ACME TOWNSHIP PLANNING COMMISSION MEETING
ACME TOWNSHIP HALL
6042 Acme Road, Williamsburg MI 49690
7:00 p.m. Monday, February 27, 2006

Meeting called to Order with the Pledge of Allegiance at 7:00 p.m.

Members present: O. Sherberneau (Chair), B. Carstens, C. David, R. Hardin, D. Krause, D. Morgan, J. Pulcipher, E. Takayama, M. Vermetten

Members excused: None

Staff present: S. Corpe, Township Manager/Recording Secretary
J. Hull, Zoning Administrator
J. Christopherson, Legal Counsel
K. Zopf, Legal Counsel
J. Iacoangeli, Consulting Planner

1. Consent Calendar:

Motion by Vermetten, support by Takayama to approve the Consent Calendar as presented, including:

Receive and File:

a) Minutes of the **02/07/06 Regular Board of Trustees Meeting**
b) Minutes of the **02/09/06 Zoning Board of Appeals** Meeting
c) **Planning & Zoning News January 2006**
d) **Planning Commissioners' Journal Winter 2006**

Action:

e) Approve minutes of the **01/30/06 regular** meeting
f) Review and approve agenda, inquiry as to conflicts of interest: Pulcipher expressed a conflict of interest regarding the sewer ordinance because he has been included in the sewer district surrounding LochenHeath. Takayama stated that he may have a conflict of interest regarding discussion of including the Steckley parcel in the proposed sewer district.

Motion carried unanimously.

2. Limited Public Comment:

Andy Andres Jr., PO Box 1647, Acme stated that he provided a letter as representative for his parents, Andy Sr. and Janet Andres, and asked when it would be discussed. Sherberneau indicated it would be discussed during the discussion about the Meijer presentation, since the letter pertains to that issue.

3. Preliminary Hearings: None

4. Public Hearings:

a) **Proposed Zoning Ordinance Amendment #133 which would add new Section 7.9, Exterior Lighting Regulations, to the Zoning Ordinance (continued from 01/30/06):** Hull stated that as requested at the last meeting, he provided a copy of the proposed ordinance amendment to township general legal counsel. There were public and Commissioner concerns about potential vagueness, but Bzdok's legal opinion was that there was not a level of vagueness or ambiguity that would cause the ordinance to be voided. Also as requested, Hull reviewed the ordinance draft with Jerry Dobek, a dark-sky lighting expert who has consulted with the township regarding the proposed ordinance; neither gentleman found a large number of ambiguities. They did make some modest proposed amendments, including to the

definition of "motion detector" and stating that the township may require unnecessary lights to be turned off from 11:00 p.m. to sunrise rather than having this be an absolute requirement. Based on discussion about the Meijer site plan that permitted metal halide lighting under a canopy at the store entrance to provide a transition from indoor lighting to general parking lot lighting, they changed some language to permit the use of metal halide lighting "as a minor portion of a lighting plan if it will reduce disability glare." He stated that other changes were of a grammatical nature.

Takayama stated that he understands grandfathering of current lighting, but asked if the sale of a property alone triggers a need to change the fixtures. Hull replied that regardless of ownership a grandfathered non-conforming fixture may remain in place until naturally replaced, and must be brought up to current standards at that time.

Vermetten asked about the word "unnecessary" in relation to turning off lights by 11:00 p.m., how this would be interpreted and by whom. Hull stated that in many places, lit signage and parking lot lights may be on for an hour after the business closes so that workers and clients can leave the site. He believes that interpretation of this is based on the nature of the land use in each case. Mr. Dobek stated that this language permits the Planning Commission to review each site plan review separately and treat each site individually as warranted. Vermetten also asked about who would define "minor" portion; interpretation will be by staff, the Planning Commission and on occasion the ZBA.

Morgan asked if this could apply seasonally; for instance some parking lot areas may only be full during the year-end shopping season and must be lit late at night at those times, but are generally unused during the rest of the year; Hull agreed that this would apply and the Planning Commission could set those requirements during site plan review through discussion with an applicant.

Hardin asked about 7.9.3(1)g(1) which prohibits certain lighting types and practices such as searchlights and lasers primarily lighting the sky for advertising. At the last meeting there was discussion about whether fireworks displays could be affected; Hull and the general consensus of the Commission felt they would not. Hardin also stated that up in Mackinac City there is a laser light show that is at a low level where it can be enjoyed by an audience; Hull stated he would interpret this situation such that the primary intent of the display is not advertising. If a more strict Zoning Administrator were in place that person's ruling could be appealed to the ZBA.

Hardin asked about the section regarding parking lots being illuminated only during business hours and for a short time afterwards and before when workers and/or clients are arriving/departing. In his business he is occasionally on-site well outside of normal business hours for a seminar – would there be flexibility for this? Hull believes that if either employees or customers are on site, the business would have a right to be there. Mr. Dobek stressed the mention that the lighting may be on until all employees and clients have left the site. Speaking to the laser light entertainment, he believes this would not generally involved fixtures and would be subject to temporary permits.

Public Hearing opened at 7:21 p.m.

Ken Engle, 6754 Yuba Road commented that the same words that caught Vermetten's attention caught his and he questioned how they would be interpreted. Regarding the prohibition of searchlights and lasers, later in the document strobe and flashing lights are also addressed. In Garfield Township there is an automobile

dealership that places flashing lights on vehicles in their lot which are very distracting. Perhaps this type of lighting could be specifically prohibited as well. Mr. Dobek stated that the language already in the document would encompass this type lighting, which is an advertising sign. Mr. Engle asked if a light on top of a car that is unaccompanied by a worded message is truly covered; general consensus was that it is an advertising device and is covered. Mr. Engle also spoke to the sections of the proposed ordinance that address residential lighting, which he believes should also be shielded. Some residents place lights on either side of their house that are unshielded – would this be prohibited? Mr. Dobek pointed out sections that would prohibit this activity. Mr. Engle also asked how this ordinance might address security lighting installed by a power company; Mr. Dobek replied that if those lights are in a residential area they must be fully shielded. He stated that some of the places that sell such lights do ask what township a customer lives in because they are aware of various ordinances.

Virginia Tegel, 4810 Bartlett Rd asked if some of the technical language could be interpreted in common language for her. Would the proposed plan prevent the sort of lit signage used at Turtle Creek which is visible for long distances? Mr. Dobek stated that in general it would, while he observed that lands in Tribal trust status are generally not required to conform to township zoning ordinances. The Turtle Creek sign would not comply with this ordinance.

Public Hearing closed at 7:25 p.m.

David spoke to Mr. Engle's comments about flashing lights on top of cars. He sees that the ordinance seems to speak directly to lighting designed to light the sky. The flashing lights on cars fall under a different section regarding advertising signs according to Mr. Dobek. Vermetten noted that the car dealership places emergency flashers on automobiles to draw attention into the lot. He feels Mr. Engle's comment is well placed and that the ordinance as written really doesn't cover this sort of problem. Mr. Engle offered the argument that such lighting might be purported to be for "entertainment." Christopherson stated that he clearly feels that the lights are placed not for entertainment but to draw people into the lot – in other words for advertising. Mr. Dobek referred to the section of the proposed ordinance dealing with entertainment lighting, which prohibits high-powered lights which those would be.

Takayama is uncomfortable with permitting neon lighting under certain circumstances; he feels it is not in keeping with Northern Michigan design at any time. He doesn't mind the "open" signs on storefronts, but in larger-scale applications he feels it implies a more urban cityscape. David stated that neon lights for advertising would be covered under the sign ordinance and would be prohibited because they represent an unshielded light source. Takayama would rather see neon prohibited with the specific exception of "open" signs up to a certain signs. David still believes this should be addressed under the signage ordinance. Mr. Dobek stated that neon, argon or krypton are sometimes desired for an architectural accent and generally don't create glare. He agreed that their use in signage would fall under the sign ordinance. Takayama stated that he was in Grand Rapids to see a movie, and the theater had so much architectural neon on the outside that the parking lot was multi-colored. Mr. Dobek replied that this situation could be addressed through the Planning Commission site plan review process. Vermetten stated that this ordinance is designed to protect dark skies, and he is hearing Mr. Dobek say that those three light sources don't impact the night sky and therefore should be addressed elsewhere.

Motion by Carstens, support by Morgan to recommend approval of proposed

Zoning Ordinance Amendment #133 to the Board of Trustees. Motion carried unanimously.

Carstens offered thanks to Hull and Mr. Dobek for their work on this ordinance.

b) **Proposed Zoning Ordinance Amendment #134 to Sewer District Ordinance, deleting Section 6.11.1(1) and adding Section 6.11.2 to spell out rules and requirements for the defined sewer district:** Sherberneau asked Corpe to summarize her memo and materials, which she did. She pointed out that notices about the public hearing were sent to approximately 1,800 landowners within the proposed new sewer district or within 300' outside of the proposed new boundaries. Feedback generated from the mailing has helped her to refine and correct the proposed district map; she had inadvertently neglected to include Arrowhead Estates which is already served by sewer, and had accidentally included land owned by Mark Hullman near LochenHeath which is not currently served and was not intended to be included. She also did not intend to include any Pulcipher property. The map was created pursuant to Commission direction to include only areas already a) within the existing sewer district, b) outside of the current district but already served by the regional sewer system, and c) LochenHeath, Windward Ridge and the Meijer property. Corpe also pointed out maps in the packet of the actual placement of existing infrastructure and the sub-service areas that make up the whole service area, a letter from Mark Hullman expressing concerns, and a memo from Sherrin Hood from 1997. She has found in the files that in 1997 and again in 1999 she, Jim Christopherson and Mark Ritter had worked on a similar potential sewer district ordinance amendment, but it didn't go very far and the files are unclear as to why. Of particular interest is a map that combines the outline of the "sewer shed area" (the map in the Master Plan mistakenly assumed to be the legal sewer district), the existing sewer district as outlined in the Zoning Ordinance and the places wehre the sewer lines exist. She also noted receipt of a letter from the Grand Traverse Resort. Her general observations about the feedback received from the general public so far is that there are many of landowners who did not already realize they are within the service district and who currently have on-site septic systems. This ordinance is not intended to make them hook up tomorrow, and the township does not have a history of making people sign up without public involvement in the formation of a special assessment district. She is unaware of any plan by the township to require expansion of the systems to unserved properties within the existing or proposed district at this time.

Sherberneau asked Corpe to point out the Steckley property, which she did. He asked why the property wasn't included in the proposed district; Corpe again stated the three expectations created by the Commission and noted that the Steckley property did not fit into any of the three categories for inclusion. She personally would support their inclusion at this time if they desired, since it is otherwise surrounded by proposed district areas, is currently zoned R-3, Urban Residential, and the proposed future land use map indicates a vision that the land would be used for higher density uses in the future. Takayama asked Corpe to clarify the location of the Hullman property.

Sherberneau asked Christopherson for his comments; he confirmed Corpe's statements about the directives from the Commission under which the proposed district outlines were drawn. Stephen Fox, attorney from Bishop & Heintz representing Rick Steckley, stated that his client would like to be included in the service district, whether at the current time or during a later review after the future land use map is complete.

Carstens concurs that the Steckley property should be included at some point in time, and asked about a small triangle near New Hope Church that is the only area east of US 31 and north of Wolverine Heights that is proposed for inclusion. Corpe replied that this parcel is actually part of LochenHeath, which is why it was included. Carstens also asked about a section of residential land use along the bayshore that is not colored in; Corpe reiterated the three conditions under which the map was prepared and stated that this area is not currently in the district or served. Carstens feels they should eventually be included in the sewer district; Corpe offered a personal opinion that she would like to see all land on the west side of US 31 North eventually included in the district. Carstens asked about the final paragraph of Corpe's memo, indicating that she wants to do more study about the sewer system. He asked if this indicated that there is additional information to be received before a decision is made on this ordinance amendment. Corpe replied that the type of study about the sewer system that she is undertaking is more historical in nature: for instance, she knows that a special assessment district was formed in 2002 to bring sewer to Deepwater Point and that there was a lawsuit about it, but she doesn't know the details. She wants to understand the evolution of the existing infrastructure over time a little better.

Carstens also noted that Corpe drew attention to the second paragraph in Mr. Hullman's letter; she has no particular thoughts one way or the other about it but wanted to make sure the Commission reviewed the question. Christopherson did not agree with Mr. Hullman's assessment that there is ambiguity in the ordinance, but noted that a similar question was raised in Mr. Bateman's letter on behalf of the Resort. The township has always required an agreement from developers that water and sewer infrastructure created by them be turned over to the township for ongoing operation and maintenance.

Carstens asked about the VASA trail and some County-owned property on the corner of Bunker Hill and Bartlett Road. He lives in the Sugarbush subdivision on Bartlett, and was wondering if the county and VASA land connects. The VASA occasionally uses the county land and, if not contiguous, the land in between. He feels that there is an ongoing intention to protect the VASA and surrounding land, so he questions its inclusion in the proposed district. Corpe again noted the three conditions under which the map was developed. The current district includes all land south of the railroad tracks and west of Acme Creek that is zoned R-2 or R-3, and regardless of current usage the VASA and the surrounding properties under discussion are zoned R-3 and are part of the current district. She stated that the county and VASA properties are not contiguous; Mr. Vermetten agreed that there is land under private ownership in between and believes there is permission for the VASA to use the property sometimes in place.

Vermetten asked for Christopherson's input about the Resort letter. Christopherson replied that on page 2 a concern is expressed about the transfer of any sewer infrastructure installed by the Tribe to the township. He reiterated that the township has required for quite some time now that in such situations any water or sewer systems created must meet township/DPW specifications and must be taken over by the township for operation and maintenance. This is permitted pursuant to the Township Zoning Act that permits reasonable conditions to be imposed when Special Use Permits are granted. The language in the proposed ordinance does not require anything more or less than is already required of all SUP recipients. This is not a new issue in terms of the Resort as a whole, although it may be new to the Tribe. Corpe noted that the Tribe is expected to provide water to Windward Ridge and the township is making no move to take that infrastructure over because it will all be

under Tribal ownership, which will make it essentially federal property. It will be subject to continued EPA regulation. If the Tribe similarly extends Tribally owned and federally regulated infrastructure to the Resort that is connected to their Tribal water and sewer plants, it may be similarly beyond township jurisdiction. Christopherson stated he would not be prepared to make a firm statement regarding that at this time.

Public Hearing opened at 8:00 p.m.

Andrew Bateman, General Manager – Grand Traverse Resort & Spa read his letter into the record, stressing the beginning of the fourth paragraph regarding the suggestion of exploring cooperative intergovernmental agreements between local units of government and the Tribe regarding infrastructure. This concept is stressed again in the last paragraph of the letter. He agreed with statements by Corpe and Christopherson that the existing Tribal water system is governed by the EPA and the federal government rather than the DEQ or local jurisdiction.

Tom Roepers, Five Mile Road asked about 6.11.2(2)c, which discusses what must be done if a property is more than 200' from an existing sewer line. He asked if this applies to only lots created after adoption of the ordinance and not those that already exist in this situation. Christopherson replied that the language discusses the need in relation to "development of a lot" and that there is no intent to make currently existing situations of this nature to hook up now. He noted that there is a sewer agreement that has been in place for decades that requires people in certain situations to hook up. Mr. Roepers was exempt from hooking into to a sewer line in an earlier situation because his house was more than 200' from the line; he asked if this would still be the case and Christopherson stated that it would be, while still noting that the Uniform Sewer Ordinance might have some impact on the situation. Christopherson stated that that Mr. Roeper's ability to remain on a septic system on his previously exempted lot will not be impacted by adoption of the proposed ordinance, although it is always possible that the township might change its Uniform Sewer Ordinance hookup requirements in the future in a way that might impact him. Sherberneau indicated that if Mr. Roeper's property was exempted from hookup and the SAD implemented when other nearby properties were hooked up because his house is more than 200' from the sewer line, this exemption will remain in place unchanged by the proposed ordinance amendment.

Tim Stoepker, attorney for Meijer, Inc. asked about Section 6.11.2(2)b and what the criteria for making the mentioned determination would be and in what sort of situation would this occur. He further noted that Meijer is over 200' away from existing sewer lines, although they anticipate being inclusion into the district. The language appears to him to leave discretion to the township to permit or deny a hookup to a property within the district if it is more than 200' away from existing infrastructure. In Section 6.11.2(2)c the main paragraph speaks to what happens if the township determines that the sewer system does not have to be expanded, but then the first numbered paragraph talks about installing a sewage collection system and the means to transmit the discharge into the public system. Mr. Stoepker also asked for a definition of "on-site community sewage disposal system," noting that there is the possibility in their situation that there could be a localized waste collection and treatment system for the Meijer property but it might be physically located on an adjacent property – would this qualify as on-site? He also asked how an ordinance can require a privately funded and built sanitary infrastructure to be turned over to the township. He also questioned the second to last sentence in 6.11.2(2)c2 and whether it represents sound engineering. Would there be a negotiated purchase

agreement?

Christopherson stated that he felt that while not specifically stated, an "on-site" system would include the scenario Mr. Stoepker described if the adjacent property owner granted an easement to permit the waste treatment system to be on their property. Mr. Stoepker stated that his client would be much more comfortable if the words "on-site" were removed from the description. Mr. Stoepker continued to express concern that based on the currently proposed language the township could determine that the Meijer property not hook up to the system because it is current more than 200' away from the sewer line. He suggested that there should be guidelines for the exercise of township discretionary power in this regard. Christopherson pointed out that at the current time there is a recommendation that Meijer be included in the service district; Mr. Stoepker noted that the Board has yet to make that determination, and asked if once the ordinance amendment is adopted they would still have to request a hookup because they are more than 200' away from the existing sewer line. Corpe stated that it has been her understanding and assumption that the township, by designating a sewer district, is essentially stating that we want all properties in the district to hook up unless an unusual circumstance exists that makes hooking up impractical or undesirable. Using this assumption, perhaps Section 6.11.2(2)b could be slightly amended to make it clear that a newly-developing property in the district will hook up unless the township approves otherwise at the landowners request. This might allay Mr. Stoepker's concerns that the township could capriciously deny the hookup even if they are included in the district, while still providing flexibility to the landowner. Christopherson stated that he feels confident that requiring turnover of the systems is permissible under the current zoning acts as a reasonable condition of SUP approval; Mr. Stoepker stated that he believes there is a "serious problem" with requiring this and that it used to be that Part 31 permits had to be signed by municipalities which had to agree to take over the systems, but that the resolution of the Lake Isabella case ended this. Takayama read the language that the Planning Commission may determine that a connection is not required, and feels it leaves the choice in developer hands and is sufficient as is.

Mr. Stephen Fox reiterated statements on behalf of his client, Mr. Steckley, that it would seem to make sense to include his client's property in the district since it is surrounded by proposed district, and the zoning and proposed future land use indicate higher density use. Christopherson stated that the inclusion could be accomplished if desired by moving to recommend approval of the proposed ordinance with one addition.

Steve Feringa, GT Casino architect asked why the Infrastructure Advisory, of which he is a member, was not involved in the drafting or review of this proposed amendment. Corpe observed that the Board can asked to have the proposed ordinance reviewed by that body before they make a final decision. Mr. Feringa feels this was mishandled.

Paul Rundhaug, 3733 Bunker Hill Road, stated that all of the existing infrastructure has been built with private money. Sometimes it was done through a special assessment district. In all cases the infrastructure was taken over by the DPW even thought the landowners funded the improvements, so he does not feel that Meijer's complaint about turning over privately funded improvements is valid.

Gard Andresen, 7745 Clearwater Drive has been President of the Deepwater Point Condominium Association since 1988. He asked about the mentions earlier this

evening about lawsuits related to the special assessment district for sewer infrastructure along Deepwater Point Road. He has only been in the area since 1988 and isn't aware of it.

Dick Erickson, 6666 Mission Ridge, owns several properties in the proposed district, including the property east of Bartlett and south of Bunker Hill, about 30 acres, that Carstens mentioned earlier. He actually built Bartlett Road and other associated roads, as well as the Sugarbush subdivision on Bartlett Road. When the sewer district was previously drawn up he was under the assumption that if they continued that subdivision they would be able to install septic fields on the majority of the property. He is uncertain if he would like to be within the sewer district or not. He has provided an easement to allow people to access the VASA trail across his property from Bunker Hill Road. He does not want to foot the bill to engineer and develop a sewer system or community system at great expense that comes through many properties and existing neighborhoods to reach what is somewhat of an isolated property that perks well now. He feels this might be a taking of property value simply because he didn't follow his original development plan from the 1970's. Corpe noted that his property is already within the sewer district, and that the ordinance currently prohibits division of land in his area without providing sewer service, and mentions no exception for his property. She recounted the variance that was required to permit the development of Cranberry Woods and Williamston Estates, granted only because the developer wanted to divide land at a time when the township had a "moratorium" in effect and would not have permitted connection to the regional system even if he built the connection. As a compromise, Mr. Williams was required to build according to R-1 standards as opposed to the R-3 standards consistent with how the land is currently zoned. The houses in these developments are also required to hook into the regional system as soon as it becomes reasonably practical as a condition of the variance, which is something not all of the currently landowners realized until recently. Last year she investigated the possibility of obtaining a connection through a new development of townhouses in East Bay that will be adjacent to Cranberry Woods and Williamston Estates. David added that

Jack Bay, Wellington Farms asked how long the township envisions it will be before regional sewer service comes to his area. Corpe noted that within Acme Township the closest the lines come to Wellington Farms is the east side of Scenic Hills Drive on Bunker Hill. Through East Bay Township is will be coming up to the boundary of Williamston Estate and Cranberry Woods. She does not believe the township is going to force the issue anytime soon, but would work with landowners if they are interested in exploring the possibilities and costs involved. Mr. Bay asked if the township is looking into grant funding opportunities for infrastructure; Corpe replied that because we are not planning any township-generated expansions we are not looking for funds, but could do so if an expansion project study is requested.

Dave Young, Cranberry Lane noted that Cranberry Woods has a common septic field with septic tanks on each lot. He knows that a sewer line is coming near his development on the East Bay township side, but there is a significant elevation difference that would seem to require an exorbitant expense to landowners to install a lift station to make the connection to his property. He asked what criteria would be used to determine whether the connection is "practicable." Corpe noted that she looked into the possibility of at least having the East Bay Township developer engineer a future connection point and grant an easement, not necessarily creating a connection at this time. She heard from many residents of Cranberry and Williamston that their investments in their on-site systems are too new to consider additional expense at this time. The window of opportunity to explore this possibility seems to

have closed. Mr. Young stated that he believes that the cost of connection to East Bay exceeds "practicable," although he and his neighbors might not oppose a connection up from Bartlett Road.

Sally Bornschein, Kaukauna Court owns several lots on Eagle Crest Drive. Feels that requiring a common system to be "on-site" is too restrictive, as it may rule out the ability to use a common off-site piece of land in a sensible way for a common system. David feels that the designation "on-site" may be giving everyone the wrong impression. The system in his neighborhood has a common drainfield that is "on-site" in the sense that it is on land that was owned by the original developer who created the development but not on each individual property within the development.

Vermetten felt that Ms. Bornschein was echoing Mr. Stoepker's thoughts about the need for some well-defined criteria to guide the township to make the decision about when regional hook-up vs. on-site system development is required. Christopherson said that it is not unusual for an ordinance to contain criteria, but it's also not unusual for the criteria not to be minutely defined. In the latter situations the decision is not arbitrary, but must be related back to the public health, safety and welfare of the citizens as required by law. He also pointed to the wording of the proposed ordinance that mentions lots and developments and he feels makes it clear that a common system on common areas of a development is contemplated.

Jim Maitland was the Supervisor when much of the early development of the sewer system was done, and he serves on the Infrastructure Advisory now. He feels that the proposed ordinance should be moved along with some relatively minor revisions. He supported Corpe's understanding that not hooking up to the regional system if within the district has traditionally been at a landowners option and not at the townships and her proposed language addition in response to Mr. Stoepker's concerns, and stressed the need for the township to work cooperatively with the Tribe with an understanding that they have the same type of rights that the township has as a governmental entity.

Public Hearing closed at 8:41 p.m.

David reviewed the three conditions according to which the proposed sewer district map was drawn up: properties already in the sewer district according to Section 6.11.1(o), properties not in that district but currently served by the regional system, and the LochenHeath, Windward Ridge and Meijer parcels. He asked Corpe to review why inclusion of LochenHeath and Windward Ridge was suggested. She replied that both projects were approved under a mutual understanding – now known to be incorrect – that the properties were within the existing district. This was a condition of approval and should be honored.

Motion by Vermetten, support by Krause to recommend approval of proposed Zoning Ordinance Amendment #134 to the Board of Trustees with the inclusion of the Steckley property within the district.

Carstens stated that the materials provided to the Commission regarding the Meijer matter include Judge Power's written opinion from July 2005 stating that the Village at Grand Traverse plan as approved was not in keeping with the dictates of the Master Plan. He believes that the proposed Meijer plan does not comport with the Master Plan either. Traditionally many people in the township have viewed the placement of sewer infrastructure as one tool for directing growth. He is uncertain if Meijer should be included in the district at this time for these reasons.

Motion carried by a vote of five (5) in favor (Hardin, Krause, Sherberneau, Takayama, Vermetten), two (2) opposed (David, Carstens) and two (2) abstaining (Morgan and Pulcipher due to conflict of interest).

Takayama noted that he voted without recalling that he declared a conflict of interest regarding the Steckley property and asked if this was appropriate. Vermetten recommended calling the question again.

Motion failed by a vote of four (4) in favor (Hardin, Krause, Sherberneau, Vermetten), two (2) opposed (David, Carstens) and three (3) abstaining (Morgan, Pulcipher and Takayama).

Motion by Vermetten, support by Krause to recommend approval of proposed Zoning Ordinance Amendment #134 to the Board of Trustees as presented. Motion carried by a vote of five (5) in favor (Hardin, Krause, Sherberneau, Takayama, Vermetten), two (2) opposed (David, Carstens) and two (2) abstaining (Morgan and Pulcipher due to conflict of interest).

A brief recess was called.

c) **Proposed Zoning Ordinance Amendment #136 for Cherries R Us for approval to rezone 11.00 acres located at 9018 US 31 North (opposite Bay Ridge Subdivision and surrounded by land that is part of the Yuba Creek Natural Area) from A-1, Agricultural to R-2, One-Family Forest & Coastal Zone:** Russ Clark presented the application with a PowerPoint display. The applicant seeks to develop the site in single family residences pursuant to rezoning and through using design principles to complement the surrounding Yuba Creek Natural Area (YCNA). He displayed the site location within the context of surrounding zoning and the YCNA. The applicant asserts that pursuing the current use by right could have a detrimental impact on the dedicated conservation area, and that the property is adjacent to existing R-2 zoning so the proposed rezoning would be consistent with the existing land use pattern. He displayed the potential use-by-right development pattern under the current zoning, with the existing home and a new home at the bottom of the slope down into the natural area on separate 5-acre parcels.

As requested at the last meeting, Mr. Clark had prepared slides consisting of a photograph of the land with a virtual house and fencing superimposed. The proposed second home was right down on the level of the YCNA valley, surrounded by a fence to try to create access management. He next provided a potential site plan slide showing the existing home plus development of 5 additional homes, all on the uplands of the site and leaving the eastern low area under a permanent conservation easement. A photo with virtual homes for this scenario was also displayed in a view from the north. He suggested that additional trees could be planted to soften the view of the homes, stressing that the photos represent the current level of vegetation. He summarized by stressing again the potential land conservation aspects of the proposed rezoning.

Pulcipher asked how visible the houses under the rezoning scenario would be from the YCNA valley. Mr. Clark stated that a few rooflines and upper levels would be visible but that natural vegetation to be maintained on the conservation area of the property would almost entirely screen the balance of the structures from view. Hardin asked if architectural design for the homes has been done yet, asking if there will be predetermined plans and standards. Some letters received expressed the idea that some of the houses built in Bay Valley are not aesthetically appealing to the writers.

Mr. Clark responded that the architectural controls have not yet been developed. Nels Veliquette, one of the partners in Cherries R Us stated that this is under consideration. Hull stated that architectural review is more appropriately part of any eventual Open Space Development review that might occur. He also mentioned that at one time there was an interpretation of the building height requirements in the ordinance that they could be 2 ½ stories or 35' tall (according to ordinance standards) rather than having to meet both conditions. He had this "loophole" closed through a ZBA interpretation, so ultra-tall homes will not be occurring in the future.

Krause asked what the future land use map holds in store for this property; the proposed designation is "country estate" which provides for one home per 3-5 acres. He asked if this should be a consideration; Sherberneau felt not, since it hasn't been adopted yet.

Public Hearing opened at 9:15 p.m.

Dan Hanna, Lautner Road stated that he raised the concern about the future land use map being used to make zoning decisions, and being assured that this would not occur. He is shocked that this is precisely just what happened. The Commission stated that he confused the situation with the Farmland Preservation Eligibility Map, which is the one not to be used for zoning purposes.

Andy Andres, Jr. stated that it would be nice if the township had funding available to purchase this piece of property. The township should try to acquire this property to add to the already-conserved lands surrounding it.

Public Hearing closed at 9:19 p.m.

Takayama stated having concerns about this proposal all along. He has been around many construction sites, and when building on a ridge it seems that everyone is trying to build a walk-out basement. He expects that the topography of the land will actually present a view from the natural area that looks like a "wall of construction" with 3 ½ story homes. He also disagrees with Hull's conclusions in his staff report; he perceives that Hull supports the plan because of the potential to protect the downslope area in an Open Space Development. Takayama feels he found numerous citations in the Master Plan that support a denial of the rezoning request and support continued use by right and preservation attempts instead. New wells and septic fields for 6 additional homes might cause "strip-mining" of the site, seeding with lawns and an undesirable look from the YCNA valley. He cited several pages of the Master Plan as containing statements that support his position against rezoning. He feels that the township would ultimately regret approving the request, as this is a bad place for a subdivision even if there is R-2 zoning across the street. He feels there really is little connectivity of zoning districts due to the separation created by the US 31 right-of-way and building setbacks from it.

David asked about the applicant's assertion that continued use by right would create greater encroachment on the YCNA, even if there are fewer buildings. Takayama believes that the bottom of the property is generally very wet and might not perk well. He also believes that it would be cost-prohibitive to run a long driveway down the slope, and that there is enough room at the top of the property to build two nice homes by right and extract value from the property without the negative impact on the natural area below. He cited page 57 of the Master Plan as containing a way that the township could work with the landowner to preserve the eastern portion of the property even with a use by right scenario. He had also referred to page 62 of the

Master Plan, but Mr. Veliquette was uncertain which portion of this page was relevant. The page talks about landowners doing their best to conserve natural resources, and Mr. Veliquette feels that the clustered housing proposal actual accomplishes the conservation goals. He also stated that building two houses up top is not a viable option because the land split required would not be allowable under the township Land Division Ordinance. Corpe confirmed this to be true, and that there essentially is no appeal process in that ordinance, which is separate from the Zoning Ordinance, that would permit creativity.

Takayama asked how many car trips the average household generates per day; the answer is around 10. With six additional homes this would be 60 additional car trips per day that would impact the YCNA.

Carstens stated his strong opinion that the current agricultural zoning designation fits with the surrounding conservation designation of the land. He believes that the individuals who donated to purchase and preserve the YCNA would not necessarily support the request. Carstens stated that he doesn't know much about use variances, but he did some reading based on letters received from some of the YCNA donors and feels he has learned a little bit about how they can be used. One of the donors suggested that permitting 3 homes would be better than 6, and perhaps could generate a win-win situation. He asked if a use variance would be a legally-viable option. Hull replied that the township's Zoning Ordinance does not permit use variances. From his perspective, some attorneys tell townships that use variances are legal and some say they are not. Acme has not adopted provisions for it. Corpe stated that there is proposed legislation that would consolidate various zoning acts and resolve outstanding use variance vagaries. Christopherson stated that there is recent case law supporting use variances; Corpe noted that at this time Acme's zoning ordinance specifically prohibits use variances so a zoning ordinance amendment would be required.

Krause supported Takayama's and Carstens' points of view, feeling that the subject property is an island surrounded by a conservation area. He would support some sort of compromise position, and Mr. Veliquette asked what opportunities might exist for such a compromise. He noted that a year or so ago he approached the Planning Commission about a potential conditional rezoning, but right after it was discussed the Planning & Zoning News warned about potential flaws in the legislation. Various planning support agencies recommend having an ordinance in place to spell out criteria for consideration; MTA has a model ordinance, but having one is not an absolute requirement.

Hardin stated that he would dislike being in the YCNA and coming around and right up to a house at the bottom of the hill. He doesn't like the idea of multiple houses up top, but he actually finds this potentially preferable to the house at the bottom alternative.

Motion by Vermetten, support by Carstens to continue discussion regarding proposed Zoning Ordinance Amendment #136 so that staff and legal counsel can review options for consideration by the Planning Commission by which a compromise can be reached. Motion carried unanimously.

5. New Business: None

6. Old Business

a) Discuss Application #2005-3P by Meijer, Inc., remanded to the Planning

Commission by the Board of Trustees pursuant to Resolution #R-2006-1 on 01/10/06 for resolution of outstanding elements required of a Planned Shopping Center SUP application that would provide a detailed finding of fact in support of the motion: Iacoangeli provided a checklist to the commissioners that he uses to track the status of various issues. He noted that Metro Fire and MDOT and the Road Commission have signed off on the project. The Planning Commission took a step this evening towards resolving the sewer issue, and a letter has been provided indicating that Meijer, Inc. and the Tribe are discussion a potential agreement to provide tribal water to the site. He regards the finalization of an agreement for water provision and finalization of the sewer issue as the only outstanding issues. Sherberneau asked Mr. Stoepker how far along the water discussion are; Mr. Stoepker stated that they are still preliminary and suggested that the Planning Commission could forward the application back to the Board of Trustees with a recommendation contingent upon finalization of the details of this issue. He noted that the ordinance requires that approvals be either in hand or reasonably well assured. Christopherson stated that in the similar case of Windward Ridge, the Board approved provision of Tribal water to that development but clearly expressed an intention that the approval not be considered a precedent; Bill Kurtz sent a letter to this effect to the Tribe. The Infrastructure Advisory also looked into the Windward Ridge situation, and he suggested this might be appropriate in this situation as well. Christopherson was careful to say that he is not saying that provision of Tribal water is or is not appropriate. Mr. Stoepker stated that concerns raised at the last Planning Commission meeting about provision of water related specifically to on-site water; Takayama mentioned the presence of methane gas in the aquifer in that area. They have arranged for off-site water provision and Mr. Stoepker sees nothing in the ordinance that would prevent the proposed arrangement. He has some questions about the proposed finding of fact, and the site plan does need to be revised to eliminate the proposed southernmost drive on Lautner Road to keep the proposed northern one pursuant to Road Commission comments.

Hardin noted the letter from the Grand Traverse Resort & Spa read earlier this evening indicated that the Tribe planned to provide water to Windward Ridge and LochenHeath; he was unaware that LochenHeath would be receiving Tribal water. Corpe stated that LochenHeath is currently served by an on-site well that the DPW operates and the township and LochenHeath are working on getting formally turned over to the township/DPW; now it seems other things may be going on in the world. Christopherson stated that current approvals for LochenHeath are based on the existing on-site well system, hinting that a change in this situation might necessitate a change in the SUP. Steve Feringa, an architect with the Tribe expressed an opinion that discussions at the Infrastructure Advisory were meant to lead to an understanding that Tribal provision of water not be construed as a precedent relative to Tribal sewer service. Christopherson stated that the Board directed Supervisor Kurtz to send a letter to the Tribe stating that allowing them to serve Windward Ridge should not be construed as a precedent. Corpe read this letter for the Commission and public; Mr. Stoepker felt that the question should be referred to the Board. David noted that the Commission was instructed to be sure that all required conditions of the application were resolved before sending it back to the Board, and he would be comfortable doing so at this point if Sherberneau is.

Iacoangeli noted that the water and sewer issues must both be ultimately decided by the Board. He agreed that these issues are out of the Commission's control at this point, and that it would therefore be appropriate to refer the application to the Board contingent upon provision of public water and sewer service in an acceptable form.

Mr. Stoepker addressed the proposed finding of fact motion. He believes it should reference the revised site plan, elevations and landscape plan by date, perhaps in the recitations section. The landscape plan date is 12/07/05, the site plan must be revised one more time to encompass the Metro Fire and Road Commission comments, and Mr. Stoepker believes the elevations are part of the site plan. On the second page, he referred to a proposed finding that the applicant has proposed a convenience store and gas station that are not discussed in the Master Plan. He stated that the Master Plan is a tool and a guide in which the Meijer store is referenced by name. He recognized that the currently proposed store are of a "slightly" larger size than mentioned in the Master Plan, and cited discussions in July and August 2005 specifically about the proposed store size and the findings of the submitted market studies. If the only point is that the current square footage is larger than that in the Master Plan, he agrees this is true. The convenience store is mentioned in the Master Plan and he believes the gas station can appropriately be inferred. Mr. Stoepker also cited recommendations in some Iacoangeli reviews that the Meijer application be viewed on a stand-alone basis without regard for a potential Village at Grand Traverse development. He stated that there has been some provision in site plan revisions for the possibility of cross-connection with a future VGT development. He feels that the assertion that the Master Plan requirements are not met is false for all of these reasons, and because this issue was never raised on a Beckett and Raeder checklist.

Christopherson stated that the finding does not say that the plan does not comply with the Master Plan as drafted, but neither does it suggest that the project complies with the Master Plan. The convenience store is discussed in the Master Plan but the 10-pump gas station is not, which Pulcipher confirmed. Vermetten suggested removing the words "or contemplated" which would recognize that the gas pumps are not mentioned in the Master Plan but goes no further than that. Carstens believes that the issue is not only size, but that the character of the proposed development is not in keeping with the Master Plan. He believes that the development should be "Elk Rapids-like" and that by deviating from this vision set forth in the Master Plan and its Town Center report, lawsuits have resulted. He does not believe the proposed development is congruous with the Master Plan. He believes it is in line with the Planned Shopping Center District ordinance.

Hardin does not see any place in the Master Plan that either calls for or does not call for a Meijer store. He feels it merely acknowledges that at the time the Town Center Report was written there was an application on file with the township for construction of a Meijer store of a certain size. He read from the Town Center report a passage saying that the application seems to contradict Master Plan goals, but that the application was filed pursuant to the zoning designation of the property and had to be processed. The passage says that with proper design a Meijer could serve as an appropriate anchor for a town center, and discusses traditional big-box development patterns and a preferable model that could be developed. Vermetten asserted that the Town Center Report is not part of the Master Plan, but several people including Corpe and Iacoangeli indicated that it is part of the Master Plan, having been amended into the Master Plan.

Mr. Stoepker objected to a statement in the finding of fact that the number of access points into the Lautner Commons Development would be limited to two from Lautner Road, stating that the applicant is unwilling to state at this time that they would not request additional access points as part of future outlot development. He also objected to a statement that Meijer would pay for street lighting on Lautner Road. The Road Commission has told Hull that they are not in a position to make

street lighting a requirement, although the township can. Meijer has stated willingness to pay for street lighting only if required by the Road Commission. The County has expressed unwillingness to pay for it. Iacoangeli feels that the street lighting would not be required were it not for this development, so the applicant should be required to pay for it. Vermetten suggested leaving the issue of street lighting between the County and Meijer.

Mr. Stoepker expressed disagreement with the proposed statement that "Eventual development of the out lots shall be abandoned if capacity is no longer available within the road network." He said they never agreed to this, suggesting that overall buildout will be to ITE Land Use Code 820 standards and that to put in additional uses they might have to re-evaluate the road configuration and expand it to make future development available. If they pay for capacity, they should be able to develop the site. Iacoangeli believes that this issue was discussed at meetings with the applicant and their consultant URS, and that the currently proposed road improvements are based on current projections. If the actual development of the site outstrips the projections, he says it was specifically discussed that continued buildout would have to cease. Takayama noted the statement that there is an expectation that there will be little new traffic impact on Lautner or Bunker Hill Roads; he believes the applicant should be required to provide for improvements to those roads if this expectation proves false. Hull stated an understanding that if future development necessitates future road improvements, they are a possibility. However, if a situation arises where it is physically impossible to increase road capacity, future development should stop. Mr. Stoepker asserted that the Planning Commission "has to approve the traffic studies." He said that if the applicant has created road improvements based on ITE 820 but finds that development of many higher-traffic generating restaurants is desirable, the applicant should be able to further improve the road. Vermetten recommended striking the sentence quoted above, but Morgan feels it should remain in tact. She feels that the traffic study has not adequately addressed what she believes is a certainly that there will be increased traffic congestion on Bunker Hill Road, and that the traffic study is therefore not adequate.

Mr. Stoepker also asked that the last sentence in paragraph 6a be striken ("As a result, the Applicant acknowledges that the out lots cannot be developed in a manner that would not be supported by the traffic network.") Iacoangeli stated that in a meeting at Christopherson's office with applicant representatives there was discussion about the traffic issue and that Mr. Stoepker suggested that as outlots develop the traffic study should be redone. The finding of fact has been drafted the way it was because the traffic plan was based on ITE 820, and that the township would accept this but that if development of the outlots was at a higher traffic impact it might mean an early halt to outlot development. He believes that taking out the sentence and concepts in question would be essentially remove something the applicant asked to have in place in the first place.

Vermetten asked if the finding of fact relates to only phase 1 of the project; Iacoangeli clarified that it covers the plan for the entire development and phase 1 of the project, being the Meijer store, convenience store and gas station. Vermetten asked if a new traffic study can be required with each site plan review request, which it can. Iacoangeli stated that the township needs coverage for the time down the road when the applicant seeks to develop the 8th outlot but it is no longer physically possible to create improvements to the traffic infrastructure to meet the new capacity demands. The applicant was originally asked to base the traffic study on the historical pattern of outlot development; had they done so the traffic study might have come out very differently. Since often there are many fast food restaurants which are high-

traffic generators, the applicant might have had to create more road improvements now. Instead the applicant asked to be governed by an assumption that traffic generation would meet ITE 820. Christopherson asked what is wrong with saying that outlots should not be developed if they can't be served by the traffic infrastructure? Iacoangeli stated that if these concepts are removed, he would then have to recommend that the applicant recalibrate their traffic studies with more high-intensity restaurants. Vermetten felt that in this light the suggested language is appropriate if the "can not" is changed to "may."

Mr. Stoepker returned to page 4, asking if Meijer would have to return to the township for further approvals if the speed limit on Lautner Road is lowered to 35 mph according to the language in place. Iacoangeli and Christopherson agreed that this issue has been resolved, and that the final sentence of the third paragraph of 3b be striken. A clause would be added to the previous sentence indicating that the Road Commission has approved the lower speed. Takayama expressed concerns, because the idea of having the adjacent portion of Lautner Road be of a lower-speed, downtown street character is important to him. He wants to reserve the ability to reconfigure the proposed outlots when they come in for site plan review in future phases in a way that lines them along the street more.

Sherberneau asked Andy Andres Jr. about the letter he provided to the Commission earlier this evening, which Krause read into the record. Mr. Andres asserted that reconfiguration of the Lautner Road/M-72 intersection and Lautner Commons driveways as proposed will render the driveway to his parents' home too dangerous to use, which will not only endanger their welfare but decrease the value of the land. He asked that the application be indefinitely postponed/denied until this issue is resolved. The applicant expressed confusion over the issue. Mr. Andres asked what ITE 820 represents in terms of traffic counts. Chris DeGood, Gourdie Fraser, indicated that this is a planned shopping center traffic flow code. Mr. Andres stated that they have a driveway that is grandfathered. The road is being widened and there will be increased traffic stacking, all of which will cause more danger to people using the Andres driveway. He also fears that anyone seeking to purchase the Andres property and redevelop it will be forced to have a right in/out driveway only, and that this will reduce the marketability of the property. Mr. Stoepker pointed out that the intersection will change from non-signalized to signalized. Messrs. Andres, Stoepker, DeGood and Nowakowski looked at the plans and displayed them for the Commission. Mr. Stoepker stated that traffic exiting the Andres property and turning left would only have to cross one lane of southbound traffic, because at this time the proposed dual lefts from Lautner to M-72 will not be needed. Mr. Nowakowski feels that the new traffic signal will actually control traffic flow and enhance the ability to move safely onto Lautner Road because of the controlled gaps created. Mr. Andres was unconvinced, feeling that the proposed right in/out driveway near the gas station will generate problematic traffic. He also felt that as an adjacent property owner they should have been personally consulted in detail, rather than getting information only at meetings. Hull discussed the nature of traffic signals with protected left-hand turning signals. He said that MDOT and the Road Commission both wanted the proposed second left-hand turn lane painted over at this time so that a protected left-hand turn segment of the signal cycle would not be needed. He stated that the striping over of this lane does not affect stacking in front of the Andres home. Mr. Andres stated that having only 4-5 cars stacked at the intersection will block the driveway. Mr. DeGood stated that peak traffic times will be 7:45 – 8:15 a.m. and 4:45 to 5:15 p.m., and that the traffic design has been done to make it possible to negotiate effectively at these times. He stated that the only time the Andres family would have a problem is if they want to turn left towards M-72 and that changing from an

unregulated traffic flow to a timed and regulated flow will create a controlled environment and enhanced safety for many potential traffic movements. Mr. Andres expressed concerns about people turning right on red from M-72 to Lautner Road while people are turning left from Lautner to M-72. He believes this will create a continuous traffic pattern that his family would have to cross when turning left out of their driveway. If traffic is stopped on Lautner people may be turning left from M-72 to Lautner. Krause observed that this situation may already exist now. Morgan asked if the applicant has ever done a traffic study that didn't work as planned. Mr. Stoepker stated that the traffic model used was mutually agreed-upon by the applicant, the township, the township's consultant and both road agencies. If the future development pattern is more intense than the one upon which the traffic study is based, they have to approach the township for further approvals. The traffic study took into account all existing curb cuts and expected traffic flows. Morgan stated that her personal observation is that Road Commission and MDOT studies frequently don't provide good real-live results, particularly at lights that have variable cycles based on when traffic passes over embedded sensors.

Carstens asked for Hull's opinion since he has experience with traffic. Hull believes that having a signal nearby doesn't necessarily create enhanced safety. It's a recognized phenomenon that drivers will naturally bunch up into "platoons" between which there are gaps. He does not believe that there will necessarily be enhanced safety from a new signal. He also expressed concern that the Andres are bringing up their concern very, very late in what has been a long process that they have attended regularly. Mr. Andres asked that the Commission carefully consider public health, safety and welfare. He believes it's never too late to bring up a concern. It's taken a long time to go from a nebulous concept to a firm site plan, and now that we are finally here he felt it was time.

Takayama expressed a concern with the finding of fact starting with the discussion of ordinance sections 8.1.3(1)c and onward. He has had concerns all along about the wetlands on the site, and he is uncomfortable voting in favor of the project when he believes that it creates a potential liability for the township. He believes that in various places where assertions are made (such as that the site is not in a flood plain, whereas he believes it is in one) that the notation should be added that this is per Gourdie Fraser Associates. He would resist any implication that the township is guaranteeing these findings and could be liable for the results. He focused on statements about wetlands, impact on the adjacent land character, the suitability of the wetlands mitigations plan and stormwater retention plans. Mr. Stoepker asked if this sort of language has ever been implemented in other approvals. Takayama stated that he does not believe that the Meijer property is suitable to this type of development. He feels an obligation to move the application forward to Board deliberation, but he does not want the township to be liable to correction of stormwater basins or remediation of flooding of neighboring properties that are then rendered unbuildable. Vermetten felt this would be unnecessary, and Mr. Stoepker stated that the conditions are those of our ordinance.

Carstens asked for Christopherson's feedback about the foregoing. Iacoangeli stated that often a finding of fact will reference presented drawings. He suggested adding the one blanket statement that the plans were as prepared by the applicant's engineers and consultants in the preliminary sentences of sections 6 and 7.

Motion by Vermetten, support by Krause to recommend approval of SUP Application #2005-3P, previously remanded to the Planning Commission pursuant to Board of Trustees Resolution #R-2006-1, to the Board of Trustees,

pursuant to the finding of fact revised as follows: (get from recording). Motion carried by a vote of 7 in favor (David, Hardin, Krause, Pulcipher, Sherberneau, Takayama, Vermetten) and 2 opposed (Carstens, Morgan).

Vermetten thanked the applicant, Hull and Iacoangeli for working together to bring this matter to a conclusion.

b) Update regarding potential amendments to Zoning Ordinance Section 7.4, Signs:

Motion by Vermetten, support by Pulcipher to discuss proposed sign ordinance amendments at the next meeting. Motion carried unanimously.

7. Public Comment/Any other business that may come before the Commission:

Corpe drew attention to a document she placed on the tables before the meeting. New Designs for Growth, a project of the Chamber of Commerce, is updating their design guidebook and revamping what has been known as the Peer Site Review into a new program called DevelopMentor. This program works with developers and landowners to suggest land and context-sensitive site design concepts. New Designs is seeking a grant from Rotary Charities to finish the guidebook and DevelopMentor program relaunch, and is seeking support from local municipalities. Supporting the venture will not result in expense to the township.

Motion by Vermetten, support by Pulcipher to adopt the Memorandum of Understanding for New Designs for Growth. Motion carried unanimously.

Meeting adjourned at 11:17 p.m.