



**ACME TOWNSHIP REGULAR BOARD MEETING
ACME TOWNSHIP HALL
6042 Acme Road, Williamsburg MI 49690
7:00 p.m. April 10, 2007**

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

Members present: D. Dunville, W. Kladder, B. Kurtz, P. Scott, E. Takayama, F. Zarafonitis
Members excused: B. Boltres
Staff present: S. Corpe, Township Manager/Recording Secretary
J. Hull, Zoning Administrator
C. Bzdok, Township Counsel

INQUIRY AS TO CONFLICTS OF INTEREST: None noted.

APPROVAL OF AGENDA: Kurtz stated that as a rule the Board holds closed session meetings if needed prior to the regular meeting. Due to a Court of Appeals hearing regarding CCAT v. Acme Township and the Village at Grand Traverse in Grand Rapids today, Bzdok is returning from the hearing now. A closed session will be held following the regular meeting. No action is expected to be taken as a result

Motion by Kladder, support by Takayama to approve the agenda as amended. Motion carried unanimously.

A. CONSENT CALENDAR:

Motion by Scott, support by Zarafonitis to approve the Consent Calendar as presented, including:

RECEIVE AND FILE:

1. **Treasurer's Report** as of 03/31/07
2. **Clerk's Report** as of 04/02/07
3. Draft Unapproved Minutes of
 - a. **03/12/07 Shoreline Park & Preservation** Advisory meeting
 - b. **03/26/07 Planning Commission** meeting
 - c. **04/05/07 YCNA Steering Advisory** meeting
4. **03/21/2007 Record Eagle Editorial** regarding downtown Traverse City Market Study
5. **March 2007 Downtown Traverse City Market Study** (full text & executive summary)

ACTION:

6. Consider approval: **03/06/07 regular** Township Board meeting minutes
7. Consider approval: **Accounts Payable** of \$90,180.06 through 04/02/07

Motion carried by unanimous roll call vote.

B. LIMITED PUBLIC COMMENT: None

C. CORRESPONDENCE:

1. **02/28/07 letter from David M. Kipley** resigning as ZBA alternate: received and filed

D. SPECIAL PRESENTATIONS: None

E. PUBLIC HEARINGS:

1. **Grand Traverse Band of Ottawa & Chippewa Indians Application** to place approximately 145 acres (75 acres in Acme Township) on M-72 E at the eastern twp. boundary into trust status: Kurtz invited the public to comment on the Tribal trust status application, which has been discussed at prior Planning Commission and Board meetings. He recognized Tribal representatives attending the meeting this evening, and referred to a draft response to the Bureau of Indian Affairs prepared for discussion this evening.

Public Hearing opened at 7:07 p.m.

Noelle Knopf stated that at the March board meeting there was mention of two letters received on this

topic that would be read into the record this month. She also asked why the proposed draft does not state that the Board feels approval of the application would be detrimental to the community. Kladder asked for her thoughts on the subject; Ms. Knopf replied that the township has a master plan calling for a retail development located near Lautner Road on M-72 to centralize commercial development. It calls for accompanying residential development in a walkable format with civic amenities and professional offices. The Tribal plan calls for only a retail center farther west than anticipated with none of the other factors and would result in no revenue to the community. Zarafonitis expressed sympathy for Ms. Knopf's point of view, but questioned her assertion that this is not stated in the letter.

Jay Zollinger, Williamston Court read in the *Record Eagle* an editorial from former Whitewater Township Supervisor Sandy Beckwith stating that her township had not received 2% funding from the Tribe as anticipated. He is concerned about the possibility for the same thing to happen here.

Ann Rundhaug agreed with Ms. Knopf. She also noted that as good neighbors the township will need to provide fire protection to Tribal property, which will cost more out of the taxpayers' pockets.

Public Hearing closed at 7:13 p.m.

The proposed draft has been available on the township website since last Friday afternoon, but perhaps not everyone has had the opportunity to read it. The draft was prepared by Corpe. Kurtz noted that Mr. Wheelock, County Commission Chairman, is present this evening. Whitewater Township and the County have finished their drafts. The letters are due to the BIA by Thursday, so the township will be forwarding its response via FedEx tomorrow.

Takayama respects the Tribe's desire to expand their business horizons as is necessary in the current marketplace. He respects the responses prepared by the County and both townships, but he feels the current Acme draft is "a little too diplomatic" for him. He read a letter received today from Kelly Hagen and he feels it very eloquently expresses his point. The township has fought hard to follow its master plan, spending money on legal fees to successfully defend it. But, at present the only clue the township has to the Tribe's plans is a reference to Quil Ceda, a commanding commercial development on different tribal lands. He does not want to respond neutrally to the application; he wants to oppose it as being opposed to what the township has fought for. The Tribe wrote a letter indicating they were not willing to sit down and discuss their plans at this time, so he is not prepared to support their application at this time.

Zarafonitis respects Ms. Knopf's and Takayama's views and agrees that we have fought long and hard to defend the Master Plan and should not stop now. Takayama stated that he has done his best to read and understand the laws that govern this situation. His understanding is that to block an approval the township must demonstrate firmly the manner in which it will negatively impact the community. He fears that the draft constitutes a rubber stamp on the approval with only faint elements of calling for further discussion.

Dunville asked why there can't be more discussions before the process moves further along; Zarafonitis observed that the deadline for a response is here. Takayama doesn't appreciate the Tribe's stated unwillingness to meet with local communities to more fully explore their plans, and feels the stance contradicts his perception of Tribal values and the statements made by Ron Olsen, Tribal EDC CEO in his recent newspaper forum article.

Scott agreed that the letter should take a firmer stance opposing the application and not treating it as a "done deal."

Kurtz stated an understanding that the county and township responses to the BIA's five questions will be forwarded to the Tribe, and the next step would be for all parties to meet to discuss the issues further. He asked the Tribal representatives present to explain further. Zeke Fletcher, Tribal Counsel confirmed that the Tribe will have the opportunity to review and respond to the letters. Kurtz asked if the Tribe is open to negotiations and Mr. Fletcher stated that this willingness exists and has been expressed at prior County and Whitewater Township meetings. Kladder asked if all outstanding concerns must be resolved prior to final application approval; Mr. Fletcher stated that this is not his understanding. Dennis Aloia, County Administrator, has expressed that the BIA encourages efforts to settle issues but are not likely to wait an extended period of time for this to occur. Kladder asked if the

township will receive a copy of the Tribe's response to our letter; Mr. Fletcher stated that the Tribe will certainly copy us and he suspects the BIA would do so as well. Kladder asked who would arrange negotiation meetings; Mr. Fletcher stated it would be between the parties and the BIA would not be likely to be involved. Kladder asked if it would make sense for all four governments to meet together; Mr. Fletcher stated that neither the County nor Whitewater Township have expressed that this is a requirement, and he believes the Tribe would be willing to meet with any or all of the municipalities. Kurtz believes the best course of action is for all four parties to meet collectively to discuss and address the issues.

Takayama's understanding of the law is that the only way negotiations would occur is through the township expressing a lack of support for the application for specifically-stated reasons. This was stated at one of the County meetings. Kladder hopes that all four governments will meet together to reach a mutual solution. He does not necessarily anticipate an adversarial relationship with the Tribe. They have a right to make the request, and they are one of Acme's largest taxpayers. His two key issues are non-conformance of the request with the Master Plan and ensuring the township is made whole financially. Mr. Fletcher posed some interesting ideas in this regard in his written statement first given to the County. Kladder also believes the letter needs strengthening, for instance by replacing the word "hope" with "must" in the statement asking our concerns to be considered before a final decision is made. He appreciates information placed on the table containing a suggestion that language be added indicating that a decision to approve the application will not be precedent-setting, as well as the suggestion that the application should not be approved simply because the land is adjacent to land already in trust, but only if it is truly a good idea. Hull stated that his research indicates that the law states that if land is adjacent to land in trust status that is a basis and/or necessary condition for adding the land to trust. His reading also indicates that the application is to be approved unless it would be harmful to the local community. The answers to the five questions seem to him to be the factors that determine whether granting the application would be harmful. He drew an analogy to the five conditions that have to be met by landowners in the township if they are seeking a variance from standard zoning regulations. Hull imagines that the BIA sees many such applications, and that all of them contain emotional elements. He believes that if the township wishes to oppose the application they must rely on demonstrating harm to the community through its responses to the five questions.

Zarafonitis asked if a road coming between two pieces of property causes them to be non-contiguous. Hull is uncertain, but agrees that the answers to questions like these are critical. He stated an opinion that the Tribe has been good to the township, citing the fact that they withdrew an application for a Special Use Permit to institute a shooting range in light of community concerns. People are worried about whether an application could be made to place the G.T. Resort property in trust status. Zarafonitis concurred that the Tribe has been a good neighbor.

Kladder would like to see more language in the letter about all four governments working together to make the process smoother and create a more uniform outcome. Scott observed that the township has had a very short time in which to learn about the procedure in order to make an adequate response on a tight deadline. He also is not comfortable with the tone of the letter, which he feels needs to be stronger.

Dunville asked Steve Feringa, Tribal EDC Project Manager, to reiterate comments he has made at previous meetings. Mr. Feringa stated that the Tribe has been able to say what the project is not, but only in general terms what it will be: something that will enhance their existing operations. They have stated that a use such as a Wal-Mart would not occur on the site because the site is too small and it would not be in keeping with the character the Tribe is trying to create for their properties. John Petoskey, Tribal Counsel, stated that Quil Ceda was not referenced as an absolute indication of the nature of the development, but only of the type of development possible. Many other tribes have used many development and revenue sharing models. The Tribe has not established a firm model for this property. He recalled that when the Tribe purchased the Resort there was a great deal of public outcry, but they have rescued and renovated what was a failing property and have contributed to the community. They have cooperated with both townships. They are sensitive to our concerns about not knowing what is going on in the process, in part because the Tribe's plans are still being developed. It is difficult for himself and Mr. Fletcher to speak to the legal aspects of the matter because they don't want to presume to provide legal counsel to the township. They are doing their best to be open about the process and their plans. He suggested that the Tribe has a track record of thoughtful development and successful intergovernmental agreements in Leelanau County. Kladder noted that township citizens are used to having a lot of say in their government and communities, through voting and

planning and referenda. Some challenging decisions must be made and we need to trust one another and work together while protecting the best interests of the township.

Kurtz asked Corpe if she has been formulating some revisions to the letter text during the discussion. Corpe replied that she prepared the draft for discussion as requested, but feels it important that any revisions going forward be dictated by the Board.

Takayama asked Mr. Petoskey why the Tribe is seeking trust status rather than moving forward with development within the township municipal planning and government framework. Mr. Fletcher stated that they are pursuing federal policy created to help tribal governments recover what has been taken from them and preventing it from ever being taken from them again, as outlined in his written presentation. Takayama's concern is that trust status removes any local say from the future process. He understands the need to provide the protection to casino operations, but given the impact to the township and region is concerned about using this mechanism for any type of development. He has no problem with people building businesses and making money, but he is concerned with allowing this to take place absent input by the community.

Kurtz noted that there are really only two of the five questions that leave room for much interpretive comment, plus the introduction and the summary. The Board took a few minutes to organize their thoughts preparatory to dictating revisions to the draft letter. Then they worked through the draft from beginning to end making amendments. Draft 2 is available for public review through the township offices.

Motion by Zarafonitis, support by Takayama to approve draft 2 of the response to the Bureau of Indian Affairs. Motion carried by unanimous roll call vote.

Kladder suggested that there was discussion about various units of government meeting to try to resolve issues relative to the application. He feels it important that all for government proceed in unison.

F. NEW BUSINESS:

- 1. Consider approval to discuss a joint planning district with Whitewater Township:** John Sych, County Planning Director, provided a two-page informational sheet discussing how joint planning commissions are regulated and permitted by state statute, formed and operated, and permitted activities. Highpointe has asked for a joint planning district to be formed, generally following their property boundaries. Most of their property is in Acme Township. Two documents are required to form a joint planning district: an agreement forming a joint planning commission and an ordinance creating a joint planning commission. Both Acme and Whitewater Township Planning Commissions have discussed the concept and recommended that their respective Boards of Trustees further consider the matter.

Kladder asked if a joint planning district should be established for Highpointe only, or should it be larger? Would it be temporary or permanent? Mr. Sych responded that at present the district is proposed to be specific to Highpointe but it could be expanded. Kladder asked which township's zoning ordinance would govern the joint planning district; Mr. Sych responded that both township Boards would jointly make this decision and state it in the agreement establishing the joint district. Kladder asked whether a property owner would have the ability to choose whether to use a joint planning district or just one or the other of the townships; Mr. Sych stated that his memo was trying to convey that the agreement forming the district has to specify how the land would be regulated if the joint district were ever dissolved. Kladder asked if the township has a choice whether to run the application in the district through a joint planning district or if it could choose to simply use its own Planning Commission alone; if the land is in a joint planning district it is subject to the joint planning commission. If an SUP is approved under a joint district which is subsequently dissolved, and then an SUP amendment is sought, the joint agreement would address what regulations would govern the project after the joint district dissolution. It is possible that the ordinance under which approval was given would continue to govern the land and the permit if the district were dissolved, so there could arise a situation whereby portions of Whitewater Township would be using Acme Township's zoning ordinance.

Kladder asked if the intent was for temporary cooperative districts to be formed, or if it is to encourage long-term or permanent joint planning efforts. Mr. Sych stated that this legislation arose from the

Governor's Michigan Land Use Council and he believes it is designed to promote long-term joint cooperation. Kladder observed that if each township partnered with more than one adjacent township the effect could be the creation of more planning commissions rather than a reduction in the overall number.

Kurtz noted that the only question before the Board this evening is whether to continue to explore the concept of a joint planning district with Whitewater. Scott asked if the point is for a developer to save money by applying to only one jurisdiction if their land crosses a boundary; Mr. Sych replied this is not the case. A joint planning district would enable the landowner with holdings spreading across a boundary to employ a planned unit development to develop the properties as one cohesive whole. Scott is concerned about how the costs of another governmental body would be covered; this is one of the things that would have to be negotiated in the documents establishing a joint planning district. Mr. Sych is aware that Acme Township policy has developers pay all the costs associated with processing an SUP application, and this principle could cover the costs of initial setup.

Kladder noted that a joint planning district helps resolve land use conflicts at municipal boundaries such as the one that exists in Holiday Hills. There is a property owned by one developer, and on the Acme portion of the property it had to be developed as single-family detached houses but on the East Bay portion it could be and was developed as multiple-family condominiums.

Terry Sanford and Jason Vander Kodde of Nederveld Associates gave a brief overview of the project Highpointe hopes to accomplish through use of a joint planning district. Their review of the entire parcel was based on the natural features of the property and not on where political boundaries crossed it. They could develop portions of the property in Whitewater Township, but those portions are prime conservation areas that would also add value to property users. They feel that the two townships can work together to their benefits and the developer's benefit, creating a land use plan that is respectful to the land and communities while enhancing landowner benefit and creating a community. They displayed a map of the total property holdings and discuss a desire to create a new clubhouse for the golf course and a variety of housing options at multiple price points. They feel it would be best to consolidate most of the development on an area in Acme Township, which respects portions of the Master Plan calling for a neighborhood center in this area. Housing would front on the golf course and protect viewsheds.

Motion by Kladder, support by Scott to proceed with discussions regarding a joint planning district with Whitewater Township. Motion carried unanimously.

2. **Consider Grand Traverse Area Veterans Coalition request for \$1,287.50 - 4th of July fireworks:** Charles Lerchen appeared in support of the request. Scott expressed a concern over what would happen if not all townships participate in the request. Mr. Lerchen stated that commitments have been made by the City, County, East Bay, Green Lake, Interlochen and Mayfield Townships. Meetings tonight at which the matter is being considered are Blair (approved), Acme, Peninsula and Elmwood. Whitewater considered the application without a representative of the coalition present and declined participation, but Mr. Lerchen subsequently spoke with Supervisor Larry Lake regarding concerns about the legality of townships contributing and the matter has been scheduled again for an upcoming meeting next Tuesday.

Kladder asked about the legal ability of the township to contribute to the fireworks display. He has been provided with an article from the MTA newsletter stating that donations to certain charitable organizations is not permitted. Mr. Lerchen noted that PA 77 of 1945 allows donations for operations to a council of veterans' organizations, whereas the MTA newsletter indicates that donations to an individual organization is not permitted.

Kurtz asked if Bzdok had reviewed the matter from a legal perspective; he had not performed detailed work on the matter but considered it and voted in favor in his capacity as a City Commissioner with support from the City's legal council.

Scott asked if funding is available in the budget. Corpe indicated that there are excess funds budgeted for bank charges and Cherry Capital Cable Council fees that will not be spent and could be redirected.

The Veterans Coalition is rushing to ensure a fireworks display for the current year, and will be discussing a more permanent solution in the future. In the past the City, County, Garfield Township,

Chamber of Commerce, Record Eagle and Cherry Festival contributed funds without a formal agreement, and contributions stopped coming in. 4th of July fireworks last summer were possible through some leftover funds from the year before.

Takayama asked how Independence Day and Cherry Festival sit relative to one another on the calendar this year; Independence Day is a few days before the Cherry Festival this year. In recent years it has fallen during the Festival and sometimes been lost in the shuffle. The projected budget includes as \$6 million indemnification policy and purchase of the fireworks and rental of the launching barge from the same vendors the Cherry Festival uses at a cost savings to both parties.

Motion by Takayama, support by to approve contribution of \$1,287.50 to the Grand Traverse Veterans Coalition for a 4th of July fireworks display. Motion carried by unanimous roll call vote.

3. Consider proposed **amendments to the 2006-07 fiscal year budget:**

Motion by Kladder, support by Dunville to approve budget amendment Resolution #R-2007-06 as presented. Motion carried by unanimous roll call vote.

4. Consider **allocation of funds received** from signing YCNA Oil & Gas lease: Consensus was that proceeds from the lease should be dedicated to parks and recreation initiatives in some form or another.

Motion by Scott, support by Zarafonitis to deposit proceeds received from the YCNA Oil & Gas Lease to a parks & recreation fund. Motion carried unanimously.

5. Consider **proposed contract with Elk Rapids School District - 2007 summer school property tax:** Last year Elk Rapids asked us to lower our per-parcel school tax collection fee, and they have asked for an additional reduction this year. Kurtz believes they have presented some good arguments in favor of the reduction. Dunville noted that Whitewater has lowered its fee to \$1.75 per parcel. Last year we received \$3.75 per parcel. Kurtz stated that at this point we do not have hard data to determine whether the suggested contract amount is reasonable; Doris Boltres reports that she has not found any historical records so far establishing how the fees were established. Last year just over \$1,000 was collected for approximately 340 parcels; this year there are 388 parcels which would generate \$970 at \$2.50 each.

Motion by Kladder, support by Dunville to accept the Elk Rapids proposed school tax collection contract for 2007. Motion carried by unanimous roll call vote.

6. Consider recommendation from Shoreline Park & Preservation Advisory Committee and Planning Commission to hire R. Clark Associates to create a **waterfront recreational redevelopment master plan:** The Planning Commission has recommended that R. Clark Associates be hired. Kladder observed that the Clark bid was much lower than the Wade-Trim bid, the latter seeming to call for more up-front data collection but including conducting a public hearing and the Clark bid having participation in a public hearing being extra (\$2,000).

Motion by Kladder, support by Zarafonitis to approve a contract with R. Clark Associates to perform a waterfront master planning project at a cost of \$7,900 in anticipation of receiving a \$5,000 grant from Rotary Charities and the township providing the balance from the Shoreline Fund. Motion carried by unanimous roll call vote.

G. **OLD BUSINESS:**

1. **Purchase of Fire Truck/Approval of Installment Financing** - Grand Traverse Metro Fire: Bzdok reported that some minor changes to the documents presented and approved pending his office's review were required, made and have his support.

Motion by Zarafonitis, support by Takayama to approve Amended Resolution #R-2007-05 approving fire truck installment financing as presented.

H. **REPORTS**

1. **County Commissioner's Report** – Larry Inman:
2. **Parks and Maintenance** – Tom Henkel

3. Sheriff's Deputy – Bob Sillers:

I. PUBLIC COMMENT & OTHER BUSINESS THAT MAY COME BEFORE THE BOARD:

Nels Veliquette asked what a typical parks and recreation cost might be. A benefit is being extracted from the YCNA, and he uncertain if designating possible use of the funds for the shoreline would include Acme or Yuba Creeks as shoreline. He feels that if resources are going to be extracted from a particular area, perhaps the rewards should be reinvested in it. It's too easy to divert funds for other purposes, and it would be a shame if land next to the natural area might be available to option or purchase to add to the YCNA and the funding weren't there. Kladder asked why the YCNA Steering Advisory would not recommend this course of action; Mr. Veliquette was unable to attend the meeting and is uncertain why. He stated that just recently there was an opportunity to perhaps add land to the YCNA that unfortunately didn't work out.

Mr. Veliquette also stated that a series of proposed zoning ordinance revisions have been recommended by the Planning Commission and are currently undergoing County review before final Board consideration. Some of the ordinance address the ability to transfer development rights out of some zoning districts and into others. He believes it is short-sighted not to allow transfers within development zones. For instance, if a neighborhood center is to be created in Yuba, transfer of development rights within the agricultural district could help to achieve that goal. Agriculture is changing, but regulations seem to be geared only towards creation of business or residential uses, but there don't seem to be mechanisms for creation of agricultural business uses.

Judith Danforth Tank supported Mr. Veliquette's statements and thanked the Board for their action regarding the tribal trust status application this evening. The application will have long-ranging community impacts. Mr. Petoskey stated it clearly: once the land enters trust status we will never have any say over the regulation or taxation of the property again. She offered thanks on her behalf as well as fellow Whitewater Township Citizens.

Andy Andres Jr. commented at the Planning Commission in the same vein as Mr. Veliquette this evening regarding development rights transfer. Transferring development rights within the agricultural district could help protect larger tracts of land in agricultural use.

Doris Boltres asked for clarification as to whether the lease royalties should be put in a new Parks and Recreation Fund; it should.

Motion by Kladder support by Zarafonitis to enter closed session to discuss litigation in CCAT v. Acme Township, the Village at Grand Traverse and Meijer Inc. because discussion in open session could have a detrimental impact on the financial interests of the township.

Bzdok stated that the purpose is to update the Board as to what occurred in the Court of Appeals today relative to this matter and that he does not expect any actions to result after the return to open session. The reason it was not held before the meeting is that the meeting start time was already published for 7:00 p.m. and to move it up to 6:00 could not have been done while meeting public notice requirements.

Motion carried by unanimous roll call vote. Open meeting recessed at 10:00 p.m.

Motion by Kladder, support by Takayama to resume open session at 10:45 p.m. Motion carried by unanimous roll call vote.

Meeting adjourned at 10:46 p.m.