



ACME TOWNSHIP PLANNING COMMISSION MEETING
SPECIAL MEETING
Acme Township Hall
6042 Acme Road, Williamsburg, Michigan
7:00 p.m. Monday, May 12, 2008

Meeting called to Order with the Pledge of Allegiance at 7:02 p.m.

Members present: M. Vermetten (Chair), B. Carstens (Vice Chair), C. David, R. Hardin, D. Krause, D. White, L. Wikle, P. Yamaguchi, J. Zollinger

Members excused: None

Staff Present: S. Vreeland, Township Manager/Recording Secretary
J. Hull, Zoning Administrator
M. Grant, Legal Counsel

INQUIRY AS TO CONFLICT OF INTEREST: None noted.

APPROVAL OF AGENDA: Motion by Carstens, support by Hardin to approve the agenda as presented. Motion carried unanimously.

1. **Consent Calendar:** None.
2. **Limited Public Comment:**
Ken Engle, Yuba Road thanked whoever was responsible for posting all the meeting materials to the website for public availability.
3. **Discussion of Content – Neutral Zoning Ordinance Rewrite Sections I through VII inclusive:**

FOR PEOPLE VIEWING THE AGENDA ON THE INTERNET: THERE ARE THREE DOCUMENTS THAT GO WITH THIS AGENDA ITEM.

- A. **Proposed new ordinance - "clean copy:"** This is the ordinance as it would appear if adopted today.
- B. **Proposed new ordinance - "mark-up:"** Same as the "clean copy," except that this document uses color to show you the current text of the ordinance and the changes to it proposed by the attorneys
- C. **Explanatory memo:** It's a long one, about 62 pages. But, it's important - it explains what the lawyers have suggested and why they have suggested it. Some of what they have to say might normally be subject to attorney-client privilege, but we are waiving that privilege in this instance because we believe it's critical to the public's ability to understand what we are trying to do, to reinforce that this re-write is intended to solve functional and legal problems with our current regulations and to demonstrate fully that there is no hidden agenda to change current landowner entitlements.

Grant stated that the memo is unchanged from the copy received by the Commission at its last meeting. There are several color pages that were inadvertently omitted from the original mark-up copy of the proposed ordinance text that were handed out this evening and should be inserted in front of Article VIII (Article VIIB; it was included in the on-line copy). There is

also an updated clean copy dated 05/07/08. Grant suggests that the Commission use the memo and the mark-up copy side-by-side. Items in green stood out to the legal team as suggested for particular discussion, and by and large should be green or gray in both the ordinance and the memo.

The Commission indicated that it liked the detailed table of contents used in the memo. In the current draft the index falls directly after the table of contents. It would be more customary to have an index at the end; Hull never uses the index and had no opinion either way but Vreeland finds it helpful to have it at the beginning of this particular document.

The list of existing amendments would be deleted in entirety because the intention of in-house and legal staff is that the document be a brand-new document as opposed to an amendment to the existing document. Such a list is not required by law, and the current format does not contain enough detail to be helpful. Once the current ordinance is replaced it remains on file in the township archives as an historical document.

Article I: This consists of one sentence giving the short name of the ordinance.

Article II, Purposes and Scope: Legal proposes a text taken verbatim from the MZEA (Michigan Zoning Enabling Act) as to the purposes for establishing zoning districts. Many of the concepts eliminated from the text are expressed in the MZEA, so reference to them should be sufficient. Not listing them can be a benefit because if the MZEA changed the text, the township would then have to amend its text. David noted that many members of the public may not tend to directly access the MZEA, and wondered if providing a summary of it is helpful to those people. Hardin suggested adding a sentence that encourages people to consult the MZEA under Section 2.1. Zollinger also suggested providing detailed information on where to find the MZEA. Grant has added a definition for MZEA to the definitions section. Wikle tried Googling “MZEA” and was able to find a reference right away. Vermetten noted that everyone is not as adept with the Internet, but if we provide the statutory citation people can look it up, and we can also provide a link via the township website.

Article III, Definitions: Grant proposes several basic changes. David asked why the definition of “boat livery” is proposed to be removed; Grant stated that there is no reference elsewhere in the ordinance to boat liveries so there seemed to be no need to define the term.

Definition of “duplex:” Carstens asked if the proposed language is adequate to cover situations where units are not just side-by-side, but could be upper and lower units separated by a ceiling. Hull proposed simply defining it as one single structure which contains two separate dwelling units. David stated that one of the things that separates a duplex unit from an apartment unit is whether or not the two have separate exterior accesses.

The definition of “erected” is proposed for deletion. As it currently exists it seems to apply entirely to installation of infrastructure for essential services or public utilities. It also behaves as a regulation placed in a definition section, which is not a good idea. Wikle believes this largely refers to installation of junction boxes and optical fiber cables along with manholes, and should not be addressed by the ordinance.

Family: our current definition does not comport with recent case law. The proposed language is the shortest Grant could find; he took it from East Lansing’s ordinance.

Farm Market: Wikle asked if the definition should require any associated structures to be temporary. An example of a permanent farm market structure might include an awning such as that used by the Sara Hardy farm market downtown, or reuse of Bertha Vos school for a farm market occasionally. The way the definition is written it would allow permanent

structures or temporary structures such as the portable tents many farm market or street sale vendors use. This definition is distinct from roadside farm stands. This definition derives from language in the recently-revised business district zoning ordinances prepared by John Iacoangeli from Beckett & Raeder.

Feeder lot: White asked why this definition would be removed; currently the term does not appear elsewhere in the zoning ordinance.

Flood Plain: the DEQ statutory definition has been suggested. Vermetten suggested adding the citation.

Garage: Wikle asked if the suggested definition would preclude people from bringing home a vehicle belonging to their employer.

Home Occupation: the definition in Article III differs from the definition in Section 7.8. Grant looked up the referenced tax code but found no information about what a home occupation is; only under what circumstances you may take a deduction for one. He reviewed the City and Garfield Township ordinances, which both use operational definitions. He believes the definition should be removed from the definition section and leave it in Section 7.8. Hull stated that the MZEA requires the township to allow a single family residence to be allowed for home instruction in a fine art or craft. Other uses may be included as well; Grant will make sure that the MZEA language is included in Section 7.8.

Manufactured Housing Community: Grant observed that dealing with the revision of the manufactured housing ordinance is separate from the overall re-write. He has placed the manufactured housing ordinance on the “back burner” until this process is complete, because some of what we propose to the Manufactured Housing Commission will depend on the final shape of the ordinance.

Major Thoroughfare: Vreeland observed that this definition has been scrutinized in the past, particularly because the current signage regulations limit the number of freestanding signs per parcel per major thoroughfare. Hull is comfortable that he could reasonably interpret the definition as written. There was some discussion about the Road Commission road classification system and how the classification of a road might or might not impact the level to which a road or the land surrounding a road might become developed.

Mixed Use Development: the definition clearly states that a MUD is intended to be a planned unit development (PUD) per Section 503 of the MZEA.

Mobile Home: will be addressed at a later date when the entire manufactured housing ordinance is revised.

Open Space: Grant stated that open space is basically only discussed in the ordinance under the clustered housing provisions that are being proposed. The state does not define open space, nor do the regulations later on. Grant has suggested this definition based on situations he has run into elsewhere, such as whether or not a man-made water feature can be part of open space. He also noted that this definition is intended to be generalize but not specific to clustered or open space housing developments under state law that require that a certain amount of land be left in an undeveloped state. Hull does not believe that the definition is ultimately useful because Article VIII C is going to provide the rules for open space within the context of a specific land use anyway. Consensus was reached to remove the definition.

A brief recess was taken from 8:35 to 8:40 p.m.

PUD, but it refers to two categories of uses: uses by special use permit (SUP) and PUD. Hull read from the MZEA Section 503, which is referred to in the MUD definition. Vermetten asked if the Elk Rapids definition of PUD has been reviewed; he thinks it would be very helpful.

Residential Zoning Districts: proposed definition includes only the “R” districts, but housing is allowed in all but the B-4 district and is often constructed in the A-1 district. Grant feels that an explicit definition would be helpful to forestall legal arguments that districts intended primarily for business are defined as residential because some residential uses are allowed.

Roadside Farm Market: proposed for removal, but doing so would fail to encompass uses such as Hoxsie’s Farm Market where one can go inside and purchase raw product, value-added product, and limited other products such as milk or ice cream. Grant will reintroduce the definition, noting that three category totals appear to be needed: farm market (the temporary periodic use), roadside farm stands (one pulls up and purchases raw product but there is nothing to go inside) and roadside farm markets (like Hoxsie’s). Nels Veliquette suggested that the first category (temporary periodic use) be renamed “Farmers Market,” and the idea was adopted. Hull asked if all three definitions should be placed together so one could review the entire spectrum together: all three will be renamed to start with “farm” so that they will naturally group together: farm market, farmers market and farm stand or something similar.

Satellite Signal Receiving Antennas: it is unclear as to whether this was intended to pertain mostly to home dishes or whether it was intended to pertain to commercial send/receive stations. Grant stated that it might be best to discuss this later in the text of the ordinance, as the township also has a personal wireless service ordinance. Conversation may be more fruitful in context.

Traveled Surface of Roadway: Grant believes this is a way to define where setbacks on properties **begin**. Hull stated that this definition contradicts other portions of the ordinance. Vreeland noted that Section 6.11.1 defines “yard setbacks.” Yard is defined in part as the “minimum horizontal distance between the lot line and the building line.” A front lot line is at the edge of a right-of-way, therefore the minimum yard setback would be the minimum distance between a lot line and a structure or building. This definition establishes setbacks from the edge of the pavement which is neither a good idea nor consistent. Grant and Hull will work together to clean up the definitions of setbacks, perhaps consulting other area ordinances and including a graphic, and this definition would be deleted.

Wetland: Carstens expressed concern with the proposed definition because some areas he sees as wetlands do not contain wetland vegetation but does support certain forms of life recognized as pertaining to wetlands. This definition was taken from state statute. Carstens then noted that the definition “wetland vegetation or aquatic life” addressed his specific concerns about certain frog habitats. Vermetten has been appreciating the increased citation of statutes as definitions, and is concerned about taking only a small part of a statute as a definition, as seems to have been done in this case. Grant suggested he would include the precise statutory definition and a citation instead.

Article IV, Administration and Enforcement:

Section 4.1.3(1), Land Use Permits: Vermetten asked if the minimum size threshold causes a problem for staff, or if the definition is unclear. Staff has no problem administering it. There was discussion about whether or not structural alterations, perhaps including remodeling as opposed to enlarging or demolishing, should require a permit. It was ultimately decided that discussing such a change would constitute a substantive change rather than a content-neutral change and it was decided that the concept of alteration would not be addressed.

Section 4.1.3(2): Grant previously struck the reference to agricultural property but it will be reinserted.

Article V, Zoning Board of Appeals:

Almost every word of the first two pages was verbatim from a prior version of the MZEA and is suggested for deletion as obsolete. Again, Grant recommends not quoting the MZEA extensively because when it is revised the ordinance would also need revision. His suggestion is to make the statutes available in a reasonably convenient manner.

Section 5.3.2, Interpretation: The first three provisions are set forth in the MZEA and would therefore be repetitive. The third seems to be a hybrid between use variances and interpretations, and the ordinance does not currently allow for use variances. Grant suggested that the fourth provision is really something that should be handled as part of the off-street parking and loading requirements later in the ordinance. Removing the third provision may make life harder for individuals who approach the ZBA with a need for more than a fairly basic interpretation. Vreeland stated an understanding that relatively recent changes in state law do not permit townships to grant use variances going forward if they did not grant them in the past. To the best of her knowledge the township has not granted use variances in the past; therefore, she doesn't think that we can grant them going forward. Hull generally agreed with this assessment, if not as strongly. The question was raised as to whether this would be a substantive change of entitlements, but the consensus was that if we don't do it now, not doing it the future is not a substantive change. This entire section will be struck.

Section 5.3.3, Nonuse Variances: Grant feels that in general this section is fine, but to better comport with state law a first new basic condition would be that the variance must result from practical difficulties which prevent carrying out the strict letter of the ordinance. As to the special conditions, the words "unnecessary hardships" would be removed because these are now the "magic words" specifically related to use variances. The former first special condition became a basic condition because it is required by statute.

Section 5.3.4, Special Exceptions: this appears to Grant to permit use variances while saying that it is not. Hull has only seen this section used if someone wanted to put up a mobile home temporarily to live in while they construct their permanent house. Vreeland recalled a specific situation within the past five or so years on Shaw Road where someone lived in a camper or mobile home while building a permanent home. She thinks the ordinance has only been used during her tenure in this one situation. Vermetten asked how one would allow use of a temporary building or dwelling elsewhere in the ordinance. Grant found a reference to use of temporary building during construction or for one year as an allowable use in the R-1, R-2 and R-3 districts. Recreational vehicles can be stored on one's property as well. Grant also suggested striking the prohibition against use of temporary structures as dwellings in the R districts. He is not seeing something analogous in the A-1 district but could add something. Because this is covered elsewhere Section 5.3.4 is proposed for complete deletion. The end result will be that the possibility for temporary dwellings will be preserved. Vreeland asked about how the entitlements in 5.3.4(2)a and c would be preserved; Grant could accommodate these by including them as special uses in the A-1 district. 5.3.4(2)b seems to make no sense, as a lot with a permanent access would not seem to qualify as "landlocked."

Section 5.4: Essential Services: will be addressed at a later date because it would not be content-neutral.

Section 5.5, Review of Building Design Near Public Buildings and Sites: If it is to be retained, Grant suggests it be moved to Article VII and rewritten. Vreeland believes this section was used in the past to impact the design and color of a proposed Hot N Now and later an actual McDonalds opposite Bayside Park to force changes in the color scheme. Grant

believes that some of the provisions may be difficult to enforce at best.

Section 5.6, Bond for Compliance: proposed to be updated to current MZEA language. Vermetten asked that the statute citation be added, or simply a reference to the MZEA so that it is always current when the MZEA is amended.

Section 5.7, Lot Division: This section has been applied in the past, by the Board (but without ZBA review) when the owners of adjacent platted lots in a subdivision want to transfer part of a lot between them, or when two lot owners want to divide ownership of a third lot in the middle between themselves. We have numerous occasions of this in the township. Grant will review this further, but feels it should be addressed elsewhere in the ordinances or under plat amendments or the land division ordinance.

The Commission scheduled another special meeting solely for continued review of the revised Zoning Ordinance Draft for Monday, June 9 at 7:00 p.m.

The Commission also moved its regular meeting for June from June 30 to June 23 to enable movement of the July Board meeting from July 8 to July 1 so that it won't fall during Cherry Festival or right after the July 4 weekend.

Meeting adjourned at 10:10 p.m.