



ACME TOWNSHIP PLANNING COMMISSION MEETING
Acme Township Hall
6042 Acme Road, Williamsburg, Michigan
7:00 p.m. Monday, May 19, 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 Yamaguchi to approve the agenda as presented. Motion carried unanimously.

- 1. Consent Calendar:**
Motion by Carstens, support by Yamaguchi to approve the Consent Calendar as amended to remove approval of the 05/12/08 minutes for discussion, including:

Receive and File:

- a) Draft Unapproved Minutes of
 1. ~~05/13/08 Board meeting~~ (not ready for this meeting)
 2. 05/08/08 Parks & Recreation advisory meeting
 3. East Bay Twp. Master Plan amendment for comment at future meeting

Action:

- b) Approve minutes of the 04/28/08 Planning Commission and 5/12/08 Special Meeting

Motion carried unanimously.

- 2. Correspondence:** None.
- 3. Limited Public Comment:** None.
- 4. Preliminary Hearings:** None.
- 5. Public Hearings:**

Vermetten stated that today he met with the attorney for Immanuel LLC. The meeting included representatives from Mansfield & Associates, Hardin, township staff and township legal counsel. John Iacoangeli attended by phone. The purpose of the meeting was to ensure that the township and the applicant for the Bates Crossing project have a common understanding of application standards and outstanding issues, and procedure for moving forward. About 8 primary issues remain to be addressed.

- a) SPECIAL-USE PERMIT Amendment Application 2008-01P by Mark Sedgewick, 5555 Bunker Hill Road to establish a residence in a walk-out basement on commercial property at 4263 E. M-72 (former Sandtrap): Mr. Sedgewick was present in support of his application. Hull summarized his staff

report. Mr. Sedgewick would like to use the upstairs portion of the former Sandtrap as a trio of businesses and the lower level as living space. The business uses were approved pursuant to Site Plan review last month; the residential use is subject to the SUP process in the B-2, General Business district. One small modification to the building is proposed that will enclose some more floor area on the lower level creating more usable space and helping to solve some water leakage usage. Hull finds the proposed use as in keeping with the township's expressed desire to encouraged mixed uses in core areas of the township. Metro Fire has given approval for the project, and Hull believes that no other agencies need to respond at this time.

Today while reviewing the ordinance update, Hull and Grant found that Section 8.7 of the ordinance deals with residential uses in business districts. Hull finds that the conditions of this ordinance section are generally met.

Vermetten asked Hull if he was aware of the structural change when he wrote his staff report, which indicates that there will be no major changes to the structure. Hull feels the proposed change is minor and will not impact soil erosion or health department issues because the area to be enclosed is exposed concrete and already an impervious surface.

Public Hearing opened and closed at 7:15 p.m., there being no public comment.

Krause asked how the upstairs uses will be advertised in terms of signage. Mr. Sedgewick plans to use the same sign as TraVino. Howard Schelde, owner of TraVino stated that when they divided the property they reserved the lower portion of their sign that says "Open for Lunch and Dinner" for the property the Sedgewicks are purchasing. No additional freestanding sign is proposed; he would expect the Sedgewicks to ask for some on-building signage.

David asked if the structural change is just to enclose the lower level patio that open onto the golf course; it is not. There is a brick walkway/precast floor on the front of the building.

Zollinger asked where the entrance to the garage will be; a new driveway will be placed near the current Dumpster location and where the kitchen formerly was. Steps will lead to the dwelling unit.

Hardin recalls conversation that the B-2 ordinance specifically allows residential uses on upper floors of business structures; this situation needed a ZBA interpretation of the ordinance that the lower level residential use was essentially similar. Will this be an ongoing issue? Hull replied that the ZBA found the upper/lower residential unit to be substantially the same, and the language will be fixed in the neutral ordinance rewrite.

Motion by Carstens, support by Yamaguchi to recommend approval of SUP Application #2008-01P to the Board of Trustees. Motion carried unanimously.

- b) **SUP Amendment Application #2008-02P by Richard Bruening, Stained Glass Cabinet Company, 4160 M-72 East to permit addition of a weekly outdoor farmers'/crafters' market on property located at 4160 M-72 East and zoned B-2, General Business:** Mr. Bruening was present in support of his application. Metro Fire reports no concerns regarding the application; their only concern would come if there were to be a large enclosed tent in use. Paul Wisniewski from MDOT performed a site inspection today and said there were no concerns with the additional

site usage from a road access perspective.

Hull noted that the applicant must still provide a narrative regarding the proposed land use; he believes that the Commission could reasonably make a recommendation to the Board contingent upon receipt. Hull will also follow up with Metro Fire and MDOT to confirm that they have no concerns about the change.

David asked if Health Department approval is required for sanitary facilities. Mr. Bruening is planning to use porta-potties rather than discharging waste on-site so Hull believes not, but he will double-check.

Public Hearing opened and closed at 7:25 p.m., there being no public comment.

Mr. Bruening hopes to open the farmers' market in mid-June. Zollinger asked about provisions to keep dust down on the gravel drive, particularly to protect the creek. Mr. Bruening regularly has the gravel drive and parking areas sprayed with an environmentally-sensitive spray; he likes to keep the doors open rather than using air conditioning but does not wish to dust endlessly. He has approached several local farmers already and says they are generally excited. David asked if temporary covers will be provided for the vendors: Mr. Bruening stated that they will have only what they bring – tables or perhaps their own temporary tent stands.

Motion by Krause, support by Wikle to recommend approval of SUP Application #2008-02P to the Board of Trustees contingent upon receipt of the required written narrative description of the land use. Motion carried unanimously.

- c) **Public Hearing on Zoning Ordinance Amendment #141, requested by Immanuel, LLC. changing the text to allow limited R-3 Urban Residential uses in the R-1MH, Manufactured Housing district:** Grant noted that there was discussion about this issue at the April 28 meeting. There is an additional submission from Mr. Quandt, the attorney for Immanuel, LLC, with some slightly modified proposed ordinance language. The changes have not been substantial enough from the language published in the public hearing legal notice to require re-publication. The difference is that the applicant seeks to clarify in 6.5.3(2) that single family detached dwellings and customary accessory uses would be permitted in the R-1MH district.

Grant has provided his legal opinion regarding this issue in the past. He also noted that this was originally an application to rezone the parcel from R-1MH to R-3, but the application has been amended to seek a zoning ordinance amendment to add most residential R-3 uses to the list of allowable uses in the R-1MH district. In practical terms, this property is the only one in the township where creation of a mobile home park is currently viable. If it becomes impossible to develop the parcel in this fashion, the township becomes open to a challenge seeking to establish a mobile home park use anywhere else within the township. The applicant's proposed amendment is characterized by them as allowing gradual development of the site in a variety of residential forms while always leaving space on the property for potential mobile home park development. Grant and Bzdok still advise that if this change is made and the parcel is developed in a non-mobile home park fashion, it would be more difficult for the township to counsel potential mobile home park developers to seek to purchase and use this property rather than seeking to rezone other parcels of land.

Vermetten characterized the request as seeking to establish a "floating zone" within

the property where a mobile home park could be created. He asked if the township can still direct potential mobile home park developers to this site. Grant stated that case law has not looked favorably on townships where zoning exists for a land use but it is not actually practical to develop the use where zoned. His concern is that this will occur regarding this site. Vermetten also noted past discussions regarding “illusory” zoning, and said he doesn’t know if the site is physically suited to an economically viable mobile home park.

Mr. Mansfield, representing the applicant, stated that there is no intent to “bait and switch.” There are areas on the site that seem conducive to siting single-family workforce housing that fits with the terrain rather than having to site in larger multi-family structures.

Public Hearing opened and closed at 7:44 p.m., there being no public comment.

Vermetten believes this is a creative option for the property that has been scrutinized closely. Yamaguchi agrees and feels comfortable about it because it would not require rezoning of the property and will uphold the Master Plan. Krause asked Hardin if he believes the Board will look favorably on this proposal. Hardin believes the issue has been examined extensively and personally sees no other way to approach the problem short of outright denial. Krause wholeheartedly endorsed the proposal as a creative approach to the land and an avoidance of rezoning.

David, looking at the current Section 6.5.2(1), notes a requirement for a deed restriction designating the site solely for occupation by mobile homes and asked if this would apply. Grant noted that this requirement applies to a “mobile home subdivision,” which is distinct from a “mobile home park,” which is the concept that has been most widely discussed. David also noted that the existing R-3 ordinance says that the district should apply to areas where the township can or will seek to provide centralized infrastructure. If the R-3 provisions are included in the R-1MH ordinance, would it require the township to provide sewer service to the subject site? Grant said it would not, and noted that the site is outside of the current sewer service district. He also noted that the current R-3 district has provisions for areas both served and not served by sanitary sewer.

Zollinger asked if the proposed ordinance change would in any way affect other properties zoned R-3 in the township; it will not, and will only affect the two R-1MH zoned properties in the township.

White feels that the proposed change will further discourage mobile home park development on the subject property. It’s a beautiful site, and he fears that this is somewhat of a “smoke and mirrors” approach. Mr. Mansfield stated that “mobile home” should not be equated with the vision of a 1976 single-wide trailer. Woodland Creek contains properties valued at up to \$300,000 according to him. Modern mobile home construction can be very nice. White believes the property should be rezoned to R-3.

Hardin visited an old-style mobile home park on the east side of Elk Rapids this weekend. He drove through Woodcreek tonight, and found it to be 6 miles from the Resort and 10 miles from the cherry processing plant. There are 65 empty spaces in that development, and the commute time is very slight. So, within 10 miles of two of the largest employers in the township there appears to be unused mobile home park capacity. Zollinger stated that it’s about 25 miles from here to Kalkaska. Hardin also noted that it is illegal to remove many of the older trailers from their existing sites

now, so it is improbable that any would be relocated to a mobile home park within the township.

Hull spoke to assessor Amy Jenema, who says most mobile home parks today are created as site condominiums, similar to any other site condominium but just requiring mobile homes rather than stick-built homes.

Carstens heard Mr. Mansfield discussing the ability to use flexibility with the site, but has also heard Grant describe the state's mobile home park standards as being extremely rigid and not allowing the type of creativity Mr. Mansfield would like to promote. Grant has put rewriting the mobile home park ordinance on hold pending the outcome of the neutral ordinance rewrite. It is true that the state could largely prevent the type of flexibility the township might otherwise desire in permitting mobile home parks. Vermetten observed that through the proposed ordinance amendment, the applicant would not be limiting itself to creating a mobile home park. Mr. Mansfield stated he has clearly understood the township's message that he is to leave room on the site for a mobile home park. Not all of the site is suitable for such a use, but a portion of it may be. As the ordinance is currently written he would be unable to integrate a mobile home park and more traditional housing. Within the mobile home park area the state and township guidelines for such projects must be followed, but outside of that portion of the site he could create something more flexible. He stated he is comfortable he can meet all the rules and restrictions and work with the parcel to develop a plan for it.

Hull noted that two alternatives that have been discussed are the proposed ordinance text amendment and splitting the zoning designation of the property. He noted that in the latter scenario, if a portion of the property were rezoned R-3 it would be subject to the possibility of a mixed use development, which was a concern for the township. Therefore, the proposed text amendment may be preferable. Hull also believes that either route will lead to the same economic outcome – the same result will follow but differing routes to the result are being considered.

Zollinger asked if he heard that the development could contain a mixture of stick-built and manufactured housing, but would also contain an area for state-mandated "mobile home park" design; Mr. Mansfield confirmed.

Vermetten reiterated prior comments that he does not believe that state law requires every governmental unit to encompass every type of land use if the need for that use can be met in a neighboring governmental unit.

Motion by Krause, support by David, to recommend adoption of proposed Zoning Ordinance Amendment #141 as set forth in the letter from Joe Quandt dated 05/13/08 to the Board of Trustees. Motion carried by a vote of 8 in favor (Carstens, David, Hardin, Krause, Vermetten, Wikle, Yamaguchi, Zollinger) and 1 opposed (White.)

- d) **Public Hearing on Zoning Ordinance Amendment #144, removal of Section 6.11.2, "Sewer District" from the Zoning Ordinance:** Immanuel LLC has asked to have the township sewer district extended to their proposed Bates Crossing project. As an outgrowth of discussion a 1997 police power ordinance was discovered that states that the township sewer district map will be found in the Master Plan, whereas it currently resides in the Zoning Ordinance. The Board was asked to decide on the process for making amendments to all three documents and where the map would ultimately reside; they have chosen to have the map in the Master Plan. One step in

the process is amending the Zoning Ordinance to remove the map. Grant added that the Commission has already agreed to do so. The processes are also beginning to amend the Master Plan, and the Board will update the police power ordinance.

Public Hearing opened and closed at 8:13 p.m., there being no public comment.

Hardin asked what will happen during the interim period when there is no sewer district in the ordinance or in the Master Plan. Grant replied that the timing for the rest of the processes should be handled carefully to minimize this interim period. David noted that master plan amendments take longer than zoning ordinance amendments. He also asked if the map when in the master plan will have authority equal to that it has now as part of the zoning ordinance. Grant cannot guarantee this, but noted that the map is referred to as part of the police power ordinance. The Board wants to keep the Planning Commission involved in shaping the sewer district because it will have such an impact on land use patterns in the township. Carstens observed that the amendments to the Zoning Enabling Act will require the Planning Commission to annually develop and/or review a capital improvements plan (CIP).

Motion by David, support by Krause to recommend adoption of proposed Zoning Ordinance Amendment #144 to the Board of Trustees. Motion carried by unanimous roll call vote.

6. New Business:

- a) **Approve minutes of the 5/12/08 Special Meeting:** The word “begin” was added to the end of first sentence of the fourth paragraph on the fourth page.

Motion by Yamaguchi, support by White to approve the minutes of the 05/12/08 Planning Commission meeting as amended. Motion carried unanimously.

7. Old Business:

- b) **Discussion of Content Neutral Rewrite of Zoning Ordinance, §5.7, and §6 if time permits:** At the May 12 special meeting the Commission reviewed the proposed zoning ordinance draft through Article V. Grant provided a memo this evening regarding **proposed replacement provisions for Sections 5.3.4(2)(a) and (c)**. These were situations where the ZBA has previously been given the ability to grant some conditional permits for special situations occurring in the A-1 district. The text as it exists currently is italicized on the first page and the proposed new text is provided on the second page. This text would also be moved to the list of special uses in the A-1 district. The proposed change is not entirely neutral, but legal staff believes that there are some significant legal issues with the provisions as they exist today.

The portion relating to 5.3.4(2)(a) allowing conversion of a single family dwelling in the A-1 district to a duplex under certain conditions appears to the legal team to practically create a use variance. The Commission and staff were unable to come to a common understanding of what this section is supposed to mean. Some wondered if it was an attempt to preclude creating rental units, and there was much discussion about mother-in-law flats. On that basis, it may be acceptable to delete that paragraph even though the deletion would not be entirely neutral because it would eliminate a legal problem. There was also discussion about simply moving the existing language from the ZBA section to the SUP section, which would require application to the Planning Commission. The proposed “clear economic necessity” language was not approved. It was decided to move the current language to being a special use under the A-1 district.

The portion related to 5.3.4(2)(c) is also proposed to be moved to special uses under the A-1 district. The only change is proposed deletion of the provision that land surrounding the residence be “prime agricultural lands” as designated by the GT County Planning Commission. Staff has been unable to determine that the County Planning Commission has ever made such a designation. There are USDA prime soils maps and a Tart Cherry Site Inventory, both of which were used to develop the PDR eligibility area map, which encompasses most of the A-1 district. White, as a farmer, feels that the suggested language is appropriate, and in fact feels that the minimum lot size in the A-1 district should be changed from 5 acres to 1 acre. The only reason you sell farmland is because you need revenue, and you don’t like to sell it out of production because the neighbors tend to complain about ordinary agricultural practices as nuisances. Few people on 5-acre lots fully maintain them; preferring recreational pursuits instead. If the farmer still had the land it would be planted, maintained and productive. Wikle tends to agree.

Hull feels that the first sentence in proposed A-1 SUP item (y) should be re-written to more clearly state that you may create a lot of less than 5 acres in the A-1 district with a house on it subject to the three listed conditions. He would prefer it if the sentence were restated to say something like: “A lot with a minimum size of one acre containing a single family dwelling may be created subject to the following requirements.” An item d was also added to the list of conditions to recreate the former 5.3.4(2)(c)2, which was inadvertently left out.

Section 5.7: Legal recommends removing this entire section because the township has a subdivision control ordinance to cover division of platted lots and a land division ordinance that covers division of metes and bounds parcels. This section has been used many times before when lot owners in platted subdivisions want to buy or sell portions of adjacent lots. This section was amended in 1997, which is when the Land Division Ordinance was adopted. Legal recommends deleting all of the current section and replacing them with two new sentences that direct people to the Subdivision Control Ordinance and Land Division Ordinance.

The next review of the proposed ordinance revision will be on June 9. The plan is to cover all of Articles VI and VII.

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

Meeting adjourned at 9:20 p.m.