ACME TOWNSHIP PLANNING COMMISSION MEETING
Acme Township Hall
6042 Acme Road, Williamsburg, Michigan
7:00 p.m. Monday, July 14, 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 CONFLICTS OF INTEREST: None noted.

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

1. Limited Public Comment:

Gene Veliquette, 8369 Elk Lake Road stated an objection to reference to the zoning ordinance amendment as "neutral" and hopes it is challenged by referendum. He believes that if it is adopted nobody will be able to comply with the site development requirements. He believes the Planning Commission is "trying to do the right things" but that the Board of Trustees acts to the contrary. Mr. Veliquette stated that he was reading the amended SUP granted to Meijer today and believes that it would require Meijer to completely redesign their project in order to comply with its terms. If the Planning Commission tries to pass the ordinance amendment without public comment, he believes it will be voted out.

2. Old Business:

a) Continued Discussion of Content-Neutral Amendment to Zoning Ordinance: Articles 8-12:

FOR PEOPLE VIEWING THE MINUTES 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 and Hull have met to prepare for this evening, and believe the first review of the draft can be completed this evening. Vermetten asked what the next step of the process will be once the first review is complete. Grant replied that based on the discussions a new "clean" draft will be generated for use for a public hearing and ultimate forwarding to the Board for their action. Hull expects that if the Commission is satisfied with the draft on July 28 they will set a public hearing for the August meeting. Zollinger asked if the legal cover memo will be updated/revised as well. It is a useful tool for the public to understand why text changes are proposed where they are. Yamaguchi agrees that this could be helpful. Vermetten is concerned that if something is inadvertently neglected from the memo it will cause a difficulty, but believes the benefits outweigh the risks.

Carstens asked to be reminded about Article VIIB; it is a segregation of the site plan review standards from Article VIII, where they were previously located.

Article VIII: Special Uses

Much of the first two pages were relocated to Article VIIB. Vermetten observed that the relocated list of impact assessment items contains 13 items, but the original list contains 14 items; the 14th item was omitted unintentionally and will be reinserted.

Proposed language in Section 8.1.2(3), taken almost directly from the zoning enabling acts, states that the Zoning Administrator reviews the application and determines whether or not it is complete, and when it is advises the Commission chairperson and he sets the public hearing date. Right now the staff reviews the application and works with the applicant to prepare it, and the Commission holds a preliminary hearing to review the application and then set a public hearing date. This format can be followed at the chairperson's discretion but would not be required. Krause supports the concept that the determination can be made by staff as to whether the application is complete and ready for public hearing, rather than taking up the Commission's and applicant's time. Rarely has the Commission disagreed with staff as to whether an application is ready for public hearing. The process would generally be expedited for applicants. While everyone agreed this process would be better for everyone, Vermetten raised the question as to whether the change would be sufficiently content-neutral to be made at this time, or if it must be reserved for a later date. Grant believes that this suggestion moves the ordinance closer to conforming with statute, and was made in the spirit of changes required for closer legal compliance. He also noted that the township goes above and beyond state legal requirements by requiring a public hearing for all SUP applications. The state only requires that a public hearing actually be held if someone receiving notice of the application specifically requests one. Carstens and David noted that sometimes applicants ask to present to the Commission before their applications are complete, sometimes because they want to get a sense of the Commission's approach. The change will be made in the spirit of better compliance.

Section 8.1.2(5) deals with SUP expiration. Currently, the township does not offer a process for requesting an extension for an expiring SUP, which became an issue with Lautner Commons. The proposed change would not be neutral, but would establish a process by which one extension of a maximum of one year could be considered. White and Zollinger observed that this would be a beneficial change but is not a legal compliance issue and should therefore, to observe the neutrality concept, be flagged for future discussion.

Section 8.1.2(6) deals with SUP revocation. This is an existing provision, but there is a legal compliance issue perceived by counsel in terms of due process. The proposed change is not content-neutral but is what they believe is required to comply with due process requirements. The language specifies how an SUP holder will be informed that they are in violation of their permit and subject to revocation, and the timeline. Grant stated that the law requires that the township must be explicit about requirements and timeframes when it exercises discretionary rights in land use permitting. The Zoning Enabling Act discusses what should be included in the standards but does not specify required criteria for each. Hull stated the proposed language is an amplification of the existing language – it better defines a right but it does not create a new right or take one away. It is already our policy to provide an SUP holder in violation 30 days to remedy the situation before further action is taken. Some commissioners were concerned that this proposed change might not be neutral enough and should be added to the list for future consideration; others felt it was a very minor and mutually beneficial change that should be included now. Consensus was reached that if the MZEA requirement for standards is referenced as a preface, the language could be amended now.

Section 8.1.3(4)a-s was moved to Article VIIB.

Section 8.1.5 deals with SUP amendments. Currently there are three possible levels of amendments in the ordinance. Grant stated that it is not clear at this time whether the standards to be met should be that in place when the original permit was granted, or that in place when the amendment is requested. Hull stated that when an amendment has been requested the standards of the ordinance at the time have been applied. There was discussion about the northern portion of LochenHeath and the GT Resort, both of which were approved under a PUD ordinance that was subsequently revoked. Former township counsel Jim Christopherson's recommendation was that amendments to those projects had to be considered based only on the terms contained in the original permits and in Article VIII. These are unique situations, in that the ordinances under which they were approved ceased to exist. When they seek amendment, they are held to the general site development standards as they exist when the amendment is requested. Vermetten believes that the proposed changes, although consistent with practice, are not neutral enough to be included at the current time and should be flagged for future modification.

Currently the ordinance contains 3 classes of permit amendments: insignificant, minor and full amendments. Currently, the ordinance allows minor amendments to be performed by the Board, but in prior conversations with Hull, Bzdok has raised concern about this. According to the MZEA, the process for considering special land uses either employs the Planning Commission as part of the process or not. Based on Bzdok's advice Hull has not been entertaining minor modifications, and he is proposing that 8.1.5b. be deleted. Vermetten stated that in his practice experience it has been more normal to see only minor or major amendment classifications. However, he believes this should also be deferred for future discussion as non-neutral.

Section 8.2 contains the standards for mobile home park developments. Rewriting this section has already commenced. Grant has spoken to the Manufactured Housing Commission and we can be on their October agenda if we submit materials to them by August 15, which staff is preparing to do. Prior discussion indicated that the commission wanted to propose applying the site design standards in Article VII to

mobile home parks, so he held off on submitting the ordinance to them for the mandated review until the review of Article VII was done. He has already been given an indication that the township may not be permitted to retain those provisions in this section by the state.

Section 8.3 is the Open Space Development Ordinance. This section may be modified as a result of creation of a new clustered housing by-right section. There is a proposed name change to "Conservation Development" as well as use in 8.3.1 of the term "land in an undeveloped state" to be consistent with state law while preserving the intent of the current terminology "open space." The difference between the Conservation Development and the clustered housing will be that the former will continue to require an SUP and a higher level of township discretionary decision-making and provide density bonuses, whereas the other will be less discretionary.

The way this section of the ordinance allows density transfer is actually through creation of a PUD, so the language in 8.3.1(1) is proposed to be changed to make this clear.

In 8.3.4, legal counsel had a question as to whether the township has a fire prevention ordinance; the township adopted Ordinance 2005-3 in December 2005.

8.3.5 was previously suggested for deletion, but is now to be retained.

Section 8.3.7 is proposed for deletion because the township has a separate stormwater and erosion control ordinance.

Section 8.3.8 language is suggested to be streamlined to the language proposed for Amendment #138. This language does not change the landowner entitlements from what they are in the existing ordinance, but shortens the section by about a page. Hull read the existing language in Section 8.3.8(1) as to what must be included in a conservation analysis, and then he read the proposed replacement Section 8.3.8(1) to show that they contain the most of the same requirements, but in the proposed new section future historical issues are removed. In section 8.3.8(2) now the Board is given final discretion to determine which of multiple preservation elements are the most important to retain; new Section 8.3.8(3) places this responsibility in the same hands. White believes that the proposed streamlined language is too changed to be neutral. "Conservation value" is in the eye of the beholder on the Board perspective. Hardin noted that this standard exists already, and that the applicant is given the responsibility to bring to the Board their list of valuable conservation features on the property. Grant stated that the proposed changes uses state statute language to specify that the proposed undeveloped areas of a project must have demonstrated conservation value, and they remove the ability for the township to speculate about the future vs. present conservation value of a natural feature that exists today. Vreeland stated that while she has always believed that the language in proposed Amendment #138 was a more streamlined and content-neutral restatement of the regulations that exist today, the public did not perceive it that way. While she supports the streamlining in concept and believes the entitlements and responsibilities remain unchanged, to try to insert this language as part of this process could be seen as an attempt to sneak something through that has yet to be more thoroughly discussed and would be detrimental to the process. Vermetten and Wikle concurred. Grant asked if the term "open space" could at least be traded out for the term "land in an undeveloped state" from the state law, even if none of the other language is

changed. This proposed terminology was not in the proposed Amendment #138.

Section 8.3.9 deals with density transfer for a Conservation Development. Proposed changes make it clear that the state enables this under the umbrella of a PUD. There is also proposed language to make it clear that on the parcel sending density to another, a specific amount of open space must be preserved rather than allowing the entire tract of land to be divided up in to fewer but larger parcels than originally. David believes that in the past, applications under this ordinance have not provided for true undeveloped land but simply for vacant space. Hull read from existing language about the uses permitted in conserved undeveloped land, which can include active agricultural uses or parklands. This language is consistent with state law. There has been one past application for density transfer, and in that case it was made clear that undeveloped land on the sending parcel had to be preserved and not just that the number of housing units would be reduced. Sending and receiving parcels are not necessarily required to be under common ownership.

Grant discovered that while the Conservation Development ordinance states it may be used in the A-1 district, it is not listed as a use by SUP in Section 6.10. Staff believes this is a clerical omission and will add it to Section 6.10.4. Applications have been processed in the A-1 district for this use before.

The Chair declared a brief recess from 8:30 – 8:37 p.m.

Section 8.4 was formerly "Travel Trailer Parks" but to conform with state nomenclature will refer to "campgrounds" throughout.

Section 8.6.3(6) Gasoline Service Stations, Fencing requires a 4'6" fence where a gas station property abuts a residential property, which is shorter than the 6' fence required in section 7.5. This section was proposed for removal as redundant to the earlier section.

Vreeland suggested that in the future there should be some discussion about Section 8.8, Planned Agricultural Units. She and Nels Veliquette have been talking about it and trying to figure out what it is and what can be put on it. Grant believes it permits the installation of 3 houses on 1 acre lots each as opposed to 5-acres lots on a 60-acre tract. This could be part of a broader discussion about the agricultural district.

Section 8.9, Elderly Housing: This section of the ordinance currently includes the language "group housing," which is likely intended to mean adult foster care. The state already requires this to be permitted in residential districts and it was already addressed there so it could be removed from this section. Vermetten stated that he dealt with this issue professionally in Garfield Township, and he agrees with Grant's analysis. The removal would be non-neutral but needed for legal compliance. Hardin asked if a group home for troubled youth would be covered; Grant read that state law requires that residential districts permit residential full-time foster homes or foster group homes, but does not require them to permit alcohol rehab facilities or transitional homes for people leaving correctional facilities. Hardin asked if this section is really necessary; if the state law differentiates between group housing for elders and for others. Adult Foster Care facilities specifically do not include nursing homes under state law. Nursing homes are not listed as a permitted use in any of the zoning districts currently; this should be considered further. It might be possible to use the Mixed Use Development option for this purpose. The section will remain in place because removal would not be content-neutral, because removal of part or all

would inhibit the ability to pursue certain types of construction. References to "group housing" will be removed but the rest will be rewritten to make sense as regulations for development of elderly housing.

Section 8.10.7 will be removed as duplicative of the provisions of the dark sky lighting ordinance.

Changes to Section 8.11(4) and (5) restate the existing requirements in briefer form. A reference to race tracks was removed because they are not listed in the title of the section.

Section 8.12.1, Planned Shopping Centers would see reinsertion of a 5-acre minimum parcel size because research indicates it was always intended to be there.

Section 8.13 addresses stand-alone mobile homes in places other than the R-1MH district. Law does not permit the township to subject mobile homes to be subjected to higher standards than stick-built homes in the same zoning district. So, this section needs to be removed from the SUP section and the regulations that do not conflict with or are not superceded by state law should be placed in the residential district language in Article VI. Grant would like to have the Manufactured Housing Commission review those standards to see if they are enforceable or not. This is a legal compliance issue that needs to be addressed.

Sections 8.14 and 8.15 contain changes that recognize where issues are dealt with elsewhere in the ordinance and that streamline the language.

Section 8.16.1(d), which was proposed for removal, will be retained.

Section 8.21, Material Processing and Warehousing: this is the name of the B-4 district. Before recent ordinance amendments creating uses by right in the business districts all development in that district was subject to these requirements. Hull noted that he made some clerical errors in compiling the new B-district ordinances. Had he not made a clerical error, even the uses by right would refer to this section in the SUP section of the ordinance. The question is how to retain neutrality while fixing this conflict if the clerical error is corrected. The Commission chose the most neutral route.

Section 8.22: Mixed Use Planned Developments: MUDs are really, in essence, PUDs. Proposed changes are minor and legal compliance-oriented.

Section 8.26: Grant and Vreeland believe that this section was essentially stricken from the ordinance by Judge Power in a 2004 court ruling as violating the Township Zoning Act. Grant's firm originally advocated for this point of view at the time. The township may wish to engage different legal counsel to confirm this section's post-2004 ruling status.

Motion by Hardin, support by Carstens to ask the Board to secure independent legal counsel to review whether or not Section 8.26 of the Zoning Ordinance is still in force or not. Motion carried unanimously.

Article VIIIB, Condominium Subdivisions

Legally, condominiums can't be subjected to different conditions that other similar

forms of land uses. Therefore this ordinance section must be harmonious with the township's admittedly antique Subdivision Control Ordinance. This was intended to be the site condominium section of the ordinance and currently specifically relates to single-family detached condominiums, but Grant believes that as a matter of legal compliance it must apply also to attached multiple-family condominium buildings.

Section 8B.3.2(1)(4) is proposed to be changed to require lots no more than 2.5 times as deep as wide to match the Subdivision Control Ordinance. The requirement in (5) for extra width on corner lots was flagged for future review. In (6) the word "buffer" was suggested to be substituted for "easement" as being a more precise use of legal language. Road terminology in (7) (8) and (9) needs to be addressed as we have nothing that creates these classifications.

Section 8B.3.6 was stricken as redundant to provisions in Article VII, 8B.3.7 was stricken as redundant to the Stormwater Control Ordinance, and 8B.4.3 was stricken as redundant to the dark sky lighting requirements.

Article VIIIC, Open Space Preservation Development (OSPD) is a proposed new section designed to meet the legal requirement that the township provide for clustered housing as a use by right. The ordinance contains the state minimum required 50% open space for this option; the township has the discretion to require more if it wishes. Because this is a non-neutral legal compliance issue the Commission recommends sticking to the state minimum.

Hull noted that in the R-2 and R-3 districts it is possible to have 15,000 sq. ft. lots. Under this section it would be possible to have 7,500 sq. ft. lots, but with the current setback requirements for those districts the lots would be unbuildable. A minimum 24' x 24' building envelope must be provided. One solution would be to allow 75' minimum lot widths in an OSPD, which would change the shape of a 7,500 sq. ft. lot and make it more conventionally buildable. It might also be possible to retain the 100' lot width minimum but reduce the required setback dimensions by half. Hull and Grant will check the math and employ the latter option if possible.

Article IX: Non-Conforming Uses: the changes proposed would bring the ordinance into better legal compliance. Section 9.7 will be relocated to the B-3 district section in Article VI.

Articles X, Amendments and XI, Severability contain changes for streamlining and compliance only.

Article XII, Violations: originally language from Section 12.1 would have been removed, but after discussion with Magistrate Tammy Rogers, Grant would like to re-insert it.

b) **Preliminary Discussion of Sewer District Amendment to Master Plan:** Hull is seeking direction on scope of and process for decision on how to proceed with this discussion. The most straightforward thing to do would be to insert the map from the zoning ordinance directly into the Master Plan, subject to coordination with the police power sewer ordinance. If other discussion about and/or changes to the sewer district is desired, the process might be different. Carstens believes that the Commission does not currently have all the information it requires to make an intelligent decision about changing the shape of the district. He would like to see updated technical information about how much of the existing capacity is being used

and what upgrades to infrastructure might be needed to serve existing and future development. He would also like to see data about the potential economic impact of future district and/or system expansion might be. While these issues are important and interesting, Vermetten sees the most immediate question as determining the balance between managing the pattern of growth and protecting the environment through providing public infrastructure broadly. The Commission generally agreed that they would like to insert the map as it exists in the zoning ordinance today, and may or may not discuss future proposed service areas depending on what the Board minutes on this issue contained.

3. Public Comment/Any other business that may come before the Commission: None.

Meeting adjourned at 10:14 p.m.