



ACME TOWNSHIP PLANNING COMMISSION MEETING
Acme Township Hall
6042 Acme Road, Williamsburg, Michigan
7:00 p.m. Monday, October 27, 2008

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

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

- 1. Consent Calendar:**
Motion by David, support by Zollinger to approve the Consent Calendar as presented, including:

Receive and File:

- a) Draft Unapproved Minutes of:**
 - 1. 10/14/08 Board meeting**
 - 2. Marina Advisory 09/18/08**
 - 3. Facilities Advisory 10/07/08**
 - 4. Planning & Zoning News August 2008**
- b) Planning Commission Ordinance**

Action:

- c) Approve minutes of the 09/29/08 Planning Commission meeting**

Motion carried unanimously.

- 2. Correspondence:**
 - a) Letter and draft agricultural action plan dated 10/27/08 from Nels Veliquette, 311 S. Maple Street in Traverse City**

- 3. Limited Public Comment:**

Nels Veliquette, 311 S. Maple Street in Traverse City, noticed that this evening the Commission would be discussing possible substantive ordinance changes to be made. He provided his draft agricultural action plan, which he has previously provided to the Farmland Preservation Advisory but it has not been acted on to date. He believes that measures beyond the township's Purchase of Development Rights (PDR) program need to be adopted to promote and protect active farming in the community. Carstens is a member of the advisory, and he reports that there hasn't been a meeting in a long time. Vermetten agrees that working through the advisory seems an ideal approach.

- 4. Preliminary Hearings:** None

- 5. Public Hearings:** None

- 6. Old Business:** None

7. **New Business:**

- a) **Consider request from Nader Saco, 4921 White Road, to permit land division of property on White Road zoned R-3, Urban Residential and within the Acme Township Sewer District without access to public sanitary sewer service pursuant to Section 6.11.2(2)B:** Mr. Saco was present in support of his application. Hull reported that the subject property is at least 1,500' from existing sanitary services. He also observed that the section of the ordinance involved is slated for removal in the near term. The ordinance does not provide clear guidance for conditions to be met to permit division of land within the sewer district without access to sewer service.

Mr. Saco stated that he has owned the property for 12 years. The economy is bad right now and he has no intention to sell or develop the property at this time. He would like to refinance his mortgage to support his business (Arizona Steakhouse). The proposed land division would enhance his ability to refinance under favorable conditions to both him and the bank.

Vermetten asked if the proposal would be to service the four lots with traditional septic systems. Hull stated that the ordinance requires either connection to the regional sanitary system or connection to a group sanitary system. He spoke to the Katie Zopf, one of the attorneys who helped draft the section, and the person he spoke to said that she thought that individual well and septic systems would be acceptable. Hull believes that the group sanitary system would be required for much larger developments. Grant stated that the first option seems to be nonsense since the section would only be used if a connection to the regional system cannot occur, but that the second option clearly requires a community system rather than individual systems for the lots created. This could involve creation of a system with individual septic tanks and a shared drainfield.

David stated that he is unaware of any situation where individual drainfields haven't been allowed if the soils will permit them. In his neighborhood, Cranberry Woods, there is a common drainfield because the soils didn't perk well enough for the proposed lot sizes. In the neighborhood next door, Williamston Estates, where Zollinger lives, the soils are more favorable and the same sized lots have individual drainfields.

Hardin asked if Mr. Saco owns any additional land nearby; he does not. Some of the land in question may belong to his sister. Vreeland summarized the way that this situation is in some ways similar to the development of Cranberry Woods and Williamston Estates, which are on land that were subject to similar restrictions.

Hull observed that the Zoning Board of Appeals is the body charged with interpretation of the ordinance, and deciding whether or not a group sanitary system is strictly required would fall to them. If they decided that the ordinance requires a group system, the ZBA could also hear a request for a variance from the condition. The Commission is not charged with determining whether or not the system must be a group system or could be a separate system, but only with recommending to the Board whether or not the property should be excused from connection to the regional sanitary system as a condition of land division.

Motion by David, support by White to recommend to the Board of Trustees that Nader Saco be permitted to divide his land without connection to the regional sanitary sewer system because the land is 1,200 to 1,500' from the nearest connection point.

Grant said that it would be helpful if the Commission would articulate for the minutes the reason for the recommendation. David stated again that his reasoning is that the property is so far from the end of the existing sewer lines that requiring the connection would likely render the property nearly valueless because the expense would make development unprofitable.

Motion carried by unanimous roll call vote.

- b) **Discuss and prioritize list of outstanding projects and Zoning Ordinance items for further review from neutral re-write process:** Hardin noted the commentary in Hull's memo regarding the wireless tower ordinance. There is a statement that right now the Zoning Ordinance does not permit cell towers anywhere in the township, but he wonders how the township has approved them in the past if this is the case. Grant replied that at one time cell towers were permitted in any business district, but when the business district ordinances were amended the use was removed from the allowable list. This was done pending revision of the Personal Wireless Services Ordinance, and following up on a recommendation that the township conduct an RF study to determine where cell towers are feasible to plan where they should be directed to. When staff contacted some engineers to accomplish this task, they were told it would be fruitless because there are so many different technologies both now and evolving rapidly that any results would be meaningless. At the current time there is no district where new cell towers are permitted, which constitutes exclusionary zoning and should be remedied.

Krause noted that each Commissioner is receiving a focus issue appointment from the Board. Perhaps the list should be examined to see how the items on it match up with the interest assignments and how each individual can work with them. Hull also directed attention to the list of 2008-09 goals the Commission developed on March 24, 2008. Number 6, the neutral re-write of the ordinance is nearly accomplished. Number 2, Mobile Home Regulations was reviewed by the State last week and we should hear from them soon. A private road ordinance has been developed and is under review for several key issues. He understands that the Commission has decided not to revisit former proposed Ordinance Amendment #138, and communication towers have just been discussed. The sewer and water district planning is already underway, and the M-72 Corridor Ordinance is being held pending the outcome of the Grand Vision process.

Zollinger is hearing that several things are already in progress. He suggested prioritizing the other items, which primarily come from the discussions surrounding the content-neutral re-write. Vermetten suggested simply beginning with the first bullet point and working through to the last. Vreeland suggested that dealing with special use permit related issues first could have a huge positive impact. Vermetten suggested that staff could go through the list with an eye to what are the biggest issues, which small ones could be combined together and move quickly and which are larger and will need more detailed individual care. Hull, Vreeland and Grant will come up with an action plan for review the November 10 meeting and potential beginning action at the end of November. The list will be packaged as suggested amendment sets.

- c) **Consider adoption of new Planning Commission bylaws to replace the 1995 bylaws pursuant to the Michigan Planning Enabling Act:** Grant prepared the proposed bylaws as an update to the existing set of bylaws. He didn't add much, but did subtract things he saw as superfluous. His major suggested change has to do with *ex parte* contact. It is generally good practice for an administrative body to receive evidence it will evaluate in a public forum at one time so everyone hears the same set

of information in the same presentation format. It's generally bad form to talk to one side of an issue but not another. In practice this would mean an attempt to minimize contact with applicants outside of the public meeting context. Grant also provided bylaws suggested by MSU Extension. They are much longer and contain some good things, but most of them are not required by law. Grant also pointed out an included e-mail discussion between himself and Vreeland and some issues that were raised. One was whether to follow the letter of the state retention schedule which permits destruction of recordings, if they occur, after meeting minutes are approved, or to continue the current long-term practice of retaining them indefinitely. There was general consensus to follow the retention schedule and delete the recordings after minutes are approved. Hardin also observed that when meetings are video recorded and web-streamed to a large extent the question will be moot.

Vermetten, as an attorney, does not support restrictions on *ex parte* communications for the Commission. He believes that the ZBA, as a quasi-judicial body, should observe such restrictions, but that much useful information can be obtained through casual conversations about a project during the course of personal daily life, and that the Commission as an administrative body is different. He finds that he gets a lot of useful information this way, and that as long as he doesn't show favoritism it can help him with his thinking on an issue. Vermetten characterized discussions between himself and Vreeland and the Bates Crossings applicant team as *ex parte*, although the discussions have been about the shape of the process rather than deliberation about the information presented. David thinks it important to receive information first-hand to the greatest possible extent, rather than relying on summaries from others. Vermetten believes that such a restriction would be detrimental to the process. Krause asked where the line between acceptable and unacceptable outside discussions is drawn. Carstens noted that the Citizen Planner program discourages *ex parte* communication. Grant observed that if placed in the bylaws it must be taken seriously because failure to comply could result in removal from office for malfeasance or misfeasance. Hardin noted that a discussion with an applicant that is not detailed can be acceptable, and that more detailed discussions or questions outside of meetings should be directed to staff. Wikle asked what would happen if she went to Jim Goss' house to play cards, and her car was parked there for 2 hours. Would there be suspicion about what was going on? Perhaps people are reasonable today, but there might not always be reasonable people involved and unreasonable suspicion could be cast. The restriction could put an undue damper on innocent neighborly relations. Consensus was reached to exclude the *ex parte* section.

Motion by Wikle, support by Krause to approve the amended Planning Commission bylaws as presented with the omission of the section on *ex parte* communications and including language permitting destruction of recordings after the meetings at which they are made are approved.

David wondered if the language proposed to be deleted should be reviewed in greater detail. The document could become quite short. Much of the information to be deleted is available in some other location or format, but how does it hurt to save the reader some additional research? Grant took as an example Section 3.0, Matters to be Considered by the Planning Commission. The list is outdated, and the matters to be considered by the Commission are largely dictated by the State and change from time to time. It isn't really the legal definition of the Commission requirements. Leaving it in would require frequent revisions and does not seem to present much of a public information purpose. David would also prefer for the *ex parte* section to remain.

Motion failed by a vote of 4 in favor (Krause, Vermetten, Wikle, Zollinger) and 4 opposed (Carstens, David, Hardin, White).

- d) Note of **special meeting** called by Planning Commission Chair Vermetten on November 10, 2008 to discuss the Bates Crossing SUP application market study, traffic study and on-site sanitary system/environmental issues outstanding: Vermetten stated that there will be an attempt to hold a meeting this week between Vermetten, Vreeland, Hardin, Hull, Grant, Iacoangeli, Grobbel, Generations Management, their legal counsel, and representatives from Mansfield & Associates to hammer out some procedural issues. Much of the discussion may center around issues related to the proposed on-site sanitary system and a clarification of mutual expectations between the applicant and the township. The nuts and bolts of the details of the report are not discussed. Vreeland reported that there will be one other issue on the agenda as well that should be fairly brief.

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

David expressed discomfort with the disposition of the bylaws and asked if the issue could be revisited. Vermetten did not permit it, but it was decided to bring the issue back to the Commission at the meeting at the end of November. Carstens supported having the bylaws discussed again at an upcoming meeting.

Motion by David, support by Carstens to reintroduce proposed bylaws amendments at an upcoming Commission meeting.

David believes that the bylaws amendment was defeated because of disagreement about the *ex parte* provisions, and that otherwise the bylaws would have been adopted. Vermetten observed that Grant said that the provision is not strictly necessary. David wondered if the vote on a motion to approve the bylaws with the *ex parte* section would have resulted in adoption.

MEETING ADJOURNED AT 8:39