



ACME TOWNSHIP PLANNING COMMISSION MEETING
Acme Township Hall
6042 Acme Road, Williamsburg, Michigan
7:00 p.m. Monday, May 18, 2009

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, S. Feringa, R. Hardin, D. Krause, D. White, 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: Vermetten said he might have a conflict of interest with the discussion about deep injection wells, to be discussed later.

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

1. Consent Calendar:

Motion by Feringa, support by Zollinger to approve the Consent Calendar as presented including:

Receive and File:

Draft Unapproved Minutes of:

- a) 05-12-09 Board Meeting
- b) 04-29-09 Shoreline Advisory
- c) Planning & Zoning News April 2009

Action:

- d) Approve minutes of the 04-27-09 Planning Commission Meeting

Motion carried unanimously.

2. Correspondence

a) 05/08/09 E-mail from Concerned Citizens of Acme Township regarding deep injection well zoning regulations: will be discussed later on the agenda.

b) Letter from Joe Quandt regarding the Bates Crossings Application: requesting that the application be tabled. Mr. Quandt stated that the applicant is still working through traffic-related issues, which they feel could be improved upon by ongoing discussions regarding potential realignment of North Bates Road. He agreed with Vreeland's suggestion that the issue be revisited in 60 days, and they envision a tabling for no more than 3-4 months.

3. Limited Public Comment:

Margy Goss, 4105 Bay Valley Drive, stated she was here because Steve Smith, Managing Partner for the Village at Grand Traverse (VGT) could not attend. She stated she would read into the record a prepared letter from him dated 05/14/09, copies of which she provided to each Commissioner, Vreeland and Grant with sufficient copies to provide to the Board of Trustees as well. The letter requests that the Village at Grand Traverse Phase I SUP/Site Plan review application be untabled and placed on the next Planning Commission agenda.

Rob Evina, Woodland Creek Furniture, 4290 US 31 North, stated that he and his family are looking for a house in Acme and hope to be residents by the fall. 143 high school and college students and 10 adults have applied for jobs with his companies. It is obvious that people in this area desperately need jobs.

Andy Andres, Sr., 4946 E. M-72, feels that it is time for the township to move ahead and “not just sit on their hands and hold things up.” If the proposed VGT project were to move forward, many new jobs would be created. For 17 years he has wanted to have his property rezoned to a commercial designation, but has been unsuccessful to date.

Noelle Knopf, 5795 US 31 North, hopes that the Commission will take the opportunity to resolve some of the issues that have occurred over the past 6 years. She believes Mr. Smith has tried to take a step in this direction.

4. Preliminary Hearings: None

5. Public Hearings:

- a) **Proposed Master Plan Amendment: Acme Township Sewer District:** The Master Plan currently generally and vaguely designates certain areas where sewer service might become available, which for a long time was used to define the sewer service district for the township. During the Lautner Commons application there was debate about how effective the map was for this purpose, and the applicant was seeking inclusion in the district. At that time a more defined sewer district map was created and inserted with sewer district regulations into the Master Plan.

At the outset of the Bates Crossings application in 2007, the applicant asked to have the sewer district ordinance amended to extend to and include their property. During discussions about this concept it was discovered that an existing stand-alone police power Sewer Ordinance states that the official sewer district map will be found in the Master Plan. To comply with this ordinance, the sewer district map needs to be relocated from the Zoning Ordinance to the Master Plan. One minor text amendment to more accurately describe the map is also required; the proposed textual changes were outlined in Grant’s 12/17/08 memo to the Planning Commission.

Hull reported that the proposed Master Plan amendment was sent for review by contiguous governmental units as required by law; only the County responded. They suggested that the map needs to have a north arrow and legend, and that a hole in the district area created by the dictates of the original map creation process be filled in, adding the formerly excluded area to the sewer district.

Krause asked if the map should be amended to include more extensive shoreline areas in the township; the map may be so amended pursuant to the public hearing process this evening.

Public Hearing opened at 7:23 p.m.

Nels Veliquette, 311 S. Maple Street in Traverse City, believes the map speaks for itself, and that the Peaceful Valley area should be included in the sewer district in the interest of public health, safety and welfare. The houses in that area are on private wells and septic systems and are within 1,000’ of the bay.

Public Hearing closed at 7:24 p.m.

revised map to include all areas presently served plus Deepwater Point. The balance of the Commission concurred.

Carstens noted that the County also suggested adding street names to the final map. Hull stated that the final map will include the map elements suggested by the County, including street names. Carstens believes it will be helpful to developers less familiar with the area.

Yamaguchi supports adding Peaceful Valley to the sewer district area and adding the map elements. She believes the entire shoreline should eventually be on public sewers.

Feringa supports adding the Tribal property immediately south of Dock Road on the west side of US 31 North, currently surrounded by but excluded from the current sewer district, and looking into what it would take engineering-wise to begin connecting more homes in the Deepwater Point area to the regional sewer system. He recalled that perhaps some enhancements to the sewer system along the US 31 corridor north of M-72 were planned in 2003 but not whether the improvements were actually made or not. Vreeland stated that they were not made because the township was unsure when they would be needed and whether they would be the correct improvements for anticipated needs. As it turns out, LochenHeath planned for and constructed its potential future connections to the regional sanitary system to be through Deepwater Point, rather than along US 31 north of M-72. As such it is probably that most of the planned but incomplete improvements would not have been applicable. As to expansion of sewer service into Peaceful Valley and LochenHeath, before this can be accomplished upgrades need to be made to at least one lift station on Deepwater Point, and possibly some of the existing downstream main lines as well. Township management has already begun discussion ways to promote these connections in the not-too-distant future.

Motion by Carstens, support by David to adopt the proposed sewer district map amendment to the Master Plan with the amendments discussed this evening. Motion carried by unanimous roll call vote.

6. Old Business:

- a) **Deliberation regarding Application 2007-05P Bates Crossing:**

Motion by Carstens, support by Yamaguchi to table Application #2007-05P for 60 days. Motion carried unanimously.

7. New Business:

- a) **Discussion regarding deep injection wells:** Vermetten represents oil and gas exploration firms that have deep injection wells, and may have deep injection wells now or in the future in Acme Township. He asked Grant if he has a conflict of interest with a general discussion. Grant has reviewed the Conflict of Interest Policy, which provides five examples of possible conflicts of interest (not the only possible ones), none of which seem applicable. The proposed discussion is general in nature and would not relate to or favor or disfavor any particular entity or create a pecuniary interest for Vermetten. If Vermetten is uncomfortable, he may disclose his interest and unless the remaining Commissioners unanimously decide that any potential conflict is minimal he may participate in the conversation. The Commission generally stated they did not feel Vermetten has a significant conflict at this time.

White stated that he might be considered to have a conflict, as he might in the future have a deep injection well on his property and benefit financially from it. The

Commission again felt that at this time, during general discussion, he does not have a significant conflict of interest.

Vermetten read the e-mail from Concerned Citizens of Acme Township (CCAT) raising their concerns with deep injection wells and the permitting process, and asking the township to adopt zoning regulations that would allow such wells “in the most appropriate places only.”

Carstens stated he has been very active with the Grand Vision process, and participated in a several-day program to clarify area values. The consensus reached was that the highest priority locally is dependably clean water. Given Carstens’ feeling that deep injection wells could impact water quality, he believes the township must proceed cautiously. His extensive Internet research indicates that there have been problems with deep injection wells, but he has found no clear indication of failure rates. He needs more information before he makes a decision. Tomorrow night there will be an EPA hearing on two potential local wells, and he feels the community should have been informed 6-8 months ago to become well-enough informed to participate meaningfully. There is an unexplained “dead zone” in Lake Erie. One process for extracting minerals is to pulverize rock formations with high pressure fluid injection – could this occur unintentionally with a deep injection well and damage our water? Will injected materials travel to the bay?

David stated that the process of “fracturing” is a common and long-standing fossil fuel extraction process. This process is useful within a small radius, and casings are cemented in and cannot leak. He believes this situation is different and that we are not dealing with rock formations that create confining zones because we are in an area formed by glacial movements.

Krause is concerned with water quality in the bay, and believes that a deep injection well within 5-10 miles of water could be problematic. He does not believe such wells are necessary in Acme Township.

Yamaguchi is concerned with drinking water quality at her home and anywhere, not just in shoreline areas. She is planning to attend the hearings tomorrow night. She understands that fossil fuel exploration involves brine being released from the earth and reinjected; the question is what happens to other materials that are injected and their impact on the environment.

Feringa noted that one of the wells subject to the hearing tonight is a new one, and one is an existing well that is proposed for modification. One question being asked by his engineers is why older wells are not being retrofitted to handle new deep injection, rather than new wells being drilled. His believe is that the EPA will all but certainly be issuing the permits.

Vermetten believes that reasonable minds can differ, and our attorneys should analyze the situation and determine whether the township has any surface zoning rights over this situation.

Hardin doesn’t know how deep “deep” is, but when he worked in the industry “deep” was 9,000 ft. down into bedrock. The proposed wells locally go into Antrim formations 2,000 – 3,000 ft. deep. As far as the zoning issue, it’s one thing to deal with mineral rights – the owners and developers have the rights to go after the resources. But, when it comes to reinjection of brine and injection of other “non-hazardous” materials from other sources, does this make a difference as to whether the township has zoning authority or not?

Grant stated that there is one set of statutes for oil and gas wells. A deep injection well is what the DEQ calls a “mineral well” which includes injection of production brine waste and waste products from another source such as cherry production waste, and this is a second separate category. There is a third category of regulations for dealing with “hazardous wastes.” He and Bzdok have preliminarily examined this very complex topic, and their initial opinion is that it is at best a grey area as to whether the township may regulate surface uses. It appears that the State wishes to reserve these rights to themselves. The law recognizes that the state “occupies the field” (has a statute and practical regulations), and since the State determines what powers townships have and don’t have, it appears that the township’s ability to regulate surface activities through zoning is very limited. The Board discussed this issue last week, and certainly expressed concern and a desire to obtain more information. The Commission may wish to consider what aspects of the use may or may not be worthy of regulation beyond water quality protection.

Hardin asked for a definition of “hazardous” and “non-hazardous.” If a milk tanker spills in Yuba Creek, it will kill the fish, and the water will become hazardous to the customary life there. The cherry processing brine may be caustic – how will this affect the rock? Is what is going into the ground from other sources going to act similarly to what is naturally down there? How will pressurized injection affect the situation? Is that a “mineral well?” Grant stated that a mineral well definition includes a place for disposal of certain industrial wastes. Cherry processing wastes is defined as “non-hazardous” by the state. He has reviewed the definitions in the statute, and the definition of “hazardous” materials is the “really, really bad stuff that can kill you.” The cement kiln dust water deep injection under discussion in Alba also appears to be defined as “non-hazardous” under the permit application. Vermetten disagreed that hazardous materials must be what is commonly thought of as toxic. He noted that the Road Commission is using oilfield brine for dirt road brining right now; this is clearly infiltrating the surface soils.

Hardin stated that when a new deep injection well is started, hydrochloric acid is sent down the pipe to open up pores in the rock and then a gelling agent is sent down to force the acid back out. David observed that this is a one-time low volume matter, as opposed to ongoing injection of waste materials.

Hull had trouble finding information about the types of risks deep injection wells may present. Negative information can be found about any major industrial process, but he could find nearly nothing about potential hazards from this sort of operation. What he did find seemed to be easily resolved. One paper he read gave a history of injection wells starting in the 1920s, and because of problems rules were developed. Since the rules developed in the 1980’s and 1990’s there has not been a significant Class I well failure he could find anywhere in the nation.

Vermetten suggested that the township should continue gathering information about the potential impacts on public health, safety and welfare. This would include additional legal research to answer lingering questions. Zollinger would like to also be aware of surface issues such as spills during transport or at wellheads. At the same time it is important to understand that many business operations, including agriculture, require the careful use of chemicals and should not be over-regulated. Vermetten suggested this matter be on the agenda again next month with any updated information about the extent of the township’s ability to regulate this type of use and real property surface and sub-surface issues. Grant will prepare an opinion memo.

Carstens supports an investigation of the legal issues, and also having an objective

and highly knowledgeable scientific advisor. So far he hasn't identified anyone in the latter category. He said that Dr. Chris Grobbel has weighed in on potential surface issues but has said that he is not qualified to address sub-surface geological issues. Zollinger suggested that once legal counsel has addressed the question of whether or not we have zoning authority, if we have authority at that time it would be appropriate to gather experts from various perspectives.

Carstens also asked about the impact of time on the process. Is there a hurry? How soon after tomorrow's hearings might the wells be put in place? Hull stated that the public comment period for the two wells being discussed tomorrow is June 3. Carstens is therefore interpreting that the only way to delay or halt these two wells is for someone to issue a legal challenge to the EPA. Any work the township does will more useful in the long run than in the short run.

Hardin noted that the township has contracted for its mineral rights to be developed. We may be expressing concerns about the wells, but we may also be accepting royalty checks in the future.

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

Bob Garvey, who owns property on Deepwater Point Road and on Brackett Road, believes it is one issue whether the township is accepting mineral royalties, but zoning regarding injection wells is a separate issue. If we have the right to look into where they should go, we should do so. The Kesner Road well is slated for an area designated rural residential on the Future Land Use Map. Farmers will continue to prosper here, and businesses and residences will continue to be developed. The question is where deep injections wells as a land use are most appropriate. He stated it is a very caustic process, and one proposed well is just north of property he owns. The sister of a former neighbor called him to say that brine has bubbled up through her driveway and she can't drink her well water anymore. Caustic materials are being pumped through metal pipes, and he has read of how poorly the EPA and DEQ truly regulate and monitor these uses.

Rachelle Babcock, 4261 Bartlett Road, stated that those attending the public hearing tomorrow may wish to request a mailing of what comments were made and what answers were given. She believes that anyone who attends will obtain a good idea of what's going on. Written letters will be part of the record.

Nels Veliquette, 311 S. Maple Street in Traverse City, echoed Zollinger's statement about considering impacts carefully. He thanked Hull for the only firm reference to research he heard this evening; the rest of what he heard seemed to more along the lines of unsubstantiated propaganda.

Andy Andres, Jr., 1107 Barlow Street in Traverse City, asked what is injected into wells, what are the pros and cons, and what happens to materials that are not injected – how is it otherwise disposed of? Why do people want to deep inject waste liquids? David was aware of a company that deep injected 250 gallons/minute for 40 years. Technologies change, and many old wells needed for that purpose are no longer needed. Mr. Veliquette stated that their Acme plant does not use a brining process. The typical treatment is recycling, and he believes Cherry Blossom is hauling their waste to Manistee for treatment. Various processors participated recently in a meeting about whether the septage treatment plan could handle the waste, but it was determined it would be prohibitively expensive.

Ken Engle, 8433 Bates Road, believes that the hazard level of anything is defined by some regulatory authority or another. It isn't someone's opinion, it's where something is listed on an official sheet.

Mrs. Goss asked if the township could benefit from public discussion about the proposed Alba wells? Vermetten stated that the Alba wells are receiving waste water from Bay Harbor. Grant stated that the well applications are available and describe the applicant's characterization of the waste stream. Ms. Babcock suggested contacting the Friends of Jordan Valley, who have researched this matter and had extensive conversation with EPA and DEQ officials. They are working to stop the Class I injection well process.

Paul Brink, 9617 Winter Road, believes that the township will learn much more tomorrow night for future discussion.

Mr. Andres Jr. asked how many deep injection wells and of what type are already nearby, perhaps within a 25-30 mile radius, and what has the impact been?

Vreeland provided the Commission with a copy of the memo about affordable housing given to the Board for their May 12 meeting. The Board has indicated their interest in the Commission pursuing this issue further. She believes that a successful project will be well thought out and executed; handling it poorly could result in public backlash and the Board being compelled to abandon it. There may be many local resources we can call upon to assist in crafting an appropriate affordable housing initiative.

Discussion turned to the letter from the VGT and the possible next steps of the process. Concern was raised about selection of Bzdok as a sole point of contact on behalf of the township. Vreeland believes that having the letter formally requesting that the matter be picked up from the table is an appropriate first step. She believes it is unlikely that the application could be prepared for preliminary hearing at a Commission meeting next month; the materials the township has for the project are in a 5" thick binder that needs to be thoroughly reviewed. Additionally the information in hand is nearly 5 years old, and at least some of it is almost certainly stale and in need of updating. While staff begins this review process, she believes it would also be a very good idea for legal counsel to lead the Commission through a review of the court rulings in the matter and the approximately 180 page Special Use Permit Document, because they will be as important as the Zoning Ordinance and Master Plan to establishing the criteria and process by which the entire application evaluation will occur.

Vreeland stated that already some confusion and concern has been building due to contacts from multiple applicant representatives to multiple township elected and appointed officials, creating a situation where perhaps "the right hand doesn't know what the left hand is doing." This activity seems similar to some of that which led to past difficulties with the project, and it would be well if the lessons of history can help guide the present and future. The township desires to provide for as effective and efficient process as possible. One way to accomplish this is to ensure that all information passing between the parties is funneled through one key project manager, and initially Bzdok was selected to perform this function. Vreeland has recently been serving the Bates Crossings application in this capacity. In selecting Bzdok there was intent to create a conduit for getting the right information to and answers from the best people to handle them. There was neither intent nor expectation that this serve as a road block to effective communication, nor that he would have ultimate discretion over the details of the process.

Vermetten and Vreeland continued to say that late last week there were high level discussions about Bzdok was indeed the most appropriate choice for project coordinator. Based on those discussions it seems at this point that another individual - most likely either Supervisor Wayne Kladder or Vreeland - will be selected, but the final decision has yet to be made.