



ACME TOWNSHIP REGULAR BOARD MEETING
ACME TOWNSHIP HALL
6042 Acme Road, Williamsburg MI 49690
Tuesday, July 5, 2011 7:00 p.m.

CALL TO ORDER WITH PLEDGE OF ALLEGIANCE AT 7:00 P.M.

Members present: R. Hardin, W. Kladder, P. Scott, E. Takayama, L. Wikle, F. Zarafonitis
Members excused: D. Dunville
Staff present: S. Vreeland, Township Manager and Recording Secretary
J. Jocks, Township Counsel

- A. CLOSED SESSION: Discuss Immanuel, LLC Bankruptcy: Motion by Wikle, support by Zarafonitis to go into closed session at 7:04 p.m. under MCL 15.268(d) to discuss trial and settlement strategy concerning the Immanuel LLC bankruptcy proceedings because discussion in open meeting would have a detrimental financial effect on the litigating and/or settlement position of Acme Township. Motion carried by unanimous roll call vote.**

Motion by Hardin, support by Wikle to reconvene open session at 7:35 p.m. Motion carried by unanimous roll call vote.

Jocks reported that the Immanuel LLC bankruptcy has been changed from Chapter 11 to Chapter 7 liquidation. Acme Township is a creditor of the proceedings. There are certain assets that had been transferred to related corporate names prior to the bankruptcy filing that may be pulled back into the liquidation. Legal counsel will continue to monitor the proceedings.

- B. LIMITED PUBLIC COMMENT: None**

- C. APPROVAL OF AGENDA: Kladder asked that the agenda be amended to add requests for approval of charitable gaming license resolutions for the Yuba Historic Society and the Acme Heritage Society as New Business #5, add discussion about a potential joint water and sewer authority as New Business #6, and remove New Business #4.**

Motion by Zarafonitis, support by Hardin to approve the agenda as amended. Motion carried unanimously.

- D. INQUIRY AS TO CONFLICTS OF INTEREST: Takayama expressed a potential conflict of interest regarding one potential citizen advisory appointee. Marcie Timmins is one of his employees, and is a potential appointee to the Parks & Recreation Advisory. Kladder reported that she was appointed last year and should not be on tonight's appointment list, which resolved any question of conflict. Scott noted that he is related by marriage to Dunville and asked if there would be a conflict with approving her appointment to the Heritage Advisory. Jocks replied there would not be as there is no pecuniary interest.**

- E. CONSENT CALENDAR: Motion by Zarafonitis, support by Wikle to approve the Consent Calendar as presented, including:**

RECEIVE AND FILE:

1. [Treasurer's Report](#) as of 05/31/11
2. [Clerk's Report](#) as of 06/30/11
3. Draft Unapproved Meeting Minutes:
 - a. Planning Commission [06/27/11](#)
 - b. Metro Emergency Services [05/24/11](#)
 - c. Farmland Advisory [06/06/11](#)

4. [Parks and Maintenance Report](#) – Tom Henkel:
5. [Planning, Zoning & Administrative Update](#) – S. Vreeland
6. “The Metro Insider” [Newsletter](#) June 2011
7. [Status Update – VGT-Phase I SUP Application #2009-01P](#)

ACTION – Consider approval:

8. Township Board meeting minutes of [06/07/11](#) and [06/20/11](#)
9. [Accounts Payable](#) of \$ 113,245.83 as of 6/30/11 (recommend approval: Dunville)
10. [Resolution R-2011-16 establishing July Board of Review meeting date](#)

Motion carried by unanimous roll call vote.

F. REPORTS:

1. **[Sheriff’s Report](#) – Mike Matteucci:** In June there were 32 citations, 16 traffic crashes (3 with injuries) and 282 total calls for service. Quarterly statistics were also provided in the written report. Kladder said that there are members of the public who feel that the total number of accidents on M-72 East, the severity of the accidents and the number of fatalities have increased noticeably. Deputy Matteucci reported that he has been helping more with accidents in Whitewater Township recently, but not really within Acme’s boundaries. At this time of year there is a lot of traffic congestion on M-72, and it can be unsafe for officers to perform traffic stops or turn around to stop a car.
2. **County Commissioner’s Report – Larry Inman:** None

G. SPECIAL PRESENTATIONS/DISCUSSIONS:

0. **Introduction of Patrick Kilkenny, candidate for Planner/Zoning Administrator:** Mr. Kilkenny is currently working for the City of Charlevoix as the Assistant City Planner. He grew up in that city. He holds a Planning Degree from Northern Michigan University, and has worked for various levels of government and private industry. He has recently returned to the area from Denver.

1. **Marina Feasibility Study Status Update – Jean Aukerman:** Aukerman was given two tasks on June 7. The first was to have the feasibility study peer reviewed. She noted that DNRE Waterways is part of this process and we are not reimbursed for their grant for 50% of the study costs until the report meets their satisfaction. Another component of the peer review was to meet with the harbormasters and other municipal officials who participated in our April panel discussion. Aukerman and Edgewater Resources prepared a 2-page list of detailed questions that could only be answered if the report was thoroughly read by the peer reviewers. The reviews from Elk Rapids Harbormaster Cheryl Werth and Traverse City Manager Ben Bifoss are in hand, and reviews from Jack Kelley and Mark from Elmwood Township are forthcoming.

The second task was to implement an interest list to validate the information in the feasibility study and thorough market analysis. She and Edgewater prepared a page that could be posted at local harbors, and the list was advertised in the township e-newsletter. Aukerman cautioned that an interest list that is promoted only to a small degree in a small area rather than to a broad degree in a broad area will not be reliable or significant based on her corporate marketing and market research experience. If the results are to become significant, the list will need much broader exposure and distribution. Takayama suggested that the township contact individuals on the waiting lists at other nearby marinas. Aukerman thought this a good idea, but noted that the budget for Edgewater’s services has been fully expended and asked if the Board would support paying them more in addition. It is also uncertain whether the marinas would share the information on their waiting lists, and it has been challenging even to get them to permit us to post information at their facilities.

Gordie LaPointe, 6375 Plum Drive, questioned the value of the marina waiting lists. The

marinas publish some information annually on how much slip turnover there has been and how many names on the waiting list were contacted to fill those slips. Aukerman asked if it is really worthwhile continuing to pursue the interest list idea, or whether a focus on a more detailed review of Edgewater's market study and the peer reviews would be more suitable. Edgewater suggested the interest list because of concerns about their study expressed at the last Board meeting, but they agree that normally this would only be done once construction of a facility was under way and actual reservations for slips are being taken.

Hardin is comfortable with the materials submitted by Edgewater without additional investigation. He has attended all of the public meetings relative to the feasibility study, and the process has been well-conducted. Now it is time for the Board to make a decision. Wikle concurred. Takayama stated that he is comfortable that if the slips were there they would be rented. He believes a marina is feasible, but if it were to be done it should be done "right." He would move the road and do broader placemaking of which the marina would only be a part. But, where would the money come from? At this point in time he would vote against acquiring the existing marina as it is. Kladder concurred with Takayama, and does not feel that spending money on a broader interest list is worthwhile. He does support the finalization of the peer review process. Whatever decision is made next month is just a preliminary step in a much longer process. Kladder thanked Aukerman for her time and her professionalism.

H. CORRESPONDENCE:

- 1. 06/10/11 [Letter](#) from Robert P. Tremp, PLC re: Marina Feasibility Study:** received and filed.

I. NEW BUSINESS:

- 1. Consider adoption of proposed [Zoning Ordinance Amendment 013](#) – Medical Marihuana regulations:** Vreeland summarized the Planning Commission studies and process leading to the presentation of the proposed regulations, which would allow dispensaries/collectives in the B-2 district, concentrated growing operations in the B-4 district, and regulations for medical marihuana-related home occupations. Zarafonitis asked if we are also considering medical marihuana business licensing regulations. This was discussed a few months ago by the Board, at which time several states had received letters from the federal government threatening litigation against them for such activities. Nothing has come from those letters so far, so Jocks might entertain the concept of business licensing again.

The Planning Commission considered a broad range of approaches, from highly restrictive to fairly permissive, finally settling after much discussion on a permissive approach. Jocks would not recommend trying to prohibit the activity outright. The state law creates a defense for using marihuana – which is still technically an illegal act – in certain medically-related ways. If the township prohibits this activity within its borders it could be subject to lawsuits. One concern raised by the County Planning Commission was whether or not dispensaries would be shut down if they are found to be illegal under the state Medical Marihuana Act, or whether they would be grandfathered. Jocks maintains that grandfathering is not a concept that applies to an illegal activity, and if deemed illegal under state law and pending lawsuits they would be shut down by law enforcement.

The proposed ordinance allows for larger-scale collective growing sites, although allowing for this may not be a necessity. The home occupation regulations don't attempt to control who grows marihuana or how much as a licensed patient or caregiver, but it seeks to regulate the timing and flow of traffic to the home occupation. Ingestion on-site and the presence of anyone under the age of 18 who is not a qualifying patient are prohibited.

Hardin confirmed what Vreeland and Jocks reported. The Commission has approached the question purely from a land use perspective and not from a moral perspective. They sought to protect the township from exclusionary zoning claims and allowing the range of uses the state

allows. He personally has been following upcoming potential changes in state legislation and in the court system.

Takayama asked if the township should try to limit the number of medical marijuana businesses present at any one time, much as the numbers of liquor licenses in any area are limited. The township has a lot of vacant space that may be available cheaply. Does the township want the majority of that space to be occupied by such businesses, or to be known as the “marijuana capital of the north?” He is not concerned about the presence of some businesses, but he is concerned with the presence of too many. Jocks reported that spacing requirements were discussed to try to limit the number of total businesses that could locate here. Hardin offered that licensing at the Board level could be a tool for limiting the total number of such businesses rather than using the land use regulations. When asked which approach would be “better,” Jocks replied that either would work as well. He feels there would be little risk in a separation requirement. Kladder feels that a distance separation would be simpler. Scott is concerned about licensing in case the federal government becomes more aggressive. There is a difference between licensing a potentially illegal act and allowing for how the potentially illegal act is performed.

There was discussion about licensing based on a certain number of licenses per a certain number of township residents. Reasonable license fees could be charged.

Hardin also noted Commission discussion about whether or not to have required buffers between medical marijuana uses and places like churches and schools. The discussion was that the township does not limit the sale of pharmaceuticals or liquor close to those places. Hardin in particular felt that it would be inappropriate to set the distance for one item but not the others when they can have the same sorts of impacts. Takayama noted that the distance may lie in public perception. Marijuana is still a “street drug.” If there are many collectives right across the street from the public park, will people be comfortable?

Kladder noted that the state Attorney General issued an opinion late last week. In the opinion he noted that marijuana use has not been legalized by the Medical Marijuana Act; the act simply protects certain individuals from prosecution for medical use. Jocks feels that to some degree this is semantics; if you can get a state license to do something, the act becomes practically *de facto* legal. Kladder voted in favor of the Medical Marijuana Act because he believes in true medical use when subscribed by a medical doctor with whom someone has a close and enduring relationship. He is concerned with the township saying that it is OK to perform transactions involving the illegal drug close to churches and schools and parks. There was an incident recently where an individual was smoking marijuana in the Bayside Park restrooms. This is illegal under state law, but if there are many medical marijuana establishments across the street from the park and it is convenient to go there, more people probably will. Jocks noted that federal law provides for more severe fines for the sale of marijuana within 1,000’ of schools. The subject was discussed heavily at the Commission level.

The Board asked Deputy Matteucci for his experiences in the township since the three local pre-moratorium medical marijuana businesses opened. He stated that things are difficult; the County Prosecutor has said that if the Sheriff finds someone in possession of marijuana and they don’t have a card but say that they have started the process, he will not prosecute. The deputies have scales to measure how much marijuana people possess, as there are limits under the state law. He has stopped several cars where he smelled fresh marijuana and asked to be shown it. If the occupant of the car lets them look when asked, they can look. However the prosecutor has said they may not search the vehicle because it would be a violation of their rights.

Kladder expressed respect for people who truly obtain a medical benefit from marijuana use when other things don’t work. The concern is with members of the public who stretch the

boundaries and claim a need where one may not exist and they want to be recreational users.

Scott asked what would be considered a cultivation facility. The ordinance says that up to 72 plants can be grown on a “parcel,” but how is this defined. Is it a parcel of land of record? Is it a portion of a warehouse rented to an individual? Should the township allow multiple growers at one site? As written right now a “cultivation facility” is defined as a place where more than 72 plants are grown, which would require growing by multiple caregivers. This probably implies a place where portions of the space are leased to multiple growers. The ordinance requires each separate space to be separately enclosed and locked and accessible only to the grower. Jocks repeated that such facilities do not have to be allowed. The Commission felt that if it is allowed it should be concentrated in one place rather than dispersed in the community.

Hardin noted that one important consideration was and is that any provisions put in the zoning ordinance must be enforceable by the Zoning Administrator.

Zarafonitis, Scott, and Takayama supported disallowing cultivation facilities. Takayama supported disallowing collectives within 1,000’ of a park or playground, and also putting a maximum limit on the number of potential medical marijuana businesses in the township. Scott suggested 1 dispensary per 1,000 of population. Takayama has no problem with the concept of medical marijuana use by the people who need it, but the township adopts zoning regulations to shape the type of community it becomes. Hardin is comfortable with the ordinance as presented by the Commission. Wikle is concerned about adopting any regulation that might conflict with or place limitations beyond those in state law.

Jocks summarized his perception of the consensus: remove cultivation facilities from the permissible uses; establish minimum distances between collectives/dispensaries, and establish minimum distances between collectives/dispensaries and parks and playgrounds. Jocks is not concerned with removal of cultivation facilities being exclusionary, because it doesn’t change the fact that a caregiver can grow 72 plants under state law. The prohibition against growing at a collective/dispensary could be retained.

There were questions about to what extent the places currently operating would be grandfathered. They have maintained that they are retail uses and not medical marijuana uses. Places that are owned by the medical marijuana users might be grandfathered if the current use moves out and the building is leased to someone new doing essentially the same thing. If a dispensary/collective is leasing and leaves, the landlord would have to try to make a case for grandfathering, but it would not be automatic. A business could stay in one location under new ownership.

Motion by Takayama, support by to direct the township attorney and manager to develop revisions to the proposed ordinance amendment based on the foregoing discussion about separation between medical marijuana businesses, medical marijuana businesses and parks and playgrounds, and the removal of cultivation facilities. Motion carried unanimously.

2. **Planning Commission and Zoning Board of Appeals Appointments:** Kladder is suggesting the reappointment of Ron Hardin (as the *ex officio* Board member), Steve Feringa (who is the allowed non-township resident member), and the new appointment of Karly Wentzloff to the Planning Commission. He is also recommending re-appointment of Larry LaSusa to a full-time role on the Zoning Board of Appeals.

Motion by Takayama, support by Zarafonitis to appoint Steve Feringa and Karly Wentzloff to three year terms on the Planning Commission expiring 07/15/2014. Motion carried unanimously.

Motion by Takayama, support by Zarafonitis to appoint Larry LaSusa to a three year terms on the Zoning Board of Appeals expiring 07/15/2014. Motion carried unanimously.

Motion by Takayama, support by Zarafonitis to re-appoint Ron Hardin to the Planning Commission as the *ex officio* Board member for a term expiring 07/15/2014. Motion carried unanimously.

3. **Citizen Advisory Appointments:** Kladder provided a memo listing appointments to the various Citizen Advisory Committees, including:

- Heritage: Dorothy Dunville
- Parks & Recreation: Owen Sherberneau, Mark Guy, Marcie Timmins
- Farmland Preservation: Bob Garvey
- Shoreline Preservation: Charlene Abernethy, Bob Garvey, Fran Gingras, Paul Brink, Pat Salathiel
- Yuba Creek Natural Area: Stan Malaski, Ron Reinhold

Motion by Scott, support by Takayama to ratify the Supervisor's appointments to the Board's Citizen Advisory Committees, all for terms expiring 07/15/2013. Motion carried unanimously.

4. ~~**Revision to Chapter 1043 of City of Traverse City Codified Ordinance:**~~

5. **Charitable Organization Fundraiser Raffle Resolutions:** In order to obtain a state charitable gaming license to hold a fundraising raffle, charitable organizations must have approval by the township in which the organization operates and the event is to be held. Clerk Dunville approached Kladder this morning asking that resolutions be adopted that would allow the Acme Heritage Society and the Yuba Historic Society to each conduct fundraising raffles in the near future.

Motion by Scott, support by Zarafonitis to adopt Resolution R-2011-17 recognizing the Acme Heritage Society as a valid charitable organization for purposes of a fundraising raffle. Motion carried unanimously.

Motion by Scott, support by Zarafonitis to adopt Resolution R-2011-18 recognizing the Yuba Historic Society as a valid charitable organization for purposes of a fundraising raffle. Motion carried unanimously.

1. **Potential Water and Sewer Authority:** Kladder reported that the Sewer & Water Committee members at the DPW began talking about a year ago about potentially leaving the DPW and forming an authority to manage water and sewer infrastructure as one unit. Acme, East Bay, Garfield, Elmwood and Peninsula Townships, and now the City of Traverse City, would like to continue to explore this option. Septage treatment would remain separate and not under the umbrella of such an authority. There are costs for investigating this opportunity as outlined in the memo Kladder provided this evening. This is a very preliminary study which may or may not lead to ultimate formation of an authority. Funding would come from the sewer fund, although we did not budget with this in mind.

Motion by Takayama, support by Scott to approve expenditure of up to \$600 from the Sewer Fund to hire Jim Young to preliminarily examine the potential for a water and sewer authority. Motion carried by unanimous roll call vote.

J. PUBLIC HEARINGS: None

K. OLD BUSINESS:

1. **Status Report: Northpointe Road Litigation:** Jocks is taking a relatively small role at this time, monitoring and communicating as needed. The township's position at this time is only that it not be given responsibility for the road. Judge Power ordered the blockade of the road removed which has been accomplished. Mr. Nalley's lawyer has filed documents seeking review and reversal of the preliminary injunction so that the road can be blockaded again. Mediation was scheduled for today but was postponed because Mr. Nalley had an accident and could not participate because he is in rehabilitation. The mediation will likely be scheduled for sometime in September. In the meantime discovery and depositions may occur. The Supervisor and/or Manager may be on the deposition lists.
2. **Consider appointment of new Planner/Zoning Administrator:** Candidate Patrick Kilkenny was present earlier so that Board members could meet him. The interview process has taken approximately a year, having been quick and slow at various points. The interview committee is recommending that he be hired at \$35,000/year for a 90-day probationary period, with a salary review at 6 months and 1 year of service. His resume and application were included in the meeting packets. He is currently working temporarily for the City of Charlevoix for the summer. They would have liked to keep him on but they could not find the funding. His current supervisor has indicated the willingness to be flexible, and a potential start date with Acme could be as soon as July 18.

Motion by Takayama, support by Zarafonitis for the Board of Trustees to appoint Patrick Kilkenny as the Acme Township Planner and Deputy Zoning Administrator at an initial wage of \$35,000/year, with a 90-day probationary period and salary reviews at 6 months and 1 year of service. Motion carried by unanimous roll call vote.

L. PUBLIC COMMENT & OTHER BUSINESS THAT MAY COME BEFORE THE BOARD:

Mr. LaPointe indicated he and Aukerman have spoken at length about the marina issue. They each bring their own backgrounds, experiences and approaches to analyzing the situation. At next month's board meeting she will deliver her final report. What is the next step after this? There were two main aspects to the feasibility study: is there demand for a public marina, and is it economically feasible. Mr. LaPointe concedes that over time if a first-class facility is constructed it will get filled, possibly by the third season. His concern is relative to costs, revenues, expenses and profits. Revenues are a function of how many slips there are, occupancy and rates charged. He feels the projected rates are on the high side, and significantly higher (30% or so) than Elk Rapids and Elmwood. A more realistic projection should be made. As to operating costs, rough numbers were provided and he doesn't have the expertise to know if they are correct. However, he feels more effort must be expended on a pro-forma. He doesn't question the potential cost of construct at \$9.3 million for the first two proposed phases. The question is whether an appropriately conservative approach is being taken to estimating the amount of grant money and donations that can be attracted to the construction costs. How much would the township have to finance? To him this would make or break the deal, and it can't be determined easily until after we already own the property and apply for grants. It's a complex situation, unless all of the construction money is going to be donated and we only have to cover the operating costs. If the wrong assumptions are made, the taxpayers would have to pick up the slack.

Rachelle Babcock, 4261 Bartlett Road felt that many concerns were raised during the medical marijuana discussion. She wonders if existing businesses within the chosen perimeter of public parkland could be compelled to move within a certain period of time after the expiration of their current lease period. Everyone talks about medical marijuana, but all they do is carry a card. Perhaps it could be required that a pharmacist or doctor has to be on site at all times in an attempt to have the medical requirement more closely monitored.

Takayama has been attending economic development meetings monthly, at which much discussion is devoted to placemaking. This month he had a 1-hour conference call with Nigel Griswold from the NW MI Council of Governments and Fred Kent and three of his team. Takayama felt he learned a lot. Mr. Kent and his team looked up the township on Google Maps during the discussion, and they asked

a lot of questions about what they were seeing. Takayama described the township, and Tribal involvement in the township. Mr. Kent's team is very interested in working with the township, but Takayama recognizes that there can be local concern about bringing in experts from far away cities. Mr. Kent stated that all they do is look at the place and the planning documents, talk to residents, and after 3 days they make suggestions and a rough outline of what local people in the community need to do next based on the Master Plan and expressed needs and desires. Takayama then spoke with Jim Lively, who said that the Michigan Land Use Institute is working on bringing Mr. Kent's team to Acme because they feel we are a model for a community that could use their services and benefit from them. Takayama also participated in last week's Waterfront Smart Growth Readiness Assessment meeting, where community members assessed how our current planning and zoning and regulatory tools prepare us for smart growth, and he sees how it all fits together. He will provide an additional update next month. Takayama has also obtained a placemaking guide from Chicago that he feels is beneficial. At the next meeting he would like to bring Messrs. Griswold and Lively to the Board to answer questions, ask the Tribe if we can repurpose their \$25,000 New Urbanist Grant for this purpose, apply for an upcoming grant of \$25,000 through the Council of Governments and then the township might not need to contribute much more money towards the effort.

Meeting adjourned at 9:56 p.m.