ACME TOWNSHIP SPECIAL BOARD MEETING
ACME TOWNSHIP HALL
6042 Acme Road, Williamsburg MI 49690
7:00 p.m. Tuesday, September 14, 2004

Meeting called to Order at 7:00 PM

Members present: R. Agruda, D. Amon, D. Hoxsie, N. Knopf, C. Walter
Members excused: None

INQUIRY AS TO CONFLICTS OF INTEREST: None noted

A. OLD BUSINESS:

1. Consider language for Special Use Permit Document regarding SUP Application #2004-11P by The Village at Grand Traverse: Amon made some introductory comments about the purpose of tonight's meeting. He stated that per Chris Bzdok's request, he has received copies of all exchanges of information between the meeting on the 7th and the current time between attorneys for the township and for the applicants. Three documents have been provided for the Board's information, a proposed SUP and a proposed Board Resolution.

a. Status report – Jim Christopherson: Since last Tuesday there have been numerous e-mails between the parties. Christopherson has tried to worth within the Board's September 7 directives. He has consulted with Russ Clark, the township's consulting planner for this project, to ensure that the recommendations passed forward from the Planning Commission are accurately represented. He began a run-through of the proposed SUP document (included and incorporated by reference) to highlight key points:

- In section 2.0, top of page 3 there is a statement that any conflicts or discrepancies between the SUP and the documents it describes, the strictest interpretation shall apply, subject to "reasonable discretion" of the Board. Christopherson feels this is standard language that should be included. Walter took exception to the term, feeling that it is too vague or subjective. Tom Schultz, legal counsel for the applicants stated that he has prepared a transparency that compares and contrasts the differences in proposed document language between the township and applicant versions.
- Section 3.0, Effect of Approval: this paragraph discusses the one year time limit on the approval; Amon noted that an extension may be requested for an additional year per the Ordinance. This is reflected at the top of page 4.
- Section 5.1: standard language from all the township's SUP, although the applicant has expressed objections to it.
- Section 5.2: A phasing plan has been submitted, with both parties recognizing that it may change over time.
- Section 5.5: this section requires that if the applicant constructs a water system, the township may take the system over in the future. This language and requirement are standard to all the township's SUPs and has been imposed on LochenHeath and Hope Village. The applicant's object.
- Section 5.6: on page 7, Walter objected to language giving the township's legal counsel discretion to make certain decisions. Christopherson stated that he has changed this, both here and later in the document, to stated that the Board will have the discretion after consultation with its attorney. He also noted in the final

sentence of the second to last paragraph of this section that he would like it noted that any certificate of occupancy will come from the appropriate permitting agency other than the Township.

- Section 5.8 – Open Space: The occupants object to this section and will elaborate later in the meeting.
- Section 5.9 – Site Plan Review: The last two sentences of the first paragraph are at issue. They state that the township is reserving the right to require adjustments and modifications to elements within the retail and mixed use areas of the project. This statement was contained in the original SUP for the previous approval which was nullified by the Court. Walter objects, feeling that this leaves too much leeway for the Board or Planning Commission to require changes when they are not well-versed enough in what may or may not be marketable for the applicant. He would like to see more detail about what types of changes would or would not be permitted at the township's discretion. He might favor some language stating that any changes may not increase construction costs over the proposed improvements. Hoxsie felt that this section might be designed to speak to the residential portions of the development; Walter countered that this paragraph clearly states that it speaks to the non-residential areas.
- Section 5.10 – Limitation on Large Retail Structures: Christopherson is unsure if the statement that there will be only one retail anchor store exceeding 150,000 sq. ft. is accurate. This should be discussed further with the applicant.
- Section 5.12 – Environmental Feature: The applicants disagree with paragraph 2 statements about the issues raised about the project's potential environmental impacts. Christopherson believes that the proposed language is consistent with the Planning Commission's recommendations. Walter noted that two differing environmental reports have been provided to the township, and that the DEQ is likely to make environmental controls and compliance the strictest part of the entire process. Since the applicants will have to satisfy the DEQ's standards, why must they also be asked to spend more time and money satisfying additional township requirements? He would favor limiting this statement to a requirement that the applicants provide an updated wetlands delineation. Christopherson stated that his understanding of the Planning Commission's concerns was that they were broader than just wetlands delineation. Agruda stated that he perceives Walter is seeking to eliminate reference to the two specific environmental assessments provided to date; Walter agreed. Christopherson stated that the second sentence in the paragraph could probably be deleted with no impact on the overall intent of the section.
- Section 5.13 – Access to Adjoining Parcels: The applicants have an issue with the second sentence in each of the sub-paragraphs stating that the improvements shall be at their sole cost. Christopherson noted that the document is only requiring that they be responsible for the portions of any connector easements within the project boundaries. Walter does not like the terminology in the TART section regarding access to the Grand Traverse Resort. He feels that the way it is written it places and entire burden on the applicants rather than recognizing that there will be negotiation between TART, MDOT, the Resort and the applicant. He also noted that earlier in the document there is reference to meeting the requirements of the proposed M-72 Corridor Overlay District which has not yet been adopted, and he is not comfortable that the requirements that they have or have not agreed to are spelled out. It was specified that only the landscaping standards will be adhered to.

The word “proposed” shall be added in reference to the possible ordinance.

- Section 5.14 – Residential Architecture: The township and applicant seem to agree in principle but perhaps not yet on specific language. Walter stated that if the applicants hire an urban design planner to work with the residential areas, he would also expect that if there is nobody on the Planning Commission or Board with expertise in this area, the township will need to hire a consultant. This will result in extra cost.
- Section 5.21 – Signs: there may be disagreement about language. In any case, ordinance standards must be met.
- Section 5.22 – Development Impact: there may be disagreement about language, but Christopherson feels he has drafted language consistent with the Planning Commission’s recommendations.
- Section 5.23 – Parking: Consistent with Clark’s report, but the applicant disagrees as will be explained later.
- Section 5.24 – Market, Economic and Traffic Studies: The ordinance requires that such information be provided at site plan review. The applicant does have concerns about divulging proprietary information. The document says that information as required by MDOT and the Road Commission *will* be required; the applicant would prefer *shall*.
- Section 5.25 – Expansion: The applicant is concerned that this section might result in a decrease in their allowable density, but Christopherson believes the density could only increase if the applicants purchase additional development rights.
- Section 7.0 – Prior Town Center Approval: added at applicant’s request.
- Section 8.0 – Representations and Statements: this may be the most controversial section. Allegations have been made that individual township representatives made improper representations. Christopherson has no direct knowledge of the specifics of any allegation, but believes that this language is important to protect the township, as the applicants have implied that they might sue to enforce such representations if they exist. The applicants disagree with this language.
- Section 10.0 – Rights: this is standard language from the township’s SUP documents. The applicants wish what Christopherson perceives as more lenient language.
- Section 11.0 – Applicable laws: Same comments as for Section 10.0

There is also a proposed Resolution, which contains language somewhat representative of a Finding of Facts. It discusses objectives considered by the township in the course of plan review and findings that the proposed plan is appropriate in terms of a number of different measures.

- Resolution 6 contains a list of specific findings. These were some, but not all, of the findings proposed by the applicant. Clark and Christopherson reviewed their proposed list and eliminated a number of items they felt were inconsistent with the Planning Commission’s recommendations. Ordinance standards are represented in boldface print with demonstration of how these standards are satisfied following each item.
- Proposed findings under section F beginning on page 7 include: that the applicant has a legal right to apply pursuant to Section 8.22 of the Zoning Ordinance; that all information required at this phase has been presented, and various other items.

b. **Discussion:** Amon invited the applicants to discuss their position on the proposed documents. Tom Schultz handed out annotated copies of the proposed permit showing their requested changes. He stated that most of the changes are along the lines of questions raised by the Board already – clearer definition of certain terms and concepts. The applicant needs a certain degree of certainty as to what may be developed in order to proceed with marketing and building the development.

Mr. Schultz stated an additional issue – whether the township and applicant have the same understanding of what this process means. One argument made during the lawsuit over the previous approval under the Town Center Ordinance was whether or not the conceptual approval conveys any actual right to develop, and they seek to avoid any similar confusion with the current process. For this reason they seek to replace the words "conceptual" and "permit" with "development plan" throughout the document.

- Section 2.0: they provided proposed revision to the discretionary language previously discussed.
- Section 3.0: Applicant proposes the addition of a phrase to the first paragraph, second to last sentence to provide consistency with the first full paragraph at the top of page 3. They also sought to clarify that construction of the project must commence within one year of issuance of site plan approval. Applicant also proposes a reference to the requirements within the zoning ordinance for granting any requested extension of the one year period from approval of the conditional SUP in which to apply for initial site plan review, and that such extension shall not be "unreasonably" withheld.
- Section 4.0: the first point where the applicant believes there is a substantive difference of opinion. Applicant proposes wholesale revision to refer to the findings attached as an "Exhibit 2" rather than to Clark's 8/12/04 and 8/31/04 reports. Walter objected to the proposed change; Schultz stated that later in the proceedings he would elaborate on why some of the report is written from a planning perspective and that some of the language may be unclear as opposed to a more formal finding of fact.
- Section 5.1: The applicant proposes wholesale revision to stated that they will be bound by the documents listed earlier in the SUP and to any representations they may have made at public meetings that are consistent with the information within those documents. An example of their concern: early on there were representations that there would be two anchor stores. Now, they have committed to only one. Are they still bound by the earlier representation even though it is inconsistent with the final revisions and representations? Later in their proposed revisions they speak to representations made by the township within the framework of the public meetings that were held.
- Section 5.2: Applicant seeks to clarify that the phasing plan provided is "estimated" and to eliminate the requirement that phasing for the entire project be set during the Phase One site plan review. They also seek to have the right to revise or amend the phasing plan at the applicant's sole discretion, rather than with township approval as proposed, to ensure marketability.
- Section 5.5: Applicant requests addition of language guaranteeing that the township has sufficient sewer capacity to adequately serve the development. They seek elimination of the final paragraph of the section in entirety, stating that a possibility exists that the eventual water system serving the project may not be of a nature that could be turned over to the township as required. Walter asked if it would be in the future occupants' best interests to be served by a public

water system. Schultz agreed in principle, but because provision of water to the site has not been discussed during the process, he feels that the issue bears future discussion. Knopf understood that the township always has first right of refusal to take over any private system, citing the circumstances surrounding the Resort's water system. Christopherson gave a brief history of litigation regarding the sale of the Resort to KSL by the Detroit Pension Fund. He noted that the township has assumed control of the privately-constructed water systems at LochenHeath, Hope Village, and the Sleep Inn and Holiday Inn Express. The intent was to preserve the possibility that any such system might be integrated into a system serving a broader segment of the public in the future. When the township takes over a system, it also assumes responsibility for the maintenance of that system. Steve Hayward, planner for the applicant stated that one concern is an equity issue: would the system be turned over for equity or at fair market value? If the applicant must expend funds to drill wells and create service infrastructure, it could be costly. The question of the value of the improvements turned over could be complex. They key issue would be whether or not the applicants would be justly compensated for the system or just handed $1. Walter stated that this issue could be dealt with through appropriate language. He believes it important for the township to have the right to take over and safely maintain and operate the system, but at market value. Knopf concurred, as did Steve Smith, one of the partners in The Village at Grand Traverse, LLC. Mr. Smith noted that if they don't own the system, instead contracting with a third party, the situation could be different. Schultz recognized the fact that there is a public interest in the question. Mr. Smith asked that the group work to finalize the language immediately. Schultz offered that instead of striking the entire paragraph, it could be specified that if the applicant develops a water system as its sole owner, at township request the applicant would dedicate the system to the township via easement, deed or other appropriate method to the extent that the applicant is adequately compensated. There would be a notation that the "adequate compensation" might be less than fair market value. Amon stated that there may be issues that come up between private and/or municipal parties that the DPW deals with all the time, and that it is important for agreements across the county-wide system to remain consistent. He believes that the language requiring compliance with Health Department, DPW and DEQ standards is critical. Schultz pointed out a reference to "all applicable state and local regulations" two paragraphs earlier. Christopherson is concerned because if the township is required to buy the system, even at a discounted rate, financing would be an issue. Generally he would assume that the township would charge user fees that are "revenue neutral" – covering system maintenance and operating costs only. He reiterated that the language he proposed is consistent with all of the other SUPs issued to date by the township. Schultz stated that the intent is not for the applicants to profit, but to ensure that their initial capital expenditures are covered. Mr. Smith proposed picking a discount rate immediately, such as perhaps 25% of the applicant's construction costs. Hoxsie and Knopf stated that they would be uncomfortable trying to pick a specific number right away this evening without further study of the issue. Agruda understands both sides of the question, but favors simplicity and a requirement that the applicant cannot transfer the system to any third party without township approval and retaining the language requiring that the system be dedicated to the township. Schultz pointed out that this dedication language does not provide for any compensation to

the applicant whatsoever. Amon sees possibilities within the discussion but feels a strong need to consult with the DPW to find out if there are any similar contracts between parties within the system in pursuit of a mutually equitable solution. He raised the possibility that the applicants might wish to create a system sized so that they could sell water to other areas of the township along with serving their own development. There was general agreement between both parties that some form of equitable compensation clause should be included.

- Proposed additions to Section 5.6 were deemed acceptable by Christopherson.
- Section 5.7: Applicant seeks to clarify that it must provide a detailed landscaping plan at site plan approval for the specific portion of the project for which site plan approval is sought, rather than for the entire project during each site plan approval proceeding. They are also asking that the buffer requirement along M-72 and Lautner Road, in which no structures will be placed, be an average figure rather than an absolute figure as proposed. Walter asked where "the line would be drawn." He would not want to provide unfettered leeway. Mr. Smith proposed leeway to be as displayed on the conceptual plan +/- 10', maintaining an average setback of 100' from M-72 and 50' from Lautner Road.
- Section 5.8: Applicant seeks to eliminate the entire proposed language, substituting a statement that the applicant has provided an open space plan to which they will adhere and for which they will provide additional details about the amenities and plantings to be contained therein. They feel that the proposed statement implies that they haven't met the requirements for 25% open space. Clark stated that the open space plan provided does meet the Master Plan specifications that there be 25-30% of the land in open space. Amon suggested making the statement within the Findings of Fact that the applicant has met the requirement; Clark noted that this is in his report.
- Section 5.9: Schultz stated that this section is the one that they feel is too broad in terms of not making the applicant's rights under the SUP clear. He offered to have Scott Nowakowski from Meijer, Inc. speak to this questions. Schultz and Mr. Smith stated that if the document says that the township may require reconfiguration of building, streets and parking, proposed tenants who have looked at the document say this is not a firm enough commitment to permit them to in turn make a commitment to become part of the development. Mr. Smith noted that the applicants have, for example, moved the lifestyle buildings closer together at the Planning Commission's request and with their approval. They can't have the possibility of further unilateral changes hanging over their heads.
- Section 5.9(8): Applicant proposes a paragraph stating that the provision is not intended to delay or deny a site plan approval that conforms to standard ordinance requirements, and that the township would not be authorized to impose conditions that might impair development of the property, and that the township could not deny, delay or limit approval due to disagreement with the statements of feasibility or impact assessment that are required (economic, marketability, streets, natural features, schools, utilities.) It does state that failure to provide require documents can delay a process. Hoxsie believes that the proposed language would effectively negate all of the items that the Planning Commission agreed to defer as requirements until site plan approval.

- Section 5.10: applicant proposes a clarification of definition and an increase in maximum anchor store building size to 210,000. Hoxsie stated that he has no problem with this figure, but does have a problem with defining a "retail anchor store" as being anything over 150,000 sq. ft. Mr. Smith stated that the largest of the lifestyle center stores would be 85,000 sq. ft. it footprint; Mr. Hayward pointed out that the Planning Commission has encouraged that these structures be multi-story, which would increase the largest one to 170,000 sq. ft. It is for this reason that they proposed the 150,000 sq. ft. figure, to enable multi-story use by select stores in the lifestyle center. Hoxsie would support a figure closer to 85,000 sq. ft., noting that the Planning Commission stated that it would consider requests to increase height. Amon suggested that the proposed parenthetical statement be revised to encompass the discussion.
- Section 5.12: applicant proposes deletion of entire paragraph about the two existing environmental reports and insertion of a statement that "Best Management Practices" will be followed along with all applicable local and state environmental regulations. The applicant maintained the requirement for the revised wetlands delineation.
- Section 5.13: applicant proposes that an easement to the Johnson parcel would be provided at the time of initial site plan approval rather than an implication that a road connection would be constructed. They propose elimination of the provision that construction of improvement of the easement within the subject property would be at their sole cost and when the township determines that traffic warrants the construction regarding all of the proposed connections to adjacent properties. Mr. Hayward recalls mentioning at an earlier meeting that the proposed Johnson parcel connection (which could be quite costly due to the need to cross wetlands) might be the only public roadway within the development and as such might be eligible for some types of federal funding programs. He also stated that it may never be allowed to be constructed for environmental reasons, and it might not be necessary for traffic reasons for a considerable period of time, if ever. Mr. Smith stated that there might be better proposed alignments for the Johnson parcel connection than the one shown on the conceptual plan that would require less wetlands to be disturbed. Bob Forsman, Gourdie Fraser, stated that the DEQ will require the applicant to look at all possible alternatives to crossing the wetlands and will require any such crossing to have minimal impact. Mr. Smith seeks to retain flexibility in final connection location. Schultz stated that the cost is a concern because it appears to the applicant that the required Johnson easement is more for Johnson's benefit than for their own. Mr. Smith would rather see a nature trail in this area than a connector roadway. Amon stated that any language regarding a connection between the proposed development and the Johnson parcel should also be included in the next approval for the Johnson property, which he understands may be forthcoming in the near future. Applicant also proposes that the language regarding the TART specify a surface cross-walk connection to the Resort. Walter stated that he feels the applicant should only be responsible for a connection easement to the boundary between the property and the right-of-way, with the rest of the journey across the street being a negotiation between the Resort, applicant and MDOT. "…provide access to the M-72 right-of-way…" was the suggested language, rather than a specific reference to the Grand Traverse Resort. The word "construct" will also be removed. Mr. Smith also asked that the township give the applicant some leeway regarding landscaping installation along M-72 if MDOT indicates that widening is imminent

in their area, and asked if some language to this effect could be included. Walter stated that since the project will be bonded, a delay in landscaping should be sufficiently covered. The language regarding the buffer landscaping will be amended to indicate that the M-72 Corridor Overlay District standards are proposed and not yet adopted.

- (Amon noted the presence of a quorum of the Planning Commission)
- Section 5.14: The applicant has proposed new language for this section in entirety stating that they will retain the right to modify the architectural style of the housing and will consider redesign of the neighborhoods using "neotraditional/traditional" design with a guarantee that there would be no loss of housing unit density. Walter asked for clarification about Planning Commission discussion on this point. Mr. Hayward stated that Dave Krause had objected to the layout of the residential area in general and a proposed cul-de-sac in particular. He said that one issue the applicant faced in proposing a neighborhood design was working to retain significant natural grade changes rather than flattening the northwestern portion of the site for the sake of a gridwork street layout. Mr. Smith stated that the applicants have stated repeatedly their desire to work with the natural terrain. Hoxsie appreciated these comments, but added that the tight gridwork layout was also important to the Commission. He feels it was the Commission's specific intent to retain the possibility that this area of the project would be redesigned, and noted that there are plenty of places in the state where a gridwork neighborhood is laid out on hilly terrain. Mr. Smith asserted that the applicants are willing to do what they can to meet the Commission's expectations, and he has no problem retaining the prior commitment. Consensus was reached to reinstate the original language with a modification to clarify the required timing ("site plan approval" being too vague, given that there would be multiple sign plan approval processes.) The applicants asked that the statement that any redesign would not create a loss of housing units be added and the Board concurred.
- Section 5.21: applicant proposes specification that the standards for signage in the B-1, B-2 and B-3 districts shall apply. Mr. Hayward amplified that the general sign ordinance is organized by zoning district, and since the development is located in a residential district the commercial signage would be overly restricted in size. He spoke earlier today with Clark and Corpe, who likened the situation to that existing at the Grand Traverse Resort. The Resort has an approved signage plan that allows for a variety of signs in the interior of the property that would not otherwise be allowed elsewhere in the township but which are appropriate in context. The applicant proposes that this section be amended to indicate that they will submit a comprehensive signage plan for separate approval that generally conforms to the allowable signage in the business districts. Clark stated that the Resort requested numerous variances for their signs because as stated before, many of the types of signs for internal wayfinding that such a development requires are not permitted by any section of the ordinance. He would recommend crafting any reference to the conditions of any specific district carefully so that appropriate signs to the circumstance that are not allowed by those districts may be considered.
- Section 5.22: applicant proposes to eliminate this section in entirety as being redundant to section 5.9. Christopherson concurred that the language is largely redundant.

- Section 5.23: applicant proposes to eliminate this section in entire. This section was a recommendation in Clark's reports that was forwarded by the Commission to the Board. Mr. Hayward stated that the applicant has concerns because they have already reduced proposed parking ratios below nationally-recommended standards. Turf overflow parking locations are not clearly identified, and it would not seem to him to be appropriate in the middle of the lifestyle center. Since the open space standards have already been met, he feels the turf parking is not necessary from this regard. Applicant is already committing to best management practices for runoff water filtration, so the requirement doesn't seem applicable from this standpoint either. Hoxsie stated that one of the Commission's objectives was to offer the applicant a way to save money by not constructing unnecessary pavement. Mr. Smith stated that it might actually be more costly to construct pavement in two phases rather than one, plus the appearance and maintenance issues for turf parking are alarming. The applicant is already concerned about whether or not there is a marketable amount of parking on the site as is. Hoxsie stated appreciation for the reduction in parking ratios because we have existing large parking lots at Tom's and K-Mart that never seem full. It always seems like even reduced parking lots are too big. Restaurants in general, particularly those that are both a dining and bar venue, require a lot of parking. Mr. Smith wants to provide the facilities to attract quality, sustainable dining facilities. Knopf felt that if the provision was meant to be a favor to the applicants but it is an unwanted "favor," it should be removed. Hoxsie felt that an additional purpose was to reduce impervious surface. Clark stated that the development is proposed for mixed use, so it is hoped that people with park once for multiple uses. Parking needs on the property interior are substantial, but parking needs on the perimeter may be lighter at the start, and his goal in making the recommendation was to prevent unnecessary parking from being developed. Amon suggested retaining the section with discretionary language. Mr. Hayward stated that the applicants do not wish the requirement to exist in any form. Ken Petterson, also legal counsel for the applicant, stated that there could also be liability issues if someone is injured by using a non-paved surface. Walter asked the applicant if it consents to the specified parking ratios; Mr. Smith said he did. Walter believes that this issue should be resolved by the applicant pursuant to market conditions and not by township requirement. Walter and Knopf both supoorted removal of Section 5.23. Hoxsie believes that this is contrary to the Commission's intent, but he has heard the arguments presented and has sympathy for the applicant's point of view as stated this evening, particularly on the understanding that the parking ratios are already substantially reduced. **Hoxsie supported removal of Section 5.23.** Agruda and Amon concurred as well.
- Section 5.24: applicant seeks clarity on what studies will be required at which points in time. Applicant has suggested addition of the same language proposed for Section 5.9. They fear that approval of a site plan application for, perhaps, a Meijer store, might be delayed or denied because the applicant hasn't remediated an existing concern with the US 31/M-72 intersection. Christopherson stated firm objection to the language suggested in common for this section an 5.9, suggests that indications from studies that a development impact will be severely negative on public facilities cannot be a factor in approval. In his opinion, such language in an SUP would "gut" the ordinance. Schultz maintained that the ordinance provides no standard for what the township does with studies that are provided

which represents a broad problem for the township. Hoxsie disagreed, saying that the Commission wanted traffic studies before making a decision. The applicant argued forcefully that it could not comply and was allowed to defer the requirement to site plan review. Statements made by Clark and MDOT should have served as an ample warning to the applicant that existing traffic issues exist for M-72 that could negatively impact their ability to proceed with development on their desired timeline. Mr. Smith asked what would happen if their application is approved but MDOT will not grant access from M-72 to the site due to problems with the roadway. If MDOT does not remediate the problems with the road and the one-year timeframe to present a site plan expires, what happens? Christopherson responded that the applicant could ask for a one year extension of the SUP or could present a request for site plan approval, which would grant a year from site plan approval to begin construction. Walter stated that MDOT may be a controlling factor; if they prohibit access from M-72 the project might either have to be accessed from Lautner Road or be deferred until access is granted. Mr. Nowakowski stated that Meijer had worked out access issues for their site in 2001 when they applied to build on their own property, so they expect they will be able to work with MDOT and the Road Commission again.

Motion by Knopf, support by Agruda to continue the meeting until a maximum of 11:00 p.m, Motion carried by unanimous roll call vote.

Schultz noted that if MDOT and/or the Road Commission grant access approval, traffic concerns might not be grounds for project disapproval. Christopherson disagreed, stating that overall traffic safety concerns might form a good basis for denying a site plan request. Mr. Hayward noted that the requirement is that no additional adverse effects accrue to the existing situation, and asked by what standard this would be judged. Christopherson stated that he would approve repetition of ordinance standards in terms of impact studies in the proposed SUP without modification by either party, but absolutely cannot recommend that the language suggested for addition to both sections be adopted. The township, in his opinion, has the ability to decline to accept MDOT's word for something on occasion. Mr. Hayward noted that all applicants must receive equal treatment under the law; Christopherson observed that this is an unique proposal for land use within the township. Mr. Hayward read aloud some proposed language for the current SUP that comes from the SUP/Planned Unit Development Report signed by Mark Ritter and Lanny Johnson approved on August 3, 1992. He further stated that correspondence has been received by the applicants from Meijer stating that the more vagary and uncertainly in the SUP, the less likelihood there is that Meijer will choose to locate within the development. Christopherson proposed that he re-draft the section to make it neutral in relation to the ordinance and Township Rural Zoning Act, as well as incorporating the principals in the referenced Acme Village permit.

- Section 5.25: applicant proposes wholesale revision, and again includes the proposed paragraph introduced in 5.9 and 5.24. They object to the idea that they might have to purchase development rights out of pocket. Mr. Petterson amplified that a TDR ordinance does not yet exist so it should not be referenced. If one is adopted later they would be as free as anyone else to take advantage of the program if desired. Christopherson stated that the provision would be useful to clarify

expectations for any future possible owners of the development. Hoxsie stated that it is intended as an expression of Master Plan goals to concentrate development in central areas of the township. The Board clarified that the expenditure is not necessary to the project as currently proposed and that the paragraph discusses possible purchase of density over and above what is being permitted through this process. The paragraph will be amended accordingly.

- Section 7.0: Applicant believes it likely that if a new SUP is approved a court action will be filed to block it. An appeal regarding the prior, overturned approval is still pending. Applicants wish to reserve the right to proceed under the prior approval if the Circuit Court decision is reversed, especially if court action regarding this approval is still pending. Christopherson does not view the proposed language as problematical.
- Section 8.0: applicant proposes re-titling of this section to "amendment to permit." It eliminates all but the first sentence as drafted by Christopherson, and adds a sentence stating that property development be governed by the SUP, applicable ordinance provisions, the Township Rural Zoning Act and that any statements or representations by any party inconsistent with the permit have no force and effect. This last sentence is the applicant's attempt to deal with the allegations of inappropriate dealings outside of the public meeting format. Christopherson stated that the situation surrounding the allegations that have been made is unique, and that he is trying to protect the township. He would prefer stronger language stating that they are not holding the township to any such allegations, the existence of which has not been proven, and specifically releasing the township from any statements made outside of a public meeting format. Mr. Hayward stated that the minutes do not specifically state that improper guarantees were made, and that the allegations are a very long leap from his actual statements. Schultz believes that the allegations are entirely fabricated. Mr. Petterson does not believe that release of liability language is legal in an SUP, seeming like a request to waive rights as a condition of request approval. Christopherson asked Schultz if he would agree that the applicants will not rely on statements made by any township official outside of a public meeting. Schultz stated that the township has in effect invited the development by having ordinances that would permit the application and that many township officials have commented that they felt the concept and plan fit the tenets of the Master Plan. Christopherson asked if all of these statements were made in a public meeting; Schultz replied that he is unaware that it has been stated that they were not. Mr. Petterson stated a belief that all alleged improper statements were alleged to have been made pursuant to the prior approval process which was set aside, so the whole issue appears to him to be moot. Christopherson stuck to his position that he needs to attempt to eliminate any possibility that the applicants might try to sue to enforce a commitment made pursuant to the alleged improper promises. The applicants feel they are being asked to unreasonably forfeit a right they possess, whether they need it or not. Walter fears that by leaving the language in there is a tacit agreement that improper dealing occurred, and he believes the language is unnecessary and unwarranted for reasons Mr. Petterson stated. Knopf does not support inclusion of the language, noting that it is unprecedented. She regards the allegations of improper dealings as being gossip only and irrelevant to the matter at hand. Hoxsie disagreed, believing that if our legal representative believes that the protection is necessary, he will take that professional advice. Knopf believes this is an admission of guilt but Christopherson stated he doesn't view it that way. Schultz stated complete unwillingness to agree to a one-sided waiver of rights, finding it completely incomprehensible. He understands

Christopherson's point of view, but his understanding of the state statutes governing SUPs does not include the ability to include indemnity statements of the nature proposed. If this issue becomes a "deal-breaker," he doesn't know how the township can defend its position. Hoxsie asked how Christopherson feels about the new language provided by the applicant at the meeting. Christopherson believes that is does part of the job but not all of it, and still requests inclusion of a statement that the applicant will not rely on any representations made outside of a public meeting. Mr. Hayward disagreed, stating that every piece of information the township disseminates (prior SUPs, minutes, ordinances, master plans) is a representation. He stated that he misspoke himself at the meeting and apologized for the current confusion it has created. He is concerned about limiting the representations to the public meetings because of unresolved issues from the prior process regarding Commission subcommittee meetings and whether or not they violated the Open Meetings Act. Many representations were made by both parties at those meetings. Mr. Petterson believes it would be inappropriate for the applicants to waive a potential claim regardless of its nature and whether it's a warranted claim or a conspiracy theory as he expects the current allegations to be.

Hoxsie and Knopf stood by their divergent positions. Walter stated that there may be little difference either way. Agruda does not believe that Christopherson's attempt to indemnify the township implies that the allegations have any credence, and he tends to agree with Hoxsie that the language should remain in place and that we employ legal counsel to look out for the township's best interests in these sorts of situations in an expert way. Knopf asked if she feels it's appropriate to place indemnification in an SUP and Agruda wasn't sure. Hoxsie agreed that it's a unique measure, but that it's within the context of an unique circumstance. Amon asked Schultz to re-iterate his previous statement that the applicant's proposed final sentence for the section is meeting the township at least half-way on the issue, which Schultz did. Schultz believes the allegation is an unfounded delay technique; that the applicants will not sign a document containing the indemnification language and would challenge it otherwise. Christopherson raised the question of why the applicants would refuse to sign the statement if the allegations truly are unfounded. Schultz maintained that the proposed language would prevent the applicants from speaking to Clark or to the township about the situation or the process; Christopherson proposed language stating that the applicants can't sue the township for anything discussed outside of a public meeting. Mr. Petterson stated that it is unreasonable to ask any applicant to agree not to sue the township for any reason as a condition of receiving a permit.

Amon felt that there had been excellent discussion on this point. Due to its intense nature, he suggested that a third party legal opinion on the subject be obtained in an attempt to settle the question of whether or not the language is appropriate. Schultz stated that whether or not a third party deems it appropriate, neither he nor Mr. Petterson would advise their client to sign a document containing the indemnification language. Amon stated that the Board is not willing to lightly dismiss a strong recommendation from its legal representation. Mr. Petterson reiterated that failure to come to agreement on this one issue will engender litigation. If this matter is adjourned to an additional meeting perhaps there is still time to compromise in the time between this meeting and the next.

Knopf supports use of the language proposed by the applicant. Amon still wishes to defer to a third legal party. Knopf and Walter disagreed, Agruda supported Amon's proposal. Walter noted that a third party opinion that disagrees with the applicants wouldn't further the process. Mr. Hayward supported the applicant's proposed language. Christopherson feels it important to specifically reference indemnification of statements by any township-related individual. Walter stated that attorneys for the two parties much reach some sort of agreement that supports both the property owners and the Board, who represent the people. It seems to him that most of the statement has been resolved, with only the words "any party" remaining as the point of contention. "…any party, including representatives of Acme Township, that are inconsistent with the terms of this permit…" was agreed to by both sides.

Motion by Knopf, support by Hoxsie to continue meeting up to 11:30 p.m. Motion carried by unanimous roll call vote.

- Section 10.0: the applicant proposes adding themselves to the statement to make the rights conferred equal, and proposed eliminating the second to last sentence as being redundant, but the Board felt the sentence should remain. The applicant also proposed removal of the last sentence in the section in light of Section 11.0. He questioned whether as proposed it would make the applicant liable for costs incurred by the township to defend against a lawsuit brought by CCAT if such action should occur. The Board agreed to elimination of the last sentence in the section.
- Section 5.24: returning to the question of traffic studies, Mr. Smith wanted to address the question of what happens if a traffic study says that US 31 and M-72, which is already a concern, must be remediated but are not within the year timeline the applicant has to proceed. If the situation is no fault of their own, there should be an element of fairness that it wouldn't delay their development. Walter stated that he believes that in this circumstance an extension of the timeframe should be automatic and documented. Christopherson suggested addition of language addressing circumstances beyond the applicant's control as being valid grounds for extension. The language should say that the extension "shall" be granted if the circumstance can be demonstrated, and an example will be provided.
- Section 11.0: Knopf suggested that the paragraph be amended to specify that notice of permit violation should be by certified mail so that proof of service exists.

Turning to the proposed resolution document, the applicant believes the text from page 4 on is similar enough to their proposed language at first glance so as to be acceptable. Schultz had no objection to page 1. Regarding the third "whereas" on page 2 specifying that the project will include civic uses, he requested a change to clarify that space would be available for possible civic uses, but that the applicant is not required to construct civic uses. He also asked that the first item on page 3 under the resolution statements be removed, stating that it is a circular reference because the SUP references the findings of fact as an attachment, so the findings of fact as an attachment couldn't approve the document to which they are an attachment. Christopherson stated that the findings are no longer constructed as a separate document and attachment so the circular problem doesn't exist; the two attorneys agreed to work this issue out independently. He also stated that modifications to resolutions 2-4 need revision because some of the Commission's recommendations have been modified.

Schultz asked if the Board could craft a motion that would indicate that the two parties have agreed to have certain final modifications to the documents made by

legal counsel for the two parties, just so they don't leave empty-handed. Christopherson feels its important for the final revisions to both documents to be completed and reviewed by the Board prior to any action being taken. Mr. Hayward indicated that he and Schultz will be back in town for the ZBA meeting on Thursday.

Motion by Walter, support by Knopf to hold a special meeting of the Board to continue deliberations regarding the proposed SUP and resolution at 5:30 p.m. on Thursday, September 16. Motion carried unanimously.

B. PUBLIC COMMENT/OTHER BUSINESS THAT MAY COME BEFORE THE BOARD

Chris Bzdok, legal counsel for Concerned Citizens for Acme Township (CCAT), played a portion of the tape of the Planning Commission meeting from which the allegation of improper dealings outside of a public forum were made containing statements made by Dave Krause and Mr. Hayward that were transcribed in his letter requesting an investigation into the allegations. Mr. Bzdok also read from a letter written by Mr. Schultz stating that the applicant's decision to purchase the property was made based on certain township representations, and the property was purchased prior to the township approval. He questioned what is going on and stated that sooner or later the Board will be brought to account.

Mr. Kelly Thayer, Michigan Land Use Institute (MLUI) quoted from the 5/27/04 letter as well stating that certain representations "*induced"* the applicants to write a $7 million dollar check, yet tonight he maintained that any allegations of improper representation are false. The statements made by the applicants this evening induced the Board to weaken the indemnification statement requested in the SUP. Before the SUP is signed allowing them to rely on representations that are not inconsistent with the SUP, an investigation is warranted.

Mr. Bzdok asked the record to indicate that Mr. Petterson instructed Mr. Hayward not to respond to Mr. Thayer's questions, as this is a public input period. Mr. Petterson concurred.

Bob Carstens, Brackett Road asked if he may comment as a private citizen, since he is a Planning Commissioner and a quorum of the Commission is present, and was told he might. He stated support for Christopherson and the stand he took, and encouraged him to continue. When he sat at meeting with the applicant he found that one minute they made promises, but the next minute they would threaten to sue. Any language needed to protect the township is important.

Mark Nixon, Traverse City is a member of the Congress for New Urbanism. He felt that some of the statements made by the applicants this evening might not hold up under scrutiny by a number of professional planning and architectural organizations. It might help the township learn what the state-of-the-art would be for planning a development in our type of community, and might show that a large shopping center no longer reflects the needs or desires of a changing marketplace.

Erick Takayama, 5100 Lautner Road, stated that he attended every public meeting regarding the proposed development. He asserted that at every meeting the development was "sold" as a way to concentrate and control growth within the township. Tonight he heard that that the SUP contains language that would not make the development a receiving area for future growth but a growth opportunity for the applicants. He recommends a closer look at a way to make this a tool to make the proposed development become a development rights receiving area. Mr. Takayama is also cognizant that in many communities developers are tearing down old developments and designing new ones. The leaders of those communities are asking for things in return. In Novi one development team is providing funding for road improvements. The applicants came to the township knowing the state of the roads currently, and they stand to make a lot of money. He feels no pity for them. Christopherson stated that the applicant cannot be held to terms of a development rights transfer plan that doesn't yet exist.

Meeting adjourned at 11:25 p.m.