



ACME TOWNSHIP SPECIAL BOARD MEETING
ACME TOWNSHIP HALL
6042 Acme Road, Williamsburg MI 49690
5:30 p.m. Thursday, September 16, 2004

Meeting called to Order at 5:30 PM

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

INQUIRY AS TO CONFLICTS OF INTEREST: None noted

Hoxsie proposed that this meeting adjourn by 7:00 p.m. so that people can prepare for the upcoming ZBA meeting at 7:30 p.m. Amon noted the concern.

A. OLD BUSINESS:

1. **Consider language for Special Use Permit Document regarding SUP Application #2004-11P by The Village at Grand Traverse:** Amon listed the documents distributed to all Board members via e-mail earlier this afternoon, which are included and incorporated by reference. He suggested that the proposed resolution be discussed first, as it is a shorter document. Amon asked where the key areas of difference might be. Tom Schultz, attorney for the applicants, asked for copies of the documents the Board received so that he can ensure that they match the documents currently in his possession. Mr. Schultz stated that after Christopherson provided his e-mail, he responded with additional proposed revisions. This item has not been distributed to the Board as yet.

The first significant differences to the resolution appear on page 3. Christopherson noted in resolution item 3 that the text has been amended to say that all findings contained in Clark's reports are incorporated except as they conflict with the proposed SUP. This was done in consideration of the fact that the Board has specifically decided to forgo the planner and Commission recommendation that some of the parking be of a turfed, overflow nature. Schultz does not feel that the proposed language acceptable. One issue is that he would like to ensure that language is comparable between the resolution and the SUP. Another is Christopherson's proposed use of the word "conflict;" he would prefer "inconsistent." While Christopherson would agree to this change, he would not agree to the additionally suggested addition of "spirit and intent" in reference to the SUP which he feels overstates the case. "...except as those recommendations are inconsistent with the Special Use Permit..." in both resolutions 2 and 3, as well as appropriate areas within the SUP. Christopherson stated that the document says what it says, so it seems unnecessary to refer to the intent. The Board concurred.

Discussion turned to the proposed Special Use Permit. There was some confusion in sorting out the various versions of the proposed document that exist, and discussion about which version would be most helpful to use as a basis for the discussion. Ken Petterson, also counsel for the applicants, felt that it would be most useful to compare the red-lined versions from both the township and the applicants.

On page 1, there is debate over whether the document should be called "Conceptual Plan Approval" or "Development Plan Approval." The former has been proposed by Christopherson, as this is the terminology that has been commonly used throughout the process. Knopf noted that this is not consideration of a site plan, and supported use of the word "conceptual." Schultz asked if the Board would agree that the

document is an SUP regardless of the terminology, which Christopherson did. Agreement to retain the word "conceptual" was reached.

At the bottom of page 2, the developers would like the end of the last paragraph and the substitution "unless otherwise provided herein." Christopherson stated that he believes it is customary and appropriate for the Board to retain final discretion if there is a disagreement over interpretation of the terms of the permit, and would not want the enabling language removed. Amon stated that complete development of the project will take a number of years and will probably be subject to rulings by many different board members. Christopherson stated that most of the issues being debated tonight are procedural rather than substantive, and usually left to staff. If the board is not confident that he can take care of these matters as their attorney, they should fire him. Amon asked for Clark's input. Clark stated that he believes the Board should stick with the traditional type of language it has used in the past. Petterson stated that the documents were thoroughly reviewed two evenings ago, and the Board has the ability to decide which provisions will ultimately be included or not. The discussion that is going on may be somewhat unusual in terms of the township's "normal" process, but there has been nothing usual about the process. It appears that there is a difference of opinion over the outcome of the discussion two evenings ago and the developers will continue to seek to remind the Board of it's point of view, but they recognize that ultimately the Board will decide what language to include. Christopherson stated that this is an unusual permit, but he believes that many of the changes are of such a nature as to be a waste of the five hours the Board has already spent on them. There are some substantive issues on which the time would be better spent.

Amon favored retention of the traditional discretionary language. Schultz stated that he would agree to this portion of the language, as he took it from documents they have prepared for other communities. In general, he sees this as a PUD process for a very large process that will be built out over 20 years. He finds it hard to imagine any applicant in similar circumstances that would quietly accept the township's language. He agrees that the language is often debated by attorneys for each side rather than by the Board as a whole. Given the applicant's acceptance, the original language was retained.

Hayward noted a typographical error near the top of page 3 where 'southeast" should read "southwest."

Section 3.0: In the first paragraph, the applicants would like to have language added stating that they will be subject to the ordinances "as written and adopted as of the date of the SUP." Knopf asked about the significance of such an addition. Christopherson stated that it reflects the truth in the law that the application is subject to the rules in effect at this time, but if we change them tomorrow this would not imply automatic changes to the project. He felt it important to note that the applicant might be subject to changes that occur in the ordinance in regards to future site plan approval applications presented after such changes occur. He feels that the language would add nothing to the document. Hoxsie felt that the Board should be guided by their legal counsel. Clark offered no comment. The phrase desired by the applicant was not added. Schultz stated that the phrase is also in the paragraph at the top of the page, so since one issue raised was redundancy he would support removing it from the earlier paragraph and inserting it here. Christopherson stated a concern that if the language is used, the applicant could argue that any site plan application presented in 2012 should be subject to the ordinance as it existed in 2004. Steve Smith expressed frustration because the process was long on Tuesday and he has a different understanding of the level of agreement that had been reached. The applicant even asked for a vote on the revised language. He feels that Christopherson has made changes that were unauthorized and not made changes that were agreed, and asked for a poll of the Board as to their understanding. Agruda

stated that he understood the Board to have finalized the language Tuesday night and that tonight's process would be a brief review of the clean copy and a vote. Christopherson agreed in principal, but stated that he never heard Board agreement to all of the applicant's proposed language. Hoxsie stated that he felt the earlier part of the discussion really didn't result in any decisions. He felt that some decisions were made in the latter parts of the discussion and document. Walter felt that the purpose of the previous meeting was to discuss and agree upon changes so that tonight they would be ready to proofread and vote on the permit document. Knopf concurred with Walter's point of view, expressing frustration that there is still ongoing debate. If there were objections, she feels they should have been raised on Tuesday night and resolved. If someone didn't speak up for their concerns, "shame on them." Hoxsie stated that he did not recall any consensus of the Board early in the meeting. Schultz stated that they felt consensus was expected from the outset regarding the document revisions they proposed and that specific language had actually been hammered out. Christopherson stated that he felt he had incorporated any specific language that had been concretely worked out. Mr. Smith called again for the Board to be polled as to their points of view.

Amon asked if he is to understand that the Board agrees to everything included in the applicant's proposed red-lined document; Knopf disagreed. He also stated that there needs to be some sort of decision as to the extent to which the language in the document should be left to Christopherson's professional discretion as an attorney. Knopf recapped her understanding of the Board's comments. Amon stated his understanding that the Board wishes to agree to the document as proposed by the applicant. Mr. Smith took exception to the way the statement was characterized and some of Christopherson's actions that he feels were outside the Board's direction.

Walter believes that in section 3.0 the applicants should be granted multiple extensions of their time to make continued applications under the SUP due to any delays caused by regulatory agencies. Christopherson had understood that one extension for such circumstance should be granted, but not that multiple extensions were to be approved. He only sees a problem going past the original period and one extension (a total of 24 months). Schultz stated that it would be very expensive to work with engineers to resolve regulatory issues only to have the process terminated because a time limit had been reached. Corpe noted that the proposed language only requires that a site plan application be brought within one year of conceptual SUP approval; it does not require that it be brought to a successful conclusion at any particular time. She gave an example involving Mike Srdjak, who received an SUP in July 2003 to permit his Surfside Resort to be razed and replaced by two condominium buildings. His SUP was due to expire in early July this year, but Mr. Srdjak was not yet ready to break ground. Corpe stated that she would take it as evidence that he had acted on his SUP in good faith if he applied for and received a land use permit and provided the necessary letter of credit for exterior improvements. This fulfilled the need to act on the SUP within a year and gave Mr. Srdjak up to an additional 18 months to begin construction and past his first Construction Codes inspection.

It became apparent that the applicants were working from a newer copy of their proposed document than the one that the Board had received prior to or at the meeting. Schultz handed out the applicant's latest copy. Hoxsie expressed concern that the Board has not had time to review all of the documents and know they have the latest versions, and that everyone's time is being wasted and there is a risk that the meeting will impinge on the upcoming ZBA meeting. Schultz stated that he does not believe the ZBA meeting should go forward. The ZBA has been asked to rule on whether or not the Board should even be holding the current discussion, but that any decision they make will be moot because the Planning Commission has already made a recommendation to the Board. It was noted that there are two other items for the ZBA's consideration this evening. Petterson expressed the hope that the group

could try to move as expediently as possible through the document to identify areas where there is or is not agreement and whether or not those areas are open for negotiation.

Returning to Section 3.0 and the debate over whether or not there should be language inserted to require that all future site plan applicants brought under this SUP be considered in relation to the rules in effect in 2004 rather than the rules in effect at that future point in time. The applicants are concerned that they could lose the ability to have certain amounts of space. Corpe observed that currently, if individual areas within Acme Village or the Grand Traverse Resort seek to develop, the specific site plans are evaluated in terms of the ordinance as it exists at the time of the specific development application. In each case, the conceptual SUP for the MUD or PUD states what type of uses may be permitted, so as long as the type of use requested conforms to that plan, even if current ordinances wouldn't permit the use, it is "grandfathered" due to the MUD or PUD approval. Current ordinances would be used to evaluate landscaping, parking, dimensional and similar requirements. Mr. Forsman asked what would happen if new dimensional requirements would not permit structures to be placed as contemplated by the conceptual plan. Corpe replied that the Resort and Acme Village requirements are very much more general than the proposed Village conceptual plan. In Acme Village, broad geographic areas are proposed for certain types of uses, but no specific building footprints were provided, so specific building footprints would have to conform to ordinances at the time of application. The Village plan is much more specific, showing certain footprints in certain locations. From her perspective, unless the actual site plans requested for approval deviated significantly from those footprints, in this particular case the level of detail in the conceptual plan should serve to grandfather the locations. Through the course of the discussion it became apparent that both sides had essentially the same understanding, and it's just a matter of finding the right language to convey the important concepts; that unless building footprints and use designation are moved substantially from the designations provided, there should be no problem.

Mr. Smith suggested that this meeting be recessed so that the ZBA meeting may go forward while both parties seek to further their understandings. The meeting could be resumed with briefer and more productive discussion. Agruda expressed frustration over not having one clean document rather than close to half a dozen through which he must try to track the situation. This is a major development and everyone is trying to anticipate the future problems that may arise. He had thought that two days would be an awfully brief period of time in which to come up with the proposed final language. Schultz stated that they had interpreted silence and head-nodding as approval, especially as compared to the nature of concerns expressed later in the meeting. He also was surprised by inability to reach agreement regarding the language between the last meeting and this one. Petterson stated that he is willing to try again to identify the areas where there is truly disagreement, which he believes are actually pretty limited. Christopherson stated that the way he understood the format of the meeting, he was asked to present his perspective and then the applicant was asked to present theirs. He remained silent early on because he felt it was his turn to listen. Later on he became more vocal, and does not want his earlier silence taken as assent to all the proposed changes early in the document. The Board can accept all of them if they choose, but they would be doing so against his advice. Mr. Smith asked for the Board to call for a vote on whether or not there was supposed to be a clear understanding about 90% of the language when the meeting was adjourned Tuesday night. Agruda stated that this had been his impression. Knopf went through her notes from that evening and stated that she had specific notes regarding the language amendments she expected. Mr. Smith stated that he thinks Schultz's copy accurately reflects that agreement was reached on Tuesday, and would like the moderator to call for a vote to that effect. Knopf stated that the Board has been polled and three out of five individuals agreed with Mr. Smith that

agreement had been reached. Amon suggested that the document the applicant handed out this evening and which they believe accurately represents an agreement be reviewed and that a report be prepared by the attorneys for each side stating which issues they cannot resolve and why each side takes its position. Christopherson and Schultz agreed. Christopherson will be on vacation next week, so when Knopf asked how long it might take to prepare such a document he said he expected that a week and a half or so would be a minimum. Schultz recognized that time is running short this evening and that the language for the Resolution at least has been approved. He asked if the Board would be willing to adopt the Resolution, which is constructed as a 4-page exhibit to the SUP, this evening. Christopherson stated no objection.

Schultz also asked for a commitment that there will be only one more meeting. A special meeting was set for Thursday, September 30, 7:00 p.m.

Motion by Knopf, support by Hoxsie to approve Resolution #R-2004-15 as amended to replace “directly conflict” with “inconsistent” in paragraphs 1 through 3 on page 3. Motion carried by unanimous roll call vote.

Motion by Knopf, support by Hoxsie to set a special meeting for Thursday, September 30 at 7:00 p.m. at which one proposed SUP document and a memo outlining any areas of disagreement between the attorneys for both parties and the reasons for same.

Agruda asked if he will receive the document far enough in advance for adequate study.

Motion carried by unanimous roll call vote.

Amon stated that whenever a special meeting is called, the applicant pays the costs for that meeting. He also stated that he hopes the public understands that the findings of fact, public input, determination by the Planning Commission and input from Russ Clark have already been approved. The differences left are purely about the language to be contained in the SUP. The result will not be substantial changes to the action taken by the Planning Commission.

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

Tom Ropers, 4802 Five Mile Road, was not present Tuesday. The Board seems to be split on what happened themselves, and it is apparent that there is miscommunication about which copies of which documents are the most recent and in any event the documents were received too late. It seems to be one more indication that the process is being rushed, and encouraged the Board to take more time to make and record good decisions.

Lewis Griffith, 5181 Lautner Road, stated that there have been quite a lot of meetings. He feels that the attorneys are giving the process a good working over. He is “ashamed” of what he is seeing, feeling that it is ridiculous even by the standards of things he has witnessed in courtrooms.

Diana Morgan, 4770 Arthur Court, stated that the township pays Christopherson for his expertise. She hears him saying that he initially reserved comment Tuesday evening so as not to be rude and step on the opposing counsel’s statements, but that nobody is hearing him. She hopes that everyone will “be on the same page” before the next meeting.

Margie Goss, 4105 Bay Valley, drive is part of the applicant team, but Christopherson works for her too since she is a township resident. She feels he has done a poor job.

Meeting adjourned at 7:15 p.m.