



**ACME TOWNSHIP SPECIAL BOARD MEETING
ACME TOWNSHIP HALL
6042 Acme Road, Williamsburg MI 49690
7:00 pm, Thursday, September 30, 2004.**

Meeting called to Order at 7:37 p.m.

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

INQUIRY AS TO CONFLICTS OF INTEREST: None noted.

A. CONSENT CALENDAR

Motion by Hoxsie, support by Walter to approve the Consent Calendar as amended to remove approval of the September 14, 2004 minutes for further consideration, including:

Receive and File:

- 1. Draft unapproved minutes from the September 16, 2004 ZBA meeting**

Action:

- 2. Consider approval of minutes from the September 7, 14, and 16 Board meetings**

Motion carried unanimously.

B. OLD BUSINESS:

- 1. Consider language for Special Use Permit Document regarding SUP Application #2004-11P by The Village at Grand Traverse:**

- a. Status report – Jim Christopherson:** Christopherson has provided a copy of the Special Use Permit as he believes it should be approved. He has also provided a memo outlining the remaining areas of disagreement between him and the applicants. Mr. Schultz, counsel for the applicants, states that he has found a few additional areas for question that require very minor revision.

- b. Discussion:** Amon asked that the Board review Christopherson's memo point by point.

- Item 1: Walter feels neither "determination" nor "discretion" is the right word, and suggested the word "judgment" instead as a compromise. Hoxsie asked what is wrong with the word "discretion." Christopherson stated that this is a standard word for the circumstance. Knopf notes that the word "discretion" appears in several other places in the proposed document and asked why the applicant is not asking for the change everywhere. Mr. Schultz stated that the paragraph in question addresses what would happen if the SUP is found to be in conflict with any of the plan documents. The applicants do not believe that "discretion" is the appropriate word because the only analysis that the paragraph says should be made is which item contains the most stringent requirements. "Discretion" seems to him to leave too much leeway. He would accede to the word "judgment" if necessary. "Judgment" was finally chosen.

- Christopherson stated that items 2 and 6 should be considered jointly because they both discuss the "trunkline." The applicant's suggested revisions are entirely new, never having been considered at the Planning Commission level. Christopherson and Clark both believe that the inclusions are inappropriate. Christopherson first saw it less than two days ago. Mr.

Hayward stated that the applicant is asking that the construction of the internal roadways be exempt from site plan review because they have found that the same consideration was given to Acme Village. Walter asked how the language would benefit the applicant. Mr. Hayward responded that it will permit some work to commence more quickly, creating infrastructure before grading and construction for any individual building in the site plan begins. Christopherson feels it would be premature to install internal trunklines before necessary traffic and market studies have been presented. Mr. Hayward countered that this application has been brought under the same ordinance as Acme Village and should receive the same consideration. Amon asked Clark for his thoughts. Clark stated that all along the applicants have asserted that there would be no additional work on the property until site plan approval is received. He has concerns about the protocol the township has followed to date in this process and feels that allowing roads to be constructed prior to the required studies and agency inputs would be premature.

Amon proposed for 5.2 deleting the applicant's proposed first sentence, substituting Christopherson's first sentence. He also proposed allowing creation of the main trunkline in phase one. Knopf feels it has been discussed all along that market forces will be critical to the final determination of phasing. Mr. Hayward stated that the proposed change would not give the applicants what they seek. He maintains that there is no indication that approval of the road was discussed during the Acme Village SUP process, but the road was clearly approved at that time nonetheless according to his review of the files. Walter stated he would support allowing the applicants to construct the infrastructure. He has no doubt that the project is "going to go." How many changes are anticipated to occur to the road system through the site plan review process? The road might be constructed yet this fall, further speeding Meijer's ability to pursue their construction project. Hearings for the roads might constitute an unnecessary delay if the road layout is already approved via the conceptual plan. The road cannot be constructed without agency and township engineer approval in any event. Christopherson pointed out that allowing the wording would allow the applicants to proceed with construction without any of the market and traffic studies that the township is otherwise requiring. Mr. DeGood stated that site plan approval process is for the future land uses. He asked what would be accomplished by having hearings regarding the core road that will serve the uses that will be discussed at site plan review. If site plan approval is never received, the applicants will have constructed an expensive private road at their own risk. They mentioned that MDOT and the Road Commission will still have to have the traffic studies to give approval. Christopherson pointed out that the township has a right to make an independent determination of its own, and that it would be waiving this right. Walter still feels that the road and utilities should be permitted to be built for use as a construction road without a further review process. Mr. Smith stated that without being able to build the trunkline for a construction road, mud from construction would get into the roadways. The applicants would have to have a road sweeper on the highway causing delays to clear the mud away for safety reasons. Walter stated that it is important to realize that the applicants will not be able to create a curb cut, even for a construction entrance, without MDOT approval. Hoxsie noted that this still means that the township would not be able to review certain studies when the road is built. He expects that if a road and infrastructure are already in place, it will mean extra pressure being placed on the township to grant site plan approvals. Hoxsie asked Christopherson if there might be some compromise language that might work. Christopherson stated that the situation is either one thing or the other. Messrs. Hayward and Smith stated again that they are only seeking the same consideration as the other project approved under the same ordinance.

Knopf and Walter both felt that the applicant should be permitted to install the road without a further hearing process. Hoxsie understands the logic but is

hearing the message being conveyed by the township's consulting planner and legal counsel. Clark maintained that a trunkline is a land use, and the concept plan does not contain specific detail about the precise dimensions of the road and related improvements, and the Planning Commission should be allowed to review those details. Walter observed that the township requires that private roads meet County private road standards. He felt that the township could later require something beyond those standards; Christopherson believes that the proposed language would not allow for this. Walter stated that he is suggesting that language be constructed that would. Mr. Smith and Mr. Hayward stated that the plans they have provided are to scale, and they would expect and agree to have the township engineer sign off on the infrastructure plans along with all other approving agencies.

Amon suggested that all applicable approval agencies be listed in the document, but the rest of the Board felt that this would be unnecessary. It was suggested that only the township engineer be specifically mentioned. Hoxsie, still expressing reluctance to vote in opposition to professional advice, stated that he would consent to the inclusion of the requested language because of the significant public agency oversight. Items 2 and 6 were deemed to be agreed upon with the additional mention of the township engineer.

- Item 3/Section 4.0: Christopherson believes that the proposed language from the applicants potentially invalidates the recommendations or requirements of some of the documents specifically adopted by resolution already. Mr. Schultz stated that the applicants believe that most of the items in Clark's report, one of the referenced documents, have been reported elsewhere. He stated that there are some "stray" things in Clark's report, such as the recommendation for turf overflow parking, eliminated through further discussion by the Board, which might be back "in" without this language. The applicant is concerned that without this language the record will be unclear. Christopherson, Hoxsie and Walter all felt that this issue would be sufficiently resolved by future re-reading of the minutes of the meetings. The Board decided not to adopt the applicant's requested addition.
- Item 4/Section 5.1: Christopherson has accepted some modifications to the standard language that is in all of the township's SUPs, trying to remain as close to the standard intent as possible. He perceives that the applicants are trying to narrow down the language, and recommends against it. Knopf feels the revision is unnecessary, given that the minutes can be referenced to see what has been represented, and therefore agreed to. Mr. Petterson stated that there are some meetings where positions changed, where there was valid revision to original representations. In cases where there are multiple representations regarding a specific issue, which would govern? Mr. Smith gave the example of building heights. Originally the applicants proposed single-story buildings; the township proposed multi-story buildings; the applicant provided for buildings up to 5 stories tall; the township asked that the height be reduced. Mr. Smith also stated that project opponents might try to use the omission of a particular word or phrase one time out of ten it was used in the process to create difficulties, and this is what the applicant is trying to protect against. Mr. Schultz is also still concerned about the unilateral nature of the statement, which appears to bind the applicants to their statements but not the township to its. Amon asked if there is a "big downside" to accepting the applicant's language other than the variation from past standard language. Christopherson does not believe so, he believes the township is only slightly better served by his proposal. Hoxsie proposed sticking with Christopherson's language; the balance of the board concurred.
- Item 5/Section 5.2: The first sentence is where the issue occurs. In the township's version the Board has discretion to approve or deny amendment of the phasing plan. The applicant's version makes this a unilateral decision

by the applicant based on the applicant's perception of market conditions. Mr. Hayward asserted that the ordinance does not strictly require a phasing plan, and that a preliminary phasing plan was only provided after significant pressure from the township. Mr. Schultz stated that this item is a key one for the applicant, and without the ability to revise the phasing plan based on the ability to obtain leases, the process may not be able to proceed. Mr. Petterson observed that the township is essentially agreeing to the overall pattern of buildout for the site, so he is unsure why the order of development of each element in the plan should be of significant consequence. Walter felt that the applicant's suggested language should be adopted. Amon stated that there has always been a desire to ensure that some of the residential land is developed fairly early in the total buildout process. Mr. Hayward observed that since the residential component of the development is about 25% of the total plan, it would not make sense to leave all of it undeveloped until the end of the buildout process. Hoxsie's objection is that the applicant is suggesting that there be no township involvement in phasing amendment decisions. Mr. Smith stated that one reason they were reluctant to provide a preliminary phasing plan for fear of this particular conversation. Walter asked if there has been interest in developing the residential portion of the development; Mr. Smith stated that there has been more interest in development of the residential areas than in the commercial areas to date. It is likely that the residential areas will be spun-off to a different developer/owner, and that such a person would not wish to sit on the inventory unused. Amon asked for Clark's input. Clark stated that it would not be unusual for a phasing plan to be locked-in for a project of this nature. He also agrees that the market will drive all parts of the project, and that he has been contacted by individuals interested in creating the residential development. The Board generally agreed to the applicant's language. Mr. Schultz stated that the word "may" I line four should be replaced with "might."

- Item 7/Section 5.5: The applicant is seeking that sewer benefit capacity be reserved for their use. Christopherson would have less concern if the project were to be developed quickly, but it would be difficult to guarantee what availability would be in 15 years. Mr. Schultz stated that the applicant is worried that future officials seeking to block the plan's construction would cause benefits to become unavailable. The Board observed that the applicant could purchase the benefits immediately to ensure their availability; Walter in particular indicated that perhaps there could be a negotiation. Corpe observed that there has not been any discussion about the number of benefits that the project will require, so it would be difficult to know how many benefits would be committed. Mr. Smith stated that they provided preliminary calculations to the DPW and were assured by that agency that system capacity is currently available. Amon gave a brief summary of how the current number of available benefits is determined. Christopherson suggested that the matter of system capacity into the future be discussed with the township's engineer. Consensus was reached to use the township's language. Mr. Petterson suggested adding a sentence stating that both parties will negotiate in good faith for future sewer benefits.
- Item 8/Section 5.5: Christopherson stated that the key issue of this item is the idea of fair market compensation for system infrastructure created by the applicants on site if it is turned over to the township. Walter directed attention to the September 14 minutes, where Mr. Smith suggested that the improvements be turned over at a 25% discount from market value. Mr. Schultz does not feel that the township's purported "typical" language requiring that system improvements be turned over to the township at no cost to become part of a township system would be typical at all. Walter read from the aforementioned minutes, which discussed a 25% discount from improvement construction costs (not fair market value). Consensus was reached to accept the applicant's language as amended to provide for a payment of 75% of construction costs. Christopherson had one remaining

concern about the language that would exempt the applicants from assessments for maintenance, upkeep and improvements. He believes they should be subject to the same assessments for these items as any other user if the improvements are purchased from them. Both sides agreed that the intent is for the applicants to be treated like every other user of the water system and that language to this effect will be inserted. Mr. Smith asked what would happen if the township asks for any system the applicants might construct to be oversized to potentially serve other areas of the township – turning over the system at a 25% discount from cost would not seem to make sense in this regard. The Board agreed that they would not ask or expect such a water system to be thusly oversized.

- Item 9/Section 5.7: Knopf is uncomfortable with the applicant's proposed language. Mr. Hayward stated that they applicants are looking for a maximum deviation for any particular building from the required setback of 10'. In no case would the setbacks from the roads become less than 90' from M-72 or 40' from Lautner, and could be more than the required 100' and 50' respectively. There was discussion about adding language to indicate that any such deviations will be consistent with the depictions of building locations on the conceptual plan after the first sentence. With this addition, the applicant's suggested language was adopted.
- Item 10/Section 5.9: Christopherson stated that the applicant has proposed a minor change to the second sentence which appears fine to him. The key is the third sentence. The applicant's language is a little bit stronger in terms of a "vesting of rights." Mr. Schultz feels this language is important because they are trying to ensure that the township is not doing anything that would impair the applicant's general rights under zoning law. The concern is the extent to which the township would have the ability to request or require further changes to the conceptual plan. Christopherson feels that the language he has proposed is very favorable towards the applicant, and that the extra language is not strictly necessary. He also feels that the proposed language is not sufficiently clear and understandable, and would likely require interpretation by a judge. Mr. Smith stated that there has been disagreement in the past over what rights were conferred on the applicant by a conceptual plan approval that ended up being resolved in the applicant's favor in court. Mr. Schultz suggested that one alternative would be to remove any reference to an ability to make minor adjustments/modifications to the conceptual plan. Knopf stated that she was originally one of the people proposing the language in this section, but that she has been subsequently made aware that if the township requests a change without sufficient expertise to fully understand the potential impacts and viability of those changes, the township could be sued. She feels there is a possibility that the entire paragraph could be stricken. Mr. Schultz said he could agree to Christopherson's proposed language if a fourth numbered item regarding "vesting of rights" were added. Agruda stated that Christopherson stated clearly that whatever vested rights exist, exist. So, if the language is redundant, what would be the problem with including it? Christopherson responded that he does not think it should be included because he doesn't know precisely what it means. Amon likes the wording "minor adjustments to meet the technical requirements..." In the applicant's proposed language. Amon suggested using the applicant's language through the second sentence and adding Christopherson's last sentence. After further discussion, it was agreed to keep only the first sentence of the section, which was identical in both versions.
- Item 11/Section 5.12: The point of difference is numbered item 1. Walter believes that the township should not require anything further of the applicant than state and federal environmental law already require. Clark stated that "best management practices" is a concept that has been addressed during

this process already. Environmental issues have been raised. The applicant is seeking to employ best management practices; he believes that Christopherson's language leaves the township the ability to determine that best management practices have indeed been employed. Mr. Schultz stated that the township's proposed language seems to say that absolutely zero adverse impact to the environment can be created. It seems that a case could be made that even one house would create such an impact, and that this provision could be used as an excuse to block the project. He referenced a fax received from Ball Environmental today. Mr. DeGood stated that the state has standards for protecting watersheds that if met, are automatically deemed satisfactory. Mr. Petterson stated that he is concerned because this appears to be a paragraph reacting to an action taken by a citizen group opposed to the application rather than in an attempt to satisfy the township. It appears to be an attempt to have an outside influence hold the applicants to a higher-than-customary standard. Mr. Petterson stated that the applicant's only real objection is to Christopherson's proposed item 1. Christopherson stated that environmental issues were raised during the process, and consciously deferred to the site plan approval phase. He wants to ensure that the Planning Commission still has the right to review environmental information at the site plan review phase as necessary. Christopherson suggested "provide Acme Township with evidence on the project's impact on the environment, including Acme Creek." Mr. DeGood stated that such language would still leave the door open for competing and contradictory studies to be presented to the township. Mr. Schultz and Christopherson debated the ability of the township to deny a site plan approval based on environmental reasons if the DEQ has granted its approval. Christopherson cited the township's ability to make a decision based on public health, safety and welfare. Mr. DeGood asked how this would be objectively evaluated. Amon observed that the state has best management practices for farming, so local municipalities do not. Christopherson stated that farming is unique because in those cases state and federal law preempt local law by statute. Hoxsie was concerned with the concept of "lessening" impact, feeling that it was the Commission's intent that there be no negative impact. Mr. Petterson observed that any change to the world will have an impact on it. Mr. Hayward observed that the applicant is providing significantly more of a buffer area between development and the creek than required. It was agreed by everyone except Hoxsie to use the language "verify use of best management practices according to state and federal law to minimize the impact...."

- Section 12/Section 5.13: the question is whether the applicants should be required to construct improved roads to the property line for connections to adjacent properties or just to provide easements for future connections. Walter feels that in all cases there should be a requirement for an easement only, and that any future construction should be subject to mutual agreements between the affected landowners. Mr. Hayward stated that any such connections would be public roads and possibly eligible for various funding sources. Walter also proposed language that would require joint agreements to build roads that would benefit each party and enhance traffic safety for residents and businesses within the project. Mr. Smith expressed concern that this issue has to be discussed again this evening; he states that his review of a videotape of the September 14 meeting indicated that the Board agreed at that time that an easement rather than a constructed road would be sufficient. Agruda read from the meeting minutes in support of this statement. The idea expressed was to approve easements rather than roads. All other language regarding how to handle the expense of roadways and pursuing maintenance agreements and whether or not a road is ultimately installed is to be eliminated. Christopherson pointed out that doing so would leave the township no way to require that the road ever be constructed on that easement. Mr. Petterson expressed confidence that at such time as the neighboring properties express interest in road connections, one party or the other will pay for their construction. Hoxsie asked if it would

still be possible for the township to require construction of a road connection as part of a site plan approval condition; Christopherson agrees that this would be possible. The Board reached consensus to adopt the applicant's suggested language with the removal of the sentence about the MDEQ relative to the Johnson Parcel.

- Item 13/Section 8.0: The key differences are that the applicant proposes removal of Christopherson's proposed statement that the applicant has not relied on statements made by township officials outside of public meetings, and the applicant having added "with regard to development of the Property under this Permit." Mr. Schultz stated that the applicants cannot bend any further from the language they have proposed for this section, and that they actually feel it shouldn't be in the document at all. Christopherson believes that this section is necessary. Walter suggested adding language to the effect that statements made by township officials during the prior approval process may be relied upon by the applicant as well. Knopf read her understanding of the language that was approved on September 14, which was similar to the applicant's current proposal for the last sentence with the exception of the final words "under this Permit." The Board reached consensus to adopt the applicant's proposed language with the exception of the last three words. Mr. Schultz did not understand why the township would wish to remove those words; the Board felt they were redundant to similar language in the second sentence.

Christopherson stated that the next step would be for him to prepare a clean copy based on tonight's discussion for the Board. Amon suggested that a motion approving the language as amended this evening would be in order, with the final clean document to be on the consent calendar for the October 5 regular board meeting.

Mr. Hayward stated that he has concerns about Section 5.10 that were not addressed in Christopherson's memo. The applicants proposed language stating that there would be only one freestanding single-story anchor store of a certain size. His concern is that a "freestanding single-story anchor store" has not been defined. He believes it possible that stores within the lifestyle center such as Barnes & Noble could be of that size and might leave an uncomfortable amount of room for unfavorable interpretation. Walter's point of view was that stores built as shown on the conceptual plan for the lifestyle center are to be approved. Mr. Hayward asked if this makes the section unnecessary; Christopherson believes that it is the intent to place a limit on the size of the anchor store. Mr. Hayward sought agreement that if one tenant occupies the entire "u" shaped building rather than multiple tenants it won't be viewed as a violation of this section. Mr. Smith asked for agreement that it will not cause a problem if any of the lifestyle center structures are occupied by one large tenant rather than several smaller tenants. The Board agreed that this would be the case.

Hoxsie raised a question about Section 7.0 of the proposed SUP. He asked if it says that there is a possibility that if appeals of the overturning of the original permit are successful, the applicants could abandon this SUP and develop according to the prior approval. Christopherson stated that this is the case as long as no more than 25% of the site has been developed under this SUP. The situation could become "messy." Hoxsie's realization is that this could mean a return to two anchor stores having been approved. Mr. Smith asked if Hoxsie is saying that the MUD plan is better than the Town Center plan in his opinion and the Commission's opinion. Hoxsie declined to comment. Christopherson noted that the applicants may pursue such an appeal independently of the township, even after the township has decided to end the fight.

Motion by Walter, support by Knopf to approve SUP #2004-11P as amended, directing Christopherson to make the changes to the SUP as discussed this evening pursuant to his September 29 memo and present them to the Board as

part of the receive and file items on the Consent Calendar on October 5. Motion carried unanimously.

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

1. Chris Bzdok, attorney for Concerned Citizens for Acme Township (CCAT) asked when the permit will be signed. Corpe observed that it can't be done at the Board meeting because the signatures must be performed in the presence of a Notary, and one would not be available at the meeting.
2. Paul Brink, Winter Road, asked why there has been public comment only at the end of the meeting. Is there a precedent for this? Corpe stated that it has happened that there has only been a comment period at the end of special meetings. Mr. Brink stated his opinion that asking for opinions only after action is taken indicates that the Board truly does not care about the constituency's point of view.
3. Approval of Minutes of the September 14, 2004 Board Meeting: Turning to page 10, Knopf asked that the minutes be amended to accurately reflect that Hoxsie had concurred with the rest of the Board to eliminate a turf parking requirement.

Motion by Knopf, support by Agruda to approve the minutes from September 14, 2004 as amended. Motion carried unanimously.

Meeting adjourned at 10:38 p.m.