



ACME TOWNSHIP SPECIAL BOARD MEETING
ACME TOWNSHIP HALL
6042 Acme Road, Williamsburg MI 49690
10:00 a.m. Wednesday, October 20, 2004

Meeting called to Order at

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

INQUIRY AS TO CONFLICTS OF INTEREST

- A. Discuss language for The Village at Grand Traverse Special Use Permit #2004-11P:** Tim Stopeker introduced himself as an additional attorney representing Steve Smith and The Village at Grand Traverse. He stated that he has spoken with the other attorneys representing the applicants and is "up to speed" with the current situation. Mr. Stopeker stated that there are three portions of the proposed SUP language that they wish to discuss to everyone's mutual benefit.

Mr. Stopeker stated that the first thing they would like to insert into the proposed SUP is a severability clause. The purpose would be to preserve portions of the permit if other portions are nullified through some sort of challenge. He stated that thereafter the parties would attempt to replace any nullified clauses with more appropriate ones.

Additionally, there are two provisions existing in the permit they wish to address. Section 5.1 deals with oral representations made by the applicants during the hearing process being incorporated as conditions of the permit. Mr. Stopeker believes that it is important to eliminate any ambiguity by saying that anything the Board approved is what should govern the situation, and that oral representations by either side should not be applicable. The written and visual documentation should be the official record and yardstick for further considerations and whether or not requirements have been met.

Section 8.0 seems to represent township intent that any statements made by township-related officials not be viewed as an obligation of the township. Mr. Stopeker suggested a change to the first line of this section to say that "No person on behalf of Acme Township is authorized to amend or change the permit." State statute says that if the Board and the Developer agree, permits can be amended.

Mr. Ken Petterson, another member of the applicant's legal team, stated that the applicants are seeking some certainty in a difficult situation. Later on the agenda is discussion of a Concerned Citizens of Acme Township (CCAT) letter stating that another lawsuit against the township will be filed. This suit may come under the current Board tenure or during a future Board's watch. The applicant is volunteering to eliminate the final paragraph under Section 5.2, which would permit interior roadways on the development parcel ("trunklines") to be constructed without further SUP hearing approval processes. While they believe that this permission is in keeping with what was allowed in the Acme Village development with the construction of Mt. Hope Road, this was specifically mentioned as a point of contention in the aforementioned CCAT letter. They are willing to remove this approval if it will calm the situation somewhat. Knopf noted that the reason the Board was willing to include this language was so that the interior roadways could be paved to be used for construction purposes, so that mud from heavy equipment would not be tracked into public roadways. This seems prudent to her, and she would not favor eliminating this consideration. Mr. Smith agreed that the reason for the request was to minimize public inconvenience. But, the applicants are "sick and tired of the nonsense" and if taking out this clause would eliminate some of the resistance coming from CCAT, they are willing to do so. Walter asked if the applicants would seek to have the road construction approved as part of the Meijer site plan application that is anticipated. Mr. Smith said that road approval would probably be sought

somewhat later on. A temporary road would be installed for initial construction, which would seem to him to be a waste of time, money and other resources. Walter suggested that it would make more sense to include permissions for the roadways with the first building site plan approval request. Mr. Smith stated that it would normally make sense, but he is unwilling to do so if it would give even the smallest chance that approval of the project would be jeopardized.

Hoxsie expressed confusion about why this discussion is occurring. He asked if the SUP has been signed and has come into effect; it has not.

Christopherson stated that this morning is the first time he has heard about any of the items brought up by the applicants for discussion. He needs to give all of it further thought. He has no initial opposition to inclusion of a severability clause. As to the requests related to Section 5.1 and 8.0, these issues have been debated extensively and decided. He believes this is becoming a "war of attrition" and that the language, which started out as standard language in all of the township's SUPs, has been watered-down a lot already. This seems to be at least the sixth time around on an issue that has already been decided upon by the Board. He still recommends stronger language for these sections that the Board has previously removed. Knopf took exception to Christopherson's statement that the language in Section 8.0 is from our standard permits. Agreeing that the language in Section 5.1 is common to all of our permits, if watered down, she believes there is an inconsistency between the representations regarding the two sections. Knopf still opposes the inclusion of the language that is in Section 8.0. Why are we sticking to our standard SUP in Section 5.1 but adding something new in Section 8.0. Christopherson replied that the proposed SUP for this application deviates significantly in many ways from the township's standard permit language. Specifically relative to Section 8.0, and based on letters received in the past from the applicant's legal counsel (Gerry Fisher), he believes there is a significant possibility that in the future the applicants will seek to enforce promises made by township officials outside of a public process. There has been an allegation from CCAT that such non-public representations were made that the Board refused to investigate. He has recommended that the township take strong action to protect itself and feels he has been overruled.

Knopf still has a concern about including statements in the SUP that hold the applicants to everything they have said, yet let the township off the hook for anything its representatives may have said. Walter believes that using language that narrows the scope of applicable information to the attachments to the SUP would cover the situation. He sees nothing extraordinary about the process that has been used, and in today's meeting. Walter further feels that minor tweaking that would allow all parties to be comfortable with the proposed document and a project that has been years in the making to get underway is a good idea.

Christopherson stated that the SUP is an SUP, and is not a contract. He believes that oral statements made at a meeting about the reasons why the Planning Commission and Board agree to approve certain facets of a development are important. Sometimes they do become critical to a legal conflict regarding performance under an SUP between a property developer and the township. SUPs are generally not a negotiation between two private parties. An applicant is seeking permission for something from the government. There is no reason why there should not be some reasonable discussion between the parties about details, but ultimately the applicant is seeking something that the township has discretion to grant or not. Mr. Petterson agreed to a certain extent, but felt that the perception that the township is doing the applicant a favor should be eliminated. He characterized the applicant as a property owner seeking to exercise reasonable property rights. He stated that they are offering a greater measure of certainty for both sides.

Walter suggested that Mr. Stopeker proceed to read the language aloud. Hoxsie felt that this could be done, but it would still be important for Jim. Christopherson agreed that it would have been helpful if written copy had been provided for Board consideration prior to the meeting.

Severability: "In the event it is ultimately determined by a court of proper jurisdiction that a condition or term of this special use permit is unlawful, said term and or condition shall be severed from the special use permit and such severed term and or condition shall be

replaced by a lawful term and or condition which shall implement and or give the same force and effect as the severed term or condition.”

Mr. Smith said that he has received a letter from Tom Schultz saying that he is still unhappy with some of the language in the proposed SUP. Mr. Smith then approached the third firm he has worked with for an opinion, and was given the same concerns from them as he has heard from his other legal advisors. This is why they have returned to seek additional conversation on those topics, and he believes that after Mr. Stopeker has read the language aloud several times that the Board should be prepared to be polled or vote on whether or not to accept the language. He feels he has been delayed more than long enough.

Mr. Stopeker suggests deleting Section 5.1 and substituting the following: “The applicant agrees to be bound by the approved development plan documents as defined in this special use permit and by the express terms of the special use permit.”

In Section 8.0, first line, after the word “person” the applicants would like to add: “. . .on behalf of Acme Township.” They would like the last sentence of Section 8.0 deleted, as they feel it provides the township the same protection from a future debate over verbal representations as they are seeking for themselves. The language as it currently exists seems to create an ambiguity that could cause future problems for the project.

Mr. Petterson again suggested elimination of the automatic approval for building the internal trunklines.

Christopherson addressed the proposal Section 8.0. He does not believe that the current language at the end of this section is one-sided. He believes that it says that anything said by any party that is inconsistent with the terms of the permit, and does not see what about that statement would be inaccurate. It is not language that is strong enough in his opinion – the applicant appears to be seeking to remove language inserted by it’s representative, Tom Schultz. Walter feels the language could be eliminated; Mr. Stopeker said it is obvious and should go without saying; Christopherson still feels strongly that it should remain in place. Walter also has no problem with the severability language. Neither does Knopf, but she is concerned about removal of the language permitting construction of the internal trunkline to proceed without further approvals. That portion as included as a measure of consideration for the convenience and safety of the users of adjacent public roadways. Christopherson feels that the language should not be in the permit. Mr. Smith stated that they are only seeking to remove this consideration because CCAT seems to be threatening lawsuit at least partially over a feeling that this particular point is illegal. Walter feels that Lautner Road will be impacted but not M-72, and stated further that Road Commission rules will require that all mud remain on-site or the applicants can be ticketed. Mr. Smith stated that it is unfortunate that CCAT continues to allege that the Board has engaged in wrongdoing, when he believes that nothing has been done improperly at all.

Mr. Petterson stated that it seems to him that the Board should either agree in principle to the proposed changes (with precise language to be developed) or not at this point. Walter stated agreement with what the applicant is asking. Knopf agrees as well. Hoxsie is hearing Christopherson say that he needs time to really review and think about the language. He came here today thinking that the SUP had already been executed based on language agreed-upon several weeks ago. He relies upon Christopherson’s advice. Agruda agrees with Hoxsie, thinking the permit had already been executed. After reading the letter from CCAT he was bothered. He didn’t appreciate the insinuations, and can appreciate the applicant’s concerns in light of the letter about further litigation. He also stands by his actions and decisions throughout the process. He believes the project is good for the township, and that it is a vocal minority that opposes it. He is more in tune with making the broad decision and leaving the precise wording to other experts in the matter. Amon feels that Christopherson should have an opportunity to look at and review the proposed changes.

Christopherson may generally find no problem with severability provisions, but still feels a need to review this particular circumstance more thoroughly. Mr. Petterson asked that the Board make a motion either approving or disapproving the language as proposed by the applicants. Christopherson stated that he would have been prepared to make a

recommendation had he been provided with adequate information before the meeting. He is willing to commit to prepare quickly. Knopf asked if this means an additional meeting. Christopherson continued to point out that if the applicants wanted a decision this morning, it would have been appropriate for them to present their information for consideration ahead of time. He feels that even if the language is standard in an absolute sense, he needs to consider it in context. Mr. Petterson still feels that either the Board agrees or does not.

Motion by Knopf, support by Walter to insert the severability clause and the amendments to the language in Sections 5.1 and 8.0 as read by Mr. Stoepker, and to remove the language permitting the main trunkline to be built without further approvals.

Hoxsie asked what Christopherson would do based on his current level of information. Christopherson said he would vote not. Hoxsie appreciates removal of the ability to construct the trunkline without further approval. But, he is concerned that blind insertion of the proposed language without considering what it means to the other 20+ pages of the document is dangerous. Something else could be inadvertently changed.

Knopf again does not favor removal of the language about the trunkline. The rest of this document has been discussed numerous times. Sections 5.1 and 8.0 seem to represent a logical and functional conflict to her that she feels will leave the township open to lawsuits. She sympathizes with Denny's point of view, but does not believe a mistake can be made because these issues have been discussed over and over.

Agruda asked Christopherson why he answered Hoxsie's question as he did. Christopherson still has a problem with changing Sections 5.1 and 8.0, which have essentially been upheld by the Board for inclusion through the numerous discussions about them.

Motion carried by a vote of 3 in favor (Agruda, Knopf, Walter) and 2 opposed (Amon, Hoxsie).

- B. Discuss sewer option agreement for The Village at Grand Traverse:** Amon stated that the Board has received an e-mail from Christopherson regarding his concerns about the proposed bulk purchase of sewer benefits outlined in the memo received from The Village at Grand Traverse dated October 14, 2004. Amon noted that the Board can make a recommendation on this issue, but final approval will rest with the Board of Public Works. Knopf disagreed with Amon's assessment of the process, stating that rate changes made by the township before have not required BPW approval. Walter feels that it would be a considerate and appropriate step since the BPW is our partner. Christopherson stated that Amon is correct about the process, and that the last time the rates were raised there were many meetings with BPW and DPW leaders prior to a decision being made.

Hoxsie's main concern is that the township still be able to meet its debt obligations. Walter understands the applicant's concerns over long-term sewer benefit and capacity availability, and feels that some way must be found to assure them that the infrastructure will be available to support continuation of their project. Amon agreed, stating that the regional sewage treatment plant is at 65% capacity right now. Blair Township is experiencing some significant new growth; their sewage flows through Garfield Township to the regional plant. How soon must the second Hoch Road plant be constructed? Is there a possibility that an existing treatment facility in Whitewater Township owned by the Tribe can become part of the DPW system? Acme Township's sewer lines are currently sized to handle significant flows. Walter stated that the regional treatment system has had a recent capacity upgrade and the land for a second plant when the first one reaches capacity has been purchased. In this light, there should be no concerns at about about future capacity availability. Amon agrees, but was trying to outline the process that the region will have to undergo to ensure capacity for everyone. The point is that we can only hope right now that Acme will be able to leave it's benefit purchase rate at \$4,200. Amon and Knopf stated that these future needs were part of the reason why Acme raised its rates to \$4,200 per benefit in the first place. Knopf feels that Blair should pay for the full impact of its additions to the system, and recognizes that increased flows from all areas will impact the timing of new plant construction.

Agruda feels that there are advantages to having someone prepay for some of their sewer benefits. What will happen when current obligations deplete the existing sewer fund balance? We would have to withdraw funds from the General Fund. Walter believes that we should be willing to grant an option, subject to a substantial payment, that would permit a certain number of benefits to be purchased within a certain period of time. They should pay the full going rate for the benefits at the time they are actually purchased, whatever that rate may be. He hopes we will be able to reduce our benefit purchase fee over time. The option fee would be non-refundable if the benefits were not purchased in the specified time period, the way all standard option agreements work. Amon asked if this same type of arrangement would be considered if requested from other developments such as the Resort, Acme Village or LochenHeath. Hoxsie believes we need an analysis from Jim Minster, our sewage engineer, regarding the fiscal impact of permitting large block of benefits to be pre-purchased at a discounted rate.

Mr. Smith stated that at a previous meeting the Board indicated that in response to concerns about sewer issues, the applicant should present a proposal. He is willing to forgo a discount at this time; he just wants to execute an option for a certain number of benefits for a period of a certain number of years to enable the project to move forward. Steve Hayward prepared the provided memo just to start the discussion; Mr. Smith stated that the memo can be discarded. Christopherson suggested that the applicants provide a written proposal for how many benefits they want to purchase and under what financial terms. This information can then be evaluated by Minster on behalf of the township.

Mr. Smith is proposing that 150 sewer benefits be optioned to the applicants, with the option to be exercised within a certain timeframe. A non-refundable amount would be paid to the township in consideration of the option agreement. Mr. Stoepker said that there should also be a clause granting the applicants a time extension if they are delayed through no fault of their own. Hoxsie and Knopf renewed the request for a written proposal. Mr. Smith stated his feeling that it should be possible to negotiate the terms verbally right now.

Walter asked how long it would take for Christopherson and the applicant's attorney to put together the actual contract language. Christopherson said it would be a matter of days.

Walter suggested an option price of \$100,000 for the ability to purchase 200 benefits at \$4,200 each for a specified time period. Scott Nowakowski, Meijer, Inc. stated that his company would be willing to contribute up to \$10,000 towards the option cost. Mr. Smith volunteered another \$10,000, for a total of \$20,000, non-refundable to be paid for the option and to be applied against the cost of benefits purchased and non-refundable if the benefits are not purchased within five years.

Motion by Walter, support by Knopf to enter into a contract with The Village at Grand Traverse, LLC granting the Village the option to purchase up to 200 sewer benefits during a five-year period at the market price prevailing at the time the option is exercised, in consideration for a \$20,000 payment that may be applied towards the benefit purchase price but is non-refundable if the benefits are not purchased.

Christopherson believes that the DPW would be amenable to final approval of such agreement. Mr. Smith stated uncertainty as to how fast their development will sell. They would like to build in the ability to purchase additional option units in lots of 100 benefits at an option purchase price of \$10,000 per 100 unit lot. Christopherson believes that as the scale of the proposal increases it becomes more important to include Minster and the DPW up front. He spoke to Mike Houlihan, DPW, yesterday and said that it could be a matter of only a few years before plant capacity becomes an issue. Walter suggested language stating that additional lots of benefit option units be available subject to plant capacity.

Walter appended to his motion the further condition that the applicants have the ability to request additional options under the same terms as the original option amount subject to capacity and review/approval by the Township Engineer and the DPW. Knopf supported the motion amendment.

Mr. Smith asked for clarification of whether all benefits can be purchased at today's benefit purchase price. The Board stated that the purchase price will be whatever the standard cost is at the time the benefits are actually purchased. The Board hopes and anticipates that the per-benefit purchase cost will be reduced over time as current debts are paid off.

Motion carried unanimously.

- C. Discuss letter from Concerned Citizens:** Knopf believes that the Township should create and pay for a letter rebutting the statements made in the October 7, 2004 CCAT letter. Hoxsie asked if all letters sent to township residents should receive similar responses. Christopherson stated that there are two questions. One is whether or not it is Board policy to do so with public funds. The other is that anything sent out must not be political in nature, as it is illegal to spend public funds for such a purpose. Agruda feels that the public is able to assess the memo at it's true worth. He still feels that it represents a minority voice in the township and does not feel that a response is necessary. Amon concurred. Walter "considers the source" for these types of letters. He feels that "they will probably fall off the edge as time progresses" and that people will make up their own minds over time. To him this letter is an attempt to paint the current Board in an inaccurate way and that the Board's record speaks for itself. Walter and Knopf both believe the letter is "trash."

PUBLIC COMMENT/OTHER BUSINESS THAT MAY COME BEFORE THE BOARD: None

Meeting adjourned at 11:43 p.m.