



**ACME TOWNSHIP SPECIAL BOARD MEETING
ACME TOWNSHIP HALL
6042 Acme Road, Williamsburg MI 49690
7:00 p.m. Monday, November 22, 2004**

Meeting called to Order with the Pledge of Allegiance at 7:00 PM

Members present: B. Boltres, D. Dunville, W. Kladder, B. Kurtz, P. Scott, E. Takayama, F. Zarafonitis

Members excused: None

INQUIRY AS TO CONFLICTS OF INTEREST: None noted

A. LIMITED PUBLIC COMMENT:

Tim Stoepker, attorney representing The Village at Grand Traverse LLC. ("The Village") and Meijer, Inc., stated that he sent correspondence dated November 19 to the Board members regarding potential conflicts of interest that could be caused by some of the new Board members reviewing the Village SUP application. He wanted to ensure that the letter had been received, and asked when would be an appropriate time to discuss the matter. He recapped the letter, stating that the applicants believe there is a conflict of interest involved in any review by the Board of The Village at Grand Traverse project. They believe that this conflict of interest extends to any potential removal from office of any staff, appointed official or consultant that might be perceived to have an impact on the outcome of the application. The claim of conflict of interest is that the Board members in question have an affiliation with Concerned Citizens of Acme Township (CCAT) which has in the past and is now suing the township regarding this matter. He noted that Takayama used to be a Vice President of CCAT and that Kurtz has identified himself in newspaper articles as a member, as have other Board members. CCAT has taken an active opposition role to the project. Today's meeting seems to focus largely on changes to the Planning Commission and the township's legal representation. Mr. Stoepker asked that before the Board acts on any resignations on the agenda this evening, they wait until they have consulted with legal counsel regarding the potential statutory conflict of interest.

Dan Hanna, 7239 Lautner Road, said that he was surprised to see that the agenda calls for two public comment periods independent of the other agenda items. He believes that the new board members' campaign platform included assertions that there was not enough public input into various processes, and that having comment only at the beginning and end of the agenda and not during each agenda item was inappropriate. Yet, tonight's agenda is no different than the ones they complained about.

Dan Rosa, 4707 Hampshire Drive, stated that another campaign promise made by the new Board members was that public input would be sought prior to any actions being taken. Tonight there are three resignations on the agenda for consideration which seem to have been solicited in advance. He is disappointed by the appearance that there has been a "meeting before the meeting."

B. SUPERVISOR'S COMMENTS: Kurtz observed that the new Board members were sworn in at noon on Saturday, November 20. He made some comments at that time that can be made available as requested. Kurtz said that this is a challenging time and that the Board seeks to involve the public in a "citizen driven" atmosphere. He plans to form advisory committees on several topics. He thanked the public for its support.

C. CORRESPONDENCE:

1. Letter of Resignation from James Christopherson, Legal Counsel: Kurtz read the resignation letter into the record.

Motion by Boltres, support by Zarafonitis to accept James Christopherson's letter of resignation.

Kladder asked who would be the current township legal counsel if this letter is accepted. Kurtz replied that a new one would need to be appointed. Takayama noted that Christopherson has offered his services for a smooth transition from one counsel to another; Kladder strongly recommends that the township take advantage of this offer in light of pending litigation. Kladder asked if there are plans for an interim counsel to be named while a search for a permanent provider proceeds; Kurtz replied in the affirmative. Zarafonitis seconded Takayama's comments, as did Dunville.

Motion carried by unanimous roll call vote.

Knopf asked if comment would be taken during each agenda item; Kurtz stated that the format as printed would be followed for this evening.

- a) **Consider retention of new legal counsel:** Kurtz nominated Chris Bzdok as interim counsel for the township.

Motion by Takayama, support by Dunville to name Chris Bzdok as interim legal counsel until a permanent replacement can be found.

Scott asked how bids would be requested from other attorneys. Kurtz stated that a process for publication will be developed and brought forward at a subsequent meeting. Zarafonitis asked how long the interim period will be; Kurtz replied 90 days.

Motion carried by unanimous roll call vote.

Bzdok joined the Board at the meeting table, and spoke to the allegation made by Mr. Stoepker this evening regarding conflicts of interest about the agenda items. Due to the threats of litigation made by The Village in the most recent and in several past letters, and the fact that the applicant is planning to intervene in the CCAT v. Acme Township lawsuit, he would recommend that this discussion of lawsuit strategy has a financial impact on the township and can be done in closed session. This could happen now or at a subsequent meeting. The allegations need to be taken serious and discussed.

Motion by Kladder to enter closed session to discuss the conflict of interest allegations prior to proceeding with the balance of the agenda.

Takayama asked if this would be an appropriate action to take at this time. Bzdok responded that it is.

Motion seconded by Scott. Motion carried by a vote of six (6) in favor (Dunville, Kladder, Kurtz, Scott, Takayama, Zarafonitis) and one (1) opposed (Boltres).

John Shimel, 6809 Deepwater Point Rd., stated that the citizens of Acme spoke during the elections. He is concerned about the law not providing that "the old Board carries on." Any prejudgement that decisions should be litigated before made seems premature. He asked that the Board continue to do its job.

Open meeting recessed at 7:22 p.m.

Motion by Kladder, support by Boltres to reconvene open meeting at 7:41 p.m.

Bzdok stated that he believes the allegations regarding conflict of interest about potential actions this evening, as well as ongoing handling of the CCAT lawsuit are unfounded. The proposed appointments and acceptances of resignations are not quasi-judicial and the allegations made by The Village therefore do not apply. The Village has also alleged conflict of interest regarding site plan review. Bzdok's suggestion is that the township has already filed an initial response to the CCAT

lawsuit, and Meijer and The Village seek to intervene. He suggests that an amended response with a third party complaint against the Village at Grand Traverse, LLC be filed, including a motion for judicial review of the actions taken by the previous board members regarding pre-decision of certain issues related to site plan review. The judge's ruling would then be followed.

Motion by Boltres, support by Scott that the Township Board file an amended response to the CCAT lawsuit, including a third party complaint against The Village at Grand Traverse LLC for declarations from the court about the conflict of interest allegations by the developer, about the site plan review process, and the restrictions the developer has tried to put on the process through the permit worked out with the former Board.

Kladder asked about the necessary timeline for such a filing. Bzdok stated an understanding that Christopherson and Pagels (CCATs representation in this case) had originally agreed on an extension of the response filing time until a point in December. Christopherson was then directed by the previous Board members to file a response by November 15. This answer can be amended within 14 days (by November 29) without asking for further permission from the court. More time would have been available had the filing not been forced before the end of the extension period granted.

Motion carried unanimously.

Mr. Hanna asked what the motion meant, and asked if comment would be taken at this time. The Board stated that the issue had been sufficiently explained.

2. **Letter of Resignation from Herbert A. Smith, Planning Commission Chairman:**
Kurtz read the resignation letter into the record.

Motion by Takayama, support by Kladder to accept Herb Smith's resignation.

Kladder stated that all township citizens should thank Smith for his work, and respect the work he did during his tenure on the Commission. Takayama added that he has always had the highest respect for Smith and the Planning Commission, but lost much of his faith in that body during the first Village at G.T. hearing process when the words of hundreds of interested citizens seemed to fall on deaf ears.

Motion carried unanimously.

3. **Letter of Resignation from Russ Clark, Planning Consultant assigned to review SUP Application #2004-19P, The Village at Grand Traverse Phase I Site Plan:**
Kurtz read the resignation letter into the record.

Motion by Zarafonitis, support by Boltres to accept the letter of resignation.

Kladder asked how finding a replacement to handle the application will be handled. This will be the next agenda item. Scott wanted to ensure that Clark is only stepping away from this one project.

Motion carried unanimously.

- a) **Consider issuance of Request for Proposals for new Planning Consultant to review SUP #2004-19P:** Corpe stated that the township has templates available for RFPs/RFQs that can be used.

Motion by Boltres, support by Scott that bids be requested within Northwest MI and the GT region.

Takayama asked Boltres if he knows how much has been spent on consultants during the past fiscal year. Boltres stated that he has some idea but is not prepared to speak to this issue at this time in detail. Takayama asked if a new planner will be hired in the future, this will be an item of future discussion. Kladder appreciates the desire to keep dollars spent by the

township spent locally, but he believes we need to hire the best firm for the job wherever they come from. He understands that the application document is quite thick, and perhaps there is someone who specializes in this type of need. Kurtz would prefer to keep the search as local as possible to begin with, staying at least within the state of Michigan.

Motion by Kladder, support by Zarafonitis to amend the motion to specify within MI. Motion carried by a vote of six (6) in favor (Dunville, Kladder, Kurtz, Scott, Takayama, Zarafonitis) and one (1) opposed (Boltres).

Primary Motion carried by a vote of six (6) in favor (Dunville, Kladder, Kurtz, Scott, Takayama, Zarafonitis) and one (1) opposed (Boltres).

4. **Letter of Resignation received from Pat Salathiel;** Kurtz read the letter received today from Pat Salathiel, resigning from the Planning Commission.

Motion by Kladder, support by Dunville to accept Pat Salathiel's resignation.

Kladder expressed appreciation for Salathiel and her service to the township; Kurtz echoed the sentiments.

Motion carried unanimously.

- D. **DISCUSS EXPANSION OF PLANNING COMMISSION FROM 7 MEMBERS TO 9:** Kurtz stated that in a spirit of increased citizen involvement, he has provided a proposed resolution expanding the Planning Commission membership from 7 to 9 individuals. Boltres read the proposed resolution into the record.

Motion by Boltres, support by Takayama to adopt Resolution #R-2004-17 increasing the Acme Township Planning Commission from 7 to 9 members.

Zarafonitis noted that there are two applications for membership on the Commission. He asked if they will add balance, and who can be appointed to represent the agricultural community. Kurtz stated that Hoxsie has expressed willingness to serve in this capacity on an interim basis. Zarafonitis stated that John Pulcipher might be willing to serve long-term. Kladder noted that when discussion of increasing the Board membership came up he supported it to increase the diversity of representation of public thought. For the same reason he supports the current initiative.

Motion carried unanimously.

- E. **CONSIDER RATIFICATION OF SUPERVISOR'S PLANNING COMMISSION APPOINTEES:** Kurtz is recommending Ron Hardin and Clare David for 3-year Planning Commission terms to fill the two newly created Commission seats. He is recommending Dennis Hoxsie as an interim member and would recommend that Takayama be the Board representative to the Commission.

Kladder stated support for filling the Board position on the Commission immediately, and for appointing Hoxsie to an interim position. He is concerned over the lack of publication for letters of interest for the other two positions. Previously he is aware that vacancies have been announced through the newspaper to seek interested individuals. He recognizes Kurtz's right to make appointments immediately, but he would feel more comfortable if the two new positions are publicized. Dunville concurred. Kurtz withdrew his nominations of Messrs. Hardin and Clare to permit such a process to occur, but is seeking approval for the Takayama and Hoxsie nominations.

Motion by Kladder, support by Scott to appoint Takayama as the Board representative to the Planning Commission. Motion carried by a vote of six (6) in favor (Boltres,

Dunville, Kladder, Kurtz, Scott, Zarafonitis), zero (0) opposed and one abstaining (Takayama).

Motion by Kladder, support by Zarafonitis to appoint Dennis Hoxsie as a member of the Planning Commission

There was discussion about proper procedure. Kurtz would like to make the appointment an "interim" one until a permanent agricultural representative is named, but the statutes only allow for appointments to new three year terms or completion of unexpired terms.

Motion carried unanimously.

Kurtz asked that a notice be placed in the paper seeking applicants immediately.

F. SET DATE FOR ADDITIONAL SPECIAL MEETING:

The Board decided that no special meeting was necessary. The next regular meeting will be December 6

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

Mr. Shimmel encouraged the Board to change their future agenda to permit public input on each proposal before them. He asked that the Board reconsider their action regarding C3A, as he feels it makes no sense for the Board to place any restriction on themselves as to who they might hire to review The Village at Grand Traverse application. Scott stated that the opportunity will be advertised in Michigan, but he would not rule out considering an applicant from a different place.

Mr. Shimmel asked about the letters of resignation from Messrs. Smith and Clark, and whether they were solicited by any Board member. Kurtz stated that prior to his swearing in, he met with these individuals to discuss their positions. He did not discuss any specific items, but spoke in generalities. Kurtz views their resignations as their options. He did indicate that he wanted to move the township in a "new direction."

Mr. Shimmel noted that without a change in the agenda, all decisions will be made without public input. Kurtz observed that Corpe has been able to create an opportunity through the township website to download and view the documents supporting the agenda items. Mr. Shimmel observed that not all individuals have access to the Internet.

Mr. Clare David stated that there will be ample opportunity for public comment, and he fears endless argument about every single agenda item that will accomplish nothing. Generous time for public comment should be provided, and the comment received should be given weight. Unrestricted argument would be fruitless. Mr. Shimmel stated that without input until after decisions are made, why should people come to the meetings.

Mr. Hanna is disappointed that his suggestion was not taken at the start of the meeting. After the criticism handed to the outgoing Board, he sees this as hypocrisy. He also feels that Takayama took a "cheap shot" at Mr. Smith.

Ron Reinhold expressed sorrow at Mr. Smith's resignation. He noted that the letter stated that the resignation was made at Kurtz's request, so he is skeptical about Kurtz's account of the discussions. The previous Board wrestled with the question of hiring planning consultants in the past and the costs involved. He recommended that Corpe be considered for the job as being knowledgeable and experienced. Mr. Reinhold also stated that the Resolution notes that the Planning Commission may be increased at a regular Board meeting. Was this a special meeting?

Noelle Knopf, asked about appointment of Bzdok as the interim counsel. She believes the original CCAT v. Acme Township lawsuit is still pending. If this is the case, and he is counsel for CCAT in that case, how can he represent the township. Bzdok replied that he was proud to represent CCAT in their first lawsuit. It was appealed by the township and the developer for the project. The Court of Appeals dismissed the requests for appeal, essentially twice.

The Village at GT has filed with the Michigan Supreme Court to hear their arguments about the Court of Appeals dismissal. The Township has not taken a position in this matter; therefore CCAT and the township are not currently in an adversarial position in that case.

Herb Smith stated that he is not resigning of his own volition, and that Kurtz indicated in their discussion that "he had a mandate" that Smith did not fit into philosophically. Kurtz offered a choice between offering a letter of resignation or being subject to a removal hearing. Smith chose the first option in the hopes that a healing process can begin within the township.

Mr. Stoecker for The Village at G.T. and Meijer pointed out a conflict of interest policy adopted by the township several years ago. He feels that tonight the terms of paragraph 2 of that policy have been violated. He is concerned about the Board asking their counsel to take a position conflicting with the position previously filed; that said counsel was previously counsel from a firm that incorporated and worked for the entity that sued the township (CCAT) and that asking for Smith's resignation was improper. Mr. Stoecker asserted the new Board's first meeting has circumvented a policy by which it is bound and did not make proper disclosures. This policy is invoked at the beginning of every meeting. He asserted that the Board is averse to granting the Special Use Permit it will be asked to consider in the future, and that it is unclear whether the members of the Board and Bzdok are representing the township or CCAT. Bzdok appears to have represented CCAT as recently as earlier this month.

Lee Bussa feels the meeting is beginning to sound like a court case, and that the arguments are useless in this venue. For better or worse, Bzdok has advised the Board on a course of action.

Gene Veliquette asked for clarification of the meaning of the motion regarding the CCAT lawsuit. He only understands there is a change in the situation, but not what the change entails. He also felt that Takayama took a "cheap shot" at Smith. The current Board members interpreted his body language when he sat behind the table, and now they will be similarly judged. Takayama said that he did not intend a "cheap shot." He and his wife used Smith as a Realtor at one time, and supports his ordinance and Master Plan crafting work. He only sought to explain why, given that respect, he made the motion to accept Smith's resignation. He stated that he still respects Smith, but felt that of late public comments had not been truly heard. He apologized for any perceived offense. Takayama also stated that he used to be a board member of CCAT, but resigned over a year ago. He joined at a time when a potential sewer might have been created that would have discharged to local creeks, which concerned him. CCAT began and continues as a "watchdog" group. He was involved in the decision to bring forth the first lawsuit against the township. He welcomes review of his comments made at public meetings, feeling that the record will show that he has not opposed all township development but just feels that the background work to making a decision regarding The Village has not been done. He has seen good and bad development in all parts of the nation, and does not feel that the Village development is right yet.

Bzdok stated that the meaning of the motion should be clear from the minutes.

Scott Nowakowski, Meijer, Inc. asked Kurtz to speak to Smith's statement that Kurtz offered him two choices: resign or be fired. Kurtz said that the township was heading in a different direction and might lead to action tonight, but does not believe his statement forced Smith out.

Chuck Walter, Bates Road, states reading in the current lawsuit that the proposed Village development would harm property values in the neighborhood of the development. Mr. Walter observed that Kurtz and Takayama both live in that area; if this were not the case, perhaps the lawsuit would not exist.

Motion Boltres, support by Takayama to adjourn at 8:45 p.m.