



**ACME TOWNSHIP REGULAR BOARD MEETING
ACME TOWNSHIP HALL
6042 Acme Road, Williamsburg MI 49690
6:00 p.m. February 6, 2007**

Meeting called to Order with the Pledge of Allegiance at 6:03 p.m.

Members present: B. Boltres, D. Dunville, W. Kladder, B. Kurtz, P. Scott, E. Takayama, F. Zarafonitis
Members excused: None
Staff present: S. Corpe, Township Manager/Recording Secretary
J. Hull, Zoning Administrator
C. Bzdok, Legal Counsel

Motion by Kladder, support by Dunville to enter closed session to discuss pending litigation in CCAT v. Acme Township v. The Village at Grand Traverse LLC and Meijer Inc. and Meijer Inc. v. Acme Township because discussion in open session could have a detrimental impact on the financial interests of the township. Motion carried by a vote of 6 in favor (Boltres, Dunville, Kladder, Kurtz, Scott, Takayama) and 1 opposed (Zarafonitis).

Public meeting recessed at 6:06 p.m.

Motion by Kladder, support by Zarafonitis to resume public session at 7:00 p.m. Motion carried by unanimous roll call vote.

INQUIRY AS TO CONFLICTS OF INTEREST: None noted.

APPROVAL OF AGENDA: Motion by Kladder, support by Takayama to approve the agenda as amended to remove discussion of determination of the correct lot line between Sayler Park and the Richard and Karen Kane property. Motion carried unanimously.

Kurtz mentioned that when necessary, closed session meetings are held at the beginning of the meeting to permit the public to be aware of any subsequent action and asked Bzdok to report. The township was successful in defending the SUP granted to Meijer, Inc. for the Lautner Commons project. He read the summary from the **court opinion**, upholding the amended SUP the Board granted removing conditions related to hours of operation and brick construction and upholding conditions related to Master Plan goals and environmental and traffic concerns. Elements of the suit whereby Meijer is suing four Board members as individuals are moving forward will be heard by the Court on February 20. The same day there will also be a hearing regarding a motion by attorneys provided by the township's former insurer to block a subpoena by Meijer Inc. to seize the four Board members' personal computers. Bzdok stated that Meijer has sued the township seven times and has lost each time despite "having the better attorney consistently" because the township has been correct in its legal position. The Board remains committed to the New Urbanism Advisory process and goal of working with a broad group of stakeholders and a nationally recognized consulting firm on mixed use town center creation issues. The township has committed \$50,000 in funding and has received a \$25,000 grant from the Grand Traverse Band towards the effort. The Board publicly re-iterates its offer to work with the developers who participated in the New Urbanism process on creation of a mixed use town center.

A. CONSENT CALENDAR:

Motion by Kladder, support by Zarafonitis to approve the Consent Calendar as submitted, including:

RECEIVE AND FILE:

- 1. Treasurer's Report as of 12/31/06**

2. **Clerk's Report** through 02/01/07
3. Draft Unapproved Minutes of
 - a. **01/08/07 Shoreline Preservation** Advisory Meeting
 - b. **01/23/07 Farmland Preservation** Advisory Meeting
 - c. **01/11/07 Zoning Board of Appeals** meeting
 - d. **01/22/07 Planning Commission** FLUM study session
 - e. **01/29/07 Planning Commission** regular meeting

ACTION:

4. Consider approval: **01/09/07 regular** Township Board meeting minutes
5. Consider approval: **Accounts Payable** of \$39,783.41 through 01/30/2007

Motion carried by unanimous roll call vote.

B. LIMITED PUBLIC COMMENT:

Lewis Griffith, 5181 Lautner Road said that for a judge, supposedly to be intelligent and make decision, to consider a company as large as Meijer and tell them “not to drive a square peg in a round hole” seems inappropriate. He also felt it disgraceful for the township counsel to say that the township won because they had the better attorney; Bzdok and several Board members attempted to correct his understanding, as Bzdok said that Meijer had consistently had the better attorney than the township, but Mr. Griffith was unconvinced.

C. CORRESPONDENCE:

D. SPECIAL PRESENTATIONS:

1. **Matt McDonough, G.T. Regional Land Conservancy – potential grant application to MDNR Trust Fund to acquire portion of “Shaw Homestead” for addition to Yuba Creek Natural Area:** Brian Bourdages from the GTRLC appeared instead of Mr. McDonough. There is an 11-acre parcel known as the “Shaw Homestead” that is an “inholding” (is surrounded on three sides by) the publicly-owned and protected Yuba Creek Natural Area (YCNA). An opportunity exists to purchase the eastern 5 acres sloping down into the YCNA from the current landowner. The GTRLC is offering to partner with Acme Township to apply for an MDNR Trust Fund Grant. GTRLC staff would put the grant application together. They have found that generally applications of this nature are successful in obtaining grant funds. It may also be possible to obtain a no-build easement over several additional acres of land as described in a staff memo.

Kladder asked when the grant cycle will occur and if local matching funds would be required. Mr. McDonough informed Mr. Bourdages that no matching dollars from the township would be required. The hope is to fit into the second 2007 grant fund cycle.

Takayama noted that a housing development has been approved for this property; Corpe confirmed that the township approved a Special Use Permit for a 5-house open space development last year. In February the Planning Commission will hold a preliminary hearing regarding a proposed different use for the parcel; a cheesemaking operation. The survey attached to the staff memo depicts a potential location for the food processing building. Takayama asked if the housing development would still be possible if the eastern 5 acres became public land, since keeping it open was a condition of increased housing density for the property; Corpe replied that the Open Space Development Ordinance allows land used as open space to be in public or private ownership so this would not be a barrier.

Motion by Kladder, support by Takayama for the township to work with the

Grand Traverse Regional Land Conservancy to submit an application to the DNR Trust Fund for possible acquisition of the eastern 5 acres of the Shaw Homestead for addition to the Yuba Creek Natural Area. Motion carried unanimously.

E. PUBLIC HEARINGS:

1. **Kevin McElyea, G.T. County Drain Commissioner – potential Acme Township Stormwater Control Ordinance**: Mr. McElyea reported that Acme is the 12th township to receive his presentation regarding a proposed local stormwater control ordinance. The previous 11 have all agreed to adopt the ordinance as proposed. A substantially similar ordinance existed at the County level, but the State Attorney General opined that while it is legal for townships to have a flooding control ordinance, Counties can have a soil erosion ordinance but not a stormwater control ordinance.

The existing County soil erosion ordinance was created 15 years ago by former Drain Commissioner Maureen Kennedy Templeton. Extensive work on this ordinance has been done by the County Prosecutor's office to ensure it complies with state regulations.

Acme Township has already adopted noise and junk control ordinances proposed by the County and enforced by them. The stormwater ordinance would work similarly. Builders would pull soil erosion and stormwater control permits concurrently from the County Drain Commissioner's office. There are design standards that accompany the ordinance that were developed 15 years ago by a broad group of community members with applicable expertise. The same standards that have been in effect at the county level are in the proposed new document; the only change is that the ordinance would be a local township ordinance rather than a county one. If adopted, the County would monitor and enforce compliance at no additional cost to the township or a construction applicant, since they are processing a soil erosion application anyway.

If the township desired different guidelines than those proposed, the County has prepared a draft resolution the township could evaluate. The Drain Commissioner would still evaluate plans prior to issuance of a local land use or special use permit, but township staff would have to monitor and enforce requirements.

If the township adopts the ordinance, the County is also offering to perform the notice publication for all participating townships jointly. They have estimated publication costs at \$700, and this cost could be paid once county-wide or by 15 different municipalities separately.

Based on feedback from the other 11 townships that have considered the matter to date, a few modifications are proposed. The original ordinance draft would have provide for appeals from the terms of the ordinance to the townships; but to date townships have preferred that the County hear appeals. Also, the County Prosecutor's Office would only undertake serious enforcement efforts after being authorized by the township where the issue occurs.

At this point, if joint ordinance adoption publication is performed, Mr. McElyea anticipates publication in April with effective date in May.

Kladder asked if the Drain Commissioner's office performs inspections on a regular basis or if there are "surprise" inspections. The DEQ requires that each site for which a permit is pulled must be inspected. Not all construction requires a permit.

Mr. McElyea has provided an annual report for his office this evening. One element in his report is the level of construction activity in Acme Township.

Kladder noted that there is discussion of when stormwater control forebays must be cleaned out. Kladder has done some reading about what this structure is, and has found that it exists generally underground. Are they inspected on a regular schedule? Who monitors whether inspections are performed and if maintenance is adequate? Mr. McElyea stated that, taking condominium associations as an example, the homeowners' association should take responsibility. The Drain Commissioner's office performs annual inspections and advises the associations of any concerns they find. Overall they tend to operate on a "gentlemen's agreement" basis, assuming that developers will comply with their commitments.

Kladder noted the reference to the inapplicability of the former county-level ordinance. He asked what happens to stormwater control measures installed before it was overturned – must they be maintained? Existing retention basins would remain. He also asked if a gentlemen's agreement is sufficient, noting that trust is good but so is checking from time to time.

Kladder asked how risk is defined in terms of contamination of public water systems and ways – who sets thresholds? The Drain Commissioner addresses water runoff quantity and quality, and in terms of quality they only address sedimentation levels and not bacterial issues which are the Health Department's purview. Kladder is seeking to ensure that an objective and measurable standard is applied to everyone.

Mr. McElyea stated that flooding control and erosion control regulations are an attempt to protect public health safety and welfare in a way that is not abusive of personal property rights.

Motion by Scott, support by Dunville to continue considering the proposed Stormwater Control Ordinance. Motion carried unanimously.

A revised draft of the ordinance will be provided for further consideration and potential adoption at the March 6 meeting. While the ordinance was not adopted this evening, because the matter was placed on the agenda as a public hearing, the floor was opened to public comment at 7:45 p.m.

Howard Yamaguchi, suggested that the Board adopt the Stormwater Control Ordinance as it currently exists because right now there is no such ordinance in effect, and something should be in place to protect the community. He does suggest re-evaluation to see if tweaks are needed in 2-3 years to elements such as design standards.

F. NEW BUSINESS:

1. Consider proposed **resolution establishing 2007 Board of Review starting date**:

Motion by Kladder, support by Takayama to adopt Resolution #R-2007-04 establishing 2007 Board of Review meeting dates.

Kladder read the proposed resolution for the public's benefit.

Motion carried unanimously.

2. Consider Planning Commission **request for permission to circulate Master Plan proposed Future Land Use Map amendment** to neighboring municipalities and

agencies: Corpe stated that a 6 of 9 Planning Commission members are present this evening, constituting a quorum. Notice of the possibility was posted yesterday.

Kurtz noted that the township Master Plan was adopted in 1999 without a future land use map (FLUM). The creation and adoption process was contentious, and creation of the map component was deferred. Just over a year ago the process was taken up again. Planning Commission Chairman Matt Vermetten added that the process of master plan review and amendment began in 2004, and a recurrent theme was the need to add a FLUM. In late 2005 the township hired consulting firm Wade-Trim to assist with a public visioning and consensus-building process to develop a map. The process was at times unexpected and uncomfortable for Vermetten, but he ended up feeling that it had succeeded in bringing people together to discuss and work out land use issues. There were approximately 45 people who attended the work sessions regularly, and most of those hosted focus groups in their homes to include broader community feedback.

For the past several months the Planning Commission has been holding feedback and study sessions that allowed for a fairly free give-and-take between the Commission and public. The draft map prepared by Wade-Trim based on the work session feedback and the accompanying text have been amended, due largely to the efforts of Commissioner Pat Yamaguchi. The Commission is now asking the Board, as required by law, to permit distribution of the new draft to local agencies and municipalities. After a 63-day feedback period a public hearing would be held and final incorporation of the map into the Master Plan considered.

Zarafonitis asked about persistent community concerns that the FLUM will be used to rezone areas of the township against landowner will. Vermetten stated that the FLUM is a planning tool and not a zoning map. The Master Plan is a guiding document, whereas the Zoning Ordinance is law.

Motion by Zarafonitis, support by Dunville to permit distribution of the proposed FLUM to neighboring municipalities and agencies for feedback. Motion carried unanimously.

Kurtz thanked the Planning Commissioners present for their hard work and asked them to stand for a round of applause.

- 3. Consider approval of Cherry Capital Winter Wonderfest fireworks display permit for Grand Traverse Resort & Spa:** Corpe summarize the materials in the fireworks display permit application. The Resort and the National Cherry Festival are teaming up to hold the first annual Cherry Capital Winter WonderFest the weekend of March 2-4. On March 3 at 7:30 p.m. they would like to hold a fireworks display. Municipal governments have the authority under state law to grant fireworks display permits. Corpe has been working with the Resort and Colonial Fireworks to obtain the needed application materials. Metro Fire has reviewed the application to support the township's decision, and has advises that fire code requirements for the application have been met. The Sheriff's Department has expressed no concerns. Resort Security will cover the event, and Deputy Sillers will be on duty.

J. Michael DeAgostino, Resort Public Relations, and Tom Youker, Resort Security, were present in support of the application. The display would be launched from the fairway of Spruce Run hole #5, well away from any structures as required by law. The Resort has signed an indemnification agreement holding the township harmless, and a \$5 million insurance policy is provided by the fireworks company. This amount is consistent with that provided to other events by the fireworks company and that

provided to the township in the past.

Motion by Kladder, support by Zarafonitis to approve a fireworks display permit for the Grand Traverse Resort Cherry Capital Winter WonderFest, March 3, 2007. Motion carried unanimously.

4. **Consider approval for Shoreline Preservation Advisory to apply for a Rotary Charities grant:** Mrs. Pat Salathiel, Co-Chair of the Shoreline Preservation Advisory addressed the Board. Her committee includes 10 individuals (herself, co-Chair Paul Brink, Charlene Abernethy, Owen Sherberneau, Noelle Knopf, Kathleen Guy, Fran Gingras, David Krause, LouAnn Brohl and Jim Maitland) who have been working diligently. They held a visioning workshop last May, created a vision statement and have formed committees to work on key issues including communicating with the public and shoreline landowners, as well as creating a shoreline master plan and address fundraising.

The advisory would like to pay for appraisals on several properties and creation of a shoreline master plan. There is \$2,300 of private donation money in the Shoreline Preservation Fund, and the master plan bids are coming in around \$8,000 - \$10,000. The advisory is seeking Board approval to apply for a Rotary Charities grant to give them some start-up money. They are ready to launch their public effort in earnest but need capital to make it happen. There was a meeting a week ago with Marsha Smith, Rotary Charities Executive Director, resulting in the township being encouraged to apply although funding can't be guaranteed. Any application made would be prepared by the advisory but would be submitted by the Board.

Kladder expressed concern about whether the advisory's request is too narrow. Should the Board be considering giving them the authority to apply for a range of grants and not just the Rotary Charities opportunity? Kurtz noted that Shoreline is one of 7 strictly advisory bodies that must work with and through the Board. He believes the question should be limited to the Rotary grant at this time, with subsequent opportunities (such as a possible August 1 grant through a different avenue) discussed as they arise.

Motion by Takayama, support by Zarafonitis to authorize the Shoreline Preservation Advisory to make application for a Rotary Charities Grant. Motion carried unanimously.

G. OLDBUSINESS:

1. **Consider whether to continue funding/participating with TCTV2 public access station:** The Board was provided with information about TCTV2 at the January meeting. Traverse City Manager Richard Lewis serves on the Cherry Capital Cable Council (CCCC) board, as do the supervisors of other member municipalities including Acme. The CCCC fiscal year matches Acme's June 30 cycle. Recently East Bay and Peninsula Townships have opted out of CCCC participation and TCTV2 operations funding. This has caused a reduction in station staffing from 2.5 to 1.5 FTEs. The City is one of the largest dollar contributors to the station and is evaluating moving their meeting broadcasts to a new governmental access channel. Governor Granholm recently signed new legislation regarding cable franchising which leaves franchise fees at their current level or might even enhance them.

Provided on the tables this evening is a memo Kurtz received from Richard Lewis which was prepared by his consultant on these matters; the other CCCC member townships will be receiving this information immediately as well.

Kurtz believes there are problems with the way TCTV2 is currently being run than can be fixed. The CCCC has a subcommittee reviewing this issue now. Mr. Lewis is looking for feedback from member townships as to whether they wish to continue TCTV2 funding, but a decision prior to hearing the subcommittee findings may be premature. Kurtz has watched the January Long Lake Township meeting video on this issue, which is 2 hours long, but understands they are not discussing the matter at their meeting this evening. Several municipalities are broadcasting their meetings on TCTV2, and Kurtz believes the public should continue to urge the station to focus on local issue programming rather than “bicycle” programs (canned programming coming from other places).

County Commissioner Inman reports that a room at the Governmental Center is being prepared to record and broadcast meetings, perhaps on a new governmental access channel. The County is also reviewing the overall situation.

Kurtz noted that everyone still needs time to receive and evaluate pending FCC regulations regarding cable franchising. Any concerns relative to franchise fees may exist in this arena.

Boltres feels that continued participation in TCTV2 is “irresponsible” when we need to spend money on other things. Acme meeting information is available at the office, on the website or in audio recordings. He does not believe we are receiving \$17,000 worth of value annually from participation. Kurtz agreed that further discussion is advisable, but also felt that the township should honor its commitment to CCCC through the end of this fiscal year. He suggested that there be an update at next month’s Board meeting.

Barb Berry from TCTV2 and the League of Women Voters stated that there is strong station usage and that some funding comes from a \$0.30 surcharge on each cable subscriber’s bill. Zarafonitis asked if he has read correctly that services could be provided in a significantly more cost effective way. Kurtz thanked Ms. Berry and Bill Vockel for being present. Mr. Vockel was video recording the meeting for future broadcast on TCTV2. Ms. Berry noted that Elmwood Township is having cameras and audio equipment installed in their meeting room next week, and the representative may come to look at Acme’s meeting room and offer an equipment proposal.

2. **Receive update/consider action regarding determination of correct common lot line between Saylor Park and Richard & Karen Kane properties on Kay Ray Road:** Removed for future consideration
3. **Receive update/consider action regarding status of road easement connecting Wild Juniper Trail and Five Mile Road:** Corpe summarized her staff report, and the recommendation from herself and Infrastructure Advisory Chair Mark Lewis that the township cease efforts to facilitate transfer of the easement into the public county road system. Bzdok observed that just because the township bows out of the process does not mean the easement will necessarily cease to exist. A private association could be created to insure and maintain the road area. Consensus was expressed to follow the recommendation provided.
4. **Discuss/consider action regarding proposed Yuba Creek Natural Area oil & gas lease:** Scott Howard, from Bzdok’s firm reviewed the two competing proposed oil and gas leases for Antrim gas exploration under the Yuba Creek Natural Area (YCNA) and summarized his report to the Board. Both proposed leases are “non-developmental,” meaning that no wells or other improvements would be placed on

YCNA/township lands – any drilling would be adjacent to the property and possibly directional beneath it. Both proposed leases provide for a 3/16 royalty. The Evergreen offer provides for a royalty increase to 1/5 if all investment costs in the well or unit are paid off which might or might not eventually occur. The OIL offer deducts post-production costs from royalties but the Evergreen offer does not.

Boltres asked if the township has mineral rights ownership in the YCNA, since the land was purchased with MDNR Trust Fund money. Ron Reinhold, 4446 Westridge and Corpe confirmed that the township does have these rights; the MDNR receives 1/6 of the royalties generated from any agreement into which we offer.

Bill Derman, representing Evergreen, stated that there was a typographic error in Howard's report; the per-acre payment is \$10 rather than \$100. OIL is offering \$50/acre.

Kurtz noted that Howard has not made a recommendation between one lease or the other. He has only compared the financial terms of the offer and evaluated the lease terms from a legal perspective, but sees a decision as to which firm is better suited to the township as being at the Board's discretion.

Takayama asked if Howard had reviewed the YCNA management plan to see what it says; he has not but generally MDNR conservation terms require zero impact on the land itself but allows for mineral extraction since this is how the MDNR generates funds. Takayama asked if "disturbance" includes "odor;" generally the issue is more related to physical disturbance. There is a general state prohibition against nuisance odors.

Kladder asked if Howard has looked at other leases regarding preserved lands. He has worked with the GTRLC on this issue for land in the Petobego area.

Joe Holt from OIL, and Dorance Amos and Bill Derman from Evergreen, were present to answer questions. Zarafonitis asked Mr. Holt to discuss the net merits of their offer, since their per-acre signing bonus payment is higher but they deduct post-production costs that Evergreen does not. Mr. Holt stated that it is more industry-standard to deduct post production costs – it occurs from state payments and the township is being offered the same deal as the state (some private leases are written with higher post-production deductions.)

Takayama asked about to provisions for shut-in well payments. Mr. Derman thought perhaps the question was more related to Evergreen's offer that royalties would rise if investment costs are paid off. OIL's offer has a static level of royalty throughout the lease life.

Kladder recalled statements from an OIL representative present at previous meeting as saying that it would be illegal to attempt to remove minerals directionally from under an adjacent property. Bzdok said the statement was somewhat different; that the state would be concerned that Evergreen's approach to unitization would be wasteful of land. OIL normally doesn't include land in a unit that they don't plan to extract minerals from directly, whereas Evergreen is talking about extracting minerals from installations on adjacent properties. Kladder asked how OIL would feel about the township asking for a 500' setback from township land boundaries, whereas the minimum is 330'.

Mr. Holt stated that OIL has been in operation since the 1980's and very active and experienced in Northern Michigan. He felt this might be an important consideration.

Mr. Derman stated that many of OILs wells were drilled when Evergreen's engineer, Greg Fogle, was heading up OIL. Mr. Amos stated that much of the land adjacent to the YCNA is with Evergreen, so wells benefiting the township could be drilled from those neighbors.

Andy Andres Jr. asked if leasing township land would accrue benefit to some adjacent landowners, but apparently the situation doesn't work that way. Wells on neighboring properties would be benefiting the township.

Scott expressed concern about any agreement with unknown factors in it. To him the OIL offer contains uncertainties about post-production costs, whereas the Evergreen offer seems straightforward to him. Mr. Holt stated that post-production costs to make produce marketable differ for each individual well. Differing companies are more efficient than others for a variety of reasons. He also observed that there is no fixed evaluation of eventual payout status when royalties would rise under Evergreen's agreement either. Every well behaves differently, and while experience can lead to predictions there are no up-front guarantees. Mr. Holt recently leased some preservation land in a different township.

Boltres feels that an experienced local oil and gas attorney should be asked to negotiate a lease on our behalf.

Takayama asked where OIL would place wells related to the YCNA if neighboring properties are signed with a different firm. Mr. Holt did not have sufficient data regarding the land lease pattern to answer the question.

Motion by Scott, support by Boltres to have an oil & gas attorney negotiate lease terms and provide feedback to the Board. Motion carried unanimously.

H. REPORTS

1. **County Commissioner's Report** – **Larry Inman**: received and filed
2. **Parks and Maintenance** – **Tom Henkel**: received and filed
3. **Sheriff's Deputy** – **Bob Sillers** : received and filed

I. PUBLIC COMMENT & OTHER BUSINESS THAT MAY COME BEFORE THE BOARD:

Kurtz mentioned that three local businesses have experienced frozen pipes leading to water damage and inoperative sprinkler systems. He read a press release from Metro Fire as to potential causes and preventative measures that can be taken by businesses and residences.

Kurtz also mentioned the special election on February 27 to recall the Board, and encouraged everyone to exercise their right to vote.

Meeting adjourned at 9:10 p.m.