



ACME TOWNSHIP PLANNING COMMISSION MEETING
Acme Township Hall
6042 Acme Road, Williamsburg, Michigan
7:00 p.m. Monday, December 22, 2008

Meeting called to Order with the Pledge of Allegiance at 7:00 p.m.

Members present: M. Vermetten (Chair), B. Carstens (Vice Chair), C. David, S. Feringa, R. Hardin, D. Krause, D. White, P. Yamaguchi, J. Zollinger
Members excused: None
Staff Present: S. Vreeland, Township Manager/Recording Secretary
J. Hull, Zoning Administrator
M. Grant, Legal Counsel
J. Iacoangeli, Planning Consultant
C. Grobbel, Environmental Consultant

INQUIRY AS TO CONFLICTS OF INTEREST: None noted.

APPROVAL OF AGENDA: Motion by Carstens, support by Yamaguchi to approve the agenda as presented. Motion carried unanimously.

1. Consent Calendar: Motion by Zollinger, support by David to approve the Consent Calendar as presented, including:

Receive and File:

- a) Draft Unapproved Minutes of:
- b) 12-09-08 Board Meeting
- c) 12-11-08 Parks & Recreation Advisory
- d) 12-15-08 Heritage Advisory
- e) Planning & Zoning News October and November 2008
- f) Memo from ZA re: Traverse RV Park Application

Action:

- g) Approve minutes of the 11/24/08 Planning Commission meeting
- h) 2009 Planning Commission Regular Meeting Schedule

Motion carried unanimously.

2. Correspondence: None
3. Limited Public Comment: None
4. Preliminary Hearings:
5. Public Hearings:
 - a) **Amendment 1 to Zoning Ordinance: Mobile Home/Manufactured Housing:** Hull summarized the history of this project to date. Grant's latest draft includes some changes to proposed definitions to match the newly adopted Zoning Ordinance and the few discretionary provisions approved for inclusion by the state Manufactured Housing Commission. In the former Ordinance mobile home parks were special uses, but in the new ordinance it would be a use by right. For this reason Grant suggests moving the new language to a separate Article XII, which would be late enough in the document to minimize the need for reprinting the portions of the ordinance which come after. Grant recommends retaining Section 9.2 as blank but reserved for future

use for any new special use permit land uses that may be regulated. It may even become useful for mobile home parks by special use if any of the zoning districts should call for such a use.

Yamaguchi asked about what a “substantial structure” for a sign would be defined as. The language requiring such a place for a sign to be attached was drawn verbatim from the existing signage regulations in the ordinance.

Feringa asked about requirements for public water and sanitary sewer service to mobile home parks which are immediately followed by a discussion of required standards for any on-site sanitary treatment. Hardin observed that the language of the former paragraph calls for provision of services either centrally or as otherwise approved by MDEQ.

Public Hearing opened and closed at 7:12 p.m., there being no public comment.

Motion by Carstens, support by Yamaguchi to recommend approval of Zoning Ordinance Amendment #1, adding Article XII and reserving Section 9.2 as blank for future re-use to the Board of Trustees. Motion carried unanimously.

6. New Business:

- a) **Amendment to Zoning Ordinance: clarify Conservation Development/Open Space Preservation Development language for inter-district use land uses:** Hull noted that in the past under our Open Space Preservation Development (OSPD) ordinance, properties with several different zoning designations have been permitted to combine and cluster their development units under one project. One example of this is LochenHeath. While there is no difficulty with the concept of doing so, the ability to do so is not explicitly set forth in the current OSPD regulations. Now there are additional Conservation Development (CD) provisions to be addressed as well. Grant’s concern is that now there is a use-by-right version of the clustering provisions, an individual could aggregate all of the development units from, for example, adjacent R-3 and A-1 properties on the A-1 (lower density zoning) parcel without any public hearing process. This could be continued, or the township could require that properties to be combined for clustering must have identical zoning designations in by-right situations.

Vreeland and Vermetten tend to believe that no problem exists with the current ability to combine differently-zoned parcels under a clustered development arrangement. Carstens can understand the value of Grant’s idea based on the new creation of two separate processes for clustered development. Krause believes that absent any expressed difficulties that there is no need to amend the language. Hull believes that the only reason there have been no difficulties raised yet is that the new by-right OSPD has only existed for about three weeks and has not been used yet. He believes that at a minimum the ordinance should clarify whether aggregating density from different zoning districts is allowed or not allowed in both CD and OSPD. Hardin asked if perhaps a provision could be made that a combination of two zoning districts would automatically require SUP review.

Motion by Carstens to set a public hearing regarding a proposed Zoning Ordinance amendments as set forth in a memo by Hull dated 12/17/08. Motion withdrawn pending further discussion.

7. Old Business:

- a) **Continued review and deliberation regarding Application #2007-05P Bates Crossings for shopping center on M-72, west of Bates Rd:** Iacoangeli summarized

recent updates regarding the application. Immanuel has provided a hydrogeologic report from Otwell Mawby which received a favorable review from Dr. Grobbel. MDOT today provided a brief letter regarding its review of the Traffic Impact Study (TIS). Vreeland had asked staff to begin preparing a list of potential conditions that could be discussed for inclusion in an SUP to recommend to the Board of Trustees; Iacoangeli chose to provide a first rough draft of a potential SUP. Grobbel summarized the contents of his recommendations to the Commission, which include a strong recommendation that the township condition SUP approval on a review of the proposed sanitary system design by an engineer on behalf of the township to ensure it could handle all types of special waste that might be generated in a shopping center, including grease, salon waste photo processing waste and the like. Alternatively the applicant could agree to provide a list of expected uses for the project. All of his concerns to date save this have been satisfactorily addressed. Vermetten asked if Grobbel's analysis could include a "worst case scenario" and some suggested system requirements rather than hiring another engineer. Grobbel considered and discarded this approach, expecting that he would come under fire for doing so without being a licensed Professional Engineer (PE). He has not been told how many restaurants there might be, whether or how they would be equipped with grease traps, and so forth. He believes the township needs this information to complete its review with suitable due diligence. David asked if any engineer hired by the township would also need the specific effluent information to do his job; Grobbel believes not, that the engineer could identify the different treatment methodologies that would be present and certify that they would be sufficient to address all possible scenarios. David is concerned because he believes that the applicant does not know yet who their tenants would be; Grobbel is simply suggesting that a PE review discuss whether the components of the system are designed for the range of possibilities.

Doug Mansfield, representing Immanuel, stated that the applicant is hoping for this evening to checking off a number of items and working on some provisions for a conditional SUP. He asserted that the engineer that has designed their system based on the worst-case scenario provided to him by the applicant. Iacoangeli noted this comment, and is asking why the applicant can't share the same set of assumptions with the township for what the tenancy might be. Mansfield stated that he has, and noted that uses can change over time. Grobbel suggested creating a "worst-case" assumption for presentation to a PE on behalf of the township for an opinion. Mr. Mansfield also volunteered to have their engineer attend an upcoming meeting to discuss the system. Iacoangeli stated that he would have a sub-consultant from Orchard Hill work on the matter. Attorney for applicant Julie Harrison requested that a price cap be placed on the additional review, as they have had a licensed engineer work on the project and the applicant's total costs have far exceeded expectations. Iacoangeli feels that the matter could be easily resolved if the applicant will state that the plant was designed for a "worst case" of x restaurants, y homes, z other sorts of things, and then the township's consultants can state whether the plant design seems appropriate to the scenario proposed. Kevin Vann of Immanuel expressed concern that this would lead to a specific tenant mix being required by the SUP, limiting the ability of the development to respond to market forces. Iacoangeli stated that there is no intent to specify buildout occupancy requirements as part of this process.

Vreeland discussed the reasons why it is prudent for the township to hire its own engineer to review projects, using the sewer systems at Windward Ridge and LochenHeath as examples. She also noted that what is proposed here is to be at a very basic level, and should not in any way be construed to indicate the township's likely response to an anticipated question: whether the township will accept responsibility for the system ultimately. Should that come to pass, the township will

hire its own engineer to perform a detailed review and approval of the plans and to perform construction oversight as well at the applicant's expense.

Hull recommended that any "worst case" scenario include a specific definition of the term: how many square feet of what sorts of uses make up the scenario.

Krause expressed respect for the applicant's concerns, the length of the process to date, and the township's reputation in some quarters as having an overly-difficult process. However he believes that having a few hours of a PE's time to review the proposed system components to ensure they are adequate to a variety of potential uses is appropriate under the circumstances. White also recognized the length of the process and the fact that there is concern about protecting ground and surface waters, but is struggling with subjecting the applicant to an additional review component and cost. He agrees that their PE has his license on the line, while agreeing with David that damage to a creek once done can take a long time to repair itself. Yamaguchi is concerned with protecting Yuba Creek and all of the township waters and supports a review by a PE on the township's behalf. Hardin agreed to the concept of a conceptual level review. There are a lot of concerns to be addressed in the township, but we are home to the headwaters of three creeks which are located generally in our higher zoning density areas. It is our charge to protect these resources, and a conceptual review of the system seems a prudent and quick step which can be easily accomplished. David concurred. Feringa stated that several months ago he spoke as a member of the public as being generally against having licensed professionals re-review designs created by other licensed professionals for things that will be vetted by a permitting agency. However, given the situation he would be compromised on a limited review by a professional on the township's behalf.

Hardin asked who and how a licensed professional is pursued if something goes wrong. Mr. Mansfield replied that it could occur through a variety of channels. Grobbel stated that if the creek is contaminated, it is likely that someone would pursue the system operator at the time and not the original designer.

Hull agreed that the township requires a high level of SUP review, and expressed sympathy for the applicant. He stated that this particular issue has only been on the table since mid-summer, rather than for the entire 1-year duration of this hearing process. He also believes that there is somewhat of a conflict of interest involved in relying only on the applicant's consultant's assertions.

Carstens agreed with Yamaguchi and Hardin, and respects Grobbel's recommendations.

Ms. Harrison believes that there is general agreement with having someone review the design on the township's behalf on a general level. She and her client would appreciate having information about the proposed sub-consultant Iacoangeli has in mind, which is OHM who also reviewed the traffic study. Iacoangeli chose them because they have someone expert on reviewing on-site treatment systems on staff. Vreeland observed that otherwise the township would initiate an RFP/RFQ process that would delay the basic review for at least two months. Vermetten tends towards disliking having layers of professionals review each other's work, but is willing to have the basic review discussed performed by OHM. Mr. Mansfield would like to know what their hourly rate would be and for how many hours; they would like to cap the potential charge. He hopes that they will contact him directly for information, and expects they will want to contact DEQ as well. He would expect about 8 hours at \$140/hour maximum.

Mr. Mansfield asked if the letter from MDOT will be satisfactory to complete review of the TIS. Mr. Iacoangeli expressed concerns previously identified that due to the location of the project and the railroad tracks nearby that any road widening of M-72 to accommodate additional traffic capacity is unlikely. MDOT concurs that there is not enough room to do this satisfactorily. They also observe that at the current time the warrants are not met to provide a traffic signal for the project. With a signal expected levels of service (LOS) were D or E; it could be worse without. People entering or exiting the development would be relying only on stop signs. OHM expert Steve Deering is expecting major complications due to this fact. Iacoangeli asked if the developer would be planning to pay for a traffic signal; Vreeland noted that even if the developer pays for it one can't be installed until the warrants for one are met. Due to previous situations where signals were installed and full buildout of a project was stalled while MDOT had to continue paying for the signal, now MDOT tends not to approve them until after the projects are built and traffic problems occur.

Yamaguchi asked about the last paragraph on the first page of the MDOT letter. This is a discussion of a minor widening of M-72 near the project entrance to provide a center left-turn lane for westward traffic entering the project and a right-turn deceleration lane for eastbound traffic. Mr. Mansfield opined that the township should accept MDOT's statement about what they can and cannot require and move on as MDOT has jurisdiction over the road, and that the applicant will be absolutely unwilling to pay anything further for additional review of traffic-related issues.

Hull stated that when Lautner Commons was reviewed, MDOT, the township and the Road Commission worked with the applicant to come up with a design for the intersection that included a traffic signal. However, it was also universally recognized that the signal might not be installed immediately upon development opening if the signalization warrants were not met at that time. There is a published standard for traffic control devices and criteria that have to be met. For instance, during a certain time of day at an intersection a major road needs to have a certain number of cars per day and the minor road another number, and accident data also plays a factor. Lautner Commons submitted fully engineered plans for the intersection revision which were reviewed and approved by MDOT as satisfying goals. Such plans have not been submitted for Bates Crossings. Vreeland observed that the Lautner Commons parcel differs from the Bates Crossings parcel, and therefore the situation differs, because the former has much more frontage on M-72, because the current conditions in the former's area lend themselves more readily to lane widening and signalization than in the latter's area, and there is already more existing development in the area of the former than the latter.

Mr. Mansfield stated that MDOT is the highest authority in the matter and has had its say. Iacoangeli disagreed, stating that MDOT has provided a technical response to the situation, but the Planning Commission has the responsibility to ensure that the proposed development will not have an unacceptable detrimental impact on the community at large. Based on what he has seen and heard from MDOT there will be a huge traffic problem with approval of this development. MDOT is taking a policy stance but they are not approving or disapproving – the “buck” stops with the Commission. The township could require the applicant to escrow funds for the future traffic signal. He has not had time yet to discuss the letter, which was received today, with MDOT, and is shocked by the statement that the warrants for a traffic signal are not met.

Ms. Harrison stated that up to now it seems as if everyone has been using a common set of rules for addressing the traffic situation. She is concerned that if the township imposes new rules on the applicant other than those of the township and MDOT on

which they have relied to date, that this is a step backwards that will require them to start from scratch. Hardin suggested having Iacoangeli make his planned call to MDOT to ask the questions about the signalization question is a good first step; Ms. Harrison was concerned that this is essentially trying to change the official answer of a permitting agency. Hull observed that the application should be processed under existing rules rather than a potential set of new rules, and that if it happens that the traffic safety risks are unacceptable under the circumstances described by MDOT, this is a factor the Commission must consider when it decides whether or not to recommend that the Board approve granting of the SUP. If the Commission generally believes that the development under the circumstances proposed by MDOT is too dangerous, it may not be prepared to recommend that the project be approved at all. Iacoangeli wants to verify how deeply MDOT delved into the TIS when they said the signalization warrants were not met. He personally would recommend denial of the application if a signal will not be approved and if there cannot be general widening of M-72 in the area. He does not feel the MDOT letter is very responsible coming from an agency such as theirs.

Mr. Vann stated that there may soon be a third meeting regarding the potential realignment of North Bates Road, which he feels may be the meaning behind MDOT's statement of continued working with the parties involved.

Hardin asked if the applicant is comfortable proceeding with their development based on the MDOT letter and a driveway in the current proposed location. Mr. Mansfield stated that he is not comfortable with it from an absolute standpoint, but that he sees no choice but to accept the answer given. He and Mr. Vann have faith that a signal will be installed eventually, that building the project will force MDOT to install a signal that they believe should be there now without the development.

Vermetten felt that the MDOT letter was embarrassing and irresponsible. Vreeland will invite MDOT to the January meeting to have two discussions with the township: one in general terms about how our two agencies can interface more effectively for traffic safety, and one specifically about their letter to the township and the Bates Crossings situation.

Mr. Vann asked Vermetten how discussion about the draft SUP document and the conditions currently contained therein should be handled – through staff or through the Commission meeting. Vermetten suggested that it be handled initially through staff for presentation to the Commission. Iacoangeli stated that with the Lautner Commons SUP, areas that were subject of disagreement between staff and applicant were brought to the specific attention of the Commission and Board for discussion.

- b) **Amend Master Plan to include sewer district**: Grant stated that this is a follow-up to earlier discussions about how and where to identify the township's sewer district. The district map has been removed from the Zoning Ordinance, so technically at present none is defined. The discussion was to move it to the Master Plan as specified by an existing police-power ordinance.

Motion by Carstens, support by David to recommend that the Board permit the Commission to distribute the proposed Master Plan amendment as presented to surrounding municipalities as required by law for their review and comment. Motion carried unanimously.

- c) **Amendment to Zoning Ordinance: cell tower**: Grant stated that currently cell towers are not recognized as allowable uses in any zoning district, which needs to be corrected. He provided a memo outlining issues with the current Personal Wireless

Services Ordinance. He is suggesting that the township should select where to permit cell towers within the township, which may be a longer discussion. General issues raised with the current ordinance can probably be addressed this evening.

There was general agreement accepting Grant's first note. Regarding his second note, Vreeland recalls the intent of the township to be to eventually identify specific pieces of land in the township to which towers and antennae would be directed and on which they would be permitted. This does not imply that the township could require the landowners so designated to agree to the towers. Regarding note three, there seemed to be no objection to small antennae being permitted as accessory uses to primary structures through an administrative process. As to note 4, staff does understand that a new antenna on an existing tower plus associated building at the base of the tower, can be allowed administratively (land use permit only), but a new tower requires a new SUP. Other edits clarify that towers require the full SUP process involving both the Planning Commission and the Board and correct a typo to Section 3j that impacts scenic viewshed provisions.

Motion by Zollinger, support by Yamaguchi accepting the proposed amendments to the Personal Wireless Services Ordinance as presented and setting a public hearing for the January meeting.

There was some discussion about whether this is a stand-alone police power ordinance (which would simply be recommended to the Board for a public hearing there) or a zoning ordinance which should perhaps be incorporated into the general Zoning Ordinance. Grant will investigate further and advise.

- d) **Consider adoption of new Planning Commission bylaws to replace the 1995 bylaws pursuant to the Michigan Planning Enabling Act:** Hardin recalled that at the October discussion on this issue, Linda Wikle proposed a scenario where she might go to Jim Goss' house to play cards but people seeing her car outside might assume they were having a potentially inappropriate discussion about his development project or other issues. He recalls discussions involving himself and Vermetten at the farmers' market this summer where people brought up general issues and concerns but they did not become embroiled in detailed discussions. He was trying to get a better feeling for appropriate boundaries in government-related discussions with citizens and neighbors, or if such casual conversations must be avoided in entirety. Hull recalls from Citizen Planner training that expert Kurt Schindler posed the situation as being that any applicant has the right to hear evidence or accusations made against them. The problem would arise if someone was collecting evidence outside of a public meeting for or against the application that the applicant did not have the opportunity to hear or respond to. If such became the case, the Commissioner involved should report the information to the Commission at a later public meeting.

Vermetten is frequently approached in public about issues before the township. His response is always in terms of events which have already occurred or general information about how processes work. He is not inclined to write down and report on every general question about whether and when Meijer is building in Acme Township or similar issues.

Grant's suggested language was taken verbatim from MSU Extension's suggested model bylaws. It specifically only applies to discussions about administrative matters currently pending before the Commission, and not about past business. It might not apply specifically to a rezoning. Administrative matters have a judicial aspect and require fairness to everyone in the process. There is not a state legal standard for *ex*

parte communications at the Commission level, just random references. Grant mentioned in response to a question to Vreeland and himself that asking questions of staff are not *ex parte* communications and perhaps this needs to be explicitly spelled out.

Hull stated that it would be inappropriate to discuss outside of a public meeting a citizen's concerns about potential noise or smell impacts from an SUP application under consideration for a cheese plant, but general discussions about past issues or administrative procedures do not fall under the proposed language. Zollinger suggested based on discussion with a lawyer that some levels and situations of behavior should be discussed and defined to clarify the language beyond the sample language provided. Krause believes that the common sense elements of the situation could be better expressed on paper.

Motion by David, support by Carstens to adopt the Commission Bylaws as presented.

Krause asked if based on discussion this evening the *ex parte* language could be adjusted to specify different types of discussions and settings and how they should be addressed. David believes this would be unnecessarily complicated. Grant stated that if someone is accused of inappropriate *ex parte* communications the outcome would be a hearing in front of the Board for potential removal from office for malfeasance.

Motion failed by a vote of 4 in favor (Carstens, David, Feringa, Krause) and 5 opposed (Hardin, Vermetten, White, Yamaguchi, Zollinger).

Motion by Yamaguchi, support by Zollinger to approve the Commission Bylaws as presented with the exception of the *ex parte* communications provisions. Motion by a vote of 7 in favor (David, Zollinger, White, Vermetten, Feringa, Yamaguchi, Krause) and 2 opposed (Carstens, Hardin).

- e) **Advise Board Regarding Curbside Recycling District:** Vreeland explained the history of consideration about mandatory curbside recycling districts in the region. The Board was asked to consider expanding the mandatory district, which is currently limited in the township to the area south of Bunker Hill Road as demonstrated by a shaded area on the maps, in 2006. At that time the Board declined to do so because we were informed that it was likely that waste haulers would raise service rates to citizens. When we called around to see what such increases might be like, the haulers who would talk to us said there would likely be increases but wouldn't precisely define them. The County is now asking again if the township feels the size and scope of the mandatory curbside recycling district is appropriate, and Supervisor Kladder asked that the Commission review and advise the Board on the matter. It is also important to note that curbside recycling may be offered outside of the mandatory district at hauler discretion.

Zollinger feels as a matter of policy that every zoning district other than the A-1 district should be included in the mandatory curbside recycling district.

Motion by Hardin, support by Krause to recommend to the Board that the Curbside Recycling District remain as is. Motion carried unanimously.

8. Public Comment/ Any other Business that may come before the Commission:

Vreeland stated that the SUP for Lautner Commons, which had been extended to December 13, 2008, has been allowed to lapse by Meijer, Inc. She also noted that the new civil infractions ordinance has taken effect, so violations of the Zoning Ordinance can now be

addressed by the issuance of a ticket by various staffers or the Grand Traverse County Sheriff's Department payable to the township Clerk's office.

Vreeland further reported that the new Zoning Ordinance has taken effect, and copies have been provided to everyone. No comments or concerns were raised by the public between the Board vote and the effective date. She also reminded everyone that the Planning & Zoning Department has a training budget and staff strives to point out educational opportunities to Commissioners and pay for them on a regular basis. If Commissioners come across likely opportunities they are welcome to suggest them. Vreeland is hearing strong indications from Supervisor Kladder that continuing education is very important to him, and that commissioners who do not partake in such opportunities are less likely to be reappointed as their terms expire.

Meeting adjourned at 10:23 p.m.