



ACME TOWNSHIP REGULAR BOARD MEETING
ACME TOWNSHIP HALL
6042 Acme Road, Williamsburg MI 49690
Tuesday, November 9, 2010 7:00 P.M.

MEETING CALLED TO ORDER AT 7:00 P.M.

Members present: D. Dunville, R. Hardin, P. Scott, E. Takayama, L. Wikle, F. Zarafonitis
Members excused: W. Kladder
Staff present: S. Vreeland, Township Manager and Recording Secretary
J. Jocks, Legal Counsel

Clerk Dunville chaired the meeting in Supervisor Kladder's absence.

A. STUDY SESSION: None

B. LIMITED PUBLIC COMMENT:

Sally Frye, 2884 Wild Juniper Trail addressed the Board regarding the Knollwood house. She says that the house is in good condition for a 130-year old building that can be maintained in a "mothballed" state for a minimal period of time. She thought after the last meeting that the Board had approved maintenance of the building for a minimum of one year to provide additional time for research, public input and decision-making about the structure, but was later informed this may not be the case. Mrs. Frye is asking that the Board clarify this evening, providing a minimum of one year. She applauded the many hours of time and dedication Dunville has provided towards this issue. She recognizes that there are many opinions on this issue, and that there are many facets of the issue to consider. She has continued to research the property and has offered her services to perform necessary studies valued at thousands of dollars at no charge to the township. Mrs. Frye has asked that citizens of the township be permitted access to the structure if they form a committee or independent 501(c)3, including the ability to conduct open houses and research.

C. APPROVAL OF AGENDA:

Motion by Zarafonitis, support by Wikle to approve the agenda as presented. Motion carried unanimously.

D. INQUIRY AS TO CONFLICTS OF INTEREST: None noted.

E. CONSENT CALENDAR: Motion by Zarafonitis, support by Takayama to approve the Consent Calendar as presented, including:

RECEIVE AND FILE:

1. [Treasurer's Report](#) as of 09/30/10
2. [Clerk's Report](#) as of 11/03/10
3. Draft Unapproved Meeting Minutes:
 - a. [Planning Commission 10/25/10](#)
 - b. [GT County Road Commission 09/22/10](#)
 - c. [Parks & Recreation Advisory 10/28/10](#)
4. [Parks and Maintenance Report](#) – Tom Henkel:
5. [Planning, Zoning & Administrative Update](#) – S. Vreeland
6. [Metro Emergency Services Newsletter October 15, 2010](#)
7. [Status Update – VGT-Phase I SUP Application #2009-01P](#)

ACTION – Consider approval:

- 8 Township Board meeting minutes of [10/05/10](#)
9. [Accounts Payable](#) of \$257,433.71 through 11/03/10 (recommend approval: Dunville)

Motion carried by unanimous roll call vote.

F. REPORTS:

1. **Sheriff's Report – Mike Matteucci:** In October there were 24 citations, 8 property damage accidents, and 4 OUI citations. The larcenies from vehicles that had been happening over the past two months are being followed up on. A suspect has been identified and some of the property stolen from Whitewater Township has been recovered. There were some larcenies at the harbor and a confession was obtained in that case. Criminal activity in the township has been reduced somewhat other than those ongoing investigations.
2. **County Commissioner's Report – Larry Inman:** The County is using some of its fund balance to meet budgetary needs for the new fiscal year while maintaining at least an 18% operating reserve. 9 positions were proposed for layoff, five are jobs that will not be filled when they become vacant but 4 jobs will be eliminated. They have also re-examined healthcare costs and received a bid from Blue Cross that was approximately \$250,000 lower than Priority Healthcare's bid. The resulting savings were used to continue to fund contributions to Metro Emergency Services for public safety education and Civic Center South. Several Sheriff's deputy positions that might have been cut were retained, although the school system did not continue its funding for the school detectives. The County and townships have been working on a plan to each loan 50% of the funds needed to meet septage plant debt payments; Inman provided a copy of the business plan adopted for the septage treatment plant. The only controversial aspect is a recommended increase in the per-gallon cost for septic tank waste. Several of the outlying townships are objecting to this increase, feeling that it violates the terms of an existing intergovernmental agreement. Some of the townships did not want to vote on the 50/50 loan repayment plan until the business plan was finalized. The Board of Public works has decided to lower the surcharge for landfill waste. There will be one centralized location for free public recycling, and all residences in the County from single-family to four-unit will be eligible for curbside recycling service. This being the case, the County believes that the interlocal solid waste agreement is no longer necessary. To terminate the agreement all townships would need to opt out of the agreement by December 31. There will be three new County Commissioners as of January 1, Herb Lemcool for Garfield, Rob Hentschel for East Bay and Jason Gillman for Peninsula and portions of East Bay. Jay Hooper's term on the Road Commission is expiring at the end of December, and he will have served for the maximum 12 years current County policy permits. The opening has been advertised and eight candidates will be interviewed tomorrow. There might be discussion about increasing the Road Commission from 3 to 5 members. Inman would support the move if it is cost-neutral (if the total compensation is divided 5 ways instead of three, reducing the compensation to each individual.) Problems with the current arrangement include that the board is too small for any committees to be set up without creating a quorum. Terms might be staggered as well.

G. SPECIAL PRESENTATIONS/DISCUSSIONS:

1. **2009-10 Fiscal Year Audit Report – Dennis, Gartland & Niergarth:** Trina Edwards and Mary Krantz from Dennis, Gartland & Niergarth provided an overview of the 2009-10 fiscal year audit report. Net assets of the township increased by \$3.4 million. Revenues were inflated over last year by the MNR Trust Fund grant received for the Shoreline Preservation Project. The township ended the year with approximately 14-months' worth of operating expenses in general fund reserves, which is an extremely healthy level. The year-end General Fund balance was down \$151,820 from last year primarily due to a planned transfer from the General Fund balance to the Shoreline Fund for the Phase I purchases of \$200,000.

Total township assets are \$22.4 million dollars, with net assets of approximately \$16 million. Some of those assets are in restricted fund dedicated for farmland preservation and police and fire protection. \$1.5 million of the total assets are unrestricted.

The auditors found that the townships financial records and recordkeeping were excellent. The customary concern regarding segregation of duties was listed with recognition that the township's staff is too small to fully segregate financial duties and that it would be imprudent to hire additional staff to address this issue at this time.

The Shoreline Fund budget for the 09-10 fiscal year was adopted as a deficit budget which is technically inappropriate; however, it was determined that this was due to a clerical error in the preparation of the budget. The Fund ended the year with a positive balance as required by law.

There are some new accounting standards requirements that took effect over the summer that the township should adopt this year. One of those requirements is that the township create a policy for how unrestricted fund balances might be designated for particular uses, and establishing purposes and limits for which certain individuals may authorize expenditures without prior Board approval. Designations could be for current or future fiscal years.

Motion by Wikle, support by Takayama to accept the 2009-10 Fiscal Year Audit Report as submitted. Motion carried by unanimous roll call vote.

2. **Road connecting Five Mile Road and Wild Juniper/Northpointe Subdivision:**

Jason Bigg, 2929 Wild Juniper Trail spoke on behalf of many township residents concerned about the closure of a roadway that links the Wild Juniper Trail cul-de-sac to Five Mile Road. He stated that the fact that a sign advertising the subdivision is placed near the base of the roadway near Five Mile Road is one form of evidence that this roadway is intended as a public access. Residents of the area are concerned that closure of this roadway will increase emergency services response times. Mr. Bigg reported that Road Commissioner Jim Maitland stated at a recent Road Commission meeting that the township should have taken formal possession of this road in the past. Township Board minutes from January 1979 reflect acceptance of the easement. A 2006 message from DPW Director Chris Buday stated that the easement is necessary for maintenance of sewer lines. There is a history of over 30 years of public use of the roadway. A complete copy of the statement Mr. Bigg read can read by [clicking here](#).

Rick Cooper, 4635 Paper Birch Lane, stated that many citizens are concerned about the roadway closure because it may take longer for emergency services to reach them. They have been accustomed to using this roadway for access to the TART that is more convenient and safer than using Holiday Road. This is one of only three ways into or out of Holiday Hills; the second being Holiday Road and the third being through the English Woods Subdivision which ultimately connects to Prouty Road. He urged the Board to keep an open mind on the issue, noting that there appears to be a historical intention for this to be a public access despite some grey areas in the documentation.

Bea Edmond, 4644 Paper Birch expressed sympathy for both sides of the debate. However she stated that when Mr. Nalley originally purchased Lot 14 the road was in place and in use by the public, and his deed noted that his land was subject to any deeds or easements of record. She stated that there are provisions for "prescriptive easements" and claims of adverse possession in state law that requires that public use has been open and uninterrupted for a period of 15 years. For this reason, and because area residents have used the area for over 30 years she believes that they have the right of use according to adverse possession.

Linda Kohout, 4421 Ground Pine Trail, was disappointed by the tone of the *Record Eagle* article about this issue today. She feels that it takes a very “not our problem” approach, and she does not know how the township could take this position towards the taxpayers. She expressed disappointment that in 2006 the Board did not accept an offer from the landowners to negotiate acceptance of the easement.

Jocks stated that adverse possession creates a private right if land has been used openly in the face of the landowner. The private user takes fee title to the land area in question. He believes the public may be thinking more of a prescriptive easement. This does not create a right for the public, but only for the private individuals who have been making use of the property. Public bodies acquire such easements through the “highway by user” concept. This concept requires use by the public and maintenance and control of the land area by the public body. It is his opinion that for the township to claim a highway by user over a road not taken over by the Road Commission, it would have had to maintain (patching, grading, trimming, plowing, etc.) and control the road. There is no evidence that the township has maintained or controlled the road. The township does not have the right to exercise a right by prescriptive easement; only the private citizens do according to legal theory.

Takayama asked, given the history of the issue what action the township could take that would clearly stand up in court as a defensible legal right to either keep open or close the road that would not likely result in a protracted court battle. What legal standing does the township have? Jocks replied that there were two points in time when the township had an opportunity to take an interest in the road. The first was when the plat was approved with a condition that access be provided. Public records have been scoured and no evidence that an easement was granted to the township has been found. Although the 1979 township minutes indicate intent, without a signed document the easement was never granted. The easement does not appear as part of the Northpointe subdivision plat. No right was granted to the township by the developer according to any findable public record. It is also odd because a public road should have been given to the County Road Commission, not the township. The township does not own or maintain or control any roads.

Can a condition placed on the plat approval 30 years ago be enforced now? In theory the township could try to force the developer to give that right now, but in practice he no longer owns or controls the land. The township would have to sue the current landowners to obtain the easement, and Jocks believes it would be a protracted fight. He believes the landowners would have a strong case on the grounds of “estoppel” and that the township’s chances of success in the suit are not good. Another option would be to void the plat; however this is impractical because it would involve removing the rights of all the property owners of the plats to their homes.

The point was raised that the township passed up an opportunity several years ago to obtain the road. However, Jocks observed again that the township does not own, maintain or control any other roads. It is not equipped to do so. It would be more customary for the township to facilitate transfer of the road to the Road Commission; however, they have expressed that they would not accept the road because it does not meet their specifications and standards. For either body to accept the road when it fails to meet those specifications could create some serious liability issues. In 2006 the township explored whether there were options for improving the road to Road Commission standards for grade and right-of-way width. The cost was determined to be prohibitive, and the topographical changes required would be vast and affect a large portion of Wild Juniper Trail.

The township could ask the landowners for the easement, but if this is done he would advise that it would have to be significantly improved to limit the township’s liability.

Ms. Edmond asked why Mr. Nalley did not have to seek township permission to close the road, whereas township residents need permits to add new construction to their properties. The road closure is not an issue covered by land use permitting requirements under the township's Zoning Ordinance.

Judy Pechur, 4399 Ground Pine Trail, asked why the Road Commission placed the signs at either end of the roadway. Vreeland replied that the signs at either end of the roadway under dispute were commissioned and installed by the landowner, Mr. Nalley. The Road Commission did recently place two new "no outlet signs" on roads leading to Wild Juniper from Holiday Road after finding that their placement would meet guidelines.

Ken Crowhurst, 2929 Wild Juniper Trail stated that he doesn't understand how the township can say that it has no interest in the roadway when there is a streetlight paid for by the township at the intersection of the roadway and Five Mile Road, but at no other points along Five Mile Road.

Joan Cooper, 4635 Paper Birch asked what Mr. Nalley's rights in the property are? Does he only own the surface, and is he unable to use large areas of the land that are subject to easements. Jocks cautiously replied, without knowing all of the details, that Mr. Nalley may use any portions of the property as long as they don't interfere with the recorded rights granted to other parties.

Questions were raised about view easements that were put in place by Brad Zucco and how they would affect use of the property. Vreeland stated that she is aware that Mr. Zucco, 2911 Wild Juniper (Lot 16) had purchased Lot 15 from the original developer to protect his view of the bay. In May 2009 he sold Lot 15 to the Eilers, who live at 4782 Five Mile Road. When he sold the property to them they gave him easements across both Lot 15 and the unplatted lot where their house sits. One of the easements is a view easement that goes over the existing 4782 Five Mile home. The other is a no-build easement over the easternmost portion of Lot 15. While she is aware of these easements, Vreeland stated that such easements are not enforced by the township. If such an easement is violated, the person to whom the easement was granted would have to pursue the matter. While if she is aware of such a situation she does her best to mention it to involved parties, there is nothing in the Acme Township Zoning Ordinance that would prevent her from issuing a land use permit in the easements area and nothing that would allow her to deny the permit based on the easement.

Diane Moore, 2930 Wild Juniper Trail said that when her children were in junior high school the light was installed because the area was a designated school district bus stop. The roadway was determined by them to be an appropriate way for the children to reach the bus stop. She asked what the significance would be if citizens had evidence that the Road Commission had maintained the road. Jocks said "maybe." Establishing highway by user is a case by case situation. A lawsuit needs to be filed and a Circuit Court judge will review evidence and determine whether activities in the situation are sufficient to prove public use and maintenance and control of the road. He would recommend that the citizens contact an attorney to see if it would be worth bringing forth such a suit based on the evidence available. He is involved in a similar litigation right now.

Hardin observed that this issue has been brought before the township Board at least three separate times now. If there is no record of an easement, and someone is hurt on the roadway they might sue the landowner. It is understandable that the landowner might wish to limit or end access to the road to limit their liability exposure. Even back in 1978 Road Commission letters stated that a connection from the subdivision to Five Mile Road should be considered at a location farther north where the topography would be more suitable. There is evidence that the township looked into the matter but could find no landowner willing to sell land for

such a more favorable easement. As far as he can determine from his research it appears that the road is on Mr. Nalley's private property and he hopes that the landowners could work out a solution. He does not understand how the township can reasonably become involved in the situation.

Zarafonitis asked if the township could assist the landowners in working out a situation.

Jim Moore, 2930 Wild Juniper Trail, stated that a proposal a few years ago was that the neighborhood might take over maintenance of the road and purchase liability insurance. He finds it interesting that the Road Commission could find one private road, such as Ground Pine Trail, safe, but another not safe. The earlier attempts to negotiate between neighbors were fruitless. He and other landowners have documents showing an easement for utilities and drainage, so how could it be now that the easement is deemed not to exist? The official plat map on file with the State of Michigan shows only a utility and county drainage easement. Jocks stated that easements only exist to the extent that the language on the easement creates it. This easement does not mention ingress or egress. If one grants an easement for utilities, it could not also be used for driving on. The utility easement means that the DPW can do whatever it needs to within the easement area to serve the sewer system, but the wording of the easement does not indicate a right to drive over it.

Cindy Phillips, 2986 Wild Juniper Trail stated that she hopes the Board understands that they are not being attacked as individuals or a body. One of the reasons she moved to Traverse City was for the walkable community, and they love Acme Township. If this access is closed, she asserted that 150 families will lose access to the TART because it is unsafe to walk down Holiday Road. So much money is spent on walkability and the TART that it doesn't make sense to her that it should become less accessible. When she bought her home it was advertised as having direct access to the TART, so she believes that if this access is gone the township should reassess the values of the homes in this area. She is asking the Board to "go back in time and do what should have been done in 1979."

Metro Emergency Services Chief Pat Parker stated that he shares concerns about emergency access to this area. For some properties it will take 3-4 minutes longer to reach them. They don't take larger vehicles up the roadway, and they don't often use it in the winter, but it is seasonally helpful. Chief Parker spoke to Mr. Nalley yesterday about the need for emergency services access to be maintained. Mr. Nalley is willing for fire, police and ambulance service to use the roadway, saying that they would have to go through the plastic snow fence that has been put up to block the roadway. General members of the public stated that there are now trees across the roadway and that large boulders have been purchased to block the road as well. Deputy Matteucci has also spoken to Mr. Nalley who says that he will not place boulders across the roadway at this time to allow continued emergency access, and until the outcome of any potential court process is known.

Mr. Crowhurst stated that the neighborhood has consulted with an attorney, and that attorney sent a message to Mr. Nalley yesterday that he read to the Board. The message states that several different avenues of action are being explored. It asked if Mr. Nalley would be open to negotiating a private easement for the neighborhood. Mr. Nalley apparently responded that he would be willing to sell both full lots, but his message does not seem open to negotiation of a private road easement for the neighborhood.

Zarafonitis asked if Jocks could attempt to ask Mr. Nalley to work with the community. Perhaps it would be better received than the overtures from the neighborhood. Jocks will do as the Board directs. He would not be comfortable threatening any litigation, and the Board does not wish him to do so. The Board wishes him to offer to facilitate to try to avoid a lawsuit being brought by the private residents. Takayama stated that members of the public

have been using the road for over 15 years so they may have a case for a prescriptive easement. Any court battle could be expensive and unpleasant for all parties involved, and perhaps avoiding this by granting an easement to the residents would be a desirable way for everyone to come out of the situation a little better. Takayama stated that he is very sympathetic to public concerns and would be upset himself. However he is also mindful of legal counsel's advice that the township is unlikely to succeed in what would be an expensive suit that it would have to defend with public taxpayer funds.

Wikle asked if there would be a conflict of interest for Jocks. It would be a conflict of interest for him to represent both the township and the citizens, but it is not a conflict for him to represent the township's interests in a non-litigious outcome.

A gentleman asked why the township could not pursue acquisition of the easement of a public road. Jocks replied that it would require condemnation of the land, with compensation.

Motion by Scott, support by Takayama to request township counsel to work with the neighborhood citizens' attorney to determine how they might together communicate with Mr. Nalley in an attempt to resolve the dispute through transfer of a private road easement across his property for the neighborhood. Motion carried by unanimous roll call vote.

H. CORRESPONDENCE:

1. [10/27/10 township response](#) to 08/27/10 DNRE letter - LochenHeath water system: received and filed. After the township's response was sent the township received a copy of a letter from Gourdie Fraser directly to the DNRE with a proposed action plan. The Gourdie Fraser consultant has asked for a meeting to discuss the proposed action plan on Friday. Jocks has spoken directly with Brian Thurston at the DNRE who says he is inclined to find the proposed action plan acceptable.

I. PUBLIC HEARINGS: None.

J. NEW BUSINESS:

1. **Consider Adoption of proposed [Zoning Ordinance Amendment 008](#) – Traffic Control Signs on public and private roads:** Vreeland summarized the intent of the ordinance amendment, which is to allow the placement of traffic control signs in accordance with applicable federal, state and local standards and requirements on both public and private roads. At present the ordinance only specifically allows them on public roads. No township permit issuance is required for such signage.

Motion by Scott, support by Takayama to adopt Zoning Ordinance Amendment 008 as presented. Motion carried by unanimous roll call vote.

2. **Consider Adoption of proposed [Zoning Ordinance Amendment 009](#) – Fence height regulations:** Vreeland summarized the intent of the ordinance, which is to raise the maximum permissible fence height in the front yard of residential properties and in any location on residential corner lots from 3' to 4'. Maximum fence heights in side and rear yards on non-corner lots would remain 7'. Another new addition would be a prohibition against electrified and barbed-wire fences on residential lots unless they are used for a qualified agricultural operation.

Motion by Scott, support by Wikle to adopt Zoning Ordinance Amendment 009 as presented. Motion carried by unanimous roll call vote.

3. **Resolution approving Entertainment Liquor Control Permit for TraVino Restaurant:** TraVino hosts Tuesday night drop-in Euchre games during the winter months, and this apparently requires the addition of an entertainment permit to their liquor license.

Motion by Zarafonitis/, support by Wikle to adopt Resolution R-2010-31 approving an entertainment liquor license for Travino. Motion carried by unanimous roll call vote.

4. **Update on Township General Liability Insurance:** November 1 is the annual renewal date for the township's general liability insurance policy. Several years ago our former insurance company said that due to the Concerned Citizens of Acme Township v. Acme Township v. the Village at Grand Traverse LLC and Meijer Inc litigation they would not continue to cover the township for zoning takings litigation. Due to concern about the timing and way the matter was handled, the township moved to another insurance carrier which was still unwilling to provide coverage for this particular risk until the township had been clear of land use litigation for at least two years. It has been slightly over two years since the township's involvement in the lawsuit ended, so we asked our insurers underwriters to consider restoring this coverage. As of November 1 it has been restored, and at the full \$5 million general liability coverage limit for the entire policy. Our previous coverage for this risk was usually \$100,000, and was \$1 million for a very brief time. The increase in premium for the land use takings coverage plus coverage of newly acquired shoreline property was only \$1,200.

This is excellent news of itself, but also leads to the question of whether the Board would like to continue to keep \$50,000 set aside as self-insurance for this risk, or whether we would like to reallocate the funds elsewhere. They are approximately sufficient to erase the potential General Fund operating deficit for this year. It is also very close the amount needed for Northern A-1 to complete the Phase I deconstruction process.

Motion by Zarafonitis, support by Hardin to use the \$50,000 for phase I deconstruction.

Scott asked what the original plan had been to cover the deconstruction costs; Kladder has been planning on fundraising. Some on the Board feel it would be appropriate to continue looking at a fundraising effort rather than reallocating these funds to the deconstruction.

Motion amended by Zarafonitis to include a requirement that the funds be treated as a loan to be repaid by fundraising.

Takayama suggested that perhaps it would be better to use the funds as a match to Phase II acquisition fundraising. It would demonstrate our level of commitment to the project to entities from which we are seeking grant and donation funding.

Amended motion and second withdrawn.

Vreeland observed that at this point it appears that deconstruction will not begin until after the first of the year, so there is no need to make a final decision as to how to allocate these funds tonight. There is time to deliberate.

Motion by Zarafonitis, support by Scott to move the \$50,000 from the Self-Insurance General Fund to the General Fund. Motion carried by unanimous roll call vote.

Shoreline Advisory Co-Chair Pat Salathiel announced that the Herbert and Grace Dow Foundation just awarded \$600,000 to Phase II of the Shoreline Preservation Project. This leaves the fundraising need to complete Phase II acquisition by the end of June 2011 at approximately \$350,000..

- L. PUBLIC COMMENT & OTHER BUSINESS THAT MAY COME BEFORE THE BOARD:**
Bob Denton, 4173 Dornoch Court stated that ORVs are more than just recreational vehicles, they are useful tools. He would support opening

Vreeland reported that Kladder would like to appoint a committee to help evaluate the proposals for solid waste handling that come back on November 18 as a result of the joint bid issued by the City, Acme and Peninsula Township. He would like to include himself, Vreeland, Bob Oosterhout from Resource Recovery one private citizen and one additional Board member. He mentioned that he had been thinking of Hardin, and Hardin has indicated willingness to participate.

Motion by Takayama, support by Zarafonitis to select Hardin to the proposed Solid Waste study committee. Motion carried unanimously..

MEETING ADJOURNED AT 9:25 P.M.