STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

CONCERNED CITIZENS OF ACME TOWNSHIP,
a Michigan nonprofit corporation,

Plaintiff,

v

Case No. 05-24483-CH (Consolidated)
HON. PHILIP E. RODGERS, JR.

ACME TOWNSHIP, a Michigan general law Township,
and the ACME TOWNSHIP BOARD OF TRUSTEES,

Defendants/Third-Party Plaintiffs/
Counter-Defendants,

v

VILLAGE AT GRAND TRAVERSE, LLC and
MEIJER, INC.,

Intervening Defendants/
Third-Party Defendants/
Counter and Third-Party Plaintiffs,

v

WILLIAM KURTZ,

Third-Party Defendant,

and

ROBERT CARSTENS, RONALD HARDIN, FRANK
ZARAFONITIS, ERICK TAKAYAMA, and
CLARE DAVID,

Third-Party Defendants/Counter
and Third-Party Plaintiffs,

v

VILLAGE AT GRAND TRAVERSE, LLC and
MEIJER, INC.,

Counter-Defendants,

and

DICKINSON WRIGHT PLLC and
TIMOTHY A. STOEPKER,

Third-Party Defendants.

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ORDER AFTER APPEAL FROM
THIS COURT'S JULY 6, 2005 DECISION AND ORDER

On July 6, 2005, this Court vacated Meijer's special use permit ("SUP") because the proposed development was inconsistent with the Acme Township's master plan. The Court also found that the SUP violated the Township Zoning Ordinance because it took away all meaningful review of traffic, environmental and market studies. The Court dismissed as moot the conflict of interest claims that had been raised by The Village at Grand Traverse and Meijer. The Village at Grand Traverse and Meijer appealed these decisions to the Court of Appeals.

On September 20, 2007, in an unpublished opinion, Docket No. 264109, the Court of Appeals reinstated the SUP and remanded the conflict of interest claims to this Court for "reconsideration in light of reinstatement of the SUP."

On December 13, 2007, this Court issued an Order After Appeal reinstating the SUP and addressing the conflict of interest issues. On January 8, 2008, however, that Order was vacated because the Court was advised that an Application for Leave to Appeal to the Supreme Court was pending and, therefore, the Court did not have jurisdiction to enter the Order.

On April 10, 2008, the appeal was dismissed.

On June 23, 2008, this Court considered and granted Robert Carstens' Motion for Relief from Judgment, reopened the case, and allowed Mr. Carsten to file an amended action against Meijer, The Village at Grand Traverse and their counsel. Meijer, The Village and their counsel sought immediate appellate review of that decision. The Court of Appeals stayed the case, pending further order. On August 28, 2008, the Court of Appeals denied the application for leave to appeal "for failure to persuade the Court of the need for immediate appellate review." Therefore, this case was reopened and this Court now issues its Order based on the September 20, 2007 unpublished opinion of the Court of Appeals.

The SUP should be and hereby is reinstated with the understanding that the Township Board "can deny site plan approval if traffic, environmental, or market studies present obstacles to the township's objectives as set forth in the master plan."

With respect to the conflict of interest issues, this Court considered and ruled on them while this appeal was pending in the context of the related case of *Meijer, Inc v Acme Township and Kurtz, Boltres, Zarafonitis and Takayama,* Grand Traverse County Circuit Court File No. 06-25260-AA. That related case was an appeal from Acme Township's May 10, 2006 Resolution and Special Use Permit ("SUP") relating to Meijer's request to locate a retail store

at the southeast corner of M-72 and Lautner Road in Acme Township. Meijer filed a Second Amended Complaint and added four individual township board members as Defendants and Count IV – Conflict of Interest and Breach of Fiduciary Duty. The conflict of interest issues were the same as the conflict of interest issue raised by The Village at Grand Traverse and Meijer in their First Amended Counterclaim and Third-Party Complaint in this case.

On February 20, 2007, after going through a lengthy review of the facts and applicable law, this Court found that the Plaintiff lacked "any credible evidence" that these individual Defendants had a conflict of interest. Instead, the Court found that they ran for Acme Township Board positions because they did not believe that the Acme master plan was being adhered to by their predecessors. As Township officials, they upheld the Township's master plan and acted in accordance with that master plan. Therefore, they were not improperly biased and did not have a conflict of interest. The Court granted the individual Defendants' motion for summary disposition and dismissed the administrative appeal, including Count IV. The Village at Grand Traverse and Meijer filed an application for leave to appeal. On October 10, 2007, the Court of Appeals denied leave "for lack of merit in the grounds presented."

Therefore, the SUP will be reinstated. However, the Court need not "reconsider" the conflict of interest issues in light of the reinstatement because those issues were resolved in the related case between the same parties while the appeal in this case was pending.

IT IS SO ORDERED.

HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: 2/26/09

STATE OF MICHIGAN

COURT OF APPEALS

CONCERNED CITIZENS OF ACME TOWNSHIP,

Plaintiff-Appellee,

v

ACME TOWNSHIP and ACME TOWNSHIP BOARD OF TRUSTEES,

Defendants/Third-Party Plaintiffs-Appellees.

and

VILLAGE AT GRAND TRAVERSE, LLC,

Intervening Defendant/Third-Party Defendant-Appellant,

and

MEIJER, INC.,

Intervening Defendant-Appellant.

UNPUBLISHED
September 20, 2007

No. 264109
Grand Traverse Circuit Court
LC No. 04-024346-AS

ACME TOWNSHIP and ACME TOWNSHIP BOARD OF TRUSTEES,

Plaintiffs-Appellees,

v

VILLAGE AT GRAND TRAVERSE, LLC, and MEIJER, INC.,

Defendants-Appellants.

No. 265753
Grand Traverse Circuit Court
LC No. 05-024483-CH

VILLAGE AT GRAND TRAVERSE, LLC, and MEIJER, INC.,

Plaintiffs-Appellants,

v

No. 265962
Grand Traverse Circuit Court
LC No. 04-024346-AS

ACME TOWNSHIP and ACME TOWNSHIP BOARD OF TRUSTEES,

Defendants-Appellees.

Before: Servitto, P.J., and Talbot and Schuette, JJ.

PER CURIAM.

These consolidated cases arise out of Acme Township Board of Trustee's issuance of a special use permit (SUP) to Village at Grand Traverse, LLC (VGT) and Meijer, Inc. In Docket No. 264109, VGT and Meijer appeal by leave granted the trial court's July 6, 2005 decision and order and final judgment vacating the SUP. In Docket Nos. 265753 and 265962, VGT and Meijer appeal as of right the July 6, 2005 order, which also dismissed their conflict of interest claims against Acme Township and the Acme Township Board of Trustees. We affirm in part, reverse in part, and remand this matter for further proceedings consistent with this opinion.

I. FACTS

Acme Township is a general law township located on the east side of Grand Traverse Bay. VGT owned approximately 182 acres in Acme Township at the corner of M-72 and Lautner Road (the Property), and it desired to develop the Property as a town center for Acme Township that resembled the Eastwood Towne Center in Lansing with a Meijer store as its anchor. The Property was located in an area zoned as R-3 or low-to-medium density residential.

The Acme Township zoning ordinance provides two exceptions to the residential use restrictions. The board first granted VGT a conceptual SUP under section 8.26, the "town center" exception, on December 22, 2003. But that SUP was overturned by Grand Traverse Circuit Judge Thomas G. Power. *CCAT v Acme Twp et al & Village at Grand Traverse, LLC*, Grand Traverse County Circuit Court Case No. 03-023264-CH. This Court denied VGT's application for leave to appeal, *Concerned Citizens of Acme Twp v Acme Twp*, unpublished order of the Court of Appeals, issued October 15, 2004 (Docket No. 256403), as did our Supreme Court. *Concerned Citizens of Acme Twp v Acme Twp*, 474 Mich 874; 704 NW2d 75 (2005).

On May 3, 2004, VGT applied for a SUP under the "mixed-use planned development" exception in section 8.22.3 of the township ordinance. That section provides:

> In acting upon an application for a Mixed Use Planned Development, the Township Board may alter and establish lot size limits, required facilities, buffers,

> open space areas, density limits, setback requirements, height limits, building size limits, off street parking regulations, landscaping rules, miscellaneous regulations and density and intensity limits where such regulations or changes are consistent with the intent of this section and the standards set forth herein.
>
> The Township Board may also authorize principal and other uses not permitted in the district where the land is located, provided that such are consistent with the intent of this section, the standards set forth herein. Dimensional and parking use restriction of the underlying zoning shall not apply to the area within an approved Mixed Use Planned Development unless expressly retained in the permit.

The township ordinance provides for a two-step review process. First, "[a] Mixed-Use Planned Development application shall be submitted to the Planning Commission and Township Board for review and approval following the procedures set forth in Sections 8.1.2(3) and (4)." Sections 8.1.2(3) and (4) require that the planning commission review the application, hold a public hearing, and forward its findings and recommendations to the board, who then makes the final decision as to whether to issue the SUP. Second, after the SUP is issued, "the developer shall request site plan approval for all or any portion of the proposed development prior to the issuance of a Land Use Permit for any construction."

The first planning commission meeting to review the application was held on June 7, 2004. Subsequent meetings were held to consider the matter, and the SUP was eventually approved at the August 16, 2004 meeting by a vote of five to two. The two dissenters believed that the commission needed more time to deliberate, given the fact that they did not have the traffic, environmental, or the market studies available to consider in making their decision, and they also expressed concern over upholding the master plan. The majority noted that those studies could be submitted later and that the board could consider them at that time.

The board held seven hearings and meetings regarding the SUP, and it was eventually issued on October 29, 2004. The SUP specified that that the development would consist of "retail uses (approximately 775,000 square feet); an area for civic uses to be developed by others (approximately 40,000 square feet); mixed use (approximately 228 units, and 225,000 square feet); a hotel use (approximately 250 units, and 225,000 square feet); and other residential uses of various kinds . . . ."

The Concerned Citizens of Acme Township (CCAT) filed a complaint and claim of appeal on October 20, 2004, which was amended on November 10, 2004, that sought to overturn the board's decision to issue the SUP. The township filed an answer on November 16, 2004. A new board had been elected and sworn in, and on November 24, 2004, the township filed an answer and a third-party complaint against VGT, challenging the prior board's issuance of the SUP. On December 7, 2004, VGT and Meijer intervened by stipulation and filed an answer and a counterclaim against the township on December 29, 2004, alleging that the new board was delaying and interfering in the VGT project, and seeking declaratory, injunctive, and other relief. VGT and Meijer also alleged that members of the new board had a conflict of interest because they were members of CCAT, and they filed a petition for superintending control and a third-party complaint against members of the board individually.

On December 20, 2004, VGT and Meijer filed a motion for summary disposition under MCR 2.116(C)(5), arguing that CCAT lacked standing to challenge the board's issuance of the SUP, and this motion was denied on March 28, 2005. On July 6, 2005, the trial court vacated the SUP because it concluded that the proposed development was in reality a regional shopping mall, rather than a village like Suttons Bay or Elk Rapids, so it was inconsistent with the township's master plan. The trial court also found that the SUP violated the township ordinance because it took away all meaningful review by the board of traffic, environmental, and market studies. Finally, the trial court dismissed the conflict of interest claims as moot. VGT and Meijer now appeal those decisions.

II. STANDING

VGT and Meijer first argue that the trial court erred in determining that CCAT had standing to challenge the issuance of the SUP. We disagree.

A. Standard of Review

"'Whether a party has legal standing to assert a claim [is] a question of law that we review de novo.'" *Michigan Ed Ass'n v Superintendent of Pub Instruction*, 272 Mich App 1, 4; 724 NW2d 478 (2006), quoting *Heltzel v Heltzel*, 248 Mich App 1, 28; 638 NW2d 123 (2001) (alteration by *Michigan Ed Ass'n* Court). Likewise, a trial court's decision regarding summary disposition under MCR 2.116(C)(5) for lack of legal capacity to sue is reviewed de novo. *Rohde v Ann Arbor Pub Schools*, 265 Mich App 702; 705; 698 NW2d 402 (2005), lv gtd 477 Mich 924 (2006).

B. Analysis

As an initial matter, CCAT argues that because the issue of its standing to challenge VGT and Meijer's development plans was already litigated in *CCAT v Acme Twp et al & Village at Grand Traverse, LLC*, Grand Traverse County Circuit Court Case No. 03-023264-CH, and that trial court implicitly determined that CCAT had standing, VGT and Meijer are collaterally estopped from raising the issue of standing on appeal. Conversely, VGT and Meijer argue that they are not collaterally estopped from challenging CCAT's standing because CCAT did not raise the collateral estoppel argument below, so it has failed to preserve the issue for appeal; further, the standing issue in this case is not the same as the one raised in the previous litigation. We agree with Meijer and VGT. Collateral estoppel is an affirmative defense, which is waived if not set forth in its first responsive pleading. *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 8; 614 NW2d 169 (2000), citing MCR 2.111(F).

Turning now to the merits of VGT and Meijer's standing argument, they argue that the trial court erred in concluding that CCAT had standing to challenge the board's issuance of the SUP. We disagree.

Our Supreme Court has adopted a three-part test to determine whether a party has standing. *Lee v Macomb Co Bd of Comm'rs*, 464 Mich 726, 739; 629 NW2d 900 (2001); see also *Michigan Citizens for Water Conservation v Nestle Water North America, Inc*., 479 Mich ___ ; ___ NW2d ___ (Docket Nos. 130802, 130803, decided July 25, 2007) slip op at 13-14 (reaffirming adoption and use of the three-part test for standing). The first part of the test

requires that the plaintiff "'have suffered an "injury in fact"—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or 'hypothetical.'"'" *Lee*, *supra* at 739, quoting *Lujan v Defenders of Wildlife*, 504 US 555, 112 S Ct 2130, 119 L Ed 2d 351 (1992). "'Second, there must be a causal connection between the injury and the conduct complained of . . . .'" *Id*. In other words, "'the injury has to be "fairly . . . traceable to the challenged action of the defendant, and not . . . the result [of] the independent action of some third party not before the court."'" *Id*. Finally, the injury complained of must be redressable by a favorable decision. *Id*.

In *Nat'l Wildlife Federation v Cleveland Cliffs Iron Co*, 471 Mich 608, 630-632; 684 NW2d 800 (2004), our Supreme Court held that the plaintiffs had standing to challenge the expansion of mining activities where some of its members submitted affidavits that "they bird-watched, canoed, bicycled, hiked, skied, fished, and farmed in the area" along with affidavits by an expert that the mining expansion would threaten the activities enjoyed by members of the plaintiff because of its negative environmental impact. Our Supreme Court agreed with the principle stated by the United States Supreme Court that "'environmental plaintiffs adequately allege injury in fact when they aver that they use the affected area and are persons "for whom the aesthetic and recreational values of the area will be lessened" by the challenged activity.'" *Id*. at 629, quoting *Friends of the Earth, Inc v Laidlaw Environmental Services* (*TOC*)*, Inc*, 528 US 167, 183; 120 S Ct 693; 145 L Ed 2d 610 (2000), quoting *Sierra Club v Morton*, 405 US 727; 92 S Ct 1361; 31 L Ed 2d 636 (1972). However, our Supreme Court then narrowed this broad view of standing, stating that "a plaintiff must include in the pleadings 'general factual allegations' that injury will result from the defendant's conduct." *Id*. at 631. On a motion for summary disposition, the plaintiff's allegations must be supported with documentation to "sufficiently support his claim, including allegations of injury, to meet his burden of proof." *Id*.[1]

In this case, CCAT has submitted the affidavits of two of its members that generally claim they will be harmed by the environmental impact caused by the proposed development. The affidavit of Tom Gokey reflects that he is concerned that the runoff problems caused by the development will cause environmental damage to Acme Creek and to his property. Another member of CCAT submitted an affidavit that stated he used Acme Creek and the surrounding area for recreation activities, including "trout fishing, hiking, snowshoeing, and wildlife viewing." Mr. Garvey also stated that he is concerned about the environmental impact that the development will have on the area and stated that he would discontinue these activities if the development went forward. The preliminary environmental assessment cited a finding by the Michigan Department of Natural Resources that the "[p]hysical habitat conditions were being adversely impacted by sedimentation from nonpoint sources such as subdivision development and streambank instability problems in the Village of Acme." The assessment then expressed

[1] The requirement of documentation to support the claims made in the affidavits by the members of CCAT represents the more narrow view of standing reflected in the dissenting opinion by Justices Scalia and Thomas in *Laidlaw*. Our Supreme Court quite clearly supports this narrow view. *Nat'l Wildlife*, *supra* at 631 n 20.

concern "that the large scales and widespread paving and grading of the site as proposed will irreparably alter the site hydrology and likely result in water quality impacts on Acme Creek."

According to *Nat'l Wildlife*, CCAT has carried its burden in establishing that it has standing. First, the two affidavits establish an injury in fact by alleging that their property, aesthetic, and recreation activities will be harmed by the activities of VGT and Meijer, and this assertion is supported by expert documentation. Second, it cannot be reasonably disputed that the development will be the cause of their environmental concerns. Finally, a favorable decision for CCAT will help preserve the environmental integrity of Acme Creek for the foreseeable future, and, therefore, the redressability requirement is satisfied. Accordingly, the trial court did not err in concluding that CCAT had standing to challenge the SUP, and we affirm that portion of the trial court's decision.

III. ISSUANCE OF THE SUP

Next, VGT and Meijer argue that the trial court erred in vacating the SUP because the SUP is not inconsistent with the township's amended master plan or the zoning ordinance. We agree.

A. Standard of Review

"This Court reviews a lower court's review of an agency decision to determine 'whether the lower court applied correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test to the agency's factual findings.'" *Dignan v Michigan Pub School Employees Retirement Bd*, 253 Mich App 571, 575; 659 NW2d 629 (2002), quoting *Boyd v Civil Service Comm*, 220 Mich App 226, 234; 559 NW2d 342 (1996).

B. Analysis

The township's zoning ordinance lacks a provision for appeal to the township zoning board of appeals. Therefore, the statutorily prescribed provisions for judicial appeal in MCL 125.293a do not apply, and the board's decision is a final administrative decision subject to review by the trial court under Const 1963, art 6, § 28. *Carleton Sportsman's Club v Exeter Twp Bd of Trustees*, 217 Mich App 195, 200-201; 550 NW2d 867 (1996). Const 1963, art 6, § 28 provides, in pertinent part, as follows:

> All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record.

Accordingly, the circuit court's review of the administrative agency's decision was "limited to determining whether the decision was contrary to law, was supported by competent, material, and substantial evidence on the whole record, was arbitrary and capricious, was clearly an abuse

of discretion, or was otherwise affected by substantial and material error of law." *Dignan*, *supra* at 576. "Substantial evidence is any evidence that reasonable minds would accept as adequate to support the decision. "'It is more than a mere scintilla of evidence but may be less than a preponderance of the evidence.'" *Jackson-Rabon v State Employees Retirement Sys*, 266 Mich App, 118, 120; 698 NW2d 157 (2005) (citations omitted). If the evidence is sufficient to support the agency's decision, the circuit court may not substitute its judgment for that of the agency, even if the court may have reached a different result. *Black v Dep't of Social Services*, 195 Mich App 27, 30; 489 NW2d 493 (1992).

The trial court vacated the SUP, concluding, in pertinent part, as follows:

> For reasons that do not appear within the certified record, the predecessor Township Board provided conceptual approval to the Village's SUP without amending its Master Plan and for a project the scale of which is grossly inconsistent with its Master Plan. No competent, material and substantial evidence has been presented to this Court that would support the notion the this project bears any reasonable relationship to that "charming main street" envisioned within the Master Plan. The Township may approve a regional shopping center but such an approval will require an amendment to the Master Plan.
>
> Having provided conceptual SUP approval, the prior Township Board then stripped itself of meaningful site plan review and eliminated any meaningful control over the scale of this project with regard to traffic issues, environmental impact and potential adverse market conditions. Such approval is inconsistent with the two-step review process described within the Township Zoning Ordinance. The Township Board may not abdicate its authority under its own Zoning Ordinance without properly amending the Ordinance. Ordinance amendments are subject to referendum, a right which does not exists with regard to administrative determinations.
>
> Here, the Township not only implicitly rewrote its Ordinance to provide a qualitatively different type of site plan review than is otherwise required, it did so with respect to such key issues as traffic, the environment and a market study for a project that will obviously have regional economic consequences. It is startling to learn that a rural township government rejected by its own citizens would approve a commercial project the scale of which dwarfs even the most intense commercial development presently within Grand Traverse County and do so in the absence of meaningful traffic, environmental and market studies. The notion that a township board could exercise its discretion so cavalierly and so irrevocably change the nature of the township and the county shocks the conscious [sic].
>
> Significant commercial development has occurred in Grand Traverse County. Such development has proceeded in the face of referenda, litigation and political change. Despite such hurdles, these developments have been constructed and appear to be commercially viable. There is no reason in the law or in this record to allow Acme Township's prior Board to so irresponsibly deviate from the

> reasonable procedures and standards created by township government and endorsed by state statute as preconditions to a meaningful change in land use. The Court finds that in approving the conceptual SUP, the prior Township Board attempted by administrative permit to create approval for a project without meaningful site plan review. The attempt to do so violates the Township's own Ordinance and renders the Special Use Permit invalid.
>
> Accordingly, the Court hereby vacates the Special Use Permit and returns this matter to the Acme Township Planning Commission for a determination regarding a resubmitted project that can rationally be shown to bear some reasonable relationship to the Township's Master Plan. Alternatively, the Township may wish to amend its Master Plan in a fashion consistent with the scale of this project. In either event, a conceptual Special Use Permit may not obviate the requirement for meaningful review of all aspects of the project described within the Zoning Ordinance and which are obligations of the Township as the body responsible for determining land use.

VGT and Meijer first argue that the trial court erred in concluding that the SUP was grossly inconsistent with the township's master plan. Specifically, they contend that the trial court erred in substituting its judgment for that of the board. We agree.

The amended master plan[2] envisioned a town center for Acme Township with three key characteristics: street network, core area, and neighborhoods. The Plan contemplated streets in the town center that would be interconnected and narrow, with small lots and buildings on them, and a core area "that feels and functions like a Main Street," citing Elk Rapids and Traverse City as examples. The following was noted in the proposed town center conceptual plan portion of the plan:

> A key issue in this conceptual plan is the relationship between the Meijer store and the rest of the town center. While superstores like WalMart have killed off many traditional downtowns, they have usually been located outside of the downtowns, pulling traffic and shoppers away from the town center. If a superstore is designed into a downtown, within a short walking distance of an easily accessible Main Street, it can help bring customers into the downtown. Such a store performs the critical function of retail anchor for the town center.
>
> The businesses that would locate in the core area shown in this plan would be those that do not directly compete with Meijer, such as higher-end specialty shops, antique and used merchandise stores, bicycle shops, restaurants, coffee and ice cream shops, personal service establishments such as cleaners and

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[2] The master plan was amended in 2001 to incorporate the Acme Town Center Report. The purpose of the amendment was to "formulate a plan . . . to create a new town center for Acme Township."

> hairdressers, art galleries, inns and hotels, video stores, movie theaters, and other types of entertainment venues. Civic buildings, such as the Township Hall, library and post office, would also attract people into the core area. There would be a synergy between Meijer and these commercial and civic places. Where else in the region could one walk from a store like Meijer directly into a place like downtown Traverse City or Elk Rapids?

VGT and Meijer's plan consists of "retail uses (approximately 775,000 square feet); an area for civic uses to be developed by others (approximately 40,000 square feet); mixed use (approximately 228 units, and 225,000 square feet); a hotel use (approximately 250 units, and 225,000 square feet); and other residential uses of various kinds . . . ."

The trial court vacated the SUP, concluding that "no rational, thoughtful township official could possibly find that [VGT and Meijer's] proposal is consistent with a walkable community of quiet pleasant streets akin to the older neighborhoods of Traverse City or the Village of Elk Rapids or Suttons Bay." We respectfully disagree with the distinguished trial court judge.

While the SUP was not completely consistent with the amended master plan—it is much larger in scope and it is more of a mall with a "town center" feel than a traditional downtown area—we do not believe that the trial court's characterization as "grossly inconsistent" to support its finding that issuance of the SUP was not supported by competent, material, and substantial evidence was accurate. Indeed, the SUP incorporates features specifically noted in the amended master plan, which would not normally be found in a mall, such as civic buildings, parks, soccer fields, clock towers, four types of residential development, a neighborhood clubhouse, hotel, offices and a 23-acre nature preserve. Further, the board is the entity charged with the discretion to grant special use permits and the ordinance states that the purpose of mixed-use plan development is to permit "flexibility in the regulation of land development and to encourage innovation and variety in Land use and design of projects. . . . ." Finally, the trial court's assessment of gross inconsistency between the SUP and the amended master plan appears to be contradicted by the fact that at least five of the board members who were involved in the approval of the SUP were also involved in the amendment to the master plan.

Therefore, given the deference that the trial court was required to give the board as the body charged with making land-use decisions, we conclude that the trial court erred in finding that the board's issuance of the SUP was not supported by competent, material, and substantial evidence because it was grossly inconsistent with the amended master plan.

The trial court also erred in concluding that the SUP violated the township's applicable zoning ordinance.

The trial court conceded in its decision and order and final judgment that under Section 8.22.5 of the ordinance, a special use permit can be granted without the submission of economic, environmental, or traffic data, as long as "the site plan review process is meaningful and the township retains the authority to approve, modify or reject the project based upon the reasonable implementation of those requirements and standards described in the Rural Township Zoning Act. MCL 125.286c." However, it went on to vacate the SUP because it concluded that the SUP

violates the ordinance because it does not provide for "a meaningful site review process." The trial court voiced the following concerns with the SUP as granted:

> [T]he SUP as granted strips the Township of meaningful site review and serves merely as a cost allocation device to lessen the traffic impacts of the project that is approved in all other respects. . . . Traffic, environmental and market studies have been reduced to mere formalities that do not provide the Township authority to rationally and reasonably modify or disapprove the project.
>
> * * *
>
> The SUP approved by the Township removes the provision recommended by the Planning Commission that would make a traffic study a factor in the overall approval process. Instead, this consideration of traffic has been reduced to a determination of monetary contributions for infrastructure improvements.
>
> Similarly, the environmental impact is not a factor in approval. . . .
>
> * * *
>
> [N]othing contained within the SUP as presently issued would provide the Township with the authority to modify or disapprove the project based upon a rational and reasonable assessment of adverse market impact.

However, while the board did make significant revisions to the planning commission's proposed SUP, it is charged with the authority to do so. And we conclude that the final version of the SUP does include "meaningful site review process" because, in addition to specific provisions addressing traffic, the environment, and the market studies, the SUP specifically states that VGT and Meijer are bound, at every phase of the development, by the site approval process set forth in Section 8.22.6 of the ordinance, which provides as follows:

> Upon request for site plan approval of all or a portion of a Mixed Use Planned Development, the applicant shall provide the following information:
>
> (1) Descriptive site and elevation plans in accord with Section 8.1.2(2) b & c and showing the type, character and proposed use of land and structures within the area of the Mixed Use Planned Development including square feet per unit, floor area for each use type, height of all structures, whether for rent or sale and any other information as required to describe the character of the proposed use or activity.
>
> (2) A plan identifying the location and type of individual trees of 10 inch diameter one foot off ground or larger, clusters and types of smaller vegetation clusters and types of smaller vegetation.
>
> (3) A description of all exterior building materials.
>
> (4) Population profile for the development.

(5) Proposed financing.

(6) Impact of development on local streets, natural features, schools and utilities.

(7) Market and economic feasibility.

(8) Such other information pertinent to the development or use.

Failure of the applicant to provide such requested information in a timely manner may be grounds for denial of the application.

Further, although there is no specific language providing for immediate recourse in the traffic, environmental, and market study provisions, VGT and Meijer conceded at oral argument that they are bound by the process set forth above for every site plan application at each phase of the project. Therefore, if the board is not satisfied with the results of the traffic, environmental, or market studies, it has recourse—it can deny site plan approval. We repeat, the board does have the ability to deny site plan approval if traffic, environmental, or market studies present obstacles to the township's objectives as set forth in the master plan.

Accordingly, we conclude that the trial court erred in vacating the SUP. Therefore, we reverse the trial court's decision and remand this case for reinstatement of the SUP.

IV. CONFLICT OF INTEREST

Finally, VGT and Meijer argue that the trial court erred in concluding that their conflict of interest claims were moot and in addressing the merits of those claims on reconsideration, when the substance of those claims had never been brought before the trial court before reconsideration.

A. Standard of Review

This Court reviews a trial court's decision regarding denial of a motion for reconsideration for an abuse of discretion. *Ensink v Mecosta Co Gen Hospital*, 262 Mich App 518, 540; 687 NW2d 143 (2004), citing *Herald Co, Inc v Tax Tribunal*, 258 Mich App 78, 82; 669 NW2d 862 (2003).

B. Analysis

In its decision and order and final judgment, after vacating the SUP, the trial court concluded that "the remaining issues contained within this litigation [including the conflict of interest claims] are rendered moot." On reconsideration, it reaffirmed its decision, stating:

> The Township's decision to issue a SUP for the construction of the Village and Meijer project was the subject of the appeal. The Court has overturned that decision for the reasons stated in its July 6, 2005 Decision and Order and Final Judgment. Any effect that any alleged conflict of interest might have had upon the issuance of that permit or tabling the application for site plan approval was

> rendered moot by that decision. Recusal of the present Township Board is not properly before the Court as no Village or Meijer application is before this Court.
>
> * * *
>
> [The Township Board has] not yet had the opportunity to make any official decision with respect to a revised Village Project or a proposed Meijer Lautner Commons Project. Therefore, allegations of conflicts of interest are speculative and not yet ripe for review.

Therefore, because we have concluded that the trial court erred in vacating the SUP, and its decision regarding VGT and Meijer's conflict of interest claims was based on that erroneous vacation, we remand this issue to the trial court for reconsideration in light of reinstatement of the SUP.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Deborah A. Servitto
/s/ Michael J. Talbot
/s/ Bill Schuette