



ACME TOWNSHIP REGULAR BOARD MEETING
ACME TOWNSHIP HALL
6042 Acme Road, Williamsburg MI 49690
Tuesday, March 2, 2010 6:30 P.M.

MEETING CALLED TO ORDER AT 6:31 P.M.

Members present: D. Dunville, R. Hardin, W. Kladder, P. Scott, E. Takayama, L. Wikle, F. Zarafonitis
Members excused: None
Staff present: S. Vreeland, Township Manager and Recording Secretary
J. Hull, Zoning Administrator
J. Jocks, Legal Counsel

- A. STUDY SESSION: Regional Solid Waste Study Update – County Resource Recovery Manager Bob Osterhout and Kim Elliott:** Osterhout and Elliot provided a PowerPoint presentation regarding the recent study performed for the County, City of Traverse City and 6 townships regarding our solid waste management system. Trash and recycling services were analyzed and several recommendations offered to the project steering committee.

An existing intergovernmental agreement will expire on 12/31/10, but will automatically renew for 5 years unless participant(s) opt out. Local residents pay an average of \$18/month for subscription-based trash service. This is the most expensive way to obtain services, and estimated savings across the study participating governments if a centralized contracting system is implemented is \$2 million/year total. The savings in Acme Township were estimated at \$156,000/year. They recommend that contracts with haulers should last at least 5 years. Costs are lowered in: larger service districts, more densely populated areas, centralized billing and mandatory participation. This would also also reduce the number of trucks on the road and the associated roadway wear and tear.

Confirmation should be obtained as to whether the Board of Public Works can set up districts and bid out curbside trash pickup and recycling if local communities would like to participate. GBB recommended that the question of funding mechanism be addressed by late spring 2010 and that BPW participant governments seek to have consolidated services start no later than January 1, 2011.

Takayama stated awareness that some municipalities place the cost of providing solid waste services on property tax bills. There was discussion that if done properly this would make the cost of trash service part of property taxes that are deductible on income tax returns. If this were done, every property in the township would be compelled to accept the trash service offered by the township.

Kladder asked how commercial properties and things like condominiums and apartment buildings would be handled under a township or regionally-run program. This needs to be researched further.

Savings to haulers can also be substantial, particularly if the billing is handled by the municipalities. Osterhout reported that billing and collections can be up to 15% of a waste hauler's costs.

Rachelle Babcock, Bartlett Road, wondered about the recycling drop-off points and whether a waste authority or other centralized bidding process could provide cost benefits for those as well. There was general discussion that having curbside recycling is more cost effective than centralized recycling, particularly as the centralized sites may be collecting recyclables from non-county residents who are passing through. Ms. Babcock also stated that she has heard a rumor from friends in the environmental community that many of the recyclables collected are not being recycled, but rather are being taken to a landfill. Osterhout tends to doubt this. Zarafonitis observed that American Waste has a facility where they take and sort all recyclables for further processing.

Next steps on this issue involve making some key decisions about whether it would be best to remain

with individual subscription service, neighborhood-negotiated service, unit of government programs or a regional waste authority; whether pickups should be weekly or bi-weekly; whether service billings should remain to individuals or should be handled centrally; and whether monthly large item and/or yard waste pickup should be part of the service offered. Kladder asked how a centralized program would affect the programs already offered such as electronics recycling. Osterhout replied that those programs are funded by the landfill surcharge, which is an undependable source of income. If all the basic and special trash and recycling services provided could be encompassed in one comprehensive operation and funding program, he believes this would be ideal.

Hardin noted the name of the existing department: Resource Recovery, and asked if we are evaluating or have a way to evaluate how much of what is collected is indeed a resource of the type that perhaps we could be selling rather than paying to have collected and reused. Who is receiving benefit, and of what type?

Elliott thanked the township for consistently having Resource Recovery information available to the public at our office and through our newsletter. The first hazardous waste pickup of the season will be coming along in April.

A brief recess was declared by the Chair from 7:09 to 7:11 p.m.

PLEDGE OF ALLEGIANCE

- B. LIMITED PUBLIC COMMENT:** None
- C. APPROVAL OF AGENDA:** Motion by Takayama, support by Zarafonitis to approve the agenda as amended to remove the public hearing regarding the proposed MichCon Gas Franchise Ordinance. 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 01-31-10
- 2. Clerk's Report as of 02-23-10
- 3. Draft Unapproved Meeting Minutes:
 - a. 01-25-10 Planning Commission
 - b. 01-15-10 and 02-05-10 Heritage Advisory
- 4. Parks and Maintenance Report – Tom Henkel
- 5. Zoning Administrator's Report – John Hull
- 6. Metro Emergency Services Newsletter
- 7. Metro Emergency Services 2009 Annual Report
- 8. Status Update – VGT-Phase I SUP Application #2009-01P

ACTION – Consider approval:

- 9. Township Board meeting minutes of 02-02-10
- 10. Accounts Payable of \$151,538.13 through 02/23/10 (recommend approval: Dunville)
- 11. Submission of Michigan DNRE Waterways Grant Application for marina feasibility study

Motion carried by unanimous roll call vote.

- F. SPECIAL PRESENTATIONS:** None
- G. REPORTS:**

1. **Sheriff's Deputy – Mike Matteucci:** During February there were 35 citations, one injury accident, two drunk driving arrests, and a total of 238 calls for service. An accident Takayama asked about last month was a car/deer accident near the Bunker Hill/Bartlett intersection. Vreeland summarized a recent letter of concern from Bunker Hill area residents regarding this intersection and an e-mail received earlier today with some information from the Road Commission. Deputy Matteucci had noticed that the placement of some speed limit signs near the intersection might be incorrect, creating a situation where for a short stretch one lane would be 55 mph and one lane 45 mph. The Road Commission has confirmed that the sign to indicate the drop in speed to 45 mph that is currently just east west of Bartlett Road should be east of the road and will be relocated. They will also place a bright yellow “t” intersection sign on westbound Bunker Hill east of Bartlett. The crash data obtained for the intersection shows that there have only been 2 reported accidents there in 5 years, both involving deer. There is a general feeling that there are many more situations that have been unreported and/or unrecorded. The Road Commission engineers will report to the township on what would be required to improve sight distance for the intersection by about 30’ to proper levels, but the cost in both dollars and land needed could be problematic. Hardin stated that it also seems dangerous to pull out onto Bunker Hill from Country View Road. The question of how crashes are defined as related to a specific intersection came up – how close to the intersection must a crash occur to be included? Should “deer crossing” signs be replaced on Bunker Hill Road?

2. **County Commissioner's Report – Larry Inman:** On March 22 at Twin Lakes Camp from noon-3:00 p.m. there will be a County/Municipality/Public Works/Resource Recovery meeting about the solid waste issue and the future of the Department of Public Works. At the recent Commission meeting County Treasurer Rokos reported that there is \$8 million in a County Fund for the purpose of making townships and other taxing authorities whole for delinquent taxes. For the first time in over a decade the County will need to bond for an estimated additional \$6 million for this purpose – a sign of the difficult financial times. County Planning Director John Sych is preparing a project prioritization list that Inman hopes to share with the township next month. County Administrator Aloia is discussing potential new budgeting techniques, such as “budget by priorities” and “budget by outcomes” that the County could employ. There is supporting software and advice about public input techniques. Community values would be determined to rank various governmental programs so if cuts need to be made, the lowest valued programs would be cut first. These programs also include methods to evaluate the effectiveness of governmental programs. So far the Commission is enthusiastic about the process and will be learning more at their next meeting. The Commission on Aging is requesting a half-mill renewal in August and the Road Commission is requesting 1 mill for 5 years in November. The millage would be collected by the County and given to the Road Commission to implement road repairs. How money would be redistributed throughout the County is a key question; it would largely be based on PASER road condition evaluation, but there is concern about how much of the money generated in each governmental unit would be used for road within their boundaries. Public information should be forthcoming within the next few months. It has not been decided yet if the County will assume full responsibility for the Senior Center from the City.

H. CORRESPONDENCE: None

I. PUBLIC HEARINGS:

1. **Consider approval of Zoning Ordinance Amendment 005 – Personal Wireless Services Ordinance:** Hull stated that the township has a stand-alone ordinance for cell towers that was adopted through the same process as other zoning ordinances but was not compiled with them. The Planning Commission reviewed the ordinance for clarity and correct cross-references, addressed inserting its provisions into the Zoning Ordinance as a section, and other than that is largely unchanged in its requirements. The Planning Commission held a public hearing and recommended adoption to the Board several months ago, but presentation to the Board was delayed pending work on the proposed Wind Energy Generation Systems

section of the ordinance to ensure consistency as appropriate since both address tall structures.

Zarafonitis asked whether in the current ordinance cell towers are allowed in any zoning district as they would be in the proposed ordinance. Hull replied that the Planning Commission found there to be no reasonable way to assess where towers would or would not be needed, as this is based on customer demand patterns and the pattern of the tower network to which a new tower is being added. The ability to protect scenic viewsheds remains in the text, although there was extensive discussion and disagreement about how to define viewsheds. There are some clearly described “protected viewsheds” in the Master Plan, but the Commission was concerned about whether these are still valid or how far into infinity they extend. The ability to protect viewsheds in the new ordinance is more generally defined.

Kladder asked Jocks about the language in the draft that a proposed tower provider “may” be required to provide a letter describing their intentions for leasing space on the tower to other service providers to co-locate rather than that they “shall” provide such a letter, and asked if there is a valid reason why applicants should be compelled to provide this information. Hardin and Jocks noted that there is a firm requirement in the ordinance that the proposed tower provider must send notice to other tower users in the township that they plan to build a tower and will have space available for co-location, and that other language in the ordinance prohibits tower owners from outright denying co-location opportunities. If there is no space available on the tower this notification may not make sense. Kladder also asked whether the towers subject to this ordinance could carry antennae for services other than cell phones, such as wireless broadband Internet service. Hull replied that this is why the ordinance name is unwieldy and refers to “personal wireless services” rather than “cell phone services.”

Public Hearing opened at 7:44 p.m.

Tim Maylone, who is in the wireless business, asked if the ordinance takes into account the federal law overrides of local ordinances regarding personal wireless services (“OTARD” Over the Air Radio Distribution). Services that fall under this federal legislation are not subject to local zoning provisions.

Public Hearing closed at 7:45 p.m.

Hull stated that the township’s legal counsel did review this ordinance thoroughly for compliance with state and federal laws as part of the key purpose of the “content neutral” zoning ordinance redrafting. Jocks was not the primary reviewer of this ordinance amendment; the primary counsel on this project was Mike Grant. Jocks did work on the application for the cell tower at the Holiday Inn for some of these issues, and he has reviewed this ordinance for compliance with federal law. He is confident that there should be no concerns with federal law conflicts with this ordinance.

Wikle has worked in the communications industry, and knows of no reason why the township should be informed every time a service provider locates on or leaves a certain tower. Jocks interprets the requirement to support the township desire to promote co-location. If a new applicant comes in and wants to build a new tower, it might perhaps be easier for the township to determine whether the provider’s needs can be served just as well by co-location on an existing tower. The township is entitled to require co-location unless an applicant can demonstrate that their needs will not be met that way.

Wikle noted the requirement to remove towers that are not providing active services. How can the township tell if a tower is “hot” or “cold?” Planning Commissioner Zollinger believes that the real question is not whether or not the tower is being used, but whether or not the company owning it is maintaining it properly and paying taxes on it.

Motion by Wikle, support by Dunville to adopt Zoning Ordinance Amendment 005, Personal Wireless Services Ordinance, as presented. Motion carried by unanimous roll call vote.

2. **Consider approval of Zoning Ordinance Amendment 006 – Wind Energy Generation Systems:** The township has received interest in personal wind energy generation and recognizes the potential for requests for commercial wind energy generation. Therefore the Planning Commission has worked on a proposed ordinance. We started with a model ordinance and attendant siting guidelines on the State website. Few changes were made to the model ordinance prior to a public hearing late last summer. At that hearing there was significant public concern that the ordinance was drafted in such a way that it would be effectively prohibitive, a pretense of wanting to promote wind energy generation. These concerns were taken seriously, so the Commission asked Hull to research the basis for various provisions of the model ordinance. His research revealed that some of the studies forming the basis were poorly constructed and executed. Further research into standards and ordinances worldwide resulted in recommended amendments to the draft. Many of the standards in the draft were consistent with the range of those in place worldwide. A second public hearing was held on the revised draft and generated none of the prior concern.

Zarafonitis noted the provision that shorter than 100% of tower height setback from property line if adjacent land is leased. Kladder asked if this land must remain leased throughout the life of the tower; it must. Kladder asked if the 55db noise level was for rural or urban areas for universal. Hull stated that he checked on OSHA and other standards for acceptable noise for human health and found context to be less important than daytime/nighttime.

Kladder asked if the ordinance adequately addresses wind turbines that might have the blades oriented horizontally rather than vertically. Hull believes the ordinance would address either well, and has read that the horizontal blade systems are not really efficient.

Kladder and Hull had a discussion about the concern for the flicker of shadows from the turbine blades as they rotate. A key concern is whether it can trigger epileptic seizures; Hull's research reports that the flicker is not fast enough from a wind turbine to trigger photosensitive epileptic seizures. Car turn signals flicker faster than most wind turbines. General human welfare/annoyance is a valid concern that the Commission recognized by requiring "measures to prevent and mitigate shadow flicker" when designing a utility-grid scale wind energy generation system. Applicants will have to explain the potential effect on residents as deemed appropriate by the Commission.

Wind generation towers are required to be secured from unauthorized entry/climbing, but are not necessarily required to be fenced around as are personal wireless services towers.

Public Hearing opened and closed at 8:15 p.m., there being no public comment.

Motion by Dunville, support by Zarafonitis to adopt Zoning Ordinance Amendment 006 as presented. Motion carried by unanimous roll call vote.

3. ~~Consider adoption of Michigan Consolidated Gas Company Gas Franchise Ordinance #2010-01~~
4. **Consider adoption of amendment to Sewer Ordinance #75-2 as previously amended:** Vreeland and Jocks discovered that an effective date was not included in the resolution adopted at a previous meeting to change Orchard Shores sanitary system users rates. They then also found that while they had thought that a 2007 amendment to the sewer ordinance allowed rates for both the regional sewer system and localized stand-alone systems to be set by resolution, it actually only allowed regional sewer system rates to be set by resolution. The proposed sewer ordinance amendment fixes this problem. If adopted, the township will then

be able to re-adopt the resolution setting new Orchard Shores system user rates by resolution once the amendment takes effect 30 days after publication.

Public Hearing opened and closed at 8:20 p.m., there being no public comment.

Motion by Takayama, support by Scott to adopt Resolution #R-2010-04 amending Sewer Ordinance #75-2 as presented. Motion carried by unanimous roll call.

J. OLD BUSINESS:

1. Discuss **renewal of non-developmental Oil & Gas Lease on YCNA:** Several months ago the Board asked the staff to see if any oil and gas exploration firms would like to bid competitively on the non-developmental lease for the Yuba Creek Natural Area. The existing lease is up for renewal. The firm we originally leased with, Evergreen, offered a lower initial leasing bonus but a higher ongoing royalty rate. OIL, a firm which also bid on the business originally, offers higher signing bonuses and lower ongoing royalty rates. Vreeland called OIL to solicit a bid several times but received no response. She asked Gordie LaPointe, a citizen who had helped his neighborhood association to lease with OIL to assist her, and his contact at OIL told him that their firm was not currently accepting new leases since natural gas prices have dropped. Vreeland recommends accepting the lease renewal agreement presented by Trendwell, the successor company to Evergreen since no competitive bids are available.

Motion by Dunville, support by Scott to approve the proposed 3-year extension of the existing non-developmental Oil & Gas Lease for the Yuba Creek Natural Area with Trendwell Energy as presented. Motion carried by unanimous roll call vote.

2. Selection of **Marina Feasibility Study consulting firm:** Six firms submitted bids in response to the RFQ/P issued by the township for assistance in preparing a marina feasibility study. The selection committee chose to interview four firms and found it to be an interesting and informative experience. Their recommendation is that the township should work with The Edgewater Group/Abonmarche, primarily because they focus exclusively on marine and marina work and brought the strongest level of financial analysis skills to the table. This is seen as the most critical issue for this phase of the project; if the numbers aren't favorable there is no need to continue with any further efforts. Hardin asked whether firms will be willing to be forthright about economic feasibility even if it cut the project short. The feedback Wikle received when she called references led her to feel that they would be very forthright in this regard.

Motion by Scott, support by Dunville to authorize the Marina Feasibility Study Selection Committee to meet with The Edgewater Group for purposes of developing a final contract for services in an amount not to exceed \$40,000, and that Supervisor Kladder be authorized to sign the final contract when funding is available. Motion carried by unanimous roll call vote.

K. NEW BUSINESS:

1. Approve assumption of **option to purchase Shoreside Inn** from GT Regional Land Conservancy: Matt McDonough from the Conservancy was present. One key usual provision is that the assignee reimburse the Conservancy for funds expended to obtain the option. In this case the Conservancy was not going to ask for this reimbursement at this time, however the Conservancy has some cash flow needs related to completion of Phase I. All of the money we are reimbursing to the Conservancy will end up expended on the Phase I purchases, but right now additional option payment funding is required.

Zarafonitis asked about fundraising status. Sufficient funding is in hand to complete the Shoreside Inn purchase during the month of March 2010, with approximately \$200,000 in additional funding required prior to June 30 to complete purchase of the remaining two Phase

I properties. Several grant requests are pending and individual fundraising is ongoing.

Pat Salathiel, Shoreline Preservation Advisory Co-Chair noted that summer community picnic on the Phase I property is being planned to welcome the community, celebrate Phase I completion and generate enthusiasm for Phase II.

Once the property is acquired we will have 90 days to convert the property for public use. We have discussed some flexibility in this deadline requirement with DNR Trust Fund, and while we haven't needed to formally request it willingness has been expressed. The Conservancy has identified a volunteer to help the township coordinate various people and entities such as Odoms or private purchasers for removal of structures. Some people will want portions of buildings, some may even purchase entire cottages to move for various purposes.

Motion by Zarafonitis, support by Scott that Acme Township accept assignment of the option to purchase the Shoreside Inn property from the Grand Traverse Regional Land Conservancy, that it reimburse the Conservancy \$75,000 in option payments applicable to closing made at the time of the original option signing, and that Supervisor Kladder, Clerk Dunville, Treasurer Wikle, Manager Vreeland and legal counsel be authorize to take any actions and sign all documents required to close on the purchase of the property on or before March 31, 2010. Motion carried by unanimous roll call vote.

McDonough stated that he works with many different municipalities on a variety of preservation projects, and they can be time consuming. In few townships has he found such a high level of help with the process and he looks forward to continued partnership on the project.

2. **Approve JP Morgan Chase anticipation loan to cover MDNR Trust Fund portion of Shoreline Acquisition Phase I property purchase prices pending reimbursement:** Wikle spoke to various banks about obtaining a grant anticipation loan, and believes that Chase offers the best option. Because the MDNR Trust Fund provides reimbursement of its share of property purchase costs after closing, the township needs a source of funding for closing and until reimbursement is received within a few weeks afterwards.

Motion by Zarafonitis, support by Scott the township authorize Supervisor Kladder and Treasurer Wikle to take all actions necessary to secure a grant anticipation loan in the amount of approximately \$1,012,500 to facilitate closing on the purchase of the Shoreside Inn property. Motion carried by unanimous roll call vote.

Takayama asked that we be certain that the loan documentation is handled with sufficient individuals involved that there are no control concerns from our audit firm.

3. **Discuss potential 2010 Gypsy Moth Spraying Program:** It has been several years since there has been a funded county-wide gypsy moth spraying program. The County Conservation District still funds surveys, and this year has found two blocks of land in Acme Township totaling about 50 acres that have significant gypsy moth nesting at a level that might be considered for spraying. There are some areas with similar concentrations in surrounding Whitewater and East Bay Townships, but those areas are not contiguous to the areas in Acme Township.

Both areas in our township are in heavily-populated Holiday Hills. If aerial spraying is done there are required public notifications, and individual landowners can opt out. If they opt out a buffer area around them must be left unsprayed as well. In an area this populated this can make aerial spraying problematic. Additionally, spraying is only good for one year and the decision to spray or not has no implications for future year infestation levels. There are a variety of natural predators and control measures that keep gypsy moths in check. Individual landowners can also undertake management measures. For all of these reasons, Lew Coulter

at the Conservation District does not recommend aerial spraying. Kladder concurs with the recommendation. The Conservation District will run some public education sessions that we can advertise to our residents through targeted mailing and the e-newsletter. The township did not budget for aerial spraying this year.

Motion by Zarafonitis, support by Takayama to not perform aerial gypsy moth spraying in 2010, but to assist with public education efforts. Motion carried unanimously.

4. **Discuss local broadband initiatives:** The federal government has grant funding available for expanding broadband Internet service in rural areas. Phase II of the grant program is coming up, with an application due date of March 22. Wikle and Kladder attended a meeting at Mill Creek School several weeks ago about ER-BAM, an Antrim County company which is applying for a grant for Antrim, Acme and Whitewater. Wikle has also been to 3 meetings of a Traverse City-based Broadband initiative.

Tim Maylone, General Manager of Cherry Capital Connections applied for grants for various areas through federal grant round 1. Many of these applications were rejected and they are re-strategizing for round 2. They began thinking less about promoting new brick-and-mortar businesses and more virtual businesses, people who can work from anywhere if they have sufficient bandwidth. This led to formation of ER-BAM. Their goal is to build infrastructure sufficient to serve every property in the Elk Rapids School District to promote new learning models. They have learned that emergency services, libraries and governments are all looking for broadband opportunities for various purposes. They are discussing a “middle mile” solution whereby many people cooperatively build centralized infrastructure that can be used by multiple providers to sell end-user services. They are talking about using high-powered microwave links to multi-frequency towers usable by a variety of providers, all extending service outwards from a centralized fiber optic cable. Their website is www.er-bam.net.

Today ER-BAM is seeking endorsement of their community initiative. They do not believe this would conflict with the Traverse Bay EDC initiative, which they believe is a “last mile” program. Mr. Maylone’s company is disappointed that they are not part of the Traverse City initiative. ER-BAM believes it can be serving at least 100 currently completely unserved homes by late spring.

Kladder asked who would own installed towers? Mr. Maylone’s company would have ownership through ER-BAM, with agreements in place that would commit the company to operating within the intent of the federal grant. He stated that they can install the towers, which are generally up to around 100’ tall and concealed where possible by buildings and trees, for around \$2,000 – less than the \$5,000 the township requires from tower applicants for RF studies.

The project would make Internet, telephone and TV content distribution to the extent permitted by the FCC available through the service. The TV would be provided through an on-demand basis, where you only get the channels you specifically want to purchase. Pressure needs to be applied to the FCC to move approval for this type of TV service delivery forward.

Wikle noted that about 300 parcels of land in the township are within the Elk Rapids School district. Mr. Maylone stated they hope to serve as much of Acme Township as possible, not necessarily just the areas within the school district.

Kladder asked how service rates would be set; this process would be managed through his company. Current negotiations are aimed at providing 10MB aggregate service at approximately \$20/month.

Jocks observed two spots in the proposed resolution where the word “Whitewater” needs to be changed to “Acme.”

Mr. Maylone is estimating that about 4 antenna sites would be needed per township. They are doing their best to co-locate where possible.

Motion by Scott, support by Dunville to adopt Resolution #R-2010-03 supporting development of economic strategy for adoption of high speed network.

Scott confirmed that adoption of this motion would not impair the township’s ability to also work with the Traverse City-based broadband initiative.

Motion carried unanimously.

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

Motion by Scott, support by Dunville to adjourn at 9:17 p.m.