

Approved 2/8/12

Casco Township Planning Commission
Regular Meeting of Wednesday, January 11, 2012, 7:00 p.m.

1. **Call to order and review of agenda:** Chair Bruce Barker called the Planning Commission to order at 7:05 pm. Present: Barker, Stroud, Liepe, Fleming, Campbell, Macyauski, Graff; Patrick Hudson (consultant), and Julie Cowie (Recording Secretary pro tem). Also, 5 persons were present (including Zoning Administrator Alfred Ellingsen). The Chair reviewed the agenda. Cowie requested that the 11/14/11 public hearing minutes be approved.
2. **Minutes:**
The Special Land Use Meeting minutes of December 5, 2011 (6:00 pm) were reviewed, with Fleming moving approval, supported by Stroud; MSC.
The December 5, 2011 Regular Meeting Minutes (at 7:30 pm) were reviewed, and Fleming moved approval with the following amendments: Reference to the wrong project was corrected, namely ~~Moran~~ JONNA; and insertion of a sentence, CHAIR BARKER ANNOUNCED THAT THE MORAN PROPERTY WOULD BE DISCUSSED IN JANUARY. Campbell supported the motion; MSC.

Chair Barker invited public comment. Brian Bosgraaf expressed interest in commenting on setbacks, Agenda item #7.

3. **Trustee Representative** Judy Graff reported that approximately \$800,000 has been kept in reserve as a "rainy day" fund from the County senior millage funds. The mandatory hookup process will produce approximately 150 hookups. All persons serving on committees were re-appointed. The Trustees still need to have a discussion about the bike trail. CMAQ and other grant opportunities were mentioned.
4. **Paul Macyauski, ZBA Representative**, announced that the ZBA will meet in February to address 3 applicants.
5. **Water/Sewer Representative Allan Overhiser**, who was present, announced the start of the process to establish a Special Assessment District for Lakeview in Miami Park.
6. **Election of Planning Commission officers:** Dian Liepe moved that officers remain as they are: Bruce Barker as Chair, Dan Fleming as Vice Chair, and Dian Liepe as Secretary; seconded by Campbell; MSC.

Chair Barker expressed appreciation to those gathered and excitement about what will likely be a busy year. Dian Liepe thanked Bruce Barker for his leadership.

7. **New Business:** Front Yard Setback question on Lake Michigan lots. Alfred Ellingsen spoke to this and reported on Township Attorney Ron Bultje's July 5, 2011 memo. The DEQ takes care of the setback from water's edge/bluffline, in all of Casco Township from Ben Stegman's house northward, because that area of the shoreline is the High Risk Erosion area. From Ben Stegman and south, our ordinance controls the setback, because it is not high risk erosion.

Currently, the Casco Ordinance does not allow for stairs to the beach because on lakefront lots, this area is considered a front yard, and stairs are considered a structure. Mr. Bultje's memo proposes solutions to this dilemma.

Discussion ensued. It was thought that the Casco Zoning Ordinance setbacks were established to retain views for properties near the Lake. Macyauski proposed that view is not a legally protected right for a non-lakefront-property owner. Graff wondered why this wasn't caught by an attorney review. Macyauski spoke to the numerous deep lots along the Lake, and the need to distinguish between a front yard and a "required front yard," to allow residents to build structures on their often very extensive "front yard."

In public comment, Brian Bosgraaf spoke. In May of 2011, he applied for a permit to renovate stairs of an existing stairway. This application was rejected based on a double asterisk section of the Zoning Ordinance. He felt it was inconsistent and unfair that someone can purchase property in a high risk erosion area and build stairs, yet someone in a non high risk erosion area cannot erect a stairway to the beach (nor any other structure). Bosgraaf has been waiting for a building permit since May to fix a stairway.

Dan Fleming wondered if it would make sense to go back to the original decision, and designate the area between the house and the road the "front yard." (Bultje's draft fixes this issue.) Bultje also changed Table 4.07, which addresses an extra setback for the area near Blue Star and 109th; the PC changed this to 50' from 100'. Per Ron Bultje's memo, the table is now adjusted to be clearer.

Brian Bosgraaf continued. In a letter he wrote dated November 9, 2011, Mr. Bosgraaf outlines the 4.07 schedule of regulations, calling attention to the footnote at the double asterisk. He believes the word "structures" is limiting. He proposes using the word "residences" instead. Further, in 5.03 under Ag, or residential, the double **, sometimes says "buildings and structures." He proposes using the word "residences" when that is meant.

He continued, regarding setbacks, a prudent investor looks for a non-erosion area—namely the area south of Lake Ridge Drive. If he would have to consider 5 houses on either side, the neighbors are in a high risk erosion, and have to abide by a different setback limit, negatively affecting his own setback. He feels that view is not a property right to be given to neighbors. Park Township has a view ordinance and it prompts a lot of lawsuits. He believes the 5 house setback to protect view is a "takings," and he encouraged the PC not to have a setback ordinance that establishes view rights for the purpose of view rights. Also, if and when houses are added in between existing houses, that affects the five house formula. The City of South Haven has no setback ordinance to the water.

For David Campbell, the beach stair issue is different from the view issue and he desired for them to be treated separately.

Discussion ensued over the problems with averaging the setback across 5 houses on either side. One distantly set back house can skew the setback.

Bosgraaf stated that it doesn't seem fair to control the setback regarding "view" for non high risk erosion when it is not controlled for high risk erosion. It is true that the DEQ has differing setbacks based on what kind of bluff exists.

Ellingsen is seeking a solution that is fair to everyone. One idea is to leave the zoning ordinance as is but add exceptions. Macyauski thought it best to not change anything except to accommodate those who wish to build stairs. People building a guest home in their front yard is not desired. Barker felt that the goal is to have what is done be in line with the neighbors. He thought the overlay concept would be helpful.

Allan Overhiser shared the perspective that this affects 1 mile of Casco Township. To have everyone recalculate setbacks every time there is a home built seems excessive. It also seems excessive to apply an overlay zone. Bosgraaf advocated 200' from the ordinary high water mark, and distributed a picture showing how most of the homes already align with this setback. (The PC had required a 150' setback, which was greater than what the DEQ requires).

Patrick Hudson, Planning Consultant, proposed that a good solution is to find out existing conditions, and set up the ordinance so that 70-80% of the properties conform, and the remainder must go to the ZBA. He proposed looking at the southernmost mile of the Township and note where 80% of the houses are setback and use that number.

Fleming wondered about matching the DEQ setbacks.

The southernmost setback set by the DEQ for high risk erosion in Casco Township is 65'. (The DEQ's rulings have changed over the years). Bosgraaf urged the insertion of a number for a setback, or eliminate the setback entirely.

Ellingsen said the high risk erosion map is inaccurate, because the Pinnacles petitioned and had their development removed from the high risk erosion area.

The ordinary high water mark is measurable and does not tend to move.

Barker believes that on the Lake MI shoreline, what people do with their property affects other properties.

Barker asked Alfred Ellingsen to work with Ron Bultje to change the definition. Consensus was that the house's lake ward yard is the front yard, but the definition should be changed to allow stairs (or gazebos) while continuing to prohibit dwellings. It seems a text amendment may be in order.

Barker also asked if making the setback 200' from the ordinary high water mark would take care of the setback issues. Consensus was that this would take care of the majority of issues and meet the intent of the Planning Commission. It is not desirable to make structures "nonconforming" by changing the zoning ordinance.

Brian Bosgraaf asked that the Zoning Ordinance's schedule of regulations, and in particular the language denoted at the double asterisk, be addressed. He requested that the words "structures on", and again, "the average of 5 houses" be removed from the Ag section because it is there erroneously. Section 3 D is still needed. These concerns will be addressed.

New language will be *200' from the high water mark*; "two front yards" will continue to be used.

West Shore Heights: A memo from Ron Bultje, attorney with Scholten Fant, dated January 5, was reviewed. This memo addresses developer Mr. Jonna's request to construct a 128 unit apartment complex.

The attorney didn't favor a "build out" density for the area. Ron Bultje's memo proposes alternatives. According to current zoning, the existing maximum density is 6 per acre. Ron Bultje's third option—a separate zoning district—has the most potential to define an area with higher density. It is important to justify why higher density is desired. Having a school nearby could provide such a justification—and it is something that doesn't exist in other areas of the Township.

South Haven is about 6 units per acre density—same as Casco. R-2 and RM1 were discussed, and it was unclear if South Haven could go to 10 units per acre. Currently on the Future Land Use map, the area under discussion is zoned medium density.

MDR2 could go from Blue Star to Columbine.

Patrick Hudson distributed a memo, with some caveats.

The attorney is proposing a new zoning district. No matter what, the zoning ordinance will also have to be changed. It would be possible to amend the region simply to allow higher density, but this may not be desirable. Higher density would allow apartments to be built in this area to support commercial, which is also allowed in this area.

Based on the logic provided by Patrick Hudson in his memo, the description wouldn't have to go over 6 per acre.

Campbell raised the issue of policing, and Overhiser responded that proposals for policing an area zoned with higher density are actively being explored in partnership with the City of South Haven.

Bruce Barker asked Patrick to create a High Density Residential District with 10 units per acre within the geographic area from North Shore Drive westward to the (imaginary) line of 74th then southward to Baseline Rd and east to Blue Star Highway. Discussion ensued about whether to cross Blue Star Highway and treat the area behind the commercial area zoned along the East side of Blue Star Highway.

8. Old Business: Master Plan update

Other changes are proposed for the Future Land Use map; Judy Graff has those based on Township Board discussion, and will provide them to Patrick Hudson. Future Land Use map changes will be on the Regular February meeting agenda.

9. Public comment: none, despite the opportunity.

Motion to adjourn at 9:18 made by Campbell, supported by Macyauski; adjourned.

Minutes recorded by Julie M. Cowie, Clerk, secretary pro tem