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Casco Township Zoning Board of Appeals  
July 19, 2018, 7:00 PM

**Members Present:** Chairman Dave Hughes, Vice Chair, Secretary Sam Craig, and Paul Macyauski

**Absent:** Matt Hamlin and Matt Super

**Also Present:** Valerie Baas, Ralph Ellis, Atty. Bultje, Zoning Administrator Alfred Ellingsen and approximately 20 interested citizens (sign-in sheet attachment #1)

The meeting was called to order at 7:07 PM by Chairman Hughes to hear a request from Valerie Baas and Ralph Ellis, 7220 Beach Dr., South Haven MI 49090, for an interpretation of Section 3.28. It is the applicant's intent that the overlying zoning district, LDR with an 85' minimum lot width, must apply to property owners who own 3 or more 30' lots. The Zoning Administrator contends that any 2 platted lots of record which equal 50' or 60' in width would be considered compliant for the construction of a dwelling.

Chairman Hughes invited Valerie Baas & Ralph Ellis to table to speak.

Ellis explained that the current practices of the Zoning Administrator was allowing lots to be split into less than conforming lots in LDR, which is 85' minimum frontage and 10,000 sq. ft. Ellis referred to the ordinance,

Section 3.03 B Existing Lots of Record A lot which is platted, or otherwise of record as the effective date of this ordinance, may be used as specified in the zoning district, provided the lot can meet the provisions of section 3.28

and

Section 3.05 Required Yard or Lot

All lots, yards, parking areas or other spaces created after the effective date of this Ordinance shall comply with the minimum requirements of the zoning district (LDR) in which they are located.

LDR frontage, 85' and 10,000 sq. ft., which is 95.24 feet of frontage or 3.175 lots. Not 3 lots, but 3.175 lots. The Future Land Use Map shows the desired migration to Lakeshore Residential B increases that to 12,000 sq. ft., which would equal 114.286 ft. of frontage or 3.81 lots.

Ellis continued, Section 3.28 plainly states that *"It is the intent of this Ordinance to permit these nonconformities to continue until they are removed but not to encourage their expansion or continuation.* Ellis said the phrase *"except in compliance with this Section."* was added in 2014.

Ellis said, If Section B is meant to be interpreted as Overhiser and Ellingsen have suggested it means, then sections (a) and (c) have no affective meaning or purpose. This is in conflict with the legal standard that interpretations are done so as to avoid rendering other sections meaningless. This is from our Attorney Ruth Skidmore.

Section B (3) (a) says that *"two or more nonconforming lots of record shall be considered an undivided parcel. So, it must mean that multiple contiguous lots, under common ownership are now one lot. Not a bunch of little lots. They are now one lot/parcel. As a single lot it does cease to be a historical*

nonconforming lot, it is now a single conforming parcel/lot. As such it cannot be divided as prohibited under Section C. It is no longer a nonconforming that gets a special treatment afforded by Section (b).

Ellis continued, we are familiar with this practice. Our house on Beach Street was originally only 2 lots, so we came here in early 2002 and got a variance and have added more lots, both to the east of us and across the street. So, we are familiar with the hardship issue with the conforming lots of record.

Obviously, once you have contiguous lots under common ownership such that compliance with current zoning requirements is achievable, you don't go backwards and divide the parcel so as to render it non-compliant with the minimum lot size requirements for the district. That would be contrary to the intent of this section as clearly spelled out in 3.28 A (1).

Additionally, section B(3) has three independent, stand-alone subsections. Section B(3)(a) tells us that for any two or more nonconforming lots of record shall be considered an undivided parcel if it's under common ownership and the lots are adjacent.

Section b addresses a situation where an owner is requesting to join lots to form a single parcel with a minimum of 60' like in Miami Park.

The purpose of Section b is to define "undivided parcel" or "parcel" for the purpose of subsection (c). And, so what does that tell us? That no portion of such "parcel" shall be divided in a manner which diminishes compliance with lot width or lot area requirements. Which lot requirements? The lot area requirements for the zoning district in which the parcel is located, Low Density Residential.

So, this whole Section 3.28, the original intent was to address hardship. Lots that are less than the requirements for lot width, lot frontage, and square footage. It has been, in our belief, misinterpreted to show that you can create splits that are smaller than this. In effect you are creating more nonconforming lots, which is in direct violation with the Zoning Ordinance. I think it is important to remember what Ms. Skidmore said, that an interpretation of a phrase or a clause cannot invalidate other sections that apply in zoning.

Valerie Baas provided copies of a referendum from 2005. Ordinance No. 061305, Adopted June 13, 2005 (attachment #14). The ordinance would have modified dimensional requirements and went into item (2).

(2) Contiguous Nonconforming Lots in Common Ownership

(a) If any two (2) or more platted lots of record or combination of lots and portions of such lots of record with continuous frontage were in common ownership at the time of this passage or amendment of this Ordinance, the lands involved shall be considered to be an un-subdivided parcel for the purpose of this Ordinance if, individually, they are less than fifty (50) feet in width.

(b) Such parcel shall be used as a single building site or may be divided into two (2) or more building sites, the minimum width of each of which shall not be less than (50) feet and each of which shall be subject to the modified dimensional requirements of section 13.03 (b)(1). No portion of such

parcel shall be used or divided in a manner that further diminishes compliance with the lot width and area requirements of this ordinance.

This went to a vote after a referendum was set up and was defeated by about a 2 to 1 margin. I think the way Mr. Overhiser and Mr. Ellingsen are conducting business is as if this ordinance had passed, which it did not. The subdivision of contiguous lots did not make it into the zoning ordinance. They came back with another amendment, adjustments were made for minimum lot widths, added 60' and they allowed the setbacks that were proposed in this ordinance, but the division clause did not make it into the zoning ordinance. I think that has to be recognized and section 3.28 needs to be recognized for what it is, which is a defense of an owner or co-owner who only owns 50' or 60'.

Ellis said for strict interpretation, three lots do not comply with the zoning in Miami Park, because we have a 105'' depth and that is a 95.24' lot, as opposed to 90', which is what we have.

Atty Ron Bultje said the zoning ordinance defines lots of record as a lot or parcel, whether it exists in a subdivision, plat, or is described by meets and bounds, or is part of a condominium project, which is show on the records at the County Register of Deeds. All of the lots in question that are commonly owned are lots of record. They don't lose their lot of record designation by virtue of being commonly owned. People may commonly own some lots and ask for a single tax bill, they don't want to get multiple tax bills, the fact that they may combine them into one lot doesn't take away their lot of record, so they continue to maintain their individual existence as lots of record. Section 3.28 establishes how we treat nonconforming lots of record. Those provisions in 3.28 are the specific rules for lots of record, and they are the rules for lots of record in every zoning district. 3.28 does not say in this district or that district, some but not all. Every nonconforming lot of record is treated by the same nonconforming lots of record in language in 3.28. So, when the zoning ordinance says a lot has to meet minimum size requirements of a zoning district, the zoning district we are talking, these are the minimum sizes for nonconforming lots in this zoning district, as for other zoning districts. The fact that they are commonly owned doesn't take away their right to be subject to the 60' minimum lot width requirement, the fact that somebody happens to own more doesn't mean that they lose the ability. We say, if you have nonconforming lots of record, and these are nonconforming lots of record, under our definition of lots of record, under the platted laws of the State of Michigan, they are lots of record. Our rules in 3.28 say nonconforming lots of record commonly owned and adjacent have a minimum lot width requirement of 60'.

Bultje stated the total width of these lots is 150'. He asked, if we have any idea how many lots in Miami Park are 150' wide?

Baas said there are a few.

Ellis said there are 5, 6 and 4 lot parcels.

Bultje asked if they had been built upon with one house?

Baas said, yes, in some cases.

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Bultje asked again if we have any idea how many.

Baas and Ellis asked Bultje what the relevance was?

Bultje said the Michigan Courts have said the provision of requiring lots of record that are inadequately sized, commonly owned and adjacent, it is legitimate to require them to combine. Someone who happens to own five of these lots can't say, I want to put 5 houses on them, they are lots of record, they are platted, they're legal, they were legal when you established your zoning ordinance, you can't take away my rights. I have the right to put five houses on them. We say, no you can't because we have a minimum 60' requirement on them, even though they are platted lots. The Michigan Court of Appeals has upheld that rule. But, the Court of Appeals has also said, we are not going to uphold that rule if it is out of character with the vast majority of the rest of the development. My suspicion, and the reason for my question, is to have one house on a 150 ft. lot in this development would probably be out of character with most of the lots that have been improved in this development.

Baas said that's only true with lots that have been recently split. There are a lot of lots on parcels that big in Miami Park. Baas wanted to make a point that, in spite of what Bultje is saying about lots of record, Michigan Land Division Act states that any parcel, any collection of lots that were in existence, contiguous and under one owner at the time when the Michigan Land Division Act went into effect is a "unique parcel" and should be consider that way from that point on. Our zoning did not go into effect until 2006 and these 5 lots were already a parcel of record according to Michigan Land Division Act.

Bultje said he understands that, but when we look at what may happen to nonconforming lots...

Baas said, it is no longer a nonconforming lot.

Bultje said, it is a nonconforming lot. It is a lot that was in existence before our zoning ordinance was adopted. It doesn't comply with our zoning ordinance rules. It's a pre-existing, nonconforming lot, made so by our ordinance. State law does not make it a nonconforming lot, it's our zoning ordinance that makes it nonconforming. They do not conform, there are five lots that are 30' wide. Those five lots do not conform with our zoning ordinance. Our zoning ordinance makes them nonconforming lots. They are still legal lots under the laws of the State of Michigan. They are platted. Under our zoning ordinance they are lots of record, but they don't comply with our minimum lot size requirements for this specific zoning district, but this ordinance goes on to say we have nonconforming, adjacent, commonly owned lots, we are going to allow them to be 60' wide. That is our rule in this zoning district. When the ordinance says you have to meet the requirements of the zoning district, these are the rules for non - conforming, adjacent, commonly owned lots. These are the rules for this zoning district as well as the other zoning districts.

Baas said, our zoning says, in section 3.28 B3a,

For any two (2) or more nonconforming lots of record or combination of lots and portions of lots of record, in existence at the time of the passage of this Ordinance, or an amendment thereto, the lands involve shall be considered to be an undivided parcel for the purpose of this Ordinance if they meet the following:

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- (1) Are in the same or substantially the same ownership;
- (2) Are adjacent to each other or have continuous frontage; and
- (3) Individually do not meet the lot width or lot area requirements of this Ordinance

This 150' parcel meets the requirements for Low Density Residential Zoning district, in terms of area and frontage. It is recognized as a unique parcel, an undivided parcel, by the Michigan Land Division Act, and by your own zoning. To make up the fact that these are actually still individual parcels is contrary to the established law.

Hughes said Bultje had something in his memo about the fact that they are still parcels.

Bultje said yes, they are still separate parcels because they are platted lots. The plat still exists and they are individual lots within that plat. They are shown on here, they still exist, this is the law. Bultje said he understands the argument in 3a that Valerie just read, two or more nonconforming lots of record...., and that's what we have, two or more lots of record, and they are still lots of record, they are combined, and they are treated as a parcel for this purpose. For this purpose, this subsection for nonconforming lots under 3.28. But, you have to read the rest of the subsection which says in this case where we take these five nonconforming lots and we require that they can't be treated as five separate lots and five separate homes, how wide does this combined lot have to be? And subsection b says this combined lots of record that are combined because they are too narrow, they are nonconforming, this has to be 60' wide. That's exactly what the rule is that our zoning ordinance says applies. That subsection 3 b says exactly what Baas said, two or more nonconforming lots of record, they are combined, they are one parcel. Then 3.28 B 3 b says in order to be legal now under this ordinance it has to be 60' wide. That's the rule.

Baas said, it must be a minimum of 60' wide. However, 3.28 B 3 c says:

No portion of such parcel shall be used or divided in a manner which diminishes compliance with lot width or lot area requirements.

Baas continued, and that is Low Density Residential.

Bultje agreed and said, and that would be the width requirement just above it, that would be 60'.

Ellis said to Bultje, you just agreed that it is the requirement of LDR, which is 85'.

Bultje disagreed with Ellis and said it does not comply with that requirement, which makes it a nonconforming lot.

Ellis said, how about Ms. Skidmore's assertion that you cannot invalidate other sections of the zoning.

Bultje said I did not have what you handed out and was not keeping up with the whole zoning ordinance provisions as you went through.

Ellis said it was her assertion that in general a phrase or clause may not invalidate other portions of that ordinance.

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Baas said the way you are interpreting Section b, invalidates a and c.

Bultje said he thought what she (Skidmore) said is there are portion of the zoning ordinance which will be inconsistent, and you will have to pick the most consistent. That happens all the time. I think the general rule she was talking about is you don't interpret provisions of the zoning ordinance to make another section of the zoning ordinance completely irrelevant, never applicable, has no meaning. That is a legitimate rule.

Baas said, that applies here.

Ellis said, that would be his interpretation, what she (Skidmore) asserted.

Bultje said he doesn't understand how any it would be completely irrelevant and never applicable. I don't know what provision you or she are talking about.

Ellis said her (Skidmore) position was that b invalidates a and c. The interpretation concerning 60' supersedes other sections of the ordinance, specifically (a) and (c) of 3.28 B3.

Baas read from 3.28 3a: For any two (2) or more nonconforming lots of record ..... the lands involved shall be considered an undivided parcel if it is under common ownership and adjacent. That is the purpose of this section. And the intent of 3.28, which is the guiding principal for this section.

Within the zoning districts established by this Ordinance, or any subsequent amendments thereto, there exists lots, structures, uses of land, and structures, and characteristics of use which were lawful before this Ordinance was passed (2006) or amended but which would be prohibited, regulated, or restricted under the terms of this Ordinance or future amendment. It is the intent of this Ordinance (Section 3.28) to permit these nonconformities to continue until they are removed, but not to encourage their expansion or continuation except in compliance with this Section.

That is the guiding principal of Section 3.28. What you are saying about Section B conflicts with that (intent), and conflicts with a and c.

Ellis added, because you are creating more nonconforming parcels in an area where the overarching desire was to reduce them in the future. You are creating more.

Bultje said where he would get off track with that would be if we didn't have 3.28. There would be five nonconforming lots and they would exist by the virtue of being a lot of record prior to the zoning ordinance. And they would be illegal because they wouldn't comply with the zoning ordinance if we didn't have 3.28.

Baas said, they would not exist as individual lots according to the Michigan Land Division Act passed in '97, they existed as a parcel.

Bultje said that Land Division act allows the division of parcels as long as it complies with the zoning ordinance.

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Baas said, the district those parcels are in ...

Bultje said no, the Land Division Act doesn't talk about the zoning district. The Land Division Act just says you may divide lots as long as they comply with the zoning ordinance. If our zoning ordinance didn't have 3.28, and we just had five lots of 30' width each, those lots would be illegal under our zoning ordinance. They would be nonconforming under our zoning ordinance, but they would still exist by virtue of being grandfathered. What we did with 3.28 was to say, if you got nonconforming lots of record, that don't comply with our zoning district requirements, but you are able to put together lots of record which equal 60', they now comply with our zoning ordinance.

Ellis asked, where do you get from there to splitting a conforming lot into nonconforming?

Bultje said, when we say in the zoning ordinance, that if you've got two or more nonconforming lots that are adjacent, commonly owned, and you can have 60' of width, you no longer have nonconforming lots, that don't comply with the ordinance.

Ellis said 60' **minimum**.

Bultje said that's all we ever enforce. We never say you can't have greater width, whether it is 85', 60', 150', whatever. We require 60' width only for prior nonconforming lots of record, commonly owned and adjacent to each other.

Baas said, this is not a prior nonconforming lot.

Ellis said it is also directly in violation of 3.28, Section 1 a Intent ..... to permit these nonconformities to continue until they are removed but not to encourage their expansion or continuation. By subdividing them, you are expanding nonconforming lots.

Baas said the Michigan Land Division Act says the parent parcel in whatever the shape and size of the parcel was as of March 31, 1997, If on that date two or more adjacent parcels under identical ownership, the entire land is considered the parent parcel.

Bultje said, yes, but that parent parcel can be divided. The Land Division Act is not what we're talking about. Bultje said when 3.28 A says we are not going to continue perpetuate or increase the number of nonconformities. Bultje said that is why the person who owns these five lots cannot say, I commonly own them, there are five of them, 30' wide, they are nonconforming lots. They still have their legal status. I'm going to sell them, so I no longer commonly own them and now I can have 5 nonconforming lots again. That would be increasing the number of nonconforming lots which do not comply with the zoning ordinance. We cannot do that. He cannot divide those five lots he owns into less than 60' of width. That's what that means. So that provision isn't meaningless. It means you can't go less than 60'. We said if you've got nonconforming, commonly owned, adjacent lots of record you can't be less than 60' and that's the rule we apply. To go less than that would be to go back to the prior situation where we had five individual lots of record which were not commonly owned. You have five nonconforming lots. We now have two lots, 75 feet of width each, which more than meet our lot size for

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nonconforming lots which are commonly owned. They are no longer nonconforming under our ordinance, they now meet our ordinance.

Ellis said 3.28 completely invalidates Section 8 LDR, which is back to the same principal. You're saying 3.28 allows you to split to 60', which is in direct violation of Section 8, which is Low Density Residential. If the township wanted to make this legal, they should have changed the frontage in Section 8 to 60', but they didn't.

Baas said in the historically platted lots of record, as marked on the map (attachment #15), coincide exactly with Low Density Residential zones. So, the Master Plan obviously designed these lots of record to come to conformity with Low Density Residential. With the Future Land Use Map (attachment #20), that shows a minimum lot size of 1200 sq. ft. and you're not going to get there by proceeding in the way you are describing.

Bultje responded to Ellis's comment. Chapter 8 establishes normally for LDR, there is a minimum lot width which is greater than 60'. That is true. One of the other principals of statutory construction or zoning ordinance construction is a specific rule controls over general rule. This is a specific rule for nonconforming lots of record. It is the rule we adopted for nonconforming lots of record. Chapter 8 applies to all lots in the LDR.

Ellis added, which are virtually all historically platted lots of record.

Bultje said Section 3.28 is the specific rule just for nonconforming lots. That specific rule, 3.28 nonconforming lots, which are commonly owned and adjacent to each other, is the rule that would apply, rather than the normal width requirements for LDR.

Baas said the ordinance that was defeated by referendum, (attachment #14) was the thing that allowed for division of the lots of record from a parent parcel into two 50' width. That amendment was defeated. That means these parcels that meet the definition of Low Density Residential are conforming with Low Density Residential zoning. They are not nonconforming and splitting them is not appropriate.

Bultje said 2005 predates him, but he is aware that provision required a lot of 50' width, and this provision was put in later. I know the purpose of this provision. I've got opinions going to the township, from I think as far back as 2009, I know in 2012, and again in 2018, talking about the purpose of this was to allow 60' width. The fact that 50' was referendumed out doesn't mean there can't be another attempt with 60' width, and there was no referendum attempt on the 60'. So, this language is here, it hasn't been referendumed out and the interpretation of this language is what I have given to you.

Baas said the reason this language is still in here is because it does not allow the division of these parent parcels that are conforming to LDR. Section b says lots must be combined, it does not say they can be divided, so this 150' parcel conforms with Low Density Residential and should not be divided to be less than that according to Section 1 of 3.28.

Bultje said, he would agree, they cannot go less than 60'.

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Ellis said he is going to appeal an adverse decision to circuit court.

Chairman Hughes said, according to this statement this involves a question of interpretation on the part of the zoning administrator and the township supervisor. Hughes said he has Ellingsen present and asked if Hughes could read a letter from Ellingsen (attachment #15). Hughes read Ellingsen's letter.

Baas stated her house is on 5 lots, among others.

Hughes said, that's neither here nor there.

Baas added, and a very close adjacent one does exist on five lots. None the less, 60' was put in as a minimum rather than 50', but there was no provision added to allow for division.

Macyauski said he wanted to back up with everything. He said he respects what has been said. He was in this room in 2005. He was in this room when the referendum went through. There was a couple of other people that were in this room at the same time. Yes, this 50' lot was turned down. We immediately, as a Planning Commission, went right to work on it with our planner that September. One of the key things we talked about in September of 2005 was the availability of public water and sewer continuing to up township properties, an alternative for previous nonconforming lots language. While the new ordinance language was not enacted, we required all adjacent lots, nonconforming and the same ownership to be treated as one property. This type of requirement is usually applied to areas without public water and sewer. With the availability of public sewer, this rational as a defense to prevent the use of legal lots of record is diluted. We pretty much swept everything we are saying about what's legal and not legal.

Baas asked what memo Macyauski was reading from.

Macyauski said this is a memo from September 15, 2005 from the Casco Planner (attachment #16). Macyauski said he wanted to move forward from that. We had numerous meetings after that, special meetings dealing specifically with nonconforming lots of record. We went back and forth with public comment, we went back and forth with the referendum of 50'. We went back and forth with the pressure, or the effect to nonconforming lots and water and sewer.

Macyauski said in July 26 of 2006 minutes (attachment #19), Judy Graff was the Chairman of Planning Commission, and she notes that we had **10 and 12 special meetings over the last several years concentrated on small lots of discussion**. The **Planning Commission utilized the input, results of the referendum and discussion to determine the good approach of the small lots situation**. Nonconforming lots were addressed, and setbacks were added in platted subdivisions. The continuous nonconforming lot size were changed as well. Current zoning allows an individual to build on 30', but not if the individual has more than one lot. The lots need to be combined to meet the minimum requirements. For all other lots, 85'. The revised zoning ordinance calls for 60' lots. This allows an individual with two or more 30' to combine two lots to build. It's pretty simple right there. That's what

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the spirit and intent was back in 2006 after we hashed this over 10 or 11 meetings of public comment. So, when you are misinterpreting what it's saying in 3.03. 3.03 A is saying, in my opinion from being on the Planning Commission back then, you're not going to take three 30 ft lots and create two ~~35's~~ 45's. If that's all you have is three thirty-foot lots, you're going to build on a 90' lot. We spent several years, and several meetings trying to decide what was the fairest. The bottom line was if you have a 25,30, 35-foot lot, the minimum requirement for that plat was going to be 60'. It's in the zoning ordinance and is the rules now. Now how you interpret it, I don't know.

Baas said, what we are disputing is the second part of that amendment that says the parcels can be divided. That got defeated. That was not put back in.

Ellis said, we realize that the zoning administrator has, in general the right to split. The question is split into how big? LDR says 85', I actually calculate to over 90', and 3.28 says 60'. Sixty-foot is really for a hardship.

Macyauski said, here is another comment from our special meeting on June 15, 2006 (attachment #19). ***During the process of the development of the new zoning ordinance the desire was to change the small lot size from 75' to 60'. The Planning Commission was in agreement with this. Paul Macyauski stated that they were looking at historically platted lots of record 25', 30', 35'. At a minimum two contiguous lots of common ownership would be joined together.***

Baas said, "joined together". We are not talking division.

Macyauski said "At a minimum"

Ellis said, we are talking splits now.

Macyauski said 13-years later, as chairing for the ZBA for a number of years, we handled some 10 to 14 cases of people coming in and looking for relief from historically platted lots. I think the Planning Commission did an excellent job of coming to some conclusion here. I also know since that time, there has been much use of language, is it meets and bounds or not? Somebody wanted to create some lots, so when they did it, they were going to have to add 15 ft. from another lot to make it the minimum compliance with the ordinance. I think he ended up with maybe 75'. I think Ellingsen has been interpreting this the same way and the people voted on back in 2006, when 50' didn't get it and we changed it to 60'. And, to give these people, I guess an ~~equity~~ *equitable relief*, with people that have formed numerous lots that plan to build on them when they were 30', but they couldn't build on them when they were 30', 35' and 25' because the health department wouldn't allow it. That's what saved us for years. This is what stimulated the water and sewer down 107<sup>th</sup>. It was based on 50' lots. There are over 400 lots.

Baas said it's more like 700.

Ellis said I depends on if you are talking lots or parcels.

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Macyauski said, I am talking platted lots. You say over 700, I believe it is five-hundred and something. So, with those, individuals needed to be granted something that says I can put two together and meet the minimum requirements to build a home.

Baas said, we are not objecting to putting lots together.

Ellis said we were in the same situation. We bought a 60' lot in 2002. We came here and got...

Macyauski asked (pointing to a plat map) is this your lot? Is it on 1, 2, 3, 4 or 5 lots?

Baas said it is on 5.

Macyauski said it's on 5 lots of record, but there is three lot numbers here. What does that mean?

Ellis said we bought it from three different people.

Macyauski ask why they are not joined together.

Ellis said, we tried to, but the township never got back to us.

Macyauski said, I see and that's your prerogative.

Baas said, what is written is what counts; history is wonderful reminiscing is great. There is no part of this ordinance Ordinance (defeated by referendum attachment #14) that allows what was opposed in Section 2 b of the proposed ordinance, that they can be divided into two or more building sites, minimum width each of which shall not be less than 50 ft. This did not make it into the ordinance. It's not here.

Macyauski said it is here. It actually goes from subsection 3a to subsection b. It says you have to meet the minimum requirement. There was never any intent of anybody in this township to force anybody to join any kind of lots together.

Ellis said, that is not even the question here, the question is specifically in this instance, there is 5 lots in one parcel for a long time, that family that sold it, it was her father's before it was hers. That was in her family for years and years and years. It goes back to the 80's.

Macyauski asked Bultje if he wrote an article in Macyauski's notes that said even though some historically platted lots were joined together for taxes or some other reason, it does not constitute the fact that they are not dividable to the minimum requirement of the zoning ordinance.

Bultje confirmed that he wrote that.

Macyauski said, and that's exactly what we meant back in 2006 after that 12<sup>th</sup> meeting.

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Baas said Section A Intent says It is the intent of this Ordinance to permit these nonconformities to continue until they are removed but not to encourage their expansion or continuation except in compliance with this Section.

Ellis said a 150' lot is well in compliance with LDR. Five lots is 15 thousand and some feet.

Baas said we are not objecting to someone who only has two lots to make 60'. What we are objecting to is the fact that the Supervisor and the Zoning Administrator are acting as if that second part of the proposed amendment (attachment #14) was actually approved, and it was not. No provision was put in for division. It is not in there. Everything in here is contrary to this.

Bultje said he understands the rationale and it's helpful to have this discussion and I understand the point. Here is what I think is the issue. Even if the zoning ordinance doesn't say you have the right to divide. The zoning ordinance doesn't say you have the right to divide a five-acre lot into smaller lots. It just doesn't say that, because the zoning ordinance doesn't give the right to divide. The Land Division Act gives the right to divide. So, even though the ordinance doesn't say, if you've got 120 or more feet of nonconforming lots, you could divide them back, the Land Division Act gives that right to do that. There isn't anything in here that talks about what the land division rights are, because the Land Division Act, the State law gives that. I think we have a land division ordinance for un-platted lots as well. But the zoning ordinance doesn't govern divisions. The fact that the zoning ordinance doesn't say you can divide down is not a huge deal in my mind because the zoning ordinance isn't where you get the land division rights. When we in 3.28 said, if you've got adjacent nonconforming prior lots of record commonly owned, 60' of width is required, we said the very direct implication was if you've got 120 ft. you may have two lots. Ellis and Baas would be saying if you've got 60' you may only have one lot. When you start adding to that 60' you can't get a second lot until you have 170'. So it takes 110' to get to the next lot that you could have, even though we only require 85' in the general zoning district without considering nonconforming lots. A lot can be 85'. Their argument says, you've got to go from 60' to 170' to have a second lot. We're saying if you've got nonconforming lots of record that were previously in existence it takes 120' to have two lots. This particular property in question happens to have 150'. That's the difference.

Macyauski said I've argued this based upon what we have talked about forever and have practiced forever. This 150' could actually be changed to one 60' and one 85' and be completely legal with the ordinance. 60' is a buildable lot and 85' is as well. In this case we are just talking about two 75's.

Sam Craig said, it doesn't say you can or can't. It just gives you one description of the lot.

The whole discussion about joining contiguous lots was to make sure we meet the minimum requirements of 3.28. It doesn't ever mention Section 8.03, LDR Requirements. It doesn't ever mention any of that it just says must meet the minimum requirement for contiguous lots of record.

Baas said, Macyauski is saying Low Density Residential does not exist.

Approved 8/16/2018

Macyauski said, yes it does, there is quite a bit of it. All of this in yellow. (Zoning Districts Map attachment #20). This is the subdivisions of the historically platted lots. This whole section here is LDR as well.

Baas said that is a very small section on the entire map, you are not including these. That little bump down there has a couple of lots

Macyauski said yes, but this whole section is on that map. All this yellow is on that map.

Baas said the same as the pink on this map.

Macyauski said, you are saying there is no LDR district. There is a lot of LDR that does have 85+ ft. lots.

Baas said, not if what you are arguing is ...

Craig said, this just says that the nonconforming lots in that district have to comply with 3.28, it doesn't say that there is no district.

Baas said, this 150' parcel is a conforming parcel. In the zoning ordinance it says, no parcel may be divided in such a way that diminishes compliance with the zoning for that district.

Craig said, it meets it though.

Macyauski said, when we talked about the zoning ordinance, we're talking about 3.28, we're not talking about a district. We could be talking about 8.03 if we noted it in the section of 3.28. In the 3.28 when we talk about nonconforming platted lots, we're talking about the zoning ordinance. The zoning ordinance is 3.28.

Baas said in the zoning ordinance 3.28 A 1, it says "It is the Intent of this Ordinance to permit these nonconformities to continue until they are removed but not to encourage their expansion or continuation .... It says that in the intent of this section. That also applies to the fact that these lots, 105' width parcel made up of 50' lots has been under common ownership for many years. It has been under one tax number. It is not a series of nonconforming lots, it is one conforming parcel, that cannot be split in to two nonconforming parcels.

Ellis said, zoning does not define parcel. If you look in definitions, there is no mention of parcels.

Bultje said a lot is defined as a parcel.

Ellis said there is no definition of parcel.

Bultje said, you could turn that around. A parcel is defined as a lot.

Approved 8/16/2018

Baas said, it says that in Section 3.28 B 3 a, it says for any two (2) or more nonconforming lots shall be considered to be an undivided parcel for the purposes of this Ordinance. It must mean contiguous lots under common ownership are now one lot. You don't have a definition for parcel. As a single lot it does cease to be treated as a historical nonconforming lot because now, it's one lot and is not a single conforming parcel or lot, and as such, cannot be divided as specified under section 3.28 B 3 c. It is no longer a nonconforming lot that gets special treatment afforded by section B. It is a conforming lot.

Chairman Hughes invited public comment.

John Barkley, 646 Waters Edge, another consideration in Section 3.33 is the provision to promote health, safety and welfare by establishing minimum standards for the design, installation, and maintenance of landscaping as greenbelt buffer zones between potentially incompatible uses and residential dwellings. An incompatible use, if you have allowed, as the Planning Commission has, a mix of short-term commercial homes and residential homes. It goes on to say in Section 3.33 B The purpose of green belts is to provide physical and visual separation between potentially incompatible uses. So, if you judge the minimum lot size to be 60', then this says you should be adding another 20' to the 60', and the new lot, allowing for the mixed commercial and residential dwelling should be 80'. It's something we pulled up on March 24<sup>th</sup> and touched on it slightly, those homeowners are now expected to build that buffer zone. So that's a consideration you may want to take when considering a 60' lot width.

Kathy Watt, Atlantic Avenue, said she moved here in 1995, and at that time they had to have 4 lots for a sewer system. By the way there are at least 10 properties right now that have five or more lots in Miami Park. I was friends with Bruce Barker who was on the board, and he explained to me, five different times, five different ways, that you could not create a hardship and cannot create 60' lots. It bothers me that you can say my interpretation is wrong and your interpretation is right, when you've got someone on the board telling me. What I am hearing is you are saying that I'm "taking" this lot, but yet you had someone on this board with my opinion.

Hughes said, again it's an interpretation

Bultje said he loves Bruce Barker and communicated with him a lot over this issue and gave him the exact rationale and reasoning that I am giving now. I've got it in memos, I've got memos in my file. I showed him the memos I had done prior to communicating with him. I understand what his position was. It's not my position.

Kathy Watt said that was the board's opinion.

Bultje said, but it wasn't.

Bultje said Bruce's opinion did not carry the Planning Commission, and those of you who were here on the Planning Commission then would know that. He had a position, I understand, he and I debated it

Approved 8/16/2018

Kathy Watt said you are missing my point, you have twisted it around, the PC had decided it could not create a hardship.

Baas said she agreed with Watt, that dividing that five-parcel lot is a self-created hardship. You are taking a conforming lot and creating two parcels that are nonconforming. That is a self-created hardship and goes against the practice of this law.

Mike Workema, 7256 Lakeview. I bought the other parcels on Lakeview which borders that property. The two totaled 150'. I moved the yellow house to that location and I did a split of two 75' lots. I could have put it on the 60' lot, it was buildable, but 75' just looked more esthetic for landscaping. I still had another 75' to build another house. Another gentlemen did the same thing. He had a 60' and a 90', if they don't split, he can still build on the 60', and there is still going to be two houses, the split just makes it 75' and 75' I think it is just a much more esthetic look. What I think they're trying to say is, I own 120' of property, I've got two buildable lots and plan on building two houses. They're telling you I can only build one house. That is wrong.

Bill Chambers said we live on Lakeridge, we have several 100 x 20' lots on 102<sup>nd</sup>, and we've been buying those lots since 1988 when we moved in that area and built that house, trying to protect our back yard, because we knew this day would come. Over the last 30 years we have watched two individuals speculate on the west end of 102<sup>nd</sup>. That's where 102<sup>nd</sup> water and sewer is. Just prior to 2004 and remember we have been watching this very closely and bid against the speculators at the auctions, and we watched those lots shuffle to maximize the number of 60' parcels, and minimize the number of parcels greater than 60'. Well, those speculators were involved in this township hall and knew that rule was coming out. So, all their 90' lots went to 60', all their 100's went to 60'. They maximized that because they knew it would be difficult to come backwards. So, to remember it now as so clearly as all of you do, I don't remember it that way and I was paying attention. I would tell you that the lot sales will demonstrate there was knowledge out there that it would be difficult to back up to 60' once that came out. It specifically says lots that were 60' prior to this date are grandfathered in.

Dan Way, 649 Lakeshore, Miami Park, said he is the one who sold the lots and stated it could be divided into two 75' lots with a boundary line adjustment. Way said it is his professional opinion, because he has been in Real Estate business for 14 years. Living in Miami Park, he has many examples where they adhered to the 60' lot size. We have many examples of property out there where there was 180' or 200' that there was a boundary line adjustment that allowed for example, you have 150' you get a boundary line adjustment and have two 75. I have always agreed with Ellingsen, had many conversations with Ellingsen on what that definition means. Ellingsen has been in this business for a long time. He has been Zoning Administrator. He helped write laws for zoning.

Baas said she wanted to make a point, if you look up the rules for boundary line adjustments, you may not create additional parcels when you do that. You can change the boundary lines between two parcels, you may not create a new parcel. Before a boundary line adjustment can be done, a parcel has to be divided as was done one the lots on Pacific Avenue. There was a parcel of record that had 11 individual lots, those were split off into three sections and there is a 5-lot section left that was split into a 90' and a 60'. That doesn't have to go to the board. Mr. Ellingsen can do that all by himself. That 90

and that 60 were brought to the board and the boundary line adjustment was requested. So they circumvented all that by doing a property division, and then doing a property line adjustment, because you cannot do a boundary lot adjustment on a single parcel, because there is no boundary line to adjust, it's only one parcel and you can't create an additional parcel. That is a rule.

Chris Barczyk, Highfield, said he is trying to understand when looking at zoning. You have an LDR district. Macyauski was saying that the LDR district really doesn't apply because 3.28 applies as far as property lines then why does LDR exist? And, if the intent of the drafters of this was to make 3.28 the zoning district, then why would you create a district that was 3.28 on top of LDR? LDR could have been modified to 60'. It was not modified to 60'. Nothing prohibited them from actually making LDR a new district, LDR B or C. The intent was for a nonconforming lot to get out of being nonconforming. That was the intent and the core they were trying to address.

Macyauski said he was reading from the minutes of July 26, 2006, when the Planning Commission deliberated over numerous meetings, numerous public comment, and said that **Nonconforming lots were addressed, setbacks were added for platted subdivisions. The continuous nonconforming lot sizes were changed as well. Current zoning allows an individual to build on a 30' lot,** (Macyauski said that may be a typo), **but the individual has more than one lot, the lot needs to be combined to meet the minimum requirements. For all other lots, the current zoning is 85'.** If you look at this map here, yellow is LDR, so outside of the historically platted subdivisions, or the historically platted lots, there's a number of lots anywhere from 85' to more. I know they are greater than 85'. Again, our chairperson at the time indicated there was 10 to 12 meetings. **The revised the zoning ordinance calls for a 60' lot. This would allow an individual, two or more 30' lots, to combine two lots to build.** Two lots to build, that's the new zoning ordinance. The Chair also indicated that 10 or 12 meetings were held over several years. At the end the Chair indicated that the entire draft for the zoning ordinance was available to review, so we finished our deliberations on how we were going to handle nonconforming lots of record, and that's what you see today.

Chris Barczyk said to Macyauski, you actually are agreeing with me that all other lots are 85' or more in LDR.

Macyauski stated that is not what he just read. That is historically platted lots in subdivisions, and then I addressed all the other lots in LDR, that are already 85' or more. That's what I addressed. We're talking about two different things here. We are talking about what Barkley said on lots of record, and talking about the section of LDR that has 85' lots. They meet the minimum requirement of LDR.

Barczyk said Miami Park...

Macyauski finished... Is a historically platted lot of record subdivision. That's addressed in the first sentence.

Barczyk said, it's all LDR.

Approved 8/16/2018

Macyauski said we're not talking about overlying districts, we're not talking about Section 8.03, which I believe is the requirements for LDR.

Barczyk said, so you are saying 8.03 lot sizes do not apply to any part of Miami Park. Is that what you are saying?

Macyauski said that's the way I understand the ordinance. Now, if somebody joined five lots or made it 85', they would probably fall under that minimum. What we have said all along is the incentive to join lots together was to have a bigger home.

Baas said, that is exactly what we are saying. They joined five lots ....

Macyauski said they are not developed, they are still the platted lots, undeveloped.

Baas said, they are together.

Bultje said, whether they are developed or not doesn't matter. They could have built a home, but that home could be taken down, and then they are five previously nonconforming lots of record, 30' wide and they would not have to stay one lot at that point.

Graff said the only comment she has was that the bulk of our meetings was about establishing the minimum lot size in the nonconforming lots of record. We did not talk about dividing things into smaller pieces, which I think is what Val and Ralph's point is. And, Ron confirmed it because he said that the zoning ordinance does not give the right to divide.

Bultje said, it doesn't address it. That is not where the power comes from. The power to divide comes from State Law.

Graff continued, we did not spend, to my recollection, any time talking about division of nonconforming district, dividing up into smaller pieces. We talked about combining lots, because the lots were 25' and 30' wide. Give somebody a buildable lot, and not keep the 30' lots.

Macyauski asked, are these still platted lots?

Hughes said they are platted as 30' lots.

Baas said she would like to point out, although zoning does not allow for division, and Ron said that is State Law, what the Land Division Act says is that any divisions must comply with the requirements in the district where the parcel is located. In this case it is Low Density Residential, as shown on the maps and the Future Land Use Map. The very same law takes it to Lake Shore Residential B, which requires 85' of frontage and 12,000 sq. ft.

Ellis said, but they increase the requirement for square footage from 10,000 to 12,000 in the Future Land Use.

Approved 8/16/2018

This is why the zoning ordinance does not allow for division, because they're trying to get to this future land use. That was passed in 2006, when section 3.28 was passed. That was not changed.

Chairman Hughes asked for more comments, there being none he said they were at the deliberation stage, asked for comments or questions, or a motion to either support the interpretation on the part of the Zoning Administration and Township Supervisor. We are not going to rewrite 3.28 tonight, just going to say if we agree or disagree with the interpretation the Township Supervisor and the Zoning Administrator.

Macyauski made a motion that the Zoning Administrator has executed the zoning exactly how it was intended, and as it states, where multiple lots in a historically platted subdivision has to have a minimum requirement of 60'.

Bultje requested that the PC add "The motion to uphold the decision of the Zoning Administrator is based on reasons in the Zoning Administrator's letter, and based on Bultje's two memos, dated March 16, 2018 (attachment #9) and March 23, 2018 (attachment #11). And, the motion to uphold the Zoning Administrator's opinion, to deny the appeal, is based on the applicant's untimeliness, because there is a 21-day rule in our zoning ordinance to take an appeal from an order, and this appeal is several years beyond. And, finally, the applicants lack standing. They don't have any special damages to entitle them to bring an appeal of this nature.

Baas asked to make one more comment.

Chairman Hughes said No.

The motion was 2<sup>nd</sup> by Craig.

All in favor. Motion Carried.

Chairman Hughes asked for a motion to approve the minutes of the May 24, 2018 meeting. A motion by Macyauski, supported by Craig to approve the May 24<sup>th</sup>, 2018 meeting. All in favor. Minutes approved as written.

Ellingsen said there is a meeting on August 16<sup>th</sup>. A gentlemen on Edgewater Terrace put a little addition April 27, 2017 and wants to raise up his house. The variance will be the same as the previous one, but will be a 2 story instead of 1.

A motion by Macyauski, supported by Craig to adjourn. All in favor. Meeting adjourned at 8:25 PM.

Approval of ZBA meeting May 24, 2018.

Approved 8/16/2018

- Attachment #1: Sign-in sheet
- Attachment #2: Notice of Public Hearing
- Attachment #3: Application Baas – Ellis
- Attachment #4: Plat Map
- Attachment #5: Aerial Photo
- Attachment #6: Real Estate Summary Sheet Way Property
- Attachment #7: Request for Interpretation Appeal Hearing
- Attachment #8: Email correspondence March 5, 2018
- Attachment #9: Bultje Memo March 16, 2018
- Attachment #10: Baas - Ellis letter March 21, 2018
- Attachment #11: Bultje Memo, March 23, 2018
- Attachment #12: Baas – Ellis letter, April 10, 2018
- Attachment #13: Email from Baas May 14, 2018
- Attachment #14: Referendum 2005
- Attachment #15: Letter from ZA Ellingsen; Re: Interpretation of 3.28; 07-13-2018
- Attachment #16: September 15, 2005 from planner
- Attachment #17: Minutes of July 26, 2006
- Attachment #18: Minutes of June 15, 2006
- Attachment #19: Zoning Map

*Dave Hughes*  
\_\_\_\_\_  
Dave Hughes, ZBA Chairman

*Sam Craig*  
\_\_\_\_\_  
Sam Craig, ZBA Secretary

*8-16-18*  
\_\_\_\_\_  
Date

*8/16/18*  
\_\_\_\_\_  
Date



**CASCO TOWNSHIP**  
**NOTICE OF PUBLIC HEARING**

The Casco Township Zoning Board of Appeals will hold a public hearing Thursday, 19 July 2018 at 7:00 pm at the Casco Township Hall at 7104 107<sup>th</sup> Ave., South Haven, MI 49090 to deliberate the following request for an interpretation of the requirements of the Casco Township Zoning Ordinance:

A request from Valerie Baas & Ralph Ellis, 7220 Beach Dr, South Haven, MI 49090 for an interpretation of Section 3.28 which only applies to historically platted lots of record. The minimum lot width to be buildable is declared in the Zoning Ordinance to be 50 feet or 60 feet depending upon several criteria found in Section 3.28. The applicants content that the overlying zoning district(LDR with an 85 foot minimum lot width) must apply to property holders who own 3- 30 foot lots or more. The Zoning Administrator contends that any 2 platted lots of record which equals 50 feet or 60 feet in width would be considered compliant for the construction of a dwelling.

The application and any pertinent information may be viewed at the Township Hall at 7104 107<sup>th</sup> Ave., South Haven, MI 49090 during regular office hours. Written or faxed comments may be made to the address above or numbers below and oral comments may be made in person at the hearing. Necessary and reasonable aids for disabled persons will be made available with sufficient notice to the Clerk.

Cheryl Brenner  
Clerk  
Phone-269/637-4441

Alfred J. Ellingsen  
Zoning Administrator  
Fax-269/639-1991

(Please place in the South Haven Tribune for publishing on 24 June 2018)

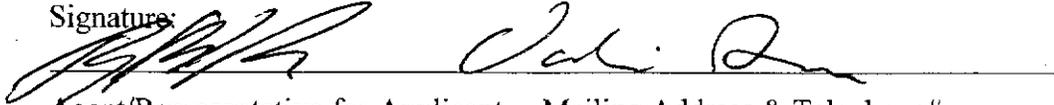
**INTERPRETATION APPLICATION TO THE ZONING BOARD OF APPEALS**

**IDENTIFICATION** DATE: May 30<sup>th</sup> 2018 Cash      Check       
*(checks payable to Casco Township)*

Applicant Name: Valerie Baas, Ralph Ellis Telephone # 734-972-1289

Mailing Address: 7220 Beach Dr. City: South Haven State: MI Zip: 49090

Signature:



Agent/Representative for Applicant Mailing Address & Telephone#

(none)

**THIS APPEAL IS A REQUEST TO** Appeal interpretation of the Casco Township Zoning Code by the Township Supervisor and Building Inspector/Zoning Administrator.

1. **PROPERTY LOCATION:** Property Address 7227 Beach Dr., South Haven, MI 49090

Property Tax # 02-544-036-00

2. **LEGAL RECORDED DESCRIPTION:**

LOTS 36-40 INCL BLK 4 MIAMI PARK SEC 13 T1N R17W (04)

**DESCRIBE THE PARTICULAR NATURE OF THE INTERPRETATION URGED BY THE APPLICANT** (attach additional sheets if necessary): We would like the ZBA to consider Allan Overhiser and Alfred Ellingsen's interpretation of Section 3.28 of the Casco township Zoning Ordinance which deals with historically platted lots of record. This is in regards to the attached realtor ad for a lot in Miami Park. This parcel is next to our property and across the street from our residence. It has now been sold. We submitted our application letter to Mr. Ellingsen as he requested on May 15<sup>th</sup> 2018 and spoke to him on May 24th but have not yet received a response or directions.

**INTERPRETATION APPEAL:** *(To Be Completed Only with Regard  
To Interpretation Appeals):*

The Zoning Code interpretation (made by the Casco Township Supervisor and Building Inspector/Zoning Administrator) that is appealed as incorrect, and the applicant's basis for the interpretation urged is as follows:

We would like the ZBA to consider the interpretation by the Township Supervisor and the Zoning Administrator of the Casco township Zoning Ordinance Section 3.28 regarding historically platted lots of record. This was brought about by the attached realtor ad for a lot in Miami Park on Beach Drive. This parcel is next to our property and across the street from our residence. It has now been sold. In January Mr. Ellingsen and the Board authorized the split of a similar five-lot parcel on Pacific, so this activity is ongoing.

Mr. Ellingson and Mr. Overhiser are actively allowing splits of larger parcels of record down to 60 foot wide lots and other lot sizes less than 85 feet in the Low Density Residential zones. This is in direct conflict with the with the Casco Township Zoning Ordinance and Master Plan. They cite Section 3.28 of the ZO as their justification for these actions, saying that it is **their interpretation** that this Section allows splits of this type in these areas of historically platted subdivisions made up of small lots. However, Section 3.28 only allows lots to be combined if necessary to make up a 60 foot parcel, not divided. The ZO does not permit the Zoning Administrator to make smaller nonconforming lots out of conforming parcels that would meet the requirements for Low density residential. "Historic lots of record" is a phrase being used by these officials as something magical that frees these areas from zoning requirements.

Since the LDR residential zone is made up almost exclusively of these historically platted subdivisions, they are effectively changing the LDR district into one more congested than a Medium Density Residential Zone. This is especially destructive in Miami Park, which has more unbuilt land than some of the other small subdivisions. Their actions area also in conflict with the Future Land Use Map and plan which indicates these subdivisions are designated as Lakeshore Residential A with an even larger frontage and area requirement.

Section 3.28 was designed to aid the property owner who only has a 50 or 60 foot lot with no chance of adding to it but not to increase the number of these nonconforming lots.

Please refer to the attached documents and correspondence.

*Note: 3 attachments*

VALERIE BAAS  
RALPH R. ELLIS  
PH. 734-972-1289  
306 OAK ST.  
YPSILANTI, MI 48198-3066

74-7654/2724

1882

DATE June 29 2018

PAY TO Carole Tomac trip | \$ 700.00  
THE ORDER OF Seven hundred and 00/100 DOLLARS 

Amount in Figures or Words

UMI CREDIT UNION

MEMO ZBA fee

*[Handwritten Signature]*

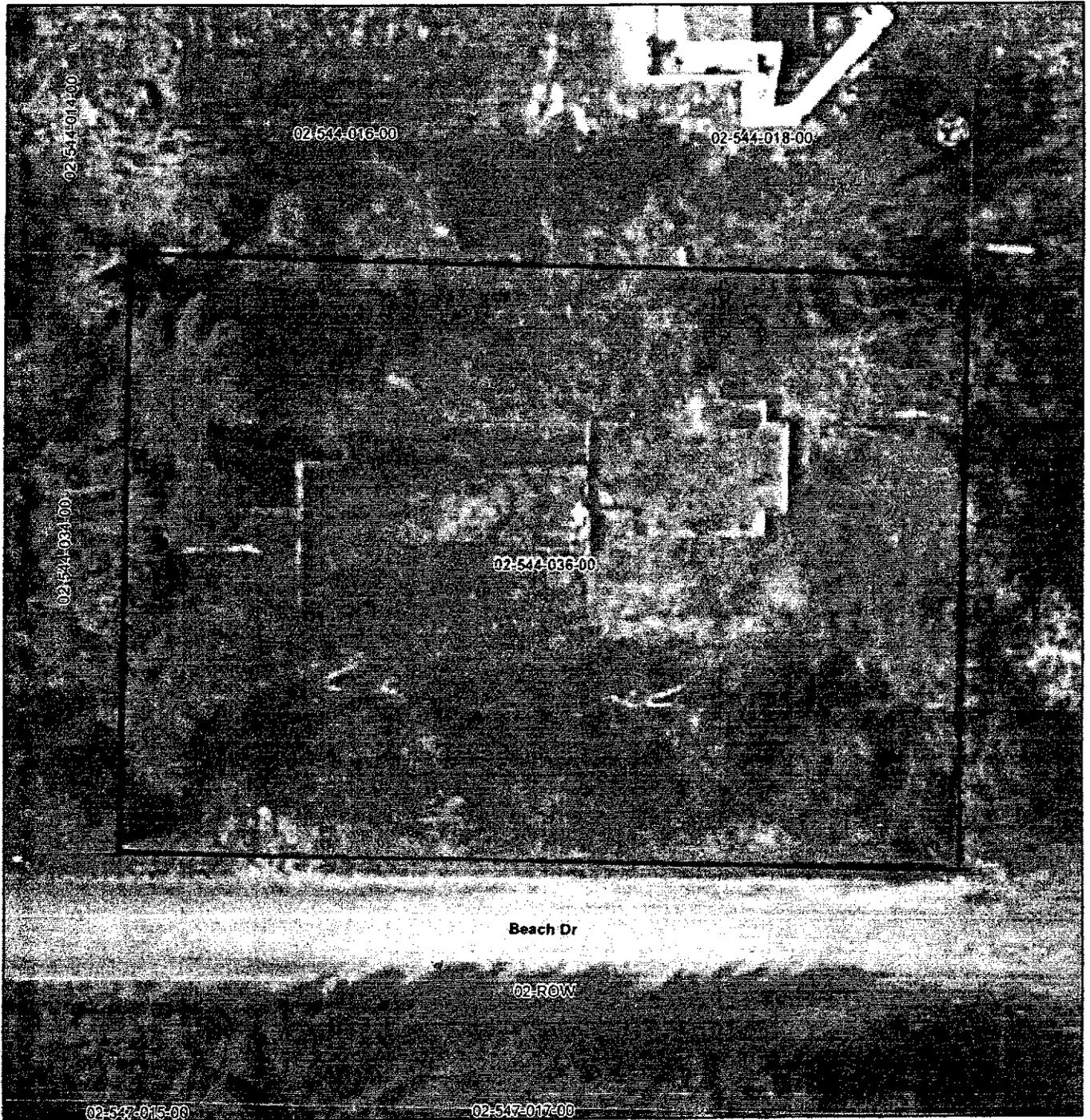
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SECRET



**Allegan County Parcel Number: 02-544-036-00**

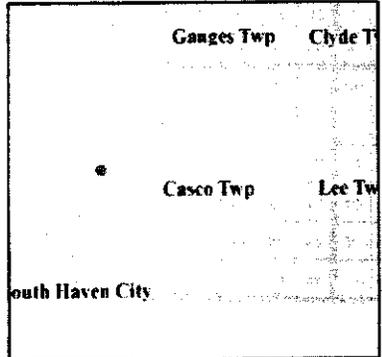


**Address: 7227 Beach Dr**  
**Owner: Way Daniel & Maribeth**  
**Acres: 0.36**



The information contained herewith has been compiled from recorded deeds, plats, tax maps, surveys and other public records. It is not a legally recorded map or survey and is not intended to be used as one. Users should consult the information sources mentioned above when questions arise.

Image Year 2014 Map Date 7/10/2017



# Real Estate Summary Sheet

\*\*\*Information herein deemed reliable but not guaranteed\*\*\*

06/20/2018 1:33 PM

**Parcel:** 02-544-036-00  
**Owner's Name:** WAY DANIEL & MARIBETH  
**Property Address:** 7227 BEACH DR

**Current Class:** 402.RESIDENTIAL VACANT  
**Previous Class:** 402.RESIDENTIAL VACANT  
**Gov. Unit:** 0302 CASCO TOWNSHIP  
**MAP #**  
**School:** 80010 SOUTH HAVEN  
**Neighborhood:** MIAMW MIAMI PARK WEST OF BLUE STAR

**Liber/Page:** 4064-665  
**Split:** 02/28/2004  
**Created:** 02/28/2004  
**Active:** Active

**Public Impr.:** Dirt Road, Electric  
**Topography:** Level, Wooded

**Mailing Address:**  
WAY DANIEL & MARIBETH  
649 LAKESHORE DR  
SOUTH HAVEN MI 49090

**Description:**  
LOTS 36-40 INCL BLK 4 MIAMI PARK SEC 13 T1N R17W (04)

## Most Recent Sale Information

Sold on 08/22/2016 for 1 by KALETA IZABELLA E.

**Terms of Sale:** INVALID SALE

**Liber/Page:** 4064-665

## Most Recent Permit Information

None Found

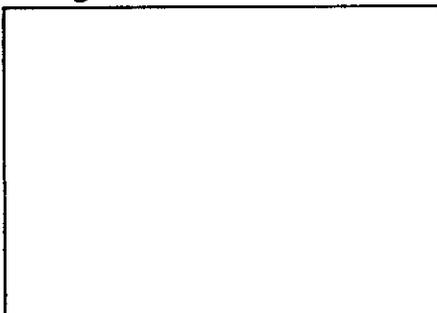
## Physical Property Characteristics

|                            |                             |                           |
|----------------------------|-----------------------------|---------------------------|
| <b>2018 S.E.V.:</b> 81,400 | <b>2018 Taxable:</b> 51,050 | <b>Lot Dimensions:</b>    |
| <b>2017 S.E.V.:</b> 50,000 | <b>2017 Taxable:</b> 50,000 | <b>Acreage:</b> 0.36      |
| <b>Zoning:</b> AGRICU (*)  | <b>Land Value:</b> 162,855  | <b>Frontage:</b> 0.0      |
| <b>PRE:</b> 0.000          | <b>Land Impr. Value:</b> 0  | <b>Average Depth:</b> 0.0 |

## Improvement Data

None

## Image





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- Spam (7)
- Trash (1)
- Smart Views
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  - Shopping
  - Travel
  - Finance
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  - Archives
  - Drafts
  - Recent

a question

People

valerie baas <baasvalerie@gmail.com>

Mar 5 at 9:17 AM

To Allan Overhiser (supervisor@castletownship.org); skwirely@frontier.com, Judy

Mr. Way is advertising this 150 ft. wide lot on Beach St. as a possible split into two 75 ft. parcels (see the attachment). It was my understanding that by zoning a larger parcel may not be split into smaller nonconforming pieces, and that the minimum is 85 ft. The ad says a sale is pending, so an answer soon would be appreciated as the potential buyer may need to be informed.

Thank you,

Valerie Baas

baasvalerie@gmail.com; 734-972-1289



shores gre....rtf



Frontier Mail News Sports Finance Weather Groups Answers Flickr More

All skwirely. search your mailbox

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Inbox (1)

Drafts

Sent

Archive

Spam (7)

Trash (1)

Smart Views

Important

Unread

Starred

People

Social

Shopping

Travel

Finance

Folders

Archives

Drafts

Recent

Re: a question

People

valerie baas <baasvalerie@gmail.com>

Mar 5 at 3:13 PM

To: Allan Overhiser (supervisor@cascotownship.org), [skwirely@frontier.com](mailto:skwirely@frontier.com)

Thank you for responding Allan, Alfred,

I understand that adjustments were made for those with only one 50 foot lot or two 30 ft. lots (60 ft.) in the nonconforming neighborhoods but I have not been able to find a section that allows the division of larger parcels of record in these areas into smaller nonconforming lots. Can you give me the citation in the Zoning Ordinance, or tell me where I can find the document if it is different than what is on the township site?

Thank you

Valerie Baas

On Mon, Mar 5, 2018 at 9:57 AM, <[supervisor@cascotownship.org](mailto:supervisor@cascotownship.org)> wrote:

Valerie,

Mr. Way is not violating the ordinance by splitting the 150ft parcel into two

75' parcels. The Ordinance was amended several years ago to address non-conforming lots of record in a platted subdivision. The resulting standard that was created is a minimum of 50' width for a single lot and 60' width for multiple lots. The 85' feet that you are referring to is for land outside of the historic platted subdivisions.

If you have any more questions I should be free to take a call after 1

Thanks

Allan

> Mr. Way is advertising this 150 ft. wide lot on Beach St. as a possible  
> split into two 75 ft. parcels (see the attachment). It was my  
> understanding that by zoning a larger parcel may not be split into  
> smaller

> nonconforming pieces, and that the minimum is 85 ft. The ad says a  
> sale

> is

> pending, so an answer soon would be appreciated as the potential  
> buyer may

> need to be informed.

>

> Thank you,

>

> Valerie Baas

>

> [baasvalerie@gmail.com](mailto:baasvalerie@gmail.com)

> 734-972-1269

>



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Re: a question

People

valerie baas <baasvalerie@gmail.com>

Mar 5 at 6:45 PM

To: Allan Overhiser (supervisor@cascotownship.org)

CC: skwirely@frontier.com, Judy

Thank you for clarifying for me that the the document on the web site is what is now in place for zoning. -Valerie

On Mon, Mar 5, 2018 at 5:03 PM, <supervisor@cascotownship.org> wrote:

Valerie

The section 3.03B references non-conforming lots

Section 3.28 provides standards for single lot and multiple lots

The ordinance is current on the web site.

Allan

> Thank you for responding Allan, Alfred,

>

> I understand that adjustments were made for those with only one 50 foot lot

>

> or two 30 ft. lots (60 ft.) in the nonconforming neighborhoods but I have

> not been able to find a section that allows the division of larger parcels

> of record in these areas into smaller nonconforming lots. Can you give

> me

> the citation in the Zoning Ordinance, or tell me where I can find the

> document if it is different than what is on the township site?

>

> Thank you

>

> Valerie Baas

>

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>

>> Valerie,

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>> 75' parcels. The Ordinance was amended several years ago to address

>> non-conforming lots of record in a platted subdivision. The resulting

>> standard that was created is a minimum of 50' width for a single lot

>> and

>> 60' width for multiple lots. The 85' feet that you are referring to is

>> for land outside of the historic platted subdivisions.

>> If you have any more questions I should be free to take a call after 1

>> Thanks

>> Allan

>>

>>



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zoning

People

valerie baas <baasvalerie@gmail.com> Mar 6 at 1:45 PM  
To: Allan Overhiser (supervisor@cascotownship.org), skwirely@frontier.com

Allan, thank you again for your comments.

The size specifications in Section 3.28 do not apply to Mr. Way's lot. As it currently exists, and as it existed for many years under Isabel Kaleta, the 150 ft. lot conforms to the current LDR zoning requirements for our area. Subdividing it would create new nonconforming lots which would conflict with several sections in the zoning ordinance.

I refer to Section 3.03 A. Required Area or Space which reads "A lot or lots in common ownership.....shall not be divided, altered or reduced so as to make it not in conformance with the minimum requirements of this Ordinance. (For LDR residential in this case a minimum of 85 ft.) If already less than the minimum requirements of this Ordinance a lot...in common ownership...shall not be divided, altered or reduced so as to increase its noncompliance with such minimum requirements.

Also, under Section 3.28 A. Intent paragraph 1. last line "It is the intent of this Ordinance to permit these nonconformities to continue until they are removed but not to encourage their expansion or continuation."

And, Section 3.28 C Nonconforming uses-Change or Discontinuance. Paragraph 1. "...the nonconforming use of...land or any premises shall not be:

a. Re-established after it has been changed to a conforming use."

The Way property on Beach, although made up of small, nonconforming lots, falls under Section C 1. a. It is made up of lots owned in common for many years by Isabelle Kaleta and conforms to LDR requirements. They are adjacent to each other and have continuous frontage. Dividing it would make it non-compliant.

The document goes on to establish that the zoning administrator has some discretion but ONLY in that he "may permit a nonconforming use to be converted to a more conforming use..."

The Intent of the Section 3.28 for nonconforming lots is to eventually bring these historically platted subdivisions into compliance by not allowing reductions in lot size beyond that for the designated zoning. (See Section 3.28 A., 1.) In this case that is Low Density Residential with a minimum lot size of 85 feet.

Thank you for your attention.

-Valerie



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my question

valerie baas <baasvalerie@gmail.com> Mar 13 at 11:48 AM

To Allan Overhiser (supervisor@cascotownship.org), skwirely@frontier.com, Judy

Hello Allan,

I am still waiting for Alfred to respond to my comments below. He said in an earlier conversation the Township lawyer had produced an opinion on this issue. Can you tell me where I could see this? I have also not been able to find any information on the 2006 referendum. BTW the "Amendments" after 2014 section on the website is not complete as it is missing every other page.

-Valerie

Allan, thank you again for your comments.

The size specifications in Section 3.28 do not apply to Mr. Way's lot. As it currently exists, and as it existed for many years under Isabel Kaleta, the 150 ft. lot conforms to the current LDR zoning requirements for our area. Subdividing it would create new nonconforming lots which would conflict with several sections in the zoning ordinance.

I refer to Section 3.03 A. Required Area or Space which reads "A lot or lots in common ownership.....shall not be divided, altered or reduced so as to make it not in conformance with the minimum requirements of this Ordinance. (For LDR residential in this case a minimum of 85 ft.) If already less than the minimum requirements of this Ordinance a lot...in common ownership...shall not be divided, altered or reduced so as to increase its noncompliance with such minimum requirements.

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Re: my question

People

valerie baas <baasvalerie@gmail.com>

Mar 13 at 6:07 PM

To skwirely

CC Allan Overhiser

Thank you Mr. Ellingsen. -Valerie

On Tue, Mar 13, 2018 at 4:02 PM, skwirely <skwirely@frontier.com> wrote: Ms. Baas,

I have asked the attorney to respond to your interpretation of the Zoning Ordinance. I am not sure if he will respond directly to you or to me or both. If only to me I will forward the response to you as soon as I receive it.

On Tuesday, March 13, 2018 11:48 AM, valerie baas <baasvalerie@gmail.com> wrote:

Hello Allan,

I am still waiting for Alfred to respond to my comments below. He said in an earlier conversation the Township lawyer had produced an opinion on this issue. Can you tell me where I could see this? I have also not been able to find any information on the 2006 referendum. BTW the "Amendments" after 2014 section on the website is not complete as it is missing every other page.

-Valerie

Allan, thank you again for your comments.

The size specifications in Section 3.28 do not apply to Mr. Way's lot. As it currently exists, and as it existed for many years under Isabel Kaleta, the 150 ft. lot conforms to the current LDR zoning requirements for our area. Subdividing it would create new nonconforming lots which would conflict with several sections in the zoning ordinance.

I refer to Section 3.03 A. Required Area or Space which reads "A lot or lots in common ownership.....shall not be divided, altered or reduced so as to make it not in conformance with the minimum requirements of this Ordinance. (For LDR residential in this case a minimum of 85 ft.) If already less than the minimum requirements of this Ordinance a lot...in common ownership...shall not be divided, altered or reduced so as to increase its noncompliance with such minimum requirements.

Also, under Section 3.28 A. Intent paragraph 1. last line "It is the intent of this Ordinance to permit these nonconformities to continue until they are removed but not to encourage their expansion or continuation."



Mr. Alfred Ellingsen  
Zoning Administrator and Building Inspector  
Casco Township  
7104 107th Ave.  
South Haven, MI 49090

Dear Mr. Ellingsen,

We are requesting a hearing before the Zoning Board of Appeals. This is regarding interpretations of the Casco Zoning Ordinance by you and the Township Supervisor, Mr. Overhiser. You are allowing splits of lots of record in Miami Park into parcels less than the frontage and area requirements for the LDR zone where these properties are located. (see attached Realtor ad)

Please let us know what documentation and fees may be required.

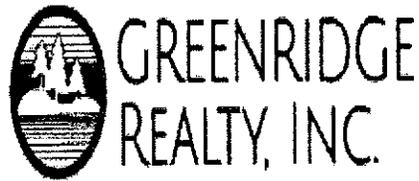
Thank you,

Handwritten signatures of Valerie Baas and Ralph Ellis in black ink.

Valerie Baas and Ralph Ellis

7220 Beach Dr.  
South Haven, MI 49090  
734-972-1289

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- MichRIC #: 17047869



Dan Way

Email Agent

O: 269-637-81

C: 269-317-77

The Shores of Sou  
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Map of 7227 Beach, South Haven, MI 49090



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FACSIMILE: (844) 670-6009  
<http://www.dickinsonwright.com>

RONALD A. BULTJE  
RBultje@dickinsonwright.com  
(616) 336-1007

## MEMORANDUM

**To:** Mr. Al Ellingsen, Zoning Administrator and Building Inspector, Casco Township

**From:** Ronald A. Bultje

**Date:** March 16, 2018

**Re:** Prior Nonconforming Lots Under the Casco Township Zoning Ordinance

VIA E-MAIL ONLY

---

Al:

Per your request, this Memorandum will address a situation in Miami Park in Casco Township.

I understand that a landowner in Miami Park has five adjacent lots, commonly owned, each with 30 feet of width. Thus, the total width of the five combined lots is 150 feet. The property owner wishes to create two lots, each with 75 feet of lot width. The question is whether this complies with the Casco Township Zoning Ordinance (the "Zoning Ordinance").

Section 3.28.B.1 of the Zoning Ordinance provides that if a single lot of record is not contiguous with any other lot owned by the same property owner, and the single lot of record is in a platted subdivision, and if the lot does not meet the minimum requirements for lot width, depth, or area as established in the Zoning Ordinance, then the single platted lot must have a minimum lot width of 50 feet and a minimum lot depth of 100 feet.

However, in the situation at hand, the property owner has five contiguous platted lots in common ownership. In that event, the relevant subsection of the Zoning Ordinance is Section 3.28.B.3. That subsection provides that if two or more nonconforming lots of record are commonly owned and have continuous frontage because they are adjacent to each other, and if the lots individually do not meet the lot width or lot area requirements of the Zoning Ordinance, then the commonly owned adjacent nonconforming lots must be combined so that one or more buildable lots are created, each with at least 60 feet of lot width and at least 100 feet of lot depth.

Based on the above, it would be permissible for the property owner in question to divide the five commonly owned adjacent 30 feet wide platted lots of record into two lots, each with 75 feet of lot width, because that exceeds the minimum lot width of 60 feet established under Section 3.28.B.3.

Mr. Al Ellingsen  
March 16, 2018  
Page 2

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I understand the question has been raised about the application of Section 3.03.A of the Zoning Ordinance. Section 3.03.A provides that lots in common ownership may not be divided so as to not be in conformity with the minimum requirements of the Zoning Ordinance. The argument has been made that since the underlying zoning district requires a minimum lot width of 85 feet, therefore these five combined lots, with a combined lot width of 150 feet, may not be divided into two lots. There is obviously not enough lot width to create two lots, each with 85 feet of width per Section 3.03.A.

That argument is not correct. Even in Section 3.03, subsection B provides that a lot which is platted as of the effective date of the Zoning Ordinance may be used as provided in Section 3.28. Thus, the determinative section of the Zoning Ordinance is Section 3.28, not Section 3.03.

As we have noted, Section 3.28 allows commonly owned adjacent platted lots of record to be divided as long as each resulting lot has a minimum lot width of 60 feet. In the current situation, with five lots having a total of 150 feet of lot width, dividing them into two lots each with 75 feet of lot width exceeds the requirements of Section 3.28 and thus satisfies Section 3.03 as well.

Please advise if you have questions concerning the above. Please advise if I can be of any further assistance on this matter.

Very truly yours,  
DICKINSON WRIGHT PLLC



Ronald A. Bultje

RAB/skc

cc: Mr. Allan Overhiser, Supervisor (via e-mail)

Ms. Valerie Baas (via e-mail; [baasvalerie@gmail.com](mailto:baasvalerie@gmail.com))

Casco 23 Memo 03162018 Ellingsen re Baas Creating Two Lots Out of Five Commonly Owned Platted Lots  
GRAPIDS 90580-23 493839v1

March 21, 2018

Mr. Bultje, Mr. Overhiser, Mr. Ellingsen

Thank you for copying me on your memorandum.

There seems to be confusion between the terms "lot" and "parcel". The 150 ft. property currently exists as an undivided parcel, under one parcel number, according to the requirements of Section 3.28 B., 3., a. It meets the Requirements for the LDR zone in which it exists in terms of lot width and area according to Section 8.03 .

Section 3.28 B. 1. States "A single lot of record is not contiguous with another lot or lots under the same ownership...that single lot of record may be used for any purposes permitted by the zoning district in which it is located, provided that:" etc.

Section 3.28 B, 3., c. states "No portion of such parcel shall be used or divided in such a manner which diminishes compliance with lot width or area requirements" Mr. Ellingsen may assert that the property is non-conforming because it does not meet the 1:4 width to depth ratio, but very few properties in the residential areas do, so that requirement is not actually used in practice or even cited anywhere in section 3.28.

In Section 3.28 C. "Nonconforming Uses-Change or Discontinuance" it states in item 1. "the nonconforming use of a building or structure or any land or premises shall not be:

- a. Re-established after it has been changed to a conforming use..."

Also, as mentioned in the earlier letter that section goes on to establish that the Zoning Administrator is allowed some discretion but ONLY in that he "may permit a nonconforming use to be converted to a more conforming use..." This parcel became conforming when the five lots were combined under a previous owner.

In the third paragraph on page 2 of his memo Mr. Bultje is justifying his argument by referring to Section 3.28 B., 3., b. His interpretation is not based on the actual text of the document however, as that section does not allow for division. It states "In the case where several contiguous nonconforming lots ...must be combined the resultant buildable lot or lots shall provide a:

- (1) Minimum lot width of sixty (60) feet...etc."

It is not allowing for division, only combining.

In article c. of that Section it states "No portion of such parcel shall be used or divided in a manner which diminishes compliance with lot width or area requirements. As no area requirements are given in Section 3.28 this must refer back to Section 8.03 which gives the requirements for LDR.

Mr. Overhiser has stated to me that the 85 foot standard only applies to "land outside the historic platted subdivisions". I would like to point out that the LDR zone as mapped consists almost entirely of historic platted subdivisions. Therefore the LDR zone does not exist in the interpretation by the Township.

The intention of 3.28 is to allow the use of parcels with only 50 or 60 feet available, not to allow the splitting apart of larger conforming parcels. That interpretation voids the effect of the entire Zoning ordinance and conflicts with the Master Plan. The desired effect of Section 3.28 is to gradually bring these historic platted subdivisions into compliance by not allowing reductions in lot size below that for the lot width and area of the zoning designation, Section 8.03.

I refer to the Ordinance Section 1.04 PURPOSE

"The purpose of this Ordinance is...to provide for orderly development in the Township... as described in the Master Plan."

We would like to be informed of any requests to divide or otherwise split this parcel. Also, as it appears that this 150 ft. lot has now been sold under the advertisement that the land may be divided the new owner should be informed that is not the case.

Thank you for your consideration,

Valerie Baas and Ralph Ellis

7220 Beach Dr.

South Haven, MI 49090

734-972-1289



200 OTTAWA AVENUE NW, SUITE 1000  
GRAND RAPIDS, MICHIGAN 49503-2427  
TELEPHONE: (616) 458-1300  
FACSIMILE: (844) 670-6009  
<http://www.dickinsonwright.com>

RONALD A. BULTJE  
RBultje@dickinsonwright.com  
(616) 336-1007

## MEMORANDUM

**To:** Mr. Allan Overhiser, Supervisor, Casco Township  
Mr. Al Ellingsen, Zoning Administrator and  
Building Inspector, Casco Township

**VIA E-MAIL ONLY**

**From:** Ronald A. Bultje

**Date:** March 23, 2018

**Re:** Prior Nonconforming Lots Under the Casco Township Zoning Ordinance  
Five Miami Park Lots

---

Gentlemen:

Per your request, this Memorandum will address issues raised in the March 21, 2018 letter from Ms. Valerie Baas and Mr. Ralph Ellis (together referred to as the "Writers") concerning nonconforming lots in Miami Park in Casco Township (the "Township").

The Writers claim there is confusion between the terms "lot" and "parcel." In response, my comment is that there should be no confusion between those two terms. In fact, they are absolutely synonymous. The Casco Township Zoning Ordinance (the "Zoning Ordinance") defines "lot" as "a parcel of land . . ." There is no corresponding definition of "parcel." Thus, it is clear under the Zoning Ordinance that "lot" and "parcel" are two synonymous terms.

The Writers next claim that the five adjacent platted lots in Miami Park, commonly owned and each with 30 feet of width (the "Five Platted Lots") which now constitute one lot with 150 feet of width (the "Combined Lot"), cannot be divided into two lots which each have 75 feet of width. However, the Writers are incorrect. The Five Platted Lots which create the Combined Lot have not lost their legal status as separate platted lots. Nothing in the Zoning Ordinance or in State law prohibits the Combined Lot from being divided as long as it is divided in accord with the Zoning Ordinance and State law. The Zoning Ordinance simply requires that the divided lots have at least 60 feet of width. Because the Five Platted Lots are nonconforming lots of record which are contiguous and commonly owned, Section 3.28.B.3.b provides that the minimum lot width is 60 feet. Thus, under State law and under the Zoning Ordinance two lots with 75 feet of width each may legally be created out of the Combined Lot.

The fact is that the plat which established the Five Platted Lots has not been amended to eliminate the Five Platted Lots. Rather, the Five Platted Lots continue to exist individually as a matter of legal record. They do not cease to exist just because the Zoning Ordinance considers them to be combined pursuant to the language in Section 3.28.B.3.a.

The Writers correctly note that Section 3.28.B.1 of the Zoning Ordinance addresses a single nonconforming lot of record which is not contiguous with another lot under the same ownership. That provision of the Zoning Ordinance is irrelevant to our current situation. Our current situation is that we have five lots of record which are contiguous and are under the same ownership. Any argument made by the Writers based upon Section 3.28.B.1 is not relevant.

The Writers note that Section 3.28.B.3.c of the Zoning Ordinance states that no "parcel" shall be used or divided in a way that diminishes its compliance with lot width requirements. As noted above, "parcel" and "lot" are synonymous under the Zoning Ordinance. In any event, dividing the Combined Lot into two lots with 75 feet of width each does not create lots which violate the lot width requirement. Rather, the two lots which each have 75 feet of width would each have 15 feet of width beyond the 60 feet required by Section 3.28.B.3.b(1) of the Zoning Ordinance, since the Five Platted Lots are contiguous nonconforming lots in common ownership and subject to Section 3.28.B.3.

The Writers note that Section 3.28.C.2 of the Zoning Ordinance allows the Zoning Administrator to permit a nonconforming use to be converted to a more conforming use. They then argue that the Combined Lot is a conforming use which may not be converted to two nonconforming lots. Their argument is mistaken.

Initially, Section 3.28.B governs nonconforming lots. Section 3.28.C governs nonconforming uses. I am not aware of any nonconforming land uses being conducted or planned to be conducted on the Combined Lot. Section 3.28.C is not relevant here.

Further, the Combined Lot is not being converted into two nonconforming lots. Rather, the Five Platted Lots are being converted into two nonconforming lots which comply with Section 3.28.B.

The Writers state that Section 3.28.B.3.b of the Zoning Ordinance cannot be used to defend the division of the Combined Lot into two lots with 75 feet of width each; they say Section 3.28.B.3.b can only be used to combine lots, not divide them. The Writers fail to understand that the Five Platted Lots still legally exist, so Section 3.28.B.3.b allows them to be combined into two lots with 75 feet of width each.

Again, the Writers go back to Section 3.28.B.3.c and note that no portion of a parcel (or lot) created by the combination of adjacent commonly owned nonconforming lots ". . . shall be used or divided in a manner which diminishes compliance with lot, width and area requirements." In this event, division of the Combined Lot into two lots, each with 75 feet of width, would not create a lot which fails to comply with the width requirements of the Zoning Ordinance. The two resulting lots would have 75 feet of width, when Section 3.28.B.3.b clearly

Mr. Allan Overhiser and  
Mr. Al Ellingsen  
March 23, 2018  
Page 3

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provides that only 60 feet of width is required for each lot, given that we are dealing with contiguous nonconforming lots in common ownership.

The width of 85 feet required for lots in the Low Density Residential District applies to all lots in that District, if they have sewer. If they do not have sewer, then the width of 100 feet is required in the Low Density Residential District. However, the exception is for nonconforming lots adjacent to each other and commonly owned. Section 3.28.B.3.b makes it clear that for those lots, 60 feet of width is the applicable requirement.

The Zoning Ordinance defines a "lot of record" as a "lot" or a "parcel," again confirming that the two terms are synonymous, which is recorded with the Register of Deeds. Further, a "nonconforming lot" is defined as a lot that conformed with Township requirements when it was created but no longer complies with the Zoning Ordinance. State law and the Zoning Ordinance allow nonconforming lots of record to continue to exist. However, Section 3.28.B places limitations upon those prior nonconforming lots of record. Specifically, if the prior nonconforming lots of record are adjacent and commonly owned, then they must be combined in a way to have at least 60 feet of width. That is exactly what the owner of the Five Platted Lots has done. Therefore, the creation of two lots, each with 75 feet of width, from the Combined Lot created out of the Five Platted Lots is exactly correct and in compliance with the Zoning Ordinance.

After you had an opportunity to review the above, please advise if you have questions or comments.

Very truly yours,  
DICKINSON WRIGHT PLLC



Ronald A. Bultje

RAB/skc

cc: Ms. Valerie Baas (via e-mail; [baasvalerie@gmail.com](mailto:baasvalerie@gmail.com))  
Casco 23 Memo 03232018 Overhiser and Ellingsen re Prior Nonconforming Lots  
GRAPIDS 90580-23 495143v1

April 10, 2018

Mr. Bultje, Mr. Overhiser, Mr. Ellingsen,

Thank you for your response to my letter of March 21, 2018.

While it is true that the Casco Zoning Ordinance only has a definition for "lot" it does not mean that "lot" and "parcel" are "absolutely synonymous". "Parcel" is used as a term in the Casco Township ZO and although these terms in common use may generally be interchangeable, at times they are quite specific.

If the Casco ZO has no definition for "parcel" we must refer to the definition in the Michigan Land Division Act, "(g) 'Parcel' means a continuous area or acreage of land ..." ". "Lot" is defined separately as (m) ...a measured portion of a parcel or tract of land, which is described and fixed in a recorded plat."

For a property description at Allegan County the parcel number determines ownership and location, and the lot number describes the measured sections within that parcel. When used as they are in Sections 3.03.B and 3.28 they are intended to provide this same distinction.

In the case of the 150 foot contiguous area of land on Beach St., according to Allegan County it is one parcel # 02-544-036-00 and recorded as such on the tax rolls. The legal description for this parcel is LOTS 36-40 INCL BLK 4 MIAMI PARK SEC 13 T1N R17W (04). These lots are not listed separately or taxed as single lots of record, but as one parcel under the number above.

In this case it is proved that Section 3.28 B.3.a. is what would apply, and these five lots recorded under one parcel number should be "considered to be an undivided parcel for the purposes of this Ordinance..." This undivided parcel meets the LDR requirements of 85 ft. of frontage and 10,000 sq. feet of area. Additionally, Section 3.28 B.3 c states that "No portion of such parcel shall be used or divided in a manner which diminishes compliance with width lot width or area requirements." The area requirement for LDR is a minimum of 10,000 sq. ft., and as no other area requirement is specified in Section 3.28, a division into two 75 foot nonconforming parcels would violate the terms of Section 3.28.B.3. c.

It is quite apparent that Section 3.28 exists as an attempt to protect the property owner who only has a single 50 or 60 ft. parcel with "no practical possibility of obtaining more land" (Section 20.08), and not to allow the creation of new "self-inflicted hardships".

Mr. Bultje and Casco Township are causing Sections 3.0.B and 3.28 to be perverted from this intent, which would gradually bring these historic platted subdivisions into compliance with the Master Plan and the designation of Low Density Residential Zoning, including the required setbacks. This intent is made clear in the fact that the LDR district in Casco Township is almost exclusively made up of historic platted subdivisions, and this was the case when the Master Plan and Zoning Ordinance were adopted.

Allowing higher density residential areas to be created in low density districts is contrary to the Zoning Ordinance and the fundamentals of zoning. This split, and others like it, should not be allowed in the Low Density Residential districts.

Thank you for your consideration,

Valerie Baas and Ralph Ellis

7220 Beach Dr.

South Haven, MI 49090

## Ruth's Email

---

**From:** valerie baas <baasvalerie@gmail.com>  
**Sent:** Monday, May 14, 2018 1:43 PM  
**To:** ZoningClerk@cascotownship.org  
**Subject:** ZBA application  
**Attachments:** Zoning Interpretation Application sheets for Casco.docx

Hello Ruth,

We would like to submit an application to the Casco ZBA, however it would be for an interpretation, not a variance. I can't find a form for this on the Township site although it is allowed by the ZO . Can you direct me to one or tell me if I may use the attached form I modified from another site? Also, is the fee \$250.00?

Thank you,

Valerie Baas

[baasvalerie@gmail.com](mailto:baasvalerie@gmail.com)  
734-972-1289

## Ruth's Email

---

**From:** Kathy Stanton <deputyclerk@cascotownship.org>  
**Sent:** Tuesday, May 22, 2018 3:24 PM  
**To:** 'valerie baas'  
**Cc:** zoningclerk@cascotownship.org  
**Subject:** RE: ZBA request

Hi Valerie –

I'm responding to your email to Ruth because she has been out of the office because her father in law passed away. She will be back tomorrow, so I'd suggest calling then, however she may not know anything yet because she and Alfred won't have had a chance to catch up yet.

Have a good evening, Kathy

**From:** valerie baas <baasvalerie@gmail.com>  
**Sent:** Tuesday, May 22, 2018 10:07 AM  
**To:** ZoningClerk@cascotownship.org  
**Cc:** Kathy Stanton <deputyclerk@cascotownship.org>  
**Subject:** ZBA request

Hello Ruth,

I delivered a letter for Mr. Ellingsen to the Township Hall last Tuesday. It was a request for a hearing before the Zoning Board of Appeals but I have not received any response. Can you tell me what the next steps might be?

Sincerely,

Valerie Baas

[baasvalerie@gmail.com](mailto:baasvalerie@gmail.com)  
734-972-1289

Frontier Mail News Sports Finance Weather Groups Answers Fli

Q All skwirely, search your mailbox Search Mail



Compose

Search results Archive Move

Inbox (1)

Drafts

Sent

Archive

Spam (7)

Trash (1)

Smart Views

Important

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Starred

People

Social

Shopping

Travel

Finance

Folders

Archives

Drafts

Recent

ZBA request

valerie baas <baasvalerie@gmail.com>

May 23 at 11:

To skwirely

CC Ralph Ellis

Hello Mr. Ellingsen,

It has been a week since we submitted our request for a ZBA hearing. you give us information as to what the next steps would be?

-Valerie Baas and Ralph Ellis

baasvalerie@gmail.com

734-972-1289



Inbox (1)

Drafts

Sent

Archive

Spam (7)

Trash (1)

Smart Views

Important

Unread

Starred

People

Social

Shopping

Travel

Finance

Folders

Archives

Drafts

Recent

Re: ZBA request

People

valerie baas <baasvalerie@gmail.com>

Jun 5 at 9:48 AM

To skwirely

CC Ralph Ellis

Thank you for your response Mr. Ellingsen.

Since you have not yet set the date, we would like to request that the hearing not be scheduled for the dates July 25th through August 3rd as we will be unavailable during that time.

Thank you,

Valerie Baas and Ralph Ellis

On Mon, Jun 4, 2018 at 10:25 PM, skwirely <skwirely@frontier.com> wrote: Ms. Baas & Mr. Ellis,

I am working on getting the 5 members of the ZBA and the Township Attorney all together on the same date to deliberate your request. I must publish your request at least 15 days before the hearing so I believe it will be sometime in July and usually on a Thursday. Since you have requested the hearing you must pay the fee of \$700 to offset the costs of publication, recording secretary, and stipends for the ZBA members. You must also provide copies of all the correspondence you have submitted to the township over the past several months regarding your interpretation of Section 3.28 of the Zoning Ordinance.

I should have a definitive date for the hearing within a few days assuming I can contact all the ZBA members soon.

Al Ellingsen
Casco Township
269/214-2382

On Wednesday, May 23, 2018 11:44 AM, valerie baas <baasvalerie@gmail.com> wrote:

Hello Mr. Ellingsen,

It has been a week since we submitted our request for a ZBA hearing. Can you give us information as to what the next steps would be?

-Valerie Baas and Ralph Ellis

baasvalerie@gmail.com
734-972-1289



Attachment #14

formal sessions.

ewal application is available for public  
aves Memorial Library, 314 Broadway  
higan and is accessible electronically  
ctors/operating/licensing/renewal/  
ml. For planning purposes interested  
o register to attend or present oral  
Mr. Robert Schaaf at (800) 368-5642,  
nail at FallsadesEIS@nrc.gov by July  
ions may also register to speak at the  
s of the start of each session.

Delivered to the Public Works Director, 1155 08th Ave., South  
Haven, Michigan, and plainly marked on the outside of the  
envelope as follows:

BID NO: 2006-01 Electrical contractor crew and equipment  
for system construction underground work and system main-  
tenance.

Robert Stickland  
Director of Public Works  
City of South Haven  
269-637-0719

**SALE**

ve obtain will be used for

idenBoss, a married man  
existing under the laws of  
sylvania St., Suite 600,  
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:003, in Liber 1403, Page  
:lare and hereby declares

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ren and 95/100 Dollars  
r the debt secured by the

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y fee allowed by law, and  
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of Thousand Oaks No. 3,  
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ral Bank of Indianapolis

**NOTICE OF ADOPTION OF ORDINANCE**

To the residents and property owners of the Casco Township, Allegan County, Michigan, and all other interest-  
ed persons: Please take notice that at its regular meeting on June 13, 2005, the Township Board adopted an  
ordinance that is set out in full, below. The ordinance was published on June 26, and the Township Board rati-  
fied and readopted it on July 11, 2005. The ordinance provides:

Casco Township, Allegan County Ordains:

Ordinance No. 061305, Adopted June 13, 2005  
Effective: Eight Days after Publication

**Section I: Amendment to the Zoning Ordinance adopted October 13, 1988**

Existing Lots of Record: delete the current section 13.03(b) and revise, as follows:

(b). Existing Lots of Record - Where a lot of record within a platted subdivision is in existence at the time of  
the adoption or amendment of this Ordinance and does not meet the minimum requirements for lot width or lot  
area, such lot of record may be used for any purposes permitted by the district in which the lot is located; pro-  
vided the following minimum requirements are met:

(1) Modified Dimensional Requirements:

- a. Minimum lot width: fifty (50) feet
- b. Minimum front setback: twenty-five (25) feet
- c. Minimum rear setback: twenty (20) feet
- d. Minimum side setback: ten (10) feet
- e. Maximum lot coverage (ground area covered by buildings): twenty-five percent (25%),  
not to exceed two thousand one hundred (2,100) square feet of ground area covered  
by buildings

(2) Contiguous Nonconforming Lots in Common Ownership:

- a. If any two (2) or more platted lots of record or combination of lots and portions of such lots of  
record with continuous frontage were in common ownership at the time of the passage or amend-  
ment of this Ordinance, the lands involved shall be considered to be an unsubdivided parcel for the  
purposes of this Ordinance if, individually, they are less than fifty (50) feet in width.
- b. Such parcel shall be used as a single building site or may be divided into two (2) or more building  
sites, the minimum width of each of which shall not be less than fifty (50) feet and each of which  
shall be subject to the modified dimensional requirements of section 13.03 (b)(i). No portion of such  
parcel shall be used or divided in a manner that further diminishes compliance with the lot width and  
area requirements of this Ordinance.

(3) Approval of on-site water and/or sanitary sewer shall be required, as provided in section 13.16 of  
this Ordinance.

**Section II: Severability**

These amendments and additions to the Casco Township Zoning Ordinance and the various parts, sections,  
provisions, sentences and clauses are severable. If any part of this Ordinance is found to be unconstitutional  
or invalid it is declared that the remainder of this Ordinance shall not be affected thereby.

**Section III: Effective Date and Repeal of Conflicting Ordinances**

These amendments and additions to the Casco Township Zoning Ordinance shall take effect eight (8) days  
after publication. All ordinances in conflict herewith are hereby repealed.

The ordinance may be obtained or reviewed at the office of the Township Clerk at the address shown below.

Julie Cowie, Clerk  
Casco Township  
7104 107th Avenue  
South Haven, MI 49090



Attachment #15

## CASCO TOWNSHIP

Zoning Administrator/Building Official

7104 107<sup>th</sup> Avenue

South Haven, Michigan 49090

Phone:269/637-4441 Fax:269/639-1991 Cell: 269/214-2382

13 July 2018

To: ZBA Members

Re: Maas/Ellis Interpretation of Section 3.28

Dear ZBA Members,

These are brief comments regarding the request of Virginia Baas and Ralph Ellis to overturn my decision to allow the so called "division" of a group of existing platted lots. The Township Attorney has specifically addressed the issue in his letters dated 16 March 2018 and 23 March 2018 and I, as well as the Township Supervisor, agree with the analysis and conclusions set forth in these letters.

The determination of the minimum lot width of 60 feet and under certain circumstances 50 feet in platted subdivisions with the special setbacks and maximum lot coverage was agreed upon by the Planning Commission after over a year and a half of hearings and deliberations and finally approved by the Township Board over twelve(12) years ago. Therefore, I dispute the accusation that the decision to allow 60 foot lots was mine.

A minimum lot width of fifty(50) feet was previously approved by the Board thirteen(13) years ago, but a referendum overturned the Zoning Ordinance and the PC had to rework the text to where it is today. Portions of Section 3.28 state a set of rules which only applies to certain areas in the Township(historically platted lots of record) and is applied similarly to what an overlay district would do. The requirements for the Low Density Residential Zone(specifically 85 foot lot width) do not apply in these areas. If they did the lots used as an example by Ms. Baas and Mr. Ellis located on Beach Street which consists of 5 platted lots(150 feet in width) would only allow for the construction of one dwelling. Those 5 lots have recently been sold, but the owner has not pursued reconfiguration of those lots as of the date of this letter. If two 75 foot width lots were requested by the owner of this parcel, the Township Board would have to adjudicate this request as a Boundary Line Adjustment since the Board approves changes within platted subdivisions. A Boundary Line Adjustment is not a division.

If the above 5 lots under a single parcel number would only allow a single dwelling to be built and an existing 60 foot lot would also only allow a single dwelling to be built, there appears to be an unequal application of the precepts of the Zoning Ordinance. Would that then be discriminatory?



Alfred J. Ellingsen  
Zoning Administrator



LSL Planning, Inc.

## Memo

TO:

Casco Township Planning Commission and Board

Date: September 8, 2005

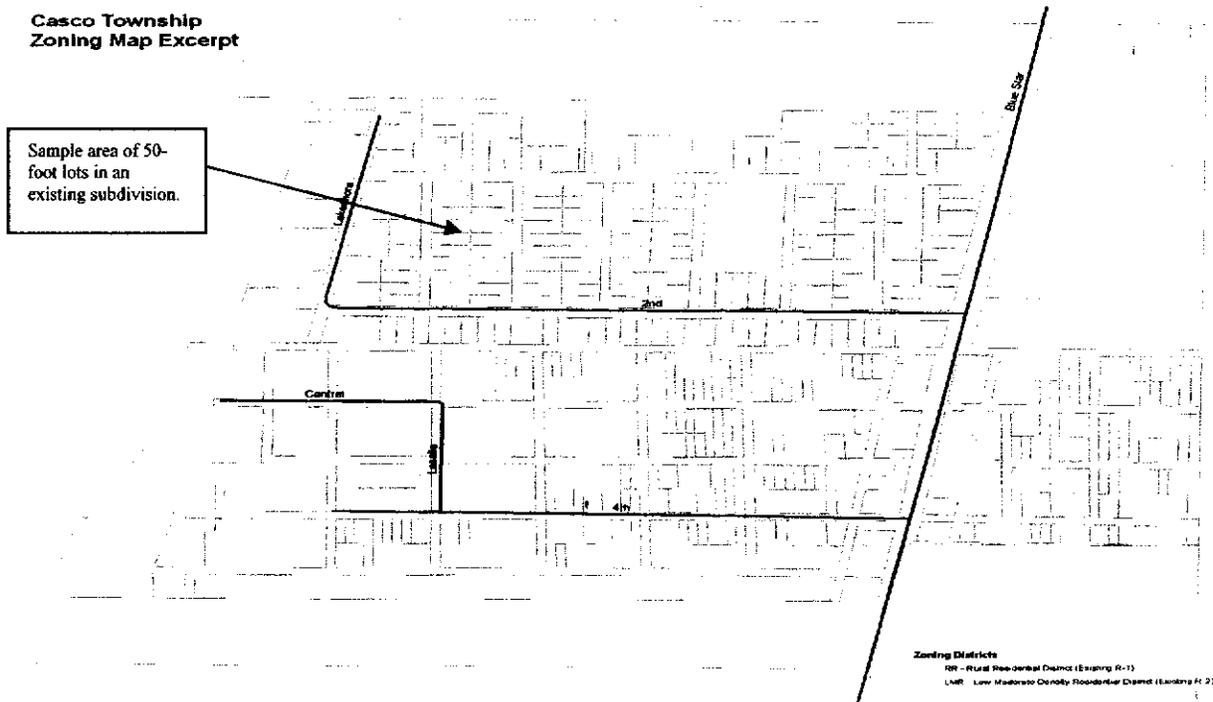
FROM

Brenda Moore, AICP, PCP  
Principal Planner

Re: Public Referendum regarding an amendment to Section 13.03(b)

### A. Background

The Township recently enacted an amendment to the zoning ordinance that further permits the development of a home on *existing* 50-foot lots *in previously platted subdivisions*-- under certain conditions. The primary reasons for this measure are; 1) the ability of the Township to now provide sewer service to these properties, and 2) to allow a reasonable use of pre-existing lots of record. Because the cost of providing sewer service is borne by the users of the system, the rationale was to make the system more cost effective by being clearer about infill development in existing subdivisions. Because of the conditions that: 1) the lot must be in an existing platted subdivision, and; 2) the lot must already be in existence; the new ordinance language affects only the R-2, Residential District, which is currently isolated (essentially) west of Blue Star Highway, near the lakeshore (see example subdivision below).



## **B. The ordinance language which is the subject of the referendum:**

Section 13.03b, as amended (*emphasis provided*)

- b) *Existing Lots of Record - Where a lot of record within a platted subdivision is in existence at the time of the adoption or amendment of this Ordinance and does not meet the minimum requirements for lot width or lot area, such lot of record may be used for any purposes permitted by the district in which the lot is located; provided the following minimum requirements are met:*
- (1) *Modified Dimensional Requirements:*
    - a. *Minimum lot width: fifty (50) feet*
    - b. *Minimum front setback: twenty-five (25) feet*
    - c. *Minimum rear setback: twenty (20) feet*
    - d. *Minimum side setback: ten (10) feet*
    - e. *Maximum lot coverage: twenty-five percent (25%), not-to-exceed two thousand one hundred (2,100) square feet of ground area covered by buildings*
  - (2) *Contiguous Nonconforming Lots in Common Ownership:*
    - a. *If any two (2) or more platted lots of record or combination of lots and portions of such lots of record with continuous frontage were in common ownership at the time of the passage or amendment of this Ordinance, the lands involved shall be considered to be an unsubdivided parcel for the purposes of this Ordinance if, individually, they are less than fifty (50) feet in width.*
    - b. *Such parcel shall be used as a single building site or may be divided into two (2) or more building sites, the minimum width of each of which shall not be less than fifty (50) feet and each of which shall be subject to the modified dimensional requirements of section 13.03 b)(1). No portion of such parcel shall be used or divided in a manner that further diminishes compliance with the lot width and area requirements of this Ordinance.*
  - (3) *Approval of on-site water and/or sanitary sewer shall be required, as provided in section 13.16 of this Ordinance.*

Note that subsection (2)(b) also clarifies that a 50-foot building lot could be “recreated” if, for example, a property owner in a platted subdivision consolidated two 50-foot lots at some point for taxation purposes. This is in the ordinance, in part, to recognize the fact that platted lots remain platted unless there is an official replat of the original registered plat.

**C. Old ordinance language (which would be reinstated if the referendum to repeal the amendment passes):**

**\*\*Previously repealed\*\*** language is ~~stricken~~ below (emphasis provided). Note that subsection (a) is still in affect.

SECTION 13.03(b) AREA, HEIGHT AND USE CONDITIONS AND EXCEPTIONS

(a) *Required Area or Space - A lot or lots in common ownership or a yard, court, parking area or other space shall not be divided, altered or reduced so as to make it not in conformance with the minimum requirements of this Ordinance. If already less than the minimum requirements of this Ordinance, a lot or lots in common ownership or a yard, court, parking area or other space shall not be divided, altered or reduced so as to increase its noncompliance with such minimum requirements.*

b) ~~*Existing Lots of Record - A lot which is platted, or otherwise of record as of the effective date of this ordinance, may be used as specified in the zoning district, provided the lot can meet the provisions of Section 13.16. The structure shall be located on the lot to assure maximum compliance with all yard and setback requirements for the zoning district in which the lot is located.*~~

It should be noted that Section 13.16 of the ordinance refers to the ability of the lot or parcel owner to provide adequate water and sewer service, either through a public system or by a County Health approved private well or septic system.

**D. Analysis**

It is our opinion that the previous ordinance language did not require the consolidation of nonconforming lots in joint ownership, so the 50-foot (or less), legal lots of record, could always be developed as long as they could meet district setbacks and get a well and septic permit from the county. Since many of them could not meet setbacks, the history of variances granted for such lots is somewhat alarming. Some agendas of the ZBA have had 10-14 cases in one meeting addressing nonconforming lots and without guidelines, resulted in wholesale variances which permitted nearly lot-line to lot-line development. One of the standards set in the new ordinance language to curb this trend was a lot coverage limit of 25%.

The current ordinance language requires the consolidation of lots in joint ownership if they have less than 50-feet of frontage. With the new amendment, those nonconforming lots with between 50-feet and 84 feet of frontage have to meet certain setback and lot coverage limit standards where before they did not.

Currently, the R-2 Zoning District requires 85 feet of lot frontage and 12,000 square feet of lot area for newly created lots. The new Township zoning ordinance, currently being written, is proposing that the frontage requirement be reduced to 75-feet and the lot area be reduced to 10,000 square feet. Again, the rationale of this change is to make the provision of public sewer more cost effective.

It should be noted that while the petition states the amendatory language, which is the subject of referendum, will “create greater density of development” but the lots in question already exist so that is not entirely accurate. With the lot coverage limits employed it should actually help prevent the crowding effect of too much building in too little space.

The availability of public sewer, and continuing market pressure in the Township, prompted the discussion of alternatives to the previous nonconforming lot language. While new ordinance language could be enacted to require *all* adjacent nonconforming lots in the same ownership to be treated as one piece of property, this type of requirement is usually employed in areas without public sewer. With the availability of public sewer, this rationale as a defense to prevent the use of legal lots of record is diluted.

#### **E. Petition Language**

Following is the language of the citizen petition:

*A referendum election pursuant to the Township Zoning Act on the approval or rejection of Casco Township Ordinance No. 061305 published July 17, 2005 in the South Haven Tribune pertaining to the amendment of Section 13.03(b) of the Casco Township Zoning Ordinance which amendment reduces minimum usable lot width and setbacks to create greater density of development.*

#### **F. State Law addressing a petition to bring the ordinance (or amendment to it) to a vote (referendum)**

##### **TOWNSHIP ZONING ACT (EXCERPT) Act 184 of 1943**

#### **125.282 Filing petition for submission of ordinance to electors.**

##### **Sec. 12.**

Within 7 days after publication of a zoning ordinance under section 11a, a registered elector residing in the portion of the township outside the limits of cities and villages may file with the township clerk a notice of intent to file a petition under this section. If a notice of intent is filed, then within 30 days following the publication of the zoning ordinance, a petition signed by a number of registered electors residing in the portion of the township outside the limits of cities and villages equal to not less than 15% of the total vote cast for all candidates for governor, at the last preceding general election at which a governor was elected, in the township may be filed with the township clerk requesting the submission of an ordinance or part of an ordinance to the electors residing in the portion of the township outside the limits of cities and villages for their approval. Upon the filing of a notice of intent, the ordinance or part of the ordinance adopted by the township board shall not take effect until 1 of the following occurs:

(a) The expiration of 30 days after publication of the ordinance, if a petition is not filed within that time.

(b) If a petition is filed within 30 days after publication of the ordinance, the township clerk determines that the petition is inadequate.

(c) If a petition is filed within 30 days after publication of the ordinance, the township clerk determines that the petition is adequate and the ordinance or part of the ordinance is approved by a majority of the registered electors residing in the portion of the township outside the limits of cities and villages voting thereon at the next regular election which supplies reasonable time for proper notices and printing of ballots, or at any special election called for that purpose. The township board shall provide the manner of submitting an ordinance or part of an ordinance to the electors for their approval or rejection, and determining the result of the election.

## **F. Interaction with the Public Regarding the Referendum**

A primary concern in this matter is that the public may not entirely understand the issues surrounding the new ordinance language—or the results of reenacting the old ordinance language. Public officials must be careful not to lobby public opinion, or use public funds to do so, but the motive is to merely be sure the public has all the information so they can make an informed decision. In this case, perhaps a citizen group can engage in a number of activities to get information to the voters including:

1. Providing a handout (perhaps a condensed version of this memo) in the Township hall, library, and other frequently visited places.
2. Provide an informational piece in a newsletter or mailing insert.
3. Publish an informational piece in the local newspaper.
4. Hold a question/answer public forum. With respect to the public forum, it will be important to have a good facilitator so the meeting does not digress into a public debate.

Prior to deciding upon any of the above, it should be absolutely clear what the Township role can, and should be in this process.

**Casco Township Planning Committee  
Public Hearing – Zoning Ordinance  
July 26, 2006  
7 – 9 p.m.**

**Members Present:** Judy Graff, Bruce Barker, Allan Overhiser, Paul Macyuaski, Rich Dutkowski, Will Hart.

**Members Absent:** Carole Sue Chase.

**Staff Present:** Jennifer Carver, Alfred Elingsen.

1. **Call to Order:** The Public Hearing was called to order by Chair Graff at 7:01 p.m. Judy Graff reviewed the agenda briefly and introduced the Planning Commission members. She indicated that the Planning Commission members are volunteers. She explained that the public hearing is to get comments and suggestions from the community to the revisions of the Zoning Ordinance that has been in the revision stage for the past two years. A copy of the revised ZO has been available at the Township Hall for review by the community since the end of June. Chair Graff determined the process for the public hearing to include comments listed on the flip chart. The ground rules include limiting comments to three minutes and the Planning Commission will go row by row twice to allow everyone an opportunity to speak. The Planning Commission members will answer any questions as briefly as possible. At the end of the Public Hearing, there will also be public comment time to indicate the effectiveness of the public hearing process.
  
2. **Review of Zoning Ordinance Changes:** Judy Graff ensured that the public present at the public hearing had copies of the handout that highlighted the changes to the Zoning Ordinance. Judy highlighted each section of the handout. The 1st page gives background of the process. She indicated that the last major revisions were made in 1986 and does not reflect our community today. The Planning Commission reviewed the entire ZO and maps and was assisted by LSL, the Township planning consultant and was provided feedback from township attorneys so that any changes would follow the law. About one year ago, there was a special citizens committee of 10-12 volunteers that also provided valuable feedback to the Planning Commission.

Many changes to the ZO were made based on Michigan Law changes effective July 01 of this year due. Court rulings affected these changes as well. One example of changes included new language on sexually based businesses.

There was no ZO for site condo projects so this information was added. The Commission also added tables and pictures to the text to make information clearer and more understandable.

Judy Graff reviewed the 2<sup>nd</sup> page of the handout which outlines the key zoning ordinance changes. Definitions were added to clarify language and terms in the ZO. General Provisions was refined to include private roads and standards.

Non-conforming lots were addressed and setbacks were added for platted subdivisions. The contiguous non-conforming lot sizes were changed as well. Current the ZO allows an individual to build on a 30 foot lot but if an individual has more than one lot, the lots need to be combined to meet the minimum requirements. For all other lots, the current ZO requires 85 feet. The revised ZO calls for a 60 foot lot. This allows an individual with two or more 30 foot lots to combine two lots to build.

10-12

Judy Graff indicated that at least 10 – 12 of the special ZO meetings held over the last several years concentrated on the small lots discussion. The Planning Commission utilized input, the results of the referendum and discussion to determine a good approach to the small lot situation.

Another change in the General Provisions included the addition of standards for greenbelts, buffers and landscaping. This supports the master plan and the rural community. Standards for special land use were also added such as cell phone towers and sexually based businesses.

The Planning Commission also wanted to ensure that all new development came to the PC for review so language was added in the Site Plan Review Section #17. Under Section #21 for Administration and Enforcement changes were made to ensure that permits are not issued until the PC approves the final site plan. Currently the Commission can approve with conditions placed on the preliminary stage. This should ensure a smoother process for approvals and permit issuances.

In summary, Judy Graff indicated that the entire draft ZO is available for review at the Township Hall or can be emailed by the Clerk in a PDF file. Discs are also available by contacting the Clerk.

- 3. Review of Zoning Map Changes:** Allan Overhiser reviewed the changes in the zoning map.

Allan indicated that the zoning map shows the history of land use. Input from the survey, citizens committee and information from the Master Plan as well as current infrastructure were taken into consideration when developing the new zoning map. Overhiser feels a good balance has been struck with what the Township needs, developer's desire and those not wanting additional development. The east side of 1196 remains an agriculture district. Some commercial zones have been removed so as to not encourage expansion of commercial activity in that area. The Commission would prefer to have special use permit requests in the short run to control types of businesses to be developed in these areas. West of 1196 has a history of being primarily residential and subdivisions. The Planning Commission added a new category called Lake Shore Residential to differentiate the lake property from other residential. It was pointed out that the map is incorrect at this time. The orange area should also be LDR. West of Blue Star at 101<sup>st</sup> Street bounded by 74<sup>th</sup> should also be yellow not orange. Commercial was left on Blue Star Highway to encourage neighborhood business growth. The Township does not want the big box development. Medium density residential was increased near the school. The Planning Commission took a slow growth process and mirrored the intent of the Master Plan.

4. **Open Public Hearing** – Judy Graff opened the public hearing at 7:29 p.m.
  - a. The Ground Rules were reviewed by Graff.
  - b. Everyone will be provided an opportunity to speak and will be provided three minutes at a time. The PC will go around the room several times to ensure opportunity to participants.
  - c. Each new point will be recorded on the flipchart.
  - d. Planning commission members will answer questions briefly

The following points were based on the public hearing comments offered at this Meeting:

1. Section 3.28 Subsection B1: 50 foot lot issue is not clear.
2. Section 3.16 G14: Follow the historical process with the fire chief/police to permit 30 foot or more for a single road with fire suppression.
3. Section 3.32. Subsection B. Fences: Height 3 'or 4' – this could be a typographical error.
4. Section 20.2 B1A. Membership Terms of Office: This is an old provision and should be deleted.
5. Beach Rules/Usage: concern of horse waste, camping and motorized vehicle/disturbance. It was indicated that this is a Township Ordinance issues and not a zoning issue.

6. DEQ rules for motorized vehicles. The PC will ask the Township to check into this.
7. Section 20.06. B3. Applications: Change 10 days to 15 days and add published to mailed.
8. Section 4.07 – Table. RR indicates 1 acre but text (Section 6.03) says 30,000. Clear up discrepancy.
9. U.S. Land Patent: A community member questioned if this was considered in the changes of the ZO.
10. Sunset Shores shows to different districts on the Lake Shore. Coloration of map incorrect and all subdivisions should be rechecked for final map.
11. Section 7.03: Owner can create density for 1 or more acres.

Clerk Cowie indicated that Table 4 should read P vs. NP. With no further comments, the public hearing was closed at 8:37 p.m.

5. **Next Steps:** Judy Graff provided information on the next steps. The PC will consider public comment at their future meeting. The revised draft ZO and ZO map will be submitted to the Township Board at the September meeting. Once the Township Board reviews the ZO it will be sent to Allegan County for approval. The new ZO is proposed to be completed in October.
6. **Public Comment:** Judy Graff requested public comment on the effectiveness of the meeting. The following are comments:
  - a. Appreciate work.
  - b. Effective meeting. Obtaining a copy of ZO was questioned. Clerk Cowie indicated that an individual can get a free copy by emailing her and she will email it back in a PDF file. A free CD is also available by contacting the Clerk.
  - c. Put copies at libraries.
  - d. Appreciate input from public.
7. **Adjournment:** Bruce Barker made a motion to adjourn the meeting and Rich Dutkowski supported the motion. Motion carried. The meeting adjourned at 8:43 p.m.

**SPECIAL MEETING OF CASCO TOWNSHIP PLANNING COMMISSION  
7 PM – 8:30 PM**

**Members Present:** Chair Judy Graff, Bruce Barker, Will Hart, Allan Overhiser, Paul Macyauski.

**Members Absent:** Rich Dutkowski, Carole Sue Chase.

**Staff Present:** Jennifer Carver.

Chair Graff called the Special Meeting for the Zoning Ordinance review to order at 7.28 p.m. This special meeting is to review the small lot issue still pending in the new ZO. The committee received a two (2) page email from Brenda Moore that reiterates The Planning Commission perspective on the small lot issue and is a summary from the last meeting. This document will be reviewed and discussed and once finalized will be placed in the new Zoning Ordinance.

**1. Review of ZO draft (Brenda Moore Document on Nonconforming Lots):**

During the process of the development of the new Zoning Ordinance, the desire was to change the small lot size from 75 to 60. The Planning Commission was in agreement with this.

Paul Macyauski indicated that we are looking at the historically platted lots of record of 25 feet, 30 feet and 35 feet, and a minimum of 2 contiguous lots of common ownership would be joined together.

The problem is this won't help the lots of 25 for when combined they only make 50 foot. The Planning Commission is trying to find language that fits all. Tom Jessup indicated in the Joint Meeting that this should be taken down to 60 foot instead of 75 feet so that it accommodates the 30 foot lots. Initially the Planning Commission indicated three lots would have to be put together to make 75 feet. Bruce Barker and Paul Macyauski indicated that two lots would have to be joined to make the 50 foot to build.

Again the 50 foot minimum covers the 25, 30 and 35 feet lots and the 60 foot requirement eliminated the 50 foot issue.

Allan Overhiser indicated that we decided that if a person owns 2 – 50 foot lots, they would have to be combined but if you own 1 – 50 foot lot, it is a buildable lot.

Bruce Barker indicated that 60 feet lots is just 10 feet more than what the referendum stated and he believes this would be voted down as well.

It was further indicated that if you have 2 - 30 feet lots, the 75 foot minimum doesn't work and does not provide any relief to the 30 foot lots.

Reference was made to Moore's Document. Part A relates to Nonconforming Lots of Record and Part B refers to Contiguous Nonconforming Lots in Common Ownership. And according to the document, the minimum lot width is 50 feet for Part A and 60 feet for Part B.

Ms. Moore's initial document section addresses the copious discussion the Planning Commission had with the Board. Her thought is that changing the frontage requirements for combined lots from 75 feet to 60 feet will address the issue. This accommodates the 30-foot lots in addition to the 25-foot lots.

Bruce Barker again indicated that the issue is still with the 30 feet lots and that two 30 feet lots in platted subdivision will be acceptable. He further indicated that this is still under the 85 feet in the rest of the township. Inequity was argued for a bit in that the 75 foot requirement would create 90 feet lots and this is even greater than the 85 feet requirement for all others.

Bruce Barker indicated that he likes the 50 foot minimum since it now addresses lot depth as well. Allan and Paul indicated that we need to approach the lot size issue subdivision by subdivision.

Bruce Barker indicated that it should read 60 feet for a contiguous lot. Bruce continued to question if there were 4 – 30 foot lots, it would make 120 feet.

Paul indicated that one approach would be to require 30 and 35 foot lots to combine 2 lots and have the 25 feet lots join 3 lots. Allan Overhiser agreed that this was possible.

Bruce Barker indicated that he would be willing to go with the 50 feet lots and the 60 feet lots.

The Commission agreed that the real issue is with the continuous lots of record and the Board prefers 60 feet lots be presented to the public.

It was determined that the initial comments from Brenda are not correct and that Section A. Nonconforming Lots of Records is correct and is what should go to the public and is what the Commission has agreed to.

During additional discussion the Commission agreed that the 75 foot lots work for the 50 foot lots and the 25 foot lots but does not work for the 30 foot lots. The 30 foot lots get penalized by requiring more multiple lots. It was determined that Section 3B for Contiguous Nonconforming Lots in Common Ownership was the correct language they agree upon.

The Commission will utilize the language in Brenda Moore's document for the public hearing in July.

The Commission discussed the public hearing process. The Commission will allow time for public comment, provide explanations but will not engage in debates over issues. One of the underlying issue is that the Township needs more lots to assist with public sewer and water expense and the general public desires less density.

Judy Graff talked about the Township Board meeting and the explanations Tom Jessup and Allan Overhiser presented about the water and sewer. When water and sewer went in, property owners could build on lots and get water/sewer without additional requirements.

At board meeting – Judy talked about what tom and Allan said when water and sewer went in, the property owners were told that they could build on their lots and get water and sewer without added requirements. Owners could build without other requirements for density was not a dirty road. Now the public wants less density. There are issues with the inherited developments. But the indecision holds us back. Ownership of property is playing into land use. Allan indicated that equity is an issue: if one person builds or has built on a 50 foot lot than others should be able to as well.

It will be determined by the market place for water/sewer.

The indecision is holding us back.

The new Zoning Ordinance will be updated by Brenda Moore based on these decisions and the Zoning Map will also be updated for the Public Hearing. Judy will remain in contact with Brenda Moore for the updates and release of documents in a timely fashion for the public hearing.

Judy Graff distributed a Zoning Training Series and indicated to talk with Tom Jessup if there was interest in attending.

**2. Public Comment:** There was no public comment.

**The next regular meeting for the Planning Commission is July 12.** Judy Graff and Allan Overhiser indicated they would not be present at the July 12<sup>th</sup> meeting. Judy will confirm other member's attendance for the July 12<sup>th</sup> meeting to ensure a quorum. Bruce Barker will chair the 12<sup>th</sup> meeting. Al Rupert will be providing a request/presentation to the Commission at that meeting.

**Paul Macyauski made a motion to adjourn the meeting, Bruce supported the motion. The motion carried and the meeting adjourned at 8:12 p.m.**

**Detail South**

