

Regular Meeting of Casco Township Planning Commission

November 2, 2016; 7 PM – 9 PM

Members Present: Chairman Daniel Fleming, Dian Liepe, David Campbell, Lewis Adamson, Greg Knisley and Judy Graff

Absent: None

Staff Present: Al Ellingsen, Zoning Administrator and Building Inspector, and Janet Chambers Recording Secretary

Also Present: Supervisor Overhiser; Pricilla Massie, Bill Chambers, Lois Schwartz and 3 interested citizens.

1. **Call to order and review of agenda:** Chairman Fleming called the meeting to order at 7:00 PM. Chairman Fleming received notice from the City of South Haven that they are redoing their Master Plan. Notification of neighboring communities is a requirement when redoing Master Plans. Chairman Fleming received two letters regarding short-term rentals and submitted a log of changes to the Zoning Ordinance. Both the letters and the log changes will be added to new business on the agenda.
2. **Constitutional Moment:** Chairman Fleming had two quotes. One from James Madison regarding protection of property and one from James Wilson regarding interpretation of laws. (**Attachment #1**)
3. **Public Comment:** Pricilla Massie, property owner in Casco since 1984, expressed concern about rules for foundations. She stated that a 4' foundation used to be required for homes that did not have a basement, providing an area for air circulation. There are homes going in Miami Park, which is essentially wetlands, on slabs. Six 3 story double wide homes have been built and are just sitting on slabs. Homes are going in on slabs that are under water at the time. The low-quality homes are being put in and used as rentals and party houses. When the financial crash happened, Casco crashed too. There are still homes under foreclosure. She is concerned about her neighborhood as lower construction standards are being used. Massie provided a letter (**Attachment #2**), and 8 photos (**Attachment #3**) to the Planning Commission.

Chairman Fleming asked Ellingsen to answer Massie's concern. Ellingsen said the State of Michigan is the only authority. If we had building codes different from the state, we could be sued. Massie asked who she could ask about this. Ellingsen said she could ask the Bureau of Construction Codes. Massie said that water runoff from the slabs drain off to neighboring properties. Ellingsen said building codes require a grading B away from the building. He said she should ask the drain commission why the property is not draining properly.

Bill Chambers asked for clarification on a point of process. What is the process for going back and correcting property owners who are outside the rules of the Zoning Ordinance or Master Plan? He gave an example; a site plan was not required for two property owners on 102nd because they stated clear-cutting activities were going to be less than 1 acre. Today, the County Health Department, Soil and Erosion Division has found this not to be true. What process triggers the Township to go back and bring the property owners into compliance with the Ordinance? In addition, because there was no soil and erosion permit, there was no research concerning potential wetlands, no drainage protection to prevent silt and mud from traveling to Lake Michigan, and no provisions put in place to prevent future flooding of established neighborhoods.

Chambers continued. A precedent appears to have been set by the County Health Department Commissioner, Randy Rapp, when he found that his office had been deceived on the size of the area that was clear cut. His

office brought the property owner in to the Allegan office to retroactively get a permit. Does this mean the township should do the same?

Chambers stated if the permit had been obtained before the work was done, it would have been a trigger for the MDEQ to check for wetlands. If you look at MDEQ website, the property that was clear cut is designated as such. Rob Pierson, Midwest Civil Engineering, hired by the township stated his firm did not check the wetlands map because they trusted the township.

Chambers said today over two thousand yards of blue clay removed by contractors, Midwest and B&Z, hired by the township to install the water and sewer, have been deposited on lots of the two property owners covering lands identified on MDEQ maps as wetlands and wetland soils.

Chambers asked when does the township align with the County and enforce the Ordinance? Where should he take the complaint?

Allan Overhiser stated there were several issues. The DEQ has power over wetlands. The Township's roll is only the assessment district that the township established. B&Z construction was hired to do the work. County Health Department is the one who issues requirements of various things such as soil & sedimentation. Trees were mistakenly cut, but those will be restored. The property owners that requested the water & sewer project on 102nd have no plans for the property that Overhiser is aware of.

Chambers asked at what point do we go back and retrofit what should have been done in the first place? What about those of us that live in the area? A neighbor had a home for sale and the buyer backed out based on the flooding behind them. In the spring when the thaws come there will be serious problems.

Chairman Fleming said we are obviously not connecting the dots. What requirements did we miss that we can go back and do?

Graff stated the Planning Commission should look at this and find out is something should have been triggered. She said we may as well through process out if we are not going to follow it.

Overhiser stated that when the tree cutting thing was put in the ordinance it was initiated by the Boardwalk project.

Campbell said the whole business of fines, across the whole township seems to be unreasonable with the respect of getting someone's attention. Maybe they should continue to be fined for every day they continue the violation. There also needs to be something done with the Lakeshore Overlay Zone. We need to look at the lakeshore and view it as an asset. Growth seems to be uncontrollable. In the Master Plan, we say we are rural. If we want to maintain the Master Plan, we must look at some tough questions.

Liepe asked Ellingsen if he sites someone who does not get proper permits and if he tells them what to do to fix the problem. Ellingsen said the person in violation would need remedy, but 90% of the time a judge is going to throw out fines and say \$60. or \$100. & court costs and it drags on forever in a lot of cases.

Campbell said it seems reasonable to have penalties that let people see what we want in our environment.

Chambers asked if the Planning Commission is not the place to bring them into compliance, where is the place?

Ellingsen said he could give Chambers a complaint form to fill out.

4. **Approval of minutes of 09/07/2016:** Motion by Campbell, supported by Adamson to approve minutes of 9/7/16. Hughes abstained. All others in favor. Minutes approved as printed.
5. **Report from Township Board of representatives Judy Graff:** Items the Board discussed included: Casco is ready for election; the approve the township roof repair on office area; snowplowing by the previous vendor was approved; the garage door was repaired because of an accident.

The Board had discussion on rentals, no decision by township board was made. Full & part time residents want to keep Casco rural & residential, not commercial. Complaints for violations of short term rental will go to Ellingsen. Residents in general support not permitting short-term rentals.

After the Board meeting, Graff and Overhiser agreed that regarding short-term-rentals, unless the Board can give specific direction as to what they want done with the Master Plan, nothing is to be done.

6. **Report from ZBA representative Dave Hughes:** ZBA had two meetings. On Sept. 22, 2016, there was a request from Bohman for a 25' variance for an existing storage shed. Request was denied, but neighbors who were at the meeting agreed to help Bohman move his shed to the back where it would be complying. The 2nd was from Sokal requesting a height and setback variances for a wireless internet tower. The concern to the ZBA was the location. They did not want it to close to any property lines. Sokal had 3 different locations he could use. A height variance was granted, but the rear and side lot line variances were denied.

On October 27, 2016, there was a request by Matt Super, Jensen's Campground, for expansion of a non-conforming use. Martin & Kendra Super explained their plans and there was discussion, but because the Public Meeting did not get noticed in the paper, public comment will be heard and a decision made at a November 28th public meeting.

7. **Report from Water/Sewer representative Lou Adamson:** Future Water & Sewer meetings will be 8:00 AM on the 1st Tuesday of month. Things are going better than last year. 11 connections in this fiscal year, so there will be no issue meeting the 17 hookups.

Knisley asked how soon the 102nd water and sewer project would be done. Adamson stated Ross told him it was done. It will be ready for hookups when homes are built.

8. **Old Business:**

9. **New Business**

- **January 2017 meeting date:** A motion by Campbell, supported by Hughes to meet Wednesday, January 4th, 2016 at 6:00 PM for a special meeting, followed by the regular meeting. All in favor. MSC. The special meeting will be a request for a Bed & Breakfast on 109th.
- **Documentation of 2016 Board of Trustees decision not to update the Master Plan:** State law requires review and update every 5 years, 2017 a review will be due. The Planning Commission had been looking

at it and asked for direction from the Board who thought no changes should be made at this time. Graff would like the Master Plan log to be updated as follows:

- *State law requires a review of the Master Plan every 5 years. On December 21, 2015, the Board recommended no changes needed.*
- **Chairman Fleming brought a list of three log changes for the Zoning Ordinance (Attachment #4).** He asked what the procedure for log changes is. Graff said he should start with Township Clerk Brenner. She should have the electronic copy and could change it. Ellingsen added Patrick Hudson worked on it last time it was updated. Once the electronic copy is updated, the updated version will be available online. Chairman Fleming will contact Cheri Brenner.
- **Chairman Fleming received two letters from citizens.** One from Bill Chambers Regarding the process for correcting property owners who are outside the rules of the Zoning Ordinance, (**Attachment #5**). The second a letter to the Board from Janet Chambers regarding concerns about short term rentals. (**Attachment #6**)

Graff asked about the 2017 meeting schedule. It should be done soon and given to the Clerk.

Graff attended the DEQ Meeting concerning the Miami Park project. The DEQ made a statement that concerned Graff. They stated that they have no jurisdiction above the high-water mark. She as a Planning Commissioner always thought the DEQ was responsible for the high-risk erosion areas and the critical dune area. Who is responsible above the high-water mark and what does that mean to the Planning Commission? Chairman Fleming said we should defer to the Board. Ellingsen will check into it and confer with Graff. Graff will take it to the Board.

Campbell said he would like to get back to the overlay zone. As someone who lives in that area he is concerned. It is becoming the developers' wild west. We need to decide what to do to protect our lakeshore. South Haven township has a lakeshore overlay zone now.

Public Comment: Massie asked Ellingsen why he didn't ask people putting in trams if they have a DEQ permit.

Lois Schwartz asked who issues permits for stairs or homes on the bluff. She asked if the requirements differ from homes built in other areas. Ellingsen said he does and the requirements do not differ from other homes. Schwartz asked about people who bulldoze the beach. Ellingsen said Ray Visscher at the DEQ would oversee that. She asked if the township checks to see if projects are permitted or if there is some process by which the township looks to see what is happening on the beaches. Ellingsen stated he does not have time for that, but if someone brought it to his attention he could check. There would need to be a record of the complaint.

Chambers said "Let me go on record as saying there is something suspicious going on". He then read from the DEQ FAQ's regarding Part 91, Soil Erosion and Sedimentation Control of the Natural Resources and Environmental Protection Act, 1994 PA 451 as Amended (**Attachment #7**). The document covers what activities require a permit, where permits are obtained, and information required under the permit, principles considered, construction sequence and penalties for not complying.

10. **Closing Comments and adjournment:** A motion by Graff, supported by Adamson to adjourn. All in favor. Meeting adjourned at 8:25 PM.

Next Meeting Wednesday, January 4th, at 6:00 PM Public Hearing followed by the Regular PC Meeting.

Minutes prepared by Janet Chambers, Recording Secretary.

Attachment #1: Constitutional Moment

Attachment #2: Letter from Massie, Re: Slab foundations in wetland area

Attachment #3: 8 Photos regarding slab foundations in wetland areas

Attachment #4: Zoning Ordinance Log Changes

Attachment #5: Letter from Bill Chambers, Re: 102nd Street and Process for correcting violations of Zoning Ordinance

Attachment #6: Letter from Janet Chambers Re: Short-Term Rentals

Attachment #7: DEQ Part 91 Soil, Erosion & Sedimentation Control of Natural Resources and Environmental Protection Act, 1995 PA 451, as amended. Provided by Bill Chambers.

Attachment # 1

Constitution Moment - November 2, 2016

For our Constitution Moment this evening, I would like to read quotes by two of our founders. The first is by James Madison concerning the protection of property. The other is by James Wilson, signer of the Constitution from PA, concerning interpretation of laws.

“Government is instituted to protect property. This being the end of government, that alone is a just government which impartially secures to every man whatever is his own. It is not a just government, nor is property secure under it, where arbitrary restrictions deny to part of its citizens that free use of their faculties or where the property which a man has in his personal safety and personal liberty is violated by arbitrary seizures of one class of citizens for the service of the rest.” (James Madison)

“The first and governing maxim in the interpretation of a statute is to discover the meaning of those who made it.” (James Wilson)

We have in the first quote the call to not be arbitrary in our decisions regarding property, and in the second, to leave to those that come after us evidence of the reasons for those decisions.

Attachment #2

I'm P. Massie my husband is Larry Massie and I have been property owners in Casco Twp since 1985.

We understand that one of the reasons we have the planning commission and zoning regulations are to enact and to prevent overcrowding and impingement on neighboring properties and to ensure the safety of our neighborhoods.

With the new zoning on foundations in Casco Twp. We are wondering why it was changed from 4 foot foundation which made sense since so much of Sunset Shores, Mt. Pleasant, Miami Park, High Fields, are in what the DEQ calls wetlands, in fact they said at a meeting last week held here, that "all of Miami Park is essentially a wetland."

Now in Casco Twp. you can build on a cement slab just like in a trailer park. Only we have 3 story-double-wides going up in Miami Park on these slabs. We have witnessed these prefab homes put in while water is covering the slabs, or foundations. I have question Alfred, and he said it is legal that the requirements for foundations had changed. We, and many of our neighbors think it is wrong for several reasons. First being that it is encouraging flimsy building going on in our neighborhoods, which devalues our properties. Secondly, it is just plain stupid when you live in a wetland such as we do to build on a cement slab, and 3rd, all of us that live in Miami Park know we have to keep our sup-pumps going 24/7 or we would have flooding and mold everywhere in our homes.

When we had the crash a few years ago Casco crashed too. And we still have homes in foreclosure in Miami Park. We don't want any more of these slab foundations allowed to be built in the subdivisions along the lake, it just isn't practical.

We are hoping that the Planning Commission will reconsider there decision to make it ok to build on slabs in Casco Twp. And go back to the way it was a 4 foot foundations for building in our area.

Photos of Pacific Ave. Property foundation under water on Sunday Oct 30 2016.

Attachment #3



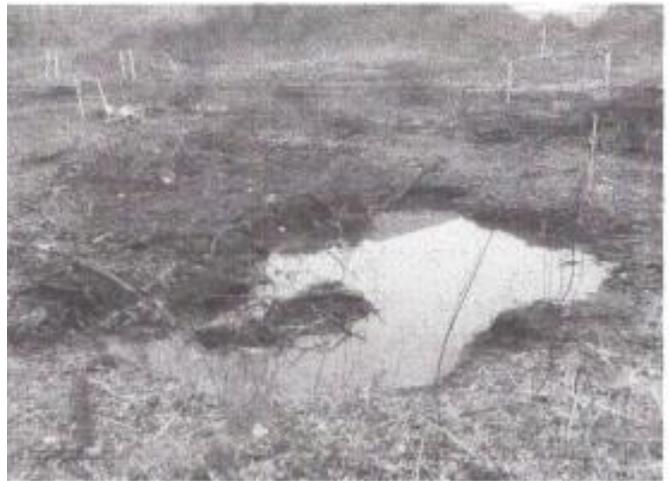
10/30/16 Pacific Ave No permit Foundation Under water



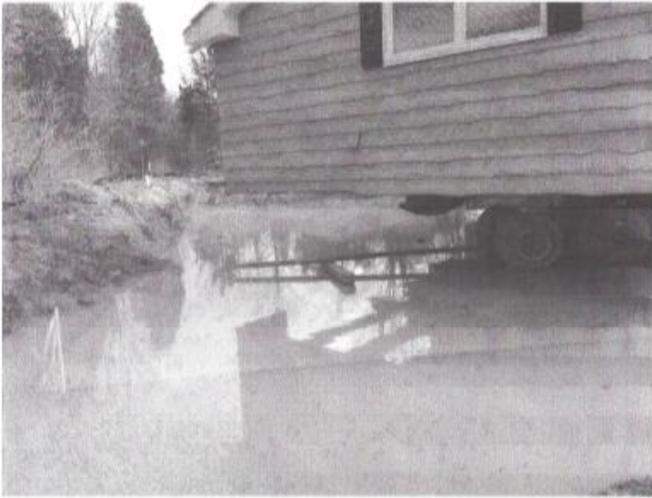
March 24th 2016
4 Atlantic Ave -



Foundations under water March 24 2016 7204 Atlantic Ave



7204 Atlantic March 2016
before foundation



12-28-14



12-28-14
Slab Foundation under water



12-28-14
Slab foundation



12-28-14
Slab foundation

Attachment # 4

Section 3.16 D – Allow more options for barriers to swimming pools

Section 3.28 – Allow expansion of nonconforming uses

Section 3.32 B, E – Change maximum fence height to match Michigan building code

November 2, 2016

Dear Casco Township Planning Commission:

The letter below was submitted to the Township Board on October 17, 2016 and was one of many presented by Casco citizens with an argument against short-term rentals in Casco township. At that meeting the Board deferred to the Planning Commission the difficult task of updating the Master Plan with a form fit definition of commercial rental.

It my opinion the Master Plan does not need updating. The Master Plan maintains a high-altitude guidance position and should not be prescriptive of the governance of short term rentals. Changing the Master Plan to conform to special interests defeats its purpose. Please use your wisdom carefully and develop a stand-alone ordinance with strict guidelines for single family/owner shared short-term rentals. Prohibit short-term rentals in multi-family developments especially those in medium and high density zoned areas

Respectfully,
Bill Chambers

October 17, 2016

Dear Casco Township Board Members:

My name is James William Chambers; I am a Casco Township resident, registered voter, homeowner, and taxpayer and I recognize there are multiple sides of the short term / long term rental story. On one side, property owners should have the right to pursue their options within the law. On the other side, when those pursuits infringe upon the rights of their neighbor, process, rules and enforcement come into play. So the questions become: Do we need written guidance? Has anyone done this before and can we learn from avoidable shortcomings? Is an ordinance a violation of owner's rights? And, how do we fit new written guidance without damaging existing residents?

Do we need written guidance? The answer here is clearly, yes. The Casco Township Ordinance developed in May of 2014 is silent on the legalities of short term rentals. Absent of instruction, the rising industry of short-term rentals has filled that vacuum with a myriad of approaches. Eventually the inevitable happened and the enterprise ended up in court. Now the precedent is for us to follow. In June 2016, Casco residents brought suit seeking relief to prevent their neighbors from entering into short-term leases in the Sunset Shores subdivision. Those against the rentals alleged that short-term vacation slots violated deed restrictions which barred commercial activity in the subdivision. They also alleged that the short-term vacation rentals were a *nuisance per se* as the activity violated the Casco Township zoning ordinance, which prohibited most commercial activity in the Low Density Residential (LDR) zone in which the subdivision was located. In this case, the practice of short term rentals was judged to be a commercial activity which was against the CCRs of the community and contrary to zoning allowances. The key is *short-term rentals were judged to be commercial.*

As a base, the judge referenced a 1974 Michigan State Supreme Court decision which recognized the propriety of private citizens bringing action to abate public nuisances arising out of violations of zoning ordinances.

Has anyone done this before and are there avoidable shortcomings? Recently Saugatuck, South Haven and St. Joseph traveled this road and answered the same challenges Casco is faced with today. St. Joseph and Saugatuck seem to have fallen on opposite ends of the

spectrum with St. Joseph being the more restrictive in location and registration. On the opposite side, Saugatuck has taken a lesser more restrictive approach in an effort to increase the influx of tourism. And more recently, South Haven has followed suit landing somewhere on the St. Joseph side of center. None of the answers have been perfect and all have met shortfalls meeting higher demands for registration that is difficult to monitor, accurate occupancy counts, increased noise, illegal parking, increased trash, and an added burden on law enforcement.

All of the ordinances accept the single-family residence as an acceptable practice because of shared spaces where owners elevate and police the behavioral expectations placed on the renters. The difficulty seems to hinge on the use of multi-family units being turned into commercial short-term rental units under the guise of the multi-family development. In short this is the commercial enterprise already ruled on by the courts.

A recent report from REALTOR Magazine (12/15) states: "The trend for STRs is away from "shared spaces," where owners are present. Individuals are now purchasing single-family or multifamily units to turn them into STRs — creating a business — to the considerable detriment of their neighbors. Some short-term renters turn these locations into party houses, creating noise, traffic, and a public nuisance. In such instances, neighbors who need a night's sleep to work the next day or who have school-age children are disturbed.

The State of Michigan has recognized this too. In a letter from the Casco Township Zoning Administrator to the Township Board in June 2016, Alfred Ellingsen states that "Michigan appears to be one of the states that is leaning toward the disallowance of short-term rentals as a property right especially in higher density, smaller lot subdivisions that comprise Casco Township, especially west of Blue Star Highway.

The lesson before us is simple: provide strict guidance for the owner shared short term rental and, absolutely no questions asked, prohibit multi-family developments which will depend on short term rental opportunities for viability.

As a property owner bordering the 102nd public works project, this is my worst nightmare and completely avoidable.

Is an ordinance a violation of the property owner's rights? Absolutely not. Property owners and developers who purchase in pre-zoned areas have accepted the rules of that zoning. They do not have the right to turn their development into a commercial enterprise to the detriment of everyone else in that zone anymore then to redraw property lines creating their own hardships to influence future variances. In addition, if the CCRs of your community do not allow short-term rentals, abide by the law. It is not your neighbors fault you did not do your homework.

How do we fit new written guidance without damaging existing residents? Given the lower court and State Supreme Court rulings and the shortcomings identified in local and national trends, I urge you to set a stand-alone ordinance with strict guidelines for single family shared short-term rentals. Prohibit short-term rentals in multi-family developments especially those in medium and high density zoned areas as pointed out by the State.

In fairness to those already here, costs of enforcement of the strict rulings should roll to those gaining profit from the industry. Include provisions to cover the financial burdens of increased registrations and increased law enforcement, additional parking and road maintenance, and larger setbacks with visual screens to shelter neighbors from sites and noise. Without this protection, property values are sure to decline pitting neighbor against neighbor on who is to blame.

November 2, 2016

None of us here tonight bought into a transient motel zone and do not believe that the profit motives of short-term rental developers, outside of the shared property model, should be allowed to negatively impact our home's value or family's peace and quiet, and safety.

Respectfully,

Bill Chambers

October 17, 2015

Dear Casco Township Board,

I am a Casco resident on the east end of Lake Ridge Road in a Lakeshore Residential-B District. My husband and I also own property in Al Pertel Subdivision, which was an undeveloped platted subdivision behind us zoned R-1 when we built our home, that has since been changed to Medium Density for the purpose of allowing property owners to use the small platted lots to build homes if they own three consecutive lots. Over the years, we continued to purchase lots behind our home to protect our rural setting and fully understand the rights of property owners to build on their smaller lots. One reason we chose Casco for our home is well echoed in the Master Plan. Under Goals & Objectives, page 4, Quality of Life it states: "The township should preserve its rural character in future planning while protecting natural resources ", and again under Residential Development it states: "Casco should emphasize its role as a rural residential community for seasonal & year-round residences." A lot of thoughtful work went into the Master Plan and should be considered when new ordinances or changes to existing ones are made.

We do want to share our beautiful community with visitors who bring business to the area. Bed & breakfasts are a good example of acceptable short term rentals because they typically are on large pieces of land and have owners residing on the property. A part time resident / home owner building a home on the lake and renting it out when they are not there to subsidize the cost is another example. If they are well maintained nice homes with large enough lots and responsible home owners, I don't have a problem with that as long as they meet the ordinance requirements the board is in the process of setting. These examples are totally different from concentrating a large volume of vacationers into a small area like Medium density.

I have heard "What is the difference if you have a family permanently living in a home or a different family each week?" Living next to a resort town, if we are to be honest with ourselves, we know there is a difference between neighbors invested in their community, and a vacationer maximizing their stay by partying and squeezing everything in to a few short days, until all hours of the night. We have recently seen an example in South Haven when the south beach had to be cleared at the 4th of July fireworks because of an unruly crowd of visitors.

Squeezing short term rentals into a small area is where the line is crossed between "commercial" and "residential". For this reason, I think apartments, duplexes and row houses should be excluded from short term rentals. Rentals in small areas, such as medium density, would absolutely be in conflict with the "Quality of Life" section in the Master Plan. Noise, traffic, littering, policing and fire issues are just the beginning. This would certainly change the rural character referenced in our Master Plan. Imagine Officer Katje trying to keep up with the increase if our whole Medium Density area went to "Motel type Rentals". Which is not that implausible. We must look down the road.

Casco can support both sides of the short term rental issue, by requiring a 50' setbacks from rear and side lot lines in all districts, restricting to unattached single family houses, quiet hours, limiting number of occupants, providing adequate parking, etc.

There is currently some kind of development going in at the west end of 102nd, which butts up to our property on 2 sides. My husband, myself, and other neighbors, have been trying to find a site plan for the development. The township has not been given one. The previously wooded area has been clear cut, raised several feet in grade, and water and sewer is going in now. A lot of money has been invested into a project with no plan! I have not been able to find any kind of study or permit protecting us from water shed and drainage problems. Might we be setting ourselves up for another water shed problem like we had at the southwest corner of Casco?

The secret nature of the project is what really bothers me. One reason for this undisclosed plan might be that the developers know the Board is currently working on a short term rental ordinance. If a site plan were provided before the ordinance is completed, a light would certainly go off in trustees' minds. They would see a scenario where short term rentals would be a nightmare for the township. I ask you to take a minute to picture row houses with minimal setbacks squeezed into a small area. I realize that is allowed in the medium density area on 102nd. But now, picture it as short term rentals where you have what is equivalent to several motels squeezed into a very small area, all vacationers with no emotional or financial connection to Casco, each unit being rented by individual owners. This would eventually result in current owners of the big homes on the lake leaving. Why should they put up with that when they came here for our rural community? As they leave, they would only be replaced with more of the same that drove them out. This problem would continue to grow as locals sell out to more developers. No new single family growth would occur near this. Our Master Plan for a rural feeling would only be a memory, not to mention the problems we would have with crime, noise, littering, traffic, etc. This is a turning point for our community where you, as our elected trustees, have the power to prevent a disaster. Short term rentals should not be confused with residential homes. Therefore, setback requirements for the short term rentals should apply equally to all zoning districts, regardless of low density or medium density.

Currently rentals of any kind are not provided for in our ordinance, therefore a moratorium on new short term rentals must be in place. I respectfully ask that before you pass a short-term rental ordinance, please look at the whole picture. Please close this loop hole so developers cannot take advantage of all of us. Develop a plan that allows you to look in the mirror and say "this is not a commercial business in a residential area" and is in keeping with the Master Plan for our rural community.

Respectfully,

Janet Chambers



FREQUENTLY ASKED QUESTIONS
Regarding
PART 91, SOIL EROSION AND SEDIMENTATION CONTROL,
of the Natural Resources and Environmental Protection Act,
1994 PA 451, as Amended

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER DIVISION
Jennifer M. Granholm, Governor - Steven E. Chester, Director
DEQ Internet Home Page www.michigan.gov/deq

Why is erosion and sediment control important?

Sediment is the greatest pollutant by volume entering our lakes and streams. Sediment is the product of uncontrolled erosion. Everyone in Michigan is affected by erosion and off-site sedimentation. Erosion and sedimentation result in: loss of fertile topsoil, filling of lakes and streams, increased flooding, damage to plant and animal life, and structural damage to buildings and roads.

Construction is one of the major causes of erosion in Michigan. Without proper planning and management, over 100 tons of sediment per acre per year can be generated on some construction sites.

Why was Part 91 passed?

The primary intent of Part 91 is to protect the waters of the state by minimizing erosion and controlling sediment.

What activities require a permit?

A permit is required for any earth change that disturbs one or more acres or is within 500 feet of a lake or stream. Exempted activities include plowing and tilling for crop production and some logging and mining activities. Access roads to the logging and mining sites and ancillary activities associated with logging and mining operations are not exempt. The removal of clay, gravel, sand, peat, or topsoil is not considered "mining" and therefore requires a permit.

Where do I obtain a permit?

Counties have the primary responsibility for issuing permits. In some cases, cities, villages, and townships have assumed permitting responsibility within their jurisdictions. Permit applications can be obtained from the respective county or municipal agencies.

What information is required in the permit application?

The applicant must submit an application that provides specific information such as the name of the on-site responsible person, location and size of the earth change, description of the earth change, and project starting and ending dates. The applicant must also submit a Soil Erosion and Sedimentation Control (SESC) plan that includes the following information:

1. A map showing the site location, predominant land features, proximity to lakes, streams and wetlands, and contour intervals or slope information.
2. Soils information.
3. Physical limits of each earth change.
4. Location of existing and proposed drainage patterns.
5. Timing and sequence of each proposed earth change.
6. Description of all temporary and permanent erosion and sedimentation control measures.
7. A schedule for maintaining all control measures.
8. Any other information required by the permitting agency.

Handwritten note:
O = Required
not met.

0 = Requirement Not Met

Potential Consequence

What principles should be considered when developing a SESC plan?

1. Integrate the overall construction design and activities to fit the physical and vegetative features of the site.
2. Stage construction and stabilization activities to minimize the area and duration of disturbance.
3. Identify control measures that will minimize erosion.
4. Identify controls that will prevent off-site sedimentation. Sediment control should not be used as a substitution for erosion control, but rather in conjunction with erosion control.
5. Establish an inspection and maintenance schedule.

Is there a construction sequence, which will help me comply with Part 91?

1. Obtain a permit from the appropriate county or local agency.
2. Install all temporary and permanent erosion and sediment control measures in accordance with the approved plan and special permit conditions.
3. Inspect all projects at least weekly and after every rainfall event to evaluate the effectiveness of the control measures.
4. Maintain all temporary and permanent control measures per plan or as needed based on the site inspections.
5. Notify the permitting agency for a final inspection when project is completed.

Are there penalties for not complying with permit conditions or Part 91?

Yes, there are several:

1. A person who violates Part 91 is subject to a civil fine of up to \$25,000 for each day of violation.
2. A cease and desist order or injunction may be issued until compliance is obtained.
3. The permitting agency may install or maintain control measures to bring the site into compliance with Part 91 and bill the landowner for the costs incurred.
4. A person may be ordered to restore all areas affected by the violation.

Who do I call if I have additional questions?

Questions should be directed to the appropriate county or municipal enforcing agency. A list of county and municipal enforcing agencies can be found on the SESC Homepage at www.michigan.gov/deq (click on "Land" and then on "SESC"). Questions may also be directed to the following Department of Environmental Quality (DEQ) staff in the Water Division:

DEQ Districts	Staff	Telephone Numbers	E-Mail Addresses
Cadillac	Matt Johnstone	231-775-3960 Ext 6362	JohnstoM@michigan.gov
Grand Rapids	Dave Schipper	616-356-0276	SchippeD@michigan.gov
Jackson	Ned Rathbun	517-780-7693	RathbunN@michigan.gov
Kalamazoo	Jon Eggen	269-567-3579	EggenJW@michigan.gov
Lansing	Lisa Warner	517-335-6117	WarnerLC@michigan.gov
Saginaw Bay	Bob Lehmann	989-686-8025 Ext 8260	LehmannR@michigan.gov
SE Michigan (Livonia)	Karen Boase	734-953-1488	BoaseK@michigan.gov
Upper Peninsula (Central)	Lindsey Villa	906-346-8518	VillaL@michigan.gov
Upper Peninsula (Eastern)	Mitch Koetje	906-346-8519	KoetjeM@michigan.gov
Upper Peninsula (Western)	George Pelkola	906-346-8516	PelkolaG@michigan.gov

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