

Approved 11/17/2021

Casco Township Planning Commission
Regular Meeting & Public Hearing
October 20, 2021; 6 PM
Casco Township Hall

Members Present: Chairman Lewis Adamson, Vice Chairman Andy Litts, Board Representative Dan Fleming, Secretary Greg Knisley, ZBA Representative Sam Craig and members Kelly Hecker and John Weaver

Members Absent: None

Also Present: Zoning Administrator Tasha Smalley, Recording Secretary Janet Chambers and approximately 20 interested citizens

1. **Call to Order:** The meeting was called to order by Chairman Adamson at 6:00 PM.
2. **Review / Approval of Agenda:** A motion by Fleming, supported by Litts to approve agenda as presented. All in favor. MSC.
3. **Public Comment – Items not on the agenda & correspondence received:** none
4. **Approval of minutes from 9/15/21:** A motion by Litts, supported by Hecker to approve minutes of 09/15/2021. All in favor. Minutes approved as printed.
5. **Public Hearing: Leeward Pool Association – Conditional Rezoning (21.09), 7302 Lakeview Avenue, 0302-542-053-00, from LDR to C-2 – for an association pool and building.**
Open Public Hearing. The public hearing was opened at 6:04 PM. Notice of public hearing (Attachment #1)

Applicant present: Kay Kossen, Attorney with Kreis Enderle Hudgins & Borsos, spoke on behalf of Leeward Pool Association. She said the applicant is requesting a pool on the corner of Lakeview and Blue Star Highway, in a residential area. Pools are allowed, but this is a unique rezoning that fits in C-2 best as a health fitness facility. It will be used by members only, with bylaws, a nonprofit corporation similar to the stairs. It will be run by members and will follow State pool guidelines. The rezone request would be a contract rezone. Under a contract zone there would be an agreement with the township. Kossen said it fits well with the Master Plan and the vacation community. There is residential, Bed & Breakfasts and motels up and down Blue Star Highway. The nonconforming lots allow a pool to exist with setbacks and area requirements. Kossen invited questions from commissioners.

Fleming asked if contract zoning is the same thing as conditional rezoning.

Kossen said yes, it is the same thing.

Hecker asked about the number of members.

Darron Massey said the use would be limited to the 25 members who bought in. It would not be open to the public. It would be only Miami Park residents. If someone sells their interest, it could only be sold to a Miami Park resident.

Knisley asked what percentage of Miami Park is represented in the 25 members.

Adamson asked if a "member" means a household.

Litts asked if a member of the household must be present for guests to use the pool.

Kossen said the pool would not be for STRs. She said there would be a set of bylaws. Maybe they would allow a long-term renter, i.e. 90 days or more.

Knisley asked if a person from a member's house has to be present for a guest to use the pool.

Kossen said yes.

Craig asked who chose the 25 members?

Darron Massey said a small amount of people got together and decided to buy in and that group decided 25 would be a good amount to cap it off.

Adamson asked if it would be licensed by the state.

Kossen said yes.

Knisley asked about the fact that there is no onsite parking?

Massey said it would be golf cart parking, walkups and one handicap car space.

Fleming asked why 35000 sq ft does not apply?

Kossen said because it is a nonconforming lot of record it complies with lesser footage.

Bultje said it would be conditional zoning. He just learned about this and got background material today. He said contract zoning is allowed in the Michigan Zoning Act. By going through contract zoning, it would not be considered spot zoning. Spot zoning is frowned upon and is not a good idea, not a good planning practice. Bultje said he would not reject this based on spot zoning. Normally, this is done at the time of the subdivision being built. In that case it would be a Planned Development and a pool included for the use of the residents of the subdivision. Because they are adding the pool to an existing subdivision it could only be done through contract zoning. The use is limited to only one use that is compatible with the subdivision. It is important to include conditions in the contract. If there was a change to something in the contract, the township would have to approve it.

Hecker asked if in the future the property changed hands, would the rezoning follow the use. If someone wanted to do something different, the property would revert to LDR?

Bultje said the use follows the land. We don't care if it changes hands if the use doesn't change.

Adamson asked where in the plans it says they will limit to 25 families, or hours of operation.

Kossen said they have not included bylaws. These types of things could be included in the contract.

Adamson said with a pool in a neighborhood, people would like to use it late at night.

Litts asked about the intended use of the pool house. Will it be a gathering space?

Smalley said the site plan does not give a size.

Massey said if rezoned it would be a pool house with changing facilities. Regarding hours of operation the pool may close at 8 or 9 PM. There will be no refreshments. Maybe a small kitchenette.

Hecker said limitation of 25 is concerning. There are many more households in the subdivision. Capping it at 25 means other residents would not benefit. She asked what happens to the 25 memberships if their home is sold? She asked if they could increase the 25.

Kossen said limiting to 25 families is more prudent as far as being busy.

Knisley asked how taxes would work. Is it a commercial venture with 25 who have equity?

Kossen said people buy memberships and they have rights to use it.

- **Correspondence:** Because of the great number of correspondences, Chairman Adamson elected not to read all of them, but are attached to the minutes.
- **Audience comments – for/against:**

John Barkley from the Boardwalk Condo Association said he is not against association pools, but feels the proposed location is not feasible. His concerns are related to disruptions. It cannot be adequately buffered from adjacent homes especially along Blue Star Highway as required by Section 3.33, to provide physical and visual separation between potentially incompatible uses. The minimum green buffer zone requirement is a min. of 100 feet deep from the right-of way along the entire frontage of any public road. The lack of required buffering along Blue Star would allow the pool area to be an attractive nuisance and a site for vandalism and nuisance. Lack of buffering would cause noise to disrupt the rural and residential expectations of adjoining neighbors including 7207 Lakeview Ave. and the SE section of Boardwalk. The location could create a safety hazard for passing vehicles along Blue Star Highway or Lakeview Ave. because the small drop-off, pickup area is not large enough for multiple vehicles. Barkley asked that Casco Planning Commission reject the conditional rezoning request.

Sue Muller, Lakeview Avenue, said she is 4 lots from the proposed pool. She did not receive notice of the meeting. Neighbors object for several reasons. When she moved here 2 years ago, she was told this area would never be developed. She was told it is the wildlife corridor and will be preserved for perpetuity. Little by little they take more and more along the corridor,

but until now has not changed the essence. A commercial pool is the first domino and the chain for that domino is the wildlife corridor. Pretty soon one by one, you open the corridor for development. We represent birds, animals, insects, plants, and trees. If they had a human voice this place would be filled. We are their voices. You who are making this decision are speaking for them. It is more than just us. This is a lot to give up for a pool for the few. You (Casco Planning Commission) represent the many.

Muller said 25 households might be 10% of the subdivision. Another issue is the attorney said, "it is in the bylaws", the bylaws are not ready, not determined. How can you make a decision before you know what the bylaws will say? This is not ready. This is not wise. This should not be allowed.

Franklin Sisson said there were wetlands behind there and there were two houses people wanted removed. Some want to put in a pool that will attract some. They are trying to make an exception of the rules for 25 people. Nobody told him or asked him if he wanted to be included. He said he has been around business for a long time and sees how this is being thrown together. If you accept this, with all the human trafficking and young girls in bathing suits walking around by Blue Star it will not be safe.

Kathy Watt, Atlantic Ave. said nobody invited her to join in with the pool membership. She questioned the selection process. There is a long history of advisory in the neighborhood. This will only exacerbate it. There will be parking issues, parking on the road, noise, alcohol. There already has been noise all night until 6 AM. It is getting harder and harder to call the STR hotline.

Steve Hillsman, is a property owner building a house, which will displace wildlife. He said he was impressed with the amount of thought and discussion that went into this. The main thing they were looking at was the neighborhood. They are doing their due diligence. The plan is not 100% final but will be soon. He feels this is a good use and will be the buffer between Blue Star and the neighborhood.

Doug Nickerson said negatives are obvious. He lives across the street from a rental with a pool. The noise is bad. In this case we are talking about 25 families. The noise will be incredible within 100 yds of the pool. The bylaws are not set yet. Will the bylaws be part of the contract, or can the members change the bylaws tomorrow? Will it be required they go through the Casco Board to change the bylaws? There are 70 or 80 houses in Miami Park and the community is growing. Noise and traffic congestion will be a problem, but it will only benefit 25 members. Not the majority of Miami Park.

Massey said the property was publicly for sale. Twenty-five people could have bought it and built a house with a pool and all use it. This was the right way to go about this. The contract form does not ask for the bylaws. Casco has a noise ordinance. They are being transparent. If sold, the use of that specific pool would have to be followed. If the membership was 100 families, it would have been too many. It is like a private golf course.

Valerie Baas said (in reference to Massey's statement that 25 people could have built a house with a pool and all used it) the lot is 100 x 100. With a 50 x 100 buffer zone, a pool house,

parking, various setbacks around the pool, there is no way you can fit a house and pool. Miami Park is for private residences and does not allow a commercial pool club.

Lois Schwartz said she has a lot in common with residents of Miami Park platted in 1920 and based on lots of record. The expectation was that it would be for residential use. Miami Park residents should enjoy that same expectation. A community can get together and build a pool. A private association getting a commercial bypass is dangerous. There are Bed & Breakfasts on Blue Star, but they are not built on platted subdivisions. She said she agrees with the others that the zoning change should not be allowed.

Sarah Clark of Sunset Shores said they are all part of these old plats that do not allow commercial use. It was decided in the Sunset Shores lawsuit.

Larry Massey of Atlantic Avenue said he wanted to put a face on what a pool could do. He pointed to Frank Sisson and said he should be able to enjoy his remaining years and be left to enjoy his property without the nuisance of a commercial pool.

Lena Bell said a community as old as Miami Park should do things in a community way. She is disappointed that it is a private commercial project in a residential neighborhood. It is not for the whole community.

Close Public Hearing – No further public comment: A motion by Litts, supported by Weaver to close the public hearing. All in favor. Public meeting closed at 7:00.

Adamson asked if the minimum setback is 50'.

Smalley said yes.

Knisley added from the right-of-way.

Smalley said 100' from the center of the road is the right-of-way.

Adamson asked about a building permit.

Smalley said this is not a site plan approval, just rezoning. She added she did not look at 3.33 regarding additional buffer and meeting setbacks in general

Bultje said a site plan review would still be required later. Conditional zoning must be a voluntary application by the landowner. They would make a written offer to the township. The township can say because certain things are missing, we cannot make a decision unless and until.... The bylaws are separate from the township contract. Whatever conditions Casco wants, as far as landscaping, noise buffering, number of members, who can use it, hours, etc. must be included in the contract.

Bultje recommended, if you are interested in moving forward with this, make a list of things you would like included in the contract.

Smalley asked if the fence was a privacy fence. It says a 48" - fence with a self-closing gate.

Items commissioners would like on the list for the contract are site plan, parking, street parking, buffer zone, and lighting. Commissioners would like to see the bylaws and read 3.33 and Michigan commercial pool regulations.

Commissioners discussed postponing a decision pending on more information.

Bultje said you cannot say “you need to provide...”. You can say “If we are going to review this and give you a chance for approval, give us this information”.

Section 3.33B 1. Says there must be a greenbelt strip of at least 20’ in width around the property between neighbors.

Hecker asked if we are looking at 2 fronts and 2 sides?

Commissioners question referral to Wildlife Corridor by a citizen. Smalley will check into it to see what Wildlife Corridor is.

6. **New Business:**

a. **Discuss / decision to or not to recommend CRZ approval to Township.**

A motion to postpone was made by Weaver, supported by Litts, all in favor. MSC.

b. **Any other business that may come before the Commission:** none

7. **Old Business:**

a. **Discuss / decision special land use group daycare:** Adamson said he saw no reason not to approve the daycare. The current owner, Andrew Scholfield, submitted the applicaton in his name and acknowledged he is aware of the court case Bauckman vs Skarin, as requested. The applicant has met what was requested.

Sara Clark, from Sunset Shores Property Owners Association, asked the commission to deny the daycare because the deed says no commercial. She stated there are over 50 homeowners objecting, this is one home. They went to court in the past to enforce the deed and were successful. She stated it makes no sense to move forward and leading d to a legal mess. Sunset Shores will fight to keep commercial out. Once this happens it opens the door for other commercial use. Decisions of zoning commission run with the property, even if sold the use could continue. We will be fighting this. She acknowledged that it is not Casco’s responsibility to enforce their deed restrictions but asked that Casco step forward and deny the use.

Fleming said he understands Clark’s logic, but at our level we cannot make our decision based on Sunset Shores need to enforce their deeds. The daycare meets requirements of Casco’s standards. It is up to Sunset Shores to enforce theirs.

A motion by Litts, supported by Craig, to approve the daycare based on Mr. Scolfield’s letter and the conditions of Casco Zoning Ordinance being met. Roll call vote: Weaver – yes; Hecker-yes; Knisley – yes; Adamson – yes; Litts - yes; Fleming – yes. All in favor. MSC.

Hecker added she was reading part of lawsuit Sunset Shores is referring to, item 15 states daycare in family homes are not commercial. This is incongruent from what I am hearing.

b. **Status text amendments; continue review:**

Smalley suggested a special meeting to work on some of the zoning amendments. Commissioners agreed to meet at 5:00 PM on November 17th to work on amendments. Followed by the regular meeting at 6:00.

c. **Any other business that may come before the commission:** none

8. Administrative Reports

• **Zoning Administrator:** Report (Attachment 29)

- Litts questioned an item in the report about a campground on 67th & 109th. Smalley said the property is for sale and people want to know what it can be used for.
- Knisley questioned a well that has been drilled in a water and sewer district. Adamson said water hookup is not mandated. Only sewer hookup is required.
- Litts asked about a cell tower in the report. Smalley said they are upgrading the antennas on the tower at 111th & 68th and were enquiring whether they needed anything from the township for that.
- Hecker asked about Valerie Sanchez's inquiry. Smalley said she was asking about property for sale on 67th and whether it could be used as an event venue. Hecker said the property has recently bought and they are already doing many weddings.
- Knisley asked about property on Pershing. Smalley said Mike Workema has divided the property in half for two lots.

- **Township Board representative:** Fleming said Casco has a new deputy. Other topics discussed included pool construction for residents; possibly changing the requirement of a home on property in order to build a barn.

- **Report from ZBA representative:** Nothing to report

• **Water / Sewer representative:**

They had two appeals that were both denied should. One was a property owner that did not want to pay the previous owner's bill, which is required. Another who thought because he paid taxes he should not be charged to have a lead put in.

They discussed P foss in Lake Michigan being a concern in addition to lead. Removal is mandated by the state, but we are not getting financial help from the state. The state is covering the cost of lead removal for Benton Harbor. Capital improvement money will be used. Customer bills will probably go up 10%.

9. **General Public Comment (2 minutes each):** None

10. **Adjourn:** The meeting was adjourned at 8 PM.

Attachment #1: Notice of Public Hearing

Attachment #2: Draft of Contract Zoning Agreement Rezone to C-2
Attachment #3: Survey for Rezone request
Attachment #4: Draft of Site Plan
Attachment #5: Articles of Incorporation – Leeward Pool Association
Attachment #6: Copy of Warranty Deed
Attachment #7: Sue Muller, October 20, 2021, opposed to zoning change
Attachment #8: Daren Massey, October 20, 2021, in support of zoning change
Attachment #9: Robinn Williams, 521 A Ave., October 19, 2021, opposed to zoning change
Attachment #10: Nancy Zirlin, 7247 B Street, October 19, 2021, opposed to zoning change
Attachment #11: Jacquelyn Bopp, 7242 Lakeview Ave., opposed to zoning change
Attachment #12: Valerie Baas, opposed to zoning change
Attachment #13: Douglas & Anne Nickerson, 7266 Pacific Ave., opposed to zoning change
Attachment #14: Jim & Jean Bolotin, 7203 Lakeview, in support of zoning change
Attachment #15: Kelley & Matt Kaleta, 7232 Beach Dr., in support of zoning change
Attachment #16: Kathy Eckler, 635 Lakeview Dr., in support of zoning change
Attachment #17: Julie & Robert Goldberg, Orchard Road, in support of zoning change
Attachment #18: Karyn & Tom Szurgot, 7240 Lakeview Ave., in support of zoning change
Attachment #19: Lois & Carl Schwartz, 7275 B Street., opposed to zoning change
Attachment #20: Shelley Coulter, 7210 Lakeview Ave., opposed to zoning change
Attachment #21: Sue Muller, 7217 Lakeview Ave., opposed to zoning change
Attachment #22: Franklin & Sarah Sisson, 7203 Lakeview Ave., opposed to zoning change
Attachment #23: Robert Handelsman, 7266 Lincoln, opposed to zoning change
Attachment #24: John Barkley, Boardwalk Homeowners Association Board Member, opposed to zoning change
Attachment #25: John & Sandra Fallon, in support of zoning change
Attachment #26: Kathleen & Hugh McBride, 7221 Lakeview Ave., in support of zoning change
Attachment #27: Cary & Lisa Claver, 7266 Atlantic, in support of zoning change
Attachment #28: Douglas & Anne Nickerson, 7266 Pacific Ave., opposed to zoning change
Attachment #29: Valarie Baas, opposed to zoning change
Attachment #30: Bill & Gail Jackson, opposed to zoning change
Attachment #25: Application by Schofield, 09/30/2021, acknowledging conflicts with commercial use in Sunset Shores, in support of Navarro’s daycare
Attachment #26: Kara & Evan Getman, October 13, 2021, in support of Navarro’s daycare
Attachment #27: Corey & Jodie Cole, in support of Navarro’s daycare
Attachment #28: Sunset Shores POA Board, October 20, 2021, in opposition to Navarro’s daycare
Attachment #28: Letter to Andrew Schofield from Sunset Shores Property Owners Association, opposed to Navarro’s daycare
Attachment #29: Zoning Administrator Report

Minutes prepared by Janet Chambers, Recording Secretary