

Approved 12-15-2021

Casco Township Planning Commission
Regular Meeting
November 17, 2021; 6 PM
Casco Township Hall

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

Members Absent: Secretary Greg Knisley and ZBA Representative Sam Craig

Also Present: Zoning Administrator Tasha Smalley, Recording Secretary Janet Chambers, Atty Ron Bultje and Supervisor Allan Overhiser

1. **Call to Order:** The meeting was called to order by Chairman Lou Adamson at 6 PM.
2. **Review / Approval of Agenda:** A motion by Hecker, supported by Litts to approve agenda as presented. All in favor. MSC.
3. **Public Comment – Items not on the agenda:** John Barkley, of Boardwalk Condo Association, complimented Casco on materials provided on the website being outstanding. Barkley went on to say he and his wife Susan moved to Casco 10 years ago because of the Master Plan. Barkley said he would like to see the Planning Commission spending more time on the Master Plan and defining zoning, and less time on spot zoning. Dealing with the “one of” exceptions cause mixed land use and more conflict. He stated spending more time on long term planning and less time on short term exceptions result in less conflict.
4. **Approval of minutes from 10-20-2021:** Motion by Fleming, supported by Weaver to approve minutes of October 20, 2021. All in favor. Minutes approved as presented.
5. **Public Hearing** - none
6. **New Business:** none
7. **Old Business:**
 - a. **Discussion / Decision Leeward Pool Association – Conditional Rezoning (21.09) 7302 Lakeview Ave. 0302-542-053-00 from LDR to C-2 – for an association pool and building.**

At the October meeting there was a presentation of the request, hearing of public comments, and discussion which ended with a motion to have the applicant submit additional information.

Smalley said since that meeting there has been a letter from Julie Werkema (Attachment 1) answering some of the questions brought up at the October meeting.

A new revised draft of the contract along with a cover letter from Atty Kay Kossen, representing Leeward Pool Association (Attachment 2) has also been received.

Atty. Ron Bultje said there are things that should be in the contract not just included in the site plan review. Atty Bultje said the Planning Commission will decide to recommend or not to recommend the contract request to the Township Board and they will make the final decision.

Atty Kossen (via zoom) said she submitted an updated contract (Attachment 2) because of concerns brought up at the last meeting. She stated she has updated Section 2 to include things to address the concerns. Specifically, about the structure of the pool and pool health code rules, noise policy, good neighbor policy and pool rules. She said there will be one parking space for handicap parking, with walking, biking and golf carts being the main access. She added that they cannot legislate the roadways. She addressed lighting and pool hours. The applicants are considering a May thru September or October season with reasonable hours of operation. Possibly dawn to dusk. They are not stating actual hours but will be reasonable. She also made changes in Section 3, Township Findings. Kossen said in her letter she included excerpts from the association bylaws. She said she has reviewed Section 3.33 regarding greenbelts and buffers and said this does not apply in this case. It is not applicable in a contract zone agreement.

Adamson said during previous discussion some kind of barrier or screening was discussed.

Atty Kossen said this would be addressed within the site plan. Pool rules and public health code are being met.

Adamson asked if the plans were not to put up screening?

Kossen said there would be screening, but she does not know what it is. They do not have a site plan as of this time.

Darron Massey, 7242 Miami Ave., said they will provide a barrier with the appropriate foliage when they have a site plan.

Adamson asked when the site plan would be done.

Atty Bultje said these things MUST be done in the contract. Casco is stuck with the contract. If something is not in the contract, they may promise you the moon, but unless it is in the contract Casco has no control over it.

Massey said the association cannot respond to Casco without Casco telling them what they need.

Smalley said they will still have to abide by the site plan review regulations.

Atty. Bultje said they can do the bare minimum with the site plan. The contract is where we are looking for the extra requirements. There is not a whole lot in promises. The contract needs to include things we listed last time. Bultje also expressed he was not comfortable with the

language in Section 9. Section 9 states Casco must give 30 days' notice to cure a problem. This implies Casco could not just rezone. You cannot give up that right.

Atty Kossen asked, regarding items in Section 2 of the draft, if they could say they intend to, or are going to.....

Bultje said they can show the buffer in the site plan, but we cannot enforce something that is not in the contract. Noise buffer, dark sky lighting, whatever Casco is counting on must be in the agreement.

Bultje said before this is sent to the board or you vote on it, you need to see detailed plans.

Massey was not sure whether they would have plans from the engineer for the December meeting or not. The engineer is working on the plans.

Kossen said while she appreciates that Casco cannot tell them what to propose or redline the contract, she doesn't want to keep guessing.

Adamson asked if Kossen could call Smalley for direction.

Atty Bultje said they could do that, and he could tell Kossen the questions he has but they need detailed plans before the PC looks at it.

Discussion ensued about any new correspondence. (Attachments 3, 4, 5, 6 & 7)
Litts recalled one about spot zoning.

Atty Bultje said spot zoning is a term that is used a lot. It is not illegal, but not a good planning practice. If Casco was considering rezoning into the commercial district, that would be spot zoning. With contract zoning we are limiting to uses that fit in the residential district. It must be a particular use that is compatible with the neighborhood.

Atty Bultje said the PC should consider, if concerns and questions are answered satisfactorily, are you willing to proceed with this contract? If so, continue this process.

Chris Barczyk said he wanted to bring to the attention of the commission, he has prepared something regarding spot zoning and why it is illegal (Attachment 8). Barczek said he is not opposed to a pool but wants to be sure it is legal and not going to be challenged. Barczek recalled an instance where a resident was denied a 1 ft. fence variance to help with noise nuisance from an incompatible use of STRs. Commercially zoned districts require green space between them and residential uses. Requests for rezoning should be compared to the Master Plan recommendations and the Master Plan should be a primary consideration. A request to construct a commercial use in an area planned for residential development, for example, would be contrary to the Plan and should not be approved. This would be considered a taking. Just because a contract law exists, doesn't mean you can make a deal with the township and bypass

the 30,000 sq ft. requirement in C-2. This is my neighborhood, my board, this could be next to me. If they want a pool, grab a bunch of land and create a proper green buffer zone.

Lois Schwartz asked the PC to consider the feelings of the public when making a radical change from residential to commercial. If it were for the benefit of all residents of Miami Park, not just 25 people exclusively, it would be different. She noted that last month the applicants said this would not be for rentals, this is not true. There is already an ad on Zillow advertising a house and referencing a community pool along and STRs being allowed. This is putting the cart in front of the horse. Is there a good reason to make a change that is so extreme?

Sue Muller, Lakeview Ave., said she appreciated what Schwartz said. What they are asking for is pool for a few people in exchange for a pristine wildlife corridor. She said, while she knows there is not a law to protect the wildlife, tell that to the birds.

Maureen Conley said she agreed with Barczek and Muller. She did not know about this until it was a done deal. Her concern is that although Massey said the pool would be for homeowners use only, what kind of guarantee can they get that it will not be for rentals? How can we guarantee this rule will not change? Conley said she does not have a lot of faith in this kind of thing. There needs to be more assistance for people who are not members.

Elliot Ziron questioned the pool association's lack of importance to detail. They have been unprepared to get the Planning Commission what they need and provide an explanation of what they want. They have done a pretty poor job so far.

Barczek said because it is "contract zoning", spot zoning does not apply. And because it is contract zoning, 3.33 does not apply, what does apply? Our Park became a nuisance so we had to put someone in there. If we allow this pool club, what is next? A pot club, drinking club, dinner clubs. They will have a kitchen and eventually a grill. Clubs are nonprofit, like the Elks Club. This is on Blue Star. How do you protect the community? This is a Pandora's box. This is not the way. It is not better for the community.

Valerie Baas expressed concern about whether the commission is reading all of the correspondence.

Adamson said the commission does read correspondence when they receive it. Sometimes new correspondence comes in at the last minute and is presented to commissioners at the meeting. It is difficult to conduct a meeting while reading correspondence. It would be best to send correspondence several days before the meeting. If we get them, we read them.

Adamson explained that commission wrestles with not wanting to take property rights away from people.

Bultje responded to the comment about a "done deal" by the time the public is notified. The applicant submits an application, the Planning Commission gives their recommendation to the

Board, who then makes a decision. There are a lot of steps. It is not a done deal now. He said a landowner has the right to make an application for conditional zoning, as does everybody. We can't make that decision until we go through everything.

Baas said a residential pool is one thing, and a commercial pool club with beer and dinners is another.

Barczekj said there is a community pool in his neighborhood, so he is familiar with the noise nuisance involved with it, but it is far away from residents and with woods around it.

Kathleen Hillson said a commercial piece of property is used for income purposes. If we were doing that, we would have built a house. With the lake rising year after year, everybody could put a pool in their back yard. We don't want that. One pool is a more environmentally sound way when we can't use the beach. It is a more efficient way to allow for residents to swim. Hillson said she and her husband, being part of Leeward Pool Association, went through the rules. She is aware it is part of a neighborhood and are respectful of people who live there. This is the most efficient way to respect the wildlife.

Barczek said C1 Commercial does **not** allow for a club. C2 **does** allow for a club. The Description and purpose of C2 is to provide for the general community-wide needs of the Township above the scope of C-1. Barczek stated the difference in C1 and C2 is highlighted in his information provided (Attachment #3) as follows:

It is intended to be used for more intensive and larger business operations that are not well-suited for the C-1 Zoning District.

Commissioners discussed the next step.

Atty Bultje said commissioners could motion to table until detailed plans, which are in process, are received. In the meantime, Bultje said he will make the PC and Atty Kossen aware of his concerns.

Motion by Weaver to postpone until a detailed site plan is received and additional questions from Attorney Bultje and concerns discussed by commissioners are addressed. Motion supported by Litts. All in favor. MSC.

A motion made by Hecker to move forward with the public hearing for text amendments. Supported by Litts. All in favor. MSC.

8. **Administrative Reports:**

- a. **Zoning Administrator report – upcoming public hearings:** Discussion ensued about getting information in advance for public hearings. Smalley said she gets information to commissioners ASAP, but correspondence keeps coming in up to the last minute.

Litts asked if there could be a meeting to review information as a group prior to a public hearing.

Smalley said information can be sent out, but discussion must take place at a public meeting.

Weaver said it is hard to look at information that is put on the desk before a meeting. He suggested if something is not received prior, it does not get on the agenda.

Hecker agreed, if she gets something on Wednesday prior to a meeting she does not have time to look at it.

Smalley said according to rules and law, the public has the right to send correspondence right up to the last minute.

b. Township Board representative:

*Fleming said because Christmas and New Year's Eve falls on Friday, they will need another dump day.

*The Treasurer's office will be open on Dec. 28th for people paying taxes.

*Casco will be purchasing a new Police Department pick-up.

c. Report from ZBA representative: In the absence of Sam Craig, Smalley said the ZBA had a meeting on October 25th. They granted a request for a 33' variance from the required 66' private road width on Blue Star and 107th. This will allow 4 homes to be built meeting all setback requirements.

d. Water/Sewer representative: Adamson said there has not been a Water & Sewer meeting.

9. **General Public Comment:** Darron Massey said people say they were not notified about something. They can follow the process on the website or posted on the door. There may be better ways to do it, but the Planning Commission did not deviate from the normal process.

10. Adjourn: Motion by Hecker, supported by Weaver to adjourn. All in favor. Meeting adjourned at 7 PM.

Attachment 1: Email from Julie Werkema, 10/25/21, Re: answers to questions posed at October meeting

Attachment 2: Cover Letter and revised contract from Kay Kossen, Atty for Leeward Pool Association, 11/10/21

Attachment 3: Email from Bill & Patricia Gibbons, 7245 Beach Street., 10/31/2021, Re: Support of Zoning Change

Attachment 4: Letter from Victoria Turbov, 11/11/2021, Re: opposition of Zoning Change

Attachment 5: Email from Kathy Watt, 11/13/2021, Re: opposition of Zoning Change

Attachment 6: Letter from Valerie Baas, 11/7/2021, Re: opposition of Zoning Change

Attachment 7: Email from Lee Doezema, 11/17/2021, Re: opposition of Zoning Change

Attachment 8: Chris Barczek, information on Spot Zoning, Master Plan and relevant sections of the ordinance

Minutes prepared by Janet Chambers, Recording Secretary