

CASCO TOWNSHIP PLANNING COMMISSION
REGULAR MEETING
September 15, 2021; 6 PM
Casco Township Hall

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

Members Absent: Chairman Lewis Adams

Also Present: Zoning Administrator Tasha Smalley, Recording Secretary Janet Chambers and 8 interested citizens

1. **Call to Order:** The meeting was called to order by Vice Chair Andy Litts at 6:00 PM.
2. **Review / Approval of Agenda:** A motion by Knisley, supported by Weaver to approve agenda as presented. All in favor. MSC.
3. **Public Comment – items not on the agenda:** Robin Grochocinski, 215 74th, said houses on Beachview development were built up 6 or 7 ft above her home (corner of Lake Ridge Rd. and 74th Street). Water runoff is flooding her property. She has put in railroad and ties and vegetation to hold water back. She has a sump pump that runs perpetually. She has tried everything they can think of to get rid of the water. She contacted the road commission and they suggested she needs to come to the township. A ditch was covered up when the development went in on Beachview and drainage stopped. She would like that ditch back and flooding fixed.

Zoning Administrator Smalley said they are working on an ordinance that would help with drainage, but unfortunately preexisting problems would not be covered in a new ordinance.

Litts said he would drive by and look at the property.

Aundria Quinn, 60 68th Street said she moved to Casco because it was a quiet rural community. The past couple of years there have been changes with Special Use permits for campsites and events. There have been noise complaints, burglaries, they are not following the noise ordinance. Quinn said at 46 68th Street, Kevin and Mary Whiteford have events. Quinn said they can hear weddings, music, and events that are not following the noise ordinance. Quinn said they are concerned about their property values and quality of life. Right now, they only have two choices, sell at a reduced value because nobody will want to live next to this, or stay and lose the peace they were looking for when they built in Casco.

Zoning Administrator Smalley said there are documented noise complaints and building code violations and multiple letters. Most recent a letter was sent to them telling them that that all assemblies must stop. Casco is working with the attorney to solve this issue.

4. **Approval of minutes from 6/16/21 Regular Meeting:** Motion by Fleming, supported by Hecker to approve minutes. All in favor. Minutes approved with the following change on page 5 b Township

Board report. Fleming said the board has not met. ~~They have changed from Wednesdays to Mondays.~~ They will meet next Monday.

5. **Public Hearing Management – Preliminary PUD - 91 70th Street (0302-032-008-00); Residential PUD 25 units:**

Open public hearing: The public hearing was opened at 6:10.

- **Applicants present:** Garth Derr and Tom Brink buy agricultural properties for development. They are considering a parcel on 70th Street, previously known as Rogers Farms. Zoning Administrator Smalley has provided them with zoning regulations and the PUD chapter. They have a very brief potential plan and are working to understand allowable density, etc. They plan to take advantage of clustering, which would meet the average 2.5-acre min. average. They would have about 32 lots. They are limited to 32 by the density requirements. They have significant interest in preserving natural area. Their plan is to preserve the active agricultural land (blueberry field), providing open views of the water without disturbing too many trees. There would be one major road and one entrance. There would be 30 or more percent common open space. They would provide for appropriate maintenance of the common space. They originally told the Zoning Administrator they would be closing on the property by August 31st. They are currently under contract, but not closed due to a few technical issues. They plan to do their homework and have a market study. They have not selected contractor yet. They are interested in hearing input from the PC and the public before moving forward. (Attachment 1 application and explanation of PUD)

Smalley said they wanted input from the public, which is why she noticed neighbors within 300' of the proposed location.

Fleming said if they meet what is in the ordinance, that would be all he needs to approve the project.

Durr said he may want to separate the blueberry field so that it is not affected by the neighborhood rules and would be exempt from the PUD.

- **Correspondence:** None
- **Audience for/against:** None
- **Further discussion:** (Attachment 2 – Memorandum from Zoning Administrator's Re: PUD) Smalley said a PUD requires a pre-conference which the PC is the approving body. Then it goes to the attorney for review, then the township board, after that it moves on to the final approval.

Derr said in the interest of not spending \$50,000 to \$75,000 for plans before hearing from neighbors and Casco. If Casco and the neighbors are agreeable to their concept, they will move forward.

Smalley said in 16.05 preliminary submittal there is not anything for the Board or attorney to look at. This is the first time Casco has used the PUD ordinance, so they will learn together to work through the process and possibly make changes to the ordinance. Smalley added allowed density and open space are the big things. Meeting setbacks of each lot without variances also needs to be considered.

Derr said he is planning small cottage type homes along the river. He has made sure the house size fits on the lots without a variance. They are planning 1500 to 2500 sq ft. homes. He put setbacks on his drawing to be sure there would be sufficient room. He had holes dug to be sure land is good for septic. The land has a lot of sand and will be good for septic systems. There will be adequate septic and wells. The road will be approved by the fire department.

Weaver recommended Derr have the water tested for his own protection.

Derr said he planned to have water tested and added the septic would be over 100' back from the river.

Smalley noted some of the property is also flood areas.

Derr said the property is 30' to 50' above the water. Derr added many things in PUD will not apply to the project.

Smalley said the preconference normally requires more details, but the applicant wanted to see if the PC agreed with his general concept before investing a lot of money. There could be another preconference when the applicant has more of what is required. Smalley said she is not sure what the attorney will have to do after the preconference.

Fleming asked if there is some way to table discussion so that the applicant would not have to pay the \$700. fee for another preliminary.

Smalley said they would not have to pay the fee again if the preliminary is continued.

Kinsley said he applauds the concept. Casco would not be losing a lot of farmland. The initial concept is a nice fit for Casco. He added there could be some hiccups with utilities and the applicant should be sure they get wells and septic approval.

Weaver said he likes the plan. It is good use of the land. Most people will not even know the development exists.

Derr said he would like a nice entrance so people will wonder what is back there.

Weaver asked if the river is deep enough for docks.

Derr said the water is 3-4 feet deep and could have docks.

Craig asked if the blueberry farm will be maintained.

Derr said he would possibly sell as a "Gentleman Farm". It does not currently have a home on it. There is another home on the property that could possibly be moved on to the Gentleman Farm.

Derr said he would like the blueberry farm to continue because it would add to the charm as people drive past the Gentleman Farm to the river and wooded lots.

Craig asked the applicant if he is aware there are subdivisions that don't have homes in them.

Derr said he is aware and that is why he intends to have a market study done. He realizes that Casco does not want an unfinished subdivision.

Hecker asked what impact 25 homes would have on the river and flow of water with impermeable surfaces of 25 homes are added along the river.

Derr said his concept of clustering uses less road and sand content of the land will take care of the water. They will be sure it is laid out properly and approved.

Craig asked if the river would be cleaned out for kayaking.

Derr said there is a lot to clean out.

Craig said people will clean it out if they want to kayak.

Knisley asked if they would build out on this or wait for sales.

Derr said a lot of developments are in phases. They may spec a house or two before they develop the rest.

Litts said it is a good concept. He told Derr if he spends a lot of time in South Haven he will hear housing cost is crazy because of people buying 2nd homes. Young families cannot afford to buy houses.

Brink said they have put two other developments like this. One is Preservation Estates on 58th Street in Allegan. The other is Orchard Valley east of Fennville. They are the same type of land and features. They are laid out to enhance the natural features. They worked with a builder who specs houses and went along as they sold. They will know more after they do the market study.

Smalley said we could move into the preliminary when the developers are ready. They will need to meet the 29 site plan requirements and continue from there. Section 16.05 tells them what to submit.

Litts asked what his time frame is or if they have a goal for getting this done.

Brinks said engineers are very busy right now. They will be ready to move on to the preliminary when engineers are available.

Knisley asked how many neighboring properties are to the project.

Smalley said she sent all neighbors within 300' a notice of this meeting.

Close public hearing: The public hearing was closed at 6:50 PM.

Nadine Navarro – Special Land Use Permit Group Daycare, 484 Blue Star Highway (0302-760-001-00)

Open Public Hearing: 6:50 PM

- **Applicant present:** (Attachment 3 – Application and information) Mrs. Navarro lived in NY over 15 years, where she ran a day care center. Now she would like to open a daycare here and is applying for a Special Use permit. She has followed the rules that have been given to her. She understands now that she is part of a HOA. The part the HOA is not familiar with is that her licensor said group daycare is not a commercial use if done in the home where she lives. She decided to do it at home. In Casco she needs a Special Use Permit. She has been told caring for children is a residential use. She has been running a daycare for 1 year and neighbors did not notice. She does not advertise and does not intend to make it look like a center. She goes by word of mouth and has been getting calls to take more children but is currently licensed for 6 children and full. A group Child Care would allow up to 12 children. Customers have over 200 signatures asking her to keep running her daycare. Regarding noise, the children are only outside for 1 hour in the morning and 45 minutes in the afternoon.
- **Correspondence:** Smalley said she has several letters that need to be acknowledged. They all say basically the same thing, that they are opposed to the daycare because the lease agreement in Sunset Shores prohibits commercial use. Vice Chair Litts went over the correspondence.

The first correspondence (Attachment 3) was from 6 Board members of Sunset Shore Property Owners Association, Kristin Brandt, Sarah Clark, Sharon Curtis, Dan Moesch, Greg Nowak and Morris Snitowsky. This letter was essentially saying they believe daycare is a commercial use and referenced a 2016 court case #15-054455-CH stating commercial use is prohibited in the Sunset Shores Deed restrictions.

The second correspondence (Attachment 4) was from Kristin Brandt stating it was against the deed restrictions and she again referred to the court case.

The third correspondence (Attachment 5) was from Bob & Sharon Curtis stating business is prohibited in Sunset Shores and again referred to the court case, noise and a sign.

The fourth correspondence (Attachment 6) was from Jennifer Isaacson asking the PC not to approve the SLU due to Sunset Shores deed restrictions.

The fifth correspondence (Attachment 7) was from the applicant Nadine Navarro stating that daycare is not a commercial use and giving the following six terms she would agreed to that would reduce elements of nuisance written by the property owners in the association bylaws:

1. Families with children attending Blue Star Little Wonders will not use the private drive or beach access owned by Sunset Shores community
2. Families will park and pick up their children using my personal driveway located on Blue Star Highway.
3. My home operation will be conducted between the hours of 7 am EST and 5:30 pm EST and noise will be kept at a level that is not disruptive to the neighbors of the community.
4. My operation will cause no increase to the usage of common elements like parking, driveways, roadways or beach access.
5. Play structures that impede the view of neighboring homes will not be built on my property
6. I will not advertise/market my childcare services as a commercial business entity since my service is considered residential purposes when caring for children

- **Audience comments:** Sara Clark, President of Sunset Shores Property Owners said she was there on behalf of members of Sunset Shores. She said she understands that day care service is valuable to the community. Her concern is the deed says no commercial use. Sunset Shores went to court for a long drawn out case. Her association position is voluntary, no members can make a decision or concession. Anything in the deeds must be agreed upon by all 70 or 80 owners to make changes to property restrictions. If this were to go forward it will get challenged in the courts. Residents can act as individuals on their own. Commercial uses are prohibited. She is not asking Casco to enforce Sunset Shores rules, but the courts did. She is at the meeting to make sure PC is also aware. Clark has been in Sunset Shores for all 15+ years and involved with the board for most of those years. Even if we wanted to say yes, we can't.

Navarro said the house is not even "in" the subdivision, she has her own drive.

Clark said Navarro property is part of the original deeded plat.

Clark said Navarro is part of a "Rent to Own" agreement. If she owned the property, she would have gotten the deed. Clark heard some mention of carving Navarro's property out of Sunset Shores. The major problem is Navarro would lose beach access. Unfortunately, this is not a great solution. Clark said it is important Navarro is aware of where Sunset Shores stands.

Sharon Curtis, 468 Beach Glass Lane, South Haven, via zoom, said the court stated anyone who violates would be fined and all activity stopped. All other property owners depend on the deed.

Kristen Brandt, 486 Sunset Lane, via zoom, said she does not have much to add, but agreed that a daycare, where profit is made, is commercial.

Bert Brandt, 486 Sunset Lane, via zoom, said he bought his home 8 years ago and at closing he was asked many times if he planned rental or any commercial activity. He would not open a restaurant or a daycare in Sunset Shores.

Morris, 480 Beach Glass Lane said he bought his home 6 years ago and was given the court case to review before purchasing his home. He had to know in advance, prior to securing the home. He has joined the board and feels it is really cut and dried. Nothing more to discuss. He said it went all the way up the courts to just below the Supreme Court. No commercial activity whatsoever. He feels it does not warrant further consideration.

- **Any further discussion:** Knisley said he believes daycare is allowed in LDR according to the zoning ordinance. He questioned whether a Rent to own agreement means Navarro is the property owner. A special use goes with the property if sold. It is not up to the Planning Commission to enforce a lease agreement. Knisley said he would not want to go up against all the Sunset Shores property owners in a lawsuit and the question of who the legal property owner is adds a lot of "ifs".

Weaver agreed according to the zoning ordinance the special use would be allowed, but it is not allowed by Sunset Shores.

Fleming said it is curious that licensing said the daycare is not considered as commercial.

Smalley said the judge said generating money in your home is commercial.

Grochocinski, 215 74th, said with covid many people are working from home. She said there is probably several people in that community generating money from home.

Fleming said what if you sell your house for more than you paid for it. You are generating money from your home.

Litts said he agreed with Knisley that this commission cannot enforce property deed restrictions.

Close public hearing: Public hearing was closed at 7:25 PM.

6. New Business:

- Discuss preliminary site plan:** The PUD request was discussed earlier. They will need to look into sanitary services.

Smalley said they will need to be careful when working through the PUD. This is the first time using the PUD ordinance. Working through the first one will be when we realize what changes need to be made.

Commissioners questioned when the PUD Ordinance was written. Some parts could be outdated. Smalley will find out when the ordinance done. When you apply the ordinance, you realize what parts are not applicable today. There are a lot of SHALL and MUSTs in the ordinance, and no Planning Commission waiver releases.

- Discuss / decision special land use group daycare:** Smalley said per the Zoning Ordinance, the applicant meets the criteria of 15.03 K for daycare groups up to 12 children. She needs another

license through the state. Smalley said she has never signed a request for a daycare before, but there are group daycares in Casco. She meets 1-8 in the ordinance. Because of the nature of the request, Smalley did not think she would have to submit 17.03 1-29. What she submitted was adequate. Smalley said she did not know about a deed restriction prohibiting daycare or she would have advised Navarro to check into it before coming in for the Special Use permit.

Discussion ensued about Navarro not being the current property owner and whether Navarro can be the applicant. Smalley said the PC could require the property owner to provide a statement that he is agreeable to the SLU.

Knisley asked Smalley if you had known about the deed restriction, would you have advised her to apply for a Special Land Use.

Smalley said she would have informed Navarro of the restriction and Navarro might not have applied for the SLU. Smalley was aware that STR were restricted, but not daycare. Now that she is aware, she would inform an applicant that they may need approval from the association.

Knisley asked Smalley what the attorney advised. The attorney told Smalley Casco does not enforce association rules but need approval from the association.

Litts went through 15.03 K 1-8. Commissioners agreed Navarro met the conditions.

Litts reviewed Special Use 15.02 C. Commissioners agreed Navarro met the conditions.

Commissioners discussed whether to approve with the condition of getting approval from the association.

Weaver said if it was challenged in court, at least they would have the approval of meeting the ordinance.

Fleming made a motion to approve the SLU based on the applicant meeting 1-8 provisions and the general land use requirements.

Knisley noted that Navarro is not the property owner.

Smalley said somewhere in the agreement between Navarro and the property owner the property owner states he is ok with a daycare.

Commissioners discussed whether the property owner should be the one to submit the site plan.

Commissioners discussed the option of postponing a decision for more information.

Supervisor Overhiser, via zoom, said the owner should acknowledge the application and use. The deed restriction should be acknowledged and reference the court case.

After discussion Fleming made a motion to amend the first motion to postpone the decision pending the property deed holder submit written approval of the application by Mrs. Navarro for a SLU to operate a group daycare, with the acknowledgement that he understands the deed restrictions and court case Bauckham vs Skarin Case # 15—54455-CH. Motion supported by Hecker. All in favor. MSC.

c. Any other business that may come before the commission:

Weaver said he would like to discuss the noise ordinance and the possibility of changing hours from 10 PM to 11 PM.

Smalley said the noise ordinance is regulated by the Township Board. Weaver will go to a board meeting and discuss it with them.

7. Old Business: Due to time, this will be discussed at next meeting.

a. Status text amendments:

b. Any other business that may come before the commission:

8. Administrative Reports:

a. Zoning Administrator: (Attachment 8) Litts questioned an August 9th entry on the report regarding flooding concerns at 67 North Shore Dr.

Smalley said after a big downpour a neighbor complained that 67 North Shore owner did something to their property that caused more water than normal. Smalley contacted the property owner and he said it has always been that way. He has not done anything to change the water flow. The neighbor is talking to the drain commissioner about it.

Fleming questioned the Quinn complaint and stated Quinn is going to the Township Board about the Whiteford events. Whiteford said for AG purposes he wanted to build a barn. He said he wanted a camper on the property. To have a camper you need a building. He built a barn, but did not build a house. Later he built a house. Whiteford said special events definition says “renting” for events. He does not rent it. He is just using the property for friends’ events. Whiteford was told you must live in the home to meet special event requirements. Whiteford does not live in the home. Now his son lives there. When his permit was issued for the pole barn the permit specified it was for a pole barn specifically for storage. Now there are weddings, noise complaints. The police have been out there. The board contacted Bultje who said if it is not rented, it is not a violation. There is a building code violation. The specific building permit says not for an assembled use. Now, to circumvent the permit, Whiteford says they are not in the barn. They have been informed they need an outdoor gathering permit if 50 or more people.

Smalley said when she has contacted him, he cites law and threatens a suit.

b. Township Board representative: Fleming said there will be a new police officer in Casco. Katje has accepted a new position. Hourly rate change for employees was approved. The Costal Resiliency group met on August 30.

c. **Report from ZBA representative:** There was a request from Robert Hubbard, 78 Pershing, who would like to build on property in wetlands. EGLE told him he needed to request a variance from Casco before they would give him a variance. The request was denied.

d. **Water/Sewer representative:** Absent

9. **General Public Comment:** no public

10. **Adjourn:** A motion by Knisley, supported by Hecker to adjourn. Meeting adjourned at 9 PM.

Attachment 1 - Application and Plan from Longview Agricultural Asset Management LLC (7 pages)

Attachment 2 - Memorandum from Zoning Administrator, Re: Special Use Permit Site Plan

Attachment 3 - Application, description, sketches from applicant (7 pages)

Attachment 4 - Letter in opposition to Daycare, from 6 Board members of Sunset Shore Property Owners Association, Kristin Brandt, Sarah Clark, Sharon Curtis, Dan Moesch, Greg Nowak and Morris Snitowsky.

Attachment 5 - Correspondence opposing Daycare, from Kristin Brandt, Sunset Shores

Attachment 6 - Correspondence opposing Daycare, from Bob & Sharon Curtis

Attachment 7 - Correspondence opposing Daycare, from Jennifer Isaacson

Attachment 8 - Correspondence from Navarro rebuttal of correspondence against Daycare

Attachment 9 - Zoning Administrator Report June 2021 and July 2021 (4 pages)

Minutes prepared by Janet Chambers, Recording Secretary