

Approved 9-7-16

CASCO TOWNSHIP PLANNING COMMISSION
SPECIAL MEETING – PUBLIC HEARING
July 6, 2016, 6 PM -7 PM

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

Absent: None

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

Also Present: 7 interested citizens

1. **Call to order and review of agenda:** Chairman Fleming called the special meeting to order at 6:00 PM. There were no changes to the agenda.

2. **Public Hearing on Zoning Ordinance Amendments**

(a) **Swimming pool enclosures:** Chairman Fleming invited Building Inspector Alfred Ellingsen to explain the proposed changes to the Zoning Ordinance. Ellingsen stated that Michigan State Building Codes allows automatic pool covers or natural barrier as an alternative to a safety fence. The cover would have to be inspected and approved by the Building Inspector as an equivalent safety barrier to a fence. Ellingsen recommends that Casco Township Zoning Ordinance be changed to be in line with Michigan building codes.

Chairman Fleming invited public comment. There was none.

(b) **Nonconforming lots, uses, or structures:** Ellingsen provided text for zoning ordinance change to Section 3.28. He stated there is no allowance for expansion to nonconforming uses in the existing zoning ordinance.

The proposed change to Section 3.28G would allow a conforming addition to be added to a building with previous nonconforming properties. An example would be a narrow deep lot with no room to add on to the sides, but plenty of room in the back. The homeowner would need to go to the ZBA for a variance to the required side yard lot line setbacks for an addition to the side of the building. Later, if that same homeowner wanted to put a conforming addition on the back of his house and there is room to add on and stay within the rear property line setbacks he would still need to go to the ZBA for a variance, because the previous variance put him into the “nonconforming” category. The proposed change would allow that homeowner to build a conforming addition on the back of his building without being affected by the existing nonconformity.

Section 3.28H. Allows expansion a nonconforming *use*, as opposed to a nonconforming building. A person seeking an expansion of a nonconforming use would need site plan review and special use permit and public hearings. Under the proposed change, the nonconforming use could be expanded up to 50% of its size at the time it was considered a nonconforming use.

Currently, Jensen's Campground is a nonconforming business in a residential district, and would like to expand. He owns 17 acres and is using 10 of those acres for his business. He would like to use the remaining 7 acres to expand his nonconforming use. He currently has 80+ campsites and would like to add 41 or 42 more.

Graff suggested that wording in Section G be clarified.

Fleming questioned the limit of 50% expansion of the nonconforming use. The possibility of raising the 50% limit of expansion was discussed. The possibility of no limit being set and letting the economy dictate how much expansion there is was discussed. The original intent of a nonconforming use was to eventually phase it out. Discussion also included the fact that when a person buys a home in a residential area, they have reasonable expectation that there will not be a business expanding next to their home.

Chairman Fleming invited public comment. **Matt Martin Super said that his property has been a resort since World War 1.** He has tried to be a good neighbor. Super said he supported the drainage problem when his neighbors had flooding, even though he had very little drainage problem himself, and is paying \$80,000 for drainage improvements in effort to be a good neighbor. He said he has very strict rules so as not to be a nuisance to neighbors; in contrast to problems created by visitors in short term rentals on July 4th at the North Beach. He added that the July 4th incident was not confined to the North Beach.

- (C) **Fences:** Ellingsen recommended a change to the existing fence ordinance Section 3.32. B and E. Where the existing maximum height of a fence is currently 6' be changed to 7'. Michigan Building Codes allow a 7' fence to be built without a building permit, therefore Ellingsen recommends the Casco Zoning Ordinance allow a 7' fence where 6' fences were previously allowed.

Graff asked if Casco is required to change the maximum fence height just because the Michigan building codes do not require a building permit for a 7' fence. Ellingsen said it is not required to change the maximum height. Graff also presented emailed letters she received from residents in opposition to increasing the maximum fence height. The letters also expressed concern about people building a berm and placing a 6' fence on top of the berm in order to circumvent the maximum fence height ordinance. Email letters were from Diane Schlanser, 45 North Shore Dr. N, Casco Township, dated July 1, 2016 (attachment #1); Eric Schlanser, 45 North Shore Dr. N, Casco Township, dated July 5, 2016 (attachment #2); and James Marovec, 39 North Shore Dr. N, Casco Township, dated July 6, 2016. Three photos of the fence placed on a berm were included with the email letters (attachments #4, #5, and #6)

Commissioners discussed the possibility of maximum fence height being measured “from Existing adjacent grade” to prevent the issue of placing fences on a berm.

3. Resolutions requiring Planning Commission action

Recommendation for Casco Township Board

A motion by Campbell, supported by Liepe to recommend the proposed change to Section 3.16D as follows. All in favor. Motion carried.

The proposed change as follows to 3.16 D:

- D. Each pool shall be enclosed by a fence or wall with a height of at least four (4) feet, sufficient to make the body of water inaccessible to small children. The enclosure, including gates therein, must be not less than four (4) feet above the underlying ground. All gates must be self-latching, and latches shall be placed four (4) feet above the ground or otherwise made inaccessible from the outside to small children. See Section 3.32 for other fence requirements. ***A natural barrier or other protective device may be approved by the Zoning Administrator as an alternative if the degree of protection afforded is at least equal to the protection offered by the fence or wall, and if the alternative complies with the state building code.***

A motion by Macyauski, supported by Adamson to recommend the following amendment to Section 3.28 Nonconforming Lots, Uses or Structures. Fleming-no; Campbell-yes; Liepe-yes; Adamson-yes; Kinsley-yes; Macyauski-yes; Graff-no. Motion carried.

Section 3.28 Nonconforming Lots, Uses or Structures

A. Intent.

1. Within the zoning districts established by this Ordinance, or any subsequent amendments thereto, there exist lots, structures, uses of land and structures, and characteristics of use which were lawful before this Ordinance was passed or amended but which would be prohibited, regulated, or restricted under the terms of this Ordinance or future amendment. It is the intent of this Ordinance to permit these nonconformities to continue until they are removed but not to encourage their expansion or continuation ***except in compliance with this Section.***
2. Nonconforming uses are declared by this Ordinance to be incompatible with permitted uses in the zoning districts involved. A nonconforming use of land or a nonconforming use of structure and land in combination shall not be extended or enlarged after passage of this Ordinance ~~by attachment on a building or premises of additional signs intended to be seen from off the premises, or by the addition of other uses of a nature which would be~~

~~prohibited generally in the zoning district involved.~~ **or an amendment to this Ordinance except in compliance with this Section**

3. To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Ordinance and upon which actual building construction has been carried on diligently. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation or demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

B. Nonconforming Lots of Record.

1. A single lot of record is not contiguous with another lot or lots under the same ownership. Where a single lot of record **in a platted subdivision** (in existence at the time of the adoption or amendment of this Ordinance) does not meet the minimum requirements for lot width, **lot** depth or lot area, that single platted lot of record may be used for any purposes permitted by the zoning district in which the lot is located, provided that:
 - a. The minimum lot width shall be fifty (50) feet;
 - b. The minimum lot depth shall be one hundred (100) feet;
 - c. The maximum lot coverage for all buildings shall be twenty-five (25) percent, and;
 - d. The setbacks for the main building shall be a minimum of:
 1. Twenty-five (25) feet for the front setback.
 2. Twenty (20) feet for the rear setback.
 3. Ten (10) feet for each side setback.
2. Where the setbacks cannot be met on the nonconforming lot, the owner may request a variance from the Zoning Board of Appeals under Chapter 20.
3. **Contiguous Nonconforming Lots in Common Ownership**
 - a. For any two (2) or more nonconforming lots of record or combination of lots and portions of lots of record, in existence at the time of the passage of this Ordinance, or an amendment thereto, the lands involved shall be considered to be an undivided parcel for the purposes of this Ordinance if they meet the following:
 - (1) Are in the same or **substantially the same condition** ~~similar ownership~~.
 - (2) Are adjacent to each other or have continuous frontage.
 - (3) Individually do not meet the lot width or lot area requirements of this Ordinance

b. In the case where several contiguous nonconforming lots must be combined the resultant buildable lot or lots shall provide a:

1. Minimum lot width of sixty (60) feet;
2. Minimum lot depth of one hundred (100) feet;
3. Maximum lot coverage for all buildings ~~shall be of~~ twenty-five (25) percent;
4. Front setback of twenty-five (25) feet ~~for the front setback~~;
5. Rear setback of twenty (20) feet; *and*
6. Side setback of ten (10) feet.

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

C. Nonconforming Uses - Change or Discontinuance.

1. Except as noted in subsection 2 below, the nonconforming use of a building or structure or of any land or premises shall not be:

- a. Re-established after it has been changed to a conforming use; *or*
- b. Re-established after *being* abandoned or discontinued for a continuous period of twelve (12) consecutive months, or for eighteen (18) months within any three (3) year period. A nonconforming use shall be determined to be abandoned or discontinued if one (1) or more of the following conditions exists, and are deemed to constitute an intent on the part of the property owner to abandon the nonconforming use:

(1) Utilities, such as water, sanitary sewer, gas and electricity to the property, have been disconnected.

(2) The property, buildings, and grounds, have fallen into disrepair.

(3) Signs or other indications of the existence of the nonconforming use have been removed.

(4) Equipment or fixtures which are necessary for the operation of the nonconforming use have been removed; *or*

(5) Other actions have ~~occurred~~ *been taken* which, in the opinion of the Zoning Administrator constitute an intention of the part of the property owner ~~or lessee~~ to abandon the nonconforming use.

2. The Zoning Administrator may permit a nonconforming use to be converted to a more conforming use which is less intensive or objectionable. In considering permission, the Zoning Administrator shall use the following standards in making the decision:
 - a. The building or premises may be changed to a permitted use for the zoning district in which the existing nonconforming use is located. The new use must meet all Ordinance requirements **for that use**.
 - b. The use of the building or premises may be changed to another nonresidential use which would be permitted by right in a more ~~restricted~~ **restrictive** zoning district than the one in which it is located.
 - ~~e. The use will be performed entirely within an enclosed building.~~
3. The Zoning Administrator must document the rationale for permitting the conversion of a nonconforming use and place that documentation in the records of the Township. This documentation shall ~~also~~ be provided to the Planning Commission.

D. Nonconforming **Buildings or** Structures.

1. Where a lawful **building or** structure exists at the effective date of adoption or amendment of this Ordinance that could not be built under the terms of this Ordinance by reason of restrictions on area, lot coverage, height, yards, ~~its~~ location on the lot, or other requirements concerning ~~the building or the~~ structure, the **building or** structure may be continued so long as it remains otherwise lawful, subject to the following provisions:
 - a. No ~~such~~ nonconforming **building or** structure may be enlarged or altered in a way which increases its nonconformity, but ~~any structure or portion thereof it~~ may be altered to decrease its nonconformity.
 - b. Should ~~such a~~ nonconforming **building** or ~~nonconforming portion of~~ structure be destroyed by any means, it ~~can may~~ only be rebuilt as permitted in Section 3.28.E.2.
 - c. Should ~~such a nonconforming~~ structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the zoning district in which it is located ~~after it is moved~~.

E. Repairs and Maintenance.

1. Except as provided by ~~Section 3.28.D.1.b, and~~ Section 3.28.E.2, all repairs and maintenance work required to keep a nonconforming building or structure in sound condition may be made, but it shall not be structurally altered to permit the use of such building or structure beyond its natural life, except for repairs necessary to maintain public safety.
 2. ~~Other than dwellings, nonconforming~~ **Nonconforming** buildings or structures damaged by fire, wind, explosion, act of God, or public enemy may be ~~rebuilt or restored~~ **or repaired** if the cost thereof does not exceed fifty (50) percent of the **true** cash value of the nonconforming building or structure prior to its damage or destruction. If the cost of restoration or repair would exceed fifty (50) percent of the true cash value of the nonconforming building or structure prior to its damage or destruction, a substantial improvement or rebuilding **the restoration or repair** shall be permitted only if it complies with the requirements of this Ordinance.
 3. **Residential** nonconforming dwellings damaged by fire, wind, explosion, act of God, or public enemy ~~may be rebuilt or~~ restored **or repaired** provided that such reconstruction takes place within the confines of the original nonconforming building height and footprint.
 4. If a nonconforming **building or** structure ~~or portion of a structure~~ containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, or ~~rebuilt~~ repaired except in conformity with ~~the requirements of~~ this Ordinance.
- F. Any **buildings**, structures or uses which fail to conform to the ~~previous Casco Township Zoning—predecessor of this~~ Ordinance, were not constructed or used legally, were not permissible nonconforming ~~uses—buildings~~ or structures, **or uses** thereunder, or which violated ~~that Zoning Ordinance, the predecessor of this~~ **Ordinance** shall not be considered nonconforming ~~uses buildings~~ or structures under this Ordinance. The **buildings**, structures or uses shall be considered illegal and subject to the enforcement provisions of this Ordinance.
- G. **Structures, buildings, or uses nonconforming because of height, area, or parking and loading space only may be extended, enlarged, altered, remodeled, or modernized provided there is compliance with all height, area, and parking and loading sections with respect to the extension, enlargement, alteration, remodeling, or modernization, and the Zoning Administrator determines that the extension, enlargement, alteration, remodeling, or modernization will not substantially extend the life of any nonconforming building or structure. Any use of a building or structure which is nonconforming because of parking and loading sections and which is thereafter made conforming or less nonconforming by the addition of parking or loading space shall not thereafter be permitted to use such additionally acquired parking or loading space to meet requirements for any extension, enlargement,**

alteration, remodeling, modernization, or change of use which requires greater areas for parking or loading space.

H. No nonconforming use of any building or structure or of any lot or parcel which is nonconforming for reasons other than height, area, or parking and loading space shall be extended or enlarged unless all extensions or enlargements do not exceed fifty (50) percent of the area of the original nonconforming use and unless such extension or enlargement is authorized by the Zoning Board of Appeals as a matter for decision pursuant to Section 20 of the Zoning Act (MCL 125.290). In considering such authorization, the Zoning Board of Appeals shall consider the following standards.

- 1. Whether the extension or enlargement will substantially extend the probable duration of the nonconforming use; and*
- 2. Whether the extension or enlargement will interfere with the use of other properties in the surrounding neighborhood for the uses for which they have been zoned or with the use of such other properties in compliance with this Ordinance.*

A motion was made by Graff to not recommend the proposed zoning change to Section 3.32 to the Casco Township Board. Motion not supported.

A motion by Macyauski to recommend to the Casco Township Board to adopt the following amendment to Section 3.32 as follows. Supported by Knisley. Fleming-yes; Campbell-no; Liepe-yes; Adamson-yes; Knisley-yes; Macyauski-yes; Graff-no. Motion carried.

Section 3 Fences Section 3.32

- B Unless provided for elsewhere in this Ordinance, a fence may not exceed a height of three (3) feet within any required front yard setback area, or a height of ~~six (6)~~ **seven (7)** feet in any other area. For waterfront lots, a fence may not exceed a height of three (3) feet within any front or rear yard setback area, or a height of ~~six (6)~~ **seven (7)** feet in any other area.
- E In the case of a double frontage (through) lot in any Residential District, a fence up to ~~six (6)~~ **seven (7)** feet in height may be erected in the rear yard, as determined by the Zoning Administrator, but shall not block clear vision for area driveways or roadways.

4. **Public Comment:** None

5. **Closing comments and adjournment** The public meeting was closed at 7:05 PM

Minutes prepared by Janet Chambers, Recording Secretary

Attacment #1 Letter from Diane Schlanser, July 1, 2016, Re: Fence Ordinance

Attachment #2 Letter from Eric Schlanser, July 5, 2016, Re: Fence Ordinance

Attachment #3 Letter from Marovec, July 6, 2016, Re: Fence Ordinance

Attachment #4 Photo of fence on berm

Attachment #5 Photo of fence on berm

Attachment #6 Photo of fence on berm

Judy

From: Diane Schlanser < dschlanser@yahoo.com >
Sent: Friday, July 01, 2016 2:07 PM
Judy Graff; Lisa Marovec; Arlene Dickerson; Linda Adeson; Eric
cc: Diane Smith Schlanser
Subject: Fence hts
Attachments: IMG_2229JPG; Untitled attachment 00043.txt; IMG_2227JPG; Untitled attachment 00046.b<t; 1MG_2225JPG; Untitled attachment 00049.b(t; 1MG_2224JPG, • Untitled attachment 00052.txt

Eric and I will be out of town and unable to make the meeting on raising the heights of fences- We are very much against this. Our neighbors at 35? North shore north applied to put in a 6 foot fence. Then they put in 12 foot posts and piled dirt 3 ft high under the fence. Thus a 6 foot fence. Meanwhile as I tried to show with my pitiful picture if you stand flat-footed on the ground right behind the fence you have a 12 foot height of fence. The neighbors called the township and were told that was fine if the fence was 6' from the dirt.

Any increase in fence heights using this standard could easily result in 12-15 or perhaps 20 foot high fences.

Just a few years ago a house just north of us lakeside applied for a variance to put up an ff fence. The residents came out in droves and variance was denied.

If you wish to raise fence heights please check with surrounding residents. Part of the ambience of the neighborhood is the park-like setting. High walls do not contribute a pleasant feeling.

In closing when the board approved a public walkway within 15 feet our home the first picture show a natural privacy boarder which Greg put in for us. It did take about 3 years to offer the privacy we sought.

Please share with other committee members on July 6th.

Thank you
Diane Schlanser

Attachment #2

Judy

From: Eric Schlanser <eschlanser@yahoo.com>
Sent: Tuesday, July 05, 2016 11:33 AM
To: Judy Graff
Subject: Fence height change proposal
Attachments: IMG_2426.JPG; Untitled attachment 00007.txt

Honorable Judy Graff,

Please forward to the Planning Commission for the upcoming 7/6/16 meeting. We will not be able to attend in person but would still like to comment.

Thank you,
Eric Schlanser

Honorable Planning Commission and Residents of Casco Township,

Attached to this email message is a picture of a newly installed fence in our neighborhood on North Shore Dr. North in Casco Township. The white plastic fence panels each are a full 6 feet tall. It is my understanding that a building permit was issued for a supposedly conforming fence of 6 feet in height. We never received notice of a hearing for a zoning variance building permit for the fence before it was built. Please notice in the picture, that the fence is up to 3 feet higher **THAN GROUND LEVEL** than the code-allowed 6 feet. We watched in horror as the fence was installed on posts **UP TO 9 FEET TALL** and up to 3 feet of dirt was tossed under the fence. In **NO WAY** does this change the prevailing ground level and make the fence 6 feet high. In fact, in our opinion, the emperor has no clothes and in reality the fence is as much as 9 FEET HIGH.

- ①
- ② You who live in rural areas of our township may ask does does fence height matter? The answer can be seen in a past request for a variance to the fence code to build an 8 foot high fence as another neighbor properly did in the North Shore Dr. part of Casco. The notice of the application to build it was enough to send many neighbors to the hearing. The many neighbors who spoke against the proposed non conforming fence convinced the Zoning Board of Appeals to deny the variance. The property owner eventually built an attractive code conforming fence that preserved the airy park like ambience and associated property values of this high density area. It can be done.
- ③ With its mature trees and unobstructed views, we have worked hard to keep up the appearances of our properties at this entrance to Casco. We feel it enhances our township to anyone entering or returning home. These values should be protected and the zoning code is the tool designed to do so. We urge you to use it.

Eric Schlanser
45 N Shore Dr N.
Casco Township

Attachment #3

Judy

From: James Marovec <jmarovec@gmail.com>
Sent: Wednesday, July 06, 2016 11:00 AM
To: graffj@i2k.com
Cc: diane schlanser
Subject: Fwd: Fence
Attachments: WP_20160705_001.jpg; WP_20160705_002.jpg; WP_20160705_003.jpg

Hi Judy,

My name is Jim Marovec. I live next door to Diane and Eric Schlanser at 39 North Shore Drive North. I am adding my concerns about a proposed new height regulation increase for fences. I thought I would also share some of the same photos that Diane sent in case you need additional images. The issue that I have is the use of a burm to increase a 6 foot fence to whatever height you desire. What is the purpose of a regulation? As you can see from my photos and Diane's, this fence is now 9 feet tall because a three foot burm that was placed underneath it. In addition, I feel there needs to be some regulation on property owners blocking lake views from other surrounding neighbors. We had challenging conversations with our neighbors in order for us to acquire "some" of our lake view back by asking for an alteration in their original plans. I hope that the recent issues we just experienced can be rectified so that others do not have to go through the difficult neighborly confrontations we had to endure through this process.

At this point, I am not able to make this meeting, but will be there if my plans change.

If you have any questions or want to talk further, please do not hesitate to call me at [708-557-2634](tel:708-557-2634) or email me.

Thank you so much.

Jim Marovec

----- Forwarded message -----

From: Jim <jmarovec@gmail.com>
Date: Tue, Jul 5, 2016 at 7:01 PM
Subject: Fence
To: James Marovec <jmarovec@gmail.com>

"existing grade"

Attachment #3

Judy

From: James Marovec <jmarovec@gmail.com>
Sent: Wednesday, July 06, 2016 11:00 AM
To: graffj@i2k.com
Cc: diane schlanser
Subject: Fwd: Fence
Attachments: WP_20160705_001.jpg; WP_20160705_002.jpg; WP_20160705_003.jpg

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Thank you so much.

Jim Marovec

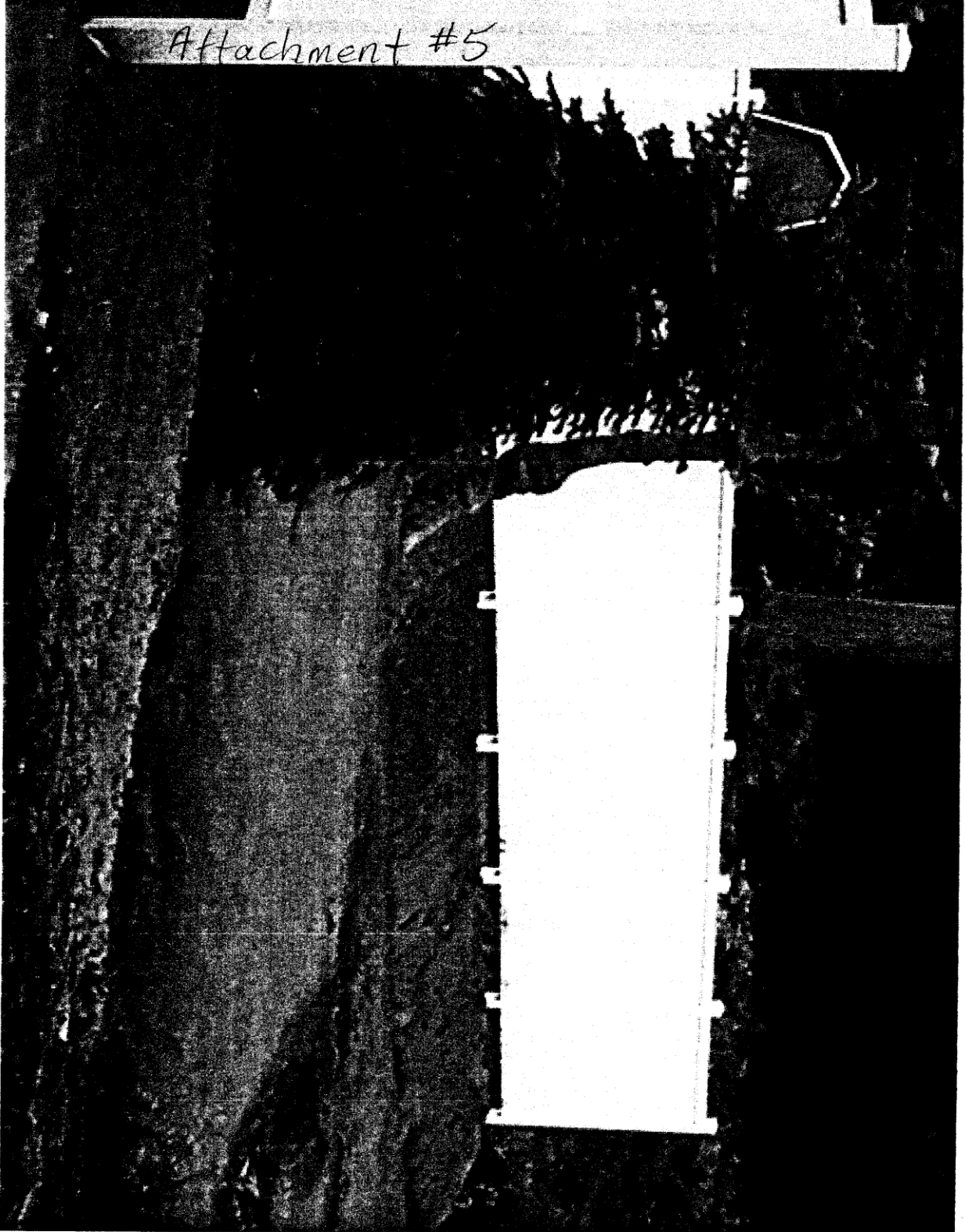
----- Forwarded message -----

From: Jim <jmarovec@gmail.com>
Date: Tue, Jul 5, 2016 at 7:01 PM
Subject: Fence
To: James Marovec <jmarovec@gmail.com>

"existing grade"

Attachment #4





Attachment #6

