

Approved 09/07/16

REGULAR MEETING OF CASCO TOWNSHIP PLANNING COMMISSION
July 6, 2016, 7 PM – 9 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:** The meeting was called to order at 7:05 PM.
2. **Constitutional “Moment”:** Chairman Fleming’s Constitutional Moment was contrasting between the freedoms of the early years of our township and the gradual decreasing of those freedoms in the years since 09/07/16g.

Campbell objected to the use of these documents to promote Fleming’s personal position. Chairman Fleming said he would take Campbell’s opinion into consideration.
3. **Public comment:** None
4. **Approval of minutes of 5/4/16 Regular Meeting:** A motion by Knisley, supported by Macyauski to approve minutes of 5/4/16 Regular Meeting. All in favor. Minutes approved as printed.
5. **Approval of minutes of 6/8/16 Special Meeting:** A motion was made by Graff, supported by Campbell to approve the minutes of 6/8/16 Special meeting. All in favor. Minutes approved as printed.
6. **Report from Township Board of Representative Judy Graff:** Graff gave a report on the June 20, 2016 Casco Township Board meeting including comments on rentals, approval of a 3% Cost of Living increase for non-elected employees. The new budget was approved. A bid was accepted for additional parking spaces at the Casco Preserve. Stairs have been repaired at the Preserve. Casco joining the Water & Sewer Authority should be addressed in August.
7. **Report from ZBA representative Paul Macyauski:** nothing to report
8. **Report from Water/Sewer representative Lou Adamson:** Projected hookups for the fiscal year have been met. Casco is currently meeting the financial obligation and will not need to borrow additional money for this year.
9. **Old Business – Report from Al Ellingsen regarding restaurants in the ag district:**
Mr. Peter Kline, Seedling Farms, 6717 111th Avenue, Casco Township has asked the Planning Commission and the Board what the feasibility of amending the Zoning Ordinance to allow

restaurants in the Agricultural Zone. Mr. Kline's attorney was again unable to attend the Planning Commission meeting. Chairman Fleming asked Ellingsen to let Mr. Kline know the next Planning Commission meeting is September 7, 2016.

Ellingsen provided commissioners with a letter (attachment #2), dated July 1, 2016, including a list of questions to consider when making a decision on allowed uses in the Ag district.

Ellingsen went through Master Plan to be sure there was not incompatibility for a restaurant in Ag. He came to the conclusion that it could be allowable if this is what the Planning Commission decides, but be very careful about allowing it.

Ellingsen also said he gets inquiries about venues for parties. Presently there are no allowance for that except for wineries or the golf course. Banquet halls would require a sprinkler system if they have over 100 people. Sprinkler systems mean good water supply. Kline says he has the facilities and the health department has approved it.

Ellingsen provided Commissioners with a letter regarding short-term rentals (attachment #3). Currently there are 125 listing for short-term rentals in Casco. Graff said the Board will be having a meeting July 20 to get comments from the public on short-term rentals.

Graff asked Ellingsen if in other townships he often gets requests for people wanting restaurants in the AG district. Ellingsen said this is the first. Graff questioned whether Ag Zoning should be changed if this is the only request because in the past Casco has wanted to preserve the Ag district. Chairman Fleming said the Planning Commission is not going to save Ag. Ag is a commercial venture started so people could make a living on the land. Businesses have come and gone. He feels it is not up to the Planning Commission to decide what is going to be profitable. He feels a restaurant is not going to mess up grain bins and tractors.

Ellingsen said some townships have tiered Ag areas where, on the outskirts, there are farm markets, restaurants and resorts. PUD's are not allowed in Ag zones.

10. New Business: None

- 11. Public Comment:** Nancy Judd, 7263 Michigan Dr, questioned the cost of water & sewer being so high. She stated that it cost \$20,000 to hookup and \$102 a month when she is not there. Adamson explained the projected growth was not a realistic number. New homes are what is needed. Judd said she would rather pay the high bills than increase number of houses.

Kathy Watt asked about building height restrictions in Miami Park some of buildings structures are too high 35' from average grade. Ellingsen said they are conforming.

Vicki Slocome said it is not only the height of the buildings, but the distance from the lake cliff. She asked about a home in her neighborhood that has no basement, no sumps, green slime in ditches. Ellingsen said the home is conforming. If there is a problem with the ditches, she

should contact the Road Commission. It was also suggested that she could contact Tom Jessup, County Commissioner.

Watt asked what the Planning Commission is thinking about rentals. Graff said the Casco Township Board will be having a public meeting on July 20th at 7:00 PM to discuss short term rentals and get public input.

12. **Closing Comments and adjournment.** A motion to adjourn by Campbell, supported by Graff. All in favor. Meeting adjourned at 8:20 PM.

Next Planning Commission meeting will be September 7, 2016

Minutes prepared by Janet Chambers, Recording Secretary

Attachment #2: Letter from Alfred Ellingsen, dated July 1, 2016, Re: Restaurant in Ag District

Attachment #3: Letter from Alfred Ellingsen, dated June 17, 2016, Re: Short-term Rentals

Attachment #1

June 6, 2016 - Constitution Moment

For our constitution moment this evening, I would like to read a short section of our zoning ordinance sandwiched into one of the opening paragraphs of the Declaration of Independence. My purpose is to show a little of the contrast between the freedoms of the early years of our township and the gradual decreasing of those freedoms in the years since zoning, as it has been practiced here, has been in existence. This contrast applies to a greater degree in what is now the Ag district, and to lesser degrees in the residential districts.

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.--That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, --That whenever any Form of Government becomes destructive of these ends,..."

SECTION 1.05 THE EFFECT OF ZONING

For the purpose of this Ordinance, except as hereafter specifically provided, no lot, land or premises shall be used, maintained or occupied, and no building or structure or part thereof shall be constructed, erected, moved, placed, maintained, reconstructed, used, extended, enlarged or altered, except in conformity with the regulations for the Zoning District in which it is located; these limitations being the minimum legislation necessary to promote and protect the general safety and welfare of the community.

"...it is the Right of the People to alter...it"

Zoning doesn't have to be tyrannical. We as a Planning Commission along with the Township Board and the citizens of this township, can make it less so.

Attachment #2

CASCO TOWNSHIP
Zoning Administrator/Building Official
7104 107th Avenue
South Haven, Michigan 49090
Phone:269/637-4441 Fax:269/639-1991

1 July 2016

To: Casco Township Planning Commission

Dear PC Members,

As you are aware the Township received a letter from Mr. Peter Klein, Seedling Farms, 6717 111th Ave., requesting that the PC and Board assess the feasibility of amending the Zoning Ordinance to allow restaurants in the Agricultural Zone. Presently, the Township has two sit down restaurants, Cousins on Blue Star and North Shore(C-2 - Community Business District), and Hawks Head(PUD District). Consumer Energy also has a full service kitchen and sit down facility which is supposed to be for their internal conferences only and not open to the general public. Minimal food items are also served at the two operational wineries.

Since the Commission is going to address this issue, I believe there should also be discussion regarding the addition of wineries and special events facilities to the list of uses since wineries have been previously adjudicated as "Farm Markets". I have had at least six inquiries during the past several years regarding wedding venues or banquet halls, either in existing structures or newly proposed buildings.

As I stated at previous meetings, Zoning Ordinances are primarily "permissive" and, therefore, allow for all the uses listed in the ordinance, either as a permitted use or as a special use, but theoretically, all other uses are negated. Saugatuck Township, during my tenure as Zoning Administrator, has always allowed restaurants in the two Agricultural Zones, which comprises approximately 62% of the land area of Saugatuck Township. The use is allowed as a special use and must also comply with the requirements for site plan review after analysis and approval by the Planning Commission. The restaurant must be full service without dancing, floor show, or drive-thru. However, over the course of twenty years I never had anyone apply for, or even discuss, a restaurant project in the Ag Zones in Saugatuck township.

After reviewing several websites where Seedling Farms is mentioned, I believe that Mr. Klein has already had several large gatherings on his property for the purpose of what appears to be an outdoor farm to table dinner for up to 180 persons. There was also a mention that the individual cost for this dinner was \$100 per person.

The Casco Township Master Plan provides some allowance for "small-scale business uses within the Agricultural and Rural Residential Zoning districts". "The decision to allow or not to allow such non-residential uses to mingle with homes in the rural countryside should be made in the zoning ordinance. Obviously, a key consideration in such a decision is the compatibility of those uses with the desired and predominant character of the area. The effects of noise, traffic, and similar impacts upon the surroundings must be carefully considered. The primary objective is to determine which type of uses are allowable ... and the scale that might be allowed."

Since it appears that the Master Plan allows some type of future commercial endeavors in the Agricultural

Zone, either in association with an existing use or as a potential stand alone use , the Planning Commission will have to answer, among others, the following questions:

1. Would small restaurants be appropriate in some areas and in conjunction with certain uses? or
2. Should stand alone restaurants be allowed?
3. Will the use change the character of the area, especially the properties immediately surrounding the property with the change of use?
4. Is the use contrary to the purpose and intent of the zoning district?
5. Will the roads be impacted such as to need upgrading to be safe and not degrade more quickly?
6. Will the use create more demand of Fire/Rescue and Police in terms of potential emergencies?
7. Will the use be able to operate long term without the need for public water and sewer?
8. Is the use primarily for local patrons or is it primarily a destination for travelers?
9. What would be the maximum scale of the facility(Number of seats, size of building, etc.)?
10. Would the Health Department approve these uses?

All of the uses noted in the second paragraph would have to be Special Uses with Site Plan Review approval. There are many other questions that will come up in a public hearing if and when that time arrives. There may also be other uses if the Commission wishes to expand the discussion to add lodging such a "Inns", commercial recreation, or other farm-tourist related uses.

There also may have to be some changes to the parking and signage sections of the Zoning Ordinance, and the noise ordinance.

For years, the rural areas have been off limits to most commercial activities. The addition of Home Based Business, Home Occupations, and Cottage Industry sections to the 2006 Zoning Ordinance has expanded the possibility and opportunity for more commercial enterprises. Because these changes have occurred over a short period of time, the resulting affects have not been fully realized and many people may still be unaware of the options allowed in the existing ordinance. For this reason, I believe that the Township should be cautious and careful in how far it goes in allowing commercial activity in the rural areas.

Alfred J. Ellingsen

Alfred J. Ellingsen
Zoning Administrator

CASCO TOWNSHIP
Zoning Administrator/Building Official
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South Haven, Michigan 49090
Phone:269/637-4441 Fax:269/639-1991

17 June 2016

To: Casco Township Board

Dear Board Members,

I was asked to provide some information regarding the conflicted issue of short term rentals of single family residences. The conflict is primarily between homeowners who wish to rent their homes on either a part time or full time basis to the general public and homeowners who live nearby either on a meets-and- bounds lot or within a platted subdivision. Some land owners have even built the dwelling for the specific purpose of rental.

As you are aware there was a lawsuit between a group of homeowners in the Sunset Shores Subdivision that were opposed to rentals and a group of homeowners that were currently renting on a short term interval, some even for as little as 1-2 days. The basis of the plaintiff's case was that the use of the property was "commercial" and the Subdivision covenants did not allow "commercial" uses. In summary, the plaintiffs prevailed and Judge Cronin allowed rentals to continue until Labor Day 2016 and thence cease and desist after that date. A secondary implied decision of the Judge stated that the defendants may also be in violation of the Casco Township Zoning Ordinance(ZO) since the ZO is permissive and any use not listed as a Permitted Use or a Special Land Use was not a legal use of property within the jurisdictional boundaries of the Township. The result is that anyone who rents a dwelling in the Township would be subject to a suit from an adjacent or affected land owner nearby who may have "standing" and the Township could be brought into the suit under the guise of non-enforcement of our Zoning Ordinance.

Therefore, the Township appears to be placed in a mediator position by adopting either a ZO Amendment or a Stand Alone "Short Term Rental Ordinance" to try to satisfy both landowners who rent and those who do not, both of which believe their positions are based upon absolute property rights in each case.

Michigan appears to be one of the States that is leaning toward 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. Public sewer and water lines which extended north along Blue Star accelerated the build up in these subdivisions and with the accessibility of Lake Michigan from these parcels, the land which was once unbuildable has become very valuable and has attracted many investors and opportunists. Whether that is bad or good remains to be seen when we get to the build out in these older plats.

The reality is that the Township must now adopt some legislation to mitigate the conflict and try to create some harmony between the two opposing factions with the least intrusion into the lives of all landowners. The cities of Saugatuck and Douglas, Saugatuck Township, and just lately the City of South Haven have adopted Ordinances to control and regulate "short term rentals". The Township Attorney, Ron Bultje, in his Memorandum of 28 April 2016, stated that the Township would be better served if a stand alone ordinance is

adopted by the Board as opposed to a ZO Amendment(Allan has a copy of the Memorandum). Some minor adjustments to the ZO would still be necessary for the sake of compatibility between the two ordinances. The Board would first need to decide if they will compose, promulgate, and review the text of a proposed ordinance or, if they wish, to request that the Planning Commission perform this duty and act as an advisory body to the Board. The Board can accept, reject, or modify any provisions of the recommendation.

After review of several currently existing short term rental ordinances in other jurisdictions it appears that the following major items are consistently found in each:

1. A formal application is required from the owner of each proposed rental property. [Must determine if this will be for only short term(28 days or less) or for all rentals.]
2. Fees based upon actual time spent and overhead costs.
3. Maximum number of occupants for sleeping purposes based upon number of bedrooms or other criteria. (Note: This does not address any visitors that may occupy the building but not necessarily sleep there.)
4. Reference or state Township or other regulations regarding, noise, parking, control of animals, garbage, fireworks, use of facilities, if subdivision rules exist.
5. Designated agent who is within a reasonable distance from the property and who is totally responsible for the physical property and to handle complaints from renters and adjacent affected property owners.
6. Inspections to be done by Fire Safety Officer and/or Building Official/ZA before approval of registration.
7. Violations and fines.
8. Revocation procedure.
9. Ordinance must achieve legitimate governmental objectives.

Between Arbnb, VRBO, and HomeAway there are about 125 listings for vacation rentals in Casco Township most of which are on or very near Lake Michigan. Over the course of the last 5 years I have never received a complaint from anyone regarding renting. I have received complaints primarily about owners of properties who are noisy, are camping, are parking on the streets, are shooting fireworks over the lake, beach campfires, and are drunk and disorderly. Of these 10-12 complaints only 2-3 have been about someone other than the owner of a property using his property with his guests.

If any member of the Board has any questions, please contact me at the Hall, my cell phone(269/214-2382), or email skwirely@frontier.com.

Alfred J. Ellingsen

Alfred J. Ellingsen
Zoning Administrator