

**REGULAR MEETING OF
CASCO TOWNSHIP PLANNING COMMISSION
April 11, 2018
7pm or Following public hearing – 9 PM**

Members Present: Chairperson Liepe, David Campbell, Greg Knisley, Dan Fleming, Judy Graff and Dave Hughes

Absent: Lewis Adamson is excused

Staff Present: Janet Chambers, Recording Secretary

Also Present: approximately 25 interested citizens

1. **Call to order and review of agenda:** The meeting was called to order by Chairperson Liepe at 7:25 PM. No changes to agenda. Motion by Knisley, supported by Hughes, to approve agenda. All in favor. MSC.
2. **Opening comments by PC members:** Fleming quoted William Blackstone (Attachment #1)
3. **Approval of minutes of March meetings:** Motion by Dave Campbell, supports by Fleming, to approve minutes of March 7, 2018. All in favor. Minutes of March 7th approved as written. Motion by Campbell, supported by Knisley to approve minutes of March 24th, 2018. All in favor. Minutes approved as printed.
4. **Report from Township Board representative Judy Graff:**
 - Cheri reported election volunteers getting training on new equipment.
 - Merger of Water & Sewer will be by July 1st.
 - Township received a petition on March 1st of the intent to call for a referendum on the STR Ordinance. If approved would be on August ballot.
 - Fireworks Ordinance draft not discussed yet. No other municipalities asked had separate fireworks amendments.
 - \$22,000 approved for road repair.
 - Maureen Perideaux said Allan has been helpful in discussion of drainage
 - August ballot will have seniors' millage.
5. **Report from ZBA representative Dave Hughes:** Have not met. Had scheduled meeting for April 26, postponed until later date.
6. **Report from Water / Sewer representative Lou Adamson:** Adamson absent. Supervisor Overhiser said they should be shifted to SHAWSA, by July 1. They are figuring out the financial details such as how we bill, they bill, etc.
7. **Old Business**
 - A. Topics from Combined meeting put on calendar/schedule:** Lighting, Lake Shore Overlay zone, plus possible MP revision. The Lake Shore Overlay zone and MP revision might go together. Chairperson Liepe asked that commissioners think of the reasons for revising the MP and the PC can present the idea to the board.

Campbell said that Adamson's reason for suggesting the MP be revisited was it has come up over the last year or so. He had a feeling that we shouldn't be waiting another 5 years (2015). SH township & City both revisited their MPs. Campbell said Macyauski made a comment that there may be sections of MP that need updating, but not necessarily in its entirety. Campbell added that Chairperson Liepe decided it would be good to meet with the board and have discussion about whether it needs updating. Graff asked if PC members were to come up with specifics to discuss with the board. Campbell suggested putting it on the agenda for next meeting. A list could be given to board before scheduling meeting.

The environment of the township has changed and there is more interest in the community. Environment is changing, and more people have retired.

Campbell said another thing from the joint meeting was looking at AG for additional areas to open opportunities.

Graff suggested putting together a list, and giving it to the board before meeting, or maybe just giving list to board without a meeting. Discussion will be on the next agenda.

Campbell said, subsequent to the joint meeting, he talked to Patrick Hudson, (former township consultant in 2014) about what experiences SH Township has had with their new overlay zone. Hudson said they have used SH Township's overlay zone in several instances, both for work in their park and for individual property owners. Hudson is someone nearby with experience to leverage off. Their document deals with the bluff, not with sea walls, however, that doesn't mean we shouldn't look at seawalls. They are 2 separate issues.

Campbell also researched the DEQ website and looked at townships, cities & state maps. Casco has a 6 or 7 mile stretch of high risk erosion. The DEQ site has every parcel that is on the bluff in the high-risk area. They list the areas where high risk erosion is a concern. There are 3 zones in Casco. Zone A1, A2 & A3 are shown with appropriate setbacks for homes. Recommendations are given for 30 year setbacks in Zone A1, at a rate of erosion of 1.7 ft per year. New building should be back 65' from the top of the bluff. They should also be required to be movable. In Zone A2 the 30 year setback recommended is 100' and a 60 year setback recommendation of 190'. Area A3 recommends a 30 year setback of 60' and a 60 year setback of 105'. Campbell provided a map and erosion information (Attachment #2) from the DEQ website to commissioners. The following links are to information provided by Campbell:

http://www.michigan.gov/documents/deq/deq-wrd-greatlakes-shorelands-CascoTwp_HREA_546392_7.pdf and

https://www.watershedcouncil.org/uploads/7/2/5/1/7251350/shoreline_erosion_3rd_edition.pdf

Campbell said an important point is that people who buy, do additions, or teardowns think they will be there in 30 years and are mistaken.

Campbell added, at some point in older subdivisions, the township needs to look at providing some guidance. Seawalls are a separate issue. Campbell stated that John Barkley has done a lot of research and would be a good source of information.

Graff said seawalls are a worthwhile discussion. People have a right to walk the lakeshore and not have their journey impacted by seawalls. Campbell said they have the right, but might not be able to get to the lakeshore. We need to have the discussion, but you can't change nature

Chairperson Liepe said another item discussed at the joint meeting is to critique the ordinance change process and learn from the experience of working on the STR ordinance. She asked that people (public and commissioners) write down ideas and email them to her so the PC can come up with a template to use in the future and become more productive.

Discussion on lighting and critiquing the ordinance amendment process are two items to put on the schedule of future agendas. Chairperson Liepe will talk with the planner about putting something together for a lighting ordinance.

8. **New Business:** Chairperson Liepe talked with Ellingsen and found there seems to be someone interested in purchasing the golf course and developing with homes. Ellingsen advised the person to put their ideas on paper and come to the PC in next couple of months.

Graff said, in preparing for tonight's meeting, she noticed in the non-conforming Section 3.28, has a discrepancy between the website copy, dated 2014, and copies printed June of last year **of the 2016 version**. The changes are not listed in the change log. This needs to be discussed at the next meeting. The following is 3.28 ~~G & H~~ **A Intent, #1 & #2** referred to by Graff:

Words in bold were not in the 2014 version but were added to the 2016 version. Stricken words were in 2014 version, but not in 2016 version.

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.**

Fleming asked PC members to write down the constitutionality of zoning and bring to the next meeting. Discussion ensued about whether PC members felt they needed to do the task. Some did not feel they should do the task and others said they would do it.

Supervisor Overhiser said that the stairs at the Casco Nature Preserve have been closed.

9. Public comment on items discussed in this meeting:

Fouts said to Campbell, if Campbell lives in a subdivision of existing lots of record, it should be considered a conflict of interest, and Campbell should not discuss or vote on lots of record. Campbell said he represents people in the subdivisions of lots of record.

Chairperson Liepe said public comments should be directed to chair, not individuals.

John Barkley said he is very happy the PC is prioritizing review of the MP. He said if we had used the MP in the STR process, both zoning and regulatory, it would have gone smoother. He added, this will come out in the process review.

Barkley's 2nd comment was about erosion. The erosion overlay in the MP, page 38, would be a good placeholder to go through and update. Erosion belongs in the MP. Erosion protection and setbacks are two different things, but related. A technical solution might be customized. He would like to see the township get involved in making sure we have walk through. There should be walk through requirements.

10. Closing comments and adjournment:

Supervisor Overhiser stated that the STR registration notice cards went out in mail. There will be training with Host Compliance next Thursday.

Mary Campbell said Host Compliance has been identifying STRs in Casco.

Clerk Brenner said the Board of Election canvassers came by and Casco got a good report.

A motion was made by Graff, supported by Knisley to adjourn. All in favor. MSC. Meeting adjourned at 8:15 PM.

Next meeting:
Wednesday, May 9th, 2018, 7 PM, Regular meeting

Attachment #1: Flemings Blackstone quote
Attachment #2: DEQ erosion information

Minutes prepared by Janet Chambers, Recording Secretary

“If a new road, for instance, were to be made through the grounds of a private person, it might perhaps be extensively beneficial to the public; but the law permits no man, or set of men, to do this without consent of the owner of the land. In vain may it be urged, that the good of the individual ought to yield to that of the community; for it would be dangerous to allow any private man, or even public tribunal, to be the judge of this common good, and to decide whether it be expedient or not. Besides, the public good is is nothing more essentially interested, than in the protection of every individual's private rights, an modeled by the municipal law. In this, and similar cases the legislature alone can, and indeed frequently does, interpose, and compel the individual to acquiesce. But how does it interpose and compel? Not by absolutely stripping the subject of his property in an arbitrary manner; but by giving him a full indemnification and equivalent for the injury thereby sustained. The public is now considered as an individual, treating with an individual for an exchange. All that the legislature does is to oblige the owner to alienate his possessions for a reasonable price; and even this is an exertion of power, which the legislature indulges with caution, and which nothing but the legislature can perform.”

William Blackstone

(from the book “Economic Liberties and the Constitution” by Bernard H. Siegan)

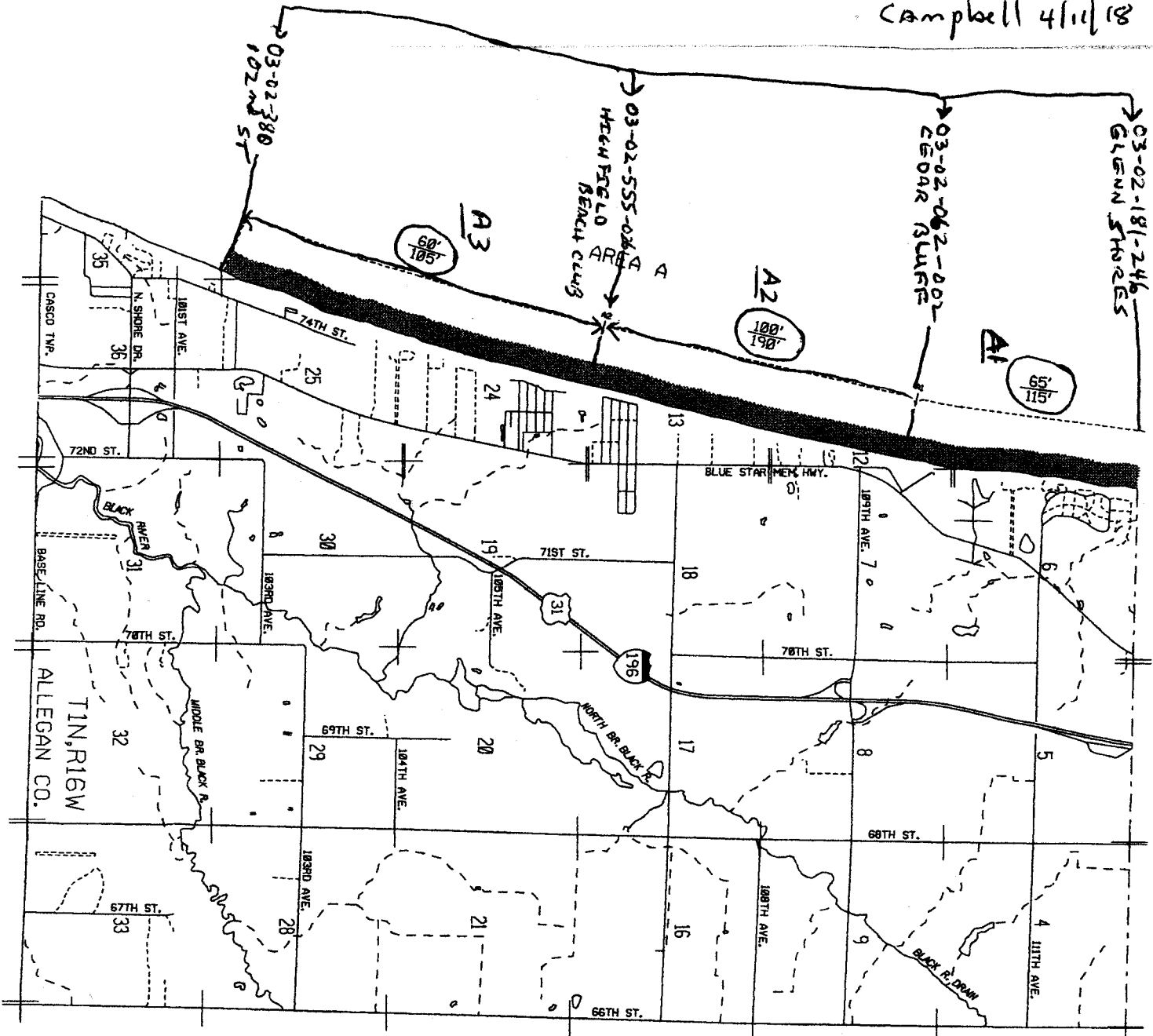
Eminent Domain?

The "just compensation clause" is found in the Fifth Amendment and states

“...nor shall private property be taken for public use without just compensation.”

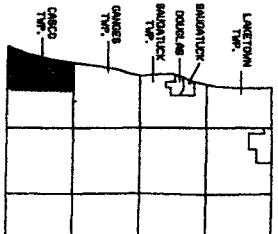
Zoning is based on the presupposition that the municipality owns the property rights and has the final say on how property is used. This presupposition, when put into practice as zoning, is eminent domain without the payment. Many times during Planning Commission meetings you often hear such phrases as "we want to preserve agriculture", "we want to preserve rural character" or "we want" to limit (or promote) this, that or the other thing. I would submit that using the term "we" in such a fashion implies public use which constitutionally requires "just compensation". To the degree that zoning is uncompensated public use of private property it is in that degree unconstitutional.

Campbell 4/11/18



CASCO TOWNSHIP
HIGH RISK EROSION AREAS & CRITICAL DUNE AREAS

ALLEGAN COUNTY



HIGH RISK EROSION AREAS

THE NUMBER REPRESENTS, IN FEET, THE 50 YEAR PROJECTED RECESSED DISTANCE. THE NUMBER REPRESENTS, IN FEET, THE 50 YEAR PROJECTED RECESSED DISTANCE.

THESE AREAS ARE LIKELY DEFINED BY PAINT SIGNS, SHERMANS PROTECTION AND MANAGEMENT, OR THE NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT 1994 PA 488 BEING GREAT LAKES SHERMANS PROTECTION AND MANAGEMENT IN FORCE ON OR BEFORE ONE FOOT ON HORIZ PER 1994.

CRITICAL DUNE AREAS

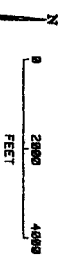
BARRIER DUNES
 AREAS NOT INCLUDED IN DESIGNATED CRITICAL DUNE AREAS THAT ARE CHANGING PHYSICALLY OR DUNE SAND AND EROSION BEING DUNE-LIKE CHARACTERISTICS.
CRITICAL DUNE ASSOCIATED PLANT
 CHARACTERIZED OUTSIDE DESIGNATED CRITICAL DUNE AREAS. THE PLANT SPECIES LISTED IN THE NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT 1994 PA 488.

SOURCE
 STATE OF MICHIGAN RECREATION RATE MAPS & ATLAS OF CRITICAL DUNE AREAS

INFORMATION
 MICHIGAN DEPARTMENT OF NATURAL RESOURCES LAND AND WATER INDEPENDENT DIVISION
 LANSING, MI 48999-7750
 (517) 373-1569



11-88-95



DATE: 11-88-95
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 APPROVED BY: [Name]

Section Two: Understanding Shorelines and Shoreline Erosion

Bluffs are most susceptible to erosion when the waves or currents erode the base (toe) of the slope. The steeper the face of the bluff, the more susceptible it is to erosion. High bluffs (over 20 feet) are more likely to experience erosion problems than low bluffs due to the weight of the bluff itself and the potential energy of runoff flowing down the bluff face. Steep, high bluffs can collapse suddenly in a landslide (also known as mass wasting, bluff slumping, falls, or debris flows) due to soil instability or human alteration.

The discharge of ground water makes any area of the land surface more erosion-prone because it moves soil particles away from the point of discharge. However, ground water discharge from bluffs presents a more serious threat to soil stability than in flatter areas. This is especially true when layers of different soils are present because the discharge of ground water can be concentrated in a small area, intensifying its

effect. Figure 2 shows a conceptual drawing of a shoreline bluff.

Plains and Beaches

Sloping plains and beaches are the most common shoreline forms. They are composed of loose sediments, ranging from silt to boulders, which slope gently up to and away from the water's edge. A beach is the zone of sediment that extends from the low water line to the beginning of permanent vegetation. Most of the beach is dry during calm weather. During windy weather on lakes and some large rivers, waves approach from offshore, breaking and surging up the face of the beach. Beaches are the product of erosive forces, sediment supply and movement, and the near-shore land profile.

Beaches have been called one of the most effective defense structures in the world. Sand or gravel beaches can resist forces that tear apart rigid structures after a

SHORELINE BLUFF

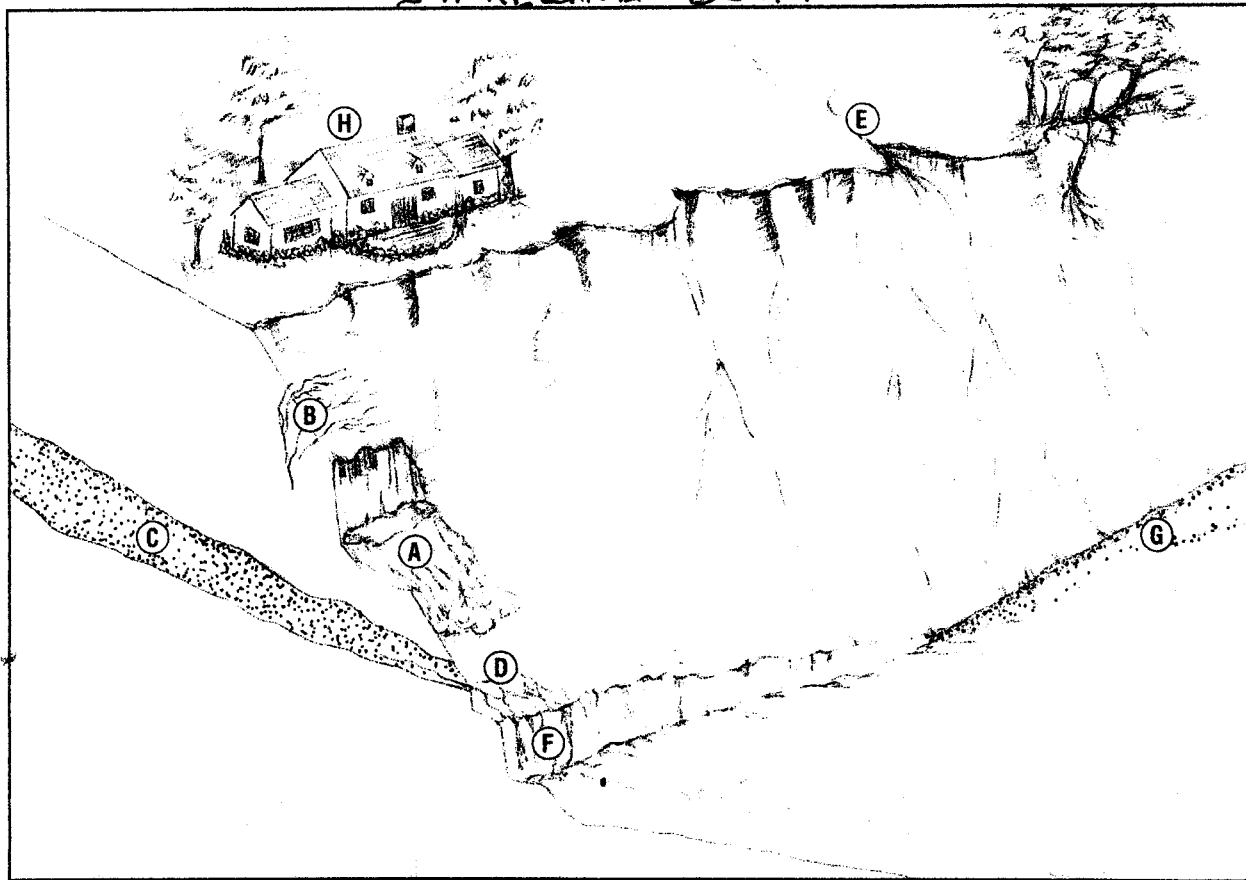


Figure 2: A conceptual drawing of a shoreline bluff. A—bluff slump, B—stress cracks, C—sand layer, D—seepage, E—overland erosion and gully, F—eroding toe, G—toe partially protected by beach, H—heavy structure in disturbed area.