

**REGULAR MEETING OF CASCO TOWNSHIP PLANNING COMMISSION**  
**June 6, 2018, 7 PM – 9 PM**

**Members Present:** Chairperson Dian Liepe, Vice Chairman David Campbell, Secretary Lewis Adamson, Greg Knisley, Dan Fleming, and Dave Hughes

**Absent:** Judy Graff is excused

**Staff Present:** Janet Chambers, Recording Secretary

**Also Present:** Supervisor Overhiser, Paul Macyauski, Cheri Brenner, Zoning Administrator Alfred Ellingsen and approximately 12 interested citizens (Sign-in Sheet Attachment #1)

1. **Call to order and review of agenda:** The meeting was called to order at 7 PM. There were no changes to the agenda.
  
2. **Opening comments by PC members:** Fleming provided two news articles (attachment #2) concerning the moratorium South Haven has placed on STRs. Fleming also shared a quote from George Washington (attachment #3). Fleming said he would like to apply that to Zoning Ordinance amendments, and justly compensate when you take something away.

Campbell shared a printout he had on Land Use and Zoning Basics, highlighting a couple of sections. *“Since New York City adopted the first zoning ordinance in 1916, zoning regulations have been adopted by virtually every major urban area in the United States.”* He went on to read a section under Regulation of Development. *“Land-use regulation is not restricted to controlling existing buildings and uses; in large part, it is designed to guide future development. Municipalities commonly follow a planning process that ultimately results in a comprehensive or master plan, and in some states the creation of an official map for a municipality. The master plan is then put into effect by ordinances controlling zoning, regulation of subdivision developments, street plans, plans for public facilities, and building regulations.”* “Campbell read a paragraph under Limits on Zoning Regulation *“Since land-use and zoning regulations restrict the right of owners to use their property as they otherwise could (and often want to), they are at times controversial. Additionally, the scope and limits of governments’ ability to regulate land use is hard to define with specificity. Courts have held that a zoning regulation is permissible if it is reasonable and not arbitrary, if it bears a reasonable and substantial relation to the public health, safety, comfort, morals, and general welfare; and if the means employed are reasonably necessary for the accomplishment of its purpose. Given the subjective nature of these factors, there is obviously a lot of room for disagreement and on the occasion, litigation.”* The third section Campbell highlighted was under Challenges to Zoning Regulations. *“Zoning ordinances must be reasonable based on all factors involved, such as the need of the municipality; the purpose of the restriction; the location, size, and physical characteristics of the land; the character of the neighborhood; and its effect on the value of property*

*involved. The rationale behind zoning is that it promotes the good of the entire community in accordance with a comprehensive plan.”*

Chairperson Liepe congratulated Dave Hughes on being inducted into the Fine Arts Hall of Fame.

**3. Public comments:**

John Barkley, 646 Waters Edge, said at the last meeting Overhiser wrote a letter concerning the proposed amendment adding “Lesser off 35’ and 2 ½ story” to building height, asking the PC to consider the loss of opportunities. Barkley said he would like to know more about the factors you (PC) and he (Overhiser) are considering calculating those lost opportunities so we can apply the same algorithm and factors used to determine disturbance cost to neighbors.

Chairperson Liepe said we (the PC) are not prepared to comment at this time. It is hard to comment on things you can’t fully understand until something has happened with it. The 3 story buildings have come up within the last 3 years. I don’t know that anybody could say what the loss would be if they were restricted to 2 ½ stories. It is impossible to know. Maybe there would be less building, but I don’t know.

Fleming said he would agree that for every decision we make we need to look at both sides. Until we do that, we cannot be reasonable and not arbitrary. I would welcome that discussion.

Liepe said she thought Overhiser’s letter was to give the board more detailed reasons why you want that change.

Knisley said there is a point to both sides. Whether it is a benefit or taking away, a loss or gain. Any time that is brought up there is no way to measure the loss or gain.

Bill Chambers, Lake Ridge Rd., said Campbell’s article says zoning is not for the past, but for the future. Chambers said don’t look so far into the future that you forget the 3 decades that it took to create what we have. Chambers recalled someone at a STR workshop in favor of STRs angerly saying, “You guys have something nice here and you don’t want to share it”. We do have something nice here. We have something nice here because we have rules and have lived by these rules for 3 decades. So, as you go toward the future, don’t forget how we got here. What’s going to happen when they build next to Dave Hughes on 2 lots a 35’ building. We’ve made these rules, we’ve lived by these rules, and should not change them unless there is a compelling argument to change them. We have

groups, a few locals, but mostly out of towners, for commercial benefit, who see a way to leverage what we have and make money. That leverage is at the expense of the life style that we have created. You asked for a compelling argument to go away from the height restrictions. Somebody from out of town, looking to line their pockets, is not a compelling argument to give up what we have worked so hard to create.

Chris Barczyk, Highland Shores, said he missed a meeting because the website was inaccurate. Barczyk asked please keep the website accurate.

Barczyk continued about building heights. He has evaluated what the Zoning Ordinance says. He would not like to see it change, but read it carefully starting in Section 2. It is not being interpreted correctly. Surrounding townships, that have the same language, have denied 2 ½ stories over 35'. Section 2.01 H 2 "Or" indicates that the connected items, conditions, provisions or events may apply singularly or in any combination. The definition of "Or" is very clear, it means the "lesser of". There is no way the ordinance intended to have a 65' 2 story building. This was never the intent. There would have been no reason to mention the number of stories if it the ordinance did not mean to apply the lesser of 2 ½ stories and 35'. Please leave the ordinance as it is but follow it.

4. **Approval of minutes of May regular meeting:** A motion by Fleming, supported by Campbell to approve the minutes of the May 9<sup>th</sup>, 2018 meeting. All in favor. Minutes approved with a spelling correction of Abonmarchre on page 6, 5<sup>th</sup> paragraph.
5. **Report from Township Board representative Judy Graff:** There was no report in Graff's absence. Overhiser will attend later and can update.
6. **Report from ZBA representative Dave Hughes:** Hughes was unable to attend the ZBA meeting on the 24<sup>th</sup> and asked Macyauski to report. Macyauski said there were 2 applicants. One for a front yard setback, which was granted. The 2<sup>nd</sup> applicant requested a 1' variance on fence height which was denied. Campbell asked why the fence height variance was denied. Macyauski said in the Review Standards one key standard refers to the adjoining property. Because the adjoining property was a conservation easement the variance was denied. Hughes said there is tentatively a July 19<sup>th</sup> ZBA meeting concerning an appeal of the interpretation by the Zoning Administrator of the Zoning Ordinance regarding lot divisions.

Ellingsen said a couple more items coming up in the future will be concerning a B&B within 750' of an existing one, building being raised with floors being put under it, and two Event Venues.

7. **Report from Water / Sewer representative Lou Adamson:** Adamson said they have approved documents and should be ready to move over to the new SHAWSA.

This should happen the first of July. There have been 22 new full connections, exceeding the projected 17.5 needed to meet their level.

Knisley asked if that means lowering the debt retirement. Adamson said no. They will probably start funding depreciation.

Campbell asked if the Water & Sewer debt repayment is on schedule and in good shape since connections have been running ahead of hookup needs in recent years. Adamson stated that is correct.

Chris Barczyk asked if a decision had been made as to where to apply the surplus. He asked if it would be applied to debt retirement.

Adamson said they had to borrow from the townships and that also would have to be paid. Ultimately the township owes the money. When we could not pay our debt, the township was responsible. A decision has not been made as to when the townships would be paid back. South Haven Township has a \$32 / month debt retirement and Casco has a \$60 / month debt retirement. When they could not make payments, the township loaned them money. They need to decide whether to cut the debt retirement or repay the townships.

Barczyk asked how much the township owes? Is it between 500,000 and 600,000? Adamson is not part financial and does not know exactly.

Adamson said they are still talking about the association, whether to keep the current in place until the debt is paid off. He said debt retirement is what we get on monthly bills to pay off bonds. The debt to the township is what we borrowed when we could not meet the payments.

Barczyk asked how much is owned in bonds, and when a decision will be made whether to use the surplus to pay off the township or bonds. Adamson did not know.

The last bond will be paid off in 2034. We are going to keep the existing Water & Sewer Authority in place until the bonds are paid off. Adamson said they will probably not pay off bonds quicker, they will probably pay the township first.

Barczyk asked when a decision would be made. Adamson said probably August or September.

Chairperson Liepe asked if a financial report will be given at the annual township meeting. Adamson said Ross Stein might. Chairperson Liepe said she would like to get a report at the annual meeting. Adamson said it is in financials, and not difficult thing to get.

Chambers asked if there is an audit done, and where to get it. Adamson said Ross Stein will give it to you. Just email him and ask for it.

Campbell asked if it could be put on the website. Adamson does not know anything about websites and cannot commit to that.

Chairperson Liepe asked Clerk Cheri Brenner if she could check into getting an updated report for the annual meeting and put on website as well. Brenner said she would.

Barczyk asked if the Water & Sewer Authority is paying interest on the loan from the township. Adamson said 6%. Barczyk said, so the longer we owe, the more we pay. Adamson agreed, he said they have tried to renegotiate that before without success.

Adamson said some want the money used for debt retirement, some want Casco Township debt paid, some want it to go toward maintenance. If we don't have money when a lift station goes we will be in trouble. We need to be financially set before we start deciding what to pay off.

Adamson said the new board will meet once a month. We don't know who is going to do what yet. Ross Stein is shared between the old board and the new board. The old board will meet once or twice a year to authorize bond payments. The Board of Public Utilities meets the last Monday of each month. Next meeting will be June 25<sup>th</sup> at 4 PM. The meeting will be on 8<sup>th</sup> Avenue at the BPU. Adamson suggested checking the South Haven City website because they do change meeting dates and times fairly often.

Knisley asked Adamson if he will be on the new SHAWSA. Adamson said he is staying on the old Water & Sewer Authority and will be in the new SHAWSA, but not officially until next month.

Chambers asked if the financial report will break down different billing rates, like hotels, factories, etc. Adamson said there are 50 different variation of how they (the City) set a rate. A condo wanted a reduction in their rate because they thought they were paying too much and in fact they were. Whether you are a hotel, B&B, resident, commercial, all different. Chambers asked, "So Ross has this?" Adamson said yes, it is not going to be easy to understand. It's a City document.

There will be 2 Casco Township people, 2 South Haven Township people, and 3 City people. Ross Stein will be Administrator. Overhiser will chair. With the two townships we have 4 votes, so at least we have a voice. Adamson said when there was a leak at Boardwalk, he was able to get things done. After a call to a certain

person, they were there within a day or 2. It helps within our township to get things done.

8. **Report from Alfred Ellingsen, Zoning Administrator:** B&B will be coming up for the PC. There is a building in on Blue Star with 8 or 9 bedrooms wanting a B&B, but because Tucker's B&B is within 750' he is asking for variance. He is applying for a 12-person B&B. The distance from building to building is 750', but not the property lines, which the ordinance requires. There is someone in Glenn shores that wants to expand upwards by adding a lower level. Seedling Farms wants to go forward with their Events Venue. Van Wagoner also want an Events Venue. O'Conner will go o the ZBA for a variance, and if they get the variance will come to the PC for a site plan. The lighting issue and venues for wineries still need to be discussed. And the height issue is still being discussed.

Chairperson Liepe asked a question from the May minutes. Fleming referred to a picture of a 3-story building and asked how you get this (3-story house) based on the chart Section 4.07? Ellingsen explained the chart was a guide, taken out of the book in 2006 because it was a duplication of what we had under individual zones. Ellingsen said building codes allow up to 40' 3-story houses.

Ellingsen said, talking about building heights, the building codes use all 4 sides. Casco Zoning says only the front of the building. Ellingsen stated, "lately he has been using average grade. Ellingsen said "Sometimes I interpret things according to my opinion rather than exactly what the zoning says." Building codes are one thing and the Zoning Ordinance is another. Back in 1986 the ordinance was for 25' because of the fire department. With the taller buildings he has never had a complaint from Ron. He said the heights are ok the way they are. Ellingsen said 2 ½ story houses can be less than or more than 35'. If they put 16' from floor to floor and if they want high ceilings. In most cases ceilings are 14'. Ellingsen said it is his opinion to measure from the average grade plane. The ordinance states taking the measurement from the average grade plane, but residential is taken from the front. It could be higher if taken from the front. Building codes allow it. Ellingsen said he has been taking an average.

Campbell said, but that is not in our Zoning.

Ellingsen said, I'm talking about building codes.

Hughes asked, in the picture, is the building 3 story. Ellingsen said he just got the email before the meeting.

Ellingsen said everyone would have to submit 2 plans to determine which is which.

Knisley asked if we have ambiguity in the ordinance. Ellingsen said yes, where I measured from. He measures from 4 sides of the building. It (the Zoning Ordinance) says residential is measured up front.

Campbell said if you have been using 4 sides and coming up with an average grade, why didn't we address this when you made the change. Why didn't we deal with the definition because it's been there forever? We don't know what is going on in a day to day basis, Alfred, you do. Ellingsen said I come to you all the time about changing X, Y and Z. Campbell said, that's my point, I can't remember you asking to change anything about this. Why did you not come to us and ask us to change this. Campbell said this is a rather significant thing. The point is the definition we sent to the board I thought addressed your concerns, but now I'm not sure. You're still talking about ambiguity. Coming up with the definition, I thought, was to clear that up. Are we clearing it up, regardless of them sending it back to us?

Knisley said to Ellingsen, can you ask us now and we can get on with it?

Knisley said we have to harden up what we have because what we have can be interpreted in a couple of different ways. That's not good.

Campbell said we are talking about "Average Grade" which we have in the amendment, which says "A reference plane representing the average of the finished ground level adjoining the building at all exterior walls. (Leaving off the part about residential being measured from the front). If that gets accepted by the board, have we cleared up the problem? Ellingsen said yes.

Knisley said, you would be eliminating the sentence on residential districts.

Hughes asked, Ellingsen if he has encountered homes that are 3 stories and 35'. Campbell said we have them. Campbell continued the interpretation is news to me, as far as I am concerned I have been looking at what we have in the book. After hearing what Ellingsen said, I understand what Barczyk is saying. If 2 ½ story means anything, we could be dealing with 60' buildings. I think that is ridiculous. We better clean the definition up or we are dealing with sky scrapers down on 102<sup>nd</sup>. I don't think we want that anywhere.

Knisley asked "Do we have the 35' defined correctly? Ellingsen said they changed that to whatever is less. Knisley said, so, you are saying the 35' is overall, not the midpoint of the roof. Ellingsen said nobody lives in the peak. Campbell asked if that is defined correctly. Ellingsen said you would have to submit whichever is less to the board again.

Fleming said it is confusing, he read definitions and it looked like it was worded as the lessor of, and 2 ½ story houses. Ellingsen said if it was 35' we did not use the 2 ½ story. Fleming said if we make it less than what it is, we are going to be changing something.

Campbell said, over the last 3 years there has been a substantial amount of discussion in 2014 and 2013 on this specific issue. The interpretation I had in that point in time, and by consensus, is that it was a maximum number of feet, and a maximum number of stories. It was always 2 ½ given the definition of what we say stories are. And that's why when we look at the chart, the chart is pretty clear. That's why there was resistance to taking the chart out. Regardless, we need to look at the whole definition of 2 ½ stories. Ellingsen said 35' would trump the number of stories. It is the maximum regardless.

Knisley said the ½ story is ½ the area of the floor space, ½ of the square footage. It could be the front ½ of the house, looking the same as a 3-story from the front. Everything would be the same as 3 stories except the pitch of the roof.

Campbell said, so you are saying there is a 35' maximum regardless. If that's the case, then so-be-it.

Knisley asked where we measure it from. Chairperson Liepe said the average. Knisley said, by the peak. Ellingsen said, no, a portion of the roof. ½ way between the peak and eave would eliminate problems with chimney's or cupolas. That's why I asked you guys to eliminate those.

Campbell said, let's just say we've relied on you to work with the planner and have given us exactly what you want, and you were supporting this. Are you still supporting it?

Ellingsen said it is not for me to decide what is right and what is wrong. I'm not the planner here, I'm the Zoning Administrator. What you give me is what I enforce, sometimes I enforce things based upon my opinion from my experience rather than exactly what the ordinance says. I look at whether it's viable. That's why I ask, if you are going to apply this, apply it only to lots of record.

Campbell said, that's my whole point. I think we have complied with your recommendation when we passed this. We said we only wanted to apply this to the historically plotted non-conforming lots. What you have given us is good, we've passed it on to the board, and the board has given it back and said we need to tell him why. I think that's where we need to move on to.

Knisley said there is a sentence there that fouls it all up. It says average grade is this, except for residential which is measured differently. If that is what causes ambiguity, I think that is one of our reasons we have to submit to the board.

Knisley said If the pushback is saying 35' from the peak, or ½ way between peak and eve.

Campbell said we have known that all along. I think we should send it back to the board. He added, in looking back at minutes the question was asked when will we get an updated chart? We still haven't gotten it. We should be aware of this and get have chart.

Chris Barczyk said it can't be over ½ between the eaves and the peak. 35' is the only standard, 2 ½ feet means nothing.

Ellingsen said It says "may", not "shall". It would be like going to a restaurant and saying you want a hamburger or a hotdog. I have a choice, right?

Barczyk said he has talked with other Zoning Administrators who say it is not more than 35' and not over 2 ½ stories. Ellingsen said congratulations, I'm glad you did.

Chairperson Liepe said we will have to figure out how to go forward with this.

Barczyk said he wants the PC to be aware. If you measure from the front you would get a lower height. If you take an average, they can berm up the sides you actually get a taller building. He asked that the PC be careful.

Ellingsen said you have to remember in the lots of record, the heavy clay doesn't allow them to build basements. The level they are living in might be a 2<sup>nd</sup> story.

Campbell said he is confused again. Are we capped at 35' or not?

Ellingsen said he doesn't like using a story as a measurement of height. It's in a lot of ordinances. He has always thought of stories as just the areas they live in.

Campbell said, but that's not what our ordinance says. Bottom line is the current ordinance as written. You always interpret it to mean volume, but that's not what it says hear and if we just apply what's written here that would be what our objective was.

Chairperson Liepe said if you add "Lesser of".

Fleming asked what our objective is. This whole thing came up almost as a surprise.

Chairperson Liepe said it was the planner that suggested it.

Hughes said “Lesser of” is the new part. The reason we are doing this is because we already decided, but the board gave it back to us.

Chairperson Liepe said the board wants reasons why we want to do this.

Campbell said this brings him back to the fact that we are only applying this to the historically platted small lots and they have been around for many years and we have not confronted it because we had not see structures like we are starting to see and the township has taken a position in the past that there are issues with congestion from larger homes. The density because the lots are so small. We are shoving more housing into these lots that were never designed for it. The other issue is the health concerns and Overhiser has pointed out that south of 107<sup>th</sup> does have water and sewer and north of 107<sup>th</sup> has septic and wells. Those are the issues we are dealing with and we don't have fire hydrants. Even below 107<sup>th</sup> if we continue to put larger homes in smaller lots then we are going against the Master Plan where we say these subdivisions are not designed to handle this. This applies to other areas not just downwind of North Shore. One size doesn't fit all. There is nothing wrong with having different standards in different neighborhoods.

Chairperson Liepe said the 2 ½ story thing confuses us, but 35' is 35' as long as you measure the same. You can't change 35'. I know we have some not just in the nonconforming areas we have 3-story. We are still around 35' right? Maybe we need to think about eliminating the 2 ½ story. Looking at the chart it says the maximum number of stories is 2 ½ and I know there is homes with more than 2 ½ stories.

Campbell said the reason Bruce Barker gave for eliminating the chart was it was exactly the same that was in the text. Campbell agreed with Liepe.

Hughes asked if the chart was taken out because we were concerned about it being updated or it being redundant?

Campbell said both. Some charts summarized what was already said, but 4.07 we spend a lot of time on, but because of difficulty updating it we eliminated it. When

we eliminated it we said we will use it at deliberations because it is very useful. We said we would keep it updated and use it.

Valerie Baas objected to eliminate the 2 ½ story part, would be too large on a 60' lot.

Knisley said it could look the same as a 3 story.

- 12. Public comments:** Chairperson Liepe moved public comment up as they waited for Supervisor Overhiser's arrival.

Valerie Baas said on a 60' lot over 2 ½ stories is too dense. If the top story is in a peak of the roof it would not dominate quite so much. If you say 2 ½ story you could build whatever you want.

Bill Chambers said I live in a house that is 1 ½-stories. It would depend on the pitch of the roof. Let's say it is 30' total and the ½ story is 15 feet. Some people measure from the top, some measure from the eve, some measure ½ way in between. A 10 x 12 pitch is higher than a 4 x 12 pitch. So where do you measure. Chambers asked Adamson where he measures. Adamson said that has already been set. That is not for him to decide.

Chairperson Liepe said for the non-conforming lots it is measured at the peak. She said we have the diagrams.

Campbell said if it is a flat roof, it is to the highest point. If it is a mansard roof, it's another formula...

Chairperson Liepe said this is not in the non-conforming lots.

Campbell asked Overhiser about his letter. He asked what he (Overhiser) meant in the context that we have our zoning book here, and when the water & sewer authority does whatever they do to take water & sewer up the street, they know what the zoning is. So, don't come to us and tell us we have to get higher or bigger. I don't see how we can get into the financial implications when these people need to understand what they can do. If the builder is covering the cost, I am confused by how we should take into consideration the financial impact once we have put something in place.

Overhiser said first, the letter was from him, not the board. He was not asking for anything to be more lenient, we spent 6 to 7 years to create 3.28 on non-conforming lots and went through a referendum. We set the stage to view what they could do with the smaller lots of record. I am not advocating for a 3-story house. Now if we make a change once it was set into motion we have implications and unintended complications.

Overhiser said in the special assessment district they assumed 100% of the cost, they had expectations of how much profit they could get. Not a small \$75,000. house. They want larger houses and larger value houses. If you make changes, it

could cause issues. Overhiser referred to Chambers' observation on 107<sup>th</sup>, we do have to watch what we do.

Campbell said where commitments have already been made and people living under these guidelines, if we do make changes, it would be going forward from there.

Overhiser said the lakefront has a value, lake view a lesser value, and further back a lesser value than that. The building cost is on a value of having a lake view.

Campbell said if there were any changes, then a buyer going forward would know what the deal is when they get into it. If the project is already started, we could consider this. The board can shoot it back and say they still don't like it. It would be fairness to those that already ran the water & sewer.

9. **Report from Overhiser, Supervisor:** Overhiser said he wanted to talk about rental issues. Kathy Stanton is working hard to get everyone registered, and their documentation in. It has gone well. There are 94 registered to date. There is a list of registrations on the website. They update it every Thursday. They have identified 13 not registered. Look at the list if you know of rentals to see that they are registered. Septic inspections are caught up. SHAES signs are on back order. There have been reports that people could not get the trash hauler to get extra cans, but that has been taken care of. There are violations and fines for failure to register or have septic inspected. Some have used the hotline. People should call at the time of the complaint, so it can be resolved quickly. Also, the hotline has automated entry options. You must participate before the operator gets on. It all gets recorded. Overhiser said he can hear the recordings. They give a call back and get it resolved. There were 23 calls regarding 10 incidents. 4 of 23 were anonymous. There was a call of trespassing at night. They had descriptions and the owner was contacted. This happened before the deadline (May 15<sup>th</sup>), but hopefully the call helped. Another on 911 where a State trooper took the call and followed up. They made the township aware. Officer Katje contacted the trooper who took the call. There were 3 calls of dogs barking at a rental in the North Shore area. It turned out to be a 30-day rental. The rental agent got a quick response. There were reports in Miami Park on the 28<sup>th</sup> and 29<sup>th</sup> of overwhelming smoke and loud group of people. It was discovered that the rental owners were there. They reached out to 911. If smoke is going straight up, it's ok. If it is coming in the house they will make them put it out. There was a large party reported by 2, that situation was resolved. A shouting on Blue Star highway on June 1<sup>st</sup> and they had a recording of noise logged in at host compliance. An owner was called, and it was stopped for the weekend. There was a rowdy and too young in an unregistered rental. The hotline could not help. They found the owner in Douglas and shut them down for the weekend. They (people registering complaint) were happy to have

service and get the help. There were 2 calls of over 12 occupants and fewer than 3 days. They found that some websites limit on what rental owners can change. They were asked to send in documentation that they are not renting to more than allowed. People are encouraged to call in while the incident is occurring to help get it resolved. If you know of people not on the list, help us out so action can be taken.

Chairperson Liepe asked what information we should know before calling. Overhiser said they will prompt you through the question but have addresses and evidence such as recordings or pictures. Overhiser said if it is something that should be a 911 call, do that first, then call Host Compliance. Overhiser has been surprised at the helpfulness of the agents. They are getting people registered and advertising the correct number of people. They have collected \$18,400 in registration fees.

Barkley asked which of the three; Host Compliance, 911, or the township, should people spend most of the time on. Which is most valuable.

Supervisor Overhiser said you can call us. Host Compliance gives Casco everything and Overhiser listens to the calls. Overhiser takes the calls on weekends and listens to them 2 or 3 times a day. Kathy Stanton follows through on them.

Bill Chambers said he called Officer Katje about speeding. There are kids on bikes in the neighborhood. When you leave a message for Katje, you will find he only works every other weekend. Katje did get back to him on Tuesday after the problem was gone.

Supervisor Overhiser said it is best to call 911.

Dave Campbell said he is planning to call 911 first, then use Host Compliance. He will not be filling out forms any more.

Mary Campbell said Host Compliance is 24/7 and have numbers for registered properties. They are going to get right off the phone and clear the violation. If you wait for a form, the problem is already over, and you had to deal with it all that time. She asked that people help get rentals registered. If they have 100% of the rentals it will help.

Overhiser said there will be some hiccups along the way, but he is pleased how owners and agents are responding.

Barczyk asked if a problem is corrected, is it still considered a violation.

Mary Campbell said it is documented as a violation. If the owner does not respond within the time limit that is considered a second violation. Most people have been responsive getting it stopped immediately.

Overhiser said they know they are being watched and less likely to get repeated.

Barczyk asked if hearing noise is considered a violation. Overhiser said if we can prove it.

Kathy Watt said at 1 AM if you don't have the address, what do you do.

Barkley said that would be a 911 call.

Barczyk asked if Host Compliance would log a violation if they do get the address after the fact.

Overhiser said get evidence and give them all you know.

Overhiser said there was only one where the State Police were involved, and it was not a rental situation.

Macyauski said if you hear a noise, call the cops. If cops come out and find the person, whether they write a ticket or not, they would be in violation and would be listed as a violation if Officer Katje verifies it.

Overhiser said they will be able to call the owner directly and that is impactful.

Macyauski said if someone is trespassing call 911. If feel my personal safety is being threatened, they will show up.

Overhiser said it's going to be an evolution to understand everything, but he is happy to have Kathy being the one that makes it go.

Cheri Brenner said the new phone system is in. There is an automated menu to be connected directly to the person you are calling. It has been great. They have not been answering everybody else's calls.

Overhiser said the advantage to the residents is they get answers quickly when they leave messages.

Because of the time, Chairperson Liepe asked for a motion to adjourn.

**10. Unfinished Business**

**A. Continued discussion on Building Height amendment and reasons for the amendment:**

**B. Lighting – Dian will gather the information put together so far and send it to PC members before July 1<sup>st</sup> for discussion at the July meeting:**

**11. New Business:**

**12. Closing comments and adjournment:** A motion by Adamson, supported by Knisley to adjourn. All in favor. Meeting adjourned at 8:25 PM.

**Next Meetings:**

Mon., June 18, 2018, 6PM - Annual Township Meeting

Wed., July 11, 2018, 7PM - Regular PC Meeting



5.28.18

Susan McGlone and her dog, Gracie, stand in front of her home on Clinton Street in South Haven. McGlone and her husband, Thomas, who live in Chicago, purchased the home less than a year ago with the intention of fixing it up, and then using it as their permanent home when they retire. They've spent \$20,000 in renovations and hoped to offset the cost by using the home as a vacation rental for a couple of years.

Short-term rentals could face more restrictions

Property owners question need for 6-month moratorium to study rental ordinance

By BECKY KARK

Editor and general manager

For the past two years local residents in South Haven have crowded into city council meetings to speak out against the growing number of vacation rental homes in their neighborhoods. Monday, second-home owners took their turn at the podium. More than 75 people packed into city hall – some standing outside the council chambers because there weren't enough seats — to voice opposition to the city council's recent decision to impose a six-month moratorium on new short-term rental registrations. Many who spoke, like Michael Biedermann, questioned the need for a moratorium, especially the timing of it – right at the start of the summer tourism season. "To rent one's property is a property owner's legal right," said Biedermann, whose family has restored historic homes and resorts on the city's north side to rent to vacationers. "Why can't this be put off until the end of the season?" another speaker asked. The council passed the moratorium May 13 to give the planning commission and city staff time to re-examine if changes need to be made to the existing short-term rental ordinance that was adopted in 2016. Monday night, the council went one step further and approved a motion asking the planning commission to consider, in an expedient manner, six amendments to the existing rental ordinance that among other things would:

- Increase short-term rental fees from \$20 to possibly \$200
- Include condominium units in the short-term rental ordinance
- Prohibit short-term rentals for newly constructed homes and prevent homeowners, who expand their homes, from being granted an increase in occupancy limits
- Prohibit or cap new short-term rentals in certain areas of the city
- Regulate the "abandonment" of short-term rentals in certain areas
- Address the correlation between short-term rentals and personal residence tax exemptions

"We've seen mushrooming of short-term rentals," Mayor Scott Smith said. "We have 409 registered homes; 600 of them (condominium units) are not included in the current ordinance. We have up to 360 possible short-term rentals that can be build in Planned Unit Developments. There is a concern that the commercialization (using short-term rentals solely as a source of income) will undermine our neighborhoods." But some people in the audience questioned the council's motives for both the moratorium and the proposed amendments to the short-term rental ordinance. "Why restrictions in some areas and not in others?" asked Mary Dizelski, regarding the moratorium that prohibits new rental registrations in Wards 1 and 2 but not in Ward 3. "This is a resort community," said Sara Mchugh. "The only reason Wards 1 and 2 have an increase (in homes being used for short-term rentals) is because they're close to the lakeshore. Location, location, location. That's real estate 101... Stop fighting it. We should love it that people want to come here." Other people who spoke said limiting short-term rentals will adversely affect the town's tourism and retail industries. "I have no idea what the hurry is," said Sally Newton of Shores Property Management, regarding the swift move to institute the moratorium two weeks ago. "Is there a fire out there that I don't know about?" Amanda Soukup, a real estate agent in South Haven, told council members that a group that stays in a short-term rental for a week spends, on average, \$3,000. A portion of the money is spent on the rental fee, but the remainder is spent in restaurants and retail establishments. Most of those units are rented 8-12 weeks each summer, hypothetically generating up to \$11 million in revenue each year. "We have 409 short-term rentals, that makes 3,681 weeks they're being rented out for the season," Soukup said. "That's \$11 million for our weekly rentals in this community." She also pointed out that vacation rental homes generate employment for a variety of occupations, including property management firms, landscapers and house cleaners. Although the majority of people in attendance at Monday's meeting opposed the moratorium and the six proposed rental ordinance amendments, a few people in the audience did speak favorably about restrictions on short-term rentals. "Full-time residences are disappearing in our neighborhoods," said Kent Johnson, who blames the growth in the short-term rental market. Joan Hiddema, who lives near short-term rentals in Ward 1, commented that the occupancy limits in the short-term rental ordinance have prevented developers from building large homes on small lots that look out of character with the neighborhood.

## SH council grants reprieve of sorts for short-term rentals

By BECKY KARK

Editor and general manager

When Jim and Heather Palmer of Kalamazoo purchased their home in South Haven 11 years ago they spent a considerable amount of money to fix it up. To recoup some of the expenses and annual property taxes, they decided to rent the renovated home to vacationers. Now, however, they'd like to sell their home, which is located in the city's Ward 1. "We need money for our kids to go to college," Jim said. But, the Palmers worry a six-month moratorium South Haven City Council recently placed on new rental registrations in Wards 1 and 2 will hurt their ability to sell their home at a price they think it's worth. "We feel like we've been blindsided," Jim said, regarding the council's decision May 13 to issue the moratorium after conducting a workshop beforehand – a move that surprised vacation rental homeowners who said they weren't aware of the meeting. "We have a property that is weakened in value because we can't transfer our registration permit. The pool of applicants who would be interested in purchasing our property has greatly been reduced." Liliana Holtzman, who resides in Ward 2, shared similar sentiments that the moratorium is causing financial hardship for her. Earlier this year, the Holtzmans decided to fix up the home with the intent of staying in it as their retirement home. They obtained a \$40,000 loan and decided to rent the home for a few weeks over the summer to pay down their debt. But, the Holtzman's plans soon went awry. "I went to get the rental permit and heard that our ward is not allowed to rent for six months," she told city officials. "We are shocked. If we can't rent our house out to help us pay for the loan, we might lose our house. That doesn't seem fair, and I can't imagine that's what the city of South Haven wants." The Palmers and Holtzmans are among a the property owners who have written to city officials saying the moratorium will have adverse financial implications for them because they were either in the process of buying, selling or renovating a home that had been used or would be used as a vacation rental. However, it looks like relief will be on the way for them. At Monday's City Council meeting, members voted to make several clarifications to the six-month moratorium to make exceptions that will allow property owners in Wards 1 and 2 to obtain a short-term vacation rental registration under special circumstances. The clarifications came about after public outcry. "Nine property owners have expressed financial hardship due to the moratorium," City Manager Brian Dissette said. Although the moratorium does not affect the 406 registered rentals, nor Ward 3 where they are still allowed, it has become apparent more exceptions are needed, according to Dissette. "Since the adoption of the moratorium, some have suggested that further exceptions are needed in order to address other property owners who have made investments in their properties with the expectation of being able to operate a short-term rental," Dissette said. The resolution that city council members approved Monday will allow property owners to obtain a new short-term rental registration in Wards 1 and 2 under the following circumstances:

- The property owner has a current building permit that was approved before the moratorium was issued
- The property is within a Planned Unit Development
- The property was registered as a short-term rental and then sold to a new owner
- The home was under construction when the moratorium was adopted
- The home was recently acquired by a new owner who bought the property with the intent to use if for short-term rentals
- The home, as of the date of the moratorium, was under contract to be purchased for use as a short-term rental

"Staff believes that the resolution would satisfy most of the concerns that have been raised, while still upholding the underlying rationale of the moratorium — to place a 'pause' on new short-term rentals while the City considers new regulations," Dissette said. "Further, by satisfying the concerns that have been raised, the proposal may reduce the risk of lawsuits relating to the moratorium."

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"It is important, likewise, that the habits of thinking in a free country should inspire caution in those entrusted with its administration to confine themselves within their respective constitutional spheres, avoiding in the exercise of the powers of one department to encroach upon another. The spirit of encroachment tends to consolidate the powers of all the departments in one and thus to create, what ever the form of government, a real despotism. A just estimate of that love of power and proneness to abuse it which predominates in the human heart is sufficient to satisfy us of the truth of this position. The necessity of reciprocal checks in the exercise of political power, by dividing and distributing it into different depositories and constituting each the guardian of the public weal against invasions by the others, has been evinced by experiments ancient and modern, some of them in our country and under our own eyes. To preserve them must be as necessary as to institute them. If in the opinion of the people the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance in permanent evil any partial or transient benefit which the use can at any time yield...."

George Washington – From his Farewell Address

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# Land Use and Zoning Basics

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Land use and zoning involves the regulation of the use and development of real estate. The most common form of land-use regulation is zoning. Zoning regulations and restrictions are used by municipalities to control and direct the development of property within their borders. Since New York City adopted the first zoning ordinance in 1916, zoning regulations have been adopted by virtually every major urban area in the United States.

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## What are Zoning Regulations?

The basic purpose and function of zoning is to divide a municipality into residential, commercial, and industrial districts (or zones), that are for the most part separate from one another, with the use of property within each district being reasonably uniform. Within these three main types of districts there generally will be additional restrictions that can be quite detailed — including specific requirements as to the type of buildings allowed, location of utility lines, restrictions on accessory buildings, building setbacks from the streets and other boundaries, size and height of buildings, number of rooms, floor space or area and cubic feet, and minimum cost of buildings. These restrictions may also cover frontage of lots; minimum lot area; front, rear, and side yards; off-street parking; the number of buildings on a lot; and the number of dwelling units in a certain area. Regulations may restrict areas to single-family homes or to multi-family dwellings or townhouses. In areas of historic or cultural significance, zoning regulations may require that those features be preserved.

## Regulation of Development

Land-use regulation is not restricted to controlling existing buildings and uses; in large part, it is designed to guide future development. Municipalities commonly follow a planning process that ultimately results in a comprehensive or master plan, and in some states the creation of an official map for a municipality. The master plan is then put into effect by ordinances controlling zoning, regulation of subdivision developments, street plans, plans for public facilities, and building regulations. Future developers must plan their subdivisions in accordance with the official map or plan. In recent years, an increasing emphasis has been placed on regional and statewide planning. Recognizing that the actions of one municipality will strongly affect neighboring cities, occasionally in conflicting and contradictory ways, these planning initiatives allow the creation of a regional plan that offers one comprehensive vision and one set of regulations.

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## Limits on Zoning Regulation

Since land-use and zoning regulations restrict the rights of owners to use their property as they otherwise could (and often want to), they are at times controversial. Additionally, the scope and limits of governments' ability to regulate land use is hard to define with specificity. Courts have held that a zoning regulation is permissible if it is reasonable and not arbitrary; if it bears a reasonable and substantial relation to the public health, safety, comfort, morals, and general welfare; and if the means employed are reasonably necessary for the accomplishment of its purpose. Given the subjective nature of these factors, there is obviously a lot of room for disagreement, and on occasion litigation.

One extremely difficult question presented in this area of law is how far land-use regulations may go without running into the constitutional prohibition against taking private property for public use without just compensation. Recent court decisions have made it more difficult for municipalities to require that land developers give up part of their property for public purposes, such as access to lakeshores, sidewalks, access roads, and parks through the use of statutory regulation. These cases serve to define the point at which government demands for control over the land become such that it must compensate the owner by exercising its power of eminent domain and condemning the property.

## Challenges to Zoning Regulations

There are numerous other restrictions on the power of government to regulate land use, any of which may provide a basis upon which such regulations can be challenged. Zoning ordinances must be reasonable based on all factors involved, such as the need of the municipality; the purpose of the restriction; the location, size, and physical characteristics of the land; the character of the neighborhood; and its effect on the value of property involved. The rationale behind zoning is that it promotes the good of the entire community in accordance with a comprehensive plan. *Spot zoning* of individual parcels of property in a manner different from that of surrounding property, primarily for the private interests of the owner of the property so zoned, is subject to challenge unless there is a reasonable basis for distinguishing the parcel from surrounding parcels. Restrictions based solely on race or occupancy of property are not permitted, and a classification that discriminates against a racial or religious group can only be upheld if the state demonstrates an overwhelming interest that can be served no other way.

In many jurisdictions, states have created boards of zoning appeals to handle these issues. These are quasi-judicial bodies that can conduct hearings with sworn testimony by witnesses and whose decisions are subject to court review. Given both the complexity of zoning law and the specialized nature of zoning appeals boards, an owner who contests a zoning requirement is ill advised to try to argue his or her case without legal assistance. The members of the board, the municipal attorney, and the planning official involved in the process have substantial experience, knowledge of the law, and a tendency to favor their interpretations of the ordinances, and an owner who cannot bring equivalent legal experience to bear on the problem will be at a substantial disadvantage.

## Non-Government Restrictions: Restrictive Covenants and Easements

Not all land use restrictions are created by governments. Land developers may also incorporate restrictions in their developments, most commonly through the use of restrictive covenants and easements. *Restrictive covenants* are provisions in a deed limiting the use of the property and prohibiting certain uses. Restrictive covenants are typically used by land developers to establish minimum house sizes, setback lines, and aesthetic requirements thought to enhance the neighborhood. *Easements* are rights to use the property of another for particular purposes. Easements also are now used for public objectives, such as the preservation of open space and conservation. For example, an easement might

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preclude someone from building on a parcel of land, which leaves the property open and thereby preserves an open green space for the benefit of the public as a whole.

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