

CHARTER TOWNSHIP OF FLUSHING

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PLANNING COMMISSION MEETING

DATE: OCTOBER 6, 2008

TIME: 7:00 P.M.

WEB ADDRESS <http://www.flushingtowship.com>

MEMBERS OF PLANNING COMMISSION

Mark J. Newman, Chair

Richard Buell

Jerome Doyle, Vice Chair

Ronald Flowers

Eric Swanson, Secretary

David Gibbs

Barry Pratt, Board of Trustee Representative

Jerald W. Fitch, Building Inspector

Julia A. Morford, Recording Secretary

PRESENT: Newman, Doyle, Swanson, Buell, Flowers, Gibbs, Pratt, Fitch, and Morford

ABSENT: None

OTHERS PRESENT: Flushing Observer Reporter Nikki Brand

I. MEETING CALLED TO ORDER at 7:00 p.m. by Planning Commission Chair

MARK NEWMAN with Roll Call and the Pledge to the American Flag.

II. ADOPTION OF AGENDA: BUELL MOVED, seconded by Flowers to adopt the Agenda as submitted. **MOTION CARRIED.**

III. APPROVAL OF MINUTES OF SEPTEMBER 8, 2008: PRATT MOVED, seconded by Flowers to approve the Minutes of September 8, 2008 as amended. **MOTION CARRIED.**

IV. UNFINISHED BUSINESS

1. **Continued Discussion on the "TO DO LIST" FOR THE Michigan Zoning Enabling Act (PA 12, of 2008) and Michigan Planning Enabling Act (PA 33, of 2008)**

a. By-Laws

BACKGROUND INFORMATION:

NEWMAN stated at the prior two (2) Planning Commission meetings, amendments to the By-Law Policies and Procedures were discussed.

Recently, two (2) pieces of legislation had been passed that required some planning commissions to make a number of substantial changes; Flushing Township is up to date with the ordinances

One issue discussed was to make sure there was a good “conflict of interest” policy in the by-laws. It was recommended from the Planning Commission to get an opinion from Flushing Township **ATTORNEY STEVE MOULTON (ATTORNEY MOULTON)**. **ATTORNEY MOULTON** reviewed the issue in a letter of opinion to the Planning Commission dated September 18, 2008.

COMMENTS ON THE OPINION:

- **DOYLE:** felt the response from **ATTORNEY MOULTON** was very good.
- **PRATT:** felt another thought should be in the by-laws: if a member committed a “conflict of interest” activity without abstaining from voting and without separating themselves from discussion, what to do if the matter was found out at a later date. **PRATT** had previously contacted **ATTORNEY MOULTON** and he (Attorney Moulton) felt there should be something in the ordinance. **ATTORNEY MOULTON** would be able to draft a particular language for the Planning Commission if needed.
- **NEWMAN:** if a Commission Member didn’t reveal a “conflict of interest” and it is determined later there was a conflict, there would be a removal of the member. There should be some type of consequence.
- **DOYLE:** 1) if the member that supposedly had a “conflict of interest” it should be discussed and 2) if the whole board should decide there was a conflict. **DOYLE** has always put it to a point of could the whole board make a decision on whether or not there was a conflict. Once the issue has passed, and it was determined there was a conflict, who would be at fault?
- **NEWMAN:** the suggestion of the policy would be to state that, for example, if a problem should come up, it might not be a problem for one member but it could be a problem for another member. **EXAMPLE:** Since **NEWMAN**, as an attorney, does real estate work and he (Newman) assisted drawing up some plans for the applicant, **NEWMAN** should divulge the information to the Commission. The information should be disclosed and then **NEWMAN** would excuse himself and step aside and have the Vice Chairperson take over the meeting. On the other hand, if **NEWMAN** had done some work for “Mr. & Mrs. Smith seven (7) years ago, the Commission could vote and say “sorry Mark, it is still a little too close to the situation.”
- **DOYLE:** on any type of occasion, if any member thought there would be a “conflict of interest” the member should excuse himself/herself.
- **FLOWERS:** the Commission could at that point decide whether there was a “conflict of interest” or to proceed.
- **SWANSON:** the *Roberts Rules of Order* specifically states the person that has the conflict should tell the Board and the Board rules on the issue.
- **DOYLE:** sometimes the Commission Member doesn’t know so, therefore anything that could possibly be related would be a conflict.
- **BUELL:** would the conflict be related to just financial relationships? If the Commission Member did something “for pay” for another individual.

- **SWANSON:** the Planning Commission had run into the conflict problem with the ponds. **SWANSON** had a discussion with one of his (Swanson's) neighbors about a pond issue so he (Swanson) asked the Board if he (Swanson) should excuse himself and he was told "no" he had to vote.
- **BUELL:** if **SWANSON** had designed a pond for the neighbor, then he (Swanson) would be gaining profit from the pond.
- **DOYLE:** if there is a conflict in a situation where you could vote one way or another on something based on if a member had something to do with the issue, wouldn't that be a conflict?
- **NEWMAN:** if a Commission Member was one of the affected property owners that would be noticed, then it would be a question. What if the next door neighbor wanted to build a pond and the Commission Member was one of the members that had received the written Notice that the issue was coming up for a hearing, then the Commission Member would not be gaining or losing any money on the outcome but the Commission Member may not like the issue.
- **PRATT:** per state law for Elected Officials, if you receive a "direct benefit" from the issue, it would be a "benefit". On the other hand, the discussion may be "misconduct" rather than "conflict of interest".
- **DOYLE:** him and Building Inspector **JERRY FITCH** had gone out to review situations in the past and have made decisions about what had to be told to the "applicant" making a request in order to make the situation work. Would that be a "conflict of interest"? There could be a fine line where **FITCH** could be in a position where he couldn't make a decision. **EXAMPLE:** If someone should come into the office and talk to **FITCH** about what the applicant had to do for the specific project, all that **FITCH** could do would be to give the applicant the information on the specific issue.
- **NEWMAN:** the problem would not be with **FITCH** because he doesn't have a vote, but the applicant would have to come before the Planning Commission.
- **BUELL:** if **DOYLE** advised the applicant, then the applicant would become a client of **DOYLE'S** and there would be a "conflict of interest".
- **DOYLE:** in the past, an applicant would come to the Planning Commission and request information as to how to put the pond details together. Sometimes there were arguments between the neighbors who didn't want a pond in the area. The Commission Members would go out to the property to review the pond and inform the individual what would be necessary to put the pond together to make the pond a reasonable thing to make a request on, and all the details would be put where it was supposed to be, and therefore the applicant would return back to the Planning Commission, and in the process, the Commission Members would review the ordinance. When the Commission Members are out on the job reviewing the situation, the member may talk to the individual about a few things the individual would need to do to make the pond rational for the rest of the neighbors.
- **NEWMAN:** when a Commission Member goes out to a project, there could be a misconception to giving the applicant the opinion the Commission Member is speaking for the Township and the Planning Commission and not just for himself/herself.

- **DOYLE:** Commission Member should give the impression there are seven (7) members on the Commission but the individual member was making his own determination.
- **NEWMAN:** personally, only drives by a project but never has actually gotten out of his vehicle; tries not to make eye contact with the neighbors when checking out a project.
- **PRATT:** if an issue would seem like a possibility of being a “conflict of interest” then bring out the issue to the whole Planning Commission.
- **FLOWERS:** “conflict of interest” also is determined by issues that would involve the board; friends; family members; property next to property that a Commission Member owned or invested in; something that was found out later to be a “conflict of interest”. Obvious things could be viewed as a “conflict of interest”; political issues. **FLOWERS** felt there should be some language in the by-laws.
- **PRATT:** the language should be clear for future Planning Commission Members.
- **NEWMAN:** very fortunate of the building inspector and clerk the township currently has; Planning Commission has to assume sometime down the road there could be less qualified people to assume the positions so have to construct the by-laws for the future. There would be a disservice to the township if the Planning Commission didn’t set the rules now.
- **FLOWERS:** Page 15, *Workshop Materials* (materials received at a Seminar at Frankenmuth, Michigan for Planning Commission Members) made reference to the “TO DO LIST” concerning removal from office.
- **PRATT:** recommended having **FITCH** run the information by **ATTORNEY MOULTON** and see what the grounds would be if a Commission Member didn’t speak up or bring the issue before the Commission.
- **FLOWERS:** felt there should be a section in the by-laws listing the consequences if an issue was not brought before the board before it was actually brought before the Commission.
- **NEWMAN:** what would happen if a Commissioner did raise the issue, the Commission voted and stated there wasn’t an issue and so the Commissioner stayed and went ahead and voted and then later it was discovered someone else interpreted the meaning in a different way. The draft language should be clear in order to protect the Commissioner because the Commissioner had done everything that is possible and brought up the issue and cleared to vote on the issue.
- **DOYLE:** everything should be put in order as to what was going to be considered a “conflict of interest” and handle one issue at a time and decide what was a “conflict of interest”.
- **PRATT:** the order would be grounds, procedures, and sanctions; if the “conflict of interest” issue was brought up would the Planning Commission want to hear the issue or would there be a grievance committee.
- **DOYLE:** **ATTORNEY MOULTON** stated the issue was left up to the Planning Commission.
- **SWANSON:** the Planning Commission has to make the decision, even **ATTORNEY MOULTON** stated there wasn’t an exact definition. One thing, that could be put in the

by-laws, would be if any Planning Commission Member felt he/she had a “conflict of interest” issue, the issue could be taken care of prior to the meeting.

- **NEWMAN:** the State Statute states the Planning Commission has to vote on the issue. One way or other, the issue has to be brought up.
- **DOYLE:** there needed to be some type of written guideline so people would know the exact definition.
- **PRATT: ATTORNEY MOULTON** had given a general guideline for “conflict of interest.”
- **DOYLE:** the Commissioner with the “conflict of interest” would know what was expected of him/her.
- **NEWMAN:** recommended **FITCH** review the procedure with **ATTORNEY MOULTON**.

V. NEW BUSINESS:

1. Farm Land Issues

NEWMAN stated the Farm Land issue had been discussed indirectly several times regarding different zoning, signage, etc. The issue is very important to Flushing Township.

DISCUSSION/COMMENTS REGARDING FARM LAND:

- **GIBBS:** what would the Flushing Township Planning Commission do in the next thirty (30) years. The United States Government has been sending everything to China to make sure they (China) has everything it needs. How can the government take away from the United States to send to China?
- **DOYLE:** the long range Master Plan keeps farms on the West side.
- **FLOWERS:** a lot of farmers have decided to quit farming and have offered the land for subdivisions or to a developer.
- **DOYLE:** the State government would take over and everyone would have to abide by State rules.
- **PRATT:** since the cherry farms are so few in the Traverse City area, the farmers have been entering into a perpetual type agreement that could not be broken for a certain number of years.
- **GIBBS:** heard on the “Paul Harvey Radio Show” where subdivisions are being placed in front of farms and the problems are with the people.
- **DOYLE:** if the government took the property from the farmer then the farmer wouldn’t own the property any longer; the government would have taken some of the constitutional rights away from the farmer. No one knows what is going to happen in twenty (20) years. With the perpetual system, the farmer’s property would be tied up to where the farmer couldn’t do anything with his property.
- **PRATT:** it would be no different than having a piece of property that was mixed with different zoning. If you have a zoning in Commercial Zoning, does it ever go back to Residential? “No.” If you have a limited amount of property it would make sense for

planning. People value open space and open view, which would make farms a big part of the open space. People would love to look out over their back yards and see open space rather than other homes. It would be a tool that when land gets used up, it would be a final tool to create the situations the people want.

- **GIBBS:** it is sad to see a farm behind a subdivision because people living in a subdivision have no respect for the tractor or the ground.
- **PRATT:** studies have shown the farm is a big part of the community.
- **NEWMAN:** one could argue that ownership of property is one's right to own property and one could sell to whomever you would like with whatever restrictions. There is a concept in property law that rules against "perpetual" and puts a limit on certain conveyances that could never come to pass.
- **DOYLE:** he sees the difference of opinions – the government comes in and tells an individual that he/she has to do something forever. The Planning Commission can change their own rules to adapt to what is taking place in the township. If the Planning Commission found there was a situation, in Flushing Township, that something would not work, it would be a matter of what would work. When you change the plan that you have, it is changed because of what is happening locally. The Planning Commission looks at the long range plan. The Planning Commission decided that General Motors was going to get larger and there would be a lot more people in the community; therefore, the Planning Commission made decisions as to the growth, which never happened. Since the growth never happened, the local Planning Commission can now adjust the situation. When you have a change with the State, you have already stated that this property is going to be a certain way forever, it is hard to change the situation.
- **GIBBS:** felt that ordinances should not be forever, but should protect the property as long as the person wanted the property the way he would like it to be.
- **FLOWERS:** there should be some type of taxation reduction as long as you keep your property in open space.
- **DOYLE:** property owners are being enticed into keeping their property in open space. He (Doyle) could turn his property into a park and it would be better for him as far as taxes but then he (Doyle) would not have a say as to his property. It would cost him more money to get the property out of the states hands. Rights are given away to own your property.
- **NEWMAN:** felt that anyone that come before the Planning Commission should follow the same rules and should get the same treatment without prejudice.
- **SWANSON:** mentioned the Green Belt Law in Florida where a farmer leased out nineteen (19) acres to a rancher so he (farmer) could save \$12,000 a year in taxes; also a golf course in Florida was shut down because more money could be earned by taking a tax break.
- **BUELL:** does **GIBBS** have a sense there is a movement to diminish farm property?
- **SWANSON:** an article had been received from Commissioner Archie Bailey where the Supreme Court had struck down Iowa's *Right to Farm Law*. Iowa's *Right to Farm Law* was similar to Michigan's *Right to Farm Law*.
- **NEWMAN:** the article was a little misleading: normally when the Supreme Court refuses to hear a case, it is the Court passing on the issue and the Court allows a lower

Court opinion on the issue. The *Right to Farm* opinion has sent out a lot of fear the last year. It is true Michigan's law is similar to Iowa's law.

- **GIBBS:** went through a situation ten (10) years ago when a neighbor that had only lived in the area for approximately six (6) months, complained because the smell from **GIBBS** pig farm went over to the neighbors. Environmental personnel came to visit **GIBBS** but he was protected by the grandfather clause of the *Right to Farm Act*.
- **FLOWERS:** years ago, there had been a gravel pit across the road and someone had not done their homework and there had been a lot of trucks going up and down the road. The same process with farmers, people do not do their homework.
- **BUELL:** there is a rooster that crows near his home every morning and is confident it does irritate the neighbors. Could the re-affirmative of the *Right to Farm Act* be of any use in the present farm land situation.
- **NEWMAN:** the State law already takes precedence.
- **FLOWERS:** people should check out the property before they purchase to review the surroundings.
- **DOYLE:** there is an ignorance of the law.
- **GIBBS:** farmers are a minority.
- **SWANSON:** about five (5) or six (6) years ago him and **DOYLE** attended a conference in Lansing on farmers purchasing rights. After the conference, **SWANSON** contacted then Genesee County Commissioner John Gleason concerning the conference to find out more details.

VI. PUBLIC COMMENTS:

7:59 P.M. – OPENED TO THE PUBLIC FOR NON-AGENDA ITEMS

None

8:00 P.M. - CLOSED TO THE PUBLIC FOR NON-AGENDA ITEMS

VII. BOARD COMMENTS:

1. **DOYLE** wanted to know if there was an outlot in the North Island Subdivision.

VIII. MEETING SCHEDULE:

REGULAR SCHEDULED MEETING – MONDAY – NOVEMBER 10, 2008 AT 7:00 P.M.

REGULAR SCHEDULED MEETING – MONDAY – DECEMBER 8, 2008 AT 7:00 P.M.

IX. ADJOURNMENT: Due to lack of business matters, **NEWMAN** adjourned the meeting at 8:10 p.m.

MARK J. NEWMAN, Chair

JULIA A. MORFORD, Recording Secretary

ERIC SWANSON, Secretary

Date of Approval

Planningminutes 10/06/08