

CHARTER TOWNSHIP OF FLUSHING

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PLANNING COMMISSION MEETING

DATE: JANUARY 12, 2009

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

Mark Purkey, Board of Trustee Representative

Jerald W. Fitch, Building Inspector

Julia A. Morford, Recording Secretary

PRESENT: Newman, Doyle, Buell, Flowers, Gibbs, Purkey, Fitch, and Morford

ABSENT: Swanson

OTHERS PRESENT: None

I. MEETING CALLED TO ORDER at 7:03 p.m. by Planning Commission Chair **MARK NEWMAN (NEWMAN)** with Roll Call and the Pledge to the American Flag.

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

III. APPROVAL OF MINUTES: The minutes were not available at this time.

IV. UNFINISHED BUSINESS

1. Conflict of Interest

NEWMAN stated that at his request, Building Inspector **JERRY FITCH (FITCH)** had contacted Flushing Township **ATTORNEY STEVE MOULTON (ATTORNEY MOULTON)** regarding language dealing with: 1) "conflict of interest" when it comes to voting on issues that are before the Commission; 2) what the duties are of the Commissioner to disclose a conflict; 3) what the duties are of the Commission as a whole; 4) how to treat the potential conflict; and 5) make sure that the provision is in compliance with not only the By-Laws but also with the Charter and any changes in the law.

NEWMAN made reference to *3.7 Voting/Conflict of Interest*, a fax that had been received from **ATTORNEY MOULTON**.

COMMENTS/QUESTIONS FROM THE PLANNING COMMISSION RE SECTION 3.7:

- **FLOWERS** felt Section 3.7, “Conflict of Interest” was covered very well. He (Flowers) felt the language should be placed in the By-Laws in simple language.
- **GIBBS** has had several times when he has had to abstain from voting; everyone knows when they have a conflict and should abstain.
- **NEWMAN** stated he respected the honesty of the Commissioners. In the past when policies and procedures have been put in, the Commissioners have tried to think down the road for a new group of Commissioners.
- **GIBBS** stated since there isn’t a complete new Commission, there shouldn’t be any problem.
- **NEWMAN** felt the language should give guidance to new Commissioners so whether it was put in the By-Laws, on the Agenda, or the format of the issue, it would all give guidance to new people. **NEWMAN** agrees with **GIBBS** that the issue would be a common sense issue, but if the issue was put in writing, it would help if there was a dispute. The new law requires “conflict of interest” requirements be made clear.
- **BUELL** has a concern with one (1) word: **page 3** (of the fax) where it states “or where the decision will directly affect the financial interests of a member.” The word may also apply indirectly. How would one differentiate from directly and indirectly.
EXAMPLE: for years **BUELL** managed contracts and he had to review the contracts for words that seemed unobtrusive when they were negotiated that later came back to him.
- **NEWMAN** would prefer that “directly” be eliminated from the language. If the word (directly) was removed, it would make the language more clear. There would be less emphasis for someone to try and “whittle” on the Planning Commission. Now would be the time to strike the word “directly” since the language would be in draft mode. **BUELL** would also prefer the word “directly” be eliminated from the language.
- **FLOWERS** stated the word “directly” would draw a question but directly does mean “in any form”. It could be a relation through marriage, but indirectly, it could go the other direction.
- **BUELL** gave an example: if the Planning Commission had been talking about the drainage for a substantial piece of property that had been very complicated and **BUELL**, a member of the Planning Commission, operated an excavation company. The land owner has come to the Planning Commission Meeting and from the expression on his (the land owner) face, he was very bewildered. When the Planning Commission Meeting was over, **BUELL** handed the land owner one of his (Buell) business cards and stated that he (Buell) was an excavator. **BUELL** was at the Planning Commission Meeting and knew exactly what it took to get the job done so that it would make everyone happy. For completing the job, **BUELL** would make \$7,000. **BUELL** has profited from the involvement of the relationship with the land owner.

INDIRECTLY: the land owner had known that **BUELL** was an excavator before the land owner had come to the meeting and sought **BUELL’S** counsel. **BUELL** advised the land owner on how the project might look and as a result the land owner paid **BUELL** a fee. **BUELL** had come to the Planning Commission Meeting as a Member and voted, discussed it, and urged the other Commission Members to vote on the project because of

the advise that **BUELL** had given the land owner. It would not be as blatant as the first example but an example of the direct involvement that would create a conflict.

BUELL felt there had been times when discussions have taken place, given the seven (7) different backgrounds, that could potentially have been seen by someone in the audience, and they had seen a vote take place that might be questionable in their mind. It would not be just a case of “conflict of interest” but a case of perception of “conflict of interest” that the Planning Commission needed to be very careful of. The Planning Commission Members have to be very careful, as a public body, to watch the reputations and activities to not give the perception of “conflict of interest”.

- **GIBBS** felt it would only be right to abstain from voting.
- **BUELL** felt the Planning Commission now had the language that would make the language clearer for “conflict of interest”.
- **NEWMAN** stated the point of the example was to show how one could have a conflict directly and also indirectly.
- **FLOWERS** stated he had no problem removing “directly” from the language if **BUELL** felt there would be a problem.
- **DOYLE** felt **ATTORNEY MOULTON** had done a great job putting everything together and he (Doyle) had no problem deleting the word “directly.”
- **NEWMAN** stated the next step would be to have a Public Hearing; the statutory notice would have to be published.
- **FITCH** inquired if there would have to be a Public Hearing since the issue was amending the By-Laws not zoning amendments.
- **NEWMAN** felt there should be a Public Hearing since it would be changing the Charter of the Township in that it would direct the future business of the township going forward. It would give the public the opportunity to voice their opinion. The Clerk will check with **ATTORNEY MOULTON** as to the requirements.

2. Wind Power

NEWMAN made reference to a proposed Ordinance from “*Chester Township, Ottawa County Michigan*” to change special use standards and regulations for wind energy conversion systems and related matters.

Reference was also made to a *December 2007 Foster, Swift, Collins & Smith P.C. (Foster, Swift) Township Law Newsletter* regulating wind energy facilities without getting blown away. (Foster Swift is known around the State as one of the top township municipal lawyers).

COMMENTS/RECOMMENDATIONS REGARDING SWIFT TOWNSHIP LAW NEWSLETTER:

- **NEWMAN** referred to **page 2** of the *Swift Township Law Newsletter* regarding key considerations in regulating wind energy facilities that stated:

- a. Make sure the Planning Commission is specific enough when talking about wind energy so that you aren't crossing over and accidentally regulating other towers and things in the township.
- **FLOWERS** felt that with the Chester Township Ordinance, some of the setbacks in the area were a little too close. He (Flowers) would like more clarification about the setbacks.
- **BUELL** felt the Chester Township Ordinance satisfied the maximum decibel reading. Every issue (in the proposed ordinance) was covered very well including non-reflective paint and no advertising on the blades.
- **PURKEY** stated the biggest problem was noise. What one person thought was quiet, another person would think the turbine was noisy. There aren't two turbines that have the same amount of noise due to the different type of props.
- **BUELL** made reference to **page 8**, number 10, Noise Emissions of the Chester Township Ordinance which stated:
 - “Noise emissions from the operation of a Wind Energy Conversion System (WECS) and Testing Facilities shall not exceed forty-five (45) decibels on the DBA scale as measured at the nearest property line or road.”
 - a. A baseline noise emission study of the proposed site and impact upon all areas within one (1) mile of the proposed WECS location must be done (at the applicant's cost) prior to any placement of a WECS and submitted to the Township. The applicant must also provide estimated noise levels to property lines at the time of a Special Use application.
- **BUELL** stated it didn't matter what type of turbine there was as long as it didn't exceed forty-five (45) decibels. The turbines that he has heard have a “swish” sound.
- **GIBBS** stated the turbines that he has heard have a “swapping” sound to them.
- **NEWMAN** stated the sound depended upon the model and the fastness of the blades; felt **PURKEY** was right about the noise. (Newman gave an example of being able to hear the Flushing High School Marching Band two (2) miles away from his home).
- **PURKEY** stated once something is installed it is very hard to make the person take it down.
- **NEWMAN** felt that if a little “teeth” was put into the ordinance, to state that once the turbine was put up the individual must operate within the operational perimeters or the individual would have to do something to it; the huge financial investment would be the applicant's incentive to tell the truth and come before the Planning Commission with honest information. If the Code Enforcement Officer was sent out to the property, because there were a lot of complaints, a lot of money would have to be put into the turbine to make it right. The individual could bring in something to rely upon but the individual would have to realize that a Special Use Permit was just that, a special use.
- **FITCH** stated that forty-five (45) seemed to be the standard decibels. A resident stated there were residential and commercial models. The noise, along with the height, would be the biggest issues.

- **DOYLE** stated the request would be to review the Site Plan, which would be part of the whole review and is similar to a subdivision. The Planning Commission should have all the information to answer the questions.
- **FITCH** felt if the product was purchased by one of the large companies, there wouldn't be an issue.
- **FLOWERS** stated he heard the grid was losing eighteen (18) to twenty-two (22) percent of power before it ever got to the house. Some places one can hear the power lines cracking.
- **NEWMAN** stated there was a dairy farm in Michigan that sued Consumers Energy stating the towers were leaking energy into the ground causing the cows to not produce milk due to having to step carefully to avoid the energy in the ground.
- **FLOWERS** stated there was a lot of power across the poles but in the ground there is a lot of energy lost.
- **GIBBS** stated years ago when there were electrical storms, he has watched some wires bounce ten (10) feet up.
- **BUELL** felt there were two (2) issues:
 - a. Private wind mills that someone wanted to build on their own personal plot of ground and use it for their own electricity. He (Buell) does realize that if an individual had a wind mill and produced more electricity than he was using, it would run the meter backwards. The wind mill was intended for the use of the owner only – not intended to be used as a profit-making operation.
 - b. Not sure if there would be a huge number of developers wanting to build a “wind farm” in Flushing Township. It more likely would be a single person that would like to build his own turbine.

BUELL felt the Planning Commission should move forward with the single home/family in mind. The Chester Township Ordinance required three (3) acres.

- **FLOWERS** felt the Planning Commission would be able to control the turbines by the individual having the appropriate acreage.
- **DOYLE** felt the Site Plan would give all the information that would be needed. A bond would also be needed for the maintenance.
- **NEWMAN** had a problem with **page 3**, number 5, *Wind Farm* with the word “intent”:

“Clusters of two (2) or more WECS placed upon a lot or parcel with the intent to sell or provide electricity to a site or location other than the premises upon which the WECS are located. Said WECS may or may not be owned by the owner of the property upon which the WECS is placed.”

EXAMPLE: If an individual had a large pole barn with horses, pumps to water the horses, and a large house, one unit would not get the job done but he had no intent of selling the energy. Would it be classified as a “wind farm” that has more requirements as compared to the person that had an electrical gate.

- **GIBBS** stated units out west were put in to run irrigation pumps.
- **NEWMAN** stated that technically, the farmer would be using all the electricity on his property to service the parcel so technically it isn't a wind farm, but maybe his farm is so large and the water is so deep in the ground that he has to pump it so far from the lake or stream that he will need two or three of the turbines to generate enough electricity.

- **GIBBS** stated the turbines out west were taking care of sixty (60) acres; the owner was pumping water for miles.
FITCH wanted to know if the owner was drawing water out of the ground and pumping the water over a sixty (60) acre area.
- **NEWMAN** felt that if a person had three hundred (300) acres to draw water, they might need five (5) turbines. Whenever there are new ordinances, they would need to protect and also serve all the members of the community whether farmers or other people that have larger homes and hobbies.
- **FITCH** wanted to know if on **page 3**, number 5, *Wind Farm*, if “Clusters of 2 or more” could be crossed out and put the emphasis on the “intent”.
- **NEWMAN** wanted to know if on **page 3**, number 6, *Single WECS for Commercial Purposes*, if the word “single” could be crossed out. If an individual started selling electricity, from day one or later on down the road, it would be easier to regulate from the beginning before the turbine was installed than down the road to tear the turbine down to make changes.
- **PURKEY** stated language wise, if the intent was for home use verses to sell, where would you draw the line – a user that sells a little bit back or a commercial provider for electricity.
- **FLOWERS** felt it would be foolish for personal use to put in a big commercial turbine that would be putting out “X” amount when the property owner would only need twenty (20%) percent of the electricity.
- **GIBBS** felt the turbine would be producing what the owner wanted; it would not produce any more than what one needed. The turbine could be updated.
- **PURKEY** stated one day you might not have any power and the next day you would have excess power.
- **GIBBS** stated that was why you keep your Consumers Energy service.
- **FITCH** stated one day the turbine would generate an excess of power and the next nothing.
- **PURKEY** stated the day an individual generated a lot of power, he would become a seller of power; the day when nothing, he would become a buyer of power.
- **DOYLE** stated it would be similar to solar energy.
- **GIBBS** stated if an individual didn’t need the power, the generator would not be producing the power; if one needed the power it would increase – if you didn’t need, there would’t be anything. The alternator in the car shouldn’t work any different than the alternator in the turbine. If you needed it, it would be there and everytime that something was plugged into it, it would increase but every time it was unplugged, the voltage would drop down.
- **NEWMAN** stated the blades would be up spinning away. **GIBBS** wanted to know if every module in the generator would be working when it was spinning.
- **BUELL** stated a regulator on the turbines prevented a runaway.
- **NEWMAN** felt the Chester Township Ordinance was pretty good and would serve Flushing Township’s needs very close. He (Newman) wanted to make sure that if an individual should come in and legitimately needed more than one turbine that he would

be able to get approval. On the other hand, if someone had two (2) or more turbines, they would not be considered having a “wind farm”. There had to be some definition of when it constituted an “intent”.

- **FITCH** stated perhaps the answer would be to deal with a percentage of the amount of electricity that was sold back.
 - **NEWMAN** felt some of the “stuff” should be more uniform instead of going into minor variances between the various classifications then there would be more broader coverage. There should be a broad set of rules for everyone and there would be minor additions based on use. The regulatory coverage would be obtained for all situations.
 - **DOYLE** stated the Special Use Permit request had to specify use; if there were changes, the individual had to come back before the Planning Commission for additional use.
 - **BUELL** stated the Chester Township Ordinance specified it shall be governed within the township as a special use within the A-Agriculture Zoning District.
 - **NEWMAN** stated a single turbine could be within any zoning district. He (Newman) read part of the Chester Township Ordinance, **page 4**, letter c, number 2 which stated:
“. . . provided the property upon which the system is to be located is at least three and one-half (3 ½) acres in size and subject to the review and approval procedures and standards/criteria of Chapter 19 of this Ordinance, as well as all of the following:”
 - **NEWMAN** felt that Flushing Township zoning classifications should also be reviewed to see what route the Commission wanted to go.
 - **FLOWERS** thought the Planning Commission should meet and review each area of the “Chester Township Ordinance” to see if it applied to Flushing Township as to what had to be deleted or left in the ordinance.
 - **BUELL** read from Chester Township Ordinance, **page 4**, letter c, number 2:
 - a. The tower shall not exceed a height of 80 feet.
 - b. The blade diameter (tip to tip) shall not exceed 100 feet.
 - c. The height of the overall WECS (with the blade in the vertical position) shall not exceed 130 feet above ground level (at normal grade).
- ON THE WIND FARM QUALIFICATIONS:**
- a. The permitted maximum total height of a WECS shall be 400 feet including the blade in vertical position.
- **FLOWERS** felt the property line setback of the Chester Township Ordinance was 300 feet.
- **BUELL** stated if an individual had a piece of property that was 130’ wide and 600’ long the turbine would not be able to be constructed on the property as it wouldn’t fit. With three and one-half (3 1/2) acres, a turbine would not fit.
- **FITCH** stated Flushing Township’s Ordinances had some strict setbacks unless the tower was designed to set by itself.
- **NEWMAN** wanted to make sure the setbacks were specified in the proposed Flushing Township Ordinance. Such as the height of the tower blade in the vertical position, from the ground to the top of the blade plus “X”.
- **BUELL** gave an example: three and one-half (3½) acres was approximately 150,000 square feet (less than 400 x 400). With the small turbine which could be one hundred

thirty (130) foot high, the turbine would almost have to be dead center in order to fit in a perfect square of three and one-half acres (3½). There would be setbacks on top of those figures.

- **FLOWERS** felt it would eliminate almost all small parcels in Flushing Township.
- **FITCH** stated most ten (10) acre lots are 330' x 1330'.
- **NEWMAN** stated for the big turbines it would take a lot of property and cost a lot of money.
- **FITCH** stated with the height, there needed to be thirty (30) feet above the closest obstacle for ground clearance.
- **GIBBS** felt the turbines would never go into a residential area because they would never fit.
- **NEWMAN** stated that if someone had a decent amount of land, and purchased a single unit for on-site service only, it would perhaps work.
- **DOYLE** felt the turbines would be based on the altitude of the land.
- **GIBBS** felt the large turbines were made for out West where there was a lot of open property.
- **FLOWERS** stated there were restrictions for towers that had to be followed such as the fall zones and the design of the cell towers.
- **NEWMAN** recommended the Planning Commission Members review the Flushing Township Tower Ordinance and the Chester Township Ordinance for future meetings.
- **FLOWERS** stated he could never see "wind farms" in Flushing Township.
- **FITCH** stated he already had inquiries for wind turbines.
- **BUELL** felt when the Commissioners reviewed the Chester Township Ordinance, they should keep in mind "does the Planning Commission want to keep the turbines out of the township or does the township want to have turbines in the township."
- **DOYLE** felt there needed to be progress with the wind turbines.
- **NEWMAN** stated the ordinance should be to serve the individuals that would like to have the turbines and help them to come into compliance; the ordinance should also protect the surrounding property owners from nuisance of noise and damage from fall.

V. NEW BUSINESS:

1. Election of Officers

BUELL MOVED, seconded by Flowers to maintain the same slate of officers that we currently have. **MOTION CARRIED.**

NEW OFFICERS: Chairperson: Mark Newman; Vice Chair: Jerry Doyle; Secretary: Eric Swanson.

VI. PUBLIC COMMENTS:

8:19 P.M. – OPENED TO THE PUBLIC FOR NON-AGENDA ITEMS

None

8:20 P.M. - CLOSED TO THE PUBLIC FOR NON-AGENDA ITEMS

VII. BOARD COMMENTS:

1. **FLOWERS** gave very interesting facts he had received from the Genesee County Metropolitan Planning Commission - Long Range Transportation Committee regarding transportation and population for the years 2030-2035:

a. Charter Township of Flushing

1. 2005 - approximate population of 10,596

2. 2035 – the population will increase to 11,336 (23% increase)

b. City of Flint

1. 2005 – approximate population of 120,283

2. 2035 – the population will decrease to 109,000

c. 2.Vehicle Traffic

There use to be four lanes of traffic (two lanes going in each direction). Now with the vehicle traffic down, there is one lane in each direction and a turn lane. It not only makes the traffic move easier but it allows less accidents, less rear end collisions, and accidents go down over a time period.

2.**GIBBS** has been doing a lot of listening to the founders of Flint cleaning up the buildings, with the renovations. Flint has got to control their crime; the younger people are starting to move in; He (Gibbs) would love to see Flint like he remembers it years ago.

3. **BUELL** will be gone for the months of February and March but will be back for the April meeting.

4. **DOYLE** received several Planning Commission Notices through the mail from different sponsors.

5. **NEWMAN** purchased a book of photos dealing with the demolition of AC Spark Plug in Flint.

THERE WAS A FEW MINUTES OF REMINISING OF HOW FLINT USE TO BE WITH THE GM PLANTS.

VIII. MEETING SCHEDULE:

REGULAR SCHEDULED MEETING – MONDAY, FEBRUARY 9, 2009 AT 7:00 P.M.

REGULAR SCHEDULED MEETING – MONDAY, MARCH 9, 2009 AT 7:00 P.M.

REGULAR SCHEDULED MEETING – MONDAY, APRIL 20, 2009 AT 7:00 P.M.

REGULAR SCHEDULED MEETING – MONDAY, MAY 11, 2009 AT 7:00 P.M.

IX. ADJOURNMENT: Due to lack of business matters, **NEWMAN** adjourned the meeting at 8:35 p.m.

MARK J. NEWMAN, Chair

JULIA A. MORFORD, Recording Secretary

ERIC SWANSON, Secretary

Planningminutes 01/12/09

Date of Approval