

# CHARTER TOWNSHIP OF FLUSHING

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## ***PLANNING COMMISSION MEETING MINUTES***

DATE: NOVEMBER 8, 2010

TIME: 7:00 P.M.

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

### **MEMBERS OF PLANNING COMMISSION**

Mark J. Newman, Chair

John Cuddeback

Jerome Doyle, Vice Chair

Ronald Flowers

Richard Buell, Secretary

Robert Gensheimer

Mark Purkey, Board of Trustee Representative

Julia A. Morford, Recording Secretary

**PRESENT:** Mark J. Newman, Jerome Doyle, John Cuddeback, Ronald Flowers, Robert Gensheimer and Mark Purkey

**ABSENT:** Richard Buell

**OTHERS PRESENT:** Eight (8) other individuals

**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: FLOWERS MOVED**, seconded by Purkey to move “New Business” to Number 4 and “Unfinished Business” to Number 5 in order to address the concerns of the public. **MOTION CARRIED.**

**III. APPROVAL OF MINUTES: DOYLE MOVED**, seconded by Purkey to approve the Minutes of October 4, 2010 as amended. **MOTION CARRIED.**

#### **IV. NEW BUSINESS:**

- Robert L. Bessert, Piper Realty Company, 5454 Gateway Centre, Suite B, Flint MI 48507**

Formal Hearing for Land Division – Hyde Park

**NEWMAN** stated a letter had been received from Terry Peck, Zoning Administrator, dated October 25, 2010, in reference to a Petition that has been filed. A copy of that petition along with a Statement from the Clerk, of the interested parties, showing the residents that were notified of tonight’s hearing which had been requested by realtor for Hyde Park LLC. In

addition to the enclosures, a very detailed drawing has been supplied by William Angus, PS which showed the proposed split of the property in question.

**LETTERS OF CORRESPONDENCE:**

One Notice had been returned because the resident lives in Flushing City but owns one unit in Hyde Park. (Gary Miller)

**COMMENTS FROM ROBERT BESSERT, PIPER REALTY, ACTING ON BEHALF OF HYDE PARK:**

Mr. Robert Bessert (BESSERT) stated they were in the process of refinancing the two (2) buildings that currently existed; the current loan was on the whole parcel. What Hyde Park would like to do was to refinance and divide the parcels so, if and when the vacant land was developed, the loan from the existing buildings would not include the land. When a new loan is obtained, approval from one lender would be necessary instead of two approvals from two lenders. There are no plans for the vacant property to be developed; the property is zoned PUD (Planned Unit Development). The current zoning would stay with the property and if there should be a change of the use, they would have to come back before the Planning Commission.

**Facts of Interest:**

1. Single parcel of land with a single legal description.
2. *Parcel A* is intended, if approved will be 3.57 acres of vacant land abutted by Wyndham Drive and Potter Road.
3. *Parcel B* will be 4.25 acres of land with the existing structures and a gazebo with some fencing as shown on the drawing.
4. There is a fifty (50) foot setback from the property line.
5. The survey has been completed.

**Comments/Questions from the Planning Commission Members:**

1. **DOYLE** wanted to know if the fifty (50) foot setback was from the original PUD itself. Was there a reason the size was left in Parcel A (according to the updated Site Plan)? **BESSERT** stated they had measured from the set back and what was left was the size. **DOYLE** felt the setback should be fifty (50) foot from the buildings.
2. **NEWMAN** stated the only setback change would be *Parcel B*, the building on the left, had been increased from, 34.6 feet to 50.1 feet and the setback, to the building on the right, had been increased from, from 39.1 feet to 54.4 feet. The closest setback anywhere on *Parcel B* would be 50.1 feet. Other setbacks are larger.
3. *Parcel A* (vacant) would be 3.38 acres; *Parcel B* would be 4.43 acres.
4. **DOYLE** stated that would make the setbacks acceptable according to the original PUD specifications. The use of the property would be the same as on the current buildings. If there should be changes in the future, they would have to come back before the Planning Commission.

**Questions from the Audience:**

1. **Charles Weber, 7181 Kings Way, Flushing** – “President of the Hyde Park Condo Association; wanted to know the end game of the property; apparently not going to sell the property at this time; wanted to know the zoning of the property” (RU-1); if the property is developed would the potential developer have to come back before the Planning Commission (Question: if wanted to deviate from the zoning they would have to come back before the Planning Commission); don’t object to the split of the property; concern as to what the zoning would allow; (**NEWMAN** stated it was like double control with the zoning and the PUD). The only concern is that Hyde Park Condo Association owns the road”.
2. **Terri Hoag, 7019 Stratford Lane, Flushing** – “Vice President of Devonshire Commons; what kind of buildings could be built on the land , would they have to be the same as the assisted living area; (Per the PUD, the same type of use would have to be continued as that is what the area was approved for; if another building was put up the same way and use OR if they wanted to put some other building with different services, they would have to come back before the Planning Commission with a site plan)”.

**CUDDEBACK** wanted to know why the utility companies had to be notified about the Planning Commission hearings. **NEWMAN** stated that utility companies could register to receive a Notice regarding zoning issues.

**DOYLE MOVED**, seconded by Gensheimer to approve request as has been stated with the change in the setback of the modified drawing.

**ACTION OF THE MOTION:**

ROLL CALL VOTE

AYES: Doyle, Cuddeback, Flowers, Gensheimer, Purkey, and Newman

NAYS: 0

ABSENT: Buell                      MOTION CARRIED.

**V. UNFINISHED BUSINESS:**

**1. Continued Review of Accessory Structures in Front Yard**

**NEWMAN** reviewed previous points of interest on the accessory structures:

- a. October 2010 minutes, page 3, the issue would be referred to the Township Attorney. (The minutes speak for the entire Commission). More directions will be coming from the Township Attorney.

## **2. Continued Discussion Regarding Medical Marijuana Law**

A draft ordinance has been prepared by the Township Attorney, but additional issues had come up at the last meeting.

- a. The issue of the level of the background check had been discussed.
- b. A law firm had passed along a “white paper” from a professor at Cooley Law School.
  1. According to the law, 1) people go to the health department with a doctor’s excuse, 2) the health department gives the person a card, but 3) it is illegal for the health department to give out any information to the law enforcement. 4) It is also illegal for the caregiver to give out information on the patients that he/she is providing for so it is almost impossible to tell how many patients that he/she is growing marijuana for.
    - a. Police Department has no advance knowledge of medical use, they cannot inspect because they don’t know where the marijuana is located and how could you zone something when you don’t know where it is or who the person is.
    - b. A five (5) person limit is almost impossible to investigate
    - c. No provisions for inspections; not sure if inspections are even legal
    - d. Don’t have to tell who the patient is
    - e. Because the drug is illegal according to the Federal Government, as a government agency or as an individual that works for the government, they could not in any way help with the sale of marijuana; someone could come back on the township.
    - f. MCL 125.3207 – “Zoning Decisions” – could not exclude a particular land use.
    - g. Prohibiting the use would cause litigation
    - h. A challenged use was issued with the “Right to Farm Act” which didn’t go over very well.
    - i. Licensing and regulations are the main issues.
- c. **DOYLE** felt there had to be a fair ordinance that could handle all the people that live in Flushing Township; some information had to be asked.
- d. **PURKEY** stated it would be against State Law if they are using marijuana.
- e. **DOYLE** suggested having Attorney Steve Moulton (Attorney Moulton) review the questions for clarification.
- f. **FLOWERS** stated in a recent Seminar sponsored by the Genesee County Planning Commission which he attended, it was mentioned that anything that is put on the books, would be challenged and it would go to a higher court. The Federal Law would not charge anyone in any state where the Medical Marijuana Law had been approved.
- g. **PURKEY** stated the municipalities that have said it is against Federal Law and would not allow anything, would be going against Federal Law, the township could be sued. He doesn’t want the township to get sued.
- h. **DOYLE** stated in order to protect the township, something had to be put in the ordinances like other townships have done.

- i. **GENSHEIMER** wanted to know if the township would be correct to place the ordinance under the current zoning and treat the issue as a commercial business.
- j. **CUDDEBACK** wanted to know if anyone had come in to request the right to be a caregiver? How would the situation be handled?
- k. **PURKEY** stated the person would not have to ask to grow marijuana.
- l. **CUDDEBACK** stated if the person didn't have to ask, and it would not be zoned, and they became a caregiver, then they would be in a bad way with the Community.
- m. **DOYLE** stated "No" because there isn't an ordinance.
- n. **PURKEY** stated the person would only be registered with the Health Department and no one else would know; the Health Department would be the only one having the authority.
- o. **FLOWERS** stated the Police Department would be involved with the issue; recommended by a lawyer to not pass an ordinance; too technical of an issue.
- p. **PURKEY** stated it is very hard for the legislative to change an initiative.
- q. **NEWMAN** stated that people are speaking through their votes because the people feel the legislature is not doing what they are supposed to do; the boss of the legislators is the people.
- r. **GENSHEIMER** stated he read where the marijuana business had to be a certain distance from schools, etc.
- s. **DOYLE** felt the township was very vulnerable to the situation.
- t. **NEWMAN** wanted to wait for an opinion letter from Attorney Moulton to see if the township could still do an ordinance and if so, what would be restricted and what would not, similar to issues as the day care facilities, parking issues, fences, time and place issues.
- u. **PURKEY** wanted to find out from Attorney Moulton, if the township followed a certain path, what would be the likelihood of being in a lawsuit.
- v. **DOYLE** stated the purpose of the zoning ordinance was to protect the health, safety, and welfare of the residents of the State.
- w. **CUDDEBACK** stated there could be retaliation from the person doing marijuana.
- x. **NEWMAN** stated 2/3 of the people that voted in the particular election, where the Medical Marijuana Law was passed, stated it was a good idea.
- y. The law may have to be rewritten and put back on the ballot. The Federal Law may have to go after the State initiative. Federal Law triumphs State Law. Flushing Township has to follow State Law.
- z. It was decided to wait to hear from Attorney Moulton whether the proposed ordinance would be a "go".

## **VI. PUBLIC COMMENTS:**

**8:12P.M. – OPENED TO THE PUBLIC FOR NON-AGENDA ITEMS**

None

**8:13P.M. – CLOSED TO THE PUBLIC FOR NON-AGENDA ITEMS**

**VII. BOARD COMMENTS:**

1. **PURKEY** felt that with all the work on the Medical Marijuana Act, it was not a waste of time because the Planning Commission had to take their time and eventually there would be an ordinance.
2. **DOYLE** stated that since the two (2) items (accessory structures and Medical Marijuana Law) are on hold for a while, what would be next? The Planning Commission does have a list of items that needed to be taken care of and which the Commission has been working on.
3. **FLOWERS** stated the Planning Commission needed to start working on the Master Plan; at a recent Planning Commission Seminar sponsored by Rowe Engineering, Flowers spoke to Doug Piggott about the Master Plan. The seminar also involved the FEMA Flood Plain issue.
4. **CUDDEBACK** was anxious to review the Master Plan.
5. **GENSHEIMER** felt maybe the Planning Commission should check with Attorney Moulton as to the results of the Lapeer County (Dryden Township) marijuana issue.
6. **NEWMAN** suggested having representatives from other municipalities come to the Flushing Township Planning Commission to discuss how they (municipalities) are handling the medical marijuana issue.
7. **DOYLE** stated the marijuana issue has gotten worse because there isn't enough patrol to control the issue because the drugs are coming from all over the world.
8. **NEWMAN** stated there had been an issue dealing with the dispensary as to whether there should be one person involved or more. The HIPAA law would also be involved.
9. **FLOWERS** stated the census should be out by the end of the year and the Planning Commission should have a report for the Master Plan.

**VIII. MEETING SCHEDULE: NEXT REGULAR SCHEDULED MEETING WILL BE HELD ON MONDAY, DECEMBER 13, 2010 AT 7:00 P.M.**

**REGULAR SCHEDULED MEETING – MONDAY, DECEMBER 13, 2010 AT 7:00 P.M.**

**IX. ADJOURNMENT:** Due to lack of business matters, **NEWMAN** adjourned the meeting at 8:25 p.m.

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MARK J. NEWMAN, Chair

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JULIA A. MORFORD, Recording Secretary

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RICHARD BUELL, Secretary  
Planning minutes 11/08/2010

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Date of Approval