

DRAFT

CHARTER TOWNSHIP OF FLUSHING

6524 N. SEYMOUR ROAD

810-659-0800 FAX: 810-659-4212

MINUTES OF THE PLANNING COMMISSION MEETING

DATE: DECEMBER 12, 2016 TIME: 7:00 P.M.

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

MEMBERS OF PLANNING COMMISSION

Chair: Jerome Doyle

Donn Hinds

Vice Chair: Robert Gensheimer

William Mills

Secretary: Ronald Flowers

Mark Newman

Board of Trustee Representative: Daniel McGrath

Recording Secretary: Joyce A. Wilson

PRESENT: Jerome Doyle, Ronald Flowers, Robert Gensheimer, and Donn Hinds. Daniel McGrath arrived at 7:10 P.M.

ABSENT: William Mills and Mark Newman

OTHERS PRESENT: Five (5) other individuals

- I. **MEETING CALLED TO ORDER** at 7:00 P.M. by Planning Commission Chair **JEROME DOYLE** with Roll Call and Pledge to the American Flag.
- II. **ADOPTION OF AGENDA: FLOWERS MOVED**, seconded by Donn Hinds to approve the agenda as presented. **MOTION CARRIED.**
- III. **APPROVAL OF PREVIOUS MINUTES:** Postponed until later in the meeting.
- IV. **UNFINISHED BUSINESS:**
 1. Ohoud Abukoush, 7570 River Road, Flushing, MI 48433 – Request of a Special Use Permit to Operate a Group Child Care Home at 7570 River Road, Flushing, MI 48433, Parcel Number: 08-36-504-002, pursuant to *Article II, Definitions, Group Day Care Home*.

Mr. Abukoush had presented his request at the November 14, 2016 Planning Commission Meeting and there had been questions regarding his lack of fencing, whether there was another such facility within 1,500 feet, the setback distances of the house and outbuildings and a Site Plan was needed. He was asked to address those concerns and return to the December 12, 2016 Planning Commission Meeting to present his solutions.

Mr. Abukoush had drawn up a site plan as requested by the Planning Commission and it was included in their packets.

The Planning Commission reviewed the Site Plan with Mr. Abukoush. The following points were noted:

There was a five car garage with three additional spaces outside the garage along with a large turn around driveway for parents to drop off children and park. The Assessor had indicated there was not another such facility within 1500 feet. Wood fencing was going to be installed to enclose the children's play area.

The sump pump drained to the back of the property and there was an underground water line. The septic tank was in front of the house and power lines overhead. The land sloped towards the river in back and was located quite some distance across two holes of the Flushing Valley Country Club.

After reviewing the Site Plan with Mr. Abukoush, the following motion was made:

COMMISSIONER HINDS MOVED, supported by Commissioner Gensheimer, to approve the request of Mr. Abukoush for a Special Use Permit to Operate a Group Child Care Home at 7570 River Road, Flushing, MI 48433.

THE MOTION CARRIED UNANIMOUSLY with the members present.

2. Alberto Dimatteo, 12645 Rattalee Lake Road, Davisburg, MI 48350 – Request a Special Use Permit for a 6' x 2' Ground Sign entitled "BOARDING" at 7462 N. McKinley Road, Flushing, MI, 48433.

Mr. Dimatteo had originally requested three separate Special Use Permits at the November 14, 2016 meeting but it has been determined, after reviewing a letter from the Township Attorney, which he is only required to get one Special Use Permit for the sign. A copy of Mr. Steven Moulton, Township Attorney's letter is made a part of the minutes and listed below:

M E M O

TO: Julia Morford
FROM: Steven W. Moulton
DATE: November 16, 2016
RE: Alberto Dimatteo - McKinley Road Property

Hannah and Albert Dimatteo own the property at 7462 N. McKinley Road (Parcel No. 08-11-100-006), the Southeast corner of the intersection of McKinley and Mt. Morris Road. The property comprises 62

acres, is undeveloped and is zoned RSA. In anticipation of building a single-family residence on the property, Mr. and Mrs. Dimatteo applied to the Planning Commission for 3 special use permits: (1) to construct an accessory structure, a pole barn to board horses, (2) to erect fences as part of the horse boarding operations and (3) for a 6' x 2' illuminated sign identifying the horse boarding operation. The applications for the special use permits were initially considered at the Planning Commission's regularly scheduled November 14, 2016 meeting without decision. Construction of the pole barn commenced prior to the November 14th meeting and no building permit has been issued.

As Mr. and Mrs. Dimatteo intend to board horses for hire, the question was asked whether this activity constitutes a commercial operation. The answer is yes and, as a general rule, RSA zoning will not permit a commercial operation. In response, Mr. and Mrs. Dimatteo assert the intended horse boarding operation is subject to the Right to Farm Act, MCL 286.471, et seq. The RTFA provides:

"... this act preempt(s) any local ordinance, regulation, or resolution that purports to extend or revise in any manner the provisions of this act or generally accepted agricultural and management practices developed under this act. Except as otherwise provided in this section, a local unit of government shall not enact, maintain or enforce any ordinance, regulation, or resolution that conflicts in any manner with this act or generally accepted agricultural and management practices developed under this act."

If the RTFA applies, then Mr. and Mrs. Dimatteo may conduct the intended horse boarding activities without commercial zoning and the provisions in the Township's Zoning Ordinance requiring special use permits for the construction of the accessory structure and fences would not apply. Even if the horse boarding operation is subject to the RTFA, the requirements of the Zoning Ordinance for a special use permit to locate the sign would still apply.

The RTFA applies to "farm operations" conducted in accordance with generally accepted agricultural and management practices (GAAMPS) issued by the Michigan Commission of Agriculture. Farm operation is defined as:

"The operation and management of a farm or a condition or activity that occurs at any time as necessary on a farm in connection with the commercial production, harvesting, and storage of farm products, and includes... the fencing, feeding, watering, sheltering, transportation, treatment, use, handling and care of farm animals."

MCL 286.472(b)(vii)

"Farm" means "the land, plants, animals, buildings, structures, including ponds, used for agricultural or aquacultural activities, machinery, equipment and other appurtenances used in the commercial production of farm products." MCL 286.472(1).

"Farm products" means those plants and animals useful to human beings produced by agriculture and includes... livestock, including breeding and grazing, equine..."

Horses are farm animals and meet the definition of a farm product. The feeding, watering, transportation, treatment, use, handling and care of horses (activities inherent in the boarding of horses) is a farm operation if these activities are performed in connection with the commercial

production of farm products. Does the boarding of horses, for hire, constitute the production of a farm product?

In a different context, the state of Michigan was asked “is the boarding of horses or the training of someone else’s horses an agricultural use for purposes of a qualified agricultural property exemption?” The state’s published response is “Yes. The property in this example is devoted to the production of animals useful to humans and is therefore, devoted to an agricultural use as defined by law for purposes of the qualified agricultural property.” While this response is not dispositive in deciding an issue under the RTFA, there is no logical reason to define and treat a horse boarding operation differently under the RTFA, than as defined and treated under MCL 324.3610(b) for the purposes of the Natural Resources and Environmental Protection Act.

I believe a horse boarding operation is a farm operation under the RTFA and, as a result, the pole barn and fences used in the farm operation are not subject to the requirements of the Zoning Ordinance for special use permits for these facilities. This assumes that the horse boarding activities going forward are conducted in accordance with the applicable GAAMPS, including the Site Selection and Care of Farm Animals GAAMPS.

Further, the requirements of the State Construction Code, MCL 125.1501, requiring a building permit do not apply to construction of the pole barn. MCL 125.1510 (8) provides that “a building permit is not required for a building incidental to the use for the agricultural purposes of the land on which the building is located if it is not used in the business of retail trade.” To the extent construction of the pole barn includes electrical, plumbing or mechanical installations, subject to permitting and inspection, those requirements do apply.

Mr. Dimatteo stated the sign would be double sided, aluminum with a wood frame and he wanted to install solar lights to light the sign. He would like to install it near the corner of Mt. Morris and McKinley. The Planning Commission cautioned him about the right-of-way and that he would have to stay back of that. They also suggested he move the cement horse back out of the right of way that he had placed near the corner.

COMMISSIONER FLOWERS MOVED, supported by Commissioner Gensheimer, to approve the request of Mr. Dimatteo for a Special Use Permit for a 6’ x 2’ Ground Sign entitled “BOARDING” at 7462 N. McKinley Road to be built off the right-of-way.

THE MOTION CARRIED UNANIMOUSLY with the members present.

APPROVAL OF PREVIOUS MINUTES:

COMMISSIONER FLOWERS MOVED, supported by Commissioner Gensheimer to approve the minutes of the September 12, 2016 Planning Commission Meeting and the October 3, 2016 Planning Commission Meeting as presented.

THE MOTION CARRIED UNANIMOUSLY with the members present.

V. NEW BUSINESS:

Commissioner Flowers welcomed Daniel McGrath to the Planning Commission as the new Board of Trustees Representative.

VI. PUBLIC COMMENTS:

There were no public comments

VII. BOARD COMMENTS:

Board members wished everyone a Merry Christmas.

VIII. NEXT REGULAR SCHEDULED MEETING WILL BE MONDAY, JANUARY 9, 2017 AT 7:00 P.M.

IX. ADJOURNMENT:

With no further business, the meeting adjourned at 8:25 P.M.

JEROME DOYLE, Chair

JOYCE A WILSON, Recording Secretary

RONALD FLOWERS, Secretary

Date of Approval

12/12/2016 plan min