

CHARTER TOWNSHIP OF FLUSHING  
6524 N. SEYMOUR ROAD  
FLUSHING, MICHIGAN 48433  
810-659-0800 FAX: 810-659-4212  
**SPECIAL PLANNING COMMISSION MEETING**  
DATE: OCTOBER 24, 2005 TIME: 7:00 P.M.  
WEB ADDRESS <http://www.gfn.org/flushing/index.html>

**MEMBERS OF PLANNING COMMISSION**

Aaron Bowron, 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:** Bowron, Buell, Flowers, Gibbs, Doyle, Pratt, Swanson, Fitch, and Morford

**ABSENT:** None

**OTHERS PRESENT:** None

**I. MEETING CALLED TO ORDER** at 7:05 p.m. by Planning Commission Chair Aaron Bowron with Roll Call and the Pledge to the American Flag.

**II. ADOPTION OF AGENDA: FLOWERS MOVED**, seconded by Pratt to approve the Agenda as presented. **MOTION CARRIED.**

**III. APPROVAL OF MINUTES OF SEPTEMBER 26, 2005: FLOWERS MOVED**, seconded by Doyle to approve the Minutes of September 26, 2005 as corrected. **MOTION CARRIED.**

**IV. UNFINISHED BUSINESS:**

1. **Review and Discussion of Conditional Rezoning**

**PRIOR SUMMARY:**

On January 4, 2005, Michigan's three (3) zoning enabling acts were amended to permit conditional re-zonings.

At a Special Meeting on August 22, 2005, the Planning Commission consulted with **JUSTIN SPRAGUE (SPRAGUE)** of Rowe Inc. who provided an overview of the law to the Planning

Commission. The Planning Commission took no action with respect to Conditional Re-Zonings. The Commission's general consensus was open to further consideration to possibilities provided by the law. Toward the goal of further consideration of the law called for the current meeting. More specifically to deliberate upon and if ultimately acceptable whether modified or not, move to approve for a future Public Hearing to draft the Michigan Townships Association (MTA) Model Conditional Rezoning (Model Ordinance) provided to the Planning Commission by township counsel. The end result would be to explicitly endorse the concept of conditional rezoning by amending Article XX of the Zoning Ordinance.

**OPTIONS BEFORE THE PLANNING COMMISSION:**

1. Reject the use of Conditional Rezoning and if so have a Resolution to that affect.
2. Approve the use of Conditional Rezoning by not approving an ordinance to implement it (self enacting as it currently stands) or to do so explicitly by adopting the proposed amendment provided to the Planning Commission which could be (a) adopted as presented or (b) as so modified.

**OPINIONS/CONCERNS:**

- **BOWRON:** supported Option 2 (b) – to approve the Conditional Rezoning explicitly and as modified:
  - a. **Article XX, Section 20-2000 (b)**

(b) Any proposal for an amendment to the zoning ordinance map may be initiated by any owner. . .
  - a **MODIFICATION: Model Zoning Ordinance from MTA (Model Ordinance)**

(A) **Intent:** It is recognized that there are certain instances where it would be in the best interests of the Township, as well as advantageous to **OWNERS OF AN INTEREST IN PROPERTY** (hereafter “Owner”) seeking a change in zoning boundaries, if certain conditions could be proposed by property owners as part of a request for a rezoning. It is the Intent of this Section to provide a process consistent with the provisions of Section 16 (i) of the Township Zoning Act, (MCL 125.286 (i)) by which an owner of an interest in land (hereafter “owner”) seeking a rezoning may voluntarily propose conditions regarding the use and/or development of land as part of the rezoning request. (**BOLD CAPS** indicate additions to the language).
  - b. **CURRENT WORDING:** Administration, Article XXI, Section 20-2100 (e)

(e) If the work described in any zoning permit has not begun within six (6) months from the date of issuance thereof, such permit shall expire, except as otherwise provided herein; it shall be cancelled by the Zoning Administrator, and written notice thereof shall be given to the person affected. If the work described in any zoning permit has not been substantially completed within one (1) year of the date of issuance thereof, such permit shall expire. The building inspector may, on application, extend for not to exceed one (1) year from the start of construction, without additional charge, if a satisfactory degree of progress in construction is shown.
  - b. **MODIFICATION: Model Zoning Ordinance from MTA**

**(G) Time Period for Establishing Development or Use:** Unless another time period is specified in the Ordinance rezoning the subject land, the approved development and/or use of the land pursuant to building and other required permits must be commenced upon the land within 18 months after the rezoning took effect and thereafter proceed diligently to completion. (BOWRON felt this was two (2) different types of construction). The construction associated with rezoning would be more extensive and complex than the construction associated with the zoning or building permit issued by Administrative personnel. A longer period of time should be allowed to commence building whether 18 months as the MTA Model Ordinance suggests or something less but still longer than the 12 months that is currently offered.

**CHAIRPERSON SUMMARY OF THE MODIFICATIONS:**

**BOWRON** supported the MTA Draft Model Ordinance as so modified for the following reasons:

1. approving the ordinance would not obligate the township to use it. The Planning Commission has the discretion, bound by the standards of the ordinance, to either accept offered conditions to rezoning or reject them. It would be another tool to potential employ when considering rezoning requests. It augments rather than diminishes the authority of the Planning Commission.
2. If the township engaged in Conditional Rezoning it preserved, per Model Ordinance Sections B (4) and (6), the authorities to still require Special Land Use Permits and Site Plan Approvals. Due consideration is given to development.
  - a. **Section B (Model Ordinance)**
    - (4) Any use or development proposed as part of an offer of conditions that would require a special land use permit under the terms of this Ordinance may only be commenced if a special land use permit for such use or development is ultimately granted in accordance with the provisions of this Ordinance.
    - (6) Any use or development proposed as part of an offer of conditions that would require site plan approval under the terms of this Ordinance may only be commenced if site plan approval for such use or development is ultimately granted in accordance with the provisions of this Ordinance.

**BOWRON** stated the MTA Model Ordinance suggested several standards for inclusion.

- Article XX, Section 20-2001 (e) numbers 1-4, the current standards would be sufficient.
  - (1) The use requested shall be consistent with and promote the intent and purpose of this chapter.
  - (2) The proposed use will ensure that the land use or activity authorized shall be compatible with adjacent land uses, the natural environment, and the capacities of public services and facilities affected by the proposed land use.
  - (3) The land use sought is consistent with the public health, safety, and welfare of the township.

- (4) The proposed use is consistent with the township master plan or a determination is made that the plan is not applicable due to a mistake in the plan, changes in relevant conditions or changes in relevant plan policies.
- The proposed standards listed on Page 7 of 7 of the Draft Model Ordinance, add little to the present standards. There would be one suggestion to add the following language: Article XX, Section 20-2001 (e):  
“At the meeting where an application for change in zoning ordinance is considered, the commission shall consider the request in accordance with the following standards.”

**CHANGED TO**

“At the meeting where an application for change in zoning ordinance is considered, **WHETHER THE APPLICATION IS MADE WITH OR WITHOUT AN OFFER OF CONDITIONS**, the commission shall consider the request in accordance with the following standards.”(BOLD CAPS indicate an addition to the paragraph).

BOWRON felt the proposed standards were duplicates of the current standards.

**REMARKS FROM THE PLANNING COMMISSION**

- **DOYLE:** Conditional Rezoning would open up a whole new way of development and freedom which the Planning Commission has never thought about – the matter has to be brought to the Commission, the Commission cannot go to the people.
- **PRATT:** Conditional Rezoning would be a valuable tool for the Township.
- **FLOWERS:** the Planning Commission could not go out and sell the issue, but the Planning Commission would be able to work with the tool. If an individual wanted to place a business in a certain, correctional way, the person would be able to come before the Planning Commission and decisions would be based on a particular standard or else it would not be approved.
- **FITCH:** the proposed Conditional Rezoning issue has been reviewed with **ATTORNEY STEVE MOULTON (ATTORNEY MOULTON)**. There were no proposed changes to the Model Ordinance from **ATTORNEY MOULTON**.
- **FITCH:** felt the addition to the present ordinance was great.
- **BOWRON:** the Conditional Rezoning issue would go to **ATTORNEY MOULTON** for his final review before any publication for a public hearing was made in the newspaper.
- **FITCH:** would get with **ATTORNEY MOULTON** regarding the format of the ordinance and then proceed with the scheduled Planning Commission Public Hearing.
- **PRATT:** Draft Model Ordinance, page 4, letter E, c, *Approval* stated:  
“Contain a statement acknowledging that the Statement of Conditions runs with the land and is binding upon successor owners of the land.”

is there a choice as to the Conditional Rezoning running with the land?

- **BOWRON:** if the Planning Commission drafted a Conditional Rezoning and nothing has been filed with the Register of Deeds, there would be an innocent purchaser for value

who takes the property without notice, because it has not been registered. The purchaser would not be bound by the Conditional Rezoning. He did not take, with notice, that the rezoning existed. "Runs with the Land" would mean that the purchaser would be on notice that he has been made aware that the land could only be used for a particular purpose.

- **PRATT:** the Conditional Rezoning would bind the land forever.
- **BOWRON:** the Conditional Rezoning would only bind the land for the duration of the term of the conditions which could be set with what the Planning Commission felt comfortable. Once the condition period has expired, the Clerk would draft a memorandum/statement to be recorded with the Register of Deeds stating the conditions no longer exist. The individual would have full rights, title, and interest in the property and he could do whatever that was permissible.
- **PRATT:** wanted to know if there was an ending date.
- **PRATT:** what does the sentence mean on the Draft Model Ordinance, page 2, letter B, Application and Offer of Conditions:

“. . . This offer may be made either at the time the application for rezoning is filed or may be made at a later time during the rezoning process.”
- **FLOWERS:** if an individual came to the Planning Commission for a rezoning to have a restaurant on the proposed property and during the checks it was determined it would be better to put in another type of business, the individual would have the opportunity to come back to the Planning Commission to change their mind.
- **SWANSON:** an individual would have the opportunity to first make an offer and then come before the Planning Commission for the zoning.
- **PRATT:** wanted to know the meaning of Draft Model Ordinance, page 5, letter f, number 1 which states:

“. . . Any failure to comply with a condition contained within the Statement of Conditions shall constitute a violation of this Zoning Ordinance and be punishable accordingly. Additionally, any such violation shall be deemed a nuisance per se and subject to judicial abatement as provided by law.”
- **BOWRON:** the authority already existed in the ordinances. Reference was made to Article XXI, Section 20-2100 (a) (1) which states:

(1) If the Zoning Administrator shall find that any of the provisions of this chapter are being violated, he shall notify, in writing, the person responsible for such violation, or the owner of record of the lot upon which such violation is taking place, indicating the nature of the violation and ordering the action necessary to correct it. He shall order discontinuance of the illegal use of any lot or structure; or of illegal additions, alterations, or structural changes; discontinuance of any illegal work being done; or shall take any other action authorized by this ordinance to ensure any other action authorized by this ordinance to ensure compliance with or to prevent violation of its provisions.
- **SWANSON:** made reference to Draft Model Ordinance, letter F, Compliance with Conditions:

“. . . any such violation shall be deemed a nuisance per se and subject to judicial abatement as provided by law.”

it would be under the control of the Zoning Administrator, Enforcement Officer or the individual who handled the nuisance ordinance. The abatements would be taken care of through the Court system.

- **BUELL:** felt the date situation listed under Draft Model Ordinance, page 5, letter F, had more to do with the commencement of operations for the building and construction as opposed to creating a long standing rezoning restructure that would be terminated some time in the future. **BUELL:** “Running with the Land” became permanent with the land. Where does the recorded “end” date come from?
- **PRATT:** the Planning Commission would set the time frame for which the conditions would apply.
- **BOWRON:** when something “runs with the land” it is for imperpetually.
- **BUELL: Example:** from a warehouse, a restaurant would be created, and fourteen (14) years later, the zoning would go away, would it have to return to a warehouse?  
**BOWRON:** the issues were raised at the August 22, 2005 meeting; there were no answers to the question.
- **SWANSON:** felt that once the issue has been recorded, it would be permanent.
- **BUELL:** if sometime in the future, an individual had come in and was sympathetic to the new conditions, it could be modified.
- **SWANSON:** Draft Model Ordinance, page 5, letter G, Time Period for Establishing Development or Use, made reference to the time period to finish the project.
- **BOWRON:** the agreement would have to be recorded.
- **SWANSON:** the individual would be able to return to the Planning Commission for another rezoning.
- **DOYLE:** if the individual felt his property was not what he wanted it to be, or if he should sell the business, he/she could come back and ask for a rezoning.
- **PRATT:** once the deed has been recorded at the Register of Deeds with conditions of the agreement, it would be binding upon the property. All the conditions would have to be met and completed in order for the contract to be binding.
- **BUELL:** assuming the project has been completed under the set of conditions, it would run with the land. Why would there be an ending date at which time the conditions would no longer exist since the project had been completed – it would now be a non-conforming project.
- **SWANSON:** an individual could come back to the Planning Commission for a rezoning request.

- **BOWRON:** read Model Ordinance, page 5, letter F, number 1, *Compliance with Conditions:*

Any person who establishes a development or commences a use upon land that has been rezoned with conditions shall continuously operate and maintain the development or use in compliance with all of the conditions set forth in the Statement of Conditions.
- **BUELL:** what would happen in fifteen (15) years if the present owner wanted to use the property in a different way; no time periods are mentioned?
- **SWANSON:** the Planning Commission can't grant a rezoning to someone and then in five (5) years tell the individual that it is no longer valid.
- **FLOWERS:** if an individual decided to construct a business and found out down the road that it would not work, the individual would have to come back to the Planning Commission to change the rezoning due to the conditions. It would stay the same until the individual decided to change the use.
- **PRATT:** read Model Ordinance, page 5, letter H, *Reversion of Zoning :*

If approved development and/or use of the rezoned land does not occur within the time frame specified under Subsection G above, then the land shall revert to its former zoning classification as set forth in MCL 125.286 (i).
- **FLOWERS:** if two (2) years down the road the business did not succeed or the business had not been constructed, the property would revert back to the former zoning.
- **BUELL:** once the project has been completed, the zoning would never change again because the conditions would run with the property. (The introduction of the time period was introduced by Justin Sprague of Rowe – nothing was mentioned in the MTA Model Ordinance).
- **BOWRON:** the only time reference made was from the time of commencement, not the term of the agreement itself or how long the conditions are to last.
- **BUELL:** the perpetuity would be the answer to the term of the agreement.
- **BOWRON:** the understanding had been that the conditions would run for a certain time period; after the excellent points made it appears the time period would refer to the commencement of the project. “Running with the land” would be the perpetuity.
- **SWANSON: Example:** reference was made concerning the property at Mt. Morris Road and Elms Road – with all the footings and work involved – the individual walked away from the project – what would happen to the zoning? Would it revert back to residential?
- **BOWRON:** read Model Ordinance, page 6, letter K, *Township Right to Rezone:*

Nothing in the Statement of Conditions or in the provision of this Section shall be deemed to prohibit the Township from rezoning all or any portion of land that is subject to a Statement of Conditions to another zoning classification. Any rezoning shall be conducted in compliance with this Ordinance and the Township Zoning Act (MCL 125.271, et esq.)
- **SWANSON:** the Planning Commission already has the option to change the rules.
- **BUELL:** once the conditions have been agreed upon, they could not be changed through the particular time period.

- **SWANSON:** if there had been a conditional rezoning on the property at Mt. Morris and Elms Road, the Planning Commission could take the zoning back, but would they (Planning Commission) take the zoning back?
- **BOWRON:** information obtained from the MTA August 2005 Seminar in Frankenmuth, regarding interpretations – when there are conditions there would be a few items that would be conditionally not available. Conditions may not be as restrictive, as currently felt, they could be.
- **DOYLE:** the applicant has to tell the Planning Commission what they would like to do.
- **BOWRON:** the language only prohibits the Planning Commission from “requiring”. There would be nothing wrong in offering suggestions to the applicant.
- **DOYLE:** there was a rationale that stated the Planning Commission would be stepping outside the ordinance when the applicant has been allowed to come to the Planning Commission and tell the Planning Commission what it is the applicant would like to do.
- **FITCH:** once someone has come to the Planning Commission, wouldn't it be similar to “bargaining”.
- **BOWRON:** there would be very little difference in conditional rezoning and contract rezoning. Contract zoning has been deemed unconstitutional. The difference in practice: they are very hard to distinguish and would be a “bargaining” give or take matter. It is recommended that the petitioner meet with the administrative personnel where there would be consultation.
- **BUELL:** a written proposal of conditions would come from the petitioner with the petitioner's signature instead of the Building Inspector's signature.
- **BOWRON:** the main issues would be 1) equal protection (due process); treating similar situations similarly; 2) what extent the conditions, that were ultimately formulated, to what extent were they actually coerced out of the petitioner.
- **SWANSON:** advice came from the big planners as to be very careful when dealing with conditional rezoning.
- **BOWRON:** the draft ordinance provided a shield for the allegation that the provisions were coerced by the Planning Commission or the Township Board. Reference was made to Model Ordinance, page 4, letter E, Approval, 2, f:

The Statements of Condition shall contain the notarized signatures of all of the owners of the subject land preceded by a statement attesting to the fact that they voluntarily offer and consent to the provision contained within the Statement of Conditions.
- **BUELL:** can state that the owner provided sewer, water and subterranean utilities that later the individual would could back and state that he “had been taken into a room and beat” in order to come up with the conditions. Felt the notarized statement was great.
- **FLOWERS:** if the individual who was requesting the conditions had a water line to his property and he needed sewer, the individual could suggest that he needed sewer such as with an apartment complex.
- **DOYLE:** the situation would be a free-will type matter.
- **BUELL:** what would be the danger of waiting until there was more case law on the situation before the Planning Commission moved to accept the rezoning.

- **SWANSON:** someone could approach the Planning Commission with a rezoning situation that would fit the Conditional Rezoning perfect, and unless there was an ordinance, the Planning Commission could not do anything.
- **BOWRON:** it would be self-implementing but with the ordinance it would provide objective standards to take care of the matter. Does not feel there needed to be an ordinance. The benefit of objective standards is that it would be standardize for all petitioners.
- **DOYLE:** if the Planning Commission went without an ordinance, it could get all wrapped up with another matter and forget some information that should have been included.
- **PRATT:** made reference to the MTA Seminar held in Frankenmuth regarding *Ten Ways for the Township to Get in Trouble*. The ordinance would give the township protection.
- It was determined that if the material was in the ordinance, everyone would be treated fairly and at the same time, the township would be protected.
- **PRATT:** the MTA Model Ordinance has been reviewed by legal authority.
- **SWANSON:** the Planning Commission would still be following the Master Plan. The Conditional Rezoning would limit the projects that would be constructed in the township.
- **DOYLE:** there would be no problems if the Planning Commission took the time to review everything to make sure everything has been taken care of properly.
- **BOWRON:** there are two (2) issues involved.
  1. legal validity by itself just as to how the Model Ordinance is drafted.
  2. what legal validity of how the Planning Commission actually applies the rezoning.

**BOWRON** felt the drafted ordinance did not address the underline constitutional issues involved with the matter and does not answer any of the questions in the application and interruption of the issue. There would not be any rush or harm in delaying the issue. If the matter should be on the books, in the event the Planning Commission was to use Conditional Rezoning, counsel would have to be involved in each step of the process. By the time the Planning Commission did, in fact, end up using the rezoning, there would be more case law available.

- **FLOWERS:** the matter has not been challenged in Court.
- **BOWRON:** the Planning Commission would be obligated to consider conditions as they are presented to the Planning Commission.
- **DOYLE:** the state has approved the conditional rezoning. If the township did not have an ordinance, and an individual came in to request the rezoning, the township would have to act on the matter. (**PRATT** had previously brought an article to the attention of the Planning Commission regarding the State Law). Why not have all the information available in an ordinance and the township would be covered before the issue comes before the Planning Commission. The matter could be acted upon without any delays.

- **BUELL:** properties where there are multiple owners, should the wording “owners of an interest in property” be worded different such as to deed holders, option holders, or contract holders.
- **GIBBS:** on his farms, **GIBBS** and his sons names are on all the deeds. If the son wanted to do something different, **GIBBS** felt he had as much right to vote what he wanted to do with the land as well as the son.
- **FITCH:** if someone wanted to sell a piece of property and wanted to do Conditional Rezoning, but did not want to purchase the property until the request actually was approved, permission would be given by the property owner for the proposed purchaser to go before the Planning Commission.
- **BOWRON:** the issue only applies to owners. There could be “Option” Contracts written up which would broaden the scope for more people that would be involved.
- **BUELL: Examples:** 1) Mineral rights owners, 2) proposed petitioner wanting to construct a building in the middle of land that was currently being leased by another individual, and 3) there could be a lot of different types of construction on the leased property. The Planning Commission could take exception to a matter if in the case where there was noise activity twenty-four (24) hours a day.
- **SWANSON:** the petitioner has to state on the contract what the proposed development would involve.
- **BOWRON:** would the Planning Commission like to broaden or narrow the terminology of “owners of an interest in property”.
- **BUELL:** suggested using the terminology “owners of an interest in a property but not limited to option holders, and deed holders.”
- **PRATT:** what would happen in a case where an individual, that currently was leasing property, came before the Planning Commission to rezone a piece of property but the property owner did not want the rezoning? The terminology of “anyone that has an interest in the property” would open a can of worms.
- **BOWRON:** if the terminology was limited to “owners only” a lot of the properties subject to rezoning are people that are perspective purchasers of interest in the land – not the owner.
- **DOYLE:** you can’t rezone a piece of property for an individual that doesn’t own the property.
- **SWANSON:** what would be the difference if the owner of the property comes before the Planning Commission and obtained approval for the rezoning and then sold the land to someone else?
- **PRATT:** what would happen if you are the property owner and are not involved, but the lessee who has legal right to the property for twenty (20) years, comes before the Planning Commission for a conditional rezoning which the individual would have the right to do so. If the property should be rezoned, and the property owner does not want the particular use on his land, the Planning Commission has created a problem.
- **BOWRON:** the conditional rezoning only states who could come before the Planning Commission. The Planning Commission could state they (Planning Commission) felt uncomfortable with the issue and would like to see the property owner.

- **DOYLE:** agrees with the terminology “owners of an interest in property.” Everyone would be notified of the matter, but it could not be the owner who has requested the rezoning. **DOYLE** has no problem with the terminology “owners of an interest in property.”
- **BOWRON** read Article XX, Amendments, Section 20-2000 (b) *Initiation of Zoning Ordinance Amendment:*
  - Any proposal for an amendment to the zoning ordinance map may be initiated by any owner of an interest in the lot as to the zoning of such lot upon the filing with the township clerk. . .
- **PRATT:** the lessee would not be an owner in the interest of the lot.
- **BOWRON:** the “owner of an interest” - a lessee has a lease hold in the interest of the lot.
- **PRATT:** an interest would go to title.
- **DOYLE:** it would almost be like the lessee has a lien against the property.
- **BUELL:** it would almost be like an oil and gas lease which is signed and recorded and has a term of the lease and for the term of the lease you are the partial owner of the property.
- **PRATT:** what would happen if a property owner leased the land to someone who decided to construct a business, on the leased land, which the owner did not like?
- **SWANSON:** the registered owner of the property has to sign the recordable property.
- **PRATT:** if the rezoning issue ran with the land, which means forever and if the property owner had a problem with the use of the land, and the approval from the Planning Commission was given to the lessee, and the rezoning runs with the land forever, the Planning Commission would have a problem.
- **BOWRON:** the problem would exist between the lessee and the lessor and would be a private issue.
- **BOWRON:** there is a presumption that everything the Planning Commission does is with “a presumption of constitutionality” and has been done properly. If anyone should challenge anything the Planning Commission does, it would carry a heavy burden of proof to show that what the Planning Commission had done was improper or unconstitutional. The burden would be on the challenging party.
- **DOYLE:** the Planning Commission only has to request all the documents be provided to the Commission, which would include the owners of the property.
- **FLOWERS:** there are a lot of options; gave details as to the process of a Consumers Energy easement on his property.
- **BOWRON:** if there were concerns it would need to be changed in the proposed Model Ordinance and also in the current zoning amendment as well.
- **FITCH:** the last three (3) churches that have come to the Township were looking to purchase property, and all had purchase agreements on the property but did not actually own the property until after the Special Use Permits were granted. The property was purchased after the permits were approved. Letters were received by the Building Inspector from all the property owners involved.

- **PRATT:** there would be a difference between granting conditions and usage and then recording the document that would change the zoning, which would actually change the ownership of the property.
- **FITCH:** before the Planning Commission made any decision on the Special Use Permits for the three (3) churches, a letter had been sent out to everyone within three hundred (300) feet so the Planning Commission knew exactly who owned the proposed property.
- **SWANSON:** the Planning Commission always asks at each meeting, when an issue comes up, is if the individual has purchased the proposed property.
- **FITCH:** could see a situation where there could be two (2) property owners such as father and son or two (2) brothers, sisters, etc. and one who agreed and the other did not agree. Letters are sent to everyone that is listed on the property tax roll in the area.
- **SWANSON:** the registered owner of the property would not be the lessee.
- **DOYLE:** even if the whole deal (conditional rezoning) has been accepted, it would be hard to image anyone letting another individual do something to his (the owner) property.
- **GIBBS:** he could see a problem if two (2) people were joint owners of farm property.
- **BUELL:** he has personally seen problems with having more than one (1) owner.
- **BOWRON:** the wording “hereafter, owner” would immediately follow the initial wording of “owners of an interest in property.” Anyone that has an interest in the land could be protected. Article XX, Section 20-2000 (b), *Initiation of Zoning Ordinance Amendment* would be amended.
- **SWANSON:** an ordinance could not be written for every little item.
- **BOWRON:** if the proposed Draft Model Ordinance with the language as it is referring to owner, there are two (2) different schemes for someone who wanted to rezone property. If someone did not want to go with conditional rezoning, only traditional rezoning, the Planning Commission would be stating that any owner of interest in land could do so. Conditional Rezoning, if left the wording “owner” the Planning Commission would be stating that only an owner of the land could do the rezoning. By adding the wording “owner of an interest” it would harmonize Section 20-2000 (b) with the proposed Draft Model Ordinance. If the word “owner” remained, the Planning Commission would have to change so that it would refer to simply an “owner.”
- **GIBBS:** the three (3) church properties, which were referenced by **FITCH**, were not property owners prior to coming to the Planning Commission for approval to zone so that a church could be constructed on the property.
- **PRATT:** there could always be a condition placed on the zoning request where the individual had to complete the agreement and then becoming the owner.
- **SWANSON:** a conditional purchase agreement, from the owner, could become part of the requirements.
- **FITCH:** there have been no major problems in the past. Both sections (MTA proposed Model Ordinance and Section 20-2000 (b)) should have the same wording.

**DOYLE MOVED**, seconded by Flowers to approve the MTA Model Draft Ordinance and to make it a part of the Ordinances in the ways which has been presented to the Planning Commission including the additions:

(1) The modification being: Model Zoning Ordinance Section 20-2001, Conditional Rezoning, letter A, Intent:

It is recognized that there are certain instances where it would be in the best interests of the Township, as well as advantageous to an owner of an interest in property (hereafter "owner") seeking a change in zoning boundaries, if certain conditions could be proposed by property owners as part of a request for a rezoning. It is the intent of this Section to provide a process consistent with the provisions of Section 16 (i) of the Township Zoning Act, (MCL 125.286(i)) by which an owner seeking a rezoning may voluntarily propose conditions regarding the use and/or development of land as part of the rezoning request.

(2) Article XX, Section 20-2001 (e):

At the meeting where an application for change in zoning ordinance is considered, **WHETHER THE APPLICATION IS MADE WITH OR WITHOUT AN OFFER OF CONDITIONS**, the commission shall consider the request in accordance with the following standards. (**Bold and CAPS** indicate an addition to the wording).

**ACTION OF THE MOTION:**

**ROLL CALL VOTE:**

AYES: Pratt, Gibbs, Flowers, Buell, Swanson, Doyle, Bowron

NAYS: 0      MOTION CARRIED.

**IT WAS DETERMINED THAT JERRY FITCH WOULD GIVE THE PROPOSED AMENDMENTS AND MODEL DRAFT ORDINANCE TO ATTORNEY MOULTON FOR HIS REVIEW AND INSERTION AND IF THERE WERE NO OBJECTIONS, THE PROCESS FOR THE PUBLIC HEARING WOULD BE STARTED.**

**V. NEW BUSINESS:**

None

**VI. PUBLIC COMMENTS:**

**8:32 P.M. OPEN TO THE PUBLIC FOR NON-AGENDA ITEMS**

**8:32 P.M. CLOSED TO THE PUBLIC FOR NON-AGENDA ITEMS**

**VII. BOARD COMMENTS:**

1. **BOWRON** stated that he had been informed the Revenue Sharing for the State had been reduced. **BOWRON** stated he would feel more comfortable with scheduling an additional Special Meeting besides the meeting where work sessions are normally

conducted for the petitioner that could not or would not wait until the next regular scheduled meeting.

The additional Special Meeting would be appealing for two (2) reasons:

1. charging petitioner for the cost of a meeting that has already been appropriated is troublesome but mute.
    - a. whether a petitioner hears from the Special Work Session meeting or a Second Special Meeting, they would have to pay regardless.
  2. routine business would not crowd out the work shops.
    - a. sometimes there are two (2) to three (3) weeks between regular and special meetings so very few petitioners would be willing to pay the price to have a meeting during the remaining weeks of the month.
    - b. notice and time constraints have to be dealt with.
    - c. all petitioners would have to be charged for anything that would be discussed at the special meetings.
    - d. doesn't want to crowd out regular items on the agenda.
- **BOWRON** felt in the case where an individual has requested a Special Meeting, unless there were unusual circumstances, to wait until the next regular meeting or petition for an additional meeting. All Special Meetings now have to be charged for.
  - **PRATT** stated that in the past, special meetings were called "work sessions". A Special Meeting which required a petitioner to meet between the regular scheduled meetings, the requirement was for the petitioner to pay for the special meeting.
  - **BOWRON** stated the ordinance did not recognize a "work shop meeting". There are only: 1) regular scheduled meetings and 2) special meetings. The ordinance of the law does not distinguish between a regular meeting and a special meeting.
  - **PRATT** stated in the ordinance, special meeting are mentioned. When the public hears the terminology "special meeting" they assume the petitioner had to pay for the meeting.
  - **BUELL** stated the "work shop" terminology was used to limit the attendance of the public so that discussions could be held but still have an open meeting.
  - **DOYLE** mentioned that on occasions there are items that come to the Planning Commission that cover more than could be handled in one (1) meeting a month. The Planning Commission has had to stick with several items until they were completed due to the complexity of the issue.
  - **PRATT** stated the Board of Trustees did not have an issue with the funding of the work sessions. If there was a special meeting, the petitioner had to pay. It would not be fair to the constituents to not hear their matter especially when it had caused time and money.
  - **PRATT** stated the issue of special meetings for the Planning Commission had to be proposed at the April 2006 Board of Trustees Meeting.
  - **DOYLE** wanted to know what happened when an issue was started at one (1) meeting and could not be finalized and another meeting needed to be scheduled. The Planning Commission would be in trouble if the issue was not taken care of, according to what the ordinance demands, in a due process time. The question had not been solved as per what the ordinance stated the Planning Commission was obligated to do.

- **SWANSON** stated when the special meetings for the Planning Commission first started, the Board of Trustees approved the money for Special Meetings to work on ordinances. If an issue has come before the Planning Commission, other than to work on ordinances, another meeting would have to be scheduled in the future because nothing had been scheduled for the meeting other than to work on ordinances. If another meeting is needed to complete the issue, how does the Board of Trustees want the issue resolved? The Planning Commission should not take a special meeting that is being paid for (by a petitioner) to work on ordinances and then bring someone to the meeting so that another meeting would have to be scheduled.
- **BOWRON** stated the meetings have been used judicially, not mutually exclusive.
- **PRATT** stated if additional monies were appropriated for additional “work sessions” and other extra meetings were called, where would the money come from?
- **DOYLE** stated it depended upon what the meeting was called: 1) if a petitioner wanted something talked about, then a special meeting would be called and the petitioner would pay for the meeting, 2) if the meeting is a “work session” and everything has been handled up until approximately 8:00 p.m. and there is additional time, and if there are additional problems that needed to be dealt with, that would be part of the meeting, and 3) items that have not been completed (tabled/postponed) could be called “work and unfinished business” meeting.
- **FLOWERS** stated that on a regular meeting where the items did not get finished, and another meeting had to be called, and the Board of Trustees did not want the Planning Commission to use the “special meeting”, what does the Board of Trustees recommend for the Planning Commission?
- **DOYLE** stated that in the past there have been meetings cancelled because there were no business matters to discuss.
- **FITCH** stated there has not been a Planning Commission Special Meeting, where a petitioner paid for, since March 1999, which had been the original request for Hyde Park. Sometimes there are appropriate times when things have to be dealt with. The meetings have been very productive.
- **FITCH** stated the Master Plan has to be dealt with real soon.
- **BUELL** wanted to know if the Board of Trustees wanted the Planning Commission to deal with the people’s business of the township, as a priority, or to set aside time to deal with the ordinances. If at a “paid Special Meeting” the item was resolved, should the Planning Commission stay later and work on other matters that individuals have paid for?
- **FLOWERS** stated originally, when the “work sessions” were first requested from the Board of Trustees, the Planning Commission only had one (1) meeting per month and was trying to take care of a petitioner’s request and ordinances at the same meeting.
- **BOWRON** stated the only issue at hand was there had to be consistency and charge for every item of carry-over business for every petitioner that come to the special meetings. The priority being there should not be carry-over business at the special meetings.
- **FLOWERS** stated if an individual needed to come to the Planning Commission but could not wait until the next regular meeting, the person that had requested the special meeting would have to pay.

- **MORFORD** stated MTA viewed the matter as: there being no such thing as a “work session”. If the Planning Commission had a “work session” it was to be called a “Special Meeting” and the agenda would indicate what the item was to be discussed such as private drives, C-1, C-2, etc. The agenda would be posted per the Open Meetings Act. There would be no charge for the “Special Meeting.” All agendas would be posted by the front door of the township hall. If a petitioner needed a “Special Meeting”, he would pay for the meeting.
  - **DOYLE** felt the Board of Trustees should allow the Planning Commission two (2) meetings per month and anything over that number would be considered a “Special Meeting.” (One meeting would be to hear petitioners and the other would be to work.)
2. The Planning Commission briefly reviewed an article on ham operator towers which had come through the mail.

**VIII. MEETING SCHEDULE:**

**REGULAR SCHEDULED MEETING – MONDAY, NOVEMBER 14, 2005 – 7:00 P.M.**  
**PROPOSED SPECIAL MEETING – MONDAY, NOVEMBER 28, 2005 – 7:00 P.M.**  
**REGULAR SCHEDULED MEETING – MONDAY, DECEMBER 12, 2005, 7:00 P.M.**

**IX. ADJOURNMENT:** There being no further business, **BOWRON** adjourned the Planning Commission Meeting at 9:09 p.m.

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AARON BOWRON, Chair

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JULIA A. MORFORD, Recording Secretary

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ERIC SWANSON, Secretary

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Date of Approval

Planningminutes 10/24/05-