

CHARTER TOWNSHIP OF FLUSHING

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PLANNING COMMISSION MEETING MINUTES

DATE: JANUARY 10, 2011

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, Richard Buell, John Cuddeback, Ronald Flowers, Robert Gensheimer and Mark Purkey

ABSENT: None

OTHERS PRESENT: None

I. MEETING CALLED TO ORDER at 7:01 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 Cuddeback to approve the Agenda as submitted. **MOTION CARRIED.**

III. APPROVAL OF PREVIOUS MINUTES: PURKEY MOVED, seconded by Doyle to approve the Minutes of December 13, 2010 Planning Commission as submitted. **MOTION CARRIED.**

IV. UNFINISHED BUSINESS:

1. Continued Review of Accessory Structures in Front Yard

The Planning Commission has thoroughly discussed the issue and it has been turned over to Flushing Township Attorney Steve Moulton (Attorney Moulton) for the update of the proposed draft. The issue will be placed on the February Agenda.

2. Continued Discussion Regarding Medical Marijuana Act

A variety of articles has been received by the Planning Commission regarding the Medical Marijuana Act. “White Paper” written by a Cooley Law School Professor, an Ordinance from Dryden Township (Lapeer County), and a power point presentation from Attorneys Foster Swift & Smith PC entitled “Medical Marijuana Act – A Primer For the MTA Livingston County Chapter”.

FLOWERS has been in contact with Doug Piggott, Planner for Rowe Inc regarding the marijuana issue; there has been five (5) Genesee County communities that have adopted the ordinance and hope to make it work. **PIGGOTT** stated there has been a lot of discussion regarding the marijuana issue and there seems to not be any true answers as to what needed to be done. Per **PIGGOTT**, most communities have agreed to use the “Home Occupation” Ordinance which is already on the books, in order to regulate the matter.

QUESTIONS/COMMENTS/FACTS:

- **GENSHEIMER** felt that if people don’t have to register by giving out their name and address how could they come to the Planning Commission.
- **PURKEY** stated he talked to two (2) different law firms when he attended the 2010 MTA Conference, and the only thing that could be done was to regulate through zoning. It has come to our attention that won’t work because people don’t have to tell where they live and who they are, so not sure how to zone for that. The marijuana issue is still against Federal Law. Per the Cooley Law Professor, author of the “White Paper”, it might never happen, but the township could run into trouble with the Federal Government if the Planning Commission helped to facilitate, distribute, grow, and cultivate marijuana.
- **DOYLE** was concerned that the Planning Commission could be jeopardized because we (Planning Commission) don’t have anyway to do any type of controlling.
- **NEWMAN** stated that when the Planning Commission started to discuss the marijuana issue, it was not whether to agree or disagree with the law or referendum, but if the Planning Commission didn’t get out in front of the issue, similar to the “wind turbines”, something needed to be on the books. If the law required people to register, then the Planning Commission had the obligation to give a mechanism by which people could register if that was what the law stated.
- **NEWMAN** felt that if the Community Health Department (Health Department) was in charge, what would there be for the Planning Commission to do?
- **GENSHEIMER** stated the Health Department could not share the information they received to the public.
- **PURKEY** stated it would be similar to having the Police Department do the inspections.
- **DOYLE** stated if there were no rules to operate, what would stop them from operating? Is there some way that if it is legal, and the township has nothing in order as far as the State is concerned, they could come into the township and set up and not talk to the Planning Commission at all and still be legitimate with the State. The Planning Commission would be in left field.

- **PURKEY** stated people could come into the township and set up and not talk to the Planning Commission; it would be against the law for the Planning Commission to ask any questions.
- **DOYLE** felt that through conditions, people would have to meet the zoning in the township. Example: in a day care home for six (6) to eight (8) people, someone from the home would have to come to the Planning Commission to get zoning approval in the township; there could be conditions placed on the request such as fences, etc. If the Planning Commission could have at least a condition to fall back on, it would be a similar case for the current (marijuana) issue. The State really decides what can and cannot be done, but the Planning Commission could throw in a few conditions to make it acceptable for the township.
- **PURKEY** stated the Planning Commission could not ask people where they are, what they are doing, or who they are. A caregiver doesn't have to give the names of the people they are growing the plants for.
- **DOYLE** wanted to know that if something was on the books and found out they have something afterwards, wouldn't that be a violation. It would make the Planning Commission very vulnerable
- **NEWMAN** felt the Planning Commission could do some type of zoning . The application would have to be limited with the only identifying item being the address. The people would still have to operate in the area that was zoned for it.
- **PURKEY** felt nothing could be done.
- **GENSHEIMER** wanted to know if the State had made any kind of clarification as to whether it would be a business, hobby, or personal use.
- **PURKEY** stated some of the municipalities have declared a moratorium on the issue until legal clarification has been received. The township couldn't supersede a State Law, even though a State law supersedes a Federal Law, which it isn't suppose to.
- **NEWMAN** stated there was an application process with the State to get a patient or caregiver identification card. Under the law, the State is prohibited from sharing the information with the Planning Commission. All they do is verify the validity of the identification card; the card is exempt from the Freedom of Information Act.
- **FLOWERS** wanted to know what would happen if he called up and stated that one of his neighbors was using marijuana? Would someone verify the use? Only the Police Department could check. What is going to happen in the future when someone comes in to complain that marijuans is being grown next to his house? Nothing is on the books for or against marijuana.
- **NEWMAN** stated the State Law said he/she could have the marijuana. If there were suspicious behaviors, people coming and going, and the smell of marijuana, the Police Department would knock on the door and perhaps have a search warrant. The person would state that he/she was a caregiver and could grow up to sixty (60) plants. There is nothing in the State Law that says a person could go off and grow marijuana because they felt like it.
- **PURKEY** stated there was two (2) type of marijuana: illegal and legal and it was hard to tell the difference between the two (2).

- **FLOWERS** wanted to know what to do with a neighbor that had obtained his card and was growing plants in his basement.
- **PURKEY** stated to go to the Police Department, since it was an illegal drug and the Police Department could determine whether it was legal.
- **NEWMAN** stated that was what you called “definitive defense”.
- **BUELL** stated about eight (8) weeks ago, he stood in his backyard and watched two (2) helicopters fly over a house just past Cole Creek. The Drug Enforcement agent was there and the individual produced his card. Later the helicopters flew away.
- **NEWMAN** stated there was nothing in the law that stopped the Planning Commission from regulating dispensaries because something could be done to make the language clearer regarding the dispensaries. Dispensaries are not legal. In California, dispensaries are smoking rooms.
- **PURKEY** wanted to know if something could be done to turn the issue back over to the State to where they would come up with an ordinance that stipulated that if there were problems, it would go back to the State.
- **FLOWERS** wanted to know if the Federal Government could do anything because they won’t prosecute.
- **NEWMAN** stated there was discretion that if the medical marijuana use was a pretense for manufacturing and distribution, the person would be prosecuted.
- **PURKEY** stated it was his understanding there hasn’t been a provision to purchase small plants, cuttings, or seeds to start the stock; would there be some way the Planning Commission could do something in that particular area.
- **NEWMAN** stated the mystery was how do people get their plants, as there isn’t anything in the State Statute as to how people are supposed to get their seeds or beginning stock.
- **BUELL** felt the Planning Commission had to be careful because one could be intruding on the Right to Farm Act.
- **NEWMAN** mentioned the City of Birmingham and Dryden Township have done ordinances pertaining to medical marijuana.
- **PURKEY** stated since there would be a cut of State Shared Revenue, he (Purkey) didn’t want the township to be a test case that would cost a lot of money. It was mentioned that Michigan Township Association (MTA) has sometimes gotten behind the municipalities on certain issues, but it had cost money.
- **FLOWERS** mentioned a case which the MTA had defended the municipalities due to the wrong formula being used for taxes. It took about five (5) years to resolve the issue.
- **DOYLE** stated there had to be a case first, then a lot of people would come forth to help with the issue.
- **NEWMAN** stated the case could go back and forth between the Legislature and the Appellant Court for a while.
- **GENSHEIMER** felt the township could not afford to be a “poster child”.
- **NEWMAN** stated that in order for a case to go to Court, there had to be a “Right for Consideration”. The township could pass a lot of ordinances, on any number of items, and unless someone should come in and applied for something or had been impacted by

them, they didn't have a case. "If there is no harm, there is no damages and if no damages, there is no case".

- **PURKEY** wanted to know what would happen down the road, when the Federal Law superseded State Law, therefore in Flushing Township we would not pass any ordinance or anything that had to do with the growing, selling, or distribution of marijuana and didn't want to prosecute anyone. If citizens come to the Planning Commission and the Planning Commission didn't do anything they could state "yes" but it was legal.
- **NEWMAN** stated the Planning Commission could not be sued by the citizens. The recourse would be a Recall or have someone run against them and have them lose the next election. If you don't do nothing you will not get in trouble. If you pass an ordinance and don't enforce it, you could get sued because the township did not enforce it.
- **BUELL** felt there were two (2) competing entities responsible for the rules: the legislators and the Community Health Department. Nothing has been available to work with since the original medical marijuana law was passed. What would a moratorium on a situation like this look like?
- **NEWMAN** stated a moratorium was something provided by law for a certain period of time that wouldn't be enforced. A moratorium was temporary.
- **PURKEY** wanted to know if a moratorium was just sitting on the issue and not going along with an issue.
- **DOYLE** stated a moratorium was a discouragement.
- **NEWMAN** stated it was a short term remedy and if removed, it would be effective immediately.
- **PURKEY** stated there needed to be a two-thirds (2/3) majority vote to change an initiative in the legislative. Could Lansing do anything within the next six (6) months to pass something that made sense.
- **FLOWERS** stated the Medical Marijuana Act passed by sixty-four (64%) percent of the Michigan people. There had to be a majority of the vote.
- **NEWMAN** stated if voted on today, he wasn't sure if the law would pass because people thought they were voting for one thing and got something totally different.
- **PURKEY** stated that people thought they would be written a prescription, then go to a State License Pharmacist, or be able to grow one (1) or two (2) plants; they didn't understand there would be caregivers and people setting up marijuana warehouses.
- **NEWMAN** stated people could go to the local pharmacy and purchase vicodin which would be a lot stronger than marijuana.
- **PURKEY** stated he doesn't remember reading about the caregivers, etc.
- **FLOWERS** stated the medical marijuana issue was a very big issue on the ballot.
- **BUELL** stated there was a big bill board sign going into Flushing City marketing big plants; not sure if the sign was appropriate due to the sign ordinance.
- **PURKEY** stated there were big businesses with big money involved in the marijuana.
- **BUELL** stated that nothing could be done to the individual who grew marijuana if he has a card; the thing the Planning Commission could do was deal with the dispensary business.

- **NEWMAN** stated per the “White Pages”, there was nothing in the law that mentioned dispensaries - only patients and caregivers.
- **PURKEY** stated that a caregiver could grow plants for five (5) patients and don’t have to tell the names of the patients.
- **NEWMAN** stated what would be the issue about renting space (such as a pole barn) to distribute if you were only going to distribute to five (5) people.
- **PURKEY** stated you could only have 2.5 ounces of marijuana in your possession. One plant could grow as high as the ceiling and if you had ten (10) to twelve (12) plants drying the buds, you would have more than 2.5 ounces.
- **NEWMAN** thought the 2.5 ounces was carry weight (harvested and ready to use).
- **PURKEY** stated the caregiver could transport 2.5 ounces at one time. At one time, the caregiver could have more than 2.5 ounces in one area.
- **BUELL** compared the marijuana limit to pheasant hunting: two (2) pheasants a day or have eight (8) in your possession (six (6) in the freezer and two (2) in your backpack).
- **NEWMAN** would like to regulate/zone dispensaries because it hasn’t been mentioned in the law. Even if allowed to zone on the caregivers it would not apply to the patient. If growing twelve (12) plants it would not be considered a farm and require to be zoned agriculture.
- **PURKEY** stated there was a concern that caregivers would get together and rent a big space and create a big coop where there might be three hundred (300) plants.
- **NEWMAN** stated it would violate the security/lock law. If a lot of caregivers went together and purchased a storage lot, the plants would have to be segregated or fenced off. Each caregiver could only have sixty (60) plants in his custody and control.
- **FLOWERS** stated the plants had to be locked up individually.
- **NEWMAN** stated if there were five (5) people that were sharing an area and each had sixty (60) plants which would be a total of three hundred (300) plants, and the individual would now have access to three hundred (300) plants but by law, he was only supposed to have access to sixty (60) plants; he would be over by two hundred and forty (240) plants. Everything has to be separated.
- **DOYLE** wanted to know why the Planning Commission didn’t abide by State Law. If anything is ever brought to Court it would be between the State and the Federal Law and would eliminate the Planning Commission.
- **NEWMAN** stated what the Planning Commission was trying to do was to protect the citizens but not run into trouble with the State Law and not be sued.
- **DOYLE** stated the whole thing was, did the Planning Commission want to concern themselves with the people of the township and if they have any complaints about marijuana. We should either go all “hogg” and say precisely what people could and couldn’t do or fall back on the zoning laws and do according to what the State says.
- **GEHSHEIMER** stated the example which **BUELL** gave was alarming where the person showed their card and the “Feds” walked away.
- **DOYLE** stated it showed that the Feds would do that forever; they don’t want to get involved with what the State says.

- **PURKEY** stated the Planning Commission could ban any sort of co-op where everyone had their own door to enter the storage facilities.
- **NEWMAN** stated most of the Storage Rental Units state in their contract that the storage was for static storage only but something could be done about dispensaries; there were discrepancies about the marijuana law regarding the safety devices.
- **CUDDEBACK** wanted to know if some kind of rule was created by the Planning Commission regarding the dispensaries in order to keep them away from schools, churches, etc. and the Police Department received a call that a dispensary was within the perimeters, that should not be there, they could act only on you can't be here but not on the marijuana or anything else?
- **DOYLE** stated as long as the people were operating within the law.
- **NEWMAN** stated they still have the card.
- **CUDDEBNACK** wanted to know if the Police Department could force dispensaries out of the area after the community found out they were that close to a church, school, etc.
- **NEWMAN** felt the only power the Planning Commission would have now, and feeling comfortable with, would be issuing a ticket for a zoning violation.
- **FLOWERS** stated there should be a legal distance between schools, churches, and facilities such as adult foster homes.
- **PURKEY** stated if a cancer patient lived across the street from a school, Planning Commission could not tell the patient that he couldn't grow his own and smoke marijuana.
- **NEWMAN** stated a caregiver could not be restricted either.
- **BUELL** inquired if a caregiver could be restricted to C-2's and no place closer than one-half (1/2) mile to a school.
- **NEWMAN** mentioned the City of Wyoming was sued regarding a licensing scheme and later the home was broken into and theft of cash and marijuana was taken from the caregivers. There was a ban put into effect for over regulating. Example: what if there were two (2) caregivers, a husband and wife team, who are both nurses and registered caregivers could they have one hundred twenty (120) plants in the house?
- **DOYLE** stated if the State said that was "ok" (the Example), then it would be "ok."
- **NEWMAN** wanted to know if the Planning Commission should be pro active about banning dispensaries to make it clear they were not allowed in the Township. (The question will be referred to Attorney Steve Moulton).
- **DOYLE** stated the dispensaries would be a major point to begin with.
- **CUDDEBACK** wanted to know if the Planning Commission would be banning or regulating dispensaries. **NEWMAN** stated it would be outright banning dispensaries.
- **NEWMAN** stated the Planning Commission would be banning a place open to the public that dispenses marijuana. Federal Law states that you can't do it; nothing from the State Law says you can do it.

IT WAS DETERMINED TO WAIT FOR MORE INFORMATION FROM ATTORNEY MOULTON.

NEW BUSINESS:

1. Election of Officers

CHAIR OPENED THE FLOOR TO NOMINATIONS:

- 1) **PURKEY MOVED**, seconded by Flowers for the people currently holding office be nominated for the positions they hold. MOTION CARRIED.

NOMINATIONS CLOSED

VI. PUBLIC COMMENTS:

8:03 P.M. – OPENED TO THE PUBLIC FOR NON-AGENDA ITEMS

None

8:04 P.M. – CLOSED TO THE PUBLIC FOR NON-AGENDA ITEMS

VII. BOARD COMMENTS:

1. **BUELL** will be absent from the Planning Commission for February and March.
2. **PURKEY** will be absent from the Planning Commission for February; there has been a lot of comments on the Medical Marijuana Act; don't want to get Planning Commission out on the limb because the township doesn't have the money to defend the issue.
3. **DOYLE** stated nothing has been done on zoning for years (referring to the updated zoning maps from Rowe Inc.)
4. **FLOWERS** has been in contact with Doug Piggott of Rowe Inc.; there will be a training session in the Spring sponsored by Rowe Inc on how to utilize the Census; Piggott would be glad to come out and help the Planning Commission with the census information which will be helpful when it comes to the Master Plan; a new zoning map is in the works for Flushing Township.
5. **MORFORD** stated that Doug Piggott will be updating the zoning maps. There will be two (2) large zoning maps for the main office and small maps for each of the Board of Trustees, Planning, and Zoning Board of Appeals Members.
6. **NEWMAN** will schedule a February 2011 Planning Commission Meeting but if there are no issues for the February Meeting, the meeting will be cancelled.

VIII. MEETING SCHEDULE: NEXT REGULAR SCHEDULED MEETING WILL BE HELD ON MONDAY, FEBRUARY 14, 2011 AT 7:00 P.M.

REGULAR SCHEDULED MEETING DATES:

MONDAY, MARCH 14, 2011 AT 7:00 P.M.

MONDAY, APRIL 11, 2011 AT 7:00 P.M.

MONDAY, MAY 9, 2011 AT 7:00 P.M.

IX. ADJOURNMENT: Due to lack of business matters, **NEWMAN** adjourned the meeting at 8:15 p.m.

MARK J. NEWMAN, Chair

JULIA A. MORFORD, Recording Secretary

RICHARD BUELL, Secretary
Planning minutes 01 10 2011

Date of Approval