

CHARTER TOWNSHIP OF FLUSHING
6524 N. SEYMOUR ROAD
FLUSHING MICHIGAN 48433
SPECIAL ZONING BOARD OF APPEALS MEETING
DATE: FEBRUARY 1, 2000 **TIME: 7:30 P.M.**
PHONE: 810-659-0800 **FAX: 810-659-4212**
WEB ADDRESS: <http://www.gfn.org/flushing/main.htm>

The meeting was delayed for 15 minutes to give members time to review information just received by Mr. Henneke from Attorney Moulton

MEETING CALLED TO ORDER at 7:45 p.m. by Chairman Henneke. He asked the recording secretary to call the roll.

MEMBERS PRESENT

Edward Henneke, Chairman
Harvey Workman, Vice Chairman & Secretary
Lynn C. McLean, Township Board Representative

James Sarka
Richard Vaughn

ALSO PRESENT:

Jerald W. Fitch, Building Inspector Ida M. Reed, Recording Secretary

MEMBERS ABSENT: None

OTHERS PRESENT: Attorney Chimovitz, Jim Hough and 8 area residents

AGENDA FOR SPECIAL MEETING:

1. Meadowbrook Manor's appeal of a decision made by the Flushing Township Board. The board denied their request to rezone 110 acres from RSA to RU-4.
2. Meadowbrook Manor's variance request from RSA to RU-4 subject of a zoning change request.

MEADOWBROOK MANOR'S APPEAL OF A TOWNSHIP BOARD DECISION:

CHAIRMAN HENNEKE stated that the appeal is on the record presented by the body, which is the Flushing Township Board. Attorney Moulton filed a 7 page report, and it is his opinion that it would be difficult for the Township to successfully argue that Meadowbrook Manor's current request is precluded from consideration by application of res judicata or collateral estoppel as the result of the voluntary dismissal with prejudice of May 10, 1995, or the board's denial of the request made in 1996. Following that advice we will proceed with the appeal.

He instructed the public that any interested parties might have up to 30 minutes to present their position. Anyone that had wanted to could have written out his or her request to be heard, but there was none presented. He then asked Attorney Chimovitz to state his position and the basis for the appeal.

ATTORNEY CHIMOVITZ stated that he represents the appellant in this matter, and his client applied for rezoning of 110 acres on Mt. Morris Road from RSA to RU-4. The stated purpose for the use of the land is for a gated senior citizen community. The rezoning request was brought to the Planning Commission in August of 1999 for a favorable recommendation, but was denied. The reason given for denial was that the township already has a sufficient number of lots in RU-4 Zoning District, and still have 187 unused lots in an approved RU-4 Zoning District for a senior citizen complex.

It was then taken to the Flushing Township Board in September 1999. At this meeting they postponed the decision, and sent us back to the Planning Commission. We went back to the Planning Commission and requested a favorable decision, but again they were denied for the same reasons, and for the health, safety and welfare of the township. On December 9, 1999 they came back to the board again, and accepted the recommendation of the Planning Commission.

ATTORNEY CHIMOVITZ stated they believe the Township Board's denial of the rezoning request was arbitrary, capricious, and use of discretion was erroneous, and contrary to the law. They feel the township ignored evidence presented to them by the applicant. They believe the property in the township presently zoned RU-4 is either occupied as a mobile home park or not being used, and may not be used as a mobile home park. They believe suitable land that is zoned Ru-4 is unduly restrictive. This constitutes discrimination against them. They feel the township's refusal to allow them to use this land as a gated senior citizen manufactured home community denies them their constitutional lawful use of their property. They also feel the lack of appropriate zoning in the township, and refusal of the township board to allow the RU-4 zoning is in effect prohibiting the establishment of the use of their land. In the presence of demonstrative deed of that land for use within the township violates a state statute.

ATTORNEY CHIMOVITZ does not believe the refusal of the township board to rezone has any relationship to the health safety, welfare and morals of the community. Because of that we feel we have been denied the lawful use of our property. They think there is a disparity value in land zoned RSA and land zoned RU-4. They feel that restricting this 110 acres from mobile home park use precludes its use for which it is ideally suited.

The idea of a gated senior citizen community on 110 acres adjacent to property that is already zoned RU-4 makes an ideal location. By refusing this development on a road such as Mt. Morris Road or Elms Road, which will hold the extra traffic, is disuse of the roads.

ATTORNEY CHIMOVITZ is adopting the 17-point letter that has been presented to the different boards on several occasions. He has gone through each of those points on previous occasion. This letter has been included in the minutes of the Planning Commission and the Township Board. There are only 8 points to be considered by the township. It is a reasonable return of the investment to the owner. In his opinion there is a demand for this use. There is compatibility with the surrounding park. He believes they have shown compliance with every one of the 8 points. Unfortunately their request was denied. Chimovitz asked the Zoning Board of Appeals to reverse the decision of the township board and allow them to resume this development.

ATTORNEY CHIMOVITZ stated that with respect to the variance, under Michigan Statute, it is his understanding that the ZBA has all the powers of the township board, and may reverse or affirm or modify a decision made by the township board. He is asking that the ZBA grant a variance to the RU-4 zoning so they can provide a gated senior community for the area.

CHAIRMAN HENNEKE asked Mr. Chimovitz if he agreed with the fact that the township does have the authority to zone, and can restrict uses? How does zoning, in this case, prohibit the use of the property that you are presently seeking to change?

ATTORNEY CHIMOVITZ stated they are not being allowed to establish a community of doublewide houses.

CHAIRMAN HENNEKE asked what about other uses, such as agricultural, or stick built houses? You could even have a gated community for seniors where they didn't have to rent the lot.

ATTORNEY CHIMOVITZ stated they could build 4 or 5 small houses on an acre of land. We could do it in such a way that there would be two or more entrances. We prefer to establish a gated community for senior citizens with the RU-4 zoning. This is the business we are in, and are very good at.

WORKMAN asked Mr. Chimovitz:

1. Was that land RSA at the time your company bought it? A. Yes
2. Was there at one point a court decision to change it to RU-4? A. Yes
3. Didn't they themselves, at one point, ask to have it returned to RSA A. Yes
4. On that basis how do you say that the township is stopping you from free use of the land? You had that opportunity at one time, and voluntarily gave up that opportunity, did you not?

A. There are restrictions on the use of this property per the zoning ordinance. He doesn't know why his client changed the zoning back, but at the same time it does have a freedom of choice. At the time it seemed like a good decision, and now something else seems like a good decision.

THERE WAS DISCUSSION concerning the Master Plan and what it planned for in future development. The growth that is going on in the township was also discussed. Discussion also centered around the existing Meadowbrook Park and the number of acres, number of lots, how many were filled, and the plans for future development in that park.

The existing park is approximately 53 acres with 400 lots, and 59 lots that are not filled. Over time they plan to replace the single wide homes with double wide homes.

McLEAN asked what would prevent them from purchasing double wide homes and put them on the land and sell them?

ATTORNEY CHIMOVITZ stated that they are not in the business of selling homes that have been placed on land, they are in the business of renting land.

CHAIRMAN HENNEKE asked, if we reverse the board's decision, would you do as you have agreed?

ATTORNEY CHIMOVITZ stated that they are willing to give that promise and agree to everything they have promised. The houses surrounding the proposal request look just like the houses proposed for the gated community. They also had an environmentalist investigate the property on the east to see if they would have a wetland problem if they put a bridge over the ditch for an entrance off Elms Road. According to the expert it doesn't appear that we will have a wetlands problem if we put the entrance off Elms Road.

VAUGHN asked if this was going to be a phase project?

JIM HOUGH said that it would be done in phases, but the location of phase one would depend on where they put the entrance. Phase one would be done closest to the main entrance.

CHAIRMAN HENNEKE opened the meeting to the public.

ANN HENDERSON 8141 Elms Road has pictures of the drainage ditch that is 6 feet deep. She doesn't know how they would build a bridge all the way across that ditch. She has a large 2500 square foot brick home, and there are other expensive homes in the area. These homes do not look like modular houses. Let them use the land if they want to, but let them put something on there that will not bring down the value of the surrounding homes.

STEVE HOWARD 7260 Mt. Morris Road lives on the southwest corner and objects to these homes because when the homes are put on the property they have completely different standards. They just run down the value of the existing stick built houses. These are not permanent dwellings. They can move them any time they want to. Mr. Howard is a senior citizen, and there is no way he could afford a modular home and rent the property as cheap as he can own his home.

TERRY COLEMAN 7059 Mt. Morris Road said that twice the Planning Commission has denied this and once denied by the Flushing Township Board. He does not approve of the ZBA changing the decision. There are too many people placed in there and it lowers the property value.

IT WAS POINTED out that the residents own the manufactured homes and lease the land. When the house is put there it usually stays there. They are movable but residents usually live there until they die or move. If they decide to sell their home the prospective buyer has to be approved by Meadowbrook Park. The prospective owner does not have to purchase their home from Meadowbrook Manor. State law requires that Meadowbrook Manor allow other businesses to sell homes to be placed in the park.

JACK HENDERSON 8141 N. Elms Road stated that the gated senior citizens community sounds good but an older man could marry a young woman and end up with young children living there.

CHAIRMAN HENNEGE closed the public comment portion of the meeting at 8:40 p.m.

McLEAN pointed out that the board made their decision based on the recommendation of the Planning Commission and legal counsel from Attorney Moulton. Some of the information the board considered was a written statement from Attorney Moulton.

CHAIRMAN HENNEKE stated the purpose of this appeal is for this body to consider what was done by the Flushing Township Board, based on the Planning Commission's recommendation did they fail to properly consider this matter, or did they just rejected the matter. The board does have the right to restrict in certain areas based on the Master Plan. The Master Plan does not provide for this area to be used for RU-4. The Master Plan is one guide that we look to in determining whether or not there are needs in the township that should be met or show a reason that this particular piece of land should be used for RU-4 zoning.

The evidence seems to indicate that even within the present site there are 59 open spaces. There are another 107 acres on McKinley Road zoned RU-4 which is still in the planning stage. The concern Mr. Henneke has, is, that once the property is changed to RU-4 they can do whatever is allowed in that zoning classification. We would not have the authority to restrict it any further other than what the ordinance allows.

CHAIRMAN HENNEKE gave six reasons why he disagreed with Mr. Chimovitz's challenge.

1. Mr. Chimovitz's challenge to the evidence seems to be that the evidence was ignored. Henneke does not know how the evidence was ignored.
2. It appears the land can be used under the RSA for farming use and building homes. That is not unduly restrictive, particularly with the present building boom that is going on.
3. Based on the Master Plan and everything that has been going on over the last number of years, he does not think the township is discriminating against Meadowbrook Manor.
4. The Master Plan is not at a point that we are so restrictive on the RU-4 zoning that we are being prohibitive.
5. The percentage of RU-4 type housing exceeds the average percentage in other townships.
6. The appellant has not met the burden of proof showing that there was error made in the prior hearings in either the Planning Commission or the Township Board.

CHAIRMAN HENNEKE MOVED, seconded by Workman that based on the six reasons listed above to deny the appeal of Meadowbrook Manor. Yes: Sarka, Vaughn, Henneke, McLean and Workman. No: 0 MOTION CARRIED. The appeal has been denied.

MEADOWBROOK MANOR'S VARIANCE REQUEST FROM RSA TO RU-4 SUBJECT OF A ZONING CHANGE REQUEST: CHAIRMAN HENNEKE stated that we have another request before the Zoning Board of Appeals. This is for the same 110 acres to allow a use variance upon this property to place modular homes on rental lots.

ATTORNEY CHIMOVITZ stated that he is asking for a use variance of 110 acres on Mt. Morris Road based on the case of Paragon verses Novi.

CHAIRMAN HENNEKE reviewed the Variance Request Form.

Question (a) Will the strict enforcement of the provisions of the Flushing Township Zoning Ordinance unreasonable prevent the owner from using the property for a permitted purpose, or would render conformity unnecessarily burdensome? If yes, how?

Answer (a) Yes Owner deprived of reasonable use of land. Present zoning is not the highest and best use.

Question (b) Is the need for a variance due to unique circumstances of the property? If yes, describe.

Answer (b) Yes. Size of parcel. See attached 17-point statement.

Question © Did you create the problems you are trying to get around?

Answer © No.

Question (d) Will the requested variance confer special privileges that are denied other properties similarly situated in the same zoning district?

Answer (d) No

Question (e) Will the requested variance be contrary to the spirit and intent of this zoning district and public safety?

Answer (e) No

CHAIRMAN HENNEKE stated that as he understands the Township Ordinance, those five criteria need to be met before the ZBA can grant a variance. Mr. Chimovitz believed that the ZBA has the authority to grant a use variance. Chairman Henneke does not agree with that assumption. The Flushing Township Ordinance only allows the ZBA to issue a dimensional variance, not a use variance.

Faith Howard, Ann Henderson and Terry Coleman didn't understand what this issue was all about. They understood that the request had just been turned down. They do not want a modular home park there no matter what it is called.

CHAIRMAN HENNEKE MOVED, seconded by Vaughn to deny the variance request because the strict enforcement is not unreasonable for the following reasons.

- 1. The appellant is not deprived of the reasonable use of his land.
- 1. The need for a variance is not unique to the circumstances of the property.
- 2. The owner created the problems .
- 3. This would confer special privileges that are denied other properties similarly situated.
- 4. The requested variance is contrary to the spirit and intent of the zoning district and public safety.

Yes: Workman, McLean, Sarka, Vaughn and Henneke. MOTION CARRIED. The variance is denied.

CHAIRMAN HENNEKE informed Mr. Chimovitz that he might be delayed in filing with the circuit court, because the minutes of this meeting are not scheduled to be approved until May 2, 2000, or if a special meeting is called sooner. May 2, 2000 is the next regular scheduled meeting of the ZBA.

CONSIDER APPROVAL OF PREVIOUS MINUTES: McLEAN MOVED, seconded by Vaughn to approve the minutes of January 4, 2000 with a correction on page 1, last paragraph, it should say December 9, 1999 in both places in the paragraph. MOTION CARRIED.

UNFINISHED BUSINESS:

JERRY FITCH, Building Inspector asked for clarification of the Earth Removal Permit approved for the Parkers. The Parkers have an opportunity to sell 40,000 yards of sand for construction of a road, and there are other builders that want the sand also. The board approved the permit to start in the spring. Their thinking was that sand couldn't be moved in the winter. Fitch felt that we should take advantage of this opportunity to remove a large amount of this sand. This time of year the residents have their windows closed, so there shouldn't be as much of a problem with noise. The sand shouldn't blow around as much this time of year.

HENNEKE MOVED, seconded by McLean to allow the Parkers to start digging and removing sand under their Earth Removal Permit that was approved by the Zoning Board of Appeals on December 7, 1999. MOTION CARRIED.

NEXT REGULAR MEETING will be held on Tuesday, May 2, 2000 at 7:30 p.m.

ADJOURNMENT: As there was no further business the meeting was adjourned at 9:25 p.m.

Edward Henneke, Chairperson

Ida M. Reed, Recording Secretary

Harvey Workman,
Vice-Chairman/Secretary

Date Approved

I, Ida M. Reed, Flushing Township Clerk, do hereby certify that this is a true and complete copy of the minutes of the Special Meeting of the Zoning Board of Appeals held on February 1, 2000.

Ida M. Reed, Clerk

Raised Seal