

CHARTER TOWNSHIP OF FLUSHING
6524 N. SEYMOUR ROAD
FLUSHING, MICHIGAN 48433
810-659-0800 FAX: 810-659-4212
SPECIAL PLANNING COMMISSION MEETING
DATE: SEPTEMBER 25, 2006 TIME: 7:00 P.M.
WEB ADDRESS <http://www.flushingtowship.com>

MEMBERS OF PLANNING COMMISSION

Mark J. Newman, 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: Newman, Doyle, Swanson, Flowers, Gibbs, Pratt, Fitch, and Morford

ABSENT: Buell

OTHERS PRESENT: None

I. MEETING CALLED TO ORDER at 7:03 p.m. by Planning Commission Chair Mark J. Newman with Roll Call and the Pledge to the American Flag.

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

III. APPROVAL OF MINUTES:

(A) **MINUTES OF AUGUST 28, 2006: FLOWERS MOVED**, seconded by Gibbs to approve the amended Minutes of August 28, 2006. **MOTION CARRIED.**

(B) **MINUTES OF SEPTEMBER 11, 2006: PRATT MOVED**, seconded by Doyle to approve the Minutes of September 11, 2006 with corrections. **MOTION CARRIED.**

IV. UNFINISHED BUSINESS:

1. **Review and Finalization of the 2006 Michigan Zoning Enabling Act**
NEWMAN reviewed the letter of opinion dated September 13, 2006 from Flushing Township **ATTORNEY STEVE MOULTON (ATTORNEY MOULTON)**, concerning questions the Planning Commission had concerning the 2006 Michigan Zoning Enabling Act (ZEA) and the proposed Revised Procedures of the Act from **DOUG PIGGOTT (PIGGOTT)** of Rowe Inc. The questions were:

1)

QUESTION: When affected properties are located in an adjoining municipality, is notice sent to the municipality, or to the affected property owners?

ANSWER: (Attorney Moulton) MCL 125.3103(2) states:

“Notice shall also be sent by mail or personal delivery to the owners of property for which approval is being considered. Notice shall also be sent to all persons to whom real property is assessed within 300 feet of the property, and to the occupants of all structures within 300 feet of the property, regardless of whether the property or occupant is located in the zoning jurisdiction.”

INTERPRETATION: The statute requires notice be sent directly to the assessed person and/or occupant of the affected property.

2)

QUESTION: In order to receive zoning notices, are public utilities required to register with the township clerk as airports are required to register?

ANSWER: (Doug Piggott) Section 20-2001(b) states:

“The township clerk shall give similar notice to each electric, gas, pipeline, telecommunication and public utility company and the manager of each airport that registers its name and mailing address with the Township Planning Commission for the purpose of receiving such notice, and to each railroad operating within the district or zone affected.”

(Attorney Moulton) MCL 125.3306 states:

(1) “before submitting its recommendations for a proposed zoning ordinance to the legislative body, the Commission (Planning Commission) shall hold at least one public hearing. Notice of the time and place of the public hearing shall be given in the same manner as required under section 103 (1) for the initial adoption of a zoning ordinance or section 202 for any other subsequent zoning text or map amendments.”

(2) “Notice of the time and place of the public hearing shall also be given by mail, to each electric, gas, and pipeline public utility company, each telecommunications service provider, each railroad operating within the district or zone affected, and the airport manager of each airport, that registers its name and mailing address with the clerk of the legislative body for the purpose of receiving the notice of public hearing.”

INTERPRETATION: the question being – (2) “that registers its names and mailing address with the clerk. . .” applies to each of the previously listed entities, or is limited to the airports.

ATTORNEY MOULTON felt the legislature intended to add airports to the existing list of entities which would be entitled to notice, provided the entity registers with the clerk.

MCL 125.279 (which was repealed with the adoption of the ZEA) originally stated:

“. . . notice of the . . . hearing shall also be given by mail to each electric, gas, pipeline, and telephone public utility company, and to each railroad operating within the district or zone affected, that registers its name and

mailing address with the township zoning commission for the purpose of receiving the notice.”

ATTORNEY MOULTON stated that in order to receive notice, the ZEA requires the listed entities to register with the clerk. Airports are treated no differently than the listed utilities.

IT WAS DETERMINED THAT A LETTER BE SENT TO EACH ENTITY CONCERNING THE REGISTRATION OF THEIR ENTITY.

3)

QUESTION: How best to implement the ZEA’s notice of adoption requirements and what changes are necessary to sections 20-2000, 20-2001, and 20-2003 of the zoning ordinance?

ANSWER: **Section 20-2000** - The ZEA requires no changes to existing, and that section remains unchanged both as to substance as designation.

Section 20-2001 – based on the language of **Section 306 of the ZEA, MCL 125.3306**, **ATTORNEY MOULTON** suggested that **Section 20-2001(b)** read as follows:

“The township clerk shall give similar notice to each electric, gas, and pipeline public utility company, each telecommunication service provider, each railroad operating within the district or zone affected, and the airport manager of each airport, that registers its name and mailing address with the township clerk for the purpose of receiving such notice.”

Section 20-2002 – the existing section 20-2002 dealing with fees, would be left unchanged, except it would be designated Section 20-2003.

Section 20-2002 – **ATTORNEY MOULTON** suggested adding the following to 20-2002(a):

“Unless the ordinance or amendment to the ordinance specifies a later date, the ordinance or amendment shall be effective upon expiration of seven (7) days after publication.”

Section 20-2002(b) follows the requirements of MCL 125.3401(8) which requires a copy of the notice of adoption be mailed to the airport manager or an airport, which is registered to receive notice. The legislature chose not to require providing notice of adoption to any other entity which is registered to receive notice.

Section 20-2003 – Fees

4)

QUESTION: Does the ZEA require any changes to the ordinance with respect to variances, particularly variance review procedures?

ANSWER: Variances including the variance review procedure are covered by existing **Section 20-2208**. There were suggestions (from Doug Piggott, Rowe Inc.) of additions/changes to subsections (a)(1) and (a)(4).

- (1) **20-2208 (a)(1)** - addition of the sentence:
“The ZBA may only consider non-use variances and may not grant use variances.”
- (2) **20-2208 (a)(4)** – change in language
“Not less than fifteen (15) days before the meeting the township clerk shall provide notice as required in Section 20-1801 of this ordinance.

The ZEA expressly states townships do not have the authority to grant use variances. The ZEA expressly addressed the legal standard for granting non-use variances and used the language “practical difficulties.” The Township Zoning Act used the language “practical difficulties or unnecessary hardship.” The courts questioned the unnecessary hardship standard, and the ZEA expressly limits the standard to practical difficulties. **Section 20-2208(a)(6)** correctly defines the applicable standard in terms of practical difficulties. The language of unnecessary hardship is not used in stating the standard, nor is it used in describing the various circumstances to be considered by the ZBA in determining whether a practical difficulty exists.

INTERPRETATION: Per **ATTORNEY MOULTON**, as the legal standard is correctly stated in the ordinance, and the various circumstances described in the ordinance are appropriate to determining whether practical difficulty exists, it is my opinion that no change is required to the ordinance in this regard.

DETERMINATION:

NEWMAN would like the changes made consistent with the Rowe proposal and **ATTORNEY MOULTON’S** letter dated September 13, 2006, by submitting the corrected version to **ATTORNEY MOULTON** for a final review to make sure what he (Attorney Moulton) suggested has been complied with, and the notices sent to all the entities for registration purposes. After everything has been completed, a Public Hearing will be determined.

V. NEW BUSINESS:

1. Review and Discussion of the Building Check List

DOYLE stated in the past, the Planning Commission would review each item on the Site Plan Review Check List and then review the Ordinances; the rational would then be determined as to why or why not the Commissioners did or did not go along with the particular request. Some comments and concerns:

- **DOYLE:** could conditions that dealt with a particular review be placed on the check list.
- **NEWMAN:** should there be a citation or reference.

- **DOYLE:** while reviewing the Site Plan Review Checklist, part of the rationale had been not only the checklist but to review what the ordinance stated as to conditions, etc. which would be recorded in the minutes and would give the rationale of why the issue had been approved or rejected. It would be a two (2) fold matter by putting the issues in the minutes of the meeting and also on the check list. If everyone had the ordinance in front of them for a particular request, with all the conditions whereby the Planning Commission made decisions, it would become part of the check list. In other words, does the Site Plan Review Checklist have enough information to take care of the job?
- **PRATT:** wanted to know if the title could be taken and then have in outline form “a”, “b”, “c”, “d”, and “e”, in the boxes. **FITCH** could hand the material to the individual; the individual would have Column 2 to put what was proposed, and there would be Column 3 for the Planning Commissioners to place their own notes. The Clerk could then make the notations in the minutes as well as give the information back to the individual as to what had been requested. **DOYLE:** the columns would not only give space for the requirements of the ordinance, but in some cases, depending not only on the site plan but other things also. There could be other rationale according to the ordinance that would be greater than the requirements.
- **PRATT:** in some cases if an item didn’t apply, such as in “Environmental Study” an “N/A” could be stated in the space; it would allow the Commissioners to make notes and then also list the conditions.
- **NEWMAN:** felt the current Site Plan Review Check List was complete but gave several ideas such as:
 - a. the document could be placed in a landscape position on the page where additional columns/space could be added.
 1. there could be a section for the statute
 2. there could be a section for the requirements of the statute
 3. there could be a section for what the applicant had proposed
 4. there could be a section for “add ons”; such as if there needed to be “x” number of pine trees along the property line because the Planning Commission didn’t want the headlights shining in the neighbors houses.
 - b. a cover sheet dealing with each zoning district could also be added to the current site plan review checklist.
- **NEWMAN:** definitely liked the idea of a reference if an individual would like to come in and review the matter ahead of time.
- **FLOWERS:** all the information would be on one (1) document, especially with the reference.
- **FITCH:** doesn’t see any problem with the current Site Plan Review Check List; no additional items to be added to the checklist at the present time. A cover sheet would eliminate a few of the items.
- **GIBBS:** would prefer to have exactly what the ordinance referred on the checklist.
- **FLOWERS:** the current Check List would be a “blanket” check list and would not cover everything. If something did not apply, a “N/A” could be indicated.
- **SWANSON:** sometimes the information is unclear to the applicant; some of the information does not pertain to the individual and his request.

- **NEWMAN:** if **DOYLE** and **PRATT'S** ideas were incorporated in “reference to the ordinance” and was given an explanation, the individual might if doing a certain project, would know what to do.
- **FITCH:** liked the idea of adding sections; Site Plan Reviews for a subdivision would be different from a Commercial Site Plan Review – what sections would be referenced? There could be different Check Lists such as for Commercial; RSA; PUD, etc.
- **DOYLE:** would like to see the wording added:
“This document must be completed before you meet with the Planning Commission. Turn this completed document into the Building Inspector before the meeting so copies could be made for the Commission members to review.”

ADDITIONAL INFORMATION: applicant must be able to satisfy the questions that governed the ordinance for a particular request, so the individual would have to look at the ordinance and answer the questions that would be asked from the ordinance itself, which would be the other conditions.

- **NEWMAN:** has seen the language included in other documents:
“This check list serves as a guide or assistance to you complying with the terms of the Charter Township of Flushing Ordinances. However, completing this form does not guarantee that you have met all the requirements and applicants are encouraged to review the ordinance themselves.”

OR

“Applicant is encouraged to review the ordinances themselves to insure they are in compliance.”

OR

“The Planning Commission will base their final decision on all the documents.”

- **DOYLE:** sometimes the spaces on the Site Plan are not filled out correctly.
- **FITCH:** if there are specific questions from individuals, **FITCH** could then give a copy of the ordinance to the applicant.
- **SWANSON:** there have been discussions at previous Planning Commission Meetings of having a pre-committee, especially for large developments, to meet with the developers to make sure everything was in place before the matter was presented to the Planning Commission.
- **DOYLE:** if the section of the ordinance, “Acceptance of the Site Plan” and attached to the Site Plan Review Checklist and was given to the applicant each time there was a request, eventually the architect or engineer would ask for the Site Plan Review Checklist. The ordinary individual would not ask for the Check List.
- **SWANSON:** there haven’t been any site plan issues with the larger PUD developers.
- **NEWMAN:** good suggestions had been given from the Planning Commission members in changing the layout of the Site Plan Review Checklist by putting applicants on notice that the information would be to help them, but would not guarantee that: 1) the request would be approved and 2) the individual would not be 100% compliance with what the

Planning Commission wanted to see. **NEWMAN** questioned whether the Planning Commission should go through the lengthy review during the meeting by doing a lot of the leg work for the applicant, or should the applicant obtain more of the information, for the Check List, on his/her own time.

- **DOYLE/SWANSON:** the applicant should do more of the work themselves.
- **GIBBS:** if the applicant had everything filled out before he/she come before the Planning Commission, there would be very few questions; although there would always be questions. The current Site Plan Check List has worked in the past so felt the Checklist should not be changed.
- **DOYLE:** wanted to know if the checklist could be made simpler.
- **GIBBS:** the checklist would cover a lot of bases and people would read the information.
- **NEWMAN:** instead of re-working the Checklist, put a cover sheet with the information that stated some of the information that has been discussed; the applicant would spend more time going through the ordinance.
- **SWANSON:** in the section entitled "Ordinance Requirements" the section number could be placed so the applicant could find the exact wording of the ordinance.
- **FITCH:** there would need to be four (4) or five (5) cover sheets to cover the different zoning districts: 1) site condominiums/subdivisions; 2) churches; etc. due to so many different setbacks?
- **DOYLE:** the only way to take care of the issue at hand would be to review the checklist, then review the ordinance, then make a decision on each individual issue.
- **FITCH:** not sure how to streamline the checklist to make it easier for the applicant.
- **FLOWERS:** how simple does the Planning Commission have to make the checklist for the applicant to understand? **GIBBS:** it has to be made easy to understand.
- **DOYLE:** the checklist should be quicker for the Planning Commission to handle.
- **NEWMAN:** inquired from the Planning Commission if they wanted to pay with their time over the next few months to have several checklists with more information included, so down the road the benefits would be reaped when the applicant came in with all the needed documents.

OR should time be spent in the future when the Checklists are received by the Planning Commission and time would be spent during the meeting going over each issue on the Checklist. **NEWMAN** stated that, at the last Planning Commission Meeting with the company on Sheridan Road, he (Newman) went through the ordinance and, based on what was put on the Checklist, he (Newman) only had a couple of questions to ask the applicant.

- **DOYLE:** the checklist could be changed and then, if after four (4) or five (5) weeks, the Planning Commission could then revert back to the current checklist. For a PUD, the time could take a long time reviewing the Site Plan Review Checklist.
- **DOYLE:** in order to make the checklist easier, the ordinance number could be stated as to where it was located so the applicant could investigate each issue. If the Planning Commission could get through the particular site plan by doing just the checklist, and nothing else, and the request was approved based on what the checklist stated, the checklist would be all that would be needed. If the Planning Commission found all the

steps had been taken to make it easier for the applicant and it still wasn't enough, the Planning Commission could still refer back to the ordinance and ask questions.

- **SWANSON:** why not just have one Site Plan Review Checklist with a separate cover sheet for each zoning district.
- **NEWMAN:** the columns on the Checklist would be entitled: 1) Title; 2) Proposed; and 3) Determination of Commissioners.
- **FLOWERS:** felt **FITCH** would know the ordinances that would be needed for a specific purpose.
- **DOYLE:** directed a question to **FITCH** as to the number of applicants that had requested a copy of the ordinance, how many had made a difference in the checklist. .
- **FITCH:** recommended the deletion of the column "Ordinance Requirements" and replace with "Proposed."
- **NEWMAN:** inquired from the Commissioners as to when the Checklist was reviewed at the Planning Commission meetings with the applicant, should 1) each line of the Checklist be read, 2) then read into the record what the ordinance had required, 3) read what the applicant had written, and 4) then make a decision **OR** would it be sufficient to ask if anyone had any suggested changes.
 - a. **SWANSON:** felt it was the responsibility of each Planning Commission Member to know the ordinance. After review, ask just the specific questions from the applicant. There isn't enough time to review the ordinance.
 - b. **FITCH:** the applicant is given time to lay out his proposal; a lot of issues such as setbacks, etc. listed on the checklist are answered during the proposal. It is very important the issues are in writing. **FITCH:** a cover letter with individual sections would not only help the applicant but also the Planning Commission.
- **PRATT:** found several things, in the ordinances, that aren't covered in the Site Plan Checklist; if everything was spelled out in writing, everything that needed to be reviewed would be in front of the Planning Commission and the applicant. Site Plan Procedures should also be included so the applicant would know what was expected.
- **NEWMAN:** if everything was spelled out, it would take a lot of time now.
- **FLOWERS:** the procedure would not only help the applicant and make the information clearer for the Planning Commission, but would also give **FITCH** a better handle of the issue.
- **SWANSON:** there are some issues on the Checklist that are not mentioned in the ordinances. Why not have something to the fact it could be a "conditional requirement"; (to the applicant) "what would be your proposal?"
- **PRATT:** the issue of the head light glare would be a conditional requirement.
- **NEWMAN:** throughout the ordinance it is stated what the Commission would require for the conditional requirements; it would be the charge of the Commission to do what is consistent with the area to make it fair to adjoining properties. There could be a lot of requirements. **DOYLE:** the requirements would depend upon the request.
- **PRATT:** there could be further argument to list all the "conditions" and then call them "conditions" so the applicant would know what the conditions would be; the conditions

could be handed to/or sent to the applicant after the meeting. The conditions should be recorded in the minutes so as to eliminate any misunderstandings.

- **DOYLE:** the current Checklist should be left as is but attach a cover sheet that explains the different parts of the ordinance to the applicant; the second column, “Ordinance Requirements” could be changed to “Proposed” and the third (3rd) column, changed from “Proposed” to “Determination of Commissioners”
- **NEWMAN:** by changing the columns, having a cover letter, and after a few of the check lists have been submitted, determine if they are sufficient and if not, have individual checklists for each type of request by having the title, the section number and the words “that applicant shall”. This would not be a guarantee that: 1) the applicant had complied with everything or 2) the applicant would obtain an approval. The applicant would still have to come to the Planning Commission Meeting and be prepared to answer all the questions from the Commission. **NEWMAN** would prefer to have an individual thorough checklist for each type of application.
- **SWANSON:** recommended actually looking into the matter to see how many applications would be needed. **SWANSON** inquired from **FITCH** as to how many applicants have actually come back and questioned the issue. **FITCH** stated that with a Special Use, he would give the proposed applicant a Special Use and the Site Plan Ordinance. If anything else was requested by the applicant, **FITCH** would make sure the applicant got the information; if nothing else was requested by the applicant, **FITCH** assumed the applicant had known what he was doing.
- **DOYLE:** no matter what was put together, and how many different applications were made, all the questions still would not be answered.
- **PRATT:** made reference to Site Plan Article XIX, Section 20-1902, Site Plan Review Requirements:

“Such site plan shall contain the following information. . .”

if the material is a Site Plan Review Checklist, it should represent what the ordinance required; the current checklist has some “loopholes” in it. **PRATT** felt every step of the ordinance should be covered even if it wasn’t applicable, it would be listed and on the minds of the Planning Commission.

- **NEWMAN:** everyone is aware the checklist doesn’t cover everything; it would be the responsibility of the Commissioners to review the material. Do the Commissioners remind themselves of the fact and do the diligent work, which the Commission has always done to review requests with the help of the checklist **OR** would it be fairer to the applicant, and at the same time, to assist the Commissioners to make the checklist more closely or exact to the ordinance. Who would take care of the matter?
- **PRATT:** felt the checklist should mirror the specific ordinance. At the top of the checklist document, the wording: “before any building permits shall be issued, the site plan has to contain the following. . .”
- **NEWMAN:** there are a lot of laws that fall within the Constitution because it would foster the health and well being of the citizenry. Additional wording such as “these are additional items that we feel have come to the attention of the Planning Commission that are important with some projects” and the items that do not have

an ordinance could be placed under the heading due to there not being an ordinance.

- **FITCH:** he and the clerk will sit down and review the checklist to have available at a future meeting.
- **NEWMAN:** the Planning Commission would continue to use the current Site Plan Review Check List.

DETERMINATION:

The Site Plan Review Check List will be reviewed at the next Special Planning Commission to be listed on the Agenda under “Unfinished Business.”

2. Review and Discussion of Cul-de-sacs (also referred to as Courts)

- **PRATT:** a question regarding the frontage setbacks of the property (cul-de-sac) had been asked at a previous Planning Commission Meeting.
- **DOYLE:** the measurement of a cul-de-sac is taken from the front property line to the easement.
- **PRATT:** made reference to Section 20-702, Table of District Regulations – RSA, Lot Width - 100 or 80 with (a). **FITCH** stated that at one time, the cul-de-sac wording was in the Zoning Ordinance. On cul-de-sac lots the building set back line would be measured at the building line at the front of the building. **PRATT** stated Flushing Township **ATTORNEY STEVE MOULTON (ATTORNEY MOULTON)** stated the addition of the wording could be added with an “*” to draw attention to the cul-de-sac information.
- **SWANSON:** when the cul-de-sac issue had come up at a previous Planning Commission meeting, he (Swanson) felt the builder was making reference to the envelope used to build the house to get the setbacks of eighty (80) foot. The road would be forty (40) foot but at the setback line, it would be eighty (80) foot.
- **NEWMAN:** would like for **FITCH** to review the issue and bring the information back to the Planning Commission at the next Special Planning Commission Meeting.

VI. PUBLIC COMMENTS:

8:42 P.M. – OPENED TO THE PUBLIC FOR NON-AGENDA ITEMS

8:43 P.M. – CLOSED TO THE PUBLIC FOR NON-AGENDA ITEMS

VII. BOARD COMMENTS:

1. FLOWERS reminded all the Commissioners about the Genesee County Metropolitan Planning Commission Seminar “Planning Prosperity Together” scheduled for Saturday, October 21, 2006 from 8:00 a.m. until 2:00 p.m. Please let the Clerk know if you would like to attend.

2. NEWMAN stated that **BUELL** was excused due to being out of the country.

VIII. MEETING SCHEDULE:

REGULAR SCHEDULED MEETING – MONDAY, OCTOBER 2, 2006 AT 7:00 P.M.
PROPOSED SPECIAL MEETING – AT THE DISCRETION OF THE PLANNING COMMISSION, THERE COULD BE A SPECIAL MEETING ON MONDAY, OCTOBER 23, 2006 AT 7:00 P.M.

REGULAR SCHEDULED MEETING – MONDAY, NOVEMBER 13, 2006 AT 7:00 P.M.
PROPOSED SPECIAL MEETING – AT THE DISCRETION OF THE PLANNING COMMISSION, THERE COULD BE A SPECIAL MEETING ON MONDAY, NOVEMBER 27, 2006 AT 7:00 P.M.

REGULAR SCHEDULED MEETING – MONDAY, DECEMBER 11, 2006 AT 7:00 P.M.

IX. ADJOURNMENT: There being no further business, **CHAIR MARK NEWMAN** adjourned the meeting at 8:45 p.m.

MARK J. NEWMAN, Chair

JULIA A. MORFORD, Recording Secretary

ERIC SWANSON, Secretary

Date of Approval

Planningminutes 092506