

CHARTER TOWNSHIP OF FLUSHING

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PLANNING COMMISSION MEETING

DATE: SEPTEMBER 10, 2007

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 7:00 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 Pratt to adopt the
Agenda as listed. **MOTION CARRIED.**

III. APPROVAL OF MINUTES OF AUGUST 13, 2007: DOYLE MOVED, seconded by
Pratt to approve the Minutes of August 13, 2007 as amended. **MOTION CARRIED.**

IV. UNFINISHED BUSINESS:
None

V. NEW BUSINESS:

1. Discussion of Natural Features

At a previous Planning Commission Meeting there had been a discussion regarding natural
features such as woodlands, rivers, creeks, etc.

DIFFERENT SCENERIOS REFERENCED:

- **NEWMAN:** on a recent special use permit request, there had been a concern about the
row of pine trees located on the North side of Willowbrook Drive (private road).

- **DOYLE:** when Natural Features have previously been discussed at Planning Commission Meetings, the Planning Commission felt there wasn't anything they (Planning Commission) could do.
- **GIBBS:** a lot of natural features are located on private property so how could the Planning Commission tell someone they couldn't cut a tree down on their property?
- **DOYLE:** trees eventually die and new trees grow back.
- **SWANSON:** at a Planning Commission meeting years ago, the Commission was working on issues to upgrade the Master Plan; there were a lot of people in attendance and were divided up and directed to list the items of importance. Natural Features was the number one issue of importance.
- **NEWMAN:** Natural Features such as natural berms, rolling grounds, and huge trees have been very important in Flushing Township and has played a great part, as far as privacy, for residents. One has to ask how to draft the language (for an ordinance) to tell someone they couldn't cut down a tree on their own property.
- **NEWMAN:** the Planning Commission has the ability, under the broad authority, to make certain requirements for approval such as the number of trees along the property line, etc.
- **FLOWERS:** one great natural feature about Flushing Township is having the Flint River run through the township. The Planning Commission has to realize the township is divided by the Flint River. The township has opened up more with the construction of roads and bridges to cross the Flint River.
- **PRATT:** the Master Plan does refer to the value of natural features. The public has stated overwhelmingly that natural features were a large part of why they lived in Flushing Township. Seminars sponsored by Michigan Townships Association (MTA) and other Planning Commissions have stressed that ordinances needed to flow from the Master Plan and be in align with it.
- **DOYLE:** the opportunity has always been available, on new site plans, to make conditions whereby the resident would have to do what was desired by the Planning Commission. The only thing that could be done would be to have the resident come before the Planning Commission and request a new Site Plan.
- **PRATT:** if an individual should bring in a Planned Urban Development (PUD) request and the developer's plan called for the clear cut of a lot of the trees, and because of what was stated in the Master Plan and the value of the township, the Planning Commission may decide not to allow for the cutting of the trees.
- **NEWMAN** read *Section 3, Goals and Policies, Problem Statements* from the Master Plan:
 - (10) There is potential for inappropriate development in areas with natural features such as flood plains, wetlands, steep slopes, and wood lots that are environmentally sensitive and need to be protected.
- **DOYLE:** the Planning Commission could be concerned about natural features in the township but to try and do something until the zoning was changed, the Planning Commission would not have a right to step in; until the appropriate time, all the Planning Commission could do would be to "just be concerned". Everyone is and has been

concerned about rivers, watersheds, fences, etc. Every house that is constructed is required to have a silt fence around it so that clay and mud would not drain into the storm sewers. A lot of issues are already being taken care of by the County. What else could the Planning Commission put into the ordinance to further natural features?

- **PRATT:** recommended the Planning Commission review aspects from different resources to see what could be done.
- **SWANSON:** sometimes a problem could be created if a bad ordinance has been approved! Example: the City of Zephyrhills (Florida) required a permit to cut down any trees. There was a list of protected trees including “old” oaks. Some of the trees have been cut down because they (trees) were getting very dangerous. One very successful program was to enlist Boy Scouts to read old aerial maps of the municipalities and actually count the number of trees that had been in the area over the previous years. The City then stated a percentage of the area had to have trees planted, which actually encouraged the residents, in the area, to start planting trees.
- **DOYLE:** there have been situations where municipalities were spending a lot of taxpayers money to save a tree.
- **FLOWERS:** the answer to cutting down trees would be re-growth with natural replanting.
- **NEWMAN:** there are two (2) common traits among Flushing Township residents who would be opposed to cutting down the trees:
 - a. privacy
 - b. property rights vs. wanting to preserve natural features
- **FLOWERS:** in addition to the Flint River and trees being two (2) special natural features in Flushing Township, historical buildings could also be added to the list but have slowly been eliminated over the years. One special note is the bottom of the Flint River has gotten cleaner over the years.
- **DOYLE:** with building permit requests, the Planning Commission might be able to review the plot plans in more detail; the Planning Commission could also steer individuals in a direction in order to get a specific house plan, such as “*this would be a beautiful place for a tri-level*” or “*this would be a beautiful area to have an exposed basement on the back of the house*”. Sometime people don’t know the difference and don’t pay attention to specifications that are available.
- **SWANSON:** the Planning Commission should address such questions as “*what could the Planning Commission do about natural features*” and “*what does the Planning Commission want to do about natural features*”. If the Planning Commission wanted to protect the steep slopes (erosion) a permit would be required to cut any tree on a steep slope. The information would have to get out to the public before the resident came in to request a permit.
- **DOYLE:** currently, would there be a need for an ordinance regarding trees; **DOYLE** felt drainage would be more important than trees.
- **NEWMAN:** how would “natural features” be reduced to just trees for a written ordinance?
- **NEWMAN:** a quote from his (Newman) grandfather was “*you can purchase a vacant lot and plant trees or purchase a wooded lot and cut the trees down.*”

- **FITCH:** currently, the only thing that could be done would be to be aware of the natural features when a site plan request had to be reviewed.
- **GIBBS:** not sure if anyone on the Planning Commission has any idea of the cost of one (1) oak tree in the middle of a ten (10) acre field; **GIBBS** has had to pay taxes on a full acre of land when nothing but a tree was planted on the property; the oak tree took an acre away from his (Gibbs) income. There should not be an ordinance in affect that would cost people money by not being able to cut down trees.
- **SWANSON:** there needed to be some type of protection but don't want to see an ordinance in place that would tell residents they couldn't, under any circumstance, cut a tree down.
- **DOYLE:** felt the issue involved the density of the number of people living in the area.
- **SWANSON:** his concern had been when large developments had come before the Planning Commission and didn't care what happened to the natural features.
- **NEWMAN:** Example - Atlanta, Georgia: where the trees would get too tall it was cheaper to bulldoze everything, put the trees in a pile, and then set everything ablaze. Later other vegetation was planted in the area which use to have pine trees.
- **FITCH:** currently, there are several methods in the ordinance pertaining to the development of property that gives means to preserving natural features.
- **PRATT:** didn't think anyone would be in favor of an ordinance that would prevent a resident from cutting a tree down. Perhaps there could be something mentioned on the Building Permit that would state that "*the applicant will retain all possible natural features on the proposed property upon the building*" and would leave the matter open and would be the spirit of the Master Plan, but at the same time, it would give **FITCH** the flexibility of a decision. Example: If the septic line needed to go in a particular area where natural features were located, yet the ordinance stated such and such, there wouldn't need to be a policing agent but would inform the individual the township was intent on saving everything possible with a reason such as the beauty of the trees, healthy for everyone, and actually helping the petitioner.
- **GIBBS:** a poll was taken several years ago on the number of trees that were in the State of Michigan; the results being there were more trees now than when the first settlers came to Michigan. Example: West Branch has had some terrific fires that wiped out hundreds and hundreds of acres of woods; the woods weren't lumbering timbers.
- **SWANSON:** Michigan was mostly prairie in the very early days. (Similar to the land at the Flushing Nature Park). There are certain trees that would not grow unless there was a fire. (The heat of the fire releases the seeds.)
- **FLOWERS:** don't forget the recent fires in the Upper Michigan that destroyed hundreds of acres of woods.
- **GIBBS:** there was enough room for the person that wanted trees on his property and also for the person that didn't want the trees; not sure if an ordinance could be put together.
- **SWANSON:** there could be a requirement that every subdivision had to have a tree of a certain size and diameter planted on each lot.

- **NEWMAN:** the requirement (of trees) would be similar to subdivisions having a percentage of green space such as decorative entrance way, restricting the number of trees that could be cut down, etc.
- **FLOWERS:** some of the *Open Space Ordinance* applied to leaving the natural features on property and allowing cluster building on smaller areas. The *Open Space Ordinance* would actually be preserving the wood lots and areas for recreational use in subdivisions.
- **DOYLE:** in the subdivisions that had been approved, was part of the site regulation to have at least one tree planted on each lot? **SWANSON** thought the Planning Commission had made the requirement for an applicant in the past. **DOYLE** felt the information from the various discussions should be kept so when the time come to update the Five-Year Master Plan, everything would be simpler because everything would be available.
- **NEWMAN:** if any Planning Commission Member should attend a seminar or other meeting in the future, please bring back the information so if the issue should arise when the Master Plan was being updated, it would be available to the Planning Commission.

2. Discussion of Townhouses vs Duplexes

NEWMAN stated at a recent Planning Commission Meeting for a special use request, the terms “townhouse” and “duplex” had been used interchangeably. Duplexes are allowed in Flushing Township and listed under RU-1 with a Special Use Permit (*Special Use Permits Article XVIII*).

Definition for Duplex:

(P) “Lots for duplexes shall be at least 23,000 square feet and at least 120 feet wide if public water or sewer are not available and used. If public water and sewer are used, the lots may be a minimum of 13,200 square feet and 105 feet wide.” (Note: there isn’t a definition for duplexes but based on water and sewer).

Definition for Townhouse:

(LL) “Shall consist of no more than four (4) single-family attached dwelling units, each individually owned, non communicating, and attached by party walls; each unit shall have separate front and rear entrances and have separate sewer, water and other utilities.”

NEWMAN felt the concern was the wording of “no more than four (4)”.

- **SWANSON:** it had been mentioned to him years ago that a duplex was like a duplication.
- **PRATT:** read the definition of “townhouse” and “duplex” from the American Heritage Dictionary:
 - Townhouse: a) a residence in the city; b) a row house especially a fashionable one.
 - Duplex: a) two fold or double; b) having two (2) apartments divisions or floors;

Used as a Noun: a) a house divided into two (2) living units or residences usually having separate entrances; b) something such as an apartment that is a duplex.

- **DOYLE:** the definition was defined by who owned the property. The single-residence attached could still be a townhouse if it was owned by the one person that owned the single townhouse. If it was a duplex, it would be a duplex on the property owned by one (1) person.
- **NEWMAN:** felt that duplex needed to be defined in the “*Definitions*” section found in the Planning Commission Zoning Book.
- **DOYLE:** the duplex could be defined as a double unit on a single piece of property.
- **NEWMAN:** the definition of duplex (in the ordinance) only talked about how large the lot had to be depending upon if public water and sewer would be on site facilities.
- **PRATT:** two (2) issues are at hand: 1) ownership and 2) description that would describe a certain type of property and could the property be rented out.
- **NEWMAN:** the way the title of the property is handled would describe the item. If the property should be two (2) living dwelling units attached and the ownership was conveyed as a single piece of real property, that would be a **duplex**.
- **DOYLE:** there could be one (1) single septic system for two (2) duplexes. A **townhouse/condominium** has to have separate septic systems.
- **PRATT:** there should be something in writing that deciphered whether the structure could be rented out to two (2) separate people **OR** was the structure a condominium with separate ownership. When the issue was petitioned to the Planning Commission, they (Planning Commission) would know exactly what was being petitioned and would it be rented out or what.
- **NEWMAN:** the individual could state he was going to rent the structure, and then turn around and sign a one (1) day lease to anyone else. When the lease expired, the individual could state he could not rent the structure anymore and sell, **OR** the individual was going to sell the structure and he couldn’t sell he would rent the structure out. If it was permissible for the structure to be a rental unit under the ordinance, the Planning Commission could not do a thing.
- **PRATT:** wouldn’t there be density issues? Are condominiums allowed under RU-1? Something has to be established so when an individual comes before the Planning Commission, would the individual be renting the unit or would there be a condominium with separate ownership?
- **NEWMAN:** the issue had to be about ownership and how the structure was titled.
- **PRATT:** Example: if the individual stated the issue was separate ownership with separate utilities. **NEWMAN** stated it would describe a townhouse.
- **PRATT:** read the definition of *Condominium*:
“a building or complex in which units property such as apartments are owned by individuals and common parts of the property such as the grounds and building structure are owned jointly by the unit owners.”

There could be a situation similar to this but it could be a duplex or townhouse. Are condominiums allowed in RU-1? Example: There is a building in which units of the property, such as apartments, but the two (2) units are owned by individuals and common parts of the property such as the grounds and building structure are owned jointly by the unit owners – this would be a **condominium**. **FITCH** stated he and the Assessor viewed cases such as this as an “ownership” issue.

- **PRATT:** there needed to be a definition in the ordinance of a condominium, duplex, and townhouse as there was nothing ever established in the ordinance as to exactly what the condominium, duplex, and townhouse actually was. The clarification would sort the information out for **FITCH**.
- **DOYLE:** a duplex could be a regular duplex on a single piece of property, or a townhouse, or a condominium. The word “duplex” could be used as a fact there were only two (2) units on a piece of property.
- **NEWMAN:** the way legislative or ordinance interpretation worked was if an individual went into a court room, they will look for specific definitions in an ordinance, review case law, then Black’s Law Dictionary or American Heritage Dictionary for common usage. Because “townhouse” and “condominium” have been specifically defined in the ordinance, one couldn’t go to another definition. “Duplex” had not been defined in the township ordinances.
- **FLOWERS** read the definition of “townhouse”:
(LL) “Shall consist of no more than four (4) single-family attached dwelling units, each individually owned, non communicating, and attached by party walls; each unit shall have separate front and rear entrances and have separate sewer, water and other utilities.”
- **PRATT:** what was the difference between “condominium” and “townhouse.”
- **DOYLE:** a “condominium” subdivision development would be declared when it was constructed.
- **PRATT:** when **PRATT** was in real estate, it had been stated to him, the difference between “condominium” was the ownership of joint parts; it had to be designated in the Deed who took care of the grounds, who took care of the joint ownership issues; it had to do with the ownership of the property.
- **DOYLE:** an individual could not construct a condominium unless it was requested when the subdivision was put together.
- **NEWMAN:** the State Statute accentually states we will not recognize it as a type of ownership of real property unless you comply with the Condominium Act.
- **NEWMAN:** “duplex” was not defined any place in the ordinances except to state a duplex could be constructed in RU-1 with a Special Use Permit and the lot had to be a certain size based on onsite or public utilities.
- **SWANSON:** a little simplicity would work great such as the style and what type:
 - 1) **Duplex** – two unit - what type of two (2) unit such as apartment, townhouse or condominium
 - 2) **Tri-Plex** – three units – what type of three (3) unit such as apartment, townhouse, or condominium

- 3) **Four-Plex** – four units – what type of four (4) unit such as apartment, townhouse, or condominium
- **PRATT:** would like to have Flushing Township **ATTORNEY STEVE MOULTON (ATTORNEY MOULTON)** clarify the difference between townhouse, condominium, and duplex.
 - **NEWMAN:** on a townhouse, one-half of the structure could be conveyed separately whether two (2), three (3), or four (4) and if it was a duplex, the whole entire structure had to be conveyed because there was only one (1) deed and one (1) title to the structure. Townhouses would all be individually; one (1) person could own all four (4) parts of the townhouse, but each unit could be sold separately.
 - **DOYLE:** described a **Site Condominium** and **Regular Condominium**:
 - 1) **Site Condominium** would be the individual's house would be his house and it would be in an envelope but the outside properties would be owned by everyone (roads, utilities, anything in the ground).
 - 2) The only thing owned in a **Regular Condominium** would actually be the inside of the building. The outside of the building would be maintained by everyone.
 - **FLOWERS:** there definitely needed to be definitions for duplex, townhouse, and condominium.
 - **NEWMAN:** “terms of art” are so important in discussions because everyone would know what was being discussed with such issues as duplexes and townhouses.
 - **PRATT:** a condominium could be made out of a two-unit on a residential lot with separate utilities according to what the agreement would state and securing the information in a Deed.
 - **FLOWERS:** in some residential areas, a duplex could be constructed where you could not put a condominium even though the same building would be constructed.
 - **PRATT:** if the Planning Commission obtained from the applicant as to what the ownership would be, what the agreements would be, etc. the Planning Commission would be better informed.
 - **NEWMAN:** when there are problems from applications that confused the applicant, it confused the neighbors, and by the end of the night it had everyone confused, the Planning Commission should state that something was missing. All the “holes” should be filled so future Planning Commission Members would know exactly what would be needed for a particular situation.

CONCLUSION:

The Building Inspector will contact Flushing Township **ATTORNEY MOULTON** to get a better definition of: duplexes, townhouses, and condominiums. The issue will be brought to the October 15, 2007 Planning Commission Meeting.

VI. PUBLIC COMMENTS:

8:17 P.M. – OPENED TO THE PUBLIC FOR NON-AGENDA ITEMS

None

8:18 P.M. – CLOSED TO THE PUBLIC FOR NON-AGENDA ITEMS

VII. BOARD COMMENTS:

1. **FLOWERS** informed everyone:
 - a) Tickets are on sale for “*Follies Goes South*” sponsored by the Flushing Senior Center scheduled for Friday, October 12, 2007 at 7:30 p.m. and Saturday, October 13, 2007 at 2:30 p.m.
 - b) Genesee County Metropolitan Planning Commission was in the fall session and was about ready to close out the Long Range Transportation Plan for air quality. Air Quality is one of the planning items that has to be checked in Genesee County and consists of pollution, air, and the status of traffic such as bottlenecks because it creates air pollution problems. The issue has to be passed through the Federal Government in order to keep the money flowing into the County.
 - c) Robert (Bob) Johnson, Chairperson for the Genesee County Metropolitan Planning Commission has been appointed to the Genesee County Road Commission. Johnson has a background in township government as he was a Trustee from Mt. Morris Township.
2. **GIBBS** would like to have Bob Johnson attend the next Planning Commission Meeting scheduled for Monday, October 15, 2007. **FLOWERS** will contact Bob Johnson to see if he (Johnson) would be able to present a small presentation to the Planning Commission on October 15, 2007.
3. **SWANSON** brought in an article that was in The Flint Journal regarding a new Senior Center Development proposed for Burton. The article mentioned the developer had gone before the City of Burton Planning Commission to put in a Senior Complex involving condominiums, single family homes, senior home care, etc. (PUD). The development would be unique; the description fits Hyde Park in Flushing Township. **DOYLE** stated Hyde Park was beginning to look very good.
4. **DOYLE** stated he had received a letter in the mail regarding a “*Tax Incentives for Private Land Protection*” seminar to be held on October 13, 2007. **DOYLE** stated the seminar would explain how to save taxes if an individual would put the property in a position to not development the land anymore. **PRATT** stated developments similar to the tax incentives program was really working in the Grand Traverse Bay area where some of the cherry farms have been put into the preservation.
5. A brief discussion was held comparing “row” houses (Washington D.C.), garden (basement apartments (Phoenix Arizona), different subdivisions such as Woodside Builders in Swartz Creek where the homes were constructed together and the garages were accessed from the back (similar to Celebration City in Florida).

VIII. MEETING SCHEDULE:

REGULAR SCHEDULED MEETING – MONDAY, OCTOBER 15, 2007 AT 7:00 P.M.
REGULAR SCHEDULED MEETING – MONDAY, NOVEMBER 5, 2007 AT 7:00 P.M.
REGULAR SCHEDULED MEETING – MONDAY, DECEMBER 10, 2007 AT 7:00 P.M.

IX. ADJOURNMENT: There being no further business items on the Agenda, **CHAIR NEWMAN** adjourned the meeting at 8:42 p.m.

MARK J. NEWMAN, Chair

JULIA A. MORFORD, Recording Secretary

ERIC SWANSON, Secretary

Date of Approval

Planningminutes 091007