

**CHARTER TOWNSHIP OF FLUSHING**  
**6524 N. SEYMOUR ROAD**  
**FLUSHING, MICHIGAN 48433**  
**810-659-0800 FAX: 810-659-4212**  
**SPECIAL PLANNING COMMISSION WORK SESSION**  
**DATE: JUNE 1, 2004 TIME: 7:00 P.M.**  
**WEB ADDRESS <http://www.gfn.org/flushing/index.html>**

**MEMBERS OF PLANNING COMMISSION**

Jerome Doyle, Chair	Aaron Bowron
Robert Gensheimer, Vice Chair	Richard Buell
Eric Swanson, Secretary	David Gibbs
Ronald Flowers, Board of Trustee Representative	

Jerald W. Fitch, Building Inspector  
Julia A. Morford, Recording Secretary

**PRESENT:** Doyle, Gensheimer, Swanson, Bowron, Buell, Flowers, Gibbs, Fitch and Morford

**ABSENT:** None

**OTHERS PRESENT:** Ida Reed, Ann Fotenakes, Andy Trogot, and Sherman Hubbard of Panther Construction

**I. MEETING CALLED TO ORDER** at 7:00 p.m. by Planning Commission Chair Jerry Doyle.

**II. ADOPTION OF AGENDA: BOWRON MOVED**, seconded by Flowers to approve the Agenda for the Charter Township of Flushing Planning Commission for June 1, 2004. MOTION CARRIED.

**III. UNFINISHED BUSINESS:**

**1. Continued Discussion Concerning Hyde Park Planned Unit Development (PUD)**

**ATTORNEY MOULTON** stated the purpose of the current meeting was due to the feeling there were a number of issues which were mentioned at the May 25, 2004 meeting and could not wait until the June 14, 2004 Planning Commission Meeting; the Special Planning Commission Work Session Meeting was an Open Meeting and had been properly Noticed.

**DOYLE** stated the called meeting was to: **1)** review the concerns about the Hyde Park Planned Unit Development (PUD) and to **2)** discuss whether the whole planned unit development is and has being built according to the way it was originally intended with the conditions which the Planning Commission originally set for the purpose.

The Southwest Section of Hyde Park (Howard Scheuner) had come before the Planning Commission to request changes to the conditions. The current concerns would be not having conditions for the rest of the first section, as well as the Northeast side of the first section, which the Planning Commission had believed to all be the same.

**DOYLE** stated correspondence had been received from the Modular Building Systems Association directed to the Planning Commission.

**ISSUES/CONCERNS FROM ATTORNEY MOULTON:**

- Letter of correspondence from Attorney Heikken (Attorney for HJM, Inc. – Howard Scheuner) faxed to Attorney Moulton on May 29, 2004 which raised an issue (Attorney Moulton was aware of and looked into):
    - “Whether the Planning Commission has the authority to direct the Building Inspector to not issue building permits”
    - a. The answer to the question is “No”
      - 1. Building Inspector does not operate under the privy of the Planning Commission
      - 2. Building Inspector reports to the Supervisor who in turn reports to the Township Board
        - a. limited exception to the fact
          - 1. if the Planning Commission felt the Building Inspector, such as in the current situation, where a Planned Unit Development (PUD) existed pursuant to the Special Use Permit, has been asked to issue permits for construction which does not satisfy certain requirements of the Special Use Permit
            - a. per Attorney Moulton even if that was the case, all the Planning Commission could do would be to indicate, in their opinion, the requested permit shouldn’t be issued for whatever reason and could let the opinion be known to the Township Supervisor, the Building Inspector’s immediate superior.
- At the last meeting, **ATTORNEY MOULTON** felt, with the issue set aside, there wasn’t any basis to direct the Building Inspector to not issue building permits
- Two (2) Separate Condominium Projects:
  - 1. Hyde Park Condominiums – referred to as: Phase I or the Northern Portion of the Development with a number of owners; Scheuner and his corporation being a large part
  - 2. Hyde Park Estates – referred to as: Phase II or the Southwest Portion of the Property – entire property - sold under Scheuner’s corporation to separate Michigan Home and Liability Company
- Planning Commission agreed to amend the Special Use Permit to allow Phase II of Hyde Park Estates to precede with separate residences in October 2003; explicit conditions were discussed by the Planning Commission
- criteria (34 conditions) for the residences

1. Attorney Moulton was not sure if the Planning Commission could go back and modify the explicit conditions under which it allowed a Special Use Permit to be amended
2. if an owner requested a building permit and he had fulfilled the criteria along with satisfying the building code, he could not be refused – same would be true for Mary Jane Hutson’s Duplex Component of the entire project; same thing would apply to the quads and tri-plexes within Phase I.
  - a. questions concerning the duplexes:
    1. March 2004 – request made to convert a number of the quads and tri-plexes into duplexes
      - a. per the minutes, request granted
      - b. could not find the specific criteria that was supposed to be applicable to the actual duplex structures
      - c. Attorney Heikken would put together a list, as to Scheuner’s understanding of what criteria was supposed to be - needed to be done immediately
  - b. Township receiving pressure from residents because the person would otherwise be entitled to a building permit and would be turned down
    1. rights of individuals being affected by the denial of the building permits
    2. could face a lawsuit
    3. **ATTORNEY MOULTON**, could not come up with a reason for denying the building permit
    4. recommended to the Planning Commission, unless they (Planning Commission) felt they had the authority to restrict the issuance of building permits, those restrictions should be lifted immediately as to all aspects of the project.
      - a. duplex building permit criteria should be in order as soon as possible
      - b. **ATTORNEY MOULTON** reviewed previous minutes from 1999 to present, could not find any historical data concerning duplexes
      - c. perhaps **SCHEUNER** felt there were some representations made to him in the past as to what the criteria were; it would not have been applicable to the duplexes, per se, because the duplexes were not the issue at the time
      - d. perhaps **SCHEUNER** felt criteria could be applied from the criteria for the quad and tri plexes that would carry over to duplexes – **ATTORNEY MOULTON** cannot find any details
      - e. **ATTORNEY MOULTON** recommended a favorably Planned Unit Development (PUD) Agreement form for future uses which would prevent going back and solely relying on minutes

1. would describe precisely the criteria for the development and would have the signature of the owner/developer included
2. would incorporate, by reference, the Master Deed and the By-Laws
3. could incorporate an architectural drawing that would consist of only one (1) document

\* \* \* \* \*

Due to members of the audience wanting to voice their opinion concerning the issue, **DOYLE** recommended, since the meeting was an actual work session, the discussion be between the Planning Commission members as to what would be available to the Planning Commission regarding the conditions that would be needed.

\* \* \* \* \*

#### **QUESTIONS AND COMMENTS FROM THE PLANNING COMMISSION:**

1. **SWANSON** stated the Planned Unit Development Agreement, which a sample had been received from Attorney Heikkinen, was very similar to the Site Plan Check List which the township currently has.

**ATTORNEY MOULTON:** Attorney Heikkinen has indicated that what Mr. Scheuner was going to assemble, he (Attorney Heikkinen) would review and it would be a site plan check list specifically devised for the condominium project. **DOYLE** stated the checklist had been assembled so the Planning Commission could review everything that needed to be covered. The township engineer reviewed the whole project and then decided for the Planning Commission if there was anything in particular which the Commission should be aware. In the case of Hyde Park, records would indicate the Planning Commission had reviewed all the details.

**DOYLE** felt the whole problem of the building structures had evolved around the Planning Commission never having placed a set of conditions on the matter; the Planning Commission had never been asked to change the conditions, which the Planning Commission felt were in place in the first place, which would refer back to the check list, minutes, and any other information that had been assembled for the meetings. The request had been made to the Planning Commission to include duplexes, rather than just tri plexes and quad plexes; that had been the only change requested other than set back distances. **DOYLE** felt the big concern had been the Planning Commission should be following the original conditions.

**DOYLE** stated stick-built homes and modular homes have the same building code; mobile homes have their own building codes.

2. **Concerns from ANDY TROTOGOT (TROTOGOT), Supervisor of Flushing Township, regarding Hyde Park Development:**

1. Bringing the ponds up to date
2. Control over the ponds
3. Planting of certain plants; rock landscape (Phase I)

3. **DOYLE** wanted to know if, on the original approval of the Special Use Permit, if there had been any areas of the development with conditions

**ANSWER FROM TROTOGOT:** Original Approval of Special Use Permit – 1999

- a. original name - Deerfield Estates; engineer - Alan Lawrence (Lawrence)
- b. housing similar to another housing development close to Howell, Michigan
  1. 57 acres in Hyde Park
  2. 96 units
  3. all condominium units
  4. 1,056 square feet – later updated to 1,300 square feet
    - a. no phases, only one unit
    - b. commercial area and assisted living area – both are still in same location
  5. developers wanted Phases for clarification – Planning Commission informed developer all should be kept all under one Master Deed – By-Laws would be changed to handle the different building locations; the decision had been turned down
  6. Hyde Park Estates – 64 single-family home development
  7. the phases do not mean anything to the Planning Commission as the conditions were given as to how the whole project would be assembled
    - a. only item changed was Scheuner’s request for single-family residences on the Southwest section (Potter Road)
    - b. changed conditions to meet single family homes
  8. there had been no approval on changing anything else, only Southwest section
  9. Planning Commission had to live by the original conditions until changes were requested
  10. two (2) things to take into consideration:
    - a. are the conditions set forth in the first place being followed; are the conditions available to the Planning Commission
    - b. the Planning Commission should place conditions (review the original conditions to decide whether they needed to be changed)

4. **BOWRON** wanted to know if there were any conditions that related to the size of the garage. **DOYLE** stated what had been originally accepted was on the floor plan where quad and tri plexes were shown; the size of the garage; the type of structure, what had actually been started and what had been approved. **DOYLE** stated research would have to be done to find all the conditions that had actually been placed when the PUD was first accepted. If there had been conditions and they had not been followed, the Planning Commission would need to determine the status and decide what needed to be done.

5. **SWANSON** reviewed some of the issues from Planning Commission Minutes:

- a. **April 12, 1999**
  1. Zoning change for PUD from RSA to RU-1
    - a. small individual neighborhoods for ages 55 plus years
    - b. enter from the front of each unit
    - c. three (3) and four (4) attached buildings with two (2) car garages

- d. average square footage for each home to be 1,200 to 1,500 square feet
- e. backyards would be small but separated in some manner
- f. roof patterns and color would be similar; the outside coloring of the homes would be similar but different colors

**b. September 13, 1999**

- 1. Preliminary Site Plan Review for a Planned Unit Development
  - a. initial plan had showed apartments and complexes
- 2. Preliminary Site Plan approval changes:
  - a. increased Senior Citizen activity
    - 1. golf courses would be added
    - 2. remove the single-family homes and add the 9-hole golf course on West corner of River Road
    - 3. shuffleboards would be added

**c. October 11, 1999**

- 1. Site Plan Approval – went to the different County entities for approvals
  - a. ponds erected
  - b. water mains
  - c. Assisted Living Quarters: 196 units of housing – 54 buildings – 100 apartments in a unit
  - d. all builders would have to comply with the architectural design purposed by the Association
  - e. all plans would go to Lawrence Engineering to be reviewed; the Master Deed to be approved by the Association before it had been presented to the Building Inspector for a permit
  - f. Lawrence requested permission to change the name of the PUD from Deerfield Estates to Hyde Park
  - g. Referred to: Condominiums would be referred to as Hyde Park Residential; Apartments would be referred to as Hyde Park Senior Citizen Residence; the Assisted Living Complex would be referred to as Hyde Park Assisted Living; and the Commercial Area would be referred to as Hyde Park Village Center

**d. January 10, 2000**

- 1. Site Plan for Assisted Living Site
  - a. development entrance changed from Elms Road to River Road
  - b. sewer issues (pay for extending sewer line on River Road to hook up to line coming from other direction)
  - c. deletion of golf courses

\* \* \* \* \*

**BUILDING PERMIT “STAY”**

**DOYLE** stated the purpose for the Planning Commission placing a “stay” on building permits would be to **1)** determine the conditions placed on the pending issue and **2)** the conditions for the Planning Commission to allow builders to construct homes in the Hyde Park Subdivision so they would conform with the original conditions. In a Special Use Permit, there are conditions that have to be followed, and in the issue in question, a “hold or stay” on building permits was due to a question where the original conditions had not been met because of “new” structures being placed in Hyde Park. The Planning Commission needed time to research the material and find out, if according to the original conditions, the conditions had or had not been approved and the issue would need to be addressed.

An Opinion had been received from **ATTORNEY MOULTON** as to whether the action would be a reasonable, logical and legal. The Planning Commission would be trying to protect their interest as well as be fair to the citizens of the township.

**ATTORNEY MOULTON** detailed Planning Commission motions that had previously been made:

**October 11, 1999:** FOTENAKES MOVED, seconded by Caterer to approve the site plan for Hyde Park Senior Citizens Community presented by Lawrence Engineering. The things we talked about as far as changes or additions are to be included on the construction plans. All required permits from Genesee County are to be turned into the building inspector along with the revised construction plans.  
MOTION CARRIED.

Construction plans would be applicable to tri and quad plexes, since nothing else had been proposed, it would automatically carry over to the duplexes. **ATTORNEY MOULTON** stated that when the developer had come to the Planning Commission and requested modification to a Special Use Permit, he had ask for something not authorized in the original specifications; the developer had wanted to build duplexes. What would be the conditions applicable to grant a building permit to built duplexes, would it be something that would carry over automatically from the quads and tri plexes or would a new set of criteria have to be developed that would only apply to duplexes.

**March 3, 2004:** SWANSON MOVED, seconded by Flowers to approve the request for change to the two (2) units as in the drawing; per the conditions of No. 15 to be adjusted along the property line; trying to keep as much distance between the buildings as possibly in order to have over 20 feet; and to keep the same architectural structures.  
ROLL CALL VOTE:  
AYES: Gensheimer, Bowron, Gibbs, Flowers, Swanson, and Doyle  
NAYS: 0 MOTION CARRIED.  
ABSENT: Buell

**ATTORNEY MOULTON** stated as far as building permits, what could be built as a duplex, what would the conditions be that would apply regardless of the construction of modality that would be used and what would be the requirements?

**BOWRON** wanted to know how the Planning Commission could take conditions that were designed for one set of housing and apply the conditions to duplexes. **DOYLE** stated there had not been a rationale for not accepting the fact the conditions would be exactly the same.

**SWANSON** read an excerpt from the March 8, 2004 minutes which stated:

**Page 8**, Barnwell reviewed history of the proposed amendment:

8. no changes in style of the homes, requirements, or conditions that were originally placed on the development by the Planning Commission.

**ATTORNEY MOULTON** stated there was a situation in March 2004 – five years later, where there would be a history; perhaps something about the quads and tri plexes that would work. Currently, there has been a request for a complete change and perhaps the door would be open for the Planning Commission to formulate what would be the appropriate conditions to place on duplex structures.

**SWANSON** stated when the PUD concept had originally been presented by Lawrence Engineering, the Planning Commission had approved the design. Since that time, the basic design has been changed by every new builder that has built in the development; which design would be the correct design requirement? There have been no requests for changes to the Planning Commission.

**ATTORNEY MOULTON** stated that since this is a condominium development, every property owner that has acquired property within the project would be urged to abide pursuant to the Master Deed and By-Laws. The Home Owners Association and the Condominium Association would have a great influence as to what could and could not be constructed in the project. There is also a Architectural Control Committee (Committee). The Home Owners Association would determine how the Committee would be comprised; the owner or developer, until there would be fifty (50) or seventy-five (75) percent ownership, would be the Architectural Control Committee. The project would be like any other contractual service where if an individual did not understand the terms, it would be the individual's responsibility to have someone explain the terms. It would not be the roll of the Township to go in and attempt to do or undo what the Home Owners Association had the responsibility to do. The Planning Commission would need to establish the new criteria for the duplexes; anything beyond that would be subject to the Home Owners Association.

Per **DOYLE**, changes had been allowed to the Southwest corner of the area where the single family homes would be constructed due to the conditions of Phase II. Not only were the single family homes changed and setbacks, discussion was also held as to the type of homes, type of roofs, would the homes have brick on the front, etc. Conditions were never discussed on the duplexes. Conditions had been placed on the original approval as to whether there would be

brick, the square footage, the setbacks, the type of construction, etc. It had never been requested for the Planning Commission to change the conditions when the continuation of Phase III – duplexes. Phase II was never changed. There are four (4) lots in the area that are less than 1,300 square feet, due to lot configuration.

**ATTORNEY MOULTON** wanted to know if, in the original approval, the conditions that were listed were comparable to Phase II so the Planning Commission could understand what had been the original; what, if any of the conditions, the Planning Commission would want to change with respect to the duplexes. **DOYLE** stated this was what the Planning Commission was searching for; should there be something that the Planning Commission should review and decide if the Planning Commission was following the original conditions.

**SWANSON** stated the original documents had been the minutes, the original plans that were given to the Planning Commission, and the Site Plan Review List. A review of all three (3) documents should be reviewed to decide the status of the issue.

When a complaint has been brought by the residents of the Township, the Planning Commission has to review the matter and respond with an answer to the residents as to “yes” there has been a problem or “no” there has not been a problem; there would have to be research done by the Planning Commission.

Since **SCHEUNER**, has been the Architectural Control Committee, and if he would like to make changes from what the Planning Commission felt would be the original deal, he (Scheuner) should get the request to the Planning Commission so they could make a judgment, which **DOYLE** felt the Planning Commission has not had the opportunity to do.

**DOYLE** recommended having a three (3) person committee to thoroughly review all the documents to get the total information. If the matter was ever taken to Court, the minutes would be used as documentation.

**DOYLE** stated the PUD had received a Special Use Permit and the developer could not vary from the special use permit; it would be a partnership between the developer and the Township where certain things are achieved.

**SWANSON** felt the original concept of the Senior Citizen part had just disappeared.

**CIRCUMSTANTIAL EVIDENCE:**

**BUELL** inquired from **ATTORNEY MOULTON** as to the circumstance in this case?

**ATTORNEY MOULTON** stated Mary Jane Hutson (Hutson), was the owner of the entire seventy-four (74) acre parcel, at the time the initial request was made in 1999. At some point Hutson sold fifty-seven (57) acres to Howard Scheuner and retained eight (8) or nine (9) acres on the corner for a Commercial Development; Hutson currently owns two parcels: **1)** 4 or 5 acre parcel at the intersection of Elms and River Road and **2)** another parcel on which she has the right to develop sixty-four (64) duplexes which would each unit being 1,000 square feet. It was unclear as to who owns the Assisted Living Facility which currently has two (2) twenty bed units; two (2) additional twenty (20) bed units could be developed in the future. Of the

remaining fifty-seven (57) acres of the original development, it was to be developed as one (1) condominium project in different phases. In 2002, **SCHEUNER** had come to the Planning Commission to request the 64 single-family residents, referred to as Phase II; a separate condominium association was developed at that time. There currently are two (2) condominium associations: **1)** one owned by **SCHEUNER**, referred to as Phase I, and technically called Hyde Park Condominiums and **2)** Hyde Park Estates, referred to as the 64 single-family residents. The two (2) developments have been completely separate entities. **ATTORNEY MOULTON** stated that at the time, he was concerned about making sure there were specific easements in terms of the roads, the water, and everything would still be treated as one (1) unit; but two (2) separate condominium units.

**ATTORNEY MOULTON** stated there were thirty-four (34) specific numbered conditions to be complied with on Phase II, 64-single family residents, which took place over four (4) separate meetings. Those thirty-four (34) specific numbered conditions would not apply to Phase I; the whole consideration would be focused on Phase II. **BUELL** wanted to know if the change of ownership, from Hutson to Scheuner's Corporation, of the original approval that had been granted to Hutson would be binding to Scheuner. Per **ATTORNEY MOULTON**, whoever should take the property would take the conditions of the Special Use Permit.

**BOWRON** stated it was his understanding the "stay" on the building permits would remain in affect until the time when the Planning Commission could arrive at conditions. **ATTORNEY MOULTON** stated the Planning Commission does not have the authority to "stay" the building inspector. **DOYLE** stated the recommendation of the Planning Commission would be to hold off on any decisions until after the Planning Commission Meeting scheduled for July 14, 2004 until conclusions of the conditions have been completed. **ATTORNEY MOULTON** stated that **FITCH** would have to make the decision. **ATTORNEY MOULTON** stated, that based on what has taken place in the background, it would be his recommendation the requested permits would comply with all the existing conditions. **BOWRON** stated that **ATTORNEY MOULTON** had mentioned general broad prohibition against restraining the building permits, but there was an exception to the narrow exception; would the township fall into the mentioned exception? **ATTORNEY MOULTON** stated the township did not fall into the category, but that would be the only area where he (Attorney Moulton) would make an attempt to defend the township's position on the narrow grounds. There currently are existing conditions in Phase II and if the conditions are followed, there would be no way the Planning Commission could hold the building permits back.

#### **8:25 P.M. OPEN TO THE PUBLIC**

1. **Sherman Hubbard, Owner of Panther Construction** – "Scheuner had given the specifications to Hubbard to follow; not going to leave the area; willing to work with the community; has tried to meet everyone's requirement – no secrecy taking place; other areas in the development smaller square footage, Hubbard's square footage of the modulares are larger; patronizes the local merchants for materials and supplies."

#### **8:38 P.M. CLOSED TO THE PUBLIC**

**CONCLUSION:**

It was determined a three-man committee including: **DOYLE, SWANSON, and BOWRON** would meet and review any and all material available concerning the Hyde Park Subdivision.

**SWANSON MOVED**, seconded by Flowers to form a three-man committee of the Planning Commission members to review and discuss concerns of the Hyde Park Planned Unit Development. **MOTION CARRIED.**

**IV. MEETING SCHEDULE:**

**REGULAR SCHEDULED MEETING – MONDAY, JUNE 14, 2004 – 7:00 P.M.**

**PROBABLE WORK SESSION – TUESDAY, JUNE 29, 2004 – 7:00 P.M.**

**REGULAR SCHEDULED MEETING – MONDAY, JULY 12, 2004 – 7:00 P.M.**

**PROBABLE WORK SESSION – TUESDAY, JULY 27, 2004 – 7:00 P.M.**

**V. ADJOURNMENT:** There being no further business matters on the Agenda, **DOYLE** adjourned the meeting at 8:45 p.m.

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JEROME DOYLE, Chair

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JULIA A. MORFORD, Recording Secretary

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ERIC SWANSON, Secretary

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Date of Approval