

CHARTER TOWNSHIP OF FLUSHING
6524 N. SEYMOUR ROAD
FLUSHING, MICHIGAN 48433
810-659-0800 FAX: 810-659-4212
SPECIAL PLANNING COMMISSION MEETING
DATE: APRIL 25, 2005 TIME: 7:00 P.M.
WEB ADDRESS <http://www.gfn.org/flushing/index.html>

MEMBERS OF PLANNING COMMISSION

| | |
|--|----------------|
| Aaron Bowron, 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: Bowron, Doyle, Swanson, Buell, Flowers, Gibbs, Pratt, and Morford

ABSENT: Fitch

OTHERS PRESENT: None

I. MEETING CALLED TO ORDER at 7:00 p.m. by Planning Commission Chair Aaron Bowron with Roll Call.

DOYLE MOVED, seconded by Pratt to dispense with the Pledge to the American Flag. **MOTION CARRIED.**

II. ADOPTION OF AGENDA: FLOWERS MOVED, seconded by Gibbs to adopt the Planning Commission Agenda for April 25, 2005 as presented. **MOTION CARRIED.**

III. APPROVAL OF MINUTES OF APRIL 11, 2005: DOYLE MOVED, seconded by Pratt to approve the April 11, 2005 Minutes as corrected. **MOTION CARRIED.**

IV. UNFINISHED BUSINESS:

1. Continued Review of the Private Road and Common Drive Ordinance

BOWRON stated that Article III, Section 20-309 has given the general rule that governs the legal non-conforming uses, which states:

- a. Any use of land or structure, which use was lawful on April 8, 1983, may be continued; provided, however, such use shall have continued in operation, does

not constitute a nuisance, and shall not be enlarged, altered, or changed in area, activity, or content during its continuance, except as provided otherwise by proper authority.

- b. Any non conforming use which has ceased its usual conduct of such business for a period of one (1) year or more shall be considered to have terminated, and may not thereafter commence operation.

BOWRON stated the idea behind the proposed draft ordinance seeks to give the Planning Commission the authority to deal with the legal non-conforming uses, with the idea to treat legal non-conforming common drives and private roads as a special land use if and when they should come to the Planning Commission for an expansion or modification. Currently, the Planning Commission is trying to “shoehorn” non-conforming private roads in particular, although there are common drives, into the confines of Section 20-304 and 20-305, which has caused a lot of hardships.

PURPOSE OF PROPOSED DRAFT ORDINANCE:

The proposed draft ordinance would attempt to give the Planning Commission the discretion to treat any request for a modification or expansion as a special land use which would be done according to the standards in Section 20-1800, 20-1801, and 20-1802. (See Attachment A).

COMMENTS, CONCERNS, RECOMMENDATIONS:

- **DOYLE:** main concern was to not make it hard for residents to use their new non-conforming property.
 1. residents originally had property which all the private roads were granted to them and were legal at one time.
 2. by changing the ordinance, the property became of a non-conforming use
 3. rational of the Commission that put the ordinance together in the first place it is still a reasonable use; the Planning Commission just changed the ordinance. Non-conforming use has always been a concern.
 - a. there are pieces of property that should still be usable but are non-conforming
 - b. the Planning Commission should not place a lot of conditions on the subject; it would be just as hard for the residents in the future to conform to the ordinance.
 4. **DOYLE:** has no objections to placing the matter in a Special Use
 5. should there be conditions placed on the matter or leave the matter wide open and deal with each matter as they come before the Planning Commission?
- **BOWRON** reviewed a portion of an Opinion from Attorney Moulton, dated November 23, 2004, which stated:

“the ordinance is appropriate for current and future situations. Expansion or changes to the use of existing non-conforming private drives depends so much on the particular facts of each situation that it is difficult to devise an ordinance that solves the problem.”

- **BOWRON:** the proposed draft ordinance leaves the conditions up to the discretion of the Planning Commission so long as they are rationally related to advancing legitimate objectives – health, safety, general welfare and morals of the community.
- **DOYLE:** one of the conditions should be that an individual could not add to the property as a continuous addition, which would make a continuous non-conforming use.
 1. if the current property was used, and if the resident placed an addition to the property, the resident would have to come to the Planning Commission with another site plan, which would be similar to an addition to an existing private road.
 2. if there were properties already off the private road, would the Planning Commission want to leave the matter open? There could be more properties off the private drive.
- **BOWRON:** the situation would cause an expansion in the non-conforming use.
- **DOYLE:** nothing is stopping the resident from annexing another piece of property on the private road.
- **SWANSON:** place a statement at the end of the proposed draft ordinance which states: “that any variances or agreements is limited to this piece of property and cannot be expanded to another piece of property.” It would be a non conforming use to build on, not expand on.
- **DOYLE:** if new property should be added to the existing property, wouldn't it state the resident would need a new site plan?
- **PRATT:** it states in the proposed draft ordinance:

“Any change in the existing use of such private road shall require a special use permit to be considered by the Planning Commission in accordance with Sections 20-1800, 1801, and 1802 of the Charter Township of Flushing Zoning Ordinance.” – any additional changes are a complete case for a different special use permit.
- **DOYLE:** there should be conditions placed on the special use for private roads – if there were no conditions placed on the special use, the Planning Commission would be in a position where if an approval would be granted to an individual and the next person would not be granted an approval.
- **PRATT:** the special use permits would be issued on a case by case basis – the Planning Commission could approve the special use permit or place conditions on the permit.
- **SWANSON:** would like to have the ordinance information up front for the individual so there would not be any misunderstanding as to an individual purchasing property to add to the original property without requesting a new site plan by using the same narrow road easement, which was granted on the original property.
- **BOWRON:** if there were to be splits in the property, there would be more people using the road, it would be a change, it would be expanding the use. Before the

individual could do anything, they would have to come before the Planning Commission pursuant to the proposed draft ordinance.

- **SWANSON:** if a road was 1,000 feet long and covered the property, there would be land splits which would be an expansion of what was on the road; the person should not purchase additional property and expand the road to 2,000 feet. If the individual would like to add to the original property, he should add a fifty (50) foot easement
- **DOYLE:** the current ordinance states when there is a site that an individual would like to put into a private road, there are conditions by which the individual has to follow – a new subdivision, a new split, etc. The resident originally put in a private road which was acceptable, the property was divided, there were more and more houses constructed on the private road, the residents on the private road had no problem – the Planning Commission did have a problem because the situation was getting out of hand with the expansion. It had to be stopped – the situation was a non-conforming use. Recommendation: The residents cannot expand other than the existing properties, which are currently on the road. The situation would be similar to widening an old private road (expanding its use onto new properties) so therefore a new site plan would be needed.
- **SWANSON:** what if an individual owned property, and then bought more property next to the original could he come to the Planning Commission and get an approval to build on both properties as one site plan?
- **BOWRON:** there would not be a site plan if someone wanted to build a house.
DOYLE: it would only be an expansion of an existing use. It would be a rational use and would be acceptable since the property was already in existence and was served by the road –grandfathered pieces of property. If an individual bought another ten (10) acres and wanted to include the additional ten (10) acres with the original property, the Planning Commission would have a bigger problem than before and it would be a non-conforming use.
- **BOWRON:** if a legal non-conforming private road would be 1,000 feet and and an individual purchased a lot of property and wanted to extend the road, it would not have to be under a legal non-conforming use – proposed draft ordinance Special Land Use, but under Section 20-305.
- **SWANSON:** there are a lot of different scenarios - wording needed to be added to the proposed draft ordinance as to the affect the non-conforming, which the person would be using is only for a particular road, which you already have and nothing more.
- **FLOWERS:** the new amendment, Section 20-305 would only be dealing with the property on a non-conforming use for the existing property, not for new property.
- **SWANSON:** would like to eliminate the negotiation period when the individual would come before the Planning Commission.
- **DOYLE:** people keep coming back with the same rational which is explained each time someone comes before the Planning Commission - the more the individual has

been allowed to have in an acceptable situation, the more the individual would pressure the Planning Commission for less.

- **BOWRON:** wouldn't an individual be bound by the Private Drive Ordinance as to what one does to the road? Since the road would not be in place, the non-conformity would be eliminated. If an individual was proposing to build a private drive, he would have to do so pursuant to the Private Drive Ordinance.
- **SWANSON:** the individual has to be able to build on what they currently have – nothing else.
- **DOYLE:** if going to allow non-conforming uses, there has to be some recommendations the Planning Commission could put together so that it would be uniform enough so that each private road (approximately 12 in the township) could each have something different and still be approved by the Planning Commission.
- **PRATT:** felt the proposed draft ordinance would give the Planning Commission the liberty to make the decisions which was stated in Section 20-305:
“The Planning Commission shall have the sole discretion to allow modification of the existing use of the private road and may impose any conditions that are reasonably necessary to achieve the objectives set for in 20-1800, 1801, and 1802.”
- **DOYLE:** don't tell people they cannot use their property – it is a constitutional right. If people are not given guidelines as to the requirements the Planning Commission has to be concerned about, when the individual makes his request and the Planning Commission would make their decision, the individual would not have a clue as how to proceed.
- **BOWRON: DOYLE AND SWANSON** would like conditions that specifically address the concerns of the private drive so the property or the non-conforming use would not be overburdened.
 - **SWANSON:** anything could be done to the current property within the ordinance, but he does not want any length added to the road, if the road is the issue.
- **DOYLE:** the size of the road, as being used now, should not be widened.
- **DOYLE:** if there are going to be conditions, they should be conditions that would be acceptable to all of the non-conforming uses since all the roads have different sizes.
- **BOWRON:** why wouldn't the request fall within the Private Drive Ordinance since it is currently not in existence?
 - a. **DOYLE:** everytime there is an individual that would like to do something to a private road, they always find one of the features they cannot do:
 1. “they can't get all the people together for a maintenance agreement”
 2. “I can't get enough property to have my roadway the correct width.”
 3. “I have everything on my road but I can't get the fifty (50) feet.”

MAIN COMPLAINT FROM PROPOSED DRAFT ORDINANCES:

- The ordinances don't specifically articulate the conditions under which approval will be granted.
- **DOYLE:** Non-conforming uses are for the property that is there now – not for the future

REFERENCE WAS MADE TO THE ST. JOHN PROPERTY (COLDWATER ROAD EXTENSION):

- **DOYLE:** when an individual comes in and makes a request and there is nothing on the books as to how the matter will be handled, the person automatically states what they would like to do. The matter is then based on what the Planning Commission hears at that time – there are no guidelines or directions to follow – the only thing would be prior experience. If there are two (2) or three (3) things that perhaps only one thing that states what you have now and what you serve now on the existing property, that abuts the roadway, is acceptable to add the housing onto, as far as lots are concerned, but if the individual would like to widen the road, the individual would have to refer back to the ordinance because the person would no longer have the private road. The individual would then be putting together a new private road and would know where he stood as far as guidelines. .
- **BOWRON:** recommended having a Committee to review the situation and return to the Planning Commission for further review by **ATTORNEY STEVE MOULTON (ATTORNEY MOULTON)**. If no results could be obtained then start from the beginning again.
- **DOYLE:** the Planning Commission should express their opinions and then have **ATTORNEY MOULTON** review the questions and then draw up a proposed draft from the results.
- **SWANSON:** have a motion to approve the proposed draft ordinance and then add a condition where the individual could not expand onto the road or the side of the property – the individual could expand all they wanted within the ordinance on the piece of property and on the road.
- **PRATT:** had a concern about informing people they could not expand their property. The proposed draft ordinance would give the Planning Commission total discretion.
- **SWANSON:** the private drives in the township have been a “headache” since day one.
- **DOYLE:** the Planning Commission has changed the ordinances on the people. There needs to be guidelines.

EXAMPLE FOR CLARIFICATION:

BOWRON – if someone has forty (40) acres that abuts the private road, they would like to subdivide the property, and they would like access from the private road back to the property, is the position of the Planning Commission that cannot be done? **DOYLE:** Under the existing Private Road Ordinance, of which the request was approved, because there was a grandfather clause (legal non-conforming use), they could use the roadway but they could not add to it. An individual could not have another subdivision off the road without following the new proposed ordinance. **BOWRON:** it would be true because it would be a new development. **DOYLE:** everyone that come to the Planning Commission meeting would have the information in their mind that they were going to be able to have another roadway without following the ordinance as

far as the new subdivision was concerned. The Planning Commission would have to answer every request with “no you can’t do that”. **BOWRON:** the law presumes that an individual does know something even though he does not. **DOYLE:** there has to be guidelines to approve an individual’s request to live and use his private road.

- **SWANSON:** recommended stating that Section 20-305 (f) could now be expanded on any new property.
- **BOWRON:** felt Section 20-305 (f) would be a condition to grant approval for a private road by the Planning Commission and would be spelled out at the time of the request.
- It was recommended to have **ATTORNEY MOULTON** at the next meeting.

FIRST ADDITIONAL WORDING TO THE PROPOSED DRAFT ORDINANCE:

- **BUELL:** felt the following wording should be added:
“Notwithstanding the above, no property may be added to any other property currently served by an existing legal non-conforming private road.”
- **DOYLE:** “any lot that is serving the existing roadway would be acceptable for an addition to the private road.”

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PRIVATE ROAD SITUATIONS:

1. Willowbrook Lane:

- a. 40 acres at end of the road
- b. 15’ roadway
- c. reviewing – adding a common driveway which would allow two houses on the one driveway at present back to the private road.
 1. ordinance states it is legitimate.
 2. there is a drive to one parcel and the same drive to another parcel – nothing else could be added to the private road.

2. Coldwater Road Extension:

- a. Mark St. John (St. John) wants to construct a home on the Coldwater Road Extension on property that is already served by the road (Coldwater Road Extension) – no change has been made - already existing property.
- b. Property on the North is legitimately used by the private drive because it fronts the road.
 1. **DOYLE:** if the property fronts on the private road, and Lawrence wants to put a road off the road to serve the other property, a new site plan would have to be made available.
 2. cannot add other property to the existing property.
 3. currently on Coldwater Road Extension, there already is a small private drive that extends off the original drive to the South.to serve another piece of property.

4. **FLOWERS:** people on the North side of Coldwater Road Extension, would like to split their property but could they still use Coldwater Road Extension?
 - a. **DOYLE:** the litigimarcy of the roadway itself, would be to stop the situation or there would be a continuation of a non-conforming use.
- **PRATT** reviewed Article XVIII, Section 20-1801
“In the case of a discretionary special land use the application shall be accompanied by copies of a site plan drawn to a scale of one (1) inch equals twenty (20) feet and meeting the requirements of Section 20-1903.”
- **FLOWERS** made reference to Section 20-305 which states:
“any private road in legal use as of the effective date of Section 20-305 shall not be subject to the requirements of Section 20-305. Any change in the existing use of such private road shall require a special use permit to be considered by the Planning Commission in accordance with Sections 20-1800, 20-1801, and 20-1802.”

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SECOND PROPOSED NEW WORDING (BUELL):

“Notwithstanding the above, no property may be added to any other property currently served by an existing legal non-conforming private road without submission of a site plan as described in Section 20-305. (One cannot add property to a current non-conforming use).

PRATT MOVED, seconded by (None) to table the Private Road and Private Drive Ordinance until the time which it could be addressed with **ATTORNEY MOULTON** at a meeting.
MOTION FAILS FOR LACK OF SUPPORT.

BOWRON felt confident the proposed draft ordinances were suitable, although he sees the concerns raised by Commission Members.

DOYLE MOVED, seconded by Flowers to accept the proposed draft ordinance governing private roads and common driveways as it is with the addition of the clause “Notwithstanding the above, no property may be added to any other property currently served by an existing legal non-conforming private road without submission of a site plan as described in Section 20-305” subject to the attorney’s approval; when received back from the attorney, the Planning Commission will review and forward to the Board of Trustees. **MOTION CARRIED.**
(No – Pratt).

2. **Continued Review of the C-1 and C-2 Ordinances**

BOWRON made reference to the Opinion of **ATTORNEY STEVE MOULTON** (**ATTORNEY MOULTON**) in his letter dated November 22, 2004. The C-1 and C-2 Zoning Ordinance has been very nicely summarized. The C-1 Zoning District minimum lot has been rendered useless given the large setbacks:

Recommendations:

- a. raise the minimum lot size
- b. reduce the setbacks
- c. reduce the minimum lot size

The C-2 Zoning District is a large lot, five (5) acres, with the same setbacks as C-1 Zoning District. **DOYLE** recommended referring back to the prior setbacks before the amendments approximately two (2) years ago.

BOWRON reviewed the proposed draft ordinance for the amendment to sections 20-1301 and 20-1401 (C-1 and C-2):

1. **C-1**
 - a. the front, side and rear yard setbacks were reduced to 50 feet
 - b. lot width to 150 feet
 - c. lot depth to 150 feet
 - d. the total lot area enlarged to 22, 500 feet (currently 22,000 feet)
2. **C-2**
 - a. create a zoning district with a minimum of five (5) acres
 - b. not distinguish between the parcel sizes that are subject to the C-2
 1. allow more than one type of business
 2. not requiring five (5) acres for each business

BOWRON felt the idea behind the large setbacks were the consideration for adjacent properties. There are other ways to accomplish the fact.

- **SWANSON** felt if one property was abutting another piece of commercial property why does there need to be such a large offset. The businesses could be ten (10) feet apart and it would not matter.

VIEW FROM THE PLANNING COMMISSION ON THE PROPOSED DRAFT ORDINANCE:

- **DOYLE:** no problem before the change in 2002, but after the change, there were problems.
- **SWANSON:** the five (5) acres had been required in C-2 as a minimum lot size
- **BOWRON:** the five (5) acres would concentrate the commercial district
- **DOYLE:** any new property would have to be the five (5) acres setting in the middle of nowhere. If someone came to the Planning Commission and decided they wanted to make a piece of property C-2/C-1, it was in the middle of nowhere, and it was residential, how would the Planning Commission decide it was acceptable?

- **FLOWERS:** according to a letter received from **ATTORNEY MOULTON** on December 8, 2004, he (Attorney Moulton) stated:
“because of the uses of C-2 district includes several uses requiring large lots areas to operate efficiently, the ordinance requires relatively large lots, five (5) acres with large setbacks of eighty (80) to one hundred (100) feet. However, the C-1 district allows the development of smaller lots with the same setbacks.”
- **DOYLE:** the parcel would abut a residential or farm property so the setback on the side would be eighty (80) or 100 feet. The front would be eighty (80) feet and the rear would be eighty (80) to one-hundred (100) feet.
- **FLOWERS: ATTORNEY MOULTON** suggested in the proposed draft ordinance to reduce the side setbacks by thirty (30) feet in both C-1 and C-2 Zoning Districts and to make the lot width fifty (50) feet narrower.
- **BOWRON:** the lot width would be larger but the setbacks would be smaller.
- **SWANSON:** if residential, you could adjust to front – 25’; back – 75’.
- **DOYLE:** there are parcels of property in the township that could not be utilized because setbacks are too stringent.
- **SWANSON:** make everything a zoning district with everything the township currently has and build within the district.
- **BOWRON:** use the sliding setback approach – the district itself would be five (5) acres with parcels included.
- **SWANSON:** anything could be built within the five (5) acres according to the proposed draft ordinance
- **DOYLE:** the parcel of land on the end closest to the residential area would need help.
- **SWANSON:** due to the sliding rule, the side setbacks could be moved away from the residential property but still stay within the building envelope.
- **SWANSON:** made reference to the proposed draft ordinance C-2 which would get away from the non-conforming use of minimum of one-hundred (100) feet:
“Any lot zoned general commercial (C-2), as of the date of this amendment shall be considered part of a C-2 district regardless of the dimensions or total area of the lot.”
- **BOWRON:** the Planning Commission could achieve the compatibility by placing trees and shrubs.
- **DOYLE:** if there should be a driveway , a small area for a berm and some trees would help divide commercial from the residential zoning district.
- **SWANSON:** once a site plan has been received, the Planning Commission could require berms and trees.
- **DOYLE:** what would be the minimum distance if it was butting up to a residential? (fifty (50) feet on one side and ten (10) feet on the commercial side). The main item would be to have both sides equal a minimum of one hundred (100) feet.
- **SWANSON:** currently with the minimum of one hundred fifty (150) feet width, there would be fifty (50) feet on each side. If the area was residential, there could be ten (10) feet on one (1) side and ninety (90) feet on the other – as long as there was a combination

of one hundred (100) feet. (The Planning Commission has the discretion to move the building as long as it meets the ordinance).

- **DOYLE:** felt the maximum on the commercial side would be twenty (20) feet or even ten (10) feet.
- **DOYLE:** there should be a large drive on the residential for two (2) lanes of traffic plus the berm. If there were berms, thirty-five (35) feet to forty (40) feet would be a reasonable distance if located next to a residential area.
- **SWANSON:** if an individual wanted to build a one hundred (100) foot building on a one hundred fifty (150) foot wide lot, the person could slide the building all the way over to one side – per the new proposed draft ordinance.
- **DOYLE:** if there was an existing piece of property one hundred (100) foot, thirty-five (35) to forty (40) feet would be taken away from one (1) side for setbacks and ten (10) feet on the other side, that would leave fifty (50) feet for the building.
- **DOYLE:** in other municipalities, if an individual is on the residential side, there is a certain percent for the setbacks.
- **SWANSON:** suggested to add to the proposed draft ordinance the wording:
“Any lot zoned general commercial (C-2), as of the date of this amendment shall be considered part of a C-2 district regardless of the dimensions or total area of the lot. **The Planning Commission has the discretion to set the offsets. (Bold indicates an addition to the ordinance.)**”
- **SWANSON:** everything applies to the non-conforming lots.
- **BUELL:** several C-1 properties are still available.
- **DOYLE:** suggested thirty-five (35) to forty (40) feet away from the residential for C-1 and C-2 districts– to be determined on a case by case basis. (Mostly C-2 property)
- **BOWRON:** in the C-1 district, the lot width would be fifty (50) feet; C-2 district would be 150’ x 150’
- **BUELL:** don’t know what is ahead for the Planning Commission regarding the non-conforming uses.
- **DOYLE:** fifty (50%) percent of the frontage of the property has to be the side setbacks for a sliding; the rear and front could also be sliding on a non-conforming lot.
 1. **FLOWERS:** slide front to back
 2. **BUELL:** if 50% of 200’ - 100’ of sliding placement
 3. **DOYLE:** if an individual had 100’ x 300’ – telling the individual that he had 150’ would not be usable.
 4. **SWANSON:** any of the non-conforming lots that could not meet the minimum requirements of the new proposed ordinance, 150’ x 150’, then fifty (50) feet of the property would become the offset.
 5. **SWANSON:** if an individual came in with one hundred (100) feet deep, there would be twenty-five (25) feet on each side.

SWANSON MOVED, seconded by Flowers to approve the draft as presented by Attorney Moulton on C-1 and C-2, but that any of the non-conforming lots that cannot meet the

requirements set down by the new ordinance that the setbacks for the front, rear, and sides be not less than 50% minimum of the combined width or depth lot setback. MOTION CARRIED.

V. NEW BUSINESS:

1. Review the Open Meeting Act

BOWRON stated it has been the intent rather than a practice or policy of the Planning Commission in the past to keep the floor closed to the public during the “Work Sessions” now known as “Special” Meetings. No one that has wanted to speak has been denied the opportunity. With the Open Meetings Act, we must strictly comply by design rather than by accident.

PRATT stated the Planning Commission could not keep the public from speaking. Different aspects of the Open Meetings Act were discussed.

VI. PUBLIC COMMENTS:

9:45 P.M. – OPEN TO THE PUBLIC

No comments from the audience.

9:45 P.M. – CLOSED TO THE PUBLIC

VII. BOARD COMMENTS:

None

VIII. MEETING SCHEDULE:

REGULAR SCHEDULED MEETING – MONDAY, MAY 9, 2005 – 7:00 P.M.

PROPOSED SPECIAL MEETING – MONDAY MAY 23, 2005 – 7:00 P.M.

REGULAR SCHEDULED MEETING – MONDAY, JUNE 13, 2005, – 7:00 p.m.

PROPOSED SPECIAL MEETING – MONDAY, JUNE 27, 2005 – 7:00 P.M.

IX. ADJOURNMENT: There being no further business, **BOWRON** adjourned the Planning Commission Meeting at 9:50 p.m.

AARON BOWRON, Chair

JULIA A. MORFORD, Recording Secretary

ERIC SWANSON, Secretary

Date of Approval