

CHARTER TOWNSHIP OF FLUSHING
6524 N. SEYMOUR ROAD
FLUSHING, MICHIGAN 48433
810-659-0800 FAX: 810-659-4212
SPECIAL PLANNING COMMISSION MEETING
DATE: JULY 24, 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, Buell, Flowers, Gibbs, Pratt, Fitch, and Morford

ABSENT: Swanson

OTHERS PRESENT: Flushing Township Attorney Steve Moulton

I. MEETING CALLED TO ORDER at 7:00 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 JUNE 26, 2006: PRATT MOVED**, seconded by Doyle to approve the Minutes of June 26, 2006 as amended. **MOTION CARRIED**

(B) **MINUTES OF JULY 10, 2006: FLOWERS MOVED**, seconded by Doyle to approve the Minutes of July 10, 2006 as amended. **MOTION CARRIED.**

IV. UNFINISHED BUSINESS:

None

V. NEW BUSINESS:

1. Review and Discussion of the 2006 Michigan Zoning Enabling Act (ZEA) with Attorney Steve Moulton

Flushing Township ATTORNEY STEVE MOULTON (ATTORNEY MOULTON) was in attendance to review the new 2006 Michigan Zoning Enabling Act (ZEA).

BACKGROUND HISTORY OF THE ACT:

1. Michigan Legislature enacted the Zoning Enabling Act, which was approved by the Governor and became effective July 1, 2006.
2. All changes, which the Planning Commission wishes to recommend to the Board of Trustees with regards to the zoning ordinances, would now have to comply with the procedural requirements of the ZEA in order to go into effect.
3. The ZEA repealed the Township Zoning Act (TZA), which has been the statutory authority for the existing zoning ordinances.
4. There were various enabling statutes for different types of jurisdictions, cities, villages, counties, charter townships and common-law township. The intent was to repeal all the different types of enabling statutes and place all the jurisdictions under the same general statutory scheme.
5. Because particular jurisdiction's zoning ordinance was unique to that particular jurisdiction, Michigan Townships Association (MTA) could not promulgate a generic amendment that would fit every jurisdiction.
6. MTA instead put out an outline that discussed, in general terms, the various areas that each jurisdiction could review, compare the ZEA requirements with their existing zoning ordinance, and then make their own independent decision as to whether or not they had to amend the ordinance.

CHANGES WITH THE NEW ZEA:

1. The provisions that govern the Planning Commission are not in the Township Zoning Act; they are in a separate set of statutes listed under Planning. They were not repealed or changed.
2. One of the major changes effected by the ZEA was to phase out Zoning Boards. If there are any townships, which have not transitioned in the past to "Planning Commissions", they are now required to do so with the new Act.
3. There are some jurisdictions, cities, villages, etc. that have never adopted a zoning ordinance; there are requirements modified to be observed if a jurisdiction would be adopting a zoning ordinance for the very first time. The Charter Township of Flushing has had a zoning ordinance in effect before 1980. The portion of the new ZEA concerning zoning ordinances can be disregarded in its entirety.
4. Another area of change would be how townships address the zoning for airports – there are no airports in Flushing Township. There aren't any zoning classifications that permit an airport; airport has not been defined in the

“Definitional Provisions” of the Zoning Ordinance. The issue could be addressed at a future time.

5. Cities and villages, under their statutory enabling act, could grant “use” variances. Over a period of time a Court of Appeals stated that townships could do the same thing. A few townships either changed their ordinance to specifically grant their Zoning Board of Appeals (ZBA) the authority to grant “use” variances or they did it without any language in their ordinance only relying on the court cases.

On February 15, 2006, if the ordinance allowed “use” variances, the township could continue to do so; Flushing Township has never allowed for “use” variances. **THE ISSUE COULD BE DISREGARDED.**

6. MTA has recommended having a very small zoning ordinance and a very large Policies and Procedural Manual for the Planning Commission instead of the approach Flushing Township has taken in “spelling” out everything that an individual needed to know in the zoning ordinance.
 - a. The Notice Requirements are in the ordinance; if you are on the Planning Commission or a member of the public and you would like to see what has to be done to provide proper notice, you would go to the zoning ordinance, you would not have to refer back to the statute.
 - b. The ordinance has been made total and comprehensive so that everything that an individual needed to know would be in the zoning ordinance. (MTA has recommended the approach that if you are adopting a requirement of the ZEA, it could be adopted by reference; there would not be a need to put it in your zoning ordinance in detail because if the statute has changed, the ordinance would not have to be amended to reflect the change. (How would an individual know what requirements to operate under; you wouldn’t want to go to the statute every time.)

RECOMMENDATION FROM ATTORNEY MOULTON:

ATTORNEY MOULTON recommended to identify the provisions in the current ordinance that need to be amended, continue with the existing policy of detailing what the amendments are, and approach in the particular manner.

1. The Master Plan had been reviewed in 2004, with the assistance of Doug Piggott of Rowe Inc.
2. **IT WAS RECOMMENDED TO FOLLOW ATTORNEY MOULTON’S RECOMMENDATION AS TO THE EXISTING POLICY OF DETAILING WHAT THE AMENDMENTS ARE AND APPROACH IN THE PARTICULAR MANNER.**

3. **BUELL** wanted to know who started the process of the ZEA. **NEWMAN** stated he recognized several names on the Act and they were from the Northwest part of the State. What normally happened with a lot of the bills, of this particular magnitude, a Representative had only two (2) staff members (Secretary and Legislative Aide). Trade groups would come in and state they had a “thing” that was important and if there was support, they would get behind it and push it through. **BUELL** stated the Act could be the result of an effort in the Northwest part of the State to create Planning Commissions, in townships and areas of the Northwest part of the State, where currently there are none located. **PRATT** stated it was his understanding there were different zoning acts and the legislators wanted to bring all of the acts together so that everyone was on the same page. **FLOWERS** stated that at the ZEA Seminar (Frankenmuth, MI) there were still some communities that operated with a Zoning Commission rather than a Planning Commission or sometimes nothing at all.

REVIEW OF THE CHANGES TO THE ZEA: The New 2006 Michigan Zoning Enabling Act – Charter/MTA (July 2006) (Brochure provided courtesy of the Michigan Townships Association).

PAGE 6, ZONING NOTICE REQUIREMENTS:

1. Anytime the Zoning Ordinance regardless of whether it was the ZBA, Planning Commission, etc. required a public hearing, there would be one uniform Notice requirement that would pertain to all the hearings.
2. **What is required NOW (after July 1, 2006):**
 - a. publish notice once instead of twice as was formerly done (before July 1, 2006).
 - b. the publication has to at least fifteen (15) days before the date of the meeting at issue.
 - c. provide written notice either by first class mail or personal delivery to:
 1. owners of property for which the approval was being considered.
 2. all persons to whom real property was assessed within three hundred (300) feet of the property.
 3. occupants of all structures within three hundred (300) feet of the property (regardless of whether the property or occupant was located in the township.) If the name of the occupant was not known, the term “occupant” may be used.
 - a. occupant would mean, if commercial use, someone that was occupying the property and would be entitled to the same notice.
 - b. take a very general view of who an “occupant” was; anyone that was using the property.

- c. any apartments, malls, etc.
3. existing Notice Requirements for Planning Commissions are set forth in *Amendments Article XX, Section 20-2001(a) (b) and (c)*. **ATTORNEY MOULTON RECOMMENDED DELETING AMENDMENTS ARTICLE XX, SECTION 20-2001 (a) (b) and (c) IN ITS PRESENT FORM AND SUBSTITUTING THE LANGUAGE REQUIRED UNDER THE NEW STATUTE.**

PAGE 7, ZONING ORDINANCE ADOPTION, TEXT AMENDMENT, AND REZONING PROCEDURES:

1. **ATTORNEY MOULTON** recommended skipping over the provisions with regards to adopting the original zoning ordinance. The Township Zoning Ordinance is already in place but even if the township should completely repeal and replace, the ordinance would only be amending the ordinance.
2. Review of the Planning Commission:
 - a. if the Planning Commission held a Public Hearing and decided that it was going to recommend, as an amendment to the Zoning Ordinance, to the township Board of Trustees, the Board of Trustees could do one of three (3) things:
 1. approve the recommendation without change
 2. not take any action on the issue and that would be the end of the matter
 3. modify in some fashion; at that point the Board of Trustees can do one of two things:
 - a. under the new changed ZEA the Board of Trustees can make the change
 - b. **OR** refer back to the Planning Commission. The decision is now optional. In the past it had to go back to the Planning Commission.
 - b. the matter would be addressed in 22-100(f), which states:

“upon receipt of the recommendations of the Township Planning Commission, the Township Board shall (see the rest)

 1. the Board of Trustees would have to decide, based on a recommendation from the Planning Commission as to whether or not they (Board of Trustees) feel the amendment, if they want to make changes to the proposed amendment, should come back to the Planning Commission for further consideration; **OR**
 2. should the Board of Trustees have the authority to make the changes as it sees fit and then proceed with the adoption process.
 - a. MTA’s comment has raised concerns of due process if the Board, because it was not required to hold a Public

- Hearing, decided to arbitrarily make changes. (It would defeat the purpose).
- b. **PRATT** felt the area of expertise should be with the Planning Commission
 3. **ATTORNEY MOULTON**, as the Township Attorney, felt that given the due process consideration, the matter should come back to the Planning Commission.
 - a. **ATTORNEY MOULTON** stated there needed to be an amendment to Section 22-100(f) (?) to address what the Planning Commission felt would be appropriate.
 - c. **ATTORNEY MOULTON** stated that now, through the provision, if someone wanted to request a Public Hearing at the Township Board level, they could do so and the township would have to conduct a Public Hearing.
 1. Summary: Page 8 of the MTA 2006 Michigan Zoning Enabling Act states:

“Section 11 of the Township Zoning Act provides an opportunity for a property owner to require that the Township Board also hold a Public Hearing at a township board meeting on a proposed zoning ordinance/text amendment (and probably also a proposed rezoning). However, this opportunity is only available where the township board has referred the Planning Commission/Zoning Board recommendation back to the zoning board/planning commission to consider changes”.
 2. SECTION 401 (4) OF THE ZEA now requires the township board to grant a hearing on a proposed zoning ordinance text amendment when properly requested by a property owner, before township board adoption of a proposed amendment or rezoning, regardless of whether or not the township board had previously referred the proposal back to the planning commission/zoning board for further consideration of changes desired by the township board.
 3. The property owner’s request for such a township board hearing must be by certified mail, addressed to the township Clerk. If such a request has been received, the township board would be required to hold the requested public hearing at a board meeting, preceded by notice of a hearing as otherwise required by the ZEA for a text amendment or rezoning, as applicable.

QUESTIONS FROM THE COMMISSION:

- **BUELL:** must the Township Board meet within a specified amount of time?
ATTORNEY MOULTON stated the legislative would think this would be an

amendment the township would want to go forward with, so as part of orderly government, the township would want to get the amendment enacted.

- **BUELL:** if an individual sent the township board a certified letter requesting a “special” meeting immediately, how would the board respond. **ATTORNEY MOULTON** stated it would be entirely within the Board’s discretion to schedule a “special” meeting and it would have to meet the Board’s criteria to warrant the “special” meeting.
- **NEWMAN:** the person would be guaranteed a hearing but not at the next possible date.
- **FLOWERS:** if the agenda has already been made out for a meeting, it could be at the next regular meeting.
- **DOYLE:** the issue could be referred back to the Planning Commission.
- **ATTORNEY MOULTON:** the statute states the legislative body (Board of Trustees) shall grant the hearing on a proposed ordinance provision to a property owner who requests a hearing by certified mail addressed to the Clerk of the legislative body.
 1. there would have to be notification sent to property owners within three hundred (300) feet (same as public hearing notice).
 2. Special Use Fee would be charged.
- **JERRY FITCH (FITCH) Building Inspector:** the only items sent to the Township Board would be “Rezoning Requests” and “Ordinance Amendments”
 1. **Rezoning Request** – the individual has already paid a fee and the notifications have been taken care of.
 2. **Ordinance Amendment** – internal business – if a resident that did not like what was proposed, the township would pay for the notification. There may be cases where the meeting would have to be scheduled two (2) months in the future.

PAGE 8, NUMBER 3, SPECIAL LAND USE AND PLANNED USE DEVELOPMENT PROCEDURES:

1. There are two (2) types of Special Use: Discretionary and Non-Discretionary
 - a. Discretionary Special Uses have to come before the Planning Commission subject to public hearing (**NO CHANGES NEEDED**)
2. **CHANGE NEEDED:** Notice requirements with regard to the public hearing to make it consistent.
3. ***Special Use Permits Article XVIII, Section 20-1801(b) 1) states:***
“Upon receipt of an application for a special land use which requires a decision on discretionary ground, one (1) notice that a public hearing for a special land use appeal will be held shall be published in a newspaper which circulates in the township and sent by mail, or personal delivery to the owners of property for which approval is being considered, to all persons to whom real property is assessed within three hundred (300) feet. The notice shall be given not less than five (5) or not more than fifteen (15) days before the date the application will be considered. If the name of the occupant is not known, the term “occupant” may be used in making notification. Notification need not be given to more than one (1) occupant of a structure, except that if a structure contains more than one (1) dwelling unit or spatial area owned or leased by different individuals,

partnerships, businesses, or organizations, one (1) occupant of each unit or spatial area shall receive notice. In the case of a single structure containing more than four (4) dwelling units or other distinct spatial areas owned or leased by different individuals, partnerships, businesses, or organizations, notice may be given to the manager or owner of the structure who shall be required to post the notice at the primary entrance to the structure.” **(NEEDED TO BE CHANGED TO BE CONSISTENT WITH SECTION 20-2001 (a)(b)(c))**

4. **ATTORNEY MOULTON** stated the ordinance already specified in detail the criteria for the standards to be used in considering special land use requests. **(NO CHANGES)**

PAGE 9, LETTER B, PLANNED UNIT DEVELOPMENTS - NO CHANGES

PAGE 9, NUMBER 4, ZONING BOARD OF APPEALS (ZBA)

1. ZEA now states the legislative body may appoint not more than two (2) alternate members to serve along with the regular five (5) members. **ATTORNEY MOULTON** stated he was not aware of Flushing Township having alternates.
 - a. **FLOWERS** stated he didn't think any board had ever had alternates; if there weren't enough board members present, there wasn't a meeting.
 - b. **FLOWERS** stated at the recent seminar in Frankenmuth, the speaker brought up the idea that he (the speaker) felt alternates were good because if there was a five (5) member board and there were two (2) members off with illness – it would take three (3) to make a quorum.
2. **ATTORNEY MOULTON** stated it would be a board decision as whether to have alternates.
3. **FITCH** stated that at one time, there were alternates to the ZBA but the alternates were never used.
4. **ATTORNEY MOULTON** stated the key, if the board exercised the discretionary authority to designate alternates, then under the ZEA, it would have to be specified as to the criteria under which the alternates would come into play.
 - a. **DOYLE** stated that once in a five (5) year period, the ZBA might not be able to hold a meeting due to lack of a quorum.
 - b. **ATTORNEY MOULTON** suggested that if there should be an issue where there isn't a quorum, the indication to the board would be that the Planning Commission has considered the issue, and the recommendation would be the ordinance not be changed and alternates are not needed.
 1. **FLOWERS** stated that in the case of a conflict of interest, an alternate should be contacted to be at the meeting.
 2. **PRATT** wanted to know what would happen if there wasn't a quorum at a meeting. **NEWMAN** stated there could not be any business transactions.

3. **PRATT** wanted to know if there would be anything in the future that could be that important that could cost a contractor or anyone thousands of dollars until the next monthly meeting?
 - a. **ATTORNEY MOULTON** stated a Special Meeting could be scheduled. Then the question would be if it was the governmental entities fault because there wasn't a quorum of the governing body, then maybe the charge for the Special Meeting would have to be "eaten" by the governing body as opposed to the regular process.
 - b. **ATTORNEY MOULTON** stated that most of the subjective issues the ZBA considers are on appeals where someone has been grieved from the decision of the Planning Commission etc.

5. Under the Township Zoning Act, there is a twenty-one (21) day appeal period. If a resident wasn't satisfied with the ZBA's decision, the recourse would be to appeal to the Circuit Court. **THE NEW ACT HAS THIRTY (30) DAYS.** Zoning Board of Appeals Article XXII, Section 20-2200 and following, governs the ZBA.

In Zoning Board of Appeals, SECTION 20-2207, Decisions, the wording should be amended to read:
". . .THE PERSON HAVING AN INTEREST AFFECTED BY THIS CHAPTER MAY APPEAL TO THE CIRCUIT COURT MUST DO SO WITHIN THIRTY (30) DAYS."

 - a. **FITCH:** what is the time period to appeal to the ZBA. **ATTORNEY MOULTON** stated the time period could be specified but he (Attorney Moulton) thought it was thirty-five (35) days.

PAGE 10, NUMBER 5, VARIANCES:

1. **ATTORNEY MOULTON** had received an article from **FITCH** regarding "Why the Legislation was the Way it Is" (February 15, 2006) which made reference to if there was an existing ordinance authorizing use variances, or if the township had granted a use variance prior to February 15, 2006, those townships which would be very few, could continue under the ZEA to grant use variances; General or Charter Townships do not have the authority to grant use variances.

The Planning Commission grants non-use variances when setback requirements cannot be met, height requirements, etc. There are so many special uses, both discretionary and non-discretionary, that rather than going to the ZBA to request a variance to use property in a manner not authorized by the statute, the individual would come before the Planning Commission and seek a "special use."

2. **ATTORNEY MOULTON** stated the Planning Commission never had the authority to grant use variances. If a resident came before the Planning Commission and

wanted to use property for something not permitted under their zoning classification, such as a dog kennel in an area not zoned, and they come in and request a variance to use the property in a manner not otherwise permitted under the statute, the request could be fit into one of the “special uses”.

3. ZBA never had the authority to grant under the former act and can never have the authority. ZBA did have the authority to grant non-use variances; regardless of what the property was being used for, if could not meet the ten (10) foot setback but could be constructed with the eight (8) foot setback.
4. **CRITERIA – Unnecessary Hardship/practical difficulties. ATTORNEY MOULTON** wanted to know if the Planning Commission would be taking a look at the standards of the practical difficulties in the first instance or should there be some input from the ZBA members. **THE STANDARDS NEEDED TO BE INCORPORATED INTO THE ZONING ORDINANCE SO THE LANGUAGE WOULD HAVE TO COME FROM THE PLANNING COMMISSION AND GO TO THE BOARD OF TRUSTEES.**
5. **ATTORNEY MOULTON stated what would be compared would be the language under:**
 - a. **Section 20-2208 compared with Section 604 of the ZEA**
 - b. **ATTORNEY MOULTON stated the wording could be: “WITH REGARDS TO THE REVIEW PROCEDURES TO BE USED BY THE ZEA IN CONSIDERING NON-USE VARIANCES THE STANDARD WILL BE SUCH AS SET FORTH IN ZEA SECTION 607.**
6. **NEWMAN** stated as long as the current ordinance met the requirements of the new ZEA, it could be left as is. **NEWMAN** felt that as long as the ZBA and the residents are use to dealing with the current ordinance, he would like to leave as is. If not, the language would be changed.
7. **PRATT** felt if there was a legal standard, then **ATTORNEY MOULTON** should undertake the issue and formulate the issue in layman’s terms for the Planning Commission.
8. **DOYLE** felt the Planning Commission was functioning well with what was available so why change; the ZEA states the Planning Commission doesn’t have to change.
9. **ATTORNEY MOULTON WILL REVIEW THE ISSUE.**
10. **ATTORNEY MOULTON** read Subsection 2, which states: (An Appeal to the ZBA which **FITCH** had inquired earlier).
“an appeal under this section shall be taken within such time as shall be prescribed by the Zoning Board of Appeals by general rule.”

PAGE 12, NUMBER 6, NON-CONFORMING USES OR STRUCTURES

1. Issues Addressed in *General Provisions, Article III, Section 20-309 through 20-313*
2. ZEA was making the possible treatment of non-conforming uses more liberal. Section 208(2) of the ZEA states:
“a township “**may** provide in a zoning ordinance for the completion, **resumption**, restoration, reconstruction, extension, or substitution of **nonconforming uses or structures** upon terms and conditions provided in the zoning ordinance.”
3. Under the current ordinance if a non-conforming use is discontinued, it is done – you can’t go back and resume the use.
4. **ATTORNEY MOULTON** stated the Planning Commission could consider leaving as is or amend the ordinance to make it more liberal.
 - a. **FLOWERS** wanted to know if a building burned down, could the structure be rebuilt at the same location?
 - b. **ATTORNEY MOULTON** stated the issue could be attributed to a natural act where it would be too harsh on the property owner to say that he would have to immediately comply with what the zoning ordinance now required; the non-conforming use could be continued. But over a period of time, the uses would dissipate and everything in the area would be conforming.
 - c. **ATTORNEY MOULTON** stated that if someone was grieved with a decision on a non-conforming use, the individual could appeal direct to Circuit Court (Section 607 of the ZEA) within a thirty (30) day time limit.
 - d. **ATTORNEY MOULTON RECOMMENDED PLACING THE LANGUAGE LISTED UNDER DISTRUCTION OF STRUCTURE, SECTION 20-313 (a)**
5. **ATTORNEY MOULTON STATED THE PROVISIONS FOR CONDITIONAL REZONING WOULD NOT HAVE TO BE CHANGED; THEY ARE CONSISTENT WITH THE ZEA.**

6. **NEWMAN** stated that after the reviews were made, the changes involved were:
 - a. **Notice changes**
 - b. **Decisions to make for alternates for ZBA**
 - c. **Non-conforming uses more liberal**
 - d. **More “user friendly” information with the thirty (30) day period to go to Circuit Court**

FLOWERS stated one of the main things he got from the Frankenmuth Seminar was the review of Section 103, which had touched on more details of the ZEA. There were six (6) rules which were given to everyone at the seminar:

1. defining the zoning act
2. review the ordinances
3. check the ZBA language
4. check on ZBA membership
5. eligibility of use variances
6. deciding on non-conforming rules

VI. BOARD COMMENTS:

1. FLOWERS stated that three (3) individuals had attended the 2006 Michigan Zoning Enactment Act Seminar held at Frankenmuth on July 20, 2006; very interesting seminar. There would not be a repeat of the ZEA at the next evening session scheduled for August 24, 2006. **FLOWERS** stated the Zoning Board could run for five (5) years and then it has to be converted to the Planning Commission. The most important item that came out of the whole seminar was Section 103, which gives all the information needed for future reference.

GIBBS/FLOWERS had directed to the speaker, of the Seminar regarding Private Roads as to whether the Township would be responsible if the Planning Commission stated there had to be a Maintenance Agreement and the Planning Commission agreed there had to be a Maintenance Agreement.

VII. PUBLIC COMMENTS:

8:31 P.M. – OPENED TO THE PUBLIC FOR NON-AGENDA ITEMS

8:32 P.M. – CLOSED TO THE PUBLIC FOR NON-AGENDA ITEMS

VIII. MEETING SCHEDULE:

REGULAR SCHEDULED MEETING – MONDAY, AUGUST 14, 2006 AT 7:00 P.M.

PROPOSED SPECIAL MEETING – AT THE DISCRETION OF THE PLANNING COMMISSION, THERE COULD BE A SPECIAL MEETING ON MONDAY, AUGUST 28, 2006 AT 7:00 P.M.

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

IX. ADJOURNMENT: There being no further business, **CHAIR MARK NEWMAN** adjourned the meeting at 8:33 p.m.

MARK J. NEWMAN, Chair

JULIA A. MORFORD, Recording Secretary

ERIC SWANSON, Secretary

Date of Approval

Planningminutes 072406