

CHARTER TOWNSHIP OF FLUSHING
6524 N. SEYMOUR ROAD
FLUSHING, MICHIGAN 48433
810-659-0800 FAX: 810-659-4212
SPECIAL PLANNING COMMISSION MEETING
DATE: JUNE 25, 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, Buell, Flowers, Gibbs, Pratt, Fitch, and Morford

ABSENT: None

OTHERS PRESENT: None

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 submitted. **MOTION CARRIED.**

III. APPROVAL OF MINUTES OF JUNE 11, 2007: PRATT MOVED, seconded by
Flowers to approve the Minutes of June 11, 2007 as changed. **MOTION CARRIED.**

IV. UNFINISHED BUSINESS:
None

V. NEW BUSINESS:

1. Discussion of Legal Terminology of Conflict of Interest

NEWMAN stated a conflict of interest issue had come before the Planning Commission at the
May 14, 2007 Meeting. It was decided to have a discussion of the legal terminology of a
“conflict of interest” when all of the Planning Commission Members were present.

NEWMAN stated, as an attorney, if there was a mere appearance (as stated in the Code of Ethics), even if someone could just imply there was some sort of conflict, the person should back off of the project.

COMMENTS FROM THE PLANNING COMMISSION:

- **BUELL:** the issue of “conflict of interest” was raised strictly because of appearance; has great appreciation and respect for **DOYLE** due to his knowledge of the ordinances and how and when they should be applied; appearance is of great concern and is an issue of what the Planning Commission should be watchful, mindful, and careful of.
- **NEWMAN:** great concern because sometimes the members of the Planning Commission have been approached by individuals for an advisory opinion for something that does not even pertain to the issue at hand.
- **NEWMAN:** sometimes individuals get the impression that just because they have filled out all the paper work for a certain project, they would automatically be approved at the Planning Commission level. Everyone needed to be cautious.
- **NEWMAN:** Planning Commission Members wear their Planning Commissioner’s hats even when they are not at a meeting.
- **FLOWERS:** it would be similar to an elected official who would be on duty 24/7. Michigan Townships Association (MTA) has brought the “conflict of interest” issue up several times.
- **FLOWERS:** other Planning Commission members have had to deal with the “conflict of interest” issue because of their occupation as a Planning Commission Member.
- **NEWMAN:** each Planning Commission member has one vote; when someone comes to the Planning Commission Meeting, the individual would not be guaranteed an approval of the request.
- **PRATT:** MTA’s opinion regarding “conflict of interest” legalities was “if you derive a direct benefit from the issue it would be considered a “conflict of interest””. Even if there was a reflection or a possibility that anyone could think there was a conflict, it would be better to back away from the issue. **DOYLE** stated he had thought about not voting at the May 14, 2007 Meeting, but had forgotten when the vote had come up. **PRATT** stated to officially perform the duties of the Planning Commission, the members were required to vote. The protocol would be to request from the Commission the desire to not vote if there was a conflict.
- **DOYLE:** being in the Township for thirty-one (31) years and being on the Planning Commission for almost the same period of time, there was a lot of times people from the township would call him so they could get information about what it was they wanted to do not just from Building Inspector **JERRY FITCH**, but **DOYLE**. In the process, **DOYLE** had told everyone that he talked to, because people were calling him (Doyle) for information, and he (Doyle) thought it was necessary that he (Doyle) gave them the information, so they (applicants) would know where they (applicants) were going at least to make the individual understand that as far as **DOYLE** was concerned, if he was going to vote, **DOYLE** was only one vote out of seven (7) was all that **DOYLE** had and to not get any idea that **DOYLE** would put something together and force it through the

Commission. **DOYLE** has talked to a lot of people on roadways, ponds, almost anything that one could possibly think of; the ordinances have gotten larger every year.

DOYLE had explained the pond/drainage situation to the Planning Commission at the May 14, 2007 meeting for which there was a “conflict of interest” concern. The whole rationale of the particular matter was the Commission, as a Township, needed more information. The applicant had already received the information from the engineer as to the grades for where the water flowed. **DOYLE** stated he had gone out to help Teeples in order to supply enough information so the Planning Commission would know the direction that Teeples was going to be taking. It was a fact that “yes” the grades did go in a particular direction. **DOYLE** was only interested in giving the Planning Commission the information in order to make a decision and did not feel that what he had done was a “conflict of interest” because all the information was put out in the open. If something had been done in secrecy, it would have been a different situation. **DOYLE** stated he did agree with the statement that if there was a feeling of conflict, it should be stated to the Planning Commission. **DOYLE** did not find a reason to not vote on the pond issue; he (Doyle) had only give information. **DOYLE** stated he had known the total amount of work that needed to be done, but the work was not being done. If Teeples had gone to an engineer to put the grades together, it could have cost \$5,000; **DOYLE** didn’t feel Teeples should have to pay that price because he (Teeples) already had a bad situation with the home builder. **DOYLE** felt the Planning Commission should determine what was considered “conflict of interest.”

- **NEWMAN:** when documents and applications have come in with a Commissioner’s name on them, even though the situation was with good intention and to get the information to the Planning Commission, **NEWMAN’S** fear was that good intention could get lost in the mix and give a wrong appearance of the Commission.
- **NEWMAN:** stressed the meeting (May 14, 2007) was not an issue with **DOYLE**, because the situation had come up before where one or more of the Commissioners had got “cornered” by residents on questions that should not be answered by the Commissioners on the side. The situation had brought to head a topic that **NEWMAN** had wanted to discuss for a long time.
- **DOYLE:** A lot of times it has put a situation together that couldn’t be answered. There are ordinances; everyone in the township should follow the ordinances as it is their (residents) property which the Planning Commission would be discussing.
- **PRATT:** would the Planning Commission be setting a precedent for the township?
- **DOYLE:** a section in the ordinance stated there had to be an engineered drawing or someone who was capable of doing the drawing. If someone wanted **DOYLE** to do a drawing or something, and money was paid for the issue, **DOYLE** would automatically exclude himself from the issue; it would definitely be a “conflict of interest.” **DOYLE** felt if something could be done by one of the Commissioners to help someone out, and the Commissioner did not feel it was a “conflict of interest”, and the Planning Commission as a whole could not see the issue as a “conflict of interest”, then why would

it be a “conflict of interest.” The Commissioner could always excuse himself from the issue.

- **PRATT:** personally, felt the Commissioners should not be involved in issues or help someone other than their duties at the Commission level. In the political arena, there has been little trust from the public. **PRATT** felt that **DOYLE** was as honest as they made it and above all, **DOYLE** was trying to help people, which was the most honorable thing possible. If there was any chance or reflection or doubt, the Commissioners should back away from the issue.
- **NEWMAN:** the issue of “turning people away” approach had been brought up at one of the Planning Commission Meetings; all property owners expected the rules to be followed for the protection and enjoyment of everyone. If there were requirements under the ordinances and people didn’t meet those requirements because the applications were half filled out or not properly filled out, **NEWMAN** stated he was uncomfortable making a decision and breaching his and the rest of the Planning Commission’s fiduciary duty. The Planning Commission was charged with following the ordinances in the Zoning Laws. If anyone couldn’t comply with the ordinances or didn’t meet the requirements by which the Planning Commission was required by law to review in order to make a decision, the individual would have to come back before the Planning Commission.
- **DOYLE:** the majority of the time the residents do not understand what the Planning Commission wanted on the application, and they didn’t know how to obtain the information.
- **FITCH:** we all need to be “user friendly” as we are here to provide a service for the public and that would include helping the residents. There was a fine line between a “conflict of interest” and helping someone; everyone struggles with the problem. **FITCH** stated he had a hard time turning someone down from coming before the Planning Commission as the officials were available to serve the residents.
- **DOYLE:** in the future if **DOYLE** performed services for someone, he should excuse himself from voting. **BUELL** felt that even if there were business partners, the Planning Commission member should excuse himself.
- **PRATT:** when someone is petitioning the Planning Commission, no Board Member should conduct any type of help, consideration, or anything that could even be seen as a “conflict of interest.”
- **NEWMAN:** the Planning Commission has to be very careful about getting involved.
- **SWANSON:** Michigan Townships Association (MTA) has many pamphlets and things on the description of “conflict of interest” but when it got down to benefit, if you benefit from a decision it is a “conflict of interest”. **SWANSON** stated the proper way to proceed was if an individual was sitting on the Commission, and there was a conflict of interest, the person was supposed to present his case to the Commission and if it was agreed there was a conflict of interest, the Commissioner would be excused and would sit in the audience.
- **NEWMAN:** always error on the side of caution.
- **SWANSON:** as long as he (Swanson) has been on the Planning Commission, there would sometimes arise a question of appearance. **SWANSON** gave an example of a bad pond situation which included a meeting of **DOYLE**, the Supervisor, and the Genesee

County Drain Commissioner; but by getting everyone involved, the situation had been resolved.

- **PRATT:** sometimes there have been situations where it would be considered as a consulting situation.
- **SWANSON:** if any of the Planning Commission Members had a problem with another Commissioner, the issue should be stated before a vote was taken. Once a vote has been taken, it was finished.
- **DOYLE:** something should be stated in the ordinance that would give everyone a direction as to what constituted a “conflict of interest”.
- **NEWMAN:** felt that after the open discussion all the Planning Commissioners had a better understanding as to how the members of the Planning Commission felt on “conflict of interest”. If in the future he (Newman) saw a Planning Commission Member’s name on the item and there was a problem, **NEWMAN** would bring the issue up before a vote was taken. All members agreed with the decision.
- **FLOWERS:** he (Flowers) had the knowledge to do specific things (road, surveying, etc) and if the situation had been reversed, **FLOWERS** would probably have done the same as **DOYLE**, and taken care of the issue. In the future, state what has been done and the issue has been taken care of “out of good will” and nothing was received for the service.
- **DOYLE:** hard to remember everything that was stated at the May 14, 2007 meeting, but he had brought up the issue of the interest.
- **GIBBS:** the biggest concern for him (Gibbs) has been the pond was already there before the issue had come to the Planning Commission. If **DOYLE** would have simply excused himself, the Planning Commission would not be talking about the situation at the current meeting.
- **PRATT:** valid point to remember would be to bring up the issue before the vote of the Planning Commission.
- **NEWMAN:** for the future, the Planning Commission agreed to an agreement that if anyone was questioned, please do not be offended because the issue would be for the protection of the Commission.

2. Discussion/Review of Grading and Drainage

FLOWERS stated attached *Exhibit A* had been given to him by **SUPERVISOR TROTOGOT** because recently there had been three (3) issues that involved drainage problems in the township. It was believed *Exhibit A* had been drafted by Justin Sprague of Rowe Inc several years ago:

COMMENTS FROM THE PLANNING COMMISSION:

- **PRATT:** people have attended Board meetings that have drainage issues; different officials have tried to help the situation; personal opinion as a Board of Trustee and a Planning Commission Member, doesn’t feel the township had the responsibility at Township level to deal with the situation, it is a civil matter.
- **GIBBS:** people have to show respect for their next door neighbor; problems have started when an individual started running water across the next door neighbor’s property.

- **PRATT:** should the township be spending taxpayers' dollars to resolve one or two issues? If there was a process whereby when someone had a problem and came to a Board Meeting, at that point the Board would have a format to handle the situation:
 - a. if there was a drainage problem, a drainage expert from the Township Office would be sent out to view the situation:
 - 1. show the individual the ordinance and the process to resolve the matter.
 - 2. go out and view the situation.
 - b. review to see if the issue involved a County Drain problem or who/what is causing the problem.
 - c. if a County Drain or Road Commission problem, we could exert pressure on them to correct the issue.
 - d. contact the appropriate person/company and write a letter:
 - 1. here is what our experts say is happening, AND
 - 2. here is why we feel it is happening, AND
 - 3. here is what the remedy would be.
- **PRATT** inquired from **ATTORNEY MOULTON** as to the State Statute regarding drainage:
 - 1. there are no State Laws regarding drainage as far as to what could be done.
 - 2. there are a lot of case laws involved, which the Courts would decide by and has been decided previously, would be that an individual could not interfere with the flow of water and affect adjacent land owners.
- **PRATT** cited *Site Regulations - Site Plan Regulations Lot Grades – Section 20-410*:
 - a) “All structures shall be constructed or located with the ground elevation such as to provide a sloping grade to cause the surface drainage to flow away from walls of such structures.”
 - b) “Grades on any lot upon which new construction or earth movement is to be carried out shall be related to existing grades and drainage systems such as to provide adequate drainage and not jeopardize such existing drainage systems, and shall be approved by the township building inspector and such other authorities having jurisdiction over such system.”
- **PRATT:** felt the new construction and state law stated it could not be done. **PRATT** stressed if there was a format, what more would be needed? Does the township want to get involved in Court and litigation and try to solve the issues at a township level, it could be a big drain money wise. Most of the issues have been civil matters to be solved in Court and not take up township time and money.
- **DOYLE:** felt the draft ordinance could be a lot simpler. All types of permits have been required before the individual would be able to come before the Building Inspector.
- **NEWMAN:** if anything was released on someone else's property it would be considered “trespass” and the individual (the person doing the releasing of something) could get sued.

- **FITCH:** some of the issues have involved drains that were higher than the property that was being drained; three (3) issues have dealt with private roads: 1) a brand new building site which could be corrected; 2) a private drive off Duffield Road; 3) a private drive off Deland Road which has been a landscaping issue. The problem has been private drives that only serve two (2) homes as there isn't anything in the ordinance that addresses drainage. On Duffield Road there wasn't a road ditch to drain the water. The fact a house has been built doesn't cause a water issue, the same amount of water would fall on the property before and after the house has been constructed; the issue involves a concentrated discharge of water – where do you take the water?
- **NEWMAN:** was there anything that needed to be done on the *Exhibit A* (draft ordinance on drainage). After hearing the review from both the Board of Trustees and the Planning Commission, **PRATT** felt there already was a sufficient amount of framework in place.
- **SWANSON:** someone needed to sit down with paper and pen and correlate what the township already has with what the township actually needed.
- **DOYLE:** a couple of things could be added to the current ordinance such as what permits are needed when an individual requested a building permit:
 1. well/water permit
 2. septic/sewer permit
 3. soil erosion permit
 4. Genesee County Road Commission culvert for driveway

DOYLE: there wasn't anything in the ordinance that specified the items needed for a building permit.

- **FITCH:** the soil erosion permit was mandated from the Federal Government to the State and Counties and on down to building departments.
- **SWANSON:** there were several cases, when **SWANSON** was Code Enforcement Officer, that people filled in their ditches for driveways; the County was contacted but nothing was ever changed.
- **DOYLE:** there was a private drive off Seymour Road where one of the property owners on the private road had decided that he was going to dam up the water; he closed up the culvert. There had been complaints from the residents so Supervisor Trogot, Treasurer Liepmann and **DOYLE** went to check out the situation. The only comment made by **DOYLE** was the property was private and the resident had decided to dam up the natural waterway that took the water back to the earth and took care of the area. Suddenly the farmer had a lot of water that was dammed up and he couldn't farm his property. The situation would be a civil matter.
- **PRATT:** there would be three (3) cases that you couldn't interfere with the flow of water and affect adjacent land owners.
- **FITCH:** example: if a house was built seven hundred (700) feet off the road, and the road ditch was two (2) foot deep, there wouldn't be enough room to get a fall for water when the pipes were coming out of the side of the ditch. Other drainage problems have consisted of flat land. The concentrated discharge of water would be the problem.
- **SWANSON:** when basements have been dug, they could only be a certain level in most cases, and then the house had to be bermed up; at that point, the grades were being affected.

- **DOYLE:** there could possibly be some details in the draft ordinance that could be added to the current ordinance
- **FLOWERS:** thought Section 8 Enforcement of *Exhibit A* could possibly be added to the Township ordinance since the township doesn't have the particular section.
- **DOYLE:** thought that would be good as long the project was not a County project; then a County permit would have to be obtained.
- **NEWMAN:** would like to encourage the Building Inspector and the Code Enforcement to do their job; would like to see some specific things to say that in Article this and Chapter that would like to see a particular item. Felt *Exhibit A* (Draft Ordinance) would be a waste of time.
- **FLOWERS:** Justin Sprague and Doug Piggott of Rowe Inc. have worked together as Planning Consultants. It was decided there was more involvement with the draft ordinance than what the Planning Commission wanted to do.
- **BUELL:** wanted to know how many drainage cases were sump discharge related? **BUELL** felt the sump discharge issue had been the problem on Carpenter Road years ago. Does the County have an ordinance regarding drainage? **FLOWERS** stated the County would tell anyone that the ditch was designed to drain roads not to drain individual property. **BUELL:** what about the tile and catch basins along roads? At one time the County maintained the catch basins. Some of the tops of drains have rusted and rotted away.
- **DOYLE:** everyone drains their property into the ditch.

CONCLUSION:

NEWMAN: if staff (Supervisor Andy Trogotog or Building Inspector Jerry Fitch) would like to come back with requests to make changes, the Planning Commission could review again or perhaps at a future Special Meeting, specific sections could be reviewed; the current draft ordinance would be too involved. The general consensus of the Planning Commission Members was to "tweak" and put into the existing ordinance.

VI. PUBLIC COMMENTS:

8:29 P.M. – OPENED TO THE PUBLIC FOR NON-AGENDA ITEMS

8:30 P.M. – CLOSED TO THE PUBLIC FOR NON-AGENDA ITEMS

VII. BOARD COMMENTS:

1. **FLOWERS** reminded all the Commission Members about the upcoming *MTA Summer Zoning Workshop* on July 31, 2007 at Bavarian Lodge Inn. Please let the Clerk know if you plan to attend.
2. **FLOWERS** reminded the Commission Members about a *2007 Genesee County Regional Trail Plan Meeting* to be held at the Flushing County Park on Tuesday, June 26, 2007 from 5:30 p.m. to 7:30 p.m. The County has been trying to connect all the trails so an individual would be able to walk/bicycle throughout the County. The availability of money seems to be the hold up. **FLOWERS** stated there wasn't any State funds

available but if the Federal money kept coming, between two (2%) and ten (10%) percent would go for non-motorized transportation.

3. **BUELL** would like to have the list of items for future work sessions to be listed on the “Memo” which is sent out to the Planning Commission Members.
4. There will not be a July 2007 Meeting; the regular meeting is currently being held.
5. **BUELL** will not be at the August 2007 Planning Commission Meeting.
6. **PRATT** stated he and the Township Treasurer had a discussion about the number of items on the Agenda and the length of the Planning Commission meetings. **PRATT** suggested that under “Unfinished Business” to add the “items for future discussion” so that at future meetings the items listed under “New Business” could be discussed first and when finished then go to “Unfinished Business”. **NEWMAN** stated if the items were something which had not been addressed by the Commission, it could not go under “Unfinished Business” but could be placed at the end of “New Business” items after the main items had been discussed. **NEWMAN** stated the issue had to be brought before the Commission and discussed in some way for an item to be considered “Unfinished Business”. **NEWMAN** suggested the items be listed as “New Business” and list last after the regular matters under “New Business”.
7. **BUELL** stated he has appreciated the way the meetings have been run.
8. It was determined by the Planning Commission that it was hard to predict the length of a meeting; the quality of a meeting is not always the quantity of a meeting.

VIII. MEETING SCHEDULE:

REGULAR SCHEDULED MEETING – MONDAY, AUGUST 13, 2007 AT 7:00 P.M.

PROPOSED SPECIAL MEETING – MONDAY, AUGUST 27, 2007 AT 7:00 P.M.

REGULAR SCHEDULED MEETING – MONDAY, SEPTEMBER 10, 2007 AT 7:00 P.M.

PROPOSED SPECIAL MEETING – MONDAY, SEPTEMBER 24, 2007 AT 7:00 P.M.

IX. ADJOURNMENT: There being no further business, **CHAIR MARK 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 062507 SPEC