

CHARTER TOWNSHIP OF FLUSHING

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PLANNING COMMISSION MEETING

DATE: APRIL 14, 2008

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, and Morford

ABSENT: None

OTHERS PRESENT: Nikki Brand and Robert DeWolley

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

MARK NEWMAN with Roll Call and the Pledge to the American Flag.

II. ADOPTION OF AGENDA: FLOWERS MOVED, seconded by Pratt to adopt the Agenda as presented. **MOTION CARRIED.**

III. APPROVAL OF MINUTES OF MARCH 10, 2008: PRATT MOVED, seconded by Flowers to approve the March 10, 2008 Minutes as amended. **MOTION CARRIED.**

IV. UNFINISHED BUSINESS:

None

V. NEW BUSINESS:

1. Election of Officers

FLOWERS MOVED, seconded by Buell to nominate Mark Newman as Chair, Jerry Doyle as Vice Chair, and Eric Swanson as Secretary.

BUELL MOVED, seconded by Flowers to close the nominations. **MOTION CARRIED.**

ACTION OF THE MOTION:
MOTION CARRIED.

2. Review and Discussion of the Permitting Process for Day Care Homes

NEWMAN stated that all the Planning Commission Members had received an excerpt of the Michigan Zoning Enabling Act (MZEA) from *Section 125.3206 of the Michigan Compiled Laws* which had pertained to a letter dated January 24, 2008 from **ATTORNEY STEVE MOULTON (ATTORNEY MOULTON)** regarding Day Care Facilities.

PRATT stated he had proposed the following questions to **ATTORNEY MOULTON**: 1) Do special use permits run with the land, and 2) Is a day care center a type of state licensed facility which is exempt from specific regulations under local zoning ordinances? **PRATT**'s initial thought is described on page 4 of **ATTORNEY MOULTON**'S letter dated January 24, 2008, in reference to *Subsection 206(4)* of the ZEA which states:

“the township cannot impose any other conditions upon the grant of a special use permit for operation of a group day care home.”

PRATT'S understanding, from a prior discussion with **ATTORNEY MOULTON**, had been that the State set up the regulations; the State does not want townships to regulate over and above certain specific items because they (the State) don't want townships or other governmental units stopping a day care facility from going into a community. Since the Township could not impose any other conditions on the special use permits for the operation of a day care home, **PRATT** inquired from **FITCH** if he would have any problem making the day care facility a non-discretionary use rather than a discretionary use. **FITCH** would be responsible for handing out permits and inspecting the homes in order to make sure the State regulations were abided by correctly. The proposed language would be drafted by **ATTORNEY MOULTON**.

COMMENTS/QUESTIONS/CONCERNS FROM THE PLANNING COMMISSION:

- **NEWMAN:** because he has worked with the people in the industry, and as a parent who uses day care from a home provider in the township, he knows the facilities are already heavily regulated by the State in order to obtain the license. Some restricted regulations are: cleanliness conditions, fire hazard issues, number of children, etc. **NEWMAN** liked the non-discretionary status because of the state's oversight and the township building inspector would have the discretionary powers to make sure the facilities would be in compliance with building codes, etc.
- **PRATT:** if the issue was non-discretionary it would save time and cost and would make the township more streamline.
- **NEWMAN:** **ATTORNEY MOULTON**'S opinion confirmed that just because one (1) individual was approved to be licensed at a certain location, it wouldn't mean the next individual that purchased the building would be licensed. If there should be another

purchaser of the facility, the individual would have to go through the application process again.

- **BUELL:** liked the proposal of the non-discretionary use. Who would keep track of the 1,500 foot radius between day care centers and adult foster care homes? Since there are three (3) or four (4) different types of institutional settings that could be in the neighborhood, most of the facilities do not come before the Planning Commission for any kind of “blessing”.
- **FLOWERS:** the State regulated the facilities; when the individual applies to the Township Building Inspector, he (the building inspector) already knows which facilities are in the community.
- **NEWMAN:** in *Section 206(4)* it specifically states what the township can restrict, so if the ordinance needed to be amended, to make the ordinance language more clearer, the statute could be referenced.
- **BUELL:** does the Planning Commission have the right to waive the 1,500 foot requirement?
- **NEWMAN:** no; reference was made to *Section 125.3206(9)* which states:
“The requirements of this section shall not prevent a local unit of government from issuing a special use permit, conditional use permit, or other similar permit to a licensed or registered group child care home that does not meet the standards listed under subsection (4).”
INTERPRETATION: the State felt if you, the local body of government, decided to allow the applicant to pass on one or more of the requirements, you could, but if the applicant met all the requirements, then the governing body couldn’t deny the applicant’s request.
- **BUELL:** inquired from **FITCH** as to how many licensed day care facilities, group homes, and similar units were in the community as described in the ordinance language.
- **FITCH:** currently, there are approximately five (5) different facilities.
- **BUELL:** would there be a problem by having **FITCH** check the facilities?
- **SWANSON:** when he was Code Enforcement Officer, there was an issue with one of the day care facilities where the lady had all her State Permits but the township had no idea there was a day care facility.
- **FITCH:** there are a lot of facilities being opened which the township doesn’t have any idea a facility is even in existence.
- **FLOWERS:** there are several facilities close by including Stanley Road, next door to the Township Hall, Duffield Road, and Carpenter Road.
- **DOYLE:** in the past, the issue has been handled as non-discretionary; if **FITCH** felt it was necessary, he (Fitch) would bring the issue back to the Planning Commission. **DOYLE** felt the items that are spelled out in *Section 206* should be added to the ordinance since it doesn’t give the Planning Commission enough information as to what the Planning Commission has to do. Conditions would not have to be placed on the use.
- **NEWMAN:** it would be more of a “point of reference” if all the information was in the ordinance then the Planning Commission would know what to look for in each request.

- **DOYLE:** the matter would be easier to handle; don't want to take the matter away from **FITCH** but felt he (Fitch) would be happier.
- **NEWMAN:** in *Subsection 9, MCL 125.3206*, **FITCH**, would still have the authority to let the individual go ahead and operate as a facility, but would still be able to bring issues that didn't meet the requirements of *Sub 4* to the Planning Commission for a review of the issue. (If the individual did not meet all the requirements, then the issue would go to the Planning Commission because at that point, the law is very clear in *Subsection 9* that the Planning Commission could go ahead and say "you don't meet all the elements of *Section 206(4)* but we will look at it with the interest of welfare of the citizens and it looks like it will be fine to continue."
- **DOYLE:** isn't it the responsibility of the Planning Commission to review special uses?
- **PRATT:** if a request was non-discretionary, the individual would not have to come before the Planning Commission.
- **FLOWERS:** it is similar to a "home occupation" permit which is a non-discretionary special use. There are seven (7) "home occupation" articles that deal with the issue.
- **DOYLE:** if the Planning Commission allowed special uses that were acceptable to where all the conditions were met, all the requests could be done by **FITCH**.
- **NEWMAN:** if the individual met the conditions, the State law states "they could not be denied, but if the individual didn't meet the requirements, then the Township would have the discretion to go ahead and state the individual didn't meet the requirements of the State Statute but the Planning Commission felt comfortable with the issue so let it go." This would not be the case.
- **PRATT:** if the issue was non-discretionary, it would not go to the Planning Commission. The decision would be with **FITCH**; he (Fitch) would review the four (4) items and if they met the requirements of the permit, **FITCH** could issue a special use permit.
- **FLOWERS:** would the Planning Commission want to place the responsibility into the hands of the Building Inspector or should the day care facilities stay as they currently are with the applicant going before the Planning Commission?
- **PRATT:** after reading an excerpt from **ATTORNEY MOULTON'S** letter, he (Pratt) wanted to know what would be the point in having the request go before the Planning Commission:

"Except for the restrictions identified in *Section 206(4)* of the ZEA, the Township cannot impose any other conditions upon the grant of a special use permit for operation of a group day care home."
- **NEWMAN:** there are several different thoughts, such as making the day care facility non-discretionary and if the applicant didn't make the State requirements then the applicant could go to the Planning Commission and a decision would be made; **OR** the issue could be left as it is except add additional information to the current ordinance so when the day care facility issue is reviewed, all the information would be in one spot in front of the Planning Commission.

PRATT MOVED, seconded by Buell that the day care facility issue become a non-discretionary special use permit situation.

DISCUSSION:

- **FLOWERS** has mixed feelings about having **FITCH** have the burden of responsibility for the issue.
- **NEWMAN** stated the motion is to move toward change; the proposed language would have to be drafted; a public hearing would have to be held; it would then go to the Flushing Township Board of Trustees for the final decision as to changes.
- **FLOWERS** stated he sympathized with people having to pay the fees just to come before the Planning Commission to listen to the issue, but on the other hand, if the Planning Commission didn't hold a regular scheduled meeting, the State could imply why does Flushing Township even have a Planning Commission.
- **BUELL** felt the issue didn't require a public meeting to decide whether day care facilities met the six (6) criteria mentioned in *Section 206*. He (Buell) could see if there were variations from the rules as written which would make sense to come before the Planning Commission.
- **FLOWERS** felt that if **FITCH** took care of the special use of the facility without any public input, there would be a house among a lot of mad neighbors; normally the residents within 300 feet of a proposed day care facility would be notified.
- **DOYLE** stated if the residents within 300 feet were notified, it would give the public the opportunity to bring up information which the Planning Commission would not know about the facility.
- **FLOWERS** stated on the other hand, **FITCH** could go ahead and legally approve the situation.
- **NEWMAN** stated every time a public hearing was held, there was a "public comment" time and there weren't any comments. **NEWMAN** stated if something meets the law then he (Newman) would vote in favor of the idea regardless if he liked the issue or not, because that was his fiduciary duty to the township and the Commission.
- **DOYLE** felt the people liked the ability to come before the Planning Commission and talk about plans they have. If the current issue was taken out of the ordinance, what would prevent taking out other ordinances. It would take the issue out of the local peoples' hands and eventually if the issues were taken out, the State would take over and then the local people would not have a say in the issue.
- **PRATT** stated **FITCH** interpreted ordinances every day; some instances are the sign ordinance, issuance of building permits, etc. Since there are rules from the state that are not negotiable and the Planning Commission could not issue any conditions above the rules by the State, don't understand what the problem would be. The office is open five (5) days a week for the public to come into the office.
- **DOYLE** stated that everyone was having trouble with money, but it was the responsibility of the township to have individuals petition the Planning Commission for an issue to where the neighbors could come to the Planning Commission Meeting and

4. **FLOWERS** passed out copies of the *2007 Annual Reports* from the Genesee County Planning Commission which gives information concerning Community Development Block Grant Funds and how Flushing Township has used the funds.

VIII. MEETING SCHEDULE:

REGULAR SCHEDULED MEETING – MONDAY -- MAY 12, 2008 AT 7:00 P.M.

REGULAR SCHEDULED MEETING – MONDAY – JUNE 9, 2008 AT 7:00 P.M.

REGULAR SCHEDULED MEETING – MONDAY – JULY 14, 2008 AT 7:00 P.M.

REGULAR SCHEDULED MEETING – MONDAY – AUGUST 11, 2008 AT 7:00 P.M.

IX. ADJOURNMENT: There being no further business items on the Agenda, NEWMAN adjourned the meeting at 8:00 p.m.

MARK J. NEWMAN, Chair

JULIA A. MORFORD, Recording Secretary

ERIC SWANSON, Secretary

Date of Approval

Planningminutes 04/14/08