

**PLANNING COMMISSION MEETING  
CITY OF REHOBOTH BEACH**

**January 11, 2013**

The Regular Meeting of the Planning Commission of the City of Rehoboth Beach was called to order at 6:30 p.m. by Chairman Preston Littleton on Friday, January 11, 2013 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

**ROLL CALL**

Mr. Francis Markert called the roll:

Present:           Mr. Brian Patterson  
                      Mr. Harvey Shulman  
                      Mr. David Mellen  
                      Chairman Preston Littleton  
                      Mr. Francis Markert, Jr.  
                      Mrs. Jan Konesey  
                      Ms. Lynn Wilson  
                      Mr. Michael Strange

Absent:            Mr. John Gauger

Also Present:     Ms. Terri Sullivan, Chief Building Inspector

Also Absent:     Mr. Glenn Mandalas, City Solicitor

A quorum was present.

**APPROVAL OF MINUTES**

Minutes of the September 14, 2012 and November 9, 2012 Planning Commission Regular Meetings were distributed prior to the meeting.

Mr. Francis Markert made a motion, seconded by Mr. David Mellen, to approve the September 14, 2012 Planning Commission Regular Meeting minutes as written. (Patterson – aye, Shulman – aye, Mellen – aye, Littleton – aye, Markert – aye, Konesey – aye, Wilson – aye, Strange – aye.) Motion carried unanimously.

Mr. Markert made a motion, seconded by Mr. Mellen, to approve the November 9, 2012 Planning Commission Regular Meeting minutes as written. (Patterson – aye, Shulman – abstain, Mellen – aye, Littleton – aye, Markert – aye, Konesey – abstain, Wilson – aye, Strange – aye.) Motion carried.

**CORRESPONDENCE**

There was none.

**OLD BUSINESS**

Chairman Littleton announced that relative to the 2 St. Lawrence Street partitioning, the deed has been signed.

**NEW BUSINESS**

There was none.

**OTHER BUSINESS**

Chairman Littleton called for the introduction and discussion with the City's Information Technology Director, Mr. Max Hamby.

Mr. Max Hamby was welcomed as the IT Director. He provided a brief history of himself and his work.

Chairman Littleton noted that the Planning Commission has been helped by the IT Department. One of the Planning Commission's goals is to have as much of its activities available to the public.

Chairman Littleton called for the *Resolution Regarding the City's Trees* passed by the Mayor and Commissioners on December 21, 2012 tasking the Planning Commission "...to research and propose amendments,

as necessary, to the City's ordinances, regulations or procedures, which are designed to protect and augment the City's urban forest in order to ensure the environmental health, beauty and enjoyment of Rehoboth Beach's trees.”:

1. Develop an understanding of the scope of the charge to the Commission:
  - a. Discussion with Commissioner Gossett, author of the resolution, and possibly other members of the Board of Commissioners regarding the broad scope and intent of the resolution.

City Commissioner Patrick Gossett briefed the Planning Commission on the intent of the resolution. Issues that came back from the lakes report were the importance of the tree canopy and the growing concerns in the community of the existing tree ordinance and other ordinances that are not working as effectively as they were originally designed to do. It is noted in the resolution adopted on December 21, 2012 by the Mayor and Commissioners that the 2010 Comprehensive Development Plan (CDP) states that the existing tree ordinance “needs to be refined to eliminate inconsistency and make it more efficient in ways that maintain its vision and simplify its enforcement”. Additionally the 2004 and 2010 CDPs also call for the City to “review and update its environmental protection and zoning codes and assign responsibility to ensure that all future buildings, developments, renovations and partitionings are planned and executed to retain and plant the maximum amount of urban forest”. The Planning Commission has the knowledge and base of how this process should come about. After researching and going through the process for public input, the Planning Commission should make recommendations for improvement. The Planning Commission is charged to conduct research, examine and recommend amendments to the existing tree ordinance and other ordinances and regulations and their enforcement with regard to natural area, building setbacks, lot coverage, etc. The Planning Commission shall seek input from the City Parks and Shade Tree Commission, Board of Adjustment, City Manager, Public Works Department, Building and Licensing Department, City Arborist and other City, County and State officials in order to determine the effectiveness of existing ordinances and suggested measures for improving the ordinances, their interpretation and their enforcement. During the process of researching the ordinances and regulations, the Planning Commission shall establish a method of obtaining appropriate involvement from the citizens of the City, especially those who have obtained or been denied permits for tree removal under the current ordinances, and the neighbors of these citizens. The Planning Commission shall also seek input from tree service companies, builders, developers and construction companies doing business within the City under the existing tree ordinance and other related ordinances and regulations. The process is to look at the tree ordinance in a holistic way from all that can impact it from the users and how it impacts other ordinances that are restrictive of what the tree ordinance can do.

Chairman Littleton noted that while the tree ordinance is important, the objective is how one maintains or expands the trees in the urban forest.

Mr. Markert thought that from the outset, the initial findings of the tree ordinance were missed such as the benefit of trees, what trees provide in this community, whether the tree canopy is or is not diminishing, etc. He hoped that the Planning Commission would be able to frame this in a way to be able to complete it with some diligence.

Commissioner Gossett suggested that in structuring the Planning Commission's discussions, it should determine what the goal is and then establish a path to get there.

Mr. Harvey Shulman was troubled by some of the thinking about making things simplistic. The tree ordinance is pretty good, and the problem has been of failure of communication or explanation. The Planning Commission cannot expect to recommend changes in a law that it thinks will be fair and balance a lot of the competing interests, and expect what is written in the law to be simplistic. The last thing the Planning Commission comes to in the process is figuring out what the words will be. As it goes through the process, real situations should be discussed. Mr. Shulman wants to ask other people such as the building inspector, members of the Parks and Shade Tree Commission, etc. how they are interpreting the tree ordinance. The Planning Commission does not have the facts it needs in terms of some of the basic issues it deals with regarding trees.

Chairman Littleton said that in carrying out this assignment, the Planning commission shall consider how best to insure that the interests of property owners to appropriate use their property are balanced with the interests of other citizens to enjoy the beauty and environmental benefits of trees to the community within the City.

City Commissioner Gossett noted that with regard to the Parks and Shade Tree Commission

meetings, there are inconsistencies or challenges with planting additional trees on a lot that may not have physical room to do that.

Ms. Lynn Wilson thought that members of the Planning Commission should attend Parks and Shade Tree Commission meetings to observe and also look at applications.

Mr. Mellen said that the verbage in the tree ordinance tries to solve a problem, and the reasons are generally not documented for solving the problem. The Planning Commission will need to ask why this code was written in the way it was written in 2006; and if those reasons still hold true. There are inconsistencies with the way the Planning Commission is allowing homes to be built and therefore free land that can support an urban forest and the goals of creating an urban forest. A lot of people think trees are fantastic as long as they are on someone else's property. Nowhere does it come into effect in the Code the issue where insurance companies are making choices about what they will or will not insure with regard to trees. Insurance companies have no vested interest in maintaining an urban forest. The vision of an urban forest is a long-term vision and goes private concerns.

Mr. Shulman said that while the Commissioners got bogged down in the appeals section of the tree ordinance when they were trying to revise the ordinance, the Planning Commission should not take for granted that the other things in there would have passed. There was never a vote on revising the tree ordinance.

City Commissioner Gossett stated that he would like to be a part of the process with the Planning Commission. Things have changed somewhat in seven years, and a review of the ordinance is needed to see whether the goal is still realistic. It is worth it to look at other communities and/or countries with regards to how trees are maintained on private property, etc.

Mr. Shulman noted that the City was going to rezone a property with multiple lots that had trailers on them. There were several old, beautiful trees among other trees on the lots which were clear-cut by the owner of the property. This led to the drafting of the tree ordinance. In another instance before the tree ordinance was passed, the bark of a huge tree in the backyard of a property was removed because the owner of the property wanted to put in a pool. What finally got the ordinance passed was the emotional energy of people who saw that the lack of an ordinance was allowing the most extreme things happen.

Mr. Brian Patterson asked what was meant by making recommendations to be more equitable in interpretation, application and enforcement with regard to No. 8 of the resolution. City Commissioner Gossett said that inequity is perception and perception becomes reality. It may be the educational process of understanding this. It is communication. Implementation, enforcement or the interpretation might be where the real work needs to be done. He will provide the names of the people who have thought the ordinance is inequitable to the Planning Commission.

Chairman Littleton said that the fundamental issue is property rights issues vs. community issues and how to balance them in an appropriate way.

Mr. Shulman said that the Planning Commission will need to know how many tree removal permit applications were filed, how trees were covered by each application, what the ruling was on each application, how many appeals there were and the results, how many trees are located on City, State or government property and how many trees are located on private property. Ms. Sullivan noted that the tree inventory which was done does not include the entire City; but it includes all the areas that have sidewalks and most of the parks. The inventory does not included Central or Deer Parks. No inventory was done on private property.

- b. Initial discussion with Chair Priscilla Smith and/or possibly other members of the Parks and Shade Tree Commission regarding issues that should be addressed by the Planning Commission as it plans to undertake this task.

Ms. Marcia Maldeis, member of Parks and Shade Tree Commission, said that the members are called to a meeting when Mr. Walter Onizuk, City Arborist, turns down someone who wants to cut down a tree that is not dead or diseased. The owners and/or their representatives present testimony as to why the tree should be cut down. She found the tree ordinance to be cumbersome, and it gives very little leeway to private property rights. To date, no owners have appealed the decision of the Parks and Shade Tree Commission to the City Commissioners. Ms. Maldeis noted that she was not representing

the Parks and Shade Tree Commission this evening, and she was not comfortable with addressing any issues.

Mr. Bryan Hall, Office of State Planning Coordination, noted that in the case of simple tree law in the State of Delaware, most tree law disputes are handled under common law, beginning in Chancery Court based on the dollar amount. If it becomes a substantial dollar amount, it moves to Superior Court.

Mrs. Konesey suggested that the Planning Commission should be provided with copies of all the minutes of the appeals before the Parks and Shade Tree Commission.

Chairman Littleton noted that the Planning Commission will need to talk with the Parks and Shade Tree Commission, possibly in a Joint Meeting.

Ms. Maldeis said that the species of trees to be planted are not correct, and the existing list of trees was never meshed together. With regard to sidewalks, trees have pushed up the concrete, and she fell and broke her hand. The Parks and Shade Tree Commission does not have a plan for every park in the City as to what its vision is for each park. The Commission only meets with regards to appeals of the tree ordinance.

Chairman Littleton was concerned that there was a misappropriation of the resolution from the City Commissioners because the Code refers to the Parks and Shade Tree Commission's jurisdiction. Chairman Littleton had talked with Mrs. Priscilla Smith, Chair of the Parks and Shade Tree Commission with regard to this issue. Mr. Mellen referred to Section 253-5 with regard to what the responsibility is of the Parks and Shade Tree Commission. It shall be the responsibility of the Parks and Shade Tree Commission to study, investigate, counsel and develop and/or update annually and administer a written plan, etc. The City Commissioners have now charged the Planning Commission with that. It is defined in the Code who should be doing what.

Mrs. Konesey said that approximately 20 years ago, the Parks and Shade Tree Commission looked at the parks and what could be planted there.

Mr. Shulman said that the Parks and Shade Tree Commission is supposed to update and administer a plan annually for trees along streets and in other public areas. Such plan will be presented annually to the City Commissioners along with other tasks assigned by the City Commissioners. This is a charge that the Parks and Shade Tree Commission must develop a plan for public areas. The Planning Commission has a broader mandate dealing with public health, safety and welfare, and trees are a subset of that. Just because the Parks and Shade Tree Commission specifically is tasked to look at trees in public areas does not mean that the Planning Commission as part of a broader mandate with public health, safety and welfare also could not look at trees, particularly when the City Commissioners have asked it to do that.

Ms. Sullivan referred to Article II of the tree ordinance. Section 253-25 deals with the Parks and Shade Tree Commission's duties for private property. Article I is strictly for public property. Mr. Shulman noted that the only duties authorized by Article II that relate to trees on private property are hearing appeals from grants or denials of tree removal permits. Mitigation is only in effect when someone has asked for permission to take down trees.

Ms. Maldeis noted that some people want to cut down trees because they cannot plant anything underneath them, such as magnolias. She asked why they cannot cut down the tree(s) because of this issue.

Chairman Littleton had hoped to get input from Mrs. Smith to tell the Planning Commission about things it should be doing as it carries out this task. Mr. Mellen noted that there will be ample opportunity at the appropriate time for the Planning Commission to ask questions, address issues and get examples.

- c. Initial discussions with Building Inspector Terri Sullivan and possibly other City governmental members regarding issues that should be addressed by the Planning Commission as it plans to undertake this task.

Ms. Sullivan said that in 2010, the City received the public tree inventory workbook which provides information on all the trees on public land. The workbook is available on the City website. Along with

the workbook, the City received a tree inventory and management plan. The City is currently at Phase 3 of the plan which provides it with all of the trees on public land that were inventoried. The trees are identified by street, addresses, condition of the tree and how they need to be handled such as pruning, removal, etc. Mr. Bobby Edmonds, Code Enforcement Officer, has been locating low lying branches in the commercial district by GPS. Trimming of these branches will begin in January or February 2013.

- d. Initial discussions with Bryan Hall from the Office of State Planning Coordination regarding issues that should be addressed by the Planning Commission as it plans to undertake this task and identify possible technical assistance available from State agencies.

Mr. Bryan Hall noted that the original study which was done two years ago was funded through Air and Waste Mitigation, Fine and Penalties monies with the idea that municipalities and non-profit organizations have the ability to apply for the fines or mitigation deals that come about from any illegal discharge, someone dumping something, someone expanding a plant, etc. The initial cost of the study was \$15,000.00 with the City matching 25% of that. Two-thirds of the City's public land has been completed at a cost of approximately \$18,000.00. The project took in everything but the pines community on Henlopen Avenue and Columbia Avenue, Schoolvue, Central Park, Deer Park and Deauville Beach.

Mr. Hall said that most jurisdictions throughout the State have been focused on public resources which includes sidewalks, trees, median tree, park trees, etc. Those resources are typically done in the inventory. This product produced a management plan that gave direction to the City to address certain situations and to assign monetary values. Two years ago, there was an ongoing discussion about how the trees are more holistic which lead to the discussion of the urban forest canopy and passage of the resolution to increase the goal and plant more trees. Currently, the City is at 32.75%, and the goal is to increase that amount by 5%. The urban forest canopy services a variety of functions, not just increasing property values but it addresses stormwater, air quality, heat effect, wildlife habitat, etc. The Federal Forest Service and various states including Delaware have begun to shift from the single tree management approach to a giant web to provide a variety of benefits which led to the resolution which was done approximately one year ago. The importance of the urban forestry assessment study (U4) is that it is not necessarily identifying maintenance issues for the immediate homeowner. The arborists looks at the size and shape of the tree, and if it is in good health. Then through a modeling exercise, the overall value is determined, and it is networked to the whole resource. It is feasible for the City to have a total inventory of trees, but it may not be cost effective. The inventories which are typically done in this case come down to a cost per tree which is then multiplied by the number of anticipated trees, all of which dictates what is expected. There are approximately 1100 acres citywide with 210 acres of tree canopy, both public and private lands. The Forestry Service has the ability to take the map layer and overlay the parcels for the City to determine what is public and private. The majority of the canopy is on private lands.

Mr. Shulman thought it would be helpful and would be a relevant fact to know how many trees are on private land in order to maintain the canopy.

Mr. Hall will work with Mr. Kyle Hoyd to get the necessary files for the GIS software to be able to allow Mr. Max Hamby to access the information. In the long run, the goal is for municipalities to manage their resource and make decisions on how to grow the canopy. In the short term, the resources could be obtained through the Forestry Service or DNREC. The overall health of the trees is in the inventory and is fairly good. The net loss has not surpassed the gain or where the City is with regard to the trees. Work has begun on the invasives such as vines in the two parks. The invasive trees species were also looked at and the age of some of the particular species. The oaks in the community are predominantly a lesser grade or lower quality. The inventory identified the trees on public property that are problematic and hazardous. Those trees were removed. Mr. Hall provided a list of the acceptable tree species from the Delaware Forestry Service. Discussion ensued as to the feasibility of the 5% increase in the goal for additional tree canopy and various recommended tree species.

Mr. Markert thought it would be helpful if a physical inventory would be taken of the big trees in the City.

Mr. Hall will provide models of legislation from other municipalities with regard to trees. There is a need for conservation education and community outreach in general.

- e. Initial discussions with the public regarding issues that should be addressed by the Planning Commission as it plans to undertake this task.

This item was overlooked and will be addressed at the next scheduled meeting.

2. Discuss and develop a work plan to carry out this assignment from the Board of Commissioners.

Chairman Littleton said that more information is needed in order to carry out this assignment.

Mr. Michael Strange said that this is not a context sensitive design ordinance. It is a one size fits all which makes it hard on the building department and the operating people who have to deal with it. The communities are very different. The Planning Commission needs to find out why the City is where it is first and establish what is trying to be achieved. There are operational weaknesses with the current ordinance that need to be addressed. It is not a fair ordinance, and there are some material inconsistencies as what can or cannot be planted.

Mr. Hall said that in factoring in the 40%, the things which are looked at are past maintenance and past cost investment made by a local jurisdiction, planting efforts that have been done in the past, removal activities that have been done, etc. For a community such as Rehoboth Beach, the rule of thumb for canopy increase is between 5% to 6%. The City Commissioners determined that 40% is the percentage of resource.

Mr. Mellen said that the Planning Commission needs to create a list of what information it wants and then target how it will get that information and collect. This will include talking with the Parks and Shade Tree Commission, people who have gone through the appeals process, etc. The Planning Commission needs to ask the fundamental question as to what private property vs. public property can support from a technical point of view. If this is inconsistent with the goal, the Planning Commission will need to figure it out.

Mr. Markert will work on an assessment of the tree removal permit applications.

Mr. Hall will provide contact information for people from the State to be used as resources during this task. He will also provide mapping information, an updated canopy and an overlay at a future date. Mr. Mellen suggested that the existing information should be separated into private land and public land with a simple overlay.

Mr. Hall said that to start, the Planning Commission should host a series of workshops which includes the community, staff that should bring resources about designs, builders, Parks and Shade Tree Commission, resource people and professionals. After the Planning Commission has an understanding of trees, it review the goal, ordinances and the application of all of it in one component. Then the Planning Commission can formulate its objectives. Mr. Hall suggested that the Planning Commission host a workshop meeting with the focus on Trees 101. The Planning Commission needs to understand what the resource is, what the needs of the resource are and how the resource grows before the Commission can have an understanding of how setbacks, overlays, impervious cover calculations, etc. are applied. Between Mr. Hall and Mr. Hoyd, they will provide a training session on trees for the Planning Commission and the public.

Mr. Shulman suggested that as part of the group, someone who is knowledgeable about construction techniques could talk about what techniques are feasible to save or not save trees. The Parks and Shade Tree Commission should be invited to attend the workshop. Mr. Hall said that Mr. Hoyd will present the tree portion, and Mr. Hall will present the construction and mitigation portion of the workshop.

Mr. Hall will work with Chairman Littleton, Mr. Mellen and Mr. Markert on developing a curriculum for this workshop.

The consensus of the Planning Commission was to schedule the workshop meeting for March 8, 2013 in the afternoon with the regular meeting to follow at 6:30 p.m.

Chairman Littleton called for the status report on efforts to finalize the Commission's lakes report.

There was nothing to report.

Chairman Littleton called for the Building Inspector's Report.

Ms. Sullivan noted that the Commissioners will be adopting the 2012 International Building Codes.

Chairman Littleton called for the City Solicitor's Report.

There was nothing to report.

Chairman Littleton called for the report, discussion and possible action concerning those activities or assignments taken at Regular or Workshop Meetings of the Mayor and Commissioners that directly relate to the Planning Commission.

Chairman Littleton noted that the Planning Commission's proposed site plan review ordinance was discussed at the City Commissioners Workshop Meeting and will be scheduled for a Public Hearing.

Chairman Littleton called for the report of any new subdivision applications that may have been timely submitted.

A partitioning application was filed today for 54, 56 & 58 Sussex Street.

Chairman Littleton called to determine if a quorum of the Planning Commission will be available for its February meeting.

There will not be a quorum for the February meeting. The next schedule Regular Meeting will be held on March 8, 2013 at 6:30 p.m.

There being no further business, Mrs. Konesey made a motion, seconded by Mr. Strange, to adjourn the meeting at 9:59 p.m. Motion carried unanimously.

**RECORDED BY**

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(Ann M. Womack, CMC, City Secretary)

**MINUTES APPROVED ON  
APRIL 12, 2013**

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(Francis Markert, Secretary)