

**PLANNING COMMISSION MEETING
CITY OF REHOBOTH BEACH**

May 9, 2014

The Regular Meeting of the Planning Commission of the City of Rehoboth Beach was called to order at 6:31 p.m. by Chairman Preston Littleton on Friday, May 9, 2014 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

ROLL CALL

Mr. Francis Markert called the roll:

Present: Mr. Harvey Shulman (arrived at 6:33 p.m.)
 Mr. Paul Hubbard
 Mr. David Mellen
 Chairman Preston Littleton
 Mr. Francis Markert, Jr.
 Mrs. Jan Konesey (arrived at 6:33 p.m.)
 Ms. Lynn Wilson
 Mr. Michael Strange

Absent: Mr. Brian Patterson

Also Absent: Mr. Glenn Mandalas, City Solicitor
 Ms. Terri Sullivan, Chief Building Inspector

A quorum was present.

VERIFICATION OF MEETING NOTICE

Ms. Ann Womack, City Secretary, verified that the Agenda was posted at City Hall, Building and Licensing Department and the City website on May 2, 2014. The Agenda was faxed to Cape Gazette, Coast Press and Delaware State News on May 2, 2014. An E-News blast was also sent out on May 2, 2014.

APPROVAL OF MINUTES

Minutes of the April 11, 2014 Planning Commission Regular Meeting were distributed prior to the meeting.

Mrs Jan Konesey made a motion, seconded by Mr. David Mellen, to approve the April 11, 2014 Planning Commission Regular Meeting minutes as written. (Shulman – abstained, Hubbard – aye, Mellen – aye, Littleton – aye, Markert – aye, Konesey – aye, Wilson – aye, Strange – aye.) Motion carried.

CORRESPONDENCE

Inquiries were received from Mr. Tim Spies and City Commissioner Stan Mills with regard to publishing a redline copy of the working draft of an amended City Tree Ordinance. The Planning Commission will not be publishing a redline copy, but it will be publishing a report that will identify the changes which have been made in the ordinance. Mr. Markert and Mr. Brian Patterson have been working on that report.

NEW BUSINESS

Chairman Littleton read the report from the Building Inspector relative to all conditions being met on conditionally approved Partitioning Application No. 0114-01 for a property located at 50 Park Avenue and possible action to finalize the partitioning. The conditions set forth by the Planning Commission have been completed, and the structures have been removed.

Mrs. Konesey made a motion, seconded by Mr. Mellen, to finalize the partitioning. Motion carried unanimously.

Ms. Womack will notify City Solicitor Glenn Mandalas to send a letter to the Applicant's attorney with regard to the finalization of the partitioning.

OLD BUSINESS

There was none.

OTHER BUSINESS

Chairman Littleton called to review and discuss a draft transmittal report and recommendations to the Board of Commissioners; review, discuss and possibly finalize the working draft of an amended City Tree Ordinance based on public input, interviews and recommendations received by the Planning Commission and research conducted by the Commission; identify any additional data needs and plan to attain the same and public comment. This is in reference to the Resolution Regarding the City's Trees passed by the Mayor and City Commissioners passed by the Mayor and City Commissioners asking 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".

The Planning Commission reviewed the recommendations of the "Goals, Realities and Opportunities for Trees in the City of Rehoboth Beach" document.

Additional suggestions to the recommendations were:

- The City should maintain its annual Tree City USA certification since it is noted in the Comprehensive Development Plan.

Recommendation No. 1. The Planning Commission recommends that the Board of Commissioners take such action as necessary to amend/replace the current tree ordinance with the revised tree ordinance attached to the transmittal report.

- With regard to the tree ordinance, the Planning Commission feels that tree canopy is still being lost. Other actions should be taken to codify this in some way and to revisit whether or not the City is achieving its tree canopy goal. Currently, this suggestion has been written into the narrative of the transmittal report.
- How to quantify whether or not tree canopy is being added to the City.

Mr. Mellen noted that this would be difficult to do. He has been researching understory canopy relative to forestry and urban forests and understory. Copies of Quantifying urban forest structure, function and value: the Chicago Urban Forest Climate Project and the Portland Plan – Urban Forestry were distributed to each Planning Commission member. In the Portland Plan, a survey was done which generated numbers by district. Tree canopy, understory canopy and landscape architecture are discussed in this plan. The goals in the Portland Plan are significantly less than the goals for the City.

Recommendation No. 2. The Planning Commission recommends that the Parks and Shade Tree Commission be afforded necessary training and assistance to help the Commission best carry out its responsibilities in accordance with the proposed revised tree ordinance.

Recommendation No. 3. The Planning Commission recommends that the Parks & Shade Tree Commission develop, upon its approval by the Board of Commissioners, the City's Comprehensive Tree Plan and update it annually per §253-5.

- The City should have a professional planner on call for the Planning Commission to use.
- Another resource would be volunteers to act as a City sponsored community group to monitor when trees are being cut down.
- The City should contract with a professional to develop the necessary training for the Parks and Shade Tree Commission and to provide the expertise to build the Comprehensive Tree Plan for public property and street trees.
- The amount of canopy coverage is critical to having a plan that includes not only public property, but also private property.
- The Parks and Shade Tree Commission should not have the authority to solely develop an implementation plan.
- An interagency task force which would include citizens should be established that is appointed by the Mayor to establish a comprehensive tree plan for the City. This would include public and private property. The task force should include representatives from the Planning Commission, Park and Shade Tree Commission, Board of Adjustment, Board of Commissioners, Streets & Transportation

Committee and citizens. A facilitator would also be needed.

- Education should also be provided to the Board of Adjustment.

Mrs. Konesey made a motion that the Parks and Shade Tree Commission shall fulfill its requirement to develop a comprehensive tree plan, that the Parks and Shade Tree Commission shall include members from other commissions, boards, committees and the public and be provided with professional assistance to develop a comprehensive tree plan for the public properties, parks and streets in the City, and that the implementation and data shall be included in the plan and shall be used for annual budgeting. This motion failed to gain a second.

Mr. Harvey Shulman recommended that the Planning Commission suggest deleting from the tree ordinance the duty of the Parks and Shade Tree Commission to develop a city tree plan. A provision can be placed in another part of the tree ordinance that specifically directs the Mayor to appoint an interagency task force composed of commissions, boards, committee members and the public. This provision would provide for an interagency task force that will look at public and private trees.

Mr. Mellen noted that Item 3 should be a recommendation based on the conclusions of the Planning Commission, that the current status of the effectiveness of a comprehensive plan of trees on private and public property is non-existent. Something should be changed to make it happen. A plan is needed and should be represented by a group of people who have a broader vision than any current individual groups. The plan needs to be comprehensive, to cover both public and private lands, to be able to be funded, and to have support and metrics. Nothing like this currently exists. The City Commissioners needs to establish the methods for doing this.

There was consensus of the Planning Commission that there should be more discussion of the rationale and explanation of this recommendation, and the recommendation itself should be simplified.

Recommendation No. 4. The Planning Commission recommends that a searchable computer based record system be implemented whereby all tree plans and permits should be entered and their outcome recorded.

- Compile and issue a report to the Board of Commissioners of how many trees the City has approved for removal over the past eight years and what type of trees they were.
- The City has failed in managing this natural resource. Recommendations should be made by the Planning Commission that the City should begin managing it in some manner and how it will be done.
- The Planning Commission suggested that one or two interns go through the records with the guidance from someone who knows how to pull the records and document them.
- A software system is needed that basically manages whatever the overall recommendation is.
- A method is needed to establish metrics to support the tree plan. A tracking system is needed to determine the status of the City's urban forest including but not limited to how many trees there are, how many trees are being cut down, how many new trees are being grown, etc. A list should be generated of some of the things the Planning Commission thinks that need to be tracked.

Recommendation No. 5. The Planning Commission recommends that tree permit application forms and instructions be made available on the City's website. (The Planning Commission further recommends that all City application forms and instructions be made available on the City's website.)

There was consensus among the Planning Commission members that application forms and instructions should be made available on the City's website.

Recommendation No. 6. The Planning Commission recommends that approved tree permit applications be posted on the City's website. (The Planning Commission further recommends that all City approved permits be posted on the City's website.)

- When someone applies for a tree removal permit, the Planning Commission recommended that the application should be posted in real time on the City website. This would be a recommendation, but it would not be included in the tree ordinance itself.

Mr. Shulman said that the City's procedures and policies about preserving the tree canopy and the input the Code permits is determined by the convenience of the person who files the application for the tree

permit. The appeals process in the current tree ordinance is a joke because even though the ordinance specifically gives an aggrieved person the right to appeal the granting of the tree removal permit, the trees will be taken down before the person has any chance to do anything, let alone know about it. The City is further complicit in that by not providing reasonable notice in connection with the application or the granting of the permit.

- A notice should be posted notifying the neighbors that an application has been applied for.
- Remove “approved” from “[T]he Planning Commission recommends that approved tree permit applications be posted on the City website”.
- In the software system that should be developed, a notice would automatically be posted to the website and an email would be sent out. The City website should have a functionality so a human being does not have to do anything to send out the notice.
- This system should be expanded to all permits.

Recommendation No. 7. The Planning Commission recommends that the City take necessary action to require that the disclosure statement required for any real estate conveyance within the City includes notifications of the tree requirements that are effective upon such conveyance.

Mr. Mike Strange noted that in the document from the Real Estate Board of Commissioners is a section of what the property owner thinks, such as if the property owner knows there have been termites, flooding, etc. He spoke with a representative from the Real Estate Board of Commissioners who thought that there would be a simplified way to make available to the seller or the buyer, things that they should be aware of. The statewide document is not specific to any locality. The Board would try to come up with a generalized statement saying that it would be recommended to go to the municipal website to see if there are requirements. The Board website has been recently updated and will not be updated for another two years. The function to be notified on the City website should be an easy extension to be notified when something is filed, etc. The Common Interest Ownership Pact does not exist at the municipal level for private property anywhere. At the municipal level, it is a function of individual codes that are developed within any particular municipality, but it is not a CIOP.

- There should be outreach to real estate agents and companies doing business within the City.
- There should be access to data within the City system.

Recommendation No. 8. The Planning Commission recommends that the Board of Commissioners take such action as necessary to increase the natural area requirements of the Zoning Code from xxx% to xxx%.

- The City should evaluate a possible increase to the natural area requirements.
- There is not enough open land to support the number of trees that would like to be seen on private property.
- More rational is needed for this recommendation.
- No percentages will be added to this recommendation.

Recommendation No. 9. The Planning Commission recommends that the Board of Commissioners take such action as necessary to increase substantially the planting and maintenance of appropriate street trees. Such action should include: (a) The City assume the responsibility of maintaining/repairing any damage to sidewalks and/or streets caused by street trees. (b) The City assumes the responsibility for planting, maintaining or replacing all street trees. (c) Whenever there is a modification or extensive repair of an existing street, give careful consideration to design features and how the number of trees can be increased: (i) Explore such option as “bump-outs” near intersections that would provide tree planting space. (ii) Where there is sufficient right-of-way, explore the creation of median islands with tree planting space.

- If the City wants to increase tree canopy, it will not be done on private land.
- On most the streets in the City such as Oak Avenue, the first 10 or 15 feet is owned by the City so the streets could easily be canopied.
- Establish a City tree plan.

- Eliminate encouraging property owners to plant street trees.
- The City should be encouraged to take responsibility for maintaining/repairing any damage to sidewalks and planting of street trees.
- Replace 9(c) with “[W]henver there is a modification or extensive repair, the City should increase the number of trees by (1) creating bump-outs near intersections and (2) in a sufficient right-of-way, creating median islands with tree planting space.”
- More off-street parking will need to be provided on private land.

Recommendation No. 10. The Planning Commission recommends that the City undertake a comprehensive public information and education program to inform its citizens not only of the importance of trees to the environment and character of the City but also to inform them of the tree ordinance and its provisions.

Mr. Mellen noted that there are a number of paragraph in the Portland Report which deal with the specific issue of public education.

- Change “[T]he Planning Commission recommends that the City undertakes...” to “[T]he City must undertake...”

Recommendation No. 11. The Planning Commission recommends that the City conducts annually an event that makes available, either free or at cost, desirable trees for planting by property owners on their private property or curbside in front of their property within the City.

- This recommendation ties in with remediation, and the funds should be available for the City to things and to partially help defer costs for private citizens to plant trees.
- In addition to this recommendation, there should be encouragement for public involvement and to support volunteer efforts.
- There are programs within the State of Delaware that the City could become involved with.
- Expand this recommendation to encourage volunteer efforts, etc.
- Remove “...curbside...” from the recommendation.

Recommendation No. 12. The Planning Commission recommends that the City initiate a special effort in collaboration with the Country Club Estates Property Owners Association to increase the number of trees in the Country Club Estates area of the City.

Chairman Littleton noted that the Association stated it would like to work with the City to plant more trees on private and public lands in Country Club Estates.

- This could encourage partial support to plant trees on private property.
- The City could help with wholesale prices.
- Add in the recommendation to pay special attention to the areas in the City that are deficient in trees.
- Country Club Estates and areas like it should be a priority for street trees. As to those areas and the planting of trees on private property, the City should help with arrangements to get bulk purchases.

Recommendation No. 13. The Planning Commission recommends that the City explore with the Delaware State Insurance Commissioner action that can be taken to ensure that insurance companies doing business in the State do not require unwarranted tree trimming for removal by its clients and provide that municipal tree arborists have the means to challenge such insurance company requirements when they conflict with the municipalities’ ordinances.

Mr. Shulman noted that this recommendation is essential and should be done sooner rather than later. This may not just involve the State Insurance Commissioner, but it may also involve the Governor’s office to decide if it wants to get involved.

Recommendation No. 14. Other recommendations.

- There are ways to dig basements where a contractor does not come in from all four sides and start digging. Digging from one side would allow for the trees on the other sides to be saved.

Mr. Shulman said the building inspector believes that the tree ordinance does not give her clear authority to tell people to dig a basement differently. He thought that the building inspector does have authority.

- The building inspector's concern that sufficient authority is not provided, and the Code should be clarified so it is clear that such authority exists.

The Planning Commission reviewed the clean copy of the draft amended tree ordinance. No new recommendations were made for changes.

Chairman Littleton called to discuss the impact and surveys with errors being submitted with subdivision applications and possible action by the Planning Commission.

Mr. Strange said that there are disjointed regulations which are not applicable with the nature of structures that are being built today, so it can meet the Code but create damaging situations to surrounding property owners. He provided a brief synopsis of what has recently occurred on an adjacent property and his property. An immense house, swimming pool and fence were built on the neighbor's property. Construction equipment was run on Mr. Strange's property, and trees were damaged and cut down on his property. There has been continuous noise with the pool pump and pool lighting issues. The current Code for noise sound levels is insufficient and obsolete for how close to the property line everything has been built. Mr. Strange will talk to the owner to inform him that there are sound deadening approaches which could have been used when the pump was mounted and baffled. Because the sound level from the pump is not in violation with the noise ordinance, he cannot get enforcement to shut off the pump from 11:00 p.m. to 8:00 a.m. It is completely intrusive and unfortunate. Mr. Strange said that because of the nature of the building code and lot zoning the way it is done, the restrictions on sound are not applicable. He thought that the City Commissioners need to look at the technical specifications which are no longer salient for the nature of building that is legally permitted in the community. The preamble to the regulations indicates protecting the health and welfare of its citizens, and that is not true. Mr. Strange suggested looking at other evolving urban areas where sound and light pollution are significant, and the regulations take that into account. Discussion ensued with regard to these issues.

Mr. Strange was tasked with the noise and light issues and regulations. He will come back to the Planning Commission with his findings and a proposal.

The remainder of the Agenda items were deferred to the next meeting.

The next meeting of the Planning Commission is scheduled for June 13, 2014 at 6:30 p.m.

Ms. Wilson made a motion, seconded by Mrs. Konesey to adjourn the meeting at 10:00 p.m.

RECORDED BY

(Ann M. Womack, City Secretary)

**MINUTES APPROVED ON
JULY 11, 2014**

(Francis Markert, Secretary)