

**PLANNING COMMISSION MEETING  
CITY OF REHOBOTH BEACH**

**July 11, 2014**

The Regular Meeting of the Planning Commission of the City of Rehoboth Beach was called to order at 6:33 p.m. by Chairman Preston Littleton on Friday, July 11, 2014 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. Paul Hubbard  
                      Mr. David Mellen  
                      Chairman Preston Littleton  
                      Mr. Francis Markert, Jr.  
                      Mrs. Jan Konesey (left the meeting at 8:56 p.m.)  
                      Ms. Lynn Wilson  
                      Mr. Michael Strange

Absent:            Mr. Harvey Shulman

Also Present:     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 on the City website on July 3, 2014. The Agenda was faxed to Cape Gazette, Coast Press and Delaware State News on July 3, 2014. An E-News blast was also sent out on July 3, 2014.

**APPROVAL OF MINUTES**

Minutes of the May 9, 2014 Planning Commission Regular Meeting were distributed prior to the meeting. Minutes of the June 13, 2014 Planning Commission Regular Meeting were not available for approval.

Mr. David Mellen made a motion, seconded by Mr. Markert, to approve the May 9, 2014 Planning Commission Regular Meeting minutes as written. Motion carried unanimously.

**CORRESPONDENCE**

1. Email dated July 3, 2014 from Paul and JoAnn Hersh, 47 Oak Avenue, regarding swimming pools, rental properties and noise in residential areas.
2. Email and letter received July 8, 2014 from John and Leah Rodgers, 45 Oak Avenue, regarding swimming pools, rental properties and noise in residential areas.
3. Email dated July 10, 2014 from the Boghosian Family, 100 Stockley Street, regarding swimming pools, rental properties and noise in residential areas.
4. Letter dated July 8, 2014 from Donald and Lynne Myers, 43 Oak Avenue, regarding swimming pools, rental properties and noise in residential areas.

**OLD BUSINESS**

Chairman Littleton called for discussion and action on a request to extend the deadline to complete conditions cited in Conditionally Approved Partitioning Application No. 1113-04 for a property located at 49 Park Avenue.

Building Inspector Terri Sullivan reported that on June 13, 2014 a request was made by the owner of 49 Park Avenue to extend the deadline of July 10, 2014 an additional 90 days to complete conditions. The building has been moved, but Delmarva Power has not supplied electricity to the property to date so the project cannot be completed.

Mr. Markert made a motion, seconded by Mr. Michael Strange, to extend the deadline date 90 days from when it expired. Motion carried unanimously.

Chairman Littleton called for discussion and action on a request to finalize Conditionally Approved Minor Subdivision Application No. 1013-03 for a property located at 114 St. Lawrence Street.

Ms. Sullivan reported that the conditions have been completed except for the planting of the trees. The structures have been removed, and the utility easement was prepared and is acceptable to the City. All repairs to City property have been made. Two separate plans had been prepared. One was for the easement as it was proposed at the Public Hearing, and the other is for the easement on the opposite side of the same lot. The Applicants' preference is to go with the easement on the opposite side of the same lot based on some plans which they had prepared for their attorney.

City Solicitor Glenn Mandalas was satisfied with the easement. The City has enforcement rights to the easement. The City has committed to extending water and sewer along Lake Drive. He did not know if the engineer's plan shows a hookup at the time this project is done with extending the main, or whether it will be the next time the lateral would need to be repaired. With regard to the easement being put in place, there is an access.

Chairman Littleton said that the Planning Commission approved the easement going to the east side of the lot, but the Applicants refer to have the easement on the west side of the lot. There was no objection from the Planning Commission to placing the easement on the west side of the lot.

Mr. Michael Strange made a motion, seconded by Mrs. Jan Konesey, to finalize the conditionally approved Minor Subdivision Application No. 1013-03, give permission for the easement to be on the west side of the property and plant the trees by October 15, 2014. Motion carried unanimously.

#### **NEW BUSINESS**

There was none.

#### **OTHER BUSINESS**

Chairman Littleton called to discuss preparation needed for the yet to be scheduled joint meeting with the board of Commissioners to discuss swimming pools in residential zoned areas and related issues.

Chairman Littleton said that the Planning Commission has alerted the City Commissioners to the issue with swimming pools and noise. A document written by Mr. Strange was presented to the Board of Commissioners at its Regular Meeting that was held on June 20, 2014. The Planning Commission has requested holding a joint meeting with the Board of Commissioners to discuss this matter. There was affirmation among the Board to proceed with the joint meeting. No date has been set for the joint meeting.

Mr. Mellen noted that Mayor Cooper does not want the meeting to be unstructured, but to have the Planning Commission outline what the issues are.

Chairman Littleton noted that in the Planning Commission's discussion regarding swimming pools, it found that there was nothing inherently wrong with swimming pools, but that there are issues with noise, use, enforcement, pumps, loudspeakers, building a foundation and its impact on trees and stormwater runoff. Chemicals are involved which would be discharged into the storm sewer system. Chairman Littleton noted that there are engineering issues inherent with swimming pools.

Mrs. Jan Konesey thought that it takes courage on the part of Commissioners to find a solution whether it is a combination of changing the noise ordinance, looking at enforcement, possibly disallowing pools on 50 foot x 100 foot lots. The Commissioners have a responsibility to the current homeowners, not to the people who are investing in property for rentals. The City Commissioners need to solve this problem quickly.

Mr. John Meng, 107 St. Lawrence Street, said that the problem is really not with pools, it is with high capacity rental houses. There is a host of other problems that goes along with the swimming pools such as noise, parking, etc.

Mr. Strange noted that the key issue is residential homes transitioning into rental properties. There are a lot of anomalies in the Code, such as outside showers, that allow things to be done legitimately, but the end effect is that it is problematic. There is nothing in the Code to address lighting on pools. There are regulations to enforce the law. Integrated long range planning is needed to be seen that does the right thing for the long term. Mr. Strange will do more research to provide more content for referencing when the joint meeting is held.

Mr. Tom McGlone, 318 Laurel Street, said that the issues are size and number of people occupying rental properties. North Shores has some restrictions that people who rent properties have to be related in some way.

Mrs. Konesey noted that this can be found in the City Code, but it may be unconstitutional and unenforceable.

Mr. Brian Patterson said that what is being discussed is about weekly rentals as a business, not people's homes. The standards that apply to rental housing where people are making their home are different. An issue is that the City is not regulating this type of business effectively as it should be.

Ms. Sullivan noted that she has developed a report of properties with swimming pools. Seven swimming pools have been built from March 2012 until December 2012. Fifteen swimming pools were built in 2013, and 11 to date in 2014.

Chairman Littleton called for review, discussion and possibly finalize transmittal report and recommendations to the Board of Commissioners and review, discussion and possibly finalize the explanation of major changes to the Planning commission approved, proposed amended City Tree Ordinance with regard to Resolution Regard the City's Trees 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.

Chairman Littleton summarized the Planning Commission's charge from the Board of Commissioners to research and propose amendments to the City's ordinances, regulations and procedures. The focus was on the City's objective and stated goals of maintaining and increasing tree canopy within the City. The Planning Commission has held public meetings and workshops, has interviewed businesses and tree companies of which particular attention was paid to the comments of the Parks & Shade Tree Commission that hears appeals, the City Arborist, Building Inspector and has independently done a lot of research including having an educational symposium. The Planning Commission had concluded that there are issues with the tree ordinance, and it redrafted the ordinance. Currently, the draft ordinance can be found on the City website. In addition, the Board of Commissioners asked the Planning Commission to look at broader issues as well. Tonight, the Planning Commission discussed a series of mega recommendations of things beyond the Code. The documents reviewed at this meeting were the generic overview transmittal and recommendations and a document of discussion between the current and proposed amended ordinance. With regard to the recommendations, Mr. Markert was tasked with rewriting one of the recommendations which had been forwarded to the Planning Commission prior to the meeting. The Planning Commission reviewed each recommendation.

Comments on the recommendations are:

1. Change Parks and Shade Tree Committee to Parks and Shade Tree Commission.
2. Define the comprehensive tree plan for the City that includes private and public lands.
3. Make sure that when the Planning Commission is talking about this comprehensive tree plan it is not the Code specified public tree plan.
4. Explain what this comprehensive tree plan is about.
5. The Planning Commission should cite that it did not change in the first section of the existing tree ordinance the definition of the comprehensive tree plan. It is recommending that a change should be made to the language in the tree ordinance so that the comprehensive City tree plan is now the comprehensive tree plan for the City and includes public and private lands. Chairman Littleton will rewrite that section.
6. Propose a searchable computer-based system for the City with regard to trees that has an accessible database.
7. All application forms and instructions should be made available on the City website.
8. Application notice should be posted on the City website upon submission.
9. Take necessary action to inform real estate companies and agents doing business in the City that the minimum tree requirement for a lot becomes effective upon any conveyance of that property to the purchaser and upon the City's notification of receipt of the transfer property tax.

City Commissioner Patrick Gossett noted that the transfer tax is collected by the County, and then the County transfers it in one large sum each month to the City. It is not done on an individual basis.

10. Move "[T]he Planning Commission recommends that the Board of Commissioners take such action as necessary to increase the natural area requirements of the Zoning Code in order to provide more space for the planting of new trees and/or survival of existing trees" towards the top of the list.
11. Reverse 8(1) and 8(2) of the recommendations.
12. Recommend that the City should maintain its Tree City designation which includes Arbor Day. Part of Mr. Mellen's research was the Portland Report which had been distributed to the Planning

- Commission. One of the most important elements of that report was a public education program.
13. Increase the number of trees, both private and public, in the areas of the City that are most deficient of trees. The President of Country Club Estates Property Owners' Association has been trying to initiate a special effort to increase the number of trees on private and public property.
  14. Recommend that the City explore with the Delaware State Legislature an executive official's action that can be taken to ensure that the insurance companies doing business in the State do not require unwarranted tree trimming or removal by its clients.
  15. Additional recommendation. The Planning Commission recommends that the City explore with the Delaware State Legislature an executive official's action that can be taken to ensure that the Office of the Insurance Commissioner recognize the protection of trees as subject matter appropriate for the formal complaint and arbitration process is available to insurances.

Suggested changes to the narrative are:

1. Line No. 137. Make it clearer why the property owner should not have to pay for a sidewalk when the property owner plants a street tree. The single most important thing is for the City to take responsibility for planting and maintaining street trees. In order for it to be equitable to private property owners, the City should assume the associated responsibility.

Ms. Sullivan read Section 253-15(b) of the redrafted tree ordinance. If the City plants the tree, all cost involved in removing or replacing the tree and repairing damage to sidewalks and curbs is the City's responsibility. If a property owner has planted a tree on City property, it needs to be removed. The Parks and Shade Tree Commission will notify them in writing, and removal and repairs shall be done by the owner at his expense.

2. Line No. 100. The tree inventory of public land was done in 2010 by Davey Tree Group and is known as the Davey Tree Inventory.
3. Line Nos. 41-45. Mr. Mellen will provide a summarization of his research relative to trying to inventory private property trees. Three visuals will be included.

Mrs. Konesey made a motion, seconded by Mr. Strange, that the Planning Commission approves the recommendation 1 through 14 in the Trees in the City of Rehoboth Goals, Realities and Opportunities document as to be amended per discussion.

City Commissioner Gossett commented that the Planning Commission should indicate whether or not there is any weight given to the numbering of the additional recommendations, and that the Planning Commission should consider cross-referencing in the narrative where any additional recommendations are drawn from.

Motion carried unanimously.

A copy of the narrative will be forwarded to the Planning Commission members of the changes made to it.

Other changes to the Discussion of Changes between the Current and Proposed Amended Tree Ordinance, Draft #1, 07-02-14 document:

1. Bullet incomplete sentences with no more than two to three lines long.
2. Refer to a section in the code that is being discussed.
3. Line No. 78. Change "...would be contrary to the purpose of the Code that spares the owner the time and expense..." to "...would be contrary to the purpose of the Code that would spare the owner the time and the expense..."
4. Line No. 27. Remove "a" at the end of the sentence.
5. Line No. 24. Change "Commission" to "Commission's".
6. Line No. 53. Change "...the size were smaller..." to "...the size was smaller..."
7. Line No. 80. Change "...as far as results are..." to "...as far as results is..."
8. Line No. 98. Change to "...faced with these problems..."
9. Line No. 105. Change "...there exists..." to "...there exist..."
10. Line No. 128. Change "...while the recommended provisions..." to "...the recommended provisions..."

Chairman Littleton called for the City Solicitor's Report.

City Solicitor Mandalas reported that Commissioner Mills has requested that mergers be placed back on agenda for the August Workshop. He has asked City Solicitor Mandalas to draft an ordinance in advance of

that Workshop Meeting.

Chairman Littleton called for the Building Inspector's Report.

Ms. Sullivan reported that an application has been received for site plan review for an addition to the Avenue Inn at 110 Rehoboth Avenue.

Chairman Littleton called for an update on the State's five-year review requirement of the City's Comprehensive Development Plan that was certified by the State on July 23, 2010. Discuss plans and timeline to meet requirements.

Chairman Littleton had spoken with Ms. Connie Holland of Office of State Planning Coordination regarding the City's Comprehensive Development Plan. The last CDP was done at a five-year increment and was done as a new Plan. It was recommended by Ms. Holland that the Planning Commission update the CDP for this five-year review requirement. The Planning Commission has one year to provide an update of the CDP.

Chairman Littleton called to discuss and possible comments/recommendations concerning the Town of Henlopen Acres' draft Comprehensive Development Plan.

Chairman Littleton has reviewed the draft CDP and has found factual errors relative to Rehoboth. He has met with the Chairman of the Planning Commission of the Town of Henlopen Acres and commented of its draft CDP. Errors were corrected in the draft CDP regarding the sewers and water wells. There is concern about wellhead protection and the adequacy of fire suppression. The contentious issue for the Town is relative to The Art League. Chairman Littleton has provided the Chair with the current and previous CDP's and the Planning Commission comments of the draft of an agreement with Cape Henlopen School District.

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

There was nothing to report.

No new subdivision applications have been timely submitted to date.

The next meeting of the Planning Commission is scheduled for August 8, 2014 at 6:30 p.m.

There being no further business, Mr. Mellen made a motion, seconded by Mr. Markert, to adjourn the meeting at 8:58 p.m.

**RECORDED BY**

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(Ann M. Womack, City Secretary)

**MINUTES APPROVED ON  
SEPTEMBER 12, 2014**

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(Francis Markert, Secretary)