

REFERENCES, FOOTNOTES, BIBLIOGRAPHY

1. Henlopen Acres: a residential development at Rehoboth Beach, Delaware/W.S. Corkran
2. Information in this section obtained from Deed of sale for the Wilbur S. Corkran Property constituting Town of Henlopen Acres of 1930 and further recorded deeds
3. National Register of Historic Places, Inventory Nomination Form
4. 1982 Deed, Sussex County Deed Book 1198, page 333
5. Natural Resources Conservation Service
6. Delaware Wildlife Action Plan 2006, Delaware Division of Fish and Wildlife
7. Arbor Day Foundation
8. Town of Henlopen Acres, 2014
9. Sussex Outdoors, ©2013

TIMELINE

- The June 27 meeting of the Henlopen Acres Planning Commission was very well attended by a good cross section of town residents, as well as by Rehoboth Art League ("RAL") officials and various state officials, including Connie Holland, Director of the Office of State Planning.
- At that meeting, the majority of Town residents made it clear that they wanted the RAL to continue to prosper, but did not want it to expand its activities or its facilities in Henlopen Acres.
- Importantly, the RAL representatives specifically stated that the RAL does not wish or intend to expand its activities or its facilities. Instead, what it wants is clarification from the Town as to what it can and cannot do, and legal assurance that it will be able to rebuild its structures in the event of catastrophic loss.
- Following the June meeting, John Scheurer, the Planning Commission Chairman, arranged a series of meetings with RAL representatives and most, if not all, of the residents abutting or close to the RAL. Two members of the Henlopen Acres Board of Commissioners -- Mr. John Staffier and Ms. Joni Reich -- attended some of the meetings in their individual capacities. At the meetings, the residents strongly re-affirmed what was said at the June meeting, namely, that they wanted the RAL to prosper, but did not want any further expansion of its activities or facilities in Henlopen Acres. The RAL, again, consistently disavowed any desire for such expansion.
- While all of this was going on, Messrs. Scheurer and Staffier and Ms. Reich were working on a draft Memorandum of Understanding ("MOU") between the Town and the RAL. The draft MOU does not establish any new zoning regulations applicable to the RAL or modify any existing regulations. Instead, it was intended and designed to (1) clarify the scope of the RAL's existing, legal, grandfathered non-conforming use status, (2) provide reasonable assurance that the RAL will be able to rebuild its facilities in the event of a catastrophic loss, and (3) memorialize the RAL's "no expansion" position. The MOU, therefore, would effectively give the RAL what it said it wanted at the June 27 meeting and thereafter. The Town does not believe that establishment of a new zone is necessary or advisable to achieve those goals. The RAL's current, grandfathered non-conforming use status already provides it with the legal right to continue its ongoing activities and to maintain its existing facilities in perpetuity. Confirmation of the RAL's right to rebuild in the event of a catastrophic loss can be provided by means other than a new zone. The draft MOU was given to the RAL on October 21, and Messrs. Scheurer and Staffier and Ms. Reich met with Ms. Diana Beebe and Mr. John Schroeder to discuss the draft on October 27.
- The MOU speaks for itself, but three provisions deserve special note. First, Paragraph 2 would establish a regular communication process between the Town and the RAL. This is very important as a means to develop mutual trust and an ongoing working relationship.

- Second, per Paragraph 1, the draft was proposed as a one year trial agreement. That was done because, as the drafters worked on it, they concluded that it was probably too ambitious to try to reach a final, permanent agreement in one step and that it would be best to try the arrangement out for a year and give both the Town and the RAL a chance to work out the kinks, and, especially and hopefully, a chance to get comfortable with the regular communication process and develop some mutual trust.
- Third, paragraph 12 provides that the Town would support a variance request by the RAL to re-build any structure that was more than 80% destroyed by accident or natural disaster during the term of the agreement. The drafters felt that Town support on that would give the RAL the assurances it needed as a practical matter during the trial period. They made clear to the RAL, however, their understanding that if and when a permanent arrangement was reached, a permanent legal solution to the 80% issue would have to be part of the deal.
- The drafters expected and understood that the RAL was going to provide specific comments on the draft MOU at the October 27 meeting. The RAL provided no comments however, and it still has not done so. Instead, at the meeting, Ms. Beebe and Mr. Schroeder took the position that the agreement must be a permanent agreement that committed the Town to establish a new zone for the RAL. While the RAL's position on that score was certainly not new, the drafters were a bit surprised by it because they had been led to believe that the RAL understood and had accepted that the MOU would be a one year trial agreement, and that a commitment to establish a new zone was not going to be part of the deal.
- Although the RAL has been talking about a new zone for many years, it has always declined to say what the rules and regulations would be in such a zone. Most recently, at the December 1 Planning Commission meeting, it once again proposed that a new zone be established and once again failed to say what the rules would be, except to say that the RAL could engage in any activities and build any structures that it felt were desirable for "recreational, educational, philanthropic or community purposes." (See attached RAL zoning proposal). That, of course, amounts to no rules. And in a recent email to Mr. Scheurer, the RAL explained that it thought the new zone should be established first, with the details -- that is, the rules -- to be established later. The Town believes that it would be irresponsible to establish any new zone without first determining the rules that would apply in the zone. In this situation, it would be a prescription for disaster and would lead only to unending arguments between the Town and the RAL about what the applicable rules should be.
- Following the December 1 Planning Commission meeting, the RAL indicated that it would try to put together some specific comments on the draft MOU. It has not yet done so, but if it does, the Town will certainly be open to considering the RAL's views. For now, however, the ball is in the RAL's court.

MEMORANDUM OF UNDERSTANDING (“MOU”) BETWEEN THE TOWN OF HENLOPEN ACRES (“TOWN”) AND THE REHOBOTH ART LEAGUE (“RAL”) REGARDING THE SCOPE OF THE RAL’S EXISTING LEGAL NON-CONFORMING USE AUTHORIZATION

Recitals:

- A. As many of the speakers at the RAL’s 75th anniversary celebration emphasized, the RAL is a “special place.” Its specialness, however, derives in large part from the specialness of the unique Henlopen Acres community in which it is located. Expansion of the scope and the frequency of the RAL’s activities at its Henlopen Acres property, and/or expansion of its facilities in Henlopen Acres, will increase the impacts of the RAL on neighboring properties and on the neighborhood in general and is inconsistent with the residential character of the Henlopen Acres community. The Town and the RAL agree, therefore, that appropriate regulations should be put in place that permit the RAL to reasonably utilize its property while minimizing adverse impacts on its neighbors and the community. Such regulations will help preserve the special qualities of both the Henlopen Acres community and the RAL itself and will permit a more cooperative and supportive relationship between the Town and the RAL.
- B. The RAL has confirmed that it has no intention or desire to change or expand the nature of its activities in Henlopen Acres, or to increase the frequency or intensity of its activities, compared to what they have been in recent years. The RAL has also confirmed that it does not intend or desire to expand or materially change its facilities in Henlopen Acres, but wishes merely to be assured of its right and ability to maintain and update its facilities as necessary, without changing their size, location on the property or current use.
- C. The RAL and the Town agree that the primary factors that affect the impact of the RAL’s activities on the Henlopen Acres community are the frequency of public events at the RAL, the number of people and automobiles attending such events, the location of the events on the RAL campus (i.e. whether held indoors or outdoors), the time of day at which the events are held, the duration of the events, and the nature of the events in terms of their potential to generate noise.
- D. Under the Town’s zoning regulations and ordinances, the RAL’s activities on its Henlopen Acres property, constitute a grandfathered, legal non-conforming use within the Town’s Residential Zone, and the RAL’s facilities constitute non-conforming structures. Its non-conforming status imposes operational limitations on the RAL that both the Town and the RAL would like to clarify.

Agreement:

In order to clarify the scope of the RAL's existing legal non-conforming use authorization, consistent with the Recitals set forth above, the Town and the RAL hereby agree as follows:

1. This agreement shall be in place for an initial term of one year beginning on January 1, 2015. At the end of the one year trial period, the agreement can be extended by mutual agreement, modified or terminated.
2. At least 30 days prior the commencement of each calendar year, the RAL shall submit to the Town a calendar of planned activities for the upcoming year. In particular the calendar shall highlight any activity that is expected to draw more than 50 people and 25 cars into the neighborhood. During the year, the RAL's Executive Director shall meet with the Town Manager quarterly to Review the activities for the past quarter, the future activities and any changes or revisions to the annual calendar.

Low Impact Events and Activities

3. The RAL is permitted to keep its galleries and museum shop open to the public, unrelated to specific events or classes, Monday through Saturday, 9 a.m. through 5 p.m. and Sunday, 10 a.m. through 4 p.m.
4. The RAL is permitted to conduct indoor public events, classes and activities between the hours 9 a.m. – 5 p.m., Monday – Friday (except holidays)) that are reasonably related to the traditional visual arts (painting, drawing, photography, sculpture, ceramics, crafts)¹ and are not intended or reasonably expected to attract more than 50 people and/or 25 cars into the neighborhood. The total number and frequency of such events per month and per year shall be consistent with and not in excess of the number and frequency of such events in recent past years. In addition, there will not be more than 4 such events on any one day, and, if the timing of such events on any day overlap, the overlapping events must not be intended or reasonably be expected to cumulatively attract more than 50 people and/or 25 cars into the neighborhood.
5. Not more than 2 days per week classes may be conducted after 5 p.m. up to

¹ The term "reasonably related to the traditional visual arts" as used herein means that the art in question is the focus of the event. Questions as to whether specific events would or would not be considered by the Town to qualify as "reasonably related to the traditional visual arts" should be addressed in good faith to the Town Manager who will, in turn, respond in good faith.

as late as 9 p.m., but, whenever possible, use of these extended hours shall be minimized.

Medium Impact Events and Activities

6. The RAL is permitted to conduct 1 artist opening per month that will be held indoors between 5p.m. and 7p.m. Many of these events will be low impact events (attracting less than 50 people or 25 cars), but up to 3 of the openings per year and up to 3 of the RAL's monthly Board meetings per year, can be medium impact events, meaning that they are expected to attract up to 100 people or 50 cars. To the extent possible, any medium impact event should be identified on the annual calendar referenced in Item 2 and discussed with the Town Manager at the prior quarterly meeting. If not so identified or discussed, it should be discussed with the Town Manager at least two weeks before it is publically announced,

High Impact Events and Activities

7. The RAL is permitted to conduct its Young at Art Show in March, its Holiday Fair in December, and its Annual Cottage Tour in July during the hours and for the durations in which those events have been conducted in the recent past. The RAL is also permitted to conduct its traditional public art show on two consecutive weekends in August with the goal of not increasing the size of or scope of the show.² If the art show continues to grow beyond its current size and scope, the RAL will investigate suitable off campus locations for the show along with other medium and high impact events with the goal of maintaining the current status quo of activity in Henlopen Acres. The specific dates for each of these events should be shown on the annual calendar referenced in Item 2.

General

8. The RAL is not be permitted to rent out or donate its property or facilities for private events such as weddings, bat mitzvahs, graduation parties, fund raisers, etc.
9. The RAL, in consultation with the Town Manager, shall develop a parking plan, which will apply when an event attracts more cars than the RAL's parking lot can accommodate. The Town agrees to provide up to 10 parking

² The RAL has indicated that it may in the future wish to conduct the art show from Thursday to Sunday of a single week, rather than on Saturday and Sunday of two consecutive weekends. The Town is open to discussing such a change.

spaces at the Marina for overflow and additional parking on the Town right of way in front of the Marina in coordination with the Town Manager, but no more than 10 days per year.

10. The RAL can apply to the Town Manager for authority to (i) hold additional public events reasonably related to the traditional visual arts that are reasonably expected to attract more than 50 people and/or 25 cars, or (ii) hold public events not reasonably related to the traditional visual arts, or (iii) hold outdoor public events of any type. Such requests shall be limited to one per month and no filing fee shall apply. In acting on such requests, the Town Manger will consider and evaluate the impacts of the proposed event in terms of the impact factors described in Recital C.
11. If the Town Manager denies such a request, the RAL may appeal the denial to the Board of Commissioners. The prevailing filing fee applicable to a request for a variance shall apply to such appeals. [Alternate: In order to avoid attorney and stenographer costs, and thus obviate the need for filing fees, any such appeals will be conducted on an informal basis and the decision of the Board shall be final and non-appealable.]
12. If at any time while the agreement in effect, any structure on the RAL property is more than 80% destroyed by natural disaster or accident, the Town will support the prompt grant of a variance to the RAL to permit the structure to be re-built to its pre-existing specification and uses, and will support waiver of the applicable filing fee.
13. No events conducted or authorized hereunder shall expand or affect the RAL's non-conforming use or affect the RAL's status as a non-conforming use within a residential zone.
14. This agreement shall be construed, interpreted and implemented consistent with the Recitals set forth above.

Accepted and agreed to this ___ day of _____

[Insert signature blocks]

Year	2009	2010	2011	2012	2013	2014
January				January Opening		
February					February Opening Bertha Riley	February Opening College Artists
March		Young at Art Opening	Young at Art Opening	Young at Art Opening and March Opening Fred Comegys	Young at Art	Member Showcase
April	Young at Art, Opening	April Opening, Exhibits	April Opening	April Opening	April Opening	
May	May Opening exhibits				May Opening	Members Craft Exhibition & Opening
June	June Opening, Crafts	June Opening Fine Arts	June Opening Fine Craft	June Opening Fine Arts and (Shakespeare in the Garden)*	June Opening Fine Arts and annual Meeting and Diamond Celebration	Best of the Beach Art Auction
July	July Opening fine Art and Cottage Tour	July Opening and Cottage Tour	July Opening and Cottage Tour	July Opening and Cottage Tour	July Opening and Cottage Tour	July opening Members Fine Art Exhibition, Cottage Tour
Aug	Art Show	Art Show	Art Show	Art Show and Opening Paintings	Art Show and August Opening	41st Annual Fine Art Show, Members Openig Aina Nergaard- Namaak

DRAFT
10/20/2014

Sept.	September Opening	September Opening	September Opening			
Oct		October Opening		October Opening	October Opening	6th Annual Juried Biannual Show
Nov	Holiday Fair, 500 attendees		Holiday Fair and November Opening and Open House Holiday Flair	Holiday Fair	Holiday Fair	Holiday Fair
Dec				Open House	Holiday Open House	Holiday Open House
Total Events	8	8	10	13	14	11
*Note, Shakespeare in the Garden was an outdoor event that would not likely be approved.						

Classes etc			
Year	2012	2013	2014
January	38 classes, 10 evening, 2 Saturday	30 classes, 15 evening, 3 Saturday	31 classes, 10 evening, 4 Saturday, 0 Sunday
February	42 classes, 14 evening, 0 Saturday	25 classes, 13 evening, 2 Saturday	18 classes, 10 evening, 3 Saturday, 2 Sunday
March	47 classes, 26 evening, 0 Saturday	21 classes, 14 evening, 0 Saturday	27 classes, 13 evening, 5 Saturday, 0 Sunday
April	39 classes, 18 evening, 1 Saturday, 1 Sunday	20 classes, 11 evening, 2 Saturday, 1 Sunday	22 classes, 10 evening, 3 Saturday, 1 Sunday
May	52 classes, 24 evening, 1 Saturday, 1 Sunday	21 classes, 10 evening, 3 Saturday, 2 Sunday	20 classes, 10 evening, 1 Saturday, 0 Sunday
June	56 classes, 18 evening, 1 Saturday, 1 Sunday, Plus 34 Kids classes	42 classes, 6 evening, 0 Saturday, 0 Sunday	56 classes, 6 evening, 0 Saturday, 1 Sunday
July	51 classes, 11 evening, 1 Saturday, 2 Sunday, Plus 53 kids classes	77 classes, 2 evening, 0 Saturday, 0 Sunday	68 classes, 2 evening, 0 Saturday, 0 Sunday
Aug	35 classes, 6 evening, 1 Saturday, Plus 37 kids classes	31 classes, 2 evening, 0 Saturday, 0 Sunday	25 classes, 2 evening, 0 Saturday, 1 Sunday

DRAFT
10/20/2014

Sept	31 classes, 9 evening, 2 Saturday, 1 Sunday	17 classes, 5 evening, 1 Saturday, 1 Sunday	20 classes, 6 evening, 1 Saturday, 0 Sunday
Oct	42 classes, 11 evening, 2 Saturday, 1 Sunday	18 classes, 5 evening, 1 Saturday, 1 Sunday	16 classes, 7 evening, 1 Saturday, 1 Sunday
Nov	27 classes, 8 evening	9 classes, 5 evening, 0 Saturday, 0 Sunday	10 classes, 5 evening, 0 Saturday, 1 Sunday
Dec	21 classes, 4 evening	5 classes, 3 evening, 0 Saturday, 0 Sunday	7 classes, 3 evening, 0 Saturday, 2 Sunday

MEMORANDUM OF UNDERSTANDING
BETWEEN
SUSSEX COUNTY
AND THE
CITY OF Henlopen Acres, DELAWARE,
FOR LAND PLANNING COORDINATION

This Memorandum of Understanding (MOU) is hereby agreed to by Sussex County (the County) and the City of Henlopen Acres (the City), a municipal corporation of the State of Delaware, and states as follows:

WHEREAS, the County is responsible for land use decisions outside the limits of municipalities; and

WHEREAS, the City is responsible for land use decisions inside its municipal boundaries; and

WHEREAS, those decisions of the County and the City may have an impact on the City or the County; and

WHEREAS, the City has completed a comprehensive plan that may designate certain lands as "areas of concern" that are similar to those designated by the County as "Environmentally Sensitive Development Areas"; and

WHEREAS, the City designated "areas of concern" and the County designated "area within one mile surrounding the City's incorporated boundary" are not identical; and

WHEREAS, the County and the City desire to discuss and communicate with each other regarding land planning and land use practices in the City and the Intergovernmental Coordination Zone; and

WHEREAS, the County and the City wish to ensure full opportunities for communication between the County and the City, their Planning and Zoning Commissions, and their staff in addressing the benefits or impacts of zoning changes and land use decisions within the City and the County's Intergovernmental Coordination Zone;

NOW, THEREFORE, the County and the City do hereby agree as follows:

1. To work cooperatively through the planning process to include land use policies and adequate public facility plans in the City and the Intergovernmental Coordination Zone.
2. To establish a process for regular communication and monitoring of plan implementation that includes regular information sharing between the parties.

3. To receive and to review any Department of Transportation Traffic Impact Studies when received from it for any application for a major subdivision within the City or the Intergovernmental Coordination Zone to determine City and County traffic impact.

4. To cooperate to ensure that public services (wastewater, water, storm water management, and electricity) are in place or provided for throughout the City and the Intergovernmental Coordination Zone so that there will be no areas excluded or unserved where feasible.

5. Upon receipt of an application for any annexation, development, or change in land use within the City or the Intergovernmental Coordination Zone, to give written notice of such application to the other party.

6. Either party may terminate this agreement upon ninety (90) days written notice.

7. That nothing contained herein shall confer upon nor be deemed a delegation to the other party of any authority or jurisdiction over the other party's land use, planning or zoning powers, authority, or jurisdiction.

IN WITNESS WHEREOF, the parties hereto do hereby set their hands and seals.

SUSSEX COUNTY

By: David Phillips

Dated: 2/3/09

Mal Rodwin
Witness

CITY OF

By: Wanda Davis

Dated: 1/8/09

Thomas A. Cole
Witness

Town of Henlopen Acres

104 Tidewaters
Henlopen Acres, Delaware 19971

302-227-6411
Fax: 302-227-3978

Mayor
David Hill

Commissioners:
Andrew Brittingham
Frank Jamison
Winifred Kee
David Lyons
Beatrix Richards
John Staffier

November 19, 2012

Mr. Todd Lawson, County Administrator
Sussex County
P. O. Box 589
Georgetown, DE 19947

Town Manager:
Thomas Roth

Hon. Sam Cooper
City of Rehoboth Beach
229 Rehoboth Avenue
Rehoboth Beach, DE 19971

**Maintenance
Manager:**
Alexander McClure

Hon. James L. Ford, III
City of Lewes
P. O. Box 227
Lewes, DE 19958

Security Supervisor:
Lee Stewart

Town Solicitor:
Glenn C. Mandalas,
BairdMandalas,LLC

RE: Comprehensive Plan

Gentlemen:

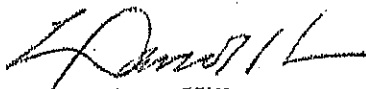
The Town of Henlopen Acres is set to begin work on the ten year update of their Comprehensive Plan.

If you or your staff would like an opportunity to review or comment on the current draft, would you please contact me or our Town Manager, Thomas Roth at your earliest convenience.

Member:
Association of
Coastal Towns

Sincerely,

**Sussex County
Association of
Towns**



David L. Hill,
Mayor

**Delaware Rural
Water Association**

Town of Henlopen Acres

104 Tidewaters
Henlopen Acres, Delaware 19971

302-227-6411
Fax: 302-227-3978

Mayor
David Hill

Commissioners:
Andrew Brittingham
Frank Jamison
Winifred Kee
David Lyons
Beatrix Richards
John Staffier

May 30, 2014

Mr. Todd Lawson, County Administrator
Sussex County
P. O. Box 589
Georgetown, DE 19947

Town Manager:
Thomas Roth

Hon. Sam Cooper
City of Rehoboth Beach
229 Rehoboth Avenue
Rehoboth Beach, DE 19971

**Maintenance
Manager:**
Alexander McClure

Hon. Theodore W. Becker
City of Lewes
P. O. Box 227
Lewes, DE 19958

Security Supervisor:
Lee Stewart

Town Solicitor:
Glenn C. Mandalas,
Baird Mandala
Brockstedt, LLC

RE: Comprehensive Plan

Gentlemen:

The Town of Henlopen Acres has prepared a draft for their 2014 Comprehensive Plan update.

Attached is a copy of the Public Hearing Notice. We welcome you to review this plan and forward any comments. If you or your staff would like speak to myself, Thomas Roth our Town Manager, John Scheurer our Planning Commission Chairman, please feel free to contact us through Town Hall.

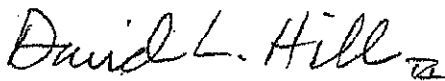
Member:
Association of
Coastal Towns

Sussex County
Association of
Towns

Delaware Rural
Water Association

Delaware League of
Local Governments

Sincerely,



David L. Hill,
Mayor

**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. Paull 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

(Ann M. Womack, City Secretary)

**MINUTES APPROVED ON
SEPTEMBER 12, 2014**

(Francis Markert, Secretary)