

**MINUTES:** Meeting of the Planning Commission of the Town of Henlopen Acres held on **Friday, August 9, 2013 10:00 a.m.** at Town Hall on 104 Tidewaters in Henlopen Acres, Delaware

**PRESENT:**

John Scheurer	Planning Commission Chairman
Mary Jane Lyons	Planning Commission
Bob Reed	Planning Commission
Dick Thompson	Planning Commission
David Hill	39 Rolling Road (member ex-officio)
Thomas Roth	Town Manager (member ex-officio)
Sharon Karl	Town Clerk
Barbara Shortley	59 Pine Reach
David F. Lyons	43 Pine Reach
Henry DeWitt	55 Fields End
Paddy Richards	5 Rolling Road
Christine Moore	14 Tidewaters
Davis Rianhard	28 Pine Reach

**EXCUSED:** Gordon Kaiser Planning Commission

**[The Minutes Are Not Verbatim]**

**1. Call to Order – Pledge of Allegiance**

Chairman Scheurer called the meeting to order at 10:00 a.m. Mr. Scheurer said our goal today is that we will be able to prepare a draft document for a September meeting to review in detail what else we need to do.

**2. Approval of Minutes – July 3, 2013**

A **motion** was made by Mr. Thompson to approve the minutes as corrected. Motion was seconded by Mrs. Lyons. Motion passed.

**3. OLD BUSINESS**

**a. 2014 Comprehensive Plan**

Mr. Scheurer reviewed items that were covered at the July 3, 2013 meeting. Mr. Scheurer asked Mr. Roth if someone from DNREC will be able to come to a meeting. Mr. Roth said that they suggested that he attend the class being offered on Wellhead Protection by Delaware Rural Water at the end of August.

Mr. Scheurer said that there were other items added to our Comprehensive Plan (CP) work list; marina dredging, bridle paths and increased traffic.

**Item 1 – Rehoboth Art League Zoning Status**

We are still awaiting direction from the Board of Commissioners on The Rehoboth Art League zoning status.

**Item 2 – Review of Zoning Code**

We have tabled review of Zoning Code for enforceability and ease of compliance until we complete most of the CP work.

**Item 3&4 – Review of Pollution Runoff & Wellhead Protection**

The review of pollution runoff into Rehoboth and Lewes Canal along with wellhead protection will be discussed at the next meeting.

**Item 5 – Develop Block W Compliance Reporting**

Mr. DeWitt provided IRS confirmation of receiving the annual submission. Mr. Roth inquired as to State compliance. Mr. DeWitt said that he will provide a copy of that as well. Mr. Scheurer asked that we put into process a way to continually monitor this. Mr. Thompson asked Mr. Roth to make sure that the fiscal year for Block W be clarified and that the required submissions to the Federal and State are being made on time.

**Item 6 – Evaluate fire response availability**

Completed.

**Item 7 – Tree Coverage Requirements**

Mr. Roth presented a draft combined from three towns for review. Addressed are concerns that have been expressed in previous meetings, including replacement of trees removed illegally.

Mr. Reed felt that there are some owners that do not want to live under a tree canopy. Individual lot owners should have a right to make that decision. Mr. Reed said from the common point of view, the general community as a whole, finds it is probably more important what happens in front of a house than what happens behind a house. Mr. Thompson would like include in the CP a statement of interest in preserving the trees of the town. He felt enforcement of tree laws would be impossible.

Mr. Reed said everyone would be opposed to an owner clear cutting their lot whether there is a house on it or not so it is appropriate for us to have something that first requires approval and second sets a standard for a minimum number of trees on any lot. Mr. Thompson said clear cutting a lot would be connected to construction. It is intrusive getting into this much detail on existing houses that aren't being rebuilt or torn down or major additions to it. Mr. Reed said that a property should maintain a minimum number of trees. The owner can take down as many trees as he wants on his property as long as he maintains that minimum. Mr. Roth said that §114-3.C Trees makes it unlawful for any person to land clear but only provides a penalty of not more than \$1,000 for each offense and questioned whether the fine was enough of a deterrent or should we have a replacement clause.

Mr. Scheurer suggested making a general statement along the lines that one of the great features of Henlopen Acres is an urban forest next to the ocean. We'll take another look at some combination of our existing language and the new proposal at the next meeting.

**Item 8 – Develop a Contingency Plan for Jetty/groin**

Completed.

**Item 9 – Clarify with Rehoboth understanding for land adjacent to Pine Reach**

Completed.

**Item 10 – Consideration of Energy Efficiency and Conservation Methods**

Mr. Roth presented the current ordinance on solar panels. §43-5 restricts solar panels that are not objectionable or facing the street. Mr. Scheurer added, today solar panels are made to look like shingles and if the Environmental Approval Committee approves it, why would anyone care. Mr. Reed said the reason we have the restrictions is because as a community our street scape is more important to us than our commitment to solar power. Mr. Reed said if it is alright with the EAC he does not see any reason to prohibit it if someone wants to make that investment.

Mr. Reed feels that the EAC would like guidelines to go by, in order to enforce this, such as, if the solar panels/shingles are indistinguishable. Mr. DeWitt, 55 Fields End said that there are State laws that place restrictions that towns are allowed to put on solar paneling so you want to make sure you conform to them. Mayor Hill said that (4) e was added to §43-5 to conform to State requirements that we must allow 70% annual access to solar energy. If it takes 6 panels to reach this efficiency then the ERC must allow the 6 panels. Mayor Hill said like everything else the technology is fast changing and needs to be reviewed.

Mr. Scheurer asked Mr. Roth to redraft §43-5 (1) – (4), add language that would give the EAC some flexibility on (2) and (3) based on the panels being indistinguishable from roof shingles and compliance with State requirements and determine the meaning of (4)e.

**Item 16** – Examine the future impact of endangered species

Mr. Roth provided a list of endangered species marked Tier 1 and Tier 2 that we will include in the CP. Mr. Thompson suggested removing the last sentence that read “Vital to this effort is to develop, implement and enforce legislation at the town level to ensure viability of both habitat and wildlife” and it was decided that it be removed.

Mr. Scheurer said we will include a statement that we believe that our overall development plan is conducive to conservation and wildlife habitat.

**Item 26** – Bridle Path use

At the last meeting there was discussion about restricting the use of the bridle paths to utility companies only. Mrs. Lyons felt new residents may not realize what the bridle paths are for and should be informed through the quarterly newsletter. Mayor Hill added that property owners own the property but the easement is permission for the utilities to use it. Mr. Reed stated that the bridle path adjacent to Henlopen Avenue properties are used by Rehoboth residents as a pathway, which could be a security issue. Mr. Roth read from the Covenants “the right to use said strips for the purpose of removing brush or trash, and as bridle paths, which said easement shall be enjoyed also by owners, tenants, and occupants of all the lots”. Mr. Reed added from page 11, “the use of said ways or means of ingress, egress, and passage, herein granted”. This article VIII is talking about other uses. Mr. Scheurer questioned whether we could enact whatever laws or rules we want. Is the solution putting up more fences or signs? Mayor Hill said the first step would be that signs be put up. Mayor Hill said public education through the Town newsletter and our security checking it periodically.

Mr. Scheurer asked, should we recommend that the Board of Commissioners restrict access to the bridle path and that additional signs put up, particularly in the area of Henlopen Avenue bordering the bridle path and put something in the newsletter. Mr. Reed suggested canvassing the owners to see what their feelings are. It would be advantageous to let them know what the rules are and recommend further restrictions.

**Item 15** – Develop a plan for specific emission mitigation methods

Mr. Roth drafted a statement on air quality. All agreed.

**3b. Wellhead Protection**

Mr. Roth prepared a schedule of buried tanks showing seven private wells and four underground tanks within the 150 foot well protection zone. Propane is not hazardous to soil or water. Mr. Roth said he will prepare a map to correspond to the schedule for the final draft of the CP.

**3c. Lighting**

Mr. Roth prepared a draft ordinance for outside lighting. Mr. Reed said that the primary concern is direct light. The idea is to have guidelines to protect neighboring properties. Mayor Hill said that the Commissioners will take this up and at the same time modify the penalty provision to civil.

### **3d. Building Setback, §130-20**

Mr. Scheurer said that the new draft for §130-20 reads “ The front yard shall extend back from the property line a distance of at least 20 feet but not less than the established building line. The established building line shall be the lesser of 40 feet or the average of the setback of existing structures on the same side of the street considering 2 lots on either side of the lot under review.” Mr. Reed said that the maximum setback and the average of the houses, however many on each side, are two separate things and calling them the established building line is confusing. Mr. DeWitt, 55 Fields End said that what he thinks Mr. Reed is saying is “ The front yard shall extend back from the property line a distance of at least 20 feet but no more than 40 feet unless the established building line is less than 40 feet.” Mr. Roth rephrased, “at least 20 feet or the established building line but not more than 40 feet”. Mr. Thompson said we would you still have to consider the other two lots.

Mr. Reed said that a front yard is the distance from the front line to the front of the house. A setback is the requirement for how far back you are. The setback does not preclude you from building further back. The front yard if you want to interpret it that way does. Mr. Roth read from definitions §130-4, “Front Yard - The required open space unoccupied and obstructed extending the full width of the lot between any part of the building and the street line.”

Mr. Scheurer said that what we have then is “The required front yard setback shall extend back from the front property line a distance of at least 20 feet but not less than the established building line and in no case more than 40 feet. The established building line shall be the average of the setback of existing structures on the same side of the street considering 2 lots on either side of the lot under review.” Mr. Roth suggested this be sent to the Board of Commissioners for their approval. Mr. Lyons asked if a diagram could be made showing building setback. Mr. Reed said that this speaks to the PLUS suggestion to make Zoning more understandable and plausible.

### **4. NEW BUSINESS**

Mr. Thompson said that he did not understand the restrictions put on garages, having to be included in the square footage of a house. Mr. Reed said that as a community we should be encouraged to have garages and use them. The current restriction has the opposite effect. Mr. Thompson suggested that the Planning Commission make a recommendation to the Board of Commissioners.

### **5. Adjournment**

Mr. Thompson made a **motion** to adjourn the meeting. Mr. Reed seconded. The meeting adjourned at 11:45 am.

**Approved: October 11, 2013**