

MINUTES: Meeting of the Planning Commission of the Town of Henlopen Acres held on **Monday, May 9, 2011 10:00 a.m.** at Town Hall on 104 Tidewaters in Henlopen Acres, Delaware

PRESENT:

John Barto	Planning Commission Chairman
John Scheurer	Planning Commission
Connie Boland	Planning Commission
Wanda Davis	Mayor (member ex-officio)
Thomas Roth	Town Manager
Sharon Karl	Town Clerk
Larry Sweigert	Rehoboth Art League
Bob Reed	96 Tidewaters
David Auten	20 Tidewaters
Dick Poole	76 Pine Reach
Howard Menaker	16 Dover Street

ABSENT:

Pete Brockstedt	Zoning Officer
Dick Thompson	Planning Commission
Mary Jane Lyons	Planning Commission

[The Minutes Are Not Verbatim]

1. Call to Order – Pledge of Allegiance

Chairman Barto called the meeting to order at 10:00 a.m. followed by Pledge of Allegiance. The Committee acknowledged the many years of service on the Planning Commission of Jim Maloney who recently resigned.

2. Approval of Minutes – March 21, 2011

Chairman Barto asked if everyone had reviewed the minutes. He asked for any corrections or comments. There being none, Commissioner Boland made a Motion to accept the Minutes. Commissioner Scheurer seconded the Motion. The Motion was approved.

3. OLD BUSINESS

a. Continued discussion on “two-story” definition from April 12, 2010

Chairman Barto said in reference to the Minutes of the Board of Commissioners Meeting held April 8, 2011, page 5, that Commissioner Hill put forth a proposal that the Planning Commission still needs to do some work pertaining to a change in Zoning Code (§130-58) which relates to the flood plain. Mr. Barto said that the Commissioners felt we did a good job on “floor area” but that we need to articulate better the matter of “two story” structures. Mr. Barto deferred the discussion to Mr. Reed, 96 Tidewaters. Mr. Reed said regarding the “two story” limit the language that we have says that you cannot have more than two stories above grade for “living area” and we proposed that the term “living area” be changed to “floor area”, so any area in the lower level that counts as “floor area”, based on the definition of “floor area” makes this clause applicable to that area. Mr. Reed said that the gray area is what does above grade mean. We are trying to restrict houses to two stories of floor area above grade, so at what point does a lower level of a house become below grade and not subject to this restriction. Mr. Reed said that is where it stands right now and we have to decide the issue.

Mr. Barto said that one of the things that the Planning Commission has done in the last 5 years which was proactive, was to revise the definition of requirements in the flood plain and that we were

complimented by DNREC on that. However; Mr. Barto said that as Mr. Reed has indicated there still is the issue of height in the flood plain.

Mr. Barto said that we have dealt with the subject of “sloping lots” for a number of years and they are throughout the town, not just in the canal area. He said there are three alternatives; 1. Adhere to the “two story” requirement by building a split level house, where the house is two stories above grade at the top of the slope and two stores above grade at the bottom of the slope. 2. Do what we are doing now which is require that the front of the house is no more than 30 feet above grade and let the rear of the house, on the down slope sit out of the ground more than two stories. 3. To discuss what else we can do. Mr. Barto asked if there were other suggestions on how to revise the ordinance as it currently reads. He said that it has been his experience that an ordinance for each and every occurrence on every individual lot cannot be legislated so we have a general ordinance where people know the parameters and for those special exceptions an owner can appeal to the Board of Adjustments.

Mr. Scheurer said that we are going to stick with the floor area allowed of 6000 square feet, and if you have a sloped lot you potentially could have three stories on the down side and two stories on the upside, but you have to live within the floor area and anything else other than that the owner would have to go before the Board of Adjustments, which is the most reasonable solution. Mr. Poole, 76 Pine Reach did not think that a split level house would look better than a house that had more than two stories in the rear, as long as only two stories was facing the street and he agreed with Mr. Scheurer. Mrs. Boland said that the code is enforcing what aesthetically looks right and that she would leave the requirements for “two story” the way it is and if an owner has a hardship, they can go to the Board of Adjustment.

Mr. Barto pointed out that at the last Planning Commission meeting a proposal was put forward to the Mayor and Board of Commissioners that the Zoning Code (§130-58) be changed (or added) as follows; “if the livable first floor, as defined by FEMA, is more than the required “base flood” plus 3 feet and the area beneath has a clearance of more than 6-1/2 feet, as defined by the Zoning Code, then that area beneath the first floor will count as total floor area toward the maximum 6,000 square feet”. He said that this may still be an item of discussion for the Planning Commission.

Mr. Barto suggested the “two story” issue be thrown back to the Board of Commissioners and that Mr. Reed make a presentation to them and let them make the decision. Mayor Davis said that when we make a change we have to make sure that it is a change for the better and that we’re not complicating the problem. We do not hear from a lot of people who are pleased with the process. Mr. Barto requested that if there are any other suggestions on ways to improve the code, especially on the “two story” issue to please forward them to the Planning Commission in writing so we can review them.

b. Definition of living space and/or living area

Mr. Barto said that the Board of Commissioners has addressed the Planning Commissioners recommendation on the use of “floor area” as terminology throughout the Zoning Code and are holding a public hearing July 8th. No further discussion.

4. NEW BUSINESS

a. Comprehensive Plan Review

Around the year 2000 a law was passed requiring all municipalities to adopt a Comprehensive Plan. Henlopen Acres plan was adopted in July 2004 after a couple of years of work with the Planning Commission with the assistance of the University of Delaware. In 2005 and 2007 we made an update and we are up for a Plan Review now. In 2014 we are required to perform a total review and re-adoption of the Comprehensive Plan. This is required to be done every ten years by the Town. In the packet are clarifications, grammatical changes and statistical changes, no substantive changes. The plan itself had very few recommendations to begin with the biggest of which was the plan

recommended adoption of conditional uses which was drafted by the town and the Planning Commission but not adopted due to public objection. Mr. Roth said that he spoke directly to the Director of State Planning Coordination, Connie Holland, who is in charge of this. In a handout, given to all present at the meeting, Mr. Roth recorded what Ms. Holland and he discussed.

Mr. Barto said that since this is, as defined by Ms. Holland, a Plan Review, the Planning Commission is responsible for evaluating the draft of the Plan Review. Once that has been completed, the draft should be submitted through the "Pre PLUS" where it will be reviewed by the relevant state agencies and we will receive a letter with comments, from the State, within 20 days. Once the response is received from the State, the Planning Commission will hold a public hearing on the Plan Review. After the public hearing is completed, the draft with any changes can be submitted for approval by the Office of State Planning Coordination. Unless there are substantive changes, the Plan Review does not need to be recertified.

Mr. Sweigert, Rehoboth Art League asked if it might be helpful if the Planning Commission had some informal public hearings before the draft is sent out to correct several inconsistencies in the Comprehensive Plan. He said for example concerning the Art League, it lists the number of parcels we have as already been determined and it calls the Art League in one place "institutional" and in another it says if we cease using it, it goes back to residential. Mr. Sweigert said that it should be helpful to the Planning Commission to see what errors we see. Mr. Barto said that the Planning Commission will evaluate the Plan Review and determine if there are any substantial changes to be made. Mr. Barto said that he would be open to comments and concerns from anyone in the community relevant to the Art League. Mr. Poole, 76 Pine Reach started a discussion about the Art League and whether their status should be changed from Residential where everything they do is a non-conforming use to Institutional. Mr. Roth said that this can be brought before the Board of Commissioners at any time. It does not necessarily need to be dealt with at the Planning Commission level.

Mayor Davis said this is just a Plan Review, we are just making grammatical and statistical changes, and we are not changing the Comprehensive Plan at this time. Mr. Barto said this discussion about the Art League could lead to a substantive change which should be addressed in preparation of the total review and adoption of a new Comprehensive Plan for 2014. Mr. Roth said that there are three levels, one is review, one is amendment and one is update. He said in his discussion with Ms. Holland, because our plan is very basic, we are a small town, although we are required to do this other towns have numerous changes that affect their plan every month. Mr. Roth said that the only suggestion that he knows of was to adopt Conditional Uses, other than that the plan made no suggestions. Mr. Roth said that he does not understand what the purpose would be for the town to start at square one again, before they have to, considering the time and expense for as basic a plan as the town has.

Mr. Barto called for a work session of the Planning Commissioners, sometime in early June. He said that any public comment will be accepted in writing only and will be considered as they review the draft and submit it through the "Pre PLUS" where it can be reviewed by the relevant state agencies. Once we receive a letter with comments, from the State, within 20 days, the Planning Commission will hold a public hearing on the Plan Review.

5. Adjournment

Mr. Scheurer made a motion to adjourn. Mrs. Boland seconded the motion. The meeting adjourned at 11:35 am. Next meeting, July 5th 10:00 am.

Approved: _____, 2011