

**MINUTES:** Meeting of the Planning Commission of the Town of Henlopen Acres held on **Tuesday, July 05, 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
Dick Thompson	Planning Commission
Mary Jane Lyons	Planning Commission
Wanda Davis	Mayor (member ex-officio)
Thomas Roth	Town Manager
Sharon Karl	Town Clerk
Sheila Bravo	Rehoboth Art League
David Lyons	43 Pine Reach
David Auten	20 Tidewaters
Paddy Richards	5 Rolling Road
Christine Moore	14 Tidewaters
David Hill	39 Rolling Road
Norma Lee Derrickson	49 Tidewaters
Betsy Wilgis	32 Tidewaters
Shaw Wilgis	32 Tidewaters
Eileen Clark	59 Tidewaters
Martin Clark	59 Tidewaters
Tom Ingram	60 Tidewaters
Richard E. Poole	76 Pine Reach

**ABSENT:**

Pete Brockstedt                      Zoning Officer

**[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.

**2. Approval of Minutes**

**a. May 9, 2011**

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

**b. June 24, 2011**

Chairman Barto said that along with the minutes of June 24, 2011 that he is also submitting the summary of workshop meeting dated June 24, 2011 for approval. He asked if everyone had reviewed the minutes and summary. He asked for any corrections or comments. There being

none, Mrs. Boland made a Motion to accept the Minutes. Mr. Thompson seconded the Motion. The Motion was approved.

**c. Group of Letters from Residents**

Chairman Barto submitted for approval into the official record a group of letters, from residents to the Planning Commission, in reference to the Comprehensive Plan Review. He asked if everyone had reviewed the letters. All confirmed. Mr. Scheurer made a Motion to add the letters into the Minutes. Mrs. Boland seconded the Motion. The Motion was approved.

**3. OLD BUSINESS**

**a. Comprehensive Plan Review**

Mr. Barto said that at the workshop meeting June 24<sup>th</sup> Ms. Holland provided us with the Municipal Development Strategy Checklist and that today we should start the process of going through that checklist. Mr. Barto passed out a Census Data sheet and a letter from Mrs. Beebe, Rehoboth Art League that he said needs to be inserted in the packets. He asked if anyone had any suggestions on how they should proceed. Mr. Scheurer suggested that we go through the Comprehensive Plan Review page by page, see what items we have done on the checklist and check the boxes, and then we can see what we need to do and we can be sure that we cover every section of it. All Agreed.

Mr. Barto noted the Plan Review Draft date be changed to July 5, 2011. Under TOWN, COUNTY AND STATE OFFICIALS - Planning Committee - Mayor Davis said that James Maloney needs to be removed and John Scheurer added but the rest is correct. Mr. Scheurer said that the Table of Contents is ok the way it reads. He said we need to go over every item in the Table of Contents.

**Chapter 1. Background**

**1.1 The Authority to Plan**

Mr. Scheurer said he could not nor did anyone in all the letters he reviewed suggest any modification to this section. All agreed.

**1.2 Public Participation**

Mr. Barto said that all Planning Commission meetings are open to the public and that in an orderly fashion; he always encourages comments, not only from the Planning Commission members but all in attendance and via letters and e-mails. With our meetings of the Planning Commission it will be documented that we have involved the community as we go through this process leading to our first public hearing on the Comprehensive Plan. Mr. Scheurer said that number one on the checklist Public Participation Summary and Results, and it is historically correct. The only language that should be added is what we have done and will do with this review process. Mr. Barto said that under this section we would have meeting dates, public hearing dates and what we did and also include when we pass this on to the Mayor and Commissioners and then the public hearing they are required to have. We can document public participation in that way.

**1.3 A Brief Overview of the Community**

**a. Location**

**b. History**

Mr. Scheurer said that this section, (It was about this time “The Homestead” was built and called in the deeds, “The Mansion House of the Plantation”. It remained intact and was occupied continuously from that date until its remodeling and enlargement in 1930), should be moved to

the end of the first paragraph under Historic Structures: Peter Marsh House or “Homestead” where the homestead is covered so that chronologically this section goes from 1675 to 1743 to 1871 to 1970. Mr. Scheurer said that the only other thing, which was mentioned in Mr. DeWitt’s letter, was in the last sentence of this section (and on the east and northeast by the mean-low-tide water line of the Atlantic Ocean) the east boundary is the mean high water line, not the mean low tide water line.

Mr. Scheurer said at the bottom of section 1.3, in the last paragraph after the sentence, (In 1930, Colonel and Mrs. Wilbur Corkran purchased the house and restored it), would it be appropriate to put in the history of what has happened with the Homestead since that time. Mayor Davis said that this category is historic structures and the only one is the Peter Marsh house, the “Homestead”. Mr. Barto said that the history seems to have stopped at 1930 and it would be nice if we could add some language that will bring it up to 2011. Mr. Barto asked Ms. Bravo, Director of the Rehoboth Art League if in the spirit of community involvement she would be willing to provide the Planning Commission with a couple of paragraphs, from her perspective on the history of the Art League from 1930 to present. Mrs. Lyons presented a sheet that a neighbor gave her which she said had history of interest. Mr. Barto asked Ms. Bravo to validate the information on the sheet when she prepares her perspective of the history of the RAL. Mr. Scheurer mentioned that he would like to have a copy of Colonel Corkran’s will. Mr. Barto said that he would make sure that a copy was available to the members of the Planning Commission.

#### 1.4 Overall Community Vision and Goals

Land Use and Annexation. Mr. Barto said that the last sentence (“The Town recommends that the property immediately adjacent to town limits across Surf Avenue from the Deauville Beach Park entrance remain as passive open space without any improvements.”) may not be enough said to get across the importance of this space, we need to beef up the importance of that strip to the Acres. It was suggested that it be footnoted on the maps. Mr. Barto said that it is crucial that area stay the way it is. Mayor Davis agreed. Mr. Roth said that if the town ever had any kind of annexation plan that this strip of land would be it. Mayor Davis said that the State of Delaware owns that strip. Mr. Roth added that it was within Rehoboth’s city limits. Mr. Barto said one way to have control of that strip is to have an annexation, it is worth considering. Mr. Roth said that the strip of land borders the 1<sup>st</sup> block of Pine Reach on the north side and mentioned that Rehoboth is looking for a place to put their ocean outfall. He said that ocean outfall is the treated effluent from post sewer treatment. He said this strip of land would be perfect for their needs. Mr. Wilgis explained the treated waste goes from the sewer plant to the Ocean where it is released a mile out. The line will go down Columbia Avenue. Mr. Barto said that we will need to gather more information and pass it on to the Mayor and Commissioners because it would involve the spending of town resources.

Open Space, Marina and Beach Club all agreed to delete “Town of” and “Association” and add “Corporation” so it reads “Henlopen Acres Property Owners Corporation” (Block W). Mr. Scheurer said, considering a letter received from Mrs. Beebe, President, Board of Trustees, Rehoboth Art League, that under 1.4 we should mention we have an Art League. Mr. Barto said that on page 6 there is more about the Art League and half of page 7 is devoted to the Art League. Mr. Barto suggested that the title be changed to Open Space, Marina, Beach Club and Rehoboth Art League. Mayor Davis said that the whole paragraph will have to be changed because it is based on beach and water sport activities. Mr. Thompson suggested instead of changing Open Space, Marina and Beach Club that after that paragraph add a separate line Rehoboth Art League with a single line descriptive that there exists within Henlopen Acres a

facility zoned as a non-conforming use that operates under the name of the Rehoboth Art League. Then after that a separate line Community Design. Mr. Thompson agreed to draft the sentence and submit it before July 17<sup>th</sup>. There were no changes or additions to Community Design or Over Goals.

Mr. Barto took a moment to review the update process by saying that after each meeting changes will be made to the Comprehensive Plan Review, the current one they are reviewing is dated May 2011. Each update will be available on the website and have the date of the meeting which will be the revision date and the word Draft. It will be easy to go through and compare them and see how and what was changed.

## **Chapter 2 Municipal Development Strategy**

### **2.1 Land Use Planning and Regulation Process**

#### **Table 1. Current Land Use**

Mr. Scheurer, referencing Mr. Dewitt, 55 Fields End letter had a couple of sections he questioned. *Beach Uses (Block W)* Acreage should be 8.82 not 11 and for *Recreation and Open Space (Beach Club and open tract)* parcels should be 1. Mr. Roth said that, as he responded to Mr. DeWitt, Block W, the Beach Club and HAPOC Beach, total 11+ acres. The term parcel and lot mean the same. Mr. Roth said that on the existing zoning maps the whole area is Block W. Mr. Roth agreed that under Table 1. Current Land Use; *Beach Uses (Block W)* should be corrected to 8+ acres and that *Recreation and Open Space (Beach Club and open tract)* should be corrected to 1 parcel and 3+ acres.

*Marina* - Mr. Thompson asked Mr. Roth to explain the role of the Army Corps of Engineers control over the Marina. Mr. Roth said that Army Corps of Engineers does not have control over the Marina. There was a Land Use Trade and because of that trade agreement the Marina is designated 6F Land which is conditions of a National Park. The Marina and Sandy Bottom need to remain in a natural state for recreational purposes. Mr. Barto said that what transpired with the marina needs to be disclosed accurately and in a politically correct language. Mr. Roth said that he would review the supporting documents to Table 1 and confirm the accuracy of the table.

*Institutional – Government and Cemetery* – Correct, no changes or additions.

*Institutional – Rehoboth Art League* – Mr. Barto said that he thought the Art League was zoned Residential. Mayor Davis said that the category in Table 1 is Land Use. Mayor Davis said that the table needs to be corrected to 1 Parcel because it changed since 2004 and that the acreage is accurate +/- . Mr. Roth disagreed and said that it is 1 parcel for zoning but 2 actual parcels that have different uses. Mr. Barto said there is the Homestead and then there is the Art League. Mr. Poole, 76 Pine Reach suggested that a footnote be used to clarify that it is 1 parcel for zoning. Mr. Roth said that Table 1 is based on the total number of parcels in the town. Mr. Barto said for the land use it is 2 parcels. Mr. Scheurer said that the Homestead is used by the Art League and is part of the Art League's operation. It has not been a separate use since Mr. Corkran died, so the use of the Homestead is the Art League. Mr. Barto said that we will ask Mr. Mandalas to clarify the accuracy of Table 1. Mayor Davis said that all requests to use the attorney goes between the Mayor and Mr. Roth. Mr. Barto asked the Mayor if he needs to make a motion to solicit assistant from the Town's Attorney. Mayor Davis said that because it is recorded in the minutes that is sufficient.

Mayor Davis added that the Town is on a tight time table to get work done. Preparing for this meeting monopolized the staffs time and we do have a Town that we are trying to operate. Friday we are approving our budget then next week Mr. Roth will be on vacation and the minutes and research may not get done in time for the next Planning Commission Meeting. Mr. Barto said that we may not have all the material done by July 25<sup>th</sup> but we are going to continue to meet and go forward.

*Residential & Vacant* – Mr. Roth said that he will review based on new information he received on Friday. Mr. Roth said that vacant means not built on, not improved.

### *2.1a. Natural Features and Environmental Concerns*

Mr. Scheurer asked if recognition of risks to our water supply should be mentioned here. Mr. Roth said that one of the things that Ms. Holland suggested we add is language concerning Wellhead Protection. Mr. Roth said that all the Town's wells are within feet of residential houses. Most residences use lawn treatment and pesticides that may cause problems. Mayor Davis said that we can send out reminders that appeal to residents and property owners to use the minimum amount of pesticides and insecticides. Mayor Davis said that the Rural Water people test our water all the time. Mr. Roth said that we have eleven wells and if one gets a bad test we shut it down and draw from the other ten. Mr. Barto said we will have to craft language to add about the environmental features concerning wellhead protection.

### *2.1b. Special Properties*

#### Henlopen Acres Beach Club

Mr. Barto asked if there is anything else, besides the modifications that were made already, to add or change. Mr. Thompson asked whose responsibility it was to maintain the groin, the Beach Club or the Town's. Mayor Davis said if it needs minor repairs the Beach Club pays for it, if damage is caused by a major storm the Town is going to have to step in and help. Mr. Scheurer said he met people from DNREC and they were not concerned about the groin but were very concerned about the maintenance of the sand fences and that we continue to build the size of the dunes and the maintenance of their dune line. Mr. Thompson said that we need to acknowledge that the Beach Club and Block W are a critical part of the community and that the Town has a responsibility to work with the Beach Club should any serious problems occur. Discussion followed about the pros and cons to having a groin.

#### Community Marina

Mr. Barto asked if there is anything else, besides the modifications that were made already, to add or change. Mr. Scheurer said just to define what exactly the role is of the Army Corps of Engineers and how did the trade agreement come about.

#### Block W Property – Henlopen Acres Property Owners Association

Mr. Barto asked Ms. Richards, who is on the Block W Board, if she could take special note of the sections that deal with Block W and present them to the Block W Board. Ask them to read these sections and make sure that they feel comfortable with anything that has to do with Block W. If they are uncomfortable with something have them get back to us. It will be helpful. Mr. Barto asked if there is anything else, besides the modifications that were made already, to add or change.

Mr. Scheurer said that the most troubling section here is this sentence. "If the Henlopen Acres Property Owners Corporation becomes defunct, or if it fails to pay the taxes on the property or fails to keep the property reasonably tidy, ~~the property shall then belong then~~

**ownership shall revert** to the University of Delaware.” Mr. Scheurer asked how we make sure on a continuing basis that Block W is doing what it needs to do so that the Town would have the ability to step in and correct any problem before it got to that point. Ms. Richards said that the Block W Board is required to have a meeting every three years. Mayor Davis said that there is a Franchise Tax that has to be paid the beginning of every year. Mayor Davis said that this is the way Colonel Corkran set it up. When we were chartered as a town the only thing that the Homeowners Association is responsible for is Block W. Mayor Davis said besides walk-ons that may leave trash on the beach there is also the issue of the Beach Club infringing on Block W. The Beach Club needs to honor the boundaries because that is considered not upholding the Block W requirements. Mr. Barto said that there should be some formal language in this section that if the Corporation does not do what is required that the Town will step in and make sure that the fees are filed.

### Rehoboth Art League

Mr. Barto asked if there is anything to add or change. Mr. Thompson said that in several of the letters received it has been requested that the classification of the Art League be changed to “Institutional”. Before acting on that we need to understand the consequences of that change. Is it necessary and will it change the existing relationship between the Town and the Art League, and the Art League and the University of Delaware. It is not clear in any of the letters received. Mr. Barto said that a discussion on why the Art League should be changed to “Institutional” is important. The IPA came up with the category of “Institutional” and put it in the Comprehensive Plan of 2004. The recommendation was also made that it be a non-conditional use. The elected officials of the Town took that approach because that was also recommended in the Comprehensive Plan of 2004. Mr. Roth made a correction that it is a non-conforming use not a non-conditional use. He said the original plan recommended conditional uses, which was considered.

Mr. Hill, 39 Rolling Road, said that the “why” for rezoning is very important and it must be discussed at some point in time. Right now, following the process, this is the background historical setting and not the place to make recommendations as to what should or should not be changed, that’s a little further on. Here there would be an objective statement for the Art League’s position in the Town and its’ current legal status. Recommendations should come later in the process after we get a lot more public input and after we understand all the issues.

Mr. Barto said that the Planning Commission has to get its arms around all information. There is not a right way or wrong way to do this but we have to understand what we are doing. We have not made a decision on whether this is a Comprehensive Plan rewrite or if it is just a review. If it is just a review then we will start the process of the rewrite in 2012. Mr. Barto said that it is his understanding that no zoning changes are made in a review of a Comprehensive Plan. Mr. Barto said that we don’t have an “institutional” in our Zoning Ordinances. Today the Art League is not Institutional, it is Residential. Mr. Barto said that there is nothing on page 7 that needs to be modified. Mr. Thompson agreed.

Mr. Auten said in reference to non-conforming use; if you have something that is used for institutional purposes such as the Art League and you zone it residential, you grandfather or grandmother it, it continues the same use it had on the day the ordinance was adopted, and you can’t expand it. Was the use in effect before the residential zoning or is it a new use that it has never done before. Mr. Auten said that this has caused tension between the Town and the Art League. If you rezone then what the Art League can do and cannot do can be spelled out and it would eliminate the problem of what has been done historically. Mr. Auten said that he did not

research the history. The history is not the issue. The issue is what we can do to clarify understanding between the Town and the Art League in order to reduce the tension.

Mr. Poole, 76 Pine Reach, added that another source of tension is non-conforming use subject to reasonable expansion. If we can work through what both the Art League and the Town are comfortable with or at least understand that both want to live together in peace and harmony as much as possible, this is a great vehicle to work towards that end.

Mr. Thompson said that this section may be impacted later by what Ms. Bravo has been volunteered to do but on the whole it captures the history.

Mrs. Derrickson, 49 Tidewaters asked at what point is something in the Town zoned commercial. Mr. Barto said that there are no parcels within the town that are zoned commercial but in the discussion of rezoning you have to talk about what is the most appropriate category to rezone a parcel to. If there is a parcel that is going to charge and accept fees then commercial might be a more appropriate classification to rezone to. Mr. Barto said to stimulate discussion, when the Art League is having an art show and are charging vendors to display and people are paying money to buy art work that sounds like a commercial enterprise. Commercial zoning is not part of the culture, that would have to be written and that is part of the Planning Commissions process to recommend to the elected officials of the Town if we are going to change the zoning or what the uses are or what can occur for that property. We're getting into a very complex process.

Mr. Barto said that one of the things he heard from Ms. Holland was that Henlopen Acres is a residential community with 200+ parcels, the marina, the beach, the town government and the Art League and we all have to melt that together and not just in a Comprehensive Plan. A Comprehensive Plan is a broad brush strokes of what goes on in the community. The zoning ordinance is a, b, c & d and the Board of Commissioners pass the zoning but the Planning Commission prepares it.

Mr. Ingram, 60 Tidewaters asked if Mrs. Corkran's living at the Homestead was a primary factor or motivation for zoning the entire property residential. If that is the case is it materially relevant to the history section here to point out, if we can name the document source, the fact that once Mrs. Corkran died and that no longer was the case that materially it is relevant to the history presented here. Mr. Thompson said that the overriding consideration is the history of the community. It is a residential community. The Art League is a part of a residential community. No matter if we are talking about the marina, the beach club or the Art League, the residential nature of this community is what most people want to preserve. That is in the history and it is quoted on page 7, that the property be "maintained in such condition as will respect its authentic character and furnishing as a colonial Sussex County Seat."

#### Bridle Paths – No modification

*2.1c. Other Deed Restrictions and Conditions* - No modification

*2.1d. Land Uses Prohibited by Deed* - No modification

Mr. Scheurer said by the time with finish the bulk of this we get to the implementation strategies which is the evaluation of current zoning and codes and ordinances. It is almost at the end of this whole process after we're happy with everything that is in here.

## **2.2 Demographics, Future Population, and Housing Growth**

Mr. Barto said our population, census and demographics on page 8, 9 and 10 - Mr. Roth will update and next meeting we will review.

## **2.3 Future Land Use and Annexations**

### *2.3 a. Plan Recommendations*

### *2.3 b. Review of the Zoning Code*

Starting on Page 11, we will talk about all of the parcels and some of our final plan for our public hearing, where we'll open up and hear more. This is where we will pick up at the next meeting.

Mr. Thompson asked if the decline in full time residence is a trend that is likely to continue. If it is are there any consequences to the town. Mayor Davis said with full time residents declining we are bound by state law many times where only residents can serve. We can run out of residents that are willing or able to serve, it puts a hardship on us. Also she said that she agrees with Mr. Thompson that the decline can change the character of the town.

Mr. Barto asked the residents present if they would like to introduce themselves and ask any question they may have. Betsy Wilgis, 32 Tidewaters said that the Planning Commission is doing a good job. Tom Ingram, 60 Tidewaters said the process is great. Dick Poole, 76 Pine Reach said it was a good meeting and asked if we have a date yet for the public meeting. David Auten, 20 Tidewaters. Eileen Clark, 59 Tidewaters said that she would like to see an active list of issues that will be discussed and also action items to make sure she got them all and that all issues were covered and put to bed. Norma Lee Derrickson, 49 Tidewaters said I applaud your service and ability to stay focused on the issues. David Hill, 39 Rolling Road said he had one suggestion that might save us money, on page 5 instead of using the term parcels, change it to lots then the numbers add up and takes away the argument. Paddy Richards, 5 Rolling Road said that she has learnt a lot today. Sheila Bravo, 12 Dodd's Lane said she wanted to commend the members of the Planning Commission for volunteering their time, this is a big process.

Mr. Barto asked if there was any other business that needed to be addressed. There was none.

## **5. Adjournment**

Mr. Scheurer made a motion to adjourn. Mr. Thompson seconded the motion. The meeting adjourned at 12:07 am. Next meeting, July 25<sup>th</sup> 10:00 a.m.

Approved: \_\_\_\_\_, 2011