

MINUTES: Meeting of the Planning Commission of the Town of Henlopen Acres held on **Monday, July 25, 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 (member ex-officio)
Sharon Karl	Town Clerk
Tim Slavin	DE Historical & Cultural Affairs
Larry Sweigert	Rehoboth Art League
Diane Beebe	Rehoboth Art League
Henry Cox	Rehoboth Art League
Rob White	Rehoboth Art League
Constance Costigan	Rehoboth Art League
David Lyons	43 Pine Reach
Christine Moore	14 Tidewaters
Bruce Moore	14 Tidewaters
David Hill	39 Rolling Road
Norma Lee Derrickson	49 Tidewaters
Eileen Clark	59 Tidewaters
Martin Clark	59 Tidewaters
Tom Ingram	60 Tidewaters
Mollie Ingram	60 Tidewaters
Richard E. Poole	76 Pine Reach
Jean Stakias	51 Tidewaters
Gail McDermott	7 Pine Reach
Marcia DeWitt	55 Fields End
Dot Weber	1 Tidewaters
Tina Manatos	1 Tidewaters
Katherine McNeilly	55 Rolling Road
Joan Rosenthal	65 Tidewaters
Jack Richter	69 Pine Reach
Joni Reich	25 Tidewaters

[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. July 5, 2011

Chairman Barto said that since the demands have been great on the Town Clerk the minutes were just finished Friday and not yet checked for errors. The Commissioners took time to read through the minutes. Mr. Barto asked for any corrections or comments. There were several spelling and grammatical corrections. Mr. Thompson made a Motion to accept the minutes with the corrections. Mrs. Boland seconded the motion. The motion was approved.

Mr. Barto said now that these minutes have been approved they will be posted to our website. Mr. Roth and Ms. Karl will take the information from the minutes and update the Comprehensive Plan Review, dating the new review draft July 5th. They will add information in bold or delete information by striking a line through it so you can see the changes and what was there before the changes. The July 5th Updated Comprehensive Plan Review Draft will also be available to view on the website

3. Old Business

a. Continuation of Comprehensive Plan Review

Mr. Barto said that he would like to accept responsibility on an issue where Mrs. Lyons presented a sheet for information only at the July 5th meeting that was not intended to be entered in the minutes as an official document, as it was not signed, dated and may be just an individual's opinion. Mr. Barto said as we went through the Comp Plan, whether it was an update of Block W or an update of some of the Art League information, things seem to stop in 1937. Mr. Barto said that he asked Ms. Bravo to write a couple of paragraphs that would bring comments on the Art League up to 2011. Mr. Barto said that he did ask Ms. Bravo to validate the information on the sheet. He said he later received a letter from Mrs. Beebe where she responded to his request to validate the accuracy of the document presented by Mrs. Lyons. Mr. Barto said he wanted to set the record straight that this sheet is not the "Lyons document" and it is not part of our record.

Mr. Barto asked if all items from the last meeting have been addressed. Mr. Thompson said as he suggested at the July 5th meeting; under 1.4, Overall Community Vision and Goals, instead of changing Open Space, Marina and Beach Club that after that paragraph we add a separate line Rehoboth Art League with a descriptive that he said he had agreed to draft. Mr. Thompson passed out to the Committee the descriptive he drafted. Then after that a separate line Community Design. All Commissioners agreed to add this to the Comprehensive Plan as stated.

Mr. Barto said that we do not have the update from the Art League of the various activities coming up but we do expect that by our next meeting. The statistical data such as census material, Mr. Roth will update. Mrs. Clark, 59 Tidewaters said that under, 1.4, Overall Community Vision and Goals, Land Use and Annexation the last sentence, we were going to put more "verbage" on the importance of the strip of land, that the State owns, that borders Henlopen Acres that we want it to remain undeveloped. Mr. Barto said the consensus of the Planning Commission was that we would emphasize the importance of this strip of land to Henlopen Acres and that we want it to remain undeveloped. He said he will work with Mr. Roth to do that section so we're politically correct with our neighbors in Rehoboth Beach.

Mrs. Clark requested a checklist of what action was taken, and not taken since the last meeting. Mr. Barto said that Mr. Mandalas is here today for clarification of some items; we have received comments from Mr. Dewitt and Ms. Richards on Block W and comments on the well information. They are a part of the minutes however they are not definitive. Mr. Barto said that

we will accept a written list from Mrs. Clark of the actions she feels that need to be taken care of by the Commission on the Comprehensive Plan, so far.

Mr. Barto said, following the Comprehensive Plan Review Table of Contents, we will pick up where the meeting of July 5th left off, 2.3 Future Land Use and Annexations, Page 11. Mr. Scheurer said that 2.3 Future Land Use and Annexations, *Goals*: no changes. 2.3 a. *Plan Recommendations*, we may have other things to add after we go through all this. One correction is change “Henlopen Beach Club Property” to “Henlopen Acres Beach Club”. Mr. Thompson asked if the maintenance of the Peter Marsh House is the total responsibility of the Art League. Mrs. Beebe said that at different times they have asked for help from other places including the Town of Henlopen Acres.

Mr. Scheurer said that 2.3 b. *Review of the Zoning Code*, no changes. Mrs. Beebe read the first two sentences of 2.3 b “The Town of Henlopen Acres has an adopted Zoning code and an official Zoning map. The Zoning specifies four districts: R-Residential; B-Recreational; M-Marine; and G- Government. In 2.1, Table 1-Current Land Use it says Institutional-Rehoboth Art League. Mr. Roth said that Table 1 addresses “use” not zoning. Mrs. Beebe asked Mr. Roth to explain the difference between use and zoning. Mr. Roth referred to the Maps from the Comprehensive Plan that he for convenience put on the walls in the meeting. 1st- Is simply a map, 2nd- Identifies environmental features, 3rd- Is a State map on their investment strategy, their priorities for investment in different communities, 4th- Is the Zoning map, 5th- Is the current Land Use map and this is where it identifies other areas; Residential, Recreational, Governmental, Institutional, Marina, Beach and Vacant and the 6th- Shows future Land Use. Mrs. Beebe asked shouldn't the uses and zoning be alike. Mr. Roth said not really.

Mr. Barto said as Ms. Holland from State Planning Office explained to us, we have a process to go through. What is now behind schedule is our update/review. We are updating and/or reviewing at this time what we have. The Comprehensive Plan has to have a rewrite by 2014. Ms. Holland made very clear that you do not do zoning changes in the update or the review. The rewrite can include zoning. If we were to recommend in 2014 a new zone, the Planning Commission has to prepare for the elected officials of this Town, ordinances that correspond to that new zone. The Planning Commission, based on our review and update of this document and after having public hearings, has to make a decision of whether or not we want to tackle any rezoning.

Mr. Barto said that when we talk about institutional, let's be honest, we're talking about the Art League. He said the letters and concern and why we have people in this room while we are going through this process is because of interest in the Town. It's not just about the Art League even though it may seem like it when you call something institutional. It's our homes and our community that we have to take into consideration. We have struggled with sloping lots as a Planning Commission for at least four years. These things do not happen quickly. We are going to take this one step at a time and do it right. The State Planning Office has agreed to work with us and they know we are behind on our update and they know it is going to take us a while. Mr. Barto said that he agrees with Mr. Scheurer that there are no changes at this time to 2.3 b. *Review of the Zoning Code*. Mr. Barto said that the adding of a new zoning district is a different process.

Mrs. Clark, 59 Tidewaters stated that she is concerned that issues discussed now will be forgotten when the Planning commission does the rewrite for 2014. Mr. Barto asked Ms. Karl with this discussion that is on tape if she has any questions or concerns. Ms. Karl said that the minutes document everything said. The plan was to follow the Comprehensive Plan's table of

contents and I record the minutes in that format. The next step was to iterate into the Comprehensive Plan Review, as of the date of each meeting, the changes. As far as things up in the air that have need of further discussion I could possibly do a recap unofficially but I cannot add words to the meeting minutes that are not said on the recording. Mr. Barto thanked Mrs. Clark and said we will put this as an item that must be discussed.

Mr. Scheurer said that on page 12 in the draft there were a number of modifications made and some other ones that could be done to clean it up a little bit. In the first paragraph, the third from the last sentence; “The current code uses the Board of Adjustment as the means to implement the special exception process, to regulate fencing, to regulate construction of a pad ~~or paving court or uses such as a beach club. or pool, and screening for construction.~~” this section seems unnecessary. Mr. Roth said that the Beach Club is a permitted use of the code that is why it is listed. He said that was a rephrasing of a sentence that was already there. Mr. Thompson said that he agrees with Mr. Scheurer because it says “uses such as the beach club.” Mr. Hill, 39 Rolling Road said that the Beach Club is in a separate zoning district specifically providing among other things for a Beach Club so it does not need any Board of Adjustment variances special exception. Mr. Barto said that his suggestion is; “The current code uses the Board of Adjustment as the means to implement the special exception process., ~~to regulate fencing, to regulate construction of a pad or paving court or uses such as a beach club. or pool, and screening for construction.~~” a period after process and eliminate the rest of the sentence altogether because what the Board of Adjustment does is in our Ordinance.

Mayor Davis said on page 12 the second sentence in the same paragraph “The Code states that the Board shall consist of three to five members who are residents ~~or property owners~~ of the Town and shall not be Town Commissioners or town employees.” we need to strike out “or property owners” because State law requires that members of the Board of Adjustment must be residents. Henlopen Acres Code, §130.43 was changed in 2007 to conform to these State requirements. Mr. Mandalas said that to be a member of the BOA you have to be a resident, it does not matter if you own property the State law says “resident”.

Discussion ensued. Ms. Boland said it should read “who are residents that are property owners”. Mr. Scheurer and Mr. Thompson concurred. Mr. Roth said if the Planning Commission wants to make that change they need to make the recommendation to the Commissioners. Mr. Mandalas said if you make a change in your Comprehensive Plan that is a zoning change, you have an eighteen month window for the Commissioners to make that change. Mr. Barto said that is exactly what Ms. Holland said not to do. Mr. Barto asked Mr. Roth to put the issue on the Agenda for the next meeting under New Business since three members of the Commission think it is a good idea.

Mr. Thompson said that currently there are inconsistencies with how variance decisions are made. The standards and the way they are enforced need to be clarified. Mr. Roth asked by enforced do you mean how it is applied rather than how it is enforced. Mr. Thompson said how it is applied is important but when someone is in violation what do you do about it. He said that it is the source of a significant amount of consternation in the community. We all love the community and like the high standards but there has been such a change in the houses and people living here part time that at a minimum, even if we stay with the same standards, everyone should understand them. Mr. Thompson recommended that the Planning Commission hold a public forum, down the road, to hear comments and recommendations on the subject of variances and see if they can be managed differently. Mr. Roth said a lot of the consternation is because the Code has changed over the years. Mrs. DeWitt, 55 Fields End agreed with Mr. Thompson

but said that the Comprehensive Land Use Plan is supposed to address the subject of standards, procedures and enforcement of variances and should be part of the public hearing portion of the Comprehensive Plan Review when we address the recommendation for zoning code changes. Mr. Thompson said that he just wanted to put it in the record and have it identified as a future issue. Mr. Barto said these are the complications and issues that would be addressed in the rewrite process which is going to begin in January 2012

Mr. Scheurer said the next sentence on page 12, "The plan suggests a review of the Zoning Code to separate the legislative planning and zoning administration function from the quasi-judicial variance process.", which predicts the point that we are going to delve into that. When we get to the end there is going to be an implementation strategy, how do we implement some of these changes and what are they going to be. Mr. Scheurer asked if we need to say we went through the conditional use process covered in the rest of that paragraph. Mr. Roth said we do because that was part of the original Comprehensive Plan and our job during an update is to include the changes that were suggested in that original plan. Mr. Barto said that it needs to say it was addressed and reviewed and that the consensus at that time was that it was not going to be put forth by the Mayor and elected officials, there was concern about the conditional use, so it was dropped. It is important to notify the people at the Pre Plus process that we took that part and addressed it.

Mr. Scheurer said he had concern if there is a county requirement for a fence around a swimming pool should we identify that we are complying with that requirement. In the second to the last paragraph on page 12, all agreed to add "this is consistent with Sussex County's Ordinance" so the sentence now reads, "This process has been revised to a permitting process by where a fence is erected in conjunction with an approved swimming pool, this is consistent with Sussex County's Ordinance." Mr. Roth said that he would verify the Ordinance and see if it is a State law. Mr. Scheurer said the last paragraph on page 12, in the first sentence, "The plan suggests that the Board of Adjustment review only errors in administration of the Zoning Code..." asked if "errors" is too strong of a word. All agreed to replace the word "errors" with the word "appeal" so that the sentence now reads "The plan suggests that the Board of Adjustment review only appeals in administration of the Zoning Code..."

Mr. Scheurer said in reference to page 13, Water Supply, we talked about wellheads at the last meeting. In this section the numbers need to be brought up to the current data for single family homes that are occupied or vacant, etc. Mr. Thompson said that this is very well managed. Mr. Barto said continuing on page 14, Wastewater Disposal, Sussex County Department of Engineering's Wastewater Treatment Division monitors wastewater flows. Mr. Barto said unless there is a technical issue he sees nothing else that needs to be changed in this section.

Mr. Poole, 76 Pine Reach introduced Tim Slavin, Division Director for the Division of Historical & Cultural Affairs, State of DE, who wanted to speak. Mr. Slavin said in that capacity he also serves as the States' Historical Preservation Officer. In the spirit of dialogue he said he wanted to offer some comments on the Comprehensive Plan. As the States' Historical Preservation Officer he said his office will be submitting formal comments based on the review of the draft in the Plus process. On the historical and cultural affairs side, last year we affiliated with the Rehoboth Art League. We manage a campus of 41 historic properties in the State and 6 affiliate sites, one of which is the RAL. He said dealing with historic preservation issues relating to planned communities adds an extra wrinkle of concern. In a planned community you have a foundation of documents, you have reasons why the community was created and why it was developed the way it was. We encourage you to strike that balance between what the original

intent of the community was and what the demands of the modern society are. We encourage you to take a look at the contextual history of the RAL.

Mr. Slavin said that historic preservation promotes a contextual holistic view of properties, seeks to place individual properties within that context, not individual properties themselves. We avoid treating properties as stand-alone entities and in the case of the RAL campus and how it relates to the surrounding environment that is a very important context to keep in mind. We promote adaptive reuse of historic properties over time. We do not freeze properties to their original use or their original footprint. There are numerous examples of how we have achieved historical preservation outcomes by opening art leagues and allowing for adaptive copies. We want to avoid “demolition by government”, where things get so over regulated that there is no adaptive reuse left and buildings and properties fall into decay. Mr. Slavin said that in his opinion the uses he’s seen for the RAL are in step with the founding of the community of Henlopen Acres and with their original intent, their original charter. He said, in the spirit of dialogue, we should take into account the context of the history of the RAL and the context of how we approach historic preservation. Mr. Slavin said that they have people available to assist us.

Questions for Mr. Slavin and discussion ensued. Mr. Barto asked Mr. Slavin if he could tell us of any other communities in Delaware that are dealing with a situation close to ours, so we can gather more information. Mr. Slavin said that the Village of Arden, in New Castle County, Delaware. The property ownership is different there, people don’t own the property but it is a residential area with this cultural use incorporated into it. Mr. Slavin said he would check with historians for a list of any others that he will send to us.

Mrs. Beebe, RAL, said that in Lewes, where she is a resident, they have historic areas and also institutional areas which are within residential zones. Lewes has gone through a process where there is a give and take in defining what the institution will be able to do with the neighbors, what the uses can be and what the rules are. Everyone understands because there is give and take on both sides. Mrs. Beebe said that with the RAL being zoned residential they have concern that if one of their buildings is struck by lightning that they have no provision, under the current zoning code, for them to be able to replace that building, let alone to modernize or update based on what the current programs are.

Mr. Scheurer asked Mr. Slavin in the other historical properties that he deals with is he talking about zoning or about use, or as Mrs. Beebe said what are the uses or the rules of the use. Do you address zoning issues as part of historical preservation or is that really a function of the use. Mr. Slavin said that they will address zoning issues as they come through the Comprehensive Plan. Mr. Roth asked Mr. Slavin, for towns with similar issues, how they were handled. Were they handled with zoning or were they handled with special conditions. The original plan had suggested conditional uses and that was defeated.

Mr. Barto moved on to page 15, Maintenance of Marinas, Piers, Jetties, and Bulkheads. Mr. Roth said that he is still working on who is responsible for the Jetties. There was nothing further to add but to change wording in the last paragraph continued on top of page 16, “Henlopen Acres Beach Club, Inc.” and “Henlopen Acres Property Owners Corporation”. All agreed to move to page 16, *2.4 b. Community Services and Facilities*. Mrs. Boland asked in reference to the second to the last paragraph under Public Safety: Police Services, “The Charter also empowers the Town Commissioners to organize a beach patrol...”, does the Town supply a guard for Block W. Mayor Davis said that it gives us the power to do it if need be.

Mr. Barto suggested the next meeting we resume at Community Services, on page 17. Mr. Barto said that the next meeting will be September 19th at 10 am Any Communication in relation to today's meeting or any prior meeting address; Attn: Planning Commission and mail to Town Manager, Town of Henlopen Acres, 104 Tidewaters, Henlopen Acres, DE 19971 or e-mail to townmgr@henlopenacres.com and include your name, date and phone number

Mr. Mandalas said that comments that come in are all subject to the Freedom of Information Act, (FOIA), so of course you want to maintain them on the record. If there is a request for any communications that you have had concerning the Comprehensive Development Plan during the update and review they are all subject to FOIA and if requested you have to turn them over. Anything communicated should be given to the Town Manager so he has a full record and also they will be important when you get to the public hearings. Mr. Roth said that if e-mails are going back and forth among residents and to the Planning Commission members it is very easy to create a FOIA violation. Mr. Mandalas said that a serial meeting is when you have a series of communications, that while it may only be among two Planning Commissioners initially, which isn't a violation of FOIA, when it goes to the third Commissioner, which is a quorum of you, then it becomes an online or serial meeting. Mr. Barto said our point of contact is Mr. Roth, Town Manager. He will be responsible for the distribution of correspondences to the Planning Commissioners.

4. New Business

Mr. Barto entered into the minutes a letter dated July 22nd, received from Mr. McNeilly, 55 Rolling Road, also entered into the minutes a letter from Mrs. McDermott, 7 Pine Reach. Some discussion ensued initiated by Mr. Poole, 76 Pine Reach who wanted the sheet that was handed out at the last meeting by Mrs. Lyons to be entered into the record. Mr. Barto made it clear earlier in the meeting that it was not the Lyons document and was not part of our record. Mr. Barto asked the other members of the Planning Commission what they wanted to do with the sheet. Mr. Scheurer said when it was presented it was clearly an unsubstantiated history of the Art League so enter it into the record as that. Mr. Barto said that he would like to enter into the record a correspondence from Mrs. Beebe, President of the Board of Trustees Rehoboth Art League written on July 21st which includes her comments on the sheet in question. Mr. Mandalas said that is appropriate and at the time of the public hearing that is when the Planning Commission can state what correspondence they gave weight to in their decision making.

5. Adjournment

Mrs. Boland made a motion to adjourn. Mr. Scheurer seconded the motion. The meeting adjourned at 12:00 am. Next meeting, September 19th 10:00 am.

Approved: _____, 2011