

MINUTES: Meeting of the Planning Commission of the Town of Henlopen Acres held on **Friday, September 30, 2011 10:00 a.m.** at Town Hall on 104 Tidewaters in Henlopen Acres, Delaware

PRESENT:

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)
Glenn C. Mandalas	Town Solicitor (Baird Mandalas, LLC)
Diana Beebe	Rehoboth Art League
David Lyons	43 Pine Reach
Christine Moore	14 Tidewaters
David Hill	39 Rolling Road
Norma Lee Derrickson	49 Tidewaters
Eileen Clark	59 Tidewaters
Martin Clark	59 Tidewaters
Richard E. Poole	76 Pine Reach
Carl Vizzi	41 Pine Reach
Brenda Vizzi	41 Pine Reach
John Staffier	58 Pine Reach
Henry DeWitt	55 Fields End
Marcia DeWitt	55 Fields End
Helene Rodgville	Transcriptionist

ABSENT: John Barto Planning Commission Chairman

[The Minutes Are Not Verbatim]

1. Call to Order – Pledge of Allegiance

John Scheurer called the meeting to order at 10:00 a.m. followed by the Pledge of Allegiance

2. Approval of Minutes

a. July 25, 2011

Mr. Thompson made a Motion to accept the minutes. Mrs. Lyons seconded the motion. The motion was approved.

3. Old Business

a. Continuation of Comprehensive Plan Review

Mr. Scheurer said that the Commission would continue their review of the Comprehensive Plan. The original purpose of all these meetings over the last few months has been to review the Comprehensive Plan and get it done and submitted this year, in 2011; and, so the State could begin the update process which will begin in 2012. Beside the minutes, we have an updated

Comprehensive Plan Draft through 7-5-11, which includes all that was discussed and they've been incorporated in here. Also, we were presented this morning, by Eileen Clark, Comprehensive Plan Action Items. As you can see there are a number of open items on here and we can discuss that as we go through the rest of the Plan. Mr. Scheurer said there are another few items that have been given to the Commission in the last 24 hours and he would also make sure that everybody here has a copy of that. There was a letter which was received yesterday from Diana Beebe who is the President of the Board of Trustees of Rehoboth Art League, which included basically a history of the Art League. There was an additional letter that is basically a short history of the Rehoboth Art League, which could be included as part of the Comprehensive Plan and it has on the back a proposal for a cultural zone. There's an additional item which is Municipal Zoning Regulations and we presume this is part of this additional request. There was one more item, which was a letter from Henry Dewitt, Rehoboth Art League, and this was addressed to John Barto as Chairman of the Planning Commission and that was presented this morning. It's advocating a Cultural Zoning District and how to implement it. We need to reiterate that our goal today is to finish our Review of the Comprehensive Plan and have that completed today. The Acting Chairman noted there are new items which have been presented, which would be New Business; the proposal for a Cultural Zone for the Rehoboth Art League Campus, that either becomes an item of new business for the Planning Commission, or we have to ask our counsel if that is the appropriate place for this to be reviewed before it's reviewed by the Commissioners. Mr. Mandalas said that depending upon how extensive the Committee wants to go into the Comprehensive Plan Update or Comprehensive Plan Review; it could be done at this level with the Planning Commission, with this process that you're going through now. If you went to the level of creating or suggesting a new district, you would be going into a Comp Plan Update mode vs. a Comp Plan Review mode; which has different requirements at the State level and all sort of things; that being a word of caution. The Committee would still need to do their job of actually implementing that zone and going through that process of having public hearings; so it would be another step level; but it's a significant enough change that we could move from a Comp Plan Review to a Comp Plan Update. Mr. Thompson suggested that it might be better to get through the Plan once; which he thought everybody would like; and then they could focus on the other issues.

Mr. Scheurer said let's dig into the Comprehensive Plan Review, if we go back to the redraft, which was given to us; this incorporates the minutes of July 5th and we can look at what's been done; and we also have in front of us the Comprehensive Plan Action Items, which were just presented this morning by Eileen Clark; just to go through her check items.

Mrs. Clark stated that it had never been decided if this was a Review or Update. Mr. Thompson made a motion that the work of the Commission be classified as a Comprehensive Plan Review. Mrs. Lyons seconded. Motion carried. Mr. Richard Poole, 76 Pine Reach, asked if Mrs. Boland had voted yes. Mrs. Boland said yes. Mr. Scheurer said that we're going to finish this review, today; and appreciates the fact that we've been handed a proposal for a cultural zone; but as far as I'm concerned, that is a topic for later and it may or may not fall under today's agenda.

Mr. Scheurer continued that he wanted to get back to Number 3, the Rehoboth Art League history, Section 1.3b. What we were looking for was a history of Rehoboth Art League from 1930 to the present. We've been given a brief history and he saw it for the first time this morning. We'll take a look at that and see if that meets everything that we're required to and incorporate it into the section following the 1930 historical portion which ended. Number 4, says we need to beef up the importance of this land and this is the property adjacent to Henlopen

Acres and he thinks if we look at the section on Page 3, Land Use and Annexation. The last sentence is what was added to further describe how important that land is to us. Does anybody on the Commission have anything else to add to this?

Mr. Scheurer said what he was going to try to go through this to get to where we were, on Page 17; finish and then also go through Eileen's checklist, just to make sure we've done what we need. Number 5 was the Rehoboth Art League purpose overall community version which was the part that Mr. Thompson did and it was accepted and included as part of the language. Number 6 is Block W Land Use Planning and Regulation Process and it was regarding changing Block W Acreage in Table 1 from 11 to 8.82. Mr. Roth said he went through the entire thing updated the table. There was discussion about Block W, the acreage and number of lots. Mr. Thompson suggested that Mr. Roth get the numbers ready for the next meeting and be consistent.

Mr. Scheurer said Table Land Use Planning and Regulation Process; the number of lots needed to be clarified by Mr. Mandalas, who indicated that he had not done that yet. Mr. Scheurer said that Mr. Roth is finished with the Land Use Planning and Regulation. Natural Features and Environmental Concerns – Mr. Roth said that we are currently working on Well Head Protection. Mr. Scheurer said that on the top of Page 6 we have this new section that was added to our Plan Draft; which talks about well head protection being a growing concern and then later on in this same document, we go on to describe the 11 wells that we have drilled and their capacity, this is on Page 13. We could beef up the section on Page 6 or say “see Page 13, Section 2.4a Utilities;” which further describes the protection.

Mr. Scheurer continued on Page 6, which is a review of what we had finished before for the Henlopen Acres Beach Club; we talk about the 8.3 acres; he asked Mr. Roth to verify the acreage on all of the parts of the table on Page 5. Mr. Scheurer said on 2.1b also, we should add that the marina comprises of 1.92 acres; even though we say it in other places; please include it here to be consistent. No.11, from Mrs. Clark's list was that we need to have language to acknowledge the importance of HAPOC (Henlopen Acres Property Owners Corporation) and Block W and indicate that the town must work with HAPOC if any problem arises. That specifically refers to the bottom of Page 6 where we talk about Block W and HAPOC. Mr. Roth said he didn't talk about it a lot because of legal implications. Mr. Scheurer agreed with Mr. Roth. Mayor Davis said she didn't think that the town should get involved in that; if the HAPOC was out of compliance, then it reverts to the University of Delaware; the town is not involved in that at all. Mr. Scheurer said that it is vitally important that Block W remain the way it is and should anybody do anything that would risk us losing that to the University of Delaware that would be catastrophic. Mr. Scheurer said that we don't need to put anything else in this Plan about this matter. Mr. Mandalas said the Mayor is correct that these are two private entities and that are coexisting. Everybody has to make sure that the status quo is maintained.

Discussion ensued on the inconsistency of the number of lots on various tables in the draft plan. Mr. Roth stated the data comes from several different sources, such as the Census and the University of Delaware. He said he would try to reconcile the numbers for the next meeting.

Mr. Scheurer said on top of Page 12, the paragraph that started out as “The Zoning Code establishes the Board of Adjustment.” The Code states that the Board shall consist of three to five members who are residents or property owners ...” and Connie had the suggestion at one of our meetings that we add, “and property owners”; however, there was a question as to whether or not that was something that we could do; and that would actually have to be something that went to the Commissioners; but he believes that there is another issue there. It would seem that if you

said property owners, that limits the definition of property owners; does that mean Trust and a Trust is not a person; so therefore you would limit the available pool of people drastically by putting “and property owners” in there. Mayor Davis and Mr. Roth indicated that the new Charter changed that and it will only need to be referred to as “resident”. They will remove the “property owners” on Page 12. There is something else in the same paragraph. It currently says “The current code uses the Board of Adjustment as the means to implement the special exception process.” The balance of that sentence should be deleted. Mrs. Boland said in the next to the last paragraph, she thought we had agreed that after “swimming pool”. The following sentence should be added “This is consistent with Sussex County’s Codes and Ordinances.” Also in the next paragraph; it should be noted that “The plan suggests that the Board of Adjustment review only appeals...” The word “errors” should be changed to “appeals”.

Mr. Scheurer is on Page 13, under the Water Supply, the number of homes should be removed. It should only say “available for all single-family homes”. On Page 14, the paragraph that starts “The Town may apply...” Mr. Roth will review this paragraph and make changes accordingly. The top of Page 16 in the first paragraph, Mr. Roth will change it to read Henlopen Acres Beach Club, Inc. and Henlopen Acres Property Owners Corporation.

Mr. Scheurer said that will bring us to Page 17, which is where we left off. On Page 17, they didn’t have anything except for on the Recreation section, which again is the acreage issue; which the Town Manager will address. The only other adjustment would be “The town maintains a marina at 47 Tidewaters...” The “s” should be added. Then just make sure that we make consistent the acreage. Additionally, someone mentioned that we should add to the Community Services Section, that there are two walk-in clinics within 2 miles on Route 1, one in Dewey Beach and the second in Rehoboth.

Mr. Scheurer was on Page 18. Mrs. Boland said that she noticed that Mr. Roth had added a sentence about the street resurfacing project. Mr. Thompson said when we talked about Transportation; he didn’t see anything in there about the town’s authority to regulate use of the roads. Mr. Mandalas said that he would have no problem with something being added to the document that basically says you do have the authority over the streets. Mr. Mandalas said that it probably is worth clarifying in the document that you have the authority to regulate the streets, only for the clarification that you have more authority than most towns. Mr. Scheurer asked if a simple declarative statement could be put into the document noting that. Mr. Roth said he would go through it again to see if it was mentioned earlier. On Page 18 there have been some modifications to the floor area. Page 19 is the Implementation section.

Mr. Thompson said his notes indicated that a Summary of a Workshop Meeting from June 24, 2011, that the Planning Commission of the Town of Henlopen Acres held a workshop meeting to discuss the review of the Comprehensive Plan, so there are minutes that reflect that from the very beginning of this process, he just wanted to highlight that.

Mr. Scheurer said if there weren’t any further comments, we’re finished for today with the Review. Mr. Scheurer said it would be appropriate for the Planning Commission itself to review and approve the minutes, and once that occurs our changes could then be included and available on the website for public comment. Mr. Mandalas said then you would make it available for public consumption prior to your public hearing, so that at the public hearing there would still be an opportunity for public input and there would still be time before sending it to the Pre Plus. He suggested the Committee meet one more time to finalize the minutes and at that time they will set a public hearing date and make the document available. Mrs. Eileen Clark, 59 Tidewaters,

believed it is important that when we do this final version that everything recommended to be considered during the 2014 Update be listed or appended to this document.

Mr. John Staffier, 58 Pine Reach asked, with respect to the items that are recommendations that are going to be included in the 2014 Update, is there language available yet as to how these certain issues are going to be discussed? Mr. Scheurer said when we opened the meeting we received something from Diana Beebe, President of the Rehoboth Art League about a proposal for a cultural zone and we also received a letter from Henry DeWitt supporting the cultural zone idea. To his recollection, those are the only items that we have for consideration to be discussed in the next planning update process. Mr. Staffier said the point is, if the Commission presumably is going to say something about those proposals, when will it be available and what will the draft proposal and what will the Commission say about these issues? Mr. Scheurer said it depends on what the proper process is for considering this cultural zone is; whether the process is for the Planning Commission to address that as a separate item, exclusive of its plan review, certainly; but is that part of the update process or is that a separate agenda item and is the Planning Commission the right place to start? Mr. Mandalas said it's probably appropriate to mention at the public hearing that there have been submissions by the Rehoboth Art League that were not reviewed comprehensively in the review process, because they were significant enough that it seemed more appropriate to address them in the 2014 update stage; but even recognizing that, you might say this is more than the Update, we might want to take this on as a separate process. Mr. Mandalas said when you get to the 2014 Update; you could say that we're going to take on this issue of the new zoning district issue for the Rehoboth Art League and we're going to consider and make a recommendation in the Plan Update whether or not we will recommend to the Commissioners that there be a new zoning district for the Rehoboth Art League; or you can say, we view this as such a significant item within the Town of Henlopen Acres that we're going to simply say in the plan it needs to be looked at more comprehensively outside of the update process and that's a recommendation in itself that the town collectively look at this item. Mr. Lyons added "or not". Mr. Staffier said his point was that it is important that whatever language is used doesn't inadvertently compromise what will happen down the road. Mr. Mandalas said he did think that the minutes of the meetings you've had so far, would give a good memorialization of what has been said up to this point about the Rehoboth Art League. Mr. Mandalas said you are given a difficult responsibility as the town's planners and the Comprehensive Plan is the document that is supposed to set out your best thoughts on the direction the town should go. It would be unfair in his view if you were to put on blinders and say the Rehoboth Art League issue doesn't exist, because it does exist. At some point in time, you as the planners have to go on record one way or the other. Mr. Thompson said everybody here basically has focused on the Rehoboth Art League. Henry DeWitt has provided excellent guidance on Block W. Maybe the way we handle this is to set an agenda, so that there is a day of hearings and presentations on the Art League by itself; for an hour or two, and let everybody who wants to offer testimony, offer testimony; and then have another segment if other people want to testify on other issues; because there are a lot of other issues that people are concerned with that have nothing to do with the Art League. But we'll have to take a stand or make a recommendation. We don't adopt a policy, we just make a recommendation. It is up to the Commissioners to decide whether to go forward with it or not and they have to address it. Mr. Mandalas said to be aware that on zoning recommendations; to the extent that you were to say **in the plan** that there will be a new district, a cultural district or anything else; there is a state law that says that Council then has 18 months to actually adopt that district. So you want to be careful with whatever language you use. They could take the plan and say the Planning Commission says we should create a new cultural district and the Commissioners could say we think that's a bad idea. Then they would have to go back to Plus and amend the Comprehensive

Plan to say we should not create a new cultural district. Mayor Davis said that we did that in 2004, it was in the plan as a recommendation about the Special Exception, we did do that, we just got inundated and we voted against it, because of the public input and the community's input; and they do act on it.

Mr. David Hill, 39 Rolling Road: In relation to the Rehoboth Art League rezoning issue. He said it seems that it's not appropriate for the review that's underway now; it probably is appropriate for the 2014 update and that will be dealt with some time further down the road and it will be dealt with, he would anticipate, in a comprehensive way in the 2014 update with recommendations to the Commissioners as to what the Planning Commission conclusion is; were you putting a third question on the table; does the Planning Commission do anything in the meantime. The Planning Commission controls their own your docket. The Board of Commissioners can recommend certain subjects for the Planning Commission to consider; you are an independent body; you can take up things on your own; the way the town commissioner's limit that, is that they have control of the purse and they don't have to fund anything that you go off on and we don't agree with or don't think is worth the town's money. The bottom line, as to your third proposition regarding what should the planning commission do now; you don't have to do anything until the 2014 Update.

Mr. David Lyons, 43 Pine Reach: Mr. Scheurer said what we're going to discuss at the next forum is our review and what we finished doing today when the minutes are incorporated.

Mrs. Diana Beebe, Rehoboth Art League: Your point (to Mr. Hill) is well taken, but part of what happens in the zoning process is definition. We've submitted some ideas about what a definition might be for a cultural zoning. It had to do with education and lectures and the activities that go on at the Rehoboth Art League, but my understanding is that's what this process is supposed to be all about. It's about recommending zoning changes or other kinds of changes and then there's a process that works through what the definition is. In a sense is the Art League's being charged with costing the town money. Mr. Thompson said the reason that issues comes up is the Art League does have a litigation history with the town and that did cost us a lot of money and the Art League was unsuccessful in the litigation. The question for Counsel, could we have a fairly coherent outline of what the options are and could we have it in a way that we minimize, if not eliminate, the possibility of future litigation.

New Business

None.

4. Adjournment

Mr. Thompson made a motion to adjourn. Mrs. Boland seconded the motion. The meeting adjourned at 11:40 am. The next meeting date is to be determined.

Approved: November 19, 2011