

Town of Henlopen Acres

104 Tidewaters
Henlopen Acres, DE 19971

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MINUTES: Meeting of the Planning Commission of the Town of Henlopen Acres held on **Monday, January 09, 2012 10:00 a.m.** at Town Hall on 104 Tidewaters in Henlopen Acres, Delaware

PRESENT:	John Barto	Planning Commission Chairman
	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)
	Michael Hoffman	Attorney (Baird Mandalas, LLC)
	Sharon Karl	Town Clerk
	Diana Beebe	Rehoboth Art League
	David Lyons	43 Pine Reach
	Christine Moore	14 Tidewaters
	David Hill	39 Rolling Road
	John Staffier	58 Pine Reach
	Le Rowell	4 Broad Hollow
	Paddy Richards	5 Rolling Road
	Richard E. Poole	76 Pine Reach
	Elisabeth Poole	76 Pine Reach
	Marcia DeWitt	55 Fields End
	Tom Ingram	21 Tidewaters
	Katherine McNeilly	55 Rolling Road

ABSENT: John Scheurer 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 the Pledge of Allegiance

Before the approval of the minutes Mr. Barto made some procedural comments. He thanked all the members of the planning commission for their time and dedication to the review of the comprehensive plan. In addition he thanked the Mayor and Commissioners for their support during the process. He also thanked all of the neighbors in Henlopen Acres and interested parties for their comments, assistance and input at the planning commission meetings and the recent public hearing.

2. APPROVAL OF MINUTES

a. November 19, 2011

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

b. December 7, 2011

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

2. OLD BUSINESS - Comprehensive Plan Review

Mr. Barto asked the commission members for any modification, suggestions and recommendations they have on the Comprehensive Plan Review.

Mrs. Boland said that there have been a number of issues received by mail, e-mail, etc. that should be made a part of the discussion for the update of the plan for 2014.

1. The rezoning requested by the Rehoboth Art League for a cultural zoning.
2. Fire hydrants in the town.
3. Storm water run-off in the canal.
4. Limit the removal of trees for the environmental health of the town.

Mrs. Lyons said that Mrs. Boland covered her concerns. She said it is interesting about the fire hydrants however we can get the water from the canal. Mr. Barto said the fire department can draft from swimming pools as well. This discussion will be included in the review.

Mr. Thompson said that he agrees with all the issues that have been brought up and said that he would also hope in going forward that the planning commission can have hearings on building size, fences, lighting, and definition of garage as part of the residence. There are a whole range of issues. If we are going to have rules they need to be enforceable. We need to discuss; what is the rationale, why were they set up the way they were and how we are going to enforce them. Mr. Thompson said that he hopes in future meetings that we identify a given subject that we are going to discuss, so we can focus on a subject at the meeting. Then at the next meeting focus on some other subject. He said that it would be advantageous to the process.

Mr. Barto began his comments saying that he hopes that everyone agrees that the review of the comprehensive plan has been an open process which has encouraged participation by all stakeholders in the process. He said that it is most important to understand, as directed by Ms. Holland of the state office of planning, that this is a plan review of the 2004 comprehensive plan. It is not the rewrite of our plan which is due in 2014. Mr. Barto said that he has personally entered this process with an open mind and interest in hearing from all parties. He said he thinks that it is important that his neighbors understand that this review of the comprehensive plan, in his mind, is based on community wide perspective. The question and review of the comprehensive plan is based on what is in the best interest of our residential community. Much discussion has taken place regarding the Rehoboth Art League (RAL), and its role in our town and community. He said that he is reminded that the RAL has been in existence for approximately 75 years. The ordinances and incorporation of the town are more recent. It is with that in mind that, he said, that he points out that our town and community are constantly changing. We must not only balance these changes but manage them in the best interest of our town and neighbors as a whole. It is crucial that the planning commission take into consideration all of the various comments and concerns of our neighbors as we review the comprehensive plan. The planning commission, our elected officials and the members of our community must work together for the benefit of all.

Mr. Barto said that he is most concerned after reviewing all the information and listening to the testimony, the amount of misinformation that some of our neighbors and outside organizations have regarding the RAL. This misinformation has caused problems for the Town and the RAL by not understanding the process and the ordinances within the town of Henlopen Acres. As an example he cited that repair or replacement of a nonconforming use can take place through the board of adjustment process. Just because a proposal was denied does not mean that another would be. The RAL indicates that they are all for compromise. Then he suggests that they consider moving forward with other proposals that comply with the current ordinance. Mr. Barto said that he would like to remind all in attendance that when the town adopted zoning laws, the RAL was permitted (“grandfathered”) to continue operation as it existed at that time. That, however, does not mean that the RAL may expand its operations to violate the town code beyond the existing ordinances just because the operation may in the minds of some, support the mission of the Corkran’s and other RAL founders. Any expansion of a non-code compliant operation would constitute a violation of the zoning code, even if it does indeed support what some may interpret as the mission of the Corkran’s and the other RAL founders. In fact, who is to say what the Corkran’s or others envisioned 75 years ago. “What they may have envisioned is pure conjecture”. He pointed out that with the identification of the marina, municipal area and Block W, Colonel Corkran and his wife were silent on the RAL.

Mr. Barto said that the issues before the planning commission today and for the past seven months are a review of the comprehensive plan. Changes in zoning require the writing of ordinances to support that zone and would need to be submitted as part of the PLUS process. Writing ordinances must be done prior to the rewrite and approved by the Mayor and Commissioners and submitted with the rewritten comprehensive plan in 2014. Ms. Holland has stated this clearly on two occasions at our meetings.

Mr. Barto said regarding our current draft of the review of the comprehensive plan that Mr. Scheurer suggested four corrections.

1. That on page one, section 1.2 that we expand that paragraph regarding our hearing process and identify the 2011 meeting dates of May 9th, June 24th, July 5th, July 25th, September 30th, November 19th and December 7th, to include them to document that the meetings took place.
2. On page four, under the description of the RAL, the reference to Co. Corkran is changed to Colonel Corkran.
3. On page five, we need to make sure that the 117.38 acres is the correct acreage.
4. On page 17, under Community Services, the second paragraph mentions that we have two health clinics within 2-1/2 miles of the town.

Mr. Barto said that his remaining comments would be included in the recommendations sections of the review of the comprehensive plan. These would be included at the end of section 3.1 as new paragraphs.

1. Many comments have been received throughout this process regarding the RAL and its governance since it is an existing non-conforming use within a residential zone. We should evaluate the RAL status, governance, zoning and need for change and what impact it would have on neighbors and the town. We should evaluate and consider the suggestion that it be made a separate zone and the impact and benefits to both the town and the RAL. As part of this evaluation and rewrite process we need to review the RAL’s impact on the community, water usage, waste generated, traffic, noise, lighting,

waste water management, etc. This would be a component of the overall rewrite and would result in a recommendation to the Board of Commissioners of Henlopen Acres. If any zoning change is to be recommended to the commissioners then the ordinances regarding this new zone would need to be submitted and approved along with the rewrite.

2. The planning commission and the commissioners need to review all the zoning ordinances to determine enforceability and ease of compliance.
3. Review pollution runoff into the canal and other storm water issues with guidance from the state.
4. Develop the well-head maintenance schedule and contingency plan if one or more wells become contaminated, to ensure our long-term water supply. This would be done in compliance with the state's well head protection program.
5. Discuss and develop a Block W, Henlopen Acres Property Owner's Corporation compliance certificate to be submitted to the town annually to ensure that the corporation does not miss a filing or conduct itself in a manner that would cause it to lose its ownership to the University of Delaware.
6. Evaluate the Rehoboth Beach Fire Company response issue given the distance to the closest fire hydrant and the impact on homeowners and insurance. Review and investigate options for improving fire suppression in the town.
7. Discuss the efficacy and viability of recommending tree coverage as an element of consideration for the environmental review committee when they are evaluating any new development, renovations or construction in the town.
8. Develop clear responsibilities and contingency plans if the jetty or groins on the beach club or Block W properties were destroyed or compromised.
9. Clarify and develop an agreement with the City of Rehoboth Beach regarding the area adjacent to Pine Reach and Surf Avenue across from Deauville Beach so that it remains as passive undeveloped space.
10. Consider energy efficiency and conservation measures to be added to the town code.
11. As part of the rewrite process mechanisms for reduction of the property tax rate that may exist by updating the zoning ordinances and codes must be explored.

Mr. Barto said that the minutes reflect the issues raised through comments taken at our meetings and public hearing. He stated that he spent days reading and re-reading every one of the letters, e-mails and comments and he believes he's addressed all of them.

The entire committee commended Mr. Barto for his diligent and thorough work.

Mr. Barto asked if there were any further comment from those in attendance. Mr. Poole, 76 Pine Reach asked if the planning commission has actually redrafted the document to reflect the eleven items. Mr. Barto stated that he just put this all on the table five minutes ago so nothing has been redrafted. He said that to move this along he has written out his comments and if all are in favor, will submit them to the Town Manager to add them to the review draft which he would like to see sent to PLUS. Mr. Barto said he knows Mr. Poole is going to argue that we have not seen them, but you are here, hearing them. He stated he wants to move them to the PLUS

process for their February 1st submission date. Mr. Poole said that would mean that the draft would go to the PLUS process without further input from the wider area. Mr. Barto felt that the community has had more than ample opportunity to view and discuss.

Mayor Davis said that when the updated draft goes to PLUS it will come back with recommendations, therefore this is not final product. Attorney Hoffman concurred with the Mayor.

Mr. Poole, 76 Pine Reach, said that there have been some issues discussed along the way that have not been mentioned today.

1. Mr. Poole asked if the town has received a legal opinion on the one lot/two lot issue. He said that if the town commissioners still believe there is a distinction, there should be a legal opinion.

2. Mr. Poole stated that in Mr. Barto's remarks he said that what the Corkran's intended for the future of the art league was speculation. Mr. Barto restated, that for anyone to say what the Corkran's or others envisioned 75 years ago is pure "conjecture." Mr. Poole said that he feels his 14 page compilation on the art league reflects their intent and that as an historian it is not conjecture it is fact.

3. Mr. Poole said that Map 6 refers to proposed future land use. In that map it shows the proposed future land use of the art league campus as residential. The RAL has not been residential since Mrs. Corkran died. Mr. Barto rebutted that he takes exception to Mr. Poole's comment that the art league has not been residential since Mrs. Corkran's death, stating that from a zoning standpoint it has always been residential, from day one until the town was incorporated and the maps were drawn. The RAL is a residential area in a residential community and was grandfathered in as a non-conforming use, the way it sits today. Mr. Barto said that if the art league has projects, repairs or building construction that they want to do then they need to design them in compliance. There is a process for the art league to move forward. The RAL had a proposal that was rejected by the Board of Adjustments and went all the way to the State Supreme Court. That does not mean you can't try again. The Board of Adjustments is the RAL's neighbors, they are full time residents. The art league constantly talks about compromise. If there is something that needs to be done and it is critical and important, take a step and put forward a proposal. As far as planning and zoning in an incorporated town the size of the Acres, with volunteer members as elected officials if we are to write a zoning ordinance or develop an historic overlay zone, it will take a lot of our time to complete it. If that is our charge and is what is best for our community, we will write that ordinance, and we will do the very best job we can. Many people from the RAL may not like the result, but we'll keep it an open process.

Mr. Thompson made a **motion** to add to the Comprehensive Plan Review draft, the four changes identified by Mr. Scheurer and 11 recommendations from Mr. Barto and submit it for PLUS review. Mrs. Lyons seconded the motion. The motion passed unanimously.

3. NEW BUSINESS

a. Lighting

Mr. Roth said that there has been concern from residents, mainly where new houses are constructed, that flood lights shine in windows of adjacent houses and concern about town lighting as well. Mayor Davis said that years ago we had requested that the Planning

Commission look at the issue of what kind of lighting we want in the town. Driving through town we have a hodge-podge of lighting. Also, when new construction is being done, we want to make sure that the light post is closer to the road. Currently there are a lot of dark areas around the town. She feels we need some consistency.

Marcia DeWitt, 55 Fields End, suggested that motion sensitive lighting be installed especially in some of the back areas. The light would not be shining on a consistent basis, only when movement is sensed. It may discourage people from walking the bridal paths and in behind houses where they are not welcome.

Mr. Barto said that the idea of a lighting ordinance is excellent, with the key issue being safety and security. Post lamps need to be there and they need to be lit. We need to start with the location of the post lamps, which was intended to be in the front of the property, but we really never said where in the ordinance. It will be hard to legislate an exact location. We should indicate that a lamp post must be placed in the front of the property relevant to the set back from the road. For new construction, the aesthetics and location of the lamp post is for the Environmental Review Committee to determine as well as that lights are not shining into neighbors bedrooms. We need to have in the ordinance that the lighting does not exceed beyond the boundary of the property line. Motion sensors are a good idea but squirrels, deer and other animals set them off so we need to be careful about that as well. More discussion on lighting ensued and it was decided that Mr. Roth would research ordinances of other residential communities and present it to the Planning Commission for the March 2012 meeting.

Mayor Davis said that some residents have suggested that the town put lights in the bridal paths. However the town does not own that land and the poles are there for Comcast and Verizon.

b. Wellhead Protection

Mr. Barto said that this will also be in the review of our Comprehensive Plan for 2014 and the appropriate agencies within the state will look at it and they will send us some suggestions. Mr. Roth said he will review another town's ordinance for acceptability and edit it to the town's needs. He may also send it to the state for their direction. Mr. Barto stated that wellhead protection will be worked on in the March meeting.

4. Adjournment

Mr. Thompson made a motion to adjourn. Mrs. Lyons seconded the motion. The meeting adjourned at 11:40 am. The next meeting will be March 12, 2012.

Approved: _____, 2012