

MINUTES: Meeting of the Planning Commission of the Town of Henlopen Acres held on **Monday, May 14, 2012 10:00 a.m.** at Town Hall on 104 Tidewaters in Henlopen Acres, Delaware

PRESENT:

John Barto	Planning Commission Chairman
John Scheurer	Planning Commission
Mary Jane Lyons	Planning Commission
Glenn Mandalas	Town Solicitor
Thomas Roth	Town Manager (member ex-officio)
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
Bonnie Staffier	58 Pine Reach
Paddy Richards	5 Rolling Road
Richard E. Poole	76 Pine Reach
Elisabeth Poole	76 Pine Reach
Henry DeWitt	55 Fields End
Marcia DeWitt	55 Fields End
Barbara Shortley	59 Pine Reach
Sarah Sunderland	71 Fields End
David Boyce	11 Tidewaters
Elinor Boyce	11 Tidewaters
Lynda Moses	39 Pine Reach
Tina Manatos	1 Tidewaters
Gail McDermott	7 Pine Reach
Norma Lee Derrickson	49 Tidewaters
David Mellen	Rehoboth Beach Planning Commission

ABSENT:

Connie Boland	Planning Commission
Dick Thompson	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

2. APPROVAL OF MINUTES

a. January 9, 2012

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

Henry DeWitt, 55 Fields End, asked to speak. He said that he will submit his concerns in writing about the need to maintain road safety especially at Crossways and where Dodd's Lane splits. Mr. Poole, 76 Pine Reach added that Crossways is a dangerous curving street and should be made a one way street. Mr. Barto asked Mr. Roth to add Street Safety Issues to the next agenda.

3. Wellhead Protection

Mr. Barto said that DNREC has standards for wellhead protection that may be helpful to us. Mr. Roth added that Henlopen Acres uses wells for its drinking water. He roughly drafted an ordinance from those of neighboring municipalities and the biggest difference due to the location of wells near houses, is the protection area of 150 feet. DNREC has offered assistance. Mr. Scheurer asked if residential fuel tanks, requires an annual or quarterly certification process and are they tested. Mrs. Lyons asked how many wells were in town. Mr. Roth said that there are 11 wells that supply the treatment plant and their proximity to the residential lawns may create a pesticide concern. Mr. Barto said that we will revisit the Wellhead Protection at the next meeting and come up with a draft.

4. Lighting

The Committee reviewed the lighting ordinance from Fenwick Island. Mr. Barto added that Fenwick Island does not address post lamps which are required here for each property. Mr. Roth said the post lamp ordinance is enforced. Security makes a list every Sunday night of lights that are not lit. If an address shows up on the list three weeks in a row someone from our maintenance department checks and determines whether power is on. A letter informing the resident of town requirements is mailed. Usually the resident responds but if they do not respond a notice is sent.

Mr. Hill said that Fenwick Island is a good model. This would merely serve as a standard. Where this would be more important would be new construction which would set the standard. We need to allow a reasonable transition period so people can come into compliance, say 30 days. Also we need to make it a civil violation. Chapter 102 would create standards for a review process set here. Mr. Barto said that this would be discussed further at the next meeting. Mr. Pool, 76 Pine Reach, introduced the idea of municipal street lights. Mr. Barto stated that would be a separate issue.

5. Review of Comprehensive Plan

Mr. Mandalas said that we received a letter back from the State's PLUS Committee, which was a coordinated effort by the State. He read from **TITLE 29, State Government State, Planning and Property Acquisition, CHAPTER 91. STATE PLANNING, Subchapter I. Delaware Planning Act, § 9101. Cabinet Committee on State Planning Issues.**

(c) The Committee shall consider matters relating to the orderly growth and development of the State, including, but not limited to:

(1) Recommendations for the most desirable general pattern of land use within the State, in light of the best available information concerning topography, climate, soil and underground conditions, water courses and bodies of water and other natural or environmental factors, as well as in light of the best available information concerning the present and prospective economic bases of the State, trends of industrial, population or other developments, the habits and

standards of life of the people of the State and the relation of land use within the State to land use within adjoining areas;

(2) The major circulation pattern recommended for the State, including major routes and terminals of transportation and communication facilities, whether used for movement of people and goods within the State or for movement from and to adjoining areas;

(3) Recommendations concerning the need for and the proposed general location of major public and private works and facilities, such as utilities, flood control works, water reservoirs and pollution control facilities, military or defense installations and other governmentally financed or owned facilities;

(4) Recommendations on land use planning actions that are subject to review and comment pursuant to Chapter 92 of this title;

Mr. Mandalas also read from **§9103. Comprehensive Plan Review and Certification Process.**

(f) Within 20 days of receipt of the findings and recommendations from the Cabinet Committee, the Governor shall certify the comprehensive plan or return the comprehensive plan to the municipality or county for revision. The municipality or county shall have the right to accept or reject any or all of the recommendations. The final decision on the adoption of the comprehensive plan is that of the municipality or county.

Mr. Mandalas cited a case where comments that were recorded in the Kent County Comprehensive Plan were determined to have the force of law. He warned to be careful with the use of words and the way language is used in a Comprehensive Plan because, as in that case, you can actually create a change in zoning or some other legal significance.

Mr. Mandalas said that once the letter came back from the PLUS Committee outlining recommendations, attached to the PLUS report was a significant appendix that basically outlined a history of the Rehoboth Art League. Mr. Mandalas said that it was a bit unconventional, that he had never seen anything of that length added to a PLUS report. So Mayor Davis sent a letter to Connie Holland's office indicating that we thought some of the comments made in the appendix should be stricken for several reasons including questionable authority or questionable evidence that the appendix was accurate. Mr. Mandalas read the letter that Connie Holland sent back; "Dear Wanda...Upon review of your letter dated March 22, 2012, the Office of State Planning coordination (OSPC) has spoken with the agency(s) responsible for the comments in questions provided as part of the PLUS Report 2012-02-01. After further review and discussion it has been determined that the comments provided on Pages 4 and 5 which reference Bridgeville and Bethany Beach as well as those comments on pages 8 through 14 do apply to the Town and should be considered as part of the comprehensive plan process. If the Town has any additional questions regarding the PLUS Report for the Town's proposed comprehensive plan, please call, Signed, Connie Holland, AICP Director."

Mr. Mandalas said, as it sits now, the PLUS letter that came from the state stands. Nothing has been changed, the series of recommendations remain and part of your job today is to discuss those recommendations and where everything stands and what you want to send to the Board of Commissioners for their approval.

Mr. Barto stated that in the March 16th letter received from PLUS, three comments were received which need attention in order to certify our update. We are not rewriting the comprehensive plan it is an update. The three comments that need action in order to be certified are: (1) “The comprehensive plan review as presented does not include a completed set of land use maps in accordance with Del Code.” Mr. Roth confirmed that he has completed them. (2) “The Town should expand the Public Participation element within the document to reflect not only dates met, but comments provided by the Town residents.” Mr. Barto said that we have the dates and we will include a summary of comments from the citizens. (3) “The Town should expand its discussion of community coordination and discuss how the neighboring jurisdictions were engaged.” Mr. Barto said that we advertised in the papers and we had representatives at one of the hearings from the Town of Rehoboth. So those certifications are in the process and are being met.

Mr. Barto said on the beginning of page 2 (of the PLUS response) are the recommendations. The recommendations are just that, they are recommendations. Mr. Barto said that in his conversations with Ms. Holland it became clear that the recommendations need to be addressed in the 2014 rewrite of the comprehensive plan. If we were to propose changes they would have to be supported by ordinances and we need time to prepare ordinances to go in conjunction. Ms. Holland’s does not want suggestions that the town does not act on it.

Mr. Barto said that the response to the certifications comments have been completed and will be sent to the Board of Commissioners for their approval and then sent to PLUS. Mr. Scheurer said, just to be perfectly clear, that as far as the certification process, Mr. Roth is going to submit the finished responses and documentation to the Board of Commissioners and then after their approval, submit this to PLUS and then we will be done with that. Mr. Barto said yes that is correct unless there was objection from this committee. Mr. Scheurer said that now we are going to begin with your list of eleven things that are going to be part of the 2014 rewrite process. Mr. Barto said that we are ready to go forward with the rewrite of the comprehensive plan that is due in 2014.

Mr. Barto said that there has been a lot of confusion about the Rehoboth Art League. To minimize confusion, he said, he would like to get more people involved. We want to figure out what is best for the Town of Henlopen Acres. Mr. Barto said, in reference to a calendar of past and upcoming activities at the Rehoboth Art League that was prepared by the Town dated May 13th, 2012, I don’t think seventy five years ago that the RAL had this many things going on, these calendars are busy. Mr. Barto said that this is 2012 and we are preparing for the 2014 rewrite and we have to meld together the past and the present and look to the future for everyone in this town.

Mr. Barto said that he wanted to start the 2014 rewrite process with a discussion asking the committee to refer to the just approved minutes of January 9th, 2012. In those minutes we outlined eleven items. We are going to look at all eleven items in the update of our comprehensive plan. Mr. Barto read:

“(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.” Mr. Barto asked Mr. DeWitt, 55 Fields End and Mrs. Richards, 5 Rolling Road who are on the Block W board, to develop a process so they can validate and certify that they have met all the requirements of Block W. They

will come back to us and tell us what they propose. The Planning Commission will then take a look at it. We will have something we can move on.

“(3) Review pollution runoff into the canal and other storm water issues with guidance from the state.” Mr. Barto said that he is going to ask DNREC to take a look at the maps and tell us what we can do. For example, pollution runoff, planting certain types of vegetation to assist in the holding of the run off into the canal. We can go through that process with the help of DNREC.

“(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.” Mr. Barto said that he would like to have a joint meeting of the Planning Commission with the Environmental Review Committee to get this process started, see what we can do and get that translated to a possible Code, all taking place in a public forum.

“(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.” He said that he was going to reach out and speak with the chief of the Rehoboth Fire Department and listen to his expertise and what he advises they have. We could also contact the State Fire Marshall’s Office. Mr. Roth said that Mayor Davis has already reached out to the Rehoboth Fire Department for recommendations and is waiting to hear back from them.

“(8) Develop clear responsibilities and contingency plans if the jetty or groins on the Beach Club or Block W properties were destroyed or compromised.” Mr. Barto again asked Mr. DeWitt, 55 Fields End and Mrs. Richards, 5 Rolling Road to get the Beach Club involved in a discussion of responsibilities and contingency plans.

“(2) The Planning Commission and the commissioners need to review all the zoning ordinances to determine enforceability and ease of compliance. (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 stated that he would like to combine these three as a review of all zoning ordinances. This would include energy efficacy, savings to the town and our tax rate. He said that he would like to reach out to the University of Delaware and the Office of State Planning to see what help is out there in the form of grants to do a review of our zoning ordinances from page one to the end. It would be very helpful in reducing confusion and misunderstanding which in the long run will save us money. Mr. Roth said that he could contact someone at the U of D, Institute for Public Administration. Mr. Mandalas said that the IPA is probably the right place to go for that assistance.

“(9) Clarify and develop an agreement with the City of Rehoboth Beach regarding the area adjacent to Pine Reach Surf Avenue across from Deauville Beach so that it remains as passive undeveloped space.” Mr. Barto said that the Mayor and Commissioners would be a very good choice to reach out to our neighboring officials in the City of Rehoboth regarding that.

[(4) This item was discussed as agenda item number 3, above.]

“(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.” Mr. Barto suggested that the Planning Commission appoint a committee to include but not limited to representative of the Rehoboth Art League, residents of Henlopen Acres, and or other individuals as determined by the Planning Commission. This committee would review all aspects of the town ordinance, covenants and needs assessments of the town and the Rehoboth Art League. They will provide a report to the Planning Commission. Our next meeting is scheduled July 9th and he said he would like for the committee, agreed upon and appointed by the Planning Commission, to provide their report to by July 2nd for review by the Planning Commission on July 9th. The committee, if appointed, would have to be extremely active and proactive to complete its’ charge. The Planning Commission will not be bound in any way by the final recommendations of the committee but the Planning Commission will give serious consideration to this group’s work. Mr. Barto said that he is looking for a group, not just of Board Members or avid supporters of the RAL, but wants some representatives from our town and community who know of the RAL to hash it out. Mr. Barto said that this is not his mother and fathers’ neighborhood any more, they are deceased, so are Mr. and Mrs. Corkran. This committee will have a difficult charge, to prepare for today and tomorrow, if the Planning Commission agrees to this.

Mr. Barto said that the Planning Commission will come to a consensus, The Board of Commissioners will review it and they will determine whether they like what we have proposed in the upcoming rewrite of the comprehensive plan or not. Mr. Barto said that he was very glad that we have good attendance at these meetings however it is a shame that some people in the PLUS process don’t think so. Mr. Barto said to Mr. Scheurer and Mrs. Lyons that this is his proposal and thoughts on how we move forward in developing the rewrite of the comprehensive plan

Mr. Mandalas, to be clear, that if it is a formal committee that the Planning Commission will be establishing and they would meet under the Freedom of Information Act in a public meeting. Mrs. DeWitt, 55 Fields End, asked Mr. Mandalas if he agreed with Mr. Barto when he stated that in the March 16th letter received from PLUS, the three comments that were received are the only items which need attention in order to certify the update, because that was not how she interpreted it. Mr. Mandalas said that with PLUS, the certification comments that come up front are comments that absolutely have to be addressed or else the Plan Review will not be certified. Generally they are statutory requirements that we have to have included. The things that come after, that are labeled recommendations; under the statue are truly recommendations. They are things that, in the spirit of the statute, the Planning Commission needs to consider each of the recommendations but there is not an obligation to adopt any or all of the recommendations. Mr. Mandalas said that Mr. Barto did an accurate reading and did present the Town’s position.

Mr. Barto said it is now on the table and time to move forward. Mr. Poole, 76 Pine Reach asked Mr. Barto if the discussion he had with Ms. Holland that the Planning Commission would not act on the recommendations until 2014 was in writing. Mr. Barto said that he spoke to Ms. Holland on the phone and asked her where they go from here. She said that the certification items needed to be addressed right away. Mr. Barto said that he did discuss with her that they are going to move forward on all the items and the recommendations. Mr. Barto said that this is what we are doing and we are starting right now. The rewrite on the comprehensive plan is due by the end of 2014 so we are moving forward. The Planning Commission will meet July 9th, August, 13th and September 10th, they are second Mondays. Mr. Barto asked the Planning Commission for their thoughts.

Mrs. Lyons expressed that Mr. Barto's proposal was excellent. It should bring the community together, rather than the division that we have now.

Gail McDermott, 7 Pine Reach said that she liked Mr. Barto's suggestion as well and suggested that a synopsis be shared with everyone in the Acres so that they know what is happening and could feel like they are involved.

Mr. Scheurer agreed that Mr. Barto's proposal was a good one and suggested that number (12) street safety, be added to the list of recommendations. Mr. Barto said he would rather that street safety is added to the next agenda so that it may be addressed immediately. Mr. Scheurer said that he loves the idea to have people work on various pieces of the 2014 plan and come back with recommendations for the Planning Commission to discuss. It will speed the process. Mr. Barto said that it will at least broaden the perspective of folks on all both sides. There is going to have to be give and take on all sides and whatever information we get from that group Mr. Barto said that he is optimistic that it will assist the Planning Commission make their recommendations.

Mrs. DeWitt, 55 Fields End felt that the covenants state that every property is entitled to be an art gallery or an art studio so in the big context this was set up as an art community. Mr. Mandalas responded that the covenants start out to say that Henlopen Acres is a residential community, then it says that there are some exceptions and art galleries is one of the exceptions that are provided for. So there is an allowance for art galleries. Mr. Barto said that is why he is forming a group, not including himself, to work on this.

After discussion it was decided to hold a special meeting of the Planning Commission on Friday May 25 at 3pm,

David Lyons, 43 Pine Reach requested that the committee that discusses the Art League seek as much involvement as possible from residents that live directly around the Art League.

Mr. Mandalas said as he understands it there are four committees. They are:
The 2014 Comprehensive Plan Advisory Committee on the Rehoboth Art League
The 2014 Comprehensive Plan Advisory Committee on review of Zoning Ordinances
The 2014 Comprehensive Plan Advisory Committee on Block W certification
The 2014 Comprehensive Plan Advisory Committee on the beach club jetty and groin.

Mr. Scheurer made a motion to establish the four advisory committees that Mr. Mandalas has outlined. The advisory committee members to be named at a subsequent special meeting of the Planning Commission. Seconded by Mrs. Lyons. Motion passed unanimously.

Mr. Barto said at the Special Meeting the Planning Commission will have to outline for all the Advisory Committees, if need be, specifics on what we are looking for. Back a while ago when Mr. Messick was the town attorney, there was a list drafted for permitted activities of the Rehoboth Art League. Mr. Roth said that it was a draft historical district. Mr. Barto said what would be the efficacy of trying to make one the Advisory Committee on the RAL charges to identify approved activities.

Mr. Mandalas said that the Rehoboth Art League was in existence prior to the town adopting zoning. It is a grandfathered property for zoning purposes. There are uses they are permitted by law and there is nothing the town can say one way or another about it. Some of those permitted uses can be taken away if they cease doing those activities for a 12 month period. Part of the confusion is what uses are permitted and what uses are not permitted. It gets more confusing for example a restaurant can change an item on their menu. When it gets difficult is, when there is not that clarity, where it clearly falls within their grandfathered status. There is a lot of confusion of what uses are permitted and what uses are not permitted under the grandfather status. Hopefully the advisory committee will address some of that.

Mr. Hill was very concerned about the Planning Commission moving into the territory of what uses should be permitted under the concept of non-conforming use. Under our provisions, decisions of non-conforming use are made by our Board of Adjustment. John Staffier, 58 Pine Reach added, he felt the advisory committee should focus on what they think the Art League should be permitted to do, not what may or may not be a permitted use. Mr. Barto concurred.

To summarize Mr. Barto stated that we need to evaluate the Rehoboth Art League's status, governance, zoning and need for change and what impact it would have on our neighbors in the town.

6. Adjournment

Mr. Scheurer made a motion to adjourn. Mrs. Lyons seconded the motion. The meeting adjourned at 12:10 pm.

Approved: _____, 2012