

MINUTES: Meeting of the Planning Commission of the Town of Henlopen Acres held on **Wednesday, July 3, 2013 10:00 a.m.** at Town Hall on 104 Tidewaters in Henlopen Acres, Delaware

PRESENT:

John Scheurer	Planning Commission Chairman
Mary Jane Lyons	Planning Commission
Bob Reed	Planning Commission
Dick Thompson	Planning Commission
Gordon Kaiser	Planning Commission
David Hill	39 Rolling Road (member ex-officio)
Thomas Roth	Town Manager (member ex-officio)
Sharon Karl	Town Clerk
Barbara Shortley	59 Pine Reach
David F. Lyons	43 Pine Reach
Henry DeWitt	55 Fields End
Sarah Sunderland	71 Fields End

[The Minutes Are Not Verbatim]

1. CALL TO ORDER – Pledge of Allegiance

Chairman Scheurer called the meeting to order at 10:00 a.m.

2. APPROVAL OF MINUTES – May 3, 2013

Mr. Scheurer reviewed items that were covered at the May 3, 2013 meeting to help prepare stage for what they need to accomplish at this meeting.

A **motion** was made by Mr. Thompson to approve the minutes with a correction to the spelling of DNREC in two places. Motion was seconded by Mr. Reed. Motion passed.

3. OLD BUSINESS

3a. 2014 Comprehensive Plan

Mr. Scheurer said that there are two letters in the packet from Ms. Dorothy Morris; Principal Planner State of Delaware Office of State Planning Coordination. In her a June 3rd letter she introduced herself and said that she is available to be a resource to us in completing our Plan. Mr. Roth said the second letter dated June 13th from Ms. Morris is in response to an annual report that is required and has been submitted on our Comprehensive Plan.

Item 2 - Review of Zoning Code for enforceability and ease of compliance

This will be discussed at a later meeting.

Item 4 – Develop a wellhead protection program

Letters that have been received back from two oil/propane providers in reference to buried tanks, when they were installed and how many gallons they hold. Mr. Roth said we have received responses from two providers. Letters were sent to seven companies. Mr. Roth said that we will follow up with the ones we have not heard from.

On the subject of water run-off issues Mr. Thompson asked if excessive rain and pool water cause additional burden for the town, does it cause additional run-off, additional pollution. Will the county or the state raise that issue? Mr. Roth said that where it causes us problems for the town is with mosquitos. Mr. Roth in answer to Mr. Reed's question said that the town storm water run-off goes directly into the canal except for a couple outfalls that empty into the ditch on Duneway.

Item 6 – Evaluate fire response and suppression availability

Mr. Scheurer read a draft prepared by Mr. Roth. This stated that the Rehoboth Beach Volunteer Fire Company does not have a concern about the availability of adequate water for firefighting. Their larger concern was visibility of house numbers. Mr. Roth said that we do remind residents periodically about the County requirement. Mr. Roth said that he will have Security do a spot check in the community and send out letters to residents whose house numbers are not clearly and easily visible.

Item 7 – Consideration of tree coverage requirements or restrictions

Mr. Scheurer referred to a section from the landscaping Code of the Town of Ocean View that reads if you cut down a tree on your property you have to replace the tree, 1 per every 3,000 square feet of land. He wondered if we should consider something similar, since we have had a lot of trees fall or cut down. Should this be something to recommend. Mr. Roth stated the average lot size in town is 20,040 sq.ft. which would equal seven trees if the Ocean View Code was applied. Mr. Scheurer felt that may be too much to require. Mr. Thompson said that we don't want to end up with care lots. Mr. Scheurer suggested that if you take down a tree, then you have to replace it with a new one or at least 'x' number of trees per lot.

Mr. Thompson asked if Rehoboth had a standard. Mr. DeWitt, 55 Fields End said the Rehoboth tree ordinance is very complicated. We would want to make it simpler than Rehoboth. You have to make clear what your intention is. You want a tree that will grow tall enough to have an impact, as opposed to decorative low lying trees. Mr. Reed said that there is also an issue of personal choice. Some people love to be under a full canopy and some like the sunlight to come through. Our efforts should be in preserving an attractive streetscape. Trees in the front yard are more important than the trees in the backyard and people should have some choice of how much sunshine they want to let through. Mayor Hill said some thought has to be given to the enforceability of such regulations. He added that a landscape plan is required for new construction. Is this something the Environmental Approval Committee can review and make suggestions about shrubbery, trees, etc.

Mr. DeWitt added that one of the characters of Henlopen Acres is the Urban Forest close to the ocean, which is very rare and we should value that. Also if you take too many trees down the ones that remain are weakened because trees protect each other. Mr. Scheurer asked Mr. Roth to draft some wording that the homeowners need to make an effort, maybe a standard like one tree per 5000 sq.ft., or if a tree comes down it needs to be replaced it with a tree that once it becomes mature provides a canopy. Mr. Reed added that if you already have the minimum number of trees a homeowner should be able to remove a tree without town interference.

Item 8 – Develop responsibility and contingency plans for jetty/groin

Mr. Scheurer read a drafted paragraph for the Comprehensive Plan draft. Here were no objections to including this information.

Item 9 – Clarify understanding for land adjacent to Pine Reach

Mr. Roth prepared language that the area from Pine Reach to Surf Avenue from Deauville Beach Park entrance remains as passive open space without any improvements, as currently zoned O-1 by the City of Rehoboth Beach. Mr. Scheurer said that we will incorporate 3a-9 into the Land Use and Annexation section in the Comprehensive Plan. Mr. Roth added that the property is 120 feet by 612 feet at its widest points.

Mr. Reed added that we should go on record that we are opposed to any zoning change to that area. Mr. Roth suggested that when we have the draft completed, we can ask the City of Rehoboth to comment on our language. Mr. Roth said that he still needs to find out whether this area is designated a key wildlife habitat.

In a related issue, Mr. Roth said the only agreement he can find associated with the Army Corps of Engineers is one that allows the Town use and maintenance of the gravel road from our parking area to Grove Park. He will contact the Army Corps. To see if there are any other existing agreements.

Item 24 – Review existing and needed drainage easements

Mr. Scheurer stated that Mr. Roth slightly modified some of the language which will be incorporated into the Plan draft.

3b. Wellhead Protection

Mr. Scheurer stated that we are getting the rest of the storage tanks identified and coming up with some language with regard to wellhead locks to prevent sabotage and some additional language about pesticides to inform people within these zones the use of pesticides are not allowed. Mr. Roth presented a map from the Sussex County website that shows defined wellhead protection areas of 150 foot radius from the wellheads. Mr. Scheurer added that it is interesting that there are properties outside the Acres on Henlopen Avenue who are within our 150 foot radius and we would not have control of their use of the wellhead area.

Mr. Reed pointed out that some of these 150 foot radius areas cover entire lots. Additionally, we should be concerned with run off, so that it is directed away from these areas. Mr. Roth stated that they are not only a wellhead protection area but it is also a well recharge area, so what is good for this area and what is bad. Mr. Roth suggested that we ask someone from DNREC come to the next meeting and explain what a protection area should be. Mr. Scheurer agreed as this is a critical issue.

3c. Lighting

Mr. Roth presented a draft prepared by the Zoning Officer. As drafted this could be applied by the Environmental Review Committee for their review and give them the authority to review lighting.

More discussion ensued. Mayor Hill felt this should be about disturbing the neighbors. Mr. Scheurer asked the other members of the Planning Commission if they wanted to address this or send it to the Board of Commissioners. Mr. Reed having been on the ERC said this will most likely not come up in the plan review of a new house. Plans will not be detailed enough at that stage to tell what direction fixtures will be pointing. If the lights are shining on a neighbor, the neighbor will call Mr. Roth. Mr. Thompson said that this could really get intrusive if we press it too far. Mayor Hill said the language should be general in wording like outside lighting shall not shine outside your property boundaries and maybe shielded. Mr. Reed added that if the info is on the plans and then approved by the ERC and subsequently shines on the neighbor, the home owner will say, “you approved my plan”. Mr. Roth said he would revise this for the next meeting.

3d. Building Setback, §130-20

Mr. Roth presented a revised draft based on comments at the last meeting. It now reads, “The established building line shall be the average of the setback of existing structures on the same block, on the same side of the street considering six lots on either side of the lot under review. **However, the established building line shall not require a setback of more than 40 feet**”. Mr. Roth said that builders have stated as the Code currently reads, every time a home is torn down and rebuilt, it will move the building setback line back until eventually there will be no back yards.

Mr. Reed said that a survey is required after the foundation goes in, so before any building takes place a violation would be caught. If the house is not where it belongs it would be corrected then. Mr. Scheurer asked why we just don't go back to what we had before. This proposed seems to say the same thing in a more complicated way. Mr. Roth said that the Code read prior to 88 Tidewaters, "required setback of not less than 20 feet or the average of the two front setbacks of the house on adjacent lots on either side". It was changed to six.

More discussion ensued. Mr. Reed felt there was a way to simplify it. As the county does it, you have a setback, but if your neighbors are closer to the street than the setback you are allowed to move up to the average. We could make it the lesser of 40 feet or the average. The 20 feet never comes into play. Mr. Scheurer said we need to examine how many lots we may be adding an extraordinary hardship. The average lot maybe 20,000 feet but 119 lots are smaller than that.

Mr. Scheurer asked Mr. Roth to draft something for the next meeting with wording "the lesser of 40 feet or the average of two lots on either side".

4. NEW BUSINESS

4a. Impervious Surfaces

Mr. Scheurer presented definitions of pervious and impervious surfaces. This follows the discussion on the required amount of coverage on your lot that has to be pervious, lot coverage ratio. There has been discussion, can you use the pavers that allow the water to go through, or the combination of grass and block that allow the water to go through but still provides something else. Mr. Reed said that the way things are now 60% of the property has to be open space. Your house can cover a maximum of 20%. Driveway, sidewalks, patio and swimming pool can cover an additional 20%. You cannot combine the 20% for the house with the 20% for accessory. If your house is 15 % than you total lot coverage dwindles to 35% because the two are separate. The lot coverage says nothing about pervious or impervious. If you build your driveway out of totally pervious gravel it still counts as lot coverage. This would introduce a whole new issue. What is the objective, how do we insert it and how do we apply it.

The Planning Commission decided not to pursue this issue.

Additional discussion items

Mr. Scheurer stated he would like to start a new section of items for the Comprehensive Plan and would like to add the following items for future discussion.

1. Marina - It is unacceptable that the dredging bags sit there for a year and we may have to do this again in a few years. We need to seek a long term solution or present it as something to be addressed in the next ten years.

2. Bridle Paths – This should be mentioned in our Comprehensive Plan. What purpose do they serve? Mr. Roth said they are utility easements now. Some are impassable because of vegetation, one because of a utility transformer. Section §42.3 in the Code states that "No individual who is not an owner of any lot in the Town of Henlopen Acres or is not a resident of the Town of Henlopen Acres shall enter or use any bridle path within the Town of Henlopen Acres without the express permission of the town of Henlopen Acres." Mr. Scheurer wondered what if we could remove §43-2 and have them as easements only and no longer a public thoroughfare. Mr. Thompson asked how we would enforce that. Mr. Scheurer said we would consider this at the next meeting.

3. Street Traffic – Mr. Scheurer expressed the need to explore a better way to handle the increasing number of walkers, joggers and bikers that use the streets within our town.

5. ADJOURNMENT –

Mr. Reed made a **motion** to adjourn the meeting. Mr. Thompson seconded. The meeting adjourned at 11:48 am.

Approved: August 9, 2013