

**MINUTES:** Public Hearing of the Planning Commission of the Town of Henlopen Acres held on **Wednesday December 7, 2011 10:00 a.m.** at Town Hall on 104 Tidewaters in Henlopen Acres, Delaware

<b>PRESENT:</b>	John Barto	Planning Commission Chairman
	John Scheurer	Planning Commission
	Connie Boland	Planning Commission
	Mary Jane Lyons	Planning Commission
	Wanda Davis	Mayor (member ex-officio)
	Thomas Roth	Town Manager (member ex-officio)
	Sharon Karl	Town Clerk
	Connie Holland	Office of State Planning
	Bryan Hall	Office of State Planning
	David Lyons	43 Pine Reach
	Paddy Richards	5 Rolling Road
	David Hill	39 Rolling Road
	Nita Hill	39 Rolling Road
	Marcia DeWitt	55 Fields End
	Henry DeWitt	55 Fields End
	Le Rowell	4 Broad Hollow
	Ed Rowell	4 Broad Hollow
	Richard Poole	76 Pine Reach
	Joni Reich	25 Tidewaters
	Sarah E. Sunderland	71 Fields End
	Sheila Bravo	Rehoboth Art League
	Diana Beebe	Rehoboth Art League
	Eileen Clark	59 Tidewaters
	Martin Clark	59 Tidewaters
	Herb Wilgis	32 Pine Reach
	Bob Stevens	66 Fields End
	Katherine McNeilly	55 Rolling Road
	Curtis McNeilly	55 Rolling Road
	Christine Moore	14 Tidewaters
	Norma Lee Derrickson	49 Tidewaters
	John Staffier	58 Pine Reach
	Ryan Mavity	Cape Gazette
	Pat Coluzzi	City of Rehoboth Beach
	Fred Beaufait	6 Blue Heron Drive, Lewes

**ABSENT:** Dick Thompson Planning Commission

**[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. Comprehensive Plan Public Hearing**

Mr. Barto reminded the audience that this is a public hearing of the Planning Commission. He reminded everyone to sign the roster and note if they wish to speak. Mr. Barto said that the purpose of today's hearing is for the Planning Commission to listen and receive public comments on the Comprehensive Plan Review Draft dated September 30, 2011. This will help the Planning

commission make their final revisions on the Plan Review that they submit to the Mayor and Commissioners. He said that the Planning Commission will not answer questions or participate in discussion at this hearing.

David Hill, 39 Rolling Road, thanked the Planning Commission for their efforts and said that he looks forward to the final product.

Paddy Richards, 5 Rolling Road, said "ditto" Mr. Hill.

Herb Wilgis, 32 Pine Reach, said on page 5 of the draft review he pointed out that the acreage of Henlopen Acres is 117.38 acres and said that this is more than 5 acres less than what we had in 2004 and asked what happened to it. Next, he said, on page 6 of the draft review it is pointed out that contamination of our water supply is an issue. The commission, in my opinion, was correct to point out this major issue. On page 5 there is a paragraph on the Rehoboth Art League, yet the commission has never identified the issue with the Art League. He said if he were head of planning for the state of Delaware that he would appreciate knowing about this potential major issue with one of Delaware's principle cultural institutions and its host town. As in the case of the issue of potential water contamination, the commission should highlight the issue between the Rehoboth Art League and the town in the Comprehensive Plan. Mr. Wilgis said another minor comment he has is in the paragraph where you talk about the art league you should mirror the list of activities, such as art gallery and art school, that are mentioned in other sections of the plan. Lastly, in a recent court case brought by the town against a landowner in Henlopen Acres, the presiding Judge ruled that the town's ordinances were not enforceable because they were too vague. The town needs a through revision of its ordinance system to make sure that it has due process written into them, which is not the case today. This should be mentioned in the Comprehensive Plan, just the way the potential issue of contamination of the town's water supply was mentioned. Mr. Wilgis thanked the members of the Commission for their hard work in improving the quality of life in Henlopen Acres.

Marcia DeWitt, 55 Fields End, said that she is a resident, a member of the Beach Club, a member of the Art League, she uses the marina, her husband is involved in Block W and they have been involved in many of the town's meetings and that she appreciates the opportunity to have a fair process for the comprehensive development plan. She said that she knows the town feels pressure to go through the Plus process but that there are many issues that need to be addressed and that they need to be addressed in the comprehensive plan. Mrs. DeWitt thanked Mr. Barto, in particular, for making this an inclusive process, although there are some issues of unfairness that need to be reviewed, including some letters in the record from Mr. Poole and others about the process. The second issue she said is that of the Rehoboth Art League. She said that she strongly suggests that the Planning Commission act on David Auten's recommendation and consider, at this point in time, the concept of zoning the art league as a cultural zone rather than residential. The residential zoning is not appropriate and in fact that was pointed out in the 2004 plan. There have been various efforts to try to correct this that have not yet been successful. Mrs. DeWitt said that the issue is urgent to deal with now, not to wait to 2014 or beyond. She said for at least ten years the art league has at least one building that needs to be replaced, but under the current code we are not able to do that. We thought in the past that fire was our biggest risk, because we can't replace the building under the current zoning, but after the hurricane and the earthquake this year, they are equally threatening issues. Mrs. DeWitt strongly urged that the planning commission act on the consideration that is outlined in David Auten's letters, plus by quite a few others, now with the recommendation.

Henry DeWitt, 55 Fields End, said that he appreciates the commission incorporating the factual corrections he made to the first draft of the comprehensive plan. Mr. DeWitt said the plan discusses the need to limit runoff into the canal but makes no recommendation on what the town might do to limit runoff from landscaped areas which are a significant contributor to water pollution. He suggested that the town look into the requirement for limiting such runoff on properties that back on the canal. Secondly, he said, the plan discusses the proximity of the Rehoboth Beach Volunteer Fire Company to provide various emergency services. He said that he believes that it should note the lack of fire hydrants in Henlopen Acres and recommend that consideration be made for providing them at some future date. Third, the plan discusses the Rehoboth Art League (RAL) and recommends that The Peter Marsh House, accessory structures, landscape and gardens not be modified significantly as to diminish the historic characteristics of the property or as a departure from the residential character of Henlopen Acres. Mr. DeWitt said that he believes that it should be recommended that steps be taken to facilitate this process. When the RAL recently recommended that a building, not having residential character, be replaced with one that did, a variety of issues developed. A process should be started to make it possible for the town and the RAL to work together to allow the replacement of decrepit non-residential structure without the need for a variance. Mr. DeWitt said that there are three recommendations that are made in the plan that are not included in the implementation section are: Well Head Protection, the Marsh House Preservation and runoff limitation. He said that there are some subjects that are totally missing from the plan that should be included. (a) The facilitation of energy efficiency and the use of alternative energy sources. (b) The importance of the tree cover in Henlopen Acres and actions the town might take to preserve that cover. (c) The fact that Henlopen Acres tax rate is one of the highest in the state of Delaware and yet the level of services provided is quite low. (d) The current zoning issues as they relate to the RAL need to be addressed whether as a new cultural zone or as an overlay. All other property owners in Henlopen Acres except the RAL are allowed to remove a decrepit structure and rebuild without requiring a variance.

Richard Poole, 76 Pine Reach said that the importance of this hearing is to hear various comments and react to them, to have dialogue. It is important that we know what the various comments are in writing so that we can continue the dialogue because, he said, he has no idea who said what in these various e-mails and letters. This hearing was set for the middle of the week, in the holiday season and many people couldn't come, even though they would have liked to have been here, therefore, he suggested that the e-mails and letters be made available and that the public hearing continue on January 9, 2012.

Mr. Barto told Mr. Poole that he did not understand the first part of his request but assured him that the letters and e-mails will be part of the public record and that the Planning Commission will meet on January 9<sup>th</sup>.

Le Rowell, 4 Broad Hollow, said she just wanted to thank the Planning Commission for their work.

Eileen Clark, 59 Tidewaters, said she has submitted an e-mail. She thanked the Planning Commissioners for the process and told them that she wanted to be a part of the process by tracking all the action items. She said she still has three things that she needs to repeat. She told Mr. Barto that she was sorry that he did not understand Mr. Poole's question. There are a lot of comments that have been received on this current draft and we want to know what you are going to do with those comments. She said that she has already listed 5 or 6 new issues that she believed that the community would like them identified in the implementation section, 3.0. She

said that her second point in her e-mail to the Planning Commission and the 26<sup>th</sup> comment in the items here, is that every item that is an issue of this community, like runoff, like the RAL, like the fire department, if we raise them they should be included in that section and when we do the update to the plan, that we take time and we look at both sides and we come up with a community decision of what should be recommended in the plan. Mrs. Clark said that she believes the issues should all be addressed, and they have not been. She believes that these comments that are being provided today should be included in the plan and before it is sent off “we” as a community should know how you are deciding to include those. What are you doing with our comments? We as the public should be able to see that.

Mr. Barto said to Mrs. Clark that he could not tell her what they were going to do because the Planning Commission is taking public testimony today to determine how they are going to move forward, what else they are going to add or delete to the draft update of September 30<sup>th</sup>. He said, we are not finished and that is why they are there today. He thanked Mrs. Clark for her action items. Mr. Barto again reiterated that the Planning Commission was not done, that they have work to do before they forward the plan to the Mayor and Commissioners and then get involved in the Plus program. January 9<sup>th</sup> is a regular Planning Commission meeting; we will reconvene in public session to work on the draft.

Martin Clark, 59 Tidewaters, said that in this season it would be nice to see peace on earth in Henlopen Acres. We have a wonderful community and I appreciate the work of the Planning Commission.

Katherine McNeilly, 55 Rolling Road, said that she has been involved in this community since she was 13 years old and she is now living in her parent’s old house. She said that she has seen the community growth into a town and some of the things she has seen happen have upset her, for example that the Rehoboth Art League is considered non-conforming when it existed as an art league will be celebrating its’ 75<sup>th</sup> year. Mrs. McNeilly said that she is hoping that we can see to it that it will be more fair. It has never been a residence and she said that she wonders if this residential thing came about as we formed a town and we received back the homestead. She said that she does not think the residential zoning ever had anything to do with the original art league and its’ business. She said that she hopes it can get straightened out.

Norma Lee Derrickson, 49 Tidewaters, said that she wanted to thank the Planning Commissioners for their time and effort and volunteering to do this. Mrs. Derrickson said that she lives in a residential community and that she wants to stay in a residential community. She said she is concerned about air pollution, noise pollution, light pollution and runoff from a lot of vehicles, into the canal. She said that she does not want to live in a tourist attraction. She said that she has lived here for 38 years.

Joni Reich, 25 Tidewaters, said that she is here to learn from everyone. She said that she has some understanding of this issue that has divided the community and that she thinks it is unfortunate. She said to echo the comments of some other people, she hopes at some point in the future, lighter heads can prevail and try to reach some amicable agreement so that everyone can live together in what is a beautiful community and my family is proud to call it home.

Diana Beebe, Rehoboth Art League, said that she is the president of the Rehoboth Art League. She said that she wanted to echo a few of the things that have been said this morning, especially Mr. Clark’s desire for peace on earth. This is a small community and a very special one and it behooves us all to work hard together to come to agreement about how things should

function in the town. Ms. Beebe said that it was the founding vision of Col. Corkran and his wife Louise, 73 years ago, to create a community of artist and their students and patrons in this very beautiful place and 73 years a later both the art league and town have grown, and in some ways unfortunately they have grown in ways that have not always been healthy in terms of their relationship with one another. The art league today provides income to hundreds of artists. It partners with other non-profits in neighboring communities, and it provides outreach to many deserving students, children and seniors throughout the county. A lot of its work is actually done off campus, and some of you may not know that. The RAL is also the steward for a significant permanent collection of Delaware art and for our own historic campus including most notably the Peter Marsh House which has been mentioned here. Ms. Beebe said that the historic campus of the art league and it's unique mission contribute to the distinct character of Henlopen Acres. Col. Corkran's surrounding development has become an equally unique town in its very residential nature. Residents are naturally very protective of that character and we understand that. The community no longer depends on the art league for its social life and its cultural activities, as there are numerous offerings across the region. The old sense of belonging has faded and tension has arisen. The art league really recognizes that tension and respects the town's desire to maintain its residential form, and she said she wanted to assure the town of that. The art league also wants badly to be a good neighbor welcomes the opportunity to work with the community to achieve the best interest of all parties. Ms. Beebe said that she appreciates the work of the Planning Commission volunteering the long hours they have on this plan and everyone in the town should be very grateful. Ms. Beebe said that residential zoning for the art league does not work. She said that they do not want to change the unique historic flavor of the campus but there are very serious problems. That residential zoning does not allow the art league to properly maintain its property in ways that assures the viability of its mission to teach, inspire and preserve. Without zoning guidelines suitable to a historic and cultural institution, rulings often seem arbitrary, capricious and reactionary. This uncertainty, she said, creates undue friction between the RAL and the town and causes mistrust and hard feelings on both sides and furthermore it puts the art league in serious danger of falling into disrepair and becoming outdated and unable to function. Ms. Beebe said that the RAL has no assurance that the buildings can be modernized or replaced or that necessary safety and security measures will be approved. The RAL believes that an open process between well intentioned and reasonable honest parties will want to arrive at a workable agreement as to what matters most on both sides so that expectations are clear, transparent and delineated. This is in the interest of both the town and the art league and what Mr. Auten suggested in his thoughtful letter and what we believe will go a long way in repairing our relations.

Pat Coluzzi, 41 Sussex St. RB, DE, said she is a City Commissioner for Rehoboth Beach and has been for the past five years and was also a planning commissioner for one year and is present at the hearing because you are a very close neighbor of ours. She said that they are always concerned with Henlopen Acres and what goes on here because it can affect the City of Rehoboth Beach. The art league, as many people have already mentioned in many more words and descriptions than I can go into right now, is a treasure of Delaware and I really hope that it can be preserved. She said that she is concerned about the current residential zoning of the art league. The fact that it may not be able to be maintained or rebuilt if something were to happen concerns her greatly. She said that a lot of people, who come into Rehoboth Beach and stay in our hotels, also come here to go to the art league. The City of Rehoboth Beach passed their Comprehensive Development Plan in 2010. Connie Holland and Bryan Hall of the State Office of Planning have been immeasurable help to us and I would strongly advise you to seek their advice. Ms. Coluzzi ended by saying that she certainly hopes that the art league will continue and be able to be maintained and perhaps this idea of a cultural zoning can be realized.

Connie Holland, Office of State Planning, thanked the Planning Commission and the residents of Henlopen Acres. This review does have to go through PLUS and she recommends that it be done before rather than later because what you are doing is collecting data and collecting comments. If you send it through PLUS, it's the first working day of each month, if you get the state comments in as you're collecting these comments that you are working through in your work shops, you will probably have a little better answer, you will at least see what the state wants for you; storm water drainage, runoff, protecting your wells, protecting your environment, your streets, your roads, etc. You will probably have some interesting comments from housing. She said that she knows that there is an elephant in the room with the art league issue. After hearing Pat speak this morning, she did work with Rehoboth. They actually had about the same issue with the school. The school thought it was an extremely valuable piece of property and so did Rehoboth and the question was what we are going to do with it. Rehoboth and the school district actually worked together and came to a wonderful resolution on what could happen there and she urges the Planning Commission to look at that. She suggest sending the plan up to PLUS as soon as possible because you will at least have the state comments, what's law, and then recommendations which hopefully are extremely helpful. The other part is that she is glad to see Rehoboth here today because it is part of the law that you have to work with the communities that you actually impact and also the town. She suggests they have a copy.

Mr. Barto said that today's hearing is to take testimony. He said that he sent Ms. Holland and Mr. Hall an e-mail requesting that they attend the hearing and that he is glad they were able to attend today. Mr. Barto addressed Ms. Holland, making it clear he was only speaking for himself, and told her that one of the reasons they have not, at this juncture, sent the plan to the PLUS process is working with my neighbors here and he doesn't want to focus on one issue or one facility, but with the art league, he was afraid if we sent it to PLUS, before the public hearing and before we meet again, that there may be a perception by our neighbors that "they have already made up their minds, they have already decided what they are going to do, look here it is, they have already sent it on to the state", so that is why he has held that up. Mr. Barto said that Ms. Holland raises a very good point, and we will at some point have to send this on to the PLUS process. If there were open items and we hadn't had a public hearing, he could see the potential for misunderstanding that the negative aspect, "the town has done it again, the Planning Commission has already made their decisions, they brought us into the Planning Commission meeting and let us talk and didn't listen to anything that the community said." He thought it was important to continue an open discussion so that community knew that the Planning Commission and our elected officials were working together, diligently, to try to update our plan in the best manner that we could. While everyone is very well intentioned and very interested he has found that there are some complicated issues. If you don't attend all the meetings and you don't read all the literature, you might not have the accurate information. It is his belief that it was best to wait.

Richard Poole, 76 Pine Reach, apologized to Mr. Barto if he was inarticulate. He said that what he was trying to say was that instead of having one on one submission to the Planning Commission that we also try to have a dialogue and discussion and try to come together. He has been working for some time, along with others to try to see where there could be common ground and he feels there are a lot of areas where there could be common ground. If we could get out from under inapplicable zoning classification, the residential zoning for the RAL does not work. Mr. DeWitt and Mr. Wilgis have also brought up some very interesting and important matters that are unrelated to the RAL. Mrs. Derrickson made some comments that deserve some further thought. Mr. Poole asked if the Planning Commission would prefer that he write out

those thoughts and responses and to the other letters and e-mails that he has not yet read so that the Planning Commission can hit the ground running in January.

Mr. Barto responded that all the meetings are open. He encourages that the dialogue continue, that is what has brought us to this point. We will reconvene on January 9<sup>th</sup>. He feels it is time that the public hear from the Planning Commission. We determine, yea or ney, good or bad, what needs to be in, or needs to be out. It is an open meeting but the members of the Planning Commission are focused on the review and we have to do some work. Ms. Holland has said that she wants us to be comfortable with it. He thinks that is the effort and direction we are going. Pat Coluzzi, 41 Sussex St. RB, said that since they are part of the record they do need to be available to everyone, either on the website or they have to come to town hall. She said that the City of Rehoboth Beach, CDP is online and everyone is welcome to view it at [cityofrehoboth.com](http://cityofrehoboth.com), it may be helpful. Mr. Roth simply said they will be available.

Sheila Bravo, Rehoboth Art League, said that between now and when the final Comprehensive Plan update is done, she is always willing if anyone has a concern or an issue about the art league to please give me a call. Certainly concerns about traffic, parking and lights and things that come up. It really helps to know what the concerns are. She welcomes the opportunity for any feedback.

Christine Moore, 14 Tidewaters, said that she would just like to end with her point of view. If the art league were not there, what would you like to see in its' place; several more homes. When you have people come visit you, is the art league one of your points of destination, do you use it as a tool, where can we take the children, where can we spend an afternoon. When you have friends come to visit who are here to paint, to enjoy, what would you do if it weren't there. How much of an impact does the Rehoboth Art League have in your lives? How much of an impact does it have on people who come to buy real estate here, they drive around and they see the RAL, they want to be part of the community that has this, it is so, so unique. So I just leave you with those questions.

### 3. **Adjournment**

Mr. Barto closed the public hearing at 10:48 am. Next meeting: January 9, 2012 10:00 am.

Approved: \_\_\_\_\_, 2012