

**Town of
Henlopen Acres**



**Comprehensive Plan
2014**

adopted March 4, 2016

**ORDINANCE OF THE MAYOR AND COMMISSIONERS
OF THE TOWN OF HENLOPEN ACRES
RESPECTFULLY REJECTING THE GOVERNOR OF DELAWARE'S
RECOMMENDATIONS RELATING TO THE 2014 COMPREHENSIVE PLAN
UPDATE AND AFFIRMING THE ADOPTION AND EFFECTIVENESS OF THE
2014 COMPREHENSIVE PLAN UPDATE.**

WHEREAS, Title 22, Section 702(a) of the Delaware Code provides, in relevant part, that “[a] planning commission established by any incorporated municipality under this chapter shall prepare a comprehensive plan for the city or town or portions thereof as the commission deems appropriate.”

WHEREAS, the Comprehensive Plan of the Town of Henlopen Acres was certified by the State of Delaware on July 9, 2004.

WHEREAS, Title 22, Section 702(e) of the Delaware Code provides, in relevant part, that “[a]t least every 5 years a municipality shall review its adopted comprehensive plan to determine if its provisions are still relevant given changing conditions in the municipality or in the surrounding areas. The adopted comprehensive plan shall be revised, updated and amended as necessary, and re-adopted at least every 10 years.”

WHEREAS, Title 22, Section 702(f) of the Delaware Code provides, in relevant part, that “[t]he plan shall be subject to the state review and certification process set forth in § 9103 of Title 29.”

WHEREAS, Title 29, Section 9103(e) of the Delaware Code provides, in relevant part, that “the Office of State Planning Coordination shall submit a final comprehensive plan report and recommendation to the Governor or designee for certification.”

WHEREAS, Title 29, Section 9103(e) of the Delaware Code further provides, in relevant part, that “If there is a finding that such a plan, amendment, revision or update is inconsistent or if there is a dispute, the report and the plan are to be forwarded to the Cabinet Committee for State Planning Issues and shall follow the same process as for the certification of county plans.”

WHEREAS, the Town of Henlopen Acres has been actively engaged in preparing and finalizing the ten year Comprehensive Plan update since 2011.

WHEREAS, the Planning Commission conducted public hearings to accept public comment on the draft 2014 Comprehensive Plan update on December 7, 2011 and June 27, 2014.

WHEREAS, the Mayor and Commissioners held public Commission meetings and accepted public comment on the draft 2014 Comprehensive Plan update on October 10, 2014 and December 12, 2014.

WHEREAS, the Planning Commission reviewed and approved the 2014 Comprehensive Plan update attached hereto as Exhibit A at a public meeting on July 10, 2015.

WHEREAS, the 2014 Comprehensive Plan update was reviewed and considered by the Mayor and Commissioners of the Town of Henlopen Acres.

WHEREAS, the Mayor and Commissioners determined that the 2014 Comprehensive Plan amply meets the Town's obligation under Title 22, Section 702(a) "to encourage the most appropriate uses of the physical and fiscal resources of the municipality and the coordination of municipal growth, development, and infrastructure investment actions with those of other municipalities, counties, and the State through a process of municipal comprehensive planning."

WHEREAS, the Mayor and Commissioners adopted an Ordinance on July 10, 2015, making the 2014 Comprehensive Plan "effective on the earlier of (1) the date on which the Governor of Delaware certifies the 2014 Comprehensive Plan update, or (2) the date on which a majority of the Mayor and the Commissioners of the Town of Henlopen Acres act to accept or reject any recommendations forwarded to the Town by the Governor pursuant to Subsection 9103(f) of Title 29 of the Code of Delaware, or (3) November 13, 2015."

WHEREAS, due to a dispute between the Town and the State Office of Planning Coordination, the Governor was not provided an opportunity to certify the 2014 Comprehensive Plan or to make recommendations relating to the 2014 Comprehensive Plan prior to November 13, 2015.,

WHEREAS, consistent with 29 *Del. C.* § 9103, due to the dispute between the Town and the State Office of Planning Coordination, on October 28, 2015 the 2014 Comprehensive Plan was sent to the Cabinet Committee on State Planning Issues for dispute resolution.

WHEREAS, on November 19, 2015, the Cabinet Committee on State Planning Issues convened a public meeting for the purpose of considering the dispute and making findings and recommendations to be submitted to the Governor.

WHEREAS, by memorandum dated December 31, 2015, the Cabinet Committee on State Planning Issues provided the Governor with the following summary of its findings and recommendation:

Summary of Findings: While the Cabinet Committee is not aware of any legal deficiency in the proposed Comprehensive Plan, as a matter of policy, the proposed Plan is deficient in its failure to address the long-term operational concerns of the Rehoboth Art League, a cultural and historical institution that the State has consistently supported. While the Town has no legal obligation to change the zoning classification of the RAL, the Town's unwillingness to consider a new zoning category and apparent inability to negotiate a mutually acceptable MOU that would protect the Town and the RAL's respective interests within the existing residential classification is not consistent with the Administration's policy priority of supporting artistic and cultural institutions like the Rehoboth Art League. The Cabinet Committee recognizes, however, that it takes two

parties to negotiate, and makes no findings with respect to the reasonableness of either the Town or the RAL in any prior negotiations.

Summary of Recommendation: The Cabinet Committee recommends returning the proposed Plan to the Town in lieu of certification, with the following proposed revisions:

- (1) The Cabinet Committee recommends that the Town re-submit the Plan to the OSPC for certification following the execution of a reasonable, mutually acceptable Memorandum of Understanding between the Town and the RAL that addresses the RAL's operational needs and the Town's concerns within the framework of the existing zoning designation of the RAL property.
- (2) In addition or in the alternative to Recommendation # 1, the Cabinet Committee recommends revising the Plan to reflect the creation of a new zoning category for the RAL. Recognizing the reality that this recommendation is contingent upon an unlikely future decision by the Town to allow the new zoning category, the Cabinet Committee acknowledges that this Recommendation will not be adopted without a major change in the Town's current position.

WHEREAS, 29 *Del. C.* § 9103(f) provides that “[w]ithin 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...”

WHEREAS, on January 20, 2016, the Governor returned the 2014 Comprehensive Plan to the Town with the recommendation that it be revised consistent with the recommendation of the Cabinet Committee on State Planning Issues.

WHEREAS, although the Mayor and Commissioners of the Town of Henlopen Acres endorses the reasonableness of recommendation (1) of the Cabinet Committee and the Governor, such course of action has been rejected by the Rehoboth Art League.

WHEREAS, as recognized by both the Cabinet Committee and the Governor, 29 *Del. C.* § 9103(f) further provides that “...[t]he municipality or county shall have the right to accept or reject any or all of the [Governor's] recommendations. The final decision on the adoption of the comprehensive plan is that of the municipality or county.”

NOW THEREFORE, BE IT ORDAINED by the Mayor and Commissioners of the Town of Henlopen Acres, in session met, this 4th day of March, 2016, as follows:

Section 1. Having thoughtfully considered the recommendations of the Governor, the Mayor and Commissioners of the Town of Henlopen Acres respectfully reject the recommendations.¹

Section 2. Consistent with 29 *Del. C.* § 9103(f)'s declaration that "...[t]he final decision on the adoption of the comprehensive plan is that of the municipality or county," the Mayor and Commissioners of the Town of Henlopen Acres hereby affirm their July 10, 2015 approval of the 2014 Comprehensive Plan update, and affirm that the 2014 Comprehensive Plan update is in full force and effect.

Section 3. This Ordinance shall be effective immediately upon its adoption.

Adopted Unanimously by the Mayor and
the Commissioners of the
Town of Henlopen Acres

Mar. 4, 2016


Secretary of the Commissioners of the
Town of Henlopen Acres

¹ As previously noted, the Mayor and Commissioners of the Town of Henlopen Acres endorse the reasonableness of recommendation (1). In the event the Rehoboth Art League reconsiders its rejection of the development of an MOU, the Town will work in good faith with the Rehoboth Art League to develop and enter into a mutually acceptable MOU outside of the framework of the Comprehensive Plan update. If such an agreement is reached, and if it requires any modifications to the Town's Comprehensive Plan, the Plan can and will be amended as necessary at that time.

Town of Henlopen Acres Comprehensive Plan

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TOWN, COUNTY, AND STATE OFFICIALS

Town of Henlopen Acres

Mayor and Council

David Lyons, Mayor
Frank Jamison, President pro tempore
Andrew Brittingham, Commissioner
Timothy Hidell, Commissioner
Joni Reich, Commissioner
Beatrix Richards, Commissioner
John Staffier, Commissioner

Planning Committee

John Scheurer, Chairman
Gordon Kaiser
Mary Jane Lyons
Robert Reed
Richard Thompson

Town Solicitor

Glenn C. Mandalas, Esq.
Baird Mandalas Brockstedt, LLC

Town Staff

Thomas Roth, Town Manager
Lisa Michaels, Town Clerk
R. Lee Stewart, Security Supervisor
Alexander McClure, Public Works Manager

Sussex County

Council Representatives

The Honorable Michael H. Vincent, 1st District, President
The Honorable Samuel R. Wilson, Jr., 2nd District, VP
The Honorable Joan R. Deaver, 3rd District
The Honorable George P. Cole, 4th District
The Honorable Robert B. Arlett, 5th District

County Administrator

Todd Lawson

State of Delaware

Governor

The Honorable John A. Markell

Senate

Senator Ernesto B. Lopez, 6th District

House of Representatives

Representative Peter C. Schwartzkopf, 14th District

Office of State Planning

Constance S. Holland, AICP, Director

Coordination

INSTITUTE FOR PUBLIC ADMINISTRATION

The original 2004 Comprehensive Plan was prepared by the Institute for Public Administration (IPA), a unit within the College of Human Services, Education & Public Policy at the University of Delaware. IPA links the research and resources of the University of Delaware with the management and information needs of local, state, and regional governments in the Delaware Valley. IPA provides assistance to agencies and local governments through direct staff assistance and research projects as well as training programs and policy forums. Jerome R. Lewis is the director of the Institute.

TOWN GOVERNANCE

The Town Charter provides for a Commission form of government with seven (7) members with one Commissioner elected to be the Mayor and President of the Commission. The Commissioners of Henlopen Acres hold quarterly meetings. Commissioners may either be bona fide residents or non-resident property owners of the Town of Henlopen Acres, however a majority of the Board must be residents. All property owners and residents are eligible to vote in municipal elections. All other offices are by appointment. -Appointments are made by the Mayor and approved by a majority of the Commissioners.

The Town Charter empowers the Town to provide government services to maintain its peace and order, its sanitation, beauty; the health, safety, convenience, comfort, and well-being of its population, and the protection and preservation of property, public and private. The Commissioners of Henlopen Acres have the power to annex additional territory adjoining the corporate limits of the Town.

The Mayor of the Town is the chief executive and presides at all meetings of the Commissioners. The Mayor executes on behalf of the Town, when authorized by the majority of the Commissioners, all agreements, contracts, bonds, deeds, leases, and other documents necessary to be executed. The Mayor has the power to appoint the other six Commissioners to be in charge of any departments or divisions of town government created by the Commissioners. The Commissioners of Henlopen Acres hire and empower a Town Manager with duties prescribed by the Commissioners. The fiscal year for the Town of Henlopen Acres is from July 1st of one year to June 30th of the next year.

COMPREHENSIVE DEVELOPMENT PLAN FOR THE TOWN OF HENLOPEN ACRES, DELAWARE OCTOBER 2014

Background

Delaware law requires that municipalities engage in comprehensive planning activities for the purpose of encouraging “the most appropriate uses of the physical and fiscal resources of the municipality and the coordination of municipal growth, development, and infrastructure investment actions with those of other municipalities, counties and the State.” This plan was written to comply with the requirements of a municipal development strategy as described in the Delaware Code for towns with population of 2,000 or fewer.

The municipal comprehensive plan for small communities, such as the Town of Henlopen Acres, with fewer than 2,000 people is to be a “document in text and maps, containing at a minimum, a municipal development strategy setting forth the jurisdiction’s position on population and housing growth within the jurisdiction, expansion of its boundaries, development of adjacent areas, redevelopment potential, community character, and the general uses of land within the community, and critical community development and infrastructure issues.” In addition, the Town’s comprehensive planning process shall demonstrate coordination with other municipalities, the county, and the state during plan preparation. (22 Del. C. 1953, § 702)

State law requires that planning be an ongoing process and that municipalities identify future planning activities. This document is the Town of Henlopen Acres’ Comprehensive Plan as required by state law. It is intended to cover a ten-year planning period and be reviewed every five years.

Public Participation

In 2002, the Town of Henlopen Acres established a Planning Commission to develop the Town comprehensive plan. A draft of the plan was presented to the Town Commission in January 2004 for public review and comment. The plan was approved at the July 2004 Town Commission meeting and certified by the State of Delaware on July 9, 2004.

In 2011, the Planning Commission began work on the ten year comprehensive plan update holding 13 meetings between May 5, 2011 and May 5, 2014, a workshop on June 24, 2011, and two public hearings, December 7, 2011 and June 27, 2014, in preparation for submission to the State of Delaware PLUS system. In 2011, residents and non-residents submitted verbal and written comments. Of the comments received most centered on the issue of the Rehoboth Art League. 27 comments were received from the 211 residents and property owners. Of those, 11 supported a new zoning district for the Rehoboth Art League. 16 residents and property owners were opposed. There were also comments from 25 non-residents supporting the Rehoboth Art League.

In 2014, another public hearing was held. Again comments centered on the Rehoboth Art League. 14 residents expressed concern for the continued existence of the Rehoboth Art League, with most indicating a desire that the Art League continue to prosper but not expand its facilities or activities in Henlopen Acres. Four residents and property owners were opposed to any change in zoning for the Art League property. The representatives of the Rehoboth Art League stated that the Art League did not intend or desire to expand its facilities or activities in Henlopen Acres.

In addition, members of the Planning Commission and at times accompanied by one or two Town Commissioners, met with an official or officials of the Rehoboth Art League 12 times from July 7, 2014 to October 27, 2014. Approximately 6 of the meetings were to discuss the RAL's activities and desires for a new Cultural Zone and 6 of the meetings were with immediate neighbors of the RAL. The meetings with the immediate neighbors were arranged so that the RAL could hear firsthand the thoughts of the immediate neighbors on the RAL's campus and activities. Universally, the immediate neighbors were concerned about the perceived growth of events on the RAL campus and the increased traffic. Generally everyone likes the RAL campus the way it is (i.e. no material change or expansion of facilities) and they do not want any additional activities or traffic creating events. Throughout these meetings the RAL has affirmed its position that it does not intend or desire to expand or change its facilities in Henlopen Acres, but wishes merely to be assured of its ability to maintain and update its facilities as necessary, without changing their size or use.

Based on these meetings, on detailed information provided by the Art League regarding its activities in Henlopen Acres over the past several years and valuable input provided by the Planning Commission in conjunction with the Board of Commissioners, a Memorandum of Understanding was drafted to develop and clarify specific rules and regulations that apply to the RAL and its activities going forward under its current legal non-conforming status. (See Appendix A)

Community Overview

Location

The Town of Henlopen Acres, Delaware, is located in eastern Sussex County. It is north of the City of Rehoboth Beach, east of the Lewes and Rehoboth Canal, and west of the Atlantic Ocean.

History

The land comprising Henlopen Acres was first brought into legal jurisdiction in 1675 as part of the Young's Hope patent granted by Governor Sir Admond Andros of New York. It appears to have remained under that patent until 1743, when it passed to the Marsh family. The property again changed hands in 1871, when it came into the Dodd family. It was not again transferred until 1930, when W. S. Corkran took title and began development into a residential development. When he took over the old farm, one of the first questions to be settled was the selection of a suitable name. Inevitably, the old local name "Henlopen" came to mind as one of the greatest distinction¹. Nothing could be more fitting than to name the development after that world-known old Henlopen Light, which had stood for 200 years within sight of the property and less than half-a-dozen miles away, across moorland and dunes. Having once decided upon "Henlopen," the word "Acres" naturally fell into place, for these lands have been real acres of peace and prosperity to their owners since 1675.

The initial residential plots laid out by Corkran himself, had a frontage of approximately 150 feet and depth of 170 feet. The variation in the lot sizes permitted the natural placement of roads and houses on the land in relation to the terrain, trees, and views, avoiding monotonous and unsightly rows of houses on a definite set-back line while ensuring ample spaces of light, air, and planting, permanently protected against encroachments. Each home site was planned as a park within a park. The advantages of the Henlopen Acres residential site developed in 1930 were defined by its owner as follows:

1. An exclusive residential park
2. A combined country and seashore community—a pinewoods setting on an ocean beach
3. It enjoys the pleasures of both sea and inland waters—bathing, sailing, motor boating, fishing, canoeing, etc.
4. Firmly protected by all essential restrictions of 1930—ample size of lots, with one family residence only on each lot, areas specified for community garage, stable, clubs, etc.

In 1970, the Charter of the Town of Henlopen Acres was approved by the State of Delaware. It has set forth the territorial limits of the Town as follows:

All three adjoining pieces or parcels of land and premises situate, lying, and being in Lewes and Rehoboth Hundred, Sussex County and State of Delaware, north of the City of Rehoboth Beach and east of the United States Inland Waterway known as the Lewes and Rehoboth Canal, bounded on the north by the lands of Daniel G. Anderson; on the northwest and west by lands of said United States Inland Waterway; and on the south and southeast, in part by the north boundary line of the City of Rehoboth Beach, in part by the north line of Henlopen Avenue, and in part by certain State lands; and on the east and northeast by the mean high-tide water line of the Atlantic Ocean. (*see Map 1.*)

Historic and Significant Properties²

Peter Marsh House or "Homestead"

The Peter Marsh House was listed on the National Register of Historic Places in November 1977. It is significant as an example of an eighteenth-century Sussex County farmhouse, which has retained much of its original detail.³ As stated earlier, Peter Marsh built the Homestead around 1743 when he purchased portions of a tract of land called Young's Hope, originally granted in 1675 to George Young by the Duke of York and called it in the deeds, "The Mansion House of the Plantation". (*see Map 2.*)

Marsh was an ensign in the Sussex County Regiment for the southern district of Lewes and Rehoboth Hundred during the French and Indian wars. When he died in 1769, he left a large estate of more than 2,000 acres in Sussex County, to his son, Thomas Purnell, he left the tract of the land called Young's Hope and 300 acres. When Thomas Purnell died in 1821, he left the northwestern portion of his inherited tract of land, together with the mansion house, to his son, also named Thomas Purnell Marsh.

The house and surrounding land remained in the Marsh family until 1871, when it was sold to the Dodd family. During most of the Dodd ownership the house was occupied by tenants. In 1930, Colonel and Mrs. Wilbur Corkran purchased the house and restored it. Where original material was beyond salvage, they carefully replaced it with eighteenth-century building material from houses about to be demolished in the area. The house retained its original floor plan and exterior.

Henlopen Acres Beach Club

The Henlopen Acres Beach Club is located at the northern beachfront property. This property comprises 3.813 acres. The original deed that conveyed the property for the use of the Henlopen Acres Beach Club, Inc., set specific conditions on the use and regulation of the property for use as beach club for the enjoyment of its members who may be residents. The Commissioners of the Town of Henlopen Acres have the authority to regulate the erection, maintenance, and use of buildings, structures, or other erections in a manner consistent with the use of the property as a community beach club. The Henlopen Acres Beach Club property is Sussex County tax parcel number 3-34 14.05 121. The beach club assesses its own dues and initiation fees and pays County and Town taxes. The Plan recommends no changes to the use of the beach club.

Block W Property – Henlopen Acres Property Owners Association

The property commonly referred to as Block W is the oceanfront property south of the Henlopen Acres Beach Club. This property is Sussex County tax parcel identification number 3-34 14.05 120. The property comprises 8.82 acres.

The property is subject to the following deed conditions. The Henlopen Acres Property Owners Corporation (HAPOC) must be and remain a Delaware corporation, and all Henlopen Acres property owners are members. Property owners are, however, responsible for an assessment not to exceed one hundred dollars, to be used to maintain the property and defray administrative expenses. The Block W property must be kept tidy and in its natural state, and all federal and state filings must be completed annually and taxes paid if any. The HAPOC retains the enjoyment of this property as long as the conditions of the deed are met. If the HAPOC becomes defunct, or if it fails to file or pay the taxes on the property or fails to keep the property reasonably tidy, then ownership shall revert to the University of Delaware. If the conditions of the deed are not met, and the property transfers to the University of Delaware, the property cannot be transferred or sold and must be still kept in its natural state; the erection of a public bathhouse, restrooms, or other facilities can be done only with the approval of the HAPOC, which annually supplies a copy of tax filings to the Town to ensure compliance.

The Plan recommends no changes to the use of Block W or HAPOC and that the Town continue to encourage its maintenance and preservation.

Community Marina

The Town has a community marina on Tidewaters along the Rehoboth and Lewes Canal. This property is Sussex County tax parcel identification number 3-34 14.09 10.00 in Block Q, consisting of 2.38 acres. This property is operated for residents and non-residents as defined by the Henlopen Acres Board of Commissioners. A portion of the property designated in the 1930 deed has been subdivided into residential lots 3-34 14.09 10.01, 3-34 14.09 10.02, and 3-34 14.09 10.03. On October 21, 1998, a revision to the deed was filed changing the boundaries of the marina site. The Plan recommends no changes to the use of the Marina.

Rehoboth Art League and The Homestead

The Rehoboth Art League, Inc. (a 501(c)3 corporation) is located on Dodds Lane. It is a beautiful and historic area that occupies three and one-half acres and was founded by Louise Chambers Corkran, the wife of the founder of Henlopen Acres, Col. W.S. Corkran. It is comprised of five buildings including the Homestead. The League holds exhibits, classes and other activities. The use of the Homestead by the Rehoboth Art League, Inc., is governed by the covenants of 1930 and 1982, deed restrictions and by the Zoning Code and is considered a grandfathered non-conforming use.

The properties controlled by the Rehoboth Art League, Inc., are Sussex County tax parcels number 3-34 14.09 56.00, which is approximately 2.027 acres (Lot 1 Block J) and includes the Homestead and parcel number 3-34 14.09 57.00 which is approximately 1.661 acres (Lot 2 Block J) These properties are exempt from Sussex County and Town taxes. Upon Colonel Corkran's passing in 1962, Lot 1 was left to his wife Louise for the remainder of her life and upon her passing, to the University of Delaware to be used by it's President or faculty as a summer home and that the property would be maintained perpetually by the University in such condition as will respect its authentic character and furnishing as a colonial Sussex County Seat. On May 18, 1979, the Delaware Chancery Court approved the transfer of the Homestead property (Lot 1) to the Rehoboth Art League, Inc. because the University had been unable to use the property as Colonel Corkran had desired. The transfer was conditioned such that, if however the Rehoboth Art League should cease to exist, the property reverts to the University of Delaware. Lot 2 was transferred on September 26, 1947 to the Rehoboth Art League without restriction.

The plan recommends that both properties only be used as art gallery, art school, or community purpose, consistent with the covenants of the deeds of 1930 and 1982. The plan suggests evaluating the establishment of a historic district or zone for both Lot 1 and Lot 2. Lot 1 already has significant historic restrictions due to the Homestead and its status on the National Register of Historic Places and Lot 2 has many historic structures and landscaping elements. If the Rehoboth Art League, Inc. ceases to exist the properties should continue to have the same restrictions for use as set forth in the deeds of 1930 and 1982 which include residential. The Town further recommends that the Homestead, accessory structures, landscape, and gardens, consistent with restrictions imposed by the Chancery Court, not be modified significantly as to diminish the historic characteristics of the property or as a departure from the residential character of Henlopen Acres. In that regard, the RAL has recently confirmed that it has no intention or desire to change or expand the nature of its activities in Henlopen Acres, or to increase the frequency or intensity of its activities, compared to what they have been in prior years.

The RAL has also confirmed that it does not intend or desire to expand or change its facilities in Henlopen Acres, but wishes merely to be assured of its ability to maintain and update its facilities as necessary, without changing their size or use. There have been discussions about the RAL's use of its facilities and expansion of both facilities and uses since at least 1985. The minutes of a special meeting of the Commissioners on December 13, 1985 show that on that date the RAL requested authority to build a new building behind the Homestead because "The Rehoboth Art League is a rapidly growing organization that has outgrown the available space beyond everyone's expectations." There was debate and a suggestion that they fix up one of their existing buildings. Mrs. Caroline Harris of the RAL said at the time that "plans are being considered to farm out some of the activities to other locations." With these points in mind, and with input from the RAL and Town residents, the Town should attempt to (1) develop and clarify specific rules and regulations that will apply to the RAL and its activities going forward, and (2) explore methods to implement such rules and regulations. Several members of the Planning Commission have met 12 times (between July 7 and October 27, 2014) with Board members and management of the Rehoboth Art League, Inc. to discuss these issues and to try to find a mutually acceptable resolution to these issues.

Pioneer and Indian Cemetery

The Indian Cemetery is approximately 4000 sq. ft. and is located on Dodds Lane between Rolling Road and Pine Reach. It is bordered on the south and east sides by Lot 16, Block K and is owned by the Town and its history is somewhat anecdotal rather than having a proven history. The Plan recommends that the Pioneer and Indian Cemetery should remain in its natural, undeveloped and unspoiled state.

Bridle Paths

There are easements associated with specific properties in the Town of Henlopen Acres that are known as "bridle paths." These are easements that provide potential public access for Town residents. A barrier has been constructed at the terminus of Easton Street and First Street on the border between the Town of Henlopen Acres and the City of Rehoboth Beach to prevent through traffic.

The 1982 covenants state that "no modification or variation shall take place that will change the location of such "bridle paths" to any other location other than at the rear of the lot, unless the consent of a lot owner whose land is to be used for such relocated bridle path shall be first secured."⁴

Community Character, Natural Features and Environmental Concerns

Community Character and Design

Henlopen Acres is a small beach town with primarily residential properties. The community character of the Town should not change due to small size and limited availability of land for development. The Town wishes to maintain its current character and retain the current design of houses as the remaining undeveloped lots are built out. The Town has limited the height of buildings to 30 feet and two stories, restricted building area to 20 percent of lot area, limited dwelling unit size to 6,000 square feet, regulated obstructions of view on corner lots, and set a minimum of open space to 60 percent of lot area. The average lot size in the Town is approximately 19,929 sf, which is significantly larger than neighboring Rehoboth Beach. This along with our significant tree canopy of 43.2% provides a very special environment that needs to be preserved.

Map 3. Environmental Features, describes the location of the Town in relation to surrounding state and federally identified wetlands, Federal Emergency Management Agency (FEMA) 100-year flood plains, and hydrologic features.

Wetlands

Federally identified wetlands may exist along the Rehoboth and Lewes Canal, (National Wetlands Inventory, Appendix A). Regulatory Protection of wetlands is mandated under Federal 404 provisions of the Federal Clean Water Act. Additionally, tidally-influenced wetlands are accorded additional regulatory protection under Title 7, Chapter 66 provisions of the Delaware Code. Compliance with these statutes may require an Army Corps of Engineers approved field wetlands delineation and/or Delaware Department of Natural Resources and Environmental Control, (DNREC), approval. Two properties along the north side of Tidewaters may include state-identified wetland areas and these properties are already developed residential. Conversely, under the U.S. Army Corps of Engineers 1987 method, an area is a wetland only when it meets, under normal circumstances, all three of the following criteria: wetland hydrology, the presence of hydric soils and the predominance of hydrophytic vegetation. The U.S. Dept. of Agriculture, Natural Resources Conservation Service in a 1974 Soil Survey⁵ identified the soils of Henlopen Acres to consist of soil classes EvA, EvB, SaA, SaB and Ft. None of these classes comprise hydric soils. As such, areas of possible wetlands should be delineated by a licensed professional wetlands consultant in accordance with the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands".

Floodplains, Climate Change, Sea Level Rise

The FEMA 100-year flood plain is a significant natural feature that covers the area from Zwaanendael to the beach and a portion of Broad Hollow and Tidewaters. Development within the FEMA 1% annual chance flood plain (also known as the 100-year flood plain) is governed by the flood plain regulations that the Town has adopted and agreed to enforce as a participating community in the National Flood Insurance Program. In 2013, FEMA released preliminary revised Flood Insurance Rate Maps that reflect minor changes to the 100-year flood plain. These maps were reviewed by the Town, residents and property owners. The revised maps became effective March 16, 2015. On October 10, 2014, the Board of Commissioners adopted a revised Floodplain Management ordinance to meet the FEMA recommended compliance requirements. The Town of Henlopen Acres Floodplain Management ordinance includes a 36 inch freeboard requirement in anticipation and mitigation of sea level rise. This along with initiatives included elsewhere in the plan reflect actions recommended by Governor Markell in Executive Order No. 41, to prepare for climate change impacts.

Key Wildlife Habitat⁶

Map No. 3, identifies Key Wildlife Habitat within the town limits of Henlopen Acres.

Construction within the areas identified as Key Wildlife Habitat is prohibited, with the exception of repair and upkeep of existing walking paths and structures or construction measures or practices endorsed by DNREC.

Endangered Species⁶

Tier 1 Species

Species that are most in need of conservation action in order to sustain or restore their populations.

The Delaware Wildlife Action Plan (DEWAP) focuses on Tier 1 species to analyze threats to their populations and habitats. Conservation actions should be developed to eliminate or minimize identified threats.

CLASS	Scientific Name	Common Name
Insect	<i>Cicindela dorsalis media</i>	white tiger beetle
Insect	<i>Cicindela lepida</i>	little white tiger beetle
Reptiles	<i>Malaclemys terrapin terrapin</i>	Northern diamondback terrapin
Reptiles	<i>Elaphe guttata</i>	Corn snake
Birds	<i>Charadrius melodus</i>	piping plover
Birds	<i>Haematopus palliatus</i>	American oystercatcher
Birds	<i>Arenaria interpres</i>	ruddy turnstone
Birds	<i>Calidris canutus</i>	red knot
Birds	<i>Calidris alba</i>	sanderling
Birds	<i>Sterna hirundo</i>	common tern
Birds	<i>Rynchops niger</i>	black skimmer
Birds	<i>Chordeiles major</i>	common nighthawk

Tier 2 Species

Species in need of conservation action but without the urgency of Tier 1 species.

Distribution of Tier 2 species help to determine where DEWAP conservation actions will be implemented.

CLASS	Scientific Name	Common Name
Insects	<i>Cicindela dorsalis</i>	Eastern beach tiger beetle
Insects	<i>Cicindela hirticollis</i>	beach-dune tiger beetle
Insects	<i>Melitara prodenialis</i>	a snout-moth
Insects	<i>Drasteria graphica atlantica</i>	Atlantic graphic moth
Insects	<i>Schinia spinosae</i>	a noctuid moth
Birds	<i>Falco peregrinus</i>	peregrine falcon
Birds	<i>Pluvialis squatarola</i>	black-bellied plover
Birds	<i>Catoptrophorus semipalmatus</i>	willet
Birds	<i>Calidris pusilla</i>	semipalmated sandpiper
Birds	<i>Calidris maritima</i>	purple sandpiper
Birds	<i>Calidris alpina</i>	dunlin
Birds	<i>Larus marinus</i>	great black-backed gull
Birds	<i>Pipilo erythrophthalmus</i>	Eastern towhee
Birds	<i>Passerculus sandwichensis</i>	savannah sparrow

This plan recommends a strategy of education, outreach and enforcement by increasing public knowledge of wildlife conservation issues and an understanding of habitats, species of concern and conservation issues. In addition, to protect shorebirds and terns, the town should consider signage along the beach to encourage beachgoers to avoid disturbing birds that may be roosting or feeding in beach habitat.

Air Quality

Henlopen Acres is primarily a residential community with a large percentage of the population participating in walking, jogging and cycling activities. Town functions including the town marina, Henlopen Acres Beach

Club and the Rehoboth Art League are the only non-residential operations. The Plan recommends continuing to explore transportation alternatives and land use measures that will improve air quality and reduce air emissions. The town already observes a no idling policy for all town vehicles. This plan recommends an ordinance be adopted expanding that policy to all commercial vehicles operating within town limits. The Plan also suggests evaluating a municipal trash and recycling service similar to neighboring municipalities. This could be the most “Green” initiative that the town could institute. It could reduce traffic, (by having one set of waste/recycling trucks instead of 4-5), reduce air pollution, and reduce noise pollution.

Tree Canopy

The Town of Henlopen Acres appreciates the importance of its natural resources and in particular its unique forested setting. The abundance of trees not only provides aesthetic beauty but provides numerous significant benefits including the reduction of ambient temperatures which results in energy savings, reduces pollutants by filtering the air and producing oxygen, reducing runoff and erosion, and the reduction of ultra-violet ray exposure.⁷ In 2008, the Delaware Forest Service received a grant to study the municipal tree canopy throughout Delaware. The study determined the Town of Henlopen Acres possessed a tree canopy of 43.2%. In comparison, the surrounding cities of Lewes and Rehoboth have a tree canopy of 29.61% and 32.75%, respectively (*see Map 9*).

Periodically, the Delaware State Forest Service makes available tree planting and maintenance grants to municipal and community organizations. The Town of Henlopen Acres has participated in this grant program in 2004 and again in 2010 to improve and enhance the town’s forested setting. The town will continue to participate in this program as the opportunity arises. Additionally, in 2008, The Town of Henlopen Acres amended the Code by adding restrictions to prevent land clearing of vacant lots without permission of the Town. The Plan recommends instituting a standard of minimum trees per lot, in particular on the 20 foot right of way owned by the Town. The Plan recommends studying the best trees for tree canopy development and preparing a plan to plant trees on right of way areas that have insufficient trees.



Henlopen Acres Marina

Open Space, Marina, and Beach Club

The Town of Henlopen Acres is based on beach and water sport activities. Participants in the planning meetings indicated that the Town should continue its efforts to maintain the beachfront areas in cooperation with the Henlopen Acres Beach Club and Henlopen Acres Property Owners Corporation, (Block W). The maintenance of the groin (jetty) along the beachfront area is of special concern for all residents and users of the beach area and is an important issue for the Town.

POPULATION AND HOUSING

Demographics, Future Population, and Housing Growth

According to the 2010 Census, the Town of Henlopen Acres had a full-time population of 122 persons. This is a 12 percent decrease from the 2000 population of 139 persons, reflecting a decrease in growth that is lower than the growth rates of Sussex County as a whole. The full-time population is a function of variables significantly different from the surrounding cities of Rehoboth Beach and Lewes. Henlopen Acres is a Town of single-family detached homes used primarily for second homes or, secondarily, for retirement homes. There is limited number of full-time residents who are in the labor force. The fulltime population of Henlopen Acres will vary based on the decision of homeowners to claim their Henlopen Acres home as their primary residence. A better indication of the need for services and infrastructure is the number of homes and occupancy conditions. Table 1 outlines the change in population in Henlopen Acres, Rehoboth Beach, Lewes, Sussex County, and the State of Delaware.

Table 1: Population of Henlopen Acres Compared to Sussex County and the State of Delaware

Year	Delaware	Sussex County	Henlopen Acres	Rehoboth Beach	Lewes
1980	594,919	98,004	176	1,730	2,197
1990	666,168	113,229	108	1,327	2,331
2000	783,600	156,638	139	1,495	2,932
2010	885,122	197,145	122	1,327	2,747

Source: U.S. Census Bureau. Henlopen Acres, Rehoboth Beach, and Lewes population figures are based on primary residence claimed by individuals filling U.S. Census forms.

Table 2, provides a comparison of basic demographic data among Henlopen Acres, Sussex County, and the State of Delaware. Based upon population, Henlopen Acres is the third smallest town in Delaware, with only Farmington (110) and Hartly (74) having lower population with significantly lower number of homes. The full-time residents of Henlopen Acres are older and have a higher median income than residents of Sussex County and the State of Delaware as a whole. In 2010, the median age of Henlopen Acres fulltime residents was 66.1 years old, compared with Sussex County's 45.4 and the State of Delaware's 38.8. It is unknown if the part-time residents have significantly different age profile, but since the homes that are used as part-time residences are typically owned by working-age persons, the overall median ages of part-time and full-time residents may be lower than the 66.1 median age reported in the 2010 U.S. Census. Henlopen Acres' residents' median income is the highest for an incorporated town or city, but it is only slightly higher than those of South Bethany and Dewey Beach. The median income for Henlopen Acres is less than those of U.S. Census Designated Places of Hockessin and North Star in New Castle County.

Table 2: Profile of General Demographic Characteristics for Henlopen Acres, Sussex County, and Delaware 2010

	Delaware (2010)	Sussex County (2010)	Henlopen Acres (2010)
Total Population	897,934	197,145	122
Age			
Population 17 years and under	22.97%	20.4%	10.7%
Population 62 years and older	17.9%	25.7%	59.0%
Median Age (years)	38.8	45.4	66.1
Households			
Total Households	342,297	79,368	67
Households with children under 18 years	32.0%	26.4%	10.4%
Households 65 or older living alone	9.6%	12.1%	38.8%
Average household size (# people)	2.55	2.45	1.82
Housing Units			
Total Housing Units	405,885	123,036	195
Occupied units	84.3%	64.5%	34.4%
Vacant housing units	15.7%	35.5%	4.4%
Seasonal or recreational units	8.9%	28.3%	64.1%
Renter occupied units	27.9%	21.4%	3.0%
Units built before 1940	25.0%	13.0%	4.0% ⁹
Units built before 1960	9.4%	5.6%	32.0% ⁹
Units built before 1980	49.2%	32.8%	64.0% ⁹
Units built before 2000	80.2%	70.7%	86.0% ⁹
Income¹			
Median Household Income	\$57,599	\$51,046	\$122,433
Persons below poverty level	11.5%	12.9%	0%
Selected Characteristics¹			
Population 25 & over, High School graduate or higher	88.5%	86.2%	*
Population 25 & over, Bachelor's Degree or higher	36.7%	30.3%	*
Population 16 and over in labor force	64.7%	58.6%	*
Population 5 & over who speak English less than very well	4.6%	5.2%	*

Source: 2010 U.S. Census, ¹American Community Survey, *=unknown

The earnings and retirement incomes are significantly higher in the Town compared to those of the state and county. The residents are more likely to have income from self-employment, and almost all of them have passive income. Reflecting the older population, the townspeople do receive a higher percentage of Social Security Income, but there is no supplemental Social Security income or public assistance for Town residents, for they are relatively affluent.

Residential Housing Stock

All the houses in Henlopen Acres are detached units, while in the state and county single-family homes represent 74% and 70% of all housing structures respectively. The Town's homes are mostly for seasonal use. The median value of owner-occupied housing units in Henlopen Acres is significantly higher than the median for Sussex County and the State of Delaware.

Table 3. Composition of Housing Stock of Henlopen Acres, Sussex County, and Delaware in 2010

Housing Type	Henlopen Acres ¹	% of total	Sussex County	% of total	Delaware	% of total
Single-Family	195	100	86,863	70.4	301,946	74.3
Multi-Family	0	0	11,796	9.6	66,717	16.4
Manufactured Homes	0	0	24,714	20.0	37,745	9.3
Total	195	100	93,070	100	343,072	100

Source: American Community Survey, ¹Town of Henlopen Acres

Table 4: Value of Homes

Financial	Delaware	Sussex	Henlopen Acres ¹
Median Home Value	\$239,900	\$225,000	\$1,000,000+
Percent with Mortgage Outstanding	70.0%	40.8%	23.2%

Source: 2013 Delaware State Housing Authority, ¹Town of Henlopen Acres

Affordable Housing Strategy

The Town believes that with respect to the development and availability of affordable housing, the Fair Housing Act was not intended to apply to a neighborhood by neighborhood basis to small, established and fully developed areas such as Henlopen Acres where its application would be impractical. The Town will, however, work with County-driven initiatives to help seek a regional solution to affordable housing that is feasible, sustainable and will not further burden the current inadequate area infrastructure.

Population Projections and Growth

U.S. Census estimates project an increase in population over the next five years of less than 1%. Growth of the full-time population and housing in Henlopen Acres will depend primarily on the decision of homeowners to live full-time in Henlopen Acres, due to the limited availability of land for new construction.

Redevelopment

The Town of Henlopen Acres does not have traditional redevelopment opportunities. The potential for redevelopment within the Town limits of Henlopen Acres could occur in two forms. The first opportunity for redevelopment would be the replacement of existing homes with new structures. There exists the possibility that these new houses could be substantially larger than existing houses. The Town has set a series of restrictions to limit the size of new homes through height, size, and set-backs. The average residential lot is 20,000 square feet and vacant lot is 25,000 square feet. The lot coverage limit and the limit of 6,000-square-foot dwelling unit will keep houses from being built out of character.

Redevelopment Recommendations

The plan recommends that all vacant or redeveloped property within the Town be developed as residential and in character with existing houses. *Map 7. Future Land Use*, describes the recommended future land use pattern for the Town. Properties that are not to be developed as residential include the Henlopen Acres Beach Club, the Block W Property, the Indian and Pioneer Cemetery, and the Henlopen Acres Marina Property.

The plan recommends that the Peter Marsh House ("The Homestead") at 10 Dodd's Lane be provided with all possible protection as a structure on the National Register of Historic Places. The current Zoning Code does not provide for a specific historic preservation district but does require the submission of a complete and comprehensive set of plans to the Environmental Approval Committee for review prior to construction or reconstruction beyond the usual and necessary repairs. The plan also recommends that those properties currently used by the Town of Henlopen Acres as a town hall and for the provision of public water remain in public use as long as those functions are deemed necessary. If the property on Pine Reach, which is now part of the public-water system, is no longer needed for this use, the land use recommended for this site is residential

LAND USE PLANNING AND REGULATION PROCESS

The Town's overall vision is to remain a well-planned resort and residential community that maintains its recreational and natural resources while providing public services to its residents.

Community Design

The participants in the planning meetings indicated a strong desire to maintain the type of development that currently exists within the Town. Housing in the Town is single-family detached. The Town has also had a strong commitment to preserving the Homestead property while maintaining its historic integrity.

Land Use and Annexation

The Town of Henlopen Acres will remain a primarily residential town with open space, recreation, and limited institutional uses. While the Town has no interest in annexation at this time, land use concerns for Henlopen Acres do extend beyond the limits of the Town. Participants in planning meetings have indicated that the preservation of wetlands along the west side of the Lewes and Rehoboth Canal are important. The use and maintenance of the Deauville Beach Park owned by the State of Delaware and used by the City of Rehoboth Beach is of particular concern. The Town recommends that the property immediately adjacent to Town limits on Pine Reach across Surf Avenue from the Deauville Beach Park entrance, remain as passive open space without any improvements, as currently zoned by the City of Rehoboth Beach.

The Town of Henlopen Acres was developed as a residential community. Of the 219 parcels, 211 are residential or vacant residential properties. Table 1 lists the current land use for the Town and the approximate acreage. *Map 6. Existing Land Use*, provides an overview of the pattern of current land use. The Rehoboth Art League uses the Peter Marsh House, also known as the "Homestead," on Dodds Lane as an art gallery and art instruction facility. The property is zoned residential and is currently an existing legal non-conforming use. The original deed restrictions for the Town allow for the institutional use on the property such as art galleries, art education facilities, or other art related uses upon approval of a Special Exception by the Board of Adjustment.

Table 5. Current Land Use⁸

Land Use	Number of Parcels	Approximate Acreage
Beach Uses	2	12.63
Marina	1	2.40
Government and Cemetery	3	1.06
Rehoboth Art League	2	3.69
Residential	201	92.19
Vacant (undeveloped)	10	5.43
Streets, Alleys, Easements, Watercourses		38.60
<i>Total</i>	<i>219</i>	<i>156</i>



Deed Restrictions and Conditions

The deed of sale of the property of Henlopen Acres, dated July 22, 1930, sets a series of restrictions concerning property use and transaction, (the covenants). These provisions were updated by the deed dated July 6, 1982.⁴ The deeds restrict the construction of properties within the Town to single-family residences. The Town has a right of first refusal on the sale of any property or any interest in any property. The property owner is also required to give notice to the Town Commissioners prior to any sale. The deed of sale also requires the review of any building or land development by the Environmental Approval Committee. The deed also stipulates how a property can be reviewed and what conditions the Environmental Approval Committee can require. The Zoning Code further defines this process of site plan review.

Land Uses Prohibited by Deed

The following land uses are prohibited by covenants within the limits of the Town: manufacturing; crematory or graveyard (except existing Indian and Pioneer burial ground on Dodd's Lane); hospitals; penal institution; agricultural uses; automobile storage or junkyard; and advertising signage. The covenants also limit any noxious or offensive uses.

Future Land Use

Goals:

- Manage the future development and redevelopment to maintain the Town's well-planned resort and residential community character.
- Support the preservation and maintenance of the Town's historic homes, structures, and resources.
- Maintain and improve the building and zoning Codes and development processes to ensure that all new development and redevelopment enhances the Town's well-planned resort and residential community character.

Review of the Zoning Code

The Town of Henlopen Acres has an adopted Zoning Code and an official Zoning map. The zoning specifies four districts: R-Residential; B- Recreational; M-Marine; and G-Government. The Code details permitted and special exception land uses and specifies lot size, lot coverage, setbacks, and height limits. The Code provides for a Zoning Inspector to enforce the regulations. The Code establishes an Environmental Approval Committee that has the power to review a site plan and approve or reject it. The Code establishes an appeal process for decisions made by the Zoning Inspector and to hear special exceptions of the Zoning Code. The Code also provides for special exception for the use of residential properties as art studios, art museums, theaters, or theater schools. *Map 5. Zoning*, delineates the current zoning designation. The plan currently recommends no change in zoning for the Town.

At present, the Zoning Code does not provide for a named zoning commission. The Code vests many of the planning and site-plan review decisions in the Environmental Approval Committee. Only a limited number of re-zonings have occurred, from residential to government, as new Town facilities have been built on vacant lots. The Environmental Approval Committee reviews the site plan prior to the issuance of a building permit. The Environmental Approval Committee acts in the role of a site-plan review committee.

The Zoning Code establishes the Board of Adjustment. The Code states that the Board of Adjustment shall consist of three to five members who are residents of the Town and shall not be Town Commissioners or Town employees. The members are appointed by the Mayor and confirmed by the Commissioners. The Board of Adjustment (1) hears and decides upon appeals of the Zoning Inspector's decision and Environmental Approval Committee's decision based on alleged error; (2) determines special exceptions listed in the Zoning Code; and (3) authorizes variances from the Zoning Code based upon either unnecessary hardship for use variances or exceptional practical difficulty for dimensional variances, not of the making of the property owner. The current Code uses the Board of Adjustment as the means to implement the special exception process. Neither the Environmental Approval Committee nor the Town Commissioners reviews these planning decisions. The next level of review would be an appeal to Superior Court.

The plan suggests a review of the Zoning Code to evaluate separating the legislative planning and zoning administration function from the quasi-judicial variance process.

The original comprehensive plan of 2004 suggested that the special exception process for allowing land use activities in addition to those land uses by right be replaced by a Conditional Use process. The Conditional Use permit would be required for land use activities not allowed by right. The Conditional Use process would have allowed the Town Commissioners to (1) set conditions on how the property will be used, limits on changes to the property and structure and (2) require review if the property owner changes or the organization engaged in the use changes.

Such revisions were drafted by the Board of Commissioners in conjunction with the Planning Commission. After holding public hearings where it was met with overwhelming opposition, the Board did not adopt the revisions.

Additionally, the plan as originally adopted, suggested that the fence review process be changed from an exceptional-practical-difficulty review by the Board of Adjustment, to a permitting process administered by the Zoning Inspector and reviewed and approved by the Environmental Approval Committee and the Town Commissioners. This process has been revised to a permitting process when a fence is erected in conjunction with an approved swimming pool, consistent with Sussex County ordinances. All other fences are reviewed for a variance by the Board of Adjustment.

The Board of Adjustment reviews only appeals in administration of the Zoning Code and variances based on exceptional, practical difficulty, where literal interpretations of the Zoning Code currently prevent or impede the owner of the property from using the property in a manner consistent with the Code.

COMMUNITY INFRASTRUCTURE

Water Supply

The Town of Henlopen Acres provides public water to its residents. The water system was updated in 1993 with new PVC piping and an automated treatment facility. The Town has 11 wells, (*see Map 8*), that were drilled from 1991 to 1993 to replace earlier wells. These wells have a combined pumping capacity of 200 gallons-per-minute. The water system capacity is 80,000 gallons-per-day. The usage varies by season. In the summer, usage can reach 80,000 gallons-per-day in July or August and can be as low as 10,000 gallons-per-day during winter months. The Town has an allocation from the (DNREC) to withdraw up to 31,190,400 gallons-per-year. Previous usage levels indicate that the Town has used up to 15,000,000 gallons per year of their allocation. The Town wells are shallow and thus may be vulnerable to contamination. The Town continues to monitor water-quality issues. The Town of Henlopen Acres has a Certificate of Public Convenience and Necessity to provide water throughout its municipal limits.

Public water is currently available for all single-family homes, the "Homestead," the Rehoboth Art League, the Beach Club, and Town facilities. Using a national average usage rate of 300 gallons-per-day for a typical single-family home, the residential usage can be expected to amount to 63,600 gallons-per-day. The maximum usage rate of 80,000 gallons-per-day and the typical year-round usage for residential properties of 63,600 is significantly less than the design capacity of the system. With a limited development potential of perhaps 11 new homes in Henlopen Acres, the water system is adequate for current and future needs. The Town limits the use of public water for irrigation purposes, prohibits fixed-irrigation systems from using public water, and requires the landowner to dig an on-site well for fixed-irrigation systems.

The Town Charter grants the commissioners of Henlopen Acres the full power and authority to provide an ample supply of pure water for the Town. The Town has the authority to purchase, acquire by grant or gift, lease, erect, construct, maintain, operate, extend, enlarge, renew, replace, and control wells, reservoirs, pumping machines and stations, tanks, standpipes, water mains, fire hydrants, and all other instruments for collection, storage, purification, conveyance, and distribution of water, over, on, under, or through the lands controlled by the Town Commissioners or belonging to private individuals. The commissioners have power to enact ordinances, rules, and regulations in regard to the use for public or private purposes of water furnished by the Town, the amounts to be paid by the users, the fixing of fines and penalties; to make contracts for the purchase of water with any responsible person or corporation; and to distribute the same to users.

Wellhead protection is a growing concern. Wells are located within residential areas. These areas may be subject to contamination due to growing use of residential pesticides and fertilizers. Additionally, the Town has attempted to catalog all underground storage tanks. In the near future the Town will need to address the risks and develop a policy or ordinance for the purpose of well head protection.

A wellhead protection plan has been drafted and is being reviewed that should provide safeguards to maintain water quality and the town should further evaluate as a back-up plan the costs and benefits of connecting to the Rehoboth Beach Water System.



Henlopen Acres Water Plant

Stormwater

The Town of Henlopen Acres is within the Inland Bay watershed and is affected by the Total Maximum Daily Load (TMDL) regulations set by DNREC for managing discharges into bodies of water. Section 303(d) of the Federal Clean Water Act (CWA) requires states to develop a list (303(d) List) of bodies of water for which existing pollution control activities are not sufficient to attain applicable water-quality standards and to develop TMDLs for pollutants of concern. A TMDL sets a limit on the amount of a pollutant that can be discharged into bodies of water, such that water-quality standards are met.

The town will work with the State, Sussex Conservation District and other agencies to try and identify strategies that will work with the goals of the Town as well as with the needs of the surrounding ecosystems. The town should also consider requiring developers to use Best Management Practices that encourage infiltration or reuse of runoffs, such as pavement and driveways surfaces. The revised Delaware Sediment and Stormwater Regulations, effective January 1, 2014, have a goal of reducing stormwater runoff for a rainfall event up to the equivalent one-year storm, 2.7 inches of rainfall in 24 hours.

The Town Charter provides the Commissioners of Henlopen Acres with the power to manage the drainage of all water within the limits of the Town and the authority to pass ordinances for the opening of gutters, surface-water and underground drains, and sewers. The Town also has the power to regulate, maintain, clean, and keep the natural watercourses, runs, and rivulets within the Town limits open, clean and unobstructed.

Stormwater management is an important factor in protecting our water quality. There is a direct relationship between the percentage of impervious cover and water quality. As impervious cover increases, stormwater runoff increases. The increased runoff that comes into contact with pollutants transfers them into the waterways. Pollutants that accumulate due to runoff include nutrients such as nitrogen and phosphorus or organic chemicals such as oil and gas.

In 2000, the Town realized the need for a stormwater management plan. The Town employed Soulé and Associates of Salisbury, Maryland, to conduct a survey analyzing need and to propose an implementation plan for the Town. As a result the Town adopted a multi-phase plan to interconnect various areas of concern within the town. The build-out was completed in 2005 with additional tie-ins completed in 2010. The Town does not foresee the necessity for a stormwater utility or additional drainage easements, as no further major development within the town is possible. Future construction and site development will be limited to single parcels, the great majority of which will be under one-half acre. Administration of best management practices can be accomplished through periodic maintenance and plan review on a case by case basis.

The Town has recently improved its stormwater management system to reduce the negative impacts of runoff. The plan also recommends that the Town institute appropriate regulations to reduce the impact of residential land use on run off. This can be accomplished through improvements that buffer run-off into waterbodies such as the Canal and other best management practices to reduce non-point sources of nutrients. These actions, along with the town's existing open space requirements, may aid in the improvement of the water quality in the Lewes and Rehoboth Canal.

Wastewater

The Town's wastewater system is connected to the Rehoboth Beach facility and accounts for approximately 4% of the flow, similar to North Shores. Dewey Beach represents approximately 36% of flow with the balance from Rehoboth Beach. DNREC's report on the Inland Bay watershed indicates that municipalities can assist in the reduction of non-point discharges by improving stormwater management policies that facilitate better managing runoff through detention or retention mechanisms, better manage floodwater storage, improved street-cleaning practices, buffer strips, grassed waterways, sediment traps, vegetative stabilization, and streamside-management zones.

Solid Waste Disposal

Property owners within Henlopen Acres arrange solid-waste disposal and recycling on an individual basis but the Plan is recommending a municipal managed solid waste disposal and recycling system as previously stated in the Air Quality section. Currently, approximately 5 different solid waste vendors with numerous trucks, travel the roads of Henlopen Acres on a weekly basis.

Maintenance of Marinas, Piers, Jetties, and Bulkheads

Henlopen Acres has a significant interest in and investment to preserve and properly manage the beach improvements. The Town is particularly concerned about the continued maintenance of protective groins located on the beach on the Henlopen Acres Beach Club property. This groin extends perpendicular from the beach approximately 320 feet. A second, adjacent groin extends approximately 148 feet parallel to the beachfront. The properties that constitute the beach of Henlopen Acres are owned by the Henlopen Acres Beach Club, Inc. and the Henlopen Acres Property Owners Corporation.

Chapter 29 of the Town Charter empowers the Board of Commissioners to "construct, widen, extend, improve, repair, vacate or abandon jetties." Any issues arising with regard to the existing jetty will be coordinated between the Town, the Henlopen Acres Beach Club and the State of Delaware, Department of Natural Resources and Environmental Control.

PUBLIC SAFETY

Police Services

The Town of Henlopen Acres maintains a security service. The Town has authorized a four full-time security-officer patrol to provide this security service. The security officers are Town employees and are not required to be accredited police officers. The security officers do not have the power to make arrests and contact the Delaware State Police as needed. The Town provides security patrols to North Shores under a contract with the North Shores Homeowners Association.

The Town Charter provides the Town Commissioners with the powers to make rules and regulations as necessary for the organization, government, and control of a police force. The Charter also empowers the Town Commissioners to organize a beach patrol that would enforce regulatory measures ordained by the Commissioners with respect to the cleanliness, usage, and enjoyment of the Town beachfront subject to cooperation with the Henlopen Acres Beach Club, Inc. and the Henlopen Acres Property Owners Corporation.

Fire Protection

The Rehoboth Beach Volunteer Fire Company (RBVFC) provides fire protection to Henlopen Acres. Station 1, on Rehoboth Avenue, is the closest fire station to Henlopen Acres. RBVFC confirmed adequate water supply for fire suppression by accessing the Rehoboth-Lewes Canal and fire hydrants located on Henlopen Avenue. RBVFC recommends the Town review visibility of house numbers for quick response of emergency vehicles. Sussex County provides advanced life support through its Office of Emergency Services. The closest paramedics station is Station 104, located in Midway on State Route 1. The Plan recommends further study of connecting to the Rehoboth Beach Water System as to costs and benefits, one of which may be the ability to install fire hydrants to better protect residences against fire.

COMMUNITY SERVICES

The Town is serviced by the post office in nearby City of Rehoboth Beach, Delaware, which is located at 179 Rehoboth Avenue.

There are no health facilities within Henlopen Acres, although there is one located ten miles away in Lewes. The Beebe Medical Center, located at 424 Savannah Road in Lewes, Delaware, operates a full service hospital, an emergency center, and a wide range of in and outpatient services. There are also two health clinics within three miles of the Town.

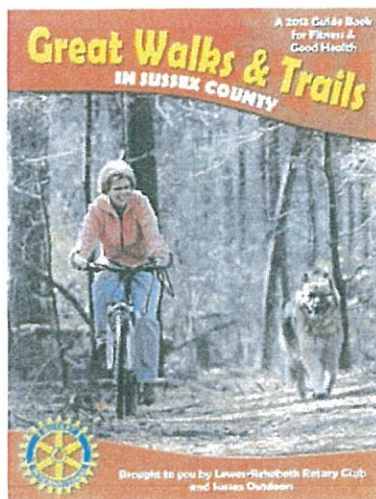
There is no library in Henlopen Acres. The Rehoboth Beach Public Library, at 226 Rehoboth Avenue in Rehoboth Beach, and the Lewes Public Library, at 111 Adams Street in Lewes, serve the Town.

There is no senior center in Henlopen Acres. Cape Henlopen Senior Center, a nonprofit senior center, located at 11 Christian Street in Rehoboth Beach, Delaware, provides a variety of services for seniors in the Town of Henlopen Acres as well as other nearby areas of the Sussex County.

Recreation

Henlopen Acres has significant recreation beach and water-sports facilities. The beach within the Town limits is divided into two properties. The southern property, 8.82 acres, is known as Block W and is owned by the Henlopen Acres Property Owners Corporation. This area of the beach is accessible to all residents of Henlopen Acres. At the north end of the oceanfront, the Henlopen Acres Beach Club owns and manages a 3.81 acre property. The Beach Club maintains facilities that include tennis courts, a clubhouse, and guarded swimming area. The Town maintains a marina at 47 Tidewaters, which has access to the Lewes and Rehoboth Canal. In 2011, the town added access and storage for kayaking at the marina. Immediately south of the Block W beach property along the oceanfront is the Deauville Beach Park, operated by the city of Rehoboth Beach. The State of Delaware owns this property. The property includes the portion of land to the west of Henlopen Avenue and bordering the Town of Henlopen Acres.

The Town is adjacent to the beaches of the Atlantic Ocean, close to Cape Henlopen State Park. The many cultural and recreational activities offered by the neighboring Cities of Rehoboth Beach and Lewes can be enjoyed by the residents of Henlopen Acres. Henlopen Acres has long been recognized as a remarkable walking area. Streets are shared equally between cars, bikes and walkers. Henlopen Acres is included in Sussex Outdoors' Guide Book for Fitness & Good Health⁹ as part of a three mile loop including Rehoboth Beach and the Boardwalk.



In addition, the Town of Henlopen Acres has recently been designated a birding hotspot by the Cornell Lab of Ornithology. Over 100 different bird species are regular visitors to the Town.

Transportation

The primary means of transportation for Town residents is private automobile, biking or walking. The Delaware Transit Corporation or DART First State provides bus service to Rehoboth Beach that connects Lewes, Georgetown, Rehoboth Beach, Dewey Beach, Bethany Beach, and Ocean City, Maryland. Bus service can be accessed at stops at the Rehoboth Beach boardwalk and at the Park-and-Ride facility on State Route 1 near Rehoboth Beach. Most beach-area transit service is seasonal, with limited cross-county service to Rehoboth Beach operating throughout the year. DART First State also provides para-transit services that Henlopen Acres residents may be eligible to use. Current information on transit and para-transit services should be obtained from the Delaware Transit Corporation.

The State of Delaware maintains the Dune Way (otherwise known as Ocean Drive). The Town maintains and has authority to regulate all other streets using Town funds or Municipal Street Aid funds that are provided by the state. In 2014, the Town maintained 3.61 miles of public roads. In 2012, the Town completed the fourth of a five phase street resurfacing project. The Town maintains a pedestrian friendly atmosphere that equally accommodates both bicycle and car.



The Homestead, circa 1930

IMPLEMENTATION

Overall Goals

- Manage the future development and redevelopment to maintain Town's well-planned resort and residential community character.
- Support the preservation and maintenance of the Town's historic homes, structures, and resources.
- Minimize the impact of beach traffic on residents and work to improve the safety of and access to pedestrian facilities.
- Preserve the beach as a resource for all Town residents.
- Assist in the continued operation and preservation of beachfront recreation facilities, the Town's marina, and other open space.
- Maintain and improve the municipal building and zoning Codes and a development process to ensure that all new development and redevelopment enhances the Town's well-planned resort and residential community character.
- Ensure that utilities, community services and facilities are adequate to serve the existing community as well as future development of vacant lots.

The implementation plan for the Town of Henlopen Acres focuses on management and investment, since there are limited land use changes recommended by the plan. The pattern of land use is set in the Town of Henlopen Acres by both deed and zoning ordinance. The limited number of vacant lots will be developed as residential, and the Town has no plans for annexation at this time. The Town infrastructure for public water, wastewater and stormwater has reached complete build out status. Tie-in of remaining properties will be completed as vacant lots are developed. The Town does face issues related to the pattern of use. In Sussex County existing homes are increasingly being converted from second or resort homes to full-time permanent residences. The impact on Henlopen Acres may be the increased use of water and wastewater in the winter months, changes in security needs, and a possible increased demand for other municipal services throughout the year.

The Town of Henlopen Acres does not expect any significant growth in housing. The trend in Sussex County has been that beach-area homes are increasingly becoming full-time residences. The Town will continue to monitor the usage of public services to determine if year-round living impacts the water, sewer, or security services. The plan recommends that the Town not annex at the present time and that land use within the Town remain residential. The Town is concerned with specific properties surrounding the Town, including the Rehoboth and Lewes Canal and the state Division of Parks and Recreation property that now contain the Rehoboth Beach Deauville Park. The plan recommends retaining the small beach town character and particularly the new and redeveloped properties to continue the current character of development.

The Town does have significant responsibilities for the preservation of its recreational and historic resources. The plan suggests that the Town continue to investigate methods to maintain the beachfront area and work in coordination with appropriate state and federal agencies to lead the process of improving the groin on the beach in front of the Henlopen Acres Beach Club. The plan also recommends the Town strive to assure the preservation of the historic Peter Marsh House ("The Homestead") and express its authority to review any plans to alter or renovate same.

RECOMMENDATIONS

1. **The Rehoboth Art League Properties:** The plan recommends that both properties only be used as art gallery, art school, or community purpose, consistent with the covenants of the deeds of 1930 and 1982. The plan suggests evaluating the merits of establishing an historic district or zone for both Lot 1 and Lot 2. Lot 1 already has significant historic restrictions due to the Homestead and its status on the National Register of Historic Places and Lot 2 has many historic structures and landscaping elements. If the Rehoboth Art League, Inc. ceases to exist the properties should continue to have the same restrictions for use as set forth in the deeds of 1930 and 1982, which include residential. The Plan further suggests that the Homestead, accessory structures, landscape, and gardens, consistent with restrictions imposed by the Chancery Court, not be modified significantly as to diminish the historic characteristics of the property or as a departure from the residential character of Henlopen Acres. In that regard, the RAL has recently confirmed that it has no intention or desire to change or expand the nature of its activities in Henlopen Acres, or to increase the frequency or intensity of its activities, compared to what they have been in prior years. The RAL has also confirmed that it does not intend or desire to expand or change its facilities in Henlopen Acres, but wishes merely to be assured of its ability to maintain and update its facilities as necessary, without changing their size or use. With these points in mind, and with input from the RAL and Town residents, the Town has drafted a Memorandum of Understanding (MOU) to develop and clarify specific rules and regulations that will apply to the RAL and its activities going forward, and explore methods to implement such rules and regulations. The Office of State Planning Coordination has acknowledged that an agreed upon MOU would be an acceptable solution to move the Comprehensive Plan forward. To date the RAL has not responded to this proposal, but has proposed a one page Cultural Zoning District lacking of relevant specifics.
2. **The Pioneer and Indian Cemetery:** The Pioneer and Indian Cemetery is approximately 4,000 sq.ft. and is located on Dodds Lane between Rolling Road and Pine Reach. It is owned by the Town and its history is somewhat anecdotal rather than having a proven history. The Plan recommends that the Pioneer and Indian Cemetery should remain in its natural, undeveloped and unspoiled state.
3. **Air Quality and Municipal Refuse:** The town already observes a no idling policy for all town vehicles. The plan recommends an ordinance be adopted expanding that policy to all commercial vehicles operating within town limits. The Plan also suggests evaluating a municipal trash and recycling service similar to Rehoboth Beach. This could be the most “Green” initiative that the town could institute. It could reduce traffic (have one set of waste/recycling trucks instead of 4-5) reduce air pollution, and reduce noise pollution.
4. **Tree Canopy:** The Plan recommends instituting some standard of minimum trees per lot, in particular on the 20 foot right of way owned by the Town. The Plan recommends studying the best trees for tree canopy development and come up with a plan to plant trees on all right of way areas that have insufficient trees.
5. **Water Supply:** The Plan recommends completing the well head protection plan to maintain the water quality and further evaluate as a back-up plan the costs and benefits to connecting to the Rehoboth Beach Water System.

6. Fire Protection: The Plan recommends further study of connecting to the Rehoboth Beach Water System as to costs and benefits, one of which may be the ability to install fire hydrants to better protect residences against fire.
7. The Marina: The Town should continue to investigate remedies to silting in the Marina which requires dredging every eight to ten years. Dredging was completed in the fall of 2012 at an approximate cost of \$200,000 taking a little over one year to complete. The process results in a major disruption to the Marina area and neighboring properties. At issue is not only the cost of dredging, but the frequency of dredging and the lengthy and unsightly process.
8. Traffic Study: The Town should consider a traffic study to provide baseline information for cars, pedestrians and bicycles covering one year to include summer months and off season. The study should differentiate traffic for residential, commercial/construction, and the Rehoboth Art League.

ADDITIONAL CONSIDERATIONS

The Planning Commission and the Board of Commissioners should consider a review all zoning ordinances to determine enforceability and ease of compliance. Upon completion of the Comprehensive Plan, the Planning Commission will make a continuing effort to simplify the Code for easier understanding to facilitate compliance. As part of the planning process it was noted that the current building requirements tend to discourage residents from building garages and that this should be reviewed to reverse this trend.

The Town holds several leases with the Army Corps of Engineers for use of property adjacent to the Lewes and Rehoboth canal. These leases were reviewed for continued compliance by all parties.

The Zoning Code requires that 60% of a lot remains green cover. The Planning Commission discussed this requirement and impervious versus pervious ground cover issues and resolved that these requirements would remain unchanged although new pervious materials would be considered. During the process we found that Rehoboth Beach considers pervious materials to be included in the "green cover".

Renewable Energy was discussed and the Town should encourage its use.

Bridle Paths were discussed in that the original purpose as horse paths has long since passed. They are restricted to resident and utility use only but enforcement is difficult. Additional restrictions were considered and resolved to erect additional signage and study the issue further.

The Plan suggests additional study around excluding at least one garage bay (approximately 10' x 25') from the square feet included in the lot restrictions so as to encourage the storage of bicycles, toys, cars, scooters and other items.

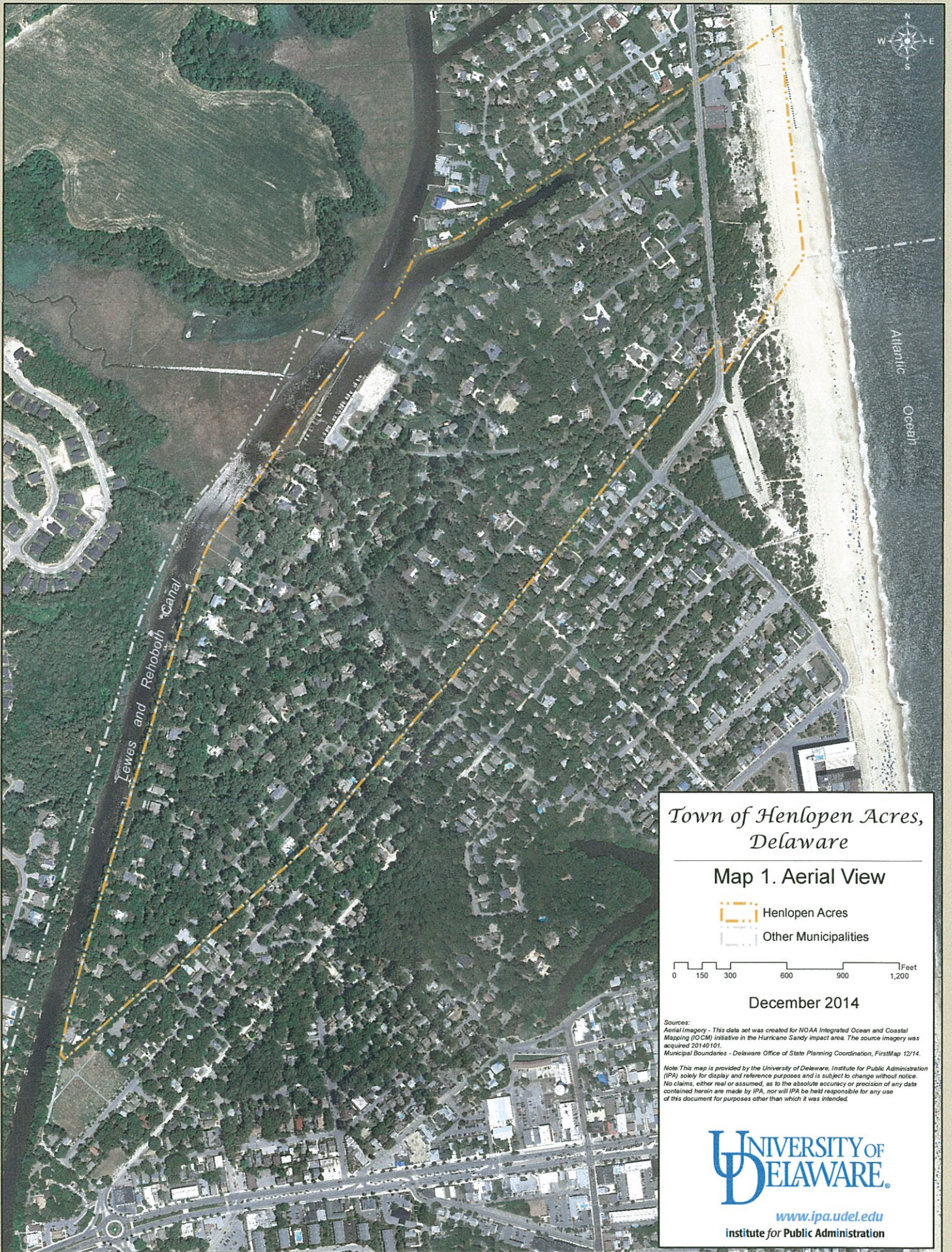
COORDINATION

The Town will continue to collaborate with the Office of State Planning Coordination, to coordinate with the state agencies, and participate on appropriate state committees as needed. The Town holds a Memorandum of Understanding with Sussex County (see Appendix) to coordinate with the County on issues related to land use planning, traffic impact and public services. The Town should also coordinate with the City of Rehoboth Beach on land use decisions along the Town's southern border. Particular attention should be paid to the use of Deauville Park and the property across the road from the Deauville Park entrance. The plan recommends that this property, immediately adjacent to the Town remain as passive open space.

Adjacent jurisdictions were notified of public hearings and comments were requested. The City of Rehoboth Beach Planning Commission reviewed the Plan, (minutes included in Appendix), and provided corrections and concerns which are addressed within this Plan.

No comments were received from Sussex County, other than those presented during PLUS review, which have been addressed.

The Mayor and Planning Commission Chairman of the City of Lewes, although not adjacent to the Town of Henlopen Acres, were contacted for their comments; however, none were received.



Town of Henlopen Acres, Delaware

Map 1. Aerial View

Henlopen Acres
Other Municipalities

0 150 300 600 900 1,200 Feet

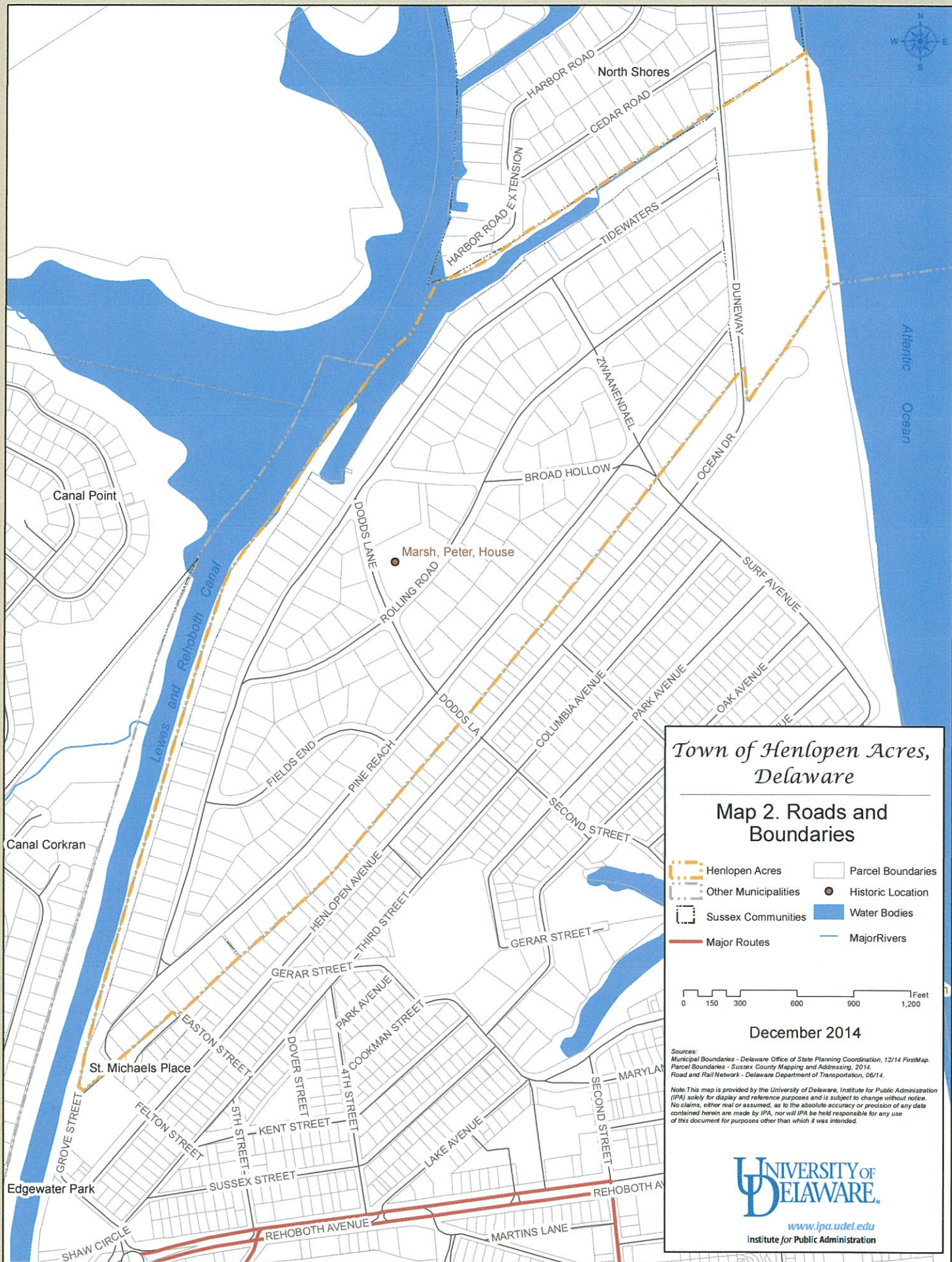
December 2014

Sources:
Aerial Imagery - This data set was created for NOAA Integrated Ocean and Coastal Mapping (IOCM) initiative in the Hurricane Sandy impact area. The source imagery was acquired 2014/01/01.
Municipal Boundaries - Delaware Office of State Planning Coordination, FirstMap 12/14.

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Town of Henlopen Acres, Delaware

Map 2. Roads and Boundaries

- Henlopen Acres
- Other Municipalities
- Sussex Communities
- Major Routes
- Parcel Boundaries
- Historic Location
- Water Bodies
- Major Rivers

0 150 300 600 900 1,200 Feet

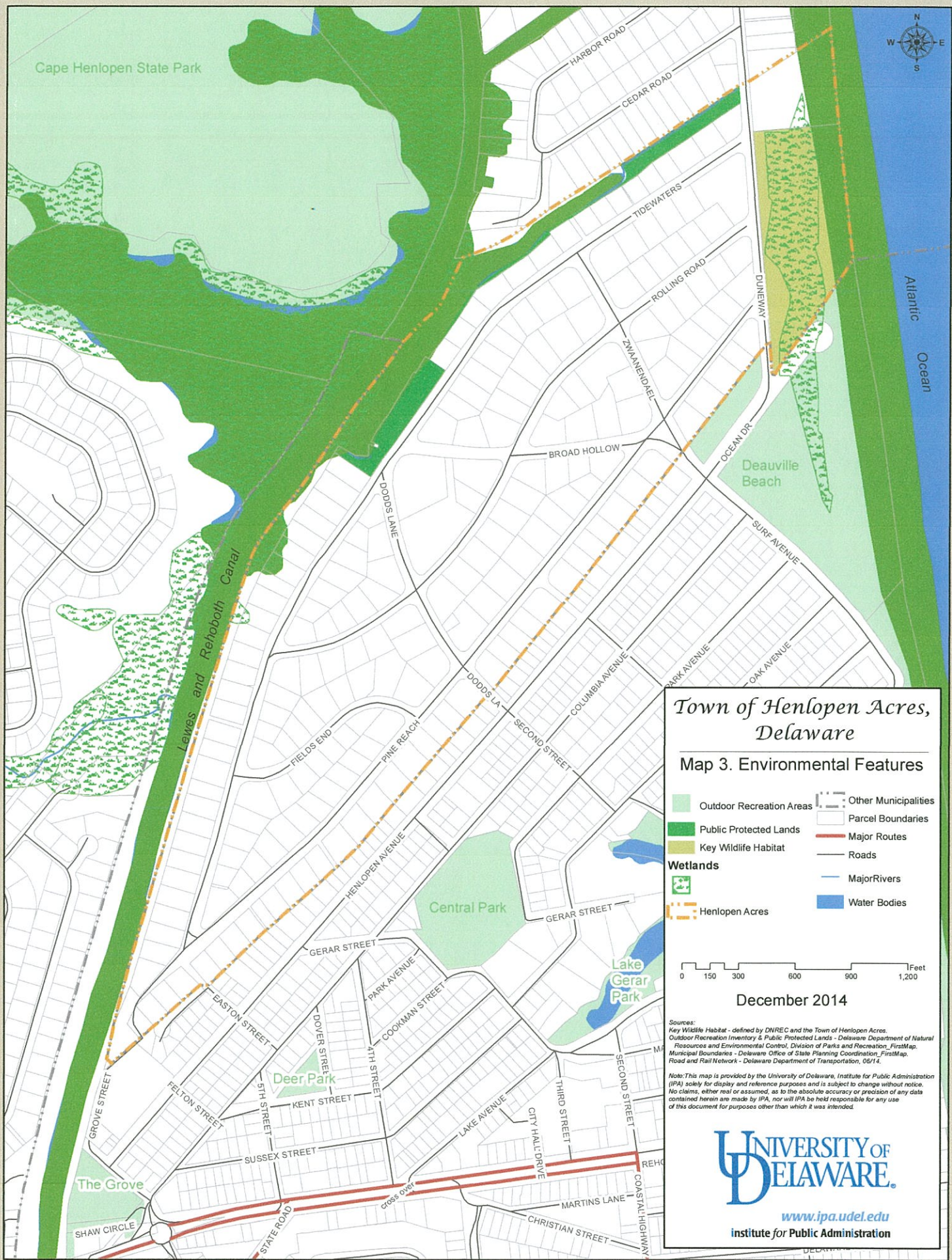
December 2014

Sources:
Municipal Boundaries - Delaware Office of State Planning Coordination, 12/14 FirstMap.
Parcel Boundaries - Sussex County Mapping and Addressing, 2014.
Road and Rail Network - Delaware Department of Transportation, 06/14.

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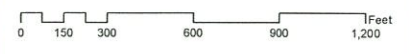
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Town of Henlopen Acres, Delaware

Map 3. Environmental Features

- Outdoor Recreation Areas
- Public Protected Lands
- Key Wildlife Habitat
- Wetlands
- Henlopen Acres
- Other Municipalities
- Parcel Boundaries
- Major Routes
- Roads
- Major Rivers
- Water Bodies



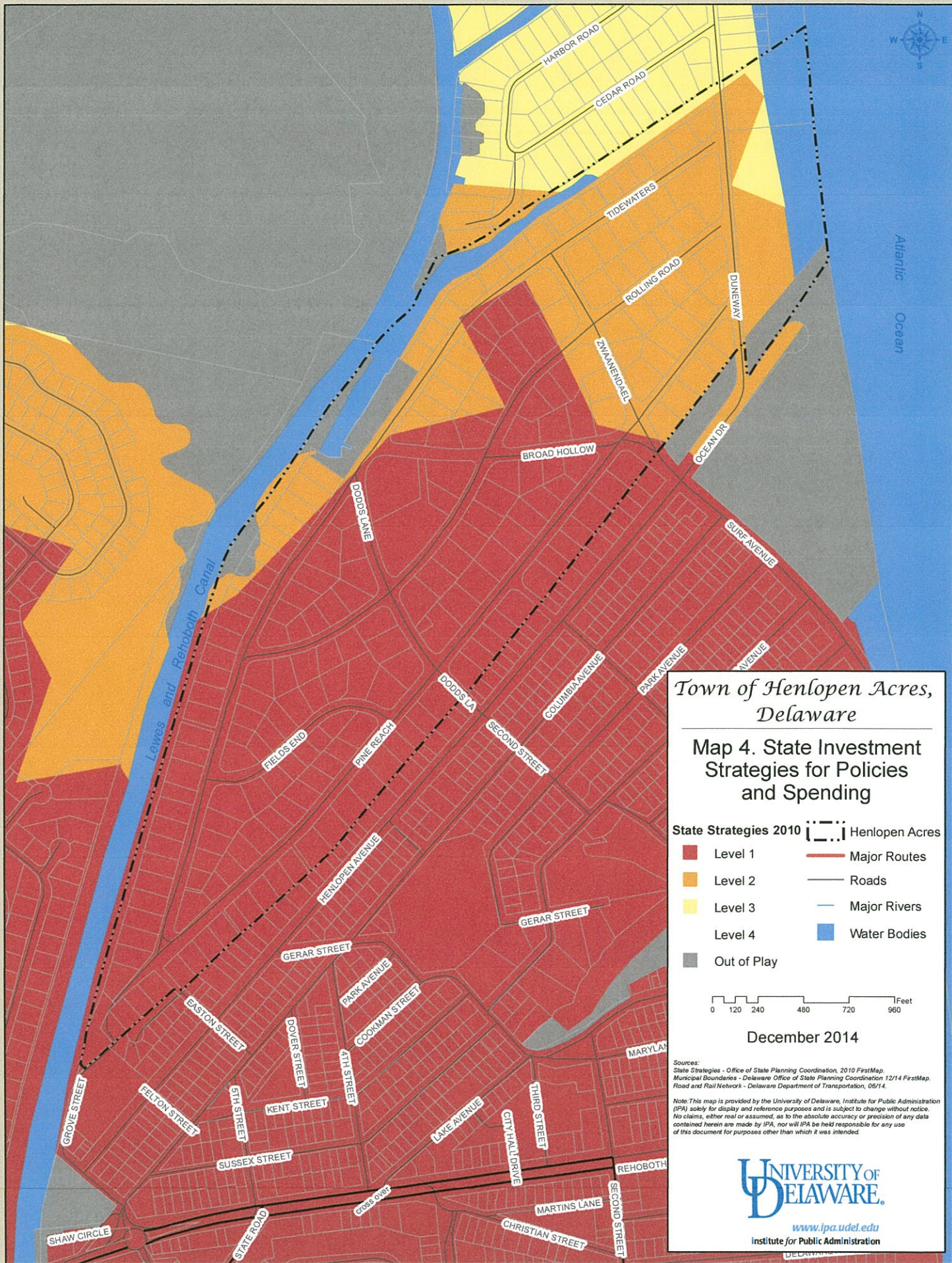
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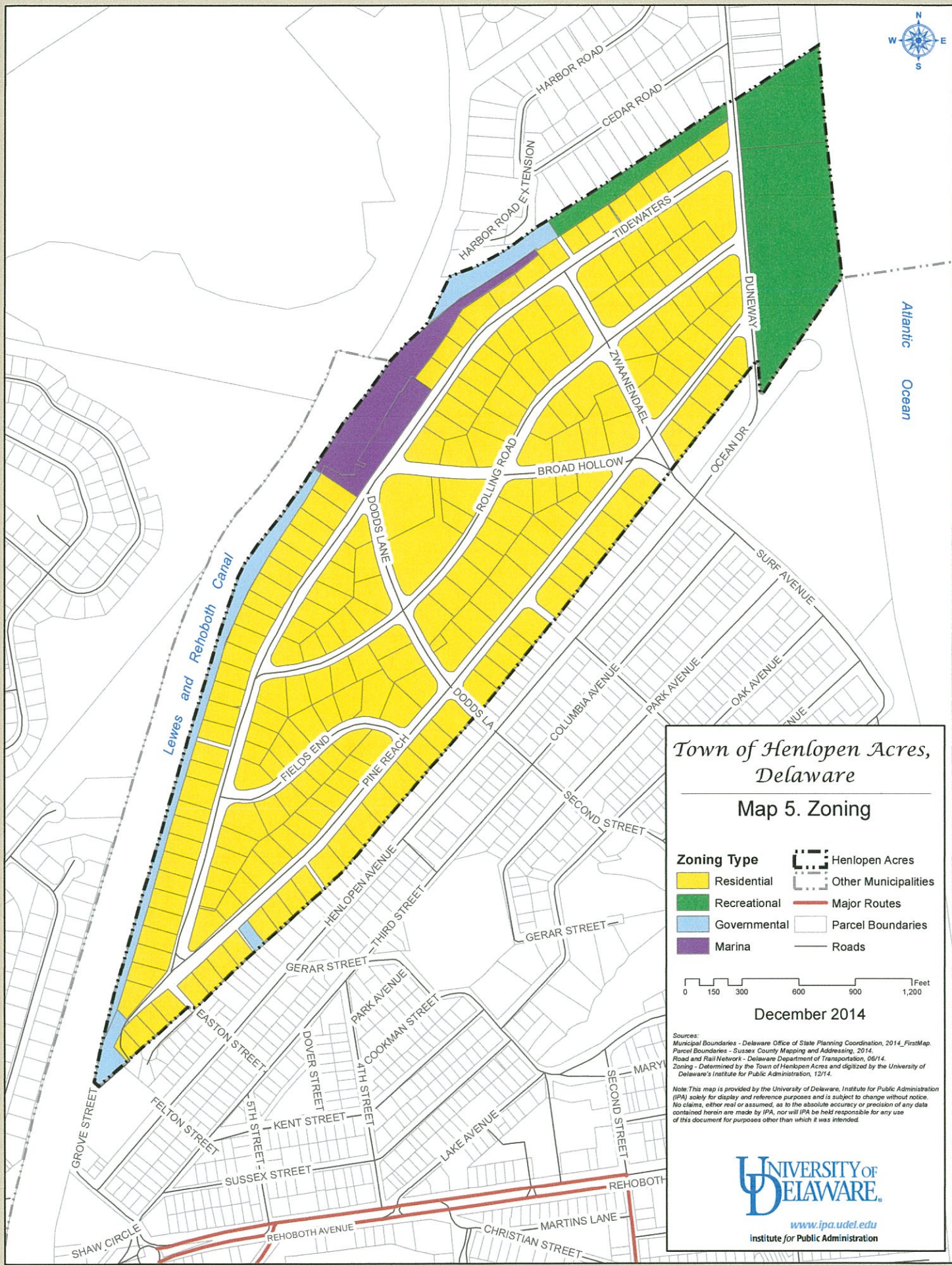
Sources:
Key Wildlife Habitat - defined by DNREC and the Town of Henlopen Acres.
Outdoor Recreation Inventory & Public Protected Lands - Delaware Department of Natural Resources and Environmental Control, Division of Parks and Recreation, FirstMap.
Municipal Boundaries - Delaware Office of State Planning Coordination, FirstMap.
Road and Rail Network - Delaware Department of Transportation, 06/14.

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Town of Henlopen Acres, Delaware

Map 5. Zoning

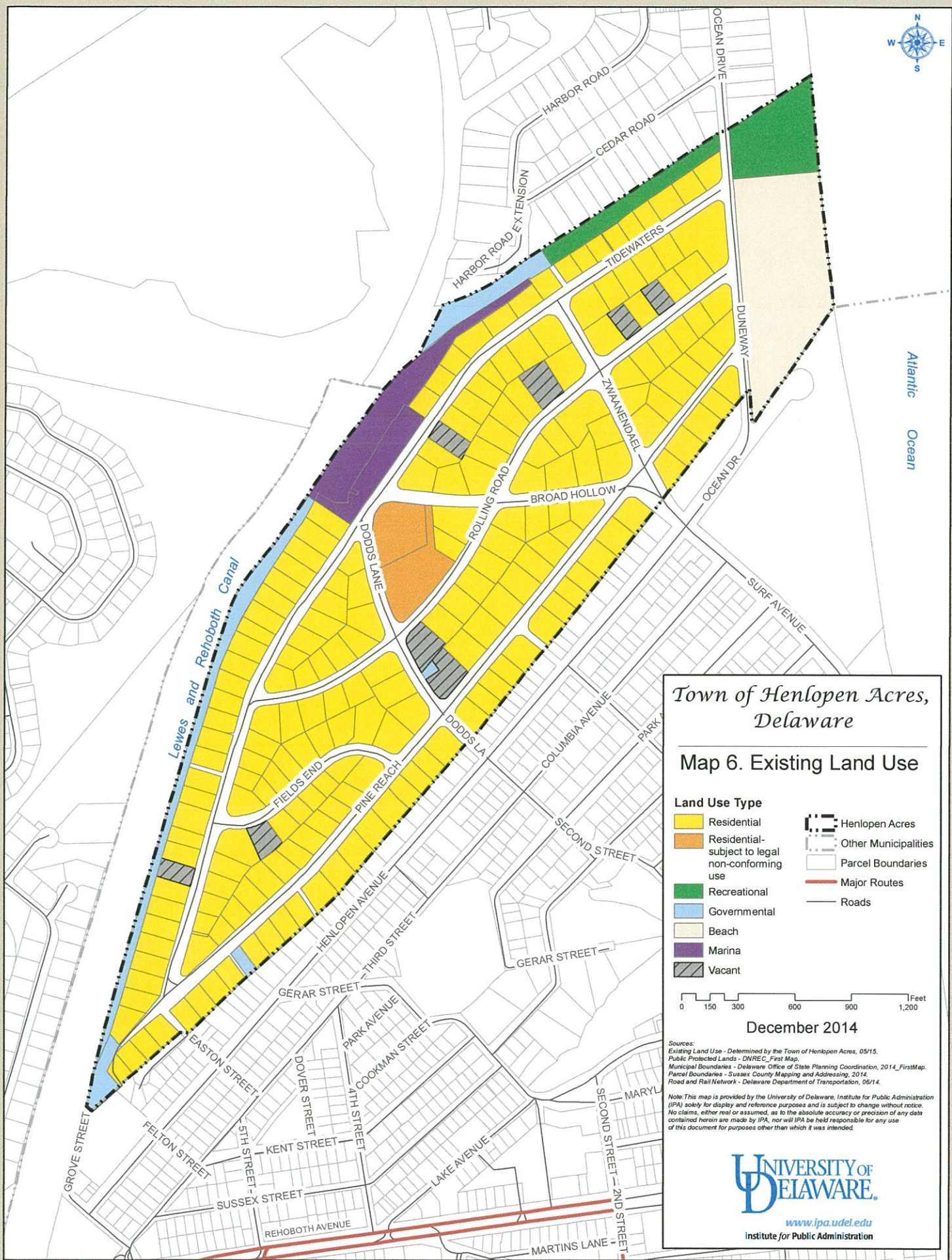
- | | |
|--------------------|----------------------|
| Zoning Type | Henlopen Acres |
| Residential | Other Municipalities |
| Recreational | Major Routes |
| Governmental | Parcel Boundaries |
| Marina | Roads |

0 150 300 600 900 1,200 Feet

December 2014

Sources:
Municipal Boundaries - Delaware Office of State Planning Coordination, 2014, FirstMap.
Parcel Boundaries - Sussex County Mapping and Addressing, 2014.
Road and Rail Network - Delaware Department of Transportation, 06/14.
Zoning - Determined by the Town of Henlopen Acres and digitized by the University of Delaware's Institute for Public Administration, 12/14.

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Town of Henlopen Acres, Delaware

Map 6. Existing Land Use

Land Use Type

- Residential
- Residential-subject to legal non-conforming use
- Recreational
- Governmental
- Beach
- Marina
- Vacant

- Henlopen Acres
- Other Municipalities
- Parcel Boundaries
- Major Routes
- Roads

0 150 300 600 900 1,200 Feet

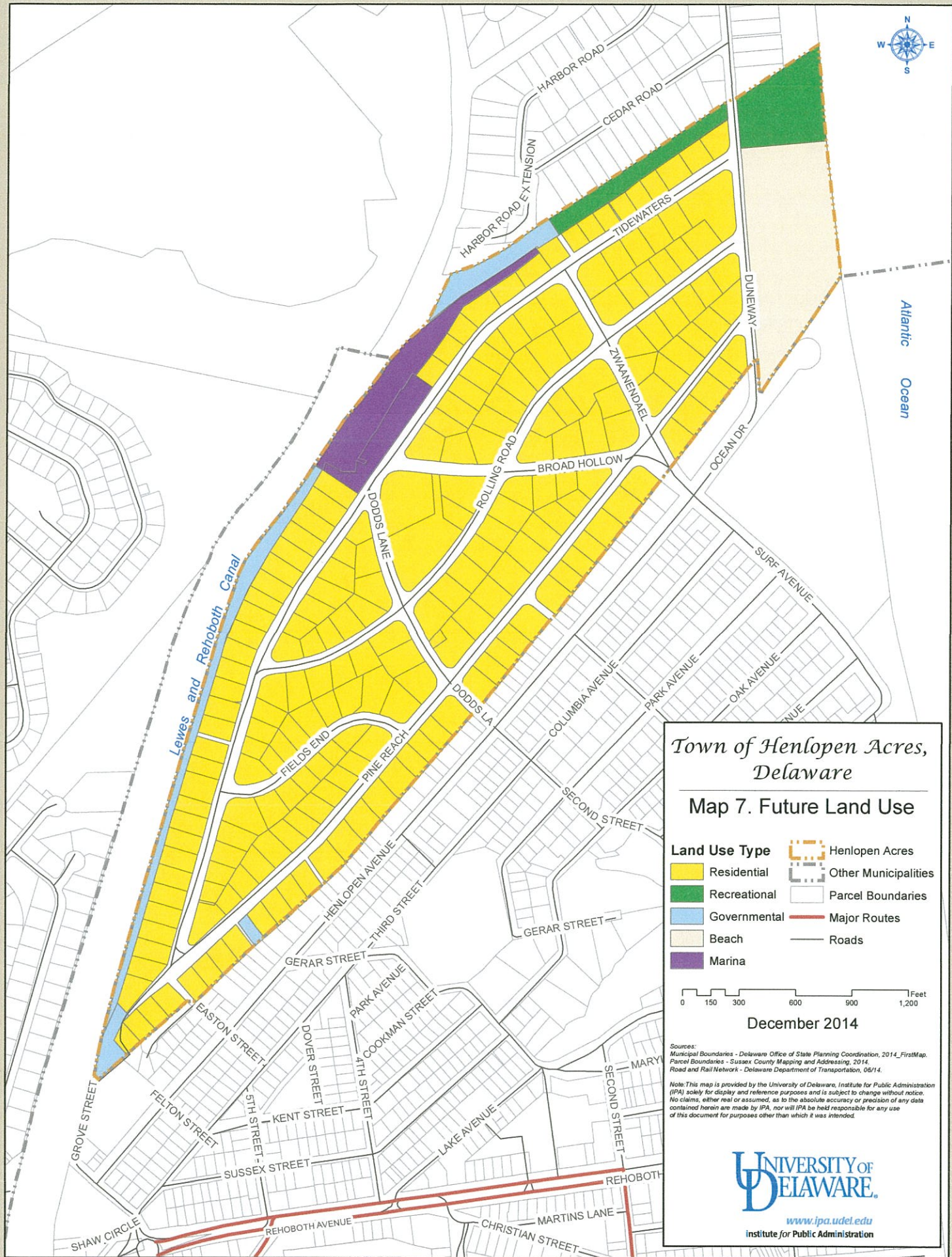
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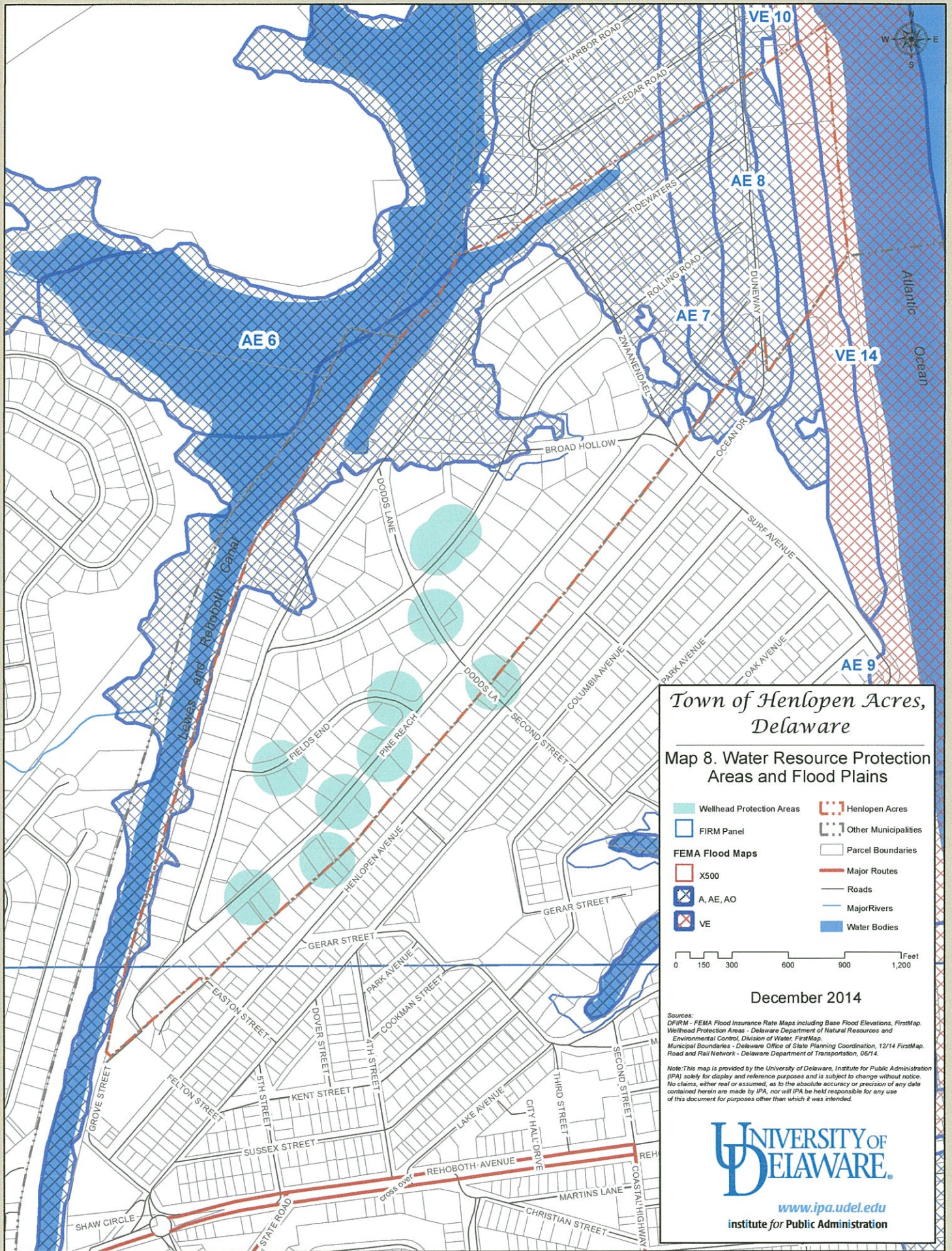
Sources:
Existing Land Use - Determined by the Town of Henlopen Acres, 05/15.
Public Protected Lands - DNREC, First Map.
Municipal Boundaries - Delaware Office of State Planning Coordination, 2014_FirstMap.
Parcel Boundaries - Sussex County Mapping and Addressing, 2014.
Road and Rail Network - Delaware Department of Transportation, 06/14.

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Community Name: Henlopen Acres

Total Area: 163.46 Acres

Urban Tree Canopy (UTC): 70.61 Acres

UTC: 43.20%

 Municipal_Bounds

 Tree Canopy

Map is for information only and is not intended as a survey



REFERENCES, FOOTNOTES, BIBLIOGRAPHY

1. Henlopen Acres: a residential development at Rehoboth Beach, Delaware/W.S. Corkran
2. Information in this section obtained from Deed of sale for the Wilbur S. Corkran
Property constituting Town of Henlopen Acres of 1930 and further recorded deeds
3. National Register of Historic Places, Inventory Nomination Form
4. 1982 Deed, Sussex County Deed Book 1198, page 333
5. Natural Resources Conservation Service
6. Delaware Wildlife Action Plan 2006, Delaware Division of Fish and Wildlife
7. Arbor Day Foundation
8. Town of Henlopen Acres, 2014
9. Sussex Outdoors, ©2013

TIMELINE

- The June 27 meeting of the Henlopen Acres Planning Commission was very well attended by a good cross section of town residents, as well as by Rehoboth Art League (“RAL”) officials and various state officials, including Connie Holland, Director of the Office of State Planning.
- At that meeting, the majority of Town residents made it clear that they wanted the RAL to continue to prosper, but did not want it to expand its activities or its facilities in Henlopen Acres.
- Importantly, the RAL representatives specifically stated that the RAL does not wish or intend to expand its activities or its facilities. Instead, what it wants is clarification from the Town as to what it can and cannot do, and legal assurance that it will be able to rebuild its structures in the event of catastrophic loss.
- Following the June meeting, John Scheurer, the Planning Commission Chairman, arranged a series of meetings with RAL representatives and most, if not all, of the residents abutting or close to the RAL. Two members of the Henlopen Acres Board of Commissioners -- Mr. John Staffier and Ms. Joni Reich -- attended some of the meetings in their individual capacities. At the meetings, the residents strongly re-affirmed what was said at the June meeting, namely, that they wanted the RAL to prosper, but did not want any further expansion of its activities or facilities in Henlopen Acres. The RAL, again, consistently disavowed any desire for such expansion.
- While all of this was going on, Messrs. Scheurer and Staffier and Ms. Reich were working on a draft Memorandum of Understanding (“MOU”) between the Town and the RAL. The draft MOU does not establish any new zoning regulations applicable to the RAL or modify any existing regulations. Instead, it was intended and designed to (1) clarify the scope of the RAL’s existing, legal, grandfathered non-conforming use status, (2) provide reasonable assurance that the RAL will be able to rebuild its facilities in the event of a catastrophic loss, and (3) memorialize the RAL’s “no expansion” position. The MOU, therefore, would effectively give the RAL what it said it wanted at the June 27 meeting and thereafter. The Town does not believe that establishment of a new zone is necessary or advisable to achieve those goals. The RAL’s current, grandfathered non-conforming use status already provides it with the legal right to continue its ongoing activities and to maintain its existing facilities in perpetuity. Confirmation of the RAL’s right to rebuild in the event of a catastrophic loss can be provided by means other than a new zone. The draft MOU was given to the RAL on October 21, and Messrs. Scheurer and Staffier and Ms. Reich met with Ms. Diana Beebe and Mr. John Schroeder to discuss the draft on October 27.
- The MOU speaks for itself, but three provisions deserve special note. First, Paragraph 2 would establish a regular communication process between the Town and the RAL. This is very important as a means to develop mutual trust and an ongoing working relationship.

- Second, per Paragraph 1, the draft was proposed as a one year trial agreement. That was done because, as the drafters worked on it, they concluded that it was probably too ambitious to try to reach a final, permanent agreement in one step and that it would be best to try the arrangement out for a year and give both the Town and the RAL a chance to work out the kinks, and, especially and hopefully, a chance to get comfortable with the regular communication process and develop some mutual trust.
- Third, paragraph 12 provides that the Town would support a variance request by the RAL to re-build any structure that was more than 80% destroyed by accident or natural disaster during the term of the agreement. The drafters felt that Town support on that would give the RAL the assurances it needed as a practical matter during the trial period. They made clear to the RAL, however, their understanding that if and when a permanent arrangement was reached, a permanent legal solution to the 80% issue would have to be part of the deal.
- The drafters expected and understood that the RAL was going to provide specific comments on the draft MOU at the October 27 meeting. The RAL provided no comments however, and it still has not done so. Instead, at the meeting, Ms. Beebe and Mr. Schroeder took the position that the agreement must be a permanent agreement that committed the Town to establish a new zone for the RAL. While the RAL's position on that score was certainly not new, the drafters were a bit surprised by it because they had been led to believe that the RAL understood and had accepted that the MOU would be a one year trial agreement, and that a commitment to establish a new zone was not going to be part of the deal.
- Although the RAL has been talking about a new zone for many years, it has always declined to say what the rules and regulations would be in such a zone. Most recently, at the December 1 Planning Commission meeting, it once again proposed that a new zone be established and once again failed to say what the rules would be, except to say that the RAL could engage in any activities and build any structures that it felt were desirable for "recreational, educational, philanthropic or community purposes." (See attached RAL zoning proposal). That, of course, amounts to no rules. And in a recent email to Mr. Scheurer, the RAL explained that it thought the new zone should be established first, with the details -- that is, the rules -- to be established later. The Town believes that it would be irresponsible to establish any new zone without first determining the rules that would apply in the zone. In this situation, it would be a prescription for disaster and would lead only to unending arguments between the Town and the RAL about what the applicable rules should be.
- Following the December 1 Planning Commission meeting, the RAL indicated that it would try to put together some specific comments on the draft MOU. It has not yet done so, but if it does, the Town will certainly be open to considering the RAL's views. For now, however, the ball is in the RAL's court.

**MEMORANDUM OF UNDERSTANDING ("MOU") BETWEEN THE TOWN OF
HENLOPEN ACRES ("TOWN") AND THE REHOBOTH ART LEAGUE
("RAL") REGARDING THE SCOPE OF THE RAL'S EXISTING LEGAL NON-
CONFORMING USE AUTHORIZATION**

Recitals:

- A. As many of the speakers at the RAL's 75th anniversary celebration emphasized, the RAL is a "special place." Its specialness, however, derives in large part from the specialness of the unique Henlopen Acres community in which it is located. Expansion of the scope and the frequency of the RAL's activities at its Henlopen Acres property, and/or expansion of its facilities in Henlopen Acres, will increase the impacts of the RAL on neighboring properties and on the neighborhood in general and is inconsistent with the residential character of the Henlopen Acres community. The Town and the RAL agree, therefore, that appropriate regulations should be put in place that permit the RAL to reasonably utilize its property while minimizing adverse impacts on its neighbors and the community. Such regulations will help preserve the special qualities of both the Henlopen Acres community and the RAL itself and will permit a more cooperative and supportive relationship between the Town and the RAL.
- B. The RAL has confirmed that it has no intention or desire to change or expand the nature of its activities in Henlopen Acres, or to increase the frequency or intensity of its activities, compared to what they have been in recent years. The RAL has also confirmed that it does not intend or desire to expand or materially change its facilities in Henlopen Acres, but wishes merely to be assured of its right and ability to maintain and update its facilities as necessary, without changing their size, location on the property or current use.
- C. The RAL and the Town agree that the primary factors that affect the impact of the RAL's activities on the Henlopen Acres community are the frequency of public events at the RAL, the number of people and automobiles attending such events, the location of the events on the RAL campus (i.e. whether held indoors or outdoors), the time of day at which the events are held, the duration of the events, and the nature of the events in terms of their potential to generate noise.
- D. Under the Town's zoning regulations and ordinances, the RAL's activities on its Henlopen Acres property, constitute a grandfathered, legal non-conforming use within the Town's Residential Zone, and the RAL's facilities constitute non-conforming structures. Its non-conforming status imposes operational limitations on the RAL that both the Town and the RAL would like to clarify.

Agreement:

In order to clarify the scope of the RAL's existing legal non-conforming use authorization, consistent with the Recitals set forth above, the Town and the RAL hereby agree as follows:

1. This agreement shall be in place for an initial term of one year beginning on January 1, 2015. At the end of the one year trial period, the agreement can be extended by mutual agreement, modified or terminated.
2. At least 30 days prior the commencement of each calendar year, the RAL shall submit to the Town a calendar of planned activities for the upcoming year. In particular the calendar shall highlight any activity that is expected to draw more than 50 people and 25 cars into the neighborhood. During the year, the RAL's Executive Director shall meet with the Town Manager quarterly to Review the activities for the past quarter, the future activities and any changes or revisions to the annual calendar.

Low Impact Events and Activities

3. The RAL is permitted to keep its galleries and museum shop open to the public, unrelated to specific events or classes, Monday through Saturday, 9 a.m. through 5 p.m. and Sunday, 10 a.m. through 4 p.m.
4. The RAL is permitted to conduct indoor public events, classes and activities between the hours 9 a.m. – 5 p.m., Monday – Friday (except holidays)) that are reasonably related to the traditional visual arts (painting, drawing, photography, sculpture, ceramics, crafts)¹ and are not intended or reasonably expected to attract more than 50 people and/or 25 cars into the neighborhood. The total number and frequency of such events per month and per year shall be consistent with and not in excess of the number and frequency of such events in recent past years. In addition, there will not be more than 4 such events on any one day, and, if the timing of such events on any day overlap, the overlapping events must not be intended or reasonably be expected to cumulatively attract more than 50 people and/or 25 cars into the neighborhood.
5. Not more than 2 days per week classes may be conducted after 5 p.m. up to

¹ The term "reasonably related to the traditional visual arts" as used herein means that the art in question is the focus of the event. Questions as to whether specific events would or would not be considered by the Town to qualify as "reasonably related to the traditional visual arts" should be addressed in good faith to the Town Manager who will, in turn, respond in good faith.

as late as 9 p.m., but, whenever possible, use of these extended hours shall be minimized.

Medium Impact Events and Activities

6. The RAL is permitted to conduct 1 artist opening per month that will be held indoors between 5p.m. and 7p.m. Many of these events will be low impact events (attracting less than 50 people or 25 cars), but up to 3 of the openings per year and up to 3 of the RAL's monthly Board meetings per year, can be medium impact events, meaning that they are expected to attract up to 100 people or 50 cars. To the extent possible, any medium impact event should be identified on the annual calendar referenced in Item 2 and discussed with the Town Manager at the prior quarterly meeting. If not so identified or discussed, it should be discussed with the Town Manager at least two weeks before it is publically announced,

High Impact Events and Activities

7. The RAL is permitted to conduct its Young at Art Show in March, its Holiday Fair in December, and its Annual Cottage Tour in July during the hours and for the durations in which those events have been conducted in the recent past. The RAL is also permitted to conduct its traditional public art show on two consecutive weekends in August with the goal of not increasing the size of or scope of the show.² If the art show continues to grow beyond its current size and scope, the RAL will investigate suitable off campus locations for the show along with other medium and high impact events with the goal of maintaining the current status quo of activity in Henlopen Acres. The specific dates for each of these events should be shown on the annual calendar referenced in Item 2.

General

8. The RAL is not be permitted to rent out or donate its property or facilities for private events such as weddings, bat mitzvahs, graduation parties, fund raisers, etc.
9. The RAL, in consultation with the Town Manager, shall develop a parking plan, which will apply when an event attracts more cars than the RAL's parking lot can accommodate. The Town agrees to provide up to 10 parking

² The RAL has indicated that it may in the future wish to conduct the art show from Thursday to Sunday of a single week, rather than on Saturday and Sunday of two consecutive weekends. The Town is open to discussing such a change.

spaces at the Marina for overflow and additional parking on the Town right of way in front of the Marina in coordination with the Town Manager, but no more than 10 days per year.

10. The RAL can apply to the Town Manager for authority to (i) hold additional public events reasonably related to the traditional visual arts that are reasonably expected to attract more than 50 people and/or 25 cars, or (ii) hold public events not reasonably related to the traditional visual arts, or (iii) hold outdoor public events of any type. Such requests shall be limited to one per month and no filing fee shall apply. In acting on such requests, the Town Manager will consider and evaluate the impacts of the proposed event in terms of the impact factors described in Recital C.
11. If the Town Manager denies such a request, the RAL may appeal the denial to the Board of Commissioners. The prevailing filing fee applicable to a request for a variance shall apply to such appeals. [Alternate: In order to avoid attorney and stenographer costs, and thus obviate the need for filing fees, any such appeals will be conducted on an informal basis and the decision of the Board shall be final and non-appealable.]
12. If at any time while the agreement in effect, any structure on the RAL property is more than 80% destroyed by natural disaster or accident, the Town will support the prompt grant of a variance to the RAL to permit the structure to be re-built to its pre-existing specification and uses, and will support waiver of the applicable filing fee.
13. No events conducted or authorized hereunder shall expand or affect the RAL's non-conforming use or affect the RAL's status as a non-conforming use within a residential zone.
14. This agreement shall be construed, interpreted and implemented consistent with the Recitals set forth above.

Accepted and agreed to this ____ day of _____

[Insert signature blocks]

Year	2009	2010	2011	2012	2013	2014
January				January Opening		
February					February Opening Bertha Riley	February Opening College Artists
March		Young at Art Opening	Young at Art Opening	Young at Art Opening and March Opening Fred Comegys	Young at Art	Member Showcase
April	Young at Art, Opening	April Opening, Exhibits	April Opening	April Opening	April Opening	
May	May Opening exhibits				May Opening	Members Craft Exhibition & Opening
June	June Opening, Crafts	June Opening Fine Arts	June Opening Fine Craft	June Opening Fine Arts and (Shakespeare in the Garden)*	June Opening Fine Arts and annual Meeting and Diamond Celebration	Best of the Beach Art Auction
July	July Opening fine Art and Cottage Tour	July Opening and Cottage Tour	July Opening and Cottage Tour	July Opening and Cottage Tour	July Opening and Cottage Tour	July opening Members Fine Art Exhibition, Cottage Tour
Aug	Art Show	Art Show	Art Show	Art Show and Opening Paintings	Art Show and August Opening	41st Annual Fine Art Show, Members Openig Aina Nergaard-Namaak

DRAFT
10/20/2014

Sept	September Opening	September Opening	September Opening			
Oct		October Opening		October Opening	October Opening	6th Annual Juried Biannual Show
Nov	Holiday Fair, 500 attendees		Holiday Fair and November Opening and Open House Holiday Flair	Holiday Fair	Holiday Fair	Holiday Fair
Dec				Open House	Holiday Open House	Holiday Open House
Total Events	8	8	10	13	14	11
*Note, Shakespeare in the Garden was an outdoor event that would not likely be approved.						

Classes etc			
Year	2012	2013	2014
January	38 classes, 10 evening, 2 Saturday	30 classes, 15 evening, 3 Saturday	31 classes, 10 evening, 4 Saturday, 0 Sunday
February	42 classes, 14 evening, 0 Saturday	25 classes, 13 evening, 2 Saturday	18 classes, 10 evening, 3 Saturday, 2 Sunday
March	47 classes, 26 evening, 0 Saturday	21 classes, 14 evening, 0 Saturday	27 classes, 13 evening, 5 Saturday, 0 Sunday
April	39 classes, 18 evening, 1 Saturday, 1 Sunday	20 classes, 11 evening, 2 Saturday, 1 Sunday	22 classes, 10 evening, 3 Saturday, 1 Sunday
May	52 classes, 24 evening, 1 Saturday, 1 Sunday	21 classes, 10 evening, 3 Saturday, 2 Sunday	20 classes, 10 evening, 1 Saturday, 0 Sunday
June	56 classes, 18 evening, 1 Saturday, 1 Sunday, Plus 34 Kids classes	42 classes, 6 evening, 0 Saturday, 0 Sunday	56 classes, 6 evening, 0 Saturday, 1 Sunday
July	51 classes, 11 evening, 1 Saturday, 2 Sunday, Plus 53 kids classes	77 classes, 2 evening, 0 Saturday, 0 Sunday	68 classes, 2 evening, 0 Saturday, 0 Sunday
Aug	35 classes, 6 evening, 1 Saturday, Plus 37 kids classes	31 classes, 2 evening, 0 Saturday, 0 Sunday	25 classes, 2 evening, 0 Saturday, 1 Sunday

DRAFT
10/20/2014

Sept	31 classes, 9 evening, 2 Saturday, 1 Sunday	17 classes, 5 evening, 1 Saturday, 1 Sunday	20 classes, 6 evening, 1 Saturday, 0 Sunday
Oct	42 classes, 11 evening, 2 Saturday, 1 Sunday	18 classes, 5 evening, 1 Saturday, 1 Sunday	16 classes, 7 evening, 1 Saturday, 1 Sunday
Nov	27 classes, 8 evening	9 classes, 5 evening, 0 Saturday, 0 Sunday	10 classes, 5 evening, 0 Saturday, 1 Sunday
Dec	21 classes, 4 evening	5 classes, 3 evening, 0 Saturday, 0 Sunday	7 classes, 3 evening, 0 Saturday, 2 Sunday

MEMORANDUM OF UNDERSTANDING
BETWEEN
SUSSEX COUNTY
AND THE
CITY OF Henlopen Acres, DELAWARE,
FOR LAND PLANNING COORDINATION

This Memorandum of Understanding (MOU) is hereby agreed to by Sussex County (the County) and the City of Henlopen Acres (the City), a municipal corporation of the State of Delaware, and states as follows:

WHEREAS, the County is responsible for land use decisions outside the limits of municipalities; and

WHEREAS, the City is responsible for land use decisions inside its municipal boundaries; and

WHEREAS, those decisions of the County and the City may have an impact on the City or the County; and

WHEREAS, the City has completed a comprehensive plan that may designate certain lands as "areas of concern" that are similar to those designated by the County as "Environmentally Sensitive Development Areas"; and

WHEREAS, the City designated "areas of concern" and the County designated "area within one mile surrounding the City's incorporated boundary" are not identical; and

WHEREAS, the County and the City desire to discuss and communicate with each other regarding land planning and land use practices in the City and the Intergovernmental Coordination Zone; and

WHEREAS, the County and the City wish to ensure full opportunities for communication between the County and the City, their Planning and Zoning Commissions, and their staff in addressing the benefits or impacts of zoning changes and land use decisions within the City and the County's Intergovernmental Coordination Zone;

NOW, THEREFORE, the County and the City do hereby agree as follows:

1. To work cooperatively through the planning process to include land use policies and adequate public facility plans in the City and the Intergovernmental Coordination Zone.
2. To establish a process for regular communication and monitoring of plan implementation that includes regular information sharing between the parties.

3. To receive and to review any Department of Transportation Traffic Impact Studies when received from it for any application for a major subdivision within the City or the Intergovernmental Coordination Zone to determine City and County traffic impact.

4. To cooperate to ensure that public services (wastewater, water, storm water management, and electricity) are in place or provided for throughout the City and the Intergovernmental Coordination Zone so that there will be no areas excluded or unserved where feasible.

5. Upon receipt of an application for any annexation, development, or change in land use within the City or the Intergovernmental Coordination Zone, to give written notice of such application to the other party.

6. Either party may terminate this agreement upon ninety (90) days written notice.

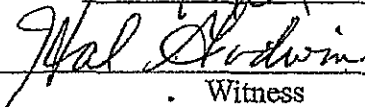
7. That nothing contained herein shall confer upon nor be deemed a delegation to the other party of any authority or jurisdiction over the other party's land use, planning or zoning powers, authority, or jurisdiction.

IN WITNESS WHEREOF, the parties hereto do hereby set their hands and seals.

SUSSEX COUNTY

By: 

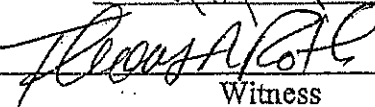
Dated: 2/3/09


Witness

CITY OF

By: 

Dated: 1/8/09


Witness

Town of Henlopen Acres

104 Tidewaters
Henlopen Acres, Delaware 19971

302-227-6411
Fax: 302-227-3978

Mayor
David Hill

Commissioners:
Andrew Brittingham
Frank Jamison
Winifred Kee
David Lyons
Beatrix Richards
John Staffier

November 19, 2012

Mr. Todd Lawson, County Administrator
Sussex County
P. O. Box 589
Georgetown, DE 19947

Town Manager:
Thomas Roth

Hon. Sam Cooper
City of Rehoboth Beach
229 Rehoboth Avenue
Rehoboth Beach, DE 19971

*Maintenance
Manager:*
Alexander McClure

Hon. James L. Ford, III
City of Lewes
P. O. Box 227
Lewes, DE 19958

Security Supervisor:
Lee Stewart

Town Solicitor:
Glenn C. Mandalas,
BairdMandalas,LLC

RE: Comprehensive Plan

Gentlemen:

The Town of Henlopen Acres is set to begin work on the ten year update of their Comprehensive Plan.

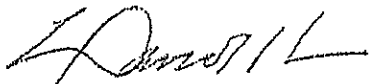
If you or your staff would like an opportunity to review or comment on the current draft, would you please contact me or our Town Manager, Thomas Roth at your earliest convenience.

Member:
Association of
Coastal Towns

Sincerely,

*Sussex County
Association of
Towns*

*Delaware Rural
Water Association*



David L. Hill,
Mayor

Town of Henlopen Acres

104 Tidewaters
Henlopen Acres, Delaware 19971

302-227-6411
Fax: 302-227-3978

Mayor
David Hill

Commissioners:
Andrew Brittingham
Frank Jamison
Winifred Kee
David Lyons
Beatrice Richards
John Staffier

May 30, 2014

Mr. Todd Lawson, County Administrator
Sussex County
P. O. Box 589
Georgetown, DE 19947

Town Manager:
Thomas Roth

Hon. Sam Cooper
City of Rehoboth Beach
229 Rehoboth Avenue
Rehoboth Beach, DE 19971

*Maintenance
Manager:*
Alexander McClure

Hon. Theodore W. Becker
City of Lewes
P. O. Box 227
Lewes, DE 19958

Security Supervisor:
Lee Stewart

Town Solicitor:
Glenn C. Mandalas,
Baird Mandala
Brockstedt, LLC

RE: Comprehensive Plan

Gentlemen:

The Town of Henlopen Acres has prepared a draft for their 2014 Comprehensive Plan update.

Attached is a copy of the Public Hearing Notice. We welcome you to review this plan and forward any comments. If you or your staff would like speak to myself, Thomas Roth our Town Manager, John Scheurer our Planning Commission Chairman, please feel free to contact us through Town Hall.

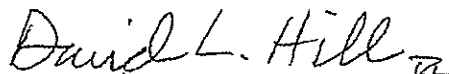
Member:
Association of
Coastal Towns

*Sussex County
Association of
Towns*

*Delaware Rural
Water Association*

*Delaware League of
Local Governments*

Sincerely,



David L. Hill,
Mayor

**PLANNING COMMISSION MEETING
CITY OF REHOBOTH BEACH**

July 11, 2014

The Regular Meeting of the Planning Commission of the City of Rehoboth Beach was called to order at 6:33 p.m. by Chairman Preston Littleton on Friday, July 11, 2014 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

ROLL CALL

Mr. Francis Markert called the roll:

Present:	Mr. Brian Patterson Mr. Paul Hubbard Mr. David Mellen Chairman Preston Littleton Mr. Francis Markert, Jr. Mrs. Jan Konesey (left the meeting at 8:56 p.m.) Ms. Lynn Wilson Mr. Michael Strange
Absent:	Mr. Harvey Shulman
Also Present:	Mr. Glenn Mandalas, City Solicitor Ms. Terri Sullivan, Chief Building Inspector

A quorum was present.

VERIFICATION OF MEETING NOTICE

Ms. Ann Womack, City Secretary, verified that the Agenda was posted at City Hall, Building and Licensing Department and on the City website on July 3, 2014. The Agenda was faxed to Cape Gazette, Coast Press and Delaware State News on July 3, 2014. An E-News blast was also sent out on July 3, 2014.

APPROVAL OF MINUTES

Minutes of the May 9, 2014 Planning Commission Regular Meeting were distributed prior to the meeting. Minutes of the June 13, 2014 Planning Commission Regular Meeting were not available for approval.

Mr. David Mellen made a motion, seconded by Mr. Markert, to approve the May 9, 2014 Planning Commission Regular Meeting minutes as written. Motion carried unanimously.

CORRESPONDENCE

1. Email dated July 3, 2014 from Paul and JoAnn Hersh, 47 Oak Avenue, regarding swimming pools, rental properties and noise in residential areas.
2. Email and letter received July 8, 2014 from John and Leah Rodgers, 45 Oak Avenue, regarding swimming pools, rental properties and noise in residential areas.
3. Email dated July 10, 2014 from the Boghosian Family, 100 Stockley Street, regarding swimming pools, rental properties and noise in residential areas.
4. Letter dated July 8, 2014 from Donald and Lynne Myers, 43 Oak Avenue, regarding swimming pools, rental properties and noise in residential areas.

OLD BUSINESS

Chairman Littleton called for discussion and action on a request to extend the deadline to complete conditions cited in Conditionally Approved Partitioning Application No. 1113-04 for a property located at 49 Park Avenue.

Building Inspector Terri Sullivan reported that on June 13, 2014 a request was made by the owner of 49 Park Avenue to extend the deadline of July 10, 2014 an additional 90 days to complete conditions. The building has been moved, but Delmarva Power has not supplied electricity to the property to date so the project cannot be completed.

Mr. Markert made a motion, seconded by Mr. Michael Strange, to extend the deadline date 90 days from when it expired. Motion carried unanimously.

Chairman Littleton called for discussion and action on a request to finalize Conditionally Approved Minor Subdivision Application No. 1013-03 for a property located at 114 St. Lawrence Street.

Ms. Sullivan reported that the conditions have been completed except for the planting of the trees. The structures have been removed, and the utility easement was prepared and is acceptable to the City. All repairs to City property have been made. Two separate plans had been prepared. One was for the easement as it was proposed at the Public Hearing, and the other is for the easement on the opposite side of the same lot. The Applicants' preference is to go with the easement on the opposite side of the same lot based on some plans which they had prepared for their attorney.

City Solicitor Glenn Mandalas was satisfied with the easement. The City has enforcement rights to the easement. The City has committed to extending water and sewer along Lake Drive. He did not know if the engineer's plan shows a hookup at the time this project is done with extending the main, or whether it will be the next time the lateral would need to be repaired. With regard to the easement being put in place, there is an access.

Chairman Littleton said that the Planning Commission approved the easement going to the east side of the lot, but the Applicants refer to have the easement on the west side of the lot. There was no objection from the Planning Commission to placing the easement on the west side of the lot.

Mr. Michael Strange made a motion, seconded by Mrs. Jan Konesey, to finalize the conditionally approved Minor Subdivision Application No. 1013-03, give permission for the easement to be on the west side of the property and plant the trees by October 15, 2014. Motion carried unanimously.

NEW BUSINESS

There was none.

OTHER BUSINESS

Chairman Littleton called to discuss preparation needed for the yet to be scheduled joint meeting with the board of Commissioners to discuss swimming pools in residential zoned areas and related issues.

Chairman Littleton said that the Planning Commission has alerted the City Commissioners to the issue with swimming pools and noise. A document written by Mr. Strange was presented to the Board of Commissioners at its Regular Meeting that was held on June 20, 2014. The Planning Commission has requested holding a joint meeting with the Board of Commissioners to discuss this matter. There was affirmation among the Board to proceed with the joint meeting. No date has been set for the joint meeting.

Mr. Mellen noted that Mayor Cooper does not want the meeting to be unstructured, but to have the Planning Commission outline what the issues are.

Chairman Littleton noted that in the Planning Commission's discussion regarding swimming pools, it found that there was nothing inherently wrong with swimming pools, but that there are issues with noise, use, enforcement, pumps, loudspeakers, building a foundation and its impact on trees and stormwater runoff. Chemicals are involved which would be discharged into the storm sewer system. Chairman Littleton noted that there are engineering issues inherent with swimming pools.

Mrs. Jan Konesey thought that it takes courage on the part of Commissioners to find a solution whether it is a combination of changing the noise ordinance, looking at enforcement, possibly disallowing pools on 50 foot x 100 foot lots. The Commissioners have a responsibility to the current homeowners, not to the people who are investing in property for rentals. The City Commissioners need to solve this problem quickly.

Mr. John Meng, 107 St. Lawrence Street, said that the problem is really not with pools, it is with high capacity rental houses. There is a host of other problems that goes along with the swimming pools such as noise, parking, etc.

Mr. Strange noted that the key issue is residential homes transitioning into rental properties. There are a lot of anomalies in the Code, such as outside showers, that allow things to be done legitimately, but the end effect is that it is problematic. There is nothing in the Code to address lighting on pools. There are regulations to enforce the law. Integrated long range planning is needed to be seen that does the right thing for the long term. Mr. Strange will do more research to provide more content for referencing when the joint meeting is held.

Mr. Tom McGlone, 318 Laurel Street, said that the issues are size and number of people occupying rental properties. North Shores has some restrictions that people who rent properties have to be related in some way.

Mrs. Konesey noted that this can be found in the City Code, but it may be unconstitutional and unenforceable.

Mr. Brian Patterson said that what is being discussed is about weekly rentals as a business, not people's homes. The standards that apply to rental housing where people are making their home are different. An issue is that the City is not regulating this type of business effectively as it should be.

Ms. Sullivan noted that she has developed a report of properties with swimming pools. Seven swimming pools have been built from March 2012 until December 2012. Fifteen swimming pools were built in 2013, and 11 to date in 2014.

Chairman Littleton called for review, discussion and possibly finalize transmittal report and recommendations to the Board of Commissioners and review, discussion and possibly finalize the explanation of major changes to the Planning commission approved, proposed amended City Tree Ordinance with regard to Resolution Regarding the City's Trees passed by the Mayor and City Commissioners asking the Planning Commission to research and propose amendments, as necessary, to the City's ordinances, regulations or procedures which are designed to protect and augment the City's urban forest in order to ensure the environmental health, beauty and enjoyment of Rehoboth Beach's trees.

Chairman Littleton summarized the Planning Commission's charge from the Board of Commissioners to research and propose amendments to the City's ordinances, regulations and procedures. The focus was on the City's objective and stated goals of maintaining and increasing tree canopy within the City. The Planning Commission has held public meetings and workshops, has interviewed businesses and tree companies of which particular attention was paid to the comments of the Parks & Shade Tree Commission that hears appeals, the City Arborist, Building Inspector and has independently done a lot of research including having an educational symposium. The Planning Commission had concluded that there are issues with the tree ordinance, and it redrafted the ordinance. Currently, the draft ordinance can be found on the City website. In addition, the Board of Commissioners asked the Planning Commission to look at broader issues as well. Tonight, the Planning Commission discussed a series of mega recommendations of things beyond the Code. The documents reviewed at this meeting were the generic overview transmittal and recommendations and a document of discussion between the current and proposed amended ordinance. With regard to the recommendations, Mr. Markert was tasked with rewriting one of the recommendations which had been forwarded to the Planning Commission prior to the meeting. The Planning Commission reviewed each recommendation.

Comments on the recommendations are:

1. Change Parks and Shade Tree Committee to Parks and Shade Tree Commission.
2. Define the comprehensive tree plan for the City that includes private and public lands.
3. Make sure that when the Planning Commission is talking about this comprehensive tree plan it is not the Code specified public tree plan.
4. Explain what this comprehensive tree plan is about.
5. The Planning Commission should cite that it did not change in the first section of the existing tree ordinance the definition of the comprehensive tree plan. It is recommending that a change should be made to the language in the tree ordinance so that the comprehensive City tree plan is now the comprehensive tree plan for the City and includes public and private lands. Chairman Littleton will rewrite that section.
6. Propose a searchable computer-based system for the City with regard to trees that has an accessible database.
7. All application forms and instructions should be made available on the City website.
8. Application notice should be posted on the City website upon submission.
9. Take necessary action to inform real estate companies and agents doing business in the City that the minimum tree requirement for a lot becomes effective upon any conveyance of that property to the purchaser and upon the City's notification of receipt of the transfer property tax.

City Commissioner Patrick Gossett noted that the transfer tax is collected by the County, and then the County transfers it in one large sum each month to the City. It is not done on an individual basis.

10. Move "[T]he Planning Commission recommends that the Board of Commissioners take such action as necessary to increase the natural area requirements of the Zoning Code in order to provide more space for the planting of new trees and/or survival of existing trees" towards the top of the list.
11. Reverse 8(1) and 8(2) of the recommendations.
12. Recommend that the City should maintain its Tree City designation which includes Arbor Day. Part of Mr. Mellen's research was the Portland Report which had been distributed to the Planning

- Commission. One of the most important elements of that report was a public education program.
13. Increase the number of trees, both private and public, in the areas of the City that are most deficient of trees. The President of Country Club Estates Property Owners' Association has been trying to initiate a special effort to increase the number of trees on private and public property.
 14. Recommend that the City explore with the Delaware State Legislature an executive official's action that can be taken to ensure that the insurance companies doing business in the State do not require unwarranted tree trimming or removal by its clients.
 15. Additional recommendation. The Planning Commission recommends that the City explore with the Delaware State Legislature an executive official's action that can be taken to ensure that the Office of the Insurance Commissioner recognize the protection of trees as subject matter appropriate for the formal complaint and arbitration process is available to insurances.

Suggested changes to the narrative are:

1. Line No. 137. Make it clearer why the property owner should not have to pay for a sidewalk when the property owner plants a street tree. The single most important thing is for the City to take responsibility for planting and maintaining street trees. In order for it to be equitable to private property owners, the City should assume the associated responsibility.

Ms. Sullivan read Section 253-15(b) of the redrafted tree ordinance. If the City plants the tree, all cost involved in removing or replacing the tree and repairing damage to sidewalks and curbs is the City's responsibility. If a property owner has planted a tree on City property, it needs to be removed. The Parks and Shade Tree Commission will notify them in writing, and removal and repairs shall be done by the owner at his expense.

2. Line No. 100. The tree inventory of public land was done in 2010 by Davey Tree Group and is known as the Davey Tree Inventory.
3. Line Nos. 41-45. Mr. Mellen will provide a summarization of his research relative to trying to inventory private property trees. Three visuals will be included.

Mrs. Konesey made a motion, seconded by Mr. Strange, that the Planning Commission approves the recommendation 1 through 14 in the Trees in the City of Rehoboth Goals, Realities and Opportunities document as to be amended per discussion.

City Commissioner Gossett commented that the Planning Commission should indicate whether or not there is any weight given to the numbering of the additional recommendations, and that the Planning Commission should consider cross-referencing in the narrative where any additional recommendations are drawn from.

Motion carried unanimously.

A copy of the narrative will be forwarded to the Planning Commission members of the changes made to it.

Other changes to the Discussion of Changes between the Current and Proposed Amended Tree Ordinance, Draft #1, 07-02-14 document:

1. Bullet incomplete sentences with no more than two to three lines long.
2. Refer to a section in the code that is being discussed.
3. Line No. 78. Change "...would be contrary to the purpose of the Code that spares the owner the time and expense..." to "...would be contrary to the purpose of the Code that would spare the owner the time and the expense..."
4. Line No. 27. Remove "a" at the end of the sentence.
5. Line No. 24. Change "Commission" to "Commission's".
6. Line No. 53. Change "...the size were smaller..." to "...the size was smaller..."
7. Line No. 80. Change "...as far as results are..." to "...as far as results is..."
8. Line No. 98. Change "...faced with these problems..."
9. Line No. 105. Change "...there exists..." to "...there exist..."
10. Line No. 128. Change "...while the recommended provisions..." to "...the recommended provisions..."

Chairman Littleton called for the City Solicitor's Report.

City Solicitor Mandalas reported that Commissioner Mills has requested that mergers be placed back on agenda for the August Workshop. He has asked City Solicitor Mandalas to draft an ordinance in advance of

that Workshop Meeting.

Chairman Littleton called for the Building Inspector's Report.

Ms. Sullivan reported that an application has been received for site plan review for an addition to the Avenue Inn at 110 Rehoboth Avenue.

Chairman Littleton called for an update on the State's five-year review requirement of the City's Comprehensive Development Plan that was certified by the State on July 23, 2010. Discuss plans and timeline to meet requirements.

Chairman Littleton had spoken with Ms. Connie Holland of Office of State Planning Coordination regarding the City's Comprehensive Development Plan. The last CDP was done at a five-year increment and was done as a new Plan. It was recommended by Ms. Holland that the Planning Commission update the CDP for this five-year review requirement. The Planning Commission has one year to provide an update of the CDP.

Chairman Littleton called to discuss and possible comments/recommendations concerning the Town of Henlopen Acres' draft Comprehensive Development Plan.

Chairman Littleton has reviewed the draft CDP and has found factual errors relative to Rehoboth. He has met with the Chairman of the Planning Commission of the Town of Henlopen Acres and commented of its draft CDP. Errors were corrected in the draft CDP regarding the sewers and water wells. There is concern about wellhead protection and the adequacy of fire suppression. The contentious issue for the Town is relative to The Art League. Chairman Littleton has provided the Chair with the current and previous CDP's and the Planning Commission comments of the draft of an agreement with Cape Henlopen School District.

Chairman Littleton called for the report, discussion and possible action concerning those activities or actions taken at Regular or Workshop Meetings of the Mayor and Commissioners that directly relate to the Planning Commission.

There was nothing to report.

No new subdivision applications have been timely submitted to date.

The next meeting of the Planning Commission is scheduled for August 8, 2014 at 6:30 p.m.

There being no further business, Mr. Mellen made a motion, seconded by Mr. Markert, to adjourn the meeting at 8:58 p.m.

RECORDED BY

(Ann M. Womack, City Secretary)

**MINUTES APPROVED ON
SEPTEMBER 12, 2014**

(Francis Markert, Secretary)