

**PLANNING COMMISSION MEETING  
CITY OF REHOBOTH BEACH**

**March 12, 2010**

The Regular Meeting of the Planning Commission of the City of Rehoboth Beach was called to order at 6:04 p.m. by Chairman Preston Littleton on Friday, March 12, 2010 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

**ROLL CALL**

Mr. Timothy Spies called the roll:

Present:           Mr. Brian Patterson  
                      Mr. Harvey Shulman  
                      Mr. John Gauger  
                      Mr. David Mellen  
                      Chairman Preston Littleton  
                      Mr. Timothy Spies  
                      Mr. Francis Markert, Jr.  
                      Mrs. Jan Konesey

Absent:            Mr. Patrick Gossett

Also Present:     Mr. Glenn Mandalas, Esq., City Solicitor  
                      Ms. Terri Sullivan, Building Inspector  
                      Mr. Kyle Gulbranson, City Planning Consultant

A quorum was present.

**APPROVAL OF MINUTES**

Minutes of the December 11, 2009 Planning Commission Regular Meeting were distributed prior to the meeting.

Mr. Francis Markert made a motion, seconded by Mr. Spies, to approve the December 11, 2009 Planning Commission Regular Meeting minutes. Motion carried unanimously.

**CORRESPONDENCE**

There was none.

**OLD BUSINESS**

Chairman Littleton called for the review, discussion and possible vote to set a Public Hearing date on Major Subdivision No. 0708-05 which was previously tabled and subsequently revised. Major Subdivision Application 0708-05 requests the major subdivision of the property located at 43 Canal Street, comprised of the following lots on Canal Street: Lots 43, 44, 45, 46, 47 & 48, the following lots on Sixth Street: Lots 26, 27, 28, 29 & 30, and the property located at 512 Rehoboth Avenue comprised of Lot 42A, into fifteen (15) lots as follows: Lot 1 to be 6,112 square feet, Lot 2 to be 5,015 square feet, Lot 3 to be 6,362 square feet, Lot 4 to be 6,112 square feet, Lot 5 to be 6,328 square feet, Lot 6 to be 6,076 square feet, Lot 7 to be 5,421 square feet, Lot 8 to be 5,260 square feet, Lot 9 to be 5,260 square feet, Lot 10 to be 5,260 square feet, Lot 11 to be 5,259 square feet, Lot 12 to be 5,584 square feet, Lot 13 to be 5,174 square feet, Lot 14 to be 7,381 square feet and Lot 15 to be 5,012 square feet. The properties are owned by Oak Grove Motor Court, Inc. The Major Subdivision has been requested by the owners of the property.

Chairman Littleton noted that the objective of this meeting is for the Planning Commission to come to a determination of whether the Application is/is not ready to move to Public Hearing. While Chairman Littleton has been in communication with the applicant, there has been a huge amount of discussion. There have been submittals, letters, emails and discussions at the last meeting on December 14, 2009 on a number of issues. The Planning Commission needs to know from the applicants that this is the best and final application; what has been filed to date is agreed to or not agreed to by the applicants as part of this application; and that the Planning Commission knows what it will be forwarding a vote on if it is going to move the application to Public Hearing or not to Public Hearing. Chairman Littleton cautioned that the Planning Commission is not making any decisions on particular issues. The Planning Commission members, individually, may want to express questions, concerns and raise issues, but the Planning Commission will not be voting until the Public Hearing is

held. The Planning Commission was caught unexpectedly at the December 14, 2009 meeting by the discovery of an issue relative to the width of Canal Street, and the Planning Commission has not taken any action other than advising the City Commissioners of what it discovered relative to that issue.

City Solicitor Glenn Mandalas explained where the Planning Commission is procedurally regarding this application process. Since this is a major subdivision, there is a different approval process from a partitioning or minor subdivision. Under Section 236-12(D), the Secretary of the Planning Commission looks at the application and advises the applicant in writing whether the application is ready to come before the Planning Commission. If not, the application is returned to the applicant for corrections, revisions, etc. This process has already taken place for this application. Under Section 236-12(D)(2), once the Secretary deems the application ready to come before this Commission, the Planning Commission has an opportunity to review it. If the Planning Commission thinks it is appropriate to do so, a Public Hearing is set. Under Section 236-12(E), the Planning Commission will review the application and all required material, making certain that all the requirements and conditions set forth in the letter the Secretary wrote to the applicants, and recommendations following review and discussion as may be elected in this chapter and Chapter 270 – Zoning have been satisfied. If the owners have failed to satisfy all requirements, the Planning Commission shall advise in writing and return all material required except the application and one copy of the plat plan until resubmission. Tonight, the Planning Commission's role is to review the application and see if it is ready to go to Public Hearing. Under the Section 236-12(F), the recommendations of those attending a public hearing shall be given careful consideration in the final decision of the Planning Commission. If the Planning Commission was to make any decisions tonight as to any particular issue, it would be pre-judging that issue before the public has an opportunity to weigh in. The Planning Commission is charged under the Code to consider what the public has to say about this application. It is entirely appropriate for the Planning Commission to give as much feedback to the applicant as possible. If the Planning Commission likes or does not like something, it is fair to let the applicant know that. The Planning Commission has to wait until the Public Hearing occurs before making any final determinations as to any particular issue or the overall project itself. The relevancy with Canal Street and the newly adopted ordinance is that the width of Canal Street is assumed to be 40 feet or more than that in some places. The importance under newly adopted Ordinance No. 0210-01 relating to minimum street width for lot in a major subdivision is that the area which fronts a street of 40 feet in width had to have been subdivided at some previous time with lots of no more than 100 feet of frontage on it, in this case Canal Street. It is known from historical documents that this has occurred. This ordinance is applicable to the Oak Grove subdivision. The 40 foot width of Canal Street no longer presents a problem to this application.

Mr. Harvey Shulman said in regard to Section 236-12(E), that if placed on the agenda to review compliance with the conclusions and recommendations which took place in the Secretary's letter after looking at Chapters 236 and 270, the Planning Commission and the Secretary have not said that everything in those chapters is satisfied. That is to be determined after the Planning Commission has had a Public Hearing. The Secretary and the Planning Commission made certain recommendations, but it has not been said that everything in Chapters 236 and 270 is satisfied. Mr. Spies acknowledged that he had made it clear in his letter to the applicants. Mr. Shulman said that whatever the Planning Commission does on this application, it would be useful to get an explanation of "the frontage of an area that was previously subdivided" which is in the new amendment to the 40 foot width of a street that was adopted by the City Commissioners. He thought that perhaps this provision could be cleaned up for the next time so that someone does not say it is vague; and therefore the Planning Commission has to interpret it in their favor because nobody knows what it means. City Solicitor Mandalas agreed.

Chairman Littleton added that it is clear the Planning Commission collectively in its discussions has the same interpretation. The Planning Commission has looked at things but it has not gone through and made a determination on each individual item to be addressed. This should be done with the Public Hearing so that before the Planning Commission starts making determinations point by point, it should have a chance to hear from the public. Chairman Littleton noted that the Planning Commission's only action resulting from the discussion it had regarding Canal Street, was brought to the City Commissioners' attention. The City Commissioners were attentive to it, and Commissioner Bill Sargent took it upon himself to investigate this issue further. Both Mr. Spies and Mr. Mellen provided him with research materials they had; but the Planning Commission did not have any recommendations, other than it had an issue. Chairman Littleton made it clear that the Planning Commission did not go to the Board of Commissioners to represent this issue. Commissioner Sargent had drafted several versions of the proposed ordinance change and did a power point presentation before the City Commissioners; and the City Commissioners had quite a bit of discussion. The ordinance has eliminated a roadblock that paralyzed the Planning Commission at its last meeting in December 2009. Chairman Littleton recently had a lengthy email exchange in general with Mr. Paul Lovett, co-owner of the Oak

Grove property. Mr. Lovett asked for guidance for the Planning Commission's procedures and guidance for tonight's meeting. Chairman Littleton summarized that this was Mr. Lovett's and the applicants' opportunity to clearly state what this application is, if there have been any amendments which were agreed to or not agreed to. At the December 14, 2009 meeting, the applicants' engineer addressed a series of issues which were listed in the Secretary's letter, saying they would comply. A lot of verbage has gone back and forth; emails have gone back and forth; letters have gone back and forth; and there has been a lot of discussion. Now is the time to get in writing where the Planning Commission is on this application.

Building Inspector Terri Sullivan and Mr. Kyle Gulbranson of URS Corporation had nothing new to add at this time.

Chairman Littleton noted that prior to the December 14, 2009 meeting, the application has been the white notebook that all the members of the Planning Commission received from the applicants along with some deletions and insertions to it. That notebook from a legal and City standpoint is the application. To date, a number of deficiencies that the applicants' engineer talked about and has agreed to in response to the Secretary's letter at the December 14, 2009 meeting, have not been incorporated into the binder. The Planning Commission needs, in writing, those points and anything else which needs to be added in the binder. Chairman Littleton urged that an addendum should be accepted at this stage, with the realization that when the Planning Commission finally gets to an approval process, everything will be reincorporated in the notebook.

Mr. Shulman said that it should be reflected on the ultimate document if lots are changed or statements about water lines changing, etc., not as an addendum. Chairman Littleton commented that at some point, those documents will be needed; but to constantly redo these plats at this stage, is an expensive thing the Planning Commission does not need to have. If and when the Planning Commission gets to the point of approving and signing off on this application, it will need to have everything incorporated so that not only does the Planning Commission know it, but people in the future know exactly what was approved, what the conditions were, etc..

Mr. David Mellen recommended that documents such as the list of deficiencies which were agreed to, should be entered into the notebook as a document and not just reflected in the minutes. All the members were in agreement with that suggestion.

Mr. Spies said that most of the changes the Planning Commission agreed to were engineering changes, and they would be reflected on the plat. He agreed with the applicants that it made no sense to show the drainage for each lot now because it is not certain that the current plat will be the final document. Time and money should not be wasted when the lots may be reconfigured. Mr. Mellen did not think that the plat itself has to be updated at this point, but there should be an addendum so later on if there is a plat which has not been changed, there is a way of going back. Mr. Spies asked if the letter from the applicants which was received by the Planning Commission is sufficient for the addendum. Mr. Mellen agreed as long as it is a part of the addendum and not just separately part of the minutes. The purpose is that anybody can pick up this book at some point in time, read through the application and addendums, and know what was or was not agreed upon. City Solicitor Mandalas said that this is critical for the Public Hearing. The interested public has to be able to figure what they are or are not going to be commenting on. The public should be able to at least take a look at the file and understand what the proposal is.

Mr. Gulbranson commented that if a lot configuration or the road configuration is not changing from the last submission, then it is appropriate at this point to keep the plat the way that it is until there are addendums with possible changes. Mr. Shulman agreed that it is premature for the Planning Commission to need a new plat if the size of a water main is changing, but he thought that if what the Planning Commission has in the notebook in terms of the lot layouts, lot lines and the street is different from what the Planning Commission is going to be dealing with at the Public Hearing, it needs an accurate plat.

Chairman Littleton read the email dated March 11, 2010 at 11:08 p.m. to Mr. Lovett. The following is an excerpt. "What is expected is for a person in this case a member of the public who has had absolutely no prior knowledge of your proposal to be able to walk into the Building & Licensing Department and privately read the complete application with any and all things that the applicant has agreed to (if anything) since its initial filing attached, and then leave knowing precisely what will be the subject of a future public hearing." Chairman Littleton said that this is an opportunity for the applicants with their concurrence, to have five days to put into writing what has not been written so if the Planning Commission would move this application to a public hearing, the public would have weeks to look at the full application.

Mr. Paul Lovett informed the Planning Commission that the notebook is the document that constitutes their proposal with the more current plat. Everything that is part of the application is in it. The underlying plat

which shows what trees are being preserved needs to be adjusted. This presentation is to be included with Oak Grove's Major Subdivision Application as further clarification of the rationale for decisions by the applicants made in response to Code interpretations and stated preferences of City officials. The applicants have been exhaustive in providing specific details in response to every deficiency letter that has come out. In regard to the most recent letter, they responded to with the last presentation. Mr. Lovett could not recall if he had delivered a letter of response to Mr. Spies' final letter of deficiencies.

Chairman Littleton commented that what the Planning Commission would like for Mr. Lovett to do, since he has all the letters, is to make sure they are all compiled and hand a package back to be inserted into the notebook, if Mr. Lovett considers those addendums or part of this application. Mr. Lovett responded that in most part, the letters have been delivered with the various submittals to Building & Licensing throughout the process. Chairman Littleton wanted clarification that referenced in the minutes, the applicants' engineer talked about issues that the applicants are responding to. If those are actual changes, then they need to be documented and included in this package. The applicant needs to understand that what the Planning Commission considers the application, unless the applicant changes it, is this document (notebook) before it.

Mr. Lovett said that the cover of the application does not reflect the current layout. He had sent out a cover dated August 29, 2008. New covers will be provided for everyone. What the applicants have now is not a whole lot different than what was originally presented. Mr. Lovett had interspersed in the presentation a request that the Planning Commission should give him a judgment about its decision. This document (presentation) is meant to provide the justification of the various decisions made throughout this process, and he requested that this document to be made a part of the application. In addition to the cover change, there are approximately five changes plus the plat itself that the Planning Commission might be asked to put in the notebook. With this presentation then it becomes the applicants' official submittal. Mr. Lovett will collect the letters and make sure the Planning Commission has them as well. A copy of the presentation will be provided tonight to Ms. Ann Womack, City Secretary, for the file. Mr. Lovett said that this is the applicants' best and final application; and it has the engineering changes that Ms. Judy Schwartz of GMB described to the Planning Commission at the last meeting on December 14, 2009. The applicants have made the attempt to put all of the engineer required changes into this. By erasing the title to the plat presented in the power point, this would be the plat with the changes that the applicants have agreed to do already. The applicants will provide a new plat to be inserted at page 42 in the notebook.

Mr. Mellen noted that when an update is provided from the applicants, the Planning Commission members need a sheet that shows the pages to destroy and insert.

Mr. Lovett said that the Planning Commission should look at the plat in the presentation which shows engineering changes because the plat which was distributed last week is not the latest one. While the applicants would like to satisfy the preferences of every City official, opinions vary and some preferences when analyzed do not stand up to logic. A list of people or entities that the applicants are working to please was provided. A brief review of the history of the application was provided; and in summary, the applicants have been working on it for 20 months, and they have participated in a major way for a Code adjustment and have participated in 30 City meetings to date. Discussion topics believed to be outstanding: 1. Rear lot lines issue and the prospect that the Planning Commission might ask the applicants to go before the Board of Adjustment. 2. Preservation of trees in a fully built-out community. 3. Preservation of natural resources for purposes of defining the internal street as a short dead-end street. 4. Internal street design. 5. Utility easements. 6. Improvements to City property. 7. Sidewalks on Canal Street. 8. Connective pathway for pedestrians and bicycles. The rear lot lines issue is a critical issue for the applicants, and they would like counsel on this particular issue. Mr. Lovett referenced Section 270-22(D) and noted that this section was added in late 2007 following a disputed partitioning request where a property owner wanted to adjust from what was a straight, continuous rear lot line between two parallel streets. It is inconceivable that the newly adopted clause was meant to disallow the situation at the end of blocks where rear lot lines coincide with side lot lines nor where streets are not parallel. Property lines create odd but workable configurations that add interest to the cityscape. The block where the Oak Grove property is located is not defined by parallel streets, and the property is not square. Where only adjacent lot lines exist to the property, Oak Grove's proposed lots extend those lines. Mr. Lovett presented the proposed plat (which has not been replaced in the notebook). It is ironic to the applicants that Oak Grove's original proposed configuration was to have perpendicular lots on Sixth Street, and the letter received from Mr. Spies asked the applicants to change the orientation. The applicants thought that this was a good idea because it would have caused some potential difficulties and less safe situations with driveways coming out with the same side of Jones Lane coming out. The applicants argued last time that the newly created lot line is continuous in every segment that defines a rear lot line. Mr. Lovett concluded, from the December 14, 2009 meeting that the

people who wrote the Code and the people who were here for the partitioning, agreed that it was not meant to apply in the applicants' particular situation. Under Section 270-22(D), the provision does not say that rear lot lines must be straight, or they may not be side lot lines. It says they must be continuous. Oak Grove's proposed lot lines are well within the intent of the Code and are consistent with City lot configurations. It seems that the Planning Commission would have the authority to conclude that Section 270-22(D) of the Zoning Code is not applicable to the Oak Grove situation. The applicants rejected the option which might perfectly conform to what the Planning Commission's intent was because the lots would have huge square footage for monster houses and more tree loss. There would be useless giant back lots susceptible to poor upkeep. Long odd-shaped lots would be difficult to market. Mr. Lovett talked about under what premise the applicants would go to the Board of Adjustment. There are two reasons: 1. Appeal from the decision of the Building Inspector. 2. Variance request. Going to the Board of Adjustment would be like going to a jury trial where one cannot be confident with the outcome. It would require the applicants to introduce their project and successfully defend their argument before five new people who have no background on the project. It would leave a Code stipulation intact that the Planning Commission would probably not want to apply to Baymart. It would require Oak Grove to pursue a course of action to correct something that the Planning Commission does not think should apply. And leaving the Board of Adjustment to last, would take final authority away from the Planning Commission. In regard to tree protection, a plat was shown with tree protection and the lots fully built-out. The three primary themes to be addressed are: 1. Commitment of the current owners. 2. Past experience, a case study. 3. The changed regulatory environment. Oak Grove's vision includes preservation of trees. Trees are important to the community in which the applicants want to own a residence. The applicants recognize the value that trees add to the value of the property. The applicants also recognized the prominence that their property has at the entrance to the City. The specific decisions Oak Grove has already made that were partially or wholly motivated by protection of trees are: 1. Fifteen, not 18 residences. 2. No "clear and build" non-resident developer. 3. Layout of lots to save trees. 4. Internal street so no trees are lost. 5. Worked for short dead-end street ordinance. In regard to the covenants, it is the intention of the sub-divider of the Oak Grove at the Beach residential area that preservation of trees is a high priority. The ARB is specifically chartered to work with lot owners and prospective lot owners on construction designs that minimize the loss of mature trees. Construction will be accomplished in accordance with Chapter 253 – Trees of the City Code. A case study of St. Michael's Place is that the residences remain heavily treed after full build out. Photographs were provided of trees on all the St Michael's Place properties. Photographs were provided of trees that survives construction at St. Michael's Place. Ordinance adjustments that will save trees are: 1. Comprehensive tree regulations adopted January 2006. 2. Revised Floor Area Ratio (FAR) regulations adopted August 7, 2006. 3. Revised density regulations adopted February 20, 2007. 4. Revised setback standards adopted June 2009. 5. Site Plan Review adopted June 2009. 6. A major revision of the tree ordinance is now being sponsored by City Commissioner Dennis Barbour. An aerial view of Oak Grove was provided. Oak Grove's estimated current canopy is approximately 60% or 55,000 square feet. A plat showed the trees greater than four inches in caliper in their surveyed positions with rough representations of the canopies they carry. Fifty-three trees fall into or close to setbacks and should be preserved. Twenty trees located within buildable areas will probably need to be removed unless the buyer elects to design around them. If all these trees are lost due to build out, it is estimated that the canopy would drop from 60% to -40%, leaving -37,000 square feet of canopy. Fourteen trees are designated for specific attention in an attempt to have them survive the build out. On Lots 4, 5, 10, 11, 12, 14 and 15, trees have been designated for specific protection during the design phase of home and driveway construction. Trees on Lots 8, 14 and 15 are designated to be protected, particularly during the installation of the street. Location of these trees should be to the side of properties to be preserved from the home construction itself, but may need to be considered when the driveway is designed. In regard to the trees near the road, the road was designed around them. The applicants are committed to planting new trees and will add more for the barrier separation between Lots 6 and 7. If the Planning Commission collectively agrees that the applicants should add trees to replace those potentially lost, the applicants will comply. A dead-end street (cul-de-sac) may be considered a short dead-end street when: 1. The dead-end street is either not more than 250 feet in length (as measured along the street line) or not more than 10 lots abut the dead-end street. 2. All lots that abut the dead-end street are solely within an R-1 single-family residence district or an R-2 general residence district. 3. An applicant demonstrates that natural features such as trees, brooks, hilltops and views will be preserved by lessening the dimensional requirements of this article. 4. An applicant demonstrates that the street design is consistent with the purposes set forth in Section 236-2, is in accord with good engineering principles and practices, and will adequately accommodate the vehicles and persons who will use the street. Oak Grove's street design meets the definition of a short dead-end street. The street is less than 250 feet in length, has less than 10 lots abutting, and is fully within the R-1 district. Under the original Code, roughly 5,000 square feet of tree canopy would be lost, affecting City views as defined by the draft Comprehensive Development Plan (CDP). Under the original Code, the asphalt coverage would be 9,445 square feet, and the design under the

revised Code would be 4,898 square feet resulting in green space being preserved. On August 7, 2009, the City Commissioners reviewed an image proposing the use of stimulus funding to eliminate heat islands in the City. The applicants consider the preservation of trees to be very significant. Meeting the original Code would mean installing an 80 foot diameter cul-de-sac and paving a 34 foot wide swath of roadway. The street design of Jones Lane was provided. The width of the street would be 18 feet which is a good number for the width of the street. First Street is 14 feet wide. In regard to the end of the street turn-around on Jones Lane, k-turns can be made by all private vehicles and most service vehicles. Few cul-de-sacs in the City can accommodate such a turn, although scores of such turns are made each day on the City's dead-end streets at the Boardwalk. K-turns by trash and larger service vehicles would be made from Sixth Street, as is safely and routinely done throughout the City on a daily basis for the dead-end streets at the Boardwalk which are much longer and serve more homes. The video of the Rehoboth Beach truck using a k-turn maneuver from St. Charles Avenue onto Rodney Street was shown in December 2009. A variety of references establish that streets have been designed too large and are unnecessarily consuming green space. They are the American Society of Civil Engineers, DNREC, Rehoboth's City Planning Consultant and Complete Streets Program. Comments were provided from ASCCE guidelines for residential streets. DNREC's Super Green Technology strategy promotes reduction of impervious surfaces and encourages on-site recharge of stormwater runoff. Mr. Bruce Galloway, Rehoboth's City Planning Consultant, is a strong supporter of reducing asphalt. The draft of the CDP refers to the National Complete Streets Coalition. A plat showed bio-retention which has a finished grade of only six inches lower than the pavement. Grass parking provides parking while preserving green space. Parking on one side of Jones Lane is sufficient and preferred because it provides better general street aesthetics; it has improved bio-retention distribution; two off-street parking spaces are required; Jones Lane is one mile from the beach; parking most of the year on Sixth Street is light; and it is not located near restaurants. Parking on both sides of the street is a Code requirement, and the applicants may need to go before the Board of Commissioners on this issue. Flush curbing was designed into the last updated plat. Easements for private utilities are located on private property and will coincide with setback lines. The R-2 district does not allow encroachments. The presented plat of the City's utilities includes the following adjustments requested by the Planning Commission's most recent letter of deficiencies: 1. Terminal manholes with sewer extension and lateral tie-ins. Terminal manholes are an upgrade over State requirements that will cost Oak Grove an additional \$4,400 for the sewer line extension and lateral tie-ins. 2. Residential setback line. 3. Proper certification. 4. Street lighting. 5. Easement. The applicants requested to defer the stormwater management requirement, and the request was granted by Mr. Spies, Secretary of the Planning Commission. A hydraulic analysis of the intersection of Canal and Sixth Streets was requested and will take 7-10 days and will cost \$4,700. An aerial view of where the proposed fire hydrants would be located was provided. The hydrants, neither of which are required by State standards, will cost the applicants an additional \$500 each. The applicants think that one hydrant is sufficient. The extensions of City utilities on City property have been required by the City to support improvement of the City's water, sewer and storm drain systems under Sixth Street. The extensions are necessary and appropriate. The new 24 inch storm drain line would be located under Sixth Street for a total of 535 feet to the intersection of Sixth and Canal Streets. The water line located under Sixth Street would be increased from six inches in diameter to eight inches in diameter from the southeast end of the Oak Grove property 400 feet to the last new construction on Sixth Street. On page 57 of the draft CDP, references are made to the Complete Streets program. A photograph was provided as an example of an acceptable street design with no sidewalks or rolled curbing, indicating that the road is fit for pedestrians, cyclists and motorists. A sidewalk located on Canal Street would go nowhere, would require removal of trees from a beautiful street, would effectively narrow the street and would reduce green space. Photographs were presented of trees that are in jeopardy if a sidewalk is installed on Canal Street. An aerial view showed streets where no sidewalks exist. The Oak Grove area does not have sidewalks. Neither the existing or proposed CDP envisions or proposes the installation of sidewalks in their sector. An aerial view showed buildings constructed in the Oak Grove sector, that have had no requirement to install sidewalks. The applicants are unaware of any safety issues this has caused. The City Code does not require sidewalks in new subdivisions. The applicants' alternative to sidewalks is shown on the plat as a grass walking path which creates a pleasant walkway, stormwater management, reduced heat absorption and preservation of green space. The reason the applicants are resisting the installation of a connecting path is that it would decrease the sense of privacy and security of houses on Lots 3 and 4. It is being suggested that the applicants connect the center of one block to the center of another block, a mile from the ocean. Except for the areas that are densely retail, nowhere else in the City is pedestrian connectivity at the center of blocks provided. Residents do not expect connectivity between blocks. Connectivity for existing blocks within the City is typically at the end of the block. Examples are provided of the City's large blocks without center to center connectivity, some much larger than Oak Grove. The area around Oak Grove already has extensive connectivity. Along Canal Park south of the Rehoboth Avenue bridge, there are already three points of logical connectivity. A path on the Oak Grove property does not get a bicyclist or walker to Canal park. A public street must still be crossed. Crossing

at an intersection could be considered safer. Connectivity is a good idea in large developments. Oak Grove is not large, and it does not limit access to the Canal. For the recreational walker or bicyclist, the street itself as designed, will be an inviting diversion. The only accessibility a through pathway will create is from Canal Street to the center of Sixth Street. The center of Sixth Street cannot be accessed from the center of State Street. Connective pathways are not a requirement of the City Code. Mr. Lovett said that he would appreciate hearing the Planning Commission's reasons if any of the following issues taken collectively, would cause the Planning Commission to vote against the project: 1. Rear lot line/Board of Adjustment. 2. Preservation of trees, fully built out. 3. Preservation of natural resources. 4. Internal street design. 5. Utility easements. 6. Improvements on City property. 7. Sidewalks on Canal Street. 8. Pedestrian/bicycle passage.

Chairman Littleton noted that rhetorical questions will not be addressed until after the Public Hearing. In regard to the rear lot lines issue, the applicants deserve to hear what ability the Planning Commission has to approve a major subdivision relative to rear lot lines. City Solicitor Mandalas said that the Planning Commission is purely advisory, and it owns the Subdivision Code. Any one of the Planning Commission members and City Solicitor Mandalas might think that this project is not consistent with the rear lot line ordinance. The Planning Commission is the decision maker as to whether this project meets the Code and it is within the Planning Commission's discretion to decide whether the rear lot ordinance is satisfied or not satisfied by this project. Chairman Littleton hoped that the applicants can understand that after the Planning Commission has a Public Hearing and hear what the public has to say, assuming that this Commission thinks it is ready for a Public Hearing, nearly every question the applicants have presented is within the Planning Commission's jurisdiction to make determinations on. Tonight, any member of the Planning Commission may have his/her own personal thoughts or comments which can be voiced.

Mr. Shulman said that whether this layout meets the rear lot line ordinance is no different from any other issue the Planning Commission looks at under Chapter 270. The rear lot line ordinance is relatively new, but the process to go through with this ordinance is a process the Planning Commission has been going through for a long time with everything else in Chapter 270.

Chairman Littleton said that the Public Hearing is legally opened to allow the public to speak and continues until the Planning Commission reaches a decision. Mr. Shulman said that when an application is sent to Public Hearing, if that happens, this does not mean the Planning Commission is not saying that the rear lot line ordinance is met, etc. It is just that there is enough information that the Planning Commission thinks the public is entitled to comment on. Chairman Littleton noted that the Planning Commission, at this point, has made no decisions on any issues, but it has acquainted the applicants with the members' individual points of views on issues, questions and concerns.

Public Comment:

1. Mr. Richard Kirchhoff, 34 Sixth Street, said that there was a reference made on the timeline to the initial public meeting, and he asked what the distinction is between initial public meeting and a public meeting. That meeting never occurred. It was aborted because the applicant withdrew or tabled the application at that point, and there were no public statements.

Chairman Littleton commented that what was held at that meeting was a preliminary review, and it was to get the Planning Commission to the point of when a formal public hearing could be scheduled. A public meeting was held, not a public hearing. Currently, the Planning Commission is holding the initial public meeting. Mr. Kirchhoff asked if the process does not have to be re-initiated because it was suspended. Chairman Littleton said that the thing, assuming the Planning Commission thinks it is ready, is to go to Public Hearing.

City Solicitor Mandalas agreed. The significance of going to Public Hearing is that it is at the Public Hearing where there needs to be enough information put on the record for the Planning Commission to make its decision. There has to be, on the record, substantial evidence to support the Planning Commission's decision. The information which is entered into the record comes in during the Public Hearing. All of this activity which is going on right now, while it is helpful and moves the process along, the Public Hearing sets the record of the proceeding upon which the Planning Commission can make a decision.

Mr. Mellen said that the Code allows for a major subdivision and allows the applicant to come before the Planning Commission in a public meeting or series of public meetings to explain the nature of the project. That is what took place at that time and has taken place ever since. It has nothing to do with the approval or the final submission until the applicant meets the requirements of the Secretary,

Planning Commission, City Engineer, Building Inspector, etc. For a major subdivision, there are certain points that must be checked off before the applicant can come to this meeting tonight. What took place before was taking advantage of an aspect of the Code that allows a developer to come before the Planning Commission to try out the concepts.

Chairman Littleton said that the applicants came before the Planning Commission twice with concept reviews. An Initial meeting had been held.

Mr. Shulman said that the Planning Commission needs to make its decision based on the documents which the applicants and neighbors submit and oral statements that people give at the Public Hearing. The Planning Commission will identify zoning matters at the Public Hearing. If someone wants something that was not officially talked about at the Public Hearing or put in a document to be considered for the Public Hearing, they need to send it in for the Public Hearing and be at the Public Hearing. City Solicitor Mandalas added that the Planning Commission can introduce things to the record as well.

Mrs. Konesey made a motion, seconded by Mr. Shulman, that the Planning Commission moves the Oak Grove subdivision request to Public Hearing.

Mrs. Konesey said that the applicants have met the requirements to go to Public Hearing.

Mr. Shulman commented that the initial Application is out of compliance with the City Code. Once the City Code was changed and the Application was resubmitted, this process has moved quickly. The Subdivision Ordinance specifically says the minimum requirements, and the Planning Commission can, has and will impose requirements that are not specifically in the City Code of State Code, because they are what is necessary to avoid adverse impact on the neighborhood or to be consistent with the general purposes of the Subdivision Ordinance. Mr. Shulman did not have a firm opinion on any of the points that rhetorical questions were raised on, but he has feedback that might be worth sharing subject to what anyone says. He thought that some of the statements which were attributed to the Planning Commission that some of the members agreed the Rear Lot Line Ordinance was never intended to apply to a situation like this, is not an accurate statement. It would be accurate to say that the Planning Commission did not have this type of layout before it at the time it dealt with the Ordinance, but the Planning Commission did have a concept of not messing up lot lines. At the Public Hearing and as the Planning Commission thinks about this issue, it has an Ordinance to be interpreted as best as possible. Rear lot lines remain an issue. The absolute basis where the applicants talk about allowing a dead-end street is that natural features such as trees, brooks, hilltops and views will be preserved by lessening the dimension requirements. The City Commissioners wanted a fair amount of evidence that, in fact, the natural features will be preserved. The applicants focused in showing the Planning Commission that a short dead-end street is appropriate and focused on the fact that green space (natural features) will be preserved. The Planning Commission will have to interpret that as a body; but by definition, any time there is a narrower street and a shorter turn-around, green space is being saved. Mr. Shulman was trying to identify for the Planning Commission the issues that may come up at the Public Hearing.

Mr. Mellen asked if there any technical issues outstanding not satisfactory to the Building Inspector's interpretation. Ms. Sullivan said that in regard to the letter Mr. Spies wrote recently, she has not seen the plat to see if the deficiencies have been addressed. Mr. Gulbranson said that a new plat will be distributed, and what is found to be missing between now and the Public Hearing, will be discussed at the Public Hearing.

Mr. Shulman said that there are two types of issues which need to be addressed: 1. Legal requirements. With those two issues on rear lot lines and the dead-end street, the Planning Commission will decide whether or not they meet the requirements. 2. Discretionary issues.

Mrs. Konesey amended her motion, seconded by Mr. Shulman that the Planning Commission moves the Oak Grove subdivision request to Public Hearing, subject to the applicant providing a complete final application with all amendments by March 19, 2010. (Patterson – aye, Shulman – aye, Gauger – aye, Mellen – aye, Littleton – aye, Spies – aye, Markert – aye, Konesey - aye.) Motion carried unanimously.

The Public Hearing will be held on April 9, 2010 at 6:00 p.m.

## **NEW BUSINESS**

There were none.



## **OTHER BUSINESS**

Chairman Littleton called for the Building Inspector's Report.

There was nothing to report.

Chairman Littleton called for the City Solicitor's Report.

City Solicitor Mandalas reported that the new zoning map has been approved by the Mayor and Commissioners. Mr. Dave Henderson, IT Director, developed the map. This is the official map of the City for zoning purposes only. There are two official maps of which one will be kept in the vault in City Hall, and other map will be hanging on the wall in the Building & Licensing Department. No changes have been made to the zoning map.

Chairman Littleton called for the status of the Board of Commissioners review of the final draft of the Comprehensive Development Plan (CDP) that was approved by the Planning Commission at its September 11, 2009 Regular Meeting.

City Solicitor Mandalas reported that the Mayor and Commissioners will be reviewing the CDP on March 20, 2010 at 9:00 a.m. in the Commissioners Room. Chairman Littleton said that he has received correspondence from Mayor Cooper asking him for Planning Commission representation at that meeting. Four members will be in attendance and represent the Planning Commission at that meeting. The remaining members planning to attend would be attending in a non-official capacity.

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

City Solicitor Mandalas reported that the City Commissioners have adopted the Sidewalk Ordinance. Certain triggering events would require a person to install a sidewalk when there is new construction, and when there is any permit valued over \$20,000 within a year if there is 50% of sidewalks in the block.

Mr. Spies reported that there is a proposal to videostream the meetings. Commissioner Dennis Barbour said that Commissioner Pat Coluzzi will return with the information needed to make a decision on this topic. City Solicitor Mandalas said he would mention to the City Commissioners at the next Commissioners' meeting that the Planning Commission is interested in videostreaming the meetings.

This item will be placed on the agenda for the April 9, 2010 Planning Commission Regular Meeting.

Chairman Littleton reported that the DE/MD Chapter of the American Planning Association is holding a Planning Commission Regional Conference on May 5-7, 2010, and he recommended that any interested members should attend. Chairman Littleton will forward an email to the members with the details. Any interested members should contact Ms. Ann Womack, City Secretary, before March 31, 2010 to sign up for the conference.

No new subdivision applications have been filed to date.

The next Regular Meeting will be held on April 9, 2010 at 6:00 p.m.

Mrs. Konesey made a motion, seconded by Mr. Markert, to adjourn the meeting at 9:00 p.m.

**RECORDED BY**

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(Ann M. Womack, Recording Secretary)

**MINUTES APPROVED ON  
MAY 14, 2010**

\_\_\_\_\_  
(Preston Littleton, Chairman)