

**PLANNING COMMISSION MEETING  
CITY OF REHOBOTH BEACH**

**April 9, 2010**

The Regular Meeting of the Planning Commission of the City of Rehoboth Beach was called to order at 6:00 p.m. by Chairman Preston Littleton on Friday, April 9, 2010 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

**ROLL CALL**

Mr. Timothy Spies called the roll:

Present:           Mr. Harvey Shulman  
                      Mr. John Gauger  
                      Mr. David Mellen  
                      Chairman Preston Littleton  
                      Mr. Timothy Spies  
                      Mr. Francis Markert, Jr.  
                      Mr. Patrick Gossett

Absent:            Mrs. Jan Konesey  
                      Mr. Brian Patterson

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

A quorum was present.

**APPROVAL OF MINUTES**

Minutes of the March 12, 2010 Planning Commission Regular Meeting were not available for the meeting.

**CORRESPONDENCE**

There was none.

**OLD BUSINESS**

Chairman Littleton called for the Public Hearing 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 presented the Public Hearing procedures.

Chairman Littleton said that tonight's meeting is extremely important for legal reasons. This is a Public Hearing. The Planning Commission, by Code, is not allowed to take any action whether it is for this application or any other applications until there is a Public Hearing. After that Public Hearing, it is the duty of the Planning Commission to take into consideration all of the comments provided by the public. Chairman Littleton presented the Public Hearing procedures. In March 2010, the Planning Commission made a decision that it would bring this application to Public Hearing provided the Applicants have submitted an updated final application by March 19, 2010. The Applicants have file a revised application which has been available to the public one week following the Planning Commission's last meeting. There is still some concern that everyone has the same documents before them. Once the Planning Commission has had the Public Hearing, it is in a position to make decisions relative to the application. Chairman Littleton presented a timeline of the history of this application. On May 12, 2008, at the Applicants' request and per Section 236-11 of the Code, the Planning Commission conducted a preliminary review of the Applicants' conceptual major subdivision

proposal. On July 11, 2008, the Applicants formally submitted the application to the City. On July 23, 2008 in fulfilling Section 236-12(D) of the Code requirements, the Planning Commission Secretary met with applicable City representatives, including the Building Inspector and City Engineer, to review the submitted application. On July 31, 2008, a letter from the Secretary to the Applicants informed them that because of identified deficiencies in material submitted, the application could not be placed on the Planning Commission's agenda for review. On August 29, 2008, the Applicants re-submitted their amended application. On September 8, 2008, the Secretary met with the City representatives to review the re-submitted amended application to determine if the application could be put on the Planning Commission's agenda for its initial review. On September 12, 2008, a letter from the Secretary to the Applicants informed them that their application could be placed on the Planning Commission's agenda for its next meeting to begin the initial review. On October 14, 2008, the Planning Commission began its initial review of the application and identified several issues relative to Code requirements. On November 10, 2008, the Planning Commission continued its initial review again noting several issues relative to Code requirements. At this meeting, the Applicants requested that the Planning Commission defer further consideration of their application and table it until there was possible action by the Board of Commissioners relative to a Code provision that would impact upon their application. The Planning Commission agreed to table the application. On May 11, 2009 at the Applicants' request, they provided the Planning Commission with a status report of their still tabled but amended application. On August 14, 2009 at the Applicants' request, the Planning Commission conducted another conceptual review of their amended but still tabled application. On September 17, 2009, the Applicants submitted new plats and additional information further amending their application. On October 2, 2009, the Planning Commission conducted a site visit to the property at which the feasibility of the then proposed short dead-end street was examined, the layout of the property was reviewed, and proposed trees to be saved were identified by the Applicants. On October 8, 2009, a letter from the Secretary reported his review of the amended application and identifying 19 remaining issues or concerns. On November 4, 2009, the Applicants amended their application and submitted a revised plat and other information. On November 16, 2009, a letter from the Secretary addressed remaining issues in the application but informing the Applicants that the latest revised application could be placed on the Planning Commission's agenda. On December 11, 2009, the Applicants formally requested re-activation of their tabled but amended application, and the Planning Commission resumed its initial review of the amended application. At this meeting for the first time, a new Code issue was identified relative to the width of an existing abutting street. On March 12, 2009, the Planning Commission, upon being informed of the Board of Commissioners' amendment to Section 236-23 of the Code as it relates to existing abutting streets, agreed that the application could proceed to a Public Hearing at its April 9, 2010 meeting subject to the Applicants' timely submittal of their final amended application incorporating those changes identified by the Applicants at the meeting. On March 19, 2009, the Applicants submitted what is entitled "Best and Final Oak Grove at the Beach" Subdivision Plats and Responses to Letter of Deficiencies from the Secretary dated November 16, 2009. The master copy which the applicants have assured that is in the possession of Ms. Ann Womack, City Secretary, becomes the standard for what or is not in this application. There were significant issues relative to the Code when this application initially came before the Planning Commission. Since that time, four Planning Commission members have addressed Code changes which impact the entire City and affect this application. As those Code changes were being made, the applicants were making revisions to their application. When the Code issues were initially identified by the Planning Commission in October and November 2008, the applicants requested that their application be tabled at the November 10, 2008 meeting. It was not until the meeting in December 2009 that the applicants asked for their application to be re-activated, which the Planning Commission did.

City Solicitor Glenn Mandalas said that there was a question last month about distinction between public meetings vs. public hearings. The Planning Commission's meetings are public meetings. They are required to be public meetings under the Delaware Freedom of Information Act (FOIA). FOIA requires that the Planning Commission conducts its meetings publicly so the interested public can come and observe, but there is no requirement in FOIA that requires the Planning Commission to take any comment from the public. The Attorney General's office has said that the public is entitled to observe the government in action, but not entitled to participate. When there is a law or statute requiring a public hearing vs. a public meeting, that is when the interested public has an opportunity to get involved with government and give their thoughts and comments. Tonight there is a requirement that the Planning Commission takes public comment because it is a public hearing. This is the public's opportunity to comment on this application. The Planning Commission has the opportunity to continue the Public Hearing into another meeting, if it wants to. The Planning Commission has the opportunity to conduct another Public Hearing, but this is a Code requirement. Under Section 236-12 of the Code is where the Public Hearing is required. Last month, the Planning Commission made a determination that the application was in order to send to Public Hearing. Tonight is the Public Hearing. Under Section

236-12(F)(1), the recommendations of those attending the Public Hearing shall be given careful consideration in the final decision of the Planning Commission. Not only is the Planning Commission obligated to listen to what the public has to say tonight, the Planning Commission is obligated to give those comments consideration in its decision. To the extent that the Planning Commission considers the public's wishes and desires, these are the wishes and desires it should be considering tonight. If something is heard outside of the Public Hearing and the Planning Commission wants to give what is heard some weight in its decision, the Planning Commission needs to describe that during the decision making process. City Solicitor Mandalas noted that if at the conclusion of tonight's meeting, Chairman Littleton closes the Public Hearing, then to the extent that the Planning Commission members want to have another Public Hearing, Building & Licensing is required to send out notices, posting, etc. There are other options. One option is if the Public Hearing is left open at the conclusion of tonight's meeting, the Public Hearing can be continued so it remains open and all the noticing requirements are not triggered other than posting on an agenda seven days in advance. Another option would be to close the public portion of the Public Hearing and accept written comment for a period of time that would still be considered on the public record. The Public Hearing could be closed and do the postings of the Planning Commission wants to have another Public Hearing.

Mr. Harvey Shulman said that when the Planning Commission makes its decision, it will be relying on a lot of information. Where there are zoning matters, it is important to understand that the information is the record. City Solicitor Mandalas noted that the record which the Planning Commission has before it is fine. There may be other things the Applicants have given the Planning Commission; but a court might stumble if the Planning Commission relied upon that information which was not in the notebook that the applicants gave the Planning Commission, unless during the Planning Commission's decision making process a document is officially submitted for the record. While some courts might say that as long as a document is in the file, it might be on the record, it is much cleaner if it is stated that this is the record, and anything in addition to this record should be dated and referenced to show that it has been placed on the record.

Chairman Littleton said that (1) anything which is not in the book as submitted by the Applicants does not exist unless the Planning Commission or someone formally reintroduces it for the record; and (2) if there is additional suppletive material issued that the Planning Commission feels the Applicants and the public should have an opportunity to be informed of that, review it and comment on it.

City Solicitor Mandalas cautioned the Planning Commission to be careful not to prejudge the application.

Mr. Shulman suggested that the documents being submitted for the record should be labeled as exhibits.

Mr. Paul Lovett and Ms. Donna Bengé of Oak Grove Motor Court introduced the application book for the record.

Application Book (white binder) with 12 tabs

Official Record of Response

Each official response the Applicants have made to letters of deficiencies

Official Correspondence

July 11, 2008 – Transmittal Letter from Oak Grove Motor Court to Mr. Spies, Secretary of Planning Commission

July 31, 2008 – Letter of deficiencies from Mr. Spies, Secretary of Planning Commission to the Applicants

August 28, 2008 – Letter from Judy Schwartz of George Miles & Buhr L.L.C. (GMB) to Mr. Spies

August 29, 2008 – Letter from Oak Grove Motor Court to Mr. Spies

November 4, 2009 – Letter from Oak Grove Motor Court to Mr. Spies including a 35 page document, Oak Grove's Responses to the Letters of Deficiencies

March 19, 2010 – Transmittal Letter from Oak Grove Motor Court to Mr. Spies

Chairman Littleton voiced concern relative to what the Planning Commission has asked the Applicants to do, which was to give the Planning Commission a complete application with all changes made as of March 19, 2010. If there were issues which were already addressed, unless the Applicants want to specifically reintroduce those for the record, then what the Applicants have submitted on March 19, 2010 should incorporate everything. Mr. Lovett said that the superfluous information can be taken out of the book. Chairman Littleton said that the record needs to be clear. He requested that nothing until the March 19, 2010 letter which specifically refers to Mr. Spies' deficiencies of November 16, 2009, is a part of the application. Mr. Lovett said that it could be removed, and the application stands.

Mr. Lovett said that the Applicants provided a 120 page presentation at the last meeting on March 12, 2010.

This presentation will be included in the record, but not in the application.

Mr. Shulman suggested that Ms. Womack keep two files of which one would be the official public record which starts with the application. The other file would consist of the background material which would not be part of the official public record. Ms. Womack acknowledged that there are two files.

Mr. Lovett presented the following contents of the application as an exhibit:

**Exhibit 1**

- Tab 1 – Major Subdivision Application, dated July 11, 2008.
- Tab 2 – Proof of Ownership – Deed for Oake Grove Motor Court, Inc. lot, Deed for Rehoboth Avenue lot (512 Rehoboth Avenue), Last Will and Testament of Marjorie J. Lovett, Affidavit from Oak Grove Motor Court, Inc.
- Tab 3 – Pictures of existing property – Canal Street frontage, Properties to left and right on Canal Street, Properties to rear of 43 Canal Street, Sixth Street frontage, Properties to left and right on Sixth Street, 512 Rehoboth Avenue property.
- Tab 4 – Pictures of lots that are proposed to be created – Lot Nos. 1 through 15, and Dead-End Street. The Applicants re-oriented four of the lots at the request of the City. The pictures are the same pictures and have not been re-organized on two pages.
- Tab 5 – Lot descriptions, revised 11/2/2009.
- Tab 6 – Existing easements – Easements for Oak Grove Motor Court, Inc. and Easement for 512 Rehoboth Avenue lot.
- Tab 7 – Deed restrictions – Covenants – Definitions, Property subject to this declaration, Oak Grove at the Beach Homeowners’ Association, Inc., Association property, Easements, Assessments and lien, Maintenance of property, Statutes and ordinances, Building restrictions, Additional use restrictions, Insurance, Architectural and landscape controls, Indemnification of officers, directors and the A.R.B., General provisions. These Covenants will apply to the owners of the properties and will be recorded with the approved Oak Grove Motor Court subdivision.
- Tab 8 – Architectural guidelines – Renderings and Architectural standards. These standards will be recorded with the approved Oak Grove Motor Court subdivision.
- Tab 9 – Tree protection plan – Demolition revised 3/12/2010, Street construction revised 3/12/2010, and Lots created with less trees than would meet City Code for tree density.
- Tab. 10 – Demolition – Site plan, Asbestos analysis, and Proposal for demolition.
- Tab 11 – Gutter calculations, Business license and Existing off-street parking and curb-cuts.
- Plat Plan of proposed “Oak Grove at the Beach” subdivision – PP-1, revised 3/12/2010.
- Plat Plan, Road Construction – PP-2 – revised 10/29/2009.
- Survey of the existing property, dated July 9, 2008.
- Survey of original layout of Oak Grove property, dated May 6, 2004.

Mr. Lovett corrected the zoning in which the property is located on page 1 of the original application dated July 11, 2008. The zoning was changed to C-1 and R-2.

Chairman Littleton presented the following exhibit:

**Exhibit 2** – Timeline History – Relative to the “Oak Grove at the Beach” Major Subdivision Application No. 0708-05, dated April 9, 2010.

Mr. Lovett provided a short presentation which delivers the Applicants’ vision for the Oak Grove property for the Planning Commission and public review. The Applicants are prepared to discuss all the issues and present their position.

Ms. Donna Bengé provided a brief history of the property. The Applicants’ vision is to provide building lots and have nice houses. An aerial of the tree canopy was provided. The Applicants would like to preserve the tree canopy as much as possible.

Mr. Lovett said that the Applicants would like to find a place for the cottages to be relocated to so they can be saved. The proposed subdivision plat of what the Applicants would like to have approved, was presented. The City can expect that the Applicants are preparing lots, and individual lot owners will build the houses. It is likely to take several years to reach the fully built-out community. Until all lots are sold, the Applicants will remain officers of the Association working to preserve the character of the property. An aerial picture was shown of what Oak Grove will look like with the proposed lots. Trees will be added to the property to bring

individual lots up to their required tree density. A rendering was created, envisioning all the homes on the lots. Images would conform to Floor Area Ratios (FAR) of the City and will conform to other stipulations of the Code. A closer look at Jones Lane was provided. The access is positioned to preserve trees. The road itself includes green parking on one side. There is a pathway which is made of the same material as the parking. Bio-retention will be provided and is necessary for collection of water from the road and homes. It will be part of the hydraulic analysis. The Applicants have had a discussion with Ms. Judy Schwartz of GMB about how close the bio-retention is to a particular tree. Flush curbing was recommended to the Applicants by the City. A detail of the side to side profile of Jones Lane was provided. Some Planning Commission members have expressed an interest in a sidewalk along Canal Street and an interest in a connective pathway from Canal Street to Jones Lane. Photographs of how Canal Park looks today. Instead of a sidewalk and connective path, the Applicants suggested the following: 1. Re-landscape the Rehoboth Avenue end of the canal bank. 2. Create a path that connects the bridge's sidewalk with the natural path. 3. Make the canal bank beautiful to walk or bike through. 4. Direct incoming walkers turning right off the bridge onto a wooded path. 5. Work with City planners to finalize the design. 6. The owners of Oak Grove will fund the project. The Applicants' approach from the start is to get this project right because there is no second chance. The proposed subdivision plat was re-introduced for discussion.

Mr. Shulman asked if the trees shown on the rendering are trees that by the City's Code would need to remain, or if the Applicants had left some of the trees there for purposes of illustration even though a particular lot owner may decide that he/she can legally take down some of those trees. Mr. Lovett said that the lot owners can legally take down the trees. There is no envisioned legal protection, other than the covenants themselves, for individual trees to be protected. There is no law requiring the Applicants to do that. The Applicants do not know if the lot owner will save trees. Mr. Shulman said that some trees located in the setback areas cannot be taken down according to the Code. This is a combination of trees that, by law, cannot be just cut down, but it also includes some trees located in the footprint of a house. If the landowner chose to take down the tree, the Applicant is saying that this would be a decision under this proposal for the landowner. Mr. Lovett said that the Applicants will encourage the landowners to try to protect trees. Ms. Cindy Lovett said that the rendering is not a proposal.

Mr. Lovett verified where the actual curb-cuts exist. Particular lots will have access to Jones Lane. The Applicants do not believe it is necessary to require curb-cuts.

**Exhibit 3** – Power point presentation of Oak Grove at the Beach for the April 9, 2010 Public Hearing.

**Exhibit 4** – Official Notice of the Public Hearing, Agenda, Letters of notification to lot owners within 200 feet, Plaquard posting, and Affidavits of newspaper publications.

Ms. Womack verified that all postings of notices, agenda, plaquards and letter of notification to lot owners within 200 feet had been done in a timely manner.

Chairman Littleton opened the public portion of the Public Hearing.

Correspondence:

1. **Exhibit 5** – Letter dated April 8, 2009, from Violet & Bruce Chilcoat, 11 Queen Street, believed the Applicants proposal for subdivision and development of their land into single family lots is in the best interest of the City. The Applicants have promised to minimize the removal of the Oak trees from this property thus assuring retention of a lot of the green canopy.
2. **Exhibit 6** – Letter dated April 5, 2010, from James Prettyman and Robert Bonham, 20 Sixth Street, opposed the lot sizes requested by Oak Grove Motor Court. The development will hinder the residential aspects of the nearby properties and increase traffic.
3. **Exhibit 7** – Letter dated April 2, 2010, from John & Alma Madanick, 13B Canal Street, expressed concern for the impact the proposed subdivision will have on parking in their neighborhood. The proposed subdivision will not have enough onsite parking to accommodate all its owners, guests and renters. Canal Street is a heavily used year round shortcut to State Street and Route 1B south, and it also has a lot of non-motor vehicle traffic. Canal Street has no sidewalks or curbs on either side. By continuing to allow parking on both sides of Canal Street after the new subdivision is built, pedestrians will be forced into the narrowed roadway. Parking on Canal Street should be limited to the east side only.
4. **Exhibit 8** – Letter dated April 5, 2010, from Don & Janet Walker, 10 Sixth Street, expressed concerns the proposed lot on Sixth Street will have their driveways on the proposed cul-de-sac and not onto Sixth Street; the final approved plan has a condition that there will be no other

new curb-cuts onto Sixth Street other than the new proposed road, and that the two existing curb-butts will be replaced with curbing; and that in lieu of the cul-de-sac road, consideration be given for the road to go through at Canal Street.

5. **Exhibit 9** – Email dated April 6, 2010, from Ellen & Howard McCabe, expressed concern that parking along Canal Street should not be permitted; the tree ordinance should be enforced; and an easement for a walking path to the Canal should be required.

Public Comment:

1. Mr. George Horn, 7 Sixth Street, said that there is concern about parking on Sixth Street; but realistically speaking, one of the great things about Sixth Street in particular is that there are not a lot of problems with parking. He thought that there are covenants with the homeowners on Sixth Street to maintain the characteristic of the street. Every house on Sixth Street faces the street. Mr. Horn said that it is time to redevelop the Oak Grove property; but for those people who will live along Sixth Street, the covenant should be that the proposed properties along Sixth Street should face Sixth Street. He did not feel that parking and curb-cuts are an issue on Sixth Street. What is proposed is not characteristic of the rest of the community. Looking at the side of a house from Mr. Horn's front porch will be a major distraction for him. Lots 8, 9, 10, and 11 can be reoriented to face Sixth Street without losing anything. If the potential new homeowners would want to know how the lots were laid out, this would be a covenant with existing homeowners on Sixth Street for the properties to face Sixth Street. Mr. Horn encouraged internal parking.
2. Mr. Rex Varner 13E Canal Street, agreed with Mr. & Mrs. Madanick and Mr. & Mrs. McCabe that they want the parking addressed on Canal Street. Currently there are no curbs on either side of the street. The park is a great asset to the community. He preferred no parking on both sides of the street, but agreed to no parking on the west side of Canal Street because when cars are parked there, it becomes muddy; and there is no sidewalk. Having a path would help to create a nicer space rather than have parking on the west side. Mr. Varner would support having parking on one side of the street next to the canal.
3. Mr. Richard Kirchhoff, 34 Sixth Street, said that this project will be an improvement to the appearance of the neighborhood over what currently exists. A healthy price will be paid for it. Fifteen houses in that area is a lot of density, and it will come with a price of additional cars coming in and needing places to park. The houses will be big, and a lot of people will probably be looking at rental income properties. A lot of stress will be put on parking in the area that may not be fully accommodated with this layout. Consideration should be given to Jones Lane to require it to be a through street because it will add additional parking off of Sixth and Canal Streets for more cars, and it will facilitate emergency and service vehicles that may have to access some of the proposed houses. In regard to the plat and all the trees, a depiction can be seen of where the trees are on the property and what their diameters are. Mr. Kirchhoff encouraged the Planning Commission to visit the site and reference the plat, and look at the size of the existing trees. There are a lot of trees in the way of the proposed building footprints, and it will have a major impact on the visual aspect of the area. The Comprehensive Development Plan (CDP) envisions an improved waterfront along the Canal which Mr. Kirchhoff encourages the City to do, especially since the Museum is improving the waterfront on the other side of Rehoboth Avenue. That would make a nice natural extension. Until that point is reached, all of the people who live on the Sixth Street side are being cut off from being able to get to the Canal park. That would connect people to a community resource if Jones Lane would be a through street. Mr. Kirchhoff voiced frustration and disappointment with the way the entire rezoning process of this property happened. It was very discourteous to those people who live in the neighborhood for the process to have been bypassed at this level. If this proposal had not come in the door, the rezoning of the Canalside Inn property and the neighborhood would have been contained in the CDP that still has not been approved by the City Commissioners. There would have been some Public Hearings; and those people who had interest in the proposal, would have had an opportunity to weigh in with the Planning Commission and talk to it about the situations they are in. Those people never had the opportunity because it was suggested that Mr. Lovett sent in a proposal to the City. The Planning Commission had endorsed the proposal before Mr. Lovett had sent it in. That really cut off the ability for those people who had an interest and were impacted by that proposal, to have some input. This was the wrong way to treat people.

Building Inspector Terri Sullivan read her report which included Exhibit A – Notebook with application as amended March 19, 2010 and Exhibit B – November 16, 2009 letter from Mr. Timothy Spies to the Applicants. Ms. Sullivan's report was based on the information submitted since the letter was issued. She concluded that

the March 19, 2010 letter from the Applicants is the reply to Mr. Spies' November 16, 2009 letter which was not included in the application book. Other than the side and rear lot line issue, the deficiencies which were brought up in Mr. Spies' letter have been sufficiently addressed.

**Exhibit 10** – Building Inspector's Report, dated March 31, 2010.

Mr. Kyle Gulbranson, City Planner, did a review of the revised plat, and he distributed copies of his general comments. Some of the question had been addressed by the Applicants during their presentation. Most things are related to street design. The proposed Jones Lane road section was presented on the plot plan. Some of the things which are being proposed do not match the requirements of the Code. The latest proposal calls for flush curbing on top of six inches of DelDOT Type B graded aggregate. Flush curbing is being done for environmental purposes. In terms of parking, the proposal calls for eight feet of grass parking over the Net Pave 50 grass pavers. The pavers would be installed over six inches of a DelDOT Type B graded aggregate base course. There has not been any detail as to the length of space. The Code requires a 9 feet wide by 18 feet long parking space. Mr. Gulbranson questioned whether grass will grow if grass pavers are installed over six inches of crushed stone. Another question was about curb-cuts. Curb-cuts are indicated on a number of the lots within the proposal; however there is a note saying that curb-cuts are temporary, and the location of the curb-cuts will be determined when the homeowner places the house on the lot. Mr. Gulbranson's concern was that a lot of parking on Jones Lane may be lost depending on where the homeowners decide to place their driveways. The Planning Commission may want to recommend that curb-cut locations be identified as part of the proposal. Another question was raised regarding the landscaping of the bio-retention swale. The Applicants stated tonight that those areas would be landscaped. The Code requires that street trees or shade trees be placed approximately every 60 feet along any new street. Those trees were not indicated on the plan. That could also enhance the tree mitigation plan for the property and could be placed within the bio-retention swale along with additional landscaping. The Applicants are not proposing a traditional concrete sidewalk, but the Code requires a five foot wide concrete sidewalk. The Applicants are proposing flush curbing with a four foot wide walkway with Net Pave 50 grass pavers which grow grass and could be mowed from time to time. It would provide a stable base for a walking path, but it is not traditional and does not meet the Code requirements. Mr. Gulbranson asked what the process would be for approving something that does not meet the Code requirements. To allow the greatest amount of sheet flow off of the road and get the most rainwater back into the groundwater table would be to place the sidewalk on the interior side of the bio-retention swale so that water off of the street would flow directly into the bio-retention swale. The last issue was with interconnectivity and providing access through the property from Sixth Street to Canal Street. If the Planning Commission feels it appropriate to move forward with the current street configuration and cul-de-sac, the easiest way to provide connectivity to Canal Street would be a pedestrian access easement located between Lots 3 & 4. It would be a continuation of the walkway that the Applicants are proposing along Jones Lane. The material should be something that is pervious and very stable. The easement would provide pedestrian access and would continue the proposed sidewalk.

**Exhibit 11** – URS – General Comments for Oak Grove at the Beach.

Mr. Shulman's impression was that the pavers for parking were not going to be on any individual lots or a public or private lot. He asked if there is a requirement in the Code regarding the size of a parking space on a public street, and he suggested that a follow up should be done. Chairman Littleton noted that the pavers would be located in the right-of-way. City Mandalas suspected that there is a guideline as to what size a parking space on a public street has to be.

Mr. Shulman assumed that the Building Inspector's Report and Mr. Gulbranson's analysis are based on the assumption that the Planning Commission determines the short dead-end street of this shape can be constructed. Ms. Sullivan said that her report only the addressed the issues which were brought up since Mr. Spies' letter to the Applicants. Mr. Gulbranson's comments were based on the assumption that the Planning Commission find this scenario acceptable.

Mr. Alan Kercher, City Engineer, distributed his comments to the Planning commission and addressed the major issues to be considered by the Planning Commission that include the street configuration, lot layout, connectivity (sidewalks or walking paths) and preservation of natural features. These are issues that need to be discussed by the Planning Commission and need to be addressed before getting down to the details of the major issues. In regard to the proposed sidewalk, it is a four foot wide walkway with grass pavers, a green technology alternative. The four foot walkway per the drawing includes the recessed curb. In Mr. Kercher's opinion, the Applicants shall provide documentation to verify that the design will withstand vehicle loadings along with any manufacturer's specifications. This information should be placed on the plans. In regard to pedestrian safety, a

possible alternative for consideration would be to design a two foot grass strip for separation of the walkway from the travel lanes. Mr. Kercher was concerned that if the bio-retention area is put next to the curb with this type of street and maneuverability issues, people will be going down into the bio-retention area, and it will be an ongoing maintenance problem. Pedestrian safety is a concern. The street is a very short straight-away street with low speeds and volumes. The Planning Commission should consider pedestrian safety vs. maintenance issues and the bio-retention area. The fire hydrant shown in the walkway should be relocated and a standard driveway detail which is ADA compliant shall be provided prior to final approval. Another consideration regarding grass pavers is that maintenance becomes an issue because it is a walkway and needs to comply with ADA. Uncut grass could become an issue. The main purpose of concrete curb is to provide edge support for the concrete pavement. The curbing will be narrow, and vehicles will be driving across it, so the curbing will provide confinement and support for the pavement to prevent edge cracking which would occur. Mr. Kercher suggested that the curb should be eight inches wide, typically the minimum width for vehicles traveling over it. Typically, curbing is required to be 20 inches deep per the Code. Mr. Kercher thought that it is a good idea that the curbing will become a cut-off wall to keep water which is in the bio-retention area from coming under the road and creating moisture problems for the pavement. He would probably not put the weep holes in the curbing. In Chapter 236 of the Code, one of the requirements is a plan for surface drainage. The plan submitted provides a generic conceptual single lot detail. The Applicants is willing to provide an overall site created drainage plan once the street layout is approved. This may require swales and/or yard inlets once it is determined how the water runs off. In regard to lot corners, the markers are not shown on the plan. In regard to street profiles and cross-sections to the streets, just prior to final approval more information and dimensions may be required. Utility pipes should be shown on the street profile plan. Under Section 236-24 – Utility Easements, the easements should be at least 15 feet wide. The plan shows 10 foot wide easements. Under Section 236-26 – Parking Spaces, sufficient parking spaces shall be provided as required by Chapter 270, and spaces shall not be less than 18 feet long by 9 feet wide. The proposed space is eight foot wide which includes the width of the curb. In regard to stormwater management, there has not been an approval from Sussex County Conservation District. This approval may occur at a future date. When preliminary approval is granted, there must be a contingency that in case the bio-retention area must be expanded this could cause lot configuration changes. Under Section 236-15 – Required Improvements, such things such as street lights, shade trees, a grading and drainage plan, storm sewer calculations and details, and sanitary sewers and water system construction details will be required prior to final approval.

**Exhibit 12 – Kercher Engineering Inc. Report on comments**

Mr. Shulman asked if there is any relationship between how the bio-retention swale stores water or water flows in freezing and thawing temperatures and the maintenance of the road. Mr. Kercher said that a flush curb being 20 inches deep will create somewhat of a cutoff wall, at least for the first 20 inches because water once it is pressurized will not rise. It should be relatively dry 20 inches under the pavement. The soils tests say that the soil are pretty good. Having the walkway before the bio-retention area raises more separation. The further away moisture is from a pavement the better off it is.

Mr. David Mellen said that with the consideration of flush curbs, it mentioned that there is a potential for people to ride on the curb and the grass, and he asked if Mr. Kercher had any comments relating to the grass area in the right-of-way easements for the utilities, and if the soil should be prepared in any way to withstand the potential for driving across it. Mr. Kercher said that there could be a requirement for stabilizing the 10 foot area beyond the eight foot stabilized parking area, for at least two feet.

Mr. Patrick Gossett asked what the familiarity and usefulness is with installing grass pavers. Mr. Kercher has not seen grass pavers used in this specific situation. They have been used in parking lots and in downtown settings. There could be a learning curve here. Mr. Kercher said that there would be a problem with wheelchairs using the proposed walkway which will have the grass pavers. The grass would start to grow and is fairly thick. If the walkway is designed and installed properly, that route should not be a long term problem, especially with pedestrians.

Mr. Shulman said that the Planning Commission has discretion to require sidewalks and asked if the Code requires the Planning Commission to require sidewalks. Ms. Sullivan said that if the Planning Commission decides to put in a sidewalk, there are requirements for what the sidewalk has to meet; but the Code does not say that the Planning Commission has to require them to put in sidewalks. Mr. Shulman asked if sidewalks would need to meet the ADA requirements that are voluntarily proposed on the plan, even though the Planning Commission decides that it does not want to require them. City Solicitor Mandalas noted that to the extent the Planning Commission would approve a plan with sidewalks, that plan should comply with whatever the Code requires as a standard for sidewalks.



Chairman Littleton said that if an applicant is proposing to put in a path which is not determined to be a sidewalk, then that may be a way to avoid the requirements of a sidewalk. Mr. Gulbranson said that in looking at the plan, the Applicants are calling it a walkway. Pathways do not have to meet ADA requirements, but there are recommendations.

Mr. Spies asked if the Planning Commission should consider the fact that connectivity with Canal Street might be an ADA issue. Mr. Kercher said that he would consult with an ADA expert.

Chairman Littleton was concerned, in talking about new design and green technology, that the Code requires you to do what is not the right thing. He wondered how this can be reconciled. Mr. Gulbranson said that with subdivision ordinances in codes, generally waivers can be granted. Mr. Shulman said that the sidewalk and street design section of the Code does not seem to have a waiver provision. Chairman Littleton noted that there may be a number of areas which the Planning Commission is supportive of what it finds potentially as not to the letter of the Code. Some of these issues have been identified. The Board of Adjustment could make determinations. City Solicitor Mandalas said that the Board of Adjustment's jurisdiction and authority is limited. It cannot grant variances for every chapter of the Code. Primarily the Board of Adjustment is limited to zoning issues. There is no waiver provision in the Code. Mr. Shulman pointed out that even if the Planning Commission thought a different type of sidewalk was a great idea environmentally and would eliminate safety problems, etc., and the Board of Adjustment was inclined to waive the Chapter 270 part of it, the Planning Commission still could not do anything about the construction standards in Chapter 232 of the Code. Chairman Littleton said that the fundamental issue is how to accommodate an applicant who is trying to maintain green space and water on the property, etc., and put it within the Code.

Mr. Shulman said that there is a question of whether the standards for the dead-end street has been met. Chairman Littleton noted that the most fundamental issue on this application is the acceptability of the street. Pathways/walkways can be reviewed at the same time. The next priority is the issue with rear lot lines and how the Planning Commission views this proposal and whether it meets the Planning Commission's interpretation of rear lot lines.

Mr. John Gauger said that the public seems to be concerned about the parking. Mr. Francis Markert thought that it would be appropriate for the Planning Commission to have some kind of proposed configuration with parking even though the property owners may be able to adjust where the driveways would be located; and what the potential is for how many accommodated parking spaces there would be along Sixth Street; and how those spaces would be delineated. Mr. Gulbranson said that with what is currently proposed, the parking areas would be a grass paver area. There would be paved aprons for the driveways. Mr. Spies said these issues would be part of the discussion if the Planning Commission finds that Jones Lane meets the other requirements. Chairman Littleton said that the only way Jones Lane can be approved is if it is in the judgment of the Planning Commission to be in compliance with Section 236-21(M)(2) & (3).

Mr. Shulman said that in part and parcel of the question of parking, is what the size of the street is going to be. Some of the public said that one reason to have a through street is that a through street would provide more on-street parking for the houses which would be there. In looking at whether the standards would be met for a dead-end street, the Planning Commission has been thinking of green space and trees. The other part is that the Applicants demonstrate the street design is consistent with the purposes of Section 236-2 which includes parking and traffic. One could find that this shows a certain amount of trees, if that is the case; but what one gives up in terms of street, parking and traffic issues, etc., does not balance the saving of that number of trees. Everything is tied together. Another question on the street as well is what the natural features being preserved are and to what extent they are being preserved. The Applicants have a burden, and the Planning Commission has discretion.

Chairman Littleton said that even with a calculation, the only ability for the Planning Commission to have something less than the street width requirement code is relevant to short dead-end streets. He asked how many trees would be lost if a 34 foot wide paved area and 50 foot wide right-of-way would be configured through this property. Mr. Markert said that there are other benefits of a smaller footprint.

Mr. Shulman said that by definition, the interpretation of the short dead-end street provision would always be satisfied. The statement of preserving natural features talks about streets and views. To say that the Commissioners meant that simply by not paving, natural features are being preserved; would be automatic. Every square foot that is not paved automatically preserves a natural feature under the interpretation of natural features. Water run-off is important. Other things can be balanced once the Planning Commission decides there has been a preservation of natural features.

Mr. Francis Markert said that there is a certain implication to the notion of the preservation of natural features of also maintaining the original natural features. The intention is that the Planning Commission is attempting to keep it the way it is to a certain extent. Mr. Spies said that Mr. Markert's interpretation might be going too far. When the Code refers to natural features such as trees, brooks, hilltops and views, it is talking about important large scale features such as trees, grass, etc. Chairman Littleton said that this section of the Code provides an opening for an environmentally sensitive development. In terms of retaining natural space meaning not paved over with cement, has merit. The idea of maintaining water on the property makes sense.

Mr. Shulman said that the re-genesis of the dead-end street provision came from the Planning Commission. Chairman Littleton commented that what the Planning Commission will need to make a decision on it if it collectively views what is being proposed for Jones Lane as warranting something less than a 50 foot right-of-way and 34 foot paved area. He asked how one presents evidence that that preservation of trees are such that it warrants something less than a 50 foot right-of-way and 34 foot paved area. The Planning Commission will be looking for a calculation of what a through street would be. The old Code provision of a dead-end street could be done which would be the same width with a huge diameter turn-around. A lot of space would be preserved with a through street.

Mr. Shulman said that this is a data point. The third option which is up to the Applicants, is that because a street can be created like this, it allows them to lay out the lots in a way that they would not be able to lay out the lots if there is a through street. As a result, because the lots can be laid out this way in addition to what the City tree ordinance says about preserving the trees which cannot be cut down, here are nine large trees that are one foot within the buildable lot area. Then the applicants could put in the covenants that these trees would be preserved. This ties in with the nature of the street because without the street like this, the lots would be smaller and different in sizes. A data point needs to be started; but it is not just comparing the starting data point to what it would be if the street went through, it is whether there are other trees if this arrangement that the Applicants were saying are not legally a part to be saved but would be committed to be saved that could be waived as part of favoring the dead-end street.

Chairman Littleton asked, in the concept of preserving trees, if there is something inherently sacred about an existing tree vs. a new tree. Mr. Shulman said that it depends on the size and the health of the tree. Chairman Littleton noted that even though the Applicants have done a good job of identifying trees, there is a quantifiable number of trees which have not been identified.

Mr. Mellen said that the Code currently requires that if a tree is taken down, it should be replaced not just in kind and number but in physical caliper. There is a practical problem on the lots of where the trees are planted. Chairman Littleton noted that mitigation would occur onsite.

Mr. Shulman chose a big healthy tree on Lot 11 which is located 1.5 feet away from the setback area. The lot owner has every right to take that tree down. Mr. Shulman would personally be disturbed if the Planning Commission interpreted this ordinance to allow a street to be this narrow. The tree is 1.5 feet outside the setback area because the street is narrower. He was talking about a plan that at the fringes with very minimum interference with the lot owners, actually recognizes that the reason there are bigger lots and the reason the lots are configured the way they are is partly because the Planning Commission would be allowing the smaller street. What Mr. Shulman is looking for is if a consequence of this needs to be that there should be trees which technically are not required to be preserved but is a trade-off for doing the street.

Chairman Littleton found this kind of approach constrained. If someone purchases a lot, Chairman Littleton personally has problems with putting constraints on what they can or cannot do that fall outside the existing requirements or fall outside the covenants that the Applicants are presenting. Chairman Littleton asked what the Planning Commission wants to do to move this forward. One of the suggestions is to take the best design with a through street that saves as many trees as possible or saves as many lots as possible including a tree count vs. what is being proposed. The other suggestion was that while some of those trees are located in the setback areas, there are other unique trees that one could put special protection on those trees in perpetuity. The third option was the idea of increasing the tree stock on the property with a guarantee offered by the Applicants that they would plant not only the Code required three trees, but they would assure that every lot has a minimum of trees. Mr. Patrick Gossett said that this would be part of a deed restriction which would convey to the owner or builder of a house that a minimum number of trees. Mr. Shulman said that at a minimum, all of the property owners in the development are given the right to enforce those restrictions. In the case of St. Michael's Place, the Mayor and Commissioners were given the right to enforce the covenants as well as the property owners. Mr. Gossett said that if the Planning Commission moves in the direction of a deed restriction, it is more applicable that the will of the Planning Commission and the thought behind this shorter street that it is

giving the Applicants larger lots and making conditions which should be met, those conditions have to go through deed restrictions. It has to come back to quantifiable whether it be the numbers of trees. The Applicants still have the ability to condominiumize. The Planning Commission would have less ability to have natural preservation, tree preservation, etc.

Chairman Littleton said that what has been proposed is that Jones Lane currently takes down no trees. Any other alternative would have to take down trees. Some of the trees are close enough to the edge that it is not certain and may not be known for three or four years if they will survive the street pavement.

Mr. Markert asked if the Applicants feel that by preserving the trees it makes the lots more marketable or less marketable. Mr. Lovett said more marketable for sure. With the St. Michael's application, the Planning Commission came to the conclusion that the applicant does not have a legitimate economic reason to suggest that they would cut down trees. The Planning Commission voted with that as one of the final summary that it would not deny the subdivision on the basis of that. There was a subsequent appeal of that decision, but that eventually resulted in individual trees being preserved on some lots.

Mr. Shulman had no concern that the Applicants would do anything because of who they are and because of their ancestors, to hurt this plan. Mr. Shulman's concern was that the Planning Commission has no idea who is going to buy the lots. Someone from the public asked how the Planning Commission is going to ensure that the trees are preserved. Some things, it is clear that the Planning Commission cannot ensure and should not ensure. Mr. Shulman was referring to the trees located in the fringes of the lots. He was concerned that there are beautiful trees which are along the fringes and the Applicants will sell the lots to someone, and the to Applicants' own dismay, someone is going to decide that they want a swimming pool, driveway, house, etc. where the tree is.

Mr. Gossett said that this is a big "give" if the Planning Commission decides to go with the plan, so there has to some kind of "take". Trees are natural and will die at some point no matter how large or how long they live. The current mitigation process is impractical. There is an opportunity for the Canal Street park that the CDP says this is a golden opportunity for future generations, the gateway to the community, etc. What Mr. Gossett would strive for, is that for a tree which dies or is taken down, it is up to Oak Grove Homeowners' Association through deed restrictions to maintain and improve the Canal Park in perpetuity. As a mitigated area, the Planning Commission is not going to control people on their own property as much than with cutting or not cutting a tree down, etc. The area along Canal Street is something that the Planning Commission has an opportunity to control. Mr. Gulbranson said that the tree ordinance allows for off-site mitigation on City lands. City Solicitor Mandalas said that the City Commissioners are currently dealing with the tree ordinance and mitigation. The mitigation provision says to replace trees on a person's own land. If that person does not like that, then an appeal can be made to the Parks and Shade Tree Commission and go through the appeal process. Only at the appeal process does that person have the opportunity to mitigate by paying money into the tree preservation fund or by planting trees someplace else on City land. Under a typical subdivision application, the Planning Commission probably could not require with an approval that the Applicants do something on the Canal side of Canal Street. This is different because the Applicants are asking the Planning Commission to say that this is acceptable as a short dead-end street which is something different than what the Code requires. There may be some opportunity to have that discussion with the Applicants. The Planning Commission cannot approve this short dead-end street and require that something be done on Canal Street unless that is a discussion where both parties arrive at that.

Mr. Mellen said that Chairman Littleton and Mr. Shulman asked what the criteria is for judging whether it meets the requirements for it to be written into the Code.

Mr. Spies said the Planning Commission has heard from the City Engineer that Trees 1, 2 & 4 are likely to die because of the building of the road. He would like to hear from an expert witness, saying why those trees would not die. Just to say that the trees are preserved when the road is built and knowing that it is likely the three trees will die, to Mr. Spies it is no reason for the justification of the road. Ms. Cindy Lovett went to St. Michael's Place and measured how close the living trees are to the street. She provided examples of those trees. In regard to the construction of Jones Lane, no one knows if the trees are going to live.

Chairman Littleton said that the current proposal is the best chance of not taking any trees down. Mr. Gulbranson had advised the Planning Commission, previously at the site visit, that the road may impede two trees at the end of the cul-de-sac. Mr. Lovett said that the design had been changed since then.

Mr. Shulman said that by not having a through street, there will probably be another 20 parking spaces. He was not saying that roads should be paved so there is a lot more parking. When Mr. Shulman looked at the big

picture behind the street and he has the concerns that some neighbors have expressed and despite all the Applicants' good intentions of ensuring that enough trees would be preserved particularly given that there is a substantial loss of parking, he was concerned about the street. Mr. Lovett said that this proposal provides more on-street parking than there currently is, but not with a through street. Ms. Lovett said that there was no public parking on the Oak Grove property, and there was never a problem with parking when the 14 trailers were located there. Currently there is no public parking on the Oak Grove property. Currently there are 15 lots proposed, and two off-street parking spaces are required by the Code for each house. Some houses will have garages which will provide even more off-street parking. Jones Lane will also provide parking, and parking is available on Sixth Street. There will not be a parking issue.

City Commissioner Dennis Barbour noted that the Commissioners had a discussion this morning about mitigation and the tree ordinance. In the case of the tree ordinance, the good is being overlooked.

Mr. Gulbranson said that the tree ordinance designates specimen trees, historic trees, etc., and offers specific protections for those trees. He asked in regard to the tree survey, if it is known which trees qualify as specimen trees or other trees which might have additional qualities that would warrant preservation.

Mr. Spies referred to the preservation of trees document, dated March 5, 2010. On page 23, it is noted that 32 trees are circled and 20 other small ones fall into the setbacks, and should be preserved. On page 24, it is noted that 14 trees are designated for specific attention in an attempt to have them survive the build-out. There are also pictures and locations of those 14 trees. Also noted are the circumferences, but no names or heights. Apparently the Applicants thought that these trees should be saved. Also shown were 20 trees that would have to be cut down because they are in the net buildable areas. Mr. Lovett said that those trees may come down if the houses are not designed around them. Mr. Spies asked if there is going to be a covenant in regard to the 14 trees because those 14 trees could go the same way as the 20 trees. Mr. Lovett believed that with City Commissioner Barbour's tree ordinance and the five ordinances which were adopted since the trees were cut down on the various other properties, those trees will be protected by all of the legislation. Mr. Spies asked what the Applicants are willing to preserve. Mr. Lovett noted the five trees which will be preserved. Mr. Gossett said the Planning Commission wants a guarantee that certain trees will be saved in order to grant the short dead-end street. If the Planning Commission does not grant the short dead-end street, then the trees will be cut down without question.

**Exhibit 13** – Preservation of trees, dated March 5, 2010

Mr. George Horn, 7 Sixth Street, asked how wide the proposed street is. Chairman Littleton noted that it is 18 feet wide in terms of the paved area. Mr. Horn said that if Lots 8 and 9 are reoriented so they are perpendicular to Sixth Street, 10 feet in width would be gained. The street width would be substantially closer to conforming to the 34 foot wide requirement. Mr. Horn noted that one tree may be in question, but he did not see that any other trees would be in danger by the difference of 10 feet.

City Commissioner Barbour noted that there is a provision in the tree ordinance which has to do with hand-digging. Hand-digging would occur if it means survival of the tree to put in a foundation for a house. The tree ordinance has a provision to save trees that are too close to a house.

Chairman Littleton said that there seems to be some members who say that a smaller street will provide a chance to save a number of trees initially. Other members say that there is no assurance that the trees will survive, and what needs to be done is to require a restriction/covenant that specific trees will be maintained within that entire property. He asked how people think the idea that the smaller street as being proposed and the idea of saving seven trees absent any other kind of restrictions throughout the development is a satisfactory solution to meeting the requirements of the Code. The other option is that that is not sufficient and something further in addition to that will be required. The only things he has heard to be required would be a voluntary ability to do something with the other side of Canal Street in terms of Canal Park or a covenant put on specifically named trees on specific proposed lots.

Mr. Markert thought that the smaller street and initially saving seven trees would meet the minimum standards. Any fortification or embellishment would certainly be favorable.

Mr. Gauger agreed that what is being proposed will initially save seven trees and is sufficient for allowing something less than the Code required 50 foot right-of-way and 34 foot paved area and 80 foot diameter cul-de-sac. He would also like to see the pathway designed in there.

Mr. Spies was not comfortable that what is being proposed will initially save seven trees and is sufficient for allowing something less than the Code required dead-end street.

Mr. Shulman was not comfortable that what is being proposed will initially save seven trees and is sufficient for allowing something less than the Code required dead-end street, but he was comfortable with suggesting identifying specific trees.

Chairman Littleton said that he has concerns about putting restraints on future owners of what they can/cannot do with their property. Mitigation would be appropriate.

Mr. Gossett said that the Applicants have great intentions, but the Planning Commission is dealing with the current property owner. Mr. Lovett has said that the Applicants will just be selling lots and not building a house. In moving forward, a higher standard needs to be set. This is a larger variance from what the Planning Commission normally does in going to a smaller street in this area. The Planning Commission needs to set aside whether it be specific trees or the seven trees or the 14 trees as outlined by the Applicants. The Planning Commission needs to go beyond that and look at this additional space. Mr. Gossett was trying to get to a different level with the opportunity to set a precedent of what this community can do to preserve the viewshed, entrance and welcoming to this community of this piece of Canal Park. The Planning Commission is charged with the preservation of this community from the standpoint of planning, and this is an opportunity the Planning Commission should take advantage of. Mr. Gulbranson thought that the off-site improvements to Canal Park could be made to work, and it is a great idea. Mr. Gossett said that the Planning Commission has the need to give the future property owners certain responsibilities.

Mr. Lovett said that if the Planning Commission demands that the Applicants deed specific trees to be saved, the Applicants will deed them. He thought this is extreme, rare and unnecessary. Mr. Lovett also said that if the Planning Commission wants the Applicants to put trees in Canal Park, then they will. Chairman Littleton said that the Applicants are willing to make concessions in order to move this project forward.

Mr. Shulman has asked for some identification of trees outside the area that must be legally preserved outside the setback areas. He is waiting 1½ years later for that identification. Mr. Shulman was willing to give the Applicants the latitude and discretion to identify the trees in good faith. He has wanted some specificity as to particular trees and some sort of notion of how preservation can be ensured.

Chairman Littleton suggested that a conversation should take place between Mr. Gulbranson and the Applicants to see if there is anything they want to come back with..

Mr. Lovett said that the Applicants will deed the trees to satisfy Mr. Shulman.

Chairman Littleton said that unless the Planning Commission resolves Jones Lane and the size of it, all other things will fall apart. City Solicitor Mandalas said that if the Applicants are willing to put deed restrictions or restrictive covenants, that is wonderful; but until they hear from the Planning Commission what trees it wants restricted or covenanted, they cannot move forward with the proposal. The proposal cannot move forward until there is some conclusion on Jones Lane.

Mr. Gossett suggested that the enforcement should be taken away from the specific landowners. The responsibility would remain with them. The development of the mitigation of the trees or the viewshed should be in a third-party area. The responsibility of the maintenance of the perpetuity of that area is with the owner.

Mr. Gulbranson said that the idea where the community has stewardship of a resource such as an open space or common area outside of the development, has been done in other municipalities. Mr. Gossett asked for 30 days to explore this possibility. Chairman Littleton said that the Army Corps of Engineers is desirous to see its land used for public purposes. The City may have zero interest in this.

Mr. Mellen said that all have relished the potential for keeping a green area and making it more parklike or maintain it as a park. Unfortunately, the Planning Commission tied the short dead-end street reduced size to the ticket of justifying it by preserving trees and other aspects of natural features. Mr. Mellen asked the Planning Commission if it can agree that the design of the street, in its entity with the curbing, reduced size in terms of traffic that it is required to be handled, etc., is satisfied with the retention area. If there is satisfaction, then maybe the problem can be solved of how to preserve the nature of the park. Mr. Mellen is against deeding the trees. A much better solution is one which states for the entity of this development that it is the goal to have certain kinds of trees, vegetation, etc. He would rather see some way of tying the concept of preserving this area to the entire development and not holding the street hostage. Mr. Mellen wanted to find out if the street itself, this concept of the lot layout, etc. is acceptable. If the general layout of the street is acceptable, then maybe the problem relative to preservation can be solved.

City Solicitor Mandalas proposed another option that instead of preserving what is there now, take the largest lot and say that this lot or more will always have one tree more than what is required in the tree

ordinance. Mr. Shulman said that of the members who did not express an objection with identifying specific trees, he did not believe anyone talked about any trees other than the ones being marginally in the setback area. The discussion has been about peripheral things. Mr. Shulman told Mr. Lovett that although it is important to preserve specific trees, the Applicants should use a fair amount of discretion in deciding that. There are different ways to do it, and Mr. Shulman would be fine with covenants.

Mr. Gulbranson recommended that a committee meeting should be held. The Applicants are looking for direction from the Planning Commission. Members of the ad hoc committee are Mr. Gulbranson, Mr. Gossett, Mr. Mellen and Mr. Shulman. The Applicants are welcome to attend the meeting, but they will not be participants. The meeting will be held before the May 14, 2010 Regular Meeting. .

The Public Hearing will be continued to the next meeting on May 14, 2010.

#### **NEW BUSINESS**

There was none.

#### **OTHER BUSINESS**

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.

Chairman Littleton noted that the Board of Commissioners are moving the Comprehensive Development Plan (CDP) to a Public Hearing and vote on April 30, 2010.

Chairman Littleton called for the Building Inspector's Report.

There was nothing to report.

Chairman Littleton called for the City Solicitor's Report.

There was nothing to report.

Chairman Littleton called for the report of any new subdivision applications that may have been submitted in the prior 28 days and the status of pending applications or requests.

No new subdivision applications have been filed to date.

The next Regular Meeting will be held on May 14, 2010 at 6:00 p.m.

Mrs. Spies made a motion, seconded by Mr. Markert, to adjourn the meeting at 10:55 p.m.

**RECORDED BY**

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(Ann M. Womack, Recording Secretary)

**MINUTES APPROVED ON  
MAY 14, 2010**

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