

**PLANNING COMMISSION MEETING
CITY OF REHOBOTH BEACH**

May 13, 2016

The Regular Meeting of the Planning Commission of the City of Rehoboth Beach was called to order at 3:07 p.m. by Chairman David Mellen on Friday, May 13, 2016 on the second floor of the Rehoboth Beach Volunteer Fire Company, 219 Rehoboth Avenue, Rehoboth Beach, DE.

ROLL CALL

Mr. Francis Markert called the roll:

Present: Mr. Brian Patterson (arrived at 3:29 p.m.)
 Mr. Harvey Shulman (left meeting at 4:35 p.m.)
 Ms. Joyce Lussier
 Chairman David Mellen
 Mr. Francis Markert, Jr.
 Mrs. Jan Konesey
 Mr. Paull Hubbard
 Ms. Lynn Wilson

Absent: Mr. Mike Strange

Also Present: Mr. Glenn Mandalas, City Solicitor (left meeting at 4:30 p.m.)
 Ms. Liz Lingo, City Arborist

Also Absent: Mr. Damalier Molina, Chief Building Inspector

A quorum was present.

VERIFICATION OF MEETING NOTICE

Ms. Ann Womack, City Secretary, verified that the Agenda was posted at City Hall, Building and Licensing Department and on the City website on May 6, 2016. The agenda was faxed to Cape Gazette, Coast Press and Delaware State News on May 6, 2016. An E-News blast was sent out on May 6, 2016.

APPROVAL OF MINUTES

Minutes of the June 12, 2015 Planning Commission Workshop Meeting and March 11, 2016 and April 8, 2016 Planning Commission Regular Meeting were distributed prior to the meeting.

Mrs. Jan Konesey made a motion, seconded by Mr. Markert, to approve the June 12, 2015 Planning Commission Workshop Meeting minutes as written. Motion carried unanimously.

Mrs. Konesey made a motion, seconded by Ms. Joyce Lussier, to approve the March 11, 2016 Planning Commission Regular Meeting minutes as written. Motion carried unanimously.

Mrs. Konesey made a motion, seconded by Ms. Lynn Wilson, to approve the April 8, 2016 Planning Commission Regular Meeting minutes as written. (Patterson – absent, Shulman – abstained, Lussier – aye, Mellen – aye, Markert – aye, Konesey – aye, Hubbard – aye, Wilson – aye.) Motion carried.

CORRESPONDENCE

There was none.

OLD BUSINESS

There was none.

NEW BUSINESS

There was none.

OTHER BUSINESS

Discussion/approval of modified Draft Tree Ordinance which now includes suggestions of new City Arborist, and discussion of other possible additional tree related items.

A brief history was provided regarding the modified Draft Tree Ordinance. The original Tree Ordinance was approved and put into effect in 2006. In 2010 or 2011, Commissioner Dennis Barbour put forth a potential redraft of the Tree Ordinance with changes that the Board of Commissioners later suspended. Based on that action, the Board of Commissioners approved a resolution in December 2012 charging the Planning Commission with reviewing and correcting or updating the existing Tree Ordinance and any other ordinances relative to trees. The Planning Commission started that process in January 2013 and completed the task in June 2014 with an approved draft of the original Tree Ordinance. In August 2014, a packet was forwarded to the Board of Commissioners which included a cover letter and a report summarizing what was being proposed in the new Draft Tree Ordinance along with recommendations for outside areas associated with the Tree Ordinance. Approximately three months ago, the Board of Commissioners had indicated to the Planning Commission that it was ready to review the Tree Ordinance, and it requested that the Planning Commission should revisit what had been prepared in 2014. Mr. Brian Patterson of the Planning Commission has reviewed the Draft Tree Ordinance and has concluded that there was no substantive change required based on the recent zoning changes. Subsequently, City Arborist Liz Lingo and Chief Building Inspector Damalier Molina have reviewed the tree ordinance and have provided feedback to the Planning Commission. Mr. Patterson has since included those edits and comments in the Draft Tree Ordinance.

It was uncertain whether or not Ms. Lingo had reviewed Mr. Harvey Shulman's comments made in June 2014 where he set out a number of concerns he had about the Tree Ordinance being insufficient to protect particularly large trees in setback areas, construction techniques and hand digging.

It was noted that Mr. Molina is willing to consider using specific construction techniques in order to save trees. Contractors and subcontractors would need to be educated in using those techniques. It is not within the City Code that Mr. Molina can request an applicant to change the design of a house to save a tree. As referenced in the provision of the Code, the building official is encouraged to have a conversation which would then encourage a builder or owner to make whatever reasonable efforts they can make to accommodate the preservation of trees. The language may not be strong enough to require an applicant to change the design of a house to save a tree. Building Inspectors are administrative officials, and they are not charged with any discretion. A suggestion was made that the Tree Ordinance needs to be more specific so that before construction begins, the Building Inspector must refer to that section of the Code for the redesign of a house in order to preserve a tree, or the applicant would need to be heard by the Board of Adjustment for approval of a variance to not redesign the house. Discussion also ensued with regard to establishing fines as significant penalties if good construction techniques are not used or to make civil assessments of some greater amounts.

Ms. Lingo explained that the critical root zone for a tree depends on the species, the diameter of the tree and how big the critical root zone is. Determining the survivability of a tree with regard to a sidewalk is different than the construction of a house. Any activity within the dripline of the canopy of a tree can affect the tree's health.

There are indications of situations where many trees do well if the right construction technique is used and depending on the tree location. A suggestion was made that the Planning Commission should take more time reviewing and updating the draft ordinance and have more discussion about specific details of how to protect trees. Prior to the next meeting, Mr. Shulman will contact Mr. Patterson, Mr. Markert and Mrs. Jan Konesey about preparing a draft proposal to address issues and a list of items that are insufficient. It was anticipated that the list would be ready for the next Planning Commission meeting. In conjunction with the proposal, it was suggested that the City Commissioners look towards the drafting and adopting of certain points such as more specific authority of the Building Inspector, construction techniques, etc.

City Commissioner Toni Sharp recommended that the goals of the draft Tree Ordinance that the Planning Commission is pondering should be shared with the City Commissioners so they can take them under advisement.

Mr. Shulman made a motion, seconded by Mr. Brian Patterson, that the Planning Commission consider at the next meeting the draft ordinance along with a list of other recommendations it thinks should be made to improve the Tree Ordinance and the protection of trees, and that the Planning Commission looks at that package of a list of recommendations and this specific set of changes at the next meeting and not incorporate them into the ordinance, and in the interim, that Chairman Mellen will advise the Board of Commissioners what the Planning Commission will be doing and request any feedback on the process prior to the Planning Commission's next meeting. (Patterson – aye, Shulman – aye, Lussier – aye, Mellen – aye, Markert – aye, Konesey – aye, Hubbard – aye, Wilson – aye.) Motion carried unanimously.

Building Inspector's Report

There was nothing to report.

City Solicitor's Report

There was nothing to report.

Discuss possible agenda items for the June 10, 2016 Regular Meeting.

There were no items.

Report, discussion and possible action concerning those activities or decisions taken at Regular or Workshop Meetings of the Mayor and Commissioners that directly relate to the Planning Commission.

The Chief Building Inspector has had a number of building permit applications come before him recently in which non-conformance impacts whether or not something can be built, etc. This has a great deal of impact related to the way the zoning ordinance has been written.

Beach Walk (Bay Mart) will be heard by the Board of Adjustment on May 23, 2016.

Chairman Mellen acknowledged the untimely passing of Mr. Chuck Donohoe of the Board of Adjustment. A replacement has not been announced to date.

Report of any new applications that may have been timely submitted.

No new applications have been timely submitted.

The next scheduled Regular Meeting will be held on June 10, 2016 at 3:00 p.m.

There being no further business, Mrs. Konesey made a motion, seconded by Ms. Lussier, to adjourn the meeting at 4:40 p.m.

RECORDED BY

(Ann M. Womack, City Secretary)

**MINUTES APPROVED ON
AUGUST 12, 2016**

(Francis Markert, Secretary)