

**PLANNING COMMISSION MEETING
CITY OF REHOBOTH BEACH**

June 10, 2011

The Regular Meeting of the Planning Commission of the City of Rehoboth Beach was called to order at 6:30 p.m. by Chairman Preston Littleton on Friday, June 10, 2011 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.
 Mr. Patrick Gossett
 Mrs. Jan Konesey arrived at 6:32 p.m.

Also Present: Mr. Mike Hoffman, Esq. of the law firm Baird Mandalas LLC on behalf of Mr. Glenn Mandalas, City Solicitor
 Ms. Terri Sullivan, Chief Building Inspector

A quorum was present.

APPROVAL OF MINUTES

Minutes of the March 11, 2011 and May 13, 2011 Planning Commission Regular Meetings were distributed prior to the meeting.

Mr. David Mellen made a motion, seconded by Mr. Francis Markert, to approve the March 11, 2011 Planning Commission Regular Meeting minutes. Motion carried unanimously.

Mr. Spies made a motion, seconded by Mr. Markert, to approve the May 13, 2011 Planning Commission Regular Meeting minutes. (Patterson – aye, Shulman – aye, Gauger – abstain, Mellen – aye, Littleton – abstain, Spies – aye, Markert – aye, Gossett – abstain, Konesey – aye.) Motion carried.

CORRESPONDENCE

There was no general correspondence.

OLD BUSINESS

There was none.

NEW BUSINESS

Chairman Littleton called for the Public Hearing of Partitioning Application No. 0311-01 requesting the partitioning for the property located at 80 Kent Street, Lot Nos. 80 & 82, into two (2) lots with each lot becoming one (1) lot of 5,000 square feet. The property is owned by Sara E. Wright, Co-Trustee of The Albert W. Wright Family Trust and The Albert W. Wright Irrevocable Trust and William Dean Wright, Co-Trustee of The Albert W. Wright Family Trust and The Albert W. Wright Irrevocable Trust. The Partitioning has been requested by Vincent G. Robertson, Esq. of the law firm Griffin & Hackett, P.A. on behalf of the owners of the property. Chairman Littleton noted the Public Hearing procedures.

Chief Building Inspector Terri Sullivan read her report with exhibits. (Copy attached.)

Exhibit A – Application packet which includes:

- (1) Property & Location Survey dated February 23, 2011 and received March 11, 2011.
- (2) Partition Survey dated February 23, 2011 and received March 11, 2011.
- (3) Partition Survey & Tree Protection Plan dated February 23, 2011 and received on

March 11, 2011.

- (4) Affidavits signed by Sara E. Wright and William Dean Wright, Co-Trustees of The Albert W. Wright Family Trust and received on March 10, 2011.
- (5) Affidavits signed by Sara E. Wright and William Dean Wright, Co-Trustees of The Albert W. Wright Irrevocable Trust and received on March 29, 2011.
- (6) Photographs of adjacent properties.
- (7) Agreement of Sale for Delaware Residential Property signed by Sara E. Wright and William Dean Wright on February 9, 2011 at 2:30 p.m. and received on March 10, 2011.
- (8) Recorded Deed received on March 10, 2011.
- (9) Trust Certification signed by Sara E. Wright and William Dean Wright on May 4, 2006 and received on March 10, 2011.
- (10) Revocable Trust Agreement signed by William Dean Wright on May 4, 2006 and Sara E. Wright on May 14, 2006, and received on March 10, 2011.

Ms. Ann Womack, City Secretary acknowledged that this application had been duly noticed and properly posted.

Mr. Vincent G. Robertson, Esq. of the law firm Griffin & Hackett, P.A. represented the owners of the property.

Applicant Exhibit A – Letter dated May 27, 2011 from Attorney Robertson to the Planning Commission submitted in response to questions in the change in circumstances. The letter amends the Application to show that there are no structures, the existing lot is currently 0%, and the lot coverage is currently 0%. Photographs were provided of the existing site taken after the structures were removed. Wingate and Eschenbach were commissioned to measure the distance of Tree No. 5 from the new dividing line on the property. The tree is located 7.1 feet from the new property line. Labeled photographs were provided of the adjacent properties.

The existing lot is 10,000 square feet with two 50 feet x 100 feet lots being proposed. The structures have been demolished, and there are no plans to date to build anything on the lot. One of the photographs showed the non-conforming building next door in terms of how it would affect the configuration of the proposed lots and side of the house. From a land planning point of view, more could be done with the open space by having the backyards of the two structures abutting the adjacent property. The photograph labeled Centerline of lots shows where Tree Nos. 5, 9 & 10 are located. Tree No. 5 is located 7.1 feet from the proposed lot line. If the lots would be approved the way they were originally plotted, six trees would be lost. In plotting the lots as proposed, three trees would be lost on the southerly lot and potentially none on the northerly lot. It would not be definite that Tree Nos. 5 & 10 would be lost. The proposed lot configuration mirrors what would have been seen when the structures were there which were oriented towards Fifth Street.

Applicant Exhibit B – Existing configuration survey
Applicant Exhibit C – Proposed configuration survey.

Mr. Harvey Shulman tried to figure out what is more likely to happen and what is less likely to happen to Tree No. 5 with regard to adverse impact and the orientation of the lots. Tree No. 5 is a 48 inch diameter oak which is considered a protected tree with regard to Section 253-35(B) of the Code. Any protected tree other than that specified in Section 253-28(A)(1)(c) that is at least 24 inches caliper shall be preserved and protected in accordance with this section unless the tree prevents the reasonable development of the lot, is determined to be a material safety hazard or cause damage of the structures, is not a native tree, is infected with disease, etc. Ms. Sullivan said that if a property owner builds a house which meets all the zoning requirements and a protected tree would restrict the development of the property, it could be removed. A proposed driveway could be relocated to the opposite side of a lot to prevent loss of a tree. Mr. Shulman asked whether it would be reasonable to impose a particular condition on the approval of this partitioning with respect to Tree No. 5. He thought that when the Code refers to removal of a tree of a certain size unless it prevents reasonable development of the lot, it gives a lot owner tremendous discretion. Depending on how the Code is interpreted, there may be people who feel a condition may or may not be appropriate on the approval of the application. In order to understand whether a condition may or may not be appropriate to some people, it is important to understand how the City applies the Code.

Mrs. Konesey suggested that when there is an oak tree of the size of Tree No. 5, the Planning Commission could go to the City Commissioners requesting that there be flexibility in the Building & Licensing Department to allow a narrower side yard setback on one side of the property and a broader one

on the other side in order to preserve and protect the tree.

Attorney Robertson noted that the survey shows the lot cannot be reasonably developed without removal of Tree Nos. 5 & 7. He voiced concerned about the imposing of a condition with regard to saving a tree because the City has a tree ordinance. The Planning Commission should not impose conditions that are related to an ordinance. If it wants to change the rules, change the ordinance and not impose conditions on an application.

Mr. Gossett said that unfortunately there are no incentives to save a 48 inch diameter oak tree. Currently the City offers no options nor diminutive variances which can be applied by the Building Inspector to state that if a person is engaged in protecting a specimen tree which adds to the value of the property and streetscape of the neighborhood and is outlined in the Code, an additional setback or change can be offered.

Public Comment:

1. Mr. Frank Graham, 89 Sussex Street – in support of.

Chairman Littleton closed the public hearing and called for discussion among the members of the Planning Commission.

Mr. Mellen made a motion, seconded by Mr. Gauger, to approve the partitioning request as outlined in the presentation specifically with the reorientation of the lots as proposed.

Attorney Robertson acknowledged that the full parcel is being offered for sale.

(Patterson – aye, Shulman – nay, Gauger – aye, Mellen – aye, Littleton – aye, Spies – aye, Markert – aye, Gossett – aye, Konesey – aye.) Motion carried.

Chairman Littleton called for the Preliminary Review of Partitioning Application No. 0511-02 requesting the partitioning for the property located at 2 Oak Avenue, Lot Nos. 2 & 4, into two (2) lots with Lot No. 2 becoming one (1) lot of 5,056 square feet and Lot No. 4 becoming one (1) lot of 5,052 square feet. The property is owned by Thomas H.B. Dunning. The Partitioning has been requested by Gregory M. Hook, PLS of Simpler Surveying & Associates, Inc. on behalf of the owner of the property. Chairman Littleton noted the Preliminary Review procedures.

Ms. Ann Womack, City Secretary acknowledged that this application had been duly noticed and properly posted.

Chief Building Inspector Terri Sullivan read her report with exhibits. (Copy attached.)

Exhibit A – Application packet which includes:

- (1) Application with supplemental received on May 4, 2011.
- (2) Proposed Partitioning Plat dated April 27, 2011 and received May 4, 2011.
- (3) Photographs of adjacent properties.
- (4) Recorded Deed prepared July 30, 2010 and received May 4, 2011.
- (5) Tax Summary from Treasury Division of Sussex County dated April 27, 2011.
- (6) Planning Commission Affidavit signed by Thomas H.B. Dunning and received May 4, 2011.

Exhibit B – Survey dated October 18, 2005 and prepared by Miller-Lewis, Inc. which is located in the City Street File.

Exhibit C – Property & Location Survey dated Jun 23, 2004 and prepared by Wingate & Eschenbach, LLC., and received June 9, 2011.

Exhibit D – Recorded Placement Survey dated May 30, 1978 and revised November 1, 1978, and prepared by Wingate & Eschenbach, Registered Surveyors and received June 9, 2011.

There is an important inconsistency between the Applicant's materials and the survey currently on file with the City. If the Applicant is permitted to partition the property, the two-story single-family dwelling will be removed, thereby avoiding the presence of non-conforming structures on the lots. Both the Applicant's materials and the survey on file with the City confirm that both lots can fully contain a 4,000 square foot rectangle. Both lots would have a lot size of at least 5,000 square feet, and the tree density requirements would be met. Despite the Applicant's representations to the contrary, the Miller-Lewis survey indicates that if approved, the 50 feet of frontage on a street requirement would not be met. The Miller-Lewis survey specifically identifies the front lot line as 99.83 feet, the rear property line as 100.50, the eastern property line as

100.92 feet and the western property line as 100.74 feet. To be valid, the front lot line must be at least 100.00 feet. All four surveys are sealed by licensed surveyors.

- Exhibit E – Placement Survey for Lot Nos. 2, 4, 6, 8, 10, & 12 and easterly one-half of Lot No. 14 Oak Avenue, dated May 30, 1978 and revised November 1, 1978, and received June 9, 2011.
- Exhibit F – Property & Location Survey prepared for Bryce M. Lingo for Lot Nos. 2 & 4 Oak Avenue (Realigned), dated June 23, 2004 and prepared by Wingate & Eschenbach LLC, and received June 9, 2011.

The above-mentioned surveys were provided by a neighbor to the subject property. In 1978, there was an agreement between the property owners that the property lines would shift. On the Placement Survey dated May 30, 1978, the property lines which moved are called out; and a concrete block wall is shown on Lot Nos. 41 & 42 which references that it is the agreed upon boundary line. Ms. Sullivan assumed that the property line was moved to the concrete block wall; and the call out of the lot line between Lot No. 2 and Lot Nos. 41 & 42 was the existing lot line.

Mr. Robert Worth, 41 & 42 Surf Avenue, said that in regard to the signatures which appear in the agreement portion of the Placement Survey, none of the property owners are current property owners of the existing parcels.

Mr. Gregory M. Hook, PLS of Simpler Surveying & Associate, Inc., represented the owner of the property. Mr. Hook and his firm did the current survey on the subject lot which is recorded in Georgetown, DE. The Placement Survey dated May 30, 1978 is also recorded in Georgetown, DE. The other surveys which have been submitted are not of record in Georgetown, DE. The preponderance of evidence which has been captured should show that Lot Nos. 2 & 4 have always had 100 feet of frontage beginning in 1928 when the original plat was done. There have been a lot of discrepancies with the different surveys; but over the years and when the realignment was done, it was the intent to have 100 feet of frontage. Mr. Thomas Hugh Burwell Dunning and Mr. Thomas H.B. Dunning reflected in the Confirmatory Deed dated July 30, 2010 are the same people. Mr. Thomas H.B. Dunning is currently the sole owner of the property. The problem with this type of deed, more commonly known as a rollover deed, is that it creates situations such as with this particular parcel which could have been rectified years ago. The legal description in this deed reads Deed Book B.K., Volume 84, page 603 and refers back to the earlier plats. Mr. Hook was not aware of any deed inheritance; and he did not know of any metes and bounds description of this property other than the legal description on the survey he prepared and the multi-property survey. The intent was always to have 50 feet x 100 feet lots. The intent of the 1978 survey by Wingate & Eschenbach was to rectify the boundary lines that the individual property owners signed off on. The lot lines on the 1978 survey were the original boundary lines. Those lot lines were readjusted per the agreement of the owners of the properties. Mr. Richard Goulet, owner of Lot Nos. 2 & 4 signed the agreement and also made sure he had 100 feet of frontage when the lots were realigned. When Mr. Hook did his survey, he captured every lot on Oak Avenue and properties on Pennsylvania Avenue, and proved City monuments, dimensions and angles, etc. The re-creation and realignment of the properties were for lots that the property owners signed off on in the agreement. The readjustment stopped at the block wall between Lot No. 2 and Lot Nos. 41 & 42. Mr. Hook acknowledged that the owners of Lot Nos. 41 & 42 Surf Avenue agreed to the readjustment of what appeared to be the rear property line for Lot Nos. 41 & 42.

Applicant Exhibit A – Copy of Partial Rehoboth Beach Camp Meeting Association Plat from 1928.

Chairman Littleton noted that although Mr. Hook is representing the owner of Lot Nos. 2 & 4, the Planning Commission is faced with what else is going on in this block and if Mr. Hook's findings adversely impacting somebody else. The Planning Commission is bound by the Code. If there is reasonable doubt, the Planning Commission cannot solve doubt. The Planning Commission must look at whether there is adverse impact on adjacent neighbors, and it will be looking much broader than Lot Nos. 2 & 4.

Mr. Hook acknowledged that he has presented a sealed survey which shows that the adjacent lots or not in 50 foot wide increments. He referred to the Camp Meeting plat with the intent to have 50 foot wide lots. The job of a licensed surveyor is to find a preponderance of evidence and find possession. The hierarchy of the order of importance is (1) possession, (2) cause, (3) monumentation, (4) bearings and distances and (5) area. If possession, monumentation and legal documents to support the cause are found, then that is what a person owns. What is before the Planning Commission today is not a disputed line. There are discrepancies in numbers from multiple surveyors. Mr. Hook's job as a licensed surveyor is to protect the public; and how he protects the public is by capturing a preponderance of evidence, documenting it and making sure that his determination with the boundary line is in accordance with all the legal documents, the intent and the

preponderance of evidence. There is a survey of record that was intended to place the boundary lines at one particular spot. Simpler Surveying went out and surveyed the entire block. There are differences in measurements. A half-inch pipe was found in the wall which is called out in every survey before the Planning Commission. That pipe is the same pipe which intersects the right-of-way lines of Oak and Surf Avenues. The pipe on the western end of the block intersects the right-of-way lines of First Street and Oak Avenue. Both of those were found and surveyed. A monument at the intersection of Pennsylvania and Surf avenues was found and surveyed too. The chisel mark found in the block wall on the Simpler survey is 97.15 feet away from the City monument. This is the start of the discrepancy were things got misconstrued with this particular piece of land not having 100 feet. On the 2004 survey, the distance between the pipe found in the wall to a found chisel mark in a wall is 97.26 feet. Mr. Hook did not believe that the 2005 survey which shows the same found pipe and the wall and the found chisel mark in the wall was clear enough to measure to the correct chisel mark. The measurement difference was approximately .1 of a foot from the 2004 survey. Distance-wise, the chisel mark has moved.

Chairman Littleton said that everyone agrees there are discrepancies with the surveys. Further research will be needed on what does exist. What is in the record about the lots which abut Lot Nos. 2 & 4 will be important to the Planning Commission as well. In regard to the re-alignment of this block, the physical dimensions of the block and lots will be of importance.

Attorney Mike Hoffman noted that Section 236-8.1(B)(1) reads that the purpose of a Preliminary Review meeting is (a) for the Planning Commission to determine if the Application is substantially complete and accurate as submitted so as to warrant further consideration, (b) to receive preliminary input from adjoining property owners and the public, and (c) in the case of an Application determined to be substantially complete and accurate, to determine whether additional information is needed from the Applicant. The threshold mark for Preliminary Review is whether the Planning Commission is comfortable making a conclusion that the Application as submitted is substantially complete and accurate. Section 236.8.1(B)(2) reads that if the Planning Commission at the Preliminary Review meeting determines that an Application is not substantially complete and accurate, said Application shall be returned to the Applicant for re-filing. If re-filed, the above process pursuant to Subsection (a) of this section shall begin again. During this Preliminary Review, there are factors to consider, preliminary input of public opinion, and whether there are additional factors to be researched; but to get to those, the Planning Commission must make an initial determination that the Application as submitted is substantially complete and accurate. To the extent that the Planning Commission believes for the Application to be substantially complete and accurate that the survey must be accurate, then that would have to be addressed in the Preliminary Review before the Public Hearing.

Mrs. Konesey said this survey shows that the property owners to the west of the subject lots do not have 50 feet of frontage. Those property owners would be uncomfortable about that. In regard to the Gorman property, the owners went to the Board of Adjustment because their property did not have 100 feet in the rear of the property; and they received a variance. There was never any question about the frontage of that property. If the Planning Commission agrees that the lot dimensions on the survey are accurate then it is saying that the property owners do not have 50 feet of frontage. She did not feel comfortable with that. More research needs to be done.

Chairman Littleton said that if there is reasonable doubt and the Planning Commission does not become convinced that what is being presented is true, it cannot act on it. Attorney Hoffman said that the Applicant has the burden to show the Planning Commission that the Application submitted is substantially complete and accurate. If the Planning Commission concludes that the Application does not meet that burden, then it would be sent back to the Applicant for re-filing. It would then be incumbent upon the Applicant to do something to bring forward to the Planning Commission to meet that threshold requirement. It

Mr. Hook acknowledged that when there is a property line dispute above and beyond just the measurements, it then is the nature of the agreement between the parties who own the property as to where the adjacent property line really is. In this case, there are discrepancies in measuring but there is no disputed property line. The numbers that are shown on the adjoining lots are found, existing, possessed monuments. Boundary law says that it is alright if the properties do not measure exactly 50 feet wide. The discrepancy comes in with Lot No. 6 being 49.85 feet. There are double monuments located in the right-hand corner of Lot No. 4.

Attorney Hoffman that in regard to whether the Application is substantially complete and accurate, the

Applicant has the burden and should be afforded the opportunity to present his case as to why his survey is the accurate survey. If the Planning Commission, in looking at the evidence and what has been submitted, is not convinced that the Application is substantially complete and accurate after the Applicant has made his presentation and is not convinced that the Applicant has met that threshold burden, then the Application is sent back to the Applicant for re-filing. The Board of Adjustment can grant a variance to the 50 feet of frontage requirement. If that is met, then this would be a way to move forward. This would not be an adjudication as to where the boundaries are, it would be the Board of Adjustment saying that this requirement would not apply in this instance.

Mr. Shulman referred to Section 236-8.1(B)(1)(c) which reads that in the case of an Application determined to be substantially complete and accurate, to determine whether additional information is needed from the Applicant or others, and whether there are legal or factual issues that need further clarification prior to final action in a subsequent meeting. Just because someone says it is substantially accurate, does not mean that there are not serious questions which the Planning Commission needs more information about. The Planning Commission may say it is substantially accurate based on what the surveyor presented and the other surveys raised a lot of questions but the planning commission needs a lot more information, but that is not inconsistent with finding that it is substantially complete and accurate.

Chairman Littleton said that a lot more information will be needed between now and the Public Hearing.

Mr. Hook said that a Class A survey is done within the town limits, and a Class B survey is in proximity to the town limits. He had not set any of the monuments. Every bit of evidence was found in the field when he got on the job. Mr. Hook was producing a preponderance of evidence to show the Planning Commission the monuments in the field work for every adjoining property; and no owner is being hurt by the evidence. Wingate and Eschenbach did a survey in 1994 from the realignment survey and showed the width of Lot No. 6 as 49.47 feet. In the 2004 survey, the width of Lot No. 6 was called out as 50.06 feet. This is the tie point to the same monument. The legal description of record in Georgetown describes the property to be 49.47 feet. This is nowhere near to be close to what is in the field today. The discrepancy between the 2004 and 1994 surveys done by Wingate and Eschenbach is .81 feet which is almost a one foot difference. Generally speaking, everyone on the block has what their deeds say they have. The original lot lines were realigned to the east to get away from building encroachments, etc. Mr. Hook certified the location of the pipe in the right front corner of Lot Nos. 2 & 4 which is shown on his survey. Lot No. 6 has a front with of 49.85 feet because the lot was surveyed to existing monumentation that possessed his land. The owner of the property to the east has what he is supposed to have per the City monuments and his lot width. The 1978 survey which shows all the properties in the block on Oak Avenue as having 50 feet of frontage is not correct to the found monumentation in the field. Three surveyors have shown that the chisel mark in the wall is correct, and there is 100 feet to an existing monument.

Mr. Shulman said that as a matter of coincidence, the lot frontage of all the other lots does not measure 50 feet wide except for Lot Nos. 2 & 4. In trying to determine whether this is substantially accurate and then eventually to determine it really is right, it seems strange that the only two lots, Lot Nos. 2 & 4, are the only right sizes according to Mr. Hook's survey. Mr. Hook said that all the other existing monuments were shown because they are found monuments, and that is what they measure. That is the preponderance of evidence which supports the corner which is in question. The difference of the measurements between the City monument and the chisel mark adds up perfectly to be 100 feet; and literally, there is no problem with the entire block. It has been created through misconceptions of data.

Mr. Gossett's understanding was that the Planning Commission has no way of determining how the two pipes were set by whom and when. Mr. Hook said that on the survey of the property to the west of the subject property, Mr. Miller called out "iron pipe set" which means that Mr. Miller called for that pipe to be set and "iron pipe found" which means that the pipe was found. The survey is accurate and the Application is complete to the best of Mr. Hook's ability as a licensed surveyor.

Mr. Hook said that the measurements were taken by conventional surveying which is a total station. The line of sight between the two monuments could not be seen, but the three turning points, angles and footers were determined mathematically. Mr. Mellen said that the distance between the two monuments for the entire block is important to know because it would help the Planning Commission in making decisions. If the measurement is 900 feet, then there is credibility to the 1978 survey; and if the measurement is not 900 feet, then the assumption that all the lots are 50 feet x 100 feet cannot add up. The questions the Planning Commission has to be worried about are whether the Simpler survey is believable, whether the other surveys are

believable or not believable, what the discrepancy is and what the adverse impact is on adjacent properties, if any.

Public Comment:

1. Mr. Robert Worth, 41 & 42 Surf Avenue, provided the Planning Commission with the 1978 and 2004 surveys, and a letter suggesting that he buy footage from Lot Nos. 2 & 4 Oak Avenue. Several years ago, he had been called by a realtor asking him to sell one or two feet on the western side of his property, but it was an impossibility because of the location of his garage. Later when he received the 2004 survey, someone had suggested that Mr. Worth buy approximately 25 feet into the eastern side of Lots 2 & 4 on Oak Avenue because that would enhance the value of his property with the thought being that the property would be worth more if it were two lots. Because of what his mother did in 1978 with the adjustment of the property, Mr. Worth did not think he had 100 feet. Because of these circumstances, he realized there was a problem. Mr. Worth just wanted to make sure that everything is being done properly. He had not seen the Simpler survey.

A copy of the Simpler survey was provided to Mr. Worth.

Chairman Littleton said that it would be helpful to the Planning Commission to know if he is comfortable with what is being proposed.

2. Mr. Mark Eisinger, 1 Oak Avenue, was in support of the partitioning. He was sick of looking at the disarray of the property, the varmints living on the property and the transient people going in and out of the house in the winter time when nobody is on the street. All of the properties on the North and South sides of Oak Avenue are messed up. His mother had told him when the 1978 re-alignment survey was done that the fence lines would be used for the property lines on the South side of Oak Avenue; and that is exactly what that survey reflects. This did not occur on the north side of Oak Avenue. Mr. Eisinger had to give easements to the properties at No. 5 Oak Avenue and Surf Avenue. It is important to move swiftly with the property at Nos. 2 & 4 Oak Avenue. The City needs to come in and clean up the property now because it is a disgrace.

Chairman Littleton closed the Preliminary Review and called for discussion among the members of the Planning Commission.

Mrs. Konesey said that if this would had been her property and there are minimal discrepancies between a number of surveys, then she would have hired an attorney and had gone to the Board of Adjustment to seek a variance. Mrs. Konesey said that she could not make a decision about which survey is accurate. She is unwilling to vote for anything that is going to tell someone who believes they have a 50 foot x 100 foot lot that they have a lot which is less than 50 feet x 100 feet.

Mr. Patterson said that with the discrepancies which the Applicant himself has pointed out in the four surveys and the deeds, these are not things the Planning Commission is capable of resolving in a Public Hearing. More information and data may be interesting, but he did not think it is something he could do anything with because this will not be an adversarial proceeding. The other property owners presumably will not be attending the hearing with their attorneys and surveyors, and the Planning Commission should not put them through that. The Planning Commission is not capable of adjudicating the property line as not being disputed, it is a discrepancy. The Board of Adjustment can waive discrepancies, but clearly the preponderance of the evidence with the four different surveys and the testimony about the discrepancies is that the Application is not substantially accurate.

Mr. Shulman viewed the Application as being substantially accurate. The place to decide whether the Planning Commission believes it is accurate is after more information is discussed at a Public Hearing. Mr. Shulman did not know what the 1932 subdivision is which the Applicant referred to; but he did know that in looking at Oak, Pennsylvania and Surf Avenues on the 1872 Methodist Campground Map with the layout and dimensions of the City, the lot on the corner of Oak and Surf Avenues has a depth of 102 feet along Oak Avenue and 50 feet of frontage along Surf Avenue. The next lot line depth is either 95 or 93 feet. The lot line depth on Pennsylvania Avenue is 86 feet. Before seeing the 1978 map today, it is clear that something had happened with the lines shifting. A lot more information is needed by the Planning Commission. The Application has met the standard to move to Public Hearing.

Chairman Littleton said that if this was to go to the Board of Adjustment, it would be easier at the outcome of the Public Hearing if the Board of Adjustment would have a reading of what the Planning Commission thinks about the matter or a recommendation from the Planning Commission to go to the

Board of Adjustment.

Mr. Gossett said that if the Planning Commission would recommend to table this Application and go to the Board of Adjustment, it would not be solving the situation. A precedent that the Planning Commission can establish would be to say that this is how a good decision was made; and the Planning Commission is bound by approving a lot that is not substandard.

Mr. Spies thought that the Application should be moved to Public Hearing.

Mr. Shulman made a motion, seconded by Mr. Spies, to move the Application to Public Hearing with the Applicant's understanding that there are substantial questions which need to be resolved and more information needs to be presented.

Mr. Patterson said that this is a prime example for the Planning Commission to be more efficient and reduce costs. No amount of additional data will allow the Planning Commission to solve this dilemma with four different surveys spanning 33 years.

Attorney Hoffman clarified that no one on the Planning Commission is unwilling to hear additional evidence. At this stage, the members are merely conveying a point that based on what they see, they have concerns. If this Application is moved to Public Hearing, Attorney Hoffman did not think that any Planning Commission member is saying that they would be unwilling to hear evidence and consider it.

Mr. Mellen said that in regard to the Board of Adjustment, the applicant could present a survey which shows he has enough property to be partitioned, but he has no obligation to submit the other information that the City may submit. The only rational reason why he would be before the Board of Adjustment would be because he would have been turned down by the Planning Commission based on its deliberations.

(Patterson – nay, Shulman – aye, Gauger – aye, Mellen – aye, Littleton – aye, Spies – aye, Markert – abstain, Gossett – aye, Konesey – nay.) Motion carried.

Mr. Shulman encouraged the Applicant to put together a book of the different surveys and trace what has happened so he can explain to the Planning Commission what has happened in a more chronological way. A lot of information is missing such as the deed for the subject property, etc.

Attorney Hoffman said that the Planning Commission's decision during the Public Hearing will be based on what is in the record. So to the extent that the Applicant is making his case for that record in the public hearing, he should put whatever he wants to be considered by the Planning Commission into that public record.

All new information and documentation will need to be submitted by June 23, 2011.

OTHER BUSINESS

Chairman Littleton called for the City Solicitor's report.

Attorney Hoffman reported that in regard to 2 St. Lawrence Street, there are still some issues being resolved at this point. This matter went before the Board of Commissioners of which there was an agreement as to a general framework with some details to be resolved. Since then, the process for resolving those details is still ongoing and is not complete.

Chairman Littleton called for the discussion of and possible action of whether the Planning Commission should re-activate the currently "tabled" Public Hearing related to the 2 St. Lawrence Street partitioning application.

Correspondence:

1. Letter dated May 13, 2011 from Chase T. Brockstedt, Esq. of the law firm Bifferato Gentilotti LLC to Chairman Littleton, requesting that 2 St. Lawrence Street be placed on the agenda for the June Planning Commission meeting..

Attorney Hoffman said that there is an issue pertaining to whether this matter needs to go back to the Board of Commissioners that needs to be decided.

Mr. Mellen said that in the course of setting the agenda for this Planning Commission meeting, he was aware of the fact that Attorney Brockstedt's letter had been submitted; and a fundamental decision had to be made. Mr. Mellen had talked with the City Solicitor and asked what the status of the negotiations was. The City Solicitor advised Mr. Mellen of the nature of the negotiations and the process taking place before the

Board of Commissioners on May 20, 2011. The deadline date for advertising the public notices for this Planning Commission Meeting was May 18, 2011. Mr. Mellen made a fundamental decision to not notice 2 St. Lawrence Street for tonight's meeting and not honor Attorney Brockstedt's request since the Planning Commission had no information and no guarantee that a decision had been made.

Chairman Littleton said he understood that following the Executive Session with the Board of Commissioners, the Applicant has come up with additional requests for information regarding the agreement. It would not be in the Applicant's best interest to put 2 St. Lawrence Street back on the agenda until there is a resolution.

It was the consensus of the Planning Commission to not schedule a Public Hearing for the July 8, 2011 meeting with the information it currently has and if a request comes without further information before June 15, 2011. The Planning Commission also agreed that for the July meeting it would be too much for one night to hear 2 Oak Avenue in Public Hearing, 36 Columbia Avenue in Preliminary Review and 2 St. Lawrence Street in Public Hearing.

Attorney Hoffman said that at the last meeting Mr. Shulman had raised a question in regard to when a motion is made to table, if it is debatable. That motion is not debatable. The important thing about a motion to table is that it is a mechanism which allows the body to place something on the table with the ability by a majority vote to take it off the table even if that means it is giving precedence over another matter.

Mr. Shulman did not want the Public Hearing for the 2 St. Lawrence Street Application on the July 8, 2011 agenda because the Planning Commission has a lot of other things to deal with; this has been kicking around for months and for some type of deal to be made three weeks before the Planning Commission has its meeting and all of a sudden the Planning Commission has to deal with it is not the right way to proceed; and until the Planning Commission knows what the deal is, there is a question under the City Charter about who has the authority to cut deals in terms of conveyance of an interest in the City real estate. There are too many unknowns to go forward.

Mr. Mellen said that in order for the Planning Commission to decide to take the application off the table, the Planning Commission has to notice it publicly by June 15, 2011 which is three days before the Board of Commissioners meet. The proposed agreement between 2 St. Lawrence Street and the City has not been placed on the agenda for the Board of Commissioners meeting for June 18, 2011.

Chairman Littleton called for the Building Inspector's report.

There was nothing to report.

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

Chairman Littleton said that discussion of the Comprehensive Development Plan was an item on the agenda of the Board of Commissioners meeting. He has received feedback that the City Commissioners will try to go through the Plan and develop a list of priorities to move on.

Chairman Littleton called for continued discussion and possible formulation of plans to address items and/or issues that have been deferred to date related to possible Code changes or Planning Commission procedures. Specific items are as follows: 1. Need to update the major subdivision section of the City Code with particular emphasis on ensuring the City is properly protected. 2. Mixed-use development and possible overlay districts. 3. Explore means to increase efficiency and reduce costs to both the City and the applicant relative to partitioning, and minor or major subdivision review. 4. Concept of proportional changes in side lot setbacks for legal non-conforming lots of less than 50 feet front footage or for lots with more than 50 feet front footage.

Chairman Littleton did not think there was time to re-open this discussion at tonight's meeting. The Planning Commission needs to be looking at this matter again. It is the responsibility of the Planning Commission to be looking from a long-term view of the mandates in the Comprehensive Development Plan (CDP) as well as the mandates laid out in the State planning doctrine which talk about efficiency and equity. Other things have been identified by the Planning Commission and it should be in the position to render opinions or recommendations to the Board of Commissioners.

Mr. Spies said that at the last meeting the Planning Commission talked about whether the Board of Commissioners want it to do anything because if the Board does not, then there is little point in the Planning Commission with moving forward on it; and if the Board does, it would be a question of time to spend on it.

The CDP has been available for one year and three months, and very little action has been taken on it. The Board of Commissioners is taking it up and coming out with a list of priorities. Mr. Spies suggested that the Planning Commission should wait to see what the priorities are before making suggestions to improve the City.

Mr. Shulman said that in regard to the School property, the Planning Commission made recommendations central to the preservation of open space and recreational opportunities, and it commended the Board of Commissioners for wanting to cut a deal with the Cape Henlopen School District; but the Planning Commission was concerned about specific shortfalls in that agreement. The Planning Commission spent a lot of time trying to get specific about what its concerns were, and none of that happened.

Chairman Littleton said that the Planning Commission was specifically requested by Commissioners Kathy McGuinness and Pat Coluzzi of the Board of Commissioners to investigate an overlay district with mixed-use development for Baltimore and Wilmington Avenues. Chairman Littleton received a request from Delaware Sea Grant to do a statement regarding the CDP. A lot of things have been done in regard to the CDP such as interconnectivity, bike path plans, water taxi, canal park, etc.

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

A partitioning request has been submitted for 36 Columbia Avenue.

There being no further business, Mrs. Konesey made a motion, seconded by Mr. Markert, to adjourn the meeting at 9:25 p.m.

RECORDED BY

(Ann M. Womack, City Secretary)

**MINUTES APPROVED ON
SEPTEMBER 9, 2011**

(Preston Littleton, Jr., Chairman)