

**PLANNING COMMISSION MEETING  
CITY OF REHOBOTH BEACH**

**June 11, 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, June 11, 2010 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

**ROLL CALL**

Mr. Timothy Spies called the roll:

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

Also Present:     Mr. Kevin Baird, Esq. was in attendance due to a prior engagement of Mr. Glenn Mandalas, City Solicitor  
                      Ms. Terri Sullivan, Building Inspector  
                      Mr. Kyle Gulbranson, City Planning Consultant

Absent:            Mr. Alan Kercher, City Engineer

A quorum was present.

**APPROVAL OF MINUTES**

Minutes of the April 9, 2010 and May 14, 2010 Planning Commission Regular Meeting were distributed prior to the meeting.

Mr. David Mellen made a motion, seconded by Mr. Spies, to approve the April 9, 2010 Planning Commission Regular Meeting minutes as written. Motion carried unanimously.

Mrs. Jan Konesey made a motion, seconded by Mr. John Gauger, to approve the May 14, 2010 Planning Commission Regular Meeting minutes. (Patterson – aye, Shulman – aye, Gauger – aye, Mellen – aye, Littleton – abstain, Spies – aye, Gossett – aye, Konesey – aye.) Motion carried.

**ACCEPTANCE OF MINUTES**

Minutes of the April 23, 2010 Ad Hoc Committee Meeting were distributed prior to the meeting.

Mr. Spies made a motion, seconded by Mr. Francis Markert, to accept the April 23, 2010 Planning Commission Ad Hoc Committee Meeting minutes as written. Motion carried unanimously.

**CORRESPONDENCE**

Letter received from City Manager Gregory Ferrese regarding the Office of State Planning Coordination having a public workshop on strategies for State policies and spending to be held on June 21, 2010 at 6:00 p.m. in the Commissioners Room.

**OTHER BUSINESS**

Chairman Littleton called for the report of the State's PLUS review of the Comprehensive Development Plan.

Mr. David Mellen, Mr. Timothy Spies and Mayor Samuel Cooper attended the Preliminary Land-Use Study (PLUS) meeting regarding the State's review of the City's adopted 2010 Comprehensive Development Plan.

Mr. Mellen noted that Mr. Bryan Hall and another representative of the Office of State Planning were present along with other representatives from various departments of the State. A summarized introduction was

provided by the representatives of the City on the process regarding the CDP. Comments were made by the various departments of the State, and Mr. Mellen, Mr. Spies and Mayor Cooper interacted with them. All of the comments from the departments of the State would be summarized and forwarded to Mayor Cooper. Those comments are recommendations, but not mandates of things that need to be changed regarding the CDP. Discussion occurred regarding workforce housing. A future meeting could be held with the Planning Commission and the representative from the Office of State Planning regarding this subject. Mr. Mellen thought that the Planning Commission could follow-up on this issue. Discussion also occurred with the Department of Health and Human Services regarding an area in the City to provide emergency health services. Comments were also made by a representative of DeIDOT that cooperation is needed between the City and County. After hearing the comments, Mr. Hall held a meeting with Mr. Mellen, Mr. Spies and Mayor Cooper. Mr. Hall had mentioned that except for the missing titles on two of the maps, the CDP is in order and is prepared to go through the remainder of the process.

Mr. Spies noted that no concrete answer was given regarding "Destination Station" which is a project in the making for eight years between Rehoboth Beach/Dewey Beach Chamber of Commerce and DeIDOT. The location would be on Route 1 next to Park and Ride. The Chamber of Commerce and DeIDOT have come to an agreement where there will be a combination visitors' center, science museum and transportation hub with a 50,000 square foot building on the site. The Chamber of Commerce expects to attract an additional 500,000 visitors with that site. The City did not receive any information on this project from the representative of DeIDOT at the PLUS meeting. Mr. Spies did not know what action the City plans to take if any.

Ms. Mable Granke, 1013 Scarborough Avenue Extended, said that this project started out to be on 12 acres at the front of the property off of Route 1. Later the size had been reduced to three acres. Two years ago, the Chamber of Commerce was dickering with DeIDOT about a land swap. That meeting was a public meeting, not a public hearing; and was inconclusive. The State legislators knew nothing about what was brewing until this blossomed in terms of the announcement. This is not a done deal because of the lack of due process. The City and State legislators were ignored. A 500,000 additional trip potential is dangerous in terms of the City and the Route 1 corridor. Ms. Granke spoke with Mr. Lawrence Lank regarding this situation with the County. When the State established Park and Ride, there was an arrangement for it to be considered exempt. Mr. Lank stated that Route 1 has a 600 foot commercial corridor on each side, and the site is located beyond that. As far as the County is concerned, the State should have to go through the public process of applying for what it wants to do because the use would be changed. The Planning Commission needs to go to the Governor and ask why the City of Rehoboth Beach is being ignored in this process.

Mr. Harvey Shulman thought that what has been raised about this really goes to the integrity of the CDP process and should be an agenda item.

Mr. Shulman made a motion, seconded by Mr. Gauger, that in conjunction with the Planning Commission's pursuit of the CDP process with the State and in responding to its questions, the Planning Commission, under Title 22 Section 703 of the State Code which gives the Planning Commission full power and authority to make investigations and reports, takes on the responsibility of finding out what is going on here, incorporates and, if necessary, holds a public meeting and a public hearing in the City for the Planning Commission and submits its (Planning Commission) findings to the State in conjunction with its comments on the CDP process. Motion carried unanimously.

Mr. Mellen said that when the State files the report with the Planning Commission on the CDP, the City will have to respond; and he assumed that the Mayor and Commissioners must respond to that letter.

## **NEW BUSINESS**

Chairman Littleton called for the proposed revisions to the Rehoboth's Tree Ordinance. Following a presentation by City Commissioner Barbour, the Planning Commission may wish to discuss the proposed changes and offer comments and suggestions via informal remarks or by vote.

City Commissioner Dennis Barbour gave his presentation. The tree ordinance was adopted January 2006; and since then, there have been concerns that some provisions of the ordinance are not clear, outdated, etc. He prepared a draft of revisions to the ordinance along with Building Inspector Terri Sullivan and Mr. Bryan Hall. The draft is now before the City Commissioners since last fall. The status is as follows: The original list of preferred trees is being replaced with trees that the State has determined to be preferred trees. Appeals will be handled by the Board of Adjustment. As of one year ago, 398 permits were applied for, and there were six appeals. Currently in the ordinance, one of the enforcement mechanisms is the withholding of a certificate of

occupancy if an owner has not complied with the tree protection and planting plan. The certificate of occupancy cannot be granted until the tree removal permit is applied for and a tree protection and planting plan is submitted. There is a provision in the ordinance for giving some latitude on the part of Building & Licensing. Some of the City Commissioners felt that this enforcement mechanism should be dropped because it is unfair to owners to require them to have to fulfill the tree protection and planting plan. No specific issues have been raised in regarding the withholding of the certificate of occupancy. The other provision in the original ordinance is mitigation, and that is for when a house is being built and there are trees over 24 inches in caliper in the footprint of the house that would need to be removed. The ordinance calls for mitigation, inch for inch. There is some feeling on the part of the City Commissioners that this is too onerous, and the City Commissioners should allow the owners to plant one tree and tell them that it is preferred they replant with oak trees. City Commissioner Barbour's position is that the City Commissioners have begun to re-litigate the tree ordinance itself. The onus is on City Commissioner Barbour to either proceed with the process or leave the ordinance the way it currently is. He would like to hear from the Planning Commission on its views.

Building Inspector Terri Sullivan said that no certificates of occupancy have been withheld. Usually if someone finals out in February, they cannot plant a tree. At that point, Building & Licensing defers it and a temporary certificate is issued until it is determined when they can plant.

City Commissioner Barbour said that the standard for measurement of trees in the original ordinance is caliper. Currently, the State is using the concept of canopy. Ultimately, what is important is the canopy the trees provide, not necessarily the size of the trunks of the trees. A grant was received from the State to do a canopy inventory of the City to use as a baseline. Mr. David Henderson, IT Director, has also done quite a bit of mapping which has identified trees on lots, etc. The City Commissioners have decided to wait for the results of the grant before moving forward. In regard to the target for tree inventory, City Commissioner Barbour said that the City is above what is considered to be a good standard in terms of percentages. Ms. Sullivan said that the State has done an initial assessment, but not as extensive as how it will be done with the grant.

City Commissioner Barbour said that a tree survey is also a requirement. This was also listed in the ordinance to be able to get a handle on trunk sizes. Amending only the tree list and bringing it up-to-date is another option which he has considered.

Mr. Shulman said that when the tree ordinance was first adopted, there was a lot of discussion about enforcement mechanisms. The effort was to come up with something that was fair and reasonable. The only truly effective enforcement, at least for new construction, is the certificate of occupancy which does not put the burden on the City. To say that taking down trees and not meeting the planting obligation is somehow of an inferior value to the betterment of the community than other things, really goes against some of the notion of the ordinance.

Mr. Shulman made a motion, seconded by Mr. Spies that the Planning Commission should affirm that the current mechanism relating to the certificate of occupancy, from what it understands has worked well and has not been unfair, and barring some new set of facts, should be changed.

Chairman Littleton said that this subject is owned by the City Commissioners, not by the Planning Commission other than being informed tonight. It is within the CDP where the Planning Commission talks about a green environment and trees. The Planning Commission has a major subdivision before it; and as Planning Commission is working it, there are references to the Tree Ordinance in terms of remediation for a subdivision. Chairman Littleton asked if there is a willingness from the City Commissioners to have another body to look at this subject and give consideration. The entire Ordinance deserves the Planning Commission looking at it in a rational manner.

Mr. Shulman amended the motion, seconded by Mr. Spies, that the Planning Commission requests the City Commissioners not to make changes in connection with mitigation or enforcement without first giving the Planning Commission an opportunity to provide some input on the matter.

City Commissioner Barbour said that it would be helpful for the Planning Commission to look at the changes the City Commissioners are considering and pass some judgment on this.

Chairman Littleton said that from a planning standpoint and from the CDP, the modified resolution deserves some discussion. The Planning Commission is looking to be invited into the process to offer comments and suggestions prior to any final action. City Commissioner Barbour said that this is a jurisdictional or a process issue. It would be helpful if the Planning Commission is involved as a matter of process.

Mr. Spies believed that in the report of the May 14, 2010 Planning Commission Meeting, there is language in there that the Planning Commission has to be kept informed about changes to the tree ordinance. There was no reaction to do that, but the subject was approached.

Mr. Mellen said that in respect to the matter which is currently before the Planning Commission on Oak Grove, it has chosen to use language relative to mitigation and remediation that is already a part of the Code in order to help justify moving forward on that issue. The Planning Commission chose specifically under the guidance from the Solicitor and its own thought, to use the language which exists in the Code rather than creating new language in the conditions. Chairman Littleton said that this background statement and explanation is why the Planning Commission is interested in giving this subject further thought.

Mr. Gossett said that one of the conditions of approval the Ad Hoc Committee had tentatively established is a conservation easement to be established for the subdivision, which the applicant has provided. In that conservation easement, it is stated specifically for conditional approval that the Tree Ordinance which is in effect must be met. There was a long discussion about whether the Committee should establish another set of rules; but it was determined that the Code is working except for six appeals, and the Planning Commission should proceed with using it.

Mr. Shulman has changed the motion to say that the Planning Commission does not believe any changes should be made in the mitigation or in the certificate of occupancy enforcement mechanism without the Planning Commission having a prior opportunity to study and weigh in on it, not that the Planning Commission is for or against it. The Planning Commission could add in accordance with its ongoing involvement and concern about the implementation and enforcement of the tree ordinance. Mr. Shulman said that the amended motion cited mitigation and enforcement. Since the Commissioners, among themselves, have figured out the other issues regarding the Tree Ordinance, mitigation and enforcement are the issues that there is still discussion on. He thought it advances the Planning Commission's effort to be heard by saying that as to those open items, the Planning Commission should request that there not be action taken until it has had an opportunity to say something about them and any other items the Commissioners deem appropriate.

Chairman Littleton said that there are other things City Commissioner Barbour is saying that the Commissioners have been working on which may or may not from a planning standpoint make sense. By limiting or focusing on two things rather than a more generic one, the Planning Commission knows that this is being looked at generically overall. It seems that the City Commissioners have reached consensus on some issues without the Planning Commission's knowledge and without editorializing them; and some items still seem to be in discussion. The Planning Commission on its own would like to look into and offer some comments back to the City Commissioners. City Commissioner Barbour said that the Commissioners have not reached agreement on anything. There has been consensus on some issues. The next step would be to take the new revision and go through it. The process has not concluded. Currently, the appeals are heard by the Parks & Shade Tree Commission. A review of those appeals would be instructive because there are facts associated with those appeals.

Chairman Littleton said that the Planning Commission is relying on this Code and is actually doing some action based on the existing Code. The City Commissioners are relooking at the Code. In the face of both the CDP and the Planning Commission's own reliance on the Code, it would like to take and offer comments as this Tree Ordinance is being developed, prior to finalizing it.

Ms. Sullivan said that the Mayor and Commissioners have gone through the Tree Ordinance line by line; and at this point, they have stopped at mitigation. She thought that the Tree Ordinance should be in final form for the Planning Commission to review it instead of going over everything that the City Commissioners have already made a decision on. City Commissioner Barbour discouraged the Planning Commission from doing anything that would get the Planning Commission in a fog like the Commissioners are in, and that is going line by line.

Chairman Littleton said that the Planning Commission's normal procedure would be to set up a working group to work things through and bring it back to the Commission, and then pass it on to the City Commissioners.

Mr. Shulman was fine with making the motion more generic. He would like the words to say that "the Planning Commission requests the opportunity to and believes it could have important input on...."

Mr. Mellen said that when he read the summary at the Ad Hoc Committee meeting, he had two reactions from the standpoint of the Planning Commission: 1. Related to the Planning Commission's specific use of parts of this Code. Mr. Mellen felt that if this Code would disappear without some reasonable discussion as to why the Planning Commission felt it is important, it would be undercutting some of the things the Planning Commission is trying to achieve. There is an urgent need to communicate that to the City Commissioners. 2. As a citizen and member of the Planning Commission, trees and canopy raise certain questions. Within Mr. Mellen's own block, he had seen large trees being removed for a new house. There is a legitimate reason for taking out the trees because they were in the footprint of the house. He questioned what the possible mitigation is of the loss of that canopy to the City. There must be other pieces of property within the City where mitigation could take place and enhance the general welfare of the entire City. To lose that concept in the ordinance would be a tragedy. City Commissioner Barbour said that that is embedded in the current ordinance. It says that if someone cannot mitigate onsite, then he/she will contribute to the tree fund, etc.

Mr. Shulman amended the motion, seconded by Mr. Spies, that the Planning Commission requests the opportunity to comment on and believes it can contribute important input to any revisions of the Tree Ordinance prior to any adoption action.

Chairman Littleton said that the Planning Commission is instructing Chairman Littleton or Acting Chair Mellen to approach the Mayor and Commissioners saying that the Planning Commission wants to take and comment on, and believes it has valuable input the Planning Commission could provide relative to the Tree Ordinance. The Planning Commission knows that it is under study. Justification would be provided on how much the Planning Commission relies on the existing Tree Ordinance. The Planning Commission has a major subdivision before it which specifically addresses the Tree Ordinance and mitigation and remediation. The Planning Commission wants to review the Tree Ordinance prior to the City Commissioners commencing formal action of revising the Tree Ordinance.

Motion carried unanimously.

## **OLD BUSINESS**

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

Chairman Littleton confirmed that he has read the minutes and listened to the tapes of the May 14, 2010 Regular Meeting. Because of the confusion as to who received what information for the May 14, 2010 Regular Meeting, Chairman Littleton instituted a new procedure that would apply primarily to the Applicants. Anything that is substantive to be put in the record will be in writing, and 17 copies will be delivered to Ms. Ann Womack, City Secretary, for her to date stamp and distribute to the Planning Commission and other parties.

Correspondence:

**Exhibit 16** – Note received at the June 11, 2010 Meeting from officers of Cottages of the Sea Condominium Association – in support of.

**Exhibit 17** – Letter received June 11, 2010 from George Horn, 7 Sixth Street – in support of. He also voiced concern that the concept of Jones Lane being a narrow dead-end lane has some functionality and safety issues.

**Exhibit 18** – Cover letter dated April 30, 2010 and associated documentation from Oak Grove Motor Court to the Planning Commission, in response to the discussions at the April 23, 2010 Ad Hoc Committee meeting regarding utility easements, impact on trees by roadway construction, modification of the bio-retention area, and a schedule to proceed with the stormwater management analysis.

**Exhibit 19** – Cover letter dated May 5, 2010 and associated documentation from Oak Grove Motor Court to the Planning Commission, in response to the May 3, 2010 Report and Recommendations of the Ad Hoc Committee concerning acceptance of the short dead-end street proposal from Vice Chair Mellen. The

attachments address Condition Nos. 2 & 3. Condition No. 1 does not require a response at this time, and Condition No. 4 requires an annotation to the plat that will be included with the final revisions to the layout.

**Exhibit 20** – Email received May 19, 2010 from Paul Lovett of Oak Grove Motor Court regarding street design and follow-up.

**Exhibit 21** – Email received May 20, 2010 from Terri Sullivan to Paul Lovett and Judy Schwartz in response to the email received May 19, 2010 regarding street design and follow-up.

**Exhibit 22** – Email received June 7, 2010 from Paul Lovett of Oak Grove Motor Court regarding a schedule for proceeding with the stormwater management analysis.

**Exhibit 23** – Email received June 8, 2010 from Chairman Littleton to Paul Lovett in response to the email received June 7, 2010 regarding a schedule for proceeding with the stormwater management analysis.

**Exhibit 24** – Email received June 9, 2010 from Paul Lovett of Oak Grove Motor Court in response to the email received June 8, 2010 regarding a schedule for proceeding with the stormwater management analysis.

There was no public comment.

Chairman Littleton said that the Applicants have elected to continue discussing this application pending action by the Board of Adjustment which will be meeting on June 28, 2010. In regard to the Minutes and listening to the tapes of the May 14, 2010 Regular Meeting, the Planning Commission has agreed that conceptually a dead-end street is acceptable, but it did not make a decision relative to the street width, parking, etc. as designed.

Mr. Mellen suggested that in discussing the design of the street, the Planning Commission cannot do it without discussing easements or the width of the right-of-way of the street because they have impact relative to maintenance of the bio-retention area, what can be done in terms of planting in the easement area vs. the setback area, etc.

Chairman Littleton said that the 18 foot street width is not a problem, but he voiced concern with the size of the parking area. It was unknown about the bio-retention area until the road and engineering is worked out. Chairman Littleton said that Mr. Alan Kercher, City Engineer has concern with the idea of the proposal having a right-of-way ending at the property line; and he preferred that the right-of-way should be extended through easements. Chairman Littleton supported Mr. Kercher's concern with things ending on property lines without the City ability to have an unobstructed right-of-way and/or easement. The tape of the May 14, 2010 Regular Meeting indicated the Applicants will amend the plat and remove the easements.

Mr. Mellen said that Mr. Paul Lovett verified that originally there were utility easements because it was anticipated that the sewer, electrical services, etc. would be installed in that area. Concern was raised about what impact the easement would have. If the easement on private property is the same as the setback area and according to the building code steps could protrude into that area, then this could be a problem. There are restrictions relative to planting of trees in an easement area vs. a setback area. Mr. Lovett and Ms. Sullivan had inquired whether utilities could be installed in the street. It was Mr. Lovett's assumption that there was no longer a need for the utility easement. There may be a need for a general easement because of the concerns that Mr. Kercher has. Mr. Kercher has cited legal situations in other jurisdictions where there is need for the City or official organization to intrude upon that area, and they cannot get legal permission. Mr. Kercher has requested a larger easement of 15 feet wide which is required by the Code.

Ms. Sullivan said that if the Planning Commission requires an easement, it must be 15 feet wide. Certain trees would not be allowed to be planted over sewer lines or utility lines. There are limitations as to the way trees can be planted. Chairman Littleton said that the big risk is if someone intrudes upon it, the City or the utility could take down the tree.

Chairman Littleton said that what is being proposed is no free space between the edge of the right-of-way and the property. The City Engineer's concern, based on experience, is that the City needs to have the ability to locate equipment on what would be private property. Mr. Mellen noted that on the opposite side of the street where the proposed parking is, the right-of-way would end at the of the proposed parking. There is no public land for the City to put up signs for no parking, parking, etc.

Mr. Shulman referred to Section 236-24 and clarified that the Planning Commission does not have to require a utility easement; but if it requires an easement, the easement must be at least 15 feet wide. Easements along property lines or elsewhere for utility installations may be required. Such easements shall be at least 15 feet wide and located in consultation with the companies or the municipal departments. Mr. Shulman would like to get an understanding of what kind of easements and where they would be located. The Code does not

say the easements shall be at least 15 feet wide on private property. Mr. Shulman said Mr. Kercher's concern is that even if all of the public utilities are in or under the street, there should be access to those from some area on the lots. Chairman Littleton said that in order for a backhoe to do work on the street or repair the retention pond, it would need to be placed on private property; and that would be a problem. Mr. Shulman questioned (1) if there should be an easement on private property and (2) if the easement has to be 15 feet if there should be such an easement. Chairman Littleton said that from a City standpoint, it would be a right-of-way and would not be an easement. The City would own and control that property. Mr. Shulman said that in this case, the right-of-way would be 40 feet wide and the paved area of the street would be 18 feet wide; but none of that would include space for doing the work.

Chairman Littleton said that the retention pond can be eliminated and runoff can go into a sewer system in order to free up the space. The Applicants' desire is to be green and maintain from an ecology standpoint; and they are proposing to use some of the space for a retention pond that he could have as a right-of-way. A solution would be to give up the retention pond. Chairman Littleton's interpretation was that once the word utility is removed, the City can do easements of any width it wants. Mrs. Konesey said that the use of private land is mainly for access. Mr. Kyle Gulbranson noted that the terms of the easement would need to be defined.

Mr. Mellen said that conceptually the question of a utility easement has probably gone away. It would have to be settled by the utility companies after the fact; but they can go down the center of the street. Chairman Littleton said that there is a concern by the City about having some of the utilities running down the center of the street because of tearing up and repairing the streets.

Mr. Mellen's concern was the legal problems of going onto private property if a repair is to be made. Free space is needed to do that. The lots facing Jones Lane could be 100 feet instead of 105 feet, and the City could take five feet as right-of-way. This would provide five feet on the other side of the retention area. Then the City could say it would need a 10 foot easement from the private property, but only five foot would be used for what is needed.

Chairman Littleton said that this would establish a new measurement for setbacks. It would impact upon the size of the house and the setback area. This is not the case with an easement unless the Planning Commission puts a restriction to it where the property owner could continue to measure it for land use purposes and for setbacks to the edge of the right-of-way. From the owners standpoint, an easement is more buildable friendly, but from the City's standpoint, the right-of-way is the right thing to do because City will have total control.

Ms. Sullivan said that the 10 foot easement poses a problem with the 10 foot setback. Steps are allowed to encroach up to two feet into the setback. It is not practical to have to take the steps out.

Mr. Shulman said the Applicant can propose to the Planning Commission as part of the easement, that despite what the Zoning Ordinance says, in this development the easement which the City has will say there is nothing including steps going into that area.

Ms. Sullivan noted that once a set of rules is set for this community, the issue would be that when Building & Licensing issues a building permit it uses the Code. Mr. Gulbranson said that covenants would increase the possibility of an error.

Mr. Shulman said that if there needs to be some work area of 10 feet, there is no way that Jones Lane can be done the way it is proposed if another 10 feet is added to the right-of-way because of the lot size. Either the Planning Commission decides to find a way to make the easement work or there is too much of a practical morass about the easement route, and it has to be a right-of-way and then it kills the street.

Chairman Littleton asked if there is consensus to be sensitive to something beyond the edge of the right-of-way, and there needs to be some provision regarding Mr. Kercher's concern about easements, right-of-way and dimension.

Ms. Judy Schwartz of George Miles Buhr (GMB) clarified that the sewer and water are intended to be within the right-of-way. The 10 foot easement on either side was originally intended for electric, telephone and cable which could be moved into the right-of-way. The area outside of the right-of-way would no longer be a utility easement. It could be an access easement which would not necessarily have a width dictated by the Code. In her experience, the minimum width of 15 feet comes from an easement that is not running along the side of the street, but is running cross-country. The easement that would occur on the outside of a right-of-way does not need to be 15 feet wide.

Mr. Paul Lovett said the reason why the Applicants felt they would remove the easement is because they thought it would create an issue. The Applicants have no problem with providing the easement, and that is why it was put on the original drawing; and that is why it still exists on the drawing. There was a question of whether it was required of the Applicants. Mr. Lovett said that City Solicitor Glenn Mandalas said in a prior meeting that the Applicants will contribute the easement, and then it will not be required to be 15 feet wide. The Planning Commission has required the Applicants to go to their contractor and ask how they would do it. The backhoe will be put on the paved surface. The Planning Commission is going to require of the Applicants that the entire street has to be built in order to protect the trees and the Applicants prefer it, and Ms. Sullivan is going to approve it. The street will be built without moving the backhoe or the equipment off of the paved surface. Ms. Sullivan said that when the snowplow hits the edge of the pavement and tears up the neighbor's yard, the City needs to have that access. That is where the easement conversation is coming from because if they run off of the street with a backhoe, snowplow, etc. the City needs that protection.

Chairman Littleton said that in a right-of-way, it will require City approval. In an easement, depending on the wording of the easement, the property owner can do what they want; but they would be forewarned that if the City needed to, it could take down a tree, drive across it, etc. Mr. Lovett said that the correct configuration of the bio-retention rain garden is to include trees in it.

Mr. Mellen said that when the Applicants realized they could put all the utilities under the street, they initially responded that they did not need the easement. At that point, Mr. Kercher had responded that he is being stymied where a City needs to do something and it cannot get legal permission from the property owners.

Mr. Shulman wanted to look at the width of the street because a letter was received which raises a number of points such as parking is manageable.

Mr. Mellen said his preference is for the street to more than 18 feet wide. There is no delineation between the grass parking and the properties. It will be difficult for people to park and assure that parking will be in the intended area. There is a problem unless there is some way of demarcating the position between the private property and the designated parking area. This will impact the available room for cars and trucks on the street.

Chairman Littleton asked if the street width is a problem or is a car parking problem. He thought that there is interplay between those two things. Mr. Mellen said that he includes the parking and the actual traverse area as one in the same. His concern is with a parked car and if there is room to drive. Chairman Littleton said that there is a total of 30 feet of space with a four foot walkway, 18 foot of paved travel lane and eight feet of parking. For a street of that dimension, the idea of one per person waiting for the next person is reasonable. Ms. Sullivan said that the ADA width for a sidewalk is five feet. Chairman Littleton said that the Planning Commission is not planning a gated private community. A City street is being proposed. The 18 foot wide street and eight foot wide parking are interrelated, and there is some concern with this. Mr. Mellen agreed that the two are interrelated.

Mr. Shulman said that if the street is not being designed for cars to pass, then 18 feet is excessive. If the street is being designed for two cars to pass and there is a nine foot minimum width for a travel lane and eight foot width for parking, then this is too close for comfort.

Ms. Schwartz pointed out that travel speed on the street needs to be factored in because that makes a difference with the width of the street. With nine feet in each direction, there is no problem getting the speeds anticipated on the street with it being short and a dead-end. Mr. Shulman said that given the parking, the street is not going to turn out to be 18 feet wide; it would be less. Mr. Gulbranson said that eight lots would be served, speeds would be slow, and it would be acceptable with two cars approaching each other for one to slow down as the other moves by.

Chairman Littleton said the design is that there is a walkway which the Planning Commission does not want people driving on. Psychologically, someone can get closer to something that is not a wall, barrier or curb. There is a wide open retention area which would be a barrier. On the parking side, there would be an edge reinforcement to the road and a reinforced grass area. On the other side of the parking area should be demarcation of some type. On the side where the walkway is located, there is an edge reinforcement. There are no elevated curbs in this project as proposed.

Ms. Schwartz commented that Mr. Kercher had indicated that he would like to see eight inches wide and 20 inches deep on the edge. This input was made two meetings ago. The scaled drawing has not been revised to date.

Ms. Konesey said that there is a good chance that all the houses will be rentals, and there will be four or



five cars per house.

Mr. Spies noted that the width of the street is fine; and the extra foot for the parking is fine because people are not careful when they park.

Mr. Gulbranson asked if it would make sense to narrow the street and add one foot to the parking side, and an additional foot to the walking path. The walking path would be five feet wide and would be compliant.

Chairman Littleton said he has received strong input by City officials that the Planning Commission is on board with talking about sidewalks, and it is in the CDP about discontinuous sidewalks and a walkable community. Mr. Shulman commented that the discontinuous sidewalk relates to something that is partially there and stops. In regard to this subdivision, the Planning Commission is talking about a consistent pathway on a small street which will be continuous. Mr. Spies said that this pathway will end on Sixth Street, and he did not see much potential for having a continuous sidewalk along Sixth Street with the townhouses being built there and the parking in front.

Chairman Littleton said that the City currently requires a five foot wide sidewalk, and he asked if the City also requires a buffer between the street and the sidewalk. The Planning Commission is looking at the pathway as not being a sidewalk. Mr. Gulbranson was not sure if a buffer is required.

Mr. Lovett said that this subdivision would be more handicapped friendly than the average in the City. The handicap access in the International Code specifically says that residential areas are not required to be ADA compliant. Ms. Sullivan noted that residential property is not required to be ADA compliant, but the pathway will be City property which is public.

Mr. Brian Patterson did not personally have a problem with a lack of a sidewalk, but he questioned the utility of the walkway whether it will actually be used. He was curious if there is an engineering rationale for having the buffer between the paved street and the bio-retention area. Ms. Schwartz said that it also serves as a filter strip for stormwater quality improvement. The filter strip is a recognized best management practice for stormwater. Mr. Patterson said that there appears to be enough space in Lots 9, 11, 13 & 14 to expand the right-of-way in that direction, and he asked if this would be something that should be considered.

Chairman Littleton summarized that the 18 foot width is fine, but the 18 foot width plus the eight foot width for parking is a problem. Parking is the critical thing. He asked the other members if they would be willing to reduce the size of the paved street to 17 feet wide and increase the parking to nine feet wide; or leave the paved street at 18 feet wide and increase the size of the parking width one foot which would be taken out of adjacent property. Mr. Patterson was concerned with narrowing the paved street because he did not think people will walk in the street, not the walkway. There was consensus to leave the paved street at 18 feet wide and increase the right-of-way width by one foot.

Ms. Schwartz said that this may present a problem with Lot 15. Lots 13 and 15 are the pinch points for the 4,000 square foot rectangle. She precluded that the foot should come out of the bio-retention area which can be reduced to nine feet. Chairman Littleton said that the Applicants will need to review where the one foot will be taken from.

Mr. Mellen asked if all the impact of utilization of the bio-retention area is lost underneath the driveways that cross the bio-retention area. Ms. Schwartz said that the driveways are at grade so there is no need for a driveway culvert. They are not part of the bio-retention area.

Chairman Littleton noted that was consensus with parking on one side of the street. Ms. Shulman said that a lot of whether there are going to be parking spaces at all will depend on curb-cuts and driveways. If the Planning Commission is going to go with the concept, it will probably need to impose limitations on curb-cuts.

Chairman Littleton said that parking will be eliminated by design at the turn-around. Any parking would be eliminated opposite and perpendicular to the backside of the k-turn. There would be a very small strip which has driveways. The City requires a minimum of a 10 foot driveway. Ms. Sullivan said that the Code allows for one curb-cut at a maximum of 20 feet for two curb-cuts at a maximum of 10 feet each. Every lot may have a minimum of one curb-cut and shall have a maximum of two curb-cuts per lot. When two curb-cuts are installed for a single lot, the curb-cut shall be located to maximize the availability of on-street parking spaces. The total linear footage of the width of any one curb-cut and/or combined width of any two curb-cuts shall not exceed 20 feet. Mr. Mellen said that the City will take another two feet on either side of the curb-cut to mark where the parking area can stop.

Chairman Littleton said that from Sixth Street to the k-turn there is 130 linear feet of parkable area of

which a minimum of 30 feet is for driveways. Parking is a big issue. There has been public concern with parking on Sixth Street, and there has been public testimony regarding a pathway. The only place that this property does not abut other properties is Canal Street. Parking can be done on Canal Street with those lots abutting Canal Street. Canal Street parking cannot be done for the lots that would abut Jones Lane. If there is a pathway through the property to Canal Street, people would have the ability to park on Canal Street, not involving Sixth Street or any other property, and have on-street parking. Unless there is access, they cannot do that. It is essential to have a pathway across the property. If there is a pathway that is designed as proposed along the street, but with a width of nine feet, an emergency exit would be provided off of this property. Chairman Littleton has looked at the literature on cul-de-sacs, and everything he has seen in terms of modern street design and modern land-use planning, is for access to be designed across the cul-de-sac street. Parking is inadequate on Jones Lane. He would like a fire/safety exit on this property which would be a plus to the design.

Mr. Shulman said in reference to Chairman Littleton's comment about access to the property, it would go to the owners, users or tenants of the property and not the public. He said that Chairman Littleton's concerns could be met by the Applicants in saying that there would be a private pathway of which all of the owners of the properties have an easement. Chairman Littleton said that he would prefer to see it be a dedicated right-of-way.

Chairman Littleton said that the only solution he can come up with to solve the parking, is a pathway unless the Applicants would want to dedicate a lot for a parking area.

Mr. Shulman asked what would happen if the Applicants come in with a proposal that says certain lots must have three off-street parking spaces. If a certain number of lots must have three off-street parking spaces, then it would be fair to make the assumption that people generally will park on their lot and decide to park somewhere down the street. The solution to the parking problem is: 1. A lot or parking on Canal Street. 2. The Applicants could say as part of the conditions of this development that every lot will be required to have three off-street parking spaces. Mr. Patterson said that another solution would be they restrict themselves to the 10 foot wide curb-cut for the driveway and not have a double driveway. Ms. Sullivan said that the issue Building & Licensing has with requiring more than two off-street parking spaces is that later it could become a patio. Requiring more than two off-street parking spaces by deed restriction would result in an enforcement issue.

Mr. Markert was of the opinion that if parking spaces are allowed, people will fill them. What is trying to be done as far as the City is concerned, is to try to inhibit people from bringing cars into the City as much as possible. By creating a situation where there is limited parking, people will need to make accommodations such as carpooling, etc. Too much freedom is being allowed. Chairman Littleton said that there is public testimony on that issue. This property's problem will be somebody else's problem. Mr. Markert said that there is space on Sixth Street for parking. The density of Sixth Street is such that it may not change that much. Sixth Street is never a congested parking street. The supply will dictate demand.

Mr. Shulman commented that in a prior presentation, the Applicants did their best to give their estimates; but what it did not account for even though there were a lot of structures on the property, they were small structures not with multiple numbers of bedrooms. The total number of living space bedrooms is going to be significantly more. This development is likely to lead to more people having cars than what was the case with Oak Grove.

Mr. Patterson asked if the bio-retention area could be in the easement because it would free up more space in the right-of-way for parking on both sides. Ms. Schwartz said that it is not necessary for the bio-retention area to be in the right-of-way.

Mr. Shulman commented that Chairman Littleton's potential solution involve a passageway to Canal Street. Chairman Littleton said the other alternative is whether the subdivision itself can accommodate parking in some other manner. The City should not be involved in creating a problem for somebody else. What is being proposed is creating a problem for somebody else. Mr. Shulman asked why a passageway will open up space for people on Jones Lane. Chairman Littleton said that this would be the only way he could rationalize an escape from parking. The most attractive thing about this piece of property is that it is on the Canal. Currently as it is designed, the majority of the owners will be denied easy access to Canal Street. From a planner's standpoint looking out for a future property owner's rights, they should have access to the most attractive natural feature, and that is the Canal. The public should also have access across the property.

Ms. Cindy Lovett said that because the Lots 8 & 9 are facing Jones Lane, there are eight parking spaces on Sixth Street that belong to Oak Grove. The Applicants are not abandoning the curb-cut on Sixth Street. If there is a curb-cut on Sixth Street, this means that another space is opened up on Jones Lane. The curb-cuts for Lots 8 & 9 can be located on Jones Lane or Sixth Street. Chairman Littleton said that there is no parking up to

30 feet from the entrance on Jones Lane 30 feet, and there is no parking up to 30 feet on Sixth Street. Mr. Patterson said that there would be no parking in front of Lot 8 on Jones Lane. Discussion ensued as to what the number of parking spaces would be in regard to this subdivision.

Mr. Shulman suggested that someone from the City should go through this layout and determine a worse-case scenario for parking on Sixth Street, Jones Lane and Canal Street.

Mr. Lovett presented his slides which showed the options for parking spaces. There would be more parking than currently exists along Sixth and Canal Streets, and Jones Lane. As it stands now, there is no parking anywhere on the property. Mr. Shulman recommended that this presentation be put into the record.

Chairman Littleton said that the burden of determining the parking spaces should be internal on this project and not from the City's or Planning Commission's standpoint.

Mr. Markert pointed out that if people are going to be in a situation where they are having multiple guests, etc., it is incumbent upon the property owner, renter, etc. to figure out how to accommodate all the cars. If a shortage of parking is created, it will become inconvenient. This is a reasonable assessment of what can be expected for parking availability and how people choose to use it or abuse it. Chairman Littleton said that the Planning Commission would be allowing the Applicants to create a problem that will impact other people. Other options that would solve the parking problem would be to abandon the retention pond and install an underground sewer system, have parking on both sides of the street, having a through street with parking on both sides of the street. Access to Canal Street would let Canal Street take the burden off of Jones Lane. There is no prohibition to parking on either side of Canal Street. Mr. Shulman asked if the Planning Commission really wants to encourage parking on both sides of Canal Street which is a narrow street and has a lot of pedestrian traffic because it is next to the Canal; and it is the first street that people can turn onto after the bridge.

Mr. Patterson said that Lot 14 is a large lot which could accommodate front end parking next to the driveway. Some trees would be lost by doing this, but there could be two or three more parking spaces.

Ms. Cindy Lovett said that there are 24 units on the Oak Grove property; there were 14 trailers; and there were 51 bedrooms. If there are four bedrooms to each proposed house, the total bedrooms would be 45. Mr. Mellen corrected Ms. Lovett that there would be a total of 60 bedrooms. Ms. Lovett said that anyone who would have a two-car garage would have two off-street parking spaces and two parking spaces in the garage. In regard to public comment, there were multiple comments made that there should not be parking on the west side of Canal Street, and parking should be eliminated on Canal Street.

Mr. Shulman said that the genesis is to preserve natural features. The Planning Commission could require what Chairman Littleton has suggested; or if the Applicants would decide not to go with the short dead-end street and do a through street, that would do the opposite of preserving natural features. There would be a lot of parking, but a lot of trees would be taken down. Mr. Shulman was not sure that there is going to be a solution for all aspects of this problem that in order to preserve natural features, it may mean that something needs to go. Chairman Littleton thought that the bio-retention area would be a plus for the City, but the elimination of the bio-retention area could be an option. He cannot conceive of the City Commissioners approving parking on one side of Jones Lane.

Mr. Markert thought that there should be some relationship between the number of bedrooms vs. the number of off-street parking spaces. If the number of bedrooms is above a certain level, then more off-street parking spaces would need to be added. There has to be some kind of restriction. Mrs. Konesey did not think it can be said that if there are six bedrooms, more parking needs to be provided. This would become a deed restriction, and the City will not enforce it.

Mr. Patterson asked if the Applicants would need to go to the City Commissioners if parking is available on both sides of the street in front of the four lots closest to Sixth Street and is available only on one side further in on Jones Lane. The proposed bio-retention area will be located on one side of the street, and there is an excess of more than 200 square feet of what is needed for the two lots on the same side. The right-of-way could be pushed into those lots, and more parking could be created which means that there would be parking on both sides of the street in this location. Chairman Littleton said if the Applicants continue to have less than the specified turn-around area, there will be no parking in this area; and that would require going to the City Commissioners. If the bio-retention areas are removed which end at the k-turn area, there is still a parking issue. Ms. Cindy Lovett said that there could be a parking space at the k-turn. Chairman Littleton noted that examples have been brought up of what exists and how it is accommodated in the City. The Planning

Commission's responsibility is designing and improving a new development where there is control. How something exists within the City now is not a good example of how to plan something. The Code has been changed three times to try to accommodate this project. Mr. Gulbranson said that the best possible situation needs to be created.

Mr. Mellen said that if the Planning Commission is going to consider what the maximum or minimum parking is, it should also ask what other options are available. Options are: 1. Eliminate the bio-retention and use it as parking. Since the parking is on grass, the implications are that there will be some absorption, more pavement is not being put in, and the sewer would be located under the street. 2. A through pathway to Canal Street. 3. Eliminate one lot. Use that lot to retain some of the trees which would be removed for building on that lot and create parking and a park area within this development that would be an enhancement to the community.

Mr. Patterson was curious whether the Applicants can find a way to reduce the size of the four lots closest to Sixth Street in order to provide parking on both sides of that part of Jones Lane and still have the bio-retention area.

Chairman Littleton summarized that the 18 foot paved road is acceptable. There will be a combination easement/parking area along the road on the outside of the property. The current proposed parking area will be increased to 9 feet wide, and the Applicants are going to figure if the one foot will be taken from the lot or the bio-retention area width. Mr. Gulbranson and Ms. Sullivan will be tasked with looking at a worst-case scenario for parking. Pending the Board of Adjustment's decision, the Applicants, if they choose to, may want to anticipate some other design that would address parking and/or restrictions.

Chairman Littleton said there was consensus at the May 14, 2010 Regular Meeting for the Planning Commission to do something at the Board of Adjustment Meeting on June 28, 2010. The Planning Commission was of consensus that the proposed use of the land is right, and it was particularly impressed with the Applicants' desire to maintain natural resources, etc.; but because of the physical layout of the dimensions and skew of this property, it is difficult to subdivide these lots to meet the letter of the Code. What the Applicants have proposed, seems a reasonable proposal. Mr. Shulman added that the Applicants have not created this problem for themselves. They are trying to solve a requirement in the subdivision law that natural resources are preserved to the maximum extent possible. In trying to comply with the subdivision law, it ran afoul in the zoning law. Chairman Littleton, Mr. Mellen and Mr. Spies will draft the correspondence.

Mr. Shulman asked if the Applicants if they cited Section 253-35(G) as one of the reasons for going to the Board of Adjustment for a variance. Mr. Shulman said that the Tree Ordinance specifically says, "[T]ree protection as justification for a variance. The interest in preserving a specimen or historic tree as defined in Section 253-28 shall be considered prima facie a unique or specific condition or circumstance peculiar to the land involved for the purpose of application for a variance from the literal requirements of a land development ordinance..." Ms. Sullivan stated that a variance has been requested from Section 270-22(D) in regard to rear lot lines.

Mr. Spies made a motion, seconded by Mr. Shulman, to close the Public Hearing tonight and create a new Public Hearing at the next meeting. Motion carried unanimously.

Mr. Spies and possibly Mr. Mellen and Mr. Markert will be in attendance at the Board of Adjustment meeting on June 28, 2010.

## **OTHER BUSINESS**

Chairman Littleton called for the Building Inspector's Report.

There was nothing to report.

Chairman Littleton called for the City Solicitor's Report.

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 Meetings of the Mayor and Commissioners that directly relate to the Planning Commission.

There was nothing to report.

One new partitioning application has been filed for a property located at 73 Park Avenue. The Preliminary

Review will be held on July 9, 2010.

Chairman Littleton announced that as part of his trip to Italy, he was tasked by the officials there to hand-carry a framed document back to the City to be presented to Mayor Samuel Cooper at the Board of Commissioners Meeting on June 18, 2010.

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

Mrs. Konesey made a motion, seconded by Mr. Gauger, to adjourn the meeting at 10:09 p.m.

**RECORDED BY**

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**(Ann M. Womack, Recording Secretary)**

**MINUTES APPROVED ON  
AUGUST 13, 2010**

\_\_\_\_\_  
**(Preston Littleton, Jr., Chairman)**