

**PLANNING COMMISSION MEETING
CITY OF REHOBOTH BEACH**

August 13, 2010

The Regular Meeting of the Planning Commission of the City of Rehoboth Beach was called to order at 6:14 p.m. by Chairman Preston Littleton on Friday, August 13, 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

Absent: Mrs. Jan Konesey

Also Present: Mr. Glenn Mandalas, City Solicitor arrived at 6:29 p.m.
 Ms. Terri Sullivan, Chief Building Inspector
 Mr. Kyle Gulbranson, City Planning Consultant
 Mr. Alan Kercher, City Engineer

A quorum was present.

APPROVAL OF MINUTES

Minutes of the June 11, 2010 and July 9, 2010 Planning Commission Regular Meeting were distributed prior to the meeting. Minutes of the July 9, 2010 Planning Commission Workshop Meeting were not available for this meeting.

Mr. Spies made a motion, seconded by Mr. David Mellen, to approve the June 11, 2010 Planning Commission Regular Meeting minutes. (Patterson – aye, Shulman – aye, Gauger – aye, Mellen – aye, Littleton – abstain, Spies – aye, Markert – aye, Gossett – aye.) Motion carried.

Mr. Patrick Gossett made a motion, seconded by Mr. Francis Markert, to approve the July 9, 2010 Planning Commission Regular Meeting minutes. Motion carried unanimously.

CORRESPONDENCE

Correspondence will be read when the Public Hearings and Preliminary Review portions of the meeting are held.

NEW BUSINESS

Chairman Littleton called for the Preliminary Review of Partitioning Application No, 0710-02 requesting the partitioning of a property located at 2 St. Lawrence Street on Block 33, Lots 22, 23, 24, 25, 26, 27 & 28 into two (2) lots with Lots 22 & 23 becoming one (1) lot of 5,020 square feet and Lots 24, 25, 26, 27 & 28 becoming one (1) lot of 12,479 square feet. The property is owned by 2 St. Lawrence Street L.L.C. The Partitioning has been requested by Chase T. Brockstedt, Esq. of the law firm Bifferato Gentilotti on behalf of the owners of the property. Chairman Littleton presented the Preliminary Review procedures.

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

Exhibit A – Application with Attachments, dated July 2, 2010 and received July 2, 2010.

Exhibit B – Existing Conditions Plan – Lot, Location & Topo Survey Plan dated June 24, 2010 and received July 6, 2010.

Exhibit C – Division Survey dated June 24, 2010 and received July 6, 2010.

Ms. Sullivan acknowledged that that a storage facility which looks like a shed is located behind

the driveway, and trash cans are stored behind it. The shed is located eight feet from the property line. She was sure that the structure is a shed.

Mr. Shulman had trouble understanding the Division Survey that was provided to the Planning Commission, and he asked if Lots 25, 26, 27 & 28 run perpendicular to the beach. Ms. Sullivan responded that Lots 22, 23 & 24 run parallel to the beach. Mr. Shulman asked if Lots 22 & 23 basically are being broken off from what is to the east of that. Ms. Sullivan responded that this was correct. Mr. Shulman asked how far to the east the property goes. Ms. Sullivan said that where the 100 feet is written on the survey, the line in front of that is the property line. Mr. Shulman asked what is to the east of the property line. Ms. Sullivan responded with open space. Mr. Shulman commented that between the property line and where the boardwalk is located, is open space, and he asked if anybody owns it. Ms. Sullivan said that she could not answer that. Mr. Shulman said that neither of these lots actually front on the Boardwalk. Ms. Sullivan said that she did not know if the Applicant owns the piece of property which is open space. She suggested looking at the deed. Mr. Shulman said that he wanted to know what the Planning Commission may be subdividing here, if there is any common ownership. There is nothing shown on the survey to indicate ownership of the open space between the lots and the Boardwalk. The Planning Commission does not know if it is public space or private. Ms. Sullivan read a portion of the deed. "It being the intention of the party of the first part to convey all the right, title and interest of the grantor in any lands in which the grantor has an interest between the property known as Lots No. 22, 23, 24, 25, 26, 27, 28, Block 33, Rehoboth Heights, and the Atlantic Ocean". Mr. Shulman said that almost everything else is marked on the survey to indicate ownership, except the open space.

Chairman Littleton suggested that the Planning Commission may want to defer these questions to the Applicant's attorney.

Mr. Chase T. Brockstedt, Esq. of the law firm Bifferato Gentilotti, represented the owners of the property. He thought that this application is straightforward. As depicted on the lot and boundary survey, this is a fairly large parcel that could be broken into three lots. The Applicant has chosen to keep the lot closest to the ocean, closest to the east intact and only partition off a 50 foot x 100 foot lot to the rear.

Mr. John Gauger asked if Attorney Brockstedt was saying that the empty lot is part of the property. Attorney Brockstedt responded with no, and he did not know the answer to that. The empty lot is not identified on the survey; but according to the deed that is recorded, the Applicant owns Lots 22, 23, 24, 25, 26, 27 & 28. As depicted on the survey, that area which Mr. Gauger and Mr. Shulman are referencing is not identified as being part of Lots 25, 26, 27 & 28. Attorney Brockstedt said that this is all he knows about that.

Mr. Mellen said that this goes back to the old issue of whether those lot numbers were original to the layout of Rehoboth Beach because properties to the east were either quit claim deeded by some people or this is where Surf Avenue was supposed to have been. In going up and down the Boardwalk, some people claim that they own land to the Boardwalk or beyond. Attorney Brockstedt said that he has his own theory as to who owns that particular piece of ground; but regardless, it is not identified as Lots 25, 26, 27 & 28 in the deed or on the survey.

Chairman Littleton did not think it has any impact as to what the Applicant is asking the Planning Commission to do. Attorney Brockstedt said that not unless whoever owns that property would object to this, and then the Applicant would have to deal with that.

Attorney Brockstedt continued his presentation. The proposed partition plan and subdivision meets Section 270-22. As depicted, the new parcels both have 50 feet of road frontage, are 5,000 square feet or greater, and they both can contain a 4,000 square foot rectangle with 48 feet at its shorter side. Also, at Tab 7 of the package, there are two parking spaces identified on the western side of the proposed lot. No curb-cut is located there, so one will have to be created.

Mr. Spies noted that the Planning Commission Affidavit is signed by only one of the member managers, not both. Attorney Brockstedt said that the signed Consent of Member Managers of 2 St. Lawrence Street, LLC is attached at Tab 4. Mr. Spies said that the Consent has no notary on it whereas there is a notary on the Planning Commission Affidavit. He suggested those signatures should be obtained for the Planning Commission Affidavit. The Applicant, Mr. Richard Harris said that he could produce the additional signatures prior to the next meeting. Mr. Spies suggested that in regard to the tree removal plan, a tree protection plan should also be shown. The tree removal plan does not show what trees will be protected. Attorney Brockstedt said that the trees which will be protected are shown on the tree removal

plan with protective fencing around them. The trees to be removed are located within the building envelope. There are no trees on the St. Lawrence side of the property. He has not met with the arborist or spoken with the Building Inspector about this, but the Applicant will need to plant one tree on the front of the proposed property which can be a condition of the partitioning.

Mr. Gauger asked if the trees to be removed have been inspected by the arborist. Attorney Brockstedt said that they have not been inspected by the arborist. With the exception of potentially planting a tree on the front of the proposed new lot to the west, the Applicant intends to comply with the Tree Ordinance and to the extent that there are any issues with regard to trees, the Applicant will certainly take exception with the arborist.

Chairman Littleton summarized that if the Planning Commission is comfortable with moving this Application to Public Hearing, the Applicant will return with the requisite signatures and will meet with the Building Inspector to clarify the tree situation of what is needed on the proposed and residual lots.

Mr. Shulman noted that in regard to the Operating Agreement, there are four members and each has 25% ownership. Mr. Harris said that the four members of the 2 St. Lawrence Street LLC are his father, two sisters and himself. Mr. Harris and his brother are the managing members. Mr. Shulman commented that usually managers without some authorization of the owners cannot basically sell the main asset of the property or business. Mr. Shulman saw an authorization signed by Mr. Harris and his brother who are the managing members; but he did not see where the other two individuals who own 25% have actually signed off on a resolution to subdivide the property. Mr. Harris said that the LLC agreement is broadly written to empower his brother and himself with all decision making authority. He can provide supplementary signatures from his two sisters if the Planning Commission desires them. Mr. Shulman was concerned that the co-managers in the Operating Agreement themselves have the authority to make a decision to subdivide the property. Mr. Harris said that he and his brother are empowered by the document. It is a broad range of powers understood by all the members, and it is the spirit with which the document was written. Mr. Shulman said that before he would be willing to approve this partitioning, he wants to make sure that the entity has the approval of at least a majority of the managers.

Attorney Brockstedt noted that a signature page for all the members to sign off on will be added. He asked if it is enough for the Applicant to meet with the arborist and the Building Inspector. Assuming nothing else is needed other than planting a tree in the front setback of the proposed new lot to the west side of the parcel, he asked if another survey is needed or if it can be a condition of approval. Chairman Littleton believed that the mere statement about identification and where the tree goes can be sufficient. On Page 7, it is confusing for the Planning Commission to know what trees will remain on the proposed divided lot. He requested clarification of what is taking place on Lots 22 & 23 relative to trees, and what is taking place on the other lots.

Mr. Shulman asked Ms. Ann Womack, City Secretary, if she or the City knows who owns the piece of land between this property and the Boardwalk; and whether any notice had been sent to the owner. Ms. Womack said that she did not know. Mr. Shulman said that this issue needs to be cleared up at the next meeting because whoever owns that land should be getting notice that a Public Hearing is about to take place on the parcel next to it. He did not think it is appropriate to move on an application unless the Planning Commission is sure that an adjacent property owner has received a notice. City Solicitor Glenn Mandalas said that it is the City's obligation to find out who the owner is and provide notice.

There was no correspondence or public comment.

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

Mr. Spies made a motion, seconded by Mr. Mellen to move the Application to Public Hearing. (Patterson – aye, Shulman – abstain, Gauger – aye, Mellen – aye, Littleton – aye, Spies – aye, Markert – aye, Gossett – aye.) Motion carried.

OLD BUSINESS

Chairman Littleton called for the Public Hearing of Partitioning Application No, 0610-01 requesting the partitioning of a property located at 73 Park Avenue, Lots 49 & 51 into two (2) lots with Lot 49 becoming one (1) lot of 5,027.828 square feet and Lot 51 becoming one (1) lot of 5,194.482 square feet. The property is owned by Vardell Realty Investments L.L.C. The Partitioning has been requested by Chase T. Brockstedt, Esq. of the law firm Bifferato Gentilotti on behalf of the owners of the property. Chairman Littleton presented the Public Hearing

procedures.

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

Exhibit A – Application for Subdivision with Attachments, dated June 2, 2010.

Exhibit B – Resubdivision Plan, dated June 29, 2010.

Exhibit C – Lot & Location Survey, dated June 29, 2010.

Ms. Sullivan noted that the hickory tree in the rear northeast corner of proposed Lot 49 is not a line tree and will be counted towards the density requirement.

Attorney Brockstedt entered his submission into the record.

Exhibit D – Revised Lot & Location Survey Plan, dated August 10, 2010 and received August 11, 2010.

Exhibit E – Updated Tree Survey Protection Plan, dated August 4, 2010 and received August 5, 2010.

Ms. Sullivan acknowledged that the building located on Lot 54 is 0.2 feet off of the property line. An error was found on the Lot & Location Survey Plan, dated August 10, 2010 where Lot 52 was noted twice. Mr. John Hughes' property consists of Lots 50 & 52. No structures from Lots 50 & 52 are encroaching onto Lots 49 & 51 at 73 Park Avenue. The 15 inch diameter hickory tree in the northeast corner is located 0.59 feet off of the property line. The 14 inch diameter cedar tree located at the front of the property is a line tree and does not count towards the density requirement. None of the surveys show a licensed area.

Chairman Littleton said that since the last meeting, the Planning Commission has learned a new fence was installed and the old fence was removed which may have demarcated the licensing agreement. The new fence is shown on the Lot & Location Survey Plan, dated August 10, 2010 and is at some point on the property line or very close to the property line.

Mr. Shulman said that the license agreement from Mr. & Mrs. Hughes indicates the contract purchaser has the right to design and select the materials of the fence which shall be erected on the grantor's property on the line demarcating the subject as the licensure. Ms. Sullivan said that the license agreement and attached survey can be found after Tab 9.

Correspondence:

1. Email received August 4, 2010 from Ann Walker Gaffney, 50 Park Avenue – in opposition to.
2. Email received August 5, 2010 from Genevieve DeBree of Stone TimberRiver LLC, Fairhaven, New Jersey – in opposition to.
3. Email received August 6, 2010 from Janice Dickson, 215 Birch Run Road, Chestertown, MD – in opposition to.
4. Letter received August 9, 2010 from John H. Wigton, 20 Oak Avenue – in opposition to.
5. Email received August 11, 2010 from Gail Winslow Ginsburgh, children own 53 Henlopen Avenue – in opposition to.
6. Letter received August 13, 2010 from Dorothy Mellan Fullerton, 145 Connecticut Street, San Francisco, CA – in opposition to.
7. Email received August 13, 2010 from James Wallace Johnson and Lawrence Miller Beach, address unknown – in opposition to.

Mr. Chase T. Brockstedt, Esq. of the law firm Bifferato Gentilotti, represented the owners of the property. Mr. & Mrs. Vardell were in attendance at the meeting. Attorney Brockstedt noted that initially Mr. Spies had identified a typographical error in the deed which was recorded. A corrected deed was created, signed and recorded on August 11, 2010. To the extent that it is necessary, Attorney Brockstedt can provide a copy of it. The Applicant became aware of some of the public opposition with regard to the building. The Applicant reached out to the Rehoboth Beach Historical Society as well as the Art League and a private individual who expressed interest at the time the property was under contract. An offer was made to cooperate with removal of the structure to some other property; but the Historical Society, Art League and the individual who expressed interest did not have a desire to do that. It does not appear that anyone is willing to spend the money necessary to move the structure. Mr. Vardell noted that some of this effort was done before opposition surfaced. Attorney Brockstedt said that the license agreement identifies an area extending south 18 inches from the rear boundary of the property; and the fence currently shown on the survey dated August 10, 2010, is erected on the southern boundary.

Mr. Mellen disagreed. A photograph can be shown of the post at the northwest side which sits at the

survey post marker. Mr. Vardell noted that the licensing area only runs the extent of Mr. Hughes' property. It does not run the full extent of the rear property line. That is why there is a jog in the fence line which is shown on the survey. The license agreement is with Mr. Hughes, and it only runs 18 inches off the extent of Lots 50 & 52 for 100 feet. The fence then jogs as close as possible back to the property line. It may be located on the property line because of the fence post and concrete around it, and an adjacent structure on Lot 54. Attorney Brockstedt said that the licensing agreement is not related to the lands that are between Lots 51 & 54. It is only related to the lands between Lots 49 & 51, and the lands owned by Mr. Hughes which are Lots 50 & 52. Mr. Randall Seeger, owner of Lot 54, does not have a licensing agreement.

Mr. Shulman asked if there is a reason why the demarcation of the license agreement area is not shown on the survey. He raised the question because if this partitioning is approved, this will be filed in Georgetown, DE. If the license agreement which is part of why the lot boundaries are not being challenged by anybody, it would make sense to indicate the license agreement area on the survey so there is no misunderstanding later.

Mr. Vardell said that the original fence which has been removed was located on the original survey. Mr. Vardell verified that there is a survey stake to the rear of the hickory tree, and monuments are located at the front of the property. Mr. Mellen noted that a pipe is located at the northwest corner of the property. Ms. Sullivan has not verified if the new fence is located 16.8 inches off of the property line.

Mr. Gossett commented that there is a clause in the agreement which states that the license agreement shall expire when Mr. or Mrs. Hughes no longer has a full-time residence in the City. Attorney Brockstedt said that if a full-time residence is not maintained, the license agreement shall expire.

Mr. Mellen said that in the license agreement Mr. Hughes accepts the survey as being the proper property line, and he asked if the license agreement will be registered with the deed in Georgetown, DE. City Solicitor Mandalas noted that the license agreement should be recorded already in Georgetown, DE. Typically, any contracts governing land have to be recorded. Mr. Vardell thought that the license agreement has been recorded. Attorney Brockstedt did not think that the license agreement had been recorded, but the intent it to be recorded if it has not already been done.

Chairman Littleton summarized that verification is needed of the 18 inch or thereabout offset of the fence, and assurance that the license agreement is a filed document and referenced with the potential subdivision. The Applicant is agreeable with having the house moved. Attorney Brockstedt said that the Applicant is willing to cooperate to the extent that someone would show interest in moving the structure. There would be a lot to be worked out on that issue. A demolition permit has been filed with Building & Licensing. Ms. Sullivan noted that no demolition can commence before September 16, 2010.

Mr. Vardell did not understand how verification of the survey marker for the fence pertains to the partitioning request. Mr. Mellen said it is obvious that there was a rear property line dispute or question at one time. He has independently heard about this from people before they knew that this property was being proposed to be partitioned. In order to try to understand the wording of the license agreement and where the boundaries were located, Mr. Spies and Mr. Mellen went to Georgetown, DE to search and try to determine where those property lines were located and understand what the dispute was about. What triggered this search was that Mr. Hughes' buildings are close to the property line, and the roof of the building at the northeast corner is slightly over the fence. Mr. Spies and Mr. Mellen were trying to determine where the dispute came from and what it involved. There were no recorded survey maps for the Hughes property, but a survey map was found for the Winter Inn property. In some cases, the metes and bounds were stated. There were some differences between the original metes and bounds, and the depth of property currently measured which could be attributed to optical transits vs. laser transits, etc. Mr. Spies and Mr. Mellen were fairly satisfied that what the Applicant was claiming as property, was in fact what the Applicant believes his property is; but they were not able to determine where the Hughes property is located. Mr. Mellen said that Mr. Hughes accepts the Applicant's survey, and the Planning Commission wants to make sure it is recorded so that in the future someone does not dispute it.

Attorney Brockstedt said that the Planning Commission has before it a sealed survey identifying the property line and a license agreement entered into between the Applicant and an adjacent property owner. He wanted to be careful that there is not some heightened burden that the Applicant has to meet, not only relative to this Application but other applications. Chairman Littleton thought that the issue of the license agreement is for protection of the property owner. The Planning Commission's concern is for a future owner not agreeing with the boundaries. It is important that there is verification of the license agreement

being recorded.

City Solicitor Mandalas noted that the metes and bounds in the deed are consistent with what is on the current survey. What is in the deed is evidence that there is at least 10,000 square feet. The only way there is going to be a determination of where the lot lines are, is in a quiet title petition filed with chancery court.

Mr. Shulman said that the original camp meeting grounds plat of the City from November 1873 shows the two lots, and it shows that the boundary line between Lots 47 & 49 were 92.7 or 92.9 feet. The current survey shows 93.45 feet. The current survey shows that the rear property line is six inches or more than what is shown on the layout of the lot at the time it first existed. The original boundary line between Lots 49 & 51 is shown as 92 feet; and the current survey shows 92.86 feet resulting in an approximate 10 inch difference that the original layout of the lot shows does not belong to this lot owner. Lot 49 on the current survey is shown as 5,000.27 square feet. If the original layout of that lot from 1873 is used and six to nine inches is taken off for distancing of the rear lot line, this lot would be less than 5,000 square feet. Where the lot line is located can determine whether the lot is less than 5,000 square feet or more than 5,000 square feet in the absence of a license agreement.

Mr. Gossett asked if the Planning Commission, in possibly moving forward on approving this partition, would be establishing a precedent that other individuals could utilize a license agreement to create irregular lot lines. City Solicitor Mandalas said that the property line is the property line, and a license agreement does not alter the property line. The City, at this point, has no authority to get involved in third party license agreements. By approving this partition, the City in no way would bless that license agreement or create a precedent which establishes that the City agrees with jagged rear lot lines. The City would not be agreeing to anything by partitioning this property with regard to rear lot lines.

Public Comment:

1. Mr. Walter Brittingham, 123 Henlopen Avenue, asked why a letter with no known address and an unsigned letter to the editor of a newspaper would be considered. City Solicitor Mandalas said that the Planning Commission has an obligation to at least read the letter when it comes in regarding an application. The amount of weight the Planning Commission places on that particular letter may be diminutive.
2. Mr. Robert Sievers, Lot 47 Park Avenue, said that he and his wife have no objections to the partitioning or demolition. He voiced concern regarding bamboo intrusion from the Applicant's property. He also requested that the chain link fence between the properties is not inadvertently removed when demolition takes place. According to Mr. Siever's survey, the chain link fence is located on his property. Mr. Vardell said that the bamboo has been sprayed twice. He was under the impression that the chain link fence was erected by the prior owner of his property. Mr. Vardell suggested stringing a line from the property owners to determination who owns the fence.

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

Mr. Shulman asked if the neighbor's survey was going to be submitted to the Planning Commission because it is fundamental where the property lines are. City Solicitor Mandalas said that the neighboring property owner is not opposing the partitioning, he only has issues with the bamboo and chain link fence. City Solicitor Mandalas did not mind if the survey is submitted, but there needs to be a survey with a more recent date or some piece of more compelling evidence than the survey which has been submitted by the Applicant.

Mr. Mellen said that the only way to find out where the original property lines were, would be to find the monuments and re-survey Columbia and Park Avenues sides. Mr. Spies had found a partial 1995 survey from the Columbia Avenue side when Mr. Hughes added a shed to his property, but it was not enough information to establish where the boundaries of the Park Avenue side. City Solicitor Mandalas said that the only way to really know where the property lines are, is to petition the Court of Chancery for a quiet title.

Chairman Littleton reopened the public portion of the hearing.

Mr. Robert Sievers noted that the Applicant's survey shows the property line as 93.45 feet, and his survey shows the property line as 93.4519 feet. The Applicant's survey shows the fence and the hickory tree, and his survey shows the markers, the property line and the fence on it. Mr. Sievers was not indicating that there is a property line dispute between his property and the Applicant's property. He did

not protest the Applicant's survey. Mr. Brian Patterson said that if the survey which was submitted by the Applicant is purporting to depict the side fence along the property line, Mr. Sievers was saying that he disagrees with that. Beyond that, Mr. Sievers was not protesting the survey.

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

Mr. Shulman said that in the information received by the Planning Commission, the side lot line is shown to be 92.90, and the survey shows 93.45 feet. There is a difference of 0.55 feet. Mr. Mellen said that the reason the information was provided was because of a potential lot line disagreement. Mr. Spies and Mr. Mellen went back through the City records to see if there were any surveys of the this property and the Hughes property; and then they went back through the records in Georgetown, DE to see if there were any deeds which reported using any surveys or metes and bounds. Mr. Mellen said that if Mr. Hughes was to argue that there were errors and his property line was not where he accepted it to be, then potentially Mr. Vardell might not have enough square footage. The fact that Mr. Hughes is agreeing the survey is correct and is accepting it becomes a moot point whether there were differences or not. In both cases, the total lot sizes are more than 10,000 square feet.

Exhibit F – Property Survey dated May 15, 1975 by Eschenbach from Book 747, Page 99, recording of the metes and bounds from Deed Book 2008, Page 235, dated November 13, 1995, which is identical to the metes and bounds from Deed Book 747, Page 98, dated May 21, 1975, summary information from the Deed Books, and Placement Survey dated October 22, 1987 by Wingate & Eschenbach. These materials were provided by Mr. Mellen and Mr. Spies.

City Solicitor Mandalas said that unless the Planning Commission can find evidence which overwhelms the survey provided by the Applicant, then it would be inappropriate to rely on anything other than what the Applicant has given the Planning Commission.

Mr. Shulman said that the Planning Commission's application rules say that the burden of the partitioning or any subdivision is on the applicant. The Planning Commission would have to find not that the older survey for the property takes precedence, but that the Applicant's survey for some reason is more believable. He did not think that the Planning Commission can let adjoining property owners agree where the property is. There are two different surveys for the same exact property with different results. Probably 99% of the time different surveys will not matter because the extra two feet will not matter; but here it makes a difference of whether the lot is under or over 5,000 square feet.

Attorney Brockstedt said that initially he concurred with City Solicitor Mandalas with regard to burden. In the Application where the Code requires the Applicant to provide a survey which is of sufficient weight goes to burden. With regard to the issue of precedence, it is his opinion that with a land-use decision and land-use application most specifically in a variance context and a subdivision partitioning context, each land presents its own unique set of facts and circumstances. The primary reason why each person has been appointed to the Planning Commission to make these decisions is to listen to and understand those particular facts which relate to each property, property owner, boundary, etc. Attorney Brockstedt said that precedent is not being set because each property is unique, and Delaware case law will back him up on that. He was confused as to the additional surveys presented this evening which are now exhibits and part of the record; and he asked if anyone can identify, other than the surveys which have been provided by the Applicant, what survey is an exhibit and is part of the record.

Mr. Shulman noted that the Property Survey dated May 15, 1975 by Eschenbach from Deed Book 747, Page 99 and the Placement Survey dated October 22, 1987 by Wingate & Eschenbach are part of **Exhibit F**. Mr. Mellen also noted that as part of this exhibit, there is a recording of the metes and bounds from Deed Book 2008, Page 235, dated November 13, 1995, which is identical to the metes and bounds from Deed Book 747, Page 98, dated May 21, 1975, and summary information from the Deed Books. The total lot area from those surveys was 10,186.03 square feet. The metes and bounds recorded with the deeds are a replica of the survey.

Attorney Brockstedt said that with regard to the survey dated October 22, 1987, it is a placement survey for Lot 52 Columbia Avenue. He could not see how the Planning Commission would give this survey any weight with regard to the sizes of Lots 49 & 51. It is not a property survey. This survey is designed to identify the location of structures. There is nothing which indicates to him that when the surveyor was hired to do this job, he did any more than just copy information off of some other document. With regard to the May 15, 1975 Property Survey, he said that it is virtually impossible to have a survey

which is 20 years apart with the exact same metes and bounds. He could not see how the survey in the remaining documents attached to Exhibit F would be persuasive. There is no evidence which would show that the Applicant did not comply with the requirements of the Code or the requirements of the partitioning application, and there is no evidence, compelling or otherwise, that the survey dated August 10, 2010 and submitted with the Application is not the survey on which a decision should be rendered. Discussion ensued as whether Exhibit F was a proper submission.

Chairman Littleton said that the metes and bounds identified by Mr. Spies and Mr. Mellen are literally the same metes and bounds that are in deed submitted as part of the application.

Mr. Spies made a motion, seconded by Mr. Mellen to adjourn to Executive Session at 8:18 p.m. Motion carried unanimously.

Mr. Spies made a motion, seconded by Mr. Mellen, to reconvene to the public forum at 8:25 p.m. Motion carried unanimously.

Mr. Mellen made a motion, seconded by Mr. Spies, to accept the partitioning of this property based on the current survey and the license agreement which Mr. Hughes, the neighboring property owner to the north, accepts the survey as being a legal document.

The consensus of the Planning Commission was that the approval would be conditioned upon filing the license agreement.

Mr. Mellen said that currently in the Code, there is no mechanism which the Planning Commission can operate on to take positive steps to stop the leveling or destruction of historic buildings. He read a portion of the Architectural Review Board Task Force report which was submitted to the City on October 1, 2007. Part of the Task Force's charge was the protection of community characters embodied in the preservation of structures with architectural merit which have local architectural significance and are deemed assets to the aesthetic cultural economic well-being of the City. Throughout the City there are private commercial structures that because of their characteristic architecture and longevity contribute to the City's ambience. An architectural principle in Rehoboth Beach is to develop a vibrant and unique setting where existing structures with architectural merit co-exist with and compliment newer structures. The Task Force was charged to establish how the architectural review could determine the historic or architectural value and significance of existing structures in their relationship to the historical value and character of the surrounding area. The review process which was a document that proposed how to conduct architectural review would determine architectural value, character and relationship of the structure to its surroundings. The review process would consider what is historic in terms of architectural value and merit, rather than age or past residence, etc. Determining the need and feasibility of historic preservation measures in Rehoboth Beach would require a separate process outside the Architecture Review Board Task Force. The City Commissioners chose not to carry the architectural review process forward. The Planning Commission is confronted both in this case and other cases with buildings which have historical merit, and the Planning Commission has no mechanism to deal with that.

The consensus of the Planning Commission was that the approval would also be conditioned upon the option of removal of the house which could also include demolition.

(Patterson – aye. Shulman – no. This property is obviously partitionable, and it has considerably more than 10,000 square feet even if adjustments are made to some of the dimensions. He was troubled by the notion if an applicant comes in with a survey which shows the dimensions are appropriate but another survey was filed at an earlier time for the same property that shows different dimensions which would make a difference of whether a lot is the correct size or not, that the Planning Commission has taken a position that the newer survey is correct because of better technology. It is unfair and overlooks the burden on the applicant to try to explain the discrepancy. Mr. Shulman would not have turned down this Application this evening, but he would have tabled it until the next meeting and have the Applicant try to come up with a better explanation than what he heard this evening why his survey is better than the other survey. The Applicant is entitled to research, investigate and explain it. No harm would come out of it because the partitioning is not finalized until after the building is either removed or demolished which cannot happen until after September 15, 2010. The Applicant will need to return for a final ruling after he meets the conditions. If the Applicant would have looked at the survey and come up with a solution to shift the lot line approximately one foot between the two lots, it would have removed any uncertainty. The Applicant would not have been hurt by this. Instead, the Planning Commission's process has been hurt by simply accepting something because it is newer rather than older. Gauger – aye. Mellen – aye. Littleton – aye. Spies – no, for the reasons stated by Mr. Shulman. Markert – aye. Gossett – aye.)

Motion carried.

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.

Mr. Patterson acknowledged that he had listened to the July 11, 2010 Planning Commission tapes.

Public Comment:

1. Mr. Richard Kirchhoff, 34 Canal Street, was in opposition to this application. He was appalled by the special breaks this application has gotten during this process: 1. Rezoning of the property and the entire neighborhood which was not necessary to do for this application to proceed. 2. Redoing the City Code relative to cul-de-sacs which was not necessary. This application could have been submitted in compliance with the existing Code. 3. Changing the requirement so that the lots do not have to front on a street that is at least 50 feet in width. There was a remedy in the Code that provided a solution to that issue, and the law did not have to be changed. 4. Zig-zag lot line issue. Those lots could have been drawn in a way that did not violate the zig-zag rule. Now the Applicant has indicated he wants to go to the City Commissioners to restrict parking to one side of Jones Lane. None of these things had to be done in order for this application to be acted on at least one year ago. The overarching reason these special considerations have been done is to save trees. Mr. Kirchhoff distributed a lot layout plan showing representation of the trees which will be sacrificed because of being in the middle of the building footprint. Depicted are ten trees which are the subject of the conservation easement and other trees which are in serious jeopardy of being killed during the road, house, or utility construction process. Collectively the citizens of Rehoboth have given up a lot to save those trees, and he has given up a lot more with the rezoning. The prime trees on the property will be taken down to make way for the houses, and most of the trees which will remain are of lesser value. Substantively with the application, the density with 15 houses is too much. In looking at the standpoint of land layout, twelve lots could be subdivided and is the right number for the neighborhood and would help to save more of the trees. Mr. Kirchhoff voiced concern about the lots which are sideways to Sixth Street, and the Planning Commission needs to consider what that will look like for the neighborhood. All the other houses front on Sixth Street, and there will be two houses that will have their sides fronting on Sixth Street. He did not know what the side yard setback requirements are and if those two houses would be set closer to the street than the other houses. The Planning Commission needs to consider and stipulate in the conditions that the facades of those two houses need to have some consideration for what the rest of the street looks like. The Planning Commission needs to do a lot more in terms of putting more restrictions on saving the trees. There are a lot of trees that could be lost during the fairly lengthy construction process which are not part of the conservation easement. Mr. Kirchhoff suggested that the Applicants should stake off the lots and mark the trees to come down, and the Planning Commission members should walk the property.

Chairman Littleton noted the outstanding issues from the last meeting: 1. Adequacy of on-street parking. 2. Sidewalks/walkways/pathways and what could be done on the western side of Canal Street. 3. Provisions within the homeowners' association documents with some of those relative to the properties abutting Sixth Street. 4. Demarcations of the right-of-way to the private property line. Other items that had been discussed at the last meeting were the edge protection for the street and looking at increasing the width of parking by one foot. Some of what the Planning Commission has arrived at consensus on has been incorporated into the plan which the Planning Commission has before it. A request was made that City Solicitor Mandalas should categorize some of the items relative to this application.

Chairman Littleton closed the public portion of the hearing.

Mr. Paul Lovett represented the applicants, and gave his presentation. Copies of submittal documents were distributed prior to the meeting.

Exhibit 30 – Cover letter dated July 30, 2010 and associate documentation from Oak Grove Motor

Court to the Planning Commission in response to a variety of subjects that remained outstanding at the conclusion of the Planning Commission's last meeting.

Attachment 1 – Revision of Plat PP-1 (Lot Layout)

Attachment 2 – Revision of Plat PP-2 (Jones Lane profile)

Attachment 3 – Image of how Oak Grove's new Plat addresses on-street parking

Attachment 4 – Proposed adjusted pages to the Declaration of Covenants

Attachment 5 – Oak Grove's ideas as to how to implement the CDP's vision for Canal Park

Full Size Plat Plan – PP-1, dated September 2009 and revised July 29, 2010

Full Size Plat Plan – PP-2, dated September 2009 and revised July 29, 2010

Mr. Lovett noted that in regard to Attachment 1, adjustments have been made to the street design and lot entrances. The fire hydrant was moved off the walking path and away from the tree trunk to minimize the impact of the internal hydrant on the trees. The parking lane was widened to nine feet which necessitated the narrowing of the bio-retention/rain garden by one foot on the other side of Jones Lane. The bio-retention was withdrawn from the tree to minimize the negative impact on the tree. The Applicants expect to meet all the stormwater distribution requirements. Four shared lot entrances are denoted that would allow an increased number of on-street parking spaces. Attachment 3 shows the on-street parking plan with 25 spaces at the 20 foot length or 30 spaces at the 18 foot length if the shared entrances on the four lots are imposed. This was in response to the Planning Commission's analysis that 1.5 on-street parking spaces (22.5) is appropriate. The bio-retention is increased at Lots 10 & 12. Attachment 2 shows adjustments to the street profile and right-of-way delineation. In Attachment 2, the depth of the bio-media mix is reduced and the drain line is removed which helps to minimize the effect on tree roots. This was a recommendation of the Sussex Conservation District which oversees stormwater management. Ms. Judy Schwartz of GMB said that she had met with Sussex Conservation District to discuss how to modify the bio-retention and better protect the trees. Mr. Lovett noted that where the property line will meet the bio-retention/rain garden, the demarcations are the depression and plantings. Corner property markers will serve to delineate the right-of-way. At the end of Jones Lane, the stubs of the blacktop will serve to define the right-of-way. A hard physical demarcation would create an obstacle for maintenance. The sidewalks will offer an approximation of the delineation between a property line and the City's right-of-way. A concrete edge support will delineate the right-of-way between the parking lane and the property line. Attachment 4 referred to the homeowners' association covenants. On Page 11, Section 5.1.10 was added. Conservation easements are held by the City of Rehoboth for protection of designated trees located on Lots 1, 3, 4, 5, 10, 14 & 15. These trees may not be removed but may be trimmed for purposes of construction with the approval of the City Building & Licensing office and the Oak Grove at the Beach Architectural Review Board. The City may require remediation in accordance with Code Section 253-32(F). Page 11A notes the ten specific large oak trees which were surveyed by location to be designated for preservation by the conservation easement. These trees are located in buildable areas of the lots and are not counted towards the other trees to be preserved. The total number of trees to be preserved is 53 under the assumption that all of the lots will be built on right away. The road construction will not cause the death of any trees. All of the largest trees will be preserved except for the one on Lot 14. On Page 16, the association will also be responsible for the maintenance of landscaping of all lots in the development regardless of ownership, including the bio-retention/rain garden area that is to become City right-of-way once Jones Lane is dedicated to the City. Property owners will not landscape into the parking area that is part of the City right-of-way. On Page 18, Section 10.2 was added. All driveways must be single wide (10 feet), not double wide (20 feet) in order to allow for adequate on-street parking. Shared entryways off the street are pre-defined in pairs for Lots 1 & 2, 4 & 5, 10 & 12, and 11 & 13. These pre-determinations were made for the purpose of assuring adequate on-street parking and to preserve trees. For these lots, owners must anticipate that they will be required to share the entryway with the neighboring lot. Section 10.3 was added. The facades of residences located directly on Sixth Street, Lots 8 & 9, must include interest accents that suggest a frontage on Sixth Street, even if the primary entrance is to be on Jones Lane. This is to assure that neighboring residences across the street are not faced with the stark side of a building. In Attachment 5, the Applicants are suggesting to have a quieter Rehoboth boardwalk constructed at water level which could have the following advantages: 1. Link with the museum's plan for creating a handicapped accessible water level platform as a quay for a canal ferry. 2. Provide short-term docking location for visits by recreational boaters throughout the bay estuaries. 3. Accommodate eco-tourism by providing boaters with access to Rehoboth convenience stores, restaurants and shops. 4. Provide a place for walkers to comfortably add to their walking circuit. 5. Provide a place for fishing and crabbing. 6. Provide a place for quiet reflection platformed seating areas. 7. Provide pedestrians with a safe route to the other side of Rehoboth Avenue. 8. Achieve the CDP's long-term objective of creating a

park at the canal. 9. Extend the park's appeal by adding a variety of additional activities. As Oak Grove's contribution, Mr. Paul and Mrs. Cindy Lovett would agree to champion the project. It would require them to coordinate with the museum, gain approvals of the Army Corps of Engineers, create an architectural design, gain approval of City management including the Planning Commission, gain support from Rehoboth's public, organize the necessary fund-raising, secure bids for construction, and oversee construction.

Ms. Judy Schwartz assembled a sequence for this project. The Planning Commission would provide a preliminary approval of the project with a list of contingencies such as a hydraulic analysis, engineering, approvals of other agencies, etc. Once the project receives the Planning Commission's preliminary approval, action would be taken to address all the contingencies, get the other approvals and work with the City Engineer on the engineering details. Performance bonds would need to be posted by the owners. They would come back with those bonds and provide proof of all the agency approvals for engineering. The Applicants would return to the Planning Commission for final approval based on the contingencies being met and the performance bonds for construction being posted. Typically, once that is done the subdivision is recorded within a certain period of time. At that point, the actual subdivision project would commence with construction. Also at that point, the Applicants are free to begin marketing the lots. No building can start on the lots until all the site development and the street is completed, inspected and accepted. Once that process is complete, there will be a process for which the bonds would be released. Then the water, sewer and storm drain improvements would be dedicated to the City. The plat would be re-recorded. Only after the dedication can the construction of the individual residences begin.

Chairman Littleton called for discussion among the Planning Commission members.

Mr. Kyle Gulbranson provided feedback on the parking issue. At last month's meeting, a parking scenario was submitted, and it was estimated that there could be approximately 19 on-street parking spaces. The only way to increase the number of spaces would be to dedicate and identify shared locations for driveways on the property which the Applicants have done. The 25 parking spaces proposed by the Applicants is a reasonable number. If the Applicants require combined driveway access on the lots indicated, they can comfortably accommodate 25 on-street parking spaces. There are still issues with whether or not a car can physically be parked underneath the trees on Canal Street. Improvements will need to take place on Canal Street to allow the parking such as grading and paving. Possible tree removal issues will come into play. Mr. Gulbranson and Ms. Sullivan were not advocating whether shared driveways were a good idea or not. This would be the only way to maximize the on-street parking.

Mr. Mellen was not comfortable with what is being proposed. The rejection of five parking spaces on Jones Lane for the six internal lots is inadequate. It is not consistent with the way the property owner would like to use the property. With five parking spaces, there is not enough for one car per lot. Although the share driveway entrances would appear to be a good idea, he has concern with having seen what has occurred with other properties. Two driveways side by side tend not to work. Parking has been the crux of the problem from the beginning. There has been no give in terms of the number of lots and no give in terms of providing more interior space or less lots. The parking density is not right, and it will create problems.

Chairman Littleton said that the issue is because of parking on one side of the street. If parking is added on both sides of the street, the bio-retention area would be lost. If the bio-retention area is lost, then storm sewers would be required. Mr. Alan Kercher said that the Applicants will be installing an outfall pipe from the bio-retention area to a stormwater pipe that runs down Sixth Street and will tie in down towards the Canal. Ms. Schwartz said that the bio-retention area is designed to address water quality for small storms. The storm drain pipe is still needed to accommodate a large storm. There is still a requirement for a pipe on Sixth Street. The Conservation District has offered the alternative of a pervious pavement such as pervious bituminous hot mix if the bio-retention needs to be deleted to gain more parking. Mr. Lovett noted that a bio-retention area is designed as a shallow depression with deep rooted native plants and grasses positioned to capture rainwater runoff and stop the water from leaching into the sewer system. The benefits are filtered runoff, recharged local groundwater, conserved water, improved water quality, protected rivers and streams, removal of standing water, reduced mosquito breeding, increased beneficial insects, reduced flooding, create bird and butterfly habitats, survive drought seasons, reduced garden maintenance, entrance sidewalk appeal, and increased garden enjoyment.

Ms. Schwartz said that if the Applicants would have grass parking on both sides of the street and a pervious pavement, a depressed curb or valley gutter would be needed to convey the water down to Sixth

Street. Mr. Kercher noted that valley gutters present long-term maintenance headaches. Another solution if there would be parking on both sides of the street is pervious pavement. A bio-retention area is usually located in the right-of-way or more often is located in open space, not on someone's lot.

Mr. Lovett suggested that if the Planning Commission requires parking on both sides of Jones Lane, the bio-retention area would be moved into the easement area between the parking area and the properties.

Mr. Spies said that parking will need to be on both sides of the street.

Mr. John Gauger said that in regard to fairness, people on one side of the street can park in front of their houses, and on the other side those people would not be able to. He agreed that parking needs to be on both sides of the street.

Mr. Brian Patterson agreed with parking on both sides of the street.

Mr. Gossett did not necessarily want to defend parking on one side of the street. He did not know if parking is as paramount an issue as in a bigger city, and he was not defending it. The Planning Commission should make sure it considers the aspect that it is encouraging walking, bicycling, alternative modes of transportation, etc.

Mr. Francis Markert said that there is a "build it and they will come" mentality. Enough parking spaces cannot be put in. His objection from previous meetings has been that there is all this effort in order to try to preserve the trees and green spaces; and then that entire effort is extinguished by trying to accommodate more parking spaces. If Sixth Street and Jones Lane are serving the eight lots, it comes close to 1.5 spaces per lot which is not too deficient. If parking would be on both sides of the street, then there would be fifteen parking spaces for the eight lots.

Chairman Littleton said that this is not a gated private community. It is a City street with City access. He thought there was a consensus from the majority of the Planning Commission members for parking on both sides of the street.

Mr. Mellen was not considering, when he suggested that more parking is needed, that the City Commissioners would find issue with this. He was not concerned with Jones Lane providing excess parking for more people coming into Rehoboth. His concern was the property owner having to tell people to park somewhere else because there is not enough available parking. Parking is not adequate for the use by the people who will own the lots.

Mr. Shulman was not really against parking on both sides of the street, but he was also not against parking on one side of the street. This property is not zoned to have a piece of land to serve as communal parking.

Mr. Patterson said that open space could be dedicated over to the City to be used as a park with parking spaces as well.

Mr. Lovett said that if the Planning Commission will require parking on both sides of Jones Lane, the Applicants will concede to it. As an alternative, the Applicants could require three parking spaces on each of the internal lots. The bio-retention will be studied relative to parking on both sides.

Mr. Mellen assumed the Chairman's role in order for Dr. Littleton to speak about sidewalks and pathways.

Mr. Gulbranson said that he had met with Ms. Sullivan and Mr. Kercher to look at alternatives for a sidewalk on the west side of Canal Street. The issue with Canal Street and the right-of-way being very narrow is that whatever happens on the eastern side of Canal Street will affect what can be done on the western side. There is not much room on the right-of-way. The pavement has shifted closer to the right-of-way line on the west side; and to put a sidewalk in on that side would require a lot of grading to be done and a number of trees would have to be removed. An alternative to that would be the social trail which goes through Canal Park itself and meanders around trees. A connection could be made to the sidewalk on Rehoboth Avenue, either as a through sidewalk or a pathway of some sort. There is room where a five foot wide ADA compliant pathway could meander through the property. The CDP states that this section of Canal Park shall have a meandering pervious pathway through the park itself; and that would be in addition to any other improvements. Some type of pervious surface such as ADA compliant gravel is being advocated so that a wheelchair or bicycle could be used on it. Mr. Gulbranson, Ms. Sullivan and Mr. Kercher really did not look at the eastern side of Canal Street. A lot of improvement will need to take place

on the eastern side of Canal Street to allow for any parking. The question is whether the Planning Commission wants the connection of the sidewalk from Rehoboth Avenue along the eastern side. The people who will live in the subdivision will have access to Rehoboth Avenue. While the improvements are being made for parking, it would be perfect to add the sidewalk on the eastern side. One constraint would be the loss of trees in the right-of-way.

Ms. Cindy Lovett noted that the speed limit on Canal Street is 15 mph. She asked if a share the road sign could be put up.

Dr. Littleton said that what Mr. Gulbranson is proposing is to improve the pathway as it exists there. This would not be a bicycle or wheelchair path, but it would be a recreational walkable path that has aesthetic appeal to it.

Mr. Gulbranson said that there has been no correspondence from the Army Corps of Engineers as to whether it would allow the pathway.

Chairman Mellen said that the development of Canal Park is a different subject from what is being considered here. No normal sidewalk could be put in on the western side of Canal Street. A sidewalk can be put in on the eastern side, but what purpose does it serve. Improvements have to be made to the street just to attain parking.

Mr. Shulman thought that it would be appropriate and may even be necessary to have an off-street pedestrian path. The Planning Commission needs to find a way to get pedestrians off of Canal Street. There are two options: 1. Have a sidewalk on the east side of Canal Street. 2. Have a nice upgraded pedestrian path on the bank of the Canal.

Mr. Lovett said that he has renderings of how the Applicants would like to improve the western side of Canal Street. The Applicants would prefer to take out the yew between the oak tree and the canal bank to create a path which connects to the sidewalk on Rehoboth Avenue.

Dr. Littleton's preference was to have a paved sidewalk. Mr. Kercher said that it would cost between \$20,000.00 to \$30,000.00 for curb and sidewalk on the east side of Canal Street. Because the canal park is Army Corps of Engineers property, he was almost certain that the sidewalk would need to be ADA compliant.

Mr. Jim Lovett asked if a boardwalk could be used as a path. Ms. Sullivan had mentioned putting in a boardwalk to the City Manager, and his main concern was maintenance.

Mr. Patterson said that for long term, he would agree with a paved sidewalk. A standard paved sidewalk abutting the roadway is the future for that part of the City and Canal Park. If it is going to be used, it needs to be used properly and needs to be accessible by wheelchairs, etc. On the west side of Canal Street, it appears that it would require narrowing the roadway. At some point the City should look at that and perhaps turn it into a one-way road with a proper park and a proper sidewalk. It is not feasible right now. Mr. Markert agreed that Canal Street should be a one-way street.

Dr. Littleton resumed his position as chairman.

Chairman Littleton said that at one time Mr. Lovett had wanted to improve the Canal Park, but Chairman Littleton did not think that he should be allowed to do it. The City should improve this area. The question would be if the Applicants would voluntarily want to do something financially to make sure that this happens. The planning, designing and licensing should not be an obligation of the Applicants. Mr. Shulman said that instead of the Applicants spending \$25,000.00 to put in a new sidewalk on the east side of Canal Street, the Applicants should write a check to the City for \$25,000.00 so the Planning Commission could meet with the Army Corps of Engineers and arrange to get the trail built. Mr. Mellen said that the Applicants have said they would create a trail. It is illogical to say that the Applicants can create the trail that will ultimately be required in the development of that park. There has been no planning relative to that. It would be logical for the Applicants to make an offer to provide manpower to help that process along whenever it takes place, and the Applicants should donate an equivalent of what a sidewalk would have cost them on the east side to put into a trust fund. Mr. Lovett said that they will either offer the time or they will offer the cash. They would like to contribute the money when the pathway is constructed.

Mr. Kercher will specify what needs to be done relative to parking.

Chairman Littleton summarized that the majority of the Planning Commission members would like to

see about getting a pathway on the western side of Canal Street. The Applicants have mentioned that they would like to see a pathway on the western side of Canal Street, and they are willing to do a financial contribution provided that something is actually done. There should be some equitable way to come up with such a process and price. It is appropriate for the Planning Commission to require that the Applicants put in sidewalk and curbing on the eastern side of Canal Street. Only in lieu of putting in the sidewalk, it is something the Applicants should volunteer to do. The Planning Commission does not have the ability to require the Applicants to put in a sidewalk on the western side. If the Planning Commission says in lieu of putting in a sidewalk on the east side, the Applicants would be willing to contribute a finite amount of money, this would be volunteered. City Solicitor Mandalas said that he would rather see it be voluntarily presented to the Planning Commission. Chairman Littleton said that the Applicants have the right to have the money escrowed or whatever needs to be done. Mr. Kercher and Mr. Gulbranson will handle getting the engineering aspects on the east side in regard to parking and parking improvements. City Solicitor Mandalas will work with the Applicants on an agreement regarding an escrow.

Mr. Mellen was uncomfortable with establishing a fund. From a planning standpoint, the Planning Commission has to make the fundamental decision if Canal Street is wide enough to have sidewalks on both sides, and if it is logical to have a sidewalk on the east side; or from the standpoint of the total planning, if it is better to have pedestrians on the western side. It is a narrow street and there is very little purpose with putting sidewalks in front of six or seven houses when there is no place to go.

The following changes were suggested in regard to the covenants:

1. Page 3. 1.20. "Jones Lane" shall mean the paved surface and the right-of-way associated with the street.
2. Page 4. 1.25. "Street" shall mean the internal street, named "Jones Lane" which is constructed by the Subdividers within Oak Grove at the Beach as shown on the Plat and is to be dedicated to the City of Rehoboth.
3. Page 7. 4.2.4. The street (Jones Lane) within Oak Grove at the Beach and the Storm Water Management System and any other Association Property including, without limitation, all beach grass, irrigation, and all original landscaping and continued planting and care of trees and shrubbery and additional landscaping.
4. Page 8. 4.8.5. Remove "[S]ubdividers shall not seek dedication and acceptance of Jones Lane and its imbedded islands, unless so required by the City of Rehoboth.
5. Page 9. 4.9. City Solicitor Mandalas will need to review this section. Mr. Shulman suggested that the Planning Commission should figure out what the fallback is if the association does not upkeep the property, etc.
6. Page 11. 5.1.9. Remove "[T]here shall be no easement for motor vehicle access, ingress or egress over the Streets of Oak Grove at the Beach for anyone who is not an Owner or Owner's delegate or assigns. This restriction is subject to modification if dedication of the streets is sought and/or accepted by the City as provided for herein".
7. Page 19. 10.4. Temporary Structures. The City does not allow temporary structures unless approved by the City Manager.
8. Page 19. 10.6. Weeds and Undergrowth. The A.R.B., or its successors, may first notify the Owner or occupier of a Lot in violation of this restriction to cut and/or remove the same within five (5) days from the giving of such notice.
9. Page 20. 10.13. Requirements need to be specified.
10. A general provision is needed that says if any of these covenants are inconsistent with any City ordinance or regulation. Then the City law would apply.
11. A provision is needed that if the City, either through the Building Inspector, Mayor & Commissioners, Planning Commission, etc., has to take any legal action to enforce the covenants and the City is successful, then it can recover its legal fees.

City Solicitor Mandalas will review the covenants and work with the Applicants to finalize them.

The consensus of the Planning Commission members was to allow Ms. Schwartz and Mr. Kercher to work through the parking on both sides of the street issue and how it will affect the bio-retention/rain garden, drainage, sewer, etc.

Chairman Littleton noted that a resolution is needed that the Planning Commission can consider acting upon at the next meeting which is comprehensive to all the aspects including engineering and legal. City Solicitor Mandalas has been working on that document, and the members will provide their feedback to

him. Mr. Shulman said that the Mayor & Commissioners, Planning Commission and the Building Inspector should have enforcement rights and should be added to the resolution. He had drafted a list of those rights. There should be a provision in the resolution of approval which says that the Applicants and the HOA and any person in privity with the Applicants and the HOA, and any subsequent lot owners who are transferred a lot that was subdivided, waive any right to object to any of the conditions in the resolution and any of the covenants.

The Public Hearing was closed.

OTHER BUSINESS

There was nothing to report from the Building Inspector and the City Solicitor.

Chairman Littleton reported on the State's PLUS review of the Comprehensive Development Plan. The CDP has been State certified. Copies of the CDP will be forwarded to the Planning Commission members.

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. A report was also called for of the Board of Commissioners' August 9, 2010 meeting relative to DelDOT's plans for the Park & Ride and the proposed Destination Station at this site.

Mr. Shulman has reviewed the authorization bill which Congress has passed, and it states specifically that the monies are to be used for the building, design, construction, etc. of Destination Station. There is a lot of misinformation that is going around.

Chairman Littleton deferred his report of the August 11, 2010 follow-up meeting to the Cape Sub-Region Planning Workshop held on June 23, 2010.

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

No new subdivision applications have been filed to date.

The next Regular Meeting will be held on September 10, 2010 at 6:00 p.m.

Mr. Markert made a motion, seconded by Mr. Spies, to adjourn the meeting at 11:24 p.m.

RECORDED BY

(Ann M. Womack, Recording Secretary)

**MINUTES APPROVED ON
SEPTEMBER 10, 2010**

(Preston Littleton, Jr., Chairman)