PLANNING COMMISSION MEETING
CITY OF REHOBOTH BEACH

October 24, 2011

The Special Meeting of the Planning Commission of the City of Rehoboth Beach was called to order at 9:06 a.m. by Chairman Preston Littleton on Monday, October 24, 2011 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

ROLL CALL

Mr. Francis Markert called the roll:

Present:	Mr. Harvey Shulman Mr. John Gauger left the meeting at 1:35 p.m. Mr. David Mellen Chairman Preston Littleton Mr. Francis Markert, Jr. left the meeting at 2:08 p.m. Mr. Patrick Gossett Mrs. Jan Konesey
Absent:	Mr. Brian Patterson Mr. Timothy Spies (resigned)
Also Present:	Mr. Glenn Mandalas, Esq., City Solicitor Mr. Mike Hoffman, Esq. of the law firm Baird Mandalas LLC Ms. Terri Sullivan, Chief Building Inspector

A quorum was present.

APPROVAL OF MINUTES

Minutes of the June 10, 2011, July 8, 2011 and August 12, 2011 Planning Commission Regular Meeting were distributed prior to the meeting.

Mr. Patrick Gossett made a motion, seconded by Mrs. Jan Konesey, to approve the June 10, 2011 Planning Commission Regular Meeting minutes as written. Motion carried unanimously.

Mrs. Konesey made a motion, seconded by Mr. Gossett, to approve the July 8, 2011 Planning Commission Regular Meeting minutes as written. Motion carried unanimously.

Mr. Gossett made a motion, seconded by Mrs. Konesey, to approve the August 12, 2011 Planning Commission Regular Meeting minutes as written. Motion carried unanimously.

CORRESPONDENCE

Correspondence will be read when the continuation of the Public Hearing of amended Partitioning Application No. 0710-02 requesting the partitioning of a property located at 2 St. Lawrence Street portion of the meeting is held.

NEW BUSINESS

Chairman Littleton called to consider a request made by D.C. Kuhns for an extension to the approved partitioning at 807 King Charles Avenue. The property is owned by E. Douglas Kuhns, Trustee of E. Douglas Kuhns Revocable Living Trust and Eileen P. Kuhns, Trustee of Eileen P. Kuhns Revocable Living Trust. The partitioning was approved on March 11, 2011.

Building Inspector Terri Sullivan noted that the demolition has been completed. No extension was needed in order to finalize the partitioning.

Mrs. Konesey made a motion, seconded by Mr. David Mellen to finalize the partitioning of 807 King Charles Avenue. Motion carried unanimously.

OLD BUSINESS

Chairman Littleton called for the continuation of the Public Hearing of amended Partitioning Application No. 0710-02 requesting the partitioning of a property located at 2 St. Lawrence Street designated as Lot Nos. 22, 23, 24, 25, 26, 27 & 28, Block 33, as shown on a plot of lots of Rehoboth Heights, said plot being of record in the Office of

Recorder of Deeds, in and for Sussex County, in Deed Book No. 264 at Page No. 410 and also any lands extending 150 feet east of the numbered lots, into two (2) lots with Lot Nos. 22 & 23 becoming one (1) lot of 5,000 square feet, and Lot Nos. 24, 25, 26, 27 & 28 and land extending 150 feet east of the numbered lots becoming one (1) lot of 27,500 square feet. The property is owned by 2 St. Lawrence Street LLC. The Partitioning has been requested by Chase T. Brockstedt, Esq. of the law firm Bifferato Gentilotti LLC on behalf of the owner of the property.

Ms. Ann Womack, City Secretary, acknowledged that the continuation of the Public Hearing was duly posted and advertised.

Chairman Littleton noted that the Planning Commission, at its August 12, 20122 meeting, received an amendment to the Application clarifying that the owner of the property located at 2 St. Lawrence Street has made a claim he owns 150 feet east of the numbered lots. A number of justifications were presented including the Ridgely case as an analogy of the 150 feet. While the Planning Commission was trying to make a decision, there were two actions taken at that meeting: 1. Continue the Public Hearing on October 24, 2011. 2. Chairman Littleton was charged to contact the City Manager to see if the City had any other information relative to this land in question; and if not, what conditions the City would suggest for the Planning Commission to consider placing on the Application for approval, relative to the 150 feet. The City Manager had referred information back to the City Solicitor for response. Since that time, new information has been developed. Clarification now needs to be made on whether or not the Planning Commission agrees that this piece of property can be partitioned. The only issue is with the land that extends eastward 150 feet of the numbered lots. If the Planning Commission would agree with the 150 feet as proposed, then conditions and approval would need to be set. Chairman Littleton noted the procedures for today's hearing.

Correspondence:

1. Letter dated August 23, 2011 from Mr. Chase Brockstedt, Esq. of the law firm Bifferato Gentilotti LLC to Chairman Littleton, stating that adverse possession is not applicable with regard to this property. The purpose of this letter was to provide the Planning Commission with comment from the Applicant regarding the potential conditions that may accompany an approval. Aside from being required to prove ownership of the land in question, the Applicant seeks to maintain the status quo. To the extent the Planning Commission chooses to impose conditions, the Applicant would suggest and be agreeable to the following: 1. The property to be addressed would be the existing Boardwalk and the land lying from the eastern edge of the Boardwalk extending east from the easterly line of Block 55. 2. The property to be addressed would be subject to uses which would be consistent with the maintenance of the natural, scenic and open space including but not limited to the protection of light, air, wind and view. 3. The use by the public of the property to be addressed would be in a manner consistent with the intent of the currently allowed usage, pedestrian use, and within the rules and regulations of the City for the beach and Boardwalk in effect at the time of the granting of the Application. The purpose of the aforementioned definition is to allow for changes in use which are consistent with the historical and current use of the beach and Boardwalk. Uses which constitute a substantial deviation from this criteria would be prohibited. 4. The use by the City of the property to be addressed would be for the purpose of maintenance, repair, erosion control and conservation practices. Reasonable methods and equipment may be employed. All related costs are to be borne by the City. 5. Other than the existing Boardwalk, no building, structure or improvement of either a temporary or permanent nature, shall be constructed, repaired, remodeled, reconstructed or maintained within the property to be addressed. 6. No commercial use inconsistent with the criteria to be protected shall be permitted within the property to be addressed.

Building Inspector Terri Sullivan stated that there is no new information to add regarding this Application.

City Solicitor Glenn Mandalas stated that two resolutions have been prepared, a Resolution of Approval and a Resolution of Denial. Several conditions have been placed in the Resolution of Approval; and if the Planning Commission would like to go in that direction, those conditions can be amended. These resolutions can evolve as the process moves forward. The Resolution of Denial has findings of fact and conclusions of law. The findings of fact and conclusions of law were drafted by City Solicitor Mandalas along with help from at least one member of the Planning Commission. A few documents have been located since the last meeting.

Exhibit A. Record from Court of General Sessions. As one of its ancillary duties, this Court dealt with streets, vacating streets, etc.

1. Page 373 of the Petition, dated October 12, 1925, to vacate certain streets. The streets were basically located west of Scarborough Avenue and were primarily being vacated for the purpose of bringing in the Rehoboth Beach Country Club. City Solicitor Mandalas read a portion of the

Petition.

2. Map of Rehoboth Heights, dated May 1924. On June 10, 1924, a map of Rehoboth Heights was recorded in Book No. 243, Page 600 with Sussex County Recorder of Deeds. The 1924 map shows streets and lots being plotted west of Scarborough Avenue.
3. Page 377 of the Court Order, dated October 14, 1925, requesting a report from certain individuals. City Solicitor Mandalas read a portion of the Court Order.

City Solicitor Mandalas wanted this document to be placed in the record because there has been question about the 1924 map and its relevance. This document suggests that a court in October 1925 had acknowledged the 1924 plat as having some relevance and relied upon it as the map to be used to vacate streets at least in the area of Rehoboth Heights. City Solicitor Mandalas noted that Block 33 on the 1924 map is shown as being 600 feet in length rather than 750 feet. The 1876 map showed Block 55, currently Block 33, on the 1924 map as being 750 feet in length.

Mr. Mike Hoffman, Esq. noted that the 1929 Board of Commissioners Meetings were about the Boardwalk. This is when the Commissioners discussed and voted to expand the Boardwalk into the Rehoboth Heights area.

Exhibit B. Rehoboth Beach Commissioners Meeting Minutes:

1. Dated November 6, 1926. Annexation of the Rehoboth Heights area and the Boardwalk itself.
2. Dated December 4, 1924. Evaluation of the pipes and streets.
3. Dated July 16, 1927. Payment for water mains, utilities and infrastructure. The vote caused a Mayor and Commissioner to give up their seats.
4. Dated April 26, 1929.
5. Dated April 13, 1929.
6. Dated May 16, 1929.

City Solicitor Mandalas read an excerpt from the April 13, 1929 Minutes of Rehoboth Beach Commissioners Meeting. He read the Resolution authorizing the Commissioners to borrow money and issue bonds for the purpose of extending, enlarging, repairing and improving the Boardwalk. The Boardwalk from the north side of Lake Avenue to the south side thereof should be rebuilt to a width of 12 feet. The Boardwalk from the south side of Lake Avenue to the south side of Baltimore Avenue should be rebuilt and widened. The Boardwalk at the foot of Rehoboth Avenue should be rebuilt. The Boardwalk from Rehoboth Avenue 300 feet south should be rebuilt and widened. The Boardwalk at 12 feet wide should be built from Brooklyn Avenue southward to Prospect Street. The approaches to the Boardwalk should be built, repaired and widened. The estimated total cost of the above is the sum of $19,000.00, and bonds should be issued for that amount to defray the cost. City Solicitor Mandalas read an excerpt from the May 16, 1929 Minutes. A Resolution was adopted that $19,000.00 be borrowed for Boardwalk purposes, and bonds of the town to that amount be issued and sold for the purpose of extending, enlarging, repairing and improving the Boardwalk. The Resolution did not address any more about the areas of the Boardwalk and how wide.

Exhibit C. Series of documents from August 25, 1928 through September 7, 1929 from Delaware Coast News which are predominantly advertisements for sales of lots in Rehoboth Heights:

1. August 25, 1928 Demand Ad – Sale of lots in Rehoboth Heights, Block 34.
2. August 25, 1928 Continuation of above advertisement.
3. August 25, 1928 Continuation of above advertisement.
4. September 1, 1928 Location Ad – Sale of lots in Rehoboth Heights, Block 34.
5. September 1, 1928 Continuation of above advertisement.
6. September 1, 1928 Continuation of above advertisement.
7. August 24, 1929 Final Sale Ad - Lot Auction of Rehoboth Heights and Silver Lake Shores.
8. August 24, 1929 Continuation of above advertisement.
9. August 31, 1929 Article - Absolute Auction Sale Labor Day/transcribed copy.
10. August 31, 1929 Article - Absolute Auction Sale Labor Day/original article.
11. September 7, 1929 Article - Auction Sale Successful on Monday/transcribed copy.
12. September 7, 1929 Article - Auction Sale Successful on Monday/original article.
13. September 7, 1929 Continuation of above original article.

Mrs. Jan Konesey asked if any documents were found which indicated that the City leased or had some type of a lease agreement to put the Boardwalk over other people's property. City Solicitor Mandalas noted that in a set of Board of Commissioners' Meeting Minutes, the Commissioners had said with regard to extending the Boardwalk that they would need to refer the Ridgely matter to the Boardwalk Committee. At that time, the Commissioners had recognized that Ridgely at least probably owned land which extended further because he

had bought the land before the 1924 map had been done. There was no discussion of other owners, land leases or any types of easement to extend the Boardwalk. The map was recorded in 1876 of the Rehoboth Heights area. Another map was recorded in 1924. Ridgely purchased property prior to the recordation of the 1924 map. Everybody has recognized that the 1876 map was the only map that could have been the map of that area at the time when Ridgely purchased the property. The 1876 map shows the oceanfront blocks as being 750 feet. The 1924 map shows them as being 600 feet. Ridgely and others who had purchased property prior to 1924 probably had land that extended an additional 150 feet seaward.

Mr. Harvey Shulman clarified that at one time the area which Ridgely purchased was owned by the Rehoboth Heights Association. Something may be in the record which indicates that the Rehoboth Heights Association transferred land originally. At some point the Rehoboth Heights Association and the people associated with it conveyed lots to the Rehoboth Heights Development Corporation. It is significant that the people who bought property after the 1924 map was recorded, seemed to have bought from the Rehoboth Heights Development Corporation as opposed to Ridgely and others who might have purchased from the Rehoboth Heights Association prior to 1924.

City Solicitor Mandalas mentioned that the Court of General Sessions was a court which dealt with streets. The 1876 map was recorded, and then the 1924 map was done. The second block lengthened in the 1924 map so presumably a street shifted from the 1876 map. Something would have had to be done at the Court of General Sessions to change the initial street layout from 1876. No document was found where the Court of General Sessions did anything with the streets other than in the area of the Rehoboth Beach Country Club. When the map was recorded in 1876, presumably the streets which are shown on it were dedicated to the public. With regard to the 1924 map, the courts relied upon the land as depicted in terms of the length of the blocks and all locations of the streets. Nothing specific was found relative to the abandonment of Surf Avenue. The 1924 map shows "Surf" in the area where Surf Avenue was located. The question is whether "Surf" is a street or open space. Things which were not plotted on the 1924 map were dedicated for public use.

Mr. Shulman said that on the 1876 map, the first two ocean blocks are the same length of 750 feet. On the 1924 map, the second block is 825 feet long, but the first block is 600 feet long. The first block lost 150 feet, and the second block gained 75 feet.

Mr. David Mellen mentioned that on the map of Rehoboth Heights, nothing is shown of Rehoboth in general; and on the maps of Rehoboth, nothing is shown of Rehoboth Heights. The 1924 map shows Rehoboth Avenue and the railroad, but it does not show cross streets. There is no way of knowing what existed in Rehoboth relative to what is shown in Rehoboth Heights. It is clear on the 1924 map that the first block is 600 feet long.

Mr. Chase T. Brockstedt, Esq. represented the 2 St. Lawrence Street LLC. Attorney Brockstedt noted that the purpose of the letter dated August 23, 2011 which he had sent to Chairman Littleton was to confirm where they are in regard to the Application, check into potential adverse possession issues and dedicate the bulk of today's meeting to the proposed conditions that the Planning Commission would deem reasonable to be imposed on the approval. He had hoped that the Applicant would have seen something from the Planning Commission or City Solicitor Mandalas regarding the proposed conditions. Attorney Brockstedt was provided with a copy of the General Session's Order on September 9, 2011. He and Mr. Richard Harris were in contact with City Solicitor Mandalas on September 9, 2011 in preparation for the hearing that evening. On October 23, 2011, the Applicant was provided with the two documents which contain various Minutes of Board of Commissioners Meetings as well as the advertisements from August 25, 1928 through September 7, 1929.

Mr. Patrick Gossett noted that he had faxed the copies of the advertisements to City Solicitor Mandalas on October 21, 2011. The documents were obtained at the Rehoboth Beach Public Library.

Attorney Brockstedt did not deem the documents relative to any of the information which he and the Applicant have provided to date. Attorney Brockstedt clarified Chairman Littleton's indication that in the beginning the Applicant represented that he owned land to the ocean, and it was an undefined title right which existed in the original deed. When ownership of that right based on the surveyor's plat extended to the mean low water line of the Atlantic Ocean, the Applicant went about to define that right. Based on the substantial evidence in the record, this right has been defined as a boundary which is 150 feet east of the residentially zoned lots. The surveyor had relied on the language in the deed which talked about a right title and interest extending to the Atlantic Ocean. Up until March 2011, this process was to determine what that right is. The right is fee simple to that land seaward of the residentially zoned lots.

Mr. Shulman noted that on August 18, 2010, the Applicant's attorney sent an email to the City Solicitor and

Building Inspector in which it referenced the Applicant's surveyor. The surveyor stated that "[T]he land owned by the Applicant extends east to the mean low water line". On August 20, 2010, the Applicant's attorney sent a letter to Chairman Littleton, objecting on having to file an amended Application. "The entire property owned by the Applicant extends from the western edge of the land identified as Lot 22 easterly to the mean low water line of the Atlantic Ocean. Although the question was raised at the Preliminary Hearing, the hearing which was not provided; and the ownership issue is resolved based on a more thorough reading of materials obtained in the Application." There was no mention of right title and interest, but it was a statement that the Applicant owns land to the mean low water line. On August 24, 2010, the City Solicitor wrote to the Applicant's attorney, expressing disagreement with the prior letter from the Applicant's attorney. The City Solicitor said that "[T]he City gave public notice of these lot dimensions before the Preliminary Hearing which your client neither objected to or corrected. Following the meeting, however, your client's position is now that it owns the entire property east of Lots 25–28 to the mean water line of the ocean." In a letter dated August 25, 2010 from the Applicant's attorney to the City Solicitor, it says that "[A]lthough owned by the Applicant (the fact that the Applicant recognizes this disputed land in the City), the land cannot be used." In a letter dated September 2, 2010 from the Applicant's attorney to Chairman Littleton, it says, "One parcel will be the lands identified as Lots 22 & 23, and the second parcel will be the lands identified as Lots 24-28. Although the proposed lots comprised in Lots 24-28 will also include the land lying between Lots 22-28 and the Atlantic Ocean (zoned O-1), that land is (1) not suitable for subdivision and (2) cannot be used to calculate the usable space so the parcel can be created." The Applicant's attorney had said that "the land lying between Lots 22-28 and the Atlantic Ocean is owned by the Applicant and will be conveyed with the newly created lot, comprising Lots 24-28." As a result of that, the Planning Commission sent out a Public Notice and an Agenda item for the October 2010 meeting where it identified two lots as one of 5,020 square feet and the remaining lot of an unknown size because it had the statements about ownership to the ocean. It was not until the October 8, 2010 Meeting where the Applicant made the statement about right title and interest. At the November 10, 2010 Meeting, a presentation was made by the Applicant's attorney, and the Minutes reflect the attorney's statement that "[A]t no time has the Applicant come forward and made an argument that the fee simple ownership of Lots 22-28 is the same or similar to some ownership of a right in the land lying to the east." The first time the Applicant advised the Planning Commission that he did not "own the land to the ocean" but instead had some "right title and interest in that land" was during the November 10, 2010 Planning Commission Meeting. Before that, the statements as to ownership of the land were unqualified.

Attorney Brockstedt said that until it was determined what the right was, they were basing it on the language in the deed. He and the Applicant have had ample time to look at the General Sessions Order; and they have looked at the documents which were received on October 23, 2011.

Mr. Shulman said that in regard to the proposed conditions listed in the letter dated August 23, 2011 from Attorney Brockstedt to Chairman Littleton where the property to be addressed would be the existing Boardwalk and the land lying from the eastern edge of the Boardwalk extending east to the easterly line of Block 55, these are not conditions related to the land between the easternmost side of the numbered lots and the westernmost side of the Boardwalk. The land that the Applicant is claiming to be fee simple is from the eastern edge of the numbered lots 150 east. That land falls into three categories: 1. Empty land between the numbered lots and the western edge of the Boardwalk. 2. The Boardwalk. 3. Land from the eastern edge of the Boardwalk to whatever remains of 150 feet. The conditions that the Applicant is proposing will only be conditions that apply to the Boardwalk and land under the Boardwalk and the lands from the eastern edge of the Boardwalk to whatever the remainder of 150 feet is. The conditions being proposed will not be conditions proposed on the land between the western edge of the Boardwalk and the numbered. lots.

Chairman Littleton said the Applicant is on record that he recognizes the land seaward of the numbered lots as zoned O-1. Mr. Harris noted that the O-1 regulation prevails with the land between the residential lots and the Boardwalk. The nature of the property is such that from the residentially zoned lots to the Boardwalk is essentially private area. He agreed that it would be appropriate for the Planning Commission to consider placing conditions on approval for partitioning because of the public nature use of that portion of the property. The pubic nature use elements are the Boardwalk and the area east of the Boardwalk. The area west of the Boardwalk is like other O-1 land in the City. Whatever burdens the City has placed on O-1 land in general would certainly apply to them. Other than that, he did not see any distinction between his R-1 land and anybody else's R-1 land in that area between the residentially zoned lots and the Boardwalk.

Mr. Shulman said that what the Applicant is saying is that the restriction which applies to sitting on the beach at 3:00 a.m. would not apply to the owner of O-1 land if he wanted to sit on that land at 3:00 a.m. The Applicant views this as private property west of the Boardwalk and that there are no zoning restriction on sitting

on his own land at 3:00 a.m. Attorney Brockstedt said that there are other rules, ordinances and restrictions currently in place which are not identified in the O-1 zoning and are forced upon that same type of O-1 land on all of the other oceanfront properties. Mr. Shulman asked if a member of the public would be violating the City Code that prohibits people from being on the beach after a certain time of night or would that person be on the Applicant's property if he walked over the wooden fence and sat down on the Open Space land between the eastern end of the numbered lots and the western edge of the Boardwalk. Attorney Brockstedt said the answer would be however it is enforced upon the other property owners. All of what the Applicant has suggested is consistent with the status quo which is however that would be enforced today. Whatever rules, restrictions, ordinances, etc. aside from a more definite one than the O-1 zoning, would be enforced the same after this partitioning application would be approved. Mr. Shulman said that if it is private land, he did not know whether the person would be trespassing on private land or would be on the beach (public land) after 3:00 a.m. Mr. Harris said that one of the regulations currently in effect is for the public to stay off the dunes. If someone was out there sitting on the dune behind the fence and in front of his house at night, the Police would treat that person the same way they would treat someone who is sitting on his front porch. This would be the case because that fenced in land between the residentially zoned lots and Boardwalk would be by nature, private. Attorney Brockstedt did not think that there is anything which should be read into the fact that the suggested conditions being proposed are inclusive of everything. A bullet-point list of concepts was taken from prior drafts of agreements with the City that addressed the bulk of the issues which came up in the context of the documents. The idea is that the Applicant has proposed to maintain the status quo and do it in such a way that if the status quo changes through action by the City, then this property would be allowed to change along with all the other properties which front the Boardwalk. The intent of the Applicant is have that person charged consistent with how he would be charged today, and how he would be charged if this occurred on neighboring properties to the north and south. Mr. Harris said that the proper solution to this concern is a legislative solution which addresses all O-1 land. The Planning Commission cannot change the zoning laws for each separate parcel of land. A comprehensive approach is needed for all O-1 land and all the land up and down the Boardwalk. Mr. Shulman said that if the Planning Commission was to recognize this as private land, he was not sure the Commission would have the statutory or legislative authority to prohibit drinking on land that happens to be private land. Mr. Harris said that this is why for a long time, he and Attorney Brockstedt have proposed a solution to this problem to give everyone south of Hickman Street an opportunity to engage in a situation where there is a land trust, City ownership and address this entire thing altogether to eliminate private ownership and put it in something that will be permanent in nature.

Attorney Brockstedt said that they have indicated all along, there was one significant change with the land west of Scarborough Avenue. When he read the Court of General Sessions Order, clearly there was a process in place. At various points in the document, the Court of General Sessions was very thorough in pointing out that notices as required had been given to all parties of interest. With regard to land theoretically already conveyed based on the map recorded in June 1924, the Court of General Sessions went to great lengths to make sure all of those parties were provided notice. In regard to the Ridgely title, there was no notice provided that there were any changes to the oceanfront lots. Repeatedly, there are references to all of the streets identified by name, etc., as well as descriptions of the land west of Scarborough Avenue. Attorney Brockstedt's position was that both the Order and the map which is referenced prior to the formal map recorded sometime later have no effect on this Application as substantial evidence in that all of Block 55 was conveyed to Mr. Marshall. The 1876 map does not die with the recordation of the 1924 map, and then subsequently reference it by the Court of General Sessions as it relates to land west of Scarborough Avenue and vacating plotted lots, providing notice to any owners of those lots and addressing it.

Mr. Richard Harris said that dedication is the law that deals with laying out blocks and streets and dedicating them to public use. The Pennsylvania cases dealt with this subject and were originally introduced into this case for the proposition of where ownership of land is disputed and the Applicant for a subdivision or partitioning must prove ownership of the property. City Solicitor Mandalas had communicated to Mr. Harris and Attorney Brockstedt that unless they disclaim ownership in the land east of the residentially zoned lots or quitclaim that land to the City, it was unlikely that the Planning Commission would grant the partitioning. Proving ownership is an underlying premise in this case and an underlying premise of the City Code. If someone has land to be subdivided or partitioned, that person must own the land under the Code. This is an outgrowth from the common law which preceded the codification of the subdivision process. If someone wants to take a parcel of land, subdivide it, lay out and dedicate street, that person must own the land or have the consent of the owner. Under the law of dedication if someone wants to create a subdivision, lay out the streets and make an offer of dedication, then it is codified before a map is filed with an explanation This would constitute an offer of dedication by dedicating the streets to public use, creating the blocks between the streets, etc. An acceptance is needed of that offer of dedication. This acceptance can take place under the Code as a

formal proceeding, or it can also take place over time, through use, acceptance by the general public, use of the streets, sale of lots, etc. Prior to acceptance of the offer of dedication, it can be revoked either outright or by acts that are inconsistent with the offer of dedication. There could also be a process for vacating a subdivision, getting rid of the streets and abandoning them. That process was available in 1925. As it applies to this case, the 1876 map was filed in the land records of Sussex County. Along with that map, there are several pages of text which describe who was filing the map, and in this case it was the Rehoboth Association, what land it was talking about, who owned the land along with specific language that says, "[T]he said Rehoboth Association does hereby lay out and dedicate for public use the City of Rehoboth and several streets, avenues and alleys thereof including said parts of the streets in accordance with the plans". Over time, land was sold based on that map, streets were developed to some extent, and that map was accepted. The deed from Cullen to Ridgely in 1912 was based on the 1876 map. The only map in the land records is the map preceding the 1924 map. There is no text that accompanies it and no evidence of the author. Subsequent to the filing of that map, there were deeds to Thomas Clarence Marshall and several other deed references from the Rehoboth Heights Development Company referring to the 1876 map. Those were acts which are inconsistent with the offer of dedication in 1924. When the map was filed in 1924, the Ridgely family already owned their part of the property. The 1924 map includes the Ridgely property. In the Ridgely case, it noted the Boardwalk as being an easement. The Ridgely case recognized the ownership by the Ridgely family of the similarly situated 100 feet x 150 feet parcel extending eastward from the currently residentially zoned lots. In the Ridgely case, the 1924 map was discussed; and it was critical to the Ridgely case because if the 1924 map had been a balance subdivision of the Rehoboth Heights area, then that 100 feet x 150 feet parcel on the Ridgely property would cease to exist. The 100 feet x 150 feet section would have been replaced by whatever is shown on the 1924 map if that map rose to the height of being an actual offer of dedication. In the reply to the complaint in the Ridgely case, the City said that "[I]t is denied that the plot plan recorded in Deed Book No. 243 Page 600 and a new plot plan for Rehoboth as might be inferred in paragraph 6 of the plaintiff's complaint. On the contrary, it is a plot plan of private real estate development then owned by Rehoboth Heights Development Company." The 1924 map looks more like a sales tool for a developer. The 1924 map was initially fatally flawed because someone would have had to own all of the land or have the consent of the owners. In the Ridgely case it is known that there could not have been consent from Ridgely because that land is still owned by the Ridgely family, and that land is based on the 1876 map. If the 1924 map had superseded the 1876 map, then the 100 feet x 150 feet parcel extending eastward from the currently residentially zoned land that the Ridgely family purchased, would cease to exist. City Solicitor Mandalas disagreed partially. He did not think the 1924 map could take anything away from any owner who purchased prior to the 1924 map. Mr. Harris said that one thing which may have happened before the Court of General Sessions is that when looking at the land in regard to the Rehoboth Beach Country Club, the land was not land which was subject to the 1876 map. The 1876 map which laid out South Rehoboth stopped on Bayard Avenue. The attorney representing the Country Club at the time made a prudent move so he could avoid any issues regarding that in the future; and also at the time, the 1876 map was still in existence and the Court did not deal with that issue. Mr. Harris addressed the fact that the lot and block have changed. The 1876 map shows the ocean front blocks extending 150 feet east of what is currently the residentially zoned lots. The original deed to Thomas Clarence Marshall by the Rehoboth Heights Development Company was in reference to the 1876 map, not the 1924 map. The subsequent deeds incorporated new block numbers.

Mr. Mellen thought that the first time there was any reference to the new system of block numbers, is during the straw transfer of 1931. There is an inconsistency because Mr. Marshall obviously had sold a number of lots in those blocks. In the straw transfer, he protected certain lots that he still owned. The lots were called out by the new numbered names, but the block was referred to as Block 55. What is not known is if Mr. Marshall owned any other land to the east, and why he did not protect it. Mr. Harris said it is known that at the time Mr. Marshall owned the land because he got it in 1926. He got the entire block as referenced by the 1876 map. Mr. Shulman said the Planning Commission believed that Mr. Marshall owned the land but it goes back to the significance of the 1924 map. It seems strange with the two-straw conveyances in 1931 that they went to the trouble of actually identifying the specific numbered lots, but there was no reference to anything besides the numbered lots. That being the case, it led to the quitclaim deed 50 years later. There is some indication that either it was a gross error or it was intentional that when the land was conveyed by the straw deeds in 1927, it clearly was numbered lots and nothing else.

Mr. Harris said that in analyzing the 1924 map, that map has a dedication of streets, blocks, etc. and is fatally flawed. Attorney Brockstedt said that it is not what Thomas Clarence Marshall believed he owned, but is what the Rehoboth Beach Development Company conveyed to him. City Solicitor Mandalas read that "…said Rehoboth Heights Development Company did then and thereby dedicate to the use of the public the streets, roads and highways there are marked out and delineated that certain portions were certain said roads, streets and highways, and the whole of certain other roads, streets and highways are unnecessary for the use of the public."

It was before the court in 1925 that the 1924 map was a dedication. The court did not say at that time that there was no dedication, and it was obligated at that time to make the record clear. Mr. Harris said that the conclusion which the court drew is not based on the facts that are in the land records surrounding the 1924 recording. There was only a map with no authorship, no text, and no language of dedication. This does not correct the initial fatal flaw of whether it arises to the level of an offer of dedication. In order to rise to that level, all of the elements are necessary to be able to make an offer of dedication. Those elements include either owning the land or having consent of all the owners of the land. It is known now that there was no consent of all the owners of the land. It was later confirmed in the Ridgely case which the City participated in and agreed that Ridgely owned 100 feet x 150 feet. If the 1876 map had been abandoned and the 1924 map took its place, then the 100 feet x 150 feet parcel of land owned by the Stockley Street residents would not have existed and would have ceased to exist in 1924. Perhaps it would have gone into the public domain. City Solicitor Mandalas disagreed. Anything that was purchased prior to the 1924 map, lives and breathes under the 1876 map. The 1924 map did not take property away from anyone who bought prior to 1924. He agreed that the 1924 map was probably drawn incorrectly based upon Ridgely's purchase.

Chairman Littleton did not think it is incumbent upon the Planning Commission to determine ownership of a piece of land. It is incumbent to the Planning Commission whether to accept the ownership of a piece of land. If the Planning Commission accepts the Applicant's arguments that they own the land and it is agreed that the land can be subdivided, then conditions need to be looked at. If the Planning Commission is not convinced that they own the land, then it cannot proceed. City Solicitor Mandalas said that the Applicant has the burden to convince the Planning Commission that they own what they are asking to be subdivided. If the evidence which has been presented convinces the Planning Commission that they own it, then they have met that factor, and the Planning Commission should move on. If the Planning Commission is not convinced that they own it, then the Planning Commission has no authority to grant a partitioning.

Mrs. Konesey said that based on the City Commission Minutes from the 1920s, it appeared that the City believed that the 1924 map was accurate. It was aware that the Ridgely property was bought beforehand, and it was noted in the Minutes. Nowhere does it mention about letters going out to all the property owners asking for permission to extend the Boardwalk. Nowhere does it mention getting easements. Nowhere in the files can anything be found. The City accepted it and acted upon it in subsequent decisions they made around the time that all this happened. Mr. Harris said since that time, the State has treated the applicant as the owner of the land.

Mr. Shulman said that there can only be a "question of ownership". The issue is based on the record before the Planning Commission, on the Applicant's claim of ownership, on the Applicant's changed claims as to what he owns and on all the other information which includes the 1924 map, the various deeds over the years including the straw deeds, the advertisements, discussion of other properties which include Ridgely and 1 Prospect Street. Based on all that information, it is not whether there is a question of ownership, it is whether there is significant evidence in the record that leads the Planning Commission to conclude that the Applicant has not met its burden to demonstrate that it owns all of the land it wants to provide.

Attorney Brockstedt said it is interesting to him that the 1924 map is consistent with what was later adopted in 1926. It lays out 25 feet x 100 feet lots. The owner of the Rehoboth Beach Development Company, even as late as 1928 1929, is selling 100 feet x 100 feet lots and 50 feet x 100 feet lots, not 25 feet x 100 feet lots. Even under a "revised" map, the land was still not being conveyed consistently with that map. Based on the fact that the Application has met the requirements under the Code, the Applicant is presumptively entitled to approval absent a non-arbitrary basis for denial which is evidenced by the substantial evidence in the record. The Applicant has gone to great lengths, great expense and great time to come back to the Planning Commission each time and try to prove not that it owns this land but has tried to prove the ownership of this land. Conclusive evidence exists which suggests that 2 St. Lawrence Street LLC and its predecessor in title work conveyed a 750 feet block, Block 55 on the 1876 map. The Applicant requests that the Partitioning Application be approved based on that and the fact that the Application meets all of the other requirements of the Code.

Mr. Mellen asked what plat currently exists for Rehoboth Heights. Mr. Harris said that for the City's position to prevail regarding 2 St. Lawrence Street, the Planning Commission would have to conclude that the 1924 map was a valid offer of dedication and acceptance. After the analysis is done of what the law of dedication, it would be found out that the 1924 map was fatally flawed as far as an offer of dedication. With regard to the Ridgely case, the City said in 1967 that it was not a new plat for Rehoboth. It was a plan laying out the lots on the block by a private developer. Mr. Harris did not know if there is a valid plot of Rehoboth Heights that exists today which accurately reflects what the legal subdivision of Rehoboth is. What is there has been accepted over time; and today, there are the existing streets which have been accepted and lots which came

from the 1924 map and the revised 1924 map which has been codified in the zoning laws. The lot is no longer 25 feet x 100 feet, but now is basically 50 feet x 100 feet. The simple law of dedication for subdividing land is that it needs to be owned or have consent of the owners. That did not occur with the 1924 map because it was fatally flawed. City Solicitor Mandalas said in regard to the Ridgely case, the City's answer to the complaint did say that it was a private developer's plat of a subdivision. It was not a new layout of Rehoboth. The City had not annexed that portion until two years later. The original deed not only referenced the 1876 map. It mentioned Block 38 in Deed Book No. 264 Page 412. The reference to Block 38 can only be under the 1924 plat. Attorney Brockstedt noted that the second blocks were numbered in the 30's on the 1876 map. Mr. Harris said it was intentionally done to convey according to the 1876 map.

There was no public comment.

Chairman Littleton closed the Public Hearing and called for discussion among the members of the Planning Commission.

A break was taken at 11:27 a.m. The meeting reconvened at 11:41a.m.

City Solicitor Mandalas referred back to the initial deed recorded in Deed Book No. 264 Page 412 and read a portion of it. It specifically referenced Homestead Square and the blocks that are consistent with the 1924 map vs. the 1876 map. The 1876 map does not show Homestead Square or those blocks. This reference in the restrictions for the initial deed is to the 1924 map. Mr. Harris said that Homestead Square did not exist according to the court case. He though that Homestead Square was the land which was engulfed by the Rehoboth Beach Country Club. City Solicitor Mandalas noted that in 1925 was when the Court of General Sessions did the abandonment. Homestead Square was shown on the map showing the streets being vacated which was subsequently recorded after the Court of General Sessions did its work.

Mr. Shulman said that Homestead Square appears to be in the later version of 1924 map which shows all the streets and Country Club vacated. The square with a notation is the exact same square and notation shown on 1924 recorded version of the map. Mr. Harris said that the location of Homestead Square moved from the 1924 map to the revised 1924 map. Mr. Shulman noted that the exterior boundaries of the Country Club are shifted by one half inch.

City Solicitor Mandalas said that the Code sets out certain threshold items that the Applicant has the burden of satisfying. One of those burdens sits on the Applicant to convince the Planning Commission of ownership of the land they are asking to partition. The Planning Commission does not have the authority to extents of ownership, but it has the ability to divide land which is already owned by an applicant. As a threshold matter in granting a partition, the Planning Commission must satisfy itself that the land being subdivided is owned by the Applicant. The burden is on the Applicant to convince the Planning Commission that the land is owned. It is up to each individual member of the Planning Commission to weigh the evidence and determine whether or not the Applicant owns the land in question. The Planning Commission has expressed that there are no other issues. According to the Code, if the threshold items are met the partitioning must be granted; and if not met, the partitioning cannot be granted.

Chairman Littleton noted that to assist the Planning Commission, City Solicitor Mandalas has provided the members with confidential memorandums and resolutions to approve or deny the partitioning. The property is sub-dividable in terms of the numbered lots. The only issue has to do with what is easterly of the numbered lots. Information which was discussed today would have to be acknowledged within the approval or denial. Chairman Littleton suggested taking an approval approach first. He summarized that all the members think the numbered lots can be partitioned. The evidence presented by the Applicant is convincing that there are unquestionable ownership rights to the 150 feet extending eastward of the numbered lots. Justification was presented based on the Ridgely case and other evidence including how DNREC and others have treated that property and others up and down the beach.

Mr. John Gauger agreed except with the conditions that have been suggested by Attorney Brocksted and the ones the Planning Commission could apply itself.

Mrs. Konesey did not agree. She knew exactly what the State did when it wanted to replenish the beach. It was her understanding that the State made a determination to send blanket letters to everyone who had a house which faced the ocean because nobody had the time, money or inclination to research each piece of land along the oceanfront. Ownership was not addressed. There was never any intent by the Secretary of Natural Resources or the Governor at that time to address ownership of land along the oceanfront all the way down past the City. This is not a valid reason for the Applicant to say he owns the land because he received a letter from

DNREC saying it was going to replenish the beach in front of his house. Everyone had received the same letter. The Planning Commission had this same discussion when the DNREC letters were originally submitted, and Chairman Littleton noted that there had been some property owners who had never claimed ownership.

Mr. Gossett said that if all the members have questions, then a determination cannot be made. A partitioning could exist with the plotted lots, but it is the additional claim of property that skews this entire application.

Mr. Markert felt that the Applicant has made a compelling case of ownership in going back to the historical records and the 1876 map that the subsequent transfers and other information presented has not been as compelling to rise to the level of denying that they do not own that portion of land. It is certainly conceivable in terms of doubt. It is conceivable that the ownership of the seaward piece of land could potentially not be owned by the Applicant. The Planning Commission has not seen compelling evidence to the contrary. Another piece affecting the Planning Commission's consideration is protection of the City, the City's rights, etc. and the fact that the City has not exercised that right up to this point. This could still be the case in the future if the City chose to by adverse possession, etc. Mr. Markert was leaning towards the idea that providing approval does not necessarily negate further actions. The Applicant has done its burden.

Mr. Mellen has tried to separate that which is fact and that which is hypothesis. The Planning Commission has an obligation in general to make a decision on facts. He has been studying the maps and going over the history of this property. Mr. Harris and Attorney Brockstedt have done due diligence to try to convince the Planning Commission of what they believe is correct. He did not necessarily agree with their solution to the missing 150 feet eastward of the numbered lots. The argument has been made that Mr. Harris owns the property eastward of the numbered lots. There is disagreement on where that boundary line lies. Mr. Mellen believed the boundary line lies very close to the Boardwalk. The boundary of Surf Avenue is intended to be along the Boardwalk not further east on the beach. There are errors on the maps and the inconsistency of Mr. Marshall protecting certain lots by virtue of their new numbers but calling the block by its old number. He did not protect other property which is now being claimed as part of the parcel. Mr. Mellen did not think the Planning Commission can answer this question. He had hoped when the Planning Commission had tabled this Application and Mr. Harris and Attorney Brockstedt had negotiations with the City, that there would be some resolution which was amenable. The Planning Commission was not privy to those negotiations. In Spring of 2011 when the Application was put back on the Agenda, the Planning Commission did not have a resolution. Mr. Mellen thought that the only way this will be resolved is to go to court. In the end, there may be a portion of land east of the numbered lots. There will be easements and agreements that will benefit the public and the City. There will be partitioned lots (the numbered lots), but the Planning Commission will end up in the same position. Mr. Mellen did not necessarily agree that the Applicant owns the land he says he owns. Mr. Harris has a compelling argument in that he wants to protect buyers, himself or his family that there will always be an ocean view now and in the future. Mr. Harris has said that portion of land cannot be used for FAR or anything other than being open land and having a view of the ocean. There is history that the City and the public has made use of certain portions of the land that they claim, and this will probably continue. There is no question the numbered lots deserve to be partitioned as they have been requested. From a legal standpoint, Mr. Mellen had questions with whether the Applicant owns the portion of property eastward of the numbered lots.

Mr. Shulman said that (1) it makes a difference who owns the land. It makes a difference, not just in terms of zoning as O-1, but in what other rights the City has over the land if it is City owned land. He did not know what is meant by the proposed conditions are for the land east of the west end of the Boardwalk. Everyone agrees that the land should be left as unbuildable land. (2) Mr. Shulman was unsure if he agreed with the statement that it is unquestionable regarding ownership rights. The Planning Commission needs to conclude whether or not the bulk of the evidence supports the Applicant's ownership rights. In looking at all the evidence and knowing that the Applicant has the burden, the question is whether the Planning Commission believes that all the evidence is stronger one way or another. Undoubtedly, there is evidence which supports the Applicant's position. The Applicant's evidence does not pass the threshold of being the preponderance and greater weight of all the evidence. There are three possibly four different assertions of what the ownership of this land is. The Planning Commission did not introduce the concept of where the land starts and ends. That was part of the Applicant's submissions. This is a piece of property that the alleged owners have not been paying taxes on. This 150 foot portion of the property, as the Planning Commission has understood, is not included on the tax maps and on which taxes have been paid. The Planning Commission has no evidence in the record at all that at the time the Boardwalk was being built the City had any concern about anyone except Mr. Ridgely. There is no indication that the City was concerned others may have owned this type of property. The Planning Commission cannot ignore the fact that if the Applicant is not the owner of this property it would

be City property beyond the numbered lots. This fact cannot be ignored because the Applicant has referred to the other properties. The Planning Commission needs to give a decision on the Applicant's record. None of the evidence presented by the Applicant has the 1924 map in it. The Planning Commission did not get an answer to the problems with the 1924 map which the Applicant says exists. Mr. Shulman said he puts significant weight on that map as well as all the other evidence in the record. He agreed that it will never be determined who owns title to the property until a court decides that. The Planning Commission is not determining title. It is just deciding whether the Applicant has met its burden of producing enough evidence so that the Planning Commission believes in that title. In looking at all the pieces together, it is against the substantial weight of 51% of the evidence to conclude that the Applicant has fee simple title to the 150 foot portion of the property east of the numbered lots. The Planning Commission cannot separate the numbered lots from the 150 foot portion of the property because in looking at the record and the Applicant's submissions, it has been consistently said to the Planning Commission that whatever property exists east of the numbered lots will be part of the conveyance of the easternmost numbered lots. Mr. Shulman did not think that the Applicant has met its burden on any land east of the numbered lots. Before the Planning Commission can decide what conditions are appropriate for the land, it has to decide whether the Applicant has made a stronger case that the land is theirs.

City Solicitor Mandalas said that if the Applicant does not own the land, the Planning Commission cannot subdivide it even with conditions. The Applicant has to demonstrate ownership of all the land being requested to subdivide it.

Chairman Littleton said that there are discrepancies between the 1876 and 1924 maps, pictures from then and now, inconsistent references in the deeds, etc. He was sympathetic to the Applicant in that they have a piece of property which can be subdivided. He was not sure the Applicant owns anything beyond the numbered lots. The Applicant has agreed that they do not own land out to the ocean. The case the Applicant has been making is that other owners north and south of this property are in the same predicament, but the Applicant will bear the consequences of what is happening. Chairman Littleton was not comfortable not knowing who owns the 150 foot portion of land. He cannot make that determination when there is reasonable doubt of ownership. Chairman Littleton was not convinced that 51% by weight says that the Applicant owns the 150 feet.

Mr. Mellen noted that the original deed was on October 1, 1926. He presented a 1926 photograph showing all the trees in bloom. The photograph shows Silver Lake, Bayard Avenue laid out and built and extending across Rehoboth Avenue and King Charles Avenue as a sea of sand. It is clear in the photograph that the second block is significantly larger than the first block. Mr. Mellen was confused that the property was sold in October 1926 based on the 1876 plat that sells two blocks when in 1926 there are two blocks which are not the way they were described in 1876. He could not comment on Mr. Harris' legal argument of whatever was laid out is not right because the dedication was not undone. Mr. Mellen was confused how someone can sell two blocks of property described one way, but it looked different physically.

Mr. Shulman made everyone aware that the deed in this case from the Rehoboth Heights Development Corporation to Mr. Marshall, was October 1, 1926. It was not recorded until July 11, 1927. A lot of the material which was discussed today in connection with the street dedications, people visiting the land, etc., happened and/or was resolved before the deed was recorded in July 1927.

Chairman Littleton said that two of the members would like to start with an approval process, and four members have substantial concerns about ownership.

Mr. Gossett noted that the preponderance of evidence which has been presented is still questionable. The ownership of the 150 feet of land is still in question.

City Solicitor Mandalas recommended that since the Resolution to Deny Approval and Findings of Fact documents were still being developed this week, he would go through them individually to make sure that the Planning Commission has heard them and that it is relying upon them in its decision; or the documents can be amended to accurately reflect the Planning Commission's findings and conclusions. He read the Resolution of the Planning Commission to deny approval pursuant to Section 236-9 of the Municipal Code as amended a partitioning application of 0710-02 for the property located at 2 St. Lawrence Street. (Copy attached.) Copies of the Resolution to Deny Approval and Findings of Fact were distributed to the Applicant. City Solicitor Mandalas read the Findings of Fact. (Copy attached.)

Mr. Mellen said that in regard to Item No. 5 and subsequently No. 6, the context of the finding is accurate. Although he was sure Attorney Brockstedt had provided the City Solicitor and Building Inspector with this information, after the August 13, 2010 meeting, the Planning Commission noted that no one had read the deed.

The Planning Commission was aware that there was a conflict. This did not come about because of the submission by Attorney Brockstedt. The Planning Commission, City Solicitor Mandalas or Chairman Littleton raised the question after it was pointed out what the deed stated. The most recent deed stated something different.

The following are changes and corrections made to the Findings of Fact:

1. Para. No. 17 – The lot numbers were corrected to read "... as Lot Nos. 25, **26**, 27 & 28, Block 33…" and "…with Lots 22 & **23** becoming …"
2. Para. No. 18 – The lot numbers were corrected to read "…comprised of lots **24-28** (measuring…" and "…between Lots **24-28** and the Atlantic Ocean.".
3. Para. No. 21 – The lot numbers were were corrected to read "…known as Lot Nos. **24, 25, 26, 27 & 28**, Block 33…" and "… with Lots 22 & **23** becoming…"
4. Para. No. 25 – Only the Ridgely case is underlined and not the statements following it.
5. Para. No. 30 – Wordage was corrected to read "…said **plot** being of record…" The lot numbers were corrected to read "…as Lot Nos. **24, 25, 26, 27 & 28**, Block 33…" and "…with Lots 22 & **23** becoming…"
6. Para. No. 32 – This paragraph provides an opportunity to include an oral statement, reference to information provided at today's Public Hearing regarding the 1924 map as discovered by the City Solicitor, advertising of oceanfront lots discovered by Mr. Gossett, further evidence from the Applicant, etc. At the October 24, 2011 meeting, the Planning Commission received and entered into the record and identified the material. It was specifically noted that the ocean facing lots on the block immediately adjacent to the Applicant's lot are identified as being 100 x 100 foot oceanfront lots and in addition, in connection with an application for partitioning of the property at 1 Prospect Street which is a lot that is on the block immediately south of Block 33. That applicant specifically did not claim ownership to any lands east of the numbered lots.
7. Para. No. 48 – Wordage was changed to read "…subsequent plots, all **support the conclusion** that the 1924 Plot…"
8. Para. No. 50 – Name referenced was corrected to read **Clarence T. Marshall**.
9. Para. No. 51 – Name referenced was corrected to read **Clarence T. Marshall**. Wordage was changed to include "…back to **Clarence T. and Esther Marshall** on or about…"
10. Para. No. 52 – Name reference was corrected to read **Clarence T. Marshall**.
11. Para. No. 53 – Wordage was corrected to include "… running to the Atlantic Ocean **to J. Robert Harris, Jr**."
12. Para. No. 54 – Wordage was changed to "…the 1924 Plot **appears to** have altered the location…"
13. Para. No. 56 – Wordage was changed to include when the July 11, 1927 deed was recorded.
14. Para. No. 57 – Wordage was changed to include when the July 11, 1927 deed was recorded.
15. Para. No. 58 – Wordage was changed to include prior to the recordation of the October 1926 deed.
16. Para. No. 59 – Wordage was included. "**The Minutes do not reflect the need to obtain easements from any property owners other than recognizing the Ridgely property to the Boardwalk Committee**."
17. Para. No. 63 – Wordage was changed to include "…however, is distinguishable **among other reasons** as it was…"

Mrs. Konesey made a motion, seconded by Mr. Gossett, to adopt the Resolution for Denial as read with the Findings of Fact as amended. (Konesey – aye. As stated in the Resolution and Findings of Fact and in addition, she felt that looking back in the Minutes of 1920s which were presented today, it is clear the City acted upon the 1924 map. In their discussion, they believed that to be accurate. There has been a preponderance of information throughout this whole process as have been noted in the Findings of Fact that indicate at one point in time there is no confusion. The City believed in the 1920s that it owned the land. Since then there may have been some confusion. Gossett – aye, based on the Findings of Fact and specifically the aspect of the 1924 map being presented as available lands for sale, in that the sale of the property not transpired until 1926 and not recorded until 1927. Among other things, that is the largest question in Mr. Gossett's mind of the preponderance of evidence leading to not being able to determine true ownership. Markert – aye. There is a great deal of confusion with regard to the issues regarding the seller. The preponderance ultimately will weigh in that all the items included in the Findings of Fact will conclude that the Planning Commission supports the denial. Shulman – aye, for the reasons stated in the Findings of Fact and what is in the record. Among the facts in the record, not specifically referencing the Findings of Fact, is the fact that there is no indication the Applicant has been paying property taxes to the City or the County on this extra 150 feet of land which is another element that goes towards the weight in showing that the Applicant does not own the land. By itself it

is very small, but it adds to the already existing weight of facts that go against ownership. Gauger – absent. Mellen – aye. Although there may be some possibility that the Applicant does own some land east of the numbered lots, he finds conflicting information in the record. He finds evidence in the record, both visual in terms of photographs, in terms of the differences of the hypothesis that the Applicant has taken vs. what the Planning Commission has taken relative to the layout of the lots comparing the 1876 plat to the more recent 1924 map. He finds the new evidence of the 1924 map really compelling and the evidence of the homeowner not paying taxes but also that the Applicant asked the City to remove the land from the tax records. Although it was in a Speed Memo, it was not official but he find that compelling. Littleton – aye. He endorsed the Findings of Fact and comments presented by Mr. Gossett and his reasoning which concurs with Chairman Littleton's own thoughts.) Motion carried to deny the approval of the Application.

OTHER BUSINESS

Chairman Littleton called for the determination of the next Regular Meeting date. Because of the Veterans' Day holiday, the November 11, 2011 Regular Meeting must be rescheduled.

The consensus of the members was to have its next regular meeting in December 2011.

Chairman Littleton called for the Building Inspector Report

Building Inspector Terri Sullivan noted that at 125 Columbia Avenue the lot is a 100 feet x 100 feet lot, but it is a parallelogram as opposed to a rectangle. The square footage is 4,999.38 square feet. The owners would like to partition the lot. Since the proposed lots would be less than 5,000 square feet, the owners have sought a variance from the Board of Adjustment. The owners requested the Board to allow them relief from the minimum lot size of 5,000 square feet. The night of the meeting the Board took the position that it did not believe the owners needed a variance because there is no encroachment of the house onto the second lot or into the setback area. City Solicitor Mandalas said that the Board turned the variance request into an appeal of the Building Inspector's decision. Ms. Sullivan's position was that the two lot had merged because the properties had been used as a single lot with one parcel number. The Board took the position that it could convert the variance request for relief from the minimum lot size to an appeal. The Board had decided that Ms. Sullivan's decision was wrong that there was not a single lot that needed to be partitioned. A variance was also granted by the Board. During that procedure, City Solicitor Mandalas put on the record that what was noticed and requested was different from what was granted. He had indicated that the Planning Commission would be interested in this case, and a member of the Planning Commission probably would want to come to comment on that. The way the motion was made was not exactly what the Board intended to do. Tonight's meeting of the Board of Adjustment is based on clarifying the motion and taking a re-vote. This would be an opportunity for the Planning Commission as a body to weigh in whatever way it deems appropriate.

Mr. Shulman said that if the lot was merged by use, it would mean that someone who owns a double lot merged by use, could get around the partitioning process simply by taking down a structure.

Chairman Littleton suggested in regard to 7C(4) of the agenda that Planning Commission charge City Solicitor Mandalas with looking at the Code on merger and un-merger of lots. Because the Planning Commission uniquely has the ability to look at adverse impact, anything which had been merged by use does not become un-merged automatically by tearing down a structure. The Planning Commission could then forward those suggestions from City Solicitor Mandalas to the Board of Commissioners for its review. Another thing needed explicitly in the Code is that the building official needs to have notice given to anyone else who is merging a lot.

Chairman Littleton announced that he had received a memo from Stan Mills on behalf of the City Commissioners who are looking at the Comprehensive Development Plan (CDP) and have asked for a representative from the Planning Commission to attend the November 18, 2011 Mayor and Commissioners Regular Meeting. The Commissioners are looking at five areas: 1. Prepare city-wide stormwater management plan. 2. Investigate City policy of requiring that all municipal facilities, City funded projects and City infrastructure projects be constructed, renovated, operated, maintained and deconstructed using Green Building and Low Impact Development practices. 3. Examine establishing a mixed-use zone allowing a blend of residential and non-residential uses as a means of encouraging the development and re-development of selected commercial areas along major commercial streets. 4. Begin Silver Lake recovery: [establish] regulatory buffer zones. 5. Review all development regulations. Chairman Littleton will be attending that meeting..

Chairman Littleton noted that a confidential memo was received from City Solicitor Mandalas regarding the

appeal process.

Mr. Gossett announced that on November 19, 2011, there will be a Public Workshop for the Pedestrian/Bicycle Plan in the Convention Center at 10:00 a.m.

Chairman Littleton has been appointed as a stakeholder, and he has provided written testimony for this project. Commissioner Lorraine Zellers has also asked Mr. Mellen to participate. She is trying to get stakeholders from various areas of the City to participate.

Ms. Sullivan noted that three partitioning have been completed, 2 Oak Avenue, 80 Kent Street and 36 Columbia. All the demolitions have been completed, and they have been finalized.

Mrs. Konesey made a motion, second by Mr. Gossett, to approve as final the partitionings for 2 Oak Avenue, 80 Kent Street and 36 Columbia Avenue. (Shulman – aye, Gauger – absent, Mellen – aye, Littleton – aye, Markert – absent, Gossett – aye, Konesey – aye.) Motion carried.

Ms. Sullivan included in the Planning Commission's packets fees for subdivision applications from other municipalities.

Mr. Mellen and Ms. Womack have been working together on a logging system for all documents of the various applications and evidence.

There being no further business, Mrs. Konesey made a motion, seconded by Mr. Gossett, to adjourn the meeting at 2:21 p.m.

RECORDED BY

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(Ann M. Womack, CMC, City Secretary)

MINUTES APPROVED ON
MARCH 9, 2012

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(Preston Littleton, Jr., Chairman)

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