

**PLANNING COMMISSION MEETING
CITY OF REHOBOTH BEACH**

December 9, 2011

The Regular Meeting of the Planning Commission of the City of Rehoboth Beach was called to order at 6:33 p.m. by Chairman Preston Littleton on Friday, December 9, 2011 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

ROLL CALL

Mr. Francis Markert called the roll:

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

A quorum was present.

Mr. Robert Anderson was welcomed to the Planning Commission as a newly appointed member. Mr. Harvey Shulman, Mr. Patrick Gossett and Chairman Littleton had each been re-appointed to three year terms.

APPROVAL OF MINUTES

No Minutes were available for approval at this meeting.

CORRESPONDENCE

1. Letter dated October 31, 2011 and received November 28, 2011 from Bruce W. and Violet J. Chilcoat, 11 Queen Street, requesting that an ordinance be adopted to eliminate the commercial jitney/shuttle service provided by Hotel Rehoboth on Queen Street and other residential streets in the City. Also requested to be eliminated in the residential neighborhoods are the "fun cars" and motor scooters rented by the hour.

Chairman Littleton noted that this matter is for the Board of Commissioners to deal with, not the Planning Commission. Mr. David Mellen commented that there is misconception in the community as to what the Planning Commission does/does not do, can/cannot do, etc., and the public needs to be informed of this.

2. Letter dated December 7, 2011 and received December 8, 2011 with photographs from Hayden Morris, 216 Laurel Street requesting that the problem of extreme stormwater flooding for homes at the addresses of 216, 218 and 220 Laurel Street be especially included in the Planning Commission's discussion and action taken in regard to the stormwater management plan.

Mr. Mellen noted that this matter will be passed on to the proper authority with the Planning Commission urging that something should be done.

Mr. Hayden Morris, 216 Laurel Street, noted that no one is taking any action in regard to this problem which occurs along the three houses. The water goes to the crown of the street and only happens when there is a heavy rain which is approximately three to four times a year. There are no problems in the winter when there is ice and snow.

NEW BUSINESS

There was none.

OLD BUSINESS

There was none.

OTHER BUSINESS

Chairman Littleton called for the Election of Planning Commission Officers for 2011/12 term which includes a report by Mr. John Gauger of the Nominating Committee, other nominations and the election of the Chair, Vice Chair and Secretary.

Mr. John Gauger noted that as a result of contacting all the members, the nominations were Dr. Preston Littleton as Chair, Mr. David Mellen as Vice Chair and Mr. Francis Markert as Secretary.

Chairman Littleton said that he has had no desire to be the Chair of the Planning Commission. He had been the Chair for a number of years because no other members have been willing to do it. All three of the officers have said they are willing to serve, but none have said they want to serve. New blood, new ideas and new leadership would be advantageous for the Planning Commission. Chairman Littleton would be willing for someone else to step in as chair. If no one is willing to do that, he will continue on for one more year. A serious discussion is needed among the members on how to get successions of leadership and of sharing the load. Chairman Littleton acknowledged that he would remain on the Planning Commission to provide expertise and support so that sharing knowledge would continue to whoever would be the new chair.

Mr. Mellen said that there have been discussions in the Comprehensive Development Plan (CDP) and the Planning Commission has made recommendations that the City should consider having a professional planner in support of this organization. Some of the work process could be shouldered by a professional. Then the position of the Planning Commission would be more of decision-making as opposed to a lot of the work it has been involved in over the two years. Mrs. Jan Konesey agreed. The Building Inspector is making decisions that she should be able to refer to a planner to have a broader view. Mr. Gauger agreed.

Mr. Shulman voiced concern that the members would be sitting here next year with this same problem. He suggested that the members should consider a fourth officer to help share the workload, have a fourth input into a lot of the decisions and have a broader pool for someone to possibly become chair next year. The best situation is that whoever becomes chair was an officer in previous years. In regard to the planner, it is worthy of a discussion at another time. The Planning Commission needs professional help. The decision needs to be made tonight regarding the Chair, Vice Chair and Secretary; and at the next meeting, the members can try to get a fourth officer and figure out how to do succession planning. Mr. Patrick Gossett concurred with the idea of a fourth officer and that succession planning is important. He suggested that the fourth officer be looked at as the immediate past chair so that person remains on and is a resource for the Planning Commission to have. In regard to a planner or outside resources, now is the time to have that discussion because budget discussions will begin in January 2012. The Planning Commission needs to submit a budget request to the Board of Commissioners for a planner. It would be up to the Planning Commission to develop a job description for a planner or outside resources. Mr. Markert concurred. Employing a planner might offset some of the legal fees which are incurred by the Planning Commission.

Mr. Gauger made a motion, seconded by Mrs. Konesey, that Dr. Preston Littleton remain as Chair, Mr. David Mellen remain as Vice Chair and Mr. Francis Markert remain as Secretary for 2011-2012. Motion carried unanimously.

Chairman Littleton called for an update of the status of and preparation for the appeal to the Board of Commissioners of the Planning Commission's decision regarding amended Partitioning Application No. 0710-02 requesting the partitioning of a property located at 2 St. Lawrence Street.

Chairman Littleton noted that the Planning Commission members have received a copy of the appeal letter in regard to 2 St. Lawrence Street. Because of the way the appeal is written, the City Solicitor should present the appeal, not a member of the Planning Commission. Discussions are taking place between the City and the Applicant of 2 St. Lawrence Street. The Board of Commissioners are cognizant that there is a timeline relative to the Code on appeal. The Applicant has requested that the appeal be postponed. The Board of Commissioners may have to vote to extend the time limit of the appeal.

Mr. Shulman said that it is not best for the Planning Commission to have someone present the Planning Commission's case at the appeal hearing. The ordinance says that the Planning Commission at such a hearing is afforded an opportunity to be heard. It may be that the Planning Commission will not be heard on the merits of the appeal. On the other hand, it may be appropriate if the Planning Commission believes that the process is not a proper process, that the opportunity of the Planning Commission to be heard would allow it, if decided by a majority vote, to not have this drag on for a number of months. The Planning Commission has the right to say something about timing.

Chairman Littleton noted the concern is that if a member of the Planning Commission gets involved in the

appeal on the record, there could be a legal challenge because it will prejudice that member if it is remanded back to the Planning Commission. Mr. Robert Anderson said that if the attorney speaks on behalf of the Planning Commission, he will not bias the appeal.

Chairman Littleton called for the report by he and Mr. Gossett of their November 18, 2011 meeting with the Board of Commissioners to discuss the five (5) Comprehensive Development Plan (CDP) recommendations that had been previously identified by the Board for action – namely: 1. Prepare a City-wide stormwater management plan. 2. Investigate a City policy requiring that all municipal facilities, City funded projects and City infrastructure projects be constructed, renovated, operated and de-constructed 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 of all developmental regulations.

Chairman Littleton noted that at the November 18, 2011 meeting, the Board of Commissioners was looking for an understanding of where the various recommendations in the CDP came from, etc. He presented a strong case of why many of the items in the CDP are interrelated. Following that meeting, Chairman Littleton had sent a memo to Mr. Bryan Hall of Office of State Planning Coordination, Mr. Jim Falk of University of Delaware – Sea Grant Program and Mr. Bill McGowan of University of Delaware – Sussex County Development, requesting a meeting to seek advice, suggestions and resources/assistance. Points from the memo were that the Board of Commissioners has not charged the Planning Commission with moving forward on this matter. One of the major themes running through the 2010 CDP is the need to explore how to re-develop and increase the viability of selected commercially zoned areas within the City such as Wilmington and Baltimore Avenues and First Street north and south of Rehoboth Avenue. Issues have been raised by the business community including (1) the current physical and aesthetic condition of these streets, (2) the uncertainty of what the City's vision is for these streets, (3) the perceived inability to construct/renovate businesses in a manner that would preserve Rehoboth's character, comply with current zoning/building code requirements and would be financially viable and justify the investment, (4) limited workforce housing and (5) differing interest of the property owner and a business lessee, etc. Recommendations and suggestions cited within the CDP included (1) the need to convene a body of representative stakeholders to further explore the problems and issues, (2) develop a visual design model of how these commercial blocks could/should look in the future, (3) explore/identify incentives for individuals to develop properties/businesses in accord with a design model, (4) investigate if overlay zoning might prompt desired development, (5) explore mixed-use zoning beyond what is currently allowed by the City and (6) identify solvable Code impediments, etc. An issue not cited in the CDP is to assemble background data regarding the projected economic and demographic characteristics of the Cape Sub-region to help better get a feel for how much commercial development can/cannot the City/Cape Sub-region support and what type businesses could be viable and the City should try to attract. The City has no professional planners on its staff and for the most part this type of planning has fallen on the Planning Commission. The Commission does not have ready access and knowledge to undertake appropriate quantitative analysis of the current and projected business capacity of the Cape Sub-region and City, no expertise in overlay zoning and possible incentives to encourage development in accord with an undefined model for these streets within the City, and limited knowledge of mixed-use zoning. There is not uniform agreement within the Board of Commissioners about this issue or its scope, however the Board itself has identified mixed-use zoning and a review of all development regulations as priority areas. Some members of the Board seem to support the CDP recommendation that unless the City develops a design image for what these streets could become in the future and means to facilitate such development, the City will remain hostage to inconsistent and perhaps undesirable piecemeal development of reluctance to invest at all. Others seem to support the concept that beyond undertaking streetscape-type improvements, the City should not develop a vision plan for these commercial areas, but rather accept whatever might result from individual developers. There seems to be consensus that there are problems with the current status of these commercial streets. This memo was sent to the Mr. Hall, Mr. Falk and Mr. McGowan since they collectively has far more experience in this area and work with others in this field, have unique resources and information sources at their disposal, and can make recommendations on who/where/how the Planning Commission should be seeking competent assistance. The Board of Commissioners must decide if it wishes to charge the Planning Commission to investigate this more thoroughly, involve all stakeholders in the process, seek/utilize the input of experts with knowledge and experience in this area and formulate a plan and vision to be shared with the City and hopefully, ultimately be endorsed by the Board of Commissioners. There is consensus with the Planning Commission that it needs to take the leadership in fleshing out these priority and interrelated recommendations from the CDP relative to Wilmington and Baltimore Avenues, and First Street commercial areas which will be confirmed at its December 9, 2011 Regular Meeting. The City is beginning its

budgetary planning cycle, and because the input of knowledgeable/professional planner(s) will be need, it is hope that such services could be obtained at a reasonable cost within the State Planning Office and/or University system of that grant support might be available. The Planning Commission would welcome input and suggestions, as well as recommendations regarding individuals, governmental or academic entities or companies with whom it could contract and being a process to explore the ways in which Rehoboth Beach can most productively formulate a plan and vision for these critical commercial areas.

Chairman Littleton had received responses from two City Commissioners who interpreted this as the Planning Commission had taken leadership and was running a project. The mistake was that Chairman Littleton thought there was a commitment by the Board of Commissioners to do something about the five areas, but they were only in the discussion stage. A meeting took place today with Chairman Littleton, Mr. Hall, Mr. Falk and Mr. McGowan.

Mr. Gossett noted that there was concern if it is the role of the City to design and develop commercial areas. Two City Commissioners' views were that it was not the City's obligation or role, but it is private industry or development to come in. Mr. Gossett and Chairman Littleton had tried to convey to the Board of Commissioners that the role of the City is to design a vision or a unified plan to design/develop in these particular areas of Wilmington and Baltimore Avenues and First Street. Some of the City Commissioners felt this was interesting and should move forward, and that this is a way to help a blighted area within the community and improve it for long-term. Chairman Littleton acknowledged that the Planning Commission's recommendations were not intended to exclude the possibility that it should be left exclusively to private enterprise to figure out a solution. A vision would not be mandated, but there may be inducements with the Code which may encourage someone to follow a vision.

Mr. Mellen said that the Board of Commissioners looks at the Code and decides what needs to be done in the City and then designates who will help to do it. The concern is that the Board has not yet decided what it is in the CDP that it wants to move forward with, and the image of the Planning Commission gathering information on its own was above and beyond what it should be doing at this point in time.

Mr. Shulman said historically there have been many issues that the Planning Commission has taken up which are generically addressed in the CDP and that the Planning Commission on its own has explored. He referred to Section 51-8 of the City Code which reads that the Planning Commission shall have the authority vested in Municipal Planning Commissions by Chapter 7, Title 22, Delaware Code, 1953, as amended, and shall perform the duties therein set forth whether or not such authority or duties are expressly referred to herein. In Chapter 7, Section 703 of the Delaware Code, it is clear in saying that the Planning Commission shall have full power and authority to make such investigations, maps and reports of the resources, possibilities and needs of the city or town as it deems desirable providing the total expenditures of said Commission shall not exceed the appropriation for its expenses. Upon the completion of any such reports, the Planning Commission shall submit the same to the City Council or Town Commissioners with its recommendation. Mr. Shulman compared that language to Chapter 7, Section 708 of the Delaware Code, Reference of Certain Matters to the Planning Commission. Any city or town having a Planning Commission established under this chapter may by ordinance, by law or vote provide for the reference of other matters or class of matters to the Planning Commission before final action thereon with or without provision that final action not be taken until the Planning Commission has submitted its report. The Planning Commission shall have full power to make such investigations, maps and reports and recommendations in connection therewith relating to any of the subjects referred to under this section. Mr. Shulman commented that the Planning Commission is not an arm of the City Commissioners, it is an independent body that is appointed by the Mayor and approved by the City Commissioners and charged with performing certain duties under the State law. If a City Commissioner does not like what the Planning Commission is doing, that Commissioner can get the Board of Commissioners to tell the Planning Commission not to do it and then remove members for cause if they persist. Otherwise, the Planning Commission has a duty. After a lengthy discussion, Chairman Littleton recommended not to do anything until the Planning Commission is charged with doing something.

Mr. Gossett said that the Planning Commission needs to create an expectation with the Board of Commissioners of what it is capable of doing and what its charge is, and to remind the Board of this with some frequency. It may behoove the Planning Commission to indoctrinate a newly elected City Commissioner as to what the role of the Planning Commission is, etc. The Planning Commission has to establish its priority list and do its homework to find someone to champion the issues and build consensus.

Mr. Shulman commented that if there are issues the Planning Commission feels are important and there is a reasonable chance in moving these issues forward, then the Planning Commission should decide to take on

those issues. The two most significant things done in the last ten years for the Planning Commission were its involvement with the Tree Ordinance and Site Plan Review. He encouraged the members to find one or two issues on the list that they feel are important and are doable, and they should move forward on them.

Chairman Littleton noted that Mr. Lendowski, Executive Director of Center for Inland Bays was also in attendance at the meeting this afternoon with Mr. Hall, Mr. Falk and Mr. McGowan. Chairman Littleton, Mr. Markert and Mr. Gossett were also in attendance. What came out of the meeting is that Rehoboth is of importance, not only to the City itself, but to the citizens of the State of Delaware. There are interests and desires beyond the borders of the City. One question was raised of what resources the City is currently losing for not having a vision that promotes economic redevelopment particularly on Wilmington Avenue. Before getting to any of the visions are the mechanisms to be used such as why stakeholders need to be involved along with various approaches to the particular issue on Wilmington Avenue.

Mr. Gossett said that there are formulas which would meet the redevelopment process of Wilmington and Baltimore Avenues whether it be with Main Street Inc., Chamber of Commerce, etc.

Mrs. Konesey suggested getting a City Commissioner or two to support this concept. The framework needs to be laid out now.

Chairman Littleton thought that Wilmington and Baltimore Avenues are important issues, but the most important issue is a walkable/bikeable community.

Chairman Littleton called to identify, prioritize, discuss and formulate action plans to address items and/or issues that have been deferred to date. Several such items previously mentioned include:

1. Need to update the major subdivision section of the City Code with particular emphasis on ensuring the City is properly protected.

Chairman Littleton noted that Building Inspector Terri Sullivan had done research with regard to major subdivisions and other municipalities. The concern is if a developer does not follow through with what was proposed and if the City is protected. Another issue is the cost incurred by the City to conduct and oversee a major subdivision. In other municipalities, the applicant is responsible for those costs incurred.

Mr. Brian Patterson thought it would be interesting to reach a conclusion this evening about an action plan on first, second, third and eighth items in the list.

Mrs. Konesey thought that the major subdivision section of the Code needs to be updated. This item ties in with visioning and what the Planning Commission wants a major subdivision to look like, what it is willing to do and the related City cost.

Mr. Shulman said that he would be against doing anything with this item. Updating the major subdivision ordinance is a huge task and has numerous issues buried in it. These do not need to be addressed in a site plan review. The only issue which needs to be addressed is in regard to the bond. The application for site plan review is important, but the ordinance is very specific that the absence of an application is an annoyance. The application for site plan review is good, but it is not essential to be done.

Mr. Shulman said that the Planning Commission needs to its attorney's guidance on how it wants the bond to be handled. An applicant who has to post a bond has to put real money towards the bond. The bond needs to be located where the City has control of the money, and it does not get released back to the applicant until the City signs off that everything has been done correctly. Mrs. Konesey said that a bond should cover any City expenses related to a half-finished project because the builder has run out of money. Mr. Shulman said that the bond is only for public infrastructure. In making sure that a bond includes correcting something that has not been completed, then the Planning Commission is going beyond the mechanics of how to get the money in the bond to increasing the scope of the bond. Mrs. Konesey thought that the bond should be increased. Mr. Shulman suggested that whatever money is covered by the bond, the developer and bonding company cannot release the money and get any of it back without the City signing off. The burden would be on the subdivider to pursue the City to release the money.

Mr. Patterson said that the concept of a performance bond with the City as beneficiary is not a liable concept. It should be pursued as a separate track from what Mr. Shulman referred to.

Chairman Littleton volunteered to draft a charge for City Solicitor Mandalas with regard to this matter. He will circulate it to the Planning Commission members for edits and will forward it to City Solicitor Mandalas at the next meeting.

2. Revitalization of selected commercial areas including the development of visionary plan and the possible use of mixed-use development, overlay zoning districts and incentives.

Mr. Brian Patterson noted that this item is a high priority. It is closely related to several of the other items in the list. The direction the Planning Commission takes with the first item may be influenced by some of the conclusions made by studying the this item.

Mr. Mellen thought that this item is the most important to do. It is a complex issue because commercial development, mixed-use zoning, more walkable streets or changing the street pattern cannot be separated. Issues about public safety and sanitation would be answered by a vision study. He suggested that study work needs to be done in order to solve this complex problem. In regard to mixed-use zoning as an example, in order to answer questions the Planning Commission needs to talk to resources and flesh out all of the various problems related to it. This would be a focus problem, and the vision would evolve. Mixed-use would need to be defined and the problems related to it.

Mr. Shulman suggested inviting experts to meetings who specialize in public/private partnerships in order to educate the Planning Commission. Then the members could meet with community groups such as Main Street, homeowners' associations, etc. and show them what the possibilities are.

Chairman Littleton suggested revisiting this item in a couple of months. Mrs. Konesey agreed.

3. Develop application form and instructions for site plan review.

Chairman Littleton noted that currently there are no applications and no guidance instructions with regard to site plan review.

Mr. Gossett and Mr Shulman volunteer to work on drafting a site plan application form.

4. Review and update of application form(s) and instruction for partitioning/minor and major subdivisions.
5. Concept of proportional changes in side lot setbacks for legal non-conforming lots of less than 50 foot frontage or for lots with more than 50 foot frontage.

Mr. Mellen noted that this item is handled at the Commissioners' level.

6. Lots merged by use/partitioning.

Chairman Littleton noted that City Solicitor Glenn Mandalas and his associates are working on this matter and have found codes and court cases relative to mergers. Their recommendations will be presented at a future meeting.

Mr. Shulman said that there is no one answer to merger and non-merger. What decides the results is a policy and land-use view of it. The Planning Commission needs to decide when it wants things to merge and un-merge in terms of what is good planning and partitioning policies.

Mr. Mellen said that City Solicitor Mandalas will return with what the Code says and what the options are. From a land-use standpoint, the Planning Commission will need to have discussion of what it wants the outcome to be.

7. Explore means to increase efficiency and reduce costs to both the City and the applicant relative to partitioning and minor and major subdivision review, etc.
8. Review the application fees and costs involved with partitioning, minor and major subdivisions and site plan review, including exploring how other municipalities address these costs.

Guidance is needed from the City Commissioners with regard to covering costs in the application fees.

Mrs. Konesey suggested that the Planning Commission obtain a copy of all the legal bills involved with 2 St. Lawrence Street. It could then be seen what was charged for the partitioning and what the costs are to the City, advertisements, legal fees, etc. This could then be brought before the Commissioners for their review of the application fees. Mr. Gossett recommended that partitioning in the entire year should be looked at. Discussion ensued regarding this matter.

Mr. Francis Markert suggested having a certain amount for the initial application and then bill the applicants for the extended time that some things take.

The consensus of the Planning Commission was that Mr. Markert should explore tracking costs for legal fees, advertising, City staff time, etc from prior applications.

9. Other recommendations from the City's 2010 CDP.
10. [Other items to be identified.]

Chairman Littleton called for the update of status of proposed Destination Station at the Park & Ride lot.

Mr. Shulman noted that there has been private fundraising efforts and the plans are to begin construction next fall 2012. He will try to contact State and Federal government officials if the members want to pursue this matter to see if there is any governmental activity going on.

Mr. Patterson said that it is clearly within the Planning Commission's authority and mandate to investigate this because it has an impact on the resources and the needs of the City. Chairman Littleton disagreed.

The consensus of the members was for Mr. Shulman to contact County, State and Federal government officials to see if there is any governmental activity going on.

Chairman Littleton called for the update, discussion and possible recommendations regarding buffer zone, land-use restrictions and building setbacks along the shore of Rehoboth's lakes [CDP p. 32, 42-44].

Mr. Shulman suggested that the Planning Commission should come up with a proposal for what a buffer zone would be. Chairman Littleton recommended asking the Board of Commissioners if it would want the Planning Commission's help on the issue of buffer zones. Mrs. Konesey agreed.

Mr. Shulman suggested presenting this issue to the Board of Commissioners in such a way that the Planning Commission is interested in the buffer zone issue, however it knows that the Board if working on this and the Planning Commission does not want to do something that will undermine or be at cross-purposes with what the Board is doing so would the Board provide feedback.

Building Inspector's Report

There was nothing to report.

City Solicitor's Report

There was nothing to report.

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

There was nothing to report.

Chairman Littleton called for the report of any new subdivision applications that may have been timely submitted.

No new subdivision applications have been submitted to date.

Chairman Littleton called to determine the number of Commission members who expect to be able to attend the currently scheduled February 10, 2012 Regular Meeting.

At present, the Regular Meeting will be held on January 13, 2012. The Regular Meeting schedule for February 10, 2012 will be cancelled.

There being no further business, Mrs. Konesey made a motion, seconded by Mr. Gauger to adjourn the meeting at 9:43 p.m.

RECORDED BY

**MINUTES APPROVED ON
APRIL 13, 2012**

(Ann M. Womack, CMC, City Secretary)

(Preston Littleton, Jr., Chairman)