PLANNING COMMISSION MEETING
CITY OF REHOBOTH BEACH

March 9, 2012

The Regular Meeting of the Planning Commission of the City of Rehoboth Beach was called to order at 6:32 p.m. by Chairman Preston Littleton on Friday, March 9, 2012 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. Robert Anderson
	Ms. Lynn Wilson
Absent:	Mrs. Jan Konesey

A quorum was present.

Ms. Lynn D. Wilson was welcomed to the Planning Commission as a newly appointed member to replace Mr. Patrick Gossett.

APPROVAL OF MINUTES

Minutes of the October 24, 2011 Planning Commission Special Meeting were distributed prior to the meeting. Minutes of the December 9, 2011 Planning Commission Regular Meeting were not available for approval.

Mr. David Mellen made a motion, seconded by Mr. Markert, to approve the October 24, 2011 Planning Commission Regular Meeting minutes. Motion carried unanimously.

CORRESPONDENCE

There was none.

OLD BUSINESS

Chairman Littleton called for the update on the status of the 2 St. Lawrence Street appeal.

City Solicitor Glenn Mandalas has been working with the owner of 2 St. Lawrence Street for some time, and he feels confident that they are very close to bringing something to the Mayor and Commissioners for their consideration as whether it is an option they would like to pursue to resolve that matter. What has not been completely determined is if the framework that has been set out is something the Commissioners may want to do. City Solicitor Mandalas was not sure what needs to happen procedurally. He suspected that it would come back to the Planning Commission because at the end of the process there would be a partitioning. The appeal is still lingering. Mayor Cooper has taken the position and the Commissioner have deferred to him that if a possible resolution can be worked out, then the appeal is still within a reasonable time period. City Solicitor Mandalas expected that something will be brought to the Commissioners this month, at least for them to start looking at. The appeal to the Commissioners was filed in a timely manner. With the current discussions, no new documents or map have been submitted.

NEW BUSINESS

There was none.

OTHER BUSINESS

Chairman Littleton said that the report on the Site Plan Review item would be deferred to a future meeting.

Chairman Littleton called for the report on the analysis of Subdivision Application Review costs:

A memo dated December 21, 2011 from Chairman Littleton to City Manager Greg Ferrese was provided to the Planning Commission members. The subject of the memo was the 2012/13 Planning Commission budget submission with expected activities and budget request.

Mr. Markert noted that in the past two weeks, he had visited the City offices to review the legal bill activity from City Mandalas' law firm for a period from April 2010 through January 2012 to assess how they were presented and what information could be gleaned from them if the Planning Commission would be considering the option of trying to identify the costs that would be reimbursed by an applicant. The statements from the law firms come in and are grouped by the organization within the City. The monthly invoice reflects a description with charges by hours and rates which are accumulated. Mr. Markert tried to identify all the charges and establish how much has been charged to the various partitioning applications. Some of the charges are compiled with three or four activities. Mr. Mike Hoffman, Esq. had noted to Mr. Markert that there may be a way to tighten that up to be able to more easily distribute the charges to the appropriate applications. After going through the invoices during that time period, Mr. Markert ended up with 700 line items, each delineating a charge or an attempt to break the charge out. Mr. Markert provided a snapshot of the costs for that period of time. He established a standard meeting cost at approximately $1,500.00.

Mr. Harvey Shulman said that to the extent the Planning Commission members are going to look at these numbers for purposes of deciding what to recommend, they should go back to all of the property items and make sure the effect that was spent is captured. The numbers were skewed by the fact that there were only legal costs. If the Planning Commission is to come up with a recommendation for fees, then the information it has needs to be based on not just legal fees.

Chairman Littleton said that the Planning Commission can go to the City Commissioners in two ways: 1. Per the advice the Planning Commission has received, some municipalities have in their Code that these expenses are charged to an applicant. 2. In terms of the amount of work the Planning Commission is doing and is not quantified, the existing application fee does not cover the Planning Commission's expenses. For example, the costs for what Ms. Sullivan does, deserves to be looked at again with the idea of perhaps recommending Code language to the City Commissioners. The Planning Commission's best choice would be to draft an ordinance and send it to the City Commissioners.

Mr. Shulman said that there should be a minimum concept that would include all the costs incurred such as staff, engineering, consulting and legal time, advertising, etc. He did not think the Planning Commission should get involved in writing an ordinance about reimbursing its costs. It is obvious that the fees being charged are low. This would be a reason to come up with a number that seems to fully compensate the Planning Commission's costs. He suggested putting aside the bigger issue of reimbursing Planning Commission costs for everything and come up with an increase in the fees that in almost every case when considering publishing costs, staff time, attorney time, etc. would be more than $1,400.00 and less than $5,000.00. There is a reasonable number for the Planning Commission to make a recommendation.

City Solicitor Mandalas noted that there was another viewpoint from the Mayor that municipalities should not expect to recoup its costs as incurred with a major subdivision because there is some inherent benefit to the community by getting the redeveloped property that enhances the community, and therefore it is something a city is willing to put its own money and volunteer effort into to achieve that goal. He noted that in other municipalities, all of the notices and posting fees are charged to the applicant.

Mr. Market said another aspect would be that any future revenue gained through tax assessment, etc., the property would become part of the tax base, and the cost could be recouped over time.

Mr. David Mellen said that there is not sufficient information to make a decision on. If there is motivation on the part of the City to charge or recoup some of the fees, a bookkeeping system or billing system needs to be put into place that will track expenses for some period of time to find the true cost. This information should be discussed with Mr. Ferrese and Mayor Cooper.

Mr. Markert noted that Mr. Ferrese thinks the application fee should be higher, and the applicant should be paying a higher share of the costs.

Mr. Shulman suggested coming up with a fee. The applicants should be told that their fee for filing is a certain amount for two lots, a certain amount for three lots, etc. In addition, the applicants would pay the mailing costs, publication costs and any other specific categories that are reasonably definable. Chairman Littleton did not support this idea because it is premature.

Mr. Brian Patterson suggested that when an applicant amends or supplements an application, this would be

an opportunity to charge a new fee. The Planning Commission cannot be at fault because applicants decide to supplement their application.

The consensus of the Planning Commission was that Chairman Littleton and Mr. Markert meet with Mayor Cooper and Mr. Ferrese to have a discussion about this and the possibilities of new fees based on known costs.

Chairman Littleton called for the report on the draft Code amendment item regarding Major Subdivision bonding requirements.

Chairman Littleton noted that when the Planning Commission was doing a major subdivision, it came to the conclusion that the City was not adequately protected if an applicant did not follow through with building the infrastructure. City Solicitor Mandalas has researched this and presented the Planning Commission with code language.

City Solicitor Mandalas referred to the draft changes shown in Exhibit A. In Section 236-15, the standard has become that prior to granting approval of a subdivision, the subdivider shall furnish a performance guaranty sufficient to cover 150% of the estimated cost of the work to be performed for infrastructure improvements. In Section 236-17 with release of the bond, all of the improvements shall be subject to inspection, and shall be approved by the City Engineer, who shall be notified at least 24 hours prior to such installation. No underground installations shall be covered until inspected and approved by the City Engineer or other authorized City authority. The performance guaranty required shall be that its terms not be released and remain in full force and effect until all required improvements it guarantees are inspected and approved in writing by the City. The performance guaranty relates to streets, street name signs, sidewalks, curbs, streetlighting, shade trees, grading, fill, topsoil and protection thereof, buffer zone planting, culverts and storm sewers, sanitary sewers and water.

Mr. Mellen thought that the issue and process of how the City goes about getting its money is not clear in the proposed ordinance. This issue had been raised at the time of the Oak Grove subdivision. The 150% would need to be defined how it is used. He asked if a developer would abandon a site, whether the City would have recourse to bring the site or have the developer bring the site back to some common existence. This would be another protection that the City needs. City Solicitor Mandalas said that the bond has to be in a form acceptable to the City, and this would be the opportunity that this condition precedent would be in the bond and is whatever the City is satisfied with regard to the money and the bond being released to the developer. Typically the developer's engineer submits the estimated cost of the work to be performed, and must be approved by the City engineer.

Mr. Shulman agreed with Mr. Mellen that the proposed ordinance is too vague the way it is drafted. The Planning Commission does not need to go in the direction of micromanaging every single thing. The proposed ordinance needs to be more specific as to who has what burden, and it needs to specifically say that no money will be released until the matter is resolved. Then there needs to be thought about if the City does not release the money and it is upheld that the City has to release it, the City should be able to recover its attorney's fees. In the opening station of the proposed ordinance, it needs to say "…in form and substance acceptable to the Planning Commission…" Mr. Shulman asked what the mechanism is for "the City" to approve the various things. City Solicitor Mandalas said that other approvals flow through the building official's office. It is unconventional that a Planning Commission would approve the form and substance of a performance guaranty.

Mr. Mellen said that from the Planning Commission's point of view, the Mayor and Commissioners are the only ones who have the legal right to negotiate and approve the bond. The Planning Commission has an obligation to sign off on the document. The Mayor and City Manager would take legal responsibility for the bond.

City Solicitor Mandalas said that the condition precedent could be codified. He will return to the Planning Commission with more detail in the proposed ordinance.

Chairman Littleton said that in a practical sense, the Planning Commission would have the City Solicitor assure it that the bond is satisfactory to the City. The Planning Commission would defer to the City Solicitor to sign off on it.

Chairman Littleton called for the report on the draft Code amendment item regarding merger by use and subdivision requirements.

Chairman Littleton noted that some owners have two contiguous lots in the City that end up with some or all of a structure built that overlaps the property line. Subsequently, the owner then wants to partition the lot

and go back to the two original lots. Twice there has been occasion where the applicants have said they were going to demolish the structure, and the property would revert back to two lots. It has been the position of the Planning Commission that is a property has been merged by use, then it requires a partitioning. All sorts of problems come up, and the Planning Commission believes that in order to unmerge the merged lots, they need to come back to the Planning Commission for a subdivision. Research has been done by City Solicitor Mandalas, and the biggest problem that has been discovered is that there is no procedure to notify people that the lots have merged.

City Solicitor Mandalas has found with other municipalities that there has to be some type of notification to a Building & Licensing Office when building a home across two contiguous lots and the owner happens to own both of the lots. Some municipalities require an affidavit that lots will be merged. Some municipalities have developed that there is a merger for zoning purposes and not for title purposes. The first step would be to determine what policy makes sense in the merger context. The next step would be to have an ordinance to codify that. Traditionally what has happened in the City if two lots come into common ownership and they are used as a single lot, this effectuates a presumption that those lots are merged. If the owner wants to discontinue the use as merged lots, they would need to come before the Planning Commission to ask that those lots be discontinued as a merge lot and be put back as two lots. Many jurisdictions have said that if two lots which have been used as a single lot are individually conforming lots, then those lots are de-merged if the structure is removed or the use is discontinued. The law desires conforming properties. The way the City applies merger is that it applies for zoning purposes and not so much for title purposes. There is no process that requires people to file a single deed that calls out the metes and bounds for two combined lots.

Chairman Littleton said the Planning Commission is of the opinion that if there is a merger by use, then it would require the Planning Commission to unmerge the property. The Planning Commission's approach up to now has been that as long as the lots are conforming, the applicant will get an approval. The Planning Commission may put conditions on the partitioning. Some of the conditions that can be done and have been done are re-orienting the lots because of the way things have developed. There are things that the Planning Commission negotiates with the applicant. Some of the criticism from citizens related to other matters is that some things happen automatically and are blind to the neighbors. The public does not know what is happening. In a public hearing, the neighbors have a change to voice their opinions. In continuing the past practices, then the Code needs to be fixed to make it clearer.

Mr. Shulman noted that the Code talks about merger by use. There is nothing in the Code that says the lots unmerge.

Ctiy Solicitor Mandalas said that if the City is going to have merger, guidance is needed.

Mr. Patterson said that absent the public hearing process, neighbors having no voice is a problem; and going through the partitioning process is not a terrible burden.

Mr. Mellen said that it would be alright if the process of going to Board of Adjustment would also require a review process. It boils down to whether the Planning Commission can look at a merger or an unmerger, and whether it is contrary to public health, safety and welfare.

Mr. Shulman said that there are penalties and violations for transferring land without having gone through the subdivision process. Section 236-5 says that the City can fine someone who sells off individual lots without coming to the Planning Commission. If before final approval has been obtained, any person transfers, sells or agrees to sell any land which forms a part of a subdivision on which by ordinance the Planning Commission is required to act, shall be subject to a fine.

Chairman Littleton sensed that the Planning Commission would like to see City Solicitor Mandalas give it specific language for Code modification which would make it very clear that these things have to come back for a subdivision. The Planning Commission has examples from the research of what other municipalities have done and real life examples with partitioning it has acted on where through a public process a more acceptable outcome resulted.

City Solicitor Mandalas noted that the only place in the zoning code merger is mentioned is in the definition of "lot". "The parcel of land on which a main building and accessory building are placed together with the required yards. The area of the lot shall be measured to the street line only. A lot shall be as shown on the zoning map of the City, except that nothing herein shall prevent the merger of two or more lots as shown on the zoning map into a larger lot if the lots are utilized as one parcel through the placement of a structure or

structures thereon."

Mr. Shulman said that the subdivision ordinance defines "lot". "Parcel of land or assemblage of recorded contiguous parcels of land." The definition of "subdivision" is the "division of a lot, tract or parcel of land into two or more lots, sites or other divisions of land for purposes of sale or building". The language is terrible, but the logic is there. Once a lot is merged by use, it seems to be a lot within the definition of the subdivision ordinance dealing with contiguous parcels of land, and it fits the definition of what a subdivision is as dividing a parcel of land.

Chairman Littleton called for the report on the new Application/Exhibits Logging System

Mr. Mellen presented the Application/Exhibits Logging System which was developed by he and Ms. Ann Womack, City Secretary, to keep a proper record of the exhibits which are submitted to the Planning Commission for Preliminary Review and Public Hearing. For every project that comes before the Planning Commission, two spreadsheets are used. The first is the Document Log which Ms. Womack will fill in chronologically for every document and attachments that come in which is pertinent to a specific property. At a meeting, documents from the Document Log can be entered into the Application Exhibits Log as exhibits.

Mr. Shulman suggested that the Public Notice and letter mailed to the neighbors should be put in the logging system. He also suggested that there would be a process for the applicant to sign off on the list before the Planning Commission makes its decision. Discussion ensued as to how the documents will be treated in terms of the record of the public hearing.

Chairman Littleton called to continue to discuss, prioritize and formulate action plans to address items and/or issues that have been deferred by the Planning Commission.

Chairman Littleton had been contacted after the last Board of Commissioners Workshop Meeting with regard to the protection of the City's lakes. The Board of Commissioners want to move forward on looking at the City's lakes in terms of barriers around the lakes, and they will be referring this to the Planning Commission for action at their Regular Meeting on March 16, 2012. In their discussions, there are three things which have come up, and they have to do with environmental buffers vs. a no build zone. Particularly with Silver Lake and possibly Lake Gerar, there are properties which are potentially in an environmental buffer area and no build area. There are properties which also go to the middle of Silver Lake. Research needs to be done as to other municipalities' ordinances and what the different practices are. There are also issues of property rights vs. what the overriding community interests are and how they are negotiated. All of this needs to be done in a public manner where everyone would have a chance to appear before the Planning Commission and make their arguments. At some point, the Planning Commission would draft code language with the help of City Solicitor Mandalas, possibly have another hearing and then forward it on to the Board of Commissioners. A resolution expected to be passed at the next Board of Commissioners meeting will task the Planning Commission with this matter. Chairman Littleton suggested that the Planning Commission should start to move on this before its next meeting in April.

Mr. Shulman noted that the current Comprehensive Development Plan says that there will be a buffer zone, but it does not say by zoning. The buffer zone may be an environmental or conservation thing. There is a statement in the current CDP that says there will be a buffer zone around the lake. If someone has a building permitted to go into the lake, then there would not be a buffer zone by definition. In 22 DelC 702, after a comprehensive plan or a portion thereof has been adopted by the municipality in accordance to this chapter, the comprehensive plan shall have the force of law and no development shall be permitted except as consistent with the plan. He asked if the building inspector has an obligation to not just look to the zoning code, but to also look to the CDP. It is hard to say that there is a buffer zone around the lake if a structure is constructed in the lake. He asked to what extent the CDP requires the building inspector to go beyond the zoning code.

Ms. Sullivan said that the Planning Commission would need to determine how large a buffer zone it would require without it being a taking of property to render that property unbuildable. The Planning Commission would need to start with the surveys of existing properties surrounding the lake areas so it can determine what properties are the closest. With regard to some of the lots, if there is a 10 foot buffer zone and it is not allowed to be used for setback purposes, the lots would become unbuildable.

Chairman Littleton thought that the Planning Commission may be charged with determining the process and return to the Commissioners with a code provision which will address a buffer zone and/or a no build zone for City properties. This would be unrelated to property lines, but it would be related to what is counted towards Floor Area Ratio (FAR) and the natural area.

Mr. Shulman suggested that depending on what happens at the Board of Commissioners meeting on March 16, 2012, Chairman Littleton should set an agenda item for the Planning Commission's next meeting which invites the public to talk generally about lake protection. He also suggested that Chairman Littleton could put out a list of questions, and among the topics the Planning Commission would like to hear the public's views.

Mr. Patterson said that a public hearing would be good for these concerns, but it needs to be structured because some basic facts could address a lot of people's concerns.

Chairman Littleton requested that the Planning Commission members help him on constructing the various questions for the public. The public meeting will be held on April 13, 2012.

There were no Building Inspector and City Solicitor Reports.

A new subdivision application has been timely submitted for the property located at 200 Hickman Street.

The next scheduled regular meeting will be held on April 13, 2012 at 6:00 p.m.

There being no further business, Mr. Patterson made a motion, seconded by Mr. John Gauger to adjourn the meeting at 9:56 p.m.

RECORDED BY

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(Ann M. Womack, CMC, City Secretary)

MINUTES APPROVED ON
JUNE 8, 2012

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(Preston Littleton, Jr., Chairman)