

**PLANNING COMMISSION MEETING
CITY OF REHOBOTH BEACH**

April 13, 2012

The Regular Meeting of the Planning Commission of the City of Rehoboth Beach was called to order at 6:02 p.m. by Chairman Preston Littleton on Friday, April 13, 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.
 Mrs. Jan Konesey
 Ms. Lynn Wilson

Absent: Mr. Robert Anderson

Also Present: Mr. Glenn Mandalas, City Solicitor
 Ms. Terri Sullivan, Chief Building Inspector

A quorum was present.

APPROVAL OF MINUTES

Minutes of the December 9, 2011 Planning Commission Regular Meeting were distributed prior to the meeting. Minutes of the March 9, 2012 Planning Commission Regular Meeting were not available for approval.

Mrs. Jan Konesey made a motion, seconded by Mr. John Gauger, to approve the December 9, 2011 Planning Commission Regular Meeting minutes. Motion carried unanimously.

CORRESPONDENCE

Correspondence will be read when the development of ordinances and regulations regarding the City's lakes portion of the meeting is held.

NEW BUSINESS

Chairman Littleton called for the Preliminary Review of Partitioning Application No. 0212-01 for the property located at 200 Hickman Street, Lot Nos. 30, 31, 32 & 33, Block 18, into two (2) lots with Lot Nos. 30 & 31 becoming one (1) lot of 5,000 square feet and Lot Nos. 32 & 33 becoming one lot of 5,000 square feet. The Partitioning has been requested by Charles E. Sheehan III, MD, owner of the property. Chairman Littleton noted the Preliminary Review procedures.

Ms. Ann Womack, City Secretary, verified that this Application has been duly posted and advertised.

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

Exhibit A – Application for Subdivision with Attachments – Addendum, (12) Photographs, Recorded Deed, Existing Conditions Survey Plan, Tree Removal & Protection Plan and Partition Survey Plan.

Ms. Sullivan noted that based on the surveys submitted, both proposed lots can fully contain a 4,000 square foot rectangle. Both proposed lots have a lot size of at least 5,000 square feet and have 50 feet of frontage on a street. The tree density requirements will be met. The existing house and garage are to remain. The section of the house that encroaches over the proposed property line, the HVAC units and the bilco door are to be demolished if the partitioning is approved. An application for demolition has not been received by the Building & Licensing Department. Ms. Sullivan acknowledged that the carport on the adjacent property to the west appears to be closer than six feet to the property line.

Mr. Harvey Shulman noted that because the carport on Lot No. 29 is a few feet away from the property line, the Planning Commission may want to say that the setback on that side of proposed Lot Nos. 30 & 31 should not be at a minimum of six feet. It would be useful to get that distance before the next meeting.

Dr. Charles Sheehan III, owner of the property was in attendance at the meeting. He provided testimony that no trees will have to be removed. A house would be built on the new lot in the future. Two 5,000 square foot lots will be created. He acknowledged that in addition to the bilco door which connects to the basement and the section of the house that encroaches the property line, the actual area underground that section will be removed.

Ms. Sullivan acknowledged that a number of the trees are specimen trees. No trees are located in the area which would be removed so there is no need for a tree protection. A plan would need to be submitted prior to construction of a new residence showing that the 36" diameter specimen maple tree on Lot No. 30 would be within the building envelope because there would be no room to save the tree. Dr. Sheehan acknowledged that there are no plans to remove any of the other trees regardless of what is being removed in terms of the encroachment.

Ms. Sullivan noted that removal of the section of the house which encroaches over the property line would not be considered a demolition. Since this would be a renovation, removal of this section could occur after May 15th.

There was no correspondence and no public comment.

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

Mrs. Konesey made a motion, seconded by Mr. Francis Markert to move the Application to Public Hearing on May 11, 2012. Motion carried unanimously.

Chairman Littleton requested that Dr. Sheehan stop by the Building & Licensing Office to update the address on the Application. A copy of the Project Document Log was provided to Dr. Sheehan for his review and agreement.

OLD BUSINESS

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

City Solicitor Glenn Mandalas said that the discussions which have been occurring with the Appellant of 2 St. Lawrence Street at this stage have been somewhat productive and are now basically at a paragraph for a quitclaim deed. A meeting is scheduled in April 2012 with Mayor Cooper, and the language for that paragraph will basically need to be agreed upon by the parties. At that point if there is an agreement among that group, then it will go before the City Commissioners so see if they have any appetite for the agreement which is proposed. If there is an appetite, a process will need to be established. There is some possibility that the Planning Commission will not see this particular application again. If the Planning Commission would see this application again, it would probably not be before June 2012. Settlement talks and negotiations at this point are confidential.

Mr. Shulman said that the Planning Commission has turned down the Application on the basis that the Applicant is claiming to own part of the beach and that the Planning Commission believed they had not met the level of evidence to show they own part of the beach. He asked if someone would have to approve the partitioning. City Solicitor Mandalas said that if there is a new subdivision line drawn, the Planning Commission would have to consider the partitioning. The Application can return to the Planning Commission.

Chairman Littleton noted that when the City figures out what it is going to do, then the City Solicitor will inform the Planning Commission what the procedure will be.

OTHER BUSINESS

Chairman Littleton called for the Building Inspector's Report.

A partitioning application has been submitted for 21 Queen Street.

Chairman Littleton called for the City Solicitor's Report and 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.

City Solicitor Mandalas said that the City Commissioners have referred to the Planning Commission the discussion about buffer zones and the City's lakes. One action they are pursuing is a moratorium as it has been drafted on construction within 15 feet of the ordinary high water mark of the lakes. The moratorium ordinance defines what the ordinary high water mark is of the lakes. As it is currently set out, the City Commissioners will likely adopt a resolution on April 20, 2012 to set a public hearing on the moratorium ordinance. Then the moratorium ordinance will be heard on May 18, 2012 in a public hearing. At the conclusion of the hearing, the City Commissioners could vote to implement the moratorium. The moratorium as it is currently set up is drafted to expire in February 2013. It would also terminate earlier if the Planning Commission's work would be concluded and sent to the City Commissioners for their adoption prior to the February date. The philosophy behind the moratorium ordinance is that it would preclude any new construction within the 15 foot area from the lake. The moratorium ordinance would not have any effect on any construction plan that has been currently filed and is pending with the Building & Licensing Office. It would only preclude construction that would expand an existing structure in the buffer area either vertically or horizontally. The idea is to maintain the status quo for the period that the moratorium is in place. There was discussion at the City Commissioners' level about putting a 15 foot buffer in place, but instead they were quick to task the Planning Commission with this matter. The moratorium is an interim measure in order to allow the Planning Commission to conclude its efforts.

Ms. Sullivan was uncertain that there are any applications pending for construction within the potential 15 foot wide buffer zone.

Mr. Shulman said that if there is an application pending, there are three potential outcomes: 1. The proposed moratorium is irrelevant to that. 2. There will not be any action on what is pending while the moratorium is in place; and afterward, the action would apply to the best application. 3. Regardless of the pending vote on the moratorium and because the Comprehensive Development Plan itself talks about there being a buffer zone, the City would then have the authority to not grant the pending application based on what the CDP says. City Solicitor Mandalas said that in regard to how the pending application would be treated, there has not been any in-depth discussion about it. There is nothing he and the Building Inspector are aware of that is in the pipeline which would be affected by the moratorium ordinance. The basic rule is that anything which is in the pipeline is moved through the system like it ordinarily would under any set of circumstances. The language in the CDP will have or not have some effect on the pending application regardless if there is a moratorium or not. With regard solely to the moratorium ordinance, things that are in the pipeline can move through the process in an ordinary manner. Anything that comes in after the moratorium ordinance is introduced does not get moved through the pipeline. There will be a provision in the moratorium ordinance to make it clear that the pending ordinance doctrine is applied so that anything new which comes in would have to be subject to the moratorium ordinance.

Mr. Shulman said if an application comes in or is pending regarding construction around the lakes, it should be strictly based on the CDP that it says there will some kind of buffer zone.

Chairman Littleton called for the development of ordinances and regulations regarding the City's lakes. The Board of Commissioners has tasked the Planning Commission to seek public input, conduct research and otherwise undertake necessary studies in order to develop proposed ordinances to amend the City's Code relative to (1) establishing buffer areas around the City's lakes and (2) for site plan review of future construction along the lakes. Of particular note is the requirement that the interests of property owners to appropriately use their property should be balanced with the interest of other citizens.

Ms. Lynn Wilson announced that Mr. David Dougherty is her brother who is the builder on the property at 6 Silver Lane. City Solicitor Mandalas said that the Planning Commission has been tasked with something completely separate from the 6 Silver Lane project. What the Planning Commission has been asked to do can have no effect on what is happening at 6 Silver Lane. He did not see any conflict of interest for Ms. Wilson or any problem, barrier or hurdle in moving forward with the anticipated discussions.

Chairman Littleton said that what the Planning Commission has been tasked with has nothing to do with and will have no impact on 6 Silver Lane. The Planning Commission's task is a more generic request by the City Commissioners to be looking at issues related to the City lakes.

Chairman Littleton called for the presentation by Jennifer Volk, Environmental Scientist of Watershed Assessment Section, DNREC, and discussion.

Ms. Jennifer Volk made a presentation concerning Rehoboth Beach's Silver Lake and the potential impacts of a new buffer ordinance. A watershed is the land area that drains to a body of water. Everyone lives in a watershed, and what is done on the land affects the quality of the water. In the May 2008 DNREC report to the

City, the water character of Rehoboth's lakes is known to have annual, very dense algae blooms consisting of phytoplankton (green scum) and filamentous algae (green floating mats/tangled hair). The Lakes have not been consistently sampled. Samples were taken in late summer/early fall 2007 for the report. The results indicate highly eutrophic conditions in all three lakes (Lake Gerar, Silver Lake and Lake Comegys). Lake Gerar did not have floating filamentous algae, possibly due to the restoration efforts there. Eutrophic Lakes have high nutrient (nitrogen and phosphorus) levels which fuel dense algae blooms. The results confirmed low dissolved oxygen levels and shallow clarity readings. Eutrophic lakes tend to be shallower, with murky bottoms and often support large fish populations, but are susceptible to oxygen depletion. A point source would be a facility with a National Pollutant Discharge Elimination System (NPDES) permit. Non-point sources are what are done on the land that affects the quality of the water. Pollution comes from water run-off and fertilizer. There are known issues with Silver Lake's water quality. It is not a regular DNREC monitoring location and is not specified on Delaware's Clean Water Act Section 303(d) list. It is part of the Rehoboth Bay watershed and therefore subject to the Inland Bays TMDL. Total Maximum Daily Loads (TMDL) is the maximum amount of a pollutant that can enter surface waters and still meet water quality standards. There are multiple ways to go about getting the nutrient loads decreased, and buffers are one of the many tools which can be used as a best management practice. A buffer is a vegetative around a water line. Buffers work by water and pollutant pathways and removal mechanisms. In regard to water and pollutant pathways, nitrogen dissolves in water. Groundwater discharges up through a buffer. Surface water (runoff) moves over a buffer. Nitrogen and phosphorus absorb onto sediment surface water. Removal mechanisms are vegetation that traps pollutants bound to the soils, vegetation that takes up pollutants and microbial organisms in the soils and stream beds that take up nitrate and transform it into nitrogen gas (de-nitrification). Factors contributing to buffer effectiveness are a hydrogeomorphic region – geology & hydrology, topography (slope), stream bank modification (severe erosion, bulkheads, rip rap, storm drains, etc.), soils, upland land use, coverage – length & width and vegetation – forest or grass. With regard to the Chesapeake Bay Program's "Urban Forest Buffer", the effectiveness estimates that are used assume that the buffer is at least 35 feet wide and is forested; and the nitrogen efficiency is 25% and the phosphorous and sediment efficiencies are 50%. This means that for every one acre of forest buffer installed, the nitrogen load is reduced by 25%. Other benefits of buffers are flood mitigation, bank stabilization, water temperature moderation, wildlife habitat, aquatic food web, aesthetics and discourages nuisance populations of geese. An aerial map of Silver Lake was provided with potential buffers. Buffers on Silver Lake will provide some benefits to water quality, but those effects will likely be limited. Jurisdictional boundaries and existing structures and roads will likely result in a patchy and narrow buffer. The natural character of the lake (shallow, enriched sediments, sediment disturbing fish) will likely limit the impacts of buffers. The hardened shoreline and storm drains limit the impacts of the buffer. Suggestions are that aesthetic, wildlife and nuisance geese benefits will outweigh the water quality benefits of buffers at this location; education/outreach to lake-side land owners to encourage maintaining existing lake-side vegetation, planting native grasses, shrubs and trees where they do not currently exist; and to further investigate the need for an ordinance. Lake Gerar is an example of where a conservation area exists. Another example is the Silver Lake Revitalization Project in Dover. Because there are various challenges especially related to stormwater, other tools that could be considered through initial educational outreach is to reduce the amount of runoff by keeping water on pervious (yard) areas, disconnecting downspouts, not watering the sidewalk or street, washing cars on yards and reducing impervious surfaces (pavement). In order to reduce pollutant inputs, fertilizer should be used sparingly and appropriately by following the recommended rate, not fertilizing before rain events and using native plants that require fewer nutrients. DNREC and non-profit partners such as Livable Lawns and the Centers for the Inland Bays are always available as technical resources. Ms. Volk acknowledged that the main focus of the buffers she spoke about is pollution related with the runoffs. The pollution benefits are likely to be somewhat limited given the location and what is flowing into the lake. Additional buffer areas along Silver Lake probably will not give a significant decrease in nutrients because the width of the buffer probably will not be 35 feet. Losing the areas which are wooded along the lake would cause the water quality to get worse. Even if the buffer is done, the existing storm drains will bypass any impact that the buffer may have. It would be up to a commission such as the Planning Commission to determine if aesthetic buffers would be appropriate. The public would also need to weigh in to see if the aesthetic buffers are a reason enough to do it. There are other good reasons to have buffers, and that leads to quality of life. There is no impact on water quality when fertilized grass goes up to the edge of the lake and there are no structures. This would be considered a setback not a buffer. Construction itself typically disturbs soils. Sediment gets into the waterway, and that sediment will often have nutrients bound to it. It would limit the area of having vegetation to stabilize a stream bank and take up the nutrients which are in the runoff. When there is construction within that zone, there are no plants within that zone. Plants provide the water quality benefit. In regard to piers in the water, there will be some disturbance of the sediment when they are constructed. Ms. Volk was reasonably sure that the bottom of Silver

Lake is not subject to the subaqueous lands regulations, and that is why there are piers out there. Any disturbance in the area will likely have some impacts. She was unsure if piers over a long time will have a negative impact on water quality. A division director at DNREC will be meeting with the Mayor and City Manager to discuss ownership, management and maintenance of Silver Lake. Funding and manpower have been the issue regarding dredging of Silver Lake, and Ms. Volk was unsure if this matter has been resolved.

Chairman Littleton noted that the natural springs which feed the lake will not keep up with the evaporation rate of the lake so with lacking rainstorms and stormwater input, the water level in the lakes will go down. It cannot be maintained from an evaporation level by what natural feeds are to it.

Ms. Volk noted that there is water quality data attached to the 2007 DNREC report which was done to provide a range of quality for a baseline. Monitoring in 2005 was also referenced in the report. There have been sporadic events where the lakes have been monitored. In regard to bulkheads in portions of the lake, they do not provide much for water quality. Bulkheads do not create a natural slope going into the lake, and they do not provide for the range of vegetation which can live in the water. A bulkhead maintains the property line, but does not perform as a buffer. It is best to stabilize a bank with vegetation naturally because the vegetation is what takes up the additional nutrients. Ms. Volk acknowledged that other forms of bank stabilization are plants, rocks, bio-logs, etc. In a wetland scenario, vegetation exists in the water and provides benefits. A buffer can be established part on land and part in the water. If everything is done in concert, there will be more of a benefit to the lake. There probably would not be major water quality improvements with only putting in buffers and not addressing stormwater. There will be water quality improvement when multiple things are done. Ms. Volk was reasonably sure that the piers out in Silver Lake are not subject to the subaqueous lands regulations and do not require permits. She was unsure if it would be beneficial for the piers to be included in the regulations. This would mean that any new piers would have to go through a review process. She will look into whether existing bulkheads and piers can or cannot be replaced.

Ms. Sullivan noted that repairs of existing docks are allowed. No new docks are allowed to be built, but that does not account for anything which is not in the City limits. DNREC is notified on a regular basis, and its response is that nothing applies to Silver Lake. City Solicitor Mandalas said that Silver Lake is a non-tidal lake, therefore the subaqueous lands act does not apply.

Chairman Littleton noted that there are approximately 667 storm drains going into various pipes, with approximately 20 to 60 of those pipes (municipal pipes and private pipes from rain gutters) going into Silver Lake. Lake Comegys which has storm drains coming off of Route 1 also flows into Silver Lake. Ms. Volk said that an analysis has not been done of Silver Lake as to the percentages of stormwater, drainage off of existing lands, etc. Such an analysis could be done, and it would require significant monitoring and modeling. Discussions would need to occur with the City with regard to resources and allocating manpower to do that. The University of Delaware could be contacted to receive the raw data of where all the storm drains are located. To do a thorough mini-TMDL for Silver Lake itself would be a big effort. Unless there would be 35 foot forested buffers around the entire lake, there will be less than a 25% reduction rate. Ms. Volk acknowledged that there are a variety of ways to treat stormwater. Piping stormwater directly to a lake would not be permitted now under the stormwater regulations. Stormwater could be treated onsite for quality. There are different levels of the stormwater regulations from worrying about quantities to looking at sediments and now looking at the nutrients. In an urbanized environment that has been around for awhile and has had existing storm drains and would be completely redeveloped with the new stormwater regulations in effect, then bio-retention cells would be done onsite to have the vegetation and water flowing into the ground instead of down a pipe. Retrofitting tends to be expensive and difficult, but it is possible to be done. Another way of addressing the issue is when a road would need to be dug up, the stormwater could possibly be addressed by incorporating green technology practices in the new road design. She will look into other coastal areas with similar situations as to what studies have been done and to see what has been accomplished with those lakes.

Mr. Mellen said that the Planning Commission needs to know what the problems are before starting to impose regulations on private property owners that may have some impact on their land.

Chairman Littleton noted that there are a number of the Planning Commission members who are concerned that if the margin of effect or improvement is low, then what would the cost be to the community.

Mr. Tom Zellers, 308 Stockley Street, noted that with all the storm drains in the City and with all of the water going into the lakes, buffers will not fix the problem. There are two stormceptors located in Country Club Estates that are catching the silt, trash, etc., but the rest of the City does not have that. He asked if it would be better to look at the stormwater management before getting into buffers.

Ms. Volk said that stormwater management should be looked into in addition to buffers. When the City will be getting a loan for the ocean outfall, possibly additional funds can be obtained to do conservation practices and not have any increase to the debt service through the Clean Water Advisory Council.

Mr. Barry Brandt, 316 Hickman Street asked from what water's edge would be considered for a buffer because the lake water level changes dramatically. He also asked if property owners can protect themselves from someone dumping soil into the lake to create a buffer.

Ms. Sullivan noted that in regard to the moratorium, it calls out for a 15 foot buffer from the 5.9 foot elevation of where the current outfall pipe is located.

Chairman Littleton commented that though the Planning Commission's charge from the City Commissioners focuses on buffers and site plan review, it is to conduct research about them. As the Planning Commission researches this matter and finds other issues not related to buffers, it would not be hesitant to inform the City Commissioners. He did not feel constrained by the charge it received from the City Commissioners not to consider other things. The Planning Commission would be remiss if it did not take those into consideration.

Mr. Shulman said that the minimum buffer would be a no-build zone; and beyond that would be the planting of grass or treating the area in a certain way. He asked what a buffer is at an absolute minimum. Ms. Volk replied that the definition of a buffer would have to be defined by a City ordinance. For her, it would be a water quality buffer with no building or disturbance in that zone. A buffer would have trees and natural vegetation for birds. A buffer for other reasons would need to be defined otherwise. Mr. Shulman said that even though discussing the studies of the lake is important, but it is primarily important to the question of whether a buffer will have a significant impact on the pollution of the lake. Depending on the benefits, there can be numerous types of buffers. He hoped the Planning Commission does not focus too narrowly on trying to solve the lake pollution problem if it cannot be solved.

Correspondence:

1. Letter dated April 12, 2012 from Vincent G. Robertson, Esq. of the law firm Griffin & Hackett, P.A. on behalf of Melissa Thoroughgood of Thoroughgood Woods, Stockley Street Extended.

Ms. Thoroughgood was in attendance at the meeting and read the letter into the record. As a result of the process for approval of her subdivision, much attention was given to the effects of the subdivision upon Silver Lake, taking into account that Ms. Thoroughgood's deed description confirmed ownership to a point in the middle of Silver Lake. The end result was the imposition of a 10 foot no-mow zone buffer starting at the edge of Silver Lake on the lot nearest to Silver Lake in the Thoroughgood Woods Subdivision. Because the subdivision and the 10 foot buffer was the result of such extensive and recent review by the City, it is inappropriate and entirely inequitable to impose a moratorium upon the construction of any improvements on the lot nearest to Silver Lake. Given the scrutiny that this lot has received, it is entirely unfair, arbitrary and discriminatory to impose an additional five feet of buffer are upon the lot. There is simply no basis for imposing an additional five feet, and none of the reasons for the buffer itself have changed between the approval and the present date. Attorney Robertson, in his letter, requested that Ms. Thoroughgood's property be exempted from the current moratorium and that the 10 foot buffer which was agreed to and imposed upon Lot 3 be allowed to remain unaffected by the current legislation that is being considered by the City for properties along Silver Lake.

Chairman Littleton noted that the Planning Commission has nothing to do with the moratorium. He suggested that Ms. Thoroughgood direct her concern to the City Commissioners who are proposing the moratorium.

2. Email dated March 25, 2012 from Timothy Spies, 53 Columbia Avenue – in support of the adoption of ordinances. He also recommended the adoption of architectural standards for the construction or modifications of houses and structures which border the lakes.
3. Email dated April 11, 2012 from Marilyn West-Nulty, 312 Stockley Street – in support of the proposed 10 feet from the water's edge for a setback and buffer. She strongly urged that dredging be done in Silver Lake to re-establish the once active wildlife and beauty of the lake.

Public Comment:

1. Ms. Mable Granke, 1013 Scarborough Avenue Extended, voiced concern that she has heard nothing about Silver Lake, Lake Gerar and Lake Comegys being a State resource. The State has a responsibility here because Silver Lake is not just the City's lake. It has bordering land from the County and Dewey Beach. This needs to be addressed in terms of what can be done because it is a three jurisdictional situation. Silver Lake needs to be protected, and it needs to be done from whatever approach that can be made. A buffer is a filter, and the reason the buffer is needed is to filter the water and dissipate the harmful ingredients. It is time to reach out to all of the property owners and urge, encourage and help them to know what is needed to be done to be responsible. She hoped that there is a basic ordinance from another municipality somewhere for protecting its lake that the City could use in terms of thinking through or helping to provide the basis from which to be able to do the ordinance that the City needs.
2. Ms. Sallie Forman, President of Save Our Lakes Alliance 3 (SOLA3), noted that unfortunately one of the most critical elements of both the 2004 and 2010 Comprehensive Development Plan (CDP) has languished, and that is the adoption of a buffer ordinance around Silver Lake and Lake Gerar. The City has ignored the fact that the CDP has the force and effect of law. The City does not have the option to ignore it as it relates to development. The 2010 CDP states that no development shall be permitted except as consistent with the Plan. It also states that the City would take interim protective measures for Silver Lake until long-term ordinances could be adopted. Because of the fiasco with Lot 6, Silver Lane, the Planning Commission has been charged with creating the buffer zone ordinance. SOLA3 strongly supports this effort, although the adoption of a buffer ordinance will not cure the City's violation of its obligations under the CDP with respect to the Silver Lane property. The recommendations SOLA3 provided for the buffer ordinance are in the 2010 CDP. They are: A clear and concise definition of the riparian buffer zone or setback should be determined. It should be created and defined based on a Needs Assessment study. The Needs Assessment study would serve to determine the specific goals and objective the Riparian Buffer Zone Ordinance.. The ordinance should allow for the specific topographical boundaries of the buffer zones on a parcel-by-parcel basis to determine the specific site conditions. The buffer zone should not be measured from the wetlands, but from the shoreline. Fifteen feet is an acceptable setback, if measured from the established shoreline. The use restrictions in the zoning ordinance should be defined to prohibit any development within the riparian buffer zone. SOLA3 encourages that shorelines be protected with a natural buffer by installing native plant to prevent erosion, filter out harmful substances entering the lakes, improve wildlife habitat, all using Green Technology Best Management Practices and Riparian Buffer Management Plans and maintenance. Natural buffers are usually more cost effective than bulkheads and rip rap, and are better for the environment. SOLA3 recommends that anyone building around the lakes be required to have an independent Certified Construction Reviewer (CCR) to ensure all Delaware Erosion and Sediment Control Regulations are followed during construction. The State of Delaware is currently completing a revision of the sediment and stormwater regulation. All regulations should be applied and enforced due to the sensitivity and importance of the lakes. The City should adopt these regulations as a condition of granting not only building permits around the lakes, but also for any building permit within the City. The deplorable conditions at the west end of Silver Lake are the result of the large storm drains depositing silt, sand and other solids that have accumulated over the years to a depth of several inches. The City has installed filters in the drains entering from Stockley and Laurel Streets. The next priority should be to install a filter at the corner of King Charles Avenue and Queen Street where there is already a build-up of sediment, soil, etc. SOLA3 has provided the Planning Commission with a map showing the City drains. This map results with SOLA3's project with the University of Delaware and Upward Bound students. In 2010, SOLA3 initiated a meeting with DNREC Secretary O'Mara to review Silver Lake's problems, and the sediment removal at the west end was prioritized as the first project. SOLA3 created the Silver Lake Task Force to work on this project which includes DNREC staff experts, State and City officials and a representative from Country Club Estates. Toxin tests have been completed, and the results have been provided to the Planning Commission. A cost for the project estimated at \$300,000.00 was obtained from a contractor. While the City and State have provided no solutions, this is an area where the City could seek grants to pay for the project. SOLA3 supports a site plan review for structures being built along the lakes. The review should be reasonable and not arbitrary, but designed to consider what is appropriate for the lakes' overall environment. A buffer ordinance and design review should treat all property owners fairly and not impose undue restrictions as long as the main objective of protecting the lakes and their environment is achieved. Other matters for the Planning Commission to look at and benefits to consider would be the border of the lake, to have it planted with something even if it would

be ordinary grass and not an impervious surface, and not allow sheds, air conditioning units and things that are not part of the house itself. A conservation easement should be done for every property that abuts the lake. Ms. Forman acknowledged that the owners living closest to the lake can make the greatest contribution to the improvement of the lake. One way to reduce the rate of erosion is to require structures to be a certain distance from the lake.

Mr. Shulman said that the Planning Commission needs to not only look at the improvement of toxicity in the lake, but to look at other goals there should be by creating a buffer zone. As the Planning Commission goes through this process, it would be helpful if SOLA3, other organizations, neighbors and property owners would let the Planning Commission know their thoughts about protection is needed in addition to the lake not being as toxic as it is. He noted that Ms. Forman suggested as part of the buffer zone ordinance that one of the items to be specifically included in the ordinance is that during the construction phase there be particular attention paid to debris, cleanup, etc.

Ms. Volk noted that impervious surfaces should be kept at a minimum within the entire watershed. She acknowledged that if a structure is closer to the lake, the water runoff will be faster and will be more likely to erode the shoreline of the lake.

3. Mr. Tom Zellers, President of Country Club Estates Homeowners' Association, asked is Silver Lake is a lake or a stormwater management lake. Representatives from DNREC have told him that Silver Lake is a stormwater management lake. He noted that there is \$300,000.00 allocated in the State's budget for the dredging of Silver Lake, to move the sediment from the west end of the lake.

Ms. Volk noted that Silver Lake is one of the only natural lakes in Delaware.

Mr. Zellers was in attendance at the meeting to represent his neighbors who live at Silver Lake in Country Club Estates. There are approximately 70 properties that abut Silver Lake in the City. The majority of those properties have a road between the lake's edge and their buildable lots. Approximately 12 of those are directly on the lake and six of those are in Country Club Estates. These homeowners would be most adversely affected by any kind of extended buffer. Many of the existing structures are located at 11, 12 and 15 feet from the lake's edge. The homeowners have serious concerns about what an extended buffer would do to them and their ability to repair, renovate or rebuild their properties, both from a Board of Adjustment standpoint and Building & Licensing standpoint. The major problem with Silver Lake is not how close a house is to the water's edge, but the major detriment comes from stormwater runoff and the pollutants it brings. Adding an extended buffer will not solve this problem. A study had been previously done by DNREC identifying the number of outfalls into Silver Lake and their locations. There are approximately 32 large storm drains that flow into the lake. The west end, in particular, has one (1) 60 inch and one (1) 32 inch storm drain which bring flows from more than 300 homes on State Road, Scarborough Avenue and Rehoboth Avenues. Volumes vary depending on rainfall. From an environmental standpoint, nothing will be gained by adding an extended buffer to the 12 to 70 homes at Silver Lake. The problem comes from beyond the lake. Over the years, Country Club Estates has worked with the City to install two (2) stormceptors on Laurel Street and in Stockley Park to catch the sediment/debris before it gets to the lake. These are the kinds of solutions that are needed. Questions have been raised about natural springs in the lake; however, due to the amount of sediment that has accumulated over the past 20 years, there is no evidence to support their existence any longer. Over the past 13 years, the lake's levels have dropped dramatically especially in the west end. There have been major fish kills and algae blooms and odors. An extended buffer will not fix this. Time and money would be better spent in developing a stormwater management plan instead of imposing a restrictive buffer on only a few properties. There is already a 10 foot rear yard setback in the Zoning Code. Keep that as it is and make 10 feet the mandated setback along the lake's edge. Mr. Zellers noted that he and his neighbors would support a 10 foot buffer from the water's edge. A 15 foot buffer could be used around Lake Drive. He did not think that they would be comfortable with turning the 10 feet into a natural buffer zone.

Mrs. Shulman said that this a significant comment by people who are most affected by this, that regardless of where their property line is, some are comfortable with a buffer zone, no building area that is measured 10 feet back from the water's edge.

Ms. Volk acknowledged that a matrix could be developed where there could be a certain buffer that would be appropriate for every single parcel. A narrow buffer could be used with a steeper slope

of the land because the groundwater will flow off quickly. A steep slope will have less of an impact to the buffer. A wider buffer could be used with a gradual slope.

4. Ms. Toni Sharp, Scarborough Avenue Extended, noted that the water quality issue is not going to be corrected overnight. The aesthetics issue of the lake has a more immediate opportunity. Since the lake at Scarborough Avenue Extended could be anyone's side yard, the side yard setback could be six feet from the water's edge. When the Planning Commission thinks about aesthetics, there may be an opportunity to no longer allow a structure to be that close to the water.

Mr. Shulman suggested that the Planning Commission get actual layouts of the lots that border the lake. There may be reasons to treat a 5,000 square foot lot differently from a 7,000 or 10,000 square foot lot. There may be reasons to suggest something different for a steep slope as opposed to a gradual slope.

Ms. Volk suggested that the City could try to do landscaped buffers where trees could be ideally placed at certain spots, the use of lower vegetation, etc. There are other resources within DNREC who could provide advice with respect to this subject.

Mr. Zellers suggested that the City could pay for the monitoring of Silver Lake. Samples would need to be taken at the same spot at the lake.

The next scheduled Regular Meeting will be held on May 11, 2012 at 6:30 p.m.

A Workshop Meeting will be held on May 12, 2012 at 10:00 a.m.

Mrs. Konesey made a motion, seconded by Mr. Gauger, to adjourn the meeting at 10:17 p.m. Motion carried unanimously.

RECORDED BY

(Ann M. Womack, CMC, City Secretary)

**MINUTES APPROVED ON
JUNE 8, 2012**

(Preston Littleton, Jr., Chairman)