

**PLANNING COMMISSION MEETING
CITY OF REHOBOTH BEACH**

June 8, 2012

The Regular Meeting of the Planning Commission of the City of Rehoboth Beach was called to order at 6:30 p.m. by Chairman Preston Littleton on Friday, June 8, 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. John Gauger
 Mr. David Mellen
 Chairman Preston Littleton
 Mr. Francis Markert, Jr.
 Mrs. Jan Konesey
 Ms. Lynn Wilson
 Mr. Robert Anderson

Absent: Mr. Harvey Shulman

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

A quorum was present.

APPROVAL OF MINUTES

Minutes of the March 9, 2012 and April 13, 2012 Planning Commission Regular Meetings and May 12, 2012 Planning Commission Workshop Meeting were distributed prior to the meeting. The May 11, 2012 Planning Commission Regular Meeting Minutes were not available for approval.

Mrs. Jan Konesey made a motion, seconded by Mr. Markert, to approve the March 9, 2012 and April 13, 2012 Planning Commission Regular Meetings and May 12, 2012 Planning Commission Workshop Meeting minutes as written. Motion carried unanimously.

CORRESPONDENCE

Correspondence will be read when the discussion regarding the City's lakes portion of the meeting is held.

OLD BUSINESS

Chairman Littleton called for the Public Hearing of Partitioning Application No. 0412-02 for the property located at 21 Queen Street, Lot Nos. 1, 2, 3 & 4, Block 33, into two (2) lots with the westerly portion of Lot Nos. 1, 2, 3 & 4 becoming one (1) lot of 5,005 square feet and the easterly portion of Lot Nos. 1, 2, 3 & 4 becoming one lot of 5,005 square feet. The Partitioning has been requested by James Fuqua, Jr., Esq. of the law firm Fuqua, Yori and Willard P.A. on behalf of CFRE Holdings I, LLC, owner of the property. Chairman Littleton noted the Preliminary Review procedures.

Ms. Ann Womack, City Secretary, verified that the Public Hearing has been duly posted and advertised.

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

Exhibit A – Application for Subdivision with Attachments – Existing Conditions Plan, Tree Preservation & Partition Plan, Affidavit, Certified Resolution of CFRE Holdings I, LLC, (6) Photographs and Deed.

Chairman Littleton said that a list of all the original submissions was provided to Mr. Tim Willard, Esq. at the last meeting.

Mr. James Fuqua, Esq. of the law firm Fuqua, Yori and Willard, P.A. represented CFRE Holdings I, LLC, owner of the property. He addressed the supplemental information which was submitted on June 7, 2012 as a result of the Preliminary Review held on May 11, 2012. The new information submitted was (9) photographs

taken after the demolition of the structure and a revised Tree Preservation and Partitioning Plan dated June 4, 2012. Each lot will contain a minimum of 5,000 square feet and a rectangle of 4,000 square feet within the boundary. Each new lot will have 50 feet of frontage on Queen Street and 100 foot depth. Each lot will provide the required setbacks. The City's tree ordinance requires that at least (3) trees are provided on a 5,000 square foot lot, and the tree density can be achieved by preserving existing trees or planting new trees. The building layout was revised to consider the best way to preserve trees while still utilizing the site for the best construction design. Proposed Parcel 1 will be the corner lot with the side on King Charles Avenue and front on Queen Street. The side of the lot along King Charles Avenue will have a 10 foot side yard setback. At least (6) of the existing trees will be preserved. Two existing trees located in the net buildable area will be removed. It is indicated on the plan that four trees could be removed based on the site design. To the rear of the lot will be an evergreen screening which will be planted along the eastern side of the rear yard and will continue across the rear yard of Parcel 2 and approximately 40 feet along the eastern boundary abutting 13 Queen Street. The 10 foot side yard setback on Parcel 2 will be relocated to the interior side to provide parking on the west side of Parcel 2. This will allow for a landscaping area to be created in the front east corner and centered with an approved tree. This will avoid interfering with the 18 inch pine tree that is located close to the front of the property line. A similar landscaping area will be located in the western rear corner of Parcel 2. This would act as a landscaped buffer between the two rear yards of Parcels 1 and 2. On Parcel 2, the existing 16 inch pine will be preserved as well as the pine tree in the front of the property. The existing magnolia and holly trees would be removed. Shown on the plan are the approximate drip lines for the magnolia and holly trees. The drip lines approximate the main root area of trees. Both the lots will contain at least (3) trees, and there will be several other trees on Parcel 1 that will be preserved. The landscaping areas on Parcel 2 will have the (2) additional required trees. It is the intent of the owners to construct two attractive homes facing the Silver Lake that would be consistent with the existing beauty of the area. Once construction is complete, it is likely that there will be additional landscaping with trees placed in appropriate locations on the site. Formal construction plans are being worked on to date. Possibly what will be done is to have at least a portion of the front building on Parcel 1 will have a greater side yard setback so that parking could be located internally. The two lots would be served by adjacent parking which would minimize inconvenience to anyone and affecting the trees. No basements are planned for the two parcels. The Application fully complies with the letter and spirit of the applicable City ordinances.

Also in attendance was Mr. Tony Fuello, principal and manager of the Applicant and Mr. Mike Early of Merestone Consultants.

Mrs. Konesey hoped that when trees are planted, the Applicant looks at planting native trees and similar trees to the ones being removed.

There was no correspondence and no public comment.

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

Mrs. Konesey made a motion, seconded by Mr. Markert, to approve the partitioning of 21 Queen Street on Lot Nos. 1, 2, 3 & 4, Block 33 into two lots which meet all the requirements. The lots are more than 5,000 square feet and have a 4,000 square feet rectangular section. There is 50 feet of frontage; and all other Code provisions have been met. Motion carried unanimously.

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

There was no update.

NEW BUSINESS

There was none.

OTHER BUSINESS

Chairman Littleton called for the status report concerning the transmittal to the Mayor and Commissioners of the two draft amendments to the City Code approved by the Planning Commission at its May Regular Meeting. The first is to better protect the City regarding the requisite bonding for major subdivisions. The second is a technical amendment to the definition of lots in regard to merged lots and their partitioning.

Chairman Littleton noted that at the last meeting, the Planning Commission finalized two proposed ordinances. He said that City Solicitor Mandalas has incorporated the last edits and has forwarded the proposed ordinances to the Mayor and Commissioners with a request that they be put on their agenda and be approved as

soon as possible. City Solicitor Mandalas will explain to the Board of Commissioners what the proposed ordinances are about and why they are needed. If the Board would like some background, Planning Commission members are willing to be in attendance at the meeting. The proposed ordinances were distributed to the Planning Commission prior to the meeting.

Chairman Littleton called for the continuation of the Commission's discussions regarding the City's lakes: 1. Update and discussion of new information and data developed since the Commission's May 12, 2012 Workshop Meeting that dealt solely with the City lakes. 2. Discussion with the Building Inspector regarding what is/is not currently allowed by the City regarding lake shoreline structures and environmental related issues. 3. Continuation of discussions about possible recommendations and suggestions to be included in a draft report and identify remaining questions and/or date needs. 4. Plans for representatives of the Commission to meet with DNREC officials at their Dover office to get additional input and discuss any remaining questions. 5. Develop timeline and process for public review and comment on draft report before finalizing and forwarding the report to the Mayor and Commissioners. 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 interests of other citizens.

Chairman Littleton said that since the Workshop Meeting on May 12, 2012, he has received information from DNREC, the most recent of which he forwarded to the Planning Commission today. After that meeting, Mr. Mellen and Mr. David Henderson, IT Director, were going to work on additional analyses.

Mr. Mellen provided an update of Table 2 from the package of four tables containing calculations which had been handed out at the Workshop Meeting. What he has tried to do was to identify the magnitude of the problem, what the problem is, the relationship of the surrounding watershed area to the lake and its perimeter and people who own property along the lake and how they may contribute to the damage of the lake vs. people who do not live on property that abuts the lake and who also contribute equally to the potential environmental impact of the lake. In Table 2, Mr. Mellen added the total area of Silver Lake Lake Comegys. Silver Lake is approximately 42-45 acres, and Lake Comegys is approximately three acres. In Table 2 are the perimeters of the blocks in South Rehoboth. The contaminants shed off the land for each of the landowners and get into the stormwater system. The typical area is approximately four acres for each second and third blocks, and the typical area for the first block is approximately three acres. A typical 50 feet x 100 feet lot is approximately 1.5 acres. The total acreage of the land in this watershed area was not calculated, but it is significant. It is on the order of, if not exceeding, the area of the lakes. Similarly, in Table 4 of the previous data, the area of the streets in that drainage portion of the watershed was summarized. Just the streets and sidewalks in the watershed area consist of approximately 50 acres. Impervious streets at least match the area of the lakes. All of the water from those streets ends up as drainage into the stormwater system. All the residents in South Rehoboth, not just the people who live along the lake, have an impact on a potential contamination problem with the lake. The actual area of properties along the lake is approximately seven times larger than the lakes themselves. Information has been provided from DNREC regarding the chemical contaminants which come off of the properties, how much of the contaminants get into the stormwater system, how much gets into the lake, how much runs off the actual properties, sediment and how it gets into the lakes through the stormwater system and information related to the oxygen levels. There have been a number of fish kills over the years dating back into the early 1980's. DNREC's comments are related to why there is a lack of oxygen in the lakes and fish kills, and what can be done about it.

Chairman Littleton added that in the DNREC information, the watershed for Silver Lake is 283 acres. A portion of the watershed is located outside of the City. The watershed is a replication of the area that the stormwaters enter into. At one end, some of the stormwater goes into the canal, and at the other end, some goes into the ocean. The area of Lake Comegys is three acres, but the watershed for that lake is 41 acres. All this data reinforces the idea that the City, the surrounding County and a portion of Dewey are contributing to this. The analysis looked at the perimeter of the lake. Another analysis had been done on the properties that are contiguous with the lake of which a small percentage is at the perimeter of the lake. The percentage relative to the total City portion of the perimeter of the two lakes consists of 1.8% for Thoroughgood Woods on Stockley Street Extended, 1.9% for Country Club Estates, 3.5% for the park area along the footbridge and near the school, 5% from the footbridge to the end of Scarborough Avenue Extended and Lake Drive and 7.8% along Lake Drive where the gazebos area located. Private property that abuts the lake is 1,040.66 feet. The total lake perimeter is approximately 10,000 feet.

Mr. Mellen summarized that the actual properties in the City that abut the lake is a small percentage of the

perimeter of the lake. Relative to the contribution of the watershed area, all of the properties in South Rehoboth which do not abut the lake are a small percentage of that perimeter. The contributors to pollution of the lake are not only the people who have property which abuts the lake. A lot of people do not fully understand that the groundwater from the watershed gets into the storm sewers, which then gets into the lake; and a lot of people do not fully understand that the water is not filtered, except in a couple places where sediment is captured. The real question is whether the water going into the lake is damaging the lake. DNREC has said that this is not the best situation, but it is not the worst situation. DNREC associates the oxygen level problems, not so much with the chemicals that are going into the lake, but more with dropping and nutrients which are created by birds. The sediment problem goes hand-in-hand with the chemical pollution problem.

Chairman Littleton noted that Silver Lake has existed for a long time, and parts of the lake were spring fed. The thought now is that there are little or no springs feeding the lake due to the silt, particularly in the western end of the lake. The lake is now being fed by stormwater runoff. He did not know if anyone can prove this.

Mr. Mellen summarized the data regarding buffer zones. Practically all the information which was gathered that refers to protecting the lake from runoff, etc. states that buffer zones should start at 100 feet, 50 feet or 35 feet. When getting down to the practical problem of 10 feet that currently exists in the built community, any change to the buffer zone such as putting in additional grasses, trees, etc. to trap sediment and chemicals, will only be a 1% or 2% correction.

Chairman Littleton said that the research which has been presented to the Planning Commission in terms of buffers zones for pollutant purposes, the minimum distance of treed buffers is 35 feet, and with that there is a potential for a 20% reduction of nutrients. There is no data for anything less than that. With regard to sediment control, bank stabilization can be done with much narrower methods. Sedimentation is a big issue with this lake. Suspended sediments also bind with phosphates and nitrogens and cause other problems. Sediment control is equally a concern as are nitrogen and phosphate pollutants or other chemicals.

Chairman Littleton had forwarded a list of items to the Planning Commission for discussion and whether or not it wants to include the items in its report to the Board of Commissioners. Items included in the list were: 1. No-build buffer. 2. Site plan review. 3. Bank stabilization/control. 4. Grandfathering. 5. Specific prohibition. 6. Improvement of City's stormwater management system. 7. Accurate mapping of City's current stormwater system. 8. Dredging and improvement of western end of Silver Lake. 9. Review of building code requirements. 10. Public information and private action. 11. Possible communication with lawn service companies doing business within the City. 12. Specific recommendations about dumpsters. 13. Trees. 14. Commending the City for actions that have or are taking place. 15. Multi-jurisdictional issues. Items to be included in the list are: 1. Lake level management and control. 2. Whether a hard surface can be a pervious hard surface. A number of questions were raised as to what the City currently allows and what elements may be missing from the Code. Additional questions/comments included trees, silt screening of properties, dumpsters and construction site management.

Ms. Sullivan provided insight to the Planning Commission with regard various items she is aware of. The code requirements for sediment and erosion control are any disturbance of more than 5,000 square feet requires silt fencing at a construction entrance. Most of the lots in the City do not disturb more than 5,000 square feet. This is not a requirement as such, but there are some places where it is required even though it is less than 5,000 square feet.

Chairman Littleton said that silt screening is required on a property, and it mandates that there is only one access point to that property. That has to be excavated with a stone construction entrance. When the project is finished, the stone will need to be removed. In the process of putting the stone in and removing it, there may be more disturbance contributed than if nothing was done. Limiting the entrance to a narrow driveway on a 50 foot x 100 foot lot would make it difficult for construction workers to walk on the property and bring in materials and equipment.

Mr. Markert thought other methodologies could be applied to preventing or maintaining runoff. The City should be able to come up with better practice with regard to runoff. Graduated practices could be established based on the scale of the project, etc.

Ms. Sullivan said that other than by seeding the area and keeping a groundcover on it, runoff is difficult to be maintained during construction. Anytime someone wants to do something over and above whatever code has been adopted, it is a non-issue. City Solicitor Mandalas said that federal law states that something cannot be done which is less restrictive; but since the City chose to implement the building code laws, any portion of them can be changed.

Ms. Sullivan noted that a contractor who does not use silt screening and there is mud on the street is told by the building inspectors to clean it up. Things that can be done to protect the storm drains are using bales of hay and removing the grates on the drains and putting in filter cloth. During construction, this would help with sediment control but it hinders water draining into the pipes.

Mr. Markert thought that the City's building inspectors could advise the construction workers as to what the best practice would be to prevent or maintain runoff.

Ms. Sullivan said that with regard to houses being demolished and lots being vacant, there is a requirement to put the lot back to the natural grade as well as ground cover. With regard to leakage from dumpsters, dumpsters cannot be waterproofed. Possibly the filter cloth which is used in storm drains could be used. During the summer months, dumpsters are required to be placed on the lots and not on the street so there will be some filtering before the water would get to the street. The City Code requires that restaurants have dumpsters that are covered because of vermin and smells. There have been no complaints of dumpsters leaking in the City. With regard to the location of trees, drip lines and digging foundations, anytime there is a disturbance with the root system under the drip line, the tree is being damaged. Tree structure and balance are lost along the possible loss of feeder systems. Many arborists have said that there is no way a tree will remain safe when putting in a seven foot deep basement within two feet of the base of a tree. If a foundation is put in too close to a tree, the foundation may be disrupted and crack which would result in material hazard. No person shall encroach or place solvents, material, construction machinery or temporary soil deposited six feet from the trunk of any protected tree or any tree within a tree protection zone. The protection area only has to be four feet from the trunk of a tree.

Mrs. Konesey noted that in the ordinance, more trees that would be located near a structure could possibly be preserved when hand digging around it.

Mr. Mellen thought that more trees would be lost especially with the current setback minimums the City Code requires. Tree canopy is being lost even though people are obeying the tree ordinance by putting in three trees. He suggested that as part of the preservation of the lakes, the Planning Commission should emphasize the importance of mitigation. People need to be encouraged to replace the canopy that is being lost by planting trees on their property or other places within the City. Ms. Sullivan said that mitigation is part of the tree ordinance. If a tree cannot be planted on a person's lot, they are planted within the watershed. Trees are allowed to be planted on City property after permission is obtained from the City Manager. The requirement for a replacement tree is to be 12 feet tall with a three inch caliper. It is a requirement by the tree ordinance that one deciduous tree be planted in the front yard of a property. A property owner is required to replace a tree if it is not dead, dying or diseased.

Ms. Sullivan said that with regard to grandfathering, structures can continue to exist as long nothing is done to them. If more than 50% of a house remains after a portion of the house is removed, then an addition can be added to the conforming side of the remaining portion of the house. With regard to a non-conformity, any new construction has to abide by the current code. If there is a fire, explosion or act of God, the non-conformity may be rebuilt and reused for the same purpose provided that the reconstruction of the building commences within six months and is carried through completion without undue delay. With regard to the piers at Silver Lake, she was not sure how they were allowed to be built. Auxiliary structures in the setback area adjacent to the lake can be put in four feet from the rear and side property lines. Grandfathering applies to existing auxiliary buildings when a person does not remove the entire structure and only repairs and puts up two new walls on the conforming side. Once more than 50% of the structure is removed, grandfathering no longer applies. Bulkheads along the lake can be repaired, but not replaced.

Ms. Sullivan said that underground sprinkler systems for manicured yards that go to the lakes' edges are not regulated. A property owner is told that anything they would put in the riparian area or the City right-of-way and it is destroyed, the City is not responsible. It also creates a problem with runoff. There is a requirement that property owners cannot dump water on neighboring properties. It would be educational to teach people about the difference between conserving water and not dumping it so it goes to a storm drain.

Chairman Littleton said that at the end of the Workshop Meeting, there had been discussion about a no-build buffer area of 10 feet to be maintained as a natural area. Testimony was provided from residents in Country Club Estates with regard to the acceptability of the 10 foot buffer area. Ms. Sullivan defined natural area as plants, grass or mulch. Chairman Littleton said that the no-build buffer is one of visual impact, not environmental. This buffer is to prevent people from building too close to the lake.

Mrs. Konesey thought that building should not be closer than 10 feet to the lake, but it should be proportional to the lot size. Chairman Littleton thought that site plan review may address this. At the Workshop Meeting, the majority of the Planning Commissioner members agreed to do site plan review for a piece of property that borders the lake. Chairman Littleton was against this idea. The site plan review would be a public process and would allow conservation with neighbors and the Planning Commission about concerns.

Mr. Markert said that the focus of the Planning Commission's task was based on preservation. The lake is a shared resource. For those reasons, a public discussion is needed in order for the public to decide or have some input on how the lake will be treated especially with regard to construction. – protecting property rights.

Chairman Littleton proposed that if site plan review is to be done for the properties that abut the lake, then a 25 foot minimum could be used for the buffer area. Site plan review would then be done for the properties in Newbold Square, School Lane and Country Club Estates. There would also be properties bordering Lake Gerar that would be affected. With regard to the 10 foot buffer area, there would be not structures allowed such as accessory building, decks, etc. Chairman Littleton's idea was that a site plan review would be required if a structure is building in the 11 feet to 25 feet area from the lake. City Solicitor Mandalas said that the lake's edge is currently defined as the ordinary high water mark which for Silver Lake is approximately a six foot elevation. The most widely adopted way to define the water's edge is the ordinary high water mark. Chairman Littleton explained why the water's edge rather than the property edge because some people claim that their property goes into the water. The City has defined the water's edge on an elevation with regard to the moratorium.

Chairman Littleton said that according to the research the Planning Commission has on bank stabilization, the techniques to be done would be a natural area, rip rap or bulkhead with bulkheading the least preferred technique. The recommended technique would be as a natural area. Every property owner could be given a certain amount of time to take care of bank stabilization. The science of bank stabilization is lot specific so an owner should defer to an expert who could determine the appropriate type of bank stabilization. If nothing would be done to stabilize a bank, then there would be a 10 foot no-mow zone. Mr. Markert recommended that standards should be established for plants in a no-mow zone in order to have a view of the lake. There should be a means to restrict certain unfavorable practices, etc. with regard to what get planted in the no-mow zone and to promote things that are beneficial.

Mr. Patterson said the SOLA recommendation and the CDP states that there should be a natural vegetative buffer surrounding the lake. The City could regulate that there should be a natural no-mow zone or a treed area, etc. along the majority of the properties that abut the lake. No accessory structures can be built there anyway. It essentially has been dedicated to a great extent to a public use in the sense that the views from the public street to the lake are not to be obstructed by private uses. It is a small further step to say that there would be a requirement of 10 feet as a natural vegetation area.

After discussion, City Solicitor Mandalas noted that the Planning Commission is considering an ordinance that would say the City engineer has the final approval authority for whatever stabilization is used.

Chairman Littleton thought that with regard to the report and whenever there is an opportunity and the findings allow, every stormwater drain system would be upgraded. Mr. Mellen suggested that there should be a method for continually monitoring the lake.

The consensus of the Planning Commission was that the west end of Silver Lake should be dredged, and no yard watering systems should be allowed in the City right-of-way or from the edge of the lake. Signage should be placed at Silver Lake regarding the habitat, water resource, buffer, etc., and there should be an increase in the planting of Delaware approved native trees. There was no consensus with the regard to grandfathering. This item will be researched further. A lot of work needs to be done to educate people about what the problem is with the stormwater runoff, drain system, lakes, etc.

The Planning Commission has received public input on this matter and an enormous amount of researched scientific data. The consensus of the members was to review the report before it is forwarded to the Board of Commissioners.

Public Comment:

1. Ms. Toni Sharp, Scarborough Avenue Extended, requested that the Planning Commission in moving

forward, should create two columns. One would be the culprit column, and the other would be the homeowners around Silver Lake. All the solutions should be lined up for each particular side of the column. A great deal of the solution is coming from very few property owners, when the larger problem appears to be the column that may not have as many items to do. The Planning Commission is grappling with a very complicated situation.

2. Mr. Eugene Lawson, 12 Hickman Street, was gratified that the Planning Commission is helping his clients to get DNREC involved. DNREC had certain jurisdiction over the lake for a long time including issuing permits for retaining walls, bulkheads, etc. up until the late 1980's. The Planning Commission has been helpful with getting staff members involved in handling what is their responsibility, which is the health of the lake. Hopefully what the Planning Commission is doing will have some effect in moving forward.

Correspondence:

1. Letter from Mr. Stephen Simmons sent to Mr. Collin O'Mara, Secretary of State of Delaware Environment and Energy, Senator Bunting and Representative Pete Schwartzkopf, to encourage them to correct an injustice to the environment and assert their influence by supporting or sponsoring the funding of the process necessary to restore Rehoboth's Silver Lake to its wellbeing by assuring the proposed removal of sediment from the lake.

Mr. Mellen noted that Ms. Mable Granke, Scarborough Avenue Extended, was supportive of what the Planning Commission has done so far in terms of the research. She was in support of the buffer zone around the lake, and her preference would be for a natural habitat, no-mow zone, etc.

Chairman Littleton, Mr. Mellen and Mr. Markert will work on drafting the report. In addition, Mrs. Konesey will join them to meet with DNREC for their review of the draft report regarding the lakes.

No new subdivision applications have been received to date.

The next scheduled Regular Meeting will be held on July 13, 2012 at 6:30 p.m.

Mrs. Konesey made a motion, seconded by Mr. Gauger, to adjourn the meeting at 9:50 p.m. Motion carried unanimously.

RECORDED BY

(Ann M. Womack, CMC, City Secretary)

**MINUTES APPROVED ON
NOVEMBER 9, 2012**

(Preston Littleton, Jr., Chairman)