

**PLANNING COMMISSION MEETING
CITY OF REHOBOTH BEACH**

July 13, 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, July 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
 Mr. Robert Anderson

Also Present: Mr. Glenn Mandalas, City Solicitor

Absent: Ms. Terri Sullivan, Chief Building Inspector

A quorum was present.

APPROVAL OF MINUTES

No Minutes were available for approval.

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 consideration of granting final approval to conditionally approved Partitioning Application No. 0212-01 for a property located at 200 Hickman Street upon receipt of a report from the Building Inspector relative to the Applicant meeting all conditions cited by the Planning Commission in its May 11, 2012 conditional approval.

City Solicitor Glenn Mandalas read Building Inspector Terri Sullivan's memorandum dated July 12, 2012. The conditions set forth by the Planning Commission have been completed. The encroaching portion of the structure, HVAC units and Bilco door have been removed, but the permit is still open as interior work is ongoing.

Mr. Mellen made a motion, seconded by Mr. Gauger to approve final approval of the partitioning at 200 Hickman Street. Motion carried unanimously.

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

City Soicitor Mandalas noted that the appeal of the 2 St. Lawrence Street partitioning is still in discussion, but significant progress has been made. An executive session will be held tonight under the context of potential litigation regarding this appeal.

NEW BUSINESS

There was none.

OTHER BUSINESS

Chairman Littleton called for the continuation of the Commission's discussions 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 interests of other citizens.

Chairman Littleton read the starting premise of the draft Rehoboth's Lakes Report with Recommendations. Respectful of the Board of Commissioners resolution, the Planning Commission stated that it should make no recommendations until it first understood what problems existed concerning the City's lakes, what could be done to address these problems and by whom, and in doing so what would be their relative benefit and cost. He read the proviso in the Board's resolution. The Board stated that the interests of property owners to appropriately use their property should be balanced with the interest of other citizens. Specific recommendations, suggestions and acknowledgements were provided under Section III of the report.

1. Public Education and Action: One of the most important tasks is to educate the public residing in the watershed and stormwater systems of Lake Gerar, Silver Lake and Lake Comegys and that what they do on their property or allow to run off of their property directly affects the condition of these lakes. The Planning Commission recommends that there be renewed public-private initiatives to accomplish this. The fact that there is an extensive existing stormwater management system throughout the City that discharges runoff from private property into the City's lakes makes this effort of paramount importance. Coordinated and concerted efforts are needed in the County's and Dewey Beach's watershed area as well. In making this recommendation, the Commission wants to acknowledge the significant and positive efforts of the volunteer organization SOLA3, which has been committed to this effort as well as the involvement of other volunteer organizations. Likewise, the City itself has undertaken positive initiatives, for example the installation of informational "medallions" on stormwater grates, making public information available and the recent installation of the rain garden demonstration at City hall. There are also other organizations within the State, such as the Delaware Livable Lawns program funded by DelDOT that stand ready to assist. The Planning Commission recommends that a joint public-private "task force" be created to design a long-term plan – capitalizing on what has already been achieved. For example, the informative signage now in place at Lake Gerar or informing lakeside property owners of means of controlling geese, associated goose droppings and using natural growth barriers that have been effective at Lake Gerar. The main elements of such a plan are that it should be comprehensive and continuous. While on-time events/activities may be part of the plan – this must be a long-term effort. With some embarrassment, the Planning Commission itself acknowledges that despite these ongoing efforts by SOLA3, the City and others – it was not until it undertook this current assigned task that members of the Commission began to comprehend the magnitude of the problem, complexity of solution and most importantly, the need to not only educate the citizenry but also for citizens to take positive action.
2. Reduction of Contaminants Entering the Stormwater System:
 - Efforts to ensure the proper use of fertilizers and insecticides are important and it is thought that the primary problem results from inappropriate action by private property owners. Recognizing that it is nearly impossible to monitor such behavior, emphasis must be given to a continuous public education program. The compliance of commercial applicators and lawn service companies for whom the City has contact information via their business licenses, should also be monitored.
 - Silt-screening and temporary gravel site access-ways are not currently required by the City for most residential building. There should be consideration to requiring cost effective measures to control construction silt. Even within the existing requirements, special attention and monitoring should be required to ensure that dirt and other contaminants do not enter the street and then storm drains. Enforcement actions should be taken – including stop-work orders mandating remedial action and penalties imposed. Preventing contaminant leakage from dumpsters must also be monitored and enforced. An overall review and discussion of sediment/contaminant control should be part of the building permitting process.

With regard to Building Inspector Terri Sullivan's proposed language for placement of dumpsters, Mr. Robert Anderson asked where they would be placed if they cannot be placed in the public right-of-way at any time of the year. He would not propose that dumpsters would not be allowed in the public right-of-way for a reasonable timeframe. Construction materials should not be allowed on the streets. Mr. John Gauger agreed. Mr. Harvey Shulman said that he would oppose it if the dumpster would be there for an extended period of time. There were no objections from the Planning Commission members. Mr. Markert noted that the roll-off dumpsters need to be monitored for contaminant leakage to insure that there is no drainage to the stormwater drains. He presumed that the Building & Licensing Department would monitor the dumpsters. Mrs. Konesey suggested contacting other

municipalities to find out how they monitor dumpsters. Chairman Littleton noted that silt screening a 50 foot frontage would make it difficult for builders if the only access is a driveway. Mrs. Konesey said that silt screening should be required. Mr. Shulman said that if silt screening will be required, then something needs to be said about trees. Requiring silt screening as an automatic requirement without taking into account the characteristics of the property, particularly the trees, would solve one problem but would create another. Chairman Littleton thought the whole focus should be on enforcement actions to prevent things from coming off of the property. Mr. Markert said that the objective is that sediment does not get into the storm drain, and this should be included in the recommendation. The conditions should include silt fencing as needed. Chairman Littleton suggested that the recommendation be that the City Code should be modified to allow the requirement for silt fencing at certain places. The objective is to keep things on the property, and it would be enforceable by the Building Inspector. Mr. Shulman said that notwithstanding any other provision of the Code, the City shall require the property owner to take all reasonable steps which may include silt screening to prevent the release of sediment into the storm drains. This would be discretionary, but the requirement is to take all reasonable steps.

- Since water, either rain or runoff from yard watering systems, is the main way silt and other contaminants are washed into the stormwater drains, efforts to reduce such runoff is warranted. Again, as part of the building permitting process, the means of keeping rainwater on a property should be addressed and required. Additionally, the installation of any lawn watering system in the public right-of-way by private property owners should be prohibited.

Chairman Littleton noted that the Building Inspector likes this recommendation. City Solicitor Mandalas said that without a license agreement, he could not recommend allowing lawn watering systems in the public right-of-way. The consensus of the Planning Commission members was that it likes this recommendation. Mr. Markert suggested including the monitoring of excessive watering in the recommendation. Chairman Littleton noted that current lawn watering systems located in the public right-of-way would be grandfathered.

- Where curbing is not in place, private property owners should be prohibited from installing impervious paving in the public right-of-way and encouraged to use pervious paving on their property.

The majority of the members agreed with the recommendation. Mr. Markert disagreed. He did not see how it would address the situation in Schoolvue which is essentially a suburban development that has driveways which go to the street. There is no delineation between the street and property lines. He agreed with the principle, but he thought there should be other alternatives to address the various conditions within the City. Mr. Patterson thought that this should be a City-wide issue which is analyzed and a recommendation made. The properties the Planning Commission has mostly focused on that are in the watershed and abut Silver Lake do not have this condition except in Schoolvue. Mrs. Konesey suggested encouraging people to use pervious materials whenever possible. Mr. Markert thought there should be exclusions for sidewalks and driveways that abut streets. This item was put to the side in order to move on to the other recommendations.

- The City is commended for its street sweeping efforts and to the extent possible and on an as-needed basis, such efforts should be increased in order to remove dirt and debris from the streets before they enter the stormwater system.
- The City should implement a convenient in-City means for residents to dispose of environmentally hazardous waste, e.g. paints, solvents, engine oil, pesticides, herbicides, etc.

Members were in agreement with this recommendation.

3. Improvements to City's Stormwater System:

- Accurate and current data on the City's entire stormwater management system should be entered into the City comprehensive computer based mapping system and kept up-to-date.

Members were in agreement with this recommendation.

- The City is to be commended for the recent installation of the two new stormceptors on large drain pipes entering the western end of Silver Lake in addition to two at Lake Gerar. The City should commit to a long-term goal of upgrading the system to further prevent silt, debris and oils from being discharged into the lakes. It is suggested that priority be given to the large pipe entering off of King

Charles Avenue as there is visible silting at that site. Further, the planned excavation of City streets associated with the construction of the ocean outfall wastewater system may present opportunities to also do upgrades to the stormwater system in the area of construction.

Members were in agreement with this recommendation.

Chairman Littleton called for Executive Session as permitted by *29 DelC 10004(B)(4)*, so that the Planning Commission members may have a strategy session to receive legal advice and opinion from the City Solicitor on this matter which involves potential litigation.

Mrs. Konesey made a motion, seconded by Mr. Markert, to move into Executive Session at 7:30 p.m. for the purpose of discussing potential litigation. Motion carried unanimously.

Mrs. Konesey withdrew the motion in order for a member of the public to be heard regarding the recommendations..

Mr. Kevin McGuire, 15 Cookman Street, said that he was waiting to hear the discussion with regard to sunseting and grandfathering of non-conformities. Chairman Littleton said that this discussion would occur after the Executive Session.

Mrs. Konesey made a motion, seconded by Mr. Markert to move into Executive Session at 7:35 p.m. for the purpose of discussing potential litigation.

Mr. Shulman amended the motion for purposes of discussing pending litigation and to receive legal advice from the City Solicitor. Mrs. Konesey agreed to the amendment.

Motion carried unanimously.

Mrs. Konesey made a motion, seconded by Mr. Gauger to reconvene to the public forum at 9:08 p.m. Motion carried unanimously.

Chairman Littleton called for the continuation of the Commission's discussions regarding the City's lakes:

4. Increase the Urban Forest within the City:

- The City is to be commended for its recent efforts to add trees in public areas. However, because of the demonstrated importance of trees to contaminant control such efforts need to be expanded with particular attention given to the Silver Lake watershed. Not only should trees on public land be maintained and increased, but every effort needs to be made to maintain and increase trees on private land as well. In all instances, appropriate trees for the sea-side area and climate should be used.

Mrs. Konesey said that the City can do plantings of trees in easements throughout the City without it impacting parking because the easements are wide. Mr. Anderson noted that this would be a huge cost undertaking for the City to plant trees in public areas. Mrs. Konesey thought that Ms. Sullivan is incorrect in her statements. Trees could be planted in the park behind the Henlopen Hotel in the fall. Chairman Littleton noted that one of the most important things to be done with regard to the lakes is to plant trees in the watershed. South Rehoboth lacks tree canopy.

5. Lake Bank Stabilization:

- The City is to be commended for implementing a managed 10 foot no-mow zone on public property abutting the City's lakes and in some areas for the installation of engineered environmental "bio-log" buffers.
- Lake bank stabilization of all property within the City should be required using the most appropriate environmental means. Not dissimilar to the existing legal requirements for sidewalks, all property owners who own property to the lake's water edge should be required, if not already in place, to install bank stabilization. Because of the different topographics, proposed means of stabilization should be approved by the City, in consultation with DNREC, on a parcel-by-parcel basis. Preference should be given to stabilization measures that are most consistent with other public objectives, including the provision of habitat for fauna and flora, and visual appeal. Therefore stabilization should be done through the use of indigenous vegetation, supplemented as necessary by "bio-logs" and the like. Use of boulders ("rip-rap") would be a second-best solution, where conditions do not permit a more natural solution. New bulkheads have been prohibited from many years, and it is proposed that when existing bulkheads reach the end of useful life, they should where possible, be replaced by the preferred stabilization measures. Where current stabilization is deemed inadequate, affected property owners

should be required to complete such stabilization within two years of notification or be required to maintain a ten foot managed no-mow zone extending from the lake's edge. The City's Code will be amended to accomplish this.

Mrs. Konesey noted that stabilization would only affect a small portion of the properties. Mr. Markert thought it would prevent certain wildlife from wandering onto lawns, etc. If the Planning Commission establishes best practices by establishing a no-mow zone and a ten foot buffer, it would be to the betterment of the lake. Most of the members of the Planning Commission thought this recommendation is appropriate.

6. Additional Means to Improve Silver Lake:

- With heightened public concern and interest prompted by the July 2012 major fish kill in Silver Lake, but tempered by the recognition that there have been only eight other documented fish kills in Silver Lake in the past three decades, an analysis of what additional means, beyond the recommendation cited above, could be taken to address the problem of low dissolved oxygen. An obvious example would be aerators similar to those that have been installed in Lake Gerar. However, beyond being many times bigger, Silver Lake has unique problems caused by a multi-jurisdictional shoreline and an outstanding question about the ownership of the lake itself. Only with the best scientific estimate of what additional means could be taken to improve Silver Lake and their probability of success coupled with not only an estimate of their initial, operational and maintenance costs but also an assessment of the distributed responsibilities of the various jurisdictions involved can rational decisions be made. The City should petition the State to undertake such an analysis.

7. Protection of Lake Views and Character:

- The City Code will be amended to establish a "No-Build Buffer" for all properties within the City that border on Silver Lake or Lake Gerar. This no-build area will extend inland 10 feet as measured from the lake's water edge and must be maintained as a natural area as currently defined by the City Code, e.g. auxiliary structures will be prohibited in the "No-Build Buffer".
- The City Code will be amended to prohibit the installation of any yard watering system on private property within 10 feet of the lake's water edge.
- Any structure that exists within the aforementioned "No-Build Buffer" at the time of the enactment of the proposed ordinance shall be "grandfathered" and considered a legally non-conforming structure in accord with the current practice of the City.

Mrs. Konesey said that at the last meeting there was discussion about a potential overlay to deal with grandfathering around the lake's edge. She met with Ms. Linda Raub of University of Delaware to discuss this issue with her. Ms. Raub had said that recent court cases have indicated that an overlay cannot be done. If a grandfathering would occur, it would have to be across the entire City. The Planning Commission's mandate is the lakes. One thought would be to have special zoning in order to address the issue of grandfathering on properties that border on the lake. City Solicitor Mandalas thought that ordinances could be passed which provide for regulations of areas around lakes without creating a new zoning district as long as it is a uniform requirement. The prohibition of overlays related to the uniformity requirement. In the State Code, all regulations must be uniform. Mrs. Konesey said that the only way to address this issue is to change the grandfathering law for the entire city. The Planning Commission's mandate is the lake. Mr. Patterson noted that most of the properties which abut the lake would be affected by a no-build buffer, including those that have a bulkhead, pier, gazebo, etc. City Solicitor Mandalas thought that if a new buffer ordinance is adopted, the idea that an amortization ordinance can be attached to it. Over a period of time, everyone would need to come into conformity. Mr. Mellen thought that sunseting should be considered. Mrs. Konesey agreed. Mr. Shulman disagreed. Gazebos are not destroying the character of the lake. There should not be a sunset provision which would essentially only affect one to two properties. He agreed with the concept, but it does not have practicality. Mr. Patterson, Mr. Gauger, Mr. Markert and Mrs. Konesey were in favor of sunseting of the grandfathering along the lake. Mr. Shulman suggested that "any structure that exists shall be grandfathered" should be stricken.

Mr. Kevin McGuire, 15 Cookman Street, said that the idea of removing grandfathering on a city-wide basis would fail.

- The City Code will be amended to require site plan review for any residential structure that is built or substantially renovated whose foundation is within 25 feet inland of the lake's water edge.

Mr. Anderson stated that he was opposed to this recommendation. Mr. Markert said that the site plan review would function in the way the tree ordinance was to function which is to ultimately preserve and protect the lake. Site plan review would allow the Planning Commission to see if certain factors are being addressed to at least provide a safeguard to protect the lake. Mr. Shulman said that the original purpose of the site plan review ordinance was not to deny people the right to build something, but to make sure it goes through a process where there would be closer scrutiny and the Planning Commission would have the opportunity to make suggestions. Development along the lake should get something beyond a typical single lot review and should be referred to the site plan process. While the Planning Commission would have to be reasonably deferential to the landowner, there would also be negotiation. Chairman Littleton thought that there is justification for a site plan review for properties along the lake. The majority of the members were in favor of the site plan review recommendation. Mr. Anderson disagreed. Mr. Mellen thought that the Planning Commission should look at making modifications to the site plan ordinance.

- Wherever “lake’s water edge” is cited in these recommendations, such edge will be defined as follow: the ordinary high water mark of Silver Lake shall be defined as elevation 6.0 feet above North American Vertical Datum of 1988 (NAVD88) and the ordinary high water mark of Lake Gerar shall be defined as elevation 5.0 feet above NAVD88.

Mr. Markert suggested that the definition should be stated earlier in the report.

8. State – DNREC:

- The City will petition the State/DNREC to include Silver Lake in their periodic routine monitoring system. This is essential in order to be able to determine the success of the proposed restoration activities and at the minimum, to ensure that there is no deterioration from the lake’s current condition that would prompt more intensive interventions.
- The City will petition and collaborate with DNREC to ensure the expeditious dredging and restoration of the currently silted-in western end of Silver Lake.

Mr. Shulman suggested that “to ensure” should be changed to “to accomplish”.

- The City will petition the State to make a determination on the ownership of Silver Lake and the requirements associated with the State assuming such legal ownership.
- The City will petition the State to assume responsibility for maintaining the Silver Lake outfall drain system and to maintain an established lake level.

Members were in agreement with these recommendations.

9. Office of State Planning

- Because multiple State agencies, in addition to DNREC, may have valuable input or suggestions or may have ongoing programs or funding sources that could be of assistance in implementing these various recommendations, a Preliminary Land Use Service (PLUS) review of this report should be sought through the Office of State Planning Coordination.
- Because the ultimate success of maintaining and restoring Silver Lake (and Lake Comegys because of its communication with Silver Lake) requires coordinated efforts of the City, Dewey Beach, Sussex County and the State, the City will petition the Office of State Planning Coordination to take the lead in facilitating such coordination.

Chairman Littleton proposed one more chance in the next two weeks to get input from DNREC for the lakes report. He also suggested scheduling a joint meeting of the Planning Commission with the City Commissioners to discuss the lakes report. All members agreed.

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

Chairman Littleton provided an update of Board of Commissioners Workshop Meeting that was held on July 9, 2012. The two ordinances proposed by the Planning Commission did not fare well with the City Commissioners. Comments regarding the two ordinances were: 1. Bonding. The timeline requirements and performance was too constraining to developers who may run into problems. City Solicitor Mandalas has been charged with reviewing and changing the timelines. 2. Merger. Several of the City Commissioners argued against this proposed ordinance. There was strong opposition to the concept of merger-by-use. The City

Commissioners will study the proposed ordinance again, and City Solicitor Mandalas will review and make changes. Another Workshop Meeting will be scheduled in the future by the City Commissioners to address these ordinances.

City Solicitor Mandalas was not sure the City Commissioners were opposed to the concept of merger. Trying to codify it by ordinance was more of the concern.

Chairman Littleton recalled that Mr. Gene Lawson, Esq. had suggested removing the merger language in the definition of lot. City Solicitor Mandalas noted that Mr. Lawson does not want merger. Since this would be the predominant if not only area within the Code where merger grows out of, Mr. Lawson's concept was that if it is removed, then there is no merging.

Chairman Littleton encouraged each member of the Planning Commission to talk with the City Commissioners to try to explain what it thinks is an important step.

Mayor Cooper provided examples of various properties which would be affected by the merger ordinance.

BUILDING INSPECTOR'S REPORT

There was nothing to report.

CITY SOLICITOR'S REPORT

There was nothing to report.

A new partitioning application has been submitted for 14 Rodney Street.

There being no further business, Mrs. Konesey made a motion, seconded by Mr. Gauger, to adjourn the meeting at 10:23 p.m.

RECORDED BY

(Ann M. Womack, CMC, City Secretary)

**MINUTES APPROVED ON
NOVEMBER 9, 2012**

(Preston Littleton, Jr., Chairman)