

**MAYOR AND COMMISSIONERS MEETING
CITY OF REHOBOTH BEACH**

July 18, 2014

The Regular Meeting of the Mayor and Commissioners of the City of Rehoboth Beach was called to order at 7:00 p.m. by Mayor Samuel R. Cooper on Friday, July 18, 2014 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

City Solicitor Glenn Mandalas the invocation followed by the Pledge of Allegiance.

ROLL CALL

Present: Commissioner Toni Sharp
 Commissioner Patrick Gossett
 Commissioner Bill Sargent
 Mayor Samuel R. Cooper
 Commissioner Stan Mills

Absent: Commissioner Lorraine Zellers
 Commissioner Mark Hunker

Also in attendance: City Manager Sharon Lynn
 City Solicitor Glenn Mandalas

APPROVAL OF AGENDA

Commissioner Stan Mills made a motion, seconded by Commissioner Toni Sharp, to approve the Agenda with the deletion of the May 5, 2014 Workshop Meeting and June 9, 2014 Special Meeting Minutes. Motion carried unanimously.

CORRESPONDENCE

Letter received will be read when the Permit of Compliance hearing is held.

APPROVAL OF MINUTES

Minutes of the February 10, 2014 Workshop Meeting, April 7, 2014 Workshop Meeting, May 16, 2014 Regular Meeting, June 19 and 20, 2014 Special Meeting, June 20, 2014 Regular Meeting, July 7, 2014 Workshop Meeting and July 11, 2014 Special Meeting Minutes were distributed prior to the meeting.

Commissioner Mills made a motion, seconded by Commissioner Patrick Gossett, to approve the February 10, 2014 Mayor and Commissioners Workshop Meeting minutes as written. Motion carried unanimously.

Commissioner Mills made a motion, seconded by Commissioner Sharp, to approve the April 7, 2014 Mayor and Commissioners Workshop Meeting minutes as written. Motion carried unanimously.

Commissioner Mills made a motion, seconded by Commissioner Sharp, to approve the May 16, 2014 Mayor and Commissioners Regular Meeting minutes as written. Motion carried unanimously.

Commissioner Mills made a motion, seconded by Commissioner Sharp, to approve the June 19 and 20, 2014 Mayor and Commissioners Special Meeting minutes as written. Motion carried unanimously.

Commissioner Mills made a motion, seconded by Commissioner Sharp, to approve the June 20, 2014 Mayor and Commissioners Regular Meeting minutes as written. Motion carried unanimously.

Commissioner Mills made a motion, seconded by Commissioner Sharp, to approve the July 7, 2014 Mayor and Commissioners Workshop Meeting minutes as written. Motion carried unanimously.

Commissioner Mills made a motion, seconded by Commissioner Sharp, to approve the July 11, 2014 Mayor and Commissioners Special Meeting minutes as written. Motion carried unanimously.

REPORT OF THE POLICE DEPARTMENT

(See attached report.)

Police Chief Keith Banks presented the report of the Police Department for the month of June 2014. There were 65 criminal, 242 traffic and 62 civil charges made during the month. Eighteen traffic crashes were

investigated. Police Chief Banks introduced Patrolman Josh Kosarowski as a new addition to the Police Department. Grants have been received from Highway Safety to allow for a few extra patrols for drunk driving and aggressive driving this month and August 2014 as well as pedestrian safety education. The Dispatch Center handled 433 police incidents, 258 ambulance incidents, 66 fire incidents, 532 traffic stops, assisted other agencies 11 times during the month and 9-1-1 calls totaling 571 were received.

REPORT OF REHOBOTH BEACH VOLUNTEER FIRE COMPANY

Mr. Walter Brittingham of Rehoboth Beach Volunteer Fire Company thanked the Commissioners with regard to the City helping the Fire Company on July 4, 2014 with the use of the Convention Center to help feed City staff and EMS and firefighters that were on call.

REPORT OF THE BUILDING AND LICENSING DEPARTMENT

(See attached report.)

Chief Building Inspector Terri Sullivan presented the report of the Building & Licensing Department for June 2014. During the month, 82 permits were issued for a value of work totaling \$1,978,755.46. Fees collected totaled \$46,240.36 for the month. Seventy-seven permit processing fees were received in the amount of \$1,540.00. The Board of Adjustment heard three cases in June. One restaurant application was received in June. One notice of violation was issued for external speakers. One notice of violation was issued for a contractor working without a building permit. Six notices of violation were issued for freestanding signs. Two notices of violation were issued for blinking signs. Six notices of violation were issued for maximum noise levels. Two notices of violation were issued for obstructions on sidewalks. One notices of violation was issued for trash in public view. One notice of violation was issued for trash out early. One notice of violation was issued for a temporary banner. There were 93 building inspections, 22 plumbing inspections, 11 rental inspections, four meetings regarding trees, 39 meetings regarding new projects and seven meetings regarding City business.

PERMIT OF COMPLIANCE HEARING

Mayor Cooper opened the Permit of Compliance hearing requested by Michael Ludden of Cellar Door LLC, to operate an existing restaurant known as "Cellar Door" and to expand the dining area of the restaurant onto the proposed patio relocation to serve food and alcohol pursuant to the City of Rehoboth Beach Municipal Code, Chapter 215 – Restaurants and Section 270-19(A) – Use Restrictions; Patios. The restaurant is located at 20 Baltimore Avenue. Mayor Cooper noted the Public Hearing procedures for this hearing.

City Solicitor Mandalas noted the purpose for both hearings, and he read from Section 215-5 of the Code that in reaching their decision, the Commissioners shall consider the following factors including but not limited to:

1. Whether the Applicant has demonstrated that the establishment's primary purpose will be that of a restaurant or dinner theater as defined in this chapter.
2. Whether the establishment meets all the City's applicable zoning and licensing provisions.
3. Whether the establishment would be a detriment to the peace, order and quiet of the neighborhood and the City.
4. Whether the establishment will have an adverse impact on neighboring properties or on the City of Rehoboth Beach considering the impact on traffic, parking and noise.
5. Whether the Applicant has made any false representation or statements to the City's employees or the Commissioners in order to induce or prevent action by the City, not only in regard to the pertinent pending Application under the statute, but also with regard to the issuance of a building permit or business license for the subject establishment.

City Solicitor Mandalas identified the exhibits: 1. Notice of Public Hearing posted by the City Secretary on June 25, 2014. Notice of today's Public Hearing was published in the Cape Gazette on July 1, 2014, Coast Press on July 2, 2014 and Delaware State News on July 3, 2014. 2. Building Inspector's Report dated July 9, 2014. 3. Application for a Restaurant Permit of Compliance notarized on June 4, 2014 and received on June 5, 2014. 4. Menu. 5. Existing Plaza Plan, dated April 4, 2002 and received on June 5, 2014. 6. Proposed Plaza Plan, dated April 4, 2002 and received on June 5, 2014. 7. Property record. 8. Illustration of the properties within 200 feet that were notified for this hearing.

Building Inspector Sullivan presented a complete report, and her findings were based on the application and her knowledge of the Code. (See attached report.) The Applicant has stated that the approximate percentage of revenue between the sale of alcohol and food is 20% alcohol and 80% food. The Application is for a 4,641 square foot restaurant. The proposed bar area will be 329.5 square feet with a proposed ratio of bar

to permanent seated dining of 15%. In summary, this was an Application for a new restaurant at 20 Baltimore Avenue using the same floor plan but changing the patio area. The new patio will be on the ground level of the front of the building instead of at the upper level, and the square footage would increase from 204 square feet to 394 square feet. Some sort of fencing should be required to surround the proposed patio area. Ms. Sullivan confirmed that the 16 seats located in the bar area and the total area are consistent with the previous Permit of Compliance. Nothing has changed on the inside of the building. She did an inspection approximately two weeks ago and verified that the seating remains the same in the bar area as well as the dining area. Some sort of fencing should be required to keep people in the square footage of the patio. The original Permit of Compliance for the patio area required that planters would be placed around the area to corral it. The fencing for the enclosed area would be approved by Building & Licensing. There is only one entrance to the patio from the Baltimore Avenue side. Ms. Sullivan recommended a minimum of 18 inches for the height of the enclosure.

Mr. Michael Ludden requested clarification as to the fencing or border enclosing the patio area. Mr. Ludden noted that he wants to have a definition of that area. Waite staff will utilize the main entrance from the theater area to service the patio. The waite staff will man the patio, and a hostess will be stationed at the front entrance who will have an overview of the patio area.

Correspondence:

1. Letter dated July 18, 2014 from Bitsy Cochran, 27 Baltimore Avenue, concerning the approval of the patio expansion for Cellar Door restaurant. She wants to be assured that the noise level and activity will be minimal.

There was no public comment

Mayor Cooper closed the public portion of the hearing and called for discussion among the Commissioners.

Commissioner Mills noticed that the front entry forces the patrons and the waite staff to walk on City property to be able to access the patio area. He suggested that if the permit of compliance is approved, Building & Licensing should be directed to relocate the entry or something. He was not comfortable because this patio would be an expansion, and it would be relocated to a remote location. There is no direct line of sight from the restaurant. He was not comfortable because the patio would be generally located in public space, and the waite staff would have to access public space via the foyer and outdoor public spaces. Commissioner Mills believed that there needs to be limits on placement of outdoor patios. He did not feel that the patio would have oversight or monitoring every hour in proposed location. Commissioner Mills preferred that there would be a policy so that there are better guidelines for the applicant to know what is acceptable before getting to this stage.

Mr. Ludden acknowledged that the motivation was to move the patio to the proposed location because there would be more space, and it is a better location. Leaving a patio unattended to allow people to come in or leave before paying would be bad business practice. He agreed that the opening to the patio should be located on the side so it does not interfere with the sidewalk. The motivation for moving the patio is for the betterment of the property, City and guest experience.

Commissioner Sargent suggested that having the hostess right at the entrance to the patio would make more sense than having people to walk through to get to the hostess.

Mayor Cooper said that if the patio is operated corrected, it would be a great addition.

Commissioner Gossett said that with a little redesign the entrance could be moved to the side of the patio. He did not know if a waiter station, server station or side station would be kept inside or outside. If the accommodations can be made, it would be a good addition to the area.

Mr. Ludden noted that there are two light bulbs where the patio would be located for late evening service.

Commissioner Sargent found the following to be true:

1. The proper Application and supporting documents have been filed.
2. The proper fee has been paid.
3. The proper notifications have been made.
4. All parties wishing to be heard have been heard.
5. The primary purpose is that of a restaurant.
6. The Application meets the City's applicable zoning and licensing provisions.

7. The restaurant would not be a detriment to the peace, order and quiet of the neighborhood and the City.
8. The restaurant will not have an adverse impact on neighboring properties or on the City of Rehoboth Beach considering the impact of traffic, parking and noise.
9. The Applicant has made no false statements to the City employees or Commissioners.

Commissioner Sargent made a motion, seconded by Commissioner Sharp to approve the Certificate of Compliance for the Cellar Door restaurant at 20 Baltimore Avenue subject to the installation of a fence or continuous barrier with the opening not on Baltimore Avenue and which is monitored by a hostess.

Mayor Cooper suggested that the height of the barrier should be determined by the building official.

(Sharp – aye, Gossett –aye, Sargent – aye, Cooper – aye, Mills – no, for the reasons he previously stated.)
Motion carried unanimously.

REPORT OF PLANNING COMMISSION

(See attached report.)

City Solicitor Mandalas presented the report of the Planning Commission. The Regular Meeting was held on July 11, 2014. The Planning Commission received reports from the Chief Building Inspector and City Solicitor stating that all conditions had been met for a property located at 114 St. Lawrence Street, with the exception of the planting of trees on the newly created vacant lots. The Commission received a request from the Applicants that the location of the utility easement be moved from the eastern to the western edge of the newly created Lot No. 1, and that they be allowed to defer the planting of the requisite trees until cooler weather when their survival would be better assured. The Planning Commission agreed to accept both of the Applicant's requests and voted to finalize the Application. The Planning Commission received a request from the Applicant for a time extension for a property located at 49 Park Avenue due to the fact that Delaware Power and Light had not yet provided requested power to the residence. The Planning Commission voted to grant a three month extension based on good cause. The Planning Commission reviewed and discussed the draft recommendations relative to its assignment from the Board of Commissioners. With the inclusion of several recommended changes, the Commission voted to approve the recommendations that it will be forwarding to the Board of Commissioners. The Planning Commission is now working to finalize the two transmittal reports. It is currently anticipated that the Planning Commission will be able to complete and approve its remaining work in response to the Board's resolution no later than its August meeting and will be able to forward the complete package to the Board soon thereafter. The Planning Commission was informed that a site plan review application for a commercial property located at 110 Rehoboth Avenue and 33 Wilmington Avenue (the Avenue Inn) had been timely submitted. Its preliminary review will be scheduled for the August 8, 2014 meeting.

OLD BUSINESS

There was none.

NEW BUSINESS

Mayor Cooper called to consider adoption of the plan document related to the establishment of an IRC 457(b) Deferred Compensation Plan for the City's full-time employees.

Commissioner Sargent made a motion, seconded by Commissioner Mills to adopt the plan document as presented.

Mr. Larry Myslewski, 2 Dover Street, noted that he had read the document; and in principle, it is a good idea. He asked who the administrator is and who specifically in the City is the liaison. He was concerned about the statement in paragraph 2.7 on page 6 that nothing in this plan prohibits the employer from making annual deferrals to the account balance of a participant. He asked when that would occur, under what circumstances would it occur and how would the public know about it. Mr. Myslewski was concerned about the openness of putting money in an account.

Mayor Cooper said that the City is the administrator, and the City Manager is the liaison. The City Commissioners agreed to when it would occur and under what circumstances it would occur in the contract with the City Manager. An action would need to be taken by the Commissioners to decide to put City money aside for an employee or group of employees.

Commissioner Mills noted that up to this point, the Commissioners have agreed that they are not putting any monies in the accounts for any employee except for the City Manager.

(Sharp – aye, Gossett – aye, Sargent – aye, Cooper – aye, Mills – aye.) Motion carried unanimously.

Mayor Cooper called consider adoption of a resolution necessary to apply for a Delaware Clean Water Advisory Council planning grant for a project titled “Preliminary Design Report” associated with the renewal of the City’s biosolids permit.

Mayor Cooper said that the grant application has been submitted and approved by the Water Infrastructure Advisory Council, but it cannot be finalized until this resolution is presented. The total project will cost in the amount of \$22,000.00, and the grant is in the amount of \$11,000.00.

City Solicitor Mandalas read the resolution.

Commissioner Sargent made a motion seconded by Commissioner Mills to adopt the resolution requesting the grant. (Sharp – aye, Gossett – aye, Sargent – aye, Cooper – aye, Mills - aye.) Motion carried unanimously.

Mayor Cooper called to set the City Real Estate Tax Rate for the tax year beginning July 1, 2014 and ending Jun 30, 2015, and consider extending the date when the annual real estate tax is due.

City Solicitor Mandalas read the ordinance. This ordinance sets the tax on real estate including improvements thereon per \$100.00 of assessed value at the rolled-back rate of \$j0.04 per \$100.00 of assessed value.

Commissioner Gossett said that the \$0.04 tax rate was determined by a mathematical equation. The budgeted tax revenue is in the amount of \$1,327,000.00, and the assessed value for 2015 is in the amount of \$3,283,907,500.00. The tax rate is based per \$100.00.

Commissioner Sargent made a motion, seconded by Commissioner Mills to adopt the ordinance before the Commissioners setting the tax rate at \$0.04 per \$100.00 assess valuation and extending the time period by one month when it is due. (Sharp – aye, Gossett – aye, Sargent – aye, Cooper – aye, Mills – aye.) Motion carried unanimously.

Mayor Cooper called to appoint the Inspector of Elections and two Judges to serve as the election officials for the annual municipal election to be held on August 9, 2014.

Mayor Cooper had forwarded his recommended list of Election Officials for the August 9, 2014 City election to the Commissioners prior to the meeting. Wayne Steele – Inspector of Elections, Nancy Meadows - Judge and Melissa Klink – Judge replacing Steve Elkins – Judge who will not be available on Election Day.

Commissioner Mills made a motion, seconded by Commissioner Sargent to approve the Election Officials as detailed. Motion carried unanimously.

CITY MANAGER REPORT

City Manager Sharon Lynn provided an update on Parkmobile. There has been an increase of 23% in revenue generated from Parkmobile, and an increase of 26% in Parkmobile transactions. To date, the City has issued 628 scooter permits. Cards from DelDOT will be distributed with the new bicycle guide from the Streets and Transportation Committee with regard to DelDOT soliciting suggestions for its new map in 2015. DelDOT’s website is www.bikeatthebeach.com. The City is currently in the process of rolling out the CodeRED emergency network notification services. There was an ad in today’s Cape Gazette about this service. The CodeRED system is the emergency planning tool that the City will have in order to notify all citizens who sign up via telephone, email, text messages, etc. for emergency notifications. There will be an all call on July 21, 2014 for those who have signed up already and are through the system. There were no Street Aid expenditures.

COMMITTEE REPORT

There was none.

CITY SOLICITOR’S REPORT

There was nothing to report.

COMMISSIONER ANNOUNCEMENT/COMMENTS

There were none.

DISCUSS ITEMS TO INCLUDE ON FUTURE AGENDAS.

Items to include on the August Workshop Meeting agenda are: 1. Electrical vehicle charging. 2. Draft proposal on lot merger/unmerger.

CITIZEN COMMENT

Mr. Tom McGlone, 318 Laurel Street, commented that the Parking Department had said to two citizens that it does not know how the Parkmobile system works.

City Manager Lynn recommended that those types of questions/comments be directed to her. Everyone in the Parking Department is familiar with the Parkmobile system.

The next Workshop Meeting will be held on August 4, 2014 at 9:00 a.m.

There being no further business, Mayor Cooper adjourned the meeting at 8:25 p.m.

Respectfully submitted,

(Ann M. Womack, Assistant Secretary)