

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

**May 5, 2014**

The Workshop Meeting of the Mayor and Commissioners of the City of Rehoboth Beach, was called to order at 9:01 a.m. by Mayor Samuel R. Cooper on Monday, May 5, 2014 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

City Solicitor Glenn Mandalas gave 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
	Commissioner	Lorraine Zellers
	Commissioner	Mark Hunker

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

**CORRESPONDENCE**

There was none.

**OLD BUSINESS**

Mayor Cooper called to discuss a request by Mr. Nicholas Caggiano to light the Verrazzano Monument on the Boardwalk at the foot of Olive Avenue.

Commissioner Stan Mills was hesitant about lighting the Monument for various reasons. He has since re-evaluated his thought that in the night time there is a certain amount of ambience in the City. There are not a lot of lighted things. The Veterans' Memorial, blue historical sign, Women's Christian Temperance Union water fountain, memorial plaque on the Beach Patrol building and the Verrazzano Monument are not lit at night, nor are the rules and water quality signs. Except for the Beach Patrol bronze plaque, everything is readable without being specifically lit. The Verrazzano Monument has the most light on it. Commissioner Mills was hesitant to support this gift from Mr. Nicholas Caggiano.

Commissioner Lorraine Zellers noted that the Monument is well lit. She would not support another light at the Monument because there is enough light already there.

Commissioner Mark Hunker did not think that it sets any precedent. The Monument is fairly lit in this lighter season now, but in the middle of January and February, it is not as light or bright. He did not see the reason not to add more light. Commissioner Hunker was in support of having spotlights on the other things.

Commissioner Toni Sharp noted that her neighbors were unanimously in agreement that this is a nice gesture for the City, and that the Commissioners may want to find a way to enable some of these things. The City does not have a good process for how individuals or groups come to the Commissioners and present their ideas. The City does not have a process for people to look at what steps they would need to take, and what kind of agreements might need to be created with the City in order to do something and maintain it. Feedback was provided by year-round residents who felt it was an opportunity for the Commissioners to find a way to enable going forward with it.

Commissioner Patrick Gossett thought that the Commissioners need to respond to any citizen who wants to enhance the community. Other gifts have been accepted from VIA. He did not see lighting as a need for the Monument. Commissioner Gossett did not think it would be a wise investment of tax dollars and staffing time to illuminate other monuments in the City just because others are. This is an opportunity for the Commissioners to design a process so that when a gift is given to the City, there are some guidelines and to be fair to all. This issue brings forward something else that the Commissioners need to work on, and he would be happy to begin that process.

Commissioner Bill Sargent said that this is a generous gift, but it is not a necessary gift. He wondered if a precedent would be set of some sort. Commissioner Sargent was uncomfortable with lighting the Monument.

Mayor Cooper was not worried about gifts. Most of the gifts in the past have been solicited by the City. The Commissioners accepted the Monument as a point of interest. He was not sure if the Monument should be lit or not. The gift of lighting the Monument could be the least of the process, but the maintenance could be the biggest part. Mayor Cooper was not in support of having a process. Mr. Caggiano was not in attendance at the meeting.

Commissioner Zellers like the idea of a process. Absent the process, the Commissioners should hold off on this gift.

The majority of the Commissioners were in agreement to not move forward with the lighting of the Verrazano Monument. This item will be placed on the agenda for a formal vote at the next Regular Meeting

## **NEW BUSINESS**

Mayor Cooper called for the presentation and discussion with Dr. Willett Kempton, UD's Center for Carbon-Free Power Integration,

Dr. Willett Kempton and Ms. Kathy Harris, a graduate student, were in attendance at the meeting. Dr. Kempton gave his presentation on the potential for partnering in a statewide network of electric vehicle charging stations. The University of Delaware has a substantial electric vehicle research program which covers many aspects of electric vehicles. This particular project is with DNREC, and it concerns charging stations. A map was provided of charging stations in the region. Most of the charging stations located in private lots are slow charging and only one station is at each location. The charging stations are not located for major accesses. Based on the University's analysis of the drivers, the reason for charging en-route is important is because they are limited range vehicles. The number one concern for electric vehicle drivers is where they can recharge. DNREC and the University are trying to identify strategic locations for longer trips. This program will cover most of the cost of it, but the site has to provide a location and some installation effort. Slow charging. Not located for easy on/easy off access. The first step was to determine the parameters which 50 miles was used as a worst case scenario. Step 2 determined the long routes in Delaware, and Step 3 analyzed the routes. The result was that the critical recharge zones (en-route) should include the I-95 Welcome Center at Newark, South Dover and Bridgeville. Charging would also be needed at destinations such as Wilmington and/or Christiana Mall and possibly Rehoboth Beach. Rehoboth Beach was picked because it is a major destination and north-south travel passes nearby. Step 4 was to determine the site and facilities. A location would be needed that have the following attributes: 1. Easy on/east off access from through route. 2. Something to do during charging. 3. Site owner agrees to host charging station. 4. DNREC pays for station and initial electric costs. 5. Agrees to find a plan to continue availability if a two year initial period works out. The charging station is: 1. Durable outdoor equipment. 2. No cost to driver for initial two year period. 3. Maximum power for charger is 16-18kW. 4. Two stations per location. 5. High power charging station adds little cost, allow for and encourages faster recharge electric vehicle models. 6. Signage to guide drivers to charging station. 7. Enter in databases. Enforcement could be through signage to show time limits, tapping local laws regarding towing vehicles and adding meters to the spots. The City's contribution would be to provide two parking spaces and the installation. The cost for two charging stations is \$3,000.00, and the installation may cost \$1,000.00 depending on the location, etc. Placement of the charging stations would be discussed by the Commissioners.

Commissioner Sargent suggested that DelDOT's Park-n-Ride facility could be used for multiple parking spaces.

Dr. Kempton noted that there is a value with having this facility in the City where a person could walk to shops, etc. The City would have the final say as to where the location would be. It certainly should not be in a prime location on Rehoboth Avenue. One or two blocks off of Rehoboth Avenue would be a possible place. He would like to have a list rather than one location because it would depend on where the nearest electrical lines are located and what the transformers are rated, etc. A couple of offers have been made on Route 1 for the charging stations. The electric would be covered under the grant by DNREC for the first year. The University would provide monitoring of that. The City would be the owner of the charging station and would be responsible for the maintenance of it, etc. The University has 20 charging stations, and the electric fees are generally \$1.00 per hour. DNREC will not pay for electricity forever, but it will pay for two years. The equipment will be provided by DNREC, and the City will do the maintenance. The next possibility for the location of a charging station would be at Tanger Outlets.

Commissioner Mills was interested in getting in on the ground floor and partnering with the State in this.

In terms of finding a space, he would like to see the City Manager charged with finding possible locations. Commissioner Hunker agreed. Two spaces in the City would not be unreasonable.

Mayor Cooper said that if there is a demand, it would be right for a private entity to do it. Let motels put one in. He did not think that the City should compete with private enterprise. Commissioner Sargent agreed.

Commissioner Zellers thought that it seemed reasonable to be looking at this now. Two spaces are not a lot, and the City could find a place for the charging stations. There would not be any cost to the City at this point in time. For the future, a meter could be placed in the spot.

Commissioner Sharp thought that the Commissioners need to continue to think and talk about this.

Commissioner Gossett thought that this is an opportunity the Commissioners need to look at. Location is the issue. He suggested that Dr. Kempton should engage in conversation with the Chamber of Commerce and Main Street about private involvement. The destination of Rehoboth is a wise selection, but it is locating the charging stations within the City and whose responsibility it is falls to. Commissioner Gossett would like to see this move forward with perhaps a private relationship or public/private type of thing.

Dr. Kempton clarified that the DNREC program is for locations available to any traveler. The State will not fund charging stations that are located at a hotel for its guests only.

Chairman Littleton of Planning Commission noted that there is the ability for a visitor to charge an electric vehicle using existing house power.

Mr. Frank Cooper, East Lake Drive, asked what the timeframe is for charging with home units. Dr. Kempton responded that it would take two evening overnight to charge an electric vehicle.

Commissioner Mills thought that approximately five Commissioners would like for the City Manager to do a little more investigation and then bring it back to the table at some point.

Dr. Kempton will forward the contract to the Commissioners for their review.

Mr. Walter Brittingham, 123 Henlopen Avenue, suggested that the City Manager should get in touch with the Town Manager in Bethany Beach because a charging station was installed in its municipal parking lot. He said that a charging station is located at 323 Rehoboth Avenue. Regulations would be needed for parking.

## **OLD BUSINESS**

Mayor Cooper called for an update on status of city-wide reassessment.

Mayor Cooper reviewed the four reasons why the city-wide reassessment was done: 1. Inequities were in the system of assessments from 1968 to 2013. 2. Computerization of the records did not have a decent element of digitalization. 3. State law requiring assessors to be certified by the State as of December 1, 2014. 4. Cost of considerably less than \$300,000.00 to do the city-wide reassessment.

Commissioner Gossett noted that physical inspections of approximately 3,225 parcels have been completed physical inspections. Valuation letters were mailed on April 25, 2014. On April 28, 2014, the website page was activated outlining frequently asked questions and the hearing process. The assessment hotline was opened on April 28, 2014 through May 3, 2014. During that period of time, the City received 110 telephone calls resulting in 50 face-to-face meetings. Thirty of the 110 telephone calls were conversations with individuals who were not able to have face-to-face meetings. Thirty-two emails were received and responded to. The issues that came about were that several property owners wanted to add additional information such as surveys, appraisals, etc. They wanted to find out the process that was used and bring additional information to the table. Informal hearings will continue the rest of this week. Once that process is complete, PTA/DelVal will send out letters to individuals who have had hearings to tell them what is going on. At the end of that process, there is a formal process of review with the Mayor and Commissioners sitting as the Board of Appeals. That process will be detailed at the time those letters are sent out to the individuals that have requested an informal hearing to get a result. The information on how to go about it will be publicized at that time. As provided in the Charter, the Board of Commissioners will set the tax rate at the Regular Meeting on June 20, 2014. After that, the tax bills will be mailed out and will be due August 31, 2014.

Mr. John Meng, 107 Laurel Street, asked if the Commissioners have considered that the new assessments not take effect until the property changes hands or is sold. People would be a lot less likely to challenge the assessment. People who are destroying the fabric of the town will be financially rewarded. Other people will be penalized.

Mayor Cooper said that there would be two problems with that idea. State law does not contemplate that in Delaware. Obviously because of the huge difference in disparity in assessments, people would be paying a few dollars while others pay in the thousands because the total assessment values went up 22 times. The law call that a person pays taxes based on the value of their property at this point in time.

Mr. Hans Riegle, 707 South Boardwalk, said that his taxes are going up 359% because it is an 80 year old cottage situation. The appraiser appraised the oceanfront properties too high compared to someone who is two houses west.

Mr. Walter Brittingham, 123 Henlopen Avenue, said that responses from the Commissioners should be carefully given because they will be sitting to hear the final appeals.

Commissioner Sharp asked if there will be any follow-up to validate whether or not the inequities have been taken care of prior to setting the tax rate on June 20, 2014.

Mayor Cooper said that was why PTA/DelVal was hired. The Commissioners cannot make an independent determination on that. The City will be given a report of the outcome of every informal appeal or by telephone. That should not be shared with the Commissioners until after the formal appeal period has run.

Commissioner Mills thought that overall this reassessment is being properly done and should have resolved all the inequities that crept into the system over the course of 40 years.

Mayor Cooper called to discuss processes and conditions for merging and unmerging lots to determine if any Code changes are warranted, including discussion of a proposed ordinance authored by the Planning Commission which provides that a property owner shall seek a formal subdivision to unmerge two or more lots previously merged for zoning purposes under the provision of the Zoning Code.

Commissioner Mills provided a recap from the last meeting. From that meeting, it was decided that the Commissioners would look at this topic and focus at one point on the Planning Commission's proposed zoning amendment of June 2012 and for him to solicit any additional input from the Planning Commission and Board of Adjustment. The Planning Commission has basically said that what it has submitted will stand on its own. When Commissioner Mills solicited input from the Board of Adjustment, he received input via a letter dated April 28, 2014 from Board of Adjustment Attorney Craig Karsnitz. Commissioner Mills reviewed the perspectives and the philosophies of the different agencies that deal with merger. Common law merger and merger that is found in the Code were reviewed. Common laws merger is generally applicable to substandard lots. Lots that are 25 feet wide are not buildable lots. They are not the standard of a minimum of 50 feet wide x 100 feet deep. According to the law of common merger, three lots at a total of 75 feet wide cannot be subdivided to retain one 50 foot wide lot and sell off one lot of 25 feet wide because one lot would result in being substandard. In terms of the City Code, there are two references to merger. Section 270-46.1 references merger, and it specifies that if two lots are used as one, they must be contiguous. The definition of "lot" mentions merger. It basically says that nothing shall prevent the merger or use of two or more lots as shown on the Zoning Map into a larger lot if the lots are utilized as one parcel through the placement of a structure or structures. Commissioner Mills provided different scenarios of lots. The Board of Adjustment philosophy is that if there are two lots which have been used as one large parcel because of the placement of structures across them and the non-conformities are removed, then the large parcel reverts back to separate lots.

City Solicitor Mandalas noted that there is no formal notification to a property owner that if two lots are used as a single parcel, they would have to go through the subdivision process. There is no documentation that lots have been merged.

Commissioner Mills said that in the June 2012 Planning Commission proposal, it mentions the redefining of "merged" to include merged by use. He provided various illustrations. The Commissioners need to review the definition of "merge", and it should include the word "use". A clearer definition would be needed from the one the Planning Commission has proposed that if one lot is used for volleyball, bocce, etc. it is merged by use. Another scenario was of putting fencing around the lot, and whether or not this would be considered a merger. Commissioner Mills provided various "what if" scenarios to be considered. He would like to work with Mayor Cooper to see if something needs to be codified about lot ownership. In the Planning Commission's proposal, it redefines merger. The current definition is modified by saying that two lots can be used together as one parcel through their use. Use should be defined as usage required to meet the current Zoning Code requirements such as off-street parking, 40% natural space, etc. Merger is further defined regardless of when the structure or structures were originally placed. Language is added that once merged, the lots remain merged unless subdivision approval is obtained by the Planning Commission. The intent of the Planning Commission is to

give them the sole authority of any future subdivision. 's position on merger. Board of Adjustment's position on merger. Building Inspector's position on merger.

City Solicitor Mandalas said that the Board of Adjustment is an agency created under State law. Nothing done at this level can take its rights and authorities given to them under State law, away from it. The Board of Adjustment has the absolute right to hear appeals from decisions the Building Official makes under the Zoning Code. The Planning Commission's ordinance change would go under the Zoning Code. To the extent that the Building Official would be making a decision about merger/un-merger relating to something within the Zoning Code, there will always be a right of appeal to the Board of Adjustment. The Board of Adjustment cannot be taken out of that process entirely. The purpose of this provision in the Planning Commission's proposal is to clarify and give clarity to the Building Official that lots which have become merged, the process to un-merge them is through the Planning Commission. Possibly some of those appeals would not occur under this proposed language.

Commissioner Mills said that the Commissioners need to be mindful that there will always be a dual process position on merger. The Planning Commission submitted a letter dated January 15, 2014 to the Board of Commissioners seeking a following-up of actions since no action was taken on the first proposal. It says in the letter that if all criteria is met, the Planning Commission is required to grant the partitioning/separation of lots. The Planning Commission has the ability to impose reasonable conditions upon the development of the partitioned lots, and the Board of Adjustment cannot impose reasonable conditions. The Planning Commission has also indicated the opportunity to notice the public and receive public comment through its process. The position of the Board of Adjustment from the April 28, 2014 meeting is that it desires rules. The Code currently has no provision for merger. The Code says nothing about merger other than that it is permissive. The Code is silent about the need to un-merge or how to merge. The Board of Adjustment considers no rules currently. In the absence of rules, the Board of Adjustment has to make its own interpretation. Common law merger is not mentioned in the Code and only deals with substandard lots. Attorney Karsnitz challenges past application of common law merger beyond substandard lots to also include standard lots. He considers it that conforming lots automatically require subdivision approval to un-merge. If two standard lots are allowed to be used as one through the placement of a structure or structures on two lots, then if those structures are removed, then the opposite happens and they are considered separate lots. The position of the Board of Adjustment from Attorney Karsnitz's letter of April 28, 2014 is that rules are needed governing merger. Attorney Karsnitz knows of other jurisdictions whereby a property owner signs an acknowledgement that the two lots will be considered merged and the rules of un-merging are laid out. A process is needed so the property owners would know they were merging their lots and notice could be given to prospective buyers. Attorney Karsnitz wants to have a process, such as if these steps are taken, it will constitute a merger of lots; the owner signs off on it, then it is on the record as having been acknowledged/agreed to; then when the subdivision of the two lots into separate lots is desired, the process for un-merging is already defined and notice/acknowledged. Commissioner Mills interpreted this to mean that merger and the process to un-merge should be defined and codified. Notice should be given to property owners. Property owners would sign an affidavit acknowledging knowledge of this process; and if in the future, the property owner would desire to separate the lots, then the formal un-merger process would occur. Attorney Karsnitz said that this process could be a trap. When neither property owner would have been that a merger would occur and that a process would be required to un-merge, this is the trap that owners would do something they did not know what the consequences would be. All this could be avoided if the City had rules governing merger as well as a process so owners would know they were merging their lots, and notice could be given to prospective buyers. Commissioner Mills noted the position of the Building & Licensing Supervisor. The mission of the Building Official basically mirrors some of the philosophy and actions of the Board of Adjustment. The policy is limited to where un-merged lots will be as they were originally plotted. Commissioner Mills thought that the Commissioners have some potential policy decisions to make. In formalizing a process to un-merge, a process needs to be formalized first to merge. To do that, a clear definition is needed. A process would need to be identified to un-merge. The Commissioners would need to codify whether or not automatic un-mergers can occur and if so, under what conditions. Three topics of discussion are to define merger, address the Planning Commission proposal and consider automatic un-merger.

Chairman Littleton of the Planning Commission commented that the attorney for the Planning Commission is the City Solicitor and he was the author of the Planning Commission's resolution. The Commissioners need to debate and discuss getting something in place and if something is excused historically or not. The Building Inspector should speak for herself. Chairman Littleton's interpretation of her action was essentially being frustrated by overruled by the Board of Adjustment each time she was trying to do what the Planning Commission wanted. Commissioner Mills said at the last meeting that he supported the Building Inspector's

change of policy as it accurately reflects the current Code.

Commissioner Sargent said it makes sense that if the Building Inspector looks at a situation and says that it is fully back to where it was before, he is comfortable giving permission to proceed. If there are circumstances that are not the way it was originally, then it would be appropriate to go to the Planning Commission. The Planning Commission has to allow a subdivision by Code, but it can conditions on it. If the applicant feels those conditions are unreasonable, then there is the appeal to the Board of Commissioners. Another route for the applicant to take if it hinges on a zoning issue would be to appeal to the Board of Adjustment. Commissioner Sargent thought that administratively, most all of these can be handled by the Building Inspector.

City Solicitor Mandalas said that the Building Inspector has the opportunity to remand it to the Planning Commission by site plan review ordinance. The appeals that have been made to the Board of Adjustment recently was based on the decision of the Building Inspector's interpretation of the Code.

Building Inspector Terri Sullivan clarified that of the five cases going to the Board of Adjustment, four were appeal and one was a variance, but the Board of Adjustment decided it was an appeal as opposed to a variance.

Commissioner Zellers said that since the 1980's, the City has had attorneys who said there are issues with the Code. She did not think it would be fair to the Building Inspector to allow her to administratively interpret this. They should be based on the Code. The Commissioners need to define merger in the Code and devise a process. Property owners need to be made aware that their properties have been merged.

Mayor Cooper said that the question is whether it would be fair to somebody who did something and did not think the lots were merging and now say that the lots are merged.

Commissioner Gossett said that the data being collected through the assessments, finding out how many lots in the City have been merged can be mined from that data. It could be based on ownership or use. A process needs to be established in going forward.

Commissioner Hunker agreed that a process is needed in going forward.

Commissioner Sargent said that the things the Building Inspector needs to be sensitive to need to be codified. If the applicant is not satisfied with that process, then they have the alternative of a zoning variance or coming to the Commissioners. Discussion ensued.

City Solicitor Mandalas said that grandfathering could be allowed, but it would have to be uniform.

Commissioner Sargent thought for un-merging that it would be fair to go back to when the merger occurred. Commissioner Zellers agreed. Mayor Cooper thought that this would be a good resolution, but the problem would be to know what the Zoning Code was at any given time.

City Solicitor Mandalas said that the majority of the appeals that went to the Board of Adjustment would have still been sent to the Planning Commission under the current policy of the Building & Licensing Department.

Ms. Sullivan said that in her memo, lots would have to conform to the current Code. Most of those appeals would have been told they had to go to the Planning Commission, but they would have had to go the Board of Adjustment first in order to get a variance. The unintended consequence of the Board of Adjustment decision would be that other non-conformities would be allowed to continue.

Chairman Littleton said that the Planning Commission cannot deny a partitioning, but it can set reasonable conditions. The Planning Commission cannot create a nonconformity. The Planning Commission is coming to the Board of Commissioners from a land-use planning standpoint and there may be an adverse impact that can be corrected. Discussion ensued.

Mr. Eugene Lawson, Esq., 12 Hickman Street said that one of things which has been complicating this discussion is merger for zoning as opposed to title of property. One of things that can help to resolve the problem is use the land records which have title to them that are located in the Office of the Recorder of Deeds in Georgetown, DE. From this point forward, if someone wants to build something across a lot line, have them actually merge the lots and have a new deed recorded of a single lot. With regard to un-merger, part of the problem is the unknowing person does not know about the land except for what is in the land records. One of the things to do is require the record and provide notice to everyone in the future. With respect to the proposed ordinance, it would depend on the Zoning Map to define what lots are. The Zoning Map has to be an accurate

representation.

Mr. Wayne Neale, 46 Sussex Street, agreed with Commissioner Mills that lots should become automatically un-merged. When lots stay merged and they get redeveloped, they get redeveloped at the maximum density. If the Commissioners make it difficult for people to subdivide the lots back into the original intended parcels, then what is being done is encouraging people to build larger houses. The incentive should be to return the lots to the way they were originally plotted at 50 feet x 100 feet. Two 25 foot wide lots constitute a parcel. The scale of the City is being destroyed. He said that the Board of Adjustment is just another layer of bureaucracy.

Commissioner Mills said that he will investigate automatic un-merger in certain cases and try to come up with something for a future meeting.

#### **CITY MANAGER'S REPORT**

City Manager Sharon Lynn reported that the seasonal police officers are currently involved in training and will start before Memorial Day as will the seasonal worker in the Public Works Department.

#### **COMMITTEE REPORTS**

There were no reports.

#### **CITY SOLICITOR'S REPORT**

There was nothing to report.

#### **COMMISSIONER ANNOUNCEMENTS/COMMENTS**

There were none.

#### **DISCUSS ITEMS TO INCLUDE ON FUTURE AGENDAS.**

Item to be included on the next Regular Meeting agenda is: 1. Consider accepting the gift of lighting for the Verrazzano Monument.

Items to be included on the next Workshop Meeting agenda are: 1. Merger/un-merger. 2. Side yard setbacks on oversized lots.

#### **CITIZEN COMMENT**

There was none.

The next Regular Meeting will be held on May 16, 2014 at 7:00 p.m.

There being no further business, Mayor Cooper adjourned the meeting at 11:54 a.m.

**Respectfully submitted,**

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**(Lorraine Zellers, Secretary)**