

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

August 4, 2014

The Workshop Meeting of the Mayor and Commissioners of the City of Rehoboth Beach, was called to order at 9:00 a.m. by Mayor Samuel R. Cooper on Monday, August 4, 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

Absent: Commissioner Mark Hunker

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

CORRESPONDENCE

Letter received from Rupert & Maureen Brady, 707 King Charles Avenue, relative to zoning issues and noise.

OLD BUSINESS

Mayor Cooper called for continued discussion with Dr. Willett Kempton, University of Delaware's Center for Carbon-Free Power Integration, on the potential for partnering in a state-wide network of electric vehicle charging stations.

Dr. Willett Kempton and Ms. Kathleen Harris of the University of Delaware were in attendance at the meeting.

Commissioner Stan Mills provided a brief synopsis for the Commissioners. The University of Delaware and DNREC are partnering together with other agencies and municipalities to develop a state-wide network of electric vehicle charging stations. The goal is to have charging stations within a 50 mile parameter to make a successful optimized charging system. It had been mentioned that the City is a great destination for enroute charging. A grant opportunity is being offered for a high speed charger for two charging stations and inclusion of reimbursement of electricity for one year. The City's part would be installation, fees and maintenance costs. The Commissioners had tasked the City Manager with doing more research. The Commissioners have received correspondence from electric vehicle owners after the last meeting.

City Manager Sharon Lynn gave a presentation based on the site visit with Dr. Kempton and Police Chief Keith Banks made on July 16, 2014. The purpose of the meeting was to look at three sites for potential locations for an electric charging station in the City. The three sites were: 1. Chamber of Commerce Visitor Center. Any electrical installation would be done into the building. The service in the building was not sufficient to power one of the charging stations, but it could be upgraded. 2. Mariners Park at Henlopen Condominiums. The location is currently metered. There is a nearby power source, and trenching would be easy. The location would be accessible by signage information. The transformer and meter would have to be upgraded. Mr. Sam Allen, City Electrician, Mr. Brett Jones, field engineer from DP&L and City Manager Lynn met on site. Mr. Jones advised that any upgrade to the transformer would be done free of charge to the City, and Mr. Allen thought that it would be less than \$1,000.00 to upgrade the meter and provide the specific ground wiring for use of two charging stations. 3. Martin's Lawn. There is a nearby power source. It would be less conducive for trenching in this area. The ideal location would be at Mariner's Park. There are 380 charging stations owned by local governments and 995 outlets located throughout the country of which three are located in Delaware.

Dr. Willett Kempton noted that the grant is offering two pedestal charging stations supplemented by one year's electricity upfront. Material costs under \$1,000.00 would be covered by monies budgeted. Technical

analysis and support is also offered. This could be a trial period with no obligation beyond the one year period.

Commissioner Mills said that the City has parking meter options, and 24 hour charging may be considered. Workers would need to be trained, and space turnover would need to be promoted.

Dr. Kempton said that the ability for the charging station to incur costs would need to be added. Upgrading the station would not be part of the grant. Charging for the parking space would be a separate commodity. A quarterly report would be provided to the Commissioners regarding monitoring.

Ms. Kathleen Harris noted that the Welcome Center at Newark, DE has charging stations. Other areas that are being looked at are Dover, Bridgeville area, beach area, Cape May Lewes Ferry terminal and the Delaware Memorial Bridge Welcome Center. The charging stations at the Welcome Center at Newark have been operational for approximately two weeks.

Commissioner Lorraine Zellers thought that Park-n-Ride on Route 1 would be a good alternative to explore so as not to bring more cars in the City.

Dr. Kempton thought that it would be more of a barrier for getting into town from Park-n-Ride. The decision would be left to the Commissioners of whether they would want to bring more people into the City or that there is too much traffic already and not enough parking spaces. Park-n-Ride was not desirable from a driver standpoint.

Mayor Cooper was not convinced that this would be something the City as a municipality should be endeavoring.

Commissioner Gossett suggested that the Commissioners should receive copies of the Memorandum of Understanding to review, and data should be provided on other installations in communities that utilize parking meters.

Ms. Carol Everhart of Rehoboth Beach/Dewey Beach Chamber of Commerce, said that there have been requests for a charging station. It would be a positive for the City and could be accomplished.

Commissioner Toni Sharp – Newark – 2.5 years.

Dr. Kempton noted that at the University of Delaware in Newark, some electric vehicles are using the charging stations on a regular basis. One of the learnings is to put a charging station in Dover because of the distance. This part of why the University of Delaware is trying to promote this program with DNREC. If there are no locations out there, it makes it hard to use an electric vehicle. No one knows how it works in terms of routines. All of the DNREC program is to provide a low cost way for different institutions to learn how it works for them. The charging stations at the Newark campus were catering to a limited clientele and not dealing with the public.

Mr. Walter Brittingham, 123 Henlopen Avenue, asked how the data collected is transmitted, and who would be financially responsible for the internet connection. Dr. Kempton said that data is transmitted via an internet connection to each charging station. He did not know if there is a charge for the internet connection. It would not be part of the program.

Dr. Kempton noted that a 208V or 240V single phase 100A breaker would be required. The average charge would use 6KW which would amount to approximately \$.75 per hour.

Commissioner Mills said that the Commissioners will give this program some consideration in the future.

Mayor Cooper called for continued discussion on the processes and conditions for merging and unmerging lots including introduction and discussion of a proposed ordinance amending the Zoning Code to clarify the merger of lots in the City.

Commissioner Mills briefly reviewed the genesis of the this particular topic and introduced the first draft of the proposed amendment to the Zoning Code. The Planning Commission has presented its issues on merger and the problems and perceptions it has had with this topic. The following concerns were to: 1. Redefine merger. 2. Retain language defining merger by utilizing multiple lots as one parcel through the placement of a structure or structures thereon. 3. Add language defining merger by utilizing multiple lots as one parcel through its use. 4. Add language further defining merger that when merger occurs through the placement of a structure or structures thereon it is regardless merged of when the structure or structures were original placed. 5. Add language that once merged, the lots remain merged unless subdivision approval is obtained by the Planning Commission. The proposed ordinance includes separation criteria. Commissioner Mills was not proposing that

all partitionings go through the Planning Commission. There is always an appeal process that allows the property owner to seek un-merging or separation through the Board of Adjustment. The following were Board of Adjustment concerns: 1. Define merger. 2. Define the process to unmerge. Give notice to property owners that if they choose to use two lot as one large parcel, then the lots will be considered merged and that a formal unmerging process will be required to unmerge. 4. Property owner signs an affidavit acknowledging knowledge of this process. 5. If in the future property owners desire to separate lots, then a formal un-merger process has been defined. 6. If merger is permissive, then there also should be a process for automatic separation. The position of the Building & Licensing supervisor is that the current police is as of April 3, 2014 that where the circumstances causing a merger have been abated, the Building & Licensing Department will no longer advise property owners that a subdivision by the Planning Commission is necessary to unmerge lots. The lots will unmerge with no further action by a board or commission. This policy is limited to occasions where the unmerged lots will be as they were originally plotted. The proposed ordinance would codify this and further clarify conditions and processes for merging and separating merged lots. There are two areas in the Code that define "lot". The deficiencies in the current definition are: 1. Lot ownership is not mentioned. 2. Criteria defining the merging of lots is incomplete. 3. The process for separation of lots is not articulated. 4. There is no provision to give notice to property owners retroactively or going forward. The proposed definition of "lot" would be the parcel of land on which a main building and any accessory buildings are placed, together with the required yards. The area of the lot shall be measured to the street line only. A lot shall be as shown on the Zoning Map of the City, except that two or more lots as shown on the Zoning Map may be combined and used as a single parcel for zoning purposes as provided in this Chapter. Examples were shown of lots that may be merged or lots that are not able to be merged when two or more lots, as shown on the Zoning Map, under common ownership shall be combined into a larger single parcel for zoning purposes when (specified conditions occur). When some property owners of abutting lots with common ownership receive individual tax bills, one for each lot, while others receive a single combined tax bill, tax billing is not evidence of merger or non-merger. There would be three criteria for mandatory merging of multiple lots: 1. When the multiple lots are utilized as one parcel as evidenced through the placement of a structure, structures or other improvements thereon. Examples of this criteria are a handicap ramp extending across the shared lot line, house straddling the shared lot line or a house on one lot with an accessory structure on the second lot.

City Solicitor Mandalas had indicated the nuance between a structure and an improvement is that an improvement is something like a hard driveway that may not fit clearly in the definition of structure, but it is an improvement that would cause a merger. Commissioner Mills suggested that Building Inspector Sullivan should provide other examples for future discussion.

2. When the multiple lots are utilized as one parcel as evidenced through the use or uses thereon. Examples of this criteria are when both the first lot and the second lot do not need each other to be zoning compliant but they are still being used as a single parcel; a formal garden extending from one property to the next; or an art studio in a building on one lot, but many of the art classes are conducted outdoors on the second lot.

Mayor Cooper said that a formal garden has no structure and has no use. He thought it would be insane for the City to require someone to come and sign a paper if they own an extra lot and want to put a flower garden on it, something that will beautify the City.

Building Inspector Sullivan noted that a fence is defined as a structure, but it does not merge two properties. A fence would be a use of the property, not an accessory use. She did not know what other structures could be built on a lot that do not have to be accessory.

3. When the multiple lots are expressly combined to comply with the provisions of this Chapter. Examples of this criteria are when the property owner wants to decrease natural on one lot to under 40% to add a patio and utilizes the second lot to ensure 40% natural for the single large parcel; the house on the first lot is enlarged using FAR calculations based on having the second lot serve the single larger parcel; the house is entirely on lot 1 but so close to the property line that it needs lot 2 so as not to be in violation of side yard setbacks; or lot 1 is so developed that it would violate FAR, natural cover, etc. if it did not have the benefit of lot 2.

Commissioner Mills said that by the end of this exercise, a clear message should be sent from the Commissioners to the Board of Adjustment that when it hears appeals, it needs to be more attentive to certain things. He has witnessed that when it disagreed with the Building Inspector, it has glossed over some of the rules.

Commissioner Gossett said that there is no paper trail that is part of the deed. This is a tool that the Board of Adjustment should have at its disposal to say that the owner was made aware.

The current Code reads that lots combined as provided herein may be separated to their originally plotted configuration without additional approval by removing the structure, structures or other improvements or discontinuing the use or uses previously causing the combination, so long as the lots, as originally plotted, conform to the requirements of this Chapter. There is desire to give an allowance for lots originally plotted as buildable lots but which prove today by current surveying standards to be slightly less than what was noted on the original plat. A question was raised if there is applicability to originally plotted sub-standard lots. Examples were given of standard lots originally plotted as 50 feet wide x 100 feet deep, lots originally plotted as 25 feet wide x 100 feet deep, lot originally plotted as 50 feet wide x 84 feet deep. Copies were provided of portions of original maps.

Commissioner Mills said that one thought is to refer back to the original maps of Rehoboth Beach.

Commissioner Gossett noted that there is no process in the Code that allows diminutive variances.

Building Inspector Sullivan was interested in having a 1% square footage allowance that would allow up to a 50 square foot variance. It would not allow for 50 foot x 84 foot properties. Ms. Sullivan said that she would prefer to not have the building inspector decide whether this is allowable or not. She would rather see a diminutive variance that is called out that as long as it is within this tolerance, it is acceptable.

City Solicitor Mandalas said the consensus view that was forming was that so long as lots were originally plotted to conform to the current requirements for a standard buildable lot, that being 5,000 square feet and it would contain a 4,000 square foot rectangle, 50 foot of frontage, etc., then those lots could be separated so long as structures and uses are removed. It would be codified that the lots would be separated. He differed from the Building Inspector with regard to an actual tolerance being enumerated or specifically identified in the ordinance. City Solicitor Mandalas said that the Sussex Street lots need to be considered. The 1876 map is accepted as the original map of Rehoboth proper. There may be another map or another mechanism that the Commissioners may want to use to say that it is the defining map. There should be some administrative or codified mechanism to separate lots without having to go through a Planning Commission partitioning or through a Board of Adjustment appeal process. A lengthy discussion ensued.

Mayor Cooper said that if relief is given on only the 5,000 square feet which would still require the 4,000 foot rectangle, the 50 foot x 84 foot lot would meet that. The 25 foot x 100 foot lots would not meet it.

Commissioner Mills said that this should capture a good number of lots for automatic un-merger; and all that do not fit in this formula would still have the opportunity to go before the Board of Adjustment to seek a variance. Not all of the properties will be captured in this formula.

City Solicitor Mandalas and Mayor Cooper had an issue with lots as shown on the Zoning Map. The Zoning Map is only to be used for zoning purposes. There is no clear answer as to whether the lots are shown as originally plotted or reconfigured over time.

Commissioner Gossett thought that the Commissioners are moving in the right direction with regard to this topic. The two elements he was concerned with were the codification or approval that the property owner is aware of a merged or unmerged lot and it is part of the deed, and the set of criteria that the Planning Commission has to evaluate partitionings on from the standpoint of land use where the Board of Adjustment never enters into that consideration of light, air, health, etc. Those need to be considered because it is not an isolated issue when separating a lot. The neighbors should be informed.

Mayor Cooper disagreed. The Zoning Code calls for 50 foot x 100 foot lots. He did not see where neighbors have a lot to say about others converting a 100 foot x 100 foot lot into two 50 foot x 100 foot lots.

Commissioner Zellers thought that the Commissioners are moving in the right direction. She would like to see a process more in identifying what can and cannot be done to make it easier for the property owner. Notification is a big part of that. People need to know that lots have merged and when they have unmerged.

Where separation results in non-conforming lots, the path forward is to go the Planning Commission, Board of Adjustment or others.

City Solicitor Mandalas and Mayor Cooper thought that this language should be stricken.

Notice. Each property owner, having been duly notified of the requirements of this Section, shall thereafter, at the option of the property owner, have 210 days from the enactment of this Section to remove any structure, structures or other improvements, or discontinue any use or uses evincing the utilization of two or more lots as a single parcel and expressly notify the city that said lots shall be considered separate for zoning purposes.

Thence, after the expiration of this 210 day period, any lots remaining combined shall only be separated pursuant to the provisions of this Section.

City Solicitor Mandalas said that the 210 days was given when the City was dealing with garage apartments and there was a process by which a garage apartment could be registered. The goal is for those people who currently have lots that arguably have become merged but no notice was given that the lots were merging. This provision would be predominantly for those lots that are not conforming to the current Zoning Code. Mayor Cooper disagreed.

Commissioner Mills suggested that a notice could be sent to everyone that the Zoning Code has changed regarding merger/un-merger when it is adopted. Commissioner Zellers agreed.

There was no consensus of the Commissioners whether to keep or delete this the entire section. Further discussion will be needed.

Recordation and monitoring of merged lots.

City Solicitor Mandalas and Ms. Sullivan would like to have a document that acknowledges a merger and it would be recorded at the Recorder of Deeds. Nothing would have to be signed unless something new is being done that the benefit of more than one lot to do it is needed.

Ms. Sullivan noted that an affidavit would be an additional document to be recorder along with the survey at the Recorder of Deeds. Ms. Sullivan will work on what the criteria and triggers will be for this process.

The Commissioners will give more thought to recordation and monitoring of merged lots.

Residential only or commercial also for combined lots having contiguous and continuous frontage on the same street.

The consensus of the Commissioners was to have this reference to residential only.

Lots that become non-conforming because of a new zoning classification. A scenario would be that these lots are originally zoned as commercial and have not setback requirements. A residential dwelling is built on one lot and is zoning compliant at that time. The owner of one lot already owns the other lot or purchases the other lot at some future point in time. At a future date, the zoning classification is changed to residential. Now the same property is legally non-conforming because the dwelling encroaches into the side yard setback. The questions are whether the lots become merged as the other lot is used to remedy the lack of proper side yard setback now for the first lot; and whether they merge automatically and can be separated automatically.

Commissioner Mills did not think that the lot can be unmerged, and it would penalize the owner of both lots because of the change in zoning.

Commissioner Sargent thought that each lot has to stand by its own; and in order to merge a lot, a deed must be presented to the Building Inspector. Mayor Cooper agreed. The problem is how to deal with all the mergers that have been done in the past. The trigger would be if everything was done conforming to the law at the time that would allow selling a lot in this circumstance. If the structure was built conforming to the Zoning Code at the time, it will not be considered merger. There may be a problem with what the Zoning Code was at the time. It should be put in the Code that a special exception could be done. The onus would be put on the person to go to the Board of Adjustment and not be put it on the Building Inspector.

City Solicitor Mandalas suggested that for newer project, an Affidavit of Merger should be placed in the Building & Licensing files regarding this matter.

This item will be placed on the agenda for the September Workshop Meeting.

NEW BUSINESS

There was none.

CITY MANAGER'S REPORT

City Manager Lynn reported that the Schoolvue Project has been completed. There are only punch list items to consider at this point. On August 14, 2014, the employees will be having a meeting with Mass Mutual regarding the deferred comp plan.

COMMITTEE REPORTS

There were no reports.

CITY SOLICITOR'S REPORT

There was nothing to report.

COMMISSIONER ANNOUNCEMENTS/COMMENTS

Commissioner Mills commented that the Rehoboth Beach Homeowners' Association has donated \$1,000.00 for beach wheels. The Communications Committee has been desirous of better audio in the Commissioners Room so the audience and the public can hear and be heard; and also so it is easier to hear when listening to the audio. Commissioner Mills had his picture taken with the National Watermelon Queen and Watermelon Queens from Georgia, South Carolina, Delmarva and Florida.

DISCUSS ITEMS TO INCLUDE ON FUTURE AGENDAS.

There were none.

CITIZEN COMMENT

There was none.

The next Regular Meeting will be held on August 15, 2014 at 7:00 p.m.

There being no further business, Mayor Cooper adjourned the meeting at 12:02 p.m.

Respectfully submitted,

(Lorraine Zellers, Secretary)