

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

May 16, 2014

The Regular Meeting of the Mayor and Commissioners of the City of Rehoboth Beach was called to order at 7:02 p.m. by Mayor Samuel R. Cooper on Friday, May 16, 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: City Manager Sharon Lynn
 City Solicitor Glenn Mandalas

APPROVAL OF AGENDA

Commissioner Stan Mills made a motion, seconded by Commissioner Bill Sargent, to approve the Agenda with the deletion of the February 10, 2014 Workshop Meeting, March 10, 2014 Special Meeting and April 7, 2014 Workshop Minutes. Motion carried unanimously.

CORRESPONDENCE

There was none.

APPROVAL OF MINUTES

Minutes of the January 17, 2014 Regular Meeting, February 21, 2014 Regular Meeting, March 10, 2014 Workshop Meeting, March 21, 2014 Regular Meeting, April 7, 2014 Special Meeting, April 7, 2014 Executive Session and April 21, 2014 Regular Meeting were distributed prior to the meeting.

Commissioner Mills made a motion, seconded by Commissioner Toni Sharp, to approve the January 17, 2014 Mayor and Commissioners Regular Meeting minutes as written. Motion carried unanimously.

Commissioner Mills made a motion, seconded by Commissioner Lorraine Zellers, to approve the February 21, 2014 Mayor and Commissioners Special Meeting minutes as written. Motion carried unanimously.

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

Commissioner Mills made a motion, seconded by Commissioner Zellers, to approve the March 21, 2014 Mayor and Commissioners Regular Meeting minutes as written. Motion carried unanimously.

Commissioner Mills made a motion, seconded by Commissioner Mark Hunker, to approve the April 7, 2014 Mayor and Commissioners Special 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 Executive Session minutes as written. Motion carried unanimously.

Commissioner Mills made a motion, seconded by Commissioner Zellers, to approve the April 21, 2014 Mayor and Commissioners Regular Meeting minutes as written. Motion carried unanimously.

PUBLIC HEARING on and consideration of a proposed ordinance amending Chapter 270, Section 270-26 of the City Code that would further define the width of a lot when determining if and how much to increase the side yard setbacks for any lot with greater than 52.5 feet of street frontage and a lot area of 5,250 square feet in the R-1 District and for R-1 uses in the R-2 District.

Ms. Ann Womack, City Secretary, verified that the resolution had been published 15 days in advance of the meeting and was published in a newspaper of general circulation.

City Solicitor Mandalas read the proposed ordinance. Chapter 270, Section 270-26 of the Municipal Code of the City as amended be and the same is hereby further amended by deleting Footnote 2 as it appears there in its entirety and substituting in lieu thereof the following new Footnote 2 to read as follows:

When the width of a lot exceeds 52.5 feet and the lot area exceeds 5,250 square feet the Minimum Aggregate Total of Both Side Yards shall be increased proportionately by the lesser of:

- (1) The quotient obtained by dividing the width of the lot in feet by 50, or
- (2) The quotient obtained by dividing the area of the lot in square feet by 5,000.

Where for the purposes of this section the width of a lot is defined as:

- (1) The perpendicular distance between the two side lot lines when these lot lines are parallel, or
- (2) When the two side lot lines are not parallel, the length of the street line between the points where these lot lines intersect the street line at the front of the lot.

In the case of a corner lot, one side lot line shall be interpreted as the street line of the intersecting street. In the case of a corner lot where the right-of-way lines of the intersecting streets are joined by an arc the point of measurement is the point at which the extension of the two right-of-way lines intersect.

The ordinance will become effective immediately upon the adoption this evening.

Mayor Cooper noted that the Commissioners had originally passed an ordinance in January 2014 requiring that side yard setbacks be increased when a lot exceeds 52.5 feet and 5,250 square feet in area. It came to light after the adoption of the ordinance that a lot could be 50 feet wide but if the street intersects the front of the lot at an angle, the measurement would be greater than the width of the lot. The proposed ordinance will correct this. If the side lot lines are parallel, a measurement will done between them and not worry about the front. If they are not, then the distance between the side lot lines measured at the street line would be used.

Public Comment:

1. Mr. Tom McGlone, 318 Laurel Street, asked how many properties would be affected by this change.

Mayor Cooper noted that there would not be a great deal of properties affected by this change, but there is no count.

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

Commissioner Sargent made a motion, seconded by Commissioner Mills, to adopt the ordinance relating to side yard setbacks.

Commissioner Mills agreed with the minor amendment. The property owner has the opportunity to go before the Board of Adjustment to seek a variance. The 50 foot width allows a deviation which was discussed at the last Workshop Meeting.

(Hunker – aye. This correction was needed to avoid any confusion as it comes up. Zellers – aye, for the reason previously stated by Commissioner Hunker. Mills – aye, for the same reason. This remedies an oversight. Sargent – aye. This is a very small but necessary change to what the Commissioners passed previously. Gossett – aye. This addresses issue that has come before the Commissioners from the public to rectify the Code. Sharp – aye. This particular amendment will improve this ordinance. Cooper – aye. It preserves the original intent of the ordinance while correcting an oversight that would have been a hardship on certain people on a few properties.) 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 April 2014. There were 15 criminal, 106 traffic and three civil charges made during the month. Six traffic crashes were investigated. The ordinance that designates smoke-free areas went into effect on May 15, 2015. The Police Department will be tracking any persons violating the ordinance and their location of any offenses. Additionally, officers are handing out brochures to help better educate the public. Today was the first day that some summer officers are working. Throughout the next week and a half, more summer officers will be reporting for work. The Dispatch Center

handled 111 police incidents, 194 ambulance incidents, 48 fire incidents, 140 traffic stops and, assisted other agencies seven times. As of May 1, 2014, no left turns on a red light at the first and second blocks of Rehoboth Avenue are being enforced.

Mrs. Nancy Meadows, 506 New Castle Street, commended Police Chief Banks for the extra training of the bicycle officers.

REPORT OF REHOBOTH BEACH VOLUNTEER FIRE COMPANY

Mr. Walter Brittingham of Rehoboth Beach Volunteer Fire Company reported that the building will be finished by August 1, 2014. The Fire Chief has been working with the City and the Fireworks Committee on a plan to feed the volunteers and house equipment for July 4, 2014.

REPORT OF THE BUILDING AND LICENSING DEPARTMENT

(See attached report.)

Chief Building Inspector Terri Sullivan presented the report of the Building & Licensing Department for April 2014. During the month, 129 permits were issued for a value of work totaling \$2,042,097.11. Fees collected totaled \$56,625.72 for the month. One hundred twenty-five permit processing fees were received in the amount of \$2,500.00. The Board of Adjustment heard two cases in April. One restaurant applications was received in April. Three notices of violation were issued for structures in disrepair. One notice of violation was issued for overgrowth. Two notices of violation were issued for sidewalks in disrepair. One notice of violation was issued for abuse of a tree. There were 108 building inspections, 16 plumbing inspections, 11 rental inspections, three meetings regarding trees, 32 meetings regarding new projects and eight meetings regarding City business.

PERMIT OF COMPLIANCE HEARING

Mayor Cooper opened the Permit of Compliance hearing requested by James Becker of the law firm Hudson, Jones, Jaywork & Fisher LLC on behalf of Jay Caputo of 251 LLC, to operate a new restaurant with a patio to be known as "Flying A BBQ & Crabs" pursuant to the City of Rehoboth Beach Municipal Code, Chapter 215 – Restaurants and Section 270-19(A) – Use Restrictions; Patios. The restaurant will be located at 251 Rehoboth 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 April 23, 2014. Notice of today's Public Hearing was published in the Cape Gazette on April 29, 2014, Coast Press on April 30, 2014 and Delaware State News on May 1, 2014. 2. Building Inspector's Report dated May 8, 2013. 3. Application for a Restaurant Permit of Compliance notarized on April 14, 2014 and received on April 15, 2014. 4. Menu. 5. Restaurant Seating Plan, Sheet No. A2, dated April 14, 2014 and received on May 2, 2014. 6. Seating and Kitchen Equipment Plan, Sheet No. A4, dated March 8, 2014 and received on April 15, 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 had stated that the approximate percentage of revenue between the sale of alcohol and food is 35% alcohol and 65% food. The Application is for a 1,683 square foot restaurant. The proposed bar area will be 337 square feet with a proposed ratio of bar to permanent seated dining of .52. In summary, this was an Application for a restaurant serving alcohol to move

into the building where the Running Company used to be. This new restaurant is in the same building as Catcher's Restaurant. The combined total square footage of both restaurants is 4,852.5 square feet. The proposed patio for the new restaurant is 723 square feet with 62 seats. A section in the Zoning Code states that the total area of a restaurant in a building cannot be more than 5,000 square feet.

Mr. Chad Meredith, Esq. of the law firm Hudson, Jones, Jaywork & Fisher LLC was in attendance at the meeting on behalf of Mr. James Becker, Esq. of the same law firm who is representing Mr. Jay Caputo of 251 LLC. The LLC is made up of two members, Mr. David Deitz and Mr. Jay Caputo, who have owned similar restaurants with the primary purpose being a restaurant. Parking is provided at the premises so there would not be any negative impact on parking, traffic, etc. The property is zoned C-1. Part of the proposed patio would taken over where Catchers operated a patio in the past. The patio will not have any outdoor speakers, no live entertainment, and it will shut down at 10:00 p.m. There will be no outdoor bar area. The purpose of the patio is to serve food and beverages to seated outdoor diners from the indoor bar area. The menu is a full menu.

Mr. David Deitz noted that the entry to the restaurant will be through the two patio areas. In the lease that was signed, it is noted that there is an area at the outside rear of the restaurant which houses a freezer and storage. This area will be used by the restaurant. Consideration has been given to pest control, fly control, air curtains, etc. Both of the outdoor seating areas are covered.

Commissioner Mills noted that there are two patios, and both sections are fenced in which will control ingress and egress.

There was no correspondence and no public comment.

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

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 Mills, to approve the Permit of Compliance for 251 LLC for a restaurant to be known as Flying A BBQ & Crabs at 251 Rehoboth Avenue. (Gossett – aye, Sargent – aye, Coluzzi – aye, Cooper – aye, Mills – aye, Zellers – aye, Hunker - aye.) Motion carried unanimously.

REPORT OF PLANNING COMMISSION

Ms. Sullivan presented the report of the Planning Commission. The Regular Meeting was held on May 9, 2014. The Planning Commission voted to unanimously approve the finalization of a conditional partitioning for 50 Park Avenue. The Planning Commission continued its tree study work. Discussion at this meeting was focused on recommendations that the Planning Commission wanted to include in its report to the Board of Commissioners. Prompted by public concerns, the Planning commission began a discussion of issues related to the apparent increase in the number of swimming pools being constructed behind new homes in the City and their impact on nearby neighbors. Issues include light and noise pollution. Unlike other structures in rear lots, the deep digging and dirt displacement/placement required during pool construction results in significant injury to the roots of trees not only on the pool property but also to trees on adjacent properties. Pool construction increased the probability that neighboring lots will be invaded during construction.

Commissioner Mills noted that the draft amended tree ordinance is currently on the City website, and the Planning Commission is still seeking input in this matter.

OLD BUSINESS

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

Correspondence:

1. Letter dated February 24, 2014 from Nicholas S. Caggiano regarding illumination of the Verrazzano Monument located at Olive Avenue and the Boardwalk. According to Russ McCabe, the Verrazzano Monument on the Boardwalk is the most visited monument in the State of Delaware. He asked if it would be possible to have the monument illuminated if Mr. Caggiano would come up with the funds. The only cost to the City would be to maintain it.

Commissioner Mills said that he is cognizant of light pollution, and he does not want to see all the extra lights. Mr. Caggiano is very generous in offering to donate the lighting for the monument, but it is something that would be put in the hands of the Commissioners to maintain. There would be significant costs to it. Commissioner Mills has looked at the various monuments; and of all the monuments, the Verrazzano monument is the most brightly lit at night from ambient lights from the Boardwalk and the pavilion. He did not support putting lights on the Verrazzano monument at this time.

Commissioner Zellers mentioned that this is a generous offer. Putting a light on something gives it special significance. There are other equally deserving areas in the City. The Verrazzano monument is the most illuminated, so for that purpose, the monument does not need a light on it. The Commissioners have to figure out a way to draw the line and have criteria about gifts. She did not feel that this offer could be accepted at this time without looking at other things in the City that are deserving in the same way.

Commissioner Hunker said that the monument is pretty well lit. There is little issue with putting a light on the monument. This is a lost opportunity for a monument that is visited the most and has a lot to do with the City's history. He would see no problem with putting a low wattage light on something like this monument or at the Methodist Church. The Commissioners' fear of taking or improving something is frustrating for the citizens.

Commissioner Sharp thought that as a community, a process should be put in place when anyone comes forward that there is a framework to take the idea to determine if it is something that rises to the level to continue on with the process. A process could help the Commissioners to define what the potential areas are to maintain as primary caretakers. There possibly may be other areas that the City may benefit from private partnership. Had this process been put in place after the Garden of the Navigators, it would have been a perfect opportunity to direct the individual on how to do business with the City. There would already be an agreement within the process of what areas are important. She would like to have a process that as the Commissioners make decisions, they are made with a great deal of equity.

Commissioner Gossett concurred with Commissioner Sharp about a process. As part of the process, a wish list should be developed of things that are priorities in the City.

Commissioner Sargent said that there is not a strong enough compelling reason to go through with this request.

Mayor Cooper said that the Commissioners did not solicit this monument. They were solicited to take it. It was stated in the letter that a State senator would be solicited for the money.

Mr. Tom McGlone thought it would be a good idea to put on an agenda that someone work on a process for future gifts and have it put in place. Then the Commissioners could go back to Mr. Caggiano to see if the process would work for the lighting of the monument. Commissioner Mills agreed. He noted that someone has to champion this. The process works somewhat fine the way it is.

Commissioner Hunker made a motion, seconded by Commissioner Zellers, to approve the request of Mr. Nicholas Caggiano to light the Verrazzano monument on the Board walk at the foot of Olive Avenue. (Sharp – no, Gossett – no, Sargent – no, Cooper – no, Mills – no, Zellers – no, Hunker – yes.) Motion failed.

Mayor Cooper will contact Mr. Caggiano on behalf of the Commissioners with their decision.

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

Mayor Cooper noted that he, City Manager Sharon Lynn and Commissioner Gossett met with representatives from PTA/DelVal this morning for an update. Mayor Cooper stated the reasons for the reassessment. A number of letters will be sent out in response to changes as a result of the informal hearings and to people who did not appeal but are affected by some of the appeals and data which has come forward. There may be global changes for neighborhoods, streets, etc. Notification will also be sent to people who had a

hearing but there are no changes. The letters are to be sent out by the middle of next week. PTA/DelVal will be providing the Commissioners with the final listing with all the changes and will be signed by the appraiser as to verification of his work. A list will be posted by May 23, 2014. A notice that the list will be available and the procedure for filing a formal appeal will be posted on the City website and a minimum of five other areas in the City. The formal appeal process will require a person to fill out a form which needs to be returned to the City Manager by June 5, 2014. Representatives from PTA/DelVal will be in attendance at the June 9, 2014 Workshop Meeting to explain the decision making process, what is expected during the appeal process and set the meeting date(s) prior to June 20, 2014. An agenda will need to be published. On June 20, 2014, the tax rate will need to be set.

Commissioner Gossett provided background on feedback that was received. The informal hearings took place for the last three weeks. At that time, there were 238 telephone calls to the hotline of which 39 were general questions, 92 resulting in face-to-face meetings with the assessor, 82 resulted in telephone meetings with the assessor, and 61 emails were received. Commissioner Gossett reiterated the process previously talked about by Mayor Cooper. A map of land values is currently being worked on.

Mayor Cooper noted that an estimate tax rate had been published in the budget to provide for revenue, but because of the adjustments, it will probably have to be increased. In the current budget, there is \$1,327,000 in revenue. The appeal is based on the assessment, not how much tax is being paid.

Mr. Tom McGlone asked if the Commissioners will undergo professional education on the process since they will be the ones hearing the appeals.

Mayor Cooper noted that the Commissioner will not undergo professional training, but they will be given a presentation by the assessors as to how the process was done. The Commissioners will be hearing both sides and making a determination.

Commissioner Gossett said that at the Workshop Meeting on June 9, 2014, the assessors from PTA/DelVal will be in attendance at the meeting to educate the Commissioners on the process. The assessors will be part of the hearing process. The role of the Board of Appeals is make the decisions.

CITY MANAGER'S REPORT

City Manager Sharon Lynn reported that the City has applied for and received a surface water matching planning grant from Delaware Water Infrastructure Advisory Council in the amount of \$30,000.00. This grant will assist the City in the collection of data, basically for the City-owned storm drains, culverts and most watershed locations so this information can be input into the GIS system. All planning for the no smoking initiative has been completed. The initiative started on May 15, 2014. Some smoking urns are still in the process of being erected on the Boardwalk and the beach. Approximately 98% of comments received have been positive. Police officers have been alerted to what to look for and where. Additional brochures will be handed out to businesses. Preparation for the Memorial Day weekend is underway and will continue next week.

A representative from Davis, Bowen & Friedel Inc. (DB&F) provided an update on the Schoolvue Sewer Project on Bay Road. The jack and bore operation started approximately three weeks ago. The first bore was done last week, and the second bore from New Castle Street to Stockley Street began at the beginning of this week. It is anticipated that the manhole will be set this coming week and the rest of the gravity sewer will be put in on Bay Road. After that is completed, it should be a short time to connect the rest of the sewer to the east on Stockley and New Castle Streets. The contractor's end of the project date is July 8, 2014. The contractor is planning on having the project completed in June 2014. DelDOT has requested that the contractor be out by Memorial Day 2014.

City Manager Lynn recommended the approval of the Street Aid expenditures:

05/07/2014	548	Delmarva Power	\$9,262.79 (Street Lights)
------------	-----	----------------	----------------------------

Commissioner Mills made a motion, seconded by Commissioner Sargent, to approve the Street Aid expenditures as presented. Motion carried unanimously.

COMMITTEE REPORT

There was nothing to report.

CITY SOLICITOR'S REPORT

City Solicitor Mandalas reported that there is legislation which is currently pending that would amend the municipality codes to make clear that certain taxing powers by municipalities are limited. It relates to an all powers

clause that a lot of charters have. The City's Charter does not have a specific all powers clause. It has other enumeration of powers which are much broader. He was not sure if the Commissioners as a municipality would want to take any position on it.

COMMISSIONER ANNOUNCEMENTS/COMMENTS

Mayor Cooper commented that he and City Manager Lynn attended a meeting of the Delaware Founders Insurance Trust. This group was formed approximately eight years ago for the municipalities to band together to try to control their workman's compensation rates and payments. Currently, there are 19 municipalities involved with approximately \$2,000,000.00 of premium per year. The trustees of which Mayor Cooper is one of nine, voted on May 13, 2014 to turn the program into a self-funded program where the premiums will be paid in. There will be a claims administrator hire. There will be excess insurance purchased for catastrophic claims, etc. Typically the claims are 40% less today than when the program started. This will free the municipalities that are participating from the vagueries of being in the State program. Initially, the City would be able to save quite a bit of money. This is a clear indication of when municipalities work together to come up with something that can improve everyone. A number of municipalities will probably be opting to get into the program before this goes into effect on July 1, 2014 or shortly thereafter. The City is the third biggest member of this program. Mayor Cooper would like to give Mr. Bill Woods of Wastewater Treatment Department a better platform in which to disseminate this to all departments.

City Manager Lynn noted that training is already going on, and this is a very good program.

Commissioner Mills distributed a flyer of the Smoke-free Initiative to the Commissioners. It an illustrative guide of where the smoke-free areas are located.

DISCUSS ITEMS TO BE INCLUDED ON FUTURE AGENDAS.

An item to include on a future agenda is to have an initial discussion on the development of a process for city gifts.

CITIZEN COMMENT

Mr. Walter Brittingham, 123 Henlopen Avenue, asked that the Commissioners consider putting the signs which are used in the summer season on an orange field to let people know they are new and different.

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

There being no further business, Mayor Cooper adjourned the meeting at 8:27 p.m.

Respectfully submitted,

(Lorraine Zellers, Secretary)