

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

**February 10, 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, February 10, 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 with the City's engineer, Bob Palmer, budgeting and contracting for inspecting, flow testing and painting of the City's fire hydrants and inspecting and exercising the in-ground valves within the water system.

Mr. Bob Palmer, City Engineer, had provided a package with recommendations to City Manager Sharon Lynn last week for distribution to the Commissioners. There are a number of ways to separate this project into smaller phases to make it more affordable and still accomplish the overall work scope which was to exercise and maintain all of the fire hydrants and isolation valves in the system. A cover letter was put together with a recommendation and review of how to go about a two-phase project. The first phase of the project would consist of locating and inspecting flow in all of the fire hydrants, and at the same time, exercising and investigating the condition of all system's isolation valves. Mr. Palmer had prepared a schedule for review which indicates an early and a late start for beginning advertisements for that work. The second phase would consist of the hydrant painting. Mr. Palmer recommended that rather than pushing the hydrant painting portion of the work into the inspection work, the inspection work should be completed as a complete project. Once that project is complete, painting project would begin. The painting project has an early and a late start depending on how the project is advertised for bids. Historically with any work being done in the streets, the City has refrained from doing any work during the high season. It may be possible to begin the hydrant painting during the summer month in the less congested pedestrian areas. The painting work could begin as early as mid-July. Otherwise, the recommendation is to start the construction work after Labor Day. One cost estimate was provided for Phase 1 - Hydrant and Valve Inspection in the amount of \$126,900.00. The second cost estimate was provided for Phase 2 - Painting in the amount of \$180,500.00. The testing for the presence/absence of lead has been omitted from the estimate. Mr. Palmer recommended that this testing could be done by City crews in advance of the painting project. There are approximately 200 hydrants in the corporate limits and 150 hydrants outside of the City. It could be specified that the outside hydrants would be done first starting in July, and the hydrants in the City would be done after a certain date. The contractor's exposure to high pedestrian areas would be limited and would be held towards the end of the project. Mr. Palmer has not had any discussion with City staff as to its capability of testing the hydrants for lead. He will coordinate with Mr. Howard Blizzard, Supervisor of Water Department to make sure he has staff available for testing and recording of the results.

After discussion as to whether or not the project would be done in two phases, the consensus of the Commissioners was for Mr. Palmer to work with City Manager Sharon Lynn to begin the advertising for Phase 1 of the project. Phase 2 would be deferred until the next budget session. The Commissioners will not need to vote to authorize the bid since no money is being spent, other than Mr. Palmer's time. Phase 1 of the project is

completely covered by this year's budget.

Mayor Cooper called to discuss revising the following sections of the City Charter to modernize them and bring them in line with practice:

- 22 Board of Assessment
- 23 Assessment of Taxes
- 24 Levy of Annual Taxes
- 25 Collection of Annual Taxes
- 26 Scrap Assessment of Sewers

Mayor Cooper noted that currently the City Charter calls for three citizens to be appointed to an Assessment Board. Professionals are needed to do the assessments. The Tax Assessor would need to be fully qualified under the regulations of the Code of Delaware to perform real estate tax assessments. A number of concepts are different. A section was added about supplemental assessments so that properties can be assessed and billed for part of a year's taxes partway through the year. It is left up to the City Manager whether this would be done. Mayor Cooper changed the 1.5% per month interest to a 1.5% per month penalty. With regard to collection of taxes, an 18% surcharge would be collected for delinquent taxes. Garnishing wages and being taken to jail once a judgment has been given was removed from the Charter. Mayor Cooper added Section 30 – Collection of Charges Due the City. These would refer to other charges due the City, not just taxes. The Scrap Assessment of Sewers section was removed. All references to the capitation tax were removed. The Commissioners need to forward this to the State legislature. Mayor Cooper and City Solicitor Mandalas will meet to review the changes against the current Charter. This item will be placed on the agenda for the next Regular Meeting.

Mayor Cooper called to discuss whether or not to expand smoke-free areas in Rehoboth Beach beyond the current six park/tot lot areas to new areas such as the beach, Boardwalk, Bandstand, additional park areas and other areas.

Commissioner Stan Mills said that the purpose of this presentation is to review municipal smoke-free initiatives, address questions from the last meeting and identify additional smoke-free initiatives beyond the bands in six park areas. Since the last meeting, Commissioner Mills has met with the Town Manager of Bethany Beach, Park Director from Cape Henlopen State Park, other officials, etc. He provided a spreadsheet showing Delaware jurisdictions such as Bethany Beach, Lewes, Delaware State Parks, Fenwick Island, and Dewey Beach with smoke-free initiatives on the beach and Boardwalk. The common threads in the smoke-free initiatives are rationale, bans-restrictions, education, enforcement and not hurting tourism. With regard to rationale, the concerns in the smoking/no-smoking debate are litter, economic costs, environmental costs and health. With regard to bans-restrictions, outright bans define areas. Restrictions are that smoking is banned in some locations and is allowed in designated smoking areas. Applicable dates could be year round or seasonal. Education is the key to voluntary compliance. Examples of education would be literature, map of smoke-free areas, media outlets, City website, Rehoboth Beach/Dewey Beach Chamber of Commerce, Rehoboth Beach Main Street, realtors, signage and training of code enforcement officers. Examples were provided of (1) the new Coronado smoking ordinance, (2) a map of the current smoke-free areas in the City, (3) no smoking icon on the City website, (4) adding the regulation to the beach & Boardwalk rules sign and (5) signage. With regard to enforcement, there should be an ability to issue citations, no heavy handedness, voluntary compliance would be sought, the laws would empower the public and training. Evidence of a smoke-free initiative supports enhancement of tourism. Tourism groups would market the beaches as smoke-free. Categorized questions raised by the Commissioners at the last meeting were: 1. Effective dates of ban or restrictions. 2. What is banned (tobacco vs. e-cigarettes)? 3. What areas would be included in bans or restricted areas? 4. Where can people go to smoke? 5. Where would designated smoking areas be? 6. How is enforcement handled? 7. Is there an impact on business/tourism? 8. How prevalent are people who smoke on the beach? 9. Are people who smoke concentrated on the beach, and doesn't the smoke dissipate? Maps were provided of the six parks/tot lots where there is currently a smoking ban by City ordinance. Other areas were shown on additional maps where smoking may be banned. Points of discussion at this meeting are to 1. Define areas under consideration. 2. Consider where people can go to smoke. 3. Consider if having designated smoking permitted areas is appropriate and if so, what conditions might apply to locating these areas. 4. Effective dates for the bans and/or restrictions. 5. City personnel feedback. Definitions of the Boardwalk, beach area and Bandstand area were provided. The Boardwalk is defined as the entire width and length of the Boardwalk running along and parallel with the public beach front on the Atlantic Ocean, including all Boardwalk access ways (walkway approaches) leading from the streets to the Boardwalk, and including all restroom and information facilities and sitting pavilions adjacent to the Boardwalk. The beach area is defined as the entire width and length of the

public beach and swimming area lying between the eastern edge of the Boardwalk and a line parallel with and 100 yards east of the high water mark of the Atlantic Ocean and including all access ways and dune crossings. The Bandstand area is defined as the entirety of the easternmost median island on Rehoboth Avenue inclusive of the Bandstand, benches, restrooms, bus stop and associated areas. Aerial photographs were provided of these defined areas. Areas were shown on an aerial photograph to distance from potential designated smoking permitted areas. Potential additional areas mentioned at the last meeting are public streets, parks, bus stops, etc. Commissioner Mills noted that the rationale for applying the smoke-free areas is applicable year-round to all areas. It is easier to enforce year-round rather than have specific dates to stop and stop the ban/restrictions. He would like to see a ban on the Boardwalk and the related access ways on a year-round basis. He has considered a total ban on the beach areas. All correspondence that Commissioner Mills has received support additional smoke-free initiatives. All were supportive of a ban on the beach and Boardwalk. He is also trying to seek a balance between the smoker and non-smoker. This would be done by using designated smoking permitted areas away from beach access ways, recreational and handicapped areas, and they are spaced far enough apart to allow beach goers to choose an area away from smoker areas. Commissioner Mills would like the Commissioners to consider smoke-free areas in all the parks and recreation areas, the Bandstand area.

Commissioner Sargent liked the Bethany model where smoking is not banned entirely on the beach, but having it in a limited area and is done year-round.

Commissioner Lorraine Zellers would like to institute this initiative for the City. In order to be fair, the Commissioners would need to have designated areas for people who are smokers. Litter from cigarette smoking is a huge problem. Commissioner Zellers would like the Bandstand area included in the smoke-free initiative, but she was not sure about the entire length of the boardwalk.

Commissioner Mills said that there would not be any smoking on the Boardwalk, but there would be smoking areas would be west of the Boardwalk. There would be smoking receptacles at the entranceways to the Boardwalk. He would need to meet with the City Manager and the Public Works Director to determine the locations of the receptacles and signage. The proposed date for the ordinance to be enacted would be possibly be in March 2014.

Commissioner Patrick Gossett said that the health issue is the primary motivator for this initiative, and the potential for having areas on the beach to having smoking sections would be the way to begin this initiative. He thought that this could be monitored for three to five years and possibly alter it at that time. This would be a major change in the way business is conducted in the City. He was concerned about how to effectively communicate that to residents, visitors, guests and enforcement officials.

Mayor Cooper thought that little universal signs would be placed at the street ends to remind people that beyond a certain point, smoking is prohibited.

Commissioner Mark Hunker suggested that someone should talk to the businesses on the Boardwalk about this initiative because the Boardwalk affects commerce. He supported the Bethany model smoke-free initiative for the beach.

Mr. Howard Menaker, 16 Dover Street, said that the definitions should be consistent with the Code. The Boardwalk should not be redefined.

Commissioner Mills noted that the ban would be for the entire width of the beach to the edge of the Boardwalk. Language would need to be crafted for the Deauville Beach since there is no boardwalk in that area. He will meet with the City Manager and Beach Patrol Captain to locate possible designated areas for smoking on the beach.

The majority of the Commissioners agreed for the smoke-free initiative to be year-round. Mayor Cooper was not in favor of leaving signs and receptacles on the beach during the winter months. Commissioner Hunker said that a longer term ban or restriction needs to be thought out.

Commissioner Mills said that he will write a policy to be proposed to the Commissioners. He recapped that the ban on the Boardwalk and beach would be year-round. The definition of the beach area would need to include Deauville Beach. The designated areas on the beach for smoking would need to be clarified. He will meet with the City Manager and Beach Patrol Captain to come up with conditions and numbers and locations of designated smoking areas on the beach. Flexibility would be given for the off-season. Commissioner Mills will provide a cost proposal for the smoking receptacles for the next meeting. The smoking ban would also include the Bandstand area, pavilions and all park areas. Small signs will be created for no smoking. Responsibility will fall on the Public Works Department to empty the cigarette receptacles.

#### Public Comment

1. Mr. Walter Brittingham, 123 Henlopen Avenue, said that there are certain hours when the beach is closed, and smoking areas should not prevail during those hours.
2. Ms. Carol Everhart, Rehoboth Beach/Dewey Beach Chamber of Commerce, was in favor of the ban on beach, Boardwalk and parks. She requested that there should be designated smoking areas, a timeline for implementation, and education.
3. Ms. Deb Brown, American Lung Association, encouraged the City to be the leader and to eliminate tobacco usage on the Boardwalk, beaches and parks. She will help with education and an opportunity to apply for a competitive grant which must be completed by June 30, 2014.

Mayor Cooper called for the report on the progress and status of the city-wide reassessment project.

Commissioner Gossett reported that as of February 7, 2014, there are 3,225 parcels in the City. The fieldwork has been completed on 57% of those parcels. The rest of the fieldwork should be completed by April 1, 2014. It is anticipated that an informational update letter will be sent to all property owners by the beginning of March 2014. A notice of new assessment letter will be mailed on April 11, 2014 which will provide the projected new taxes and the projected tax rate. Appointments will be scheduled for the appeals process between April 15 and 25, 2014.

#### **NEW BUSINESS**

Mayor Cooper called to discuss processes and conditions for merging and unmerging lots to determine if any changes are warranted.

Commissioner Mills said that in June 2012, the Planning Commission sent the Board of Commissioners a memorandum referencing merging/unmerging processes. Since then the Board of Commissioners has had two workshop meetings on July 9 and August 6, 2012 to discuss this issue. At that time, some issues were unresolved. Recently, the Board of Adjustment effectively unmerged a property using different standards than the Planning Commission uses which contradicted the process with the Planning Commission. Commissioner Mills has identified the following items as being unresolved and needing more attention: 1. Historically, the City has permitted automatic merger of lots, and if a formal process to merge lots is needed. 2. Clarify the definition of merged lots specifically, and what constitutes a merger through use and/or by structures straddling properties. 3. Formalize a process to unmerge lots including defining when the formal process is required. 4. Formalize a process to unmerge in regard to determining if only one path for unmerging via the Planning Commission is appropriate vs. having the two paths via the Planning Commission and the Board of Adjustment; or clarify conditions for choosing one path or two paths. 4. The merging/unmerging process to include notice to the public. 4. Review practice of sending one tax bill to people who own two lots assuming they should know their lots have merged. 5. Inventory merged lots. 6. Review or combine the definitions of lot in the Subdivision Code and the Zoning Code. The Planning Commission has also provided the Board of Commissioners with a recent update on merger/unmerger, dated January 15, 2014.

City Solicitor Mandalas mentioned that the Building & Licensing office has treated merger as a concept that is codified and exists within the City. Generally if a subdivision line is drawn within the City, it is done by making an application to the Planning Commission. There are existing subdivisions and subdivision lines from when the City was originally plotted. The way two properties merge is that they come into common ownership. That in of itself does not create a merger. The lots have to be used as a single parcel. The lots can be merged by structure or by use. The codification of merger is in the definition of lot in the Zoning Code which says that nothing shall prevent the merger of one or more lots by a structure or structure placed thereon. It does not mention the possibility of merger by use. Common law suggests that where there is merger by structure, there is merger by use. There is a competing argument that if there is a codification as to structure, then it is the presumption that the Commissioners did not intend the possibility of merger by use. Other people have made arguments that the way it is stated in the definition of lot, suggests that it is not an automatic merger. There have been instances where the City has taken a position through the Building & Licensing office that merger by use also exists within the City which would be in instances where there is no structure straddling the property line, but the two lots were used as a single parcel. Merger is a zoning concept so when two lots merge, they merge for purposes of zoning but not for purposes of title. The City Code says that a person can only have a single structure on a residential lot. If two lots merge and are in common ownership but in separate title and a house that straddles the property line is torn down a building permit can be issued for the first lot but not the second lot because the properties have merged for zoning purposes. It becomes an issue with the tax bill if one of the lots is conveyed or sold. When lots have merged, it requires an action of the Planning Commission to unmerge them even if a particular owner only wants to put the lots back the way they were previously plotted,

and they both conform. The issue which has gone to the Board of Adjustment is that a few times there have been owners who have wanted to recreate the subdivision line where it was previously plotted and put the lots back to the way they were previously plotted. There were two lots by title purposes but one zoning lot. The Board of Adjustment has routinely decided through a vote that where lots are being put back the way they were originally plotted, then the Building Inspector's decision to not issue a building permit is erroneous. The Board of Adjustment has the authority to hear appeals on anything in the Zoning Code and make a statutory interpretation. The Board of Adjustment is a higher authority than the Building Inspector; and in these instance, the Board has ruled that the Building & Licensing Department should issue two building permits where the lots are being put back the way they were originally plotted. The longstanding practice has been for people to go to the Planning Commission for a partitioning.

Mayor Cooper did not think that the two paths are comparable. The Planning Commission is saying to resubdivide, and the Board of Adjustment is saying that there are two lots and someone has the right to build on two lots.

City Solicitor Mandalas said that recently in a case with the Board of Adjustment, there was not a structure straddling the property line but there was a structure on one of the lots that would encroach the setback for the building lot and natural area would not have been satisfied if the two lots are recognized as two separate building lots. If the lots are recognized as one lot, there was not an encroachment on the setback. In that instance, the Board of Adjustment recognized the two separate lots and did not draw a distinction between the encroachments. Discussion ensued as to different scenarios that would involve merger/unmerger.

Mr. Francis Markert, Secretary of Planning Commission, said that if merger took place, then it would go before the Planning Commission; and to undo a merger would be through the subdivision process.

City Solicitor Mandalas said that in an instance where two lots are plotted that come into common ownership, a house is built that straddles the property line and causes a merger, then the house is torn down and the lots would still remain conforming lots under the current zoning, the Planning Commission's position is that this should come to the Planning Commission for a partitioning. The Planning Commission can impose a reasonable condition to address concerns.

Commissioner Mills said that automatic unmerger would occur if it meets all the conditions and there are no encroachments. Encroachments would dictate going to the Planning Commission.

Commissioner Zellers noted that the Board of Adjustment does not have to look at whether or not the original lots are substandard lots, but the Planning Commission would look at them. Having the same process going forward is good for the City.

Commissioner Sargent said that to unmerge should require the same agency that normally is used for all partitioning. The Commissioners may need to clarify that the lot is clear and meets the requirements, then merger would be automatic. The Board of Adjustment would become a second agency that is creating a partitioning, and this is wrong.

Commissioner Zellers said that she would like to see the oversight of the Planning Commission because that is a pathway for everyone to go through that process rather than someone circumventing the law process.

Commissioner Hunker said that if a lot can be returned back to its original state, it should go through the process of the Planning Commission. It is not proper for the Planning Commission to deny subdividing because there would be conditions. Mr. Markert noted that the Planning Commission can impose reasonable conditions in order to partition a lot. The Planning Commission takes into consideration the input from adjacent property owners.

Ms. Lynn Wilson, Planning Commission member, said that a change would be made that will affect the landscape all around, and this would be a good reason to codify merger/unmerger.

Mayor Cooper said that if a merger code of what defines merger is going to be written, then it needs to be made specific and not leave it to someone else to interpret it. The first threshold would be a totally vacant lot. The next one would be that if a lot was conforming until the City changed the Zoning Code. If this would be articulated, it should be in the Zoning Code; and the Commissioners would have to do it.

Commissioner Gossett said that currently there is nothing in the Code which states that the Building Inspector has the ability to approve merger/unmerger. The logical body to answer the questions about threshold would be the Planning Commission.

Mr. Markert said that once merger has taken place, then this would trigger the Planning Commission to rule on any subsequent partitioning.

Commissioner Gossett noted that a doctrine of merger should be created so there is a logical process.

Mr. Howard Menaker, 16 Dover Street, said that if the Zoning Code is met, the Planning Commission cannot deny the right to move forward, but it can apply reasonable conditions.

Mr. Walter Brittingham, 123 Henlopen Avenue, said that if a repartitioning is requested with a notarized statement certifying that the property would be returned to its original status with no encroachments, then the Building Inspector should be able to sign off on it.

Commissioner Mills will work with City Solicitor Mandalas to write an executive summary on this issue. Three things to be targeted for the next meeting are: 1. Clarify what constitutes a merger. 2. Address removal of all structures and encroachments. 3. Address a conforming lot with a zoning change.

Mayor Cooper called to discuss a proposal from Verizon Wireless that they lease space on, within and outside of the City's Lincoln Street Elevated Water Storage Tank to establish a cell site.

Mayor Cooper has been communicating with a consultant for Verizon about placing a cell site at the Lincoln Street elevated water storage tank. The lease would be for five years with (4) five year extensions. The rent would be \$2,100.00 per month with an escalation of 3% per year. Verizon is doing a radio frequency interference with two antennas currently on the tank. The lease will be sent to the City's insurance carrier for review and to the people who maintain the tank.

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

City Manager Sharon Lynn reported that a new compressor for the heating system for the Commissioners Room was installed on January 28, 2014. The existing telephone system has been enhanced by adding outgoing lines and voice mail. Contract negotiations with the police and Teamsters Union are continuing and will meet on February 14, 2014. The contract expires March 31, 2014. City Manager Lynn thanked the police and public works departments for helping to make the Polar Plunge successful. Mayor Cooper and City Manager Lynn met with DeIDOT and DNREC representatives regarding the planned extension of the Breakwater Trail. This is for an anticipated bike path into the City. A public meeting will be held on February 11, 2014 at 6:30 p.m. for residents affected by the Schoolvue Sanitary Sewer Replacement Project. She has met with Ms. Pam Baker of Barbacane & Thornton who is an independent auditor, Mr. Bob Palmer, Mr. Todd Fritchman. Mayor Cooper, Commissioner Mills and she met with officials from DNREC's financial department regarding potential decreases in interest rate offerings from the State to the City, particularly for stormwater improvements and sludge handling. The City has advertised for a new full-time employee in the Parking Department. That position was filled with a part-time seasonal employee.

### **COMMITTEE REPORTS**

Commissioner Sargent reported on items discussed at the Streets and Transportation Committee's January 27, 2014 meeting. Items that were discussed: 1. Scooters and free permits to residents. 2. Parking on Rehoboth Avenue. 3. Dates/times for bicycles on the Boardwalk. 4. Skateboards. 5. White line, sharrows and no parking on part of Surf Avenue. 6. An informational pamphlet that contains the bike map and rules. 7. Bicycle parking in the downtown area. Two items to be discussed at next month's meeting are snow removal and downtown sidewalks, and bicycles having flashing lights front and rear.

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

City Solicitor Mandalas reported that with the scooter litigation, there is a mitigation conference coming up later this month.

### **COMMISSIONER ANNOUNCEMENTS/COMMENTS**

There were no announcements/comments.

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

There were no items to include on future agendas.

### **CITIZEN COMMENT**

There was none.

The next Regular Meeting will be held on February 21, 2014 at 7:00 p.m.

There being no further business, Mayor Cooper adjourned the meeting at 12:39 p.m.

**Respectfully submitted,**

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**(Lorraine Zellers, Secretary)**