



# **REHOBOTH BEACH BOARD OF COMMISSIONERS**

## **Supporting Document Packet**

**WORKSHOP MEETING:**

**May 5, 2014**

**\*\*DISCLAIMER\*\***

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THE COMMISSIONERS OF REHOBOTH BEACH

Workshop Meeting

Monday, May 5, 2014; 9:00 a.m.

**WORKSHOP AGENDA**

1. Call to Order
2. Invocation, Pledge of Allegiance to the Flag and Roll Call
3. Correspondence
4. Old Business
  - A. Discuss request by Mr. Nicholas Caggiano to light the Verrazzano Monument on the Boardwalk at the foot of Olive Avenue.
  - B. Update on status of city-wide reassessment.
  - C. 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.
5. New Business
  - A. Presentation by and discussion with Dr. Willett Kempton, UD's Center for Carbon-Free Power Integration, on the potential for partnering in a state-wide network of electric vehicle charging stations – Commissioner Mills.
6. City Manager's Report
7. Committee Report
8. City Solicitor's Report
9. Commissioner Announcements/Comments
10. Discuss items to include on future agendas.
11. Citizen Comment
12. Adjournment

AGENDA ITEMS MAY BE CONSIDERED OUT OF SEQUENCE.

Citizen comment regarding Old Business, New Business and Committee Reports will be heard during each agenda topic after initial discussion by the Commissioners at the discretion of the chair. Speakers shall state their name and address. Comments are limited to three minutes or at the discretion of the chair. Comments on non-agenda items will be heard under "Citizen Comment".

\*For additional information or special accommodations, please call (302) 227-6181 (TDD Accessible) 24 hours prior to the meeting.

\*\*Next scheduled meeting – (Regular) Friday, May 16, 2014; 7:00 p.m.

amw: 04/28/14; posted 04/28/14

pc (Via Fax) Cape Gazette, Coast Press, State News

April 8, 2014

FROM: Dr. Preston Littleton,  
Chair, Planning Commission  
City of Rehoboth Beach

### Statement about merger/unmerger of lots in the City

The City Code makes clear the long-standing practice of the City to allow property owners to merge adjacent lots for zoning purposes. For example, by building a structure that extends over the dividing line of two lots – these lots have become merged. It likewise has been the long-standing practice of the City to require the Planning Commission's approval to subsequently partition, i.e., unmerge, these two lots.

The reason that the City has required such partitioning applications to come before the Planning Commission is that many things may have occurred in the adjacent area over the years since these lots were initially platted – some in the City over a 100 years ago. For example the neighborhood has been developed, adjacent homes built, street and curb cuts constructed, trees planted, utilities installed, etc. It is important to understand that the Planning Commission must approved all partitionings/subdivisions that meet all the provision of the City's Zoning and Subdivision Code. However, the Planning Commission has the responsibility to seek input from the public before doing so and the authority to set reasonable conditions, if needed, to help ameliorate adverse impact.

Recently several property owners, or their attorney, have argued that there is ambiguity in the City's Code and that if the structure(s) that resulted in the merger of these lots are removed then the lots should automatically become "unmerged" irrespective of proximate development; or health, safety, welfare issues; or public comment/concern. And, in doing so, have appealed the decision of the City's Chief Building Inspector to require the subdivision of these merged lots to the Board of Adjustment.

With the assistance of the City Solicitor, the Planning Commission prepared and submitted a proposed amendment to the City Code to eliminate the claimed ambiguity to the current Code and to assure that the historic practice of the City to require the partitioning/subdivision of merged lots continue to be done in a public meeting by the Planning Commission.

The responsibility to make changes to the City Code rests with the Mayor and City Commissioners and they are currently studying the clarifying Code language drafted by the City Solicitor and submitted by the Planning Commission.

# City of Rehoboth Beach



306 Rehoboth Avenue  
Rehoboth Beach, Delaware 19971

**Planning Commission**  
**(302) 227-4504**

**(302) 227-6181**  
**Fax (302) 227-3336**

January 15, 2014

Dear Mayor and Commissioners,

Some time ago the Planning Commission sent to you a proposal that would explicitly incorporate into the City Code, with clear language, what has been a practice of the City for decades in regard to the treatment of "merged" lots. We understand that you have been studying this issue since our proposal, but that other matters have required more immediate priority. However, because the "merger" matter has taken on a greater sense of urgency in the past few months, we hope that you are able to act on this matter as soon as possible.

By way of background, there are many lots in the City which are categorized as double lots (or sometimes triple lots) – meaning that although the minimum lot size under Chapter 270 is now 5,000 square feet, many larger lots of 10,000 or more square feet exist because they resulted from the "merger" of two or more adjacent lots. This merger has occurred because the lot owner has built structures that straddle the adjacent lots or has otherwise used the adjacent lots as if they were one lot (for example, parking for the structure).

Over the years the owners of merged lots have filed with the Planning Commission applications for partitioning (or minor subdivision) of the larger lots into the original lots (or some variation of the original lots) so that each lot could then be sold and/or developed separately. Under the Subdivision Ordinance, the Planning Commission must grant these applications if they meet the requirements of the Subdivision Ordinance and the Zoning Ordinance, although the Subdivision Ordinance permits the Planning Commission to impose reasonable conditions upon the development of the partitioned lots in order to prevent "adversely affecting the development of the remainder of the parcel or adjoining property."

The ability of the Planning Commission to impose reasonable conditions that help avoid "adverse impact" is extremely important. For the most part, individual streets and neighborhoods have developed and their character has been established over the past several decades based upon what has been "built on the ground" – namely, although a street may have been initially laid out with all 5,000 square foot lots (or, in some cases, even smaller lots), many lot owners chose to buy, develop and use multiple adjoining lots as one lot. Hence, the City is dotted with these larger, merged lots. Sometimes when a merged lot is partitioned and the development of multiple lots will follow, it can cause an adverse impact on the adjoining properties. Thus, when granting a partitioning application, the Planning Commission has on occasion required that a curb cut should be made only within a certain part of the lot frontage in order to minimize potential safety problems with adjoining properties, or that a driveway should not be paved with impervious surface in order to minimize potential water run-off problems with adjoining properties. Imposing these and other reasonable conditions, when warranted by the facts, has had only a

minor impact or no impact on an owner of the newly-created lot, but it has contributed to the health, safety and general welfare of the adjoining lot owners and the neighborhood.

Recently, however, some owners of merged lots have avoided filing an application for partitioning (or minor subdivision) with the Planning Commission by demolishing all structures and eliminating combined uses on the merged lot. They have claimed that, as a result of their actions, the merged lot has become “unmerged” into the original lots – and so there is nothing for the Planning Commission to approve under the Subdivision Ordinance. The City’s Building Inspector has rejected that view and has denied building permits for construction on each of the allegedly separated lots – and the lot owners have appealed such denials to the Board of Adjustment. Although the Board of Adjustment has no authority to partition merged lots, it has taken the position that the previously merged lot has become “unmerged” by the lot owners’ actions, so that there is no need for a partitioning application and thus the Building Inspector should have granted the building permit. The Board of Adjustment has acted, in part, because it has not been involved in the decades-old practice of the Planning Commission of handling merger situations and interpreting the city’s ordinances as they relate to merged lots.

The Board of Adjustment’s actions demonstrate the need for the Mayor and Commissioners to address this situation as soon as possible. There are at least four reasons why this is necessary.

First, the Board of Adjustment’s actions are at odds with decades of practice by the Planning Commission – and the Building Inspector – who have interpreted the City’s ordinances to require that owners of merged lots must file a partitioning (or minor subdivision) application with the Planning Commission in order to “unmerge” the lots. In other words, a lot owner cannot unilaterally “unmerge” a larger lot simply by razing the structures and discontinuing combined use.

Second, the conflict between the Planning Commission and Building Inspector, on the one hand, and the Board of Adjustment, on the other hand, will almost certainly lead to unnecessary and expensive court litigation – unnecessary because the City Commission can eliminate any doubt about the situation by adopting the proposal regarding merger.

Third, the Board of Adjustment’s approach has the potential to make the Subdivision Ordinance meaningless in the typical partitioning situation. If every lot owner of a merged lot could avoid the partitioning process simply by razing the structures and discontinuing combined use, probably 75% of all partitioning applications historically filed with the Planning Commission would no longer face Planning Commission review. This would represent an upheaval in a subdivision process that has been in place for decades.

Fourth, and probably most important, the Board of Adjustment has no authority to impose reasonable conditions on any proposed development of lots created by “unmerger” – i.e. all it can do is to reverse the Building Inspector’s decision to deny a building permit, but it cannot take any action to minimize adverse impact on adjoining properties resulting from any unmerger. As is all too clear, one common result of partitioning a lot is that a single, reasonably-sized structure that has existed for 50 or more years on a merged lot is being replaced by two large structures built to the maximum (height, lot coverage, setbacks, FAR) on adjacent unmerged lots. This type of infill has the potential to cause significant adverse impacts on adjoining properties, and the Planning Commission has the tools – in the Subdivision Ordinance – to reasonably address these situations. But if owners of merged lots can completely by-pass the Planning Commission, these protections for neighbors and neighborhoods will disappear.

For all of the above reasons, we urge the Mayor and Commissioners to enact, as soon as possible, the proposal for dealing with merged lots. Please note, our action to inform the Mayor and Commissioners was adopted by a unanimous vote of 7-0 at our recent meeting held on January 10, 2014.

Respectfully,

*Preston A. Littleton, Jr. /aw*  
Preston A. Littleton, Jr.  
Chair, Planning Commission

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**AN ORDINANCE TO AMEND CHAPTER 270 OF  
THE MUNICIPAL CODE OF THE CITY OF REHOBOTH BEACH,  
DELAWARE, 2001, BY AMENDING SECTIONS 270-4 AND 270-46.1,  
RELATING TO LOT MERGER FOR ZONING PURPOSES.**

**WHEREAS**, Title 22, Chapter 3, Section 301 of the Delaware Code provides that “[f]or the purpose of promoting health, safety, morals or the general welfare of the community, the legislative body of cities and incorporated towns may regulate and restrict the height, number of stories and size of buildings and other structures, percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes”; and

**WHEREAS**, Article X, Amendment Procedure, Sections 270-86 and 270-88 of the Municipal Code of the City of Rehoboth Beach provides the following procedure to be followed by the City Commissioners before exercising the aforesaid authority:

1. Hold a public hearing at which hearing parties in interest and citizens shall have an opportunity to be heard;

2. Provide at least fifteen (15) days’ notice of such hearing by publishing notice of the time and place of such hearing in an official newspaper of the City of Rehoboth Beach or a newspaper of general circulation in the City; and

**WHEREAS**, a public hearing was conducted on \_\_\_\_\_.

**WHEREAS**, at least fifteen (15) days’ notice of such hearing was provided by publishing notice of the time and place of such hearing in an official paper or a paper of general circulation in the City; and

**WHEREAS**, the City has historically interpreted the Code as permitting automatic merger for zoning purposes of two or more lots utilized as one parcel through the placement of a structure or structures thereon, and further requiring Planning Commission approval to unmerge previously merged lots; and

**WHEREAS**, the City Commissioners deem it appropriate to eliminate any uncertainty as to the necessity of a formal subdivision application to unmerge lots previously merged for zoning purposes; and

**WHEREAS**, the proposed amendments will promote the health, safety, and general welfare of the Rehoboth Beach community.

**BE IT ORDAINED** by the Commissioners of the City of Rehoboth Beach, in session met, a quorum pertaining at all times thereto, in the manner following to-wit:

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**Section 1.** Chapter 270, Section 270-4, Definitions, of the Municipal Code of the City of Rehoboth Beach, Delaware, be and the same is hereby further amended by deleting the definition of “LOT” in its entirety and inserting a new definition of “LOT” as follows:

**LOT**

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.

**Section 2.** Chapter 270, Section 270-46.1, Merger of lots in residential districts, of the Municipal Code of the City of Rehoboth Beach, Delaware, be and the same is hereby further amended by deleting Section 270-46.1 in its entirety and inserting in lieu thereof new Section 270-46.1 as follows:

- A. Two or more lots as shown on the Zoning Map shall be considered merged for purposes of this Chapter if the lots are utilized as one parcel through their use or through the placement of a structure or structures thereon, regardless of when the structure or structures were originally placed or the use originated. Once merged, the lots shall remain merged unless subdivision approval is obtained from the Planning Commission.
- B. Notwithstanding anything contained in this chapter to the contrary, in all residential districts, no structure shall be constructed that would result in the merger of two or more lots unless all such merged lots shall have contiguous and continuous frontage on the same street.

**Section 3.** If any provision of this Ordinance shall be deemed or held to be invalid or unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not affect any other provision of this Ordinance which may be given effect without such invalid or unenforceable provision, and to this end, the provisions of this Ordinance are hereby declared to be severable.

**Section 4.** This Ordinance shall take effect immediately upon its adoption by a majority vote of the Commissioners of the City of Rehoboth Beach.



VERSION: June 2, 2012

88 Adopted by the Commissioners  
89 Of the City of Rehoboth Beach  
90 \_\_\_\_\_, 2012  
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Secretary of the Commissioners of  
the City of Rehoboth Beach

**SYNOPSIS:** This Ordinance 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.

DRAFT

Support document for related agenda topic of Commissioner's workshop of May 5, 2014.  
Prepared by Commissioner Stan Mills.

# UDaily



Delaware will soon have more public charging stations for electric vehicles through a partnership between the University of Delaware and the Delaware Department of Natural Resources and Environmental Control.

## **EV charging station expansion**

### **UD, state partner to create electric vehicle charging station network**

9:56 a.m., Feb. 19, 2014--Charging stations for electric vehicles will be strategically placed at key locations in Delaware to enable long trips in the state by next year, through a new collaborative research agreement between the University of Delaware and the Delaware Department of Natural Resources and Environmental Control (DNREC).

UD researchers are in the process of determining the most effective locations for charging stations, and they will assist in equipment installation and analyze station usage when the

stations become operational. This new infrastructure will support greater use of electric vehicles, which do not release air pollution or carbon dioxide, unlike their gasoline-fueled counterparts.

“A well-planned electrical highway in Delaware makes it easier for drivers of electric cars both from Delaware and surrounding states to patronize Delaware tourist destinations – from nightlife on the Riverfront to popular shopping districts to our beaches,” said Nancy Targett, dean of UD’s College of Earth, Ocean, and Environment (CEOE). “Of course, environmentally, air pollution and the need for gasoline are reduced.”

Two years ago, the federal government announced a national goal of 1 million electric vehicles on the roads by 2015. It also announced help to install charging stations, but the latter effort has been sporadic. For example, in the Mid-Atlantic region electric chargers are clustered within metropolitan areas like Philadelphia and Baltimore, but these are not well-located for en-route charging and most are incapable of fast charging.

“Through our innovative partnership with the University of Delaware, our state will help accelerate the widespread adoption of electric vehicles throughout the Mid-Atlantic region and seize both greater air quality and economic development benefits for our state,” said DNREC Secretary Collin O’Mara. “No longer will any Delawareans or visiting owners of electric vehicles have to worry about running out of electricity while traveling in the First State.”

Electric vehicle drivers in Delaware have access to only a few public charging stations. That does not pose a problem for a driver on a typical day – on average, Americans travel 30 miles per day and can charge at home in the evening – but longer trips require either battery recharging en route or a large and expensive long-distance battery.

A ride from Wilmington to Bethany Beach, for example, necessitates a recharge for today’s most economical electric cars, which have small batteries and require charging roughly every 70 miles.

The new project will take into account driver convenience as well as traffic patterns to major destinations in pinpointing locations for five or six new charging stations. Charging a battery from empty to full charge can take from 40 minutes to two hours, depending on the car model, so locations where drivers can spend time dining, shopping or enjoying the outdoors would be carefully considered.

For drivers who just need a boost to go an additional 15 miles, the charge may require only 15 to 20 minutes – time to have a cup of coffee or look at a magazine.

The 16-kilowatt stations will charge two to three times as quickly as more common models, and the service will be offered free-of-charge to users through at least 2014. Willett Kempton, professor in CEOE, and his colleagues will work with public and private location owners on the initial set-up and on a long-term plan, which could include a fee in subsequent years to cover any ongoing costs. The researchers will monitor station usage and track reductions in pollution and carbon dioxide emissions.

The project will help remove a significant obstacle to the adoption of electric cars: “range anxiety.” Potential buyers hesitate to purchase the vehicles for fear that their battery will run out

of charge beyond the range of a charging station. Based on prior studies, these stations at key locations will encourage use of electric vehicles, even if the recharge is not actually needed.

The new stations will not be more than 50 miles apart, which is the battery range for the least expensive electric vehicle models today. The program will encourage purchase of such vehicles, which at about \$22,000 are about one-fifth as expensive as models with the largest batteries and longest ranges.

Additionally, existing incentives make electric cars appealing, including a federal purchase credit, a reduced carbon footprint and reduced fuel costs as low as \$1 per gallon compared to gasoline. Drivers can download convenient smartphone apps like Recargo to locate charging stations when traveling.

The UD-DNREC project will enable trips within Delaware and nearby cities, making the entire state within an electric car's range. The project also helps fill a regional gap for recharging capabilities between Baltimore and Philadelphia, urban areas where charging stations are more common.

With a budget of \$80,000, the entire project costs less than one long-range electric vehicle. Yet the project would serve many hundreds of electric vehicles due to the driving pattern of most Americans, who make long trips only a few days a year.

“Delaware is setting up charging stations in a smart way, which is surprisingly more cost-effective than each electric car buyer getting a big battery,” Kempton said.

An expert in alternative energy, Kempton is not aware of other states determining charging locations based on this type of systematic travel, charging speed and range limit analysis.

“This project enables people to buy electric vehicles, use them for longer trips and not worry about range,” he said.

Article by Teresa Messmore

Photos by Evan Krape

Image by Kathleen Harris and Tammy Beeson, UD CEOE

<http://www.udel.edu/udaily/2014/feb/ev-charging-stations-021914.html>

# Willett Kempton

## Professor

Dr. Willett Kempton is a professor in the University of Delaware's School of Marine Science and Policy within the College of Earth, Ocean, and Environment. Dr. Kempton is the Research Director for UD's Center for Carbon-free Power Integration. His research interests and areas include: offshore wind power: public reactions, policy framework, large scale implementation; electricity policy; and electric vehicles for grid power storage. He has a joint appointment in the Department of Electric and Computer Engineering.

Dr. Kempton is a nationally renowned expert in two renewable energy fields: offshore wind power and electric cars/vehicles. He pioneered vehicle-to-grid (V2G) technology. V2G vehicles work like an electrical sponge, capable of absorbing excess energy when demand for power is low and returning some back to the electric grid when the demand for power is high.

Dr. Kempton also research into offshore wind turbines as a source of energy. Focus includes the viability and efficiency of such offshore wind farms, as well as gauging public support and public opposition. He is widely quoted by news outlets on proposed East Coast offshore wind farms off the coasts of Delaware and Cape Cod, amongst other locales.