

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

February 20, 2015

The Special Workshop Meeting of the Mayor and Commissioners of the City of Rehoboth Beach, was called to order at 1:01 p.m. by Mayor Samuel R. Cooper on Friday, February 20, 2015 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	Kathy McGuiness

Also in attendance was: City Manager Sharon Lynn
City Solicitor Glenn Mandalas (left the meeting at 3:55 p.m.)

PRESENTATION by and discussion with Kyle Gulbranson of URS Corporation, the City's planning consultant, regarding the management of the impact on residential neighborhoods as related to size of houses currently being constructed, swimming pools, rental licenses and noise issues.

Mr. Kyle Gulbranson noted that minor revisions had been made to the draft swimming pool and noise ordinances at the last meeting. Redline and clean copy versions of both draft ordinances were forwarded to the Commissioners prior to the meeting.

Changes and comments regarding the noise ordinance are:

1. §189-3. Added definition of plainly audible standard. A method used to identify a noise disturbance where a noise can be heard no closer than the property line of a receiving property and the noise is plainly audible to the human ear.
2. §189-4(A)(2). Deleted (A)(2) and inserted new (A)(2). Noise levels from small power equipment, associated with residential and commercial land uses, as well as for landscaping equipment such as lawnmowers, trimmers and blowers, used intermittently, shall not exceed 74 dBA. Any small power equipment which exceeds permissible noise levels established in Subsection A(1) may only be operated during the hours of 8:00 a.m. to 8:00 p.m.
3. §189-4(A)(3). This subsection will remain. Notwithstanding anything to the contrary herein, during the hours designated as nighttime in §189-7 herein, in residentially and commercially zoned districts, the noise levels from stationary sources and mobile sources while stationary shall not be plainly audible within any receiving dwelling unit, including any dwelling unit in a multiple dwelling structure.
4. §189-4(A)(4). This subsection will remain. Noise measurements made to determine compliance with Subsection A(1) and (2) shall be made not less than four feet above the ground and not closer to the noise source than the boundary line of the property on which the noise source is located.
5. §189-4(C). Deleted this subsection in its entirety. No commercial establishment required to be licensed by the city shall provide entertainment which generates sound which is audible and/or penetrates beyond the property boundaries of the commercial establishment, between the hours of 1:30 a.m. to the following 8:00 a.m. each day. Entertainment includes without limitation the playing of any television set, radio, tape player, phonograph, musical instrument, game or other device which produces sound as well as sound emitted by live entertainers. This section shall in no manner modify other provisions of this article dealing with the maximum permissible noise levels for residential or commercial districts.

City Solicitor Mandalas suggested that the definition should be a method used to identify a noise disturbance where a noise can be heard at a location not on the emitting property, and the noise is plainly audible to the human ear.

Mayor Cooper noted that with what the City Solicitor had written, it could be used in the case of a condominium. The property in that case can be interpreted as the unit.

Commissioner Bill Sargent said that noise should not extend beyond the property.

Mr. Edward Chezefsky, 46 Pennsylvania Avenue, said that this is concerning to him that the ordinance will become so rigid that two people on a porch will be heard by someone five feet off of the property line in residential, and a foot off of the property line of any restaurant, bar, or commercial place that could be mixed in with residential by someone. Flexibility is needed for the police to enforce; however, the language needs to be clear enough for the residents so it will protect them from neighbors calling all the time about people speaking quietly on their porch and because they do not like the person. Mr. Gulbranson responded that this standard only applies to residential properties. If there is an issue with commercial properties, the decibel meter readings can be used.

City Solicitor Mandalas said that the standard is the plainly audible standard, but a noise disturbance level has to be reached.

Mr. Donald Myers, 43 Oak Avenue, liked the idea of a method used to identify a noise disturbance where a noise can be heard no closer than the property line of a receiving property. This way an absolute line would be drawn.

Mr. Jim Horty, address unknown, asked how noise would be handled with regard to people assembling in the street in residential. Mayor Cooper noted that it would be considered disturbing the peace.

6. §189-5(A). Language was clarified. A decibel meter shall be used to determine noise disturbances when the sound source is emitted from a commercially zoned property whether the receiving property is in a commercial or residential zone. The reading shall be taken no closer than the property line of the sound source. Exceeding noise levels established in §189-4 Maximum Noise Levels constitute a noise disturbance.
7. §189-5(B). Plainly Audible Standard was defined. The Plainly Audible Standard shall be used to determine noise disturbances when the sound source is emitted from a residentially zoned property and the receiving property is residential. Noise that is plainly audible constitutes a noise disturbance.

Commissioner Stan Mills noted that a different standard is being set up for residential properties abutting commercial properties. They basically have to be very quiet compared to what the commercial has to be in relation to the residential.

Commissioner Sargent said that all residential should be held to the same standard. Residential properties abutting commercial properties should not be exempted from the normal residential standard. Commissioner Mills disagreed.

Commissioner Mills said that there is no clear path for the commercial complainant to make a complaint about a residential property.

Mayor Cooper said that a complainant may be a resident in a commercial zone, and he would have not protection from the residential property other than the commercial. The complainant may not be a business, it may well be a residential use in a commercial zone.

Mr. Frank Cooper, 96 East Lake Drive, said that it would be easier to say that the decibel meter would apply in the commercial district regardless of where the noise is emitted from, and plainly audible would apply in the residential district. If the noise is received in the commercial area, then the decibel meter would be used.

8. §189-5(C). Language was clarified. Noise measurements made to determine compliance with Subsection A and B shall be made not less than four feet above the ground and not closer than the property line of the property on which the noise source is located.
9. §189-6(A). Change "Commercial" to "All Zoning Districts".
10. §189-6(A)(1). Changed "No person shall play any television set, radio, tape player, phonograph or any musical instrument or other device for the production of sound..." to "No person shall play any television, radio, digital music device or any musical instruction or other device for the production of sound..."
11. §189-6(A)(2). Change "Generally creating a racket, such as yelling, shouting, hooting or whistling on public streets between the hours of 11:00 p.m. and 8:00 a.m. so as to annoy and disturb..." to

- “Generally creating a racket, such as yelling, shouting, hooting or whistling on public streets so as to annoy and disturb...”
12. §189-6(A)(7). Language was revised to be consistent with language throughout the draft ordinance. No commercial establishment required to be licensed by the city shall provide entertainment which generates sound which is audible and/or penetrates beyond the property boundaries of the commercial establishment, between the hours of 1:30 a.m. to the following 8:00 a.m. each day. Entertainment includes without limitation the playing of any television set, radio, digital music device, tape player, phonograph, musical instrument, game or other device which produces sound as well as sound emitted by live entertainers. This section shall in no manner modify other provisions of this article dealing with the maximum permissible noise levels for residential or commercial districts.
 13. §189-6(B). Change “Residential” to “Commercial District”.
 14. §189-6(B)(1). Changed “No person shall play any television set, radio, tape player, phonograph or any musical instrument or other device for the production of sound...” to “No person shall play any television, radio, digital music device or any musical instrument or other device for the production of sound...”
 15. §189-6(B)(2). Change “Generally creating a racket, such as yelling, shouting, hooting or whistling on public streets between the hours of 11:00 p.m. and 8:00 a.m. so as to annoy and disturb...” to “Generally creating a racket, such as yelling, shouting, hooting or whistling on public streets so as to annoy and disturb...”
 16. §189-6(B)(5). Added “In addition to other regulations contained in this Chapter, it shall be unlawful for any person...”
 17. §189-6(B)(6). Added “In any residential district, no radio, digital music device, musical instrument or other machine or device for producing or reproducing sound shall be used after 11:00 p.m. or prior to 8:00 a.m.”
 18. §189-6(C). Add “Residential District”.

The work group will determine which subsections will be placed in the appropriate sections.

19. §189-11(A). Changed “All violations of this article need not be complaint based. Noise disturbances may be identified by citizens, police officers or city staff” to “All violations of this article need not be complaint based. Noise disturbances may be identified by the public, police officers or city staff.”

Mr. Gulbranson will forward the changes back to the Commissioners on February 25, 2015 for their review.

Changes and comments regarding the swimming pool ordinance are:

1. §206-1. Change “The purpose of this ordinance is to ensure that residential swimming pools located within residential zoning districts are used and enjoyed in a responsible manner...” to “The purpose of this ordinance is to ensure that residential swimming pools are used and enjoyed in a responsible manner...”
2. §206-3. Change “Permit” to “Construction Permit”.
3. §206-3(B). Change “Plans and Specifications – The following information must be submitted...” to “Plans and Specifications – In addition to other requirements of this Code the following information must be submitted...”
4. §206-3(B)(e). Added “A grading plan indicating proposed grading and measures being utilized to prevent stormwater runoff from impacting adjacent properties.
5. Add “The grading around a pool shall not direct water onto neighboring properties.” This should also include the discharge water.
6. §206-3(C). Formerly 206-3(F). “Drainage and Discharge Plan Required – The Applicant shall provide a drainage/discharge plan detailing how the pool water shall be discharged in conjunction with winterization or maintenance. Drainage and discharge water must be directed to and flow over a vegetated area prior to flowing onto pavement or into a storm drain, catch basin or water body. The Plan shall also incorporate the following requirements:”
7. The requirements of what can be done with a pool need to be pulled out into a separate section. When applying for a permit, the person will need to show how they will meet the requirements. The same should be done for the stormwater issue.
8. A question was raised of how Building & Licensing will evaluate a rendering demonstrating that adequate greenspace area exists on the subject property to accommodate overflow, discharge and backwash needs based on the type of filtration and general pool specifications.
9. A question was raised as to whether the Commissioners can mandate and/or encourage requirements

that pervious surfaces are used.

Mr. Gulbranson noted that the onus is put on the Applicant to demonstrate that they can achieve the plans and specifications requirements at the time of application for a building permit to construct a pool.

10. §206-3(C)(c). Change "Pool and spa water should have an acceptable pH..." to "Pool water shall have an acceptable pH..."
11. §206-3(C)(e). Change "Filters should be cleaned over the lawn..." to "Filters shall be cleaned over the lawn..."
12. §206-3(D). Added "After a specific site is approved, any change must be reported to the Building & Licensing Department and approved prior to incorporating any such change. An additional site inspection may be required.
13. §206-7. Deleted the reference to accessory structures and side yard setbacks because it is a zoning issue.
14. §206-7(A). Change "All residential pool owners shall be required to obtain a pool operation license and pay a fee" to "All residential pool owners shall be required to obtain a pool operation license for a specific address or location and pay a fee." The fee will be determined at the next budget meeting.
15. §206-7(B). Change "Operating licenses shall expire annually. The operating license is not transferable if ownership changes" to "Operating licenses shall expire annually. The operating license is for the operation of a swimming pool at a specific address or location and is not transferable if ownership changes."
16. §206-9(D). Deleted the reference to accessory structures and side yard setbacks because it is a zoning issue.
17. §206-9(D). Changed "Private rental pools must be maintained as established by..." to "Private rental pools must be maintained following public pool standards for maintenance, chemicals and filtration as established by..."
18. §206-9(E). Deleted "A safety sign shall have the City Pool Operation License number located on the sign. The number will be provided on a sticker provided by the City."
19. §206-9(E). Deleted the timeline for violations/penalties.
20. §206-9(E)(b). Change "The City Manager shall provide the pool operator license holder with a written notice of any violation of this Section and the action taken by the City Manager" to "The City Manager shall provide the pool license holder with a written notice of any violation of this Section."
21. §206-9(E)(c). Added "The suspension or revocation may be stayed upon appeal until such time as the City Commissioners' decision is made."
22. §206-9(E)(c). Change "The appeal shall be on the record, and the Commissioners shall determine..." to "The appeal shall be de novo, and the Commissioners shall determine..."
23. §206-9(E)(c). Add "Upon receiving the letter of appeal, the Commissioners shall convene no sooner than seven days from receiving the letter and no later than 60 days from receiving the letter."
24. §206-10(B)(b)(v). Change "A safety sign shall have the City Pool Operation License number located on the sign. The number will be provided on a sticker provided by the City" to "The City Pool Operation License sticker is to be placed on the safety sign."
25. §206-11(B). No illumination shall extend beyond lot lines is in direct parallel with noise.
26. §206-13. Interference with Enjoyment of Property Right Prohibited. Strike this entire section and put it in the preface.

Mr. Gulbranson will forward the changes back to the Commissioners on February 25, 2015 for their review.

Ms. Myers, 43 Oak Avenue, asked when there is a potential hearing if the person who makes the initial complaint will brought in at the hearing. City Solicitor Mandalas said that it would be at the discretion of the City Manager. Mayor Cooper said that the hearing would be based on the City Manager's decision which is based on the violations that have been adjudicated.

Mr. Gulbranson and Building Inspector Terri Sullivan had met to discuss the appropriate sections of the zoning code which may need scrutinizing.

1. Article II Use Regulations. §270-18. Specify the accessory uses permitted. All references to zoning, setback, pool size and equipment locations are being removed from the Pool Ordinance and should be located in this section.

Mayor Cooper suggested that the discussion should start with rental properties with pools and

address the single family residential district. The Commissioners need to address on a basic level what an R-1 zone really is. The houses and structures are being built that are taking on more of the characteristics of things that are only permitted in commercial zones such as a hotel or motel.

2. Article III Height, Density and Area Requirements. Lot coverage should be reviewed. FAR should include attic space and pools. Look at whether building, rear and side yard setbacks should be adjusted. Look at the natural area requirements and whether they should be increased and/or be better defined.

Mr. Gulbranson noted that drainage and stormwater issues could be considered as part of the natural area discussions. The City needs additional drainage and stormwater requirements.

Commissioner Gossett requested that with regard to the draft tree ordinance, the Commissioners should look at the impact of the loss of neighboring trees when digging a pool foundation.

3. Article IV Off-Street Parking, Loading and Unloading. Section 270-35 Minimum Parking Spaces Required. An exception whether the residential unit requirement should be increased based on the number of bedrooms over two.

Commissioner Mills suggested that in the next four meetings, the Commissioners need to be as productive as they can. One option would be to extend the moratorium. All the zoning issues could be tweaked and in effect control the size of a house. The work group may be able to give the Commissioners recommendations with regard to lot coverage.

Commissioner Sargent said that the Planning Commission should look very carefully at preserving the cottage nature, but there is not enough time to address that. The Commissioners can make the pools have an effect on the size of what is built. Pools should be part of the FAR calculation. Parking should be based on the number of bedrooms.

Mayor Cooper suggested that all the Commissioners should review the Neighborhood Preservation Ordinance (NPO).

Mr. Gulbranson noted that performance standards could be incorporated into the zoning code. Commercial, density and environmental issues will be looked at by the work group. He will provide a toolbox of zoning changes for the Commissioners to review at the March 9, 2015 Workshop Meeting.

The next Regular Meeting will be held on February 20, 2015 at 7:00 p.m.

There being no further business, Mayor Cooper adjourned the meeting at 4:18 p.m.

Respectfully submitted,

(Lorraine Zellers, Secretary)