

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

**February 9, 2015**

The Workshop Meeting of the Mayor and Commissioners of the City of Rehoboth Beach, was called to order at 9:04 a.m. by Mayor Samuel R. Cooper on Monday, February 9, 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   Bill Sargent (left the meeting at 12:00 p.m.)  
              Mayor             Samuel R. Cooper  
              Commissioner   Stan Mills  
              Commissioner   Lorraine Zellers  
              Commissioner   Kathy McGuiness

Absent:     Commissioner   Patrick Gossett

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

**CORRESPONDENCE**

There was none.

**OLD BUSINESS**

Mayor Cooper called for the 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 the work group has made the recommended changes to the noise ordinance from the last meeting.

Changes and comments regarding the noise ordinance are:

1. Line Nos. 110-112. §189-3. Definitions. Changed "Nighttime. The local time of day between the hours of 11:00 p.m. and 8:00 a.m. year-round" to "Nighttime. Those times of day excluded from the definition of daytime."
2. Line No. 115 §189-3. Definitions. Changed "Noise includes vibration of audible and subaudible..." to "Noise includes the amplified and unamplified human voice, vibrations of audible and subaudible..."
3. Line Nos. 122-123. §189-3. Definitions. Changed "D. Interferes with the peaceful enjoyment of property rights of adjoining and/or adjacent or neighboring property premises; or" to "D. Interferes with the peaceful enjoyment of neighboring properties; or".
4. Line Nos. 126-128. §189-3. Definitions. Changed "Any noise for which the information content of that noise is unambiguously communicated to the listener, such as, but not limited to, understandable spoken speech or comprehensible musical rhythms, including bass tones with a repetitive and impulsive sound" to "Any noise for which the information content of that noise is unambiguously communicated to the listener, such as, but not limited to spoken speech or comprehensible musical rhythms, including bass tones with a repetitive and impulsive sound."
5. Line Nos. 151-153 §189-4(A)(2). Use this section instead of §189-4(C) & (1). Change "Noise levels from small power equipment, associated with residential and commercial land uses and 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." to "Noise levels from small power equipment not limited to lawnmowers, leaf blowers, etc., associated with residential and commercial land uses and 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."
6. Line Nos. 155-158. §189-4(A)(3). Keep "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.”

7. Line Nos. 159-161. §189-4(A)(4). Removed this subsection in its entirety.
8. Line Nos. 168-177. §189-4(B). Added “3) No construction shall be carried on between the hours of 5:00 p.m., prevailing time, and 8:00 a.m. of the following morning, prevailing time. No construction shall take place on any Saturday, Sunday or the following State of Delaware holidays: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day; provided, however, that construction shall be permitted on Saturdays (except where a Saturday falls on a holiday) between the hours of 9:00 a.m. and 5:00 p.m., from November 1 to April 30; further provided, however, that nothing contained herein shall prevent any homeowner from working within his own property boundaries, provided that such work is done by himself and is used exclusively by him or his family or guests. Such privilege does not convey the right to violate any of the provisions of the Building Code, nor is it to be construed as exempting any such property owner from obtaining a permit and paying the required fees therefor.”

Mayor Cooper said that not all construction is noisy, and the statement above seems misplaced. Commissioner Mills thought that this is redundant because it is already in the Code.

9. Line Nos. 179-182. §189-4(C) & (1). Remove “Landscape maintenance noise. 1) Landscaping and lawn maintenance using gasoline or electric operated machinery or equipment shall not take place prior to 7:00 a.m. or after 8:00 p.m. Monday through Friday and 7:00 a.m. or after 8:00 p.m. Saturday and Sunday.”
10. Line Nos. 195-202. §189-5(A). Changed “In any commercial district or a commercial sound source heard within a residential district, a decibel meter shall be used for a noise disturbance made at or within 100 feet of the property line of the sound source. The decibel reading shall be made at the location of the noise disturbance. A decibel meter shall be used to determine noise disturbances when the sound source is emitted from a commercially zoned property and whether the complainant is in a commercial or residential zone. The reading shall be taken at the property line of the sound source. Exceeding noise levels established in §189-4 Maximum Noise Levels constitute a noise disturbance. The investigating officer may issue a citation for unreasonably excessive noise, unless in his or her judgment a warning is sufficient to cease the violation” to “A decibel meter shall be used to determine noise disturbances when the sound source is emitted from a commercially zoned property whether the complainant 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.”
11. Line Nos. 204-207. §189-5(B). Added “The plainly audible standard shall be used to determine noise disturbances when the sound source is emitted from a residentially zoned property and when the complainant is in a residential zone. Noise shall be measured no closer than the property line of the complainant. Noise that is plainly audible constitutes a noise disturbance.”

Commissioner Mills voiced concern that if the noise generator is in residential and the complainant is in commercial, there is no way to address that. He also noted that there is no definition of the plainly audible standard.

Mayor Cooper voiced concern with the term “complainant”. He preferred that the term “receiving property” should be used.

12. Line Nos. 209-212. §189-5(B)(1). Removed this subsection in its entirety.
13. Line Nos. 213-216. §189-5(C). Changed “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” to “Noise measurements made to determine compliance 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.”

Commissioner Mills suggested that this section be made a part of §189-5(A).

14. Line Nos. 226-322. §189-6. Housekeeping changes were made to this section based on the work group review. What constitutes a noise disturbance was broken into commercial and residential subsections. Like noises and disturbances were grouped together for administration purposes to make it easier to navigate through the ordinance.

Commissioner Mills did not like the changes because of the significant redundancy. There is a third component which is public streets. References to public street within the residential is not applicable. Public noise should be pulled out into a separate area by itself.

Police Chief Keith Banks said that with regard to redundancy, it will make it easier for summer officers handling a commercial area or a residential area.

15. Line Nos. 286-294. §189-6(B)(5). Added “In addition to other requirements contained herein, it shall be unlawful for any person to make, continue or cause to be made or allow at any pool any loud, or unusual noise or any noise which annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others. In the operation of a pool, or surrounding patios or decks, the use or permitting the use or operation of any radio, digital music device, musical instruments, or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing of the person or persons who are in such pool premises shall be unlawful.”
16. Line No. 298. §189-6(B). Deleted “No person shall sound a vehicular horn or other audible signal device except as an emergency warning.”
17. Line Nos. 300-301. §189-6(C). Relocated this §189-6(A)(3).
18. Line Nos. 303-307. §189-6(D). Relocated to §189-6(A)(4).
19. Line Nos. 309-311. §189-6(E). Relocated to §189-6(A)(5) and (B)(4).
20. Line Nos. 313-317. §189-6(F). Relocated to §189-6(A)(6).
21. Line Nos. 412-415. §189-11(A). Changed “All violations of this article need not be complaint based. Noise disturbances may be identified by citizens, police officers, city officials or city staff. Any police officer, city official or city staff is authorized to make an administrative stop for the purposes of enforcing this provision upon detecting that a noise disturbance has occurred” to “All violations of this article need not be complaint based. Noise disturbances may be identified by citizens, police officers or city staff. Any police officer or city staff is authorized to investigate for the purposes of enforcing this provision upon detecting that a noise disturbance is occurring.”
22. Line Nos. 424-431. §189-11(E). Changed “Any violation of the provisions of this article not otherwise provided for herein is a misdemeanor and, upon conviction thereof, shall be punished by a fine of up to \$100, or by imprisonment for a period not to exceed 30 days, or both, for each offense, together with court costs, and each hour a violation continues shall constitute a separate offense” to “Any person or persons charged with a violation of this chapter for the first offense shall be subject to a fine of at least two hundred dollars (\$200.00) and not to exceed two hundred and fifty dollars (\$250.00). For each subsequent offense such person shall be subject to a fine of at least two hundred and fifty dollars (\$250.00) and not to exceed five hundred dollars (\$500.00) or by imprisonment for not more than thirty (30) days or by both fine and imprisonment.”

Mr. Kyle Gulbranson noted that the work group has worked on the language of the ordinance to reflect current pool care standards and regulations. At the last meeting, the Commissioners had discussed the need for a policy and a process for how violations would be enforced and what the process would be if someone challenged the City’s decision on that.

Changes and comments regarding the swimming pool ordinance are:

1. Line No. 31. §2. Definitions. Changed “Private Residential or Family Pool” to “Private Residential Pool”.
2. Line Nos. 32-35. §2. Definitions. Changed “A swimming pool twenty-four (24) inches or more in depth used or intended to be used solely by the owner, or lessee thereof and their family, and by guests, invitees, or friends invited to use it without payment of any fee. This includes residential in-ground, above ground and on-ground swimming pools, hot tubs and spas. This excludes hotels, motels or condominiums” to “A swimming pool twenty-four (24) inches or more in depth used or intended to be used solely by the owner, or their family, and by guests, invitees, or friends invited to use it without payment of any fee. This includes residential in-ground, above ground and on-ground swimming pools, hot tubs and spas. This excludes hotels or motels.”
3. Line No. 37. §2. Definitions. Changed “Private for Profit Pool” to “Private Rental Pool”.
4. Line Nos. 38-41. §2 Definitions. Changed “A swimming pool twenty-four (24) inches or more in depth used or intended to be used solely by the owner, or lessee thereof and their family, and by guests, invitees, or friends invited to use it with payment of any fee. This includes residential in-ground, above ground and on-ground swimming pools, hot tubs and spas. This excludes hotels, motels or condominiums” to “A swimming pool twenty-four (24) inches or more in depth used in conjunction with a rental property. This includes residential in-ground, above ground and on-ground swimming pools, hot tubs and spas. This excludes hotels or motels.”
5. Line Nos. 60-61. §3(B). Plans and Specifications. Added “The following information must be submitted to the Building and Licensing Department at the time of application for a building permit to construct a swimming pool.

6. Line Nos. 62-64. §3(B)(a). Changed “An application for a building permit accompanied by two (2) sets of construction drawings, two (2) site plans, two (2) copies of a survey and two (2) copies of a cost proposal shall be submitted to the Building and Licensing Department” to “Two (2) sets of construction drawings, two (2) site plans, two (2) copies of a survey and two (2) copies of a cost proposal.”
7. Line Nos. 65-67. §3(B)(b). Changed “The general layout of the entire building lot on which the pool is to be located, including the distances of the pool from the lot lines and the location of all utilities” to “A scaled drawing indicating the general layout of the entire building lot on which the pool is to be located, including the distances of the pool from the lot lines and the location of all utilities.”
8. Line Nos. 68-70. §3(B)(c). Changed “A plan that demonstrates vegetated land greenspace, discharge, drainage, the type of filtration and general pool specifications” to “A rendering demonstrates 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.”

Mr. Gulbranson said that part of the requirement calls for calculations to be provided when applying for a pool permit. Backwash water must be accommodated on the property.

9. Line Nos. 79-85. §3(B)(f). Changed “The Applicant shall provide a drainage plan detailing how the pool or filter water shall be drained. Drainage of water for all swimming pools must be absorbed on the subject property and not on a neighboring property, nor directly onto a street, driveway or sidewalk, prior to entering the City storm sewer. Pool drainage during winterization or maintenance must be directed to and must discharge to a paved area or into a storm drain, or catch basin or water body. The plan shall incorporate the following drainage requirements” to “The Applicant shall provide a drainage plan detailing how the pool water shall be discharged in conjunction with winterization or maintenance. Water must be directed to and flow over one hundred (100) feet of vegetated soil prior to flowing onto a paved area or into a storm drain, catch basin, or water body. The plan shall also incorporate the following drainage requirements.”
10. Line Nos. 86-89. §3(B)(f)(i). Changed “Draining pool and spa water must be controlled so as not to cause erosion or carry debris or vegetation. Pool and spa water must be de-chlorinated and must not contain hydrogen-peroxide, acid or any other chemicals before the water is properly discharged” to “Discharge of pool and spa water must be controlled so as not to cause erosion or carry debris or vegetation.”
11. Line Nos. 90-91. §3(B)(f)(ii). Changed “Pool and spa water should have an acceptable pH of seven (7) or eight (8) prior to discharge” to “Pool and spa water should have an acceptable pH of between 6.8 to 7.8 prior to discharge.”
12. Line Nos. 92-94. §3(B)(f)(iii). Change “Pool water chlorine levels shall be reduced to at least 0.5 ppm prior to discharge. Acid wash water should not be drained into storm drains. Acid washing should be done in a proper and safe manner that is not harmful to the environment” to “Pool water chlorine levels shall be reduced to at least 0.05 ppm prior to discharge.”
13. Line Nos. 95-97. §3(B)(f)(iv). Change “Filters should be cleaned over the lawn or other landscaped areas where the discharge can be absorbed. Cartridge type filters cleaned and sprayed out over same landscaped areas” to “Filters should be cleaned over the lawn or other landscaped areas.”

Mr. Gulbranson noted it is DNREC’s policy that water must be directed to and flow over one hundred (100) feet of vegetated soil prior to flowing onto a paved area or into a storm drain, catch basin, or water body.

Commissioner Mills did not believe that a 100 foot standard could be set because no one would be able to fulfill it. It would not be physically possible to keep all of the water on the property unless stormwater retention is done. He would like to be better informed on what the standards are that DNREC has.

Mayor Cooper noted that the backwash water should be contained on the property.

Mr. Frank Cooper, 96 East Lake Drive, said that the 100 foot rule has the assumption that lots are perfectly sloped from back to front, so it would seem unenforceable. Some lots will not drain the same way.

Ms. Lorie Carter of Carter Pool Management, Lewes, noted that DNREC advises and recommends. It is a recommendation that there is 100 feet of vegetative area before it hits a direct water source.

Allan of Carter Pool Management said that 90% of the pools in the City do not have 100 feet available for water runoff. If bladders are used, they have to be put on flat land only, on grass or in the street. Discussion ensued.

Mr. Gulbranson recommended that there should be a generalized statement about grading as part of the

pool ordinance. The City will need to look at the other codes in relationship to stormwater runoff.

Mayor Cooper said that it should be retained in this section that the water has to be pumped across a vegetative area which cannot be on an adjacent property. Backwash of a pool should be kept on the property.

Ms. Sharon Palmer of Coldwell Banker suggested using the Fire Company to drain a pool by running its hoses from the pool to the stormwater drain.

14. Line Nos. 101-103. §3(C). Changed “After a specific site is approved, any change of location may require another site inspection” to “After a specific site is approved, any deviations from the approved plan shall be reported to the Building and Licensing Department prior to construction. An additional site inspection may be required.”
15. Line Nos. 112-120. §5. Location. Deleted this section in its entirety.
16. Line Nos. 128-129. §7(A). Changed “Equipment of circulating pumps and filters must be located inside an enclosure that reduces the amount of noise and vibration produced” to “Equipment of circulating pumps and filters must be located inside the primary structure or in an enclosure that reduces the amount of noise and vibration produced.”
17. Line Nos. 130-131. §7(A)(a). Changed “The enclosure must be built to the requirements of the building code” to “The enclosure must be built to the requirements of the building code and be insulated to reduce vibration and noise.”
18. Line Nos. 132-133. §7(A)(b). Added “Such enclosures shall have appropriate louvered areas, including vents, panels or doors as well as ventilation as required for exhaust fans and heating systems.”
19. Line Nos. 135-137. §7(A)(d). “The enclosure as well as any fuel tanks necessary for pool heating will not be considered an accessory structure and as such must be located within the buildable area of the lot and not in any setback area.” This subsection will be relocated to the Zoning Code.

Mr. Walter Brittingham, 123 Henlopen Avenue, said that pool filter devices are intended to sit outside and in the open.

Mayor Cooper thought that the Commissioners may need to revisit the noise ordinance as it relates to pool equipment because it may not be adequate. Someone should not be subjected to noise in their house from their neighbor 24 hours per day, seven days per week.

Commissioner Mills suggested that Police Chief Banks should evaluate the use of a sound decibel meter to measure equipment vs. an octave band meter.

20. Line Nos. 182-187. §9(D). Changed “All pools must be maintained by an individual who has successfully completed a pool operator training course that is approved by the Division of Public Health. Private for profit pools must be maintained following commercial pool standards established by the Delaware Division of Public Health and operated by an individual who has completed a pool operating training course that meets the criteria established by the Delaware Division of Public Health. Owners of private residential pools shall enroll in a pool safety training course offered annually by the City” to “Private rental pools must be maintained following public pool standards established by the Delaware Division of Public Health and operated by an individual who has completed a pool operating training course that meets the criteria established by the Delaware Division of Public Health.”

Mr. Gulbranson thought that the best course of action is to state in the ordinance that rental pools must be maintained by public pool standards.

21. Line No. 145. §9(E). Added “Penalties and Revocation of Pool Operation License”.
22. Line Nos. 146-151. §9(E)(a). Added this section to provide the reasons why a pool permit could be revoked.
23. Line Nos. 153-165. §9(E)(b). Added this section to provide a timeframe about the number of violations during a 90-day period and what the City Manager’s response to that might be.

City Solicitor Mandalas has reviewed (a) and (b), and suggested that either (a) or (b) should be in the ordinance but not both. He personally thought that (a) is the better option.

Commissioner Mills and Mayor Cooper thought that there is more clarity with (b). Mayor Cooper did not think the City Manager should make a determination. He asked how there can be an appeal of the decision of the City Manager that’s been discretionary, on the record. If discretion is given to the City Manager, then the appeal should come to the Board of Commissioners with discretion. If it is discretionary, the penalty has to be held in obedience until the Commissioners have decided the issue.

City Solicitor Mandalas said when it is discretionary, on the record is a difficult legal standard. It would be an on the record appeal, if it is non-discretionary. If there will be an on the record legal standard, then it should be "shall" vs. "may" in (b). If there is a de novo appeal, then it could be discretionary. Discussion ensued.

City Solicitor Mandalas and Mr. Gulbranson will work together to tighten up the language for the next meeting. City Solicitor Mandalas will also be working on formatting the ordinance.

This item will be placed on the agenda for the February 20, 2015 Special Workshop Meeting at 1:00 p.m.

## **NEW BUSINESS**

Mayor Cooper call to discuss approving additional task orders with the engineering firm GHD for work related to the design, permitting and construction of the City's wastewater outfall and wastewater plant improvements.

Mayor Cooper had forwarded four task orders from GHD to the Commissioners prior to the meeting. The task orders are done under a contract the City has signed Stearns & Wheeler, at the time, and is now GHD on March 5, 2010. The task orders are written as lump sum amounts, but it would behoove the City to go with time and material so it is only billed for the actual time that is spent on each project. Task Order No. 13 relates to the force main from the treatment plant to the Deauville Beach parking area. The lump sum fee is in the amount of \$446,700.00 which will include the actual bid process. Task Order No. 14 relates to the treatment plan effluent pumping station. The lump sum fee is in the amount of \$227,760.00. Task Order No. 15 relates to the upgrades to the treatment plan that were included in a report from July 2012 for rehabilitation and changes at the wastewater treatment plan itself. The lump sum fee is in the amount of \$1,018,000.00 to prepare the plans and specifications and go to bid. The next step would be for action to be taken at the next Regular Meeting by the Commissioners to authorize the task orders to be executed with GHD. Funding of the task orders has been budgeted and will come from the sewer surcharge which has been implemented. Forty percent of the total amount for the task orders will be funded by the County. In order to go to construction of the outfall project, the City will need to borrow money and it will need to have the voter's approval through a referendum in late April or early May 2015 in order to do that.

Mayor Cooper called to discuss approving an agreement with the engineering firm GHD for conducting a stormwater evaluation as called for and outlined in the Record of Decision issued by the Delaware Department of Natural Resources and Environmental Control on January 5, 2015, which Record of Decision relates to the construction of the City's wastewater outfall.

Mayor Cooper noted that Task No. 12 is for GHD to look at the five stormwater outfalls as opposed to the wastewater task orders. The outfalls discharge stormwater into the ocean within the City limits. GHD would look at the area that contributes to each of the outfalls, the issues in those areas, what is contributing to the stormwater and how the stormwater might be contaminated or polluted. GHD will take the model that was done for the wastewater outfall and apply it to the stormwater outfalls. This model will be used to predict what would need to be done to ensure that a given concentration would be under the concentration in the surf zone, etc. DNREC has made this a condition of Record of Decision that the City does this project. Mayor Cooper had agreed to get this done by the end of this year. The amount of Task Order No. 12 is in the amount of \$138,496.00. This task order is not written as a lump sum. Mayor Cooper proposed that the Commissioners should not look at this project as related to the wastewater outfall even though the City is being mandated. It is not fair nor advisable that the Commissioners put this project as a cost against the wastewater outfall and bill the County for it. The City should assume this cost on its own because it will not benefit the customers in Dewey Beach and Henlopen Acres. It should be paid for solely by the City. Task Order No. 12 has been sent to DNREC for it to sign off on. The next step would be for action to be taken at the next Regular Meeting by the Commissioners to authorize this task order to be executed with GHD.

Mayor Cooper called to discuss seeking Delaware General Assembly approval to change Sections 29(a)(36) and (40)(q) of the City Charter, modifying the permitted amount for the total of indebtedness of the City in order to accommodate two proposed City projects.

Mayor Cooper said that approximately three years, the Commissioners had authorized the Mayor to request the Delaware General Assembly for a Charter change. Rather than going with the 25%, the City's total bonded indebtedness was set at a maximum of \$50,000,000.00. With the reassessment, the 25% would have yielded approximately an \$800,000,000.00 bond indebtedness. At this point in time, the wastewater outfall may be approximately \$40,000,000.00 and the City Hall project may be approximately \$18,500,000.00. This would total approximately \$58,500,000.00. Mayor Cooper suggested that a request be made to the Delaware General

Assembly for a Charter change to increase the maximum indebtedness to \$75,000,000.00. City Solicitor Mandalas will draft a Charter change for the next Regular Meeting to change the State Code and authorize the Mayor to request it be adopted by the State Legislature.

## OLD BUSINESS

Mayor Cooper called to discuss the processes and conditions for consolidation (merging) and separation of lots including a proposed ordinance amending the Zoning Code to clarify the consolidation and separation of lots in the City.

Commissioner Mills had forwarded the proposed merger ordinance to the Commissioners prior to the meeting. A new definition of Lot was introduced to replace the definition in the current Code.

Changes and comments regarding the proposed ordinance are:

1. Section 1. Lot. A uniquely identifiable parcel, tract or area of contiguous land that is held in common ownership, fronts on one or more streets, is not divided by a street, shall not include any land within the limits of a public or private street right-of-way and is any of the following:

City Solicitor Mandalas read Section 270-22. At least 50 feet of frontage on a street except between Hickman Street and the southern boundary of the City, a residentially zoned lot which is the easternmost lot and has its easternmost lot line parallel with the Atlantic Ocean is not required to have such street frontage. Those lots abutting the ocean do not have to have street frontage because a street is not there.

Mayor Cooper thought that it would be best to reference Section 270-22. The definition thinks about lots to be created. Clearly, new lots should not be created that does not front on a street, and new lots should not be created that is bisected by a street.

There are three options: (1) Strike the frontage requirement from the definition of Lot because it appears that the frontage requirement is adequately addressed in Section 270-22. (2) Reference Section 270-22's exemption within the definition of Lot. Possibly "...fronts on one or more streets unless specifically exempted from such requirement in this Chapter". (3) Leave the new definition of Lot as is because a building official would likely conclude that Section 270-22, as the more specific section, would override the general requirement of street frontage in the broader definition of Lot.

Mayor Cooper said that the definition would indicate that it is two lots, not one lot that is bisected by a street. The lots on at the Boardwalk and Lake Drive are legally non-conforming because they do not fit the definition of Lot.

City Solicitor Mandalas noted that if the area is not buildable on the other side of the street or it is something else, it should not be used for all the other zoning calculations.

Ms. Sullivan said that with regard to the properties along Lake Drive, a lot of those areas are called out as separate lots in the deeds. Even though it is considered one tax parcel, the lots are called out separately.

Mayor Cooper noted that typically the property on the lake side of the street was deeded after the original lots were sold. He questioned whether those deeds are valid. City Solicitor Mandalas mentioned that government property cannot be adversely possessed.

2. Section 2. Lot Area, Gross. The area of a lot inside the property lines. The area shall be measured to the street line only.

City Solicitor Mandalas suggested that the definition of Lot Area, Gross should be clarified. A possible definition would be "The area of a lot inside the property lines, except that when either a lot is divided by a street or a portion of a lot is in the Open Space (O-1) Zoning District, only the area on the buildable side of the street and the area not in the Open Space (O-1) Zoning District shall be included. – 3 & 4. After 1974 that does not have Planning Commission approval.

3. Section 3(D). Change "Lots merged as provided herein may be separated to their originally plotted lot configuration through an administrative approval of the City Manager by demonstrating that it is not necessary to consolidate the multiple lots to comply with the provisions of this Chapter, or by demonstrating that but for the requirements of Section 270-22(A), it is not necessary to consolidate the multiple lots to comply with the provisions of this Chapter and each of the lots, as originally plotted, conform to the requirements of Section 270-22(A)(3) of this Chapter" to "Lots merged as provided herein may be separated so their originally plotted lot configuration through an administrative approval of the City

4. Manager by demonstrating that it is not necessary to consolidate the multiple lots to comply with all zoning requirements or if one or more of the lots meet all other requirements but fails to have 50 feet of frontage or fails to be 5,000 square feet, the lots can still be separated if it can contain the rectangle of 4,000 square feet.”
5. Section 3(E). The Board of Adjustment is given authority to separate lots and them allow to remain, The Board of Adjustment cannot recognize the lots originally plotted as 25 feet x 100 feet.

Commissioner Mills provided drafts of (3) affidavits to the Commissioners. They consist of (1) Lot Consolidation Affidavit of Owners, (2) Separation of Lots Previously Consolidated (Merged) and (3) Separation of Lots Previously Consolidated (Merged) – not for recordation.

City Solicitor Mandalas noted that the affidavits would be documents of the City which would be subject to change.

The proposed ordinance will be put in its final format and will be ready along with a resolution for the March Workshop Meeting, and then vote on setting the public hearing date at the Regular Meeting in March 2015.

Mayor Cooper called to discuss possible Code changes to Chapter 227 – Solid Waste and Chapter 270-27 – Storage of Refuse including but not limited to: Timeline for putting out refuse-yard waste-recycling for collection and for retrieving containers in the residential areas to include addressing refuse put curbside for collection and non-collection days, e.g. on Saturdays; feasibility of the City providing special pickup service; screening of refuse-yard waste-recycling containers; and miscellaneous updates to Code.

Commissioner Mills noted that he, Commissioner McGuinness and City Manager Lynn have been working on this problem. Previously, this topic was discussed with regard to timelines, how to deal with the three commodities, putting out trash too far in advance of collection days and the lack of retrieval. A valet service was discussed as an option at an extra fee for the three commodities. Also discussed was adding a recycling day collection to a refuse day collection which would offer recycling on Thursday and Friday. The City Manager and Mr. Mike Peterman of Streets Department may entertain the idea of possibly requiring the use of City furnished containers throughout the entire residential community. The group had discussed the possibility of twice a week pickup for 7.5 month per year vs. once a week pickup for 4.5 months per year. The City Manager will make suggestions on this matter. Commissioner Mills has spoken with two realtor/managers about the possibility of a valet service and in particular, about the trash being put out on Saturdays which is causing problems. The onus is put on the rental tenants who at times may not put the trash out at all. Both realtor/managers were interest in the valet service. They thought approximately 80% rental landlords would partake of the valet service. The best program would be to start it in the off-season because it would be easier on the crews. This would allow enough time to poll people to see who would be interested in this program and to order containers. The contract with the recycling vendor expires in March 2015. If there is a new contract, specifications would need to be addressed beforehand. Monies would also need to be allocated in the upcoming budget for purchasing equipment, containers, labor, etc. The easiest and simplest program would be for an outside vendor to take over all of the residential trash pickup and valet service, the group liked the concept of doing this program in-house with the City’s personnel. One method for providing the valet service for refuse and yard waste is to do it in-house and collect en route. Another method would be to send out a separate advanced crew which would go out ahead of the regular refuse crew to put out the containers and then come back later to remove them from the street. One question was raised about what to do with the crews in between the times. Mr. Peterman’s preferred method would be to collect en route.

City Manager Lynn said that a huge daily effort of the City’s employees in the Streets Department is to pick up commercial waste on a daily basis. If the in-house commercial collection would be removed, it would add additional help to the residential collection. That would also help with the recycling effort.

Mayor Cooper said that the effort going into the manpower to pick up the commercial could be diverted to residential valet service. The City’s manpower level may not change. He suggested that the group should get a set of rates from an outside vendor, so there would be a preferred service and the City may be able to facilitate that somehow. The Chamber and Main Street may be able to put that together.

The group will continue to work on this matter, and it will devise a letter for polling the residents and realtor/managers.

## **CITY MANAGER’S REPORT**

City Manager Sharon Lynn reported that the next Budget Meeting is scheduled for February 27, 2015 at 9:30



a.m. Phase 2 of the Fire Hydrant Project is slated to begin, weather permitting, the week of February 16, 2015. The Lake Drive Sewer Project is out to bid.

#### **COMMITTEE REPORTS**

Commissioner Sargent, Chair of the Streets & Transportation Committee discussed issues related to increasing pedestrian safety in the presence of bicycles on the Boardwalk was deferred to the Regular Meeting on March 20, 2014.

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

There was no report.

#### **COMMISSIONER ANNOUNCEMENTS/COMMENTS**

Commissioner Sharp announced that the Gumbo Crawl is scheduled for February 15, 2015 from 2:00 p.m. to 5:00 p.m. She congratulated Mr. Walter Brittingham for his many decades of service to the fire department.

Commissioner Mills announced that he had attended the Coastal Management Program focus group on behalf of DNREC looking for input on concerns about land use, flood preparedness and prevention, sea level rise, coastal hazards, public access, marine debris, ocean resources, energy in governing facility sighting and wetland conservation. It highlighted that DNREC could do a better job communicating with municipalities about all its grants and education and training programs.

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

There was none.

#### **CITIZEN COMMENT**

There was none.

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 12:46 p.m.

**Respectfully submitted,**

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**(Lorraine Zellers, Secretary)**