

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

**March 9, 2015**

The Workshop Meeting of the Mayor and Commissioners of the City of Rehoboth Beach, was called to order at 9:07 a.m. by Mayor Samuel R. Cooper on Monday, March 9, 2015 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

The Invocation and Pledge of Allegiance took place at the Special Meeting prior to this meeting.

**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

**CORRESPONDENCE**

There was none.

**DISCUSS** the request of the owners of the property at the southeast corner of Philadelphia Street and Bayard Avenue, 300 Bayard Avenue, to have their property rezoned from R-1 to R-2.

Mayor Cooper had received a letter in Fall 2014 requesting to rezone a property on Bayard Avenue. He had sent a letter in return to inform the owners that if the Commissioners think it is worthwhile, they would request the Planning Commission to review this and possibly hold a public hearing and make a recommendation back to the Commissioners, at which time the Commissioners would take this matter up.

Mr. Kevin Matthews, owner of the property, was in attendance at the meeting. If the property would be rezoned to R-2, he would like to potentially build townhouses on the property. The short side of the property would front on Philadelphia Street which he thought should be in the R-2 Zoning District. He would like to pursue the possible rezoning of the property. Currently, there are three structures on the property

Mayor Cooper believed that the subject lots were part of the Rehoboth Heights subdivision. They are 25 feet wide. The lots were originally plotted to front on Bayard Avenue, but because Mr. Matthews owns four lots, the shorter side fronts on Philadelphia Street. The zoning on Philadelphia Street from the ocean is R-2. All the lots along Bayard Avenue were zoned R-1. The neighbors to the rear of the subject lots are zoned R-2. Multi-family structures can be built in R-2, but the density is the same as a single family at 5,000 square feet per unit. The setbacks are pretty much the same. The front setback in R-2 is 10 feet, whereas in R-1, it is 15 feet unless there is a porch.

Commissioner Sargent voiced concern that if the property is rezoned to R-2, the structures would be substantially different than for R-1. The idea of townhouses vs. separate houses is incompatible with what is on Bayard Avenue. He would have to see a very compelling reason to rezone this property.

Commissioner Patrick Gossett noted that the Planning Commission is in place that is more familiar with this type of operation. This could be looked at as spot zoning in the sense that the property is adjacent to R-2. The zoning of the City was laid out with specific thought, direction and intention of what the community would look like. This is a legitimate issue, but it has to be balanced with the entire community and the plan of the community. That is where the Planning Commission would come in to take a look at this request and make an intelligent consideration of the facts. This is the methodology which should be pursued if moving forward with this request.

Mayor Cooper will forward Mr. Matthew's correspondence and a cover letter to the Planning Commission, telling it that there was consensus from the Commissioners to forward this matter to the Planning Commission for review and input.

## 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 workgroup has made the revisions from the last meeting with regard to two proposed ordinances.

Changes to the proposed noise ordinance, Version 8 are:

1. Line Nos. 67-68. §189-3 – Definitions. Strike “Holidays include the day before a holiday and Memorial Day, Independence Day and Labor Day.”
2. Line Nos. 92-95. §189-3 – Definitions. Plainly Audible Standard. Changed “A method used to identify a noise disturbance where a noise can be heard at a location not on the emitting property and is plainly audible, no closer than the property line of a receiving property and the noise is plainly audible to the human ear” to “A method used to identify a noise disturbance where a noise is plainly audible at a location not on the emitting property.”
3. Line No. 155. §189-5 – Noise measurement. Changed “...emitted from a residentially zoned property, and the receiving property is zoned residential” to “...emitted from a residentially zoned property.”
4. Line No. 175 §189-6(A)(1) (Commercial), “Generally creating a racket...” and Line No. 215 (Residential), “Generally creating a racket...” should be combined and placed in All Zoning Districts.
5. Line No. 190 §189-6(A)(3) (Commercial), “No person shall use any musical instruments...” and Line No. 221 (Residential), “No person shall use musical instruments...” should be combined and placed in All Zoning Districts.
6. Line Nos. 217-218. §189-6(B)(1). Changed “Noise shall be measured at the property line...” to “Such noise as emanating from residential or commercial properties shall be measured at or beyond the property line. Such noises on public streets can be measured anywhere...”
7. Line No. 255. §189-7 – Sound Trucks and Amplification Equipment. Question as to what sound trucks are and what sound amplifying equipment refers to. This Section will be deferred to the next meeting for the City Manager to address. Mr. Gulbranson will draft a definition for sound truck.
8. Line No. 258. §189-7(A). Moving sound trucks are prohibited.
9. Line No. 259. §189-7(A). Strike “...the fee of which shall be \$25 an hour.”
10. Line No. 283. §189-7(D). Grant of permit; duration. There is no reference to permits in Section 189-2. This reference needs to be corrected.
11. Line No. 284. §189-7(D). Gender needs to be updated or eliminated.

Mr. Gulbranson noted that the workgroup has made the revisions from the last meeting with regard to the pool ordinance.

Changes to the proposed pool ordinance, Version 7 are:

1. Line No. 7. Chapter 206. Changed “Private, Residential or Family Swimming Pools” to “Swimming Pools”.
2. Line No. 51. §206-3. “Pool Permit” has been changed to “Pool Construction Permit”.
3. Line Nos. 67-71. §206-3(B)(c). Removed this subsection in its entirety and created §206-10 – Grading, Drainage and Discharge Plan Required.
4. Line Nos. 75-76. §206-3(B)(d). Added “A grading, drainage and discharge plan meeting the specifications and requirements of Section 206-10 of this Chapter.”
5. Line Nos. 106-107. §206-6(A). All residential pool owners shall be required to obtain a separate pool operation license for each property, and pay a license fee of fifty dollars (\$50.00).

Commissioner McGuiness did not think that \$50.00 will cover the administration of this ordinance.

Mr. Walter Brittingham, 123 Henlopen Avenue, said that the provisions for residential private pools would require a license, and \$50.00 will not cover it.

Commissioner Zellers noted that this would provide an additional mechanism for enforcement revocation.

6. Line No. 117. §206-6(D). Question as to enforcing anything in this subsection. Building Inspector

Sullivan will be reporting back to the Commissioners after her meeting with the Delaware Division of public Health.

Commissioner Mills asked who will be evaluating and monitoring the swimming pools. He voiced concern with the extra duties that Building & Licensing will need to do.

Commissioner Gossett voiced concern with the onus that will be put on property owners or residents. He suggested that there should be consideration given to have different standards for residential rental houses vs. a residential house that is owned and not rented. Mayor Cooper said that if a person owns the property and does not rent it, they are the recipient of what happens. When someone is paying somebody else a remuneration for the use of the pool, then it will take a whole new set of standards because that person does not have any control over it.

Mr. Gulbranson said that a homeowner who does not rent out a pool will still need to get the pool licensed. That homeowner will need to demonstrate to the City that he/she has the pool equipment which is required, signage with the permit number, an annual inspection and submittal of a maintenance log to show that the pool is being maintained. The rental pool owners have to maintain the pool following commercial standards established by the State. Rental pools have to be maintained by someone who is certified and has the credentials to do so. Mr. Gulbranson will come back to the Commissioners with specific standards on private rental pools following public standards.

7. Line Nos. 141-144. §206-6(E)(c). Changed “The City Commissioners shall conduct a hearing on the appeal within sixty (60) days of the date of the filing of the letter of appeal. The appeal shall be and the Commissioners shall determine whether the decision of the City Manager is supported by the evidence and free from legal error” to “The City Commissioners shall conduct a de novo hearing on the appeal within sixty (60) days of the date of the filing of the letter of appeal.”
8. Line No. 172. §206-8(A). Changed “Lights used to illuminate any residential pool...” to “Any outdoor lighting used in conjunction with a residential pool...”
9. Line Nos. 179-180. §206-8(C). Removed “Additional landscaping may be required to provide light reduction between properties as identified in this Section.”
10. Line Nos. 190-212. §206-10 – Grading, Drainage and Discharge Plan Required.

Commissioner Mills was uncomfortable with specifying what types of plans are needed and trying to codify what the plans are to be accomplished in one section. It needs to be divided out. The two are exclusive. What is needed in the plan is one thing and what constitutes being in compliance with the Code is second. Commissioner Mills said to consider separating one section on the plan requirements and consider the other section to codify such as stormwater runoff shall not be directed onto adjacent properties.

Mayor Cooper said that this has to be looked at as to what is permitted and what is prohibited in one section, and then in getting a permit, demonstration must be made to meet the requirements. He will try to separate the things out with regard to Section 10. Stormwater from the area surrounding a swimming pool shall not be directed toward neighboring properties and/or the street. Any new pool shall be constructed such that stormwater is not directed towards these things, and any regrading around an existing pool, these things are prohibited. The discharge from any swimming pool filter and/or the cleaning of the pool filter shall be done on a vegetated lawn area upon the property for which the pool resides. Drainage or discharge for the winterization of any new pool shall be directed over a vegetated area, and a plan shall be created to demonstrate this. Any existing pool shall not be modified such that the existing vegetated area will be decreased in which the pool can be drained.

11. Line No. 197. §206-10(C). Changed “Drainage and Discharge Plan Required” to “Requirements for Drainage and Discharge”.
12. Line Nos. 204-205. §206-10(C)(a). Changed “...a grassed or vegetated area...” to “...a grassed or vegetated area of at least 200 square feet.”
13. Lines Nos. 207-208. §206-10(C)(b). Added “...but in no case shall the discharge leave the property, and if or when it does leave the property on which the pool is located, then this is a violation of this section. Any request for a permit for a new pool or reconstruction of a pool or grading around a pool shall include a plan that demonstrates compliance with all the sections of this Code.” The requirements should be in a different section, and they should be consistent with what the rules are.
14. Line No. 209. §206-10(C)(c). Changed “Pool water should have an acceptable pH...” to “Pool water shall have an acceptable pH...”
15. Line No. 215. §206-11(A). Changed “...private, residential or family pool entailing sales...” to

“...private residential pool entailing sales...”

Mr. Nick Delcampo, 37 Maryland Avenue, said that he owns a rental property with a pool. He has over 50 years of experience with maintaining pools. Commercial pools that require daily testing of the water will increase the cost of the pool operation. He did not know why daily testing is needed.

Ms. Libby Stiff, 1007 Scarborough Avenue, asked who will enforce this.

Commissioner Mills said that all maintenance and chemical log records must remain onsite and be readily available. It does not say daily, monthly or what the frequency is. Maybe two entries during the summer are satisfactory. He was not comfortable this.

Commissioner Zellers said that from the last meeting, the Commissioners were to put together a list of minimum requirements for maintenance logs. Numerous bodies in a pool require different types of maintenance. There should be different standards for people who rent to large groups.

Mayor Cooper said that by the way it is written, the City is not trying to enforce it; the Commissioners are just saying that there are standards which the State has established and pool owners need to live by them. Specific sections should be pulled out of the State requirements.

Mayor Cooper thought that parts of the permitting process would start immediately, and annual inspections and licensing would begin after the beginning of 2016.

Commissioner Gossett thought that the permit process could be a testing ground for any new pools or new permits in this season so the implementation could be phased in.

City Manager Sharon Lynn said that the good neighbor brochures will need to be updated and will be ready for distribution to everyone this year along with a copy to be posted on the City website, etc.

Mr. Kyle Gulbranson noted that the workgroup has put together a menu of possible zoning changes which could be implemented to address development issues the City has been experiencing. Code sections for possible modification are:

1. Article II. Use Regulations.
  - §270-18. Accessory Uses Permitted.  
(All reference to zoning, setback, pool size and equipment locations are being removed from the Pool Ordinance and probably should be located here.)
2. Article II. Height, Density and Area Requirements.
  - Lot Coverage, FAR to include attic space.
  - Pools included in FAR, possibly reducing FAR total if pool is included.
  - Building Setback, Rear and Side Yards.
  - Natural Area Requirements – increase and/or better define.
3. Article IV. Off-Street Parking, Loading and Unloading.
  - §270-35. Minimum Parking Spaces Required. Exceptions – Residential Unit Requirement. Off-street increase based on number of bedrooms over two.

The different changes that could address the issues have been listed:

1. §270-21. Remove exclusion for driveway and sidewalks.
2. §270-21(A). Remove 10% accessory structure exclusion.
3. §270-21(A)(1). Increase natural area from 40% to 50%, creating 50/50 coverage to green space.
4. §270-35. Revise to 2 off-street parking spaces per dwelling of 4 bedrooms or less.
5. §270-35. Add – over 4 bedrooms, 1 space per 2 additional bedrooms.
6. §270-26(A). For all residential districts revise side yard from 6 feet to 10 feet. Revise minimum aggregate total of both side yards from 16 feet to 20 feet.
7. Add setback requirements just for pools. (a) – For pool – 10 foot side yard, 15 foot rear yard. (b) – All equipment, etc. – 15 foot rear yard.
8. §270-21(B). Revise FAR to include attic space.
9. §270-21(B). If swimming pool is proposed, reduce FAR maximum from 60% to 55%.
10. Add sliding scale for pool size based on lot size.
11. Sliding scale for pool size similar to §270-26(A).
12. Definitions are dated and should be updated, clarified as to location, districts, etc.
13. Remove definitions if not enforceable.

Mr. Gulbranson noted that the intent of all these possible changes is to reduce the size of a house on a property and increase the amount of open space.

Mayor Cooper thought that the definition of hotel/motel/boarding house need to be addressed.

Commissioner Mills suggested that the work group should provide the Commissioners with new definitions and examples. He asked what the ramifications of what the Commissioners are doing such as including the attic and basement in FAR and including pools in FAR.

Mr. Gulbranson said that including pools in FAR is problematic in itself because FAR measures bulk. If someone is going to have a pool, the best way to handle this issue is to decrease the FAR from 60% to 50% and increasing the natural area from 40% to 50%. The issues should be addressed by lot coverage. Mayor Cooper agreed with decreasing the FAR. FAR deals with bulk, but it also an extension of the use of a lot for habitable space. He thought there would be a conundrum with increasing the natural area to 50%.

Commissioner Sharp thought that these issues should be vetted out holistically with the Planning Commission. Mr. Gulbranson said that a lot of the recommendations being made came out of the last Comprehensive Development Plan (CDP) that the Planning Commission felt were important.

Commissioner McGuinness asked what the primary goal is that the Commissioners are trying to achieve such as bulk, green space, character, etc. Mayor Cooper said all of those.

Commissioner Zellers said that the pool issue brought up the size of houses, reduction in stormwater runoff on properties, green space is gone, etc.

Mayor Cooper said that the tree ordinance is totally ineffective as long as 50% lot coverage is allowed, and 10 foot setbacks. Discussion ensued.

Mr. Gulbranson said that all of the items listed are beneficial to the City. Anytime a zoning change is made, non-conforming situations will be created.

Commissioner Gossett said that one element the Commissioners need to consider is that there are five different characteristic neighborhoods as defined in the Neighborhood Preservation Ordinance (NPO). If the Commissioners are going to make changes in the direction of affecting the size of a house with lot coverage or creating the streetscape, he would like to look at the characteristics in the five neighborhoods. Mayor Cooper did not disagree, but it is a huge undertaking.

Mayor Cooper said that the first place to start is lot coverage.

Mr. Gulbranson said that if lot coverage is increased to 50%, driveways, sidewalks, patios, house the footprint itself, etc. would be within the additional 50%. It would improve areas for planting trees and improve grading. Mayor Cooper thought that lot coverage should be 40% with 50% buildings and other things.

Commissioner Zellers thought that the Commissioners should encourage pervious surfaces for driveways, etc. rather than everything being paved.

Mayor Cooper did not like the idea of increasing off-street parking. The Commissioners should not encourage the lots to become parking lots with parking across in front of a house. Discussion ensued.

Commissioner Mills thought that a possible solution would be for houses built on lots over 52.5 foot wide was a sliding formula that the minimum side yard setback has to grow bigger. He referred to requirements in the NPO as compared to now.

Commissioner Sharp said that there is a lot of support for house size reduction and open space at a minimum.

Mr. Gulbranson noted that the work group had addressed some of the possible revisions to setbacks and increasing them to 10 feet. Increasing the open space around a pool would not address noise, etc.

Commissioner Mills suggested that an annual pool inspection would be good.

Commissioner Sharp thought that the Commissioners should continue to think about off-street parking and impervious surface. Commissioner Zellers agreed. Her concern was in regard to additional spaces as the amount of impervious surface put on the lot. Additional parking would require a pervious surface so that there is still runoff.

There was consensus with the Commissioners that open space, natural area and lot coverage needs to be adjusted.

Mr. Gulbranson noted that there are differences of opinion on parking, but the work group will come back with some requirements for discussion. Sixty percent natural area in the front yard will be incorporated into the changes. The work group intentionally did not bring up the tree issue because it wanted to address the true zoning issues. If natural area is increased, there would be more area on the lot to plant trees or maintain trees.

Mayor Cooper suggested that in addition to the setbacks, there should be a requirement on a lot that there has to be at least an all-natural area.

Commissioner Sharp said that this would be an opportunity to resurrect the tree ordinance and do something with it. It could be done as the next phase.

Commissioner Gossett said that the Commissioners should read the tree ordinance because it does have an impact. When changes are made in zoning, the Commissioners may cut part of the tentative tree ordinance.

Mr. Gulbranson noted that the work group has not discussed setbacks to date, but it has discussed additional setbacks for pools. He thought the rear yard setbacks should be adjusted.

Mayor Cooper suggested that there should be a way to, without banning all rentals, define what a commercial rental is as opposed to a residential rental.

A Special Workshop Meeting will be held on March 20, 2015 in the afternoon.

Mayor Cooper called to discuss the draft budget for fiscal year 2015/2016 as prepared by the City Manager.

City Manager Sharon Lynn noted that the draft budget is balanced. Changes that have been made are an increase in revenue for parking permits and a 20% increase in mercantile licenses. Ms. Sullivan has consolidated a lot of the license permit requirements into different categories. Parking meters will be increased from \$1.50 to \$2.00 per hour. Ninety-seven parking meters in the first two block of Rehoboth Avenue need to be replaced, of which 51 will be replaced this year at a cost of \$351,000.00. There have been no other changes other than a reconciliation page being added.

Mayor Cooper supported the capital improvement program which entails street paving in the amount of \$250,000.00, replacing the City's enterprise software in the amount of \$285,000.00, etc.

Commissioner Sharp attended a board meeting of Main Street on March 2, 2015 and talked about the Commissioners' perceptions of how the kiosk is handled. Each April, the materials from all the businesses without respect to any other status, are collected and taken to the kiosk. This began last summer and will continue this summer. Volunteers from the kiosk have confirmed that there is no distinguishing between businesses, it is all about the City for the purpose of the kiosk. Commissioner Sharp has gotten tacit approval from the board to come back with a plan of how to eliminate the memberships and what the impact would be.

City Manager Lynn will provide a list of any changes to the budget for the Workshop Meeting on April 6, 2015.

## **NEW BUSINESS**

Mayor Cooper called to discuss the proposal from EDiS Company for preparation of construction documents, preparation of bid documents, soliciting competitive bids and managing the construction of the proposed City Hall Complex, including a new building for the Parking Department and Main Street organization.

Mayor Cooper said that if this project is to remain on a course that the Commissioners set forth with starting construction this fall and next winter, this process has to get started. Mr. Wigley of DB&F has put together the preliminary plan for the Parking Meter building. The AIA document has been modified by EDiS. The Commissioners need to approve this at the March 20, 2015 Regular Meeting.

Commissioner Mills said that the next step is for the City Solicitor to review the document.

Mayor Cooper said that with the construction documents and construction phase, EDiS would continue to use DB&F to do the plans. EDiS would operate as the construction manager working for the City and would prepare bid packages for each of the trades as opposed to having a general contractor and one bid for the entire project. Mayor Cooper, City Solicitor Mandalas and City Manager Lynn met with EDiS to discuss the City's

need to hold the contracts to be assured that the competitive process meets its standards. The contracts would be with the City, but would be managed by EDiS for the various trades. The City would pay EDiS for its construction management which is in the estimates that the City has been given. EDiS estimated its construction management service in the amount of \$2,014,659.00 for design and construction. A pre-construction fee in the amount of \$52,159.00 and a fixed construction fee in the amount of \$532,000.00 would be added. Mayor Cooper thought it would be best to move the contract along with the letter of intent.

## **OLD BUSINESS**

Mayor Cooper called to discuss the processes and conditions for merging and unmerging lots including a proposed ordinance amending the Zoning Code to clarify the merger and un-merger of lots in the City.

Commissioner Mills noted that the Affidavits are part of a policy which would be undertaken by the Building & Licensing Department. These are informational and will not need to be voted on. His goal for the resolution to be voted on March 20, 2015 to go to public hearing.

Edits made to the resolution:

1. Line No. 53. Definition of Lot. Inserted "...unless specifically exempted from such requirement in this Chapter..." City Solicitor Mandalas noted that this deals with frontage and accommodates those lots that front the Boardwalk.
2. Lines Nos. 81-83. Definition of Gross Lot Area. Inserted "...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." City Solicitor Mandalas noted that this give the Building Inspector clarification as to what is considered the gross area of the lot for those lots that are divided by a street or dual zoned.

Mayor Cooper called for the update relative to solid waste discussions including but not limited to elimination of commercial refuse service, implementation of valet service and possible Code changes.

Commissioner Mills said that he and Commissioner McGuiness will be continuing with this subject. Not timeline is definitive for the letter to be sent out. They will be working with City Manager Lynn on engaging the business community and the potential to eliminate commercial refuse service to the business area. Discussion with regard to the ordinance will resume at a later date.

## **NEW BUSINESS**

Presentation on and discussion of the use of audio/visual technologies in the new municipal building including the use of video cameras to broadcast selected meetings was deferred to March 20, 2015.

## **CITY MANAGER'S REPORT**

City Manager Sharon Lynn reported that the Rehoboth Avenue restrooms are closed for painting until March 13, 2015.

## **COMMITTEE REPORTS**

There were no reports.

## **CITY SOLICITOR'S REPORT**

There was no report.

## **COMMISSIONER ANNOUNCEMENTS/COMMENTS**

Mayor Cooper and City Manager Lynn has talked with Mr. Jeff Sturdevant and Mr. Rip Copithorn of GHD on the wastewater issues via teleconferencing. Mayor Cooper has asked Mr. Sturdevant to give a presentation on March 20, 2015 about the history of the ocean outfall project and plant improvements and currently where it is at and the direction for the future. There will also be a discussion on funding for the project. Coming out of that meeting, the Commissioners will need to know how much will need to be borrowed and/or a plan on how the Commissioner will determine that. This will be a huge part of a referendum vote.

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

There were none.

## **CITIZEN COMMENT**

There was none.

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

There being no further business, Mayor Cooper adjourned the meeting at 12:47 p.m.

**Respectfully submitted,**

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**(Lorraine Zellers, Secretary)**