

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

September 8, 2014

The Workshop Meeting of the Mayor and Commissioners of the City of Rehoboth Beach, was called to order at 9:00 a.m. by Mayor Samuel R. Cooper on Monday, September 8, 2014 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

City Solicitor Glenn Mandalas gave the Invocation followed by the Pledge of Allegiance.

ROLL CALL

Present: Commissioner Toni Sharp
 Commissioner Patrick Gossett
 Commissioner Bill Sargent
 Mayor Samuel R. Cooper
 Commissioner Stan Mills
 Commissioner Lorraine Zellers

Absent: Commissioner Mark Hunker

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

CORRESPONDENCE

There was none.

NEW BUSINESS

Mayor Cooper called to discuss the request of Kitty T. Cole for consent to enlarge a porch at the second floor level, extend a roof over this porch and reconstruct an outside stairway and landing on a structure at 39 Olive Avenue which encroaches on City land and is subject to a license agreement with the City dated October 21, 1981.

Mayor Cooper had received a letter dated May 27, 2014 from Ms. Kitty Cole requesting permission to add to a structure that encroaches into Cranberry Park. Copies of the letter, survey, license agreement dated October 21, 1981 and an architectural plan of the improvements were forwarded to the Commissioners prior to the meeting. A good part of the construction would be on City land, and according to the terms of the license agreement, the Commissioners must approve it.

Mr. George Cole represented Ms. Kitty Cole of 39 Olive Avenue. The steps need to be replaced and the platform made bigger. Water has leaked through the upstairs door to the efficiency on the first floor. The best approach would be for the roof line to overhang further than what is currently there. The deck would be enlarged. The platform at the top level going into the unit would be realigned. The only thing being added into the City property would be the posts. There would be not negative impact on neighboring properties, and there would be minimal impact on Cranberry Park.

Commissioner Stan Mills noted that the license agreement permits them to use City property, and the proposed construction would be within the license agreement. The footprint within the City property is minimal. The proposed construction fits within the parameter of the 12 foot licensed area. The license agreement should be redone and the address corrected from 45 Olive Avenue to 39 Olive Avenue.

Commissioner Bill Sargent said that what is currently there is somewhat hazardous, and the proposed construction will result in something that is safer. A carpenter should make certain that the water tends to flow off the platform of the deck since it seems to hold water. The Commissioner could accommodate the request very comfortably.

Mayor Cooper suggested that the Commissioners set a time limit of one year or 18 months for completion. Ms. Cole should meet with the Building Inspector, before the Commissioners take action, to discuss a revised plan with regard to the steps encroaching into the setback area.

City Solicitor Mandalas provide an explanation of a license agreement. The City gives permission to allow an individual to use City property. It is different from a land lease agreement which gives additional property rights. The previous license agreement would be referenced in the new license agreement, and the drawing would be attached to the new license agreement.

Building Inspector Terri Sullivan noted that an as-built survey can be done at the end of the project.

OLD BUSINESS

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

Commissioner Mills distributed copies of the proposed ordinance, redline edits from the last meeting and discussion points/comments to the Commissioners prior to the meeting. Merging lots allows the ability to use both lots together to achieve the 40% natural area. The lot lines change.

Mayor Cooper noted that in South Rehoboth and Schoolvue, nearly every lot encompasses a merger because the lots are plotted as 25 feet wide. A 50 foot wide lot is a merger of two lots.

Changes to the proposed ordinance:

1. Lines 45-51. Correct the definition of lot in Section 270-4. A common way to define a lot is by metes and bounds, and it can be made up of parcels. Currently under the definition, the parcel of land on which a main building and any accessory buildings are placed, together with the required yards, a vacant piece of land is not a lot.
2. Lines 45-64. Delete "...as shown on the Zoning Map..."
3. Lines 60-61. "Two or more lots under common ownership shall be combined into a larger single parcel..." The current Code does not mention ownership at all. It is possible to have an affidavit for residential and/or commercial lots noting that lots under different titles are merged and encumbered and cannot be un-merged.

City Solicitor Mandalas noted that common ownership is a concept that developed in common law dealing with merger. As for mergers going forward, if there is going to be an affidavit putting all interested parties on notice that lots are merging, there is not a real need to have a common ownership requirement. As long as there is acknowledgement that the properties are merged and cannot be un-merged without going through the City process, then the common ownership requirement can be removed for those properties for future mergers. In looking at the past, common ownership has to be an element that is considered.

Commissioner Mills thought the common ownership should be a requirement if there is a way to remedy it by having an affidavit that says the two lots are merged and encumbered even though they have different titles and that they cannot be un-merged unless it goes through a certain process.

Mr. Gene Lawson, Esq., 12 Hickman Street, said that the term "merger" should be taken out of the title business, and have merger for zoning purposes done for the recorded site plan. Making merger for zoning purposes a physical plan that has to be recorded in Georgetown will take care of common ownership. The site plan would be a plan of the lots that are being merged and would be designated as a site plan that merges the two lots for zoning purposes. It would be recorded behind the most recent deeds to each of the properties so any title search would pick up the merger.

Mayor Cooper said that it would have to be recorded with all the affected properties.

City Solicitor Mandalas said that common ownership may not be element that would be required if it is a specific process that would be codified rather than looking at common law of merger. A recordation process would be needed. The proposed ordinance would probably take care of 95% of the cases because there is an allowance for the Building Inspector to approve an automatic un-merger for those lots that were plotted at 5,000 square foot or two 2,500 square foot lots put together. Most of the instances of what has been merged would be taken care of by some of the basic provisions of the proposed ordinance dealing with automatic un-merger.

4. Lines 58-64. The criteria for mandating merger of multiple lots.
 - (1) "...as evidenced through the placement of a structure, structures **or other improvements thereon...**"

Commissioners Mills noted that the definition of structure in the Zoning Code is anything that is constructed or erected, including any part thereof, the use of which requires permanent location

on the ground or attachment to something having a permanent location on the ground, including, but without limiting the generality of the foregoing, house trailers, mobile homes, relocatable homes, signs, swimming pools, porches, balconies, decks, canopies, fences, backstops for tennis courts, pergolas, gazebos, heating, ventilating and cooling devices, compressors or pumps and showers, and excluding driveways and sidewalks. Driveways and sidewalks would be considered improvements. Examples mandating merger of lots are a handicap ramp extending across a shared lot line, house straddling the shared lot line, house on one lot and accessory structure on second lot, fence, sidewalk and driveway. Commissioner Mills thought that one of the triggers would be in getting a building permit.

- (3) "...when multiple lots are expressly combined to comply with the provisions of this chapter."

Commissioner Mills noted examples mandating merger of lots. They are when a property owner wants to decrease natural on one lot to under 40% to add a patio, and utilizes the second lot to ensure 40% natural for the single large parcel; when the house on the first lot is enlarged using FAR calculations based on having the second lot serve the single larger parcel; When the house is entirely on lot 1 but so close to the property line that it needs lot 2 so that it is not in violation of side yard setbacks; and when lot 1 is so developed that it would violate FAR, natural cover, etc. if it did not have the benefit of lot 2. Commissioner Mills thought that one of the triggers would be in getting a building permit.

Mayor Cooper noted that currently there is no documentation for this criteria.

- (2) "...when the multiple lots are utilized as on parcel as evidenced through the use or uses thereon..." Examples are when both the first and second lot do not need each other to be zoning compliant, but they are still being used as a single parcel such as a parking lot on one lot and ancillary parking on the other lot; formal garden extending from one property to the other, and an art studio on one lot and classes conducted outdoors on the other lot.

Commissioner Mills recommended that this criteria be eliminated. The consensus of the Commissioners was that this criteria should be eliminated.

City Solicitor Mandalas noted that common law merger includes merger by structure and merger by use. The current definition of lot does not talk about any merger by use. Historically, the City has applied merger by use. There is no permit triggering event that would cause the City to become aware of a use that would merge properties. With regard to parcel, it is usually defined as one or more lots or portions of lots.

Mayor Cooper thought that the crafting of an affidavit would be hugely important because the two lots will forever, unless they are unmerged, be viewed for zoning purposes as though they are one.

Commissioner Gossett noted that parcel is not defined in the Code. He would like to address this at this time. A lot is defined by metes and bounds, but lots make up parcels. A parcel can also be a single lot.

City Solicitor Mandalas said that with regard to parcel, it is usually defined as one or more lots or portions of lots. Parcel is a term that is often used for tax purposes, so a single lot can be a single tax parcel, or a multiple of lots can be a single tax parcel. Parcel is understood well enough in the law so there is not an absolute necessity to define it in the Code.

- (4) Monitoring/recordation of merged and separation of merged lots. The methods can be in-house monitoring and/or recordation in Georgetown or a combination. The program idea would be that when a property owner seeks information about doing something with their property, then Building & Licensing would advise them that those actions may cause a merger and advises them of the conditions for merger and the process for separating merged lots; when a property owner submits a building permit application and Building & Licensing determines that their actions may cause a merger of lots, then Building & Licensing would have the property owner sign an affidavit acknowledging that their actions may cause a merger and the process for separating merged lots; when a property owner seeks to unmerge lots, they must submit an application to Building & Licensing to do so; and Building & Licensing creates and maintains a master log of mergers while retaining the original affidavit in the property file.

Commissioner Mills noted that this criteria would satisfy the Board of Adjustment and have a formal process for merging/unmerging. Recordation would need to also be done in Georgetown.

City Solicitor Mandalas said that the affidavit recorded in Georgetown would be to provide notice that for zoning purposes two or more lots have become one single building or zoning parcel. If there would be an attempt at a future time to sell off one of the lots, the unsuspecting buyer would be put on notice when there is a title search performed and the affidavit is located. The sale would not go forward until the formal process is taken advantage of through the City to unmerge the merged properties. The recordation process would be to avoid the problem of a new owner requesting a building permit and being denied when the lots are merged because one of the two lots was put in a different entity's name and was sold off.

Mr. Vincent Robertson, Esq. said that in Angola by the Bay, Sussex County, there is process which works like that. Some of the lots did not perk well, so two lots were merged in order to get a septic permit. A one-page affidavit is recorded at the Recorder of Deeds so that way when a title search is done it is known that either lot has merged. The affidavit has a legal description with two map parcel numbers on it, and in the body it says that to terminate the agreement the Division of Soil and Water at DNREC has to be contacted to get its approval. A one-page affidavit of termination would then be filed. This process works well. Attorney Robertson will forward copies to the Commissioners. The fee for recordation is less than \$49.00. The affidavit would be recorded at the same time as the as-built survey.

- (5) Notice. The proposed ordinance would be a Zoning Code amendment so it would require a public hearing. After adoption, it would be noticed in the newspapers. A certificate of merger would be signed so it would also service as a form of notice. The intent of retroactive notice is to notify property owners that their past actions may have constituted a merger, and it gives the property owner a limited window of opportunity to separate lots merged in the past regardless of the awareness of the property owner.

Commissioner Mills said that the attorney for the Board of Adjustment agreed that this would be a quagmire, and it would be difficult to do. The attorney is comfortable in the going forward process with signing an affidavit, etc. and not providing retroactive notice in that the Commissioners are providing an automatic un-merger process if the right requirements are met. Commissioner Mills recommended that this section referring to retroactive notices should be deleted in its entirety, and only use the notice going forward.

City Solicitor Mandalas said that there will be a few cases where something was done in the past where two lots have merged and the home is too close to the property line so it encroaches and the Building Inspector will take the position that those properties have merged. Without removing the structure, there would be no automatic un-merger. This type of case would still go to the Board of Adjustment, and it would rule the way it has previously ruled that the two properties have not merged. The number of those cases are probably small compared to the concern raised by giving notice to all the property owners. He thought that doing away with this provision is the wiser route to go.

The consensus of the Commissioners was to strike the retroactive notice in its entirety.

- (6) Relative to separation of lots. This would provide allowance for lots originally plotted as buildable but which are undersized due to original surveying errors or inaccuracies. Original non-standard lots sizes were also looked at. In Section 270-46.1(B), lots combined as provided herein may be separated to their originally plotted configuration, without additional approval by removing the structure, structures, or other improvements, or discontinuing the use or uses previously causing the combination, so long as the lots, as originally plotted, conform to the requirements of this Chapter. An allowance would be provided for undersized lots due to original non-standard lot sizes, specifically 50 foot wide but less than 100 feet deep.

Commissioner Mills said that if there is going to be an allowance for undersized lots, they need to be referenced somehow. There is no one map that can be used for the entire City. There are blocks in the City that were originally plotted at less than 100 feet deep.

City Solicitor Mandalas asked if the Commissioners would want to carve out areas in the City where there are lots that are less than 5,000 square feet but they were originally plotted that way

and give special allowances under the ordinance for those areas so they can be unmerged. An option may be that so long as the lot can still fit the rectangle within it. In dealing with the undersized lots as originally plotted, the Commissioners would need to either acknowledge them and provide some allowance for it in the ordinance or take the policy prospective of not acknowledging them and there is some real value to having fully sized buildable lots and not give them the benefit of an automatic un-merger process. There are a three approaches to take with regard to the map situation: 1. Put together a conglomerate of maps. 2. Put the burden on the property owner to convince Building & Licensing that a lot was originally plotted as 5,000 square feet. 3. Create a new map for purposes of merger.

Mayor Cooper thought that relief should be given for the undersized properties that not only applies to merger, but potentially to other things as well. Everybody, as far as zoning purposes, has a full lot.

Commissioner Sargent said that unless there is a compelling reason, an undersized lot should be recognized as a buildable lot.

Building Inspector Sullivan noted that the only time there is a major issue is with the 25 foot x 100 foot lots which were originally plotted that way.

Mayor Cooper thought that by keeping the 4,000 square foot rectangle standard may be an answer. There may be some lots that would require a variance. If the proposed ordinance is adopted, hereafter, all the people who build in South Rehoboth will have to do an affidavit for their two or more 25 foot lots.

Mayor Cooper suggested using language that says if it is originally plotted by a determination of the Building Inspector as to what map is used or otherwise go to the Board of Adjustment to make the case that the wrong map was used. Subsequent plats may need to be considered. Not all circumstances can be considered, and that is what the Board of Adjustment is there for.

The consensus of the Commissioner was that an allowance should be given for undersized lots. The 4,000 square foot rectangle fits the criteria if a lot is somewhat less than 5,000 square feet as required by the Zoning Code which would allow for deviation from the 50 foot frontage as well as depth and square footage. The Commissioners' guidance to City Solicitor Mandalas is to pursue reconfiguring this section as necessary to give allowance for lots that are 50 feet wide x under 100 feet deep and originally platted in a way that became the 4,000 square foot rectangle.

- (7) Lots that become non-conforming because of new a zoning classification. Scenarios would be: 1. Lots originally zoned as commercial and have not setback requirements. 2. Residential dwelling is built on one lot and is zoning compliant at that time. 3. Owner of one lot already owns the second lot or purchases the second lot at some point in the future. 4. At a future date, the zoning classification is changed to residential. 5. Same property is currently legally non-conforming because the dwelling encroaches into the new side yard setback resulting from change in zoning. 6. Lots becoming merged as the second lot is used to remedy lack of proper current side yard setback for the first lot. A possible path forward would be to do a special exception which would give more direction to the Board of Adjustment.

Mayor Cooper said that Board of Adjustment should be the impartial judge of whether a structure was built conforming under the code at the time and later became non-conforming because of the changes in the code. He would hope that the burden on the applicant would be fairly high, but at least it would be some way for relief without having to tear down the structure. This would also apply in going forward. No new mergers should be created that are not done by an affidavit. If the Zoning Code would be changed in the future and a building permit is obtained afterward, there is no merger.

Mr. Tom Zellers, 308 Stockley Street, said that the Commissioners are only addressing the lots side by side and asked about lots that are back to back on different streets. Commissioner Mills said that this type of situation would not be allowed in residential. For the residential area in the Code, the lots must be contiguous and continuous on a street.

The consensus of the Commissioners was that common ownership should be put in the proposed ordinance for both residential and commercial. City Solicitor Mandalas agreed that it is cleaner as to both residential and commercial. The requirement of common ownership would

prevent some private disputes.

NEW BUSINESS

Mayor Cooper called to discuss a proposed ordinance amend Chapter 159, titled "Flood Damage Reduction", of the City Code which changes would bring this chapter into agreement with FEMA's current requirements for the National Flood Insurance Program.

Mayor Cooper said that in 2012, the City adopted a complete rewrite of Chapter 159. FEMA has made additional changes since then and hired a consultant to go through the various codes and help people bring them up to speed. A copy of the proposed ordinance was distributed to the Commissioners prior to the meeting. There are approximately 200 properties that will be affected by this proposed ordinance.

Building Inspector Sullivan said that in 2012, the City received approval from DNREC and FEMA prior to the Commissioners adopted the requirements. Since then, FEMA has made changes to the State model. The City was notified that it will no longer comply if the current changes are not made.

Attorney Robertson noted that the County is going through the same exercise under the same timeframe as the City is. One of the things the County is looking at is to potentially have consistency along the coastline with some of the requirements.

This item will be placed on the agenda for the next Regular Meeting.

Mayor Cooper called to discuss a proposal from EDiS Company to provide design development level architectural, engineering and estimating services for the proposed City Hall Complex.

Mayor Cooper noted that the proposal is in the amount of \$250,000.00 of which \$245,000.00 had been budgeted. The proposal covers what the Commissioners expect to have done. One concern he has was whether or not there are foundations from the old City Hall building which was located in front of the current City Hall. Part of the process will be to decide whether or not to go with a geotechnical system.

Commissioner Mills said that some surface evaluations are not included in the fee. HVAC calculations and system design will done with regard to loads, etc.

This item will be placed on the agenda for the next Regular Meeting.

Mayor Cooper called to discuss a proposed ordinance that would repeal Chapter 152, titled "Fire Prevention", of the City Code.

Mayor Cooper said that this Chapter has never been updated and is seriously outdated, and there is nothing in this Code that has any redeeming value. Since this ordinance was passed in the 1970s, the Fire Marshal's office is much larger and does plan reviews, etc. Mayor Cooper recommended to repeal this Chapter in its entirety, but leave the Chapter number in the Code.

Ms. Sullivan noted that the City has a Memorandum of Understanding with the Fire Marshal's office giving permission to come into the City to perform inspections.

This item will be placed on the agenda for the next Regular Meeting.

Mayor Cooper called to discuss a proposed resolution that would give guidance to the Building Department and allow replacement HVAC equipment to continue an encroachment into side and rear yards required by the Zoning Code.

Mayor Cooper noted that the proposed resolution would permit HVAC units to be replaced in the same location even if they were previously in a side or rear yard. He contacted Ms. Sullivan and City Solicitor Mandalas and both feel that this can be done with a resolution. Mayor Cooper said that an air conditioner is part of the structure and should be on a new installation within the setbacks. No one should be free to place the air conditioner anywhere on the lot that they want to. The building official will take this and understand what the intent of the Commissioners is and apply it.

City Solicitor Mandalas read the resolution.

Attorney Robertson said that the resolution does not address is a situation where there is a lot that has been sold and a survey needs to be done and there is an HVAC unit in the setback that currently a variance is needed to get the survey approved. He suggested that this scenario should be addressed. The title companies want the survey recorded with no encroachments, so if it is brought to Ms. Sullivan to get it approved and recorded, she

will not approve it. Ms. Sullivan noted that she has a stamp for recordation purposes only, but not for zoning purposes. The survey can be recorded even though it is not approved for zoning purposes.

Mayor Cooper said that a layer would have to be added that the building official would be able to certify. The Commissioners have taken the position in the past that if there is something in the setback the City has not enforced against anybody, but it is the title insurance companies that have these requirements.

Mr. Frank Cooper, 96 East Lake Drive, voiced concern that by augmenting the process of going to the Board of Adjustment, this would eliminate the neighbors from having due process.

Mr. Walter Brittingham, 123 Henlopen Avenue, said that what is being proposed is wonderful. It will save people a lot of money.

City Solicitor Mandalas said that this resolution related to Section 270-49 of the Code. Previously HVAC units have been interpreted to be stand alone and separate from the house structure. This resolution acknowledges that under Section 270-49, as with siding and other repairs, a replacement HVAC unit is a repair to the overall structure.

This item will be placed on the agenda for the next Regular Meeting.

Mayor Cooper called to discuss the plans to install water and wastewater mains in Lake Drive west of King Charles Avenue.

Mayor Cooper said that the City is involved with the need to extend water and sewer services to a property on Lake Drive. Davis Bowen & Friedel Inc. (DBF) has been working with the City on this project. Mayor Cooper provided a presentation of the property in question and the proposed services to it. The property had been serviced by water and sewer lines from St. Lawrence Street. After losing a lawsuit, the City is now required to extend the water and sewer services to that property on Lake Drive. This project would take approximately three months to complete. A copy of the estimate in the amount of \$656,850.00 was provided to the Commissioners for their review. The City has two capitalization accounts for water and sewer. This money is not to be used for maintenance issues, but it can be used to expand system capacity. The project does not meet all the criteria, but it is expanding service on a street where it does not exist now. Funding for this project would be 1/3 from the water capitalization account, 1/3 from the sewer capitalization account and 1/3 from the general fund or reserves. Currently, there are issues with right-of-way on Lake Drive that will need to be potentially resolved.

There was consensus of the Commissioners to move forward with developing the plans for the full extension of sewer and water.

CITY MANAGER'S REPORT

City Manager Sharon Lynn reported that the Mayor has been working with other municipalities informing the delay of the Founder's Insurance Trust. The City has received notice that on September 1, 2014, the program has been approved by the Department of Insurance. This is the first self-insured program in the State of Delaware. The annual fee for the program is \$331,914.00 which is a 32½% decrease from what was budgeted at \$462,308.00. Meters will be off on September 14, 2014 at midnight. Currently, the meter revenue is exceeding what has been projected and budgeted. The number of parking permits sold this summer has exceeded that of last summer. The total of scooter permits sold were 663, an increase from 609 last year.

COMMITTEE REPORTS

There were no reports.

CITY SOLICITOR'S REPORT

There was nothing to report.

COMMISSIONER ANNOUNCEMENTS/COMMENTS

Mayor Cooper commented that he had been approached by the Sussex County Administrator and Sussex County Council President that they are rolling out on September 11, 2014 a new program at the EOC called SMART 911. This system will sit on top of the existing 911 system and is similar to CodeRed. Each person will voluntarily put their information such as medical conditions and photographs on it. When the 911 information populates, it goes to the EOC database and brings up that information. The initial cost is \$5,000.00 which the City has agreed to pay. The City is picking up the licensing fees for the first year. A kick-off ceremony will be held on September 11, 2014 at 11:00 a.m.

Commissioner Mills commented that he spoke in front of the Ocean City, MD town council about the City's philosophy and process on its smoke free initiatives. At that meeting, the town council voted to authorize the City Solicitor to draft language for no smoking on the beach or boardwalk, except designated areas. Commissioner Mills had hosted two Ocean City planners this past week to walk them around the City and show them the smoking areas and how the City's process.

Commissioner Sharp commented that the Annual Cottage in Town Awards are underway for this year. Everyone should take note of last week's Coast Press which had a banner ad at the bottom, starting to advertise Cottage in Town for in-town residential and commercial properties. Everyone should download a nomination form from www.downtownrehoboth.com. Commissioner Sharp thanked everyone who manned the Boardwalk kiosk this summer and gave out information. She announced that the downtown businesses had a wonderful summer. The rental market is up, the hotels had high occupancy and there was a brisk summer business. On behalf of Main Street and the businesses, they hope for a lively and well attended off-season to make some of the uneven months better for the businesses.

DISCUSS ITEMS TO INCLUDE ON FUTURE AGENDAS.

Items to be included on the agenda for the October Workshop Meeting: 1. Personnel Committee update. 2. Merger topic will continue. 3. Electrical vehicle charging station topic will continue. 4. Update will provided for the smoking initiative. 5. Discussion of what went well during the 2014 season and what needs improvement for the upcoming season.

CITIZEN COMMENT

There was none.

The Joint Meeting with the Planning Commission will be held on September 12, 2014 at 3:00 p.m. to discuss swimming pools and other issues.

The next Regular Meeting will be held on September 19, 2014 at 7:00 p.m.

There being no further business, Mayor Cooper adjourned the meeting at 12:13 p.m.

Respectfully submitted,

(Lorraine Zellers, Secretary)