

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

January 15, 2010

The Regular Meeting of the Mayor and Commissioners of the City of Rehoboth Beach, was called to order at 7:02 p.m. by Mayor Samuel R. Cooper on Friday, January 15, 2010 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

City Solicitor Glenn Mandalas gave the invocation that was followed by the Pledge of Allegiance.

ROLL CALL

Present: Commissioner Bill Sargent
 Commissioner Pat Coluzzi
 Commissioner Kathy McGuiness
 Mayor Samuel R. Cooper
 Commissioner Dennis Barbour
 Commissioner Stan Mills
 Commissioner Lorraine Zellers

Also in attendance were: City Manager Gregory Ferrese
 City Solicitor Glenn Mandalas

APPROVAL OF AGENDA

Mayor Cooper requested that Item 10(A) – Discuss possible ordinance requiring the construction of missing or discontinuous sidewalks upon the occurrence of certain events and Item 11(B) – Consider appointments to City committees, commissions and boards be deleted from the Agenda. City Solicitor Glenn Mandalas was not prepared to move forward with Item 10(A), and Mayor Cooper was not prepared to move forward with Item 11(B).

Commissioner Stan Mills made a motion, seconded by Commissioner Bill Sargent, to approve the Agenda as amended. Motion carried unanimously.

CORRESPONDENCE

There was none.

APPROVAL OF MINUTES

Minutes of the December 2, 2009 Workshop Meeting, December 14, 2009 Special Meeting, December 18, 2009 Regular Meeting and January 4, 2010 Workshop Meeting were distributed prior to the meeting.

Commissioner Mills made a motion, seconded by Commissioner Sargent, to approve the December 2, 2009 Mayor and Commissioners Workshop Meeting minutes as corrected. Motion carried unanimously.

Commissioner Mills made a motion, seconded by Commissioner Lorraine Zellers, to approve the December 14, 2009 Mayor and Commissioners Special Meeting minutes as written. Motion carried unanimously.

Commissioner Mills made a motion, seconded by Commissioner Zellers, to approve the December 18, 2009 Mayor and Commissioners Regular Meeting minutes as written. Motion carried unanimously.

Commissioner Mills made a motion, seconded by Commissioner Pat Coluzzi, to approve the January 4, 2010 Mayor and Commissioners Workshop Meeting minutes as written. Motion carried unanimously.

REPORT OF THE POLICE DEPARTMENT

(See attached report.)

Police Chief Keith Banks presented the report of the Police Department for the month of December 2009. There were 56 criminal, 164 traffic and one civil charges made during the month. Four traffic crashes were investigated. The Dispatch Center handled 159 police incidents, 138 ambulance incidents, 48 fire incidents, 180 traffic stops, assisted other agencies 10 times during the month, and 9-1-1 calls totaling 244 were received. There were 21 police alarm incidents with only one being an actual alarm.

REPORT OF REHOBOTH BEACH VOLUNTEER FIRE COMPANY

Mr. Chuck Snyder presented the report of the Fire Company for the month of December 2009. The officers for 2010 and are as follows: Mr. Donald Mitchell, Jr. – Fire Chief, Mr. Craig Farren, Deputy Chief, Mr. Chuck Snyder – 1st Assistant Chief, Mr. Lenny Marsch – 2nd Assistant Chief, Mr. Chatham Marsch – 3rd Assistant Chief, Mr. Leonard Tylecki – Chief Engineer, Mr. Mike Simpler – President, Mr. William Delle Donne – Vice President, Mr. Daniel Mitchell – Secretary, Mr. Ron Blizzard – Assistant Secretary, Mr. Ted Doyle – Treasurer and Mr. Rob Dobak – Assistant Treasurer. He reported that the total calls for the calendar year 2009 were 660 fire and 2,292 ambulance calls which is an increase over the calendar year 2008. The Polar Bear Plunge event will be held on February 7, 2010. A command bus from the County will be brought in to help coordinate and manage the event. Mr. Snyder reminded everyone to have their heating systems checked and chimneys cleaned. The website at www.rehobothbeachfire.com is being updated regularly.

REPORT OF THE BUILDING AND LICENSING DEPARTMENT

(See attached report.)

Building Inspector Terri Sullivan presented the report of the Building & Licensing Department for December 2009. During the month, 43 building permits were issued for a value of work totaling \$1,030,607.02. Fees collected totaled \$19,437.23 for the month. Forty-seven permit processing fees were received in the amount of \$940.00. No restaurant applications were received in December. No stop work orders were issued. No signs were removed from City property. One notice of violation was issued for no tree protection. One notice of violation was issued for a dumpster without barriers. The Board of Adjustment heard one case in December. A grant application for a comprehensive review of all public trees and a complete forestry canopy assessment to evaluate canopy density was submitted to DNREC today. The maximum allowed for the grant is \$15,000.00 with an in-kind match of 25%. Notification is anticipated by February 4, 2010 regarding whether the City has received the grant.

REPORT OF THE PLANNING COMMISSION

There was nothing to report.

OLD BUSINESS

Mayor Cooper called to a proposed revision to the City tree ordinance, Chapter 253 of the City Code.

Commissioner Dennis Barbour had distributed a copy of the suggested revisions to the Commissioners prior to the meeting. Comments returned to Commissioner Barbour, were organized into three categories: 1. Substantive. 2. Quasi-substantive. 3. Editorial. Commissioner Barbour suggested that he and Commissioner McGuinness go through the suggested changes and parse out the ones which are editorial. After a lengthy discussion, it was determined that the ordinance would be reviewed section by section.

Commissioner Coluzzi approved of the change that the Park and Shade Tree Committee will be more of a planning committee, and the appeals will be heard before the Board of Adjustment.

Mayor Cooper saw this ordinance as three articles: 1. General statement of purpose and definitions. 2. City Trees and Park and Shade Tree Committee. 3. Body of the ordinance.

The suggested revisions are as follows:

1. Line 291. Section 253.3(E) – Protected Trees. Commissioner Pat Coluzzi noted that this section defines what a protected tree is and should be moved into the definition section of the ordinance.
2. Line 184. Section 253.3(A) – Findings. This section should be moved to the beginning of the ordinance. Commissioner Lorraine Zellers noted that by moving this section, it will let the residents know that the Commissioners hold the City to the same standards as the private citizens are held.

Commissioner Sargent suggested that this section should be removed. There should be a purpose statement such as “The purpose of this Chapter is to achieve and maintain the tree density within publicly and privately owned lands of Rehoboth Beach that enhances the City beauty and the quality of life for its residents and visitors”. The statement of purpose would accomplish the same thing as the Findings would. Mayor Cooper said that the Findings serve a purpose to help a person, at a future date, to understand what was in the minds of the Commissioners in moving forward. Commissioner Coluzzi commented that the Comprehensive Development Plan (CDP) is referred to on Line 187, Subsection (A). This is an important piece which should be in the ordinance because it was certified by the State and was adopted; and it calls for the preservation, protection and conservation of trees

within the City. Commissioner Sargent did not think that the importance of the Comprehensive Development Plan needs to be recognized throughout the Code. Mayor Cooper agreed. Subsection (A) could be listed as a "Whereas" clause when the ordinance is ready to be adopted. One of the "Whereas" clauses could cite the Comprehensive Development Plan without it being codified in the Code.

3. Separate purposes are to be included at the beginning of each section for public and private.
4. Section 253.1 – Definitions and Word Usage.

Commissioner Barbour noted that Mr. Bryan Hall came up with a universal set of definitions, and the entire definition section is the result of Ms. Sullivan and Mr. Bryan Hall's work and knowledge of how the ordinance works. Commissioner Barbour has relied heavily, in many sections of this Code where there are changes, on the experience of the people that deal with it on a day-to-day basis.

The following definitions should remain or be added or deleted in the ordinance because of their usage or lack of usage in the body of the ordinance.

- a. Line 22 – Ball and Burlapped. The correct terminology is Balled and Burlapped.
- b. Line 37 – Canopy. This definition should remain.
- c. Line 38 – Canopy Density. This definition should remain.
- d. Line 45 – Crown. Delete this definition because this word does not appear in the ordinance.
- e. Lines 102-103 – Root Crown. This definition should remain.
- f. Line 123 – Topping. Use the definition from Section 253-13 of the old ordinance.
- g. Line 132 – Urban Forestry. This definition should remain.
- h. Add the definition of "mulch".
- i. Add the definition of "line tree".
- j. Add the definition of "tree professional".

Commissioner Coluzzi suggested that if descriptive words such as canopy, canopy density, crown, etc. are used in the ordinance, they should be defined. If those words are not used, then they are not needed.

Ms. Sullivan noted that when Mr. Hall came up with the definitions, they were based on the ANSI standards. Mr. Hall's suggestion was to follow the ANSI standards. The State also follows those standards.

Mayor Cooper recommended that the ANSI standards should be provided to the Rehoboth Beach Public Library.

Commissioner Sargent suggested that the Commissioners handle the definitions only as a policy matter, and only put in definitions that are needed to support the Code; and if there is anything that is unclear and needs to be clarified, then do that. Commissioner Barbour said that if there is a uniform standard that professionals have developed, he would defer to that. To the extent that the ANSI definitions apply in the requirements of this section, those will be the ones used. Commissioner Sargent said that adhering to unfamiliar standards would not make sense until it is known that those standards are used by municipalities across the United States and is accepted practice. Commissioner Barbour suggested that research should be done as to how ANSI standards are applied, and Mr. Hall could give a presentation on this subject.

Commissioner Mills thought that a comprehensive review of the ordinance is needed from beginning to end.

Commissioner McGuiness suggested that she and Commissioner Barbour should take all the comments and put as many of them into the ordinance as possible; and then return to the Commissioners with a new draft.

- j. Refer to the ANSI code and incorporate it into the ordinance.

Commissioner Sargent said that the objective of the City is to have a marvelous "canopy", but he did not think that the Commissioners can drive the Code by "canopy". "Caliper" would be the best way of doing it. He would not mix very much about "canopy" in this ordinance, except that the Park and Shade Tree Committee can undertake studies of whether the City is meeting a standard and the Committee can provide guidance. Mayor Cooper disagreed. "Canopy" gives clear direction, and what is being looked for is tree cover. The City has applied

for a grant to help determine what the “canopy” is in areas. The state of the art technology is moving away from “caliper” and towards “canopy” as the measurement.

Commissioner Coluzzi made a motion, seconded by Commissioner Zellers, to take the definitions and use the ANSI standards; only use the definitions as they are in the remainder of the ordinance; and move on to the next section.

Commissioner Barbour said that a new definition section should be developed which has all the changes in it. The Commissioners should accept Mr. Hall’s recommended deletions, etc. and look at a clean copy of the definitions for the next iteration. Commissioner Barbour will work with Commissioner McGuinness and Ms. Sullivan to develop a new definition section.

The consensus of the Commissioners was that a motion was not needed to move forward.

7. Section 253.2 – Public Spaces.

- a. Line 141. Section 253.2(A) – Purpose. Community Forestry Program is mentioned but it is not known whether it needs to be defined. Community Forestry Master Plan was removed from the definitions.
- b. Line 144. Section 253.2(B) – Park and Shade Tree Committee. Formerly known as Parks and Shade Tree Commission.
- c. Line 148. Section 253.2(B)(1). Delete “...and residents...”
- d. Lines 155, 158 & 161. Section 253.2(B)(2)(a), (b), (c). Commissioner Mills thought that Subsections (a), (b) & (c) are redundant and could be combined in a new Subsection (a).

Commissioner Barbour noted that the Arbor Day Foundation has specific language for what the City has to do to qualify to be a Tree City. The language was pulled directly from the standards for maintaining the status as a Tree City. Commissioners Coluzzi and Zellers agreed that the current language is straightforward.

Mayor Cooper agreed with Commissioner Mills. Subsection (c) is more comprehensive than (b) because it speaks about City staff and encompasses all of what is in (b).

Ms. Sullivan noted that Subsection (b) is an annual working plan which the Park and Shade Tree Committee shall develop; and (c) is a comprehensive tree management plan for the future.

- e. Line 177. Section 253.2(B)(4). Use of the term “forest resources”. Mayor Cooper said that only Central Park would qualify as a forest. It should be made clear in the Definitions or somewhere in the ordinance that when talking about a “forest”, it means all the trees in the City, not just those which are in groups. Somewhere in the ordinance it should be determined that where the term “forest” is used, it refers to “urban forestry”.

8. Section 253.3 – Trees on Private Property.

- a. Line 203. Section 253.3(B). Determine whether this is a “Section” or “article”.
- b. Line 220. Section 253.3(D)(1). “All residential lots, whether or not they contain a structure, and all residentially used lots that are commercial lots or mixed-use lots or other lots that are not residential lots, must maintain...” will be changed to read “[F]or all residentially zoned lots, whether or not they contain a structure, and all residentially used lots, must maintain...”
- c. Line 228. Section 253.3(D)(1)(a). “Each single-family residence lot in a residence district shall have...” will be changed to read “[E]ach lot in a residentially zoned district shall have...”
- d. Line 244. Section 253.3(D)(2)(a)[2]. Delete this subsection.
- e. Line 246. Section 253.3(D)(2)(a)[3]. “[O]nly one small specimen tree may be counted for each 5,000 square feet; and” will be changed to read “[N]o more than 1/3 of trees counted toward the density requirements may be small specimen trees.”
- f. Line 265. Section 253.3(D)(6). “...[a]n application for a building or demolition permit or for...” will be changed to read “...an application for a building permit of over 500 square feet or for...” The intent of this subsection is that there is no grandfathering.
- g. Line 269. Section 253.3(D)(7). “... [d]ensity requirements in Subsection 253.3(D) of this section as of...” will be changed to read “...density requirements of this article as of...”
- h. Line 271. Section 253.3(D)(7). “...[f]iled for a building permit for a structure of 500 square feet...” will be changed to read “...filed for a building permit for an addition of 500 square feet...”
- i. Line 272. Section 253.3(D)(7). Strike “...or demolition permit...”

- j. Line 285. Section 253.3(D)(9). This is the first reference to “land-clearing permit”, and every reference of this should be removed because it is not applicable.

Discussion ensued as to the fee for a tree permit. Currently, the fee is \$50.00 regardless of how many trees are removed. Commissioner McGuinness recommended that a certain amount of trees would be included in the \$50.00 price of the permit, but any trees over that amount would cost additional. Commissioner Barbour and Ms. Sullivan will work on developing language in this regard.

- k. Line 315. Section 253.3(E)(3) – Tree stand. This section is to be removed in its entirety.
- l. Line 322. Section 253.3(E)(4) – Historic Tree. This section is to be remain.
- m. Lines 329-333. Section 253.3(F) – Emergencies. This section should be more narrowly tailored. “[t]he requirements of these regulations may be...” should be changed to read “...the requirements of the tree removal permitting process may be...”
- n. Lines 343-344. Section 253.3(G)(1)(a). “[u]nless removal is by a tree professional with a City of Rehoboth Beach business license ...” will be changed to “...unless removal is by a tree professional with a City of Rehoboth Beach business license or an owner.”
- o. Lines 344-345. Section 253.3(G)(1)(a). All trees must be clearly marked. The property owner when applying for a permit, must identify which trees (in the field) are to be removed with a ribbon. The City will mark the tree with paint.
- p. Lines 352-356. Section 253.3(1)(a)[2](a)[1]. Commissioner Mills requested clarification as to “net buildable area” and matching it to the definition.

Commissioner Barbour said that the intent of “net buildable area” is the area of which the building permit is granted. When someone applies for a permit and the footprint is inside the setbacks, it is anything between the setbacks and the building. Commissioner Barbour and Ms. Sullivan will work on clarifying the definition.

Commissioner Mills said that a tree removal permit cannot be obtained unless the tree is within the footprint, and he asked what would happen if the tree is one foot outside of the footprint. Commissioner Barbour noted that there are exceptions.

Mayor Cooper hoped it would be worded that a driveway can be moved to the other side of the lot in order to save a tree.

Due to the lateness of the meeting, the review of the ordinance was stopped at Line 360. Section 253.3(G)(1)(a)[2](a)[3] – “The tree is located within an existing or proposed public easement...”

This item will be placed on the agenda for the February 5, 2010 Workshop Meeting.

NEW BUSINESS

Mayor Cooper called for an update on the Delaware League of Local Governments Insurance Trust and the City’s participation in the Trust.

Mayor Cooper said that several years ago the Delaware League of Local Governments (DLLG) put together a trust with the idea to be self-insured or to form a pool for insurance for municipalities starting with workman’s compensation. Various municipalities opted not to participate, and it was deemed to not be viable to start the pool. The remaining eleven municipalities have a master policy with a contract for each. The retrospectively rated plan provides for a municipality to receive a rebate or opt to pay up to 25% more into the plan. An important milestone which has been reached is that the plan starts April 1st of each year. The previous year ending in April 2009 has been closed out with over \$1,000,000.00 in total premium being collected. There was \$476,000.00 in set-asides for claims and \$130,000.00 to be rebated. The City’s share is \$34,000.00. The Board of Directors have been debating whether to rebate the money or have it kept by AmeriHealth in a fund for the municipalities. It is hoped that more municipalities will participate to start the pool. City Manager Gregory Ferrese and Mayor Cooper attended a meeting last week in which Mr. Ferrese advocated to return all the money to the City. This item will be discussed again at the Board of Directors’ Meeting on January 28, 2010.

CITY MANAGER’S REPORT

(See attached report.)

Mr. Ferrese reported that City Managers from other municipalities had a meeting with the Delaware Solid

Waste Authority (DSWA) on January 13, 2010 to object to the large proposed increase in tonnage disposal fees. DSWA proposes to raise the tonnage disposal fee from \$62.50 per ton to \$80.00 per ton effective July 1, 2010. The City Managers requested that the proposed increase be reduced and phased in over five or six years rather than three years. Mr. Ferrese had a meeting with Mr. Don Hocking, City engineer, to revise the Convention Center specifications to include the work which will be completed by the City electrician. This project will be advertised in January 2010. Mr. Ferrese has spent a lot of time preparing the 2010/2011 City Budget. The first Budget Meeting will be held on January 23, 2010 at 9:00 a.m. in the Commissioners Room. Sealed bids will be opened on January 20, 2010 at 1:31 p.m. in regard to Phase II Amenities at the Museum.

Mr. Ferrese recommended the approval of the Street Aid expenditures:

12/16/09	667	Delmarva Power	\$ 1,132.93 (Street Lights)
12/14/09	668	Daft McCune Walker, Inc.	\$ 10,865.46 (Handicap Ramps)
01/13/10	669	Delmarva Power	\$ 7,821.89 (Street Lights)

Commissioner Mills made a motion, seconded by Commissioner McGuinness, to approve the Street Aid expenditures as presented. Motion carried unanimously. Dennis was absent from the vote.

COMMITTEE REPORTS

Commissioner Mills, Boardwalk Committee, gave an update of Phase 2 of the Boardwalk Reconstruction Project to the Commissioners. The next meeting will hopefully be scheduled for the end of January or beginning of February 2010. The target date for the South Phase is the end of January 2010, and the project is close to being on schedule. During February 2010, the South Phase will be walkable. From Rehoboth Avenue north, the project is on schedule and the timeline is to have the Boardwalk walkable for Memorial Day 2010. Currently the decking is being added to the Boardwalk at the end of Rehoboth Avenue, and it is anticipated that this section will be walkable by the end of March 2010. The pilings are expected to be completed in the next two days at the Virginia Avenue access.

Mayor Cooper noted that the Budget and Finance Committee will be discussing the City's budget and financial matters on January 23, 2010.

CITY SOLICITOR'S REPORT

There was nothing to report.

COMMISSIONER ANNOUNCEMENTS/COMMENTS

Commissioner Coluzzi announced that in regard to the Sister Cities Program, an official letter has been received from the Mayor of Greve, Italy. A celebration will be taking place in Greve, Italy on April 17, 2010 for Verrazzano Day, and the City of Rehoboth will be the highlight of the festivities. Commissioner Coluzzi will be forwarding an email to the Commissioners to find out who wants to go and the length of stay.

Discuss items to include on future agendas.

Topics to be included on future agendas are the Tree Ordinance and the Oak Grove issue.

CITIZEN COMMENTS

There were none.

There being no further business, Mayor Cooper declared the meeting adjourned at 9:54 p.m.

Respectfully submitted,

(Kathy McGuinness, Secretary)