

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

January 21, 2011

The Regular Meeting of the Mayor and Commissioners of the City of Rehoboth Beach, was called to order at 7:01 p.m. by Mayor Samuel R. Cooper on Friday, January 21, 2011 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
 Mayor Samuel R. Cooper
 Commissioner Dennis Barbour
 Commissioner Stan Mills
 Commissioner Lorraine Zellers

Absent: Commissioner Kathy McGuiness

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

APPROVAL OF AGENDA

Commissioner Stan Mills made a motion, seconded by Commissioner Bill Sargent, to approve the Agenda as amended with the deletion of the November 8, 2010 Workshop Meeting and December 6, 2010 Executive Session Minutes. Motion carried unanimously.

CORRESPONDENCE

There was none.

APPROVAL OF MINUTES

Minutes of the December 6, 2010 Special Meeting and December 17, 2010 Regular Meeting were distributed prior to the meeting. Minutes of the November 8, 2010 Workshop Meeting and December 6, 2010 Executive Session were not available for this meeting.

Commissioner Stan Mills made a motion, seconded by Commissioner Lorraine Zellers, to approve the December 6, 2010 Mayor and Commissioners Special Meeting minutes as written. Motion carried unanimously.

Commissioner Mills made a motion, seconded by Commissioner Zellers, to approve the December 17, 2010 Mayor and Commissioners Regular 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 2010. There were five criminal, 133 traffic and three civil charges made during the month. Four traffic crashes were investigated. The Dispatch Center handled 149 police incidents, 153 ambulance incidents, 54 fire incidents, 168 traffic stops, assisted other agencies three times during the month, and 9-1-1 calls totaling 318 were received. Twenty-seven alarm incidents were responded to.

REPORT OF REHOBOTH BEACH VOLUNTEER FIRE COMPANY

No representatives were in attendance at the meeting to present a report.

REPORT OF THE BUILDING AND LICENSING DEPARTMENT

(See attached report.)

Chief Building Inspector Terri Sullivan presented the report of the Building & Licensing Department for December 2010. During the month, 73 permits were issued for a value of work totaling \$2,517,820.51.

Fees collected totaled \$47,303.09 for the month. Sixty permit processing fees were received in the amount of \$1,200.00. No restaurant applications were received in December. Two stop work orders were issued for contractors working without licenses. Three stop work orders were issued for contractors working without building permits. Three signs were confiscated from City property. Two notices of violation were issued for not having dumpster barricades. The Board of Adjustment heard one cases in December.

REPORT OF THE PLANNING COMMISSION

(See attached report.)

Mr. David Mellen presented the report of the Planning Commission. The Regular Meeting was held on January 14, 2011. The Planning Commission passed a resolution granting conditional preliminary approval of the Oak Grove at the Beach Major Subdivision. Copies of the Resolution and Irrevocable Escrow Agreement have been provided to the Commissioners. The Escrow Agreement can only be accepted by the Commissioners on behalf of the City. Condition No. 13 in the Resolution states that the Planning Commission's approval of Major Subdivision Application No. 0708-05 is conditional upon the execution of the final form of the Escrow Agreement by the Applicant and presentation of this agreement to and acceptance of the Escrow Agreement by the Mayor and Commissioners of the City of Rehoboth Beach. It was the Planning Commission's understanding that the Oak Grove Applicants thought their attorney, Ms. Jane Patchell of the law firm Tunnell and Raysor, have requested that this be put on the agenda of the Board of Commissioners January 21, 2011 meeting. When this agenda item is addressed, Planning Commission Vice Chair Mellen and Secretary Timothy Spies are prepared to answer any questions and provide any background information related to the Agreement that the Commissioners may have and require. The Planning Commission voted to conduct a Public Hearing at its March 11, 2011 Regular Meeting of a partitioning application for the property located at 807 King Charles Avenue subject to the Applicant's timely submission of additional information. The Planning Commission reviewed and adopted updates to the Planning Commission's Bylaws and Policy/Procedures. The Planning Commission reconfirmed its concurrence with the City's audio recording policy as it relates to the Commission and requested that the audio recordings of its meetings be placed on the City's website in accordance with the policy.

OLD BUSINESS

Mayor Cooper called to discuss the proposed redraft of Chapter 189 of the City Code which Chapter relates to the control of noise.

Commissioner Bill Sargent said that in October, the Commissioners began discussing the possibility of changing the patio ordinance so patios would be allowed to stay open until later hours. Many of the Commissioners looked at that favorably; but in order for this to be done, an effective noise ordinance would be needed. It was clear that the noise ordinance cannot be used, and the patio ordinance was often used to enforce the reduction of noise. Commissioner Sargent read a provision from the current Code. Notwithstanding anything to the contrary herein, during the hours designated as nighttime (from 11:00 p.m. on), in residentially and commercially zoned districts the noise level from stationary sources and mobile sources while stationary shall not be *plainly audible* within any receding dwelling unit including any dwelling unit in a multiple dwelling structure. In the current ordinance even though it says *plainly audible*, noise meters in the past were still needed to show what the problem was. The current Code is confusing because it lays out different frequencies and decibels that take a high degree of training to implement which is not available with the City's police officers. Furthermore, there is a problem with the use of noise meters to register the true level of noise from a particular establishment because of ambient background noises. This provided an ordinance which could not be enforced. The *plainly audible* standard is used widely throughout the United States. One of the advantages of the *plainly audible* standard is that it is clear what the standard is to a business or residence which is making noise and to someone else who may be offended by the noise. Commissioner Sargent adapted the City of Newark, DE noise ordinance to the City of Rehoboth, and his objective was to meet the desire of residents for peace and quiet, and the businesses and patrons for good entertainment. In Section 189-3 of the proposed ordinance, the definition of *plainly audible* noise is 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. Commissioner Sargent would like noise violations to become civil offenses with the use of small fines rather than criminal offenses. The intent is that people should live by the ground rules that the Commissioners are proposing. The *plainly audible* standard would apply to musical instruments, devices with loudspeakers and other sound generating devices. Operating or permitting the operation of any such device in such a manner as to be *plainly audible* would be: 1. Between 8:00 a.m. and 9:00 p.m. beyond 100 feet from the property line of the premises. 2. Between 9:00 p.m. and 11:00 p.m. beyond 50 feet from the property line of the premises. 3. During nighttime hours (11:00 p.m. and

8:00 a.m.) across real property boundaries or through partitions common to two parties within a building, or through such partitions between a person within a building and the public way including, but not limited to, common areas and parking lots, or *plainly audible* at 50 feet from such device when operated within a motor vehicle on a public right-of-way or on a public space.

Commissioner Mills noted that a copy of the proposed noise ordinance has been posted to the City website for the public to review.

Commissioner Barbour has found in his research that the genesis of the *plainly audible* standard was in response to automobiles. The patio ordinance which has been on the books since 1991 has not been used to deal with a noise issue, and it was sprung into action just last summer. His greatest concern with the proposed ordinance is that it is overly broad in terms of what it covers. The Commissioners need to be careful in terms of the policy and the legality of the language. In many cases in the proposed ordinance, the language is unclear as to invite legal challenge. Commissioner Barbour was concerned about the impact in terms of the cost to the City in defending an ordinance that is of questionable legal validity. He is opposed to the *plainly audible* standard, and he suggested going neighborhood by neighborhood and setting up standards, and using the metering system in working with the community. In October 2010, the businesses had said the same thing. The current noise ordinance is unenforceable for two reasons: 1. The City has technology that dates back to 2003. 2. The City does not have anyone who is adequately trained in how to use the meters. The research he has done indicates that most cities which use meters have one person who is a noise enforcement officer who is well trained and knows how to use the meters. The Commissioners should work with the community to set up neighborhood standards and accept decibel levels with the meters, get a good metering system technology and hire a noise control officer. If the City is going to impose greater restrictions than it does now, then it is the City's responsibility to hire somebody, and it should not fall on the police officers. The proposal is all encompassing and questionable legally that the Commissioners would have to take months to go through it. Commissioner Barbour did not feel he would be a responsible public official if he would vote on this proposed ordinance without considerable study, expert opinion and going through it line by line.

Commissioner Sargent said that somehow the gap needs to be bridged on what is fair for the residents and what is fair for the businesses, and come up with something that both sides feels is equally fair. He is looking for a mechanism where both sides can work together and agree on something as being fair.

Commissioner Barbour said that the City has had a system like that; and it is flawed and imperfect. The Police Department has largely worked with the businesses; and to the extent that this has been a problem, they have been outliers. A system has been in place that largely has worked. It has been because of a few people who have not been satisfied with this system that it has come to the Commissioners' attention. Mayor Cooper took exception to that. At a prior meeting, Chief Banks indicated that he had not gotten cooperation from some establishments. There is an issue with the existing ordinance. Commissioner Barbour said that 36 of the 62 restaurants in the City have alcohol licenses; and two or three of those restaurants are problematic. He did not consider that to be a problem which is community wide. He noted that the police officer from the City of Newark when he was here to give a presentation, had said that the noise ordinance was because of rowdy, not because of businesses. The genesis for the City of Newark's noise ordinance was different from the genesis for Rehoboth because the City is focused on restaurants. The police officer from the City of Newark had also said that of approximately 190 complaints, one or two had to do with businesses. A large number of the businesses have outdoor patios and are not being cited for violations, and the City of Newark does not view that as a problem downtown. The violations happen to be in the residential areas. The City of Newark is in no way applicable to the City of Rehoboth. In terms of working out a compromise between businesses and residences, there is a fundamental disagreement as to the relative rights of the businesses which are in commercial areas and the residences that abut them. The commercial zoning goes back to 1941. With certain exceptions, people who have own properties abutting the commercial areas, bought those properties knowing they were abutting commercial areas. Commissioner Barbour did not think that their right to peace and quiet is equivalent to someone who buys in a residential area further from the commercial area. The business' ability to run a business and make a living should not be constricted by the complaints of people who are abutting those businesses to the same degree as they would if they are blocks away. Those residents do not have the same rights. Because the businesses are in a commercial zone and they are abutting the residences, the businesses have a superior right because it is their livelihood. The businesses do not like the *plainly audible* standard. This ordinance underscores Commissioner Barbour's concern of all of this in that it has been too subjective from the beginning. It started out with one Commissioner's concern that he did not like the business which abuts his property because it was making too much noise, and now it has escalated into all of this and the Commissioners have not been clear about what it is. Mayor Cooper said that that is not the case for him. His motivation is not attributed to Commissioner Mills. Mayor Cooper acted on his own observations, his own receipt of complaints,

etc. Commissioner Barbour said that with a new generation of noise meters, someone should go on two or three occasions to acquire an accurate reading of what is normal for the neighborhood. He suggested that City Solicitor Mandalas should review the proposed ordinance very carefully, and input is needed from the community. Commissioner Barbour also suggested that the 2003 report be reviewed again over winter and have some people come in and give a presentation about alternative means of using meters while at the same time working with the community with the goal of next summer to set up neighborhood standards.

Commissioner Sargent said that there is a lot of evidence that the *plainly audible* standard will work in all likelihood, and he has not heard any legal challenges.

Commissioner Coluzzi said that there is a procedure which is used in Cape May, NJ for using sound meters, but she did not know if the City does that. If someone is trained in the procedure, perhaps the use of sound meters could work. She hoped that all the Commissioners would agree that an objective measure is better than a subjective measure. She did not think that the definition of *plainly audible* and noise is universal; and it cannot be used as a measurement. The Commissioners need to look at another option in terms of another municipality that uses technology for this purpose.

Commissioner Sargent said that he would not argue that it is impossible for the City to use noise meters, but the problem is that it is not clear whether a restaurant is making too much noise. The meter in the environment which is being talked about is more subjective than the use of the human ear.

Commissioner Zellers said that the way *plainly audible* is defined in Miami, FL, etc. is not just that the noise is heard, the sound of the noise can be heard; and it is understood what a person is saying 100 feet away. Timewise, this standard would be applied to certain hours of the night beyond which *plainly audible* should not be allowed. After 11:00 p.m., the noise can stay inside of a restaurant and should not be outside.

Mayor Cooper said that one of the things that has been missing in this is a discussion about why an establishment cannot, and if it is impossible for these establishments to, control their noise to keep it inside.

Commissioners Coluzzi and Barbour and Mayor Cooper have gone to a variety of establishments, restaurants, bars, etc. and have talked to them. Commissioner Coluzzi did not know if the establishments have done all they can do, but the establishments have said to them in a meeting that they would welcome any assistance that could be provided by an audio engineer. Mayor Cooper said that he is not adverse to that idea because he had suggested this idea.

Commissioner Barbour said that there are three outliers of which Conch Island is one. The owners of Conch Island have come forward with a proposal, and they are willing to work with the City. Purple Parrot and The Blue Moon are the other two outliers. Aqua Grill has been brought into this because of its patio. Commissioner Barbour could not believe that the Commissioners cannot figure out a way to deal with the problem without turning everything upside down the way that they are. Mayor Cooper did not think that Commissioner Sargent's proposal encompasses any sounds or noises or makers that are not contemplated in the existing ordinance. The City is much like the City of Newark in which the police officers get very good cooperation from residential areas. It is effective. The problem is that the City has a number of establishments where the rules the City has have not been effective.

Commissioner Barbour asked why the Commissioners are reaching into a potential hornet's nest if there has not been a problem with the residential areas, and why are the Commissioners giving neighbors the legal right to complain and have people cited for something as insignificant as having a radio on their deck at 11:00 p.m. on a July night. The proposed ordinance is overly strict. Commissioner Zellers said that the noise ordinance is about controlling the volumes over and above what is normal.

Commissioner Coluzzi thought that everyone would be better served if the Commissioners do not take on a new ordinance, look at the named outliers and talk to them, stay with the current ordinance, and understand what the problems are with training and noise meters so they can be used to enforce the noise ordinance. This is not what she considers a community problem. There are problems with a few businesses; and if the Commissioners work to solve those with the businesses, then the Commissioners will not have to go through all these machinations and spend all this time doing it.

Mayor Cooper said that one problem he is left with is what the standard is for the City and if any noise is acceptable; and if not, where the level is. He wants an ordinance that says this is too much; and if there is a new business in the City that disregards everything, then there is an effective way to deal with it. Commissioner Barbour said that the Commissioners should do what the businesses have said they are willing to do; and that is to take a reasonable measurement of what exists now, come to some resolution as to what is reasonable, work

with the people who have properties that about the businesses, use a meter to give it a metric and go that route.

Commissioner Barbour believed that if the City feels strongly enough as a matter of police to impose this on the business community, it has the responsibility to hire someone who knows how to run a meter. Police Chief Banks noted that the current meter will work. The problem is time restraints in the summer for an officer to outline the levels of noise. Anytime the police have cited people, it is transferred to the Court of Common Pleas on appeal and the City Solicitor becomes involved. The current ordinance and process are not working. There is not enough manpower to outline and train. Restaurants are using their own noise meters which are probably not calibrated or are a less expensive model. Commissioner Coluzzi said that if a noise control officer has a meter that is calibrated, then that is the one to go by.

Public Comment:

1. Mr. Joe Maggio, co-owner of Aqua Grill, said that a direction of subjective measurement in an atmosphere where the restaurants are already distrusting, would not apply right now. He would be one that would challenge the proposed ordinance. The proposed noise ordinance of amplified music would cause more turmoil in the community. Mr. Maggio does not want people to patrol the outside of his establishment because it looks bad to have a City Commissioner patrolling his street. He has never been disrespectful to the Chief of Police, and he would not tolerate a manager who is disrespectful to a police officer. The proposed noise ordinance would not solve the problem. The structure is old and has been insulated. Mr. Maggio would welcome someone to make suggestions as to what other modifications can be made to the establishment.
2. Mr. Tom McGlone, 318 Laurel Street, has asked whether any of this is going to be communicated to the 65% of the homeowners who have second homes where no one is here in the wintertime; and to his knowledge, none of that has happened.
3. Mr. Patrick Gossett, 16 Dover Street, said that there are two sides to this equation: 1. Outliers (businesses). 2. Outliers (residents) who are repeat individuals. This may be an opportunity to take the outliers from both sides of the equation and bring them together around the table as opposed to addressing it through legislation. Commissioner Coluzzi said that she had made this suggestion two meetings ago that there should be remediation or arbitration for outliers on both sides to bring people together to talk about it.
4. Mr. James Clarke. Lewes, DE, suggested that the Key West, FL noise ordinance should be reviewed because it is a resort community. He also suggested that decriminalization factor needs to be addressed, and the ordinance should be repealed.
5. Ms. Sheila Savaliski, co-owner of Seafood Shack, found it disturbing that a deadline has not been set as to when the patio and noise ordinances will be decided on. She suggested that the 2003 report should be published for the public to review. The report could possibly be used to move forward on this matter, and a noise control officer could be hired.
6. Mr. Brandon Morely, address unknown, said that instead of trying to implement more training for using the noise meter, the Commissioners went directly towards revising a new noise ordinance.

Commissioner Sargent commented that Chief Banks has said it was very difficult to use the current noise ordinance to stop those businesses particularly that were persistently making a lot of noise. Commissioner Barbour had said that the noise ordinance was basically unenforceable because of having an older meter and there was no one who was adequately trained.

Mr. Morely said that his interpretation of *plainly audible* is going to be much different from another person's interpretation.

Mayor Cooper said that there are enough communities that have the *plainly audible* standard to say that it has wide usage. Commissioner Barbour said that noise is any sound which is unwanted or which causes or tends to cause an adverse physiological or psychological effect on human beings. This does not mean it can sustain legal challenge. Commissioner Barbour agreed with the idea of a timeline, and he asked if by March 15, 2011 the Commissioners can come up with a specific solution to the patio and noise ordinances and start with what is being proposed which is looking at the outliers and working with them. The restaurant ordinance should be put aside for the time being. Commissioner Coluzzi thought that it would be fine for the Commissioners to put money in the budget to have training for an officer or individual solution for this person when there is a complaint that this person will need to go out and use the noise meter, etc. to determine whether there is a problem. It is reasonable to use the current ordinance and hire someone to enforce it. In the meantime, the Commissioners should talk to the outlier businesses and the outlier residents as well, and have some

sort of mediation between them. Commissioner Barbour said Commissioner Coluzzi's proposal should be adopted, and he would like to work with the business community in setting up a timeline to work towards having a group of businesses and people from the City to define the neighborhoods and go out and listen to noise, and do something that is basically a community standard which is reduced to decibel levels. This would be moving towards a standard with a metric which is potentially objectively measurable. Commissioner Coluzzi said that at the same time she would like to bring the patio ordinance back for a vote. The Commissioners need to make sure that the patio ordinance is decriminalized.

City Manager Gregory Ferrese noted that on numerous occasions he has received telephone calls from residents about loud noise from a restaurant. He turns it over to the Police Chief and Building Inspector and tells them to resolve it. They will talk to the business, and the business will hopefully cooperate. The City tries to work with the businesses and have not cited them. There are businesses that are not adhering to the patio ordinance after when they came before the Commissioner six months earlier.

Mayor Cooper said that the police get called to hundreds of residential noise complaints in the summer, and the citations are a handful. The issues are resolved at the scene so there is no citation. It has been remitted to a handful of outliers; and Commissioner Barbour seems to be protecting them when the vast majority of the establishments are fully in compliant with whatever would be adopted probably. Commissioner Barbour said that he and the business community are not protecting the outliers. The business community has said at the Commissioners' meetings that they are just as annoyed with the outliers as everybody else. Since 1991, the patio ordinance has not been used to appease the noise issue. All of a sudden at a meeting that was not publicly noticed, the police were told to enforce the ordinance.

Commissioner Coluzzi said Chief Banks mentioned that it is a manpower issue and can be used to enforce the noise ordinance if money is put in the budget to hire and train a person. Mayor Cooper said that he called for a need for someone in the summertime, but the City cannot just have one person to enforce the noise ordinance. He suggested that the people should be trained for this summer and see how it goes. Commissioner Coluzzi put a proposal on the table that did not just only involve hiring a person. It talked about having the residents and the businesses sit down with a mediator to talk about the issues. Commissioner Zellers agreed, and she said that if there is a way to resolve this matter by the businesses and the homeowners or complainers coming together, that would be fine. She thought that maybe a waiver could be given to a business to work out noise issues such as installing baffles. Commissioner Zellers does not want to see this kind of adversarial community because it did not start out that way and it was not meant that way. There have been problems with noise. These ordinances are not meant to be hurting the businesses. If the businesses are in compliance, they will not affect them. Have someone come in with a decibel meter from a community that uses this type of ordinance only and listen to what that person has to say. Commissioner Coluzzi said that she would like some consensus from the Commissioners tonight in regard to moving forward with the idea that the Commissioners will try to work with the businesses, leave the ordinance as it currently is, try to work with the outliers, both residents and businesses and come to some conclusion, get training for certain people to use the noise meter, come up with different neighborhoods having different noise levels this summer, and then in going forward the ordinance is enforced.

Mayor Cooper said that he agreed with Commissioner Sargent in regard to the patio ordinance.

7. Mr. Howard Menaker, 16 Dover Street, supported the suggestion that there is a universal agreement with all the Commissioners, businesses and residents that this is not a widespread problem. There are a few businesses and residents who see it as a problem. What is emerging is a consensus to train the police to level where the businesses have some confidence that it will be enforced efficiently and fairly, give it training and give it time to be enforced in the summer season. In the meantime, those businesses that have been the subject of numerous complaints and those residents who have filed numerous complaints need to sit down and see if they can work out measures that everybody thinks will help and test those this summer, and see if it becomes less of a problem. Continuing to debating this issue into May when the season starts is doing a disservice to residents and businesses.

Mayor Cooper said that he is willing to suspend the patio ordinance for this coming summer until the end of 2011 as the Commissioners look at the noise ordinance and see if it creates a problem. If this is waived, then there is no issue with the penalty.

City Solicitor Mandalas said that a moratorium can be placed on the enforcement of the patio ordinance in regard to the extension of hours for a limited period of time that is reasonable.

Commissioner Coluzzi read a portion of Section 270-19(A)(1)(f), Use of Restrictions for Patios. Food service shall be allowed from 7:00 p.m. to 10:00 p.m. Alcoholic liquor service and consumption shall be allowed on from 11:00 a.m. to 10:00 p.m. Patrons must leave the patio by 11:00 p.m. This subsection would be suspended. The time will not be enforced.

Commissioner Mills said that it will allow the restaurant to serve food and beverage up until the time the establishment closes; and at that point, everyone will need to leave.

City Solicitor Mandalas will draft a Resolution to set the Public Hearing for March 18, 2011 to consider the ordinance.

Mayor Cooper stated that a letter will be sent out to every licensed establishment making it clear of the moratorium on the hours portion of the patio ordinance. In regard to Commissioner Coluzzi's proposal, Mayor Cooper said mediation is fine if people want to get together. He wants to hire someone this summer to monitor this situation, bring someone in to train the police and anyone else, and enforce the ordinance this summer. If the Commissioners get results that are not expected, they will be brought back to the Commissioners to know what the impact is, etc.

Mayor Cooper called to discuss potential changes to Section 270-19(A) of the City Code, which Section relates to the regulation of patios associated with restaurants.

This item was addressed in the previous discussion.

Mayor Cooper called to discuss with Bryan Hall of the Office of State Planning Coordination the recently completed public tree inventory, the current and potential forestry grants and the setting of tree canopy goals.

Mr. Bryan Hall said that some time ago, the City set forth to assess and evaluate an inventory of forest resources within the City. That was done through a grant through the Department of Natural Resources. This allowed the City to go forth to evaluate and assess the overall health and character of the urban forest within the City. A copy of the executive summary of the management plan and recommendation associated with this inventory was distributed to the Commissioners. This was done by Davey Resource Group, an independent firm from the Ohio area during the period of October 18 through October 28, 2010. During that time, they looked at trees within the public spaces, both within the street right-of-ways and within the parks. The resource review team looked at approximately 2,800 trees which increase the overall infrastructure values for the community to more than \$2,000,000.00. This includes not only the environmental factors of clean air and water, but it also looks at the increase of property value and reductions of costs associated with crime and overall quality of life for residents. Out of the populations associated with those trees along the street, there are 60 different species; and within the parks, there are 67 species. Out of those trees within the street community, there were a variety of species most of which are dominated by ornamental species and characteristics and are typically pear trees as well as cherries, plums and peach trees. That did not exclude a level of more traditional or more native species such as oaks, pines and maples. These species tend to be relatively young to medium in age in contrast to the park species which were dominated more by native species such as pines, maples and oaks, but were more of a medium to older age. In regard to the executive summary, the most notable thing that was pleasing to discover through this effort was that the overall condition of the resource was good to fair with less than 20 trees requiring some form of immediate action or what were identified as hazard out the nearly 2,800 trees which were considered. Priority maintenance work had identified those, and five of those requiring immediate action are along the street. For those within the parks, only three were recommended for immediate action of removal. The priorities or removals typically constitute trees that are either dead or dying, have significant structural defects, have large cavities, large portions of the crown have been broken off, or there was substantial dieback in the crown constituting a potential hazard. This was a five year snapshot intended and what has been proposed is based over a five year period. It documents a variety of removal activities as well as associated costs over the five year period. In addition to focusing on the action items necessary to improve the overall health of the population, it talks about a training pruning program which is preventive maintenance. With those species that are smaller in size such as the trees along Rehoboth Avenue, problem branches may be removed, etc. before they constitute a larger expensive remediation cost. It recommends diversification of species to allow for and prevent catastrophic failure to the resource. It also calls for a series of key and important educational outreach. The importance of this resource should be conveyed as much as possible, and it provides several outlying opportunities to do so. It talks about continued review of existing ordinances that may be necessary to adapt to new and additional standards or in response to problematic species which were

identified and were not being touched on in the report of the summary. The report goes into greater details and talks about potential conflicts, planting locations, challenges that come about with sustaining the resource over time, and looking at other ways to increase and enhance the overall quality of resources. A completed version of the summary was presented to the Commissioners and staff at a recent Workshop Meeting. This version outlines the individual trees based on address and location so that when staff receives a call about any tree, it can go out and assess, and begin to look at and modify any work related to that based on the recommendations and potential concerns that might be raised by the resident or through the current permitting process. The plan is a living document and is something that is subject to be updated periodically over time. It is the intent, not only of Office of State Planning and Coordination to assist in the City's efforts to implement the Comprehensive Development Plan (CDP) but more importantly the Delaware Forest Service and its role in assisting and helping to grow and enhance this overall resource. Copies of the Guidelines for Implementing the Delaware Bay Watershed's TMDL's through Urban and Community Tree Canopy Goals and a Memorandum Agreement Between City of Rehoboth Beach and Delaware Forest Service was provided to the Commissioners. Mr. Hall said that one of the things which is referenced in the CDP is the creation and/or implementation of canopy goals which is looking at the resource and finding ways to set standards or benchmarks to grow or maintain the resource at its current level. The map factored in and accounted a substantial amount of non-plantable space which are the City's limits that go into the ocean as well as Silver Lake and the pond. Based on that error, the canopy numbers were approximately 19.28%. After making the necessary corrections, it has been identified that the actual canopy in the community is approximately 32.75%, and that is based on photo interpretation as well as staff using information and technology when applicable. As a result of recent conversations with the Forest Service, another branch has become available to the City. Annually the Forest Service receives monies to provide and augment an outreach of different activities such as the planting of trees. Because of challenges with other communities, the Forest Service has found itself in a unique situation where there is approximately \$28,000.00 available to the City, if it so chooses to invest into the resource for tree planting throughout the community. This is in part a deliverable requirement through the grant to do the inventory which was done. There is a lot of opportunity for tree planting throughout the community within the parks and along the streets and other right-of-ways. Currently, there is a potential of nearly 1,300 sites available for planting throughout the community based upon the recent inventory that was done. Based upon initial information presented through the report to maintain the current number or canopy, 86 trees should be replaced each year. This is not being proposed because it can be challenging with the fiscal budget. Opportunities are being looked at based on the information here and based on the information through the inventory to possibly take advantage of those monies and plant trees throughout the community. Ms. Sullivan, Mr. Ferrese and Commissioner Barbour had the opportunity to meet with the Forest Service to have an understanding of this grant, and they asked that Mr. Hall present this to the Commissioners this evening for discussion and consideration. The match can be cash as well as in-kind services and can come about with monies already in place based on what is being collected as far as fee and mitigation money associating with the permitting process with the tree ordinance. These monies are not tied to an existing federal program which is secured through the tree inventory. The subsequent management plan can also be used to match. The City can reach the match without putting up a lot of its own monies. The way the Forest Service had envisioned this is that \$28,000.00 would be going to tree planting activities which may also include site preparation. The tentative date for the monies to be spent is April 30, 2011. What is key is that there is a commitment that the City is working towards that date. April 30, 2011 was the date that was discussed because the summer season would be approaching, and there was discussion regarding a concern that there may be ongoing activity. Substantial construction was proposed to be completed before the summer season starts. If the City can demonstrate that it is moving forward in the process and contracts are in place, the Forest Service is willing to extend the grant beyond the April 30, 2011 deadline. A six month or up to a year extension can be requested based on the program. One of the things envisioned in a general plan was the development plan calls for public outreach and public components to grow public awareness. Replacement trees along Rehoboth Avenue are one module to the solution. Replacement trees on Baltimore Avenue or other locations where business owners and residents are accustomed to having trees are an option that can be immediately acted on. Park plantings, etc. are things that can be acted on much more quickly than starting on planting trees in Country Club Estates tomorrow. Once the planting has begun, then that is the opportune time to promote the awareness and outreach. There is a potential for 186 trees to be planted with the grant monies.

Mr. Hall said there is a possibility that monies might be available for cleaning up Central Park. In looking at the matrices of the grant, the only limitation is based on where the City is ranked in the State in the amount of fines that were collected which may hinder the amount of money to be received. Once City employee and two volunteers have locations already picked out for additional tree plantings.

Commissioner Barbour made a motion, seconded by Commissioner Coluzzi, to approve the Memorandum

of Agreement between City of Rehoboth Beach and Delaware Forest Service for the grant in the amount of \$28,333.00. (Sargent – aye, Coluzzi – aye, Cooper –aye, Barbour – aye, Mills – aye, Zellers – aye.) Motion carried unanimously.

Mayor Cooper called to consider rendering a decision in the matter of an appeal filed by General Teamsters Local Union 326 of a decision of the City Manager regarding a grievance filed by them which appeal was the subject of a public hearing by the Commissioners on January 10, 2011.

Mayor Cooper noted that he would not be calling the roll for Commissioners Zellers and Sargent because they were not part of the Public Hearing.

City Solicitor Mandalas mentioned that based upon discussions he had with the Mayor and Commissioners who participated in the Appeal Hearing, he drafted the “Decision of the Commissioners of the City of Rehoboth Beach On Appeal”.

Commissioner Coluzzi made a motion, seconded by Commissioner Mills, that the Commissioners affirm the decision of the City Manager in the matter of the appeal.

City Solicitor Mandalas said that the Decision will be dated January 21, 2011, and at the top it is captioned “Before the Commissioners of the City of Rehoboth Beach in regard to Corporal R. Tyler Whitman’s grievance, this is a decision that the Commissioners of the City of Rehoboth Beach on appeal”. The final decision portion reads that after hearing testimony and reviewing evidence presented by the Union and the City Manager as well as applying and interpreting the terms of the collective bargaining agreement, the Mayor and Commissioners concluded that the City Manager’s decision to affirm Chief Banks’ decision to suspend Corporal Whitman without pay pending a court decision reinstating his ability to carry a firearm is supported by the evidence. Consequently the Mayor and Commissioners affirm the decision of the City Manager. The Mayor and Commissioners make the findings of fact the conclusions included above and rely in part on those facts and conclusions in support of their decision.

(Coluzzi – aye, Cooper – aye, Barbour – aye, Mills – aye.) Motion carried unanimously.

Mayor Cooper called to consider adoption of an ordinance revising Chapter 22 of the City Code which Chapter relates to Emergency Planning and Operations.

Mayor Cooper made a revision today to add Section 2 that is simply the adoption. This ordinance shall become effectively immediately upon its adoption by a majority vote of all members of the Commission of the City of Rehoboth Beach. Adopted by at least a majority of all Commissioners of the City of Rehoboth, date and signature of the Secretary of the Commissioners of the City of Rehoboth Beach.

Commissioner Coluzzi made a motion, seconded by Commissioner Mills, to adopt the ordinance rewriting Chapter 22 of the City Code. (Sargent – aye, Coluzzi – aye, Cooper – aye, Barbour – absent, Mills – aye, Zellers – aye.) Motion carried.

NEW BUSINESS

Mayor Cooper called to consider approval of a proposed Irrevocable Escrow Agreement with Oak Grove Motor Court, Inc. as negotiated by the Planning Commission, which would provide a specific amount of money for a walkway and potential other improvements between Canal Street and the Lewes-Rehoboth Canal.

Ms. Jane Patchell, Esq. of the law firm Tunnell & Raysor, represented the Applicants of Major Subdivision Application No. 0708-05, Oak Grove at the Beach. The Applicants are Mr. Paul Lovett, Mr. Jim Lovett, Ms. Donna Benge, and collectively the three are also Oak Grove Motor Court, Inc. Throughout the Planning Commission’s review of this application, it discussed whether the Applicants needed to place a sidewalk and curb along Canal Street that abuts their property. In June, July and August 2010, there was extensive discussion at the Planning Commission Meeting with testimony given by the engineer regarding the issues of water runoff and stormwater retention. The Planning Commission at the July 2010 meeting, requested that Mr. Kyle Gulbranson of URS Corporation who was hired as a consultant for the City to review this application, City Engineer Alan Kercher of Kercher Engineering Inc. and Building Inspector Terri Sullivan meet and determine the advantages or disadvantages of having sidewalks and curbs along the property at Canal Street. The issues they came up with were provided to the Planning Commission in a memorandum written by Mr. Gulbranson and dated August 5, 2010. The issue involved whether sidewalks and curbing would be beneficial along the Applicants’ side of Canal Street. The basic issues were that the Canal Street right-of-way is very narrow and only 40 feet wide in some locations. The pavement has shifted closer to the right-of-way line of the road on the west side of Canal Street; therefore, placement of the sidewalks would require extensive

grading and a loss of a number of trees in the location. The recommendation of the individuals who analyzed this for the Planning Commission was an alternative of having a social trail that goes through canal park and meanders through the trees which would be on the opposite side of Canal Street from the Applicants' property. Several other benefits and detriments to requiring a sidewalk were also discussed such as if the Planning Commission requires a sidewalk adjacent to the Oak Grove property, it would be a sidewalk going nowhere. The water runoff is inconsistent with green technology strategies determined by DNREC. The 2010 Comprehensive Development Plan (CDP) references the west side of Canal Street and states that this area should be used as part of a canal park. The discussion between the Planning Commission and Applicants evolved into the Applicants making a voluntary donation in the amount of \$20,000.00 to the City to be used within a five year period for improvements to the land area between Canal Street and Lewes-Rehoboth Canal Park to be known as the Canal Bank Improvement Project which is detailed in the Irrevocable Escrow Agreement. The Planning Commission relied on the Irrevocable Escrow Agreement in its conditional preliminary approval which was granted on January 14, 2011. The Applicants are requesting that the Commissioners review this agreement. One of the conditions regarding the payment of the \$20,000.00 is that the \$20,000.00 shall be delivered to the escrow agent immediately upon final approval of the Oak at the Beach subdivision application by the City of Rehoboth Beach Planning Commission and the execution of the escrow agreement by the City.

City Solicitor Mandalas noted that the \$20,000.00 will sit in an escrow account, and the City has five years from that date to do a canalside improvement project. The condition precedent to the release of escrowed funds to the City shall be the preparation of final design plans and submission of permit applications to the Delaware Department of Natural Resources and Environmental Control (DNREC), Sussex Conservation District (SCD), Army Corps of Engineers (ACOE) and if necessary the Delaware Department of Transportation (DelDOT) for the canal bank improvement project with improvements beneficial to the public within five (5) years from the date the funds are deposited with the escrow agent. Such improvements shall include a walking path unless an agency with approval authority denies approval of a walking path. Such improvements, in addition to a walking path, could include benches, bike racks, informational signage, bank stabilization, landscaping and lighting. Tunnell & Raysor would be acting as the escrow agent. In regard to the Commissioners choosing not to enter into this agreement, the Planning Commission put a condition in its preliminary approval that the Applicants would have to provide for sidewalks abutting their property along Canal Street.

Mr. David Mellen, Vice Chair of the Planning Commission, said that this is an opportunity for the City because it fits the vision of the CDP, and it fits the vision of the development already taking place on the north side of Rehoboth Avenue with the overlook, Historical Society and the potential of a dock and water transportation. The CDP speaks to this issue of extending the concept of the park on the south side of Rehoboth Avenue. A path current exists along with benches. It was the vision of the Planning Commission that, if this can be achieved, it is a better use of the area and people will be channeled along that side of the bank. There will be seven lots in this development along Canal Street, one of which is a commercial lot on the corner of Rehoboth Avenue and Canal Street. A sidewalk that would extend past those lots would stop without connecting to another sidewalk. The Planning Commission felt that if there are people in this area using the park, it would be better to channel them to the park side. If the Commissioners choose not to do anything, the loss is that the fallback position would not be achieved. The fallback position is the Oak Grove development will need to put in sidewalk and curbs on the east side of Canal Street. The ACOE has indicated a willingness to see the City make use of its property. If a sidewalk would be put in on the Oak Grove property side of Canal Street, at least two trees and potentially a third tree would be lost.

Commissioner Coluzzi made a motion, seconded by Commissioner Barbour, to approve the Irrevocable Escrow Agreement between City of Rehoboth Beach and Oak Grove Motor Court Inc. as presented with the one change outlined by the City Solicitor.

City Solicitor Mandalas suggested and Attorney Patchell was agreeable to modifying paragraph 4 on page 2 with the following language, "[T]he condition precedent to the release of escrowed funds to the City, in such amounts as set forth below, shall be the preparation of final design plans and submission of permit application, **if necessary**, to the Delaware Department of Natural Resources and Environmental Control ("DNREC"), the Sussex Conservation District ("SCD"), the Army Corps of Engineers ("COE"), and the Delaware Department of Transportation ("DelDOT")..."

Commissioner Mills said that he would vote no at this time because he would like the opportunity to look at the plans and walk the property so he would feel more comfortable with his decision.

(Sargent – aye. Coluzzi – aye. Cooper – no. He did not know enough at this point to commit to it. The area he

has looked at is very narrow near the bridge, and he did not know if there is room for a walkway. He thought the City was on course to put in sidewalks where it could, and it looks like the City is going away from that. Barbour – aye. Mills – no. Zellers – aye. It is fairly straightforward, and she has walked the property. It does seem to be a reasonable continuation along that side of the bank. It actually is very pleasant back there. It is an opportunity for the Commissioners.) Motion carried.

Mayor Cooper called to review proposed changes to payment and appeal instructions on parking ticket document.

Commissioner Coluzzi said that Mayor Cooper, Mr. Ferrese, Alderman July Catterton, personnel from the Parking Division and herself met to discuss parking violation notices. Copies of the existing and proposed parking violation notices were provided to the Commissioners. In addition, Commissioner Coluzzi has extracted paragraphs from Section 92 of the City Code which she thought needed to be changed. The idea is to change the language from a summons to a parking ticket because a summons indicates that someone is to report to court. These paragraphs refer to parking tickets that would be paid. There is an option to contest the ticket and have a hearing. She tried to make it clearer on the ticket. Commissioner recommended that a telephone number should be added to be able to do a credit card transaction over the telephone. The \$30.00 minimum fine is being proposed to increase to \$45.00 after seven days. A suggestion has been made regarding head-in parking in the angled parking spaces, and what is being proposed is to delete Section 92-29.

Commissioner Mills was concerned with codification to make sure that when a change is made, the entire document has been gone through.

Mayor Cooper said that in looking at the State law, the wording in the City Code is consistent with State law; and what is being proposed probably is not consistent. There is good reason for not backing in with angled parking because traffic is impeded more so than with backing out.

Commissioner Barbour said that if Alderman Catterton thinks these changes should be made, he trusts her judgment.

This item will be placed on the agenda for the Workshop Meeting on February 7, 2011.

Mayor Cooper called to accept the recommendation of the Audit Committee approving the audit as prepared by the auditing firm Barbacane, Thornton & Co. for the City's fiscal year ended March 31, 2010.

Mr. Ferrese said that the Audit Committee held its annual meeting in December 2010 and reviewed the audit ending March 31, 2010. The Audit Committee recommended that the audit be adopted, and approved and signed the minutes.

Commissioner Coluzzi made a motion, seconded by Commissioner Mills, to adopt the recommendation of the Audit Committee to accept the audit for fiscal year ended March 31, 2010. Motion carried unanimously.

Mayor Cooper called to consider award of a contract for the Rehoboth Beach/Dewey Beach Chamber of Commerce Drainage Project for which bids were received and opened on January 11, 2011.

Mr. Ferrese has updated the Commissioners on the Chamber's drainage project. There is a drainage problem between the Museum and the Chamber of which the Chamber has encountered damage inside its building last July or August 2010. Eleven sealed bids have been received. The City Engineer has recommended that the contract be awarded to Ashton Group, the low bidder, in the amount of \$18,400.00.

Commissioner Mills made a motion, seconded by Commissioner Sargent, to award the bid for the drainage project at the Rehoboth Beach/Dewey Beach Chamber of Commerce office in the amount of \$18,400.00. (Sargent – aye, Coluzzi – aye, Cooper – aye, Barbour – aye, Mills – aye, Zellers – aye.) Motion carried unanimously.

CITY MANAGER'S REPORT

City Manager Gregory Ferrese reported that there were no Street Aid expenditures for the month.

(See attached report.)

City Manager Gregory Ferrese reported that he is waiting for the executed copy of the Competitive Grant Contract. Once received, the process will begin for preparation of plans and specifications for those items on the activity list. Sealed bids will be opened on January 27, 2011 at 1:30 p.m. in regard to the Stormceptor Project. The City will be advertising for the new boiler for the Municipal Building. A pre-bid meeting is scheduled for

February 24, 2011. The City will also be advertising to upgrade the Baltimore Avenue restrooms, and for new decking around the Delaware Avenue restrooms. A Recycling Grant was submitted to the State for marketing of the City's recycling program and to purchase carts. An Employee Committee Meeting was held on January 27, 2011. Mr. Ferrese will be attending a City Manager's meeting in Dover, DE on February 10, 2011.

Ms. Bitsy Cochran, 21 Baltimore Avenue, recommended that when a yard waste policy is implemented, it needs to be forwarded to the homeowners. Mr. Ferrese said that the yard waste cannot be comingled with recyclables and garbage anymore. The yard waste policy has been in effect since January 1, 2011, and the fines will go into effect on July 1, 2011.

COMMITTEE REPORTS

There was nothing to report.

CITY SOLICITOR'S REPORT

There was nothing to report.

COMMISSIONER ANNOUNCEMENTS/COMMENTS

There were no announcements/comments.

Discuss items to include on future agendas.

Topic to be included on a future agenda is discussion regarding changes in the Emergency Operations Plan.

CITIZEN COMMENTS

There were none.

The Workshop Meeting will be held on February 7, 2011 at 9:00 a.m.

There being no further business, Mayor Cooper declared the meeting adjourned at 10:36 p.m.

Respectfully submitted,

(Ann M. Womack, Assistant Secretary)