

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

February 15, 2013

The Regular Meeting of the Mayor and Commissioners of the City of Rehoboth Beach, was called to order at 7:03 p.m. by Mayor Samuel R. Cooper on Friday, February 15, 2013 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 Patrick Gossett
 Commissioner Bill Sargent
 Commissioner Pat Coluzzi
 Mayor Samuel R. Cooper
 Commissioner Stan Mills
 Commissioner Lorraine Zellers

Absent: Commissioner Mark Hunker

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

APPROVAL OF AGENDA

Commissioner Stan Mills made a motion, seconded by Commissioner Lorraine Zellers, to approve the Agenda with the deletion of the minutes for the February 4, 2013 Workshop Meeting. Motion carried unanimously.

CORRESPONDENCE

Correspondence will be read when the public hearing for site plan review portion of the meeting are held.

APPROVAL OF MINUTES

Minutes of the December 10, 2012 Workshop Meeting, January 7, 2013 Workshop Meeting and January 18, 2013 Regular Meeting were distributed prior to the meeting. Minutes of the February 7, 2013 Workshop Meeting were not available for approval.

Commissioner Mills made a motion, seconded by Commissioner Zellers, to approve the December 10, 2012 Mayor and Commissioners Workshop Meeting minutes as written. Motion carried unanimously.

Commissioner Mills made a motion, seconded by Commissioner Zellers, to approve the January 7, 2013 Mayor and Commissioners Workshop Meeting minutes as written. Motion carried unanimously.

Commissioner Mills made a motion, seconded by Commissioner Zellers, to approve the January 18, 2013 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 January 2013. There were 35 criminal, 135 traffic and zero civil charges made during the month. Three traffic crashes were investigated. The process has begun for hiring 24 seasonal officers, and training begins April 5, 2013. The Dispatch Center handled 175 police incidents, 159 ambulance incidents, 34 fire incidents, 138 traffic stops, assisted other agencies four times during the month, and 9-1-1 calls totaling 263 were received.

REPORT OF REHOBOTH BEACH VOLUNTEER FIRE COMPANY

Mr. Walter Brittingham of the Fire Company reported that its budget has been approved. During the summer season from Memorial Day to Labor Day, there will be two full ambulances and crews on duty 24 hours per day.

REPORT OF THE BUILDING AND LICENSING DEPARTMENT

(See attached report.)

Chief Building Inspector Terri Sullivan presented the report of the Building & Licensing Department for January 2013. During the month, 70 permits were issued for a value of work totaling \$3,736,057.90. Fees collected totaled \$84,549.04 for the month. Eighty-two permit processing fees were received in the amount of \$1,640.00. One restaurant application was received in January. Thirty-six notices of violation were issued for damaged sidewalks. Two notices of violation were issued for blinking signs. One notice of violation was issued for a freestanding sign. One notice of violation was issued for hours of construction. The Board of Adjustment heard no cases in January. Since November 2012, 150 letters have been sent out regarding sidewalks, and only 39 property owners have not responded as to what their plans are. Mr. Bobby Edmonds had identified and compiled a list of low tree branches over sidewalks and streets throughout the City. Mr. Walter Onizuk, City Arborist and the City workforce will be trimming the tree branches beginning February 25, 2013.

PERMIT OF COMPLIANCE HEARING

Mayor Cooper opened the Permit of Compliance hearing requested by Megan and Joseph Churchman of Bramble & Brine LLC to operate a new restaurant to be known as "The Bramble & Brine House" pursuant to the City of Rehoboth Beach Municipal Code, Chapter 215. The restaurant will be located at 315 Rehoboth Avenue. Mayor Cooper noted the Public Hearing procedures for this hearing.

City Solicitor Mandalas noted the purpose for both hearings, and he read from Section 215-5 of the Code that in reaching their decision, the Commissioners shall consider the following factors including but not limited to:

1. Whether the Applicant has demonstrated that the establishment's primary purpose will be that of a restaurant or dinner theater as defined in this chapter.
2. Whether the establishment meets all the City's applicable zoning and licensing provisions.
3. Whether the establishment would be a detriment to the peace, order and quiet of the neighborhood and the City.
4. Whether the establishment will have an adverse impact on neighboring properties or on the City of Rehoboth Beach considering the impact on traffic, parking and noise.
5. Whether the Applicant has made any false representation or statements to the City's employees or the Commissioners in order to induce or prevent action by the City, not only in regard to the pertinent pending Application under the statute, but also with regard to the issuance of a building permit or business license for the subject establishment.

City Solicitor Mandalas identified the exhibits: 1. Notice of Public Hearing posted by the City Secretary on January 23, 2013. Notice of today's Public Hearing was published in the Cape Gazette on January 29, 2013, Coast Press on January 30, 2013 and Delaware State News on January 31, 2013. 2. Building Inspector's Report dated February 7, 2013. 3. Application for a Restaurant Permit of Compliance, notarized and received on January 18, 2013. 4. Menu. 5. Basement and First Floor Plan for renovations/addition, sheet no. A1, dated January 16, 2013 and received January 18, 2013. 6. Property account record for 315 Rehoboth Avenue. 7. Depiction of the properties within 200 feet that were notified for this hearing.

Building Inspector Sullivan presented a complete report, and her findings were based on the application and her knowledge of the Code. (See attached report.) The Applicant has stated that the approximate percentage of revenue between the sale of alcohol and food is 20% alcohol and 80% food. The Application is for a 2,606 square foot restaurant. The proposed bar area will be 133 square feet with a proposed ratio of bar to permanent seated dining of .19. In summary, this is an Application to take an existing building that was previously used as a flower shop and turn it into a restaurant. There will be a residential unit on the second floor, the basement will be used for food preparation as shown on the plan and no patio is proposed. Ms. Sullivan acknowledged that there is an approximate 32 foot expansion to the rear which will be used primarily for a new kitchen facility and restrooms. The basement area is currently under the existing building. No construction plans have been submitted to Building & Licensing to date. Because the change of use from a flower shop to a restaurant, there is an increase demand for the ADA accessibility via the ramp.

Ms. Megan Churchman of Bramble & Brine LLC noted that there are no plans for the establishment to be considered a bar, only serving good food. A wall would be added to partition of the fan on the roof so there would be no disturbance to the neighbors.

Ms. Winnie Keith said that the Applicants have met with neighbors and are willing to work with them.

There was no correspondence.

Public Comment

1. Mr. Brian Mooney, 311 Rehoboth Avenue, said that construction will not encroach onto the adjacent lot which he owns. He asked if there would be off-street parking available. More trash receptacles would be helpful on the north side of Rehoboth Avenue.

Ms. Winnie Keith assumed that people will be parking their vehicles at the metered spaces on Rehoboth Avenue. It would be a liability for parking to occur on the Hudson lot.

2. Ms. Diane Dixon, 72 Sussex Street, voiced concern with noise and the trash dumpster.

Ms. Churchman noted that trash collection will be done by rolling cans instead of a dumpster. The asphalt pad would be moved closed to the restaurant and away from neighboring properties.

Mayor Cooper closed the public portion of the hearing and called for discussion among the Commissioners.

Commissioner Sargent made a motion, seconded by Commissioner Mills, to approve the Permit of Compliance for the restaurant known as The Bramble & Brine House to be located at 315 Rehoboth Avenue.

Commissioner Sargent found the following to be true:

1. The proper Application and supporting documents have been filed.
2. The proper fee has been paid.
3. The proper notifications have been made.
4. All parties wishing to be heard have been heard.
5. The primary purpose is that of a restaurant.
6. The Application meets the City's applicable zoning and licensing provisions.
7. The restaurant would not be a detriment to the peace, order and quiet of the neighborhood and the City.
8. The restaurant will not have an adverse impact on neighboring properties or on the City of Rehoboth Beach considering the impact of traffic, parking and noise.
9. The Applicant has made no false statements to the City employees or Commissioners.

(Gossett – aye, Sargent – aye, Coluzzi – aye, Cooper – aye, Mills – aye, Zellers – aye.) Motion carried unanimously.

REPORT OF PLANNING COMMISSION

A written report was provided to the Commissioners prior to the meeting.

Commissioner Gossett commented that the March 8, 2013 Special Workshop Meeting has been postponed due to a personnel change at the State level. The meeting will be held at a future date.

OLD BUSINESS

Mayor Cooper opened the Public Hearing on and consideration of a proposed ordinance which would amend Chapter 236 of the City Code requiring that building permits for a structure which is within 25 feet of Lake Gerar or Silver Lake be subject to the City's site plan review process.

City Solicitor Mandalas said that the site plan review process is currently in the City Code where certain projects are required to go through a review process by the Planning Commission. This ordinance would add an additional type of project to that process. In the new instance, any project that are within 25 feet of Lake Gerar or Silver Lake would be required to go to the Planning Commission for a site plan review. Twenty-feet from the lakes is now a defined term under the ordinance and would be defined as the ordinary high water mark. For Lake Gerar, that would be five feet above the North American Vertical Datum of 1988 (NAVD 88), and for Silver Lake, it would be six feet above the NAVD 88. There is relaxation of some of the requirements under site plan review if the only reason it is sent to site plan review is because it is within 25 feet of the lakes. Certain plans, etc. required under some of the other projects which would trigger site plan review, are not triggered for this sort of a project. Fees for those site plans requiring Planning Commission review and approval, except for those referred by the Building Inspector, and those that in accordance with Subsection 236-30(A)(5) of this Article, shall be \$500.00. If a project is only going to site plan review because it is within 25 feet of the lakes, there will be no fee.

Correspondence:

1. Letter received February 13, 2013 from Martha L. Cochran, 1004 Scarborough Avenue Extended, in support of the proposed 10-foot "no build" buffer. The ordinance needs to be clarified as to its

application to existing structures. The City needs to officially mark the location of the ordinary high water mark around the lakes. She opposes the site plan review ordinance. It prohibits the issuance of a building permit for a structure located within 25 feet from the ordinary high water mark of the lake until the Planning Commission has reviewed and finally approved a site plan. She asked that the Commissioners, instead of adopting the site plan review ordinance, to address what the Planning Commission identified as the true source of harm to the lakes – the stormwater runoff from all areas of the City. The small group of property owners surrounding the lakes within the City's jurisdiction should not be targeted with an amorphous, arbitrary standard that leaves them without recourse if the Planning Commission decides to turn down a proposed building that otherwise complies 100% with City Code requirements.

1. Letter received February 14, 2013 from Joseph J. Filipek, 8 Silver Lane – in support of the 10-foot “no-build” buffer, but strongly opposes the site plan review ordinance. No residential homeowners in the City are presently subjected to a site plan review. From his knowledge of Silver Lake, there would be only a handful of property owners that would be impacted by this proposed ordinance. Given the fact that there are no published or proposed guidelines for a site plan review, he is concerned that the decision-making process will be subjective, arbitrary and political. The proposed site plan review will place an unnecessary burden on a select few homeowners without providing environmental protections for Silver Lake. The proposed site plan review will be unfairly burdensome to a small number of homeowners without necessarily having any impact on the lake.
2. Letter received February 15, 2013 from Sallie Forman of Save Our Lakes Alliance, stating that the site plan review ordinance is vague in stated goals. Section 5 relates to a structure located within a distance of 25 feet from the ordinance high water mark of Lake Gerar or Silver Lake. This appears to only address issues relating to the building structures but not the potential environmental impact construction can have on the lakes. SOLA3 has presented its position on runoff, erosion and sediment containment for lakefront properties at three Planning Commission meetings. For properties over 5,000 square feet, it recommends that anyone building around the lakes be required to have an independent Certified Construction Reviewer (CCR) to ensure all Delaware Erosion and Sediment Control Regulations are followed during construction. The City should require that the CCR be a condition for obtaining a building permit for lakefront lots over 5,000 square feet. Currently, properties of 5,000 square feet or less within the City are exempt from any requirements to contain runoff or stormwater. SOLA3's position is that the State of Delaware is currently completing a revision of the Sediment and Stormwater Regulations. All regulations should be applied and strictly enforced due to the sensitivity and importance of the lakes. The City should adopt these regulations as a condition of granting not only building permits around the lakes but also for any building permit within the City. SOLA3 requested that the Commissioners add to Item 5 in the site plan review ordinance the specific protections specified above as a condition of obtaining a building permit.

Commissioner Gossett noted that currently there are approximately 45 properties which border Silver Lake or have lakefront exposure. The site plan review ordinance had been adopted in June 2009 and has not been used to date. With regard to no published or proposed guidelines, the site plan review ordinance lays out those guidelines in Section 236-30(E) and the purpose clause in Section 236-30(D). In Sections 236-32 through 236-36 of the current ordinance, a specific method of review and an appeal process is laid out.

Public Comment:

1. Ms. Toni Sharp, Scarborough Avenue Extended, asked how many homes at Lake Gerar and Silver Lake would be impacted by the adoption of the ordinance. She asked for clarification with the Planning Commission reviewing and finally approving the site plan. There had been lengthy discussions about the site plan review done by the Planning Commission that it would be non-binding.

Commissioner Gossett noted that City property buffers all of Lake Gerar. Approximately 45 properties abut Silver Lake, but many of those properties currently have setbacks that are greater than 25 feet.

Mayor Cooper said that there is an issue with riparian rights and whether or not those properties count. Assuming that the person who owns the property most adjacent to the lake has some right to the lake, the properties that abut the lake may have some issues which will come up such as sprinkler systems, benches, etc. With regard to the review and final approval by the Planning Commission, this is language that is currently in the Code.

City Solicitor Mandalas said that there was discussion about whether the Planning Commission has authority to subject a project that is completely compliant with the Zoning Code to a site plan review process. With regard to a project that is completely compliant with the Zoning Code, the Planning Commission cannot deny that project under a site plan review. The site plan review process provides an opportunity for the Planning Commission to identify any specific health, safety or welfare concerns it might have. If there are concerns, the Planning Commission has discretion to attach reasonable conditions to its approval. The Planning Commission has the ability under the ordinance to finally approve or deny a project. The Planning Commission cannot deny the project if it is within the Zoning Code. An appeal would be directed to the Mayor and Commissioners.

Commissioner Mills was uncomfortable because this is an untested process, and he was not convinced that people understand all the ramifications of enforcing it.

Commissioner Zellers was not clear on what criteria will be used to figure out who gets approved or not approved. A separate section under the site plan review is specifically needed for the lakeside properties. She agreed with the concept of site plan review, but not for a 5,000 square foot lot and not in all areas of the City. A large number of the 45 properties are separated by a road, and the site plan review will not affect them as much as it will affect properties that truly are within the City. There will be a limited number of people who will be adversely impacted by this process.

Mayor Cooper said that the dilemma of the Commissioners is that there is a site plan review process. The Planning Commission has recommended because of the unique nature of these lots and history that the Commissioners consider including these lots in the process.

Commissioner Zellers said that this has to be clarified for the property owners who are going to be affected as to what they will be judged on and what will be looked at. She was not sure that it is clear in the proposed ordinance.

City Solicitor Mandalas said that under the current site plan review statute, there are a number of factors the Planning Commission is required to consider when it looks at a site plan. Those factors are laid out in Section 236-30 and include: 1. Motorized or non-motorized vehicular traffic flow, both on-site and off-site. 2. Access to structures. 3. Access to public or private streets, easements or other rights-of-way. 4. Pedestrian movement. 5. Fire equipment and other emergency access. 6. Refuse removal. 7. Landscaping and maintenance of natural features. 8. Drainage flow and structures. 9. Stormwater management. 10. Signage. 11. Lighting. 12. Screening for certain uses. 13. Recreational and open space areas. 14. Utilities and community facilities. 15. Height of buildings. 16. Existing scale and character of nearby properties. 17. Streetscape. 18. Impact on nearby properties or the neighborhood. 19. Air flow, natural light and similar environmental considerations. 20. Other public health, safety and welfare concerns. 21. Comments and recommendations received from the City Engineer, City Departments and the public. There is a basic framework of things that the Planning Commission is required to go through as it performs the site plan review process. It is not entire arbitrary. There is nothing that specifically addresses the lake properties. Some of these factors could be used to get at lake property considerations.

Commissioner Mills said that there are a lot of protections in place, but there are a select number of properties that do not fall within that and deserve to have protection measures in place. He was not satisfied with the current site plan review ordinance that it alleviates pollution to the lake and protects the view shed. One of the points in the Lakes Report authored by the Planning Commission is the comparison of the potential pollution from properties that abut the lake and those that are inland but within the same watershed, which is virtually equal. Commissioners Mills had concerns that the properties which abut the lake are being targeted and may be give more weight than the inland properties. The lakeside properties are unique and deserve different controls such as shore stabilization, etc. He was uncomfortable with the site plan review targeting only the lakeside properties for little cost benefit compared to doing some other things; the original site plan review for properties above 20,000 square feet and commercial properties above 15,000 square feet and now the single 5,000 square foot lots being targeted; the extra time constraints and delays, and extra burden and workload it will cause the property owners who will be required to have a site plan review; the binding or not binding situation; and the burden of using a broad cause to bring the applicant in front of the Planning Commission and the subjectivity of this at this time. A more efficient process would be to objectify some of the concerns and codify them. Commissioner Mills preferred to give Building & Licensing the tool to receive and act on permits in a timely fashion by addressing construction silt

fencing, no-build zone, recommendations for watering within certain footages, etc. He was not satisfied that site plan review should take care of visual environmental pollution vs. codifying something such as the 42 inch height of fences in rear setbacks, 15 to 20 feet setbacks for the main structure but with concessions to allow a deck in another area, etc., step backs, tradeoffs and consideration of special conditions for grandfathering existing structures. There are other ways to approach this that can be more effective for minimizing pollution and protecting the view shed.

Commissioner Sargent said that there are two objectives: 1. Protect the general view of the lake. 2. Process that involves neighbors. The site plan review is a blunt instrument for protecting the view and communications. He was not comfortable with using site plan review as the mechanism for that. When it seems the site plan review is targeted for erosion control, etc., Building & Licensing would be able to handle this. The mechanics of a site would be governed by Building & Licensing.

2. Mr. Eugene Lawson, Esq., 12 Hickman Street, said that a number of lots around the lake are greater than 5,000 square feet. Viewing sediment control and stormwater management would go to the Sussex Conservation District. It is not necessary to put someone through the time, expense and forcing communication. Mr. Lawson said that there is a substantive with sending an appeal to the Board of Commissioners vs. the Board of Adjustment.

Mayor Cooper said that this started as a recommendation from the Planning Commission. The site plan review would be like a second set of eyes to make sure the interpretation is clear, to expose the public view so that there is a chance for people to understand why a decision is made or why it is permitted under the Code and to possibly intervene in some cases where there is a better way to do something that would not be as harmful to the lake and/or the neighboring properties such as with a grading plan, etc. He hoped that the Planning Commission would move the site plans through quickly. This could be beneficial to everyone involved to have the site plan out there and discuss it, and have everyone understand why the decision is made.

Commissioner Sargent said that he would be comfortable with the Planning Commission implementing a process for the public to have discussion with regard to a site plan review. He did not want the Commissioners to be bound by something that is a too blunt and inaccurate of an instrument that leads to the right process. He was glad that there is a proper appeal process.

Commissioner Coluzzi was not sure this is the right way to go about the process. She is in favor of a larger setback than 10 feet and have concessions such as a porch in the setback, etc. The runoff problem from various places in the City needs to be addressed.

Commissioner Zellers said that all the things that would require a site plan review would be onerous. Before going for a site plan review, all the building and zoning codes would need to be satisfied.

Commissioner Gossett said that there are only a few properties that a site plan review would affect, and that is what makes them precious. The Commissioners need to take an extra standard to protect those properties and the view shed for future generations. He reiterated the factors to be considered when reviewing a site plan as presented by City Solicitor Mandalas. The site plan review process has been established. The Planning Commission, through the codification of the site plan review, can add conditions. The Commissioners are charged with representing the entire community, not just a few individuals.

Commissioner Sargent said that this is a broad ordinance but can be used to focus on the communication of the community and the major issue of protecting the view shed. It will not necessarily be overwhelming into the details that might apply to a major subdivision. Commissioner Sargent thought that the process should be tried.

3. Ms. Lynn Wilson, Planning Commission member, said that with larger lots, 25 feet may be self-regulating. Site plan review is the kind of tool to answer concerns and give leeway. This process will not be as difficult or onerous as has been stated. It is a valuable piece of the environment that special care should be taken.
4. Mr. Frank Cooper, 96 East Lake Drive, said that his property will not be affected by the proposed process. The issue with 6 Silver Lane has generated this entire process, and there were no issues with aesthetics around the lake until that 6 Silver Lane. Now this process will focus on the few remaining properties that could build a house close to the lake. The Planning Commission is being used to do this

in a role it is not designed for. The current language is designed for commercial properties. For a homeowners to go through this process is a lot. Mr. Cooper agreed with the general idea of the review. The current setup may not be the one for the review. There are no guidelines within the Planning Commission that specifically address lakeside homes and residential properties. He voiced concern with regard to the language and whether this is a blunt instrument. The general process should be for the Planning Commission, etc. that the setback is set at a certain footage and that the Planning Commission, etc. is allowed to give more as opposed to taking away for the process.

Commissioner Gossett said that a review process is needed for lakefront properties, and the current process is the one to be used.

Commissioner Gossett made a motion, seconded by Commissioner Sargent, to adopt the ordinance amending Chapter 236 relating to site plan review. (Gossett – aye, Sargent – aye, Coluzzi – no, Cooper – aye, Mills – no, Zellers – no.) Motion failed for lack of a majority vote.

NEW BUSINESS

Mayor Cooper called to consider adoption of a resolution that will adopt a Rehoboth Beach Emergency Operations Plan and designate the Chief of Police as Emergency Management Coordinator.

Mayor Cooper noted that the Plan was put together with the help of Mr. Clay Stamp who was the Emergency Management Director in Ocean City, MD for a long time. A resolution will bring about the adoption of this plan and the appointment of the Chief of Police as the Emergency Management Coordinator.

Commissioner Coluzzi made a motion, seconded by Commissioner Mills, to adopt the Resolution to adopt the Rehoboth Beach Emergency Operations Plan and designate the Chief of Police as the Emergency Management Coordinator.

Commissioner Mills said that Police Chief Banks will be the key advisor, and he will be working on procedures and policies with the different departments to ensure the checklist is done and conduct after action reviews.

(Gossett – aye, Sargent – aye, Coluzzi – aye, Cooper – aye, Mills – aye, Zellers – aye.) Motion carried unanimously.

Mayor Cooper called to consider adoption of a resolution setting a public hearing on a proposed ordinance that would amend the City's Zoning Code to establish a ten foot "No-Build Buffer" landward of the water's edge around the City's two lakes.

City Solicitor Mandalas read the resolution. The proposed ordinance would establish a 10-foot no-build buffer 10 feet from the lakes' edge. The lakes' edge is defined as the ordinance high water mark being five feet above the North American Vertical Datum of 1988 (NAVD 88) for Lake Gerar and six feet above the NAVD 88 for Silver Lake. A special provision has been provided in the proposed ordinance requiring a no-build buffer around the lakes. In all zoning districts, the area of land located within a distance of ten (10) feet from the ordinary high water mark of Lake Gerar or Silver Lake is deemed to be a no-build buffer and shall remain a natural area as defined in Section 270-4. To the extent this required no-build buffer forms a portion of a buildable lot, such area may be counted toward any requirement for natural area contained elsewhere in this Chapter. This Section shall supersede any portion of this Code which might otherwise permit a structure, a part of a structure, projection from a structure, fence or screen to occupy any portion of the required no-build buffer. Parties in interest and citizens shall have an opportunity to be heard at said public hearing. This Resolution to hold a public hearing shall be printed at least 15 days prior to said public hearing in an official paper or a paper of general circulation in the City. The Ordinance to be considered at the March 15, 2013 public hearing is subject to the Pending Ordinance Doctrine and therefore, no application for issuance of any permit or other approval for any construction within 10 feet of the ordinary high water mark of Lake Gerar or Silver Lake shall be accepted by the Building and Licensing Department upon the adoption of this Resolution and until the City Commissioners act upon the "No-Build Buffer" Ordinance.

Commissioner Mills made a motion, seconded by Commissioner Zellers to adopt the resolution setting the public hearing on March 15, 2013 on the ordinance as discussed. (Gossett – aye, Sargent – aye, Coluzzi – aye, Cooper – aye, Mills – aye, Zellers – aye.) Motion carried unanimously.

CITY MANAGER'S REPORT

(See attached report.)

City Manager Gregory Ferrese reported that the City has received grant approval from the State Parks and Recreation Department to begin the Geotechnical Feasibility Study for the Water Tax Terminus Dock and Pedestrian Access Ramp Project. The City's structural engineer, Mr. Alan Kercher, has been authorized to begin the study. The City's commitment is to provide 25% of the funding. The grant is to be 50%, and 25% will be raised from other sources, primarily the association. The total cost is \$44,435.00, and the grant is for \$22,217.50. The City's share is for \$11,108.75. The bid will be awarded at a Special Meeting on February 22, 2013 at 9:00 a.m. pertaining to the Phase IV ADA Ramping Project. The City is well within its budget for this project. Representative Schwartkopf has allocated \$50,000.00 towards this project, and Senator Bunting has allocated \$10,000.00. The budget process has been completed with no increases in rates for City services. The 2013/14 Budget will be adopted at the Commissioners Regular Meeting on March 15, 2013.

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

02/06/13	528	Delmarva Power	\$ 8,681.33 (Street Lights)
02/13/13	529	Delmarva Power	\$ 73.37 (Street Lights)

Commissioner Mills made a motion, seconded by Commissioner Sargent, to approve the Street Aid expenditures as presented. Motion carried unanimously.

COMMITTEE REPORT

Commissioner Coluzzi, Chair of Streets & Transportation Committee, gave a presentation, discussed and considered the proposed Scooter Parking Plan and timeline for implementation. The Streets & Transportation Committee believes that it is of critical importance to prohibit scooters and all motorized vehicles from travelling and parking on the sidewalks and Boardwalk. The plan takes into account suggestions from the Commissioners to accomplish that goal. The concerns which the Commissioners had are: 1. Prohibit scooters from parking in front of residences. 2. Provide a "free" area for scooter parking. 3. Prohibit scooters from parking on Rehoboth Avenue. 4. Entertain free or reduced scooter parking for Rehoboth Beach residents. In the residential areas, scooter parking was proposed on the following streets: 1. Queen Street. The proposed parking area for Queen Street is an option unless it is determined that disturbing the dune and vegetation at this location is not appropriate. A parking space at the street end can be utilized that is away from the house boundaries. 2. St. Lawrence Street. Leaving the parking space closest to the Boardwalk for the lifeguards, the scooter parking area would be away from the boundaries of the house. The lifeguard and scooter parking spaces could be switched at the leisure of the Commissioners. 3. Rodney Street. The scooter parking would be one space away from the house driveway on the left side of the street. Parking could be accommodated on the right side well away from that house's driveway. 4. Norfolk Street. Parking on the left side of the street should not pose an issue. 5. Stockley Street. Scooter parking on the left would be well away from the house driveway. 6. New Castle Street. Scooter parking should be eliminated as the parking area would be directly in front of the entrance of the house. With regard to Prospect Street, a parking space could be used for scooter parking, if needed. Scooter parking was proposed in the following commercial streets/areas: 1. Olive Avenue. 2. Maryland Avenue. 3. Baltimore Avenue. An extra parking area has been proposed. 4. Wilmington Avenue. 5. Behind the Fire Station. 6. Martin's Lawn. 7. Lot near the VIA. The area behind the firehouse, near the VIA and at Martin's Lawn could be considered for "free" parking. While it could address the issue of providing free parking it might cause confusion and would present problems for enforcement/ticketing should it become necessary. A permit, either paid or free would provide a mechanism for obtaining contact information for the operator. The Committee has recommended paid permit parking in order to be "revenue neutral" as well as cover implementation costs. Two possible areas for free scooter parking were looked at on Rehoboth Avenue, but Chief Banks has recommended against them for safety reasons. Scooter parking was also proposed for the Deauville Beach area. The following is a range of pricing that has been recommended: 1. Residents - Free or pay \$20.00. 2. Non-resident Seasonal - \$35.00 to \$50.00. 3. Non-resident Weekly - \$15.00 to \$20.00. It is important to accommodate the scooters and get them off of the sidewalks and the Boardwalk. With regard to the communication plan, it will be easy to communicate to the public the new rules that will govern scooter parking because the number of scooter riders is a very small fraction of vehicles that park in the City. Scooter will almost exclusively come into the City from a five mile radius. Getting the "word out" should be relatively easy. Visitors who rent scooters will be provided a copy of the scooter parking map/rules and regulations regarding scooter parking in the City. Actions/items to be accomplished in communicating rules governing scooter parking are: 1. Incorporate scooter parking into the Parking and Walking Maps. This can be made available through City Hall, Police Department, Chamber of Commerce, Main Street and the Boardwalk kiosk. 2. Make sure that the map and rules and regulations are available through the various newspapers. 3. Allow the permits to be sold by the City employees who currently sell vehicle permits in the City. 4. Post signs at the three entry points into the City. Signs will be posted at every scooter parking area. Parking spaces may be added to the north side of the City such as at Pennsylvania and Oak Avenues.

Commissioner Zellers noted that issues were raised at the February Workshop Meeting regarding moped/scooter regulations. There was concern about going forward with a new scooter policy without all the “pieces” in place such as regulations, enforcement and processes with impact on City staff. The current Code shows that there are definitions/ordinances in place. She met with Police Chief Banks to review and obtain input. Definitions of an electric personal assistive mobility device (EPAMD also a Segway) and a moped were provided. There is no definition for a motor scooter in the Delaware Code but DE MVA states that motor scooters that are not a motorized skateboard and do not qualify as a moped, must be titled as a motorcycle. Definitions of motor scooter (MD DMV), motorcycle (DE), motorized skateboard or scooter, motorized wheelchair and triped were provided. Suggested to be included in the current language of the Code are: 1. Motor Vehicle. Every vehicle, as defined in this section, which is self-propelled, except farm tractors, electric personal assistive mobility devices and OHV’s. **(Consider including “an automobile, truck, motorcycle, moped, motor scooter, motorized skateboard, Segway or any other self-propelled vehicle designed to run on land, but not on rails”.)** 2. Vehicle. Every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks and excepting electric trackless trolley coaches and excepting OHVs. **Remove electric personal assistive mobility devices.) (Consider removing – if it’s motorized, it should be off the street.)** With regard to bicycles, no bicycle shall be attached to a parking meter, post, tree or bench located on any sidewalk, boardwalk, street or public place within the corporate limits of the City. With regard to parking near the Boardwalk, current language in the Codes states that no vehicle shall be parked within 15 feet of the way which has for its eastern termination the main Boardwalk. The provisions of this section shall not be applicable to motor vehicles owned or operated by lifeguards employed by the City who may use these spaces for the parking of motor vehicles during the hours when they are on duty. With regard to parking upon sidewalks, current language in the Code states that no vehicle shall be parked upon any sidewalk, crosswalk, street intersection, public lawn, curb or drainage course. With regard to parking in fire lanes, current language in the Code states that no person shall park any motor vehicle owned or operated by him in any designated fire lane. This section shall not be construed to be applicable to the parking of emergency vehicles of the City of the State when on official business. With regard to parking, stopping or standing in a median strip, no person shall park, stop or stand any vehicle, except when necessary to avoid conflict with other traffic or in compliance with the direction of a police officer, in the median strip connecting the east lane and the west lane of Rehoboth Avenue. With regard to parking restricted for certain vehicles, no owner or operator of any moped **or motor scooter** shall park such vehicle on any street within the corporate limits of the City, except such vehicle may be parked in a designated area or marked parking spaces as determined by the City Manager or his designee for the parking of mopeds **and motor scooters**. A possible additional space for parking would be at the Bandstand area. With regard to driving on sidewalks, current language in the Code states that no person shall drive any motor vehicle longitudinally upon any sidewalk in the City, nor shall any person drive any vehicle upon or across any sidewalk, except in order to gain access to or egress from a driveway or alley at a location where the curb, if such sidewalk is curbed, shall have been properly cut down for the purpose. Current fines/enforcement are not less than \$50.00 nor more than \$100.00 and shall pay the costs of prosecution, provided that with the consent of the person charged with a violation, the Chief of Police is authorized to accept and receive, without hearing, not less than \$50.00 as a penalty for such violation if such penalty is paid within seven days from the date of violation or accept \$75.00 if such violation is paid within 30 days from the date of the violation or accept \$100 if such penalty is paid after 30 days from the date of the violation. Any police officer of the City, while in the performance of his duty, may remove or cause to be removed any motor vehicle parked in violation at the expense of the owner or operator of such motor vehicle when the operator or is unable, unwilling or not available to move such motor vehicle immediately. Parking in fire lanes has similar language except that fines are doubled.

Mayor Cooper thought that the distinction between motorized scooters and skateboards needs to be cleared up. Discussion ensued as to the distinction between a motor scooter, moped and motorcycle.

Mr. Frank Cooper, 90 East Lake Drive, thought that the distinction should be for two-wheeled motor vehicles, not specifically addressed.

Commissioner Zellers said that the Commissioners will need to consider how strictly the motor scooter parking will be enforced the first year of operation. Mayor Cooper said that it will need to be enforced, possibly with one or two warnings. After that the regular procedure would be followed by issuing tickets. Mr. Ferrese said that with regard to enforcement, it needs to be made as simple as possible.

Commissioner Zellers said that an open air sticker would be issued to put directly on the scooter that would possibly be numbered. An application would need to be filled out so there is contact information and a way of enforcing with a ticket, etc. The language would need to be standardized as to where the ticket would need to be placed on the scooter, etc. With regard to the action items, the timeline for Mr. Mike Peterman to complete

the processes for implementation such as signs and line painting would be no later than mid-March 2013. The deadline to design the permits would be March 18, 2013, and the deadline for the courtesy notices would be March 31st or early April 2013 at the latest.

Commissioner Mills said that he would be comfortable with adding more free scooter parking spaces in the second block of Baltimore and Wilmington Avenues, and opening up an area behind the Fire Department and at Martin's Lawn. He did not know what the cause and effects of doing all of the scooter parking are. The City has a parking expert, Ms. Linda Kauffman, who would be an excellent resource to provide guidance on the proper questions to be asking to make sure this program works. There may be still time to consult her.

Commissioner Coluzzi said that the Committee has done a lot of research and spent a lot of time on working with this program as well as working with a transportation consultant in terms of bicycles. A small program was in place this past season, and what the Committee is looking at is to expand the program at a minimal cost. Scooters need to be accommodated, but allowing them to be on the sidewalks is not an answer. One hundred seventy scooter parking spaces will be available. Approximately 16 spaces would be provided behind the Fire Department and at the VIA. Approximately 12 spaces are available at Martin's Lawn. Approximately seven scooters would be accommodated in a corralled area. It would need to be determined whether to have the scooter parking in corrals or lined spaces on Baltimore and Wilmington Avenues. The permit system for scooter parking in the corrals would be 24 hours per day and seven days per week, not a limited timeframe. From a practical point of view, people who have scooters will buy the permits.

Commissioner Mills said that with scooter parking only in designated areas, he feels obligated to provide enough parking spaces. He thought lined spaces would be best for organization.

Commissioner Zellers said that scooters could park in permitted areas. In Country Club Estates or School Vue there is no parking line per se. If scooters are parking in the permitted areas, they would have to park in the direction of traffic with their front wheel (diagonally or perpendicular) so they would take up less space. In the downtown area where there are parking lines, then that presents a problem. The scooters would be able to take up an entire parking space. A few more spaces could be added in certain areas. Commissioner Coluzzi agreed. Scooters could be parked at a meter space, but the fee for the space would be paid. With regard to evaluating this program, the parking officers have cameras that can take pictures of license plates or the permit if they are in violation. The parking officers would make their rounds and come to a scooter parking space and record the time and how many scooters, etc. to collect the information.

Mr. Drexel Davison of Bad Hair Day asked if this will be for all motor scooters or just those who want to park. All motor scooters could be charged a license. He thought that maybe the Commissioners could work on this program at the next Workshop Meeting and then have a vote at the Regular Meeting because it would help corral all of the scooters and give access to the beach without bringing in cars, etc. Maybe the expert could have a report for the Workshop Meeting.

Commissioner Gossett said that free parking vs. a permit sends mixed signals, and this issue needs to be resolved. With regard to non-resident seasonal or non-resident weekly permits, he asked if a sticker is issued each time a person gets a permit, and the pricing should run parallel to vehicular parking permits. Commissioner Gossett thought that there should be a succinct presentation as to what the Committee suggests should be done.

Mr. Ferrese said that the most important thing is direction. If direction is given, then the signage can be started and where they will be located, etc. From today on, the permit will need to be set up. The fee structure should be as simple as possible. He suggested that the Committee contact other municipalities that have a scooter program to get input from them.

Commissioner Coluzzi said that on March 1, 2013 the Committee will be conducting a meeting. Scheduled for consideration are having two permits (resident and non-resident), set the fees for parking, general and exact spots for scooter parking, lining and signage, permits and application sheets.

City Solicitor Mandalas said that there should be a resolution stating there will be a permit process, the number of spaces, adopting a map to show the areas for scooter parking, etc.

Commissioner Gossett suggested having a memorandum of understanding or an operating statement to have all the data in one place that has been agreed to, and then move forward.

Mayor Cooper thought that the fee for the permit should be \$40.00 for the season for everybody because there would only be one class of permits. The consensus of the Commissioners was for the permit to be \$40.00

for the season. Mayor Cooper thought that if someone does not have a permit, \$30.00 should be the fee for a violation, but if a scooter is parked at a bicycle rack, a separate category could be created in two years for violations where scooters are parked in the wrong place.

Commissioner Zellers and Mr. Ferrese will work together with regard to scooters not being allowed to park at bicycle racks. Commissioner Coluzzi and Mr. Ferrese will work with Ms. June Embert and Mr. Peterman with regard to scooter parking and the T2 system and whether the proposed tickets will be sufficient. The Committee will decide at its meeting whether or not there should be a separate category for scooter parking. Commissioners Coluzzi and Zellers will work on language for a policy and have it ready as a draft for the Committee to review before forwarding it to the Commissioners at the next Workshop Meeting.

Mayor Cooper said that at the next Workshop Meeting, the Commissioners will need to be prepared to work through this policy.

CITY SOLICITOR'S REPORT

There was nothing to report.

COMMISSIONER ANNOUNCEMENTS/COMMENTS

Commissioner Gossett commented that the city-wide re-assessment is moving forward, and a database is presently being built. A meeting is set in approximately three weeks to go through that process. He will provide a further update then.

DISCUSS ITEMS TO INCLUDE ON FUTURE AGENDAS.

There was none.

CITIZEN COMMENT

There was none.

The next Workshop Meeting will be held on March 4, 2013 at 9:00 a.m.

There being no further business, Mayor Cooper declared the meeting adjourned at 10:17 p.m.

Respectfully submitted,

(Patricia Coluzzi, Secretary)