

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

October 15, 2010

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

A moment of silence was given for Mr. Michael DeFiore who had been Alderman for the City for 26 years.

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

ROLL CALL

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

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

APPROVAL OF AGENDA

Commissioner Stan Mills made a motion, seconded by Commissioner Lorraine Zellers, to approve the Agenda as amended with the deletion of the August 9, 2010 Workshop Meeting Minutes. Motion carried unanimously.

CORRESPONDENCE

Correspondence will be read when the patio ordinance portion of the meeting is held.

APPROVAL OF MINUTES

Minutes of the September 8, 2010 Workshop Meeting, September 17, 2010 Special Meeting, September 17, 2010 Executive Session, September 17, 2010 Regular Meeting and October 4, 2010 Special Meeting were distributed prior to the meeting. Minutes of the August 9, 2010 Workshop Meeting were not available for this meeting.

Commissioner Mills made a motion, seconded by Commissioner Zellers, to approve the September 8, 2010 Mayor and Commissioners Workshop Meeting minutes as written. Motion carried unanimously.

Commissioner Mills made a motion, seconded by Commissioner Bill Sargent, to approve the September 17, 2010 Mayor and Commissioners Special Meeting minutes as written. Motion carried unanimously.

Commissioner Mills made a motion, seconded by Commissioner Sargent, to approve the September 17, 2010 Mayor and Commissioners Executive Session minutes as written. Motion carried unanimously.

Commissioner Mills made a motion, seconded by Commissioner Sargent, to approve the September 17, 2010 Mayor and Commissioners Regular Meeting minutes as written. Motion carried unanimously.

Commissioner Mills made a motion, seconded by Commissioner Zellers, to approve the October 4, 2010 Mayor and Commissioners Special 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 September 2010. There were 29 criminal, 188 traffic and 24 civil charges made during the month. Twenty-one traffic crashes were investigated. The Dispatch Center handled 395 police incidents, 238 ambulance incidents, 59 fire incidents, 206 traffic stops, assisted other agencies seven times during the month, and 9-1-1 calls totaling 634 were received.

REPORT OF REHOBOTH BEACH VOLUNTEER FIRE COMPANY

No representatives were present to present a report.

REPORT OF THE BUILDING AND LICENSING DEPARTMENT

(See attached report.)

Assistant Building Inspector Stephen Kordek presented Building Inspector Terri Sullivan's report of the Building & Licensing Department for September 2010. During the month, 71 permits were issued for a value of work totaling \$2,340,826.41. Fees collected totaled \$46,729.69 for the month. Sixty-five permit processing fees were received in the amount of \$1,300.00. No restaurant applications were received in September. One stop work order was issued for a contractor working without a permit and without a license. Four stop work orders were issued for contractors working without licenses. No signs were confiscated from City property. One notice of violation was issued for weeds encroaching on a sidewalk. Two notices of violation were issued for sidewalks in disrepair. Two notices of violation were issued for tall grass. The Board of Adjustment heard two cases in September.

PERMIT OF COMPLIANCE HEARING

Mayor Cooper opened the Permit of Compliance hearing requested by Liew Thanibutra of TNK Corporation, to operate a new restaurant to be known as "Lily Thai Cuisine", to serve food and alcohol pursuant to the City of Rehoboth Beach Municipal Code, Chapter 215 – Restaurants. The restaurant will be located at 10 North First Street.

Assistant Building Inspector Kordek presented a complete report and addendum of October 4, 2010 of Building Inspector Sullivan's findings 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 10% alcohol and 90% food. The Application is for a 1,667.25 square foot restaurant. The bar area is 146.25 square feet with a ratio of bar to permanent seated dining of .21. In summary, this is an Application to add alcoholic beverages to an existing restaurant at 10 North First Street. No patio is included with this Application. The total square footage for the two restaurants is less than 5,000 square feet which meets Section 270-28 of the Code.

City Solicitor Glenn Mandalas noted the purpose of this hearing, 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 this 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. Application for a restaurant Permit of Compliance, received on June 21, 2010. 2. Notice of Public Hearing signed by the City Manager and posted by the City Secretary on August 25, 2010. Notice of today's Public Hearing was published in the Delaware State News on October 11, 2010 and Cape Gazette on October 12, 2010. 3. Building Inspector's Report dated September 9, 2010 with Addendum of October 4, 2010. 4. Menu. 5. Tax Record. 6. Placement Survey prepared for Bryce M. Lingo, received June 21, 2010. 7. Series of drawings identified as Jammin' Joes, received August 16, 2010: (a) Existing Restaurant Layout. (b) Existing Plan View. (c) Foundation Plan. (d) Typical Section. (e) Details. 8. Letter dated December 11, 2006 and received August 16, 2010 from the National Forensic Consultants, Inc. 9. Existing Structure Plan of Lily Thai Cuisine received August 26, 2010.

No comments were made by the Applicant or the Applicant's attorney.

There was no correspondence.

Public Comment:

1. Mr. Drexel Davison of Rehoboth Beach Main Street – in support of.

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

Commissioner Mills said the floor plan he has evaluated for this hearing is dated August 26, 2010., and he found the two items in the exhibits, dated August 16, 2010, to be irrelevant and contradicts the floor plan. The floor plan is rigid, and the Code dictates what the procedure is if there are any changes to be made. There is no dance floor. The Code indicates that tables cannot be moved around without going to the City Manager and coming back before the Board of Commissioners.

Commissioner Mills found the following to be true:

1. The proper Application has 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.

Commissioner Mills made a motion, seconded by Commissioner Kathy McGuiness, to issue the Certificate of Compliance to Lily Thai Cuisine at 10 North First Street. (Sargent – aye, Coluzzi – aye, McGuiness - aye, Cooper – aye, Barbour – aye, Mills – aye, Zellers – aye.) Motion carried unanimously.

REPORT OF THE PLANNING COMMISSION

(See attached report.)

Mr. Timothy Spies presented the report of the Planning Commission. The Regular Meeting was held on October 8, 2010. The Planning Commission continued its review of the Oak Grove major subdivision application as updated September 29, 2010. The majority of the meeting was devoted to reviewing the drafts of the various legal documents accompanying the application that had been revised since the Commission's September meeting. At the meeting, it was learned that the applicant was requesting additional changes. The applicant and City Solicitor stated that these changes could be incorporated into the legal documents and distributed to the Planning Commission for review within a week. The Planning Commission is proceeding with scheduling a special meeting on October 22, 2010 that will be devoted solely to the Oak Grove application. It is anticipated that the Planning Commission will be able to take action on this application at this meeting. The Planning Commission conducted a Preliminary Review of amended Partitioning Application requesting the partitioning of a property located at 2 St. Lawrence Street. The applicant will make additional changes to the application. In addition the applicant is cognizant that there is dispute concerning the ownership of some of the land currently claimed by the applicant. Both the applicant and City Solicitor will investigate this issue further prior to the next regular meeting. The Planning Commission voted to proceed to Public Hearing on November, 2010.

OLD BUSINESS

There was none.

NEW BUSINESS

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

Commissioner Dennis Barbour distributed a copy of the draft ordinance prior to the meeting. He read from a statement he had prepared prior to the meeting. He stated his support for all the employees who were directed to act as they did in this manner. At the last meeting, Commissioners Pat Coluzzi and Barbour volunteered to work with the business community and come up with a solution to the controversy that was spawned by one Commissioner who acted without the knowledge of his fellow Commissioners. Commissioners Coluzzi and Barbour have spoken extensively with City officials and have met with the business community on October 7, 2010 to do interviews on what transpired and how to move forward. What has transpired since September 8, 2010 was a result of a determined effort on the part of one City Commissioner to accomplish a long held personal business goal which has been to insulate his lodging patrons from reasonable commercial noise from nearby businesses that existed at the time he purchased his property. For years these businesses have

been the subject of numerous complaints about noise made by many adjoining property owners including Commissioner Mills. As an elected official, Commissioner Mills has acknowledged that he had played a major role in orchestrating a private meeting with City officials to specifically target 12 restaurants for enforcement of the patio ordinance. As a member of this body, it is Commissioner Barbour's responsibility as a public official to take concrete steps to right this process. Commissioner Barbour called for Commissioner Mills to recuse himself from participation in this matter under 29 DeIC. 5805 & 5806 which governs public officials' conflicts of interests. Commissioner Barbour stated that he was not part of this process, and he objected to the processes followed.

Mayor Cooper said that, in time, he would like to respond with a prepared statement regarding this matter.

City Solicitor Mandalas stated that under 20 DeIC. there is a State code of conduct that if an elected official has a personal or private interest he shall not participate, but the general rule is that the decision is left to the individual.

Commissioner Sargent suggested talking about the patio and noise ordinances because they are the agenda items.

Commissioner Kathy McGuinness stated that she was not part of the problem, but she would like to be part of the solution and move forward.

Commissioner Zellers was uncomfortable about the way this has been brought up. The process was not correct, but she did not feel it was done in any way to target specific people. Rules were being broken, and it was the City's attempt to remedy that. It was not a personal vendetta.

Commissioner Coluzzi said the point Commissioner Barbour was trying to bring forward is that as a public official he felt obligated to state these particular things to have people understand that there could be a possible conflict of interest.

City Solicitor Mandalas said that two things can happen: 1. A complaint can be filed with the Public Integrity Commission asking the Commission to make a determination. A hearing is held, and the Commission will issue a formal opinion. This can be done by a private party or by a Commissioner. 2. A particular member who is in question can ask the Public Integrity Commission for an advisory opinion.

Correspondence in support of changing the patio ordinance by either changing the patio hours of operation, decriminalizing, keeping the grandfathering status, etc.:

1. Letter received October 15, 2010 from Marilyn Spitz of The Back Porch Café.
2. Letter received October 15, 2010 from Nicholas Papantinas, 35 & 37 Wilmington Avenue.
3. Letter received October 15, 2010 from J. Caputo of The Porcini House Bistro and Espuma Restaurant.
4. Letter received October 15, 2010 from Eric Kessler, 21 Baltimore Avenue.
5. Letter received October 15, 2010 from Timothy D. Ragan, Blue Moon.
6. Letter received October 15, 2010 from Kenneth & Carmel Rutter of Iguana Grill.
7. Email received October 15, 2010 from Lyn & Don Lenhart, address unknown.
8. Email received October 15, 2010 from Jeff Clayton, First Street.
9. Email received October 14, 2010 from Troy Senter, 217 Country Club Drive Unit 101.
10. Email received October 13, 2010 from Mark Kehoe, address unknown.
11. Email received October 12, 2010 from Preston & Pauline Littleton, 300 Laurel Street.
12. Email received October 8, 2010 from Andy Meddick, address unknown.
13. Email received October 6, 2010 from Robert Cline, address unknown.
14. Email received October 4, 2010 from Richard McReynolds, address unknown.
15. Email received October 4, 2010 from John & Jan Motz, 25 Delaware Avenue.
16. Email received October 4, 2010 from Tony Potter, 4 Sea Chase.
17. Email received October 4, 2010 from Carol Chrzanowski, Lewes, DE.
18. Email received October 4, 2010 from Carol Fezuk, 219 Monroe Avenue, Lewes, DE.
19. Email received October 4, 2010 from Jayne Burke, 308 State Road.
20. Email received October 4, 2010 from W. Mason Freddy, address unknown.
21. Email received October 4, 2010 from Pamela Notarange, address unknown.

Other Correspondence:

1. Letter received October 13, 2010 from Carol Everhart, President/CEO of Rehoboth Beach/Dewey Beach Chamber of Commerce, requesting the following amendments to the patio ordinance:

- (a) Decriminalize minimal offenses and/or reduce violations from a criminal matter to a civil matter.
 - (b) Standardize the closing time for all restaurants to 1:00 a.m.
 - (c) Transfer any current noise associated restrictions to the noise ordinance for review. Discussions regarding a few of the suggested noise provisions have included:
 - (a) Transfer enforcement from the police to an evening City enforcement officer.
 - (b) Use of a decibel meter with a pre-determined, permanent and agreed to location by and between the property owner and City official as to where the decibels will be read.
 - (c) Review of reasonable decibel levels (commercial property backs to residential property vs. commercial to commercial).
 - (d) Fees, fines and complaint process, etc.
2. Email received October 14, 2010 from Jenny Barger, Executive Director of Rehoboth Beach Main Street, summarized the meeting held on October 14, 2010. A summary of comments was also provided. Commissioners Coluzzi and Barbour drafted a patio ordinance to include the following suggestions:
 - (a) Decriminalize the punishment for patio ordinance violations for Section 270-19(A).
 - (b) Allow businesses to treat their patios as an extension of their business referring to the hours of operation and food/alcohol service.
 - (c) Consider the "use of patios" to be extended to waiting patrons and/or smoking customers.
 - (d) Allow restaurants to have outdoor music under the restriction of certain hours via the application and approval of a permit. (Any restaurant grandfathered under the patio ordinance should continue to be able to have music without a permit.)In regard to the noise ordinance, other municipalities' regulations and enforcement will need to be examined. Commissioners Coluzzi and Barbour will draft a noise ordinance for future discussion including methods that work well in other municipalities. Businesses and residents which contacted Rehoboth Beach Main Street all agree that they would like to see the noise ordinance enforced in a way that any charges are civil instead of criminal. The hours considered acceptable for outdoor music varied.

Commissioner Barbour said that he and Commissioner Coluzzi met with the business community on October 7, 2010; and they emerged from that meeting with a consensus between themselves and the business community as to how to move forward. Commissioner Barbour has attempted to incorporate those notions in the draft ordinance. He has worked with Commissioner Coluzzi and City Solicitor Mandalas, to make sure that the draft ordinance is properly framed. New language was provided for Section 270-19(A)(1)(c) which deals with live entertainment. A number of businesses in the City are grandfathered, and they are able to have live entertainment which is one issue. The more important issue is that some businesses have said they would like to be able to have live entertainment for limited periods of time for weddings, grand openings, etc. A provision was drafted that would allow live entertainment up to 8:00 p.m., and the permit would have to be granted by the City Manager under criteria outlined in this provision. The previous provision referenced the closing hours as 10:00 p.m. or 11:00 p.m. What is being proposed is that the closing of the patio would be the same as the closing of the restaurant itself. The last major provision has to do with decriminalizing the violations. A fee would need to be set. This was brought up by the business community itself that the fee should be highly punitive. For the businesses that can have live entertainment because they were grandfathered, they would not be affected by the proposed changes to the ordinance.

Commissioner Coluzzi noted that in Section 270-19(A)(1)(b) of the draft ordinance, no patrons may await seating on the patio has been stricken. The key pieces of the draft ordinance are: 1. To allow music on a patio until 8:00 p.m. as long as the permit is granted by the City Manager based on Subsections (i) through (iv). 2. To extend the hours of business on a patio. Noise is the real issue, and the Commissioners need to figure out how they are going to enforce that issue. 3. Violation should be a civil offense, not a criminal offense.

Commissioner Sargent did not think that the Commissioners should vote on the proposed ordinance now or in the immediate future without the noise ordinance. The problem is noise, not the patios. Until there is an effective noise ordinance, the Commissioners should not change the patio ordinance. He did not have a problem with loose enforcement of the patio ordinance at this point. The Commissioners need to recognize that this is a bigger problem than patios; and an effective noise ordinance is needed. Commissioner Sargent said that he would not be doing his duty to support this until the Commissioners show that they have an enforceable noise ordinance.

Commissioner Zellers agreed with a lot of the things in the draft ordinance. For whatever way this came about, it is unfortunate the way the dialogue started. This has provided all with an opportunity to come together and have much needed discussion about the patio and noise ordinances. Commissioner Zellers is sensitive to the concerns about businesses and their patrons about enjoying themselves, but she has a responsibility to the people who live on those blocks adjacent to the businesses with patios. She agreed with decriminalizing the patio ordinance, and stiff penalties should be imposed for people who abuse the ordinance. A patio ordinance is needed because it is a way of controlling numbers of people around town, and it goes hand-in-hand with the noise ordinance. Commissioner Zellers agreed to a relaxation of the hours on a patio, and a compromise could

be agreed to in regard to the time. Patio patrons should be seated, and closing should possibly be tied into dinner service and kitchen closings. Noise is the issue, and it is something that needs to be addressed. Music on the patio should not be allowed after certain hours. Commissioner Zellers would not be comfortable with making a decision about that until an ordinance regarding noise is in place. She did not want to move too quickly on this matter because what changes the Commissioners make could impact upon the kind of City it would become. Commissioner Zellers said that the Commissioners need time to resolve this matter the right way, and she would like to see this matter settled before the summer season starts in 2011.

Mr. Joe Maggio, co-owner of Aqua Grill, said that he and Mr. Bill Shields, co-owner of Aqua Grill, are in favor of the changes to the patio ordinance as residents who live behind the commercial structures. He felt that this matter was very personal and targeted. He asked how many times the complaints took place by someone who has an investment behind those businesses, and how much City resources were spent addressing the same complainant again and again.

Commissioner Zellers said that she would like to move forward regarding this matter, keep open discussions and start working on this subject. Commissioner McGuinness disagreed. There was no second thought about arresting people. If enforcement is going to be lax, then some of the changes to the ordinances can be made right now. The arrests should be dropped, and the violations should be decriminalized. Live music can be permitted until 8:00 p.m., and a penalty can be made enforced. Hours can be extended with possible longer hours between Memorial Day and Labor Day. Commissioner Zellers said that the residents are not present to voice their concerns.

Commissioner Mills found the summaries from Main Street that outlined everybody's comments more useful than the original correspondence which has been submitted. The comments were largely from the business and restaurateur communities, and provided a different insight to their perspectives on various issues. He received the comments yesterday and the draft ordinance last evening. This is a good start by getting feedback from the commercial entities, but he looks forward to the future in getting feedback from the residential community, hotels and those within the commercial area. Personally, this is not just a noise issue for Commissioner Mills. It also has to do with behaviors. Somehow when alcohol is added and there is a late night dining and drinking crowd, there is potential for rowdiness and becoming another Dewey Beach; and he has been trying to figure out how to minimize that. A concurrent Code review is needed, as previously mentioned. He would not be comfortable with voting on anything until he knows the rest of it. What is all intertwined with the patio code and this entire issue, is the noise code and Chapter 215 – Restaurants and the permit of compliance process. Those three elements need to be looked at. Commissioner Mills asked for a response from City Solicitor Mandalas or Mayor Cooper if the Commissioners can review the process for changes in the three different codes, Chapter 215, noise and patio codes. He also asked if the Commissioners can clarify the process required for decriminalization. Representative Pete Schwartzkopf has offered help in this respect. Commissioner Mills was not sure that Representative Schwartzkopf's help is needed, but he would like clarification from City Solicitor Mandalas. It would be good for City Manager Gregory Ferrese and Mayor Cooper to review how the City has currently loosened up on the Code. Due diligence needs to be done, and Commissioner Mills expects to get this done by the end of year 2010 or sooner. Commissioner Mills requested that the process and length of time for changes be addressed, and the clarification of the decriminalization process at some point.

Commissioner Barbour said that the draft ordinance is a zoning change and requires a public hearing. Personally, he had hoped that the Commissioners could vote on something and send it to public hearing at which point the Commissioners can engage in a dialogue as described.

Commissioner Mills said that he would not be voting to go to public hearing on this issue right now because he is not comfortable with making any changes to the patio code until the Commissioners do something with the noise code.

Commissioner Coluzzi was uncomfortable with the fact that Commissioners Mills, Zellers and Sargent are saying they do not want to do anything until the Commissioners talk about the noise ordinance. If so, she wanted to hear a schedule from those three Commissioners when they intend to start this. Commissioner Coluzzi has spent time with the business owners and residents; and she wanted to make sure they understand that this is something the Commissioners are going to pursue now. Mayor Cooper thought that a draft noise ordinance could be presented at the next Workshop Meeting. Mayor Cooper knew of another municipality in Delaware that has a good noise ordinance, and he would like to have a chance to talk to that municipality.

Commissioner McGuinness suggested that this topic should stay on the agenda until it is resolved. She thought that the Commissioners should vote for decriminalization tonight. Commissioner Barbour agreed.

Commissioner Sargent hoped that in the next two to three months the Commissioners use this as an opportunity to involve everyone and come up with something that will make Rehoboth better than it has been. The Commissioners need to do this with a noise ordinance in addition to the patio ordinance. Commissioner Sargent said that he would be willing for the Commissioners to collectively tell City Manager Ferrese and Police Chief Banks that they do not want any criminal action taken on this. He does not want someone to have a criminal charge on their record because of the actions of patrons at their place of business.

City Solicitor Mandalas said in regard to process and decriminalization and because of the way the Code is set up, the Commissioners would need to make a declaration within the Zoning Code that this specific patio ordinance is a civil offense vs. criminal offense. Changes to the Zoning Code require at least 15 days notice for the public hearing. The Commissioners could vote to proceed to have it decriminalized, but the Commissioners cannot vote to decriminalize it tonight. A resolution to set a public hearing could be presented at the next Workshop Meeting. At the Regular Meeting, the Commissioners would vote to adopt the resolution setting a public hearing.

Commissioner Barbour said that he would like to have the opportunity to vote on whether or not the Commissioners should move this ahead to public hearing.

City Solicitor Mandalas said that in the general provision in the Zoning Code which sets out enforcement, any violation of the current Zoning Code is a criminal offense.

Commissioner McGuinness said that if there are things the Commissioners have of interest, they could be separated and voted on to move forward. In the meantime, this topic should be kept on the agenda. A subcommittee could be set up, and then move forward.

Commissioner Sargent said that the Commissioners should not vote on this issue or any issue until the Commissioners have the patio and noise ordinances, etc. as a completed package. Noise ordinances are written one of two ways. The majority of them use instruments, but there are other that talk about subjective standards. He thought that in working with the community, the Commissioners can come up with usable standards. Commissioner Barbour agreed, but he would also like to know whether those ordinances have survived judicial scrutiny because they are subjective and vague. Commissioner Sargent noted that a number of the Commissioners have said effective mechanisms are needed such as fines.

Commissioner Sargent made a motion that the Commissioners defer the voting on any part of the patio and the noise ordinance. Commissioner Barbour made a point of order that the public should be heard before a motion is made. City Solicitor Mandalas noted that public discussion is included prior to a motion. There was no second to the motion, and no vote was taken. Motion failed.

Public Comment:

1. Ms. Shelia Savaliski, co-owner of Seafood Shack, 42½ Baltimore Avenue, said that members of the business community are present at this meeting, and they want to see the ball continue to roll now. She said that they are asking for the Commissioners' help and not to be hurt anymore.
2. Mr. Tom McGlone, Laurel Street, said that the decriminalization aspect should be addressed tonight because he did not know how the Commissioners can selectively decide what laws will or will not be enforced. Mr. McGlone disagreed with the patio ordinance, but he agrees with everything that was said.
3. Mr. Steve Elkins, 39 Baltimore Avenue, took offense that previously it was stated that citizens who are residents have not participated in the discussions. Various residents in the City have participated. Enforcement of the ordinance was targeted.
4. Ms. Susan Wood, owner of The Cultured Pearl, said that patio and noise ordinances have been made one in the same, but they are not the same. Ms. Wood asked if she is on the list of 12 as a noise violator or patio violator. The patio ordinance is being used to do what the intent for the noise ordinance to do. Because the noise ordinance is flawed, the City is taking advantage of restaurants with patios to bring attention to what the noise ordinance is not doing. Everybody is present at this meeting except the customers and tourists. The Commissioners need to write an ordinance that is specifically designed to do what they want it to do.
5. Mr. Hugh Fuller, owner of Purple Parrot, apologized to the Commissioners and to any residents who may have felt that this came down because of his patio. He had a DJ on the patio because of his grand opening. His problem is with the noise ordinance, not the patio ordinance. It is a bad decision to enforce the patio ordinance for a noise ordinance. Mr. Fuller wished that the Commissioners would address some part of this tonight.

Commissioner Sargent asked what the Commissioners can do to accelerate the review of the noise ordinance so that it is done in the same timeframe as the patio ordinance. Commissioner Barbour noted that he and Commissioners Coluzzi and McGuiness have spoken about this; and it was their plan to get something to the Commissioners within the next two to three weeks regarding the noise ordinance. Mayor Cooper noted that he will also present a draft noise ordinance. Commissioner Coluzzi said that she has prepared a draft ordinance as well for the November Workshop Meeting. She felt strongly that the Commissioners should decriminalize this part of the patio ordinance tonight. She read the proposed language in Section 270-19(A)(5) regarding a violation being made a civil offense. If the Commissioners would vote to go to public hearing on this portion, it would go a long way to make the business owners feel more comfortable about the future.

Commissioner Zellers said that the penalties and violations would need to be addressed and in place at the same time if this would be decriminalized. There should be a process for the people who are not doing the right thing and for those who are repeated violators. In some way, the repeated violator should have to come back before the Commissioners. City Solicitor Mandalas said that with a civil offense, there are no penalties or fines; but there is an assessment that must have a reasonable relationship to the offense which was committed. In regard to a repeat violator, this would go back to the discussion the Commissioners had recently about the permit of compliance process and whether someone who is violating ostensibly should have to come back before the Commissioners for review of the permit of compliance.

Commissioner Sargent said that a lot of noise ordinances have a monetary escalation, but he was not sure if those ordinances related to criminal or civil. In most municipalities, they do not use the police department. They have a noise control officer who functions under Building & Licensing. This would indicate that the violations are not criminal, but they had the escalating rate. He will research this and report back to the Commissioners.

Commissioner Barbour said that the police department has been using disturbance of the peace for noise violations because the noise ordinance itself is criminal. And that is what has made it difficult for the police department. Police Chief Banks concurred.

Mayor Cooper had reservations when the civil penalty section was done. The Charter limits fining someone to \$500.00. Before the Commissioners would decide to change that amount, he would like to know exactly what the impact is. It will become more problematic with having a section in the Zoning Code that will have a different penalty. An appeal would be made to the Board of Adjustment if the penalty would be found in the Zoning Code. Mayor Cooper would like for Police Chief Banks and City Solicitor Mandalas to go through the noise ordinance. Approximately 10 or 20 years ago, when a violator was charged with a City offense, it was heard in Alderman's Court. At some point, the City was mandated to transfer to the State system. Mayor Cooper did not have a problem with keeping it here in the City if at all possible, and he did not know what forces the City to send it to the State to create a record.

Public Comment continued:

6. Mr. Ralph Hamer, 243 Rehoboth Avenue, said that 10:00 p.m. is a ridiculous closing time. The Commissioner need to take into consideration that tourists want to be able to sit outside on the patios. There are two problems: 1. Alcohol. 2. Noise. The tourists who want to sit on the patios until 10:00 p.m., 11:00 p.m. or 12:00 a.m., are being punished.
7. Mike (last name unknown), a representative of Greene Turtle, suggested, in regard to looking at noise ordinances from other municipalities, that there should be representation from the restaurants, bars, etc. to be a part of looking into it and to make sure that the municipalities are other resort towns which are comparable to what is in Rehoboth during the season, not just in the off-season.

- Commissioner Barbour said that a meeting can be scheduled regarding the noise ordinance issues, in the same manner that Main Street pulled together a meeting for the patio ordinance issues with the businesses and Commissioners Coluzzi and Barbour. Commissioner Sargent agreed. Mayor Cooper said that this cannot be substituted for the Commissioners' process.
8. Ms. Jenny Barger of Main Street said that she would be willing to continue with this process and call a meeting to discuss the noise ordinance. She hoped that the Commissioners will take the suggestions Main Street has made.
 9. Mr. Drexel Davison of Main Street said that something good will come of this. He asked the Commissioners to consider playing holiday music and having outside cafés located on the sidewalks.
 10. Mr. Guy Abernathy, 50 Wilmington Avenue, said that he is a proponent of outdoor cafés and restaurants. He asked if the Commissioners are not worried about being sued for not enforcing what is

already on the books.

11. Mr. Richard Kirchoff, 34 Sixth Street, said that the way this has been reported in the newspaper and on television makes the City look bad. There has not been an adequate explanation of how this all came about, and he hoped there would be a full discussion on it. The public deserves to understand fully what happened and how it happened. In regard to the noise ordinance, the Commissioners need to keep in mind that the restaurants and people sitting on patios are not the only sources of noise in the City. This is a larger issue than just the restaurants.
12. Mr. Jim Park, Lewes, represented the tourists who patronize Rehoboth Beach. Criminalization is the problem. The Commissioners may need to go through some of the ordinances and take out some things. Decriminalizing needs to be put on the agenda for the future. It might be simpler to repeal the ordinance and introduce a new ordinance. City Solicitor Mandalas said that a repeal would still require the same type of notice.

Mayor Cooper assumed that in regard to food and beverages on the patio in Section 270-19(A)(1)(b), the people standing on the patio cannot have any drinks or food. Commissioner Barbour said that this provision is for people waiting for a table. Currently, most people must stand on the sidewalk or in the restaurant to wait for a table. Mayor Cooper voiced concern that some of the patios are used as bars. If people are going to be serve who are standing, then it would be considered a bar; and it is not desirable. Only those people who are seated can have a drink or food. Commissioner Barbour said that it should be clarified that people are allowed to stand around on the patio and drink until 1:00 a.m. unless they create a lot of noise.

Mayor Cooper said that the idea of granting a permit for entertainment has no place in the Zoning Code because this would be arbitrary and capricious. The City Manager would have no guidance. Commissioner Barbour said the way proposed ordinance was originally drafted was that it would be under guidelines which would be adopted by the Commissioners.

Public Comment continued:

13. Mr. Hoyte Decker, Laurel Street asked if this would be a one-time specific request such as for a wedding on a patio, Fourth of July celebration, etc. These types of things create an ambience that enhances the tourist concept. It should not be open-ended. There should be no weakening of the smoking rules that exist. There should be progression in regard to penalties such as the suspension of the certificate of compliance. The civil penalties provisions should be across the board that when they apply to the patio, they also apply to noise. In regard to grandfathering, he wondered why some restaurants should get an advantage over others. The Commissioners need to consider doing something that will be across the board for everybody. Specific information which is stipulated regarding the restaurants that are grandfathered needs to be known in order to do this correctly.

Commissioner Barbour said that in the criteria, there would need to be some sort of limitation on how many occurrences there would be per year. He assumed that the City has a record of who is grandfathered.

14. Mrs. Nancy Meadows, 506 New Castle Street, said that the Commissioners have a problem, and they need to make a plan of action and move on because the restaurant owners here have to make a living.

Commissioner Barbour said that in terms of moving forward with the noise ordinance, Mayor Cooper and Commissioner Coluzzi will work together, and Main Street will held to coordinate a group of businesses to meet and talk about their concerns with them.

Commissioner Coluzzi said that Main Street has already had one meeting specifically dealing with the noise ordinance and input has been provided to her. She would be happy to move forward with a plan. The Commissioners will attack the noise ordinance at the next Workshop Meeting. The noise ordinance should be put on the City website for all to look at it once the Commissioners are comfortable with it from the Workshop Meeting.

Commissioner McGuinness made a motion, seconded by Commissioner Coluzzi to have a resolution so the Commissioners can vote at the next meeting to decriminalize this ordinance and move it from a criminal offense to a civil offense.

City Solicitor Mandalas suggested that the Commissioners direct him to prepare a resolution setting the public hearing to be looked at during the Workshop Meeting.

Commissioner Coluzzi said that the Commissioners have not given City Manager Ferrese the

parameters for the permit. Commissioner Barbour said that the guidelines are drafted, but the Commissioners need to approve them; so ultimately the Commissioners will be drafting the parameters. Mayor Cooper suggested that the Commissioners take the time to get the ordinance where they want it. He is expecting this topic to be on every agenda from now until there is a resolution.

Commissioner McGuinness withdrew the motion.

Commissioner McGuinness made a motion, seconded by Commissioner Coluzzi, for City Solicitor Mandalas to draft a resolution for decriminalization of the patio ordinance in Subsection (5) "A violation of this section shall be a civil offense. Any violation of this subsection A is declared a civil offense pursuant to Chapter 126 of the Municipal Code of the City of Rehoboth Beach. Any person who violates this section shall pay a civil assessment of (insert)" to be prepared for the next Workshop Meeting.

City Solicitor Mandalas said that since this would be a zoning change which would require notice, there should be some indication to the public as to what amount this would be referring to.

Commissioner Mills stated earlier that there are three components of this discussion: 1. Patio. 2. Noise. 3. Chapter 215 – Permits of Compliance. He is cautious about moving forward without understanding all of the ramifications of the changes of all three and how the codes interact. He would not be able to vote at this time.

Commissioner McGuinness amended the motion, accepted by Commissioner Coluzzi, to insert the assessment of \$500.00 and set the public hearing for November 19, 2010.

Commissioner Sargent said that he has every intention to vote for the decriminalization. Good incentives are needed, and those incentives can be worked out well and in a way that the restaurant owners will believe to be fair. He will not support this change without the noise ordinance being done at the same time. The Commissioners should be looking at all three parts at the same time. He said that noise is criminal, and nothing has been proposed to decriminalize it tonight. Commissioner Sargent supported the removal of all criminalization in regard to these ordinances, but he wants it done as a package. He would be happy to work with the restaurant owners.

Commissioner Zellers had basically said the same thing. She was worried that the Commissioners are moving too quickly without assessing the other ramifications. The patio ordinance should be decriminalized, and the fine is good. A process needs to be put in the ordinance if possible so that people can come back before the Commissioners with their problems. Restaurants and noise is not being addressed either.

Commissioner Coluzzi said that this will probably be a three-part process: 1. Decriminalize the patio ordinance. 2. Talk about the noise ordinance. 3. Talk about the patio ordinance again.

(Sargent – no, Coluzzi – aye, McGuinness – aye, Cooper – no, Barbour – aye, Mills – no, Zellers – no.) Motion failed.

In response to a question from the audience on whether the patio ordinance is going to be enforced, Commissioner Barbour said that it is a law and the Commissioners have to enforce it.

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

Commissioner Barbour said that this topic has been covered under the previous discussion. The consensus of the Commissioners is that Commissioner Coluzzi and Mayor Cooper will meet with Ms. Barger of Main Street.

Ms. Barger of Main Street said the last meeting that was originally scheduled to be a noise ordinance discussion would have been more productive if a Commissioner or City official would have been present to answer City related questions. She would like to schedule another meeting with a Commissioner or City and have something for the business owners to react to. Commissioner Coluzzi will work with Ms. Barger regarding the scheduling of the meeting.

Mr. Patrick Gossett, Dover Street, suggested that when the Commissioners work towards the noise ordinance, they should consider that one size does not fit all. Zoning regulations are enforced differently in the commercial districts and residential districts. There should be consideration of how a noise ordinance impacts the different areas, and the Commissioners may want to consider the seasonality the community.

Mayor Cooper called to award the bid for solar panels at 306 Rehoboth Avenue.

City Manager Gregory Ferrese had distributed the bid tabulation and the engineer's recommendation to the Commissioners prior to the meeting. Eight sealed bids were received on October 7, 2010 for the purchase and installation of solar panels at 306 Rehoboth Avenue. Clean Energy USA was the low bidder and meets the specifications. It is recommended that the bid be awarded to Clean Energy USA in the amount of \$49,115.00. read the bid tabulation. A grant was received from the State in the amount of \$35,000.00, and the City had budgeted \$40,000.00. Mr. Ferrese recommended to award the bid. Mayor Cooper clarified that it was federal money that came through the State. The City has received a \$50,000.00 check from Clean Energy USA, and the contractor is from Rehoboth.

Commissioner Coluzzi made a motion, seconded by Commissioner Zellers, to accept the bid from Clean Energy USA for the solar panels at 306 Rehoboth Avenue.

Mr. Ferrese noted that the \$50,000.00 check is not certified and the City is to put it in an escrow account. No bid bond was provided.

Commissioner Coluzzi amended the motion to say once the check has cleared.

City Solicitor Mandalas said that the check does not meet the technical requirements of the bid documents. After discussion, it was determined that City Solicitor Mandalas will look into whether this can be officially accepted.

Commissioner Coluzzi withdrew the motion.

This item was deferred.

Mayor Cooper called for confirmation of appointments to the Planning Commission and Board of Adjustment.

Mayor Cooper had distributed the recommended appointments to the Planning Commission and Board of Adjustment prior to the meeting. The appointments to the Planning Commission are David Mellen (3 years), John Gauger (3 years) and Francis Markert (3 years). The appointments to the Board of Adjustment are Frank Cooper (3 years) and Doug Popham (3 years).

Commissioner Sargent made a motion, seconded by Commissioner Coluzzi, to approve the appointments to the Planning Commission and the Board of Adjustment. (Sargent – aye, Coluzzi – aye, McGuinness – aye, Cooper – aye, Barbour – aye, Mills – aye, Zellers – aye.) Motion carried unanimously.

CITY MANAGER'S REPORT

There were no Street Aid expenditures:

(See attached report.)

City Manager Gregory Ferrese reported that in regard to the City receiving a \$500,000.00 Energy Efficiency Grant from the State, he will be attending an energy workshop on October 20, 2010 in Dover, DE. Once the City receives the written agreement from the State, it will then be authorized to begin the project. Authorization was given to the architect to begin preparation of plans and specifications for a new roof including insulation and drainage on the Convention Center and lobby area. It is estimated that energy wise the City will save \$15,000.00 per year. Authorization was given to the City's engineer to prepare plans and specifications for a new boiler. The City's architect is preparing a facilities plan which will include upgrading all the fixtures in the Delaware and Baltimore Avenue restrooms, and also making those restrooms green with all new lighting and other amenities. It is hoped that State grant funding of 50% will be received for this project. The City engineer is preparing plans and specifications to repair the Boardwalk decking at the Delaware Avenue restroom. A pre-construction meeting scheduled for October 21, 2010 at 1:30 p.m. pertaining to the Solar Panel Project has been postponed. It is intended that the Stormceptor Project in Country Club Estates will be bid out in December 2010. The City has received a State grant of at least \$100,000.00 for this project, and the City has allocated \$75,000.00. The City will begin once a week trash pickup on December 6, 2010.

COMMITTEE REPORTS

There was nothing to report.

CITY SOLICITOR'S REPORT

City Solicitor Mandalas commented that one thing the Commissioners do well is that they are deliberate about their process; and they repeat the same process again and again. There is value in that.

COMMISSIONER ANNOUNCEMENTS/COMMENTS

Commissioner Mills announced that he has been recently appointed by Delaware League of Local Governments (DLLG) to be an alternate representative to the DLLG on the Recycling Public Advisory Committee which is a State committee dealing with recycling. As an alternate, he has been attending meetings and participating in the Public Outreach Sub-Committee. Commissioner Mills hopes to share some of the resort area perspective with DLLG. New State legislation has been implemented that mandates a yard waste ban effective January 1, 2011 and recycling will be offered to residents and restaurants by September 2011. In approximately three years after that, recycling will be offered to multi-family units, condominiums and the commercial area. It is Commissioner Mills' intent to have discussion of what the legislation is and the timeline on the agenda for the November Workshop Meeting.

Discuss items to include on future agendas.

Topic to be included on the agenda for the November 8, 2010 Workshop Meeting is the draft lease for Lot 22 Rehoboth Avenue.

CITIZEN COMMENTS

There were none.

The Workshop Meeting will be held on November 8, 2010 at 9:00 a.m.

There being no further business, Mayor Cooper declared the meeting adjourned at 10:02 p.m.

Respectfully submitted,

(Kathy McGuinness Secretary)