



(See attached report.)

Chief Building Inspector Terri Sullivan presented the report of the Building & Licensing Department for October 2010. During the month, 71 permits were issued for a value of work totaling \$1,808,191.03. Fees collected totaled \$66,518.43 for the month. Seventy-two permit processing fees were received in the amount of \$1,440.00. One restaurant application was received in October. One stop work order was issued for a contractor working without a permit and without a license. Two stop work orders were issued for contractors working without licenses. Three stop work orders were issued for contractors working without building permits. Three signs were confiscated from City property. Two notices of violation were issued for not having dumpster barricades. Four notices of violation were issued for sidewalks in disrepair. One notice of violation was issued for tall grass. The Board of Adjustment heard one case in October.

**PERMIT OF COMPLIANCE HEARING** has been postponed.

#### **REPORT OF THE PLANNING COMMISSION**

(See attached report.)

Mr. Timothy Spies presented the report of the Planning Commission. The Regular Meeting was held on November 12, 2010. A Public Hearing was conducted on an amended Partitioning Application requesting the partitioning of a property located at 2 St. Lawrence Street. The applicant requested that the Planning Commission table this application to allow them time to see if some solution could be worked out with the City relative to the disputed ownership of some of the land currently claimed by the applicant. The Planning Commission voted to table this application and close the Public Hearing. At the request of Ms. Jane Patchell, Esq. of the law firm Tunnell and Raysor, P.A. who is now representing the applicants of Oak Grove Major Subdivision, the Planning Commission agreed to move this agenda item to its December 10, 2010 Regular Meeting. In regard to a conditionally approved Partitioning Application for a property located at 73 Park Avenue, the Planning Commission received a report from the Building Inspector advising that all conditions that had been set by the Commission in its August 13, 2010 conditional approval of this application had been met. The Planning Commission voted to finalize the approval of this application. The Planning Commission voted to re-elect Dr. Preston Littleton as Chair, Mr. David Mellen as Vice Chair and Mr. Timothy Spies as Secretary. The Planning Commission's December 10, 2010 Regular Meeting will begin at 6:30 p.m.

#### **OLD BUSINESS**

Mayor Cooper called to discuss the potential changes to Section 270-19(A) of the City Code, which Section relates to the regulation of patios associated with restaurants and Chapter 189 of the City Code, which Chapter relates to the control of noise.

Commissioner Coluzzi provided a short review that four meetings have taken place, one with residents regarding the patio ordinance, one with residents regarding the noise ordinance, one with business owners regarding the patio ordinance and one with business owners regarding the noise ordinance. Discussion has also occurred with residents and business owners at the Workshop and Regular Meetings about issues surrounding noise. Initially Commissioner Dennis Barbour had presented a proposed patio ordinance, and it was voted that the Commissioners need to spend more time with collecting information and reviewing the noise ordinance. Today, an officer from the Newark Police Department met with Mayor Cooper, Commissioners Sargent and Coluzzi, Police Chief Banks and City Manager Gregory Ferrese and provided a review of Newark's noise regulations. Commissioner Coluzzi requested that Mr. Ferrese contact the officer for him to attend either the next Workshop or Regular Meeting so all the Commissioners can ask questions of him and find out what is done regarding the regulation of Newark's noise ordinance. Commissioners Mills and Zellers agreed.

Commissioner McGuiness asked if any of the Commissioners would be interested in decriminalizing the ordinance while fact finding is going on. Commissioner Sargent said that a memo has been received from City Solicitor Mandalas addressing this issue. Based on what City Solicitor Mandalas has provided to the Commissioners, it is unsure what the Commissioners would do to decriminalize so there would be no state record and no physical arrest.

Commissioner Barbour noted that the Police Department is working on trying to determine the names of the complainants who registered complaints over three years.

Commissioner Mills said that this entire issue was started by the lack of compliance with the patio code and it then segwayed into noise, etc. He thought the Commissioners were all in agreement to look at the patio ordinance, noise ordinance and Chapter 215 – Restaurants. Commissioner Mills is heading up the review of Chapter 215 which includes the permit of compliance, violation and appeal process. Commissioner Zellers and

Mayor Cooper are working with Commissioner Mills on this review. They will try to have something ready for the December 6, 2010 Workshop Meeting. Commissioner Zellers said that the certificate of compliance can be used as a tool to bring violators before the Commissioners. Commissioner Mills said that the Commissioner will need to look at Chapter 215 because it has the violations, penalties and the appeal process in it. At the last meeting, Commissioner Barbour had outlined a proposal for noise violations that one would be a warning; two, three and four would be monetary fines in a progressive state; and the fifth one indicated suspension of the license. For proper codification, Commissioner Mills believed that the suspension of the license should not be within the noise or patio ordinance, but within the permit of compliance section which is in Chapter 215.

Commissioner Barbour asked if the Commissioners can deal with the noise issue without going into the restaurant code. He presented an amendment to the noise issue that dealt specifically with noise. A draft ordinance was also put together for the patio issue. City Solicitor Mandalas said that if the Commissioners want to deal with the issues comprehensively, they would need to look at everything. He did not know that this topic concerning patios necessarily means getting all the way into the restaurant code. Commissioner Barbour said that the Commissioners have created an acute situation for the businesses in the City, and the Commissioners have a responsibility to deal with that quickly, rather than postponing it for a broader review.

Mayor Cooper said that there is a problem with noise with some of the establishments, and that is an acute problem to be taken care of as well before next summer. He agreed with Commissioner Mills. If the Commissioners are going to allow more time on the patio, then the patio needs to be separated from the main restaurant. Two certificates would be needed so if there is activity on the patio, the offender can be punished by removing the right to occupy the patio but the restaurant could still be used. Patios are part of the permit of compliance, and the restrictions are part of the Zoning Code.

Commissioner Barbour said that the Commissioners have not had an open discussion amongst the group about whether or not they want to go off in this new direction. It requires a discussion.

Commissioner Sargent remembered Commissioner Mills mentioning the need to bring in the restaurant code four meetings ago. All of the Commissioners need to understand how important it is that this entire issue gets resolved well before the season begins.

Mayor Cooper said that at the last meeting, Commissioner Coluzzi's suggestion was that he, Commissioners Coluzzi and Barbour, Police Chief Banks and Mr. Ferrese were to meet with some of the people on the top of the offenders' list and get their input, get some compliance from them and transmit to them the Commissioners' concerns.

Commissioner Zellers said that at the last meeting, it was her understanding that the Commissioners were going to look at the certificate of compliance process so if there is a problem, it does not take two years before the Commissioners can suspend the certificate. Commissioner Zellers had volunteered if there was going to be any work on this subject.

Commissioner Mills said that the restaurant code is being looked at comprehensively, and there is a potential for new issues to be added to the mix. Commissioner Barbour said that he had a problem with that because the Commissioners started with the patios, then went to noise; and now, the suggestion is to get into a whole other realm of inquiry which could still be going on two years from now. The City created a problem, and the City needs to address that problem directly and get it over with. Mayor Cooper noted that some of the businesses have created a problem; and that in part was what sparked the City's response. Commissioner Barbour said that this is a problem which was created by a small group of citizens, and he did not think that the citizens of this City really find this to be a concern. Commissioner Mills said that it is unrealistic to think the Commissioners can just pick out little minutia of the Code and change them to better reflect what the Commissioners want to do in the patio and noise codes, and not look at the impact that those changes have on the rest of the entire Code.

Commissioner Coluzzi said that a timeline needs to be put in place in order to address the issues and for the people to be comfortable with how the Commissioners are moving forward with this matter. It is important to know that the Commissioners want to work with the businesses and help them solve a problem which is perceived or real.

Commissioner Barbour thought that this issue should mimic the process which was used for the patio and noise issue. Main Street had hosted a meeting of the businesses and residents to come in and talk to the Commissioners about what is being done. This way the Commissioners would have their input while going through the process. If there is going to be another three Commissioner panel along with a timeline, then they should follow the same process with meeting with the businesses and residents. A meeting was scheduled with

one restaurant this week, and a meeting with two other restaurants may be set up in the next two weeks. Based upon one experience, it is a good exercise because the Commissioners are finding common ground where they can work together with the businesses.

Commissioner Mills said that goal is December 6, 2010 or sooner. His group will be able to definitely commit to having something to the Commissioners by December 17, 2010 with a goal of getting it out soon enough for the Commissioners to look at prior to the meeting. Mayor Cooper said that when the sub-committee has something to present, a meeting will be help on it. He said that it is wrong and should be corrected for restaurants to willfully violate the patio ordinance, knowing what they had said at the permit of compliance hearings.

## **NEW BUSINESS**

Mayor Cooper called to consider the approval of a new lease with Kelly Rodgers, Trustee of the Blanche Rodgers Trust, for Lot 22 Rehoboth Avenue which is owned by the City and leased to the Blanche Rodgers Trust, the current lease terminates at the end of 2010.

Commissioner Mills noted that at the last meeting, the Commissioners were comfortable with Version No. 1 of the new lease, dated September 27, 2010. No changes have been made to the draft.

Commissioner Mills made a motion, seconded by Commissioner Sargent, to authorize the execution of the lease agreement before the Commissioners with Kelly Rodgers for Lot 22 Rehoboth Avenue.

Mayor Cooper noted that the term of the lease if five years with two renewals for five years. Mr. Rodgers will pay the taxes to the City and County on the improvements. Mr. Rodgers will be responsible for any insurance he wants to carry on the building and will be required to carry \$1,000,000.00/\$2,000,000.00 liability insurance. He will also be responsible for all utilities including water and sewer. The term of the lease is the same as the current lease which was dated in 1995. The current lease is weak on who owns the building. Mr. Rodgers will be responsible for sidewalk repairs and anything that would ordinarily a property owner would have to do in the City.

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

Mayor Cooper called for the presentation on yard waste and recycling disposal processes from collection to re-use.

Commissioner Mills gave his presentation on yard waste and source separated recycling, and he hoped it would be used for public outreach. Yard waste is defined as organize materials. The City picks up the yard waste in bundles, bags, cans and the leaf vacuum machine. The organics are transported to a yard waste collection facility in the Milton, DE area. All the facilities that accept the organics must be licensed by DNREC. The Milton facility produces mulch which is sold to landscapers. The owner of the facility suggested that Rehoboth should start buying his mulch so that it will come full circle and come back into the City. Blue Hen Organics is a much bigger facility which composts and produces different soils, topsoils, and mulch. Because composting is done, the facility also accepts poultry manure, sod, root mat and soil. Commissioner Mills described Blue Hen Organics' yard waste recycling process. In regard to source separated recycling, Delaware Solid Waste Authority (DSWA) collects the recyclables at the transfer station in Milford, DE. Rehoboth's recycling sub-contractor is First State Disposal (FSD), and it disposes of recyclables at this facility. DSWA holds the recyclables to be transferred to a material recycling facility (MRF) in Camden, NJ. Recyclables are a commodity, and every week DSWA bids out. Currently, there are approximately 11 vendors. The typical fee might be \$20.00/ton in the north and about half that in Sussex County due to disparity in transportation costs. The winning bidder provides trailers to be loaded and then transport comingled recyclables to its own material recycling facility. FCR MRF's process was described. Yard waste and source separated recycling is really reused.

Mayor Cooper called to consider the appointments to City committees, commissions and boards.

Mayor Cooper proposed that there be no real changes this year. He recommended the following appointments:

Election Board: Mr. Al Morris for a new three-year term  
Parks & Shade Tree Commission: Ms. Priscilla Smith for a new three-year term. Reaffirm and confirm Ms. Edwina Macadam for two years remaining, Ms. Jane Wyatt for two years remaining,

Ms. Marcia Maldeis for one year remaining, and Mr. Ned Kesmodel for one year remaining.  
All other Committees will remain the same.

Commissioner Mills disclosed that his wife if up for a vote on the Parks & Shade Tree Commission.

Commissioner Mills made a motion, seconded by Commissioner Sargent, to approve the Board, Committees and Commissions list. Motion carried unanimously.

### **CITY MANAGER'S REPORT**

City Manager Gregory Ferrese recommended the approval of the Street Aid expenditures:

10/10/10	679	Daft McCune Walker, Inc.	\$ 1,530.75 (Sidewalk Ramps)
10/27/10	680	Delmarva Power	\$ 8,206.57 (Street Lights)
11/11/10	681	Delmarva Power	\$ 8,259.83 (Street Lights)

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

(See attached report.)

City Manager Gregory Ferrese reported that in regard to the solar panels for 306 Rehoboth Avenue, the contract has been signed between the City and Clean Energy USA. He is waiting for the list of materials and certification that the materials are American made. In regard to the Energy Competitive Grant, the City has to have an asbestos assessment done on the Convention Center roof. BrightFields Engineering will do the assessment on November 22, 2010. The City hopes to receive state approval of its Energy Activity List by the end of December 2010. The Audit Committee will be meeting on December 1, 2010 at 10:00 a.m. in the Commissioners Room with the auditors to review the City's Audit Report ending March 31, 2010, and the public is invited to attend that meeting. In regard to Streetscape, some of the brick pavers in the crosswalks at the intersections are sinking. Beginning November 29, 2010, the company that installed the brick pavers in 2005 will be in the City with two employees. The City has purchased all the materials needed, and it will assign one employee a loader to make necessary repairs to the brick pavers that are sinking. The crosswalk in the travel lane at the post office will be concentrated on first. The next priority will be at all the intersections in the ADA compatible areas. The fire company has come before the Commissioners on numerous occasions about the lip at the sidewalk in front of the fire company. That project has been completed. Commissioner Sargent said that in regard to the crosswalk at Surf and Lake Avenues, the City is waiting to hear from the Mr. Bob Palmer, City Engineer on this matter. Mr. Ferrese noted that the Museum project has been completed, and the City has received reimbursement in full. The Tree Inventory has been completed. The City has submitted an interim report to the State agency which was required to be in by November 30, 2010. Commissioner Barbour will be talking with Bryan Hall about going after more grants. Mr. Ferrese was sure the Commissioners were aware of the nice job that Main Street has done with the pavers program around the comfort stations at Rehoboth Avenue. This item will be placed on the agenda for a future Workshop Meeting.

### **COMMITTEE REPORTS**

There was nothing to report.

### **CITY SOLICITOR'S REPORT**

City Solicitor Mandalas reported that in regard to the School rezoning, the conservation easement has been finalized, signed and recorded.

### **COMMISSIONER ANNOUNCEMENTS/COMMENTS**

Mayor Cooper reported that he had talked with Mr. Rip Copithorn today, and Mr. Copithorn had said that the instrumentation located in the ocean was retrieved on November 8, 2010 and was successful except one of the two current profilers had an issue with the battery so it shut down after being there a few days. The other profiler worked well. On November 29, 2010 a meeting has been scheduled in Dover, DE and the City's engineer will be in attendance. At the end of September 2010 the scoping meeting for EIS was held in the Convention Center. The City's engineer will be given the document of what needs to be included in the EIS. The draft EIS will be submitted in late summer 2011. It is expected that the City will have submitted all the permits and applications it needs, and hopefully all those permits will be dealt with in one large public hearing. After the public hearing, the EIS would be finalized.

Commissioner Coluzzi announced that the rose bushes should be transplanted at the circle because currently they obscure the line of sight at the circle and the medians. Mayor Cooper said that Sposato typically replants

the entire area each year. Commissioner Coluzzi will talk with Sposato on November 22, 2010 regarding this issue.

Commissioner Mills announced that federal funding has come through for all the beach towns to receive beach replenishment to restore the dune and beach profile to the Nor-Ida storm. The contracts will either be due or awarded on December 1, 2010. A contractor will be onboard soon after that date. The completion date is prior to Memorial Day 2011, and there is no timeline dictated in the sequence for where the contractor will start first. DNREC has been doing preparation for the beach replenishment.

Commissioner McGuinness noted that on November 26, 2010 at 6:00 p.m. at the Bandstand, there will be a sing-along and at 7:00 p.m. is the lighting of the Christmas tree. A lot of the businesses will have discounts and extended hours this season. On December 5, 2010 from 4:00 p.m. to 7:00 p.m., Community Unity will be held in the Convention Center. The Christmas Parade has been scheduled for December 6, 2010.

Commissioner Coluzzi noted that the Holiday Farmers' Market will be held on November 27, 2010 from 12:00 p.m. to 3:00 p.m.

Commissioner Mills noticed that on Robinson Drive there are new freestanding solar powered speed signs and detectors similar to what Bethany Beach has on Route 1. He thought this would be something worth looking into.

**Discuss items to include on future agendas.**

An employee appeal of the decision for disciplinary action by City Manager will be scheduled for December 6 at 1:00 p.m.

**CITIZEN COMMENTS**

City Solicitor Mandalas noted that there is pending litigation within the City. The Reigles have filed a trespass action against the City in connection with the City Boardwalk reconstruction project. Litigation is ongoing. Mr. Hans Reigle has requested to be heard before the Commissioners.

Mr. Hans Reigle, 707 South Boardwalk, noted that his family's problem with the City goes back two years, and they feel they are being picked on. Mr. Reigle said that he has letters that the City Manager has acknowledged that the Reigle's own land on both sides of the Boardwalk. Recently, the City has reversed its decision which may have something to do with the fact that the City may want to assume ownership and has bulldozed both sides of the Boardwalk. He also has DNREC letters showing that any disturbed vegetation will be replaced after the Boardwalk construction. Misrepresentations have been made on the application to do the project about the width of the Boardwalk, etc. Mr. Reigle voiced concern that he has had trouble getting on agendas and getting information from the City. He has received information regarding the legal fees spent in Rehoboth and other municipalities.

A concerned city who lives at 43 Delaware Avenue hoped that the Commissioners resolve the noise issue by March 2011. For those who live near a certain establishment, the sound that amplifies is unnecessary and unreasonable, and is really annoying. He suggested that possibly the decibel levels can be quantified that come out of certain establishments so there is a certain level is acceptable vs. being totally objective. At night, the noise ruins the quality of life, and he hoped that something will get resolved and this just does not continue on. He has complained to the police. He did not think that a commercial property owner has the right to infringe on his quality of life. Many of the people on his street have the same feelings.

The Workshop Meeting will be held on December 6, 2010 at 9:00 a.m.

There being no further business, Mayor Cooper declared the meeting adjourned at 8:42 p.m.

Respectfully submitted,

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(Kathy McGuinness Secretary)