

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

December 17, 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, December 17, 2010 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

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

ROLL CALL

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

Absent: Commissioner Kathy McGuiness

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

APPROVAL OF AGENDA

Commissioner Stan Mills made a motion, seconded by Commissioner Lorraine Zellers, to approve the Agenda as amended with the deletion of the November 8, 2010 Workshop Meeting Minutes. Motion carried unanimously.

CORRESPONDENCE

There was none.

APPROVAL OF MINUTES

Minutes of the October 15, 2010 Regular Meeting, November 19, 2010 Regular Meeting and December 6, 2010 Workshop Meeting were distributed prior to the meeting. Minutes of the November 8, 2010 Workshop Meeting were not available for this meeting.

Commissioner Mills made a motion, seconded by Commissioner Zellers, to approve the October 15, 2010 Mayor and Commissioners Regular Meeting minutes as written. Motion carried unanimously.

Commissioner Mills made a motion, seconded by Commissioner Pat Coluzzi, to approve the November 19, 2010 Mayor and Commissioners Regular Meeting minutes as written. Motion carried unanimously.

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

REPORT OF THE POLICE DEPARTMENT

(See attached report.)

Police Chief Keith Banks presented the report of the Police Department for the month of November 2010. There were 18 criminal and 140 traffic charges made during the month. The Dispatch Center handled 163 police incidents, 136 ambulance incidents, 25 fire incidents, 162 traffic stops, assisted other agencies 10 times during the month, and 9-1-1 calls totaling 450 were received. Chief Banks reminded everyone of a new State law going into effect on January 2, 2011 banning talking and texting on a handheld cell phone while driving. The fine will be \$50.00 for a first offense and will be a civil violation at this time.

REPORT OF REHOBOTH BEACH VOLUNTEER FIRE COMPANY

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

REPORT OF THE BUILDING AND LICENSING DEPARTMENT

(See attached report.)

Chief Building Inspector Terri Sullivan presented the report of the Building & Licensing Department for November 2010. During the month, 80 permits were issued for a value of work totaling \$2,688,469.27. Fees collected totaled \$79,007.39 for the month. Seventy-nine permit processing fees were received in the amount of \$1,580.00. No restaurant applications were received in November. Two stop work orders were issued for contractors working without licenses. Two stop work orders were issued for contractors working without building permits. Two signs were confiscated from City property. One notice of violation was issued for not having dumpster barricades. Five notices of violation were issued for sidewalks in disrepair. The Board of Adjustment heard no cases in November. Ms. Sullivan also noted that 44 solar panels have been installed at 306 Rehoboth Avenue. In addition to that, the tree inventory and management plan was received from Davey Tree at the beginning of December. Copies of the CD have been forwarded to Mayor Cooper and the Commissioners. Removal and pruning of trees are two priorities and will be taken care of probably after January 1, 2011.

REPORT OF THE PLANNING COMMISSION

(See attached report.)

Mr. Timothy Spies presented the report of the Planning Commission. The Regular Meeting was held on December 10, 2010. After a review and discussion of the apparent transfer of ownership and the initiated dissolution of Oak Grove Motor Court, Inc., one of the named applicants and the subsequent restoration of ownership, the Planning Commission determined that its review and consideration of the Oak Grove Major Subdivision Application could continue. The Planning Commission continued its review of the application, specifically the final materials submitted on behalf of the applicants by Ms. Jane Patchell, Esq. The following motion was approved: Whereas the Planning Commission is in general agreement to grant a Conditional Approval of Major Subdivision Application No. 0708-05, "Oak Grove at the Beach", and Whereas several necessary substantive changes must first be made to the Resolution of Approval and further Whereas the Applicant and the Planning Commission are in agreement with the substance of these necessary changes, the Planning commission direct the City Solicitor to provide it by December 31, 2010 with a final revised draft Resolution for review and approval. The Resolution for Conditional Approval will be placed on the agenda of the Planning Commission's Regular Meeting scheduled for January 14, 2011. A new partitioning application for a property located at 807 King Charles Avenue and will be placed on the January 14, 2011 agenda for Preliminary Review.

OLD BUSINESS

Mayor Cooper called for the presentation by a representative of the Newark, Delaware Police Department concerning Newark's noise and other ordinances and their enforcement.

Commissioner Bill Sargent said that what has become apparent is the current noise ordinance is very hard to enforce in many respects. When there is a complex neighborhood environment and there is noise, it becomes difficult to enforce the noise ordinance. The City of Newark, DE has used a different standard and has found it to be successful. The City of Newark, DE has a similar situation because it is a college town. It has bars that are closely associated with a lot of residents. Commissioner Sargent introduced Corporal Jerry Breida to provide a history of Newark's noise ordinance; how it has been effective and enforced; what problems there are and what level of compliance there is.

Corporal Jerry Breida gave his presentation. He has been a police officer with the City of Newark for 12½ years. The City of Newark is a unique town that has a lively population for 10 months of the year; and noise and disorderly conduct are one of the biggest problems it has. Since 1981, the City of Newark has had two different ordinances that are used to deal with noise. First, he talked about the noise ordinance and how it applies to residences. Under noises prohibited, a device such as a stereo, television, loudspeaker, live band, etc. cannot be operated and be heard plainly audible across real property boundaries between 9:00 p.m. to 7:00 a.m. From 7:00 a.m. to 9:00 p.m., an order which is a warning is given to shut the music off. The business has a 60 day warning period, and a summons will be issued upon another violation. The plainly audible across real property boundaries standard means that if a neighbor calls the police and complains that a house is having a party and the stereo can be heard, the police officer then acts as the witness to the offense. The police officer will respond to the location; and if he can hear the stereo plainly audible from the City sidewalk in front of the residence during the nighttime hours, there is zero tolerance. A criminal summons is issued to the owners or leasers of the property for that charge. In regard to apartments, the plainly audible standard applies in the common areas. If a neighbor calls the police and the officer can stand in a common hallway and plainly hear the music during the nighttime hours, a summons is issued for violating the noise ordinance. If a resident or anyone is driving by a bar or restaurant that has loud music playing and a complaint is made to the police, a police officer will respond and stand on the City sidewalk in front of the business or on the property where the complaint was made, and the officer will act as a witness. If the music is plainly audible, the police officer will

go into the business and contact the manager; and the manager is issued a criminal summons and is ordered to turn the music off. The disorderly premise ordinance is a second ordinance which is used for both residences and businesses. This ordinance basically says that it would be unlawful for someone to allow loud noises, smaller crowd noises, yelling, screaming, fighting, quarreling or fraying which disturbs the quiet and good order of the City of Newark. This ordinance comes into play for businesses when police officers respond repeatedly weekend after weekend to large fights at bars, fights in parking lots, overcrowding at bar establishments, etc. when the noise rises to a level that disturbs the quiet and good order of the City of Newark. This ordinance is also used for residential properties such as crowds in the backyards of properties that can be heard blocks away. In regard to the disorderly premise ordinance, the violation is against whoever is in charge of the property. Ninety-nine percent of noise and disorderly premise violations are complaint driven through the 9-1-1 center. If a police officer responds to a complaint and acts as a witness and a violation is not noticed, no action is taken. The genesis for the start of the noise ordinance was college students moving into residential neighborhoods, having parties and disturbing the longtime residents. Ninety-six percent of citations or complaints are from residential neighborhoods year round. Violators can have a full criminal-type trial in Alderman Court because it is a City violation. If violators are found guilty, they have the right to appeal to the Court of Common Pleas. Decibel levels are not used. The plainly audible standard is used for electronic devices coming from residences and businesses. If no complaints have been received, the police officers working foot patrol will give a warning to businesses. Outdoor patios are provided by approximately six restaurants on Main Street. There is no live music allowed outside.

Public Comment:

1. Ms. Sheila Savaliski, co-owner of Seafood Shack asked if the complaints are anonymous and what the percentage is for anonymous vs. known complainants. Corporal Breida acknowledged that complaints can be done anonymously. The complaints are not tracked in terms of anonymous or known. It is not made a point to investigate who made the complaint. Although this law can be enforced proactively, the City of Newark Police Department does not. Ninety-nine percent is complaint driven by the citizens. Ms. Savaliski asked how it is handled with people in front of businesses who are smoking and talking loud. Corporal Breida said that if there is a complaint that the crowd is too loud, a police officer would talk to the management of the establishment and have the bounce staff try to quiet down the yelling or screaming. If the people are outside the boundaries of the business, then it would become disorderly conduct which would result in a warning or arrest.
2. Mr. Joe Maggio, 21 Ocean Drive, Rehoboth Beach, asked if the noise ordinance in Newark, DE would be applicable to something a resort area such as Rehoboth Beach. Corporal Breida was not comfortable giving an opinion because he has never seen what the problem is in Rehoboth Beach. The noise ordinance is 100% applicable to Newark, DE especially in the residential areas.
3. Ms. Carol Everhart, Rehoboth Beach/Dewey Beach Chamber of Commerce asked what the fee and process are once the property owner is ticketed. Corporal Breida said that a criminal summons is issued for the first offense. That person would be required to appear in Alderman Court and the fine would be along with associated court costs. An escalating scale is used for subsequent offenses.
4. Ms. Judy Mellen, 105 Rodney Street asked how large groups of people who are laughing and talking are handled. Corporal Breida said that this would fall under the disorderly premises ordinance. He read the ordinance. The police office would probably enter into the business and talk to the manager that there is a complaint and provide an option of moving the patrons inside.
5. Mr. Tom McGlone, 18 Laurel Street, said that this is an inappropriate comparison to what the City of Rehoboth Beach has here. He thought that Dewey Beach could be used as a comparison. Mr. McGlone did not think that there is a noise problem in the City, but there is a problem relative to a couple of residents basically complaining. As a resident of this community, he was disappointed with the comparison and the tone that this basically sets in terms of the starting point relative to talking about noise in the City. Mr. McGlone suggested that if people own houses which are infringing on businesses and they are disturbed by them, then the people should move.
6. Mr. Drexel Davison of Rehoboth Beach Main Street agreed with Mr. McGlone. He has always wanted to ask the person calling in the complaints how they have lived at their residence and if the businesses existed at the time they bought their residence.
7. Ms. Betty Ann Kane, Maryland Avenue, thought that a small minority of businesses are causing noise disturbance problems; and she has complained many times to Rehoboth Police and Alcoholic Beverage Control Board. She said in regard to outdoor patios and no live music, that this is also a requirement of ABCC. The City has a particular problem with residences backing up to commercial areas where a few businesses flaunt the law and do not comply. Ms. Kane said that she bought her house in 1988 and there was no business behind her house at that time. The residents on Maryland Avenue signed a

- petition against the change in ownership of a particular business that was disturbing them because of the previous owner running the business was noisy and violated every City and State law. Only because they agreed to be grandfathered in and abide by the City law did the residents drop the petition. Many of the residents on Maryland Avenue have lived there much longer than the businesses.
8. Mr. Rick Eisenman, 402 Rehoboth Avenue, said that his residence is in a commercial district. In regard to a disorderly business, this ordinance would work in the case of a 7-11 where repeatedly there are vehicles with loud music in the parking lot. There are a few businesses that do not have regard for the residents who live in the community, and that is when enforcement comes into play.
 9. Mr. Timothy Spies, 53 Columbia Avenue asked if the plainly audible standard has been upheld in any Delaware Courts. Corporal Breida said that he would have to research the Court of Common Pleas cases. Commissioner Sargent said that he spoke with the Chief Alderman, and she has never lost an appeal.
 10. Ms. Jenny Barger of Rehoboth Beach Main Street, asked how the Newark police officers are trained to hear plainly audible. Corporal Breida said that all of the officers basically are trained with regard to this sort of ordinance in the first four weeks of field training. Plainly audible is when someone can clearly hear the lyrics of a song, feel the base, see the windows shaking on a house, etc. Plainly audible is plainly obvious. Ms. Barger asked if there is a reason to restrict the timeframe that a patio is open due to a noise problem. Corporal Breida said that this would fall under the building department for restrictions.
 11. Mr. Bill Frankis of Greene Turtle asked if a complaint is by a resident, a business that is stationary or simply by a person walking by even though their peace is not being compromised. Corporal Breida said that any one person in any way, shape or form can call in a complaint for the police to investigate.
 12. Ms. Betty Ann Cochran, 27 Baltimore Avenue, asked what is done about bull horns, megaphones, etc. Corporal Breida said that exterior loudspeakers, horns, signaling devices, construction noise, etc. fall under the same noise standard.
 13. Mr. David Mellen, 105 Rodney Street, asked how many times businesses are violating the noise ordinance, but because there is no complaint the police officers do not respond. Corporal Breida said that he could not accurately say. The police officers are always on foot patrol on Main Street. There is occasion where the officers will walk by where there is loud music playing. The police officers have the discretion of not issuing a summons.
 14. Mr. Jim Neese, Dewey Beach, asked how the businesses are receiving this ordinance. Corporal Breida said that this ordinance has been in effect for more than 20 years; and no major complaints have been received regarding it.
 15. Ms. Cindy Lovett, 510 Rehoboth Avenue said that this reminds her of someone who buys a home across the street from a high school and then complains that there are kids all over the place.
 16. Mr. Walter Brittingham, 123 Henlopen Avenue, asked if the low numbers are driven by known enforcement standards. Corporal Breida said that he did not believe so. It is all complaint driven. If a violation is observed, a summons will be written. In the past, there have been businesses that had a number of violations in a period of time. Some of the violations have been disorderly premises type. There are not a lot of complaints because businesses know that if they are loud they will be cited. It is all part of the package when they get their license from the City.
 17. Mr. Trey Kraus of Carlton's, 31 Rehoboth Avenue, asked for enlightenment regarding the demographical makeup of the people living above bars. Corporal Breida said that in downtown Newark, DE the vast majority of the apartments above bars, restaurants or other stores, are college age people and are a little more tolerant. There is one residential condominium complex in the center of Main Street, and those people are not college age. People from those condos registered complaints because they tried to oppose a bar coming in across the street from them.
 18. Ms. Michelle Kelly, address unknown, said that the City wants the businesses in town, but it wants to change the ordinances for the people to come out and have a good time.

Commissioner Coluzzi commented that Rehoboth is a tourist town, not a university town. People come to Rehoboth to have a good time. Businesses are the lifeblood of this community, and they are needed. There is another approach the Commissioners need to think about is some sort of mediation or arbitration for people who are repeat callers complaining about problems they are having with noise. It may be time for these people and businesses to talk to each other to see if something can be worked out. There needs to be a dialogue, and that is what has occurred since this all happened several months ago. Continuing with this approach will lead to success.

Commissioner Dennis Barbour said that Rehoboth has a problem with the businesses and residents which is opposite of the City of Newark with residents and kids. If the City had taken a leadership role and gone to the

businesses and individuals who were complaining, more would have been accomplished. Mayor Cooper said that the City has done this, and it is not fair. Commissioner Barbour has heard and understood that there are two to three particular establishments that have been perceived to be the problem. It is the Commissioners' job to deal with them and the complainers, and mediate rather than bringing in police power.

Mayor Cooper has looked at other ordinances, and he said that the City of Wilmington and City of Newcastle have similar or identical language to the City of Newark's ordinance. Corporal Breida said that Middletown might also have the same language. Mayor Cooper said that Newark's ordinance has wide recognition among municipalities in Delaware.

Commissioner Sargent said that the Commissioners are looking for a standard that can be applied across the board and meets everybody, and is enforceable. Police Chief Banks has done his best to work with some of the businesses, and he has not been able to get the compliance with some businesses. The Commissioners want to find a way that is accommodating to everybody, and at the same time entertain more late night dining.

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

Commissioner Barbour said that of the 69 restaurants in the City, 36 have gotten liquor licenses. From what he can tell, the current problem comes down to three restaurants and a small number of people in the City who are disturbed by this. Commissioner Barbour believed the system is working, and the Commissioners should not change their way of doing business because of those three restaurants. The system is working, and the Commissioners should not change because of the three businesses. It is unfair to the other 66 restaurants. The Commissioners need to deal effectively with those three restaurants first. What the Commissioners have been doing is a good example by meeting with the businesses. With the businesses they have talked to, it is very clear in the case of one restaurant that is getting chronic complaints, that they have done all they can; and there is nothing more that they should be reasonably expected to do. At that point, the Commissioners need to talk to the neighbors about this issue and try to get some perspective from both parties. Commissioner Barbour had suggested in one case that the owner of the restaurant should talk to the owner of the property; and they both agreed. Before the Commissioners change the way business is done, they need to deal with the three outliers and try to resolve those specific problems before including everybody in the epic. Commissioner Barbour agreed with the mediation concept. The Commissioners are headed in the direction towards a far more severe way in dealing with these businesses in an attempt to get hold of a problem that only applies to three establishments. The patio ordinance is flawed because it is overly restrictive. The problem here has been generated by someone going around one weekend and making a list of establishments that had patios where people were out there talking. This was not driven by the citizens.

Mayor Cooper said that the City needs a code that is effective in dealing with businesses. He regretted that there is not some way to bring into this room what is being talked about so people can witness what other people are going through and what is being put onto the sidewalks of the City. In the past, there has been an effort to organize a walk-around, but that is self-defeating because word will get out and people will tone it down. This involves specific businesses, a few more than what has been mentioned. It is a small minority of the licensed establishments. They have been a source of the problem; and several of the establishments have thumbed their noses at the City; and they do present a problem. Mayor Cooper had witnessed on a Saturday night a four piece band in front of a business, and he was receiving readings on his noise meter in excess of 100 decibels in the middle of the sidewalk.

Commissioner Barbour said that in talking with the businesses in the City, they agreed that this should not be allowed. The police have worked out a system whether it is formal or informal, and it was his understanding that there is not a state of constant conflict between the businesses and the police.

Police Chief Banks said that it usually is a minority of the businesses and sometimes residents who have caused problems and have been cited. The residents get a ticket and pay it, and nothing more is heard about it. Businesses get upset because it is the cost of trying to do business and trying to attract people to come into their restaurant, bar, etc. Usually when the police respond, it is complaint driven. If the noise gets too loud, police officers will go into the business and talk with the manager to have the music turned down and the doors shut; but a few of the businesses have basically told the police that meter readings and the noise ordinance can be challenged, and they are not shutting their doors and windows. The same businesses will turn the music down for 10 to 15 minutes; and when a police officer goes by again the music has been turned up again. A noise ordinance needs to be adopted because businesses will not be heard in Alderman Court. Those cases will be transferred to the Court of Common Pleas. The noise ordinance is challenged in the courts.

City Solicitor Mandalas said that these charges are typically summons to appear in Alderman Court. There is an automatic right of removal for a defendant to remove their case from Alderman Court to the Court of Common Pleas. Once the case gets to the Court of Common Pleas, the City Solicitor is deputized as a State Deputy Attorney General to prosecute the case, or the case is dismissed. For a \$25.00 or \$50.00 fine, it is not worth going through these efforts to prosecute a noise violation in the Court of Common Pleas.

Ms. Savaliski asked Police Chief Banks how many of restaurants his officers took direct enforcement on. Police Chief Banks said that prior to July 1, 2010, some businesses were cited for disturbing the peace; but no citations were issued since July 1, 2010.

Mr. Davison asked who the three disrespectful businesses are. Commissioner Barbour said that there were 34 complaints against Blue Moon with zero violations. Mr. Maggio noted that there were 14 complaints against Aqual Grill with zero citations. Commissioner Barbour could not recall the third business involved.

Mr. Krauss asked if the Bandstand has to adhere to any noise. He did not think there is a time limit to noise. The Commissioners need to be careful of how they go about handling this because Rehoboth is a resort town, and there is noise. He thought that it is ridiculous that someone cannot eat al fresco after 10:00 p.m. on a patio. People who come to visit Rehoboth while on vacation do not start eating until that time, and they are here to enjoy themselves. Commissioner Sargent said that City sponsored events are excluded; and Funland is excluded. The Code specifically lays exceptions out. Mayor Cooper said that if this is a problem he will speak with the Director of the Bandstand.

Mr. Brittingham said that the Bandstand serves a purpose. Rehoboth is not a tourist town. It is the resident's town. In regard to Main Street's unadvertised meeting which he attended, most of the people said that it is necessary to have a penalty. There is a responsibility to the commercial community. Commissioner Barbour said that the businesses that had the highest complaint numbers attended that meeting because they wanted to find a solution to this problem.

Ms. Savaliski asked if the City has a designated community police officer or a community liaison. Most towns have community police officers and community liaisons to work in concert with community problems. City Manager Gregory Ferrese said that he personally works with Ms. Carol Everhart, Director of the Rehoboth Beach/Dewey Beach Chamber of Commerce Carol Everhart and Ms. Jenny Barger of Main Street. He has worked with a lot of the businesses. Ms. Savaliski said that if there would be a go-to person, she would like to sit down with the person who is complaining about her and try to work with the community. She suggested that a community liaison should be appointed. Police Chief Banks has talked with businesses. The police officers are trying to work with the businesses. There are a few people who are violating the laws.

Commissioner Barbour said that this is not a problem with the police, it is a problem with policy which the City has set; and it is essentially a problem for the Commissioners. Police Chief Banks has worked with the businesses, and Commissioner Barbour thought that they had come to an understanding of what the businesses should do.

Commissioner Coluzzi thought that the Commissioners are moving in the direction towards requiring some sort of mediation between the person who has complained and the business. Mayor Cooper thought it would be fine to have somebody to try to work through it, but he did not see where the complainant has to be identified.

Commissioner Barbour said that there are instances in the City related to chronic complainers. Mayor Cooper said that what he has consistently heard Police Chief Banks say is that he does not have an enforceable standard. This City needs to have a written standard, and then it needs to be enforced. Commissioner Barbour did not believe it is fair to businesses and neighbors if there is one person who is complaining constantly about a problem. It is not fair to the neighbor or the business to not have an opportunity to know who it is.

Commissioner Sargent said that the Commissioners need to find a fair standard that people who are neighbors to a business can recognize when that business is within the standard. The complaint has to be confirmed, or nothing will happen. Without an agreeable standard that is fair to residents and businesses, it is complicated and cannot be solved. Commissioner Barbour agreed, but he feared that the Commissioners will be going to a very strict standard in part because of people living next to businesses who have been complainers over a period of time. Those are the people who are creating the problem, and the City is reacting to a small group of people. Commissioner Sargent said that he does not want to solve a problem for any one individual. He wants to find something that is fair for the community. The Commissioners will need to work on the standard, and plainly audible would be a way of writing something. The problem is to find what is fair for everyone.

Commissioner Barbour said that there is one restaurant in the City that he would deem to be a public nuisance. He does not believe the restaurants on Baltimore Avenue are public nuisances.

Commissioner Coluzzi said that in the Code, there is a plainly audible standard relating to vehicles which can be used. She read the provision. Commissioner Barbour said that what came out of those meetings with the businesses was for police officers, Commissioners, etc. to go around in the summer with the businesses and get a real sense of what noise exists so the Commissioners can come up with a read-upon standard that is reasonable based upon what actually exists.

Mr. Kraus said that there should be a group of residents, businesses, Commissioners and police officers to agree on the level of noise, then everyone will understand what it is. Currently there is an arbitrary level that no one knows exactly where it is. Those who attended the meeting held with the businesses thought it would be a beginning of a solution to be considered on how to set the limits.

Mr. McGlone suggested that the Commissioners as a group put together a target date or goal to get this accomplished and get something going vs. just talking about this issue. Commissioner Barbour agreed specific timelines need to be set. Mayor Cooper said that the Commissioners have been trying to collect information.

Commissioner Sargent said that Commissioner Barbour's original proposal took the restrictions off the patios. Commissioner Sargent did not have a problem with that, but it needed to be accompanied by an enforceable noise ordinance. He liked the idea of somebody being able to sit on a patio during the full hours that a restaurant is open. A patio is no different from any other part of a restaurant.

Commissioner Barbour said that there has been a patio ordinance since 1991, and there have been no citations of the ordinance. Patios were never the problem. Mayor Cooper thought that patios are a problem. A new patio was opened at the end of August 2010, and three emails were received from people a block away who said that they have been impacted by it. Mayor Cooper said that a lot of the problems experienced lately are new. The patio ordinance worked beautifully for a long time, but some people are finally challenging the system and challenging the Commissioners to do something about it. Commissioner Barbour said that the Commissioners need to develop community standards.

Mr. McGlone asked if the Commissioners visit the flagrant violators. Commissioner Barbour said that he, Mayor Cooper and Commissioner Coluzzi have met with Blue Moon, Aqua Grill and Purple Parrot to hear from their perspectives on the things they had tried to do to alleviate neighbors' concerns. Mayor Cooper has made a suggestion for the Commissioners to engage an expert on noise to help the Commissioners work through what noise is reasonable. Commissioner Coluzzi said that the idea is to have an expert go into restaurants and give them ideas of what they can do in their places of business to help them contain the noise. Commissioner Barbour said that he would like to have a deadline date of when this will be resolved.

Commissioner Sargent had put together a draft ordinance and would distribute it to the Commissioners if they would like to see it. Commissioner Barbour said that consensus is needed as to whether plainly audible is an appropriate avenue. He did not think that it is. The Commissioners should work with the community to come up with a notion of what the reasonable community standard is. The plainly audible standard is not a good standard and is not applicable to this City. It would end up being overly restrictive and unfair.

Commissioner Zellers said that there are municipalities going from decibel levels to plainly audible. The City of Newark's plainly audible standard is not applicable to the City of Rehoboth Beach. There is a way that the Commissioners can come up with a plainly audible standard by working with the business community, so that everybody knows there is a certain distance beyond which a conversation cannot be understood. This would be something that a reasonable person could understand. Commissioner Barbour said that he did not think this applies to an area which is a mix of residential and commercial. The Commissioners have a responsibility to work with the community to try to come up with some sort of a standard before they decide to go down the road with plainly audible.

Commissioner Sargent said that the critical issues are the times of night and the level of noise that is expected. The level of noise is a function of business. He would like to talk to the community about these issues. Commissioner Sargent will provide a draft ordinance to the Commissioners for their review.

Ms. Barger requested that if the Commissioners choose to send out a draft ordinance and use Main Street as an outlet, a survey should be done to follow that up with an outlet for people to comment on it in some sort of organized fashion; and have one person from the City organizing the responses.

Commissioner Coluzzi said that she would like to review Commissioner Sargent's draft ordinance several

days prior to the Workshop Meeting in January 2011 and to set a timeline at the same meeting.

Mr. McGlone said that 65% of houses in the City are owned by people who do not live here. As a result, this needs to be communicated to people because ultimately it will affect them, how they live and interact here, and also potentially their property value. This is something that should specifically be addressed, and there should be a mailing to poll the residents of the community.

Ms. Kane said that it is important to let the residents know when there is a draft ordinance.

NEW BUSINESS

Mayor Cooper called to discuss potential changes to Chapter 215 of the City Code, which Chapter relates to regulation of restaurants.

Commissioner Barbour announced that he had only received the proposed changes to Chapter 215 this morning and did not have time to review it prior to this meeting.

Commissioner Mills said he, Mayor Cooper and Commissioner Zellers have been working together on the proposed changes. This is an outline of issues the group identified and a proposal on guidance on how to move forward. Mayor Cooper said that the group is not asking for any decision or discussion tonight, only to introduce the subject. Commissioner Mills said that the group has tried to come up with objectives for the review of Chapter 215.

Commissioner Sargent said that as the Commissioners were looking at combined patio and noise ordinances, Commissioner Mills had raised a question as to whether there are things in the restaurant code that might be conflicting or need to be touched on.

Commissioner Mills said that in looking at Chapter 215, a issue was found with the definitions. The definitions are incomplete, unclear, scattered within the Code or missing. Some proposed resolutions to deal with this type of issue would be to consolidate, clarify and/or add new definitions. Current language in the Code defines bar area, and language from the permanent seated dining area should be relocated to the bar area because it has to do with calculations of square footage of the bar area.

Commissioner Barbour asked if Commissioner Mills could point out what needs to be changed and whether or not it has any impact on the substance of the ordinance.

Commissioner Mills said currently in the definition of restaurant, "totally enclosed" is currently not defined and should be added to the Code. Another that was identified is that there is no lesser alternative to closing an entire establishment when issuing a revocation or suspension. The proposed resolution would be to establish a patio license that is separate from the standard permit of compliance. The standard permit of compliance would license the general premises except for the patio area. A special patio permit of compliance would license the patio area only. Currently a restaurant with a patio applies for and receives a single permit of compliance. The group believed that dividing the permitting process into two licenses would allow for separate enforcement actions. Currently a suspension of a restaurant with a patio shuts down the entire operation. With separate licenses, a suspension could be applicable to the patio only and leave the balance of the establishment in operation. Currently in the definition of restaurant, a special patio license is referenced. Other issues were that Code sections applicable to restaurants are dispersed throughout Code Chapter 162, 215 and 270. Proposed resolutions are: 1. Add related Code(s) to "General References" at the beginning of Chapter 215, i.e. Zoning Use Restrictions – See §270-19, and Zoning Size Limitations – See §270-28. 2. Create a new section on "Use Restrictions" and relocating language from definitions and other areas of the Code such as bar area and dinner theaters. Another issues was that application submittals are often incomplete, information is difficult to interpret, and the submittal requirements may be deficient. The proposed resolution is to amend/clarify the type of information to be submitted with the application. The applicant would be required to provide area calculations rather than relying solely on the Building Inspector to make calculations. This would minimize disparities in calculations between the applicant and B&L. The applicant would be required to highlight the different areas of the premises to better visualize the areas and assist in area calculations. Other input would be provided from Building & Licensing Department. Another issue identified was that the times for revocations, suspensions and appeals overlap, are incongruous and/or inflexible. The proposed resolution is to amend the timelines for revocations, suspensions and appeals. Other changes under consideration are amending/updating violations and penalties sections by possibly providing for more than daily violations and/or updating fine amounts. Another change for consideration would be to amend the Code such that the violation of patio and noise codes are additional triggers for revocations and suspensions. The next steps would be to get Building & Licensing's review and comment, seek City Solicitor's review and comment, draft proposed changes based on

the issues identified, finalize the first draft, and present to the Commissioners and public for discussion.

Mr. Maggio thought that this is a direct attack on businesses.

Commissioners Zellers said that the patios, noise and restaurants all interact.

Commissioner Coluzzi said that she is not totally comfortable with this proposal going concurrently with the noise and patio ordinances. She liked the idea of doing two permits of compliance. Commissioner Coluzzi hoped that the Commissioners look at the draft of the noise ordinance next week, decide if that is the path to go and try to push forward and adopt that ordinance. After that, the restaurant code could be pursued. Her thought is that the patio is an extension of the restaurant; and the patio should have the same hours as the restaurant. If there is a problem with the patio, it better to shut the patio down than the entire restaurant.

Commissioner Sargent said that no one should ever be shut down because of noise. The fines should be high enough that there is no question of it costing too much. Commissioner Mills has provided a mechanism, and the Commissioners need to decide how far they want to go.

Mayor Cooper said that the noise code does not have to wait for the restaurant code.

Commissioner Barbour voiced concern with dealing with the restaurant code and patio and noise ordinances all at once. Commissioner Coluzzi suggested moving forward with the noise and patio ordinances. The restaurant code can be taken up after those ordinances are finished.

Mayor Cooper called to discuss a proposed revision of Chapter 22 (Emergency Operating Plan) of the City Code and the proposed new City Emergency Operations Plan drafted by Sumter Consulting.

Mayor Cooper said that this item was placed on the agenda simply to find out if there are any thoughts by the Commissioners since the Workshop Meeting. He recommended removing the emergency operations plan from the process and work on the ordinance. Once the ordinance is adopted, the plan can then be worked on and be adopted. He said that a number of definition can be eliminated since they are not used in the ordinance.

Commissioner Coluzzi said that for the ordinance, she came up with the section that directly talks about succession and who the emergency coordinator should be. Mayor Cooper said that he would like to review the plan in regard to this suggestion. Two paragraphs are needed for: 1. Line of succession. 2. Emergency Management Council. Mayor Cooper recommended that the Emergency Management Council not be included in the ordinance because it is included in the plan.

Commissioner Zellers said that the City of Lewes has a schematic with all the guidelines, a how-to list and forms. This may provide guidance as to how the Commissioners would like to set up the plan with appendices.

Commissioner Mills said that the document itself need updating. At one point, the resource inventory should be dated. The Commissioners need to talk about much of the plan is public information, and how much of it is confidential. Some jurisdictions have their entire Emergency Operations Plan on their website, some have it in part, and others do not have it on their website at all.

Commissioner Sargent noted that in the line of succession, a designated individual should be called out. He also suggested that anything which requires legal action such as calling a curfew, etc. should be put in the ordinance. Anything organizational would fall within the plan.

This item will be placed on the agenda for the Workshop Meeting scheduled for January 10, 2011.

Mayor Cooper called to discuss a request by Rehoboth Beach Main Street for the City to provide additional locations for RBMS to place additional engraved brick pavers.

Commissioner Coluzzi said that Main Street has requested additional areas to place pavers. The ends of Wilmington and Olive Avenues at the Boardwalk have been identified as those areas. .

Ms. Barger noted that the paver installer who works with Main Street said that 700 brick pavers can be installed in the two garden areas on the north and south of the existing pavilion at Wilmington Avenue, and at the south side of the pavilion where the Verrazzano monument is located on Olive Avenue. The Sister Cities Association has already considered the idea of having pavers all around the monument.

Mayor Cooper said that paver programs have been directly related to a capital improvement program because it is a way to raise money. He voiced concern about equal protection because the Fire Company and VIA have programs going on right now. Mayor Cooper suggested that DNREC should be contacted because of placing a number of brick pavers that close to the ocean. At the very minimum, Main Street owes it to the

Commissioners to say that this is a fundraising endeavor and what the finances will be used for.

Ms. Barger said that the money raised through the paver program is used for the sign and façade grant and helping with downtown beautification in general. If both locations could be secured, option one would be Wilmington Avenue and the money raised would go 100% to Main Street; and with option two at Olive Avenue, the funds would be split with 1/3 going to Sister Cities Association and 2/3 going to Main Street. Main Street is also proposing to maintain the areas once the pavers are installed.

Mayor Cooper said that the Commissioners are the custodians of City property, and they are obligated to manage it in a way that is equal to all groups.

Mr. Davison said that after Main Street has received all aspects, it will return to the Commissioners with a presentation. Mayor Cooper said that he would like to know if the pavers would be put on a base with a border around them to keep them contained. Ms. Barger said that it would be repeat of the concept for the pavers at the Bandstand.

Mayor Cooper called to consider adoption of a resolution authorizing the issuance of up to \$5,250,000 in General Obligation Bonds of the City of Rehoboth Beach, Delaware pursuant to Section 40(r) of the City Charter to refinance outstanding obligations of the City in order to realize present value savings.

Mayor Cooper said that there are two bonds proposing to be refinanced so there are two resolutions because the money is being used for two different purposes and approved in different ways. The recommendation is to keep the bonds separate and the terms similar. WSFS Bank has put together an extremely good proposal to take the deposits of the City and manage the City's accounts. As part of that, WSFS is willing to take over these two bonds at an interest rate which has not yet been determined. Mr. Scott Swingle of WSFS was in attendance at the meeting. The first bond was the \$6,000,000.00 borrowing for the Streetscape improvement, Lake Gerar Bridge, 306 Rehoboth Avenue and other small projects. The remaining balance on this bond is less than \$4,500,000.00. The resolutions were prepared by Ms. Emily Neinan, Esq. The existing interest rate on this bond is 4.28%. Mr. Swingle feels that the City is looking at an interest rate of approximately 70% of the existing rate. The money for the second bond was borrowed for the elevated storage tanks which was originally \$3,600,000.00 funding. The remaining amount is less than \$700,000.00 to be repaid in two installments in December 2011 and December 2012. The interest rate will be the same.

Commissioner Mills made a motion, seconded by Commissioner Sargent to adopt the resolution authorizing the issuance of up to \$700,000 General Obligation Bond to refinance the City's outstanding General Obligation Bond regarding the drinking water facilities improvement project. (Sargent – aye, Coluzzi – aye, Cooper – aye, Barbour – aye, Mills – aye, Zellers - aye.) Motion carried unanimously.

Commissioner Mills made a motion, seconded by Commissioner Sargent to adopt the resolution authorizing the issuance of up to \$4,500,000.00 General Obligation Bond for refinancing the City's outstanding General Obligation Bond regarding Streetscape and Lake Gerar Bridge projects. (Sargent – aye, Coluzzi – aye, Cooper – aye, Barbour – aye, Mills – aye, Zellers - aye.) Motion carried unanimously.

CITY MANAGER'S REPORT

(See attached report.)

City Manager Gregory Ferrese reported that in regard to the Energy Competitive Grant in the amount of \$500,000.00, the City has not received the approved Activity List from the State. All forms have been submitted to the State on behalf of the City. It is anticipated that the City will receive authorization to proceed by early January 2011. The City is advertising for sealed bids in regard to the Stormceptor Project in Country Club Estates, and the bid opening is scheduled for January 27, 2011. Bids will be opened on January 11, 2011 for a small drainage project next to the Rehoboth Beach/Dewey Beach Chamber of Commerce office. Plans and specifications are being prepared for the improvements to the Baltimore Avenue restrooms. Advertising for bids is anticipated in late January 2011. The Solar Panel Project at 306 Rehoboth Avenue is now complete. The proper paperwork will be submitted for reimbursement. Mr. Ferrese is presently working on the 2011/12 Budget and would like to have the first Budget Meeting on either January 21, 2011 or January 22, 2011.

The consensus of the Commissioners was to hold the Budget session on January 21, 2011 at 1:00 p.m.

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

11/17/10	682	GrassBusters Landscaping Inc.	\$ 14,063.28 (Intersection ADA Compliance)
11/24/10	683	Daft McCune Walker Inc.	\$ 271.00 (Professional Services)

12/15/10 684 Delmarva Power \$ 8,450.21 (Street Lights)

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

Mayor Cooper called to consider a proposed settlement agreement in the matter of Reigle vs. the City of Rehoboth Beach. This item may include an executive session for the Commissioners to receive legal advice from the City Solicitor as permitted by Title 29 Section 10004(b)(4) of the Delaware Code since this item concerns pending litigation.

Commissioner Mills made a motion seconded by Commissioner Sargent to enter into Executive Session at 10:27 p.m. Motion carried unanimously.

Commissioner Mills made a motion, seconded by Commissioner Sargent, to reconvene in the public forum at 10:58 p.m. Motion carried unanimously.

Commissioner Mills made a motion, seconded by Commissioner Sargent to authorize the Mayor to execute the settlement agreement and release along with the easement maintenance declaration. (Sargent – aye, Coluzzi – aye, Cooper – aye, Barbour – aye, Mills – aye, Zellers - aye.) Motion carried unanimously.

COMMITTEE REPORTS

There was nothing to report.

CITY SOLICITOR'S REPORT

There was nothing to report.

COMMISSIONER ANNOUNCEMENTS/COMMENTS

Commissioner Sargent asked if a meeting has been scheduled with the people who own the Jolly Trolley since they had requested the meeting. The Commissioners have received the audit report. Mayor Cooper said that this item will be placed on the agenda for the Regular Meeting on January 21, 2011.

Discuss items to include on future agendas.

Topic to be included on the agenda is a discussion of intermediary actions that the Commissioners can take regarding the recent personnel hearing. City Solicitor Mandalas will review this issue.

CITIZEN COMMENTS

There were none.

The Workshop Meeting will be held on January 10, 2011 at 9:00 a.m.

There being no further business, Mayor Cooper declared the meeting adjourned at 11:03 p.m.

Respectfully submitted,

(Ann M. Womack, Assistant Secretary)