

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

December 20, 2013

The Regular Meeting of the Mayor and Commissioners of the City of Rehoboth Beach was called to order at 7:01 p.m. by Mayor Samuel R. Cooper on Friday, December 20, 2013 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

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

ROLL CALL

Present: Commissioner Toni Sharp
 Commissioner Patrick Gossett
 Commissioner Bill Sargent
 Mayor Samuel R. Cooper
 Commissioner Stan Mills
 Commissioner Lorraine Zellers

Absent: Commissioner Mark Hunker

Also in attendance was: City Solicitor Glenn Mandalas

Also absent: Acting City Manager Gregory Ferrese

APPROVAL OF AGENDA

Commissioner Stan Mills made a motion, seconded by Commissioner Toni Sharp, to approve the Agenda as written. Motion carried unanimously.

CORRESPONDENCE

There was none.

APPROVAL OF MINUTES

Minutes of the November 15, 2013 Regular Meeting and December 2, 2013 Special Meeting were distributed prior to the meeting.

Commissioner Mills made a motion, seconded by Commissioner Lorraine Zellers, to approve the November 15, 2013 Mayor and Commissioners Regular Meeting minutes as written. Motion carried unanimously.

Commissioner Mills made a motion, seconded by Commissioner Sharp, to approve the December 2, 2013 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 2013. There were 37 criminal, 161 traffic and two civil charges made during the month. Five traffic crashes were investigated. The Dispatch Center handled 200 police incidents, 159 ambulance incidents, 51 fire incidents, 198 traffic stops, assisted other agencies seven times during the month, and 9-1-1 calls totaling 329 were received.

REPORT OF REHOBOTH BEACH VOLUNTEER FIRE COMPANY

Mr. Walter Brittingham of Rehoboth Beach Volunteer Fire Company reminded everyone to check their smoke detectors and replace the batteries if needed.

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 2013. During the month, 86 permits were issued for a value of work totaling \$3,065,735.56. Fees collected totaled \$79,905.08 for the month. Seventy-five permit processing fees were received in the amount of \$1,500.00. The Board of Adjustment heard two cases in November. One restaurant application was received in

November. Two notices of violation were issued for contractors working without building permits. There were 98 building inspections, nine plumbing inspections, two rental inspections, one meeting regarding trees, 32 meetings regarding new projects and 19 meetings regarding City business.

PERMIT OF COMPLIANCE HEARING

Mayor Cooper opened the Permit of Compliance hearing requested by William Frankis of GT Rehoboth Avenue LLC to operate a new restaurant to be known as "The Greene Turtle Sports Bar & Grille" pursuant to the City of Rehoboth Beach Municipal Code, Chapter 215. The restaurant will be located at 52-B Rehoboth Avenue. The Applicant acknowledged that he was aware of the Public Hearing procedures.

City Solicitor Mandalas noted the purpose 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 the statute, but also with regard to the issuance of a building permit or business license for the subject establishment.

City Solicitor Mandalas identified the exhibits: 1. Notice of Public Hearing posted by the City Secretary on November 21, 2013. Notice was published in the Cape Gazette on December 3, 2013, Coast Press on December 4, 2013 and Delaware State News on December 5, 2013. 2. Building Inspector's Report dated December 13, 2013. 3. Application notarized and received on November 15, 2013. 4. Property account record. 5. Depiction of the properties within 200 feet that were notified for this hearing. 6. Menu. 7. Irish Eyes Restaurant and Pub Restaurant Calculations, Sheet No. A-2 dated February 28, 2008 and received November 15, 2013. 8. The Greene Turtle Sports Bar & Grille Schematic Plan & Schedule, Sheet No. SD-3 dated November 7, 2013 and received November 15, 2013. 9. The Greene Turtle Sports Bar & Grille Schematic Plan & Schedule, Sheet No. SD-5a dated December 12, 2013 and received December 13, 2013.

Building Inspector Sullivan presented a complete report, and her findings were based on the application and her knowledge of the Code. (See attached report.) The Applicant has stated that the approximate percentage of revenue between the sale of alcohol and food is 30% alcohol and 70% food. The Application is for a 4,959 square foot restaurant. The proposed bar area will be 558 square feet with a proposed ratio of bar to permanent seated dining of .25. In summary, this is an Application for a second location for The Greene Turtle restaurant. The new location had previously been occupied by Irish Eyes restaurant. The floor plan is changing to accommodate the proposed new business. No patio has been proposed. Ms. Sullivan noted that the canopy located in the front of the restaurant will remain, but it will be redone with new lettering. The sizes of the restrooms in the establishment are based on the Plumbing Code requirements. The square footage of the proposed restaurant will be increasing to include 52-C Rehoboth Avenue.

Mr. William Frankis said that GT Rehoboth Avenue LLC is looking to expand. The Greene Turtle Sports Bar & Grille on Rehoboth Avenue will be a restaurant with a bar, not a bar with a restaurant. It is in Mr. Frankis' best interest to run a topnotch family oriented establishment. Nothing will be done differently between the two locations. The Rehoboth Avenue location will be fully handicapped accessible as compared to the Wilmington Avenue location. The hours of operation at the Rehoboth Avenue location will be year-round, and it is expected that the hours of operation will be scaled back at the Wilmington Avenue location in the off-season.

There was no correspondence and no public comment.

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

Commissioner Sargent made a motion, seconded by Commissioner Mills, to grant the permit of compliance for The Greene Turtle Sports Bar & Grille at 52-B Rehoboth Avenue.

Commissioner Sargent found the following to be true:

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

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

REPORT OF PLANNING COMMISSION

There was no report.

OLD BUSINESS

There was none.

NEW BUSINESS

Mayor Cooper called to consider approving an amendment to the lease the City has with the Rehoboth Beach Historical Society, for the Rehoboth Museum building, that would remove the requirement that the Historical Society pay additional rent under a 2008 amendment to the original lease. The practical effect of approving this amendment is, as the Historical Society approaches Phase 2 of museum construction, to forgive the \$125,000 balance of a \$250,000 loan extended to the Historical Society in 2008 which funding was used for Phase 1 construction.

Mayor Cooper provided a brief history. The City purchased the Olde Icehouse building in 1998 and leased it to the Historical Society for a museum in 2002. Part of the building was demolished because it was not suitable for the museum purposes. Funding in the amount of \$250,000.00 that the Historical Society had available only completed the first floor. The second floor needs to be finished. The Historical Society had approached the City about trying to save money. In 2008, the Commissioners agreed to advance in term \$50,000.00 and then take rental payments equal to the total amount of \$250,000.00 plus interest on the unpaid balance over the next 10 years. The proposed amendment to the lease would cease payments upon its adoption.

City Solicitor Mandalas read the second amendment to the lease between the City and the Rehoboth Beach Historical Society dated December 13, 2002. In consideration of the mutual covenants expressed, the parties agree as follows:

1. The City agrees to forego any additional rent payments and interest called for in the First Amendment, dated November 3, 2008, to the original lease between the City and Historical Society which original lease was dated December 13, 2002.
2. The Historical Society, in turn, agrees to pursue raising the funds necessary to install an elevator and to finish the second floor of the Rehoboth Museum as expeditiously as possible.

Mr. Paul Kuhns, President of the Rehoboth Beach Historical Society, thanked the Commissioners and said that this will generate a lot of interest from potential donors on moving forward. The Society has quietly raised money for the second floor. This payment of the debt by the City will entice outside interest from the community for donations.

Commissioner Mills said that the language captures the essence of what was talked about at the last meeting. Instead of looking at this as paying off a loan, he looked at it more as investing in capital improvement and specifically investing in the building and the renovations. The City owns the building and leases it to the Historical Society. Anything the Society does will belong to the City.

Commissioner Zellers reiterated what the Historical Society has done with the museum. It is a perfect showcase at the entrance to the City. The City will be investing in itself, and this is for the good of the City.

Commissioner Sargent agreed. This is a wonderful investment in a thriving institution. It appears to be the

reduction of a debt, but it clear to the Commissioners and hopefully clear to the public that this is an investment in an extraordinary facility.

Commissioner Sargent made a motion, seconded by Commissioner Mills, to adopt the amendment to the lease with the Rehoboth Beach Historical Society.

Commissioner Gossett agreed with his fellow Commissioners. This is an investment in the community and is an opportunity to preserve the past by showing future generations what the sense of place Rehoboth has. It is important to share with future generations. It is a perfect investment for the gateway to the community.

Mayor Cooper said that the City bought the building, not knowing what it was going to do with it, but knowing that the piece of land was too strategically situated in front of the park, etc. to let it be privately owned. The museum is a perfect fit for the Chamber, Visitors' Center and the park.

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

Mayor Cooper called to consider adoption of an ordinance to amend Chapter 215 – Restaurants of the City Code clarifying and establishing that, in all cases, adding, enlarging or modifying a restaurant patio is an extension and/or modification of the premises of the restaurant.

Mayor Cooper said that the case the City was involved in on Lake Avenue has concluded and is included in the Delaware courts with a Supreme Court decision. The proposed ordinance resolves the issue of a definition of premises.

City Solicitor Mandalas said that the court case came down to a highly interpretation of the statute. Everyone at the dais and the building official's office understood clearly the intention of the Code, but the Court chose to take up a very technical reading of it and decided how it did. It is proposed to add Subsection 215-7(D) which will make that the addition of a patio is an extension of the premises. City Solicitor Mandalas read the proposed ordinance. (Copy attached.)

Commissioner Mills did not cite this issue as an emergency type of thing, he did believe that it is a priority and needs to be taken care of expeditiously. He suggested that through a moratorium or pending ordinance doctrine, it would put a stay on any future applications and give the Commissioners more time to think about this issue and provide for the public's input.

Commissioner Sargent was comfortable with moving forward with the ordinance.

Commissioner Gossett said that this is simply a codification of how the Commissioners have been acting for decades. This has a direct effect on the residents in protecting them from issues of this nature that could happen in the immediate future. The Commissioners' role is to represent the residents of the community.

City Solicitor Mandalas said that as a matter of legal process, there is no violation of any legal process to adopt this ordinance tonight. The Commissioners would need to make a motion with an action distinguishing that it is now subject to the pending ordinance doctrine.

Commissioner Sargent made a motion, seconded by Commissioner Gossett to adopt the ordinance before the Commissioners amending Chapter 215 related to permits of compliance for restaurant patios.

Commissioner Zellers thought that the City should have oversight of patios that come into play. Due to size and proximity of residential/commercial areas, the Commissioners would be irresponsible not to. She was comfortable in moving forward with the ordinance.

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

Mayor Cooper called to consider award of contract for the Fire Hydrant Painting and Maintenance Project for which bids were received and opened on November 21, 2013.

Mayor Cooper said that last year the Commissioners placed \$175,000.00 in the budget to repaint fire hydrants that are part of the City's water system, inside and outside of the City. There are approximately 340 fire hydrants. The estimated quantity of hydrants in the bid is 350. The low bid from Whitemarsh Environmental was in the amount of \$318,683.00. Mr. Bob Palmer, City Engineer, recommended that the low bid be awarded to Whitemarsh Environmental for the fire hydrant work only. Mr. Palmer had put in the

specifications to sandblast 200 fire hydrants and repaint them. The other 150 hydrants were to be tool cleaned. As it turned out, Whitmarsh Environmental does not have the capacity to sandblast the hydrant so its bid was higher for that part. The revised base bid award is in the amount of \$178,683.00 which will require tool cleaning and limiting the work to just the hydrants. Mayor Cooper thought that it might be appropriate for a conditional award to be done with Whitmarsh Environmental for painting of six fire hydrants in the City that are tool cleaned. The recommendation is to award the contract in the amount of \$178,683.00, eliminating everything but the fire hydrant work and tool cleaning only

Commissioner Mills voiced concern that (1) valves should be exercised in the near future before the hydrants are painted and (2) sandblasting should be given greater consideration than wire brushing the hydrants. The WACHS group that had previously exercised the valves, also mapped the hydrants and identified which valves are turned to the left and which ones are turned to the right. Commissioner Mills assumed that the scope of exercising the valves would be expanded to match what was done before. Sandblasting done properly should be considered. The contract bid at that time was to sandblast, prime and paint all the hydrants. Hand tooling was done on some of the hydrants.

Commissioner Gossett said that thought should be given to set up preventive maintenance, and he recommended that 75 hydrants should be done per year. Mayor Cooper thought that all the hydrants should be done, then preventive maintenance could be applied.

Commissioner Sargent thought that it would be simple for the Water Department to test 10 hydrants per day before painting them. There is not a compelling case at this point to do the sandblasting.

Mayor Cooper said that every fire hydrant will be opened, flowed and tested as part of this project. Each has to be color coded as to what volume they will produce. This would be done before the hydrants are painted. The valves in the ground were inspected by WACHS in the City approximately eight years ago.

Commissioner Sargent made a motion to approve the revised bid award in the amount of \$178,683.00 to Whitmarsh Environmental to paint approximately 350 fire hydrants inside and outside of the City that are under the City's Water Department. The motion failed due to the lack of a second.

Mayor Cooper called to consider award of contract for the Schoolvue Sanitary Sewer Replacement Project for which bids were received and opened on October 9, 2013.

Mayor Cooper noted that bids were opened on October 9, 2013. There were two bidders, (1) A.P. Croll at \$794,424.25 and (2) Teal Construction at \$1,077,677.00. The City has a loan approved with Clean Water Infrastructure Advisory Council in the amount of \$475,000.00. Mr. Jason Loar of Davis, Bowen & Friedel Inc. had met with A.P. Croll to discuss the proposal to change the methodology and eliminate two items to save \$166,011.25. Mr. Loar recommended that the low bid be awarded to A.P. Croll in the amount of \$628,412.00. Mayor Cooper gave a presentation of what the project would entail. The proposal is to open cut between School Lane and the State Road Pump Station with two sections requiring boring. The old pipe from the school would be filled so there would not be any collapse of it or sediment getting into it. New laterals would be included for anyone along the route in Schoolvue who had not replaced them in the last few years and does not have a clean-out, etc. Construction of the project would be scheduled to be completed in April 2014.

Commissioner Mills – item 6. Removal from contract.

Mayor Cooper

Mrs. Nancy Meadows, 506 New Castle Street Extended, asked if the size of the pipe will handle the volume of water used in case of an emergency. She also asked which side of Stockley Street Extended the new pipe will be installed and how the homeowners will be notified.

Mayor Cooper said that the house laterals will be down near the elevation of the pipe. A force main on Stockley Extended Street dumps into a manhole from the Newbold Square pump station which handles Scarborough Avenue Extended, Newbold Square and Bay Mart Shopping Center. He thought that the gravity sewer line along Scarborough Avenue Extended is only eight inches and feeds into another eight inch sewer line. The new pipe for this project will be installed off of the edge of the roadway on the north side of Stockley Street Extended where the existing pipe is located. It is anticipated that when the old pipe is removed, the new pipe will be installed at the same time. Each house may not have service for a day. Mayor Cooper noted that the pit due to the directional boring at the end of New Castle Street Extended will be almost the width of the road and will be open for a considerable amount of time. The State is requiring concrete barriers with crash attenuators on each end to protect the pit. Any hole outside of that barrier will

be filled at the end of each day. Once the contract is awarded and the contractor is onboard, then a meeting will be scheduled. Everyone in Schoolvue will be notified by letter and invited to the meeting. Minutes will be issued after the meeting for those who could not attend the meeting.

Commissioner Mills made a motion, seconded by Commissioner Gossett to award the bid for the Schoolvue Sewer Project to A.P. Croll in the amount of \$628,412.00 incorporating the changes identified as No. 1 through No. 8 in the documentation.

Commissioner Mills thought that there might not be cost savings for sidewalks and handicap ramps being done now vs. being done later. Commissioners Mills and Zellers and Mayor Cooper had previously met with the school, DelDOT and Safe Routes to School representatives to discuss putting sidewalks in for connectivity. The population of the school is such that it warrants sidewalks on the south side of Stockley Street Extended but not in the area proposed for the sewer project. Commissioner Mills still desires the sidewalks being put in. Mayor Cooper said that this may be added back in to the proposed project for the work to be done later.

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

Mayor Cooper called to consider accepting the recommendation of the Audit Committee approving the audit as prepared by the auditing firm Barbacane, Thornton & Co. for the City's fiscal year ended March 31, 2013.

Commissioner Gossett made a motion, seconded by Commissioner Sargent to accept the Audit Committee's recommendation regarding the audit for the previous fiscal year. (Sharp – aye, Gossett – aye, Sargent – aye, Cooper – aye, Mills – aye, Zellers – aye.) Motion carried unanimously.

CITY MANAGER'S REPORT

There was no report.

Mayor Cooper recommended the approval of Street Aid expenditures:

| | | | |
|----------|-----|----------------|-----------------------------|
| 12/11/13 | 540 | Delmarva Power | \$ 9,226.71 (Street Lights) |
|----------|-----|----------------|-----------------------------|

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

COMMITTEE REPORT

There was none.

CITY SOLICITOR'S REPORT

There was nothing to report.

COMMISSIONER ANNOUNCEMENTS/COMMENTS

Commissioner Mills announced that the American Shore and Beach Preservation Association has scheduled its annual conference on February 25-27, 2014.

DISCUSS ITEMS TO INCLUDE ON FUTURE AGENDAS.

Items to be included on the agenda for the Workshop Meeting on January 6, 2014 are: 1. Report of Communications Committee on utilizing support documents. 2. Smoking ban on the beach and Boardwalk. Item to be included on a future agenda is the concept of merger.

CITIZEN COMMENT

Mr. Walter Brittingham, 123 Henlopen Avenue, has received comments from people and the merchants that the City's Streets Department has done a wonderful job with beautification of the City during the holiday season.

The next Workshop Meeting will be held on January 6, 2014 at 9:00 a.m.

There being no further business, Mayor Cooper declared the meeting adjourned at 8:45 p.m.

Respectfully submitted,

(Lorraine Zellers, Secretary)