

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

January 16, 2015

The Special Workshop Meeting of the Mayor and Commissioners of the City of Rehoboth Beach, was called to order at 1:11 p.m. by Mayor Samuel R. Cooper on Friday, January 16, 2015 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
 Commissioner Kathy McGuiness

Also in attendance was: City Manager Sharon Lynn
 City Solicitor Glenn Mandalas

PRESENTATION by and discussion with Kyle Gulbranson of URS Corporation, the City's planning consultant, regarding the management of the impact on residential neighborhoods as related to size of houses currently being constructed, swimming pools, rental licenses and noise issues.

Mr. Kyle Gulbranson gave his presentation. The work group made a series of changes to the ordinance based on the discussion from the last meeting. DNREC had been contacted to find out what requirements it has with regard to pools and drainage. There is nothing in the State code regarding drainage. A handout from DNREC was distributed to the Commissioners that gives recommendations for how pool water should be treated. The appropriate language from the handout was added to the draft pool ordinance. From the last meeting, a recommendation was made that a drainage plan should be incorporated as part of the requirements when applying for a building permit so there is a clear and concise plan on how water from a pool will be treated that has to be drained appropriately.

Changes and comments regarding the swimming pool ordinance are:

1. Line Nos. 73-76. §3(B)(e). Changed "Drainage of water for all swimming pools must be absorbed on the subject property and not on a neighboring property, nor directly onto a street, driveway or sidewalk prior to entering the City storm sewer" to "The Applicant shall provide a drainage plan detailing how pool or filter water shall be drained. Drainage of water for all swimming pools must be absorbed on the subject property and not on a neighboring property, nor directly onto a street, driveway or sidewalk. The plan shall incorporate the following drainage requirements:"
2. Line Nos. 77-78. §3(B)(e)(i). Added "Draining pool and spa water must be controlled so as not to cause erosion or carry debris or vegetation."
3. Line Nos. 79-80. §3(B)(e)(ii). Added "Pool and spa water must be de-chlorinated and must not contain hydrogen peroxide acid or any other chemicals before the water is properly discharged."
4. Line No. 81. §3(B)(e)(iii). Added "Pool and spa water should have an acceptable pH of 7 or 8 prior to discharge."
5. Line Nos. 82-83. §3(B)(e)(iv). Added "Acid wash water should not be drained into storm drains. Acid washing should be done in a proper and safe manner that is not harmful to the environment."
6. Line Nos. 84-85. §3(B)(e)(v). Added "Filters should be cleaned over the lawn or other landscaped area where the discharge can be absorbed."
7. Consider how general runoff of water such as rain and pool splash is handled so as not to run into neighbors' yards.
8. De-watering follows DNREC and the Conservation District regulations in terms of disposal. De-watering takes approximately one week to 10 days if the weather cooperates.

Mayor Cooper said that if the de-watering does not become contaminated in some way, i.e. pumping finds or silts, it naturally goes to the lakes and ocean as groundwater. The water itself is not the issue.

Building Inspector Terri Sullivan said that something which may need to be addressed is that no one lets Building & Licensing know when there is de-watering of pools.

Commissioner Mills thought that general handling of pool splash or general rain runoff from pool areas should be incorporated into the ordinance. Solving this problem may be by having a swale from the affected area to the street.

Mr. Gulbranson said that the work group had not discussed how draining pools would be enforced. Currently, the work group is trying to get the regulations as close to DNREC's recommendations as it can. Pools today are not typically drained to the greatest extent. Water remains in the pool most of the time to help regulate pressures, and it is treated. Where the problem would lie is when pools need to be drained for repairs or when pools need to be cleaned with acid wash.

Ms. Lorie Carter of Carter Pool Management, Lewes, operates approximately 30 commercial pools and approximately 100 private pools. There are many different kinds of pools. Even with the pools that are regularly maintained in Rehoboth Beach, there is a different management for each pool and filtration systems. Backwashing is discharging water when pressure goes up, and she does not neutralize the chlorine. Backwash water goes into neighbors' yards, septic systems and right on the lawn. The ground should be able to absorb the backwash water. The Commissioners could require cartridge filters so that pool owners do not have to backwash. The only time they would be discharging water would be if there is a hurricane or for the winterization process. In the winterization process, if there is a plaster pool, the water level needs to be monitored so if it freezes, it will not increase cracking of tiles. Ms. Carter asks the property owners where they want the water discharged. The Commissioners have the opportunity to require certain types of filtration systems. Most times when a pool is drained, it is done because of replastering. There is a significant trend for saltwater pools. Granular chlorine is used to boost saltwater. It does not change the need for filtering. Backwashing is typically done when the psi has gone up approximately 10 pounds. An outdoor pool should have a chlorine rating of 3.0 to 5.0 ppm which has people in it. To backwash a pool, it is approximately 60-100 gallons of water. Certified pool operators must be certified by the Division of Public Health, not by DNREC. Before a commercial pool can be drained, it should sit for approximately one week before discharging the water. Approximately 80% of Ms. Carter's clients deal with weekly summer rental situations, and she treats those pools at least weekly. It would be difficult for a homeowner to take a course in maintaining a residential pool who rents the home and lives out of state. The Division of Public Health does not offer courses. DelTech offers a three-year certification for a pool operator. Hotel owners must have certified pool operators on staff. Rental agencies know if the rental pools are being managed or if they are owned by someone who is taking care of the pool.

Mayor Cooper said that someone who does not rent should not be required to have a pool operator certification. He thought that the backwash water needs to be addressed, and a grading plan should be required and should be part of the pool application. The pool needs to be implemented and/or constructed according to the plan. The plan needs to demonstrate that no drainage from the subject lot is directed towards neighbors' lots.

9. Lines Nos. 123-131. §8 – Buffers. Delete this section in its entirety.

Mr. Gulbranson noted that currently a building permit is required to build a six foot high perimeter fence. The requirement for pool safety is four foot high. It had been mentioned in discussion that the City does not want to create backyard enclaves throughout the City where no one has interaction with neighbors.

Ms. Donna Mabry, 221 Hickman Street, said that there should be something to buffer noise, so the noise is attenuated. Fencing and shrubbery are insufficient, so there has to be far more substantial things that will attenuate noise. What is needed is for pools to be enclosed or indoors because it would create walls and a ceiling where sound buffering materials could be put in to absorb the noise. Sound absorption cannot be hung on perimeter fencing. If pools would be part of the FAR and part of the house itself, it would allow getting the pools out of the landscape and allowing more permeable land for runoff. Not only does noise ricochet off of vinyl fences, it also ricochets off the cement board paneling on houses.

Mr. Donald Myers, 43 Oak Avenue, said that another approach would be to throw the burden back on the person who is building the swimming pool to require noise attenuation. Noise abatement would have to be more than just a plastic fence and some shrubbery.

Mr. Gulbranson said that if someone is building a pool in the backyard, a minimum height of four feet would be required for the fence in order to meet code and for safety reasons. He assumed that the person would want privacy, some type of landscaping and possibly the six foot high fence surrounding the pool.

Sound attenuation is the issue the Commissioners are concerned about. The solution may be that there is some type of a sound attenuation plan, and let the person come up with the most appropriate way to do it. Forcing people to do a sound attenuation plan will create an enclosed pool with some type of a wall system.

Mayor Cooper suggested that there should be a standard for a sound attenuation plan if there is going to be a requirement for a buffer.

Ms. Lorie Carter noted that vinyl fences ricochet noise. With regard to putting equipment inside a structure, the systems for outdoor pools require constant air movement. The structure would need to be louvered with a concrete floor and walls. There are different regulations for commercial pools vs. residential pools. With regard to a commercial pool, a pool filter in the pump must run 24 hours a day, seven days a week. With regard to a residential pool, a pool filter can be operated on a timer. By State code, there are three turnovers through the filtration system per day. If someone is renting a pool, the renters are entitled to have sanitation running 24 hours per day, seven days a week. A rental operates as a commercial pool which is required for sanitation. Total dissolved solids are removed only when the pump is running. Sanitizer administration whether it be salt or chlorine only operates when the pump is on. The pump, in rental situations, usually is an erosion type feeder. The pool equipment needs to be outside because it needs to be ventilated. It is good practice for a rental house to operate a pump system 24 hours per day, seven days per week. Body load is an issue which requires backwashing and setting chlorine based on usage.

Mr. Frank Cooper, 96 East Lake Drive, said that putting pool equipment inside is not impossible to do, and it is not an unreasonable requirement.

Mayor Cooper said that requiring a buffer without any measurable impact does not have any benefit. He was not sure how the City would enforce it, even if there is a measurable impact.

Commissioner McGuiness said that there is a situation with properties where pools are being built which may not have enough ground for water to seep in. The Commissioners have some ideas of possibly addressing the future building of pools and future regulations. Commissioner Zellers agreed. If people cannot show that pool water can be discharged on their property or the runoff can be contained on their property, then they should not be allowed to have a pool.

Mr. Gulbranson said that someone has to demonstrate there is enough land on the property to drain a pool properly. If there is not enough land, the size of the pool will be scaled back and possibly the size of the house. The grading plan will make it more difficult for someone to put in a pool so people will have to scrutinize what they are doing. Mayor Cooper agreed.

Commissioner Gossett said that buffers addressing sound is an aesthetic in the pool ordinance as opposed to addressing noise in the noise ordinance.

10. Line Nos. 229-233. §14(A). Changed "In the operation of a pool, the use or permitting the use or operation of any radio, musical instrument, or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing of the person or persons who are in such pool premises shall be unlawful" to "In the operation of a pool, or surrounding patios or decks, the use or permitting the use or operation of any radio, musical instrument, or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing of the person or persons who are in such pool premises shall be unlawful."
11. Line No. 236. Delete "Section 15 – Quiet Hours".
12. Line No. 237-243. Incorporate Section A in its entirety into Section B of §14.
13. Line Nos. 237-238. §14(B). Change "To minimize noise disturbances and interference with enjoyment of property rights of owners adjacent and adjoining premises the following quiet hours have been established" to "To minimize noise disturbances and interference with enjoyment of property rights of owners adjacent and adjoining premises noise regulations are in effect."
14. Line No 239-243. §14(B)(1). Change "11:00 p.m. to 9:00 a.m. During these times pool users shall refrain from making or causing unusual loud noises or speaking in a louder volume than is necessary of convenient hearing of person or persons within the pool premises shall be unlawful. No radio, receiving set, musical instrument or other machine or device for producing or reproducing sound should be used after 11:00 p.m. or prior to 9:00 a.m." to "11:00 p.m. to 8:00 a.m. During these times it shall be unlawful for pool users to make or cause unusual loud noises or speak in a louder volume than is necessary of convenient hearing of

person or persons within the pool premises. No radio, digital music device, musical instrument or other machine or device for producing or reproducing sound should be used after 11:00 p.m. or prior to 8:00 a.m.”

Commissioner Bill Sargent thought that the pool ordinance should address zoning, safety, etc., and noise would be addressed in the noise ordinance.

Ms. Donna Mabry said that most people who live in Rehoboth live in their homes 24 hours per day, seven days per week. People want to use their homes and outdoor spaces in the morning, noon, afternoon and evening. The real problem with noise is not at night, it is all throughout the day. She was not willing to say that people cannot have pools in the future, but the pools should be enclosed. There should be significant sound attenuation because the lots are small, and living in the residential areas is dense.

Commissioner Mills was optimistic that with the new noise ordinance and the plainly audible standard, there will be a great reduction in noise. Noise will be reasonably controlled with proactive enforcement and responding to complaints. He was not interested in forcing pools to be enclosed and pursuing the buffer concept at this time.

Commissioner Toni Sharp said that the pool operation license could be revoked, and private and rental homes would be subject to the same revocation. She was optimistic about a shift in the attitude around pools and enforcement. The onus would be put on the realtor community, owner community and property owners.

Mr. Gulbranson noted that the proposed pool ordinance addresses the physical issues surrounding pools and the uses of the pools. The noise ordinance will regulate itself to deal with the noise issues. The pool ordinance can be modified later to add buffers, if needed.

Mr. Donald Myers said that the only thing which will work regarding plainly audible will be to enforce any noise which can be heard at the property line that disturbs the comfort of people who live in surrounding properties. People getting citations and possibly losing rental licenses because they violated the plainly audible standard will be hard to enforce. The rules regarding noise should be the same during the day and night.

Mr. Eugene Lawson, Esq. not that it needs to be very clearly point out what the procedure is for notifying people of violations and the process by which they can appeal it.

15. Line Nos. 174-178. §9(F)(a). Change “Violations of the requirements of this ordinance may result in the revocation of a pool operation license if applicable. On notice of first violation, the owner of said pool shall have 48 hours to rectify the violation” to “Violations of the requirements of this ordinance, Chapter 189 Noise and disturbing the peace, may result in the revocation of a pool operation license. Should the violation be for lack of proper equipment, signage or renewed license or permit, the owner of said pool shall have 48 hours to rectify the violation.”

Commissioner Sargent was bothered with taking away the pool privilege for a tenant who comes a week later. The offender should pay for it, and the renters the following week should not. Maybe there should be a penalty for a house that is offensive week after week because the owners or realtors did not do what they should do. There should be a penalty for a serious infraction and it should cost someone something.

Mayor Cooper said that this would be a problem. Unless it is part of a penalty that is spelled out that the court rules on, there has to be a standard. There would need to be a board to hear these things.

Commissioner McGuinness said that the offender should be fined or reprimanded, etc. The property owner or contact person should be made aware of what is going on at the property.

Mr. Frank Cooper, 96 East Lake Drive, said that the Commissioners are balancing not allowing people to build pools or making them build a building to place the pools in vs. being afraid of enforcing the permit against an owner. He would be much more willing to be subject to having the pool license revoked because of not maintaining the pool, renters, etc. The owners are responsible for the pools, not the renters.

Commissioner Zellers agreed. She would not have a problem with revoking a license. The Commissioners need to spell out in the ordinance what the steps are.

Commissioner McGuinness disagreed. The City cannot revoke a license for the people who rented the previous week. The owner would lose the license for the next season, but not immediately.

Mayor Cooper had suggested at the last meeting that there should be a process for the neighbors to petition the Board of Commissioners and have a hearing. The loss of the license should be for the next season, not immediately.

Commissioner Sharp said that as part of the process in losing the license, the owner would have been on notice for quite some time.

16. Line Nos. 236-243. §15 – Quiet hours. Strike the entire section.

Mayor Cooper noted that plainly audible applies to day and night. It would be appropriate to put in the good neighbor brochure that after 11:00 p.m. there should be quiet hours. Mr. Gulbranson agreed.

Ms. Donna Mabry said that with regard to the pool license and revocation, the process would need to be spelled out. It would be good to spell out how many violations would be needed for a revocation or suspension. She suggested that the Commissioners should extend the moratorium for another year to see if the new things have an impact. Another option would be no rental licenses for properties that have pools.

Commissioner McGuinness noted that residential pools had more complaints than rental pools. The Commissioners will educate everyone so they know what is going on.

Mr. Donald Myers was not optimistic that revoking a license will be effective. Rules for a hearing and the opportunity to object would need to be in place.

Commissioner Sargent said that a much more realistic approach would be to withdraw the license for the rest of the renters' stay after there have been three offenses.

City Solicitor Mandalas said that a process is needed to be put in the ordinance. He liked the idea of an immediate suspension of the license if the party that is there is being unruly. Suspending the license for a 24 hour period would be enough. This would address the immediate problem, but it could not be adjudicated quickly. There are two issues: 1. The City taking affirmative action. 2. A neighbor taking action and petitioning.

Ms. Donna Mabry voiced concern that the burden would be put on the victims before action is taken.

Mr. Walter Brittingham, 123 Henlopen Avenue, said that it is not the pool that makes the noise. The Commissioners need to go back to the noise ordinance and disturbing the peace. The owner of the property and the people who are making the noise are inherent to the problem.

Mr. Gulbranson recommended that the Commissioners should adopt the pool and noise ordinances and good neighbor brochure before the moratorium is over. Zoning is a bigger issue and will take more time to deal with it.

Mayor Cooper suggested that Mr. Gulbranson should work with City Solicitor Mandalas to clean up the processes, break things out and come back with a draft ordinance to basically adopt.

At the next Workshop Meeting on February 9, 2015, the noise and pool ordinances may be finalized, and there will be initial discussion on zoning.

Changes and comments regarding the noise ordinance are:

1. Line No. 111. Nighttime. Keep "Those times of day excluded from the definition of daytime."
2. Line No. 122. Noise Disturbance. (D). Interferes with the peaceful enjoyment of property rights of adjoining and adjacent properties; or".

Commissioner Zellers read a portion of the noise ordinance from Montgomery County. Noise disturbance is defined as any sound that is unpleasant, annoying, offensive, loud or obnoxious, unusual for the time of day or location where it is produced or heard, and is detrimental to the health, comfort or safety of any individual or to the reasonable enjoyment of property or the lawful conduct of business because of loudness. Commissioner Zellers will forward this definition to Mr. Gulbranson for him to review and incorporate into the definition of disturbance.

3. Line No. 115. Change "Noise includes vibrations of audible and subaudible frequency, including but not..." to "Noise includes the unamplified or amplified human voice, vibrations of audible and subaudible frequency, including but not..."
4. Line Nos. 148-149.
5. Line Nos. 175-187. Commissioner Mills had rewritten this section to try to clarify what had been written by the work group. 1). A decibel meter shall be used to determine noise disturbances when the sound

source is emitted from a commercially zoned property and the complainant is in a commercial or residential zone. The reading shall be taken at the property line or within 100 feet of the property line of the sound source. Exceedance of noise levels established in §189-8 Maximum Noise Levels constitute a noise disturbance. 2). A decibel meter shall be used to determine noise disturbances when the sound source is emitted from a residentially zoned property and when the complainant is in a residential zone. Commissioner Mills provided illustrations of the sound source/sound emitter, the complainant's property location and the reading location. Noise that is plainly audible at the receiving line of the complainant's property constitutes a noise disturbance. Commissioner Mills noted that the reading location has to have some accuracy.

Mayor Cooper did not want to give the inference that there has to be a complainant. He wanted to get away from the idea of it complaint driven. If the officer goes there and says that the noise is too loud, he should be able to go to the adjoining property line. The City should not be handling complaints from ten doors down. Discussion ensued.

Commissioner Mills noted that there is no opportunity to complain if the sound is in residential zone and the complainant is in commercial zone. He read the maximum permissible noise levels as in the current Code: 1. All commercial districts but for those commercial properties abutting residentially zoned properties. 2. Commercial abutting residentially zoned properties. 3. Residential district. He suggested that the decibel ratings should remain as is and use the dual enforcement mechanism in the residential districts.

Mayor Cooper said that the ordinance should say something to the effect that in a residential zone, enforcement personnel need not take sound readings to determine a violation when the plainly audible would be sufficient.

6. Line Nos. 185-187. §189-8(2). Strike "The investigating official may issue a warning if in his or her judgment a warning is sufficient to cease the noise disturbance. Should a warning not be sufficient to cease the noise disturbance a citation shall be issued".
7. Line No. 196. §189-5. Leave in "No person shall play any television set, radio, tape player, phonograph..." and added "...phonograph, digital music device or any musical..."
8. Line Nos. 202-205. §189-9(B). Added "Generally creating a racket, such as yelling, shouting, hooting or whistling on public streets and residential properties between the hours of 11:00 p.m. and 8:00 a.m. so as to annoy and disturb the quiet comfort or repose of persons in adjacent or adjoining premises. Noise shall be measured at the property line and the plainly audible without the use of a noise meter, such noise shall be considered a noise disturbance."
9. Line Nos. 324-327. §189-10(A). Added "All violations of this article need not be complaint based. Noise disturbances may be identified by citizens, police officers, city officials or city staff. Any police officer, city office or city staff is authorized to make an administrative stop for the purposes of enforcing this provision upon detecting that a noise disturbance has occurred."

Mayor Cooper suggested that this subsection should be given to City Solicitor Mandalas for review and wordsmithing.

10. Line Nos. 333-334. §189-10(D). Strike "The investigating officer may issue a warning if in his or her judgment a warning is sufficient to cease the violation."
11. Line Nos. 329-349. §189-10(B), (C), (D), (E), (F) and (G).

Police Chief Keith Banks thought that the penalties should be enforced as civil violations. Almost all of the complaints can be handled as a disturbance of the peace. The work group will work with City Solicitor Mandalas on proper wordsmithing of the penalties.

Mayor Cooper did not know if a civil citation rises to the level of being able to pull a rental license and/or pool permit.

Mr. Gulbranson noted that the language in the current Code will be kept intact for this section.

Police Chief Banks said that he and City Manager Sharon Lynn will come up with a procedure for keeping track of violations.

Mayor Cooper thought that the process for violations and problem houses should be heard by a board and not an individual. Mr. Gulbranson noted that the owners and houses would be put on a watch list.

The budget meeting will be held on February 6, 2015 at 9:00 a.m.

The next Regular Meeting will be held on January 16, 2015 at 7:00 p.m.

There being no further business, Mayor Cooper adjourned the meeting at 4:38 p.m.

Respectfully submitted,

(Lorraine Zellers, Secretary)