

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

November 10, 2014

The Workshop Meeting of the Mayor and Commissioners of the City of Rehoboth Beach, was called to order at 10:00 a.m. by Mayor Samuel R. Cooper on Monday, November 10, 2014 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

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| Present: | Commissioner | Toni Sharp |
| | Commissioner | Patrick Gossett (left meeting at 11:54 a.m.) |
| | 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

CORRESPONDENCE

Email received will be read when the presentation and discussion with Kyle Gulbranson of URS Corporation is held.

DISCUSS the request of Douglas M. Warner of Element Design Group on behalf of Brad and Kathy Rozansky the owners of the lot on the southeast corner of Lake Drive and Prospect Street, that the Board of Commissioners sell a ten foot strip of the right-of-way of Lake Drive to the Rozansky's to be incorporated into their lot.

Mr. Douglas M. Warner of Element Design Group noted that Mr. & Mrs. Rozansky would like to request consideration from the Commissioners to pursue the purchase of an additional 10 feet of the City's right-of-way which is adjacent to their property. The potential acquisition could help the City and would not adversely affect the road or anything progressing into the Sussex County portion of the parcels to the south. The house would be facing Lake Drive, and this request would provide more opportunity for the home design to be a more standard type back to the home.

Mr. Brad Rozansky said that the lot he had purchased is not a conforming lot to the neighborhood. Currently, the requested portion of the property is part of the Lake Drive right-of-way. The paving does not encroach into the requested area, and there are no utilities at this location. Maintenance of this area by the homeowner would ensure that the area is kept well and in a similar fashion to the adjacent property. The building restriction lines would not encroach into the 10 feet. If the Commissioners would allow them to purchase this piece of land, there is no way that anyone would be able to build on it.

Mayor Cooper said that the right-of-ways of the streets should not be for sale. It is not known into the future what the City will need the right-of-way for. Under the Charter, in order to close a street or part of a street, the City has to go through a process of abandoning the street which would require a public hearing. It is not in the public interest to close or abandon a street to sell it to someone so they can increase the size of their lot. This is not a hardship on the City.

Commissioner Stan Mills said that the lot is odd-shaped where the rear lot line is 40 feet wide, the frontage is approximately 100 feet along Lake Drive and the depth is 79.5 feet. The City should not be in the habit of selling off land, and he would not be in favor of creating an uneven right-of-way.

Commissioner Patrick Gossett noted that a typical lot is 5,000 square feet. This particular lot is 5,756 square feet so it is a larger lot that has a different shape. If the City would lease the 10 feet to the Rozansky's, it would allow the house to have a larger footprint and density. If for some reason the City would need to expand the road, the house would be existing but the lease would not be renewed. Gaining a larger house would be based on a lease that would not be perpetual. Commissioner Gossett did not think that this is an appropriate application of a lease agreement.

Commissioner Lorraine Zellers could not support it. The Commissioners should not set this kind of a precedent going forward.

OLD BUSINESS

Mayor Cooper called for the presentation 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 noted that at the last meeting, the charge of the workgroup was to find examples of possible ordinances which may be used as a template to move forward. A timeframe was established based on certain activities or elements that can be done relatively quickly and other that would take more time. Items to be discussed at this meeting are: 1. Residential noise. 2. Swimming pools in residential areas. 3. Rental home issues. The City currently does not have any type of short-term vacation rental regulations. 4. Zoning and development issues. Two sample ordinances had been forwarded to the Commissioners prior to the meeting. The City of Newark, DE has a comprehensive noise ordinance. It sets clear guidelines of what are allowable noise levels, penalties and exceptions. The ordinance is specific about allowable and prohibited noises and what the appropriate noise levels are at certain times of the day. The ordinance defines plainly audible which is noise that a person can stand at a property line and hear the noise itself, understand the beat and hear conversation. It is not dependent upon an instrument which may or may not be well calibrated. In terms of residential noise, the audible standard seems to work much better. Enforcement and penalties allow for verbal warnings as well as charging for violations. The type of penalty depends on the time of the day of the noise violation. There are a series of fines based on noise offenses and the number of violations received. There are exceptions and special waivers, but the ordinance does not include types of activities approved with a waiver request. When the workgroup looked at the possibility of changes to the City's noise regulations, the Newark ordinance seemed to be a good fit. The group is looking at taking the City's current noise regulations and blend them with something similar to what Newark has. There would not be a different set of standards for commercial districts vs. residential districts. There would be a different way of measuring sound, and the criteria would be different. Currently, the City does not have any vacation rental regulations. This would be a better way of determining how many vacation rentals there are in the City, the noise violations associated with them and a bad neighbor/good neighbor circumstance where the City would have control over the bad neighbors. The City of Palm Springs, CA has a very good comprehensive vacation rental ordinance. It requires a good neighbor brochure summarizing rules that must be posted and provided in every rental unit. A hotline is available to call for complaints with rentals. There is a designated local contact person for every rental who is responsible for dealing with complaints/concerns with rentals and available 24 hours, seven days a week. Any rental for a period of less than 28 consecutive days is considered a vacation rental. Anything over 30 days is considered more of a long-term rental, and this type of ordinance would not apply. There is an application process that the City would establish with a fee based on occupancy of the structure. With regard to Palm Springs, there is a certificate that is affixed to the property. A certificate can be denied for bad behavior. If there is any change with the owner of the property, a new rental application with certification needs to be applied for. Palm Springs also caps occupancy of structures based on the number of bedrooms. Maximum occupancy is 24 persons during the day and two people per bedroom. Mr. Gulbranson did not think that the daytime and evening occupancy would need to be differentiated. Penalties are involved. The City Manager would have discretion if there is a repeat violator to review the license, and the City Manager has the option of revoking the rental license. In terms of noise and when the workgroup met, it was determined that from the police department's perspective that any violation for noise issues needs to be complaint driven so that there is a tracking mechanism. Law enforcement should be the authority that makes the determination of whether it is a warning vs. a ticket vs. a violation. The workgroup had discussed that when a fine is imposed, it would be split, half to be paid by the tenant and half by the owner. In going forward, each rental has to have a representative who is available and notified of a warning or complaint. If there would be a violation late in the evening, the next morning some in the City, administratively, would have the task of contacting the property owner, sending a letter, etc. That way there would be a documented paper trail. After three noise complaints or violations, the City Manager would review the rental license/certificate. The workgroup had talked about having some type of board. Ocean City, MD has a noise board that hears noise complaints. The workgroup thought it would not be necessary here if a representative type system would be set up. The ultimate authority would rest on the City Manager. If there is an education process and the rules and regulations are posted in a good neighbor brochure and is posted on the property, then hopefully that will calm down some of these issues.

City Manager Sharon Lynn said that in terms of the discussion for the workgroup, it was talking about what responsibilities does the owner of the property have and how the owner is notified.

Commissioner Lorraine Zellers said that the owner should bear some responsibility of what is going on in the rental house.

Mayor Cooper thought that there should be a board structure set up so the owners would have a chance to argue before the board. If this process would be put in the City Manager's hands, there needs to be procedural due process and an appeal process would be needed.

Commissioner Kathy McGuinness suggested that the process should be similar to what is done in Dewey Beach, DE. where there is a fine and the owner of the property is contacted. A lot of the noise violations were from property owners, not renters.

Commissioner Bill Sargent did not want to put too much pressure on the owner. The occupant should be the one who suffers serious consequences, not the owner who did not make the noise and who has no control over the immediate actions of the occupant.

Commissioner Gossett had contacted the City Manager and Code Enforcement Director in Palm Springs. The rental agent or the owner has become stricter in the screening process. A deposit for the unit is equal to the maximum penalty and fine for the third strike which is \$5,000.00. This prevents repeat offenders. The onus would go back on the owner or the rental agent who is responsible. In Palm Springs, the reaction time to take action on a complaint is within 15 minutes.

Mr. Gulbranson noted that everyone would have to abide by the requirements of the noise ordinance. There would be a lot of administrative work the City would have to do with regards to fines and this process. The idea would be to have escalating fines. The workgroup felt that there needs to be annual rental inspections. Initially, that will be a large undertaking. Part of the importance of inspection is to validate what the occupancy should be of the structure.

Mayor Cooper said that the City would not be able to levy a fine of more than \$500.00. This would require a Charter change through the State legislature.

Commissioner Mills advocated that there should be annual rental inspections, primarily seeking out the number of bedrooms and occupancy. The main focus would be to deal with safety and health issues. He suggested that an outline should be drafted from the workgroup on how to approach the implementation of an inspection program.

Mr. Gulbranson said that the workgroup will draft an outline on funding, the necessary labor and what the program would be. This will create a drain on manpower because someone will physically have to do all the work. The rental tax in the City is the lowest of any coastal towns. This would be a mechanism for generating additional income. Having this program would provide registration of the rental properties, and the rental fees and taxes would be able to be collected. The workgroup thought that the revocation of a license would be for at least a one year period of time.

Commissioner Mills thought the revocation of the license should not be effective immediately upon revocation. City Solicitor Mandalas said that it could be written for it to be effective immediately.

Commissioner McGuinness suggested that every property owner should sign an affidavit that is notarized of whether or not they rent their property.

Mayor Cooper said that the noise ordinance needs to be fixed for it to be effective. The Commissioners may create a board that may never be used. The issues should be resolved at a much lower level. Commissioner McGuinness agreed. She disagreed with taking the license away immediately.

Mr. Gulbranson suggested that the workgroup should draft the registration process, updating the noise ordinance, annual inspections, education amongst the police officers and possible violations.

City Manager Lynn noted that by tightening up the noise ordinance, it will educate everyone. There are not a lot of noise complaints in a given period of time. People need to be mindful, they need to keep calling in their complaints and the police need to respond appropriately.

Mayor Cooper did not think the Commissioners need to go to the point of revoking licenses. If there is a valid noise, it would be appropriate to send the owner a notice. The owners need to be made aware of it. Mayor Cooper suggested holding off on creating a board and revocations of the licenses until a season has gone by under a tighter regime on the noise code. At some point, the Commissioners will need to have a discussion on the generators of noise. He thought that the City Manager having the authority to revoke a license should be removed from the proposed ordinance. If there are houses are still problematic after notices have been sent to

the owners or local contacts, then they would appear before the Commissioners. Commissioner Mills agreed.

Commissioner Zellers thought that the language is needed. Commissioner Sharp agreed that there is no consequence.

Mr. Gulbranson said that the workgroup will go back and pool the information and confer with the draft ordinance and process.

Mr. Walter Brittingham, 123 Henlopen Avenue, suggested speaking with the Fire Marshal's office to find out how their system works with regard to response and times. He thought that the Alderman should make the decisions for appeals.

Ms. Jennifer Duncan, 68 Kent Street, said that the issue is not just about pools, it is also about noise. She thought if rental inspections are done, the City may be liable.

Mr. Frank Cooper, 96 East Lake Drive, thought that the law could be structured for the owners/points of contact/renter would go to the Alderman Court because of a nuisance house. Any revocation of a license could be done through the Alderman Court rather than having the City create another bureaucracy.

Ms. Marcia Schick, 1025 Scarborough Avenue Extended, has a rental property, and there is a clause in the lease about noise. The City should adopt verbage about respecting neighbors. The Commissioners should tighten education and heighten awareness. Three days before the renters come, they are sent a welcome letter which reiterates her expectations such as peaceful enjoyment, respecting the neighbors, the fact that a renter could be cited and if there are issues, the renters will be evicted. In looking for a consequence, a milder approach is better. The eviction route punishes the offender. The police do not have the right to evict unless an agent or owner gives permission. The Town of Dewey Beach does not enforce the three strikes you're out rule. It has been on the books forever, but it has never been enforced.

Mr. Bunky Markert of the Planning Commission suggested that the workgroup contact someone he knows who has a house in Palm Springs, CA to get some background information.

Ms. Donna Mabry, 221 Hickman Street, said that there should be licenses for pools. If there is a problem with noise around the pool, then the pool license could be revoked and the pool would have to be covered for the remainder of the season. There are two issues: 1. General noise. 2. Pool noise.

The next meeting will be held on November 25, 2015 at 9:00 a.m. with regard to this issue.

NEW BUSINESS

Mayor Cooper called to review implementation of expanded smoke-free initiative and discuss any potential changes to the initiative including whether or not to include other smoking products or devices, e.g. e-cigarettes in the initiative.

Commissioner Mills provided a brief review and history. An outline had been forwarded to the Commissioners prior to the meeting. In 2011, the Commissioners adopted a smoking ban in the parks. It was expanded in May 2014. The expanded smoke-free areas include the parks, the entirety of the Boardwalk and access ways, the entirety of the beach but for certain specified designated smoking areas and the entirety of the Bandstand plaza area. Signage has been placed in all the different areas, and brochures have been created for an educational program. Commissioner Mills briefly reviewed the rationale for the initiative.

City Manager Lynn noted that the challenges were few. Everything that was brought to her attention had been addressed including smokers congregating around certain areas and smoke creating a nuisance as it went into some of the businesses. A minor ash urn fire was dealt with quickly.

Police Chief Banks said that from May 15 through Labor Day, weekly statistics were kept on the initiative. Three hundred three warnings were give out, and there were four arrests. Overall, the implementation of the initiative went very well. Two areas of concern were at Delaware Avenue and the Boardwalk and at Gus & Gus. There were no complaints about the initiative. Twenty-six calls were received from people alerting the police to violators. There were approximately three verbal warning per day for the summer season. The majority of the 26 calls received were in regard to E-cigarettes.

Ms. Cindy Lovett, 4 Canal Street, said that people who smoke sit their chairs right at the designated smoking areas on the beach.

Commissioner Mills had contacted Mr. Greg Gosner of Grotto's who reported that there was no impact on his business or his employees' ability to smoke. Mr. Gosner reported that there were a lot of favorable

comments regarding the initiative. Fun Land mentioned the challenge of smoke wafting into their area, but otherwise they are being continually supportive of the initiative.

Mr. Frank Cooper, 96 East Lake Drive, said that there were less people smoking, and there were less cigarettes in his yard.

Commissioner Mills said that during the meeting where the Commissioners were considering the vote to implement the expanded initiative, Commissioner Sargent said that smoking E-cigarettes within the areas designated as tobacco smoke-free zones could be confusing to the enforcement officers, the public and other smokers. Bethany Beach had changed its law regarding E-cigarettes prior to the summer of 2014.

Commissioner Sargent thought that E-cigarettes would be a distraction on the Boardwalk, and it would reduce compliance.

Mayor Cooper said that he did not see the governmental purpose here. Confusion does not meet the test. The Commissioners should not be making the moral judgments that people should not smoke or should smoke.

Commissioners McGuinness and Zellers noted that E-cigarettes have toxins in them, and they were in favor of banning them.

Commissioner Mills and City Solicitor Mandalas will draft the necessary language to be discussed and voted on at the next meeting.

Mayor Cooper called to discuss implementation of electric vehicle charging stations in the City including required code changes.

Commissioner Mills said that the term "electric vehicle" has been defined to include all electric vehicles and plug-in hybrids so two types of electrical vehicles will be able to use the charging stations. The Code will need to be amended to allow only electric vehicles to utilize specific parking spaces in front of the charging stations. Duration for parking needed to be established, fines and towing capabilities needed to be ensured along with year-round meter usage. The three hour parking limit was selected by the City Manager. The definition will need to be reviewed, and the Code should indicate that the electric vehicles can only park in the spaces while they are charging.

Mayor Cooper said that there should be a section in the Code to specify the actual spaces, and a registry should be created.

CITY MANAGER'S REPORT

City Manager Sharon Lynn reported that the start date for the Rehoboth Avenue ADA improvements has been delayed three weeks. Engineering continues for the Lake Avenue Streetscape Project. The mid-year budget numbers are relatively on target with slight variances due to personnel changes. The transfer tax revenue is approximately \$195,000.00 over budgeted. The City offices will be closed on November 11, 2014 due to the observance of Veterans' Day. Arbor Day will be celebrated at Silver Lake on November 21, 2014 at 1:00 p.m. The City crews are putting lights up for the holiday. The donated Christmas tree will arrive on November 19, 2014.

COMMITTEE REPORTS

Commissioner Sargent, Chair of Streets & Transportation Committee, discussed the following issues:

1. Proposal from the Committee that the City Manager prepare a budget item to fund a traffic study of the City.

This item was deferred to November 25, 2014.

2. Proposal from the Committee that in the downtown area owners of all properties be required to provide for snow removal from the sidewalks in front of their properties.

This item was deferred to November 25, 2014.

3. Proposal from the City Manager, Police Chief and Committee to further limit the use of bicycles on the Boardwalk.

Police Chief Banks suggested banning the use of bicycles during the high months or reducing the hours because more complaints have been received about bicyclists speeding down the Boardwalk. Lifeguards have seen an increase with more bicyclists and more people using the Boardwalk in the morning hours. He

suggested that the hours should be reduced to 9:00 a.m., not 10:00 a.m. from May 15 to September 15.

Mayor Cooper said that there is an inherent conflict between something that can go 25 mph vs. something going 2 to 3 mph.

Commissioner McGuinness was not in favor of banning bicycles on the Boardwalk, but there could possibly be a change in time to 9:00 a.m. instead of 10:00 a.m. for the bicycles to be off of the Boardwalk. She also suggested that there should be educational outreach.

Commissioner Zellers said that similar rules should apply to any big events and holidays that apply during the summer months.

Ms. Cindy Lovett, 4 Canal Street, said that this is a common sense problem and a safety issue.

Mr. Frank Cole, 18 Wilmington Avenue, said that bicycling on the Boardwalk is one of the main attractions for the City. He thought that this issue should be approached from a safety standpoint rather than an enforcement standpoint. Mr. Cole has drafted a proposal which would consist of having volunteers doing something like the beach patrol does with the junior lifeguard program. This could be a public/private partnership. His proposal was forwarded to the Commissioners for their review.

Mr. Frank Cooper, 96 East Lake Drive, said that bicyclists do not belong on the Boardwalk because they go too fast, and they cannot be regulated.

Ms. Jinny Fesner, 21 Wilmington Avenue, said that if bicyclists are banned from the Boardwalk, then joggers should be banned.

This item will be placed on the Agenda for the November 25, 2014 meeting. The options to be further discussed are a potential ban on bicycles from May 15 to September 15, reductions of one hours that they would need to be off of the Boardwalk and changing the dates.

4. Efforts by the Committee members to review issues and possibly propose changes related to parking in the City's commercial district.

This item was deferred to November 25, 2014.

CITY SOLICITOR'S REPORT

There was no report.

COMMISSIONER ANNOUNCEMENTS/COMMENTS

There were none.

DISCUSS ITEMS TO INCLUDE ON FUTURE AGENDAS.

There were none.

CITIZEN COMMENT

There was none.

The next Regular Meeting will be held on November 21, 2014 at 7:00 p.m.

There being no further business, Mayor Cooper adjourned the meeting at 1:00 p.m.

Respectfully submitted,

(Lorraine Zellers, Secretary)