



Commissioner Bill Sargent hoped that in the process of reconstruction, a few problems may be resolved which resulted from what was done before. The Army Corps of Engineers was concerned about erosion of the beach line, so there was a good argument for extending the dunes out as far as they did; but because the beach goes out beyond the groins, there is a very sharp cutoff which has resulted in a tremendous number of back injuries. The shoreline has not actually eroded, and the groin line has really held the beach. Commissioner Sargent hoped that in dealing with the Army Corps of Engineers something could be designed to give almost the same protection, but does not go beyond the end of the groins ending up with a sharp beach. The second problem is that there are a lot of stones in the sand when it was brought in. As the sand has eroded away, it has gone into the surf and drifted north. Now there is a lot of discomfort for the beach goers because of the stones. He suggested that when more sand is brought in, it should be brought from an area with little or no stones in it. The last problem is the huge dune in the grass which approximately one foot higher than in 2005 when it was put in. People have complained that they cannot see the beach anymore. Commissioner Sargent suggested shaping the dune in a way to meet the Boardwalk. He would like the City to work with the Army Corps of Engineers and Mr. Pratt to resolve these problems so they do not occur in the future.

Mr. Pratt said that the slope is not a function of the groin, it is a function of sand quality. The angle is steeper with coarser material. From a beach preservation standpoint, heavier grained material resides longer on the beach. The gravel is in the process of migrating north. The shape of the dune and beach is determined by an engineering standard. The Army Corps of Engineers are the experts who are trained to provide the protection that will justify the Federal government expending the money at a 65% Federal cost share of \$45,000,000.00 worth of work. By changing the engineering to diminish the level of protection by altering the geometry of the dune, a cost benefit analysis will need to be done. By changing the geometry of the dune by lessening the protection, the Boardwalk and infrastructure would be an exposed risk which would result in an additional cost to the Federal government. Mr. Pratt said that as an important element to be noted, the dune by nature will grow. Eventually, the top of the dune may get to the point where something needs to be done because it could eventually collapse the Boardwalk. He has addressed this issue of topping off the dune to the Army Corps of Engineers. Mr. Randy Weiss of the Army Corps of Engineers has an idea in his drawings of how to correct the problem with the dune at the north end. The national supplemental will happen. Bethany and South Bethany has more damage and is a much higher priority. Dewey Beach has not suffered any sand loss. Rehoboth has minimal dune loss, and DNREC will repair the crossings and fencing, and will be planting the grass, etc. Mr. Pratt suggested that the Mayor and Commissioners should forward a letter to Senators and Representatives expressing their heartfelt position that help is needed as quickly as possible, and the beach brings in far more revenue and stimulation of economy than the cost to maintain it. Mr. Pratt is the Vice President of American Shore & Beach Preservation Association which is a science based organization and does lobbying. It has done a lot of work on retaining a higher level of profile for America's shores and beaches in the Federal process. The power base of the organization is derived from communities which are members and participate. The State of Delaware is a prescribing member.

Mr. Paul Lovett, 510A Rehoboth Avenue, asked if there is any benefit to removing the rocks that collect on the beach at low tide. Mr. Pratt said that most of the rocks accumulate at the front slope of the beach. A loader/excavator was used twice from Rehoboth Avenue to the north end of the Boardwalk to move the gravel and bury it on the front side of the dune.

Commissioner Barbour asked if there is unexploded ordinance out in the water. Mr. Pratt said that there is an array of targeted areas where the military had routinely fired ordinance. The dredgers used to pump the sand have screens installed on them for filtering out projectiles. The screen on the dump side is emptied and inspected with every load. The pumping activity is close to three miles out from the coastline which is within the territorial waters of Delaware.

Ms. Cindy Lovett, 510A Rehoboth Avenue, asked when it is expected that the stones will migrate out of the area. Mr. Pratt was not sure as to the length of time it will take for the gravel to migrate.

Ms. Maria Sadler of DNREC said that the dune grasses will be planted on March 20, 2010.

## **NEW BUSINESS**

Mayor Cooper called to discuss with a representative of the City's IT Department the City's parking meters and acceptance of credit cards by same.

Mr. David Henderson gave his presentation and provided an overview on parking meters and available technology. Last year the amount of credit card revenue was approximately \$110,000.00, and the revenue for this past season was approximately \$179,000.00 from the 51 meters that are equipped for credit card usage.

Last year there were AT&T connectivity issues. Over the July 4, 2009 holiday weekend, 51 meters were turned on, and they crashed the entire AT&T system. City Manager Gregory Ferrese and Mr. Henderson met with representatives of AT&T who had promised better service from AT&T. Mr. Henderson has been in contact with representatives from AT&T; and another array of antennae will be operational in March or April of 2010 on the roof of the Henlopen Hotel. Communications is important for processing of credit cards. What happened last year was that there were systemic failures within the equipment itself, and they were not being addressed. Twenty-seven of the 51 meters were inoperable in regard to accepting credit cards. The \$179,000.00 does not represent peak credit card usage. It reflects approximately two thirds of what the potential should have been for this past season. Mr. Henderson provided a revenue summary of the various weeks during the past season. There is less of a risk of losing money by going live on the first transaction, than by doing a batch. Approximately one third of the transactions on the existing meters, are credit card transactions. There was a declining trend for credit card usage the remainder of the season. For the 2009 season, the City paid \$14,944.04 in credit card fees, \$8,721.00 in air time fees, and \$10,883.00 in credit card repair parts. The initial investment was \$105,000.00. The equipment is based on a five to seven year lifecycle. The investment in keeping the credit card meters working is approximately \$45,000.00 per year. The credit card fees are non-negotiable and controlled by Duncan which the City uses to process the credit cards. Mr. Henderson has asked Duncan to explore the usage of a Gobe modem which will allow the City to use any carrier of its choice. Mr. Henderson recommended the following changes for the 2010 season: 1. Parts bench stock replenishment system. 2. Storage of electronic boards at IT Department. 3. Maintenance log system on Reino meters. 4. Inventory control system implemented. 5. Two-day training of all technicians in April 2010. Every technician will have parts and repair manuals. 6. One for one swap for parts. 7. Onsite troubleshooting instead of repairs at the depot. The average repair time is 15 minutes. In regard to ACH (automatic debit from a checking account) payments, the City is average three to six payments per day at the counter in City Hall. The average ACH payments received over the internet per quarter is approximately 40. To date, the amount of transactions is not balancing with the amount of costs incurred for the service charge, software and maintenance contract.

Commissioner Mills was mindful that during a prior budget session, parking meters were discussed; and the intent at that time was to try out credit card meters along with changing some of the meters on the side streets from Duncan to Reino meters. For now, this may be on hold because of the economy. This will help in a future evaluation of those meters; and it made him mindful that there is a cost to the City to implement the credit card readers.

## **OLD BUSINESS**

Mayor Cooper called to discuss the issue, raised by the Planning Commission, regarding Section 236-23(C) of the City Code which requires that each lot created in a major subdivision must front on a public street at least 50 feet in width.

Commissioner Sargent has worked with Mr. David Mellen and Mr. Tim Spies of the Planning Commission to prepare a report. Commissioner Sargent's approach was to 1. Show a map of the Oak Grove property. 2. Look at the consistency of how an issue like the Oak Grove property is being treated. 3. Look at possible ambiguities in the Code. 4. Discuss alternatives. 5. Ask what is best for the City. 6. Talk about a recommendation. He thought the Commissioners should be mindful that they need to address this issue to fit the City, not just this particular property. The proposed Oak Grove major subdivision has 15 lots, and seven of those lots face Canal Street. When the Planning Commission discovered that Canal Street was platted at 40 feet wide, it went to the language of the Code and realized there was a problem. If the lots are owned separately by three different owners, there would not be a major subdivision. Because this is a proposed major subdivision, the 40 feet comes into play. Similarly, if the proposal would be to put in condominiums, there would be no issue because it would not be considered a major subdivision; but it would be subject to site plan review. Eight of the proposed lots will face a new street that can be as narrow as 37 feet wide. The point is that the Code is not entirely consistent. Commissioner Sargent read Section 236-23(C) – Lot Design. "Each lot must front upon a public street with a width of at least 50 feet, excepting lots fronting on an approved short dead-end street." The language in this subsection, prior to August 2009 reads: "Each lot must front upon a public street at least 50 feet in width". The Code is not entirely clear whether the 50 feet applies to the street or to the lot. In Section 236-23, Street Design is handled in a different area of the Code. The Code is not consistent in regard to treatment of major vs. minor subdivisions, condominiums, and new streets. The Code continues to have ambiguities with regard to new only vs. new and existing streets, and street design vs. lot design. Commissioner Sargent and Mr. Mellen came up with four alternatives: 1. Do nothing. 2. The Code should apply to new and existing streets. 3. The Code should apply to new streets. 4. The Code should apply to new

lots. Their recommendation was based on recognition of inconsistencies: 1. The issue of two or three lots vs. major subdivision. 2. Condominiums would be excluded from these considerations. 3. The new street width could have a potential to be a street narrower than Canal Street. Recognition of ambiguities were considered: 1. New and existing vs. only new streets. 2. Lot or street must be 50 feet. The final recommendation is to accept one of the following code changes and direct the Planning Commission to proceed with the subdivision proposal: 1. Current Code. "Each lot must front upon a public street with a width of at least 50 feet, excepting lots fronting on an approved short dead-end street." 2. Alternative 4. "Each new lot must have a width of at least 50 feet and must front upon a public street." 3. Alternative 3. "Except for lots fronting on an approved short dead-end street, each lot must front upon a public street that is at least 50 feet wide unless the Planning Commission, in its discretion, determines that an existing street no narrower than 40 feet would be acceptable." Commissioner Sargent said that the Planning Commission has enough discretion that if it is not fully satisfied, the matter can be forwarded back to the City Commissioners. Commissioner Sargent preferred Alternative 4. He did not have a problem with Alternative 3 introducing the limit of a 40 foot width.

Commissioner Mills thought that at the conclusion of the last discussion the intent was not to bring this issue up until maps have been provided to the Commissioners. The Code is clear and applies to existing and new streets. Section 236-21(F) provides the remedy. Interpret that subdivision on one side vs. the other.

Mr. Paul Lovett, 510A Rehoboth Avenue, has the Army Corps of Engineers map of which copies can be forwarded to the Commissioners.

Commissioner Barbour said that in regard to Alternative 3, the Planning Commission would have discretion and would also have authority with any application that would trigger this, to place conditions on the application. He thought that the Code is ambiguous, and he liked Alternative 3. City Solicitor Glenn Mandalas noted that in case law, the Planning Commission can place limited conditions on a subdivision approval so long as it identifies specific health, safety and welfare concern, and the condition is narrowly tailored to the health, safety and welfare concern.

Mayor Cooper said that if the Commissioners are taking this action because someone is trying to convince them that the Code is ambiguous and it needs to be clarified, then he is totally against this action. The Code is clear. This is the third time that the Commissioners have spent a major amount of time on something to do with this development. First was the rezoning which he had agreed with. Second was the narrowing of the street which he disagreed with. Mayor Cooper would encourage the Planning Commission to make a list of things that are at issue here, and present it to the Commissioners.

Commissioner McGuinness did not feel it is appropriate to do things that are pertinent to a particular project.

City Solicitor Mandalas said that the bigger question is not whether it is ambiguous or not, the question is whether the Commissioners want to allow lots to front on a street of less than 50 feet in width. The provision in the current Code can be made clearer. The wording to Alternative 4 could be changed to read, "Each new lot must have a width of at least 50 feet and must front on a public street having at least 50 feet in width".

Mayor Cooper said that in regard to Alternative 3, he would add that it would only apply to areas which had been previously subdivided into lots. Commissioner McGuinness agreed with Mayor Cooper's amendment.

Commissioner Sargent will work with City Solicitor Mandalas and Mayor Cooper to draft an ordinance to bring back before the Commissioners at the next meeting.

Mayor Cooper called to discuss the proposed ordinance requiring the construction of missing or discontinuous sidewalks upon the occurrence of certain events.

City Solicitor Mandalas distributed the proposed ordinance prior to the meeting. He read the ordinance. He asked if the Commissioners would want the building permit to trigger construction of a sidewalk where there is a discontinuous sidewalk; and if so, at what dollar value.

Commissioner Coluzzi asked if a sidewalk that is cracked and needs to be maintained would be considered a trigger when a building permit is pulled. Mayor Cooper did not think it would be advisable. The City should be requiring property owners to fix their sidewalks regardless of whether or not they have a permit.

Commissioner Mills thought that an aggregate or timeline should be used in the ordinance. Mayor Cooper said that the following should be added, "The aggregate value of projects requiring a building permit within a twelve month period is at least \$20,000". Commissioners Coluzzi and Mills agreed. Commissioners Sargent and Barbour disagreed.

Commissioner Sargent said that if the Commissioners feel that the sidewalks should be filled in, then it should be mandated and made a City project. Commissioner Barbour said that the City, itself, should fix the sidewalks, not the property owners.

Building Inspector Terri Sullivan attended an ADA conference yesterday, and the topic was sidewalks. A copy of the presentation will be forwarded to the Commissioners.

## **NEW BUSINESS**

Mayor Cooper called to discuss the draft Comprehensive Development Plan (CDP) presented by the Planning Commission and the process for Commission approval of same.

Commissioner Mills said that due to the many points listed in the proposed CDP, he would like to hear a presentation or have clarifications made regarding programs, etc. It may be beneficial to have a member of the Planning Commission present to address questions. Commissioner Mills would like brief presentations regarding the Delaware dune protection and maintenance requirements, Delaware inland bays, etc. He suggested having four independent meetings aside from the Commissioners' Workshop Meetings to devote to presentations and discussion of the proposed CDP.

Mayor Cooper suggested that the Commissioners should schedule one special session dedicated to the CDP, and have a representative from the Planning Commission be present to answer questions.

This item along with a definitive path forward will be placed on the agenda for the February 19, 2010 Regular Meeting.

The Budget Session scheduled for February 6, 2010 was cancelled due to the approaching inclement weather. This meeting will be rescheduled to February 13, 2010.

## **OLD BUSINESS**

Mayor Cooper called to discuss proposed revisions to the City tree ordinance, Chapter 253 of the City Code.

Commissioner Barbour had distributed a copy of the tree ordinance as revised from the January 15, 2010 meeting. The "Whereas" clause has not been written. Commissioner Barbour broke the ordinance up into the tree ordinance and two sections. One of the sections has to do with public property, and the other section has to do with private property. The general Findings have been brought to the front of the ordinance. The Definitions were listed after that. A purpose clause has been incorporated for the Public Spaces section. The numbering system has been cleaned up. Concerns were addressed up to Line 264.

The suggested revisions are as follows:

1. Line 5. Chapter 253. Changed "Comprehensive Tree Ordinance" to "Trees".
2. Line 54. Emergencies. Mayor Cooper said that it is fine to have a definition of what constitutes an "emergency", but the rest of it needs to be in the body of the ordinance.
3. Line 292. Put the name of the section in that the Section No. applies to. Commissioner Sargent suggested that all such references should be done accordingly.
4. Line 322. Section 253.6(a)[2](b)(3). Strike "tree stand".
5. Lines 329-330. Section 253.6(a)[2](c). Display of permit. Commissioner Mills suggested that "[T]he applicant shall prominently display on the site the permit issued on a sign prescribed by the Commission." should be changed to "[T]he applicant shall prominently display on the site for which the permit is issued such that it is visible from the sidewalk or street."
6. Lines 331-335. Section 253.6(c) and Lines 347-349. Section 253.6(d)(6). Relocate and combine both subsections into a new section, "Right of Entry".
7. Line 341. Section 253.6(d)(4). Delete this subsection.
8. Line 350-357. Section 253.6(d)(7). Delete this subsection.
9. Line 367. Subsection (2)(a). Tree removal permit fee. Delete "...to offset the cost of evaluating the application..."
10. Lines 370-374. Subsection (2)(b). Delete this subsection.

This item will be placed on the agenda for the February 19, 2010 Regular Meeting.

## **CITY MANAGER'S REPORT**

There was nothing to report.

**COMMITTEE REPORTS**

Commissioner Mills, Boardwalk Committee, provided an update on the Committee activity and Phase 2 of the Board Reconstruction Project. The timeline for the opening of the southern portion of the Boardwalk is March 2010 after the lights are installed.

**CITY SOLICITOR'S REPORT**

There was nothing to report.

**COMMISSIONER ANNOUNCEMENTS/COMMENTS**

There were no announcements/comments.

**DISCUSS ITEMS TO INCLUDE ON FUTURE AGENDAS.**

No items were discussed to be included on future agendas:

The Mayor and Commissioners Regular Meeting will be held on Friday, February 19, 2010.

There being no further business, Mayor Cooper declared the meeting adjourned at 11:59 am.

Respectfully submitted,

---

**(Kathy McGuinness, Secretary)**