

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

April 9, 2012

The Workshop Meeting of the Mayor and Commissioners of the City of Rehoboth Beach, was called to order at 9:03 a.m. by Mayor Samuel R. Cooper on Monday, April 9, 2012 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 Bill Sargent
 Commissioner Pat Coluzzi
 Mayor Samuel R. Cooper
 Commissioner Stan Mills
 Commissioner Lorraine Zellers
 Commissioner Mark Hunker left the meeting at 10:02 a.m.

Absent: Commissioner Patrick Gossett

Also in attendance was: City Solicitor Glenn Mandalas

Also absent: City Manager Gregory Ferrese

Mayor Cooper recognized that City Manager Gregory Ferrese was unable to attend this meeting due to his father-in-law's passing last Wednesday. Commissioner Patrick Gossett was unable to attend this meeting due to a problem with returning from Denver, Colorado. The son of Mr. Willie Merchant of the IT Department was involved in a fatal car accident this past Thursday morning.

CORRESPONDENCE

There was none.

OLD BUSINESS

Mayor Cooper called for the presentation by Bryan Hall of the State Office of Planning Coordination on the work to be performed in Central and Deer Parks relative to removing the underbrush, ivy and other nuisance growth.

Mr. Bryan Hall gave his presentation. This matter is part of the ongoing efforts by the community to enhance its overall forest resources. One element which has repeatedly come up in conversation is invasive species in Deer Park and Central Park. Because there are no natural predators, they adapt well to the environment. Invasive species are incompatible and tall growing and are more aggressive. A Presidential Executive Order has been put in place by Presidents Clinton and Bush and reaffirmed by the current administration. What has created a significant impact is the aspect of fire. The aspect of invasive species creates a situation where there are adverse fuels and adverse impacts to the community. Common invasive species are phragmite, tree of heaven, princess tree, Norway maple, greenbrier, English ivy, ornamental grasses, etc. English ivy is a problem in Deer and Central Parks. It acts as a fuel source in certain times of the year and is an evergreen plant. English ivy grows up trees, but is not necessarily harmful to them as it is parasitic. It creates a potential hazard for certain trees. In looking at the base of some trees, a person would have to pay close attention to root rotting and decay at the bottom root flare which is the crown that comes out of the base of the tree where the transition from the above-ground tree grows to the below-ground tree. Fungi and bacteria can form to create structural hazards in a tree. Another challenge is bamboo which is problematic for where it can be a fire source; and once it is in, nothing else will grow. Bamboo has a hormone given off by the plant which prevents other vegetation from growing around it. Phragmite is transmitted by wind and spores, and is the most predominant and prevalent fire fuel. Mr. Hall is trying to introduce a management problem to both of the parks to allow them to be and continue to be general, natural open spaces. The long-term plan is to maintain the sites, manage the invasive species, reintroduce native vegetations and then decide what the future of the parks might be. Before discussing any of that, the vegetation needs to be gotten under control. Activities need to be prioritized, and a combination of tools needs to be used to be able to control the unwanted species. There is always a public safety concern. This matter is also looked at from an environmental quality standpoint. Control would be done at a minimal cost so as things occur they can be handled locally, or competitive grants could be sought. It is proposed to clean up the debris with low impact equipment such as a bobcat or a small

mulching machine. Both machines would grind up the material and leaving it on-site, and making a much more traditional appearance which is seen in a park. Aesthetics is a key aspect of this project. After doing an initial assessment of Central Park, it is proposed that this work would take place in the next two weeks before the summer season starts barring that there are no significant objections from the community and residents. The contractor would be working between normal business hours, starting at 8:00 a.m. for four days. Someone will be on-site to answer any questions that may arise. The next step between now and the Memorial Day weekend would be to spray using a low impact, limited use herbicide. A local contractor will be responsible for coming in and treating the areas which have been mowed, and treating the areas that cannot be mowed. The areas would be treated that have been mulched to control the vine population and problem. Herbicides such as traditional Roundup and aquatic-safe Roundup will be used in addition to Garlon. With regard to controlling the invasive species, there may be native plants on-site that could fill in through natural regeneration. Other native plants and shrubs could also be introduced if there is no regeneration. Mr. Hall proposed a tentative timeline that in the week of April 16, 2012 the machine would be brought in based on the availability of the machine. Spraying would begin approximately May 7, 2012. The site would be monitored for fall and winter, and replanting would occur if necessary. A letter can be provided to all the residences that are adjacent to the parks advising them of today's meeting. This presentation will be posted along with notes and an overview on the City website. Once it is known when the machine will be starting, another mailer could be sent out. As part of the replanting process, the site would be opened up to talk with the residents one-on-one.

Mr. Walter Brittingham, 123 Henlopen Avenue, asked where the project started. He voiced concern that in the process of opening up the parks, a lot of people's backyards will be opened up. Mr. Brittingham asked if it is intended to leave the parks un-mowed for the wildlife. Mr. Hall responded that that approximately one year ago, the City started an inventory process of all its public trees that are within the City right-of-way. Work was done to assess and evaluate streets trees as well as park trees. Both Central Park and Deer Park were discussed on how to manage them. Because they are natural areas, a different management regime was proposed at that time. The grant is being funded through USDA Forest Service and is \$10,000.00 with a 50% match. The intent is to leave several sites in the parks which will not be mowed because of their uniqueness and are supportive of habitat. Mr. Brittingham noted that people take leaves and brush into the parks, and opening up the parks would require more signage.

Mayor Cooper said that the intent is not to change the use of the parks, but to control the growth.

Commissioner Mills thought that Mr. Brittingham's comment on dumping in the parks is valid. He was not sure if ordinances need strengthening to prohibit certain behavior, but it is worth having a conversation with the City Manager.

Mayor Cooper called to discuss the proposed zoning moratorium to restrict construction around the City's lakes until such time as the Planning Commission issues a report on possible new and/or revised ordinances as tasked by the Commissioners at their meeting on March 16, 2012..

Commissioner Lorraine Zellers recused herself from this discussion.

Commissioner Coluzzi noted that at the last meeting, she had proposed a moratorium on building to be put in place until the Planning Commission has done its research and has determined what makes sense as far as setbacks, etc. City Solicitor Mandalas has drafted an ordinance. Commissioner Coluzzi proposed an addition to Section 5 concerning existing structures. Section 5(2) would read that applications for construction or improvements to existing structures that do not change the footprint of the structure such that the structure would not encroach into the 15 feet of the ordinary high water mark of any freshwater body within the municipal limits of the City of Rehoboth Beach.

City Solicitor Mandalas said the intent is that nothing can be expanded within the 15 foot setback; but a permit could be issued if there is a repair needed to be done. The language he is proposing would be that there would be no expansion instead of not changing the footprint.

Commissioner Sargent said that he would be willing to see the Commissioners pass a permanent buffer as a zoning change as opposed to a moratorium. Commissioner Mark Hunker noted that the moratorium is an interim proposal. Commissioner Coluzzi said that it makes sense for the Planning Commission to make recommendations.

Mayor Cooper said that the Commissioners have tasked the Planning Commission with this matter and to move forward and change the ordinance would send a wrong signal. Commissioner Mills agreed.

City Solicitor Mandalas noted that the Planning Commissioner has set April 13, 2012 as the first time it

will take public comment on this matter. This is a zoning change affecting private property and would follow the same course as any other zoning matters. He reviewed the noticing procedures and approval process with the Commissioners. If approved, the resolution would be adopted on April 20, 2012 setting the public hearing for May 18, 2012. If approved, the ordinance for the moratorium be enacted that evening. The general nature of the ordinance is that a moratorium would be declared on the issuance of any permit or other approval for any construction within fifteen (15) feet of the ordinary high water mark of any freshwater body located or partially located within the municipal limits of the City of Rehoboth Beach. The ordinary high water mark of Silver Lake would be defined as elevation six feet above National Geodetic Vertical Datum of 1929 (NGVD29). The ordinary high water mark of Lake Gerar would be defined as elevation five feet above NGVD29. The moratorium would continue until and including February 14, 2013, unless sooner lifted by the City Commissioners in order to provide the Planning Commission with an opportunity to issue its report and recommendation, and an opportunity for the Mayor and Commissioners to consider the report and recommendation, prepare any appropriate ordinance, conduct any necessary public hearing and take any action deemed appropriate. This moratorium would not apply to applications for permits or other approvals for construction of land improvements within fifteen (15) feet of the ordinary high water mark of any freshwater body within the municipal limits of the City which are now currently pending or approved, applications for permits or other approvals for construction where such construction would not expand an existing structure or other existing land improvement, and activity of the United States, the State of Delaware and the City for public purposes.

Commissioner Mills thought that the proposed ordinance is descriptive in mentioning the buffer zones and the synopsis. He was leaving it in the hands of the Planning Commission to come up with a buffer zone and/or setback, etc. as is in the resolution. He requested clarification of "within fifteen (15) of the ordinary high water mark" because he could interpret it as going inland or out into the water body itself. The gazebos and docks fall under this moratorium. Possibly for the next meeting, he would like a legal explanation for Lot Nos. 24-28 on Stockley Street. The properties are not shown going to the lake's edge. Building Inspector Terri Sullivan responded that her interpretation would be fifteen feet in either direction. Mayor Cooper said that the fifteen feet would be measured in the ordinary way setbacks are measured, and they are measured horizontally not on a slope.

City Solicitor Mandalas will return in two weeks with the elevation of the ordinary high water mark of Lake Gerar.

Ms. Toni Sharp, address unknown, asked for a recap of what happens on April 20, 2012 and May 18, 2012. City Solicitor Mandalas recapped the procedure.

Mr. Tom Zellers, 308 Stockley Street, voiced concern that he is not in favor of moratorium because the Commissioners are unfairly targeting that area. He suggested since the properties in Country Club Estates abut the lake and there is a 10 foot rear setback, the 10 foot buffer and the 10 foot setback should be as one. With regard to construction and issuing permits, the Building Inspector can refer that right to the Planning Commission. He did not understand why the Commissioners are wasting their time with this matter. Commissioner Sargent noted that this would be a zoning change, and zoning changes cannot be done by the Planning Commission. A process which includes a public hearing is required. City Solicitor Mandalas said that under the Site Plan Review process, there is a provision which says that the Building Inspector's office can send it to the Planning Commission for certain types of projects. There is a provision which says if it seems a little different than what the Building Inspector has seen previously and there are questions about it, that project can be referred to the Planning Commission as well. The Planning Commission could not impose more stringent setbacks, etc. that are not already in the Code; but it provides the Planning Commission an opportunity to talk with the applicant.

Mayor Cooper called to discuss a proposed amendment to the City Charter, Section 40, Paragraph (q), to change the authorized indebtedness of the City from a percentage of the assessed value of real property to a fixed amount.

Mayor Cooper said that the City Charter limits the total indebtedness of the City to 25% of the assessed value of the properties which are taxable. The wording is intended to exclude those properties which are tax-exempt. The values placed for assessment are 50% of the fair market value when the assessment was done, but nowhere in the City Code or State law is the 50% referenced as to where it comes from. The current assessed value of the City is approximately \$73.7 million dollars. The potential total borrowings are \$18.4 million dollars. Mayor Cooper proposed that the Commissioners ask for a Charter change to remove the 25% cap and go to a \$50,000,000.00 fixed cap amount. City Solicitor Mandalas has prepared a proposed Charter change and resolution because the State legislation would take action on this matter. The resolution would

authorize Mayor Cooper to do whatever necessary to get this through the State legislature.

Commissioner Sargent agreed that this absolutely makes sense, and he agreed with the \$50,000,000.00 cap. Commissioners Coluzzi and Zellers also agreed. Commissioner Mills was not sure if using a formula would be a better program than a fixed amount.

This item will be placed on the Agenda for the Regular Meeting on April 20, 2012 to adopt the resolution.

Mayor Cooper called for the report on the status of the ocean outfall project, and renovations and improvements to the City's wastewater treatment plant.

Mayor Cooper provided an update. The public hearing on the Environmental Impact Statement (EIS) will be held on April 10, 2012 at 1:00 p.m. in the Convention Center. It has been advertised in excess of 30 days prior to tomorrow. Approximately 30 exhibits will be entered into the record at the public hearing along with presentations the Commissioners have received over the last four to five years, and various studies and reports which have been done. Because the public hearing is a function of the City, a public hearing officer will be in attendance to put everything in the record and conduct the hearing. There will be 30 days following the public hearing to receive written testimony which will be included as part of the record. A court reporter will be in attendance at the public hearing, and the transcript will be given as part of the file. All written comments are to be sent to DNREC. It will compile the comments and forward them to the City in which the City must address each public comment as part of the final EIS. Once the appeal period of 30 days has closed, then GHD will have 45 days to assemble the responses. The documentation will then go to DNREC, specifically the Secretary for a record of decision. This entire procedure is done for the funding for the Clean Water Advisory Council. The EIS will be applicable to all the permits. This project is consistent of the outfall, force main, pump station and the treatment plant; and there is a \$25,000,000.00 loan application with Clean Water Advisory Council to fund those items. Sussex County will pay part of the expense in the amount of \$10,000,000.00. A report with regard to improvements at the wastewater treatment plant which are unrelated to the outfall itself will be finalized within the next two weeks. It is anticipated that those improvements would be funded through a loan from USDA Rural Development. The length of the loan would be for 40 years. A big issue is how the bio-solids are treated as sludge. There has been a lot of sentiment by the people who have been working on this, including the plant operator, to change treating the sludge through a different process. Currently, a Class B sludge is created which is land applied to a farm south of Milford. The idea would be to go to a Class A sludge which does not need to be permitted and can be sold to homeowners, farmers, landscapers, etc. The consensus is to go to a dry sludge. This is an issue which should be addressed now.

CITY MANAGER'S REPORT

There was no report.

COMMITTEE REPORTS

There were no reports.

CITY SOLICITOR'S REPORT

City Solicitor Mandalas reported that with regard 2 St. Lawrence Street, he has asked Mayor Cooper for an additional meeting to finalize the language.

COMMISSIONER ANNOUNCEMENTS/COMMENTS

There were no announcements/comments.

Discuss items to include on future agendas.

An item to be included on a future agenda is an update and demonstration on Parkmobile. An item to be included on the agenda for the May 7, 2012 Workshop Meeting is the possibility of two projects with regard to the Bicycle/Pedestrian Master Plan.

The Mayor and Commissioners Regular Meeting will be held on Friday, April 20, 2012 at 7:00 p.m.

There being no further business, Mayor Cooper adjourned the meeting at 10:31 a.m.

Respectfully submitted,

(Patricia Coluzzi, Secretary)