

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

**July 9, 2012**

The Workshop Meeting of the Mayor and Commissioners of the City of Rehoboth Beach, was called to order at 9:05 a.m. by Mayor Samuel R. Cooper on Monday, July 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   Patrick Gossett  
              Commissioner   Bill Sargent  
              Commissioner   Pat Coluzzi  
              Mayor            Samuel R. Cooper  
              Commissioner   Stan Mills  
              Commissioner   Lorraine Zellers

Absent:     Commissioner   Mark Hunker

Also in attendance was:     City Solicitor Glenn Mandalas  
                                  City Manager Gregory Ferrese

**CORRESPONDENCE**

There was none.

**OLD BUSINESS**

There was none.

**NEW BUSINESS**

Mayor Cooper called to discuss a draft ordinance forwarded by the Planning Commission that would amend Chapter 236 of the City Code relating to subdivision improvement performance guaranty and sun-setting provisions for major subdivisions that do not proceed timely after approval.

City Solicitor Mandalas said that the draft ordinance is a byproduct of the Oak Grove approval process. During the process of considering and finally approving the Oak Grove subdivision, one of the things the Planning Commission recognized and had a real concern with was that the major subdivision ordinance is thin on bonding requirements. Throughout the State, certain developments had been approved, funding dried up and the projects were not completed. The Planning Commission questioned how to protect against that within the City. Traditionally, this is done through bonding where a developer is required to post a certain bond; and in regard to the proposed ordinance, the requirement was proposed for 150% of the cost of infrastructure improvements. If the developer is not able to complete those improvements, the City has some ability to exercise on that bond the payment of monies, and then complete the project or do something else with those monies to resolve the issues. In Section 236-7 Approval Procedure new Sub-section (1)(C)(1), [T]he major subdivision approval shall become void unless the subdivider shall have commenced construction within one (1) year from the date of Planning Commission approval. Sun-setting provisions are typically put in ordinances because subdivision laws change over time. In Sub-section (1)(C)(2), [T]he major subdivision approval shall become void unless the sub-divider shall have completed the improvements identified in Article IV Improvements, and any other improvements required by the Planning Commission within two (2) years of Planning Commission approval. In Sub-section (1)(C)(3), [P]rior to the major subdivision approval becoming void, the sub-divider may apply to the Planning Commission for an extension of the time periods included in this Section of up to one (1) year, and the Planning Commission may grant the extension upon good cause shown. In Section 236-15 Required Improvements Sub-section (2)(A), this provision sets up the bond for the 150 percent of the estimated cost of the improvements to be made. In Sub-sections 236-15(2)(B)(C)(D), these provisions set up how the City will exercise on the bond. In Sub-section (2)(B), [I]ncorporated within the performance guarantee shall be a provision requiring that the performance guaranty shall not be released and shall remain in full force and effect until all required improvements it guarantees are inspected and approved, in writing, by the City Engineer and the Planning Commission. In Sub-section (2)(C), [A]ll improvements shall be completed in accordance with this Code and any additional requirements specified by the Planning

Commission. In Sub-section (2)(D), [I]n any case where the City is the prevailing party in legal proceedings to enforce the performance guaranty required by this Section, the City shall be entitled to collect its reasonable legal fees and costs incurred in such action.

Mayor Cooper was not sure that a year to get started is long enough because a lot of projects are staged, and financing is needed. He did not know if this always can be done before the approval. Two years might be more appropriate. With regard to Lines 42-45 Sub-section 236-7(1)(C)(2), voiding the subdivision approval is not the way to get the development done.

Commissioner Bill Sargent said that he would be reluctant to pull it back once the subdivision is approved, unless nothing has taken place. There should be a mechanism to make certain that the developer continues doing something, and it should not be dependent on the conclusion but dependent upon his intentions. If the developer runs out of money, then maybe it should be open to someone else to complete the subdivision improvements. To put the bond at risk if the developer is not working is the biggest incentive to keep working. Mayor Cooper agreed.

City Solicitor Mandalas said that there should be an opportunity for the City to say that two years is long enough when improvements are not done. He suggested that the subdivision approval may be voided by the City if it is not completed by two (2) years. Mayor Cooper said to not void it, but to have the right to exercise the bond and complete it. Commissioner Mills agreed.

Commissioner Lorraine Zellers suggested that it be brought back to the Planning Commission after two (2) years for an explanation and then a review if the improvements have not started.

Commissioner Sargent said that to put the bond at risk if the developer is not working is the biggest incentive to keep working. Mayor Cooper agreed.

Mayor Cooper said that with regard to completion within two (2) after the approval, there should be a sliding scale.

Commissioner Gossett asked how to define "commence construction" with regard to Sub-section (1)(C)(1), lines 38-39. It depends on the price of the attorney as to how this is defined. In reviewing the current Code, there is a definition for "start of construction" in the flood hazard area. He asked if it is defined how many times this could be extended with regard to Subsection (1)(C)(3). In other bonding codes Commissioner Gossett has reviewed, there is a table that involves the square footage of the project and a time limit. City Solicitor Mandalas noted that "commence construction" is standard language which is used, but he did not know whether other subdivision ordinances define what the "start of construction" or "commence construction" is. For clarity, it would not hurt to have that definition. The Planning Commission wanted one opportunity for a one-year extension. The time may not be enough and the Commissioners may want to provide a longer period of possible extensions. Special cases provide an opportunity for a lengthier extension upon good cause shown.

Commissioner Sargent said that if the Planning Commission would have the ability to extend one or more times, it would make sense for the Planning Commission to say that the project will take a certain amount of time. It would be up to the developer to show plans, etc. This would be part of the overall project, rather than the Code be frozen to two (2) years for completion. This should be part of the statement of the original development project. He was looking for a mechanism to set up a reasonable time period, and perhaps the construction square footage would be the best way to do it. Commissioner Gossett said that this would put the developer in control, and the City would have the ability to review it periodically based on size, time, etc. The review process should be determined by the City's side of the table. Mayor Cooper said that as part of the original approval process, the developer would submit a timeline and it would be subject to negotiation. Commissioner Gossett said that direction needs to come from the Planning Commission.

Mayor Cooper said he would prefer that a person making the application submits a timeline, and then it is either approved or modified through negotiation. He would set this up as a separate section and provide background that the intent is for these projects to move from planning to construction as quickly as possible. As part of the approval process, the applicant shall submit a timeline for getting started and a timeline for finishing and upon review the Planning Commission shall either accept it or whatever.

Mr. Jeff Clayton, 101B Henlopen Avenue, said that the City should make the developer get the project done as soon as possible as a favor to the people who live in the immediate area and who drive the road, etc. The City should make it harder for the developer to make sure he gets the project done on time.

Commissioner Mills asked who estimates and validates the costs of infrastructure improvements.

City Solicitor Mandalas responded that the developer initially provides the estimated costs, and the City Engineer reviews those costs and either agrees or disagrees.

City Solicitor Mandalas noted that in Section 236-7(C)(2), the approval would not become void because it would not make sense to undo subdivision lines. He will make clear that there is an opportunity to exercise on the bond at the two (2) year period. The Commissioners need to deal with the definition of commence of construction. What he had heard from the Commissioners was to create a new section that would give background indicating that the intent is to move subdivisions along as quickly as possible. Upon application by the developer, the Planning Commission can grant longer periods of time through the approval process.

Mayor Cooper thought that the Planning Commission would refer it to the City Engineer to find out if it is a reasonable timeline.

Chairman Preston Littleton of the Planning Commission felt that the City is vulnerable with the current Code provision in terms of the bonding and in the abandonment of a project. The goals were set out by the Planning Commission, and it asked City Solicitor Mandalas to help craft the language. Attention should be paid to the citizens and not to the developer. Goals set out. Be sympathetic to the property owners and pay attention to the citizens and not to the developer. He suggested that the Commissioners assess what is currently in the City as they make their determinations.

Mayor Cooper thought that Section 236-15(A) was too wordy, and he thought that there should be some citing of what is acceptable for the performance guaranty. Commissioner Gossett said that the language provides the developer or owner of the property with more flexibility for financing. This language allows the flexibility of the developer or the person setting the security instrument to develop the package as long as it reaches 150 percent of the proposed value of construction. City Solicitor Mandalas said that the Planning Commission would have the ability to review the bonding mechanism and possibly reject it.

Mayor Cooper said that in Section 236-15(C), the language should read “[A]ll improvements shall be completed in accordance with this Code and all requirements as contained in the Subdivision Code. City Solicitor Mandalas thought that the intention was to capture any additional conditions with approval that the Planning Commission would attach for other improvements that it requires.

Mayor Cooper thought that in Section 236-15(D), “prevailing party” should be stricken. City Solicitor Mandalas noted that originally, he did not think that this language was necessary, but based upon the discussion with the Planning Commission, he inserted it. He will reword this subsection and bring back another draft to the Commissioners.

This item will be placed on the agenda for the next Workshop Meeting.

Mayor Cooper called to discuss a draft ordinance forwarded by the Planning Commission that would amend Chapter 270 of the City Code relating to what creates a merger of lots for zoning purposes.

City Solicitor Mandalas said that there has been a lot of discussion about merger, what causes a merger of lots, what does not cause a merger of lots and if there is a mechanism to un-merge lots that have become merged. This all flows from the definition of lot in the Zoning Code. The current definition of lot is the parcel of land on which a main building and any accessory buildings are placed, together with the required yards. The area of the lot shall be measured to the street line only. A lot shall be as shown on the Zoning Map of the City, except that nothing herein shall prevent the merger of two or more lots as shown on the Zoning Map into a larger lot if the lots are utilized as one parcel through the placement of a structure or structures thereon. City Solicitor Mandalas referred to case law across the country. Over time, there have been lots which have been merged by structure or merged by use. Merger is a concept that only relates to zoning, it does not relate to title. He referred to a recent case that had come before the Board of Adjustment where it granted the appeal and reversed the decision of the Building Inspector where she had stated that a building permit could not be issued for a second lot because the both lots had been merged by zoning. The proposed ordinance clarifies that in instances of zoning merger, there is a requirement that a subdivision approval from the Planning Commission be obtained to separate the lots. In Section 270-4, the proposed definition of lot would read: “[T]he parcel of land on which a main building and any accessory buildings are placed, together with the required yards. The area of the lot shall be measured to the street line only. A lot shall be as shown on the Zoning Map of the City.” In Section 270-46.1(A) the new language would read: “[T]wo or more lots as shown on the Zoning Map shall be considered merged for purposes of this Chapter if the lots are utilized as one parcel through their use or through the placement of a structure or structures thereon, regardless of when the structure or structures were originally placed or the use originated. Once merged, the lots shall remain merged unless subdivision approval

is obtained from the Planning Commission.” This incorporates the concept of merger by structure or a merger by use of the two parcels. Even if the structure does not span the two parcels, if they are used as a single parcel, this would require that those lots be merged and could only be un-merged through subdivision. What use constitutes a use substantial enough to merge the two lots would be the decision of the Building Inspector. If the owner would disagree with the Building Inspector’s determination, an appeal could be made to the Board of Adjustment. Discussion ensued as to merge by structure and common ownership.

City Solicitor Mandalas noted that Illinois has good examples of merger. When owner comes in for a building permit, if that person would be doing something that would merge two lots, then an affidavit would be signed by the owner saying that they understand the lots are being merged. Mayor Cooper agreed with that concept. City Solicitor Mandalas said that the problem in the City is that it is trying to deal with lots that people are trying to un-merge. Mayor Cooper said that if the lots have been willingly merged, a person would have to come in to un-merge them; but he had a problem when lots were merged because of someone’s interpretation of what a use is and not knowing it was being done.

Commissioner Sargent did not believe the Board of Adjustment should be exercising power when there is merger by structure. Merger of a lot is when a structure is built across two lots, and it needs to go back to the Planning Commission for subdivision.

Chairman Littleton said that the Planning Commission would like a technical amendment to the Code. The long-term, historic practice of the City when there is a structure spanning a lot is that the lot is merged. IF there are two 50 feet x 100 feet lots, the Planning Commission must grant a partitioning; however, it can grant the partitioning with conditions. The conditions would get into what is adverse impact. There are times when there are adverse impacts upon the neighbors that historically occur. A partitioning is done at a public meeting and a chance for neighbors to come in and voice their concerns. With regard to a structure across the property, this proposed ordinance would clarify the use thing the Commissioners want to negotiate. The Planning Commission feels that ambiguity is going against the historic practices of the City, and the desire was to strengthen this provision so that it is clear that partitionings are done by the Planning Commission and not the Board of Adjustment.

Mr. Eugene Lawson, Esq., 12 Henlopen Avenue, agreed that there needs to be a technical amendment to resolve the ambiguity problems. The technical amendment would be to redo the definition of lot that currently exists in the Code and to remove merger altogether so there is no argument about whether a lot is merged or not.

City Solicitor Mandalas said that there has to be some recognition for zoning purposes at least when an owner wants to put a structure across two lots. There has to be some sort of merger because setbacks would be violated, by definition, when crossing a property line. The two lots would have to be used as a single lot for setback purposes. Chairman Littleton said that the Planning Commission cannot create a new non-conforming lot line that is not in compliance with the Code.

Commissioner Zellers liked the idea of merger going back to the Planning Commission to have it clarified.

Commissioner Mills said that technically once a structure encroaches into the setback the property merges because the structure could still be a certain distance from crossing the line. City Solicitor Mandalas said that technically the benefit of a lot next to another lot to not have to adhere to a setback, etc.

Commissioner Gossett said that this technical amendment gives direction and clarity on how to move forward. The proposed ordinance gives the Commissioners a direction or standard to make decisions or allow the Planning Commission to make decisions. Mayor Cooper disagreed. It would clear up one issue, but would open up other issues.

Mayor Cooper said that once the structure which was built across two lots is gone, what has caused the merger is taken away. The merging factor is gone so there would not be a merger anymore. He would consider letting the Building Inspector approve a structure on each of the two lots as long as the lots are conforming to the Zoning Code.

After a lengthy discussion, the consensus of the Commissioners was to place this item on the agenda for the August 6, 2012 Workshop Meeting.

Commissioner Gossett also noted that currently there is a definition of lot in the Zoning Code, and another definition of lot in the Subdivision Code. He suggested that there should be one definition which is consistent throughout the Code. This may be an opportunity to make the consideration of having one definition.

Mayor Cooper called to discuss the City's policies and goals for the parking of bicycles, mopeds, scooters and other motorized and non-motorized vehicles.

Commissioner Coluzzi said the Streets & Transportation Committee has been trying to develop a bicycle plan for the City and to look at additional parking for bicycles. There are a number of scooters in the City this year as compared to last year. After putting in the bicycle parking station, it realized that there is a need for scooter parking. Currently, scooters are designated as mopeds by license plate and can park at bicycle racks. It has become overwhelming because of the number of scooters that there are. Something would need to be done to accommodate scooters in the City. She would like to see areas in the City that currently have yellow lines and cannot accommodate a car to be converted for scooter parking.

Mayor Cooper noted the City has said that mopeds can be parked at bicycle racks. The mopeds he sees are parked near the bicycle racks but not in them. There is a definitional problem with what constitutes a moped, motorcycle, etc. He said that the City charges for cars to park and does not guarantee a space for them. The City should find parking for the mopeds, but mopeds should not be guaranteed a space to park in. He asked if mopeds should also pay to park, and if a mechanism should be set up to encourage turnover. In the heart of the City, parking meters are set up to encourage turnover. There is an ordinance that a moped cannot be parked on the street.

Commissioner Sargent thought that this subject should be taken back to the Streets & Transportation Committee, and then eventually come back to the Commissioners with a proposal. He suggested that nothing should be changed this summer. Mayor Cooper agreed.

Commissioner Coluzzi thought that additional accommodations should be made because the number of scooters in the City is overwhelming, and it is causing issues.

Mr. Jeff Clayton, address unknown, voiced concern with people driving their scooters on the sidewalks. There needs to be a law enacted immediately that scooters cannot be on the sidewalks.

Mr. Joe Hill, 42 Henlopen Avenue suggested having scooter parking and additional bicycle racks placed on the medians, and more bicycle racks at Deauville Beach. He also suggested striping areas for scooter parking.

Commissioner Sargent said that if someone is riding a scooter on the sidewalk, then they should be fined.

Mr. Walter Brittingham, 123 Henlopen Avenue, said that at Surf Avenue, the last parking spaces at the crosswalks should go away because of visibility issues. The bicycle racks which are placed at Surf Avenue can be placed across the street against the curb. There should be some forethought before doing something.

Commissioner Coluzzi said that the issue to address is the scooter parking. Scooter parking issues and developing a policy for meter time to increase turnover is on the agenda for the next Streets & Transportation Committee meeting.

Commissioner Zellers said this is an issue the Streets & Transportation Committee should discuss. She is cautious about proceeding too quickly in identifying things. The scooters needs to be addressed that are riding on the sidewalks. A plan is needed of where the bicycle parking stations should be located. Scooter should possibly pay for parking.

Commissioner Coluzzi said that there are places in the City that are too small for parking spaces and could be utilized as metered scooter parking. For the future, scooter parking possibly could be created on the medians. This is a suggestion the Committee would look into. She would like to see the Commissioners move forward with two scooter parking spaces.

Commissioner Mills thought that the City should adopt the dual philosophies guided by the Comprehensive Development Plan (CDP) to promote fewer motorized vehicles and promote walking, biking and public transportation.

Commissioner Gossett shared photographs from other communities of lined parking spaces with individual meters for motorcycles, etc., and ways to create corrals with smaller curbing on the street and the use of pylons. Parking spaces at Martin's lawn could be used for scooter parking. He showed photographs of areas to be used as a quick fix which would not have an impact on traffic flow. Commissioner Gossett suggested that the owners of the three scooter shops should attend the next Committee meeting to present their views. Commissioner Zellers said that the riders will need to be educated.

Mayor Cooper said that there needs to be an overall policy and goal for scooters.

Commissioner Coluzzi requested permission to work with the City Manager to identify four spots in the City to be converted immediately to scooter parking. Commissioner Mills agreed. He added that parallel parking would be the easiest, and there should be a public outreach campaign. Mayor Cooper said that there needs to be some oversight by someone. Commissioner Coluzzi said that this will be discussed at the Committee meeting on August 13, 2012.

Mr. Walter Brittingham asked if the enforcement of no mopeds will be done at the bicycle parking stations on Baltimore Avenue. This should be reported back to the Commissioners at their regular meeting. The Police Department has not enforced bicycles on the sidewalks because there are no signs. He suggested making specialized parking spaces just past the yellow fire lanes.

Ms. Carol Hill, 41 Henlopen Avenue, thought that walkers need to be aware that they are walking and riding bicycles the wrong way on streets and should be aware of the dangers. Visitors need to be educated.

Mr. Walter Brittingham said that someone with or without authorization made changes to the boulders and gates at Grove Park and Henlopen Avenue. Bicyclists are coming right out of Grove Park, and they are not stopping at all before coming out onto Henlopen Avenue. A barricade needs to be placed there with a stop sign.

Mayor Cooper called to discuss progress on the planning for and the efforts to address possible concerns about a possible docking facility in the Lewes/Rehoboth Canal at the Rehoboth Beach Museum.

Commissioner Coluzzi said that an ad hoc committee met with some members of the Board of the Lewes/Rehoboth Canal Improvement Association. A plan has been publicized to have a potential dock and water taxi behind the Museum. The Association has asked the City to partner with it in this endeavor. The components are a geotechnical analysis, design and construction documents and ultimately construction of this facility. There has been a feasibility study done. The Commissioners need to make the City Engineer does the geotechnical analysis. There is an opportunity to get a grant that will pay for 50%. The City would pay 25%, and the Association would pay 25%. The top end of the estimate is \$40,000.00, which would be \$10,000.00 of the City's money. The idea is for the Association to move forward with the project and have the City as a partner. It needs the partnership with the City in order to get grants.

Commissioner Sargent would be comfortable with the City not paying the \$10,000.00, but being the agency that allows the grant to go forward. Commissioner Coluzzi noted that the members of the ad hoc committee were she, Mayor Cooper, Mr. Ferrese, Mr. Mel Craig and the City Engineer. This committee felt comfortable that the City would be willing to allocate the \$10,000.00. Commissioner Gossett thought that the investment of \$10,000.00 vs. \$40,000.00 would be a wise investment for the City. It is not specifically tied to the development of the docking facility for the water taxi.

Commissioner Mills said that the geotechnical information may help with the Oak Grove property at the Canal. He did not recall at the last meeting the Commissioners coming to consensus about moving forward with this facility.

Mayor Cooper thought that the improvement is great, but his concern was with how it will be used. The water taxi and the parking associated with it, and the potential kayak launch becomes the issue for him.

Commissioner Zellers said she would like to see this come to fruition, but there are concerns about parking, maintenance and liability.

Mr. Walter Brittingham said that the scope has changed. Improvements also need to be made at the canal bank along Canal Street. Mayor Cooper said that the grant would be specific to this project. A lot of the information to be collected will be specific to the project. Mayor Cooper did not have a problem with the water taxi per se, but he did have a problem with the demands it may place on that particular location. Commissioner Coluzzi said that the water taxi capacity would be 26 passengers, and five parking spaces would be required to accommodate those passengers.

This item will be placed on the next agenda for a vote.

Mayor Cooper called to discuss a draft ordinance to amend Section 10-1 of the City Code to increase the fee for a returned check to be consistent with City policy.

Mayor Cooper said that per the Code, the charge for a returned check is \$15.00, and the City has been charging \$30.00. The fee needs to be increased in the Code to \$30.00.

Mr. Ferrese would like to increase the fee to \$50.00. He will check with the County to see what it charges.

This item will be placed on the next agenda for a vote.

Commissioner Coluzzi thought that the memo from the Alderman also needs to be looked at for fines charged. City Solicitor Mandalas will look at the alderman's draft ordinance. There are a lot of inconsistencies between the State and City Codes.

#### **CITY MANAGER'S REPORT**

(See attached report.)

City Manager Gregory Ferrese reported that the Lake Avenue Streetscape Improvements Project for design and preparation of contract documents is estimated to cost no more than \$175,000.00 with the State funding \$140,000.00 of that cost. The City's engineer has submitted the right-of-way and property boundaries plan for Lake Avenue to the State for its review, and the City has not received a response to date. Sealed bids will be opened on July 10, 2012 at 1:31 p.m. for the purchase of a tractor in the Water Department. Monies have been allocated for this purchase. The City Hall Complex Master Plan Task Force will be meeting on July 11, 2012 at 9:00 a.m. in the Commissioners Room. Mr. Mike Wigley, City architect, will give a presentation. The transfer tax for June 2012 was \$136,000.00, and from July 1 through July 10, 2012, it was \$95,000.00. The majority of the revenues are coming in as expected.

#### **COMMITTEE REPORTS**

There were none.

#### **CITY SOLICITOR'S REPORT**

City Solicitor Mandalas reported that he expects to see something soon regarding 2 St. Lawrence Street.

#### **COMMISSIONER ANNOUNCEMENTS/COMMENTS**

There were none.

#### **Discuss items to be included on future agendas.**

There were none.

There being no further business, Mayor Cooper adjourned the meeting at 11:43 a.m.

**Respectfully submitted,**

---

**(Patricia Coluzzi, Secretary)**