MAYOR AND COMMISSIONERS MEETING
CITY OF REHOBOTH BEACH

August 6, 2012

The Workshop Meeting of the Mayor and Commissioners of the City of Rehoboth Beach, was called to order at 9:00 a.m. by Mayor Samuel R. Cooper on Monday, August 6, 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
	Commissioner	Mark Hunker
Also in attendance was:		City Solicitor Glenn Mandalas
		City Manager Gregory Ferrese

CORRESPONDENCE

There was none.

OLD BUSINESS

Mayor Cooper called to continue discussion of 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 presented the changes to the proposed ordinance:

1. Section 236-7(C)(1) – Changed "[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" to "[T]he subdivider shall have commenced construction within one (1) year from the date of Planning Commission approval. For purposes of this section, commenced construction shall mean that the subdivider has begun a continuous program of construction".

   Commissioner Stan Mills said that construction is usually when the first foundation is poured or when the first excavation is dug in preparation for pouring the concrete. Site clearance or site preparation is done prior to construction which disturbs the land. He asked if it is intended to start the timeline when the soils are first disturbed and utilities are put in vs. construction. City Solicitor Mandalas said that subdivision does not approve any homes, etc. Subdivision deals with improvements to the land that allows utilities to come in. Whenever that excavation begins for those improvements is when construction commences. Commissioner Mills thought that this would need to be detailed. He provided a definition for site clearance preparation: Land clearing, soil loadbearing tests, leveling of the area, sewer and utility lines, road building, power line installation, fencing, construction, building, etc. He tended to go with that as the beginning of the timeline because that is when officially noise and construction are onsite and impacting the adjacent neighbors.

   Mayor Cooper noted that the problem is if construction is not continuous. Commissioner Mills thought that the parameters for the start date should be set by site clearance preparation. If there would be a lag in time between steps, then it would be incumbent for the Commissioners to give a time restriction to the overall start and stop dates.

   Commissioner Bill Sargent thought that "continuous" would be the key. The developer would be in trouble if he would not maintain the appearance of continually working on the project.

   City Solicitor Mandalas noted that a secondary step is to be considered in that construction would need to be completed within two (2) years. One of the major fixes is that there is a two (2) year time

limit.

Commissioner Patrick Gossett said that the definition of "commence" means to begin with some defined action. In the City Code, permanent construction does not include land preparation such as clearing, grading or filling.

Commissioner Sargent thought that instead of "continuous program of construction", it could read "continuous program of implementation of those items included in Section 2" which means streets, name signs, sidewalks, curbs, etc.

Commissioner Hunker said that it is important to realize that the clock should not start if someone comes in to assess, plan or scheme and there is no developer. The Commissioners have to be reasonable about letting someone plan or do, but they should not let it go vacant. Financing and talking to the public in meetings could slow the clock down.

Mayor Cooper said that one of his concerns was this would be a rigid one (1) year. With some of the projects, people cannot get financing until there is an approved subdivision plan to show.

Commissioner Sargent said that the draft ordinance allows for the developer when there is a big project to come in with a revised timeline which the Planning Commission would approve of. The one (1) and two (2) years are placeholders until there is something else that the developers propose. Commissioner Lorraine Zellers agreed and thought that it would give the subdivider an opportunity to get an expansion for whatever deviations there would be.

Mayor Cooper distributed his proposed changes to Section 236-7(C)(1),(2) & (3): (1) If construction has not commenced within one (1) year from the date of Planning Commission approval, such approval shall become void. The Planning Commission may, at the time of final approval, grant a longer period of time for commencing construction if in its judgment the subdivider has shown good cause. For purposes of this section, commenced construction shall mean that the subdivider has begun a continuous program of construction. (2) The improvements identified in Article IV, Improvements, and any other improvements required by the Planning Commission, shall be completed within two (2) years of Planning Commission approval, unless because of the size and/or complexity of the improvements a longer period of time for completion is granted by the Planning Commission at the time of final approval. If the improvements are not completed within the time period set out in this paragraph, the City may exercise any legal remedy to complete the improvements. (3) After final approval, the subdivider may apply to the Planning Commission for an extension of the time period included in this subsection to commence construction or complete the improvements of up to one (1) year, and the Planning Commission may grant the extension upon good cause shown." Mayor Cooper thought that maybe an extension would need to be applied for before the expiration.

Commissioners Coluzzi and Hunker agreed with the proposed language by Mayor Cooper. Commissioner Coluzzi thought that the Commissioners could be in trouble with "continuous program of construction" and suggested that it be further defined to say for example "a time period of two (2) months". Mayor Cooper said that if a person gets started in the second month after approval, it can be gauged whether it is continuous over the next ten (10) months before the one (1) year timeframe expires. If a person waits until the eleventh month, then they can do almost anything if it looks continuous from that point on and it may well not be. The purpose is the intent of doing the project, not just getting approval and sitting on it to seeing what develops. Commissioner Sargent said that instead of the language, "continuous program of construction", he would use "continuous program of implementing the improvements identified in Article IV.

Commissioner Gossett said that if a partitioning expires, there is a period of time to wait to re-apply. He was unsure if this should be considered in order to keep things consistent. City Solicitor Mandalas read Section 236-8.1(D) of the City Code. "The application for partitioning or minor subdivision shall not be considered by the Planning Commission if within the twelve (12) month period immediately preceding the application, the subject partial was the subject of a subdivision application that was denied by the Planning Commission. However this limitation shall not be applicable if the majority of the Planning Commission members then present find the facts and circumstances existing at the time of their prior decision have undergone a substantial change justifying their reconsideration or if the prior application was returned for refiling as a major subdivision." After discussion, the Commissioners decided that the language in Section 236-7(C)(3) should read "[T]he subdivider may apply to the Planning Commission for an extension of the time

periods included in this subsection of up to one (1) year, and the Planning Commission an extension upon good cause shown".

2. Section 236-15(A) – Changed "[A]s a condition of subdivision approval, prior to making any improvements, the subdivider shall furnish a performance guaranty sufficient to cover 150 percent of the estimated cost of the improvements to be made, in form acceptable to the Planning Commission, for the ultimate installation of the following" to "[T]he subdivider shall furnish a performance guaranty prior to making any improvements sufficient to cover 150 percent of the estimated cost of the improvements. The performance guaranty shall be in a form acceptable to the Planning Commission (including but not limited to a surety bond or letter of credit), and shall cover the following".
3. Section 236-15(C) – Changed "[A]ll improvements shall be completed in accordance with this Code and any additional requirements specified by the Planning Commission" to "[A]ll improvements shall be completed in accordance with this Code and any additional requirements attached as a condition of approval".
4. Section 236-15(D) – Changed "[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" to "[T]he City shall be entitled to collect reasonable legal fees and costs incurred in an action to enforce the performance guaranty required by this Section".
5. Section 236-17 – Changed "[N]o underground installations shall be covered until inspected and approved by the City Engineer or other authorized City authority" to "[N]o underground installations shall be covered until inspected and approved by the City Engineer or other authority authorized by the City Manager".

This item will be placed on the Agenda for the Regular Meeting on August 17, 2012.

Mayor Cooper called to continue discussion of 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 mentioned that at the last meeting, there was significant discussion about merger by use context vs. merger by structure context in establishing two properties.

Commissioner Mills thought that the language "…under the provision of the Zoning Code **and this changes the definition of merging lots**" should be added to the synopsis because it is now stated in Section 270-16.1(A) that "[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…." It was significant to highlight that the definition of merging lots is being changed.

City Solicitor Mandalas provided an example of merging through use in order to implement the procedure as opposed to having a big building. Generally, if there is a driveway and detached garage on one lot and they were being used to service the home on the second lot, then both lots would be used as one entire lot.

Commissioner Sargent said that merger would be if a structure would straddle both lots. The definition of merging should not be just a structure crossing two lots, but also if there is a separate structure on a second lot that is integral to the use, etc. of the first lot, which would then be merger by use. Discussion ensued as to various examples of merger vs. non-merger of lots.

City Solicitor Mandalas noted that there is an argument of two lots being used as one lot if someone is using a lot for volleyball beside the main lot with the house. The Commissioners as a legislative body would need to decide if they want merger by use to fundamentally exist in the City. Commissioner Lorraine Zellers said that in researching this topic, she found some codes have a process where an application is submitted to merge the lot. The City has no process. City Solicitor Mandalas agreed that a lot of the jurisdictions that have adopted different sorts of merger, have an affidavit to sign for merging of lots. The issue the City has is that there are lots in the City which are in question as to whether or not they have already been merged and people are trying to separate them. Commissioner Zellers said that the City has to have a way of saying the lot has been merged and a way of dividing it so the City legally has two tax bills and two lots. City Solicitor Mandalas said that traditionally, the City has taken the position that there is zoning merger; and to separate the lots a person would have to go through a partitioning or subdivision process. Everyone agrees that in order to change a subdivision line to make a new line where one had not been plotted previously, then a person would have to go to the Planning Commission for that subdivision. The larger question is whether a person should have to go through the Planning Commission partitioning or subdivision process if a lot is being put back the way it was,

already plotted and meets the Zoning Code as the minimum lot requirements. Merger developed over the years as an effort to bring lots into conformity with the Zoning Code. So long as the lots are put back the way they were and they still satisfy the minimum lot requirements of the Zoning Code, then this possibly should not be a situation to go before the Planning Commission.

Commissioner Sargent agreed that the majority of mergers could be automatic, but there may be instances that the City would somehow be protected by going to the Planning Commission. He was reluctant to remove the Planning Commission's review of things even though the language that controls the Planning Commission states that the Planning Commission shall grant the subdivision if the zoning is met. He was not sure that if the Commissioners would make the change which would allow the Planning Commission to do this, the Commissioners might not have the resolution they could potentially have here. Commissioner Zellers agreed. There has not been a process to alert people that they are merging their lots, and that is something which is needed. City Solicitor Mandalas said that in going forward, the Commissioners can put it into the books to alert them about it. He was more concerned about the issue where some people are not aware their lots have been merged. The question is whether the City has not given those people some sort of process that they are entitled to, and whether the City bears some liability or risk if they are forced to go to the Planning Commission.

Mr. Eugene Lawson, Esq., 12 Henlopen Avenue, said that the biggest problem is the un-merger. For zoning purposes and in order to be fair, if someone wants to build a huge house, they would need to have two lots in order to make the setbacks. For zoning purposes, it has to be assumed that the lots are merged for the whole purpose of getting a building permit. If a house is torn down and everything remains as it was before, there would still be two lots at that point. Even if it was for zoning purposes, once the house is torn down, the reasons for merger no longer exists. Deeds always refer to separate lots, and in some instances to separate purchase of the lots. The Commissioners need to deal with the un-merger of platted lots. Common ownership does not stop someone if they own a house from leasing the property next door and being able to building a large house on it. The question would be whether the zoning merger belongs to the leaseholder or the feeholder. A person should not have to come back to the City there are two lots. Commissioner Zellers said that the determining factor would be whether a person is receiving one or two tax bills.

Mayor Cooper said that typically in the City, if someone owned lots together years ago, there would probably be one tax bill. If a lot was added at another time, then there would probably be a separate tax bill.

Attorney Lawson said that he has had clients which have a 100 foot x 100 foot property with two lots on it. The County has issued two tax bills with two tax numbers for the two lots, and the City has taken the position the lot is merged and there is only one tax bill. For title purposes, the lots are separate. They have separate identities and tax numbers. The City's land records do not control the title, they control the zoning. From a land rights perspective, as long as a owner is staying within the way the lots were originally platted and once a house is torn down, there should be two lots again.

City Solicitor Mandalas said that it is not the best process in some situations for the City to send one tax bill to people who own two lots and to assume that they should know their lots are merged. The best process is to have someone sign an affidavit recognizing that their lots are merging when they come in for a building permit to build a structure across two lots. In those instances, the lots are not merging just for zoning purposes, but also for title purposes, etc. The County would be notified if this would be done. Mayor Cooper said there are a significant number of lots which this would involve, depending on the City's definition of merger.

Commissioner Gossett asked if an evaluation could also be done in parallel if the City proceeds with re-assessments. Part of the process would be to do visual inspections of every property in the City. City Solicitor Mandalas said that if this would be done and it would not be a significant number of lots, an appeals process could be set up where everybody would be notified if the City thinks their lots are merged. Fundamentally, the Commissioners have not made a determination as to whether they like or not like the idea of merger.

Mr. Walter Brittingham, 123 Henlopen Avenue, asked if there is a process to un-merge lots. There is an obligation to the public to be informed. There needs to be a process that when something is legally done, the City provides it. The process change should be of record. City Solicitor Mandalas said that if there is a process to un-merge lots, an owner should be entitled to some notice that lots are merging.

Commissioner Hunker – process of informing people or formal process to sign.

City Solicitor Mandalas reiterated that the Planning Commission has sent the Commissioners an ordinance that it thinks merger should exist. The Planning Commission wants to be clear in the Code that merger exists for both structure and use. This process should be in place and should occur within the City.

The Commissioners are having a more comprehensive discussion about whether there should be merger and in what circumstances there should be merger.

Mayor Cooper said there has been a strict interpretation that if someone builds a house a property line, the lots are merged; and that person would have to go to the Planning Commission. Attorney Lawson has gone to the Board of Adjustment and said that the merging factor has been removed, so the lots are not merged. Currently, there is a two-track system.

Commissioner Hunker suggested either considering the proposed ordinance or work on a discussion or committee to look at this holistically. The Commissioners are looking for a continuous process of improvement and how it will best work.

Commissioner Coluzzi said that if the structure is removed, then there is no reason to go to the Planning Commission and the lots should be considered as two lots.

Commissioner Sargent said that there should be one agency, the Planning Commission that handles the issue of mergers and un-mergers. It should not be bifurcated.

Commissioner Zellers agreed that there should be a simple process for voluntary merger or involuntary merger, but it should not be made to be onerous on the property owner.

Commissioner Gossett said that one of the aspects of the partitioning process is that neighbor within 200 feet are made aware that this would take place. There needs to be a process with a defined action.

Mayor Cooper said that the basic argument is whether there are two lots or one lot if there originally had been a house that straddled the line but is now torn down. There is nothing to merge it except what existed in the past. City Solicitor Mandalas said that two non-conforming lots merged in the past would remain merged because it was all about trying to bring non-conforming lots into conformity. It is typically undersized lots that came together, and the law favors things coming into conformity.

Mr. Brittingham said that there was a partitioning at 2 Oak Avenue. The house was torn down, and it was offered has two separate lots. Someone bought the property which consists of two lot and put it back as one lot. The City probably considers it as one lot at this point. Ms. Sullivan noted that the lots are in two separate ownerships by the same owner.

City Solicitor Mandalas asked how difficult it would be to determine how many instances throughout the City there are of lots which may be merged, either through use or construction. The first step would be to check where there are adjacent lots that are in common ownership and see how many instances there are. In dealing with a small number of lots, then a process could be set up for notifying the owners that their lots may be merged, etc. Ms. Sullivan said that a windshield tour could be done. The tax base does not reveal how big the lots are.

After a lengthy discussion, there was no consensus among the Commissioners regarding merger of lots.

Commissioner Gossett suggested that a few Commissioners meet with the Planning Commission and the Building Inspector to have a better understanding or another way to approach the idea of merger. Commissioner Hunker agreed.

Mayor Cooper thought that a list could be created of things, such as whether a merger has occurred in a certain scenario, etc.

Commissioners Hunker and Gossett and Ms. Sullivan will be meeting with members of the Planning Commission

NEW BUSINESS

There was none.

CITY MANAGER'S REPORT

(See attached report.)

City Manager Gregory Ferrese reported that Representative Schwartzkopf has allocated $50,000.00 towards the City's next ADA Ramping Project. The City now has a total of $126,000.00 allocated towards this project minus a commitment from Senator Bunting. It is expected that Senator Bunting will allocated at least $10,000.00. Mr. Ferrese has been notified by two State funding agencies that they would allocate 50% of the total cost towards

the Canal Bank Geotechnical Evaluation Study. One funding agency said that it would possibly allocate funding towards the project. He is waiting for the proposal from the City's Engineer, Mr. Alan Kercher. After the proposal is received, the grant application can be submitted. DP&L has advised Mr. Ferrese that it does not trim trees or vegetation from around, above or below street lighting to improve visibility. DP&L will prune around primary and secondary distribution lines, removal of hazardous trees that threaten electrical infrastructure and vegetation management along high voltage transmission corridors. Should the City desire to remove vegetation or a tree to provide better illumination, the DP&L forester would be willing to coordinate any DP&L safety procedures so the removal does not interfere with the energized lines above. The City Hall Complex Master Plan Task Force will be meeting on August 8, 2012 at 9:00 a.m. in the Commissioners Room.

COMMITTEE REPORTS

There was nothing to report.

CITY SOLICITOR'S REPORT

There was nothing to report.

COMMISSIONER ANNOUNCEMENTS/COMMENTS

Mayor Cooper noted that the Commissioners have received the Lakes Report from the Planning Commission. The consensus of the Commissioners was to hold a Joint Meeting with the Planning Commission on September 10, 2012 at 9:00 a.m.

Commissioner Mills noted that the draft report shows that it is not for public distribution. Before holding the Joint Meeting, he thought the report should be available to the public, even if it is not finalized.

Commissioner Gossett volunteered to talk with Chairman Littleton about the reason for that statement. The Commissioners should have the report and have it read. The purpose of the Joint Meeting would be for the Planning Commission to present to the Commissioners its findings and research to have a better understanding of it so the Commissioners are fully aware of the content of it. As to releasing the information prior to that meeting, Commissioner Gossett did not see a problem with it but obviously there is a reason for the statement.

Mayor Cooper's understanding of the meeting is to see if the Planning Commission is on the right track and then it could come out of the meeting that Commissioners would want the Planning Commission to finalize the report, and the Commissioners would draft any ordinances or it could be said that the Planning Commission could move forward with preparing the ordinances to come to the Commissioners.

Discuss items to include on future agendas.

Items to be discussed on future agendas are: 1. Workshop Meeting in September or October - Discuss the issue and a possible procedure for eventually burying power lines in the City. 2. Workshop Meeting in October or November – Discussion that the Board of Commissioners propose to host an annual Joint Meeting with the Planning Commission for the specific review of the Comprehensive Development Plan (CDP)..

There being no further business, Mayor Cooper adjourned the meeting at 10:48 a.m.

Respectfully submitted,

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(Patricia Coluzzi, Secretary)