

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

November 7, 2011

The Workshop Meeting of the Mayor and Commissioners of the City of Rehoboth Beach, was called to order at 9:02 a.m. by Mayor Samuel R. Cooper on Tuesday, October 11, 2011 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
 Mayor Samuel R. Cooper
 Commissioner Stan Mills
 Commissioner Lorraine Zellers
 Commissioner Mark Hunker

Absent: Commissioner Pat Coluzzi
 Commissioner Kathy McGuiness

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

CORRESPONDENCE

1. Letter dated October 24, 2011 from Mable Granke, 1013 Scarborough Avenue, pleading for more action in taking care of Silver Lake.

OLD BUSINESS

Mayor Cooper called to discuss implementation strategies for the City's 2010 Comprehensive Development Plan (CDP).

Commissioner Mark Hunker said that at the last meeting, he and Commissioner Pat Coluzzi had talked about putting together a framework for the projects to be undertaken regarding items in the CDP. Since that meeting, Commissioner Hunker has put together a grid consisting of who wants to sponsor the piece, what the item is from the CDP, what the proposed timeframe is and what the process points are where all appropriate process points are checked and a brief description is given on the action. The process points would consist of the review process, what type of City office would be involved, whether coordination is required with other governmental bodies (Sussex County, DelDOT, etc.), whether additional funds are required (City budget/State funds/Grant monies), whether it involves a current committee, any meetings with stakeholders, Commissioner involvement/reporting and a desired outcome. Commissioner Hunker would like to know if this would be helpful. This framework would provide everyone an overview and is not meant to say that this is exactly what will be done.

Commissioner Lorraine Zellers liked the list from an individual standpoint and thought that it would be helpful in keeping things organized and not forgotten.

Commissioner Bill Sargent thought that this framework fits the CDP.

Mayor Cooper called to discuss amending various ordinances that are effective seasonally and/or have time of day provisions, to make beginning and ending dates and the time of day provisions more consistent between the various ordinances.

Commissioner Stan Mills noted in regard to the discussion, the Commissioners need to be mindful that it is not just time and day alignment, but there might be a safety component which is worthy of discussion. He had introduced this topic at a prior meeting. For approximately two months, the supporting documents which consist of a sunrise chart, proposed amendments chart and a compilation of relative codes, have been on the City website.

Police Chief Keith Banks said that once the dog ordinance was changed in regard to times, it prompted looking at why the times are different and not consistent for other ordinances. Officers, for years, have been saying that there should be consistencies with the times. Over the years, Police Chief Banks has gotten emails

and requests to change the times when bicycles are allowed on the Boardwalk in the early morning hours when people are jogging and walking. Some requests have been made to ban the bicycles on the Boardwalk entirely, and other requests have made to change the time from 10:00 a.m. to 8:00 a.m. or 9:00 a.m. This has become a safety issue from the standpoint that it gets busier on weekends starting in early May. Police Chief Banks noted that crash data is available from the Boardwalk, but he had not brought it with him for the meeting. It has gotten busier because the City is getting to be a more year-round resort, and a lot of issue are weather dependent related. The better the weather, the more people will be out and about especially on weekends.

Commissioner Hunker found that this solution to amending the ordinances especially regarding the bicycles is a problem which does not exist. He has received approximately 17 emails and has mentioned this topic in the businesses in the City, but he has received no emails in favor of this solution. Commissioner Hunker did not understand how the 15 additional days will save on the crashes or people getting hurt, and he did not understand where the safety concern is without having the data from May 1st to May 14th.

Commissioner Mills said that making an amendment to any one of the ordinances presented with the single rationale to come into alignment does not work for him for every one of the ordinances. That is where the safety aspect needs to come in. He asked is the individual ones which need to be taken separately, rise to the level that they demand an amendment be made.

Commissioner Sargent reflected on an incident which had occurred with his roughly four year old grandson when they were coming out of a business. As his grandson was darting out of the business, it was fortunate that Commissioner Sargent grabbed him because a bicyclist was coming along at approximately 15-20 mph. It would have been a disaster if Commissioner Sargent would not have grabbed him. As a runner, Commissioner Sargent is well aware of bicyclists. Ninety percent of the bicyclists go very slow, but there is a group of people who feel that it is fine to ride at 2-3 times the speed at which people walk. This is a disaster waiting to happen. Commissioner Sargent's preference is for the cut-off time to be 8:00 a.m. for bicycles being on the Boardwalk, and to at least not have bicycles on the Boardwalk when there are a lot of pedestrians. He respects the rights and desires of people with bicycles to enjoy the Boardwalk, but they are overshadowed by a factor of 20 to 1 or more by pedestrians who are at risk at some point. If the speed limit could be controlled, this probably would solve a good part of the safety problem, but Commissioner Sargent was not sure it could be possible. He did not see it as a realistic solution. Police Chief Banks noted that from May 15th on there are summer officers are on the Boardwalk.

Commissioner Zellers said that if the skateboarders, scooters, roller bladders and only allow the bicycles on the Boardwalk, that would eliminate a lot of the other factors. She would be interested to see before and after the change to bicycles with regard to the Bicycle/Pedestrian Plan. The skateboarders are more reckless. This may be a partial solution. Other municipalities have many of the same ordinances as the City. Some municipalities ban them altogether. There are narrow areas on the Boardwalk is worrisome. Surreys also are allowed on the Boardwalk. The Boardwalk is not quite wide enough to have a bike lane down the center.

Commissioner Hunker asked why the police presence on the Boardwalk would not be moved from May 15th to May 1st if it is such an issue and concern. More full-time officers should be hired if this is an issue and concern. Police Chief Banks said at that time of year, his department is limited on personnel because of people trying to take vacation. As far as seasonal officers and getting them in earlier, training is done in May.

Mayor Cooper said that when there are bicycles on the Boardwalk with a certain density of people, there will be issues. He agreed with Commissioner Sargent that if speed is controlled then the issue would be lessened. Commissioner Hunker said that the issue is speed, not taking people off the Boardwalk. Commissioner Sargent said that there is no way of effectively controlling the speed.

Commissioner Hunker said that May 15th is an arbitrary date. It is when people start arriving on the weekends. Commissioner Sargent said that there is some desirability to standardize the dates and times so everyone will know when to expect things. May 1st is better than May 15th for the issue with the bicycles on the Boardwalk, and a 10:00 a.m. cutoff is too late because the Boardwalk is busy at that time. Changing the cutoff time to 8:00 a.m. or 9:00 a.m. would be better. Commissioner Hunker agreed that 10:00 a.m. is late. The argument regarding May 1st is taking away from the citizens of something that does not exist. Discussion ensued.

Mr. Howard Menaker, 16 Dover Street, reminded the Commissioners that there is a group setting up a Bicycle/Pedestrian Plan. There will be public hearings and public meetings planned on this. He suggested that this issue should be taken as part of a broader question which the City is currently looking at which is what the rights are and encouragement in terms of pedestrians and bicyclists. If this issue is solved in isolation, the

Commissioners may potentially end up in conflict with the plan that may or may not be adopted in six months from now. If bicycle issues in the City are going to be discussed, this should be included in that so that it is a more comprehensive discussion. Commissioner Sargent said that the purpose of the study is to reduce greenhouse gases, so the issue of Boardwalk times may or may not be amenable to this. The study itself may not address the hours.

Commissioner Mills said that the safety aspect is important in this issue as well as some of the other items. He recognizes the safety issues and that there are two classes of bicyclists: 1. Recreational. 2. Exercisers. In the two weeks prior and after the current season, the weekdays are fairly quiet; but the weekends are just as busy as any summer day or weekend. Other off-season activities are just as crowded such as the Sea Witch Festival, etc. The safety aspect needs to be emphasized more. Commissioner Mills has received endorsements from people over the years and through the Boardwalk Committee that surreys should be banned year-round, surreys should be banned in the summer, all bicycles and surreys should be banned year-round, better enforcement for speed is needed, the bicycle ban law should be extended longer than what is being proposed, bike lanes should be painted, the hours should be changed from 5:00 a.m. to 10:00 a.m. year-round, the bike hours should be reduced when allowed from 5:00 a.m. to 8:00 a.m. or 9:00 a.m., the allowed hours should be expanded to go longer into the season, and to abandon all rules for bicycles. He did not mind deferring this to the Bicycle/Pedestrian Study or independently.

Commissioner Sargent said he would be comfortable in waiting to see what results in the Bicycle/Pedestrian Study before this particular law is changed. He thought the Commissioners should move forward on the timing on the other ordinances if there is no controversy. Commissioner Zellers agreed, and she would prefer bringing up this issue of the bicycles on the Boardwalk during the bicycle discussions so people can comment on it. This would be a more reasonable approach. A public hearing will be held on November 19, 2011 in regard to the Bicycle/Pedestrian Plan.

Mr. Patrick Gossett, 16 Dover Street, said that one of the elements of the equation which he did not hear being discussed is implementation and setting expectations of how the change will come about. If this change is going to be made, the bike shops need to be involved.

Commissioner Mills said that in regard to Sections 92-18(C) – no bicycles on boardwalk from 10:00 a.m. to 5:00 a.m. and 98-11(C) – bicycles allowed on Boardwalk from daybreak to 10:00 a.m., this language needs clarification because there is a disparity. To clarify the Code, daybreak should be replaced with 5:00 a.m. Other relative codes are: 1. Sleeping on the beach prohibited from 1:00 a.m. to 5:00 a.m. 2. Being on the beach is prohibited from 1:00 a.m. to 5:00 a.m. At the original meeting with Police Chief Banks, the proposal was to get alignment with 198-37 – pavilions adjacent to Boardwalk are closed from 1:00 a.m. to 6:00 a.m. All of the other Code references for bicycles, sleeping on the beach, being on the beach, etc. are 5:00 a.m. The original discussion was whether to change everything to 6:00 a.m. After discussion, it was agreed upon to take the prohibition from being in the pavilion until 6:00 a.m. and turn it back to 5:00 a.m.

Commissioner Sargent said that any reference to daybreak should be changed to 5:00 a.m. Mayor Cooper disagreed because there is a reason why it is 5:00 a.m. At certain times of the year, it has to do with the sun coming up and being able to see as the real reason.

Commissioner Zellers said that if everything else is 5:00 a.m., this time makes sense.

The consensus was to change daybreak to 5:00 a.m. and changing the pavilion code prohibition to end at 5:00 a.m. instead of 6:00 a.m., and move forward to adopting an ordinance.

Commissioner Mills asked if there was any interest in extending the prohibition season from May 1st to September 30th for skateboards, scooters, rollerblading, hawking and no left turns. These codes are not specific to the Boardwalk. Commissioner Zellers was comfortable with extending the prohibition because it would take some of the traffic off of the Boardwalk.

Commissioner Sargent said that the compelling interest would make enforcement simpler such as the pavilions, etc.

Commissioner Hunker said that he is in favor of aligning the times. He does not see an issue with skateboarders, scooters during the May 1st to May 15th piece. His perspective on addressing a safety issues is change the times to 9:00 a.m. or earlier vs. taking away the shoulder piece. Commissioner Hunker believed that the timeframes should be aligned.

Mayor Cooper thought that 5:00 a.m. is arbitrary, and he preferred the language using daybreak.

He suggested that all the ordinances which deal with 5:00 a.m. should be changed to daybreak, and daybreak should be defined in the general section of the Code. Police Chief Banks agreed.

Commissioner Mills noted an ordinance can be created in regard to Sections 198-37 – change 6:00 a.m. to daybreak, 92-18(C) – change 5:00 a.m. to daybreak, 95-6(A) – change 5:00 a.m. to daybreak, 95-6(B) – change 5:00 a.m. to daybreak, 98-11(C) would remain the same along with a definition of daybreak. If any decisions are going to be deferred in regard to bicycles, then the argument would not hold up for skateboards, rollerblades, and scooters.

Mayor Cooper said that the “no left turn” should be changed. Commissioner Mills has received a letter stating that the no left turn should be year-round. The consensus was to extend the no left turn season from May 1st to September 30th.

Police Chief Banks will confer with Mr. Jeff Green of Delaware Greenways regarding the bicycle issues and the Boardwalk. Commissioner Zellers will forward an email to Mr. Green in this regard.

A draft ordinance may be placed on the agenda for the November 18, 2011 Regular Meeting.

NEW BUSINESS

Mayor Cooper called to discuss an amendment to Chapter 270 of the City Code, the Zoning Code, which would permit the replacement of non-conforming retaining walls under certain circumstances.

Mayor Cooper and Building Inspector Terri Sullivan have drafted an ordinance which would permit the replacement of non-conforming retaining walls under certain circumstances.

Ms. Sullivan explained that currently the structures in the setback are not allowed. There are retaining walls located throughout the City, and many are failing. Currently, there is a property where the owners have applied for a demolition, and the wall to the west is failing. It is not something which can be repaired. The wall needs to be replaced. In order to replace the wall if more than 50% is removed, the non-conformity has to go away. The retaining wall to the east holds their property back. The slope of the property is drastic, and Ms. Sullivan did not know if it can be fixed without creating more problems for the owners of the property to the east because there will be water issues. Retaining walls cannot be located in the setback because they are a structure. Ms. Sullivan was unable to answer what is done with retaining walls located at the banks of water bodies. There was an instance with a retaining wall on Silver Lane, and that case went before the Board of Adjustment and onto court. The retaining wall was a structure in the setback and could be put back 10 feet from the property line, but it cannot be put back in the setback area so it cannot go to the property line. This ordinance pertains to existing retaining walls. It is preferred that the properties are graded.

Commissioner Mills said that the ordinance is generally relative to retaining walls within the setbacks.

Mayor Cooper said that the essence of a variance is for unusual circumstances. Ninety-nine percent of the lots in the City should not need a retaining wall. If there is a unique situation where the elevation drops off greatly, then the owner can go to the Board of Adjustment; but to allow them on a routine basis is asking people to create goofy things just so they can level their lot out, etc. The neighbor needs to be thought about as well because whatever they do affects that owner.

Commissioner Lorraine Zellers thought that the ordinance is reasonable in regard to non-conforming. She was particularly concerned about areas around the water because there is a lot of erosion taking place along the banks in several areas.

Mayor Cooper acknowledged that retaining walls beyond the property line and on City property is not affected by the Zoning Code. Whatever the issue is currently would still remain. Ms. Sullivan said that anything which is not on the property would have to come before the Board of Commissioners if it is something that would require a license agreement. With this proposed ordinance, it is being asked that the property owner adjacent to the particular property has to be involved.

Commissioner Mills asked if this is something that should be restricted to legally non-conforming in other words, grandfathered, and if there is a potential with some recently installed retaining walls that are legal which should not fall under this proposed ordinance. Mayor Cooper said this is would get into the question if something is found that is non-conforming, when did it happen. A date may be found, but more than likely not. Commissioner Mills said that the way to effect repairs for a retaining wall are two-fold: 1. Go to the Board of Adjustment for a variance which allows for the retaining wall to be replaced in its entirety. 2. The retaining wall can be replaced in portions under 50% in three sections to circumvent going to the Board of Adjustment.

He asked that if the retaining wall can be replaced in sections legally what the big deal is with replacing the retaining wall all at one time. City Solicitor Mandalas said that if the intent by the owner is to replace the retaining wall in three sections, in some ways would violate the Code. The allowance in the Code to allow replacement for something less than 50% is when a portion of the structure less than 50% is damaged and needs to be replaced and the rest is in fine condition. There is a problem when a property owner says that he is going to circumvent the Code and replace the retaining wall in three separate stages. It is not entirely accurate to say it can be done legally in three stages. Commissioner Mills said that his understanding of grandfathering, especially something that is legally non-conforming, is that it pre-existed the Code changes, and his understanding of the philosophy of grandfathering is that it is the desire of the jurisdiction to generally get rid of those non-conformities. He did not have a take right now on whether some retaining walls should go to the byway vs. being replaced. Commissioner Mills thought the proposed ordinance is a good thing, but he would like to look at a few more retaining walls in the City. He also questioned whether there was anything else legally non-conforming grandfathered such as fences which should fall under the same type of thing. Ms. Sullivan noted that fences can be located in the setback.

Commissioner Hunker said that the proposed ordinance is basically protecting current retaining walls if an owner wants to replace it in place. Ms. Sullivan said that it would be required to have a surveyor do an elevation as well as where the retaining wall is located. The height of the retaining wall cannot be higher than what is existing. She confirmed that if it affects a neighboring property, this would have to be coordinated with that owner. If the retaining wall is completely on an owner's property, the neighbor's permission is not needed because they are not affected.

Mayor Cooper said that the idea behind the proposed ordinance is to recognize that there are retaining walls and houses have been built in respect to retaining walls. To take the retaining wall away may jeopardize the structure. If the retaining walls fall in disrepair, there could be a problem, and the City would allow them to be rebuilt. Commissioner Sargent said that the point is the Commissioners do not want someone to have to replace the retaining wall in possibly three sections and have a lousy retaining wall because it may present a problem for them or their neighbors. The proposed ordinance is saying that the retaining wall is to be replaced the right way and to have a solid, legitimate protection.

Mayor Cooper disclosed that he has a retaining wall on the street side of his house. Without it, there would be no way to re-grade the property, and it would jeopardize the foundation of the house. Mayor Cooper would not necessarily be in favor of a new retaining wall on his property, but he was not sure the retaining wall should be there if the house would be demolished.

City Solicitor Mandalas will draft the Resolution to set the Public Hearing. This item will be placed on the agenda for the November 18, 2011 Regular Meeting.

Mayor Cooper called to discuss building permit fees charged by the City including the equity of the fees charged for new construction as opposed to renovation and repair.

Mayor Cooper prepared an examination of the two methods of calculating the fee for a residential building permit. The existing building permit fees consist of residential (less than three dwelling units) which is calculated at \$1.25 per square foot for new construction and 2% of building cost for renovations, repairs and alterations, and commercial (includes three or more dwelling units) which is calculated at \$2.00 per square foot for new construction and 3% of building cost for renovations, repairs and alterations. The fee of \$1.25 per square foot for new construction equates to a construction cost of \$62.50 per square foot if the permit was charged for at the rate of 2% as it is for renovations, repairs and alterations. ($\$1.25/0.02\% = \62.50). The fee for new construction includes the area of basements, porches, decks, patios, garages, etc. A case study - actual on 11 permits consisted of the construction cost, square footage, fee paid, average cost per square foot and the fee as a percentage of the construction cost. The average construction cost per square foot by permit was \$106.40. A case study - what if? on the same 11 permits consisted of the construction cost, fee paid, fee at 2% of cost, the difference, and the percentage change. The observations were: 1. For the 11 permits examined had the building permit fee been charged at 2% of the construction cost rather than \$1.25 per square foot, the fees would have increased by a low of 29.2% to a high of 143.6%. 2. The overall increase would have been 78.4%. 3. Of the 20 permits looked at for this examination, the single largest fee was for a remodeling where the fee was \$10,715.00 on a construction value of \$535,750.00. The fee was paid at the 2% rate. 4. The fee would need to be increased to \$2.23 per square foot for new construction to be on par with the fee for renovations, repairs and alterations. 5. While it is not expected that a decision would be made based on this disparity, perversely the existing fee schedule promotes demolition and rebuilding over preservation and restoration. 6. The fee for commercial construction of \$2.00 per square foot for new construction equates to a construction cost

of \$66.67 per square foot if the permit was charged for at the rate of 3% as it is for renovations, repairs and alterations. ($\$2.00/0.03\%=\62.50). This more than likely is more skewed than residential. In regard to thoughts, there exists a disparity in the two different ways the fee for a building permit is determined, and there is no rational reason for this disparity other than renovation jobs tend to be smaller than new construction projects. This needs to be addressed by one of the following: 1. Remove the per square footage classification and charge all permits at the percentage of cost rate. 2. Increase the per square footage fee for a residential permit to from \$2.20 to \$2.30 per square foot. 3. If revenue neutrality is sought, do further analysis to calculate new fees that have parity. Calculating the fee only on cost requires that truthful cost data be submitted to the City. This may require the City to maintain some benchmark costing data. Commercial building permit fees should be addressed at the same time and in a similar fashion. Mayor Cooper said that currently people are being penalized who are renovating over those who are building new.

Commissioner Sargent thought that this should be related to the transfer tax in a sense because someone is acquiring something and is paying something to the City. The rate should be the same whether someone is building a new house or renovating.

Commissioner Mills said that this would not need to be a revenue generator, but it certainly needs to be designed to cover cost.

Ms. Sullivan did not think the contractors will provide the Building & Licensing Department with false numbers. Either way with new homes the square footages need to be calculated for the FAR, etc. Two percent would make it convenient across the board.

Commissioner Zellers said that the percentage across the board seems to be fairer.

Mr. Patrick Gossett, 16 Dover Street, asked if the Board of Commissioners would consider any incentives for preservation of existing homes with regard to permit fees, to entice people when making the decision to extend front porches as not to include in the FAR, to maintain the character of Rehoboth, and to promote an incentive for maintaining existing properties in that nature. Mayor Cooper said that his main concern would be that the renovation truly keeps the character of the community.

Commissioner Sargent said the problem is that the cost of demolition and reconstruction vs. renovation totally dwarfs the fees, so fees become an inefficient nudge. From a policy standpoint, he likes when someone can help preserve the look of the neighborhood. There may be other things that can be done to help someone preserve the façade of the house, etc., but the fees are not an effective way. As times get better, the Commissioners may need to examine how to not get more tear downs than needed.

Ms. Sullivan said that with the renovations in the existing Code, there are incentives. Most of the houses which are being remodeled are existing non-conforming, so if less than 50% of the house is demolished the non-conformity can be maintained.

Mayor Cooper did not believe that people would make a decision on based on the fee, but it was odd that the City would incentivize in the opposite direction of what the Commissioners have stated. His recommendation was to remove the per square footage fees and calculate everything with percentages. Any permit applications that are received as of the date the ordinance is adopted would be handled under the existing fee structure. Anything received after that date would be handled under the new fee structure.

This ordinance will be placed on the agenda for the November 18, 2011 Regular Meeting for adoption.

CITY MANAGER'S REPORT

City Manager Gregory Ferrese reported that FEMA has approved the City's documentation pertaining to the expenses incurred from Hurricane Irene. The City will receive 75% of \$27,200.00. Sealed bids will be opened on November 8, 2011 at 1:31 p.m. in regard to the ADA Ramping Project. The installation of the new roof over the Convention Center will be completed by mid-November 2011. The City has asked the State Energy Office for approval to remove and install the same type of roof over the Municipal Building, Police Department and Alderman's Court. The City is in the process of preparing the scope of work and cost, and approval is anticipated from the State Energy Office. The end result will be an energy efficient roof over the existing complex. The replacement of the three (3) underground storage tanks and new generators will begin today. The new storage tanks will be placed above-ground. The City is gearing up for the Thanksgiving weekend and the Christmas season. The City Auction was held on November 5, 2011.

Ms. Sullivan said that the bids were put together for the grant in the amount of \$10,000.00 for the pruning

and maintenance of trees. Mr. Bryan Hall, Mr. Kyle Hoyd and Ms. Marsha Fox will be meeting with Ms. Sullivan on November 8, 2011 in regard to planting of the remainder of the trees. The grant is still being worked on for the cleanup of Central Park.

COMMITTEE REPORTS

There were no reports.

CITY SOLICITOR'S REPORT

There was no report.

COMMISSIONER ANNOUNCEMENTS/COMMENTS

Commissioner Mills announced that the Communications Committee will be meeting on November 15, 2011 at 1:30 p.m. in the Commissioners Room.

Discuss items to include on future agendas.

Commissioner Mills noted that Chairman Preston Littleton of the Planning Commission will be in attendance at the November 18, 2011 Regular Meeting in regard to discussion of five items within the Executive Summary of the Comprehensive Development Plan (CDP). The intent is not to discuss the merits of each individual item, but to engage in conversation with Chairman Littleton and give guidance to the Commissioners on whether or not to move forward. Commissioners Mills will forward support documents to the Commissioners prior to the meeting.

The Mayor and Commissioners Regular Meeting will be held on Friday, November 18, 2011 at 7:00 p.m.

There being no further business, Mayor Cooper adjourned the meeting at 11:12 a.m.

Respectfully submitted,

(Ann M. Womack, Assistant Secretary)