



November 18, 2011 Regular Meeting, and Commissioner Coluzzi was hoping that the Commissioners could give the Planning Commission some direction as to how it could help as far as where the Commissioners are going with some of the CDP items. She did not know if it has to be a decision of the Commissioners to have the Planning Commission assist with some of these items. Mayor Cooper said it was his sense that the Planning Commission would like specific things to do.

Commissioner Hunker commented that he will fill out two items he is interested in which will benefit from the Planning Commission's input and Chairman Littleton's email.

Commissioner Stan Mills agreed that it is time for specificity. If the Commissioners are going to talk about i.e. mixed-use or rental licenses, the public needs to be noticed and provided the opportunity to be involved in the discussions. He had articulated an invitation to the Planning Commission of which, at the last meeting, Chairman Littleton had less understanding that the intent from Commissioner Mills was for the Commissioners to have a specific discussion on each of the five items which has not occurred at this point. Commissioners are needed to champion any of the five items and have it placed on a future agenda for discussion. Commissioner Mills read into Chairman Littleton's note that the Planning Commission was definitely going forward with i.e. mixed-use. He was hesitant about the Planning Commission doing that without the Commissioners talking about it. Commissioner Mills would like more discussion on what the objectives are of each item, what the cost would be, what the time commitment would be, what the benefit would be, etc. in order to make sure that there is value in spending time and looking at these things. The Commissioners need to discuss the items as they are the ones to give the Planning Commission guidance. Commissioner Mills said he would feel more comfortable with that process.

Commissioner Coluzzi asked Commissioner Mills if it was his intent to take one of the five items and champion it or work with the Planning Commission. Commissioner Mills said that perhaps a Commissioner needs to champion something such as mixed-use and put it on the agenda, and guide the conversation among the Commissioners first. He has not picked an item but is kind of focusing on buffer zones, for instance. He wants to do a little more research on that before choosing to bring that topic forward.

Mayor Cooper said that apparently there has been some confusion on Chairman Littleton's part. Mayor Cooper's sense was that the Commissioners have asked for the five items until they get more information to see if they want to move forward with any of them. What came back from Chairman Littleton was that the Commissioners had made a decision to move forward. Chairman Littleton was one step ahead. If a Commissioner wants to take something up, they will need to ask to specifically put it on the agenda.

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 Mills said that this is an ordinance to amend Chapter 92, 95 and 198 of the Code by changing the expiration time of certain code restrictions to "daybreak" and changing the period of time that bicycles are permitted on the Boardwalk and the period of time certain turns are prohibited. The agenda language of amending various ordinances that are effective seasonally and/or have time of day provisions is applicable, but the reasoning has changed, not necessarily for the coinciding of beginning and ending dates, but due to safety issues. Because of that discussion at a previous meeting, the Commissioners decreased the 20 items from the original list to the following five items:

1. Section 1-11. Insert definition of daybreak. "Thirty minutes prior to sunrise."
2. Section 92-18(C). This subsection refers to the prohibition of bicycles on the Boardwalk. Delete subsection in its entirety and insert "No person shall ride or operate any bicycle on the main Boardwalk between the hours of 10:00 a.m. prevailing time, and Daybreak on the following day from May 15 to September 15, both dates inclusive of any year".
3. Section 92-143(B). This subsection refers to no left turns at certain streets. Replace "May 15, inclusive, to September 15" with "May 1, inclusive, to September 30".
4. Section 95-6(A). This subsection refers to prohibition of sleeping on the beach from 1:00 a.m. to 5:00 a.m. Replace "5:00 a.m. of the following morning" with "Daybreak".
5. Section 95-6(B). This subsection refers to prohibition of being on the beach from 1:00 a.m. to 5:00 a.m. Replace "5:00 a.m." with "Daybreak".
6. Section 198-37. This section refers to Boardwalk pavilions being closed from 1:00 a.m. to 6:00 a.m. Replace "6:00 a.m." with "Daybreak".

Commissioner Mills went back and looked at the definition of "Daybreak" as being thirty minutes prior to

sunrise. He wanted to make sure the Commissioners understand the ramifications of changing things to "Daybreak". From Memorial Day to Labor Day, daybreak occurs anywhere from 5:09 a.m. to 6:00 a.m. In the off-season, daybreak occurs anywhere from 5:20 a.m. to 6:50 a.m. It gave him pause with regard to the pavilions. The pavilions are closed late at night to get the people and kids out of there. Without checking with Police Chief Keith Banks, Commissioner Mills was not sure the opening time in the morning is a problem. Currently, people can sit in the Boardwalk pavilions at 6:00 a.m. If it is changed to "Daybreak", the time could be as late as 6:50 a.m. before being allowed to sit in the pavilions. The Commissioners need to understand that there is a differential, especially with the Boardwalk pavilions.

Commissioner Sargent did not see a problem with "Daybreak". It probably would be more natural even if it does make the time later, 6:50 a.m. vs. 6:00 a.m. He could not see any harm with having it on the books if there was some rowdiness or something which should be enforced and would give some cause to take action against some people who should not be there. What is really being said is that if it is dark, then stay off the beach and out of the pavilions. Once when someone can see clearly, then they are clearly within the reigns.

Mayor Cooper said that largely, this may be an ordinance to deal with problems beyond what is actually stated in the ordinance. It is not an issue for one person quietly sitting in the pavilion 15 minutes before daybreak.

Commissioner Coluzzi asked if Police Chief Banks agreed with the usage of "Daybreak" because he seemed to be concerned about his officers having the capability of dealing with different times; and "Daybreak" would be a sliding scale of time. Commissioner Mills said that not since the ordinance has been prepared. Commissioner Coluzzi suggested that in Section 95-6(A) and (B), 6:00 a.m. should be used instead of "Daybreak" because it would be easier to enforce.

Commissioner Zellers had pause with definition of "thirty minutes before sunrise" because it leaves it nebulous instead of having a set time for certain ones.

Commissioner Mills will make the corrections and have a discussion with Police Chief Banks regarding this matter.

This item will be placed on the agenda for the December 16, 2011 Regular Meeting.

## **NEW BUSINESS**

Mayor Cooper called to discuss amending Section 270-19(A)(1)(f) of the City Code, to allow expanded hours of use of patios associated with restaurants which section was suspended until January 1, 2012 by an ordinance enacted on March 18, 2011.

Commissioner Mills recused himself from this topic and discussion.

Commissioner Coluzzi distributed a report from Mr. Bobby Edmonds, Code Enforcement Officer, to the Commissioners. This report lists the establishments which complaints were registered and were in violation from July 1, 2011 through September 4, 2011. Primarily the complaints and violations were due to noise. The Commissioners had promised the restaurants they would come up with a solution to this issue. Since Mr. Edmonds was hired, things have improved a lot because there have only been five complaints in July and August 2011 for noise. Trying to think about noise and patios at the same time does not make much sense because they are two separate things, and she would like to treat them that way. There is no reason why people who have patios should not be able to have the same hours for the patios as their restaurants. Commissioner Coluzzi would like to move forward with this to delete that part of the ordinance where people are not allowed on the patio after 10:00 a.m. and put it on the Agenda for the Regular Meeting. Commissioner Zellers agreed in terms of enforcement. It has been shown that the patios can stay open as long as everyone is on the same page and knows that it will be enforced. Everything else as far as that code is good. She felt comfortable in moving forward with the timeline. The Commissioners will need to deal with the noise issue at some point. It is a separate issue.

Commissioner Sargent said that in the long run, he could not agree more that if the restaurant is going to open then the patio should also be open. When the Commissioners first got into this issue, patio hours were being used as a way to control noise. The Commissioner have found that they can control noise actively through someone like Mr. Edmonds. It would be better to not give up the association of the two and to go ahead and solve the question of how it is best to enforce the noise ordinance. The Commissioners should look into the question of "plainly audible". The two issues should not be separated at this point.

Commissioner Hunker disagreed. Most restaurants are done serving by the times listed on the report.

The noise complaints were not of patrons outside of dining establishments. Some of the establishments listed in the report do not have outdoor dining. There is a complain about noise and decibels. Bass contributes to the noise. People having a drink on the patios are not contributing to the noise. The Commissioners are doing a disservice by marrying the two – noise and patios. Commissioner Coluzzi agreed. It was a mistake how this all came down in the beginning to use the patios to get at the noise. This has been a great year, and people have enjoyed the patios. There have not been any problems with the patios. To hold them hostage with a noise ordinance so people could not be on the patios is wrong. She would like to move forward with the ordinance at the December 16, 2011 Regular Meeting to allow people to be on the patio the same hours as the restaurant.

Mayor Cooper said to say that there is no enforcement is wrong. The police were enforcing the noise ordinance previously, and people were thumbing their nose at them. That was part of the problem. He does not necessarily like lengthening them, but clearly the hours of the patios were set in the Code when they were because of the noise issue and knowing that at that hour people tend to be drinking more, eating less and getting louder, etc. The Commissioners need a full understanding of what it is they are going to enforce because that is part of what got them into trouble. The City went out to enforce the code, and certain people took advantage of that. A full discussion is needed. This is not just about the hours. The City will be enforcing the service to seated patrons only, no speakers, etc. It is time to start enforcing the ordinance with fines.

Commissioner Coluzzi did not see any reason why the Commissioners cannot talk about that matter in December. People can be given notice that all of the ordinance which relates to the patio including speakers would be enforced from this point forward. Also in moving forward, the Commissioners would allow patrons to be on the patio the same hours the restaurant is open. The City would enforce no speakers on the patio, patrons must be seated, etc. She was comfortable with this. Commissioner Zellers agreed. When the ordinance is enforced, there is the issue of whether the Commissioners want to do anything with decriminalization – civil vs. criminal. The hours can be extended, and everything else should be enforced. That will help control what happens on a patio. The Commissioners need to deal with the noise ordinance in a different way for adjustable levels or plainly audible which needs to be done for the people who do not have patios. Discussion ensued.

Ms. Libby Stiff, Scarborough Avenue Extended, stated that noise and patios are two separate issues and should be addressed separately.

Mayor Cooper said that patios have a potential to be a problem. If the City has the right ordinance, the Commissioners can prevent it from becoming a problem.

Commissioner Coluzzi suggested that the patio ordinance should be placed on the Agenda for the December 16, 2011 Regular Meeting to change the hours of the patio to whatever the hours are when the restaurant is open. Then at the January 2012 Workshop Meeting, the noise ordinance can be discussed.

Commissioner Sargent thought that the noise ordinance and patio ordinance should be addressed at the same time.

Mayor Cooper said that there seems to be a commitment to deal with the noise. He is willing to go forward with the patio ordinance with the understanding that people are going to be serious about dealing with the noise. A Resolution can be adopted December 16, 2011 setting the Public Hearing for January 2012.

City Solicitor Mandalas will draft the Resolution.

Mayor Cooper called to discuss proposed resolution setting tree canopy goals.

Mr. Bryan Hall of the Office of State Planning Coordination reported that a grant was received to allow trees to be planted throughout the City which is now nearly complete. Part of the contractual agreement with the Delaware Forest Service was to implement a general forest canopy goal with the idea that the City would try to enhance and/or continue to enhance its forest resources. This is a housekeeping measure. Something is needed on the books for two reasons: 1. Get credit and continue to promote the successful project which has been done towards the canopy goal. 2. Continue to receive State monies to continue doing the work. Mr. Hall forwarded a general resolution to City Manager Gregory Ferrese and Building Inspector Terri Sullivan for consideration. It has been massaged with the general idea to make improvements. There is a plan and action step to move forward with that. Mr. Hall requested that the Commissioners review and adopt the resolution in order to go after the next round of funding on January 1, 2012.

Commissioner Coluzzi thought that 40% or greater seems like a reasonable goal for the tree canopy.

Ms. Libby Stiff noted that the mess up with the location for planting a tree on Scarborough Avenue was not due to the contractor. Mr. Hall said that 11 utilities were identified in the area of where the tree was to be

planted. The contractor planted the tree at the safest possible location. Sussex Tree will start pruning trees after December 15, 2011. A draft agreement will be forwarded to Mr. Ferrese and Ms. Sullivan in regards to the invasive species project. That outreach will begun in January 2012. Notification has been received to go after additional monies for the second phase of the inventory. An effort is needed from the Commissioners to make sure of continuing to move forward and meet the requirements of the grants.

Commissioner Sargent requested a change in the resolution from "...in cooperation with citizens that will grow the resource..." to "...in cooperation with citizens that will ideally grow the resource..." The reason is that Commissioner Sargent is hoping the objective will be set neighborhood by neighborhood; and that it will, by the time the project is complete, be well over 40%. Using "ideally" will support the idea that this is going to be a community developed objective.

City Solicitor Mandalas suggested using the language " with the intention of growing the resource to 40%".

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

Mr. Ferrese had not prepared a written report. The tree lighting was nice. Lights are out at the roundabout and sidewalk due to a short which has to be located. All projects are on schedule. The windows are being installed in City Hall, and the lighting will be installed in the near future. The Convention Center roof is nearly complete. A request will be submitted to finish the roof over the Administrative Office, Police Department and Alderman's Court. Mr. Ferrese will let the Commissioners know if there are additional grant monies available for that project. The wires have been pulled for the lighting on Scarborough Avenue.

#### **COMMITTEE REPORTS**

Mayor Cooper, City Hall Complex Master Plan Task Force, reported that two meetings have been held with the last meeting being held on November 28, 2011. EDiS Company does construction management, and it came to the last meeting. This is a firm with capable people and good experience in what the City is trying to do. EDiS Company is teaming up with an architectural firm, Davis, Bowen & Friedel, to provide the services of programming to see how much space is needed for the people the City has and for modest growth. All those things will be discussed by the Committee. The Task Force has asked for a proposal from EDiS Company to provide those services and a program to move forward. The drawings would be at a level of blocks assigned for Administration, Building & Licensing, etc. The next step would be for the drawings to be at a level which would contain rooms. Mayor Cooper was hoping to have the proposal in order to schedule a meeting for December 8, 2011 at 9:00 a.m. to review the proposal with the idea of placing it on the agenda for the December 16, 2011 Regular Meeting.

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

There was no report.

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

There were no announcements/comments.

#### **Discuss items to include on future agendas.**

There were no items to include on future agendas.

The Mayor and Commissioners Regular Meeting will be held on Friday, December 16, 2011 at 7:00 p.m.

There being no further business, Mayor Cooper adjourned the meeting at 10:13 a.m.

Respectfully submitted,

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(Pat Coluzzi, Secretary)