

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

**April 7, 2014**

The Workshop Meeting of the Mayor and Commissioners of the City of Rehoboth Beach, was called to order at 9:03 a.m. by Mayor Samuel R. Cooper on Monday, April 7, 2014 in the Commissioners Room in City Hall, 229 Rehoboth Avenue, Rehoboth Beach, DE.

The Invocation followed by the Pledge of Allegiance was provided at the Special Meeting prior to the Workshop Meeting.

**ROLL CALL**

Present:	Commissioner	Toni Sharp
	Commissioner	Patrick Gossett
	Commissioner	Bill Sargent
	Mayor	Samuel R. Cooper
	Commissioner	Stan Mills
	Commissioner	Lorraine Zellers
	Commissioner	Mark Hunker

Also in attendance was:      City Manager Sharon Lynn  
   City Solicitor Glenn Mandalas

**CORRESPONDENCE**

There was none.

**OLD BUSINESS**

Mayor Cooper called to discuss processes and conditions for merging and unmerging lots to determine if any changes are warranted.

Commissioner Stan Mills gave a presentation on merger/unmerger of lots. He presented illustrations of the various subdivision processes and talked about the dual processes via the Planning Commission and Board of Adjustment that both result in two lots being used as one parcel being unmerged. There is no definition of merger in the City. Commissioner Mills referred to Section 270-4, the definition of a lot. 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. As the Code allows, property owners can put structures on two lots, thereby using them as one parcel. Property owners can choose to demolish the structures and rebuild using both lots, they may seek to unmerge the lots to have two independent lots. Through the Planning Commission process, a property owner would remove all the structures to unmerge the lots. By removing the structures, all encroachments would be removed, and the lots would be conforming and buildable. The Planning Commission would have to grant the partitioning request for the lots to become two lots.

City Solicitor Glenn Mandalas noted that if a property owner identifies a health, safety or welfare concern and it is reasonable, the Planning Commission can impose reasonable conditions to address that concern.

Commissioner Mills provided illustrations of various scenarios regarding merged lots in the City. If a property owner seeks to realign a lot so that it faces a different direction, this is a case that would need to be heard before the Planning Commission. In South Rehoboth, the lots were originally plotted as 25 foot x 100 foot lots. Common law merger addresses substandard lots. When there are two substandard lots that are merged together to form one lot, that lot cannot be unmerged to create two substandard lots. Another scenario presented was the merger of a 50 foot x 100 foot lot and a 25 foot x 100 foot lot. The Code allows for both lots to be used as one parcel, but they are forever merged because a property line cannot be located for two 50 foot wide standard buildable lots. A scenario presented with the unmerging of lots when lot lines are changing would require a property owner to go before the Planning Commission for subdivision. Another scenario presented was regarding a property consisting of two 50 foot x 100 foot buildable lots with the one lot providing four parking spaces and the other lot having two structures on it which combine commercial use and two

residential dwelling units. In order to subdivide, the structures would need to be removed that are straddling the centerline of the property. With regard to the Board of Adjustment process, the appeal of the decision of the building inspector was granted; and with the removal of the structure, two independent lots were created. Commissioner Mills presented the same scenario but with the Planning Commission process. By Code, the Planning Commission looks to create two independent lots that conform to the current zoning code. If the two independent lots would not conform, the partitioning would be denied. Commissioner Mills asked how a situation would be handled where properties would be unjoined and the structures may have predated the zoning code and were legal at the time they were built. He also asked how structures would be handled on properties that become non-conforming because of a change in zoning.

Mayor Cooper said that the Board of Adjustment looks at the Code and if the building official has properly applied it. Commissioner Patrick Gossett said that the Planning Commission looks at the Code and interprets the Code as it applies to a parcel of land.

Commissioner Mills noted that an owner of a property that has structures on two lots but are used as one parcel can either go to the Planning Commission or the Board of Adjustment. He provided another scenario with regard to two standard 50 foot x 100 foot buildable lots and a house built across the centerline and the parking for the house is on the second lot. The Planning Commission recognizes that the two lots are subdividable. The Board of Adjustment recognizes that if the structures are removed and there are no encroachments, the parcel reverts to two individual lots. Therefore, a partitioning is granted through the Board of Adjustment. From the last Board of Adjustment case, the attorney for the Board of Adjustment indicated familiarity with the merger of sub-standard lots, that case law is directed at sub-standard lots. He also stated that when there are not sub-standard lots, he does not understand the rationale behind saying they are automatically merged. That is, he does not understand the position that because there are two standard lots (used as one parcel), they automatically merge; and if so, then why not the position that if a house is torn down they automatically unmerge and the merger is rescinded. Planning Commission has proposed amendment to the Code for the Commissioners to act on. The following is the dual process to partition/unmerge/unjoin two properties: 1. Planning Commission. It has statutory authority to hear requests to partition. The costs are \$1,000.00 + \$200.00 per property. The time to act on a request is a minimum of two meetings. The Planning Commission has the ability to impose conditions upon granting a request. 2. Board of Adjustment. It has statutory authority to hear appeals of the decisions of the building official. The cost is \$1,000.00. The time to act on a request is a minimum of one meeting. The Board of Adjustment has the ability to grant a variance to zoning requirements. Statutory Merger is not in the City Code. Interpretation solely references the definition of a lot. The definition of a lot can be interpreted as permissive, not automatic or mandatory. The interpretation applied by the building official has been automatic merger. There is no process in the Code to identify the conditions for merging. No notice is given to property owners. Common Law Merger deals with sub-standard lots. Issues as they relate to fitting in with this topic are: 1. Placement of structures predating zoning codes. 2. Zoning classification changes creating non-conformities with a new zoning classification. 3. Common ownership vs. not of multiple properties. 4. Recordation of combined lots in Georgetown. 5. One tax bill for the parcel or one bill for each lot. The Planning Commission has a proposed amendment to the Code for it to have more authority to do the partitionings.

City Solicitor Mandalas read the memorandum from the Building Inspector regarding a new policy change for interpreting and acting on un-combining two properties used as one parcel. Going forward, it will be the policy of the Building and Licensing Department that where the circumstances causing a merger have been abated, the Building and Licensing Department will no longer advise property owners that a subdivision by the Planning Commission is necessary to unmerge the lots. The lots will unmerge with no further action by a board or commission. This policy is limited to occasions where the unmerged lots will be as they were originally plotted, and each of the lots qualifies as a conforming buildable lot under the City's zoning laws. The current zoning laws require at least 50 feet of frontage on a street, a minimum area of 5,000 square feet and can fully contain a rectangle of at least 4,000 square feet in area with its shortest side measuring 48 feet. It is within the Building Inspector's purview to change policy and interpret the Code. The Board of Adjustment is a quasi-judicial branch of higher authority that can rule on whether or not the Building Inspector is interpreting the Code appropriately. On several occasions, the Board of Adjustment has ruled that the Building Inspector is not interpreting the Code the way it thinks it should be interpreted.

Building Inspector Terri Sullivan acknowledged that this policy would take effect only with properties that when they are unmerged are buildable lots. Any non-conforming lots or lots with other issues with sub-standards would have to go to the Planning Commission.

Mayor Cooper thought a site plan review may be needed or the same standards for every development of a

lot.

Commissioner Gossett said that the interpretation the City has been following for years is that when a partitioning is requested it is a change in use and density. He acknowledged that it conforms to the zoning code.

Commissioner Sargent suggested that the Planning Commission should review its records with regard to its handling of mergers and the outcomes, and come back to the Board of Commissioners with the result of its review.

Commissioner Mills said that the appeal process is there forever. The Building Inspector will always be making decisions that will always be appealable to the Board of Adjustment. The Building Inspector's policy change indicates that she is following the Board of Adjustment's philosophy and by doing that, it will reduce the Board's caseload. A merger where it specifically targets sub-standard lots and the Board of Adjustment attorney's statements validate the policy change.

Commissioner Toni Sharp was not sure how the process involving the Planning Commission benefits the City. City Solicitor Mandalas said that when a partitioning goes to the Planning Commission, its administrative duty is to determine whether or not the proposed subdivision or partitioning meets all the requirements in the Code. If it meets all the administrative requirements, then the Planning Commission has a legal obligation to approve the partitioning. The Planning Commission has some authority to attach reasonable conditions to its approvals.

Mayor Cooper said that the Commissioners have not talked about ownership in detail. Given the present discussion, anyone who buys an adjacent second lot would be foolish to put it in the same name as the existing lot they have. The policy would only apply if the second lot is in the same ownership. The Building Inspector has cleared up one scenario that has the least impact, but there are still other scenarios to be looked at.

Commissioner Sargent noted that the Planning Commission has not made its case that it needs to have the overview the Planning Commission wants.

Commissioner Gossett said that the Commissioners have a proposal before them for the past 18 months from the Planning Commission which they have not acted on. Discussion needs to continue based on the Planning Commission's proposal and its presentation. He thought that the Planning Commission should be given the opportunity to react to the Building Inspector's change in policy and attend a Workshop Meeting to present its case.

Mayor Cooper acknowledged that in the meantime, the memorandum from the Building Inspector stands.

Mayor Cooper called to discuss amending an ordinance related to side yard setbacks for residential lots greater than 50 feet in width which was adopted by the Commissioners on January 17, 2014 by further defining the width of a lot.

Copies of an example of a 50 foot wide lot with regard to wider lots with the same parameters was distributed to the Commissioners prior to the meeting.

Mayor Cooper noted that the ordinance adopted on January 17, 2014 applies when the width of a lot exceeds 52.5 feet and the lot area exceeds 5,250 square feet and the side yard setbacks would be proportionate based on the width of the lot. The width of the lot was defined as the length of the street line across the front of the property. It was brought to Mayor Cooper's attention after the ordinance was passed on January 17, 2014 that in the case of parallel side lot lines, it is clear what the width of the lot is; but if a street cuts the lot at an angle, the street line will be longer than the width of the lot. In the proposed ordinance the width of the lot will be defined as (1) the perpendicular distance between the two side lot lines when these lot lines are parallel, or (2) when the two side lot lines are not parallel, the length of the street line between the point where these lot lines intersect the street line at the front of the lot. In the case of a corner lot, one side lot line shall be interpreted as the street line of the intersecting street. In the case of a corner lot where the right-of-way lines of the intersecting streets are joined by an arc the point of measurement is the point at which the extension of the two right-of-way lines intersect.

City Solicitor Mandalas will draft a resolution to be considered for adoption at the April 18, 2014 Regular Meeting. This resolution will set the Public Hearing for the May 16, 2014 Regular Meeting.

Mayor Cooper called to discuss a proposed lease with Verizon Wireless for space on, within and outside the City's Lincoln Street Elevated Water Storage Tank for the establishment of a cell site.

Mayor Cooper and former City Manager Gregory Ferries had been approached in October 2013 about Verizon Wireless having the need to establish a new cell site in the vicinity of the Lincoln Street elevated water storage tank. Mayor Cooper has been in contact with a representative of Eagle Creek Consulting since then. Copies of the proposed lease agreement were distributed to the Commissioners prior to the meeting. City Solicitor Mandalas had no issues with the proposed lease. The City's insurance agent had no issues with the language in the proposed lease. One remaining issue is that a frequency interference study is being done to see that the new installation would not interfere with the two existing antennas on the tank. The proposal is that Verizon would pay the City an \$8,500.00 signing bonus up front, and the rental would be \$2,100.00 per month for the first year and would increase by 3% each year after the first year. The lease is for an initial term of five years with (4) five year options. A generator would be placed on City property, and a new electric service would need to be established for Verizon's equipment. Verizon has coordinated with Mr. Howard Blizzard, Water Superintendent, to determine the entry point into the tank. The equipment would be located in the second floor of the storage tank.

The proposed lease will be considered for approval at the next Regular Meeting on April 18, 2014.

## **NEW BUSINESS**

Mayor Cooper called to discuss a proposed ordinance that would prohibit parking on the east side of Surf Avenue from Lake Avenue to Henlopen Avenue.

Mayor Cooper noted that currently there is a section in the Code which refers to no parking on the east side of Surf Avenue from the last parking meter going 711 feet north. The proposed language in the ordinance would substitute for what is currently written in the Code, "on the east side of Surf Avenue from the south side of Lake Avenue to Henlopen Avenue".

Commissioner Sargent provided the rationale for a change in the Code. Surf Avenue has been extended approximately eight feet in the pavement along a section that is 320 feet long which had been dirt before. Bicyclists would have to move over from the side of the road into the traffic lane. This area is now suitable for bicycles, and a white line will be painted that will delineate the vehicular area from the bicycle area. This would remove six parking spaces from the east side of Surf Avenue. There is a defect in the paved area at the end of Surf Avenue when making a right onto Ocean Drive. The bike lane turns into the curb. City Manager Sharon Lynn has been working with the State and Mr. Bob Palmer, City Engineer, on the exact specifications. These specifications have not been drawn up to date. He would like to see a bicycle sign along Surf Avenue delineating that this area is to be used by bicycles. Bicycles will use this area both ways.

City Manager Sharon Lynn clarified that the City is not intending to go forward with any additional engineered plan. This area will be designated for bicycles because it will be delineated with a white line, but it will not be a certified bike lane. City Manager Lynn's and the City Engineer's recommendation is to not put a sharrow or signage there.

Mayor Cooper said that a high percentage of vehicles will use whatever pavement there is to the right to make the curve. If this area would be designated as a bike lane, there would need to be a clear beginning and clear ending to the lane.

Commissioner Sharp had serious concerns about the safety of what is being proposed, the impact on the other side of the street and the elimination of parking. She was uneasy about eliminating additional parking spaces. She thought that the Commissioners should look at Surf Avenue in a more holistic way, the implications of what should be done in this area and the long range vision. She was not comfortable in moving forward with the elimination of additional parking at this time. Commissioners Hunker and Mills also had an issue with the elimination of parking.

Commissioner Sargent said that the area around Oak and Surf Avenues is where the majority of parked cars are located.

Commissioner Lorraine Zellers said that the parking would be eliminated in the area of Oak and Surf Avenue because the roadway is narrow in this area. There is congestion in this area, and there is a blind curve from Lake Avenue. The no parking would end at the end of the newly paved area.

Mr. Walter Brittingham, 123 Henlopen Avenue, provided photographs of the bicycle racks on Surf Avenue. He thought that what is being presented is being done wrongly. When the paving on Surf Avenue was done last Fall, there was not enough adequate planning, and there were not enough provisions for the width. In the Fall, it was proposed that there would be no markings for the addition of the east side of Surf Avenue. Mr. Brittingham

did not think that the State and a traffic engineer were brought in to review this area. The newly paved area could be extended past the northbound travel lane, and a bicycle lane could turn onto Route 300. The Streets and Transportation Committee had intended for the bicycle lane to be two-way. This lane is also to be share with pedestrians. There was no provision made when widening Surf Avenue for a vehicle to be loaded or unloaded. When moving the vehicles off of the east side of Surf Avenue, they will park on Park, Columbia and Henlopen Avenues. On the west side of Surf Avenue from the edge of the sidewalk to the edge of the roadway, in most cases, it is 14 or more feet all because the property owners have installed railroad ties and irrigation within four feet of the roadway at the intersection of Park and Surf Avenues. There are also trees in the right-of-way. There should be unloading areas on the east side of Surf Avenue past the intersections. This proposal should be stopped and looked at carefully. Commissioner Hunker concurred with Mr. Brittingham that a plan is needed.

Mayor Cooper said that there was no sentiment in taking forward the no parking ordinance. Commissioners Zellers and Hunker said that no parking should be limited to the current paved area where the no parking ends currently.

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

City Manager Sharon Lynn reported that a household hazardous pickup will occur behind the Fire Department on April 12, 2014 from 8:00 a.m. to 2:00 p.m. Beach grass cutting will be done by Public Works Department on April 9, 2014 under the direction of DNREC. The City is interviewing and hiring for two positions.

#### **COMMITTEE REPORTS**

There were no reports.

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

There was nothing to report.

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

Commissioner Sharp commented that the Commissioners have recently received a communication regarding demolition fees. She was curious if there would be any energy to put this item on a future agenda for a Workshop Meeting for discussion. Mayor Cooper will not place this item on an agenda until after a Commissioner contacts him.

#### **DISCUSS ITEMS TO INCLUDE ON FUTURE AGENDAS.**

An item to include on the agenda for the May Workshop Meeting is prohibiting parking on Surf Avenue.

#### **CITIZEN COMMENT**

Mr. Walter Brittingham commented that a condition for getting a demolition permit is that the utility line should be cut off at the pole so there are no fires started.

The next Regular Meeting will be held on April 21, 2014 at 9:00 a.m.

There being no further business, Mayor Cooper adjourned the meeting at 11:04 a.m.

**Respectfully submitted,**

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**(Lorraine Zellers, Secretary)**