

**LEWES PLANNING COMMISSION**  
**Regular Meeting Minutes**  
**January 16, 2019**

The regular meeting of the Lewes Planning Commission was held on **Wednesday, January 16, 2019 at 6:00 P.M. in Lewes City Hall** in accordance with proper notification with the following present: Chairman Drew McKay, Kay Carnahan, Steve Rogers, Joe Hoechner, Nina Cannata, James Linnen, Thomas Panetta, Mark Harris, Tom Owen of the Lewes Board of Public Works, City Solicitor Glenn Mandalas, City Planner Tom West, Planning Consultant Savannah Edwards, Ex-Officio City Councilman Dennis Reardon, and Recording Secretary Jackie Doherty. Richard Kirschner was excused. Mayor Becker and City Councilman Rob Morgan were also present.

**1. Call to Order and Announcements**

*Chairman McKay* called the meeting to order at **6:00 P.M.** stating the agenda would be taken out of order tonight.

**3. Presentation and consideration of a request by Cellco Partnership for conditional use approval of a cellular antenna array on an existing tower off Cape Henlopen Drive.**

*Ms. Edwards* reported the applicant proposed the addition of up to 12 telecommunication antennas to the existing 102' tower, as well as the installation of related equipment within a 275 square-foot enclosed area adjacent to the tower located at 41 Cape Henlopen Drive. The application was submitted for consideration on December 12, 2018 by Young, Conway, Stargatt & Taylor, LLP on behalf of their client Cellco Partnership.

The following were provided by the applicant:

- A copy of the site survey;
- A letter of intent from the applicant requesting Planning Commission review;
- A letter from the owner of record designating Cellco as their representative for the conditional use application;
- A Radio Frequency Engineer's Report demonstrating the need for these antennas;
- An Electromagnetic Exposure Analysis demonstrating compliance with applicable FCC standards;
- A Structural Sufficiency Letter;
- A letter from the Lewes Board of Public Works certifying that utilities are existing and available (to be provided); and
- Documentation of Public Notification.

*Ms. Edwards* reviewed the Project Summary; Zoning District Compliance stating this is an existing non-conforming structure and listed the conditions for permitted continued existence; Considerations for Conditional Use; Flooding Issues with the recommendation for implementing best practices for floodproofing these critical facilities. Mayor and City Council may grant conditional use approval of one year, after which an applicant may reapply.

**Staff Recommendation:** The City regulates cellular towers as a conditional use. This review was conducted to ensure compliance with Lewes City Code conditional use procedures outlined in 197-95 and the associated requirements outlined in 197-96. As noted in the Staff review, the proposed conditional use, as depicted on the site survey, comply with current lot and accessory structure requirements for the Marine Commercial Zone. Furthermore, the applicant has demonstrated that the use meets the requirements set forth in the Code. Recommendation of conditional use approval should be contingent upon adherence to the suggestions described in the review or any additional topic that arises during review at the Planning Commission meeting.

*Mr. Panetta* questioned what the landscaping plans are for the viewshed from the rear of the tower area. Also, are there inspections regarding the condition of the existing tower. There are concerns about the tower being in a hurricane zone, debris during high-wind events, and what is stated in the Code regarding inspection of the structure with the additional antennas.

*John Tracey of Young, Conway, Stargatt & Taylor and Todd Bettenhausen of Cellco* were present and stated the landscaping plan includes trimming the existing arborvitae and the addition of new plantings along the property line.

Regarding structural analysis inspection, we are below the 105% threshold with plans for the engineers to inspect the full design for any corrections needed before construction; the facilities are then inspected monthly.

*Mr. West* stated the building code has no specific reference for inspection of a wireless or cellular tower, but the online Code does not contain the entire portion. This will need further research and discussion with Mayor and City Council (MCC).

Discussion included:

- Design meets the floodplain requirements with a 1' foundation; grade requirement is 7' and the floodplain is at 8';
- City Code 197-73 states critical infrastructure must be built to the 500-year floodplain plus 1' elevation; wireless communications are considered to be part of the critical infrastructure;
- Installation will include a crane to install three sets of four antennas.

**Elaine Curl, 13 Texas Avenue**, questioned if residents were able to have a site visit to see the support structure; will the addition of the 12 antennas decrease radio frequency; what the impact of the tower will be regarding wind issues with the added equipment; lightning rods installed; when the construction work will begin, how long it will take, what equipment will be used, and the times of the day for the work.

*Mr. Tracey* stated he has spoken with Ms. Curl and provided the information sent to neighboring property owners including: Copy of the site plan and drawing of the structure; letter from engineer including the two reports regarding radio frequency and the need for the additional antennas; report showing FCC threshold regulations were followed to include the existing Coast Guard and T-Mobile antennas; all government standards followed for emission levels.

*Mr. Bettenhausen* stated all systems are grounded, all equipment will be on a gravel base with adherence to all stringent requirements. There are existing true lightning rods. The plan is for completion at the end of 2019 or beginning of 2020; it is not known for now if any construction will take place during the Summer; the process should take about 60 days. The equipment will be enclosed with greenery and arborvitae without fencing. Propane generator will be 500 gallons and placed on cement. Backup generator, which is muffled by design, is checked for about an hour every other week. All requirements stated in the City Code 197-73 will be followed.

*Chairman McKay* requested Ms. Curl be given a site visit before the request is presented to MCC.

**ACTION:** *Mr. Panetta made a motion recommending to Mayor and City Council approval of the request with the following conditions: 1) Arborvitae be planted for screening; 2) Code 197-73 states critical infrastructure must be built to the 500-year floodplain plus 1' elevation; 3) Clarification is needed with Mayor and City Council regarding inspection requirements for towers as it relates to structural integrity and debris during wind events. The requirements outlined in 197-96 of the City Code have been met. Mr. Rogers seconded the motion.*

*Mr. Harris* voted yes to the motion stating he agrees with the conditions stated by Mr. Panetta.

*Mr. Linnen* voted yes to the motion stating he agrees with Mr. Panetta.

*Mr. Rogers* voted yes to the motion stating he agrees with the criteria outlined by Mr. Panetta.

*Mr. Panetta* voted yes to the motion stating there is a need for the added antennas and connectivity is very important.

*Ms. Carnahan* voted yes to the motion stating communication with concerned neighbors is very important especially before the request is presented to Mayor and City Council so their concerns can be addressed.

*Ms. Cannata* voted yes to the motion stating she agrees with Ms. Carnahan and Mr. Panetta.

*Mr. Hoechner* voted yes to the motion stating he agrees with all the above.

*Chairman McKay* voted yes to the motion stating there is a need for cellular service; the conditions of City Code 197-76 were met; agrees with Mr. Panetta's statements.

*The motion to recommend approval of the request to Mayor and City Council passed unanimously.*

**4. Presentation and consideration of a request by MERR Institute, Inc. and the City of Lewes to define a boundary line revision to create an easement to ensure long term access to facilities at 801 Pilottown Road.**

*Mr. West* reported according to the application an easement would be created on SCTM 335-4.00-6.00, currently owned by the City of Lewes, for access to the adjacent parcel. A map was included in the Staff Review showing the Pilottown Road and Lewes boat ramp location.

*Mr. West* continued with a review of the Project Summary; Application Materials including the site survey and letter excerpt describing the request; public notifications; letter from the City Manager verifying the proposal and agreement for the proposed application; Zoning District Compliance; Considerations including Floodplain and Wetlands with no development being proposed; easement is within the Flood Zone AE. Should any site disturbance occur in the future, the applicant will need to obtain permits through the Army Corp of Engineers and DNREC.

**Staff Recommendation:** Given the purpose of the proposed easement is to establish frontage that could allow access to existing facilities, the easement should be permitted. Should additional access be required the applicant will need to obtain permits, following review by State and Federal agencies that regulate wetlands and floodplains.

*Mr. Mandalas* stated the land is currently leased to the University of Delaware. The decision was to continue the lease with the University and provide a new lease with MERR for this parcel, and the University has agreed. MERR plans to make improvements to the facilities and is requesting access through Pilottown Road by this triangle-shaped parcel if needed. With the approval of this parcel, MERR will have access and no longer need to cross the property currently being leased by the Coast Guard Outpost.

*Mr. Mandalas* stated what is before the Planning Commission is the decision whether to recommend approval of the subdivision of the two parcels for the 50' access from Pilottown Road to MCC.

Attorney for MERR Robert Gibbs was present stating all lease documents for the University and MERR and the application for the subdivision of the property have been submitted to the City. There will be no changes to the property in the future since the location is too close to the road to build.

**ACTION:** *Ms. Carnahan made a motion to recommend to Mayor and City Council approval of the MERR request for an easement to access 801 Pilottown Road; Ms. Cannata seconded the motion, which passed unanimously.*

**5. Presentation and consideration of a request by Furbo, LLC for a major subdivision to create 6 lots at the intersection of Anglers Road and East Market Street (SCTM 3-35-4.20-97.00, 97.01 & 97.02).**

*Mr. West* presented an overview of the major subdivision process and application timeline stating this is Phase I of the major subdivision plan.

*Mr. West* provided the following for review, stating all are available on the City website:

1. Staff Review
2. City Engineer Review
3. Lewes Parks and Recreation Report
4. Area Maps

**Background Information:** The application is for the subdivision of three (3) existing lots on 0.92 acres at the northeast corner of Anglers Road and East Market Street. The major subdivision would provide for the development of six (6) new single-family homes, and the existing dwelling located on one of the existing lots would be removed. No new streets are proposed, and extension of existing City utilities is limited.

The applicant included waiver requests from the following ordinance requirements as part of the proposed application:

- Requirement for 10% of the subdivision to be provided as open space (Section 170-26 B);
- Requirement for the construction of sidewalks (Section 170-27 N) along the Market Street side of the property (sidewalks already exist along the Anglers Road frontage);
- Requirement for the construction of street lights (Section 170-26 D. (1) (a)).

**Plan Application:** The applicant submitted the following:

- A letter of intent from the applicant requesting Planning Commission review;
- A letter from the Lewes Board of Public Works certifying that utilities are existing and available;
- A completed major subdivision application form;
- Payment of major subdivision application fee;
- A letter from the owner of record, the Clare Family LLC, permitting the applicant Furbo, LLC to apply for major subdivision of the property;
- A Site Data Table and Conceptual Plat Plan;
- An Applicant Engineer's Report Narrative;
- An Applicant's Narrative on Subdivision Code Compliance;
- A Wetland Study Report;
- A Boundary, Topographic and Wetland Location Survey;
- A copy of Plats and Deeds of Record;
- An Applicant's Proposed Conditions of Approval;
- An Applicant's Proposed Findings of Fact document;
- Documentation of Public Notification
- Additional Report information including:
  - Copy of the FEMA Flood Insurance Rate Map;
  - Copy of a Delaware Regional Topo Map for the area;
  - Copy of a blank Sussex County Conservation District Standard Plan application;
  - State of Delaware 2007 Land Use Map;
  - NRCS Soils Map and Report.

*Mr. West* continued with review of the Staff Analysis including the Comprehensive Plan; Zoning Ordinance; Subdivision Ordinance including waiver requests; Agency Reviews including the Lewes Parks and Recreation Commission report; Other Comments including street trees and the demolition of the current structure; the City's Engineer report.

*Chairman McKay* stated the process for tonight includes:

1. To determine if the application is complete;
2. Preliminary consideration of the application;
3. Decision to schedule a public hearing date.

*Chairman McKay* stated all public comments will be available on the City website.

*Bill Huntley of Furbo, LLC and Ken Christenbury of Axiom Engineering* were present stating:

- Technicalities that changed this project from a minor to major subdivision include no sewer on Market Street and greater than five lots is now considered a major subdivision;
- Each lot has frontage on an existing City street; infrastructure required is limited and specific; subdivision is located at the transition point between commercial on Anglers and residential further east;
- All lots are a minimum of 5,000 square feet as permitted in the R-3 District; Lots 1, 2, and 6 are larger because of the rear area of the rectangular parcel; this open space area is not an area for a park or to be maintained by an HOA, but should be privately owned and maintained by the six homeowners;
- 20-foot-wide easement over the sewer for future access; the swale will be addressed with two pipes installed for drainage in the swale and centered at Lots 3, 4, 5, and 6 with proper grading; permit for minor linear disturbance to install sewer and easement on property and Residential Standard Plan approvals are needed because property is less than an acre;
- Entire parcel contains 14 square feet of wetlands.

*Mr. Christenbury* read his letter addressed to *Mr. West* dated November 21, 2018 regarding the request for three waivers into the record.

*Mr. Christenbury* reviewed the January 8, 2019 letter from GMB addressed to the Lewes Board of Public Works regarding the waivers, suitability of land for proposed purpose, concerns about trees removed to install the sewer and drainage improvements on Market Street. Although there are no plans to remove trees for the sewer and drainage improvements, property owners may decide to remove trees.

*Mr. West* stated there are guidelines and considerations regarding trees as part of the subdivision review.

Discussion and concerns by the Commissioners included:

- Plans by Board of Public Works to require all electric lines be installed underground; only easement shown on the maps is the 20' for the sewer line;
- Curb cuts to line up for the Anglers driveway entrances; concerns about building in the open space area; Code allows fences to be 6' with 2' lattice for a total of 8' in height; homeowners to be advised on deed restrictions;
- If a property is flipped, do the deed restrictions continue with the property; deed restrictions are to protect the viewsheds;
- Existing property lines will be extinguished, and the new property lines will be created in one process; concerns about sidewalks being required and the lack of lighting; increased runoff, flooding potential.

**Sumner Crosby, 10 Missouri Avenue**, is concerned about the property regarding the wetlands, wetland migration, sea-level rise, soil survey, stormwater ditch, 10% open space requirement.

**Maryanne Ennis, 50 Harborview Drive**, questioned if the lot sizes are the same as the other new construction in Anglers Nest. Also, will these homes be raised giving the Anglers Nest homes a lower footprint.

*Mr. West* stated discussion continues regarding these houses being raised. The requirement for R-3 is 34 feet with elevation.

**ACTION:** *Ms. Carnahan made a motion to schedule a public hearing; Mr. Rogers seconded the motion, which passed unanimously.*

*Chairman McKay stated the public hearing will be February 7, 2019 at 6:00 P.M.*

## **6. Presentation and consideration on recommendation to add sustainability as a land use element.**

*Chairman McKay* requested two volunteers to form a subcommittee to prepare recommendations for an amendment to the Code for presentation to Mayor and City Council in September.

## **7. Report on February 21<sup>st</sup> Water Workshop.**

*Ms. Carnahan* provided information for review; a press release will be sent; invitations are being prepared; planning continues on the best location for each presenter.

*Mr. Crosby* stated Danielle Swallow of the Center for Inland Bays said the workshop is a promising way to educate the public on sustainability for the future and is very pleased with the format and content.

## **8. Discussion of proposed consolidation of Historic Preservation Commission and Commercial Architectural Review Commission and the changes to site plan review processes.**

*Chairman McKay* reported Mayor and City Council deferred discussion and a decision at their meeting on January 14, 2019.

## **2. Presentation and possible action on the December 19, 2018 regular meeting minutes.**

**ACTION:** *Ms. Cannata made a motion to approve the December 19, 2018 regular meeting minutes as corrected; Mr. Panetta seconded the motion, which passed unanimously.*

## **9. Reports by City Solicitor, Liaisons, Planner, and Commissioners including discussion of the February 7<sup>th</sup> and February 20<sup>th</sup> draft agendas.**

*Chairman McKay* reviewed the **tentative** meetings schedule all beginning at 6:00 P.M.:

- **February 7<sup>th</sup>** is the public hearing for Anglers and Market Street subdivision; preliminary consideration for Fishers Cove with limited public comments; presentation for the assisted living development on Kings Highway;
- **February 20<sup>th</sup>** will be preliminary consideration of the Brittingham subdivision; Showfield; second presentation on the assisted living development on Kings Highway;
- **February 21<sup>st</sup>** is the Water Workshop from 4:00 P.M. to 6:30 P.M.;
- **March 14<sup>th</sup>** is the Fishers Cove public hearing;
- **March 20<sup>th</sup>** will be the public hearing for Showfield and Brittingham properties
- **April 10<sup>th</sup>** backup date for public hearings if needed;
- **April 17<sup>th</sup>** will be the regular meeting and include applications;
- **April 24<sup>th</sup>** Mayor and City Council (MCC) public hearing meeting on the zoning changes to the annexation zoning code.

*Mr. Hoechner* reported he will be speaking to the Historic Lewes Byway Committee at their meeting next week regarding what is stated in the code on street trees. Mr. Hoechner provided photos of the tax ditch at Pilottown Village near Mariners Retreat showing the existing pipes and the new concrete pipes to be installed.

*Mr. Panetta* reported the Lewes Board of Public Works will hold their final strategic planning meeting on January 18<sup>th</sup> from 9:00 A.M. to 4:00 P.M. with everyone welcome to attend.

*Ms. Cannata* reported the Greenways and Trails Committee meeting on January 19<sup>th</sup> at 9:00 A.M. will be at the DNREC building with a talk by Mike DiPaola of Lewes Historical Society on the Greenhill Light site.

*Mr. West* reported Mayor and City Council approved the Gills Neck Road minor subdivision; work is needed for the Lowder Mitchell PLUS Review letter; MCC approved the scope of work for the coastal engineer LPC recommended in December.

*Chairman McKay* stated budget meetings by MCC will begin in February, and discussion is needed regarding LPC consultants being hired.

**ACTION:** *Mr. Harris made a motion to adjourn; Ms. Carnahan seconded the motion, which passed unanimously.*

The meeting adjourned at 8:45 P.M.

Respectfully submitted,

Jackie Doherty, Recording Secretary  
Lewes Planning Commission