

**Mayor & City Council  
January 7, 2019  
PUBLIC HEARING  
MINUTES**

The Mayor & City Council held a public hearing on **Monday January 7, 2019 in Council Chambers at Lewes City Hall**, in accordance with proper notification, with the following members present: Mayor Theodore Becker, Deputy Mayor Fred Beaufait and Councilperson Dennis Reardon and Rob Morgan. Also, present were City Manager Ann Marie Townshend, City Planner Tom West and Recording Secretary Alice Erickson. Councilperson Bonnie Osler was excused.

*Mayor Becker* called the hearing to order at **7:00pm** and read the resolution into the record by title, as follows:

**RESOLUTION BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LEWES PROPOSING THAT A PUBLIC HEARING BE HELD ON THE SUBJECT OF AMENDING CHAPTER 70 BUILDING CODE, CHAPTER 197 ZONING, AND CHAPTER 170 SUBDIVISION AND LAND DEVELOPMENT OF THE MUNICIPAL CODE OF THE CITY OF LEWES, DELAWARE TO REPLACE THE COMMERCIAL ARCHITECTURAL REVIEW COMMISSION (CARC) AND THE HISTORIC PRESERVATION COMMISSION (HPC) WITH THE HISTORIC PRESERVATION AND ARCHITECTURAL REVIEW COMMISSION.**

*Mayor Becker* stated a lot of time and energy has gone into the drafting of this ordinance by the HPC/CARC Consolidation Ad-Hoc Committee. The committee membership consisted of Deputy Mayor Beaufait, Councilperson Osler, Barbara Warnell, HPC Chair and James Edwards, CARC Chair. He thanked them for all their hard work.

*Deputy Mayor Beaufait* reviewed the committee's report. The process started in January 2018 and they submitted a report in November 2018. They primarily focused on how to organize and combine the two commissions. They tried to avoid addressing any substantive changes to the current HPC and CARC ordinances and recommend the new Historic Preservation Architectural Review Commission (HPARC) review of the new ordinance for any changes they determine necessary. The committee made a few comments and changes but primarily focused on organizing the new commission. In their recommendation they indicated that HPARC should have exclusive jurisdiction over the exterior design of all commercial structures located in the city of Lewes and jurisdiction over residential structures only with the Historical District unless the residential structure is subjected as a recognized historic designation.

They have also recommended HPARC and the Lewes Planning Commission should provide a comprehensive, integrated process through a special joint committee and should have jurisdiction over projects subject to the site development process.

**Section 197-56 Article VI. Historic Preservation Architectural Review Commission (page 10 of 24)**

The committee recommends the new commission consist of seven (7) members, with at least three of the members living in the historic district and six should be residents of the city of Lewes. The seventh member could be from outside the city limits but must add a specific expertise to the commission that cannot be found from within the city. There should be one member from architecture or building design; one member should have expertise in historic preservation, one member from building construction and one member from the planning commission. Ex-officios would include a member of city council, the building official or designee and the city planner.

CARC has generally only had a few meetings per year, while HPC has been very busy. The new commission would primarily address historic preservation applications, only addressing commercial applications occasionally.

**Chapter 179-33 Article V. Site Development Plan Review (page 1 of 24)**

A policy for the review of site development plans was over-looked and council assigned it to the planning commission, stating that as the new combined commission came together, they might want it to go to them. In the beginning their meetings were open to public comments. Then they began to work specifically on the organization of the new commission and the writing of the ordinance, not taking additional public comments. They did hear from the planning commission.

In their initial report, they recommended HPARC take over this function, with subdivisions staying with the planning commission. After listening to the planning commission, they concluded that there needed to be a joint effort

between LPC and HPARC to address the site plan review process. They are recommending a joint committee be formed, referred to as the Joint Site Development Review Ad-Hoc Committee or JSDRC, consisting of seven members, three from HPARC and three from LPC with the chair to be a member of city council who would manage the process but would not be a voting member. The reason to have the chair as a nonvoting member is that being a member of city council, they would then have to vote as a council member and would have expressed their position publicly. He believes that the six members of the joint committee should be able to come to a decision and if not, city council would have to make the final decision for them.

*Deputy Mayor Beaufait* thanked Barbara Warnell and Jim Edwards for all their work on this committee.

*Mayor Becker* stated this has been a year's work and there has been a diligent effort to make it a workable document, but here are some outstanding questions that still need to be addressed.

*Mayor Becker* opened the hearing to public comments.

*Drew McKay, Chairperson, Lewes Planning Commission.* Mr. McKay stated Section 170-33 C. 6 states the JSDRC shall endeavor to complete its review as expeditiously as possible. He feels they need to set a specific timeframe for a decision to be made. The planning commission requires a decision within 90 days after a public hearing. If this committee will be moving in a timely manner to facilitate site development process, they need to include a specific timeframe. *Deputy Mayor Beaufait* agreed and thinks this is something council can easily do.

*Mr. McKay* stated in paragraph F, line 90, it talks about a concurrent review with the land subdivision regulations. He questioned how they envision that working.

*Mr. West* explained this ordinance was pulled out of the current ordinance with the idea that if any of this activity is submitted separately, they would be reviewed at the same time. Under the new ordinance the question they need to think about is how it would happen if the subdivision is going through the LPC and the site review process is going through HPARC, which is partially made up of the LPC.

*Mr. McKay* agreed there will be overlapping issues. He feels it is very dicey on the issue of the chair coming from city council and while they are not voting, they would certainly have a good deal of control over the management and operation of it. There will also be three members of the joint committee that are also on LPC operating and rendering opinions and recommendations to council on another aspect of the same matter. Those jurisdictional distinctions are somewhat problematic in terms of whether there are influences that would be inappropriate to make the recommendation and whether people need to recuse themselves. He didn't know how far that would go but finds it unclear how the concurrency would work with overlapping membership and overlapping recommendations.

*Deputy Mayor Beaufait* stated they thought it would be important for the LPC representatives to be able to present the LPC thinking and the HPARC representatives to present their committee's thinking. He recognizes they may come with biases, but the idea is they would work together. He feels that having members that are not from these committees would be much more cumbersome.

*Mr. McKay* stated he understands the logic but what he recommended to Councilperson Osler isn't quite what has been presented. He recommended holding simultaneous hearings with independent decision making by the two respective bodies, HPARC and LPC. It is in fact being rendered as recommendations to council and in the final analysis would be far more productive. He understands they are trying to get the two commissions to work together, but there are many different aspects of this that need to be fully attended to and he feels this would create some delays.

*Mr. Beaufait* stated if it doesn't work it can be changed but the idea of trying to get both full commissions to come together to have a public hearing would be challenging. This process would allow both the LPC and HPARC to be involved. He and Councilperson Osler worked together on this and heard Mr. McKay's recommendation. This is their approach to the issue.

*Mr. McKay* stated lastly, while this is not in the code, he wanted to take the opportunity to stress that he believes they will be facing some staff crunches going forward with the number of applications and other matters before the LPC. So far they have not figured out how to clone Tom West or Savannah Edwards and they have a lot of stuff coming up that will require additional expertise. He thinks council needs to consider sooner than later the requests they have made for a geologist, hydrologist or otherwise. The parks & rec commission needs some support in

terms of an arborist. There needs to be some clarification of the language relating to the city engineer's review in Section 170-19 E. and parks and rec review in Section 170-19 E as to what they are expected to do. Right now, it is not clear, and they are not getting the full benefit of their input which is necessary under the current city code before an application can go forward to a public hearing. These are very important pending matters that need to be addressed and there is some urgency given the number of applications before LPC. They have applications that have already created considerable public comment and they need some additional expertise. He urged council to think about this in terms of applying resources to some important pending problems that need the attention of LPC and ultimately of council. They are going to be faced with some very focal opposition and could face challenges to some decision making in the not too distant future. One of the objectives of the LPC is to become the planning commission and not just react to current situations or yesterday's news but try to get ahead of the curve. That is why they are holding a water workshop in February, and why they are looking at longer term issues, not just in terms of the comp plan but in terms of other issues they believe are critically important for city council to address. For the next several months they will be meeting twice a month, holding public hearings, and addressing applications. They have a full agenda and could certainly use additional help, as could parks & rec.

*Deputy Mayor Beaufait* stated what he is addressing are budget concerns and there will be time to consider these very important issues. The question tonight is regarding the combination of these two commissions into one. He agreed they can put a time frame on what they mean by expeditiously.

*Councilperson Morgan* stated the suggestion was that concurrent review by the two bodies was better than creating a third committee. Why did Mr. McKay think this would be better?

*Mr. McKay* stated what he thought would be better was the fact that the LPC would continue to do the site review and as matters pertaining to the jurisdiction of HPARC came up, they would handle that. He doesn't see the need to change the criteria of the evaluation of site plan review. He suggested that if there were a reason to move the process along faster, then a joint public hearing could be held. The planning commission has expressed their opinion that the site plan review process should remain with the LPC and a third committee should not be formed.

*Deputy Mayor Beaufait* stated in their discussions, the one thing that concerned them was to not have an applicant caught between two commissions. This is the reason they initially wanted the site plan review to be with HPARC. It was their effort to streamline the process. He believes HPARC will have the necessary expertise to be able to perform this function. He would like to try the proposed process and if it doesn't work, they can try something different.

*Mayor Becker* thanked Mr. McKay for his comments. Council will be starting their budget hearings in February. *Mr. McKay* stated these problems cannot wait until the next budget cycle, they need to be addressed now. *Ms. Townshend* stated that council will be considering hiring a coastal engineer at their next meeting.

*Barbara Warnell, Chair, HPC*, stated another way to approach the process is for HPARC to deal with site plan review only in the historic district and properties outside the district would go to LPC. This seems automatic given how small the properties are in the historic district. She understands the idea of creating this committee and would entertain the idea of both commissions meeting when there is an application that requires equal discussion. She understands the goal but there could be another solution.

*Tom Panetta, LPC*, stated there is the provision to charge a developer for additional expertise as needed and then the budget would not be involved.

*Councilperson Morgan* stated the site plan review process is currently done by LPC, who forwards a recommendation to council. An appeal of a decision by HPC and CARC currently goes to the Board of Adjustment. A decision by the joint committee would go to city council, as LPC does. Would that complicate anything in the appeals process for HPARC.

*Atty. Mandalas* stated the joint committee would forward a recommendation to Mayor & City Council and an appeal to a council decision would be judiciary. An appeal to a decision of HPARC would go to the board of adjustment.

*Mr. West* stated he doesn't believe it would be on the same project. HPARC would be addressing projects in the historic district. An application could go to HPARC and the joint committee at the same time, but they would be reviewing different aspects of the application. There would be two separate decisions and therefore, there would be two separate appeal processes.

*Ms. Warnell* stated it seems very, very redundant to have any HPARC applicant that involves site planning go to another committee. In the historic district any project would be very small. She questioned why they would need another committee for a historic district site plan review. HPARC would have qualified individuals on the committee that would be able to do a historic district site plan review.

*Ms. Townshend* stated that if a project is below the threshold of 5,000 square feet it would not have to go to the joint committee, as stated in 170-33 D. (3). Only if the floor area is greater than 5,000 square feet it would have to go to the joint committee. *Mayor Becker* stated that would be collective floor area and with a two story building it could happen.

*Ms. Warnell* stated on one hand they are trying to reduce committees and make the process more efficient for the applicant and on the other hand they are actually creating yet another layer. She is strictly referring to the historic district. She feels this is wrong and should not be made more complicated with another layer.

*Deputy Mayor Beaufait* stated council could make a change or leave as is and let HPARC make a recommendation for changes. This isn't cast in stone and there are ways to address their concerns.

*Mayor Becker* stated council should make it as workable as possible before adopting.

*Ms. Warnell* stated currently HPC and CARC give final decisions. HPARC would give a final decision, unless there is a site plan review then that portion would be forwarded to council for their final decision. This would be very confusing and not very efficient.

*Councilperson Morgan* stated in the report it states this doesn't apply to structures that are designated as historical outside the historic district. He questioned if there are any at this time. *Mr. West* stated yes. HPC would review an application if a structure is on the national register of historic places whether it is in the historic district or not.

*Councilperson Morgan* questioned why major subdivisions are not included. *Deputy Mayor Beaufait* stated they are not interested in residential developments outside the historic district. *Mr. Morgan* questioned if a subdivision is always exclusively residential as the AX-MIX zone could include commercial development. *Mr. West* agreed but when commercial is included in a subdivision it is addressed separately. *Ms. Townshend* clarified HPARC would be involved if there is commercial development on a commercial lot, but it would have a site development plan whereas residential development would not.

*Rachel Grier Reynolds, 227 Second Street, HPC*, stated she is concerned about certain areas that are not included in the historic district even though they have structures that are very important to the history of Lewes. Shipcarpenter Square is one such example. The second biggest attraction of Lewes is the history and these structures need to be protected by being a part of the historic district.

*Mr. McKay* stated in Section 170-19 E there are 22 major subdivision elements that the planning commission has to review. They are very detailed and are not applicable to site plan development in the historic district. He encouraged council to review them again. He feels *Ms. Warnell's* suggestion about the bifurcation of the historic district to outside the historic district has value. Major subdivisions outside the historic district have a lot of elements that need to be evaluated that are not within the scope of HPARC. He feels they are going to get some fractured decisions and it is not in the best interest of the city or the applicant and is not consistent with the comp plan going forward. They should not wait to see how it works but they need to make the change now.

*Ms. Warnell* stated she recognizes the different layers that the planning commission goes into that HPC does not address. She is concerned that if HPARC could contribute to the process, she would rather it be on a project basis. The majority of the planning commission's projects are outside the historic district.

*Deputy Mayor Beaufait* stated the majority of the planning commission's work is with residential subdivisions, which would remain with them. The joint committee would not be involved in residential projects. There will be the odd occasion where a nonresidential structure is involved and would go to the joint committee.

There being no further comments the hearing adjourned at 8:00pm.

Minutes submitted by  
Alice Erickson  
Recording Secretary