

**MAYOR & CITY COUNCIL
REGULAR MEETING MINUTES
February 11, 2019**

The Mayor & City Council met on **Monday, February 11, 2019 in Council Chambers at Lewes City Hall**, in accordance with proper notification, with the following members present: Mayor Ted Becker, Deputy Mayor Fred Beaufait and Councilpersons Bonnie Osler, Dennis Reardon & Rob Morgan. Also present were: City Solicitor Glenn Mandalas, City Manager Ann Marie Townshend, Chief of Police Thomas Spell, City Planner Thomas West and Recording Secretary Alice Erickson.

A. CALL TO ORDER

Mayor Becker called the meeting to order at **7:00pm**.

B. PLEDGE OF ALLEGIANCE

Mayor Becker led the Pledge of Allegiance and a moment of silence.

C. ANNOUNCEMENTS

- The City and BPW offices will be closed Monday February 18th for President's day.
- Beebe Hospital has begun demolition and will be complete in approximately 3 weeks.
- Budget meetings will begin tomorrow, and council is expected to adopt the budget on March 18th.
- Mayor & City Council will be meeting on Monday March 18th instead of the Monday March 11th.

D. ADDITIONS AND/OR DELETIONS TO THE AGENDA

Agenda items G-2 & I-11 were deleted and I-5 & I-6 were moved to between E & F.

E. PROCLAMATIONS, RECOGNITIONS & APPOINTMENTS

- 1. Presentation of a proclamation proclaiming April 7-13, 2019 at National Volunteer Week in the city of Lewes.**
- 2. Presentation & consideration of the appointment of three (3) members to the Board of Elections for a one-year term.**

Mayor Becker recommended the appointment of Joan Reader, Nina Cannata and Dee Lott to the Board of Elections for a one-year term each.

ACTION: *Deputy Mayor Beaufait made a motion to approve the appointment of Joan Reader, Nina Cannata and Dee Lot to the Board of Elections for a one-year term each, seconded by Councilperson Reardon, all voting in favor, motion carried.*

- 3. Presentation & possible action on the appointment of two (2) members to the Lewes Planning Commission.**

Mayor Becker recommended the appointment of Melanie Moser to the Lewes Planning Commission to fill the unexpired term of Steve Rogers until May 2021.

Mayor Becker stated he has received a resignation from Richard Kirschner. It is his recommendation to appoint Sumner Crosby to fill his unexpired term until May 2021.

ACTION: *Deputy Mayor Beaufait made a motion to approve the appointment of Melanie Moser and Sumner Crosby to the Lewes Planning Commission to fill the unexpired terms of Richard Kirschner and Steve Rogers until May 2021 each, seconded by Councilperson Reardon, all voting in favor, motion carried.*

- 4. Presentation & possible action on the appointment of two (2) members to the Annexation Regulation Ad-Hoc Committee.**

Mayor Becker recommended the appointment of James Berrigan and Bob Patterson to the Annexation Regulation Review Ad-Hoc Committee to replace Richard Kirschner and James Prettyman.

ACTION: *Deputy Mayor Beaufait made a motion to approve the appointment of James Berrigan and Bob Patterson to the Annexation Regulation Committee, seconded by Councilperson Reardon, all voting in favor, motion carried.*

- 5. Awarding of the 2018 Elaine Bisbee Award.** *Mayor Becker* presented the 2018 Elaine Bisbee Award to City Planner Thomas West.

I. NEW BUSINESS

5. **Presentation & possible action on Lewes Planning Commission recommendation 619 for the approval 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.**

City Planner Tom West reviewed the recommendation from the Planning Commission.

ACTION: *Councilperson Reardon made a motion to approve the request as presented, seconded by Councilperson Morgan, all voting in favor, motion carried.*

6. **Presentation & possible action on a recommendation from the Parks & Recreation Commission for approval of the installation of a bronze plaque in Otis Smith Park.**

Ed Zygmanski, Art in Bloom, presented the request, with a digital proof of the proposed plaque and pictures of its placement. The plaque is to honor past mayor Otis Smith and his service to the city and his role in the menhaden fishing industry in Lewes. Art in Bloom will also commission a mural on the side of the Beacon Hotel. They are not requesting any funding from the city towards the plaque or the mural.

ACTION: *Deputy Mayor Beaufait made a motion to approve the recommendation as presented, seconded by Councilperson Morgan, all voting in favor, motion carried.*

F. MINUTES

1. **Presentation & consideration of the Mayor & City Council regular meeting minutes from January 14, 2019 and workshop meeting minutes from January 10, 2019 and workshop/public hearing minutes from January 15, 2019.**

Councilperson Reardon made a correction to the January 14, 2019 meeting minutes, page 11 of 12, fifth bullet, first sentence, to state "City council has approved the purchasing of additional parking meters for possible installation along Kings Highway from the Zwaanendael Museum to the beginning of the residential district." Councilperson Morgan had a few typographical corrections.

ACTION: *Councilperson Reardon made a motion to accept the minutes of the January 14, 2019 meeting as corrected above, and approval of the January 10, 2019 and January 15, 2019 meeting minutes as presented, seconded by Bonnie Osler, all voting in favor, motion carried.*

3. **Presentation & acceptance of the Board of Public Works meeting minutes from December 13, 2018 and December 27, 2018.**

ACTION: *Councilperson Reardon made a motion to accept the minutes as presented, seconded by Councilperson Osler, all voting in favor, motion carried.*

G. STAFF REPORTS:

1. **Presentation & acceptance of the Financial Activity Report.** *Councilperson Osler presented the January 2019 Financial Activity Report.*

ACTION: *Councilperson Osler made a motion to accept the Financial Activity Report as presented, seconded by Councilperson Reardon, all voting in favor, motion carried.*

2. **Presentation of the City Manager's Report.** *City Manager Ann Marie Townshend presented the January 2019 City Manager's Report.*

3. **Presentation & acceptance of the Police Department Activity Report.** *Chief Thomas Spell presented the January 2019 Police Department activity report.*

4. **Presentation of the Fire Department Activity Report.** *Mayor Becker* presented the January 2019 Lewes Fire Department report and year-to-date comparison.

ACTION: *Staff reports were accepted by common consensus.*

H. UNFINISHED BUSINESS:

1. **Presentation & possible action of an Ordinance regarding the creation of the Historic Preservation Architectural Review Commission (HPARC).**

Mayor Becker explained there was a public hearing on January 7, 2019 and it was discussed at the January council meeting at which time action was postponed for further consideration.

Deputy Mayor Beaufait and Councilperson Osler chaired the ad-hoc committee. The purpose of their endeavor was to find a way to combine the Historic Preservation Commission and the Commercial Architectural Review Commission. They reviewed highlights of the committee's work and the proposed ordinance to create the proposed new commission, the Historic Preservation Architectural Review Commission (HPARC). The commission would be comprised of seven (7) members, three of which would have to be members of the historic district. Six of the seven members must be residents of the city of Lewes.

The proposed ordinance this commission would work under is essentially a combination of the HPC and CARC ordinances, with a few minor tweaks. There are several changes that could be made, but they determined it would be better to leave that up to the new commission once they are organized to review and make any changes they determined appropriate.

They are also recommending the creation of the Joint Site Development Review Committee, which would be made up of three (3) members of the Planning Commission and three (3) members of HPARC with a member of Council sitting as chairperson. The chairperson would not be a voting member.

Councilperson Osler explained the principle question had to do with the site plan review. It currently sits with the planning commission, but it had been suggested the new commission would assume responsibility once it was established. There was a concern about which commission would be in the best position to deal with the issues. The difficulties are twofold. What the planning commission looks at and what HPARC will look at are two different kinds of things and having both commissions review the plans sequentially would take a lot of time. They felt the answer would be a combined group of the LPC and HPARC and when there was a site plan issue, hopefully everyone will benefit from a streamlined approach. If the process doesn't work, council can always modify it but they believe it will be an easier approach for the applicant, better from the city's perspective, and most importantly, it will be qualitatively better for everyone.

Councilperson Morgan stated he didn't have the most up to date version of the document and therefore, didn't know what they were considering. *Mayor Becker* stated the January 7th revised document was the latest version and there were several proposed changes.

Councilperson Osler explained the three changes to be incorporated into the document that was distributed at the public hearing are:

- The term "HPARC" needed to be consistent throughout the document
- §197-33 Site Development Review Applicability, C 6. The JSDRC shall ~~endeavor to~~ complete its review as expeditiously as possible **in no more than 90 days.**
- §197-59. Historic District or Properties Criteria; Standards. B. 4. ... Other acceptable materials are natural stone and ~~pargeting~~ **parging** (stucco) sufficient to disguise the block joints.

These changes have not been acted on and should be a part of council's motion, unless there is a controversy.

Joe Hoehner, LPC, questioned if there are going to be bylaws. *Councilperson Osler* stated the new commission will create their own bylaws, which will then go to city council for approval.

Councilperson Morgan stated his concern is HPC appeals go to BOA and LPC goes to council. What happens with an appeal to a decision by the new Joint Committee? Will they make recommendations or final decisions? *Attorney Mandalas* clarified all appeals from JSDRC would go to Mayor & City Council. *Councilperson Osler* clarified those members on the joint committee will be acting as a member of the Joint Site Development Review Committee, not as members of HPARC or LPC.

Councilperson Morgan stated they have heard from the LPC and HPC and they are not in favor of this joint committee. The site plan review process currently sits with the LPC and questioned if they really need this hybrid committee. He doesn't understand why council is second guessing the chairs and their ideas.

Councilperson Osler stated HPARC needs to play a role in site development, as well as the planning commission and an advisory role is not sufficient.

Councilperson Morgan stated the role of the JSDRC will be advisory because the final decision will be made by city council. If it remains with LPC and HPARC offers advise to them and they disagreed, it would still be forwarded to city council to be a part of their final decision.

Councilperson Osler disagreed, there needs to be coequal authority to review and make recommendations. The JSDRC was approved by the ad-hoc committee by unanimous vote, which included the chairs of HPC and CARC. *Councilperson Morgan* stated the chair of HPC later changed her mind. No other municipality does this and they all make land use decisions.

Drew McKay, Chair, Lewes Planning Commission, stated under the current regulation the city engineer and parks & recreation commission have to submit their review to the planning commission to go forward. Their reviews are not disregarded, they are important recommendations. He does understand how this kind of review is dismissed so easily as not substantive. It is a substantive review and something that is important in the decision-making process. It was recommended that HPARC has the same kind of review process prior to LPC's consideration. One of their pending site plan reviews is very complicated and detailed and will very much a part of what is going forward in the LPC decision-making process. The process is there now and feels HPARC could be incorporated into it without creating another committee.

Councilperson Osler disagreed and believes this will be a better process.

Councilperson Reardon stated the record is closed and a public hearing has been held. Everyone has had their opportunity to be heard.

Councilperson Beaufait stated they don't want to make the process more complicated. The joint committee should have the same enthusiasm as the LPC. The point is to have a thorough investigation.

ACTION: *Deputy Mayor Beaufait made a motion to approve the formation of the Historic Preservation Architectural Review Commission, with the incorporation of staff recommendations from January 7, 2019 meeting as outlined, seconded by Councilperson Osler.*

City Solicitor Mandalas stated as there are Zoning Code changes, he requested a roll call vote:

Councilperson Morgan voted against the motion. He is grateful for all the hard work the ad-hoc committee did combining the HPC and CARC and believes it will have a great result. It is just the narrow question of creating another committee for site plan review that he disagrees with and would like to leave it within the scope of the planning commission.

Deputy Mayor Beaufait voted in favor of the motion. It will be a new way to do business and keep the process moving forward.

Councilperson Osler voted in favor of the motion. The committee worked on this for a year with the help of staff. The only real contention is the site plan review process. They heard from both sides of the issue and appreciates the LPC opinion. She wants to try the process and see if it works. She believes it will be a better approach and will eliminate the potential for conflict and will be faster.

Councilperson Reardon voted in motion, for reasons stated it is a much more efficient process.

Mayor Becker voted against the motion. He has some concerns about the site plan review process and would like to have seen it fleshed out more. He doesn't believe the idea of less bureaucracy is being achieved with this process. He is very concerned about time line and if the site plan review were developed more it would accomplish that but what is before council leaves a lot of questions.

The motion carried with a majority vote of 3-2

There was discussion about when the new commission would take affect.

Mr. West stated there are many details that will need to be addressed before the new commission can start working.

Ms. Townshend agreed the commissioners for HPARC still need to be appointed by city council, which should be at the March council meeting.

Councilperson Osler stated there is an existing site plan review ordinance in place and there shouldn't be any changes to the application of that ordinance. She understands forms will need to be revised.

Deputy Mayor Beaufait suggest they allow 60 days for HPARC to be established and hold an organizational meeting.

Councilperson Morgan stated they need to make it clear in the ordinance that applications already in process would not change and would remain with the LPC until completed.

Mayor Becker suggested a start date of May 1, 2019.

ACTION: *Deputy Mayor Beaufait made a motion for the effective date of the establishment of HPARC to be May 1, 2019 and any application already in progress between now and May 1, 2019 would not change, seconded by Councilperson Osler, all voting in favor, motion carried.*

2. DELETE: Presentation & possible action on the Lewes Running Branch Multi-Use Trail Agreement with DNREC.

3. Presentation & possible action on the approval of the city of Lewes Anti-Harassment Policy.

Councilperson Osler reviewed a number of changes she has recommended to the proposed policy. *Ms. Townshend* reviewed a couple of changes from Councilperson Morgan.

Ms. Townshend stated they need to share this with the employees and make sure they understand it. It will be located in the Employee Personnel Handbook.

ACTION: *Councilperson Osler made motion to approve as the Lewes Anti-Harassment Policy as amended, seconded by Councilperson Morgan, all voting in favor, motion carried.*

I. NEW BUSINESS:

1. Presentation & possible action of the Annual Assessment List for the Year 2019 and if necessary, the setting of a date and time for a hearing of appeals

Mayor Becker stated no appeals have been filed, therefore, there was no need to schedule a hearing.

2. Presentation & possible action on the awarding of the bid for the Phase 23 street improvement and Beach 1 parking lot.

GMB City Engineer Charlies O'Donnell reported bids were opened on January 23, 2019. The lowest responsible bid was from the Jerry's Inc. in the base bid amount of \$321,386.03. GMB recommends awarding of the bid to Jerry's Inc. A pre-construction meeting will be scheduled later in February.

ACTION: *Deputy Mayor Beaufait made a motion to award the bid to Jerry's Inc. in the amount of \$321,386.03, seconded by Councilperson Osler, all voting in favor, motion carried.*

3. Presentation & possible action on an amendment to the contract with EDiS to authorize renovations to Lewes City Hall.

Mayor Becker stated this has been discussed for some time and they have looked at several different options. This proposal addresses office space in administration, expanding into the second floor BPW space and repairs to the council chamber floor.

Ms. Townshend explained the process they have gone through to date and reviewed the proposed renovations. The estimate before council is from EDiS for \$80,000, which includes new carpeting.

Councilperson Morgan stated that even though the scope of work is clear, it is lacking detail and suggested they will require a lot of close supervision to make sure we are getting a professional job. *Mayor Becker* agreed.

Councilperson Osler stated this has been a long process in working to accommodate staff, increase efficiency and to come in at a reasonable rate. She feels this is a good solution.

Deputy Mayor Beaufait stated that at some point they are going to have to use the conference room for offices and suggested they remove the fireplace now. This will make it easier in the future to partition the room.

Ms. Townshend stated they have looked at the option during the process and they determined that the second-floor space will give them additional office space.

ACTION: *Councilperson Morgan made a motion to approve the amendment to the contract with EDiS to authorize renovation to Lewes City Hall as presented, seconded by councilperson Osler, all voting in favor, motion carried.*

4. Presentation & possible action on Lewes Planning Commission recommendation 618 for the approval of a request from Cellico Partnership for a conditional use for the placement of a cellular antenna array on an existing tower off Cape Henlopen Drive with the following Conditions: (1) screening shall consist of arbor vitae; (2) the specific regulations in Ch. 197-73 be followed in regard to elevation of equipment; (3) there be regular inspections regarding integrity of structure; and (4) specific regulations in Ch. 197-96 regarding development plan approval have been met.

Mr. West explained the project as it was presented to the LPC requesting a conditional use for the placement of an array of cellular antenna on an existing 102-foot tower with related equipment at the base of the tower located at 41 Cape Henlopen Drive. They received a complete application with supporting documentation and with a conditional use permit they look at the zoning designation. The tower is a nonconforming structure but as long as there are no changes in the footprint, the size or position of the array can be mounted on the tower. It is the recommendation of the LPC to approve this request for a conditional use. A key consideration is the need for this during the summer months when there is increased usage.

Mr. West stated there was one resident that had questions and the applicant has met with her to address her concerns.

Attorney John Tracey, Young Conaway Stargate and Taylor, was present on behalf of applicant. He explained they have met with the concerned resident and addressed her questions.

ACTION: *Councilperson Reardon made a motion to accept LPC recommendation 618 and approval of the request for a conditional use agreement for the placement of a cellular antenna array on an existing tower off Cape Henlopen Drive with conditions as stated, seconded by Councilperson Osler.*

Atty. Mandalas stated this is a zoning request and requested a roll call vote. They can reference the findings in §196-96 as a part of their vote.

Councilperson Reardon voted in favor of the motion, as stated in 197-96 and based on the recommendation of the planning commission.

Councilperson Osler voted in favor of the motion, stating she appreciated that the application was very detailed and covered all the necessary issues; and complies with all the necessary regulations.

Councilperson Morgan voted in favor of the motion, for reason set forth in the staff report and the LPC recommendation.

Deputy Mayor Beaufait voted in favor of the motion, based upon the completeness of the application and the LPC recommendation.

Mayor Becker voted in favor of the motion, based upon the recommendation by the planning commission and the completeness of the application.

All voting in favor, motion carried.

5. Presentation & possible action on a recommendation from the Parks & Recreation Commission for approval of Phase I final layout, design and budget of the George HP Smith Playground subject to additional fundraising.

Mayor Becker stated this has been considered by the Parks & Recreation Commission. Ms. Townshend explained there is a grant from DNREC and there has been private fundraising. There is a gap of approximately \$10,000 in funds. The PRC are requesting approval of phase 1, they don't have the funding for phase 2 at this time. There was considerable community involvement in this project.

ACTION: *Councilperson Morgan made a motion to approve the PRC recommendation for approval of Phase I final layout, design and budget of the George HP Smith Playground, subject to additional fundraising, seconded by Deputy Mayor Beaufait, all voting in favor, motion carried.*

6. Presentation & possible action on a recommendation from the Finance Committee to amend section 8.5 of the City of Lewes Investment Policy to increase allowable percentage of City investments in fixed income investments from "up to 75%" to "up to 80%."

Councilperson Osler, Chair, Finance Committee, explained the recommendation. The city's investment consultant, Tim Reath has suggested increasing the fix income percentage from 75% to 80% to give the city more flexibility. This will not change the city's overall investment approach.

ACTION: *Deputy Mayor Beaufait made a motion to approve the Finance Committee recommendation to increase the fixed income investments from up to 75% to up to 80%, seconded by Councilperson Osler, all voting in favor, motion carried.*

7. Presentation & possible action on the development of a policy to address commercial concessionaires on city lands.

Ms. Townshend explained the city received a request from a potential concessionaire to rent umbrellas and chairs at Beach 2. The city doesn't have a policy that addresses this issue and council wants to determine if this would be of any value to the community. Currently, the Lion's Club does this on Beach 1 and the request was for Beach 2. If council determines it is worth considering, the question would then be how to go about it.

Councilperson Osler stated she thought the request was broader. Ms. Townshend stated it could be, but the PRC feels that chairs and umbrellas would have more value. There has been discussion on how much the beach should be commercialized and that is the real question to council. Other beaches do have concessionaires, as well as the state park. The question is does Lewes want it and how it would be addressed.

Councilperson Morgan stated he feels they need to consult with the other towns that do it. There are many questions and it would require consideration.

Councilperson Osler stated she has several concerns about other commercial issues that have been held in Lewes parks. There has also been commercial use of the kayak launch in Canalfont Park. It has been a creeping issue of commercial use of public assets. Renting umbrellas and chairs may be nice but then there are other questions to address, such as selling water and food, that would lead to other concerns. This application raised questions that they don't have answers for. While PRC has policies over the parks, they do not have jurisdiction over the beaches. She is not against it they just need to look at it carefully.

Deputy Mayor Beaufait stated he has concerns relating to the existing business on Savannah Road and doesn't want a concession on the beach to compete with those businesses. The city needs to hear from them and the general public.

Councilperson Reardon stated there are many issues and what impact would this have on the beaches and the people that are coming.

Mayor Becker stated another concern is that the existing concessionaire is a local nonprofit and he doesn't want to interfere with their operation.

Councilperson Osler agreed and looking at uses of public property that they have allowed, particularly the parks, it was been primarily nonprofit organizations. This would be a different direction.

Mayor Becker agreed, but it could be done and needs further consideration. Council will look at this over the next couple of months.

Matt Carter, Quest Adventures, explained the idea was from him to see if it was something the city would be interested in. Quest currently does this in the state park. He has 6-10 seasonal employees, mostly high school students. They deliver chairs and umbrellas to the Lewes beaches numerous times a day, and he believes this would reduce the amount of traffic on the roads during the summer. He looks forward to working with council on this issue.

Mayor Becker stated this needs to be a public process because of the sensitivity to local businesses and nonprofits.

Ms. Townshend stated she would work with Allison Kirk to start a dialogue with the businesses at the beach and bring an update to the next council meeting.

8. Presentation & possible action on Agreement with Chesapeake Utilities Corporation for the extension of natural gas on Tennessee Avenue.

Mayor Becker stated the city is developing three (3) lots on Tennessee Avenue with the intention of selling them. They are considering the addition of natural gas along the street to these lots. There would be new construction of homes and it would be better to have the connections in place prior to construction. The city would pay for the installation and recoup it in the purchase price. It should be under \$10,000.

Deputy Mayor Beaufait agreed the city should move forward with this agreement.

ACTION: *Deputy Mayor Beaufait made a motion to move forward with the agreement with Chesapeake Utilities Corporation for the extension of natural gas on Tennessee Avenue, seconded by Councilperson Reardon.*

Councilperson Osler stated she understands they need to do this, but she doesn't want to reward Chesapeake's bad behavior. Chesapeake received its franchise with the city of Lewes about 10 years ago with the understanding they would work to provide natural gas to the hard to serve customers. Regrettably that has not happened. They are very, very good at serving the big customers and installing services when a street is open, but they have been very bad in going to the harder to serve areas of the city. This is highly regrettable. There are a lot of Lewes residents that want the option of natural gas and it hasn't happened and it is on Chesapeake to make it happen. She agrees they should extend natural gas on Tennessee Avenue, but she is out of patience with them.

BPW President Press Lee stated the BPW is talking with Chesapeake about the expansion of services throughout Lewes and if the BPW has to help make it happen, they will.

Mayor Becker stated the city should be building the infrastructure as they do major street improvements with the installation of a sleeve in which a gas line could be run into for future development. Once a street is opened, it is a minor expense to install the sleeve. He is encouraged that there will be monthly meetings with Chesapeake Utilities.

ACTION: *All voting in favor, motion carried.*

9. DELETED: Presentation & possible action regarding amendments to Lewes City Code, Chapter 59 Animals, Article II Felines.

- 10. Presentation & possible action on the one-year renewal of a Conditional Use Agreement for the placement of a 14' x 64' Redman Trailer on property located at 406 Park Avenue on behalf of The Estate of Isabelle Jackson commencing February 15, 2019 through February 14, 2020.**

ACTION: *Deputy Mayor Beaufait made a motion to approve, seconded by Councilperson Reardon, all voting in favor, motion carried.*

- J. EXECUTIVE SESSION:** Pursuant to 29 DEL. C §10004(b) an executive session shall be held to discuss the following: (4) Strategy sessions, including those involving legal advice or opinion from an attorney with respect to COLLECTIVE BARGAINING or pending or potential litigation and (9) Personnel matters in which the names, competency and abilities of individual employees or students are discussed, unless the employee or student requests that such a meeting be open.

Council went into Executive Session at: 9:21pm

Council returned to Open Session at: 10:17pm

- K. CONSIDERATION AND/OR ACTION ON MATTERS DISCUSSED IN EXECUTIVE SESSION:** No actions were taken.

- L. ADJOURNMENT:** There being no further business, the meeting adjourned at **10:19pm**.

Submitted by,

Alice M. Erickson
Recording Secretary
Mayor & City Council