

LEWES PLANNING COMMISSION
Regular Meeting Minutes
February 20, 2019

The regular meeting of the **Lewes Planning Commission** was held on **Wednesday, February 20, 2019 at 6:00 P.M. in Lewes City Hall** in accordance with proper notification with the following present: Chairman Drew McKay, Kay Carnahan, Joe Hoechner, Nina Cannata, Mark Harris, James Linnen, Thomas Panetta, Sumner Crosby, City Solicitor Glenn Mandalas, City Planner Tom West, City Manager Ann Marie Townshend, Ex-Officio City Councilman Dennis Reardon, Tom Owen of the Lewes Board of Public Works, Building Official Henry Baynum, and Recording Secretary Jackie Doherty. City Councilman Rob Morgan and City Councilwoman Bonnie Osler were also present. Thomas Panetta arrived at the meeting at 6:30 P.M.

- 1. Call to Order and Announcements:** *Chairman McKay* called the meeting to order at 6:00 P.M. welcoming Sumner Crosby as the newest member of the Commission. Thank-you letters will be sent to Steve Rogers and Richard Kirschner who have both resigned from the Commission due to medical reasons.

Chairman McKay requested for everyone to be sure to send their comments to the Commission on the website, and not Mayor and City Council, to be part of the public record.

- 3. Discussion and possible recommendation to Mayor and City Council on requests from Furbo, LLC for waivers as part of a subdivision application to create 6 lots at the intersection of Angler's Road and East Market Street (SCTM 3-35-4.20-97.00, 97.01, and 97.02).**

Ms. Carnahan stated she would recuse herself and left the meeting.

Mr. Mandalas reviewed the process by which waivers and preliminary consent are granted including: Mayor and City Council (MCC) authority, as stated in the Code, to grant waivers under the Subdivision Code; recommendations from the Commission sent to MCC before or after the entire review; MCC could be considering the waivers while the Commission continues their process of consideration for preliminary consent.

Mr. West reviewed the preliminary consent stages for a major subdivision including: The second stage would be final plan approval if the Commission acts on preliminary consent tonight; the applicant could move forward with the final plan after preliminary consent is granted by the Commission and MCC makes a decision regarding the waivers.

Mr. Mandalas stated preliminary consent, if granted, is valid for 12 months while MCC continues their review and holds a public hearing.

Mr. West reviewed the three waiver requests: 1) Requirement for 10% of the subdivision to be open space; 2) Requirement for construction of sidewalks along the Market Street side of the property; and (3) Requirement for the construction of streetlights along Market Street.

Discussion of waiver for open space:

- Proposal for three of the lots (#1, 2, 6) to have greater setbacks for back yards larger than required; these lots are adjacent to wetlands with #6 against the wetlands; concerns about flooding, sea-level rise, fences, utilities, no HOA management;
- Back-yard space for Lots #3, 4, 5 with installation of utilities; a utility agreement will state what landscaping and construction is allowed with access needed for repairs; there is no stormwater management plan required for a development this small;
- Formal description is needed regarding the easement for Lots #1, 2, 6; alternative to open space easement is to have restrictions on the sale as to backyard uses; an easement would give the City enforcement rights; general easement for utilities and for conservation purposes;
- Deed restrictions regarding building permanent structures.

Mr. Bill Huntley, owner of the property, stated deed restrictions will be submitted as part of the application with the City stating what will be allowed on the easement; the proposal for larger setbacks on Lots #1, 2, 6 is to create the same amount of physical space as if it were open space and to avoid the need for an HOA to maintain.

ACTION: *Ms. Cannata made a motion to recommend to Mayor and City Council that the open space property behind Lots #1, 2, 6 be covered under a conservation easement that restricts any building of permanent structures to keep it as true open space with special care of the buffer zone on the property; Mr. Harris seconded the motion.*

Discussion of the motion:

- ✓ Amend to state the requirement for an HOA to maintain the open space is waived if the 10% open space requirement is protected by another mechanism such as a conservation easement;
- ✓ 170-26 B of the Code states an HOA is not required if there is a covenant between the City and developer to protect the open space.

Ms. Cannata and Mr. Harris accepted the amendments to the motion to be stated as follows:

ACTION: *Ms. Cannata made a motion to recommend to Mayor and City Council a waiver for the requirement of an HOA to maintain the open space if the 10% open space requirement is protected by a conservation easement that restricts any building of permanent structures to keep it as true open space with special care of the buffer zone on the property (SCTM 3-35-4.20-97.00, 97.01, and 97.02) located at the intersection of Angler's Road and East Market Street; Mr. Harris seconded the motion, which passed unanimously.*

Chairman McKay made a recommendation to allow MCC to refine the motion to specify what is needed regarding 170-26 B before being sent to MCC for approval.

Discussion of waiver for sidewalks

- Need for sidewalks, connectivity; other developers were required to install sidewalks on both sides of the streets; need for consistency since there are sidewalks along Anglers Road;
- How to connect these sidewalks to the other parcels on Market Street; curbing helps channel stormwater on Market from impervious surface.

ACTION: *Mr. Crosby made a motion to recommend to Mayor and City Council denial of the request for a waiver to require construction of sidewalks along the Market Street side of the property; Ms. Cannata seconded the motion, which passed unanimously.*

Discussion of waiver for streetlights

- Additional lighting is needed because the existing commercial lighting is not adequate; consistency of lighting is needed for safety;
- Continuity is needed with the sidewalk to access Anglers and additional lighting;
- New development on Anglers has installed lighting;
- Dark Sky technology.

ACTION: *Mr. Linnen made a motion to recommend to Mayor and City Council denial of the waiver for the addition of streetlights along Market Street; Mr. Hoechner seconded the motion, which passed unanimously.*

4. Discussion and possible recommendation on preliminary consent from Furbo, LLC for a major subdivision to create 6 lots at the intersection of Angler's Road and East Market Street (SCTM 3-35-4.20-97.01, and 97.02).

Mr. West reviewed the process for preliminary consent by the Commission as stated in 170-19 of the Code. This would be preliminary consent of the site plan for the applicant to proceed with the application process. If the site plan is changed regarding the decision by MCC on the waivers, it would be reviewed again by the Commission. There are conditions to be corrected stated in the engineer's report to be addressed in the final plan review.

Ms. Cannata stated she wants to be sure the request for the conservation easement is verified.

Mr. Mandalas stated review and verification of the conservation easement confirmation will be during the final plan review.

ACTION: *Mr. Harris made a motion to approve preliminary consent to be forwarded to the Building Official for final site plan before being presented to Mayor and City Council with the following conditions:*

1. *Deed restrictions and easements to be applied.*
2. *Conditions stated in the City engineer's report to be completed for final approval.*
3. *Plans by the 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.*
4. *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.*

5. *If a property is flipped, do the deed restrictions continue with the property; deed restrictions are to protect the viewsheds.*
 6. *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.*
- Mr. Hoechner seconded the motion, which passed unanimously.*

5. Presentation and possible recommendation to Mayor and City Council for a site development plan entitled Assisted Living Facility Lewes Medical Development submitted by Davis, Bowen & Friedel, Inc. to create 220,245 square foot senior living facility on an 8.55-acre parcel of land (SCTM 3-35-8.00-36.08) along Kings Highway.

Chairman McKay invited anyone in the audience who wanted to comment on this application to speak explaining there was a mistake on the time listed in the notice from the February 7th meeting to start at 7:00 P.M. when the correct time was 6:00 P.M.

Nancy Cunningham, Henlopen Gardens, asked if there would be an entrance from Atlantic Drive onto the site to eliminate some of the traffic on Kings Highway that includes the ferry, high school, and Lewes. The concern is that the congestion of traffic will impact the quaintness of Lewes. Also, will the wastewater treatment plant be able to handle all the construction or be revised in the future; are there apartment units being planned for development in this area that will be low-income housing; will the police force need to be increased to handle the influx of people.

Ms. Cunningham stated she was upset when receiving the certified letter regarding the time for the meeting on February 7th thinking this was done purposely so she and others who received the letter would not be present for discussion.

Chairman McKay stated this was a mistake on the notice perhaps caused by the meetings always being at 7:00 P.M. in the past but recently changed to a 6:00 P.M. start time. The record was opened tonight for additional comments.

Mr. West stated the proposed application is available online for review. Roads on the Kings Highway side through the development will be private streets and not public streets. Mr. West reviewed the plans stated in the proposal for the private roads to line-up including working with DelDOT to provide flow- thru traffic. A letter is requested from the Board of Public Works for every subdivision to confirm capacity, and the letter has been received for this application. There is a proposal for the adjacent area that would front on Savannah Road for multi-family, residential, workforce housing. The discussion regarding the police will be during the subdivision approval meetings.

Chairman McKay stated since there are no other comments from the audience, the record will now be closed.

Ms. Carnahan stated a letter was received today (available on website) from Lewes Fire Chief Steven Evans concerning the Hazard Mitigation Planning Team. A tabletop exercise was held in January regarding how a Category 3 hurricane would impact Lewes with recommendations for assisted living and nursing home buildings to be built to withstand the hurricane and for assisted living residents to shelter-in-place.

Mr. Mandalas stated because all construction requires building codes to be followed, this letter cannot be used to recommend a rejection.

Zach Crouch of Davis, Bowen and Friedel was present stating the building will be designed to meet the International Building Code requirements for a 120-miles-per-hour storm; Category 3 is between 111 and 129; generators for the alternative power source will be installed.

Discussion of comments and concerns included:

- Lower-floor construction to prevent system damage with generators located on the ground floor; property is not within the 100-year floodplain;
- Parking reduction and the zoning ordinance, which allows shared parking; landscaping details with the addition of sidewalk trees for shade;
- FEMA Guidelines under critical facilities built above the 500-year floodplain for new structures; Executive Order #41 states 100-year floodplain plus 3 feet to address sea-level rise;
- Summary by Mr. West estimates 420 vehicles for daily trips per day, while the State Plus Review estimates the number to be 2,700; concerns about the traffic on Kings Highway with the zoning change approval for the Mitchell Farm;

- Protection of the wellfield area near the high school; MCC has informed the Sussex County Council and Planning and Zoning regarding the City's concerns for the protection of the wellhead area due to the number of developments being approved without considering the consequences;
- DNREC has suggested raingardens for stormwater retention in the PLUS Report.

Mr. Crouch stated the Plus Review combined the two projects, including the proposed housing adjacent to the property and facing Savannah Road, in their traffic study; Mr. West's summary only included this project.

Mr. Owen stated the Board of Public Works is also concerned about the protection of the wellheads during all the construction and are always checking the water data.

ACTION: *Mr. Panetta made a motion to recommend to Mayor and City Council approval of the site development plan to include the recommendations and requirements stated in the PLUS Review in the final plan; Ms. Carnahan seconded the motion.*

Mr. Panetta stated the 500-year floodplain needs to be considered and included in the final plan since this is an assisted living facility with shelter-in-place and evacuation measures needed. This needs to be added to the motion because it is not addressed in the PLUS Report.

Ms. Carnahan accepted the amendment to the motion by Mr. Panetta.

Mr. West reviewed the process for site development plan approval including MCC to schedule a public hearing and make their decision to either approve, send back to the Commission, or deny.

Mr. Crouch stated regarding the motion to include the requirements and recommendations listed in the PLUS Report to be included in the final plan for approval is a concern since many are not feasible. If all the requirements stated in the PLUS Report must be met, this project will not be constructed. The developer has submitted their answers to the PLUS Report to the State. The same concept plan has been presented to the City since the rezoning was approved in February 2018.

Attorney Jim Fuqua, who represented the applicant for the rezoning request, spoke of the difference between the recommendation and requirement comments of the PLUS Review.

Mr. Panetta stated he did not intend for all recommendations and requirements to be adopted, but only those considered critical that pertain to the community and this specific site.

Mr. Mandalas stated any conditions attached to approval would need to contain the reasons that pertain to health, safety, and welfare of the community. A specific recommendation from the PLUS Review may be attached as a condition for approval, but it is not appropriate to adopt each recommendation as a condition.

Chairman McKay asked if the Commission would want to defer the decision until there is a list of the requirements from the PLUS Review to be included in the motion to approve. Only Mr. Crosby and Mr. Panetta stated they would prefer to defer; all other Commissioners agreed to move forward.

ACTION: *Mr. Panetta withdrew his motion, Ms. Carnahan withdrew her second.*

ACTION: *Ms. Carnahan made a motion to recommend to Mayor and City Council approval of the site development plan entitled Assisted Living Facility Lewes Medical Development submitted by Davis, Bowen & Friedel to create a 220,245 square foot senior living facility on an 8.55-acre parcel of land (SCTM 3-35-8.00-36.08) along Kings Highway with special attention by Mayor and City Council to any addendum provided by the Commission at the public hearing; Mr. Panetta seconded the motion.*

Mr. Mandalas read the list of reasons for a vote as stated in the Code.

Mr. Panetta voted yes to the motion stating the site plan is in the best interest of the City, is in keeping with health and safety issues, DelDOT comments need to be incorporated regarding traffic flow, design needs to be within the character of the City of Lewes.

Mr. Linnen voted yes to the motion stating he agrees with the reasons given by Mr. Panetta.

Mr. Crosby voted yes to the motion stating he agrees with Mr. Panetta and feels the goals of the City have been met.

Mr. Harris voted yes to the motion stating he recognizes the value of the project to Lewes and also appreciates the work that has been done regarding adequate parking issues for the residents of the facility and employees.

Mr. Hoechner voted yes to the motion stating detailed lighting of the site against adjacent existing housing and the impact needs to be reviewed.

Ms. Cannata voted yes to the motion stating the importance of the developer speaking to neighbors in Henlopen Gardens, DeIDOT on traffic issues; stormwater management and impervious surface needs to be addressed.

Ms. Carnahan voted yes to the motion stating she agrees with the previous statements; important that the Fire Department's disaster plan has been incorporated for the health and welfare of the residents of the facility and the employees.

Chairman McKay voted yes to the motion stating he agrees with the previous statements; the developer has made a good-faith effort to address issues in the PLUS Report and those submitted by residents.

The motion passed unanimously.

6. Initial presentation and consideration of a request by Setting Properties, Inc. for a major subdivision called the Lewes Waterfront Preserve (former Brittingham property) that would create 90 townhouse lots on a parcel (SCTM 3-35-8.00-17.00) located along New Road near the Canary Creek Bridge.

Ms. Carnahan stated she would recuse herself and left the meeting.

Attorney Jim Fuqua, developer Joe Setting, and Ron Sutton of Civil Engineering Associates were present.

Mr. Fuqua stated the property is zoned AX-RES under the Lewes Zoning Code and plans include 90 townhouse units in 18 buildings located on the southwest portion of the site; townhouses will be on individual lots 28' wide x 100' deep with wider lots for the end units.

Mr. Fuqua reviewed the background of the application including comments made at previous meetings and articles in the newspaper stating:

- Focus of opposition is based on the residential/annexation zoning being inappropriate, the townhouses are not in character with the area and will establish a precedent for similar future development on New Road, 90 townhouses are too much density for the site;
- The applicant understands concerns of the existing residents for future development of the New Road Corridor; the applicant is following the future land use plans of the City and has adhered to the plans in designing the site plan;
- Review of the annexation process and Annexation Regulation Ad Hoc Committee; Commission recommended to MCC adoption of the annexation zones; MCC approved adoption of the new zoning designations AX-RES and AX-MIX zones for land annexed into the City;
- AX-RES zone allows townhouses and cluster design; meeting minutes of MCC 11/12/18 gives a detailed account of the reasons and needs for the AX-RES district with annexation of the property and zoning of the land to AX-RES approved unanimously by MCC during that meeting.

Mr. Fuqua continued stating:

- The Brittingham property is zoned AX-RES; townhouses are a permitted use on the property; by using the cluster option of the AX-RES district, 90 townhouses are permitted;
- Reports by the Parks and Recreation Commission, Board of Public Works, City engineer, and Staff Review comments were all received.

Mr. Fuqua read comments from the City engineer report and the Staff Review into the record. The Staff Review states that the application is complete.

Mr. Sutton reviewed the site plan as follows:

- 90 townhouse lots; AX-RES ordinance-required buffers include 30' on left; 50' wetland buffer at bottom side of plan; 50' tidal wetlands; 10' along New Road in addition to the right-of-way and permanent easement installed for DeIDOT; all wetlands will have buffers not only tidal;
- 25' dedicated to DeIDOT which is 40' from the physical center line of New Road; permanent easement is 15' in addition to a 10' buffer; DeIDOT regulations for left and right turn lanes;
- Over 65% open space proposed with the stormwater management included on the original application deducted; City regulations followed regarding street widths, upright curbs;
- Additional overflow parking through the subdivision; using City utilities with the addition of a new pumping station in compliance with BPW; plan is for natural gas; townhouse height will be 36', 2 story;
- Area at creek to remain open for fishing and parking but may be changed by DeIDOT's plans; New Road utility poles owned by Delaware Electric Cooperative to remain; BPW electric will be underground throughout the development;

Discussion of comments and concerns by Commissioners:

- Length of cul-de-sac and room for emergency vehicle turnaround; modifications to plans regarding Executive Order #41 and DeIDOT's designs for the bridge replacement;
- Trail along Canary Creek and connect to the bike trail at the railroad line; developer agrees to an easement for a trail system along Canary Creek but would not maintain;
- Will the tree line remain at Canary Creek; confirmation that 99% of the trees will remain with only one located at the telephone pole to be removed;
- On-street parking; driveways with front-loading garages; streets 16' for each lane with sidewalks on both sides; one way in and one way out;
- Floodplain elevation is 7' and homes will be 10' to 11' with roads outside the elevation 7' floodplain; technical analysis is being done on the stormwater pond to decide if it will be infiltration or release based on groundwater; concerns that stormwater pond is in the projected sea-level rise; opportunities to increase size of buffers;

Mr. West stated the application is complete having received:

- Identity of the applicants;
- Conceptual plat plan that meets the requirements of the subdivision ordinance;
- Letter from the BPW confirming services would be provided for the proposed development;
- Application fees;
- Verification of Public Notification;
- Applicant's engineer report with details of the subdivision ordinance;
- Reports from: Parks and Recreation Commission, Board of Public Works, City Engineer Review Staff Review, PLUS Review, Sussex County Conservation District Report.

Comments from the public:

Debra Evalds, Harborview Road, representing the New Road Preservation Alliance, provided a PowerPoint presentation to focus on the 22 points of concern on behalf of the group. Concerns included: Natural and historic features including archaeological sites; preserve open space and scenic views; open space calculations within the buildable area; 100' floodplain setback is 50' and DNREC has requested 100' setbacks for construction; density; grading; tree removal; increase buffers; traffic issues; impact on property values; compatibility with adjacent land use; impact on waterways; scenic byways; walkability; flooding on New Road and evacuation issues; hydrologist to study site; Future Traffic Demand Model; work with Historic Lewes Byway Committee on their recommendations.

Judy Rolfe, Henlopen Gardens, spoke of concerns about the development crisis in the area. Also, the importance of protecting the wetlands; Delaware's low elevation and problems with sinking; building and not building for the next 100 years; stormwater analysis needed for every project; climate change preparations; additional City employees needed to manage the stormwater; value of open space, Great Marsh, tidal marshes, Canary Creek, and the ecosystems. Ms. Rolfe stated she would send a copy of her statement to Mr. West.

Marianne Ennis, 50 Harborview Road, stated concerns include flooding in the area; plans show a 50' setback for the buffer and DNREC stated in the PLUS Review that 100' is required; cluster zoning is not consistent with the neighborhood and comments from Mr. Mandalas made at the Planning Commission meeting on 2/21/18 were read regarding the character of the surrounding neighborhood in zoning districts; New Road is all individual houses.

Mary Lauffer, 9 Shaffer Lane, stated concerns include flooding; 10'buffer is inadequate; her view will now be the backs of a row of townhouses; 30' buffer at Canary Creek would improve the entrance into Lewes as a scenic byway; traffic on Creekside Drive; stub street and traffic from adjacent parcels; the location of the pumping station and impact of construction on the creek and watershed; archaeological site addressed; open space; development will be out of character for the neighborhood and have a negative impact.

Marta Nammack, 128 New Road, stated the importance of information from the Water Workshop meeting scheduled for March 21st and the hydrologist report before the approval of more dense developments. Concerns include flooding of Canary Creek, impervious cover threshold as in New Castle County; the ecologically-sensitive area; a possible moratorium on development.

Dave Ennis, 50 Harborview Road, spoke of evaluating the scientific materials; letter sent by the Delaware Archaeological Society that states the site is surrounded by Native American burial sites; the need for an archaeological study of the property; written agreement is needed between the City and developer regarding removal of trees; boundary line needs to be documented.

Mr. West stated there were discrepancies regarding the County survey map, and it is being reviewed by the City engineer for verification of adjacent properties.

Chairman McKay stated the next step in the process will be a site visit by the Commissioners. Four possible dates and times need to be provided to decide the best date and time to schedule.

- 8. Report on Sustainability Committee:** *Chairman McKay* stated the committee members will be Mark Harris, Sumner Crosby and Melanie Moser. Ms. Moser will be attending the regular meeting in March as our newest Commissioner. After review of the Code and surrounding jurisdictions, a sustainability and resiliency workshop will be planned. All meetings will be noticed and open to the public.
- 7. Report on February 21, 2019 Water Workshop:** *Chairman McKay* stated the workshop will begin tomorrow at 4:00 P.M at the Rollins Center with 10 presenters to speak followed by questions from the public. There will not be any discussion regarding a particular project or residence.
- 2. Presentation and possible action on the minutes from the regular meeting on January 16, 2019**

ACTION: *Ms. Cannata made a motion to approve the regular meeting minutes of January 16, 2019 as presented; Mr. Hoehner seconded the motion, which passed unanimously.*

- 9. Discussion on scheduling upcoming public meetings:** *Chairman McKay* listed the next four scheduled meeting dates: March 14, March 20, April 10, and April 17.

- 10. Adjourn:** *Ms. Cannata made a motion to adjourn; Mr. Harris seconded the motion, which passed unanimously.*

The meeting adjourned at 9:15 P.M.

Respectfully submitted,

Jackie Doherty, Recording Secretary
Lewes Planning Commission