

**Annexation Regulation Review
Ad-Hoc Committee
February 25, 2019
MINUTES**

A meeting of the **Annexation Regulation Review Ad-Hoc Committee** was held on **February 25, 2019 in Council Chambers in City Hall** with the following members present: Chairperson, Deputy Mayor Fred Beaufait; Councilperson Dennis Reardon, Robert Kennedy, Jim Berrigan and Bob Patterson.

Ex-officio members present were: City Manager Ann Marie Townshend, City Planner Tom West, Building Official Henry Baynum, BPW Assistant Manager Austin Calaman and Recording Secretary Alice Erickson.

1. Call to order: *Chairperson Fred Beaufait* called the meeting to order at **10:00am**.

2. Approval of Minutes: February 4 & February 11, 2019

ACTION: *Councilperson Reardon made a motion to approve the February 4, 2019 minutes as presented, seconded by James Berrigan, all voting in favor, motion carried.*

ACTION: *Councilperson Reardon made a motion to approve the February 11, 2019 minutes as presented, seconded by James Berrigan, all voting in favor, motion carried.*

3. Review list of issues to be reviews by the committee

Chairperson Beaufait distributed and reviewed a list of issues that were identified at the last meeting for consideration by the committee. Today they will address defining of wetlands, delineation of tidal wetlands, exclusion of all wetlands and exclusion of tidal wetlands.

4. Consideration of modifications to the density formula for the AX Zones (defining wetlands, delineation of Tidal Wetlands, exclusion of wetlands, and exclusion of tidal wetlands)

Mr. Beaufait raised the question if the committee wanted to exclude wetlands and/or tidal wetlands from the density formula. The county has eliminated tidal wetlands from their density and there have been suggestions that they might want to consider all wetlands. Wetlands cannot be built on, so they are already somewhat limited. Does the city want to follow the county to exclude tidal wetland from the density calculation?

Mr. Beaufait reviewed the city's density calculation as GROSS AREA divided by 21,780 (approximately 2 lots per acre) = DENSITY.

Mr. Beaufait explained the formula defines the permitted number of family units, or conventional housing, that would be allowed on a parcel of land. The conventional option requires 20,000 s/f lots. Cluster option 1 allows for 7,500 s/f lots but can only have the conventional number of units on the parcel. They would just be smaller lots and more open space. Cluster option 2 requires more open space and allows a 30% increase in density with 5,000 s/f lots. By eliminating wetlands, the buildable area of a parcel would be reduced and thereby, the density would be reduced. There are two limiting factors. One is the density formula which is based upon two lots per acre. The second is the size of the lot allowed and how much space there is to build on.

Mr. West explained the idea with clustering is to have the housing units in a smaller area so more open space can be protected. A lot of communities will approach clustering by trying to even it out so that if there is a tract that is constraint free and another tract that has a lot of constraints like wetlands or steep slopes, they take that out in an effort to level the playing field. The cluster option has a formula and a lot of communities will add in a lot of these things that are removed before they apply the formula, which are considered constraints.

Mr. Beaufait clarified that this formula will only apply to annexed lands, not lands that are already in the city. Does the committee want to exclude tidal wetlands from the current density calculation?

Mr. Reardon stated the county has changed their calculation to state “the gross area shall include the lot area and the area of land set aside for common open space for recreational use but shall exclude any area designated as a tidal tributary streams or tidal wetlands.” If the city wants to be competitive with the county, it should be their consideration that tidal tributaries, stream or tidal wetlands should be removed from the density calculation.

Mr. Paterson stated he doesn't understand why they wouldn't do it.

Mr. Reardon explained these zones were established before the county made this change. The city was trying to be competitive with the county and not be more restrictive. Now that the county has made this change, council is considering following suit.

Mr. Beaufait questioned if there is any reason they wouldn't follow suit?

Mr. Kennedy questioned about to what extent they would include any of this is the open space but not the calculation. *Mr. Beaufait* stated they would discuss when they address open space.

ACTION: *Mr. Reardon made a motion to forward a recommendation to city council that the exclude any area designated as a tidal tributary streams or tidal wetlands should be excluded from the density calculation in the Annexation zones, seconded by Mr. Patterson.*

Chairperson Beaufait opened the meeting to public comments, requesting comments be limited to the motion.

Marta Namack, 128 New Road. *Ms. Namack* stated she is in favor of the motion

Sumner Crosby, 10 Missouri Avenue. *Mr. Crosby* questioned why they would put high density housing in these vulnerable areas that need to be protected.

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

Mr. Beaufait stated the next question is do they want to exclude nontidal wetlands. They cannot be built on and at this time wetlands are considered a part of the open space, in county and in the city. The question is when calculating the maximum number of units allowed, should they exclude all wetlands, but they would be allowed in open space. They will be discussing open space at a future meeting.

The county only excludes tidal wetlands and tributary streams in their calculation. If the city excludes all wetlands it will be a harsher requirement.

Mr. West stated this is the harder question. The county took a step to exclude tidal wetlands but not nontidal wetlands. From a planning standpoint, wetlands cannot be built on so they should be excluded. But if the city excludes nontidal wetlands, then the city becomes more restrictive than the county and an applicant could opt to develop in the county.

Mr. Beaufait stated that if all wetlands are not included in the density calculation the number of units would be lower because the buildable area would be less. The city needs to be aware of the impact it could have. If the city wants to be competitive with the county they have to remain in line with the county.

Mr. Reardon stated there has been a lot of discussion about whether or not to exclude the wetlands. They decided that to be competitive with county, the city needed to follow their lead. He doesn't want to go any further then what the county doing, therefore, he does not want to exclude non-tidal wetlands in the density calculation.

Mr. West stated he believes in the county, there is a process that considers allowing certain options as a conditional use and sets a cap for some uses versus single family development.

Mr. Beaufait stated the conventional and cluster option 1 is limited to whatever the formula allows. It is only with cluster option 2 they were trying to recognize that the county did permit a bonus with the payment of a fee to double the permit density. This is what they were trying to recognize. There will be discussion about options 1 & 2 at future meetings.

Ms. Townshend stated ideally, they would be excluded but we don't live in an ideal world. If the city doesn't do what the county does, we won't have the influence over land development. There are also very little non-tidal wetlands in the Lewes area, so excluding tidal wetlands would get to the problem.

Mr. Kennedy questioned if the wetland maps are up to date regarding tidal and non-tidal wetlands. *Ms. Townshend* stated there are a variety of map data out there. The state regulatory map for tidal wetlands was developed in 1988 and has not been updated since then. We know the footprint of the tidal wetlands has more than likely expanded, however the map does not show that. We could ask DNREC to update the tidal wetland map for a certain area. We could also do that in a two-stage approach. In 2016 the property review committee did a delineation of tidal wetlands and the city could start by having them update with the delineation that has already been done.

Mr. Beaufait stated that in defining the mean tidal wetland area, they could require the submission of a certified survey report by the developer to define the boundary.

Mr. West explained that for a major subdivision it is a requirement to do a wetlands delineation. They would use a procedure set out by the Army Corp to define what a wet land is and to categorize. We don't have the until an application is submitted, so before that we rely the mapping resources. They will eventually have that information. Once a map is done it becomes static and it gets old. The process needs to be dynamic.

Mr. Beaufait stated that as a part of the city ordinance there would be a requirement that a report by a certified hydrologist regarding the mean high tide be submitted with an application.

Sumner Crosby, Missouri Avenue. *Mr. Crosby* stated there is confusion about what is and is not a wetland. There are all sorts of maps. He has looked at the city and county ordinances. The county refers to a state definition of wetlands, Title 7 Chapter 66 of the State Code. The definition describes a zone which exists from mean low water to mean high water plus 2 feet. Within that zone there are all sorts of other conditions; hydrologic and plants that need to be present to indicate a wetland. Then there are the 1987-1988 aerial based imagery maps in which the wetlands likely occupy a different placement now. The maps are important and are now out dated. The city needs to pursue a formal update of the tidal wetlands for the city. He requests they keep all these things in mind as they move forward.

ACTION: *Dennis Reardon made a motion to include non-tidal wetlands in the density calculation, seconded by Robert Kennedy.*

Dave Ennis, Harborview Road. *Mr. Ennis* stated the Quinn Report became part of the city's comp plan and anything discussed should be done keeping in mind the impact it will have on flood insurance. The residents need to be assured that what is being recommended will not have an impact on the city's flood insurance rate.

Marta Namack, New Road. *Ms. Namack* urged the committee to consider excluded non-tidal wetlands from the density calculation. This area is very sensitive, there are flooding problems and a lot of impervious surfaces. They need to reduce the amount of impervious surface within the boundaries of the city. She understands the city wants to be competitive with county, but county uses the conditional use process to review. They need to protect the city of Lewes and exclude non-tidal wetlands from the formula.

Fran Murphy, New Road. *Mr. Murphy* stated there are many here that need to be educated and recommended they provide diagrams on how the formulas work. If the state will do maps at no cost to city they need to be done. He encouraged the committee to exclude nontidal wetlands in the formula. The county's farmers put a lot of pressure on county council to not exclude nontidal wetlands.

Debra Evolds, Harborview Road. *Ms. Evolds* stated she believes the county would have excluded all wetlands if it hadn't been for the pressure from the farmers. Along Kings Highway is nontidal but it is the city's wellfield. Need to look beyond the Canary Creek watershed and the need to consider nontidal wetlands. The city doesn't need to worry about what the county is doing. Lewes is different and Lewes is better. Wetlands are not all tidal, but they do impact the city. Anything they can do to protect the wetlands will protect properties that are currently in the city.

Mr. Reardon stated if the city is able to annex more parcels further into the county, then city can adjust as it goes.

Mr. Beaufait stated they need to keep in mind they are looking at the density formula. No buildings are allowed in the wetlands and there will be buffers. The buildable area will determine the number of units allowed. There are controls and constraints in place.

Maryanne Ennis, Harborview Road. *Ms. Ennis* stated Lewes is paying more for flood insurance than surrounding towns. DEMA says it is important to keep the "sponge affect" in the area and higher density reduces the sponge effect on properties and increases flood insurance rates. Increased density harms the people of Lewes as compared to Rehoboth, Dewey, Bethany and Fenwick. The county will not address nontidal wetlands because of the farmers, so Lewes needs to address this issue on their own.

ACTION: *All in favor, motion carried.*

Fran Murphy, New Road. *Mr. Murphy* questioned what happens to all the comments in the process? *Mr. Beaufait* stated where appropriate, they will try to address them.

Ms. Townshend stated requesting the wetland mapping, that is beyond the scope of this committee and city council would have to address. There could be property owners that would be affected by a map change.

Mr. Reardon stated they are aware of getting DNREC to do wetland delineation lines; it has been done in other areas of the city.

Dave Ennis, Harborview Road. *Mr. Ennis* spoke on the topic of protecting the historic and archeological significances on these properties. He distributed information to committee members. *Mr. Beaufait* stated this is not a part of the annexation process. It would be a part of the planning commission's subdivision process.

Mr. Ennis stated he wants it to be a part of the annexation process to have an archeological survey on a property prior to annexation. *Mr. Reardon* stated that is not be part of this committee's charge.

5. Set meeting date for second meeting in March:

March 4, 1:00 pm
March 11, 10:00 am

6. Adjournment: The meeting adjourned at **11:30am**.

Minutes submitted by,

Alice Erickson
Recording Secretary