

**Annexation Regulation Review Ad-Hoc Committee
March 11, 2019**

MINUTES

A meeting of the **Annexation Regulation Review Ad-Hoc Committee** was held on **March 11, 2019 in Council Chambers in City Hall** with the following members present: Chairperson, Deputy Mayor Fred Beaufait; Councilperson Dennis Reardon, Robert Kennedy, and Bob Patterson. Jim Berrigan was not present.

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. **Opening Remarks from Chair:** *Chairperson Beaufait* stated they have modified the list of issues they are going to be considering to include building height.
3. **Approval of Minutes: February 25, 2019 & March 5, 2019**

ACTION: *Mr. Patterson made a motion to approve the March 5, 2019 minutes as corrected, seconded by Mr. Kennedy, all voting in favor, motion carried.*

ACTION: *Mr. Patterson made a motion to approve the February 25, 2019 as corrected, seconded by Mr. Kennedy, all voting in favor, motion carried.*

4. **If necessary, finalize discussion & consideration regarding 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 stated the thing they needed to do was to identify tidal and non-tidal wetlands, and give directions as to how that could be done.

Mr. Beaufait and Mr. Reardon submitted the following recommendation, which was read into the record as follows:

New section 170-19 A (3): Identification of Tidal and Non-tidal Wetlands.

- a) The applicant must submit documentation from DNREC **delineating and defining the area (square footage) of tidal wetlands** and this can be accomplished by submitting the completed "Jurisdictional Determination and Map Change Request Form" to the Wetlands and Subaqueous Land Section of DNREC.

Mr. Beaufait stated DNREC will do for free if the form is submitted and they will delineate the area of the tidal wetlands. The second part is,

- b) The applicant will also need to submit a report and map prepared by an environmental consultant **delineating and establishing the area (square footage) of the non-tidal wetlands** on the tract.

There are two things a developer has to do. First, submit documentation to DNREC to delineate and define the tidal wetlands, and secondly, submit a report from an environmental consultant delineating and establishing the area of non-tidal wetlands on the tract.

Mr. Beaufait opened the meeting to discussion from the table. One of the issues was how to define and delineate the areas and that is the reason for this recommendation. This makes it clear to the applicant what they must do.

Mr. Patterson stated in item b they are talking about the non-tidal wetlands and need an environmental consultant report. Is this term meaningful? What are the qualifications to be an environmental consultant to fill out the report? *Mr. Beaufait* stated they would have to have the proper credentials.

Mr. Beaufait explained if the committee approves this amendment, it will then be forwarded to Tom West to determine how it will fit into the City Code and then it will be included in the recommendation city council. At this time the committee is determining what will be in their report to council. Once the recommendations are forwarded to council there will be a public hearing before final consideration.

ACTION: *Councilperson Reardon made a motion to approve the proposed amendment as presented, forward to Tom West to determine where it should be placed in the City Code and then include it in the committee's recommendation to Mayor & City Council for their consideration, seconded by Mr. Kennedy, all voting in favor, motion carried.*

Mr. Beaufait and Mr. Reardon submitted the following recommendation, which was read into the record as follows:

New section 197-50 C (2) While the total required minimum **open space** for the cluster options in the AX-Residential Zone may include tidal and non-tidal wetlands, **a minimum of 30% of all required open space shall be located on one contiguous tract of land**, except that such open space may be separated by water bodies and a maximum of one street. This tract of open space must be designed to be beneficial and accessible to the residents or users of the open space; hence, it shall not be constituted of fragmented lands with little open space value.

Mr. Reardon stated this would also apply to the AX Mixed Zone also.

Marta Namack, 128 New Road, questioned if the open space could have trees? *Mr. Beaufait* stated yes, it can have trees, it just needs to be useable by residents.

Ms. Townshend stated it needs to be clearer that the 30% open space would not include wetlands. It is implied but not clear. *Mr. Beaufait* stated as *Mr. West* works to fit this into the code, he would have some flexibility to make it clearer. *Mr. Reardon* suggested including wording that states "contiguous tract of land exclusive of the wetlands...". *Mr. Patterson* agreed with this change.

ACTION: *Councilperson Reardon made a motion to approve the proposed amendment as amended, forward to Tom West to determine where it should be placed in the City Code, and then in the committee's recommendation to Mayor & City Council for their consideration, seconded by Mr. Patterson, all voting in favor, motion carried.*

5. Discussion & consideration of modification of required open space [exclusion of wetlands from open space, % of open space required for Options 1 & 2]

Mr. West explained the city's current buffer for wetlands in 50 feet from a tidal wetland and 25 feet from non-tidal wetlands. *Mr. West* read §197-50 (5) read into the record as follows:

A minimum of 25 feet of permanent buffer must be maintained around the outer boundaries of all wetlands, except for tidal waters, tidal tributary streams and tidal wetlands and from the ordinary high-water line of perennial nontidal rivers and nontidal streams where a fifty-foot (50) permanent buffer is required.

Mr. Beaufait stated there is a desire for a 50-foot buffers for wetlands and 100-foot buffers for tidal wetlands. Buffers are also part of the open space. Every time they increase the distances there is an impact on the overall development. Do they want to change what there currently is in the code and is there a good reason to make any changes?

Mr. Patterson questioned what the county has? *Mr. West* stated they currently have the same but are looking at increasing them. *Mr. Beaufait* at this time they do not know what changes the county will make and the city needs to decide what they want to do. If the county makes any change, then the city could look at their actions at a future time.

Mr. Reardon stated the planning commission submitted to city council a recommendation that the city adopt a 50-foot buffer for all wetlands. Council did not feel that was appropriate without knowing why it should be done. He believes a 25-foot nontidal land buffer is sufficient.

Mr. Beaufait suggested continuing with what is in the code.

Maryanne Ennis, Harborview Road explained the state recommends a 100-foot buffer from tidal wetlands. FEMA states that a 100-foot setback from wetlands would increase the city's points. The city shouldn't be worried about annexing property to do something for the developer. They have to think about the people in Lewes and the flooding. What they are doing is affecting the people that live in Lewes. Don't worry about property rights and they need to be more stringent for these reasons.

Mr. Beaufait stated he doesn't want the restriction in the annex zones to be different from what is already in the city. He feels there would be a conflict. *Mr. West* stated they are stricter now because there are no wetland buffers on property already in the city. *Mr. Reardon* stated the planning commission is working on it and will be bringing a recommendation to council.

Doug Spelman, Samantha Drive, Canary Creek, stated a higher density is allowed in Annexation zones than in city so that is a contradiction.

Ms. Townshend clarified that the density in the annexation zone is not higher than the remainder of the city. The R-2 zone allows for 10,000 s/f lots, which would equate to 3+ units per acre. Even with the cluster option 2, the AX zones only allow for 2.6 units per acre. There are areas throughout the city that permit higher than in the annexation zones. *Mr. West* agreed. The lot sizes may be smaller, but when the open space is factored in, it is not higher density.

Joe Hoechner, Planning Commission, questioned if a man-made drainage ditch would require a buffer? These should be excluded from the buffers. *Mr. West* stated wetlands are not exclusive to natural features. A wetland is a feature that is handling water. There are a number of definitions that contribute to the wetlands. He is not sure a tax ditch would qualify unless there is vegetation that would qualify.

Marta Namack, New Road, stated they need to prepare for climate change with larger buffers and lower density.

Mr. Beaufait questioned the real purpose of the buffers?

Mr. West stated it depends on the type of wetlands. The problems in Sussex County could be different than coastal Lewes. If the buffers are for water quality, the buffers are usually bigger. In Lewes, flooding is a concern with the expanding of the wetlands. Buffers are a part of flood control and part of preserving land for wetlands, if they are increasing. Wetlands are defined by a community in determining what wetlands they are talking about and what the goals are, and different areas would have different goals. That is why there are different numbers. It depends on what the biggest issues are in that area.

Mr. Patterson questioned what would be a down-side in increasing the size of the buffers in Lewes? Buffers can be included in open space.

Mr. Beaufait stated it would be a loss of developable land and so they have to consider if a 100-foot buffer is really needed. He is concerned that it would be easy to make the buffer 100-feet and disregard the developer, but would that be fair. They have a responsibility not just to the residents or to the developer but to everyone. They are trying to address it in an equitable way. They may not make everyone happy, but they have to try to be reasonable.

Maryanne Ennis, Harborview Road, stated the city hired consultant Rebecca Quinn for a report that stated they should have 100-foot buffers and the city is not paying attention to this recommendation. Will the city listen to the hydrologist or the speakers from the water workshop? Why are they not listening to the experts they are hiring?

Mr. Beaufait stated they will not accept it just because they say it. There are many issues that need to be considered. They are listening to the residents and will do the very best they can.

Ms. Ennis stated council is not responsible to the developers, they are responsible to the residents of Lewes.

Mr. Beaufait brought the discussion back to the wetland buffers and how to proceed. *Mr. Reardon* stated they have listened to what everyone has said, and he believes they should stay with the 50 & 25 foot buffers.

ACTION: *Mr. Reardon made a motion to stay with the current buffers, seconded by Mr. Kennedy.*

Mr. Beaufait stated if the county determines in the future to make changes, the city should relook at the issue. They are imposing buffers on annexed land that are not imposed within the city. If the planning commission comes back with a recommendation that is different, they would consider it.

Mr. Kennedy stated he would support the motion. They need to remember that any changes will only be for property that is annexed into the city. It makes sense to continue to mirror the county knowing if the county changes, council can take another look at it.

Ms. Townshend stated she is comfortable with the motion. The challenge is that these zones only apply to annexed property. Developers will stay in the county if they don't like the city code offers. They need to play close attention to what the county is doing.

Mr. West agreed there are a number of concerns by the community. The water workshop addressed the issue. Whatever the county does, it would be appropriate for the city to consider it.

Mr. Beaufait stated city council is always open to looking at additional information. City Council has already turned down a recommendation for 50-foot buffers.

Ms. Townshend clarified at the moment they are encouraging that the buffers be outside of the lot lines, therefore, if the buffer is outside of the lot lines then the building setback is going to be more than 50-feet. Through the design process they need to make sure that line is in the open space, it does provide more benefit in that there is more distance.

Chairperson Beaufait called for the vote.

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

6. Open Discussion & consideration of depth of buffers [wetlands, adjacent to State roads, setbacks at rear property lines, and restrictions of fences and berms]

Mr. Beaufait explained the state roads in question are New Road, Kings Highway, Gills Neck Road, and Savannah Road. Certainly, along state roads they want to have sufficient buffers as to maintain what the Byways Committee is trying to do and beautify the properties along New Road. He suggests requiring a 75-100-foot buffer along the state roads.

There was discussion about where the buffer would be measured from. *Mr. Beaufait* stated he thought it should be from the right of way. *Mr. Patterson* stated it should be from the center line of the road.

Ms. Townshend explained DeIDOT's right of way standard is 40 feet from the center line on these types of roads. If they don't have it, the developer will have to dedicate right of way to reach it. DeIDOT will have to survey the property and establish the right of way line.

Mr. West stated DeIDOT will meet with the developer to discuss the required right of way and it is always based on the center line of the road.

Mr. Beaufait stated there will be a state defined shoulder and there may be land free from the shoulder beyond that. Should that be counted as a part of the buffer or does the city set a dimension for the developer to work with, regardless of what the state defines.

Mr. West stated he believes it make sense for the city to use the right of way, which would be determined from the center line of the road. *Mr. Baynum* stated road are not always in the center of the right of way.

Ms. Townshend suggested looking at what the county does. *Mr. Beaufait* agreed, and they need to talk to the Byways. We all recognize it is important for New Road to look nice. They will work on it and come back with a recommendation.

Joe Hoechner, Planning Commission, stated they need to consider utility easements also. They may need some input from the BPW. *Ms. Townshend* stated most utilities are put within the right of way.

Mr. Beaufait stated one of the other issues is the set back from the rear property line. *Mr. Baynum* explained the current rear setback is 15 feet from the main structure. *Mr. West* agreed and for the cluster option it is between 15-25 feet.

Mr. Beaufait stated a lot went into trying to determine establish the setback and they may not want to change it.

Mr. West stated if they consider changing the buffers, they may need to look at it. In Sussex County it is from the structure.

Mr. Beaufait stated they need to define if the buffers will be inclusive or exclusive of the lots. *Ms. Townshend* stated it is cleaner if the buffers are outside of the property line. *Mr. Baynum* agreed. *Mr. West* pointed out that if it is a condo setup, there are no lots and they will not have to deal with it. Then you would have setbacks from other structures.

Mr. Beaufait stated the other issue is whether or not to allow berms or fences within the buffer. He is not sure why they would not permit it.

Marta Namack, New Road, explained she raised this issue because in the AX zone it allowed berms and/or fences instead of a buffer. She doesn't believe this is a good idea, so she proposes they don't allow this instead of a buffer. It would be allowed within the buffer but not instead of a buffer.

Mr. West stated the current code states it could be a fence instead of a buffer. *Ms. Townshend* stated they also need to look at how fences are address along New Road.

7. Set meeting date for additional meeting in March/April

March 22 2:30pm
March 28 10:00am

8. Adjournment: The meeting adjourned at 11:26am.

Minutes submitted by,

Alice Erickson
Recording Secretary