

**MAYOR & CITY COUNCIL
REGULAR MEETING MINUTES
March 18, 2019**

The Mayor & City Council met on **Monday March 18, 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, Financial Officer/Asst. City Manager Ellen Lorraine McCabe 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:** *Mayor Becker* made the following announcements:
- Renovations to city hall will begin March 19th and go through the beginning of May. All meetings will be held in the Margaret Rollins Community Center's city meeting room.
 - The annual free city-wide bulk pickup will be held April 10, 17 & 24. Please contact city hall to schedule a pick up. Items that will not be allowed can be found on the city's website.
 - The BPW will be holding a hazardous household waste drop off on April 27th in conjunction with the Lewes Police Department Drug Take Back event.
 - DNREC is offering the opportunity to purchase composting bins at a reduced cost. The city has worked with DNREC in the past when they offered rain barrels. There will be three pick up locations and can be ordered by going to the DNREC website.
- D. ADDITIONS AND/OR DELETIONS TO THE AGENDA:** Additional agenda item I-14, Comments from the Table and agenda item I-6 will be moved to the April agenda.

E. PROCLAMATIONS, RECOGNITIONS & APPOINTMENTS

- 1. Presentation of a Proclamation proclaiming Saturday May 18, 2019 as National Kids to Parks Day in the city of Lewes**
- 2. Presentation of the 2019 Jefferson Awards:** *Intern Madeline Milligan* gave a presentation on the 2019 Jefferson Awards. This year's program is called Multiplying Good, the Power of Service to Others.

Lewes Phase 1 results: 5 projects, 1035 volunteers with 861 volunteer hours, impacted 545 lives with a financial impact of over \$21.9K to the Lewes area.

State of Delaware Phase 1 results: 175 projects, 38,713 volunteers with 155,037 volunteer hours, impacted 164,600 lives with a financial impact of over 3.9 million.

Mayor Becker presented the following Jefferson LEAD 360 awards:

- State of Delaware Phase 2 - Buckets of Love recognition to All Saints Episcopal Church Youth Group
- All Saint's Episcopal Church Youth Group – Ditty Boxes
- Girl Scout of the Chesapeake Bay – Darby K: Champion's Giving Back
- Girl Scout of the Chesapeake Bay- Mickayla: Hope Bags
- Isabella Leishear: DelaCare
- **Mayor's Top Project:** Hollymount 4-H Club: Carving Pumpkins for Cape Henlopen Fantasy Trail

- 3. Presentation & possible action on the appointment of the Historic Preservation Architectural Review Commission (HPARC)**

Mayor Becker recommended the appointment of the following individuals to the newly formed Historic Preservation Architectural Review Commission (HPARC): **Barbara Warnell, Philip Franz, Bill Landon, George Thomasson, Michael Weidner, Larry Adams, and Joe Hoechner**. Councilpersons Fred Beaufait and Bonnie Osler will serve as ex-officio members while the committee is organizing.

ACTION: *Deputy Mayor Beaufait* made a motion to approve the appointment of *Barbara Warnell, Philip Franz, Bill Landon, George Thomasson, Michael Weidner, Larry Adams, Joe Hoechner (LPC)* to the Historic Preservation Architectural Review Commission, with Councilperson Fred Beaufait and Bonnie Osler as ex-officio members, seconded by Councilperson Osler all voting in favor, motion carried.

4. **Presentation & possible action on appointments to the Public Art Committee**

Mayor Becker stated Jane Ellan Golde and Lorelei Meanor have stepped down from the Public Art Committee due to health issues. It is his recommendation to appoint **Tony Boyd Heron** and **Carole Somers** to fill these seats.

ACTION: *Councilperson Morgan made a motion to approve the appointment of Tony Boyd Heron and Carole Somers to the Public Art Committee, seconded by Councilperson Reardon, all voting in favor, motion carried.*

5. **Presentation & possible action on an appointment to the Traffic Safety Committee**

Mayor Becker recommended the appointment of **Robert Quinn** to fill the vacated seat of Bernard Clark.

ACTION: *Deputy Mayor Beaufait made a motion to approve the appointment of Bob Quinn to the Traffic Safety Committee, seconded by Councilperson Reardon, all voting in favor, motion carried.*

F. **MINUTES:**

1. **Presentation & consideration of the Mayor & City Council regular meeting minutes from February 11, 2019, budget meeting minutes from February 12, 2019, February 15, 2019, February 21, 2019, February 26, 2019 and March 4, 2019, special meeting minutes from January 31, 2019 and council retreat minutes from January 16, 2019.**

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

2. **Presentation & acceptance of the Board of Public Works meeting minutes from January 23, 2019.**

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 February 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 February 2019 City Manager's Report.

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

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

Mayor Becker explained the Lewes Fire Department gave a presentation to city council during the budget process to explain the cost of supplying services to the greater Lewes area. As a result, it was determined the city would be increasing their contribution to the fire department from \$30,000 to \$50,000. He encouraged the residents of Lewes to make their personal donations. He thanked the Lewes Fire Department for all their services to the city of Lewes and the surrounding area.

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

H. UNFINISHED BUSINESS:

1. **Presentation & possible action on Amendments to the Lewes City Code, Chapter 59, Animals, Article II, Felines.**

Mayor Becker thanked *Walt Fenstermacher* of the Brandywine Valley SPCA for all his efforts in helping the city to address the ongoing feral cat population and crafting a new ordinance for the city.

Councilperson Morgan explained his proposed changes to the city's current feline ordinance. The goal is to have the city's ordinance in line with the State Code. He met with the SPCA to discuss and has adopted most of their suggestions. Delaware does not require a license to trap cats and the SPCA feels this is appropriate because then good Samaritans can trap feral cats and take them to a shelter.

Mr. Morgan explained one of his neighbors in Cape Shores is taking care of a cat colony, but another neighbor would rather it not be in his neighborhood. She trapped one of the cats and took it to the SPCA for vaccination, neutering and ear tipping and there was a charge. This made *Mr. Morgan* realize this may keep people from taking cats to the SPCA. He has added a provision which stated if a resident takes a cat to the SPCA, or another no killer animal shelter, the city will reimburse that cost up to \$75.00. He feels the SPCA is happy with this and hopes council can accept this as it is not a lot of money.

Council members stated they had not received the proposed ordinance. *Mr. Morgan* stated he disseminated it a few days ago. There have been email issues at city hall and council and staff did not receive the proposed ordinance.

Councilperson Morgan stated there is one provision *Mr. Fenstermacher* does not agree with. The provision he added states if someone in Lewes traps a cat, takes it to a shelter to be neutered, that cat can not be returned to the city of Lewes. The trap, neuter, return program calls for returning the cat to its original location. For several reasons he feels it is not appropriate in the city of Lewes:

1. He has a neighbor that lives close to the other neighbor that doesn't want cats in his yard. He would hardly trap a cat, pay the fee, only to bring it right back into his yard.
2. The State Code singles out "migratory bird flyways" as an area where a cat can't be relocated to. It doesn't say cats can't be returned so under the state law they could be returned to the same location, even though Lewes is very much a migratory bird flyway.

The Fish and Wildlife Services recognizes a broad area of Delaware as a bird flyway and the DNREC wildlife office recognizes a migratory bird flyway at least as far as the rivers are tidal in Delaware. Lewes is right on the coast. While it wouldn't violate the state statute for Lewes to allow cats to be returned to the city, for the reason that it would subvert the conservation goal that the state had in mind when it drafted that provision and simply for other conservation reasons, he added a provision that if a cat is trapped in the city of Lewes, it cannot be returned to the city of Lewes. Scientific literature indicates that cats are predators and have endangered the viability of many birds, reptiles and small mammals. He feels the last thing they want to do is replenish the feral cat population to kill more birds. This is why he inserted this provision and would like to hear from *Mr. Fenstermacher*.

Mayor Becker agreed he would like to hear from *Mr. Fenstermacher*. Also, the provision for reimbursing a city resident for taking a cat in to be spayed/neutered, he has indicated there may be other funding sources for this besides the city. *Mr. Fenstermacher* has agreed there may be some state funds available.

Walt Fenstermacher, SPCA, thanked the city for allowing them to be involved in the redrafting of the city's ordinance, given revisions to the State Code. He had been involved in the draft of the new state law. They did hear from all aspects of the community regarding feral cats and the new state law. The new law is really only affecting the shelter's return to field programs. It is enabling shelters to provide a service to get involved with the community to let them know there is a service available to trap and neuter in Sussex County and to have a humane live release if the cat is not a candidate for adoption. They wanted to look at what would be successful in the city of Lewes and with that they looked at surrounding communities close to Lewes. Rehoboth has had a successful turn-around with their feral cat population, so their recommendation was to mirror that program as close as possible. Having an uncontrolled feral cat population presents a number of concerns for everyone in a community. Rehoboth has adopted a program that reflects the state law and allows residents to trap and take animals to the Brandywine SPCA in Georgetown. It is their recommendation that this service be a model for the city of Lewes.

He feels Mr. Morgan did a great job with the removal of some of the barriers regarding trapping. The departure they have is the section regarding not allowing cats to be returned to the city of Lewes. The Brandywine SPCA supports the trap, neuter, return model so that an animal that is healthy but not suitable for adoption, would be returned to their original location. They request the city reconsider the language and allow healthy animals to be returned to Lewes. The trap, neuter, release program has been a very successful model in controlling the feral cat population.

Councilperson Osler questioned if the Rehoboth ordinance is similar to what is being proposed? *Mr. Fenstermacher* stated there are similarities, with the exception regarding the option to return a cat to its original location. *Mr. Morgan* stated the Rehoboth policy has overlooked the state statute barring the relocating of cats. It is a model of simplicity, perhaps it is over simplified. *Mr. Fenstermacher* stated the state law to prevent the relocation of cats would not necessarily affect animals being returned to their original area.

Ms. Osler stated she is not ready to vote on the proposed ordinance. *Mayor Becker* agreed and stated it would be tabled until the April council meeting. The Brandywine SPCA is a no kill shelter and that is the direction they are trying to get to.

George Terrell, 16 Cape Henlopen Drive. *Mr. Terrell* stated he has reviewed the current code and there is a lot of language included that he finds disturbing regarding what is to be done with a cat once it has been trapped.

Mayor Becker clarified all that language would be removed in the new regulation.

Mr. Terrell also disagreed with not bringing the cats back to Lewes. The colony helps to stabilize the feral cat population and keep other feral cats from coming into the area. It has been scientifically proven that the trap, neuter, release program is the best way to manage feral cat populations. It is also the most cost effective.

Mayor Becker will have a copy of the draft ordinance available to the public.

Brook Hedge, 901 Savannah Road. *Ms. Hedge* stated she disagreed with not returning cats to the city of Lewes. Cat are very tenacious, and they will return to their original location if they want to, no matter where they are released.

2. Presentation & possible action on an ORDINANCE to amend the Future Land Use Map of the city of Lewes Comprehensive Plan as follows: *(Public hearing was held January 15, 2019)*

- **335-8.07-105.00 is classified as Residential.**
- **335-4.15-69.00 is classified as Open Space.**
- **335-4.15-70.00 is classified as Open Space.**

City Planner Tom West explained that in October 2017 the city updated and adopted the 2015 Comprehensive Plan. The city then had 18 months to bring the zoning ordinance into compliance with the comp plan. This agenda item and the next one is an adjustment to the zoning ordinance and the comprehensive plan mapping to achieve that compliance.

Savannah Edwards reviewed the changes. It was the recommendation of the planning commission to approve these map changes. City council held a workshop and public hearing on January 15, 2019.

- **335-8.07-105.00: Institution to Residential.** This property is near St. Paul and Fourth Street, and was a church converted to residence.
- **335-4.15-69.00 & 4.15-70.00: Residential to Open Space.** Both properties are located at the end of Smyrna Avenue. These properties were zoned residential off of the paper street, Smyrna Avenue. City council abandoned Smyrna Avenue and rezoned it to Open Space, therefore, these parcels needed to be also.

There is also a letter from the State PLUS process and there are no significant recommendations and approved all three changes to the comprehensive plan. There was nothing of significance from the public hearing.

ACTION: *Councilperson Reardon made a motion to approve the Ordinance amending the Future Land Use Map of the city of Lewes Comprehensive Plan as presented changing parcel 335-8.07-105 from Institutional to Residential and parcels 335-4.15-69.00 & 335-4.15-70.00 from Residential to Open Space, seconded by Councilperson Osler, all voting in favor, motion carried.*

3. Presentation & possible action on an ORDINANCE to amend the Zoning Map to rezone: (*Public hearing was held January 15, 2019*)

- **335-8.07-137.00 from R4 (H) to CF(HC)**
- **335-8.15-40.00 from R4 to OS**

Ms. Edwards reviewed the proposed amendments to the zoning map. These amendments were reviewed at a city council public hearing held on January 15, 2019. There were no significant comments at the hearing and there was no State PLUS review required.

- **335-8.07-137.00: R4/H to CF/HC:** This parcel was a residential lot but now will be use as a parking lot for Beebe Hospital.
- **335-8.15-40.00: R4 to Open Space:** This parcel is located behind the new library. It was a residential parcel which was purchased by the city and needs to be rezoned as open space.

ACTION: *Councilperson Reardon made a motion to approve the Ordinance amending the zoning map as presenting, rezoning parcel 335-8.07-137.00 from Residential Medium Density/Historic District (R4/H) to Community Facilities/Health Care (CF/HC) and parcel 335-8.15-40.00 from Residential Medium Density (R4) to Open Space (OS), seconded by Councilperson Osler, all voting in favor, motion carried.*

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

Ms. Townshend explained this is a redo of a previous agreement. Council required clarification on what DNREC meant by maintenance responsibilities. She reached out to DNREC and they have added language, I. b. "DNREC shall be responsible for major trail repair or reconstruction of the project. This effort may be supported through multiple funding sources including statewide capital rehabilitation and maintenance programs, and eligible grant projects. The city of Lewes agrees to support DNREC in seeking funding through these programs."

There was also an additional language under II. (e) Termination c. Termination of Funding. It previously stated, "Validity and enforcement of this MOU is subject to appropriations by City Council", they have added "and the General Assembly of the State of Delaware."

She does not have Exhibit A. (listed in I. a.) which is the contract with DelDOT for the trail. She can get a copy of that contract, but the limits are from Freeman Highway to the Lewes-Rehoboth Canal.

Councilperson Osler requested clarification that this applies to the trail itself, not with the right of way that continues to be owned by DelDOT. *Ms. Townshend* agreed, but in this area there is no grass or landscaping.

Ms. Osler stated the city will have to do "minor patching and crack seal the mainline trail, site amenities, (benches, bike racks and bollards)...". *Mayor Becker* clarified it will be maintained 'as built'.

Mr. Morgan questioned that the city is responsible for trash pickup. Is there a procedure in place for doing this? *Ms. Townshend* stated street personnel go out to pick up trash periodically. They don't feel this will be a burden on staff or a major expense at this time.

ACTION: *Councilperson Morgan made a motion to approve the city manager to sign the agreement, seconded by Councilperson Reardon. The motion carried with a vote of 4-1, Deputy Mayor Beaufait voting against the motion.*

H. NEW BUSINESS:

1. Presentation & possible action on a RESOLUTION to schedule a public hearing on LPC RECOMMENDATION 620 to approve the proposed site development plan entitled Assisted Living Facility Lewes Medical Development, submitted by David, Bowen & Friedel, Inc. to create a 220,245 s/f senior living facility on an 8.55-acre parcel of land (SCTM 3-35-8.00-36.08, along Kings Highway.

Mr. West explained this is to set a public hearing to review the site development plan for the assisted living facility along Kings Highway. This recommendation comes from the planning commission.

ACTION: *Councilperson Osler made a motion to schedule the public hearing on Monday April 22, 2019 at 6:00pm, seconded by Councilperson Reardon, all voting in favor, motion carried.*

2. Presentation & possible action on LPC RECOMMENDATION 621 to deny the request from Furbo, LLC to waive the city requirement for 10% Open Space but to include that land in a “Conservation Easement” written into the sales agreements in conjunction with a subdivision application to create six (6) lots at the intersection of Anglers Road and E. Market Street SCTM 335-4.20-97.00, 97.01 & 97.02.

City Planner Tom West explained these three recommendations are a part of a major subdivision request at the corner of Anglers Road and E. Market Street. The planning commission has reviewed the subdivision and has granted preliminary approval. The developer has requested three waivers in conjunction with the subdivision, which as per the code must go to city council for consideration. It is the recommendation of the planning commission to deny all three waivers.

William Huntley, Ferbo LLC, 38 Cape Henlopen Drive, Lewes DE. He is the sole member of Ferbo LLC and owner of the property. He has requested three waivers from the major subdivision ordinance. He believes there are merits in these waivers and would like city council to consider approving them.

Mr. Huntley explained it is a requirement of a major subdivision to offer open space. This is barely a major subdivision, with only six (6) lots. It is their assumption that because open space must be maintained, there would need to be an HOA formed by the property owners and would create a burden. It was always their intention to provide for open space, but they proposed to include the open space into a couple of the lots and therefore, would belong to the property owners and would have the responsibility to maintain them. They were going to restrict building on them through deed restrictions. The city solicitor stated that the problem with deed restrictions is that the city would have no enforcement rights. It was suggested a better way would be a conservation easement. It would still belong to the property owners but would give the city enforcement rights. The proposed area would conform to open space in terms of size and would be owned by lots 1 and 6.

Councilperson Morgan questioned how the city would enforce a conservation easement? *Attorney Mandalas* explained a conservation easement would be drafted by the owners, at their expense, to be reviewed by the city and the city would be a party to the easement and have rights to enforce the open space.

Councilperson Morgan questioned why they are trying to avoid an HOA. Is it because of the expense? *Mr. Huntley* stated it is just because of the cumbersome process. These houses will probably be owned by part-time vacationers and it could be problematic. It would be solely for the purpose of mowing the grass and he does not want to impose it on future homeowners. With the conservation easement the responsibility would fall to the property owner.

Councilperson Morgan did not agree that an HOA would be a burden. They are wonderful organizations to bring people together and to be able to communicate, though six would be a small HOA. *Mr. Huntley* agreed six is a small number and there are no internal streets, therefore no issues of plowing snow. There is nothing for an HOA to do other than mow the grass.

Councilperson Morgan stated there is a definition of open areas in the subdivision code and it states land or water, other than lots, set aside by the developer, so arranged as to permit ingress, egress or passage over and through the area.

Mr. West stated there is also a definition of permanent open space. It is one of the recommendations of the updates to make the two definitions consistent. Permanent open space is to be a part of the proposed development to provide some recreation, usually common open space and is a part of the subdivision process review. Each development is different, but it is also to help mitigate the negative impacts of development on an area.

Councilperson Osler read into the record from Chapter 170-26 B. 1. “Required: (a) Open space shall be provided within all subdivisions. Open spaces are typically maintained as common open space areas consisting of but not limited to lawns, trees, landscaping, sidewalks or pathways and benches. Open space systems shall consist of both active and/or passive uses and area.”

Councilperson Morgan read (d) “The size and location and configuration of open space shall provide adequate access to residents within the subdivision and enable appropriate access for maintenance.”

Mr. Huntley stated if they provide open space as per the code, it will be the exact same piece of ground in all ways. It will conform in every respect to open space. The only difference will be that it will belong to lots 1 and 6.

Ms. Osler stated that if it belongs to lots 1 and 6, who will be able to access it? What if the property owner doesn’t want other residents to access it, then what? She stated the benefits of this would be to ensure viewscapes, but that is just one aspect of enjoying common open space.

Atty. Mandalas stated a conservation easement is usually arranged for the conservation of natural resources so that nothing is built. They could also make it a general easement for the benefit of the six lots as well.

Ms. Osler stated they are asking for an exception under 170-7 A, which states “Where an applicant shows that strict compliance with the requirements of this chapter would result in *extraordinary hardship* to the applicant or to the City’s objectives...” He is describing the hardship that open space would require an “unnecessary hardship on six future landowners by creating an HOA”. Her problem is how they can grant the request; what is the extraordinary hardship?

Mr. Huntley stated it would be the imposition of the HOA on the six property owners, which would include forming the organization, electing officers, and holding regular meetings. *Mr. West* stated the ordinance does not require an HOA to be set up, but it does require 10% common open space.

There was discussion about the possibility of dedicating the open space to the city. *Mr. Morgan* questioned if *Mr. Huntley* would consider dedicating it to the city. It does border on land currently owned by the city. *Ms. Osler* stated the property would be left in its natural state. *Mr. Huntley* stated it was their assumption the city would not want it. It will need to be maintained to stay the way it currently is. *Mayor Becker* pointed out that if the property was dedicated to the city it would be very difficult to access it as it is land locked. *Mr. Morgan* stated he would be agreeable to dedicating the open space to the city, even if it isn’t accessible.

Ms. Osler doesn’t want to put the city in a position where it has to maintain it. She doesn’t believe the forming of an HOA would be considered an extraordinary hardship and would not vote to approve the waiver. The dedication of the open space to the city would require further discussion.

Atty. Mandalas stated this is only at preliminary consent and further discussion regarding dedication could happen if the waiver is denied. *Mayor Becker* agreed the dedication issue would require a lot more discussion.

Deputy Mayor Beaufait suggested sending it back to the planning commission to look at other options. *Mayor Becker* stated that could be a part of a motion to deny the waiver.

ACTION: *Deputy Mayor Beaufait made a motion to affirm the planning commission’s recommendation to deny the waiver but suggested the developer work with the city solicitor to see if there is a solution and present it back to the planning commission, to include consideration of the potential dedication of the open space to the city, seconded by Councilperson Osler, all voting in favor, motion carried.*

3. Presentation & possible action on LPC RECOMMENDATION 622 to deny the request from Furbo, LLC to waive the city requirement to add a sidewalk along E. Market Street to match sidewalk along Anglers Road, in conjunction with a subdivision application to create six (6) lots at the intersection of Anglers Road and E. Market Street, SCTM 335-4.20-97.00, 97.01 & 97.02.

Mr. Huntley stated this development is at the intersection of Angler’s Road and East Market Street. They are only referring to E. Market Street. There are currently no sidewalks on E. Market and there already is a sidewalk along Anglers Road to which they will probably have to make cuts for driveways.

East Market Street is very different from Anglers Road. The sidewalk would only be a small stub and he feels would have no real benefit to the area. There are no sidewalks on the other side of the street for the Hotel Blue. Also, there is a storm sewer grate where the sidewalk would be and would end up in the sidewalk which could be a walking hazard.

Ms. Osler questioned if the grate could be relocated. *Mr. Huntley* did not know. *Mr. West* stated it has been addressed by the Board of Public Works and is in the engineer’s report. There aren’t many storm water inlets in this area and this one was recently installed.

Mr. Huntley stated he feels if a sidewalk and curb were installed it would be a problem with the runoff going into the street. The swale would no longer exist so any runoff from the lots would run across the sidewalks and be forced into the street. Also, sidewalks increase the amount of hard surface. There are already driveway entrances off of E. Market Street that are in the wrong location. They will have to be moved and there are pipes that would have to come out and the entire swale would be reworked. They are proposing as a part of that work to tap into the storm sewer to guide the storm water into that drainage system.

Ms. Osler stated they will have to install driveways anyway, so why would the installation of a sidewalk stop any reconfiguration of the stormwater system.

Mr. Huntley stated the water running off the property would then run into the street where currently it is running into the swale. If the water goes into the street, they will not be able to direct it into the storm sewer. *Mayor Becker* stated unless the storm sewer is relocated. *Ms. Townshend* stated GMB addressed this in their report.

Deputy Mayor Beaufait stated he agrees it would be a sidewalk to no place and would cause more problems than it would solve. He doesn't see the purpose of a sidewalk.

Drew McKay, Chair, LPC stated the planning commission's view was the engineer's report stated it would improve drainage, there would be cut-outs on that side that would go through the swale for the driveways and the installation of curbs and moving the drain into the street would also facilitate additional drainage rather than just from that property. Ultimately, while it might be a sidewalk to nowhere, there is a development there and under the ordinance on a major subdivision a sidewalk is required. They did not think the improvement of the property by adding the sidewalk, curbing and moving the drain should be avoided because it would improve the entire area's drainage and the use and facilitation of people visiting those houses.

Councilperson Morgan stated there is a reason for a sidewalk and feels it would serve a purpose.

Councilperson Osler agreed. Sometimes sidewalks can be done in sections and the city can require sidewalks be installed so the fact that there isn't additional sidewalk doesn't mean there never would be. This will be a transition from commercial to a residential area and that could mean there will be people walking. They may be able to walk only part way on the sidewalk, but they will have some. In the city engineers report it seems that he feels the drainage issue could be addressed with a sidewalk, gutter and grate. So, there would be advantages to not granting the waiver and again, she is not hearing an extraordinary hardship to justify granting this waiver.

Mayor Becker explained he was on council when the sidewalks on Anglers Road were installed. There were no sidewalks and they were installed as a part of the street rehabilitation. Also, there was a requirement with the Anglers Nest development that sidewalks be installed on that side of the street all the way up to Savannah Road. The city installed sidewalks along Anglers Road all the way from Savannah Road to Irish Eyes because there was an understanding that the amount of pedestrian traffic was growing, and they needed a safe place to walk. He has concerns about the swale where it is currently located and thinks once the houses are built, the swale will be moved one way or the other. Draining runoff onto the street and directing it to a basin would have merit. He would have concerns about granting a waiver to avoid installing sidewalks.

ACTION: *Deputy Mayor Beaufait* stated that having heard the arguments, he would make a motion to affirm the planning commission's recommendation to deny the waiver, seconded by *Councilperson Osler*, all voting in favor, motion carried.

4. Presentation & possible action on LPC RECOMMENDATION 623 to deny the request from Furbo, LLC to waive the city requirement to provide for street lights along Market Street in a style to match adjacent existing lights and of a design to avoid "up pointing" light pollution in conjunction with a subdivision application to create six (6) lots at the intersection of Anglers Road and E. Market Street, SCTM 335-4.20-97.00, 97.01 & 97.02.

Mr. Huntley stated Anglers Nest has internal roads and street lights were provided on those streets, but no additional street lights were required on Anglers Road. They will be on both Anglers Road and E. Market Street and there are already street lights and there is a lot of ambient light that contributes to the illumination of the area. He feels this requirement is more for a real major subdivision. There will be no internal roads and there is already light from the surround area. He feels additional light would not be practical or necessary. Through a number of photos, *Mr. Huntley* reviewed the lighting that is currently available in the area.

Councilperson Morgan stated personally he doesn't like ambient light, but most people want to see where they're going.

Councilperson Reardon didn't believe there was a lot of light and with additional homes, lights would be needed for public safety.

Councilperson Osler stated the Anglers Nest lighting is in front and near the sidewalks. The average age of Lewes residents is over 65 and providing more lighting is better. She feels street lights would be prudent.

Tom Panetta, Board of Public Works, stated the BPW requires all new services be installed underground. The power line currently ends before this property on the other side of the marsh. There is an LED light on this side of the street down that far, but from there to the corner it is going to require new electrical service. LPC's recommendation was for downlighting and night sky sensitive. He feels this is something they should be considering throughout Lewes.

Mayor Becker stated with the additional traffic on E. Market Street from these new houses, street lights would be preferred.

ACTION: Councilperson Reardon made a motion to affirm the planning commission's recommendation to deny the waiver, seconded by Deputy Mayor Beaufait, all voting in favor, motion carried.

5. Presentation and possible action on an ORDINANCE to amend Chapter 183, Vehicles and Traffic, Article II, Parking; Article VI, Special Zones and Areas; Article XI, Parking Meters; Article XII, Schedules; Article XIII, Parking, Stopping or Storage of certain types of motor vehicles in certain areas of the city, Code of the city of Lewes, Delaware relating to Parking and Fines.

Ms. Townshend explained this is a follow-up from council's budget meetings where they reviewed parking fines of neighboring communities and determined Lewes' fees were much lower. Mayor & City Council have agreed to increase parking fines from \$20 to \$30 and allow 7 days to pay, instead of 72 hours.

Ms. Townshend reviewed the changes to:

- Chapter 183 Vehicles and Traffic, Article II, Parking, §183-12 Violations and penalties,
- Chapter 183 Vehicles and Traffic, Article VI, Special Zones and Areas, §183-18 Loading zones designated
- Chapter 183 Vehicles and Traffic, Article XI, Parking Meters, §183-37 Violations and penalties
- Chapter 183 Vehicles and Traffic, Article XIII, Parking, Topping or Storage of Certain Types of Motor Vehicles in Certain Areas of the City, §183-63, Violations & penalties

Mayor Becker stated council has agreed to extend the hours of operation of the parking meters to 8:00pm. Will this need to be brought back to council to make this change. Ms. Townshend stated they will need to bring the meter table back to the next council meeting for approval.

ACTION: Councilperson Osler made a motion to approve amendments to Chapter 183, Vehicles and Traffic, Article II, Parking; Article VI, Special Zones and Areas; Article XI, Parking Meters; Article XII, Schedules; Article XIII, Parking, Stopping or Storage of certain types of motor vehicles in certain areas of the city, Code of the city of Lewes, Delaware relating to Parking and Fines. Chapter 183 Vehicles and Traffic, as presented, with the understanding the final version of changes to Schedule IV, Time Limit Parking, will be taken up at next month's meeting, seconded by Councilperson Reardon, all voting in favor, motion carried.

6. DELETED: Presentation and possible action on an ORDINANCE to amend Chapter 63, Beaches, Article I, General Restrictions; Article VII, Jet Skis; Article IX, Fishing on Beach; and Create Article X, Kiteboards/Kiteboarding, Code of the city of Lewes, Delaware relating to Allowed Beach Activities.

7. Presentation & possible action on a RESOLUTION setting a public hearing to amend Chapter 197-58 (C) designating that "historic properties" must be reviewed under the same standards as a "contributing structure".

Councilperson Osler explained this is about historic properties located outside the historic district, and the need to ensure they are protected, and bring them into the historic district.

Barbara Warnell, Chairperson, Historic Preservation Commission, explained there is a list at the state level and also, the National Register of Designated Houses that are significant to the city. People have gone to great lengths to protect their own houses, but the city needs to assist with the effort.

Mayor Becker stated he is willing to entertain the need to do this but they will need to identify the specific houses for the public hearing.

Councilperson Osler stated the idea is to say that if a property is on the historic property list, then it would be subject to preservation. It is the whole class of historic properties.

Mayor Becker stated they will need to identify the historic list to be used as a reference. There are multiple lists for historic properties, some local and some national. He is concerned the public knows what list they are using. *Ms. Warnell* stated they are hoping to use the same list used to identify contributing structures and would apply to houses outside the historic district.

Atty. Mandalas stated they will need to gather the information before a public hearing could be scheduled. The public needs to be clear on what is being addressed. *Ms. Warnell* agreed.

ACTION: *The setting of the public hearing was delayed until the necessary information is defined.*

8. Presentation & possible action on granting a permanent easement to DELDOT at the southeast corner of American Legion Road and East Savannah Road.

Ms. Townshend explained this is for the creation of a cross walk at American Legion Road and Savannah Road as part of the bike improvements. The DelDOT right of way is not wide enough for the necessary turn radius.

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

9. Presentation & possible action on a request to participate in the 2019 DNREC Mosquito Abatement Program.

ACTION: *Councilperson Osler made a motion to approve the city of Lewes participation in the 2019 DNREC mosquito Abatement Program, seconded by Councilperson Reardon, all voting in favor, motion carried.*

10. Presentation & discussion on the creation of a Lewes Police Foundation.

Daniel DeSimone & Jonathan Cherry are residents of the greater Lewes area and are retired career federal law enforcement officers of the United State Secret Service and the FBI. *Mr. DeSimone & Mr. Cherry* would like to start a Lewes Police Foundation. It would be a public/private partnership between the community's police department and its citizens with the goal to assist the police in accomplishing their mission. They will be working through the Greater Lewes Foundation. The Lewes Police Foundation can support many different items, to include equipment, technology, training, education, health awareness, community relations and events, such as the National Night Out. They pledge to work with the police department and the elected officials of Lewes. He distributed and reviewed information on how to run a police foundation, consistent with the US Department of Justice. The other document is the proposed agreement to establish the Lewes Police Foundation.

Councilperson Reardon question what the source of their funding would be. *Mr. DeSimone* explained funding would come from private donations, as well as, from businesses and other nonprofit organizations.

Councilperson Osler stated it is an interesting idea, but she is concerned about any expense to the city. She questioned if they had formulated what their first, second and third goals might be, depending on funding. *Mr. DeSimone* stated they do not want to encumber the city but want to work with the police and elected officials. They will look to the chief to come up with a list of priorities.

Chief Spell stated he is excited about the possibility. It is a good program, though usually established in a larger police department. He is excited about the community aspect of it as well. They need to see how much can be raised to determine what would be done with the funds.

Deputy Mayor Beaufait questioned if it would be better to set up a three-member board, to include one or two citizens and a councilperson, to review requests. *Mr. DeSimone* agreed there will be a board for the foundation. They feel it will be a sign of transparency to have the mayor and chief of police sign the founding document. They want the concurrence of the leadership of Lewes. The board would be comprised of a cross section of the community.

Councilperson Osler stated they are talking about two different boards. *Mr. Beaufait* is talking about who would approve distribution of funds to the police department. The way it is outlined it would be the police, whether in discussion with you or independently, who would provide a request and the foundation board of directions would review and say yes or no. Then it would be brought to the city for final disposition.

Mr. DeSimone stated the actual funding and disbursement would be by the advisors in concurrence with the foundation's board. The reason they have added the signatures of the mayor and chief of police is they wanted to show that they will be working in concurrence with the city.

Mayor Becker stated any disbursement could be brought back to the council for approval. The foundation could make a recommendation to city council for disbursement of funds to the police department.

Councilperson Morgan questioned if the approval of the mayor and chief would be required as it stands now. *Mr. DeSimone* stated no. He has received guidance for many sources, and they felt it was important to have elected or appointed officials separate from the approval process, so it didn't seem that the police foundation was an extension of the elected or appointed officials. He included the mayor and chief's signature to show a level of concurrence.

Councilperson Morgan reviewed suggestions he had on the agreement. He feels the city has to maintain control over the funding of the police department and the things on which the police department spends money. The agreement has the mayor and police chief as those that will concur. The charter states that the mayor and city council have all powers and must vote on everything. He would like to have mayor changed to mayor & city council. They want the foundation to be transparent therefore, it would need to be brought before the full city council.

Mr. DeSimone stated they see it as concurrence more than approval. Likely in good faith they would not do something which council did not concur, however, by requiring approval based on the advice he received, it would be too close a relationship for both the police chief and the mayor.

Councilperson Morgan stated he doesn't believe that would be enough involvement for the city. He wants the city to have input.

Councilperson Osler stated if concurrence was not provided and the foundation move forward anyway, the city would always have the authority to deny something to the police. This is why the foundation should never do that. She suggests starting with the entire council and eventually move to a small board or a designee from the city.

Councilperson Morgan would be happy with this suggestion. He suggested changing concurrence to consultation and where there is reference to the mayor and police chief, it should say mayor & city council and police chief. He questioned who will be signing this agreement?

Mr. DeSimone stated it would be the founding members, himself and Mr. Cherry. He wanted to have the signature of the mayor and police chief to show the transparency and that there was agreement, and also Mike Rawl from the Greater Lewes Foundation.

Deputy Mayor Beaufait questioned if he is asking them to give him the green light to move forward in setting up the process with the suggested changes? *Mr. DeSimone* stated yes.

ACTION: *Deputy Mayor Beaufait made a motion to give them the green light to move forward with the next steps in developing the Lewes Police Foundation, Mayor & City Council are very interested in the establishment of the foundation, and resubmit for final approval, seconded by Councilperson Reardon.*

Mr. DeSimone requested that as they revise the document, to be allowed to submit it through the chief of police for review by the city manager to share with city council, so they are not waiting in monthly increments. They want to launch the foundation during Police Week in May.

ACTION: *Councilperson Osler made a motion to amend that the document will be revised as discussed in open session on March 18, 2019 and the document will be resubmitted and council authorizes the police chief and the mayor to sign without returning to Mayor & City Council for final approval, seconded by Councilperson Morgan.*

Mayor Becker called for the vote on the amendment:

ACTION: *All voting in favor, the amendment carried. Mayor Becker abstained from the vote.*

Mayor Becker called for the vote on the motion:

ACTION: *All voting in favor, motion carried. Mayor Becker abstained from the vote.*

11. Presentation & possible action on scheduling Saturday April 13, 2019 from 9am-12pm for voter registration and absentee voting, if an election is to be held.

ACTION: Deputy Mayor Beaufait made a motion to approve scheduling Saturday April 13, 2019 from 9am-12pm for voter registration and absentee voting, if an election is held, seconded by Councilperson Osler, all voting in favor, motion carried.

12. Presentation & possible action on a request for the Extension of a 99-year Lease on property located at 14 Cedar Street, SCTM 3-35-4.15-160.00.

Attorney Mandalas stated this lease expired about one year ago and the extension has been issued based on the original expiration date.

ACTION: Councilperson Reardon made a motion to approve the extension as requested, seconded by Councilperson Osler, all voting in favor, motion carried.

13. Presentation & possible action on a request for the Extension of a 99-year Lease on property located at 108 New Jersey Avenue, SCTM 3-35-4.15-22.00.

ACTION: Councilperson Reardon made a motion to approve the extension as requested, seconded by Councilperson Osler, all voting in favor, motion carried.

14. Presentation & possible action on a request for the Extension of a 99-year Lease on property located at 2400 Bay Avenue, SCTM 3-35-4.14-6.00.

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

15. Comments from the table

Councilperson Reardon made the following statement: Our March 14, 2019, Mayor and council meeting took an unfortunate turn that I feel compelled to address. Without any basis in fact, Councilman Morgan unprofessionally attacked my integrity and that of Councilman Beaufait by suggesting that we engaged in conduct, that if true, would violate the City's Code of Professional Conduct. Mr. Morgan is aware from our one on one conversation that his suggestion of impropriety is completely unfounded. Additionally, concerning is that Mr. Morgan seems to have engaged a member of the public to advance his agenda in this matter. The way that Lewes Council has operated up to this time has been a model of civility. While Council members will disagree on issues, discussions about those differing views should be based on facts and not on unprofessional, unfounded personal attacks. I make these comments because this is not the professional relationship that our Council should have going forward.

Deputy Mayor Beaufait made the following statement: First let me say that I concur with what Dennis has said. He is absolutely correct in his remarks. Speaking for myself, I am incensed by Mr. Morgan's personal attack on me - and Dennis - and his attempt to discredit my integrity in the public meeting held last Thursday. Make no mistake about it - that is exactly what he was attempting to do. This is not the first time that he has engaged in such an attack on the two of us. We answered his allegations the first time with the facts which give no cause to question our actions or integrity. Hence, he knew the facts - the truth - before even making the assertions that he directed at me at the public meeting. It is most unfortunate that Mr. Morgan found it necessary to make personal attacks in his effort to justify his position against the proposed policy being discussed. It must be said that I find Mr. Morgan's personal attacks to have been unprofessional, - "out of line" and unnecessary. As far as I am concerned his behavior has put a "black mark" on the character of this body. There is simply no excuse for such behavior as he exhibited.

Councilperson Morgan responded as follows: During the meeting to which Councilperson Reardon refers, I made a remark that perhaps some of my colleagues had gotten too close to the developer. I regret that comment as there was no a basis to that statement. There were other comments which were directed at a course of meetings between two of my colleagues and the developer and others, by which I mean the chair of the planning commission, which I thought were highly questionable. If all the facts were brought to light, perhaps others would agree. It was that to which I meant to refer and to which I meant to lay emphasis on. I am sorry for us all that it has come to this because I have great respect for Councilperson Reardon, and I am sorry to lose his good opinion in part or whole. Apart from the one comment that escapes me, which I do regret, I think I had some good grounds for the statements I made.

Deputy Mayor Beaufait and Councilpersons Reardon had no further comments. *Mayor Becker* stated that hopefully they can move forward from here. Council has a lot of work to do for the betterment of the city of Lewes.
March

- 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-at-law, with respect to ... pending or potential litigation: City vs Nepa, City vs Virden.

Council went into Executive Session at: 10:21pm

Council returned to Open Session at:

K. CONSIDERATION AND/OR ACTION ON MATTERS DISCUSSED IN EXECUTIVE SESSION

- L. ADJOURNMENT** *made a motion to adjourn at pm, seconded by, all voting in favor, motion carried.*

Submitted by,

Alice M. Erickson
Recording Secretary
Mayor & City Council