

**Annexation Regulation Review
Ad-Hoc Committee
March 5, 2019
MINUTES**

A meeting of the **Annexation Regulation Review Ad-Hoc Committee** was held on **March 5, 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 **1:00pm**. *Mr. Beaufait* reviewed the charge of the committee is to review the Annexation Districts and make minor adjustments to keep the city in sync with the recent changes made by Sussex County. They are not rewriting the entire ordinance. Mr. Beaufait stated he understands many residents are interested in other topics, but this committee is looking at density. There are other committee's that can address issues that may be of importance to the public. He requested the public stay on topic so the committee can move forward.
2. **Continue discussion and consideration re. 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 distributed and reviewed modified wetland definitions. He also distributed a handout explaining how the density calculation would apply to the Conventional and Cluster Options 1 & 2 *if tidal wetlands were eliminated from the density calculation.*

DENSITY CALCULATION: GROSS AREA minus TIDAL WETLANDS divided by 21,760 = DENSITY

The scenario Mr. Beaufait used as an example was a **28-acre parcel**, with **5 acres of tidal wetlands** and **4 acres of non-tidal wetlands**.

Per the **Density Calculation**, the **maximum permitted dwelling units would be: 46**

➤ **CONVENTIONAL: 20,000 s/f lots (2 lots per acre) & 10% open space requirement**

Gross Parcel Size: 28 acres
10% open space requirement: 2.8 acres

Tidal wetlands: 5 acres
Non-tidal wetlands: 4 acres
TOTAL wetlands: 9 acres

Wetlands can be included in open space and there are more wetlands than required open space, but they cannot be built on. **Developable area = 28 acres minus 9 acres of wetlands = 19 developable acres.** *This does not include infrastructure or buffers.*

Maximum Allowable units based on 20,000 s/f lots: 41
Maximum allowable based on density calculation: 46

➤ **CLUSTER OPTION 1: 7,500 s/f lots & 30% open space required**

Gross Area: 28 acres
30% open space required: 8.4 acres
Total wetlands: 9 acres

Wetlands can be included in open space and there are more wetlands than required open space, but they cannot be built on. **Developable area = 28 acres minus 9 acres wetlands = 19 developable acres.** *This does not include infrastructure or buffers.*

Number of units based on 7,500 s/f lots: 110
Maximum allowable units based on density calculation: 46

➤ **CLUSTER OPTION 2: 5,000 s/f lot size & 50% open space required with a 30% density bonus**

For smaller lots and more open space, Cluster Option 2 allows 30% more dwelling units.
The maximum permitted dwelling units: $46 \times 30\% = 13.80 + 46 = 60$ units

Gross Area: 28 acres
 50% open space required: 14 acres
 Total wetlands: 9 acres

Wetlands can be included in open space but there is more required open space than wetlands. **Developable area = 28 acres minus 14 acres required open space = 14 developable acres.** *This does not include infrastructure or buffers.*

Number of units based on 5,000 s/f lots: 122
Number of allowable units based on density calculation + 30%: 60

Mr. Beaufait stated this is an arbitrary example of how the density calculation would apply to a parcel of land that had tidal wetlands and non-tidal wetlands on it. They have decided to recommend following the county's lead with the exclusion of tidal wetlands from the density calculation. This is to give the developer some guidance as to what they can do.

Mr. West pointed out what is different in this example from what the city currently allows in the exclusion of the tidal wetlands from the density calculation.

Mr. Beaufait stated at the top of the handout regarding definitions, they included guidance as to how to determine the area of tidal wetlands. The city would require a "certified report and map designation from a qualified professional delineating and establishing the area of the tidal wetlands."

Mr. Reardon questioned how these definitions could be integrated into the subdivision ordinance, so it is available to the developer upfront.

Mr. West explained in the current city ordinance, there are two stages for a subdivision, preliminary consent and final subdivision plan. It is not common to do engineering studies at preliminary consent but in this case, it could be an option. It could be considered that if anyone is using one of these districts, the city would require it ahead of the application and included in §170-19 which lists the things that are required for an application. There is enough "unofficial" mapping of wetlands that could be used for discussion but for development the city would want to have an official wetland delineation completed.

Ms. Townshend stated there would need to be a wetland delineation report by a certified wetland scientist.

Doug Spelman, Samantha Drive. *Mr. Spelman* stated the comp plan shows the potential annexation area and DNREC is willing to do the wetland survey for the city. Can the city get these surveys done upfront before an application for annexation?

Mr. Reardon stated DNREC will do it for the city but not for property that isn't in the city. *Mr. Beaufait* stated it would be the responsibility of the developer.

Mr. Kennedy stated the delineation should accompany the developer's plan and needs to be done by a qualified person. They can't rely on a DNREC report as the wetlands could change by the time an application is filed. They need the most up to date delineation.

Mr. Beaufait and Mr. Reardon will meet with Tom West to fine tune the definition that would be included in Chapter 170.

Chairperson Beaufait read the proposed definitions into the record. These definitions are directly from the County Code, as follows:

Lewes Code Section 197-74 Wetlands, to add the following definitions from Sussex County Code Section 115-193:

- a. Tidal wetlands: Lands below the water elevation of the mean high-tide water line regulated under Section 404 of the Clean Water Act of 1972.
- b. Mean-high water line of tidal water: The mean high-water line of any tidal water body, tidal stream or tidal marsh.
- c. Non-tidal wetlands: Lands above the water elevation of the mean high-tide water line regulated under section 404 of the Clean Water Act of 1972.
- d. Tide Tributary Stream: A stream under tidal influence, either connecting fresh or salt water.

Mr. West explained the city code has a wetland section, but it doesn't break down into these categories. They will need to examine the code to make sure there will be no unintended consequences regarding what is already in the code. This is how the county defines and the way the Army Corp regulates wetlands. The one thing they will need to look at in the wetlands section, §197-74, there is a definition section that doesn't include these, it talks about the Army Corp's delineations. The section after refers to the official boundaries "the official map for wetlands is prepared by the Delaware Department of Natural Resources, Division of Water Resources, Wetlands and Subaqueous Land Section." The term "official map" needs to be looked at because they would be different from these terms which aren't necessarily mapped. They need to explore this further to determine what is the official wetland map.

Ms. Townshend stated the official DNREC map is only tidal so it is probably better to rely on definitions rather than on a map that is could be out of date and doesn't include the non-tidal wetlands.

Mr. Beaufait stated these are terms that will be used if they deduct tidal wetlands from the gross area. This is just a basic definition, but agreed they need to make sure there are no conflicts.

3. Discussion and consideration of modification of required open space (exclusion of wetlands from open space, % of open space required for Options 1 & 2)

Chairperson Beaufait stated the county does not exclude wetlands from open space. If the city is going to, we will need to modify the amount of open space required. He questioned what is the purpose of open space? One purpose is to not interfere with the normal function of nature, such as absorption and drainage. He is not sure open space is necessarily a requirement to allow for recreational activities. They need to give careful thought if they want to deviate from what the county has in place in terms of excluding wetlands from the calculation of open space.

Mr. Patterson state he is torn on the subject. He would like to see a development have as much open space a possible for the beauty of the development, but at the same time, he recognizes that open space is very valuable land to the developer. They city wants to be in step with the county and he understands why they want to do what the county does. If they exclude wetlands from open space, it could drastically reduce the number of units that could be developed and would no longer be in sync with the county.

Mr. Beaufait stated the likelihood that the number of units that can be placed on a parcel will more than likely result in more open space than what is required

Mr. Kennedy stated if they want to encourage developers to annex into the city, they need to be as competitive with the county as possible. The base line is they need to be competitive with the county. Personally, he believes tidal and non-tidal wetlands should be included in the calculation for open space. Open space not only provides for

wildlife habitat, it is also passive recreation. While wetlands can't be built on, it should be a part of the open space calculation.

Mr. Reardon agreed with *Mr. Kennedy's* statement.

Mr. West stated with the reduction in lot sizes from conventional 20,000 s/f lots to 7,500 s/f lots, if the available open space is all wetlands, there would be some limitations for recreational use. He values the passive recreational value of wetlands but with the smaller lots, the open space will be used for yard space and active recreation. There needs to be opportunity for some portion of the open space to provide an opportunity for active recreation. It is very good that open space is going to protect wetlands and the flood plain but when parks & rec looks at the development, part of their charge is to determine if there are active recreational opportunities, especially if there are reduced back yards to serve that purpose.

Mr. Beaufait stated there would be so fewer houses than could be allowed, there would be more open space than required. He doesn't disagree, but this should be the job of developer to make the development as attractive as possible to potential buyers. He feels the LPC would raise the issue of requiring a certain amount of active recreational open space.

Mr. Kennedy agreed that for marketing purposes the developer would have to take this into consideration.

Ms. Townshend agreed with *Mr. West*. There needs to be something in open space that is not wetlands. If they allow, for example, 50% of the required open space could be wetlands, it would secure some open space would not be wetlands. She agreed that if all the wetlands are removed from open space there would be a lot of open space that may or may not be of value. The challenge is to find the middle ground and not inhibit the creativity and design of the development.

Mr. Patterson stated they may want to designate a certain percentage of open space that is not wetlands. This would ensure there is some area for recreational activity.

Maryanne Ennis, Harborview Road. *Ms. Ennis* stated the county uses the term "usable" open space and could be a more understandable term.

Marta Namack, New Road. *Ms. Namack* stated she agreed they need to have some of the wetlands excluded from open space. They also need to minimize impervious surfaces close to the wetlands. She doesn't understand why the city needs to compete with the county. The city has incentives that should be enough.

Mr. Beaufait stated they agreed to make some adjustment.

Mr. Kennedy stated he would be in favor of keeping all tidal and non-tidal wetlands in the open space. The question becomes what percentage of the open space should not be wetlands. Most developments are going to have a certain amount of usable open space and he is reluctant to require a specific percentage.

Mr. Reardon stated they could look at applying some percentage of the wetland as open space.

Mr. Beaufait stated he and *Mr. Reardon* will touch base with *Mr. West* and *Ms. Townshend* to discuss and return with a recommendation for the committee to consider.

Ms. Namack stated she feels it would be a better idea to exclude all the wetlands from open space. She doesn't believe anything less would be sufficient. She feels they are giving enough incentives for annexing into the city with the building heights and waiving of property taxes.

Mr. Beaufait stated they have stated they are not willing to exclude wetlands from open space and will be looking at setting a percentage. He explained the waiving of taxes is not related to density or the site plan.

Joe Hoechner, LPC, Pilottown Village. *Mr. Hoechner* stated at many of the meetings he attended on the historic byways, they are looking forward to having buffers, not only between wetlands and adjacent developments but between the road and the developments.

Mr. Beaufait stated they will be addressing buffers at the future meeting.

4. **Set a meeting date:** A meeting was scheduled on **March 22, 2019 at 2:30pm.**
5. **Adjournment:** The meeting adjourned at **2:22pm**

Minutes submitted by,

Alice Erickson
Recording Secretary