

Annexation Regulation Review Ad-Hoc Committee

April 22, 2019

MINUTES

A meeting of the **Annexation Regulation Review Ad-Hoc Committee** was held on **April 22, 2019 in city meeting room in the Margaret Rollins Community Center**, after proper notification, with the following members present: Chairperson, Deputy Mayor Fred Beaufait; Councilperson Dennis Reardon, Robert Kennedy, and Bob Patterson. Ex-officio members present were: City Manager Ann Marie Townshend, City Planner Tom West and Recording Secretary Alice Erickson. Jim Berrigan was not present.

1. **Call to Order & Opening Remarks:** *Chairperson Beaufait* called the meeting to order at **10:00am**.
2. **Approval of minutes of previous meetings if available.**

ACTION: *Mr. Reardon made a motion to approve the March 11, 2019, March 22, 2019, March 28, 2019, & April 8, 2019 minutes as presented, seconded by Mr. Patterson, all voting in favor, motion carried.*

3 Finalize decisions with respect to Protection of ground water and landscaping of open space and buffers

Mr. Beaufait stated they will be wrapping up to approve a draft report at the April 29th meeting and then forward to Mayor & City Council for consideration at their May meeting.

Mr. West distributed and reviewed updates to the Annexation Zones, as per discussion at previous meetings.

- **§197-50 Cluster Development A.** Permitted Residential Units, (2) "If the proposed development uses Cluster Lot Option #1 or #2 determine Permitted Residential Units as follows: (a) Use following formula to determine Base Permitted Residential Units". *The formula was amended to remove TIDAL WETLANDS from the total base permitted residential units.*

$$\frac{\text{Gross Tract Area} - (\text{Area of Tidal Waters} + \text{Tidal Wetlands})}{21,780} = \text{Base permitted Residential Units}$$

- **§197-50 Cluster Development: A.** Permitted Residential Units, (2) (b) Determine maximum Permitted Residential Units as follows: ... "If using Cluster Lot Option #2, Permitted Residential Units = Base Permitted Residential Units + 30% Base Permitted Residential Units", with additional requirement:

"An application for either cluster option must include a wetland delineation report and mapping or verification that no wetlands exist on the property in accordance with §197-74 Wetlands".

Mr. West explained the following are based on suggestions by the committee to define each type of buffer. He also referred to a proposed buffer definition for inclusion I the zoning definitions.

- **§197-50 Cluster Development: B.** Cluster Lot Option Design Requirements – Lot Design and Site Layout Shall comply with following criteria:
 - (1) All lots shall be configured to be contained completely outside of all wetlands as defined by this ordinance.
 - (2) **Agricultural Buffer:** A forested buffer area, designed and maintained in accordance with Section 170-26 of the City of Lewes Subdivision Ordinance and Chapter 177: Trees, with a minimum width of 30-feet shall be provided for lots abutting an agricultural area.
 - (3) **Existing Residential Buffer:** A proposed development adjacent to an existing residential development shall provide a minimum 30-foot buffer along the shared property line meeting one of the following standards and maintained by a designated entity:
 - (a) A planting strip within the required 30-foot buffer consisting of a mix of canopy trees, understory trees and shrubs to provide a functional screen between the development; or
 - (b) A landscaped rolling berm at least four feet in height within the required 30-foot buffer; or,
 - (c) A solid fence or wall ~~a minimum of six feet in height~~ designed with durable materials, texture and colors compatible with adjacent residential development. The fence or wall will be set back at least 5-feet from the shared property line with appropriate landscaping on both sides, ~~as defined by the Lewes Parks and Recreation Commission.~~

- (4) **Wetland Buffer:** 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 permanent buffer is required. No building or paving shall be placed within these buffers. The buffer zone shall be maintained in a natural vegetation, but may include planted vegetation where necessary to protect, stabilize or enhance the area. Buffers shall be designed and maintained in accordance with § 170-26 of Chapter 170, Subdivision and Land Development.
- (6) **Corridor Buffers** – For proposed developments along a marked state road or designated Lewes Scenic and Historic Byway (New Road, Pilottown Road/Front Street, Savannah Road, Kings Highway, Gills Neck Road, and Cape Henlopen Drive) the following shall be used to create a visual buffer:
- (a) Buffer width - Between the right of way and applicable property lines:
 1. Where there are no individual lots a 75-foot buffer is required measured from the applicable road right of way to the near face of the adjacent structure;
 2. Where individual lots are established a 60-foot buffer is required measured from the right of way to the near property line.
 - (b) Buffer Treatments – Within the required buffer the following are permitted to provide screening from the roadway and can be no closer to the right of way than 25 feet:
 1. A planting strip within the required 30-foot buffer consisting of a mix of canopy trees, understory trees and shrubs to provide a functional screen between the developments, or
 2. A landscaped rolling berm at least four feet in height within the required 30-foot buffer; or
 3. A solid fence or wall ~~a minimum of six feet in height~~ designed with durable materials, texture and colors compatible with adjacent residential development. The fence or wall will be suitably landscaped on both sides, ~~as determined by the Lewes Parks and Recreation Commission.~~

There was discussion about the need for the parks & recreation commission being included so early in the process. *Mr. Beaufait* stated he is concerned about having PRC defining the landscaping plan. *Mr. West* explained that the planning commission defers to the PRC when addressing landscaping designs as a part of their process. Final decision is always made by the LPC. *Mr. Beaufait* requested it be struck from this section.

ACTION: *Mr. Reardon made a motion to adopt the language of Agricultural Buffer, Existing Residential Buffer, Wetland Buffer and Corridor Buffer, striking “as defined by the Lewes Parks and Recreation Commission”, seconded by Mr. Kennedy, all voting in favor, motion carried.*

There was extensive discussion about the option of “A solid fence or wall a *minimum of six feet in height*” being included.

Tim Ritzert questioned the purpose of the wall. Is it for privacy or just to separate developments? He is not in favor of including a minimum fence height. What about the maximum? *Ms. Townshend* clarified that is already determine by the city code to be six feet of solid material with an option of an additional 2 feet of open material, such as lattice.

Mr. Beaufait stated this is only one of three option available to the developer, who would make the determination.

Mr. West clarified that the purpose of a fence or wall is to screen one use to another and would only be used when a development is along a state road, such as Kings Highway and would have to be within the annexation zone using one of the cluster options.

Mr. Kennedy stated a fence should be an option but doesn’t see the need for a minimum height requirement. This should be left up to the developer. *Mr. Patterson* agreed and suggested striking the minimum height. The code addresses the maximum allowable height.

ACTION: *Mr. Kennedy made a motion to amend §197-50 Cluster Development: B. Cluster Lot Option Design Requirements. (3)(c) and (6)(b)3. by striking “a minimum of six feet in height”, seconded by Mr. Reardon, all voting in favor, motion carried.*

- **§197-50 Cluster Development: B.** Required open space shall comply with the following criteria:
 - (3) At least 30% of contiguous portion of required open space must be useable land that does not contain any wetlands (tidal or non-tidal).

***ACTION:** This change had already been approved by the committee.*

- **§197-50 Cluster Development: D.** Review procedure for cluster development.
 - E. Additional review procedures for Cluster Option #2
 - (1) In addition to the information required for plan submittal listed above, the applicant will provide the following information when using Cluster Option #2:
 - (a) Tree/vegetation/view shed report - A report from a registered arborist or landscape architect identifying the following:
 1. Location, type and size of all existing trees or tree stands, and a notation of whether each such tree or tree stand is to be preserved, replaced or removed;
 2. Location and description of existing native tree communities to be preserved and remain undisturbed; and
 3. An assessment of defined (City Plans) or identified scenic viewsheds.
 - (b) Landscape Plan- As part of the preliminary consent review, applicants shall prepare a **conceptual** landscape plan, prepared by a registered landscape architect, for the site in accordance with Section 170-26 C of the City code.

Mr. West reviewed the additional procedures for Cluster Option 2 regarding the 50% open space requirement and discussion at the last meeting for additional protection of existing trees. This would be an additional review process to identify trees, shrubs and vegetation and to prepare a report to the LPC and a landscaping plan only for Cluster Option 2.

Mr. Beaufait stated he is concerned about requiring more from the developer for preliminary approval. He feels they are adding unnecessary constraints too early in the process. LPC will be looking at minimizing the loss of trees further into the process.

Mr. West explained most of what is in this regulation is also in the county's ordinance, but a lot of it is optional. Using Superior Design, the developer must supply more information upfront by someone with credentials. This is only for Cluster Option 2 and compares with the county code except for the protection of trees.

Ms. Townshend clarified this would be with a request for the density bonus. For a property with woodlands, this can help to prioritize what areas need to be protected. She feels the analysis could be beneficial at an early stage in the process. It will be an assessment and much less intensive than the engineer design and should not be a burden to the developer.

Mr. Patterson stated he feels that the developer should be willing to do this as the city is not requiring a density bonus fee.

Mr. Kennedy questioned where this would come into the process. *Mr. West* stated it would be required during the preliminary stage. A site inventory would come first.

Mr. Beaufait stated the developer would have to pay a landscape architect to do it. He feels they are intruding on the freedom of the developer.

Mr. West stated there is a balance. A landscape plan is required for all subdivisions, but the difference here is the stage it is required. With the use of a cluster option the city is saying the developer must take into consideration the protection of open space and the view sheds before determining where the structures will be placed and to do this, the information must be required up front.

Mr. Beaufait stated rather than being specific, he would prefer to make a statement that the overall landscaping needs to be considered before final approval. He is concerned it is too early in the process. They should be looking at these issues, but how much government regulations be should imposed.

Mr. Reardon questioned what the impact on buildable land would be. Would this lock it in, or would it still be open to discussion?

Mr. West stated it would still be open to discussion. The plan would have to come to the planner to discuss before it goes to the planning commission to identify what is important on the site. It would be better to go through it when the reports are done. He stated the committee originally determined not to charge a fee in exchange for more open space because this is the city's most valuable resource. This design would give them more information to work with.

Mr. Ritzert stated they need to listen to the city planner and act on this issue. This is not something that would be difficult for a developer to do.

Mr. Beaufait stated he feels #2 is redundant. Mr. West clarified there was discussion at the April 8th meeting about using native species, but it could be included in #1. Mr. Beaufait suggested using the word "conceptual" before the words "landscape plan".

ACTION: Mr. Patterson made a motion to approve **§197-50 Cluster Development: D. E. with changes as per discussion, seconded by Mr. Reardon, all voting in favor, motion carried.**

• **§ 197-74 Wetlands. Wetlands Regulations and Definitions.**

A. Purpose: provide standards for protecting wetlands in development projects.

B. Definitions:

(1) Wetlands

- (a) Areas inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions; or
- (b) Areas that are defined and delineated in accordance with the United States Army Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, as amended from time to time; or
- (c) Areas that are further defined and delineated by the United States Army Corps of Engineers, the United States Environmental Protection Agency, or the Delaware Department of Natural Resources and Environmental Control (DNREC).

(2) Tidal Wetlands - Areas under the jurisdiction of Title 7, Chapter 66, of the Delaware Code, as regulated and mapped by the Department of Natural Resources and Environmental Control.

(3) Non-tidal Wetlands - Those areas inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions and that are not defined as Tidal Wetlands in the City code.

(4) Tidal Waters (Mean High-Water Line) - The mean high-water line of any tidal water body, tidal stream, or tidal marsh. The average height of all the high-tide water recorded over a nineteen-year period as defined by the National Oceanic and Atmospheric Administration tidal datum.

Mr. West explained there was discussion regarding what the county is doing regarding wetlands. The county is using the state mapping which makes sense from a preliminary standpoint. It makes sense for the city to follow the latest version of the county definition and use the state mapping. The definitions reflect the county and would be used for the density formula in the annexation zones. A wetland delineation report would come early in the process.

Mr. Reardon stated the county is still working on their definitions and questioned if they want to wait until they have finalized. Ms. Townshend stated they need to move forward but continue watching what the county is doing. She doesn't want to wait. Mr. West agreed.

ACTION: Mr. Patterson made a motion to approve the definitions as presented, seconded by Mr. Reardon, all voting in favor, motion carried.

5. Set next meeting date: April 29th 10:30am

6. Adjourn: The meeting adjourned at **11:22am.**

Minutes submitted by
Alice Erickson, Recording Secretary