

Annexation Regulation Review Ad-Hoc Committee

April 8, 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, Jim Berrigan and Bob Patterson. Ex-officio members present were: City Manager Ann Marie Townshend, City Planner Tom West, and Recording Secretary Alice Erickson.

1. **Call to Order & Opening Remarks:** *Chairperson Beaufait* called the meeting to order at 2:30pm.
2. **Approval of minutes of previous meetings if available.** No minutes were available for approval.
3. **Unfinished Business: Buffers**

Chairperson Beaufait reviewed unfinished business from the last meeting. There was discussion about the 30-foot buffers adjacent to an existing development. One of the options was a solid fence. Based on discussion, it was determined to require landscaping on both sides of a fence or wall.

Mr. Beaufait stated he received an email from Mr. West regarding things that could not be counted in open space: parking areas, sewage or water treatment facilities, structural development including stormwater management ponds, spill ways and level spreaders. However, certain facilities can be counted such as stormwater facilities designed as permanent retention ponds. The question at the last meeting was if stormwater retention ponds could be calculated in open space and within the city's ordinances they can be as long as they are permanent.

Mr. West stated the other question was about whether or not a road could be within a buffer. There are three kinds of buffers in the City Code:

- Adjacent to agriculture,
- Adjacent to exiting resident development,
- Adjacent to a wetland.

The wetland buffer states no building or pavement shall be placed within these buffers. This would eliminate any roads in the wetland buffer but not in the other two. If they put something similar in the other two buffers, there could be some roads running across. They can't remove all pavement as there may be a road require to assess the property.

Mr. Beaufait stated this is something that could be left to the discretion of the planning commission when reviewing the site plan. There could be an existing road that had to be included in a buffer, such as the Brittingham property. Does this apply in general to the city ordinances?

Mr. West explained this applies to open space within a cluster development. At this point that is the only place cluster development is permitted, therefore, it applies to the AX zones. On this one development there will be a right of way and a buffer overlapping.

Mr. Beaufait questioned if they needed to also include roadway? *Mr. West* explained they are talking about two different things, open space and buffers. Open space states there cannot be parking or structural development but for the buffer areas, only the wetland buffer excludes paving and structures. The other two don't have this language but it could be included.

Mr. Beaufait believes it should be left up to the planning commission. The Brittingham property issue is an anomaly and they don't want to be too particular. *Mr. Reardon* agreed they need to leave it up to the planning commission, therefore, they don't need to add anything. *Mr. Patterson* agreed there can't be a rule or regulation for every situation.

Doug Spelman, Samantha Drive, Canary Creek, stated if a road is allowed within a buffer, wouldn't the developer take advantage of that?

Ms. Townshend stated the draft language takes care of that. There could be a connection to another development or a stub street, and a road may cross through a buffer. They shouldn't write it such that it precludes things that would be a good design and mitigate traffic. The situation on the Brittingham property is very unique and they can't write specifically for this one situation.

After the last meeting changes were made and *Mr. Reardon* read the amended wording into the record as follows:

Buffer adjacent to existing development, modify Section 197-50B(3), as follows:

A proposed development adjacent to an existing residential development shall provide a minimum 30-foot buffer of open space, meeting 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 developments, or
- (b) A landscaped rolling berm at least four feet in heights within the required 30-foot buffer, or
- (c) A solid fence or wall, a minimum of 6-feet in height with appropriate landscaping on both sides of the fence within the 30-foot buffer, made with durable materials, texture and colors compatible with adjacent residential developments.

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

4. Continue discussion of Cluster Options

Attached Housing: *Mr. Beaufait* stated at the original meetings of the annexation committee there were issues about allowing attached housing as a conditional use. After discussion it was determined to allow for attached housing as a permitted use. They felt it was appropriate because it would require more open space.

Mr. Reardon stated on the issue of continuing with cluster option 1. With conventional they would allow 20,000 s/f lots. Option 1 lots are reduced to 7,500 s/f, the open space requirement is increased to 30% and the density will not increase at all. They went over this a lot and considered all the issues. He believes it is a plus-plus and they should continue with cluster option 1 and attached housing should remain a permitted use.

Mr. Beaufait stated attached housing is a permitted use in options 1 & 2. The question was raised whether it should be a conditional use and the committee does not want to do that.

Mr. West explained a conditional use is a permitted use, but criteria can be applied as necessary.

ACTION: *Mr. Reardon made a motion to continue with attached housing as a permitted use in cluster options 1 & 2, seconded by Mr. Berrigan, all voting in favor, motion carried.*

Option 2 Density Bonus: *Mr. Beaufait* explained the other issue is the 30% density bonus in option 2 with a 50% open space requirement. The question was raised to either remove it or reduce it. At the time, the county allowed a density bonus of 4 units per acre, with the payment of a fee. This doubled the maximum permitted units. They didn't want to double the density but wanted to be reasonable and still remain competitive, so they came up with 30%. The question is do they want to change it.

Mr. Patterson stated he doesn't see any reason to change it. It sounds reasonable and he doesn't want to question the original committee's process.

Mr. Beaufait stated with the 50% open space requirement; they are only going to be able to use 50% of the property.

Mr. Reardon pointed out that when they were calculating this, they included all the wetlands. Now they are removing the tidal wetlands so the developable area will be less. If the open space has to be all in one area, they have already reduced the possible density. It is a bonus, but it is not excessive.

Mr. Beaufait stated they need to keep in mind they are only requiring 5,000 s/f lots and the density calculation will more than likely control the process even with the additional 30% bonus.

Ms. Townshend agreed, taking out the wetlands should fix the problem.

ACTION: Mr. Patterson made a motion to continue with the 30% density bonus under Cluster Option 2, seconded by Mr. Reardon, all voting in favor, motion carried.

Density Bonus Fee: Mr. Beaufait stated the question was raised if the city should impose a fee for the density bonus. The county requires a fee for their density bonus but he original committee felt it was inappropriate and wasn't sure what the rationale for it would be. They were trying to encourage annexation into the city.

Mr. Reardon stated he still feels it would be inappropriate.

Ms. Townshend stated in the county where they charge a fee, the funds are used for an open space. If the city wants to create such a fund, it could be appropriate to charge a fee. She is not sure there would be enough units to make a dent in the need for open space.

ACTION: Mr. Berrigan made a motion to not consider imposing a fee in Cluster Option 2 regarding the density bonus, seconded by Mr. Reardon, all voting in favor, motion carried.

4. Consideration of development in flood plain, pervious pavement, trees, and building height

Flood Plain: Mr. Beaufait stated a question was raised about allowing development in the floodplain with certain regulations. Within the city, development in a floodplain is allowed and would it be appropriate to deny it within an annexation zone.

Mr. West stated within the current city regulations development is not prohibited in any zone, but it is much harder in the floodplain. FEMA regulations require buildings to be raised up, and future homeowners are subject to flood insurance. Some communities prohibit it due to the regulations.

Mr. Reardon stated they don't need anything in the city ordinance as it is regulated by FEMA.

ACTION: Mr. Reardon made a motion to not make any changes to the regulations regarding building in the flood plain, seconded by Mr. Kennedy, all voting in favor, motion carried.

Pervious Pavement for Driveways: Mr. Beaufait stated there was a suggestion of requiring pervious pavement for driveways. He understands why but he doesn't know if it should be required. There was discussion about pervious versus impervious surfaces and should the city require it.

Maryanne Ennis, Harborview Road, stated they have a pea gravel driveway and it is pervious and low maintenance. It could be used on a residential property.

Debra Evalds, Harborview Road, stated they need to consider pervious pavement along New Road due to flooding. Kings Highway is the city's water recharge area which needs pervious pavement and they need to do what they can to protect the well fields. We need to do what we can to protect the city's well fields.

Mr. Kennedy stated excess water will go into the catch basins and will recharge back into the ground. He feels the stormwater collection system will put the water back into the ground.

Ms. Townshend stated a lot of the stormwater discharge goes into the canal.

Mr. West explained the ordinance has a design component to it and read Section 197-50 B Cluster lot design options, into the record. They could put something into the existing ordinance to encourage the use of pervious surfaces that would allow drainage back into the ground. It is difficult in zoning to require these things because if it is in the ordinance, it would have to be done even if it couldn't be done. Zoning is very prescriptive and there are no waivers. He suggested including something in the design criteria to promote pervious vs impervious surfaces.

ACTION: *Mr. Reardon* requested *Mr. West* create language in the design criteria in 197-50 B.

Trees: There was a suggestion to limit the removal of trees. *Mr. Beaufait* stated he doesn't believe they can do that, but they could consider increasing trees.

Mr. Reardon questioned if this issue is covered in another ordinances? *Mr. West* stated the cluster option with its open space and buffers offers a lot more than the city's other zones in terms of landscaping. They are suggesting the protection of more open space in environmentally sensitive areas. There is an opportunity to preserve woodlands here, but they could add something to require preservation of existing woodlands to promote ground water recharge and provide guidance about what that means. The ordinance requires street trees be added.

Mr. Beaufait questioned if this would be beyond the zoning ordinance and into the site plan design criteria.

Mr. West because this is the cluster option there is criteria that goes into the designing of open space. They could require a landscaping plan that would address certain criteria. There are communities that already have open space plans that have identified resources to protect. If Lewes had such a map it would be relatively easy to tie the zoning into the strategies that are already out there. This would prioritize the resources that need to be protected and then link them into the development process. Lewes doesn't have this but needs to be considered moving forward. A district that has cluster in it should have some open space criteria.

Mr. Beaufait clarified that because the city requires 50% open space in option 2, which is a fair amount of open space, most of which is farm land, is there a minimum statement that could require a landscaping plan and provide guidance.

Mr. West agreed, especially with the 30% increase. Sussex County has a superior design option where the applicant has to prepare a plan that demonstrates how they are incorporation design criteria.

Mr. Beaufait suggested that with cluster option 2, in addition to a site plan they require a landscaping plan for the open space. *Mr. West* agreed especially in areas where there are identified resources, such as the byways. *Mr. Beaufait* would like something that states there is an "expectation" to have a plan for the open space.

Mr. Spelman stated he would like the city to take this opportunity to include something that would protect trees on large properties.

Mr. Beaufait stated there is a statement in the code about encouraging the minimization of the removal of trees. They need to be careful about what they require on private property. He doesn't want to get into this too deep and just include a general statement at the zoning level and let the planning commission address it more deeply.

Ms. Townshend stated the parks & recreation commissioner in charge of trees is starting to do this city wide based on a request from the planning commission. She is interested in addressing how we deal with tree and the planting of trees during development process. Whether it is in this or not, it is something that will be forth coming.

Ms. Ennis stated she would back up what *Mr. Spelman* stated. Trees are important to absorb flood water, especially oak trees, and would help with the flooding issues.

Mr. Patterson agreed they need to think about things like this and what it will mean 30-years from now.

Mary Roth, Chairperson, Historic Lewes Byway Committee, stated each of the commissions have to be careful about what to require on private property. The byway committee has some people working with private property owners with design guidelines. Mandates will restrict what other can do, and flexibility is important.

Mr. West clarified that he is talking about a process. In a cluster option 2 they would not really say what it is but initiate a process working with the byway committee or the parks & recreation commission.

Mr. Beaufait stated he is concerned about writing an ordinance with one specific situation in mind. He feels they need to consider open space during the approval process.

ACTION: Mr. West will provide a statement with direction regarding a process for landscaping in the open space.

Building Height: The city's current building height is 30.5 feet from the center line of the road and 34 feet in the flood plain. The county allows 42 feet. The original committee discussed that the annexation zones would be a transition and were looking for something in between. After lengthy discussion it was determined the building height in the annexation zones would be 36 feet and 38 feet in the flood plain.

Mr. Beaufait didn't feel there needed to be any changes. Mr. Reardon agreed

ACTION: Mr. Reardon made a motion to not change the building heights in the annexation zones, seconded by Mr. Kennedy, all voting in favor, motion carried.

Chairperson Beaufait stated they will start looking at the AX MIX zone at the next meeting.

5. Set meeting date for additional meeting in April:

April 15, 2019 10:00am
April 22, 2019 10:00am

6. Closing comments: None

7. Adjourn: There being no further discussion, the meeting adjourned at **3:55pm.**

Minutes submitted by,

Alice Erickson
Recording Secretary