

Prepared by: *Ann Marie Townshend, AICP*
City of Lewes, City Manager
114 E. Third Street
Lewes DE 19958

Approved: November 13, 2018

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LEWES, DELAWARE, CERTIFYING THE ANNEXATION OF THE PROPERTY CONTIGUOUS TO THE CITY'S BOUNDARIES KNOWN AS THE BRITTINGHAM PROPERTY, A 34.64-ACRE PARCEL LOCATED ALONG THE SOUTHEAST SIDE OF NEW ROAD SUSSEX COUNTY TAX MAP NUMBER 335-8.00-17.00

WHEREAS, the Mayor, on August 13, 2018, appointed a Committee of four of the elected members of the City Council to investigate the question of annexing the property contiguous to the City's boundaries known as the Brittingham property, as fully described in a legal description prepared by Civil Engineering Associates, attached hereto as *Exhibit A*, and with the Sussex County Tax Map Number 335-8.00-17.00 (hereinafter, the "Property");

WHEREAS, the Committee met on September 11, 2018, and subsequently submitted a report to Mayor and City Council;

WHEREAS, the Committee's report included the advantages and disadvantages of the proposed annexation to the City and further contained the Committee's recommendations to proceed with the proposed annexation;

WHEREAS, the Committee concluded that the proposed annexation is advantageous to the City of Lewes;

WHEREAS, the Committee further concluded that the Property be zoned Annexation Residential Zone (AX-RES) upon annexation;

WHEREAS, the proposed annexation is consistent with the annexation policies expressed in the City of Lewes 2015 Comprehensive Plan;

WHEREAS, a public hearing on the subject of the proposed annexation and rezoning of the Property was held on October 30, 2018 at 6:00 p.m.; and

WHEREAS, the "Findings of Fact" attached hereto as *Exhibit B*, demonstrate the annexation of the Brittingham property is consistent with the policies set forth by Mayor and City Council, as well as the strategies and policies developed by the Annexation Regulation Ad-Hoc Committee and ultimately supported by Mayor and City Council.

WHEREAS, the sole owner of the Property requested annexation and the Mayor and City Council therefore infers that the annexation is advantageous to the territory proposed to be annexed;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council, in session met this 13th day of November 2018, a quorum pertaining at all times thereto, that the Property be, and hereby is annexed to the City's limits and territory and be zoned AX-RES;

BE IT FURTHER RESOLVED, that a plot of the Property, consistent with the legal description attached hereto as *Exhibit A*, shall be prepared and recorded in the Office of the Recorder of Deeds, in and for Sussex County, in Georgetown, Delaware no later than February 15, 2019;

BE IT FURTHER RESOLVED, that public notice of the annexation shall be published in two newspapers of general circulation within the City.

I, Dennis Reardon, Secretary of the City Council of the City of Lewes, do hereby certify that the foregoing is a true and correct copy of the Resolution passed by the affirmative vote of at least two-thirds (2/3) of the Mayor and City Council at its meeting on November 13, 2018 at which a quorum was present and voting throughout and the same is still in full force and effect.



Secretary of the City Council
of the City of Lewes

EXHIBIT A

Legal Description

T.P. # 335-8.00-17.00

S/E Side of C.R. # 266 A.K.A. New Road

Prepared by Civil Engineering Associates

All that certain parcel of land with improvements erected thereon being located along the southeast side of C.R. 266 a.k.a. New Road (at varying widths), Tax Parcel 335-8.00-17.00, situated in Lewes & Rehoboth Hundred, Sussex County, Delaware, according to a Boundary Survey Plan, prepared by Civil Engineering Associates, dated July 16, 2018, and according to Deed Book D713, Page 83, recorded in the office of the Recorder of Deeds, in and for Sussex County, State of Delaware, as follows to wit:

BEGINNING at a point located along the southeast side of C.R. 266 a.k.a. New Road, said point being the intersection of the said southeast side of New Road with the southerly side of Canary Creek Drive (existing 50' wide private road and right-of-way), said point being the first mentioned POINT AND PLACE OF BEGINNING, THENCE,

Along said southeast side of New Road the following two (2) described courses and distances:

1. N34°01'24"E, a distance of 625.28 feet to a point, THENCE,
2. N34°05'57"E, a distance of 597.51 feet to a point, located near the approximate center of Canary Creek, THENCE,

Leaving said southeast side of New Road, along the approximate center of said Canary Creek, and along the line formerly dividing the City of Lewes and Lewes & Rehoboth Hundred (T.P. # 335-8.00-17.00 to be annexed into the City of Lewes) the following three (3) described courses and distances:

1. S60°17'10"E, a distance of 761.14 feet to a point, THENCE,
2. S86°58'53"E, a distance of 440.23 feet to a point, THENCE,
3. S22°37'23"W, a distance of 20.00 feet to a point, located at the approximate center of a ditch and being a common corner if the herein described parcel and lands now or formerly of Linda R. Miller (D.B. w446, P. 194), THENCE,

Along the division line of the herein described parcel and said lands of Miller, and with the approximate center of said ditch the following eight (8) described courses and distances:

1. S44°05'40"W, a distance of 713.50 feet to a point, THENCE,
2. S24°28'17"W, a distance of 383.87 feet to a point, THENCE,
3. S64°48'06"W, a distance of 150.88 feet to a point, THENCE,
4. S46°55'52"W, a distance of 29.54 feet to a point, THENCE,
5. S49°38'02"W, a distance of 239.98 feet to a point, THENCE,

6. S35°04'27"W, a distance of 196.82 feet to a point, THENCE,
7. S37°45'44"W, a distance of 36.94 feet to a point, THENCE,
8. S52°28'43"W, a distance of 202.93 feet to a point, being a common corner of the herein described parcel, said lands of Miller, and lands now or formerly of William E. Truitt, Jr. (D.B. 2668, P. 50), THENCE,

Along the division line of the herein described parcel and said lands of Truitt, N43°15'42"W, a distance of 419.28 feet to a point, being a common corner of the herein described parcel, said lands of Truitt, and lands now or formerly of Joseph Brittingham (D.B. 3347, P. 299), THENCE, along the division line of the herein described parcel and said lands of Brittingham, N61°44'58"E, a distance of 199.73 feet to a point, located along the southerly side of Canary Creek Drive, THENCE, with same, the following three (3) described courses and distances:

1. N28°15'02"W, a distance of 255.00 feet to a point of curvature, THENCE,
2. along the arc of a circle curving to the left described by a radius of 200.00 feet, an arc length of 97.74 feet to a point of tangency, THENCE,
3. N56°15'02"W, a distance of 225.55 feet to a point, said point being the first mentioned POINT AND PLACE OF BEGINNING.

Containing within the said described metes and bounds 34.64 acres of land be the same more or less. Subject to all restrictions and easements as noted or shown on the according to a Boundary Survey Plan, prepared by Civil Engineering Associates, dated July 16, 2018, and according to Deed Book D713, Page 83, recorded in the office of the Recorder of Deeds, in and for Sussex County, State of Delaware.

EXHIBIT B

The Mayor and City Council of the City of Lewes make the following findings of fact and conclusions of law, and rely, in part, upon these facts and conclusions in support of the Mayor and City Council's decision to adopt the Resolution titled "A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LEWES, DELAWARE, CERTIFYING THE ANNEXATION OF THE PROPERTY CONTIGUOUS TO THE CITY'S BOUNDARIES KNOWN AS THE BRITTINGHAM PROPERTY, A 34.64-ACRE PARCEL LOCATED ALONG THE SOUTHEAST SIDE OF NEW ROAD SUSSEX COUNTY TAX MAP NUMBER 335-8.00-17.00".

Brittingham Property Annexation Findings of Fact

The City of Lewes 2015 Comprehensive Plan includes an annexation strategy that focuses on annexing adjacent areas so that the City can influence development in these areas. Map 11 (attached) of the Comprehensive Plan depicts areas identified for potential annexation.

On June 13, 2016, recognizing the City's annexation process is cumbersome and time-consuming, Mayor and City Council created an ad-hoc committee (Annexation Regulation Ad-Hoc Committee) to recommend revisions to the annexation process, amendments to the City Charter and/or Code including zoning classifications, and incentives to encourage annexation.

Between July 2016 and November 2017, the Annexation Regulation Ad-Hoc Committee held twenty-four (24) public meetings to develop recommendations as assigned by Mayor and City Council.

At its meeting on August 16, 2016, the Annexation Regulation Ad-Hoc Committee discussed the separation of the annexation process from the subdivision process, expressing concern that a developer might not agree to annex property if they were not assured they would get the zoning requested. Based on discussion and input from legal counsel, it was determined that this could be addressed through an annexation agreement.

Minutes of the Annexation Regulation Ad-Hoc Committee discussed in detail the anticipation of annexation of raw land without a subdivision plan, as articulated in their discussion of incentives for annexation of undeveloped land at their meeting on October 25, 2016.

At its meeting on May 16, 2017, the Annexation Regulation Ad-Hoc Committee discussed priority areas for annexation of lands surrounding Lewes. At this meeting, the Brittingham property was identified as the second highest annexation priority, with the Cape Henlopen High School as the top priority.

On June 6, 2016, the Annexation Regulation Ad-Hoc Committee began discussion of clustering, specifically referencing the Brittingham property.

On June 27, 2017, Mr. Reardon, Mr. Kennedy and Mrs. Townshend reported on a meeting held with Chip Brittingham regarding the potential of annexing the Brittingham property. Details of this discussion are included in the minutes of this meeting. At this meeting, Mr. West also presented some ideas for annexation zoning districts, reviewing potential clustering options.

The Annexation Regulation Ad-Hoc Committee continued to discuss and refine the annexation zones at nine (9) public meetings of the committee on July 10, 2017; July 26, 2017; August 15, 2017; September 22, 2017; October 4, 2017; October 17, 2017; October 27, 2017; November 3, 2017; and November 30, 2017. During this review, discussions included the use of clustering to protect natural resources.

The Annexation Regulation Ad-Hoc Committee presented its report to Mayor and City Council on December 11, 2017, including the proposed annexation zones. Mayor and City Council referred these proposed zones to the Lewes Planning Commission, who had extensive discussions on the proposed zones at three meetings on January 17, 2018; February 21, 2018; and March 28, 2018. On March 28, 2018, the Lewes Planning Commission forwarded the proposed zones to Mayor and City Council with a favorable recommendation, including a series of comments for Mayor and City Council's consideration as they finalize the ordinance.

At the public hearing regarding the annexation/zoning of the Brittingham property, and in the comments submitted for the record following the public hearing, public comment was overwhelmingly opposed to the annexation/zoning/development of the Brittingham property. The facts provided above support that the annexation of the Brittingham property is part of a policy rooted in the City of Lewes 2015 Comprehensive Plan and discussed in a series of public meetings during 2016 and 2017. The comments relate to several specific topics as follows, along with facts that address these comment topics.

- Residents have expressed concern about the pace and amount of development in the Lewes area, specifically along New Road.
 - Development pressures exist regardless of a property's location in the City or the County.
 - The subject property is zoned AR-1 in Sussex County. Under this zoning district, the property could be developed at 2 units per acre as single-family detached homes¹. In addition, the Sussex County zoning ordinance allows for many conditional uses within the AR-1 zone, including multi-family dwelling structures and townhouses. As stated by members of the public, there is a series of criteria that must be met in order to construct townhouses or multi-family dwellings².
 - The area along New Road is within the Environmentally Sensitive Developing Area according to the 2008 Sussex County Comprehensive Plan. In the draft 2018 Comprehensive Plan, this area is identified as a Coastal Area, which the draft plan states is "to address the development pressures and unique environmental characteristics of the area." Within the Coastal Area, the draft plan (page 25) identifies a list of potential zoning classifications that could be applied, ranging from industrial and commercial zones to residential zones.
 - Within the AR-1 zone in the Environmentally Sensitive Developing Area, if a developer pays a fee per unit over two dwelling units per acre, the land can be developed with a density of up to 4 units per acre.
 - The City's policies placing a priority on annexation follow years of rapid development in the unincorporated areas surrounding Lewes. Mayor and City Council have prioritized annexation of areas contiguous to the City boundary in an effort to protect the City's wellfields and influence the character of the development. Missed opportunities to influence the character of development are most recently noted with the development of Harbor Point and Showfield.

¹ Sussex County Code §115-25 B

² Sussex County Code §115-22

- Residents expressed concerns that the annexation request does not include a subdivision application and comments reflect a general discomfort with separating the subdivision review from the annexation review. Several comments refer to the City not following its typical process.
 - According to the City of Lewes Code, §170-13:
Concerning areas located outside of the City limits, annexation shall be completed prior to the submission of a subdivision application under this chapter.
 - Prior to November 10, 2014, subdivision applications were reviewed concurrently with annexation requests. In response to a recommendation from the Planning Commission, Mayor and City Council adopted an ordinance to amend the City of Lewes Code, §170-13 to the current language. This is why the process differs from past annexation requests.
- Residents expressed concerns about congestion, drainage and run off, archaeology, flooding, traffic, road character, home values, and environmental protection.
 - These issues will need to be addressed, whether development takes place within the City limits or in unincorporated Sussex County.
 - The City has knowledge of and sensitivity to these issues. Annexation of the property allows the City to ensure that these issues are appropriately addressed through the development process, which will include significant engagement of the public.
 - If the property is annexed, the developer will need to submit an application for a major subdivision. This application would be reviewed by the Planning Commission under the provisions of the City of Lewes Code, Chapter 170 – Subdivision and Land Development, Article III –Major Subdivisions. During this review, the Planning Commission must consider a list of 22 items listed in the City of Lewes Code, §170-19 E.

Brittingham Property Annexation Findings of Fact (Document Excerpts)

2015 Comprehensive Plan, pages v and vi:

PROPOSED LEWES ANNEXATION PLAN

Position on Expansion of Boundaries: Lewes is interested in expanding city boundaries in order to have more control over surrounding development and, where possible, to add areas that are now served by the Lewes Board of Public Works.

Policy for Annexation: Lewes is interested in expanding its boundaries in order to have more control over surrounding development and to protect its wellfield.

Recommendations: This Plan recommends that Mayor and Council consider:

- Annexing those lands that lay between Kings Highway and Savannah Road, out to Clay Road, to include Warrington Farm, Cape Henlopen High School, and the City of Lewes wellfields.
 - Continuing to seek ways to make it more attractive to be a resident of the City as a way to encourage annexation of lands within the annexation area.
 - Approaching the homeowners within the inholdings/enclaves to encourage them to annex into the City.
 - Reviewing incentives, such as, tax abatement, fee reductions, and streamlining processes.
-

Mayor and City Council Minutes – June 13, 2016:

Presentation & consideration of the appointment of an Ad-Hoc Committee to review potential future annexations into the City.

Mayor Becker explained the regulations for annexing property into the city has been found to be cumbersome and very time consuming. This committee will review those regulations to determine what can be done to improve the sequencing of actions so it can move forward in a timely manner. The City Code and Charter will have to be amended for any recommended changes. We can only annex land that is contiguous with the City. There are some parcels that are part of the city that are not contiguous and that has created some other issues that will need to be addressed.

Mayor Becker recommended the appointment of the following individuals to the Annexation Regulation Ad-Hoc Committee:

Fred Beaufait, Deputy Mayor, Chairperson
Dennis Reardon, Councilperson
Tom Panetta, Planning Commission
Richard Kirschner, Planning Commission
Jim Prettyman

Mayor Becker read the **CHARGE** of the committee into the record as follows:

The committee shall review current annexation procedures as outlined in the Lewes City Code and Charter. This review shall include the sequence of actions currently required by both the Planning Commission and the Mayor & City Council. The committee shall provide Mayor & City Council with recommendations regarding:

- Possible revisions to facilitate the timelines of the annexation process
- Possible revision to the Charter and City Code, include zoning classifications
- Possible incentives to encourage annexation.

ACTION: Deputy Mayor Beaufait made a motion to approve as presented, seconded by Councilperson Morgan, all voting in favor, motion carried.

Annexation Regulation Ad-Hoc Committee Minutes – August 16, 2016:

A copy of the Lewes Planning Commission's draft Comprehensive Plan as related to annexation was distributed and reviewed by *Mr. Panetta*. One of the key issues is zoning. Currently there is no specific zoning tied to lands considered for annexation. The future land use map has zoning designation but is much more general.

Mr. Beaufait stated what they are working with is the Mayor & City Council draft 2015 Comprehensive Plan, which could be amended if necessary. Council's approach is that any lands annexed would be residential and they would work with the property owner regarding exactly which residential zone they were looking for.

Mr. Panetta stated in trying to split annexation from subdivision, zoning becomes a major issue. The question is would a property owner agree to annex into the city without knowing if he would get the zoning he wants for development. *Mr. Reardon* stated the annexation agreement could be written such that if the owner did not get the zoning he requested, the annexation would be voided. There is a path to address that issue. *Atty. McCallister* agreed anything tied to the land can be a part of an annexation agreement.

Annexation Regulation Ad-Hoc Committee Minutes – October 25, 2016

Discussion and consideration of motion regarding incentives for annexation of undeveloped land

Mr. Beaufait reviewed a draft motion, as follows:

When considering an undeveloped, unimproved property for annexation into the City, it is recommended that the property taxes that would normally be imposed, if appropriate to the annexation process, would be waived for a period not to exceed seven (7) years from the date that annexation is approved. At the end of the seven year period, even if the property has not been developed nor improved, property taxes would be implemented against the property. If at any time

during the seven year period the property is developed or improved, property taxes would be imposed, annually, on the property once the work on improvement or development begins.

As requested at the last meeting, *Atty. McAllister* looked into the definition of "unimproved land". He explained the US Department of Agriculture sets the standard for lending on undeveloped land. They defined it as "raw land"; with absolutely no improvements, to include buildings, infrastructure and/or landscaping. It has not been defined in the state of Delaware.

There was discussion about the motion and how to define if a property has been improved or not and how to determine when taxes would be imposed.

Councilperson Osler suggested tying it to the date a building permit is issued. A certain trigger needs to be determined so there is no ambiguity about when a property goes from undeveloped to developed.

Mr. Beaufait stated his idea was that when the property owner puts the "first blade in the ground", the property would go from undeveloped to developed. Even after a subdivision is approved, there is still a period of time to start development.

Mr. Reardon felt this was a good idea. It could also be tied into approval of the subdivision application. No improvements can be made until a subdivision has been approved and could be the trigger for taxes to start. *Mr. Kirchner* agreed, this could be the time to start taxes because there is an intent to develop.

Mr. Beaufait feels that just because they made an application, doesn't mean it has been approved and would be imposing taxes before the process is completed. He wants taxes to be imposed after the improvements have been started.

Mr. Reardon clarified that taxes wouldn't be imposed until after the final approval for a subdivision. The application process would have been completed and permission given to move forward with the installation of the infrastructure. A building permit would be issued for individual houses and the infrastructure would have already been installed.

Mr. Beaufait stated the purpose is to encourage land to be annexed into the city. As long as the land doesn't change, taxes would not be imposed even if it is sold during the seven years grace period. If the owner starts working, even if it is minor, then taxes would be imposed.

Mr. Kennedy stated unimproved property in the city currently pays taxes. If we want to encourage property to be annexed into the city, then we would have a set of incentives that if agreeable to the owner, they would go through the annexation process and then there is an opportunity for deferral of property taxes for seven years. If anything happens within the seven year window, it isn't reset, it is fixed at seven years. If nothing happens by the end of the seven year period, the property is assessed at the appropriate tax rate and taxes are imposed.

Mr. Beaufait clarified that the issue of imposing property taxes could be addressed in one of three ways:

- when the property owner gets a building permit,
- when they get final approval for the subdivision,
- when change begins to take place on the land.

Mr. Kennedy requested clarification when the application for utilities is approved. *Mr. Reardon* explained when an application for subdivision is considered, there has to be a letter from the BPW stating they have the capacity to supply utilities to the property. When the subdivision receives final approved, so does the utilities.

There was discussion about imposing taxes when the property value increases. *Mr. Beaufait* questioned how they would know when the property value increases. There is a lot of development around Lewes and he feels it is bringing property values in Lewes down. There is a lot of competition and is not a solid argument.

Mr. Prettyman stated tying it to property values would be very ethereal. He asked Ms. Osler to make further comment on tying to the building permit.

Ms. Osler stated it could be tied to almost anything. It could be Council approval, recordation of the plat, any one thing in the process or when the process is completed. That someone goes through the process and then decides for whatever reason to not develop the land, shouldn't be what is tied to taxes. Rather it should be that the land is within the city and has been approved for this use, all the city mechanisms are in place, that's when taxation should occur.

Mr. Beaufait wants to waive taxes within the seven year period as long as nothing has been done to land.

Atty. McAllister suggested reviewing the process to determine when and/or what would trigger taxes to be imposed. He can review it with the building officials.

Mr. Beaufait stated that even after final approval is complete, the developer may choose to not develop. When the change begins, that should trigger taxes, not when approval is given.

Mr. Hoehner questioned how they would define "work". Is it work when there are surveys? Is it work when there are soil tests? He feels it should be when the subdivision is approved.

Mr. Beaufait stated a survey or soil test doesn't mean development has begun. It is when they change the landscape.

Mr. Prettyman stated if they set it to when all the permitting is done and there is final approval, in his mind that is when the developer's risk begins relative to taxes. This would be an incentive to move forward.

Mr. Reardon questioned what if a property is annexed into the city, they receive the seven year grace period and they decide to sell the property. Does the tax waiver transfer with the property?

Mr. Kirschner feels taxes should be imposed when the property is sold.

Mr. Beaufait doesn't want it to change. The seven year period starts at annexation and runs with the land. It could be sold multiple times but that wouldn't change the clock.

Mr. Reardon doesn't agree with this. The abatement is tied to the annexation and once the property is in the city, if sold, property taxes should be paid.

Mr. Kennedy agreed the enticement to annex into the city is the waiving of property taxes. Once a property is in the city, it can be developed, and if sold the enticement should go away.

Atty. McAllister stated the 7-year period in the City's Charter is the maximum allowable limit for tax abatement. That doesn't mean it has to go that long. Another option would be to use a shorter duration of time, for example 3-years and could state that unless a property is undeveloped after 3-years, property taxes would be imposed. If the property continues to be undeveloped after 3-years, the

abatement could be extended up to a total of 7 years. This would allow there to be some development within the 3-year period, but at the end of 3-years the situation would be reassessed.

Mr. Beaufait stated he feels that would be too complicated. The selling of the property is an easy trigger to identify but the second trigger needs to be defined. *Mr. Reardon* wants the second trigger to be when they receive final approval of the subdivision.

Mr. Beaufait will discuss this issue with the building official to help define a trigger to start imposing taxes.

Annexation Regulation Ad-Hoc Committee Minutes – May 16, 2017

Priorities for potential annexation

Mr. Beaufait explained he wants to identify which properties the city wants to approach and encourage with regards to annexation, for example, the Cape Henlopen High School land. Annexing that property will allow the city to bring the wellfields directly into the city. There is the Brittingham property out on New Road and the Warrington Farm on Kings Highway. There is also land at the corner of Kings Highway and Gills Neck Road.

Committee members reviewed a map and there was discussion about what properties are contiguous with the city limits.

Ms. Townshend stated they have developed incentives for undeveloped parcels and questioned if there would be incentives for developed parcels to annex into the city. *Mr. Beaufait* stated it is something worth discussing.

Mr. Beaufait stated they need to determine the priorities. The properties to focus on are:

Cape Henlopen High School, Kings Highway: Government property, benefit allows the wellfield to be contiguous with the city.

Brittingham property, New Road: Private property, currently for sale, need to approach ASAP

Warrington property, Kings Highway: Private property, need to determine who owns it

Plummer property, land locked next to the Warrington property: Private property, dependent on the Warrington property for access

Harbor Point, off of Park Road: They tried to annex into the city but the process became too cumbersome and they withdrew their application. The city would need to do some ground work to make this possible. *Ms. Townshend* & *Mr. West* will meet with the *Lingos* and try to work with them.

University of Delaware property: Will be a cost to the city and no property tax income- less urgent

Lowder-Mitchell property, Kings Highway

Mr. Reardon suggested starting with the Cape Henlopen School District about the High School property. It would be the easiest if they are interested. The second would be the Brittingham property on New Road, and then Harbor Point.

Mr. Beaufait suggested having City Solicitor Glenn Mandalas do some preliminary work researching the Warrington and Plummer properties. *Ms. Townshend* stated she can do some preliminary work looking at the public records first.

Mr. Beaufait reviewed the priorities as follows:

1. Cape Henlopen School District/High School
2. Brittingham Property, New Road
3. Harbor Point, Park Road
4. Warrington & Plummer properties

Process for approaching property owners of potential property for annexation

There was discussion about the process for approaching property owners as listed above.

Harbor Point: *Ms. Townshend & Mr. West* will approach the Lingos.

Brittingham Property: *Mr. Reardon & Mr. Kennedy* will discuss the Brittingham property and determine a strategy to approach the owner.

Cape Henlopen High School: *Mr. Beaufait* will talk with Mayor Becker to determine how to approach the School District.

Annexation Regulation Ad-Hoc Committee minutes – June 27, 2017:

Brittingham property/New Road: Dennis Reardon, Robert Kennedy & Ann Marie Townshend

Mr. Reardon reported they met with Chip Brittingham last week. *Mr. Kennedy* stated *Mr. Brittingham* raised a couple questions. The property is owned by a family corporation and there are still some legal issues that need to be dealt with before the property can be sold. *Mr. Brittingham* feels this could take several years. There are currently several developers that want to purchase the property. There is an interest in looking at annexation if their concerns can be addressed.

Mr. Reardon stated one of *Mr. Brittingham's* concerns is that they would want the property to remain as it is, currently zoned AR1, which allows for agriculture. Lewes does not have a zoning district that would be compatible with the county's AR District. As they look at developing new zoning districts for annexation of outlying properties, they need to consider the inclusion of hunting and active farming. He was also concerned about the cost of the county running sewer lines to the property. They were able to assure him that if he annexed into the city, utilities would be supplied by the BPW and also discussed the possibility of an increase in the property value if located inside the city limits.

Ms. Townshend stated the focus of the discussion was on how to bring new properties into the city and address our zoning to allow development in a way that is comparable with the county. She feels the

city needs to address the need for outlying properties to be allowed to actively farm and hunt as they could if in the county. Currently, the City Code does not allow farming and/or hunting.

Mr. Kennedy pointed out the Lingo property further out on New Road is currently used as a hunting preserve. Any kind of zoning to reflect this would make it more attractive to annex into the city.

City Planner Tom West stated *Mr. Brittingham* also asked about the taxes. The property is very wide and he is concerned about the cost to serve for the utilities. He also acknowledged that the cost of having on site systems and having them fail is something to be taken into consideration, especially in areas that have wet soils.

Mr. Beaufait pointed out there would be seven years of no property taxes. *Mr. West* stated that was mentioned to him. *Ms. Townshend* stated they need to look at how other towns tax property that is being actively farmed. *Mr. West* stated if a property has been farmed for over 10 years, the local zoning cannot supersede farming. But he agreed they need to permit for it in the zoning code instead of just letting it happen. *Mr. Reardon* agreed. At this point they can continue farming but we need to look at what new zoning can be established so there is a clean transition from the county to the city.

Ms. Townshend stated they have meetings scheduled with relators Lingo and Schell. Dorothy Morris, State Planning Office, suggested they also talk to some of the engineers that have worked with the developers in the area.

Discussion & consideration of possible establishment of an alternative zoning for newly annexed undeveloped land in to the City

Mr. West explained that since the last meeting he has created some concepts. They need to create zoning districts to coincide with the county's so there are no disadvantages to coming into the city. They need to consider all the options to see what could work or not work. *Mr. West* distributed a rough draft Table of Permitted Uses and Structures for evaluation and discussion. Lot sizes range from 20,000 square feet to 4,000 square feet and include all kinds of housing, open space, commercial, community facilities, and agriculture.

The first step was to look at what Sussex County offers. Everything under consideration for annexation is in the county's AR District, which surrounds the city on all sides. The AR-1 District is somewhat of a catch-all district in that it allows primarily residential use, but also an array of nonresidential uses as special exceptions and condition uses.

Mr. West focused on the residential uses in the county's AR-1 District, reviewing three (3) options: Conventional Lot, Cluster Lot Option #1 and Cluster Lot Option #2. (See attached summary)

Conventional Option with Single Family units of 20,000 s/f lots, if there is water and sewer available and a 2/3 acre lot would be required if there is no water and sewer available. Also there would be a height limit of up to 42 feet.

Cluster Lot Option #1 with Single Family units must have 30% Open Space with minimum 7,500 s/f lots, and a height limit of 42 feet.

Cluster Lot Option #2 with Single Family units, requiring a fee paid to the county, must have 30% Open Space but would allow minimum 5,000 s/f lots, and a height limit of 42 feet.

In the AR-1 district, the county does not net out wetlands therefore the density would be higher than if the wetlands are not factored in.

Mr. West distributed and reviewed a modified version of the City's Table of Permitted Uses and Structures for a proposed Annexation Residential Use or AX (Res) and Annexation Mixed Use or AX (Mix). Agricultural Use has been added into both districts as a permitted use. (See attached table)

As written, within the AX Residential District permitted by right would be detached, two family, and single family detached dwellings including modular & manufactured and by conditional use would allow attached and townhouses. There are a few non-residential uses, such as a recreation facility and accessory uses.

As written, within the AX Mixed District permitted by right would be detached, two-family, single family detached dwellings, including modular & manufactured and apartments in conjunction with commercial use and only on floors above street level. By conditional use attached, multiple family, townhouses would be allowed. There is a wide array of commercial uses either permitted by right or by conditional use.

Mr. West reviewed a table of lot standards as related to the proposed AX Residential zone as compared to Conventional Lots, Cluster Lot Option #1 and Cluster Lot Option #2. (See attached table)

Mr. West distributed and reviewed three (3) examples of existing tracts to show how these districts could work.

Brittingham property on New Road consists of 32.4 acres of which 7.5 acres are wetlands. Because the county does not net out wetlands, and the city would be competing with the county, we could consider using part of the wetlands towards the open space requirement.

The County would allow 60 conventional units. Cluster option 1 would allow 64 units. Cluster option 2 would allow 129 units with a fee of \$20,000 per unit. The fee goes into a state fund for preservation of open space.

The City of Lewes would allow 60 Conventional units. Cluster option 1 would allow 54 units and require 9.7 acres towards the open space requirement of which 2.6 acres of the wetland is not applies. Cluster option 2 would allow 61 units and require 16.2 acres of open space, of which no acres of wetlands would be applied.

Comparing the county to the city, the conventional units would be the same but under the cluster option 1 there would be a loss of 10 units in the city. *Ms. Townshend* stated the city should try to make sure units are not lost going to the cluster option, if that is the preferred option. *Mr. West* stated some places do that and it is worth considering. It would depend on the property and the amount wetlands if it would be possible. The 60 conventional lots might not be possible once it is laid out. The number of units don't usually work out as calculated.

Mr. West explained he did not try to approximate the county's option with the fee as this would result in double the density and he doesn't think Lewes would be open to higher density.

Ms. Townshend questioned if developers are taking advantage of the cluster with a fee option in this area? *Mr. West* stated it appears that they are using the conventional option more than anything.

Mr. Kennedy stated if the city decided to go with a higher density for a fee, the city would keep the fee. *Ms. Townshend* agreed. It wouldn't have to be for recreation but could be used for capital improvements, something for the betterment of the city.

Lewes Planning Commission Minutes – January 17, 2018

Presentation and consideration of a recommendation by the Annexation Regulation Review Ad-Hoc Committee for the development of two (2) new zoning districts for newly annexed property.

Ms. Carnahan stated the plan for tonight is for an overview with more detailed discussion and review of tables at the February meeting.

Mr. Beaufait stated Lewes is in competition with the County and in order to expand our borders, as stated in the Comprehensive Plan, the Committee discussed:

- Having a 'Transition Zone';
- The possibility of 'Clusters' to include 20,000 square-foot lots with 30% to 50% Open Space to offer developers a unique option;
- Two new zones were also proposed;
- Option to have 5,000 square-foot lots would allow the maximum number of houses plus 30% for a small cluster;
- Recommendation for limits on the square footage per building lot;
- How the County will charge fees to allow density to be increased.

Ms. Carnahan questioned the discussions of the Committee concerning communities with mixed living options that include single-family homes, one-and-two-floor condos built around a central activities center.

Mr. Harris asked if there is encouragement for developers to build affordable housing.

Mr. Beaufait stated mixed-living communities will be permitted as long as the lot size requirements are met. The issue of affordable housing has not been addressed.

Mr. West reviewed the map showing the creation of two new districts to be added to the current format of the zoning ordinance. Each district has purpose statements, use tables, and metric tables. Design criteria for Open Space will also be included. Clustering had been allowed in Lewes in the past--is allowed in the County--and will be useful in the annexation areas.

Mr. McKay questioned the size of the Mixed-Use area at the corner of Kings Highway across from the high school. Was there a public hearing or were these public meetings and were there many comments from the residents.

Mr. West stated he would check about the area questioned by Mr. McKay.

Mr. Beaufait stated all meetings were public meetings but were not well attended by the residents. A public hearing has not yet been scheduled.

Mr. Reardon stated, according to the charter, a zone must be assigned for annexation and it also provides for conditional annexation. LPC would review applications for a parcel after annexation is completed and a site plan is submitted. If LPC denies a request, the applicant cannot back out of the

annexation and then go through the County. This applies to undeveloped property only. The charter also states property must be contiguous with the City limits.

Lewes Planning Commission Minutes – February 21, 2017

Presentation and consideration of a recommendation by the Annexation Regulation Review Ad-Hoc Committee for the development of two (2) new zoning districts for newly annexed property.

Mr. West stated the purpose of the Committee was to provide new zoning districts, if needed, for residents to be interested in coming into the City vs. the County. These new districts will only be used for new development in the annexation agreement process, but current zoning districts can also be used. Developing considerations are needed for the wellfields located in the outlying areas.

Mr. West reviewed the characteristics of AR-1 Sussex County, AX-Res and AX-Mix Districts City of Lewes for residential use lot options including:

- Conventional
- Cluster 1
- Cluster 2
- Maximum building heights
- Non-residential Uses-By Right, Non-residential Uses-Conditional Use
- Non-residential Uses-By Right (AX-Mix), Non-residential Uses-Conditional Use

Discussion included fees paid to the County per dwelling based on acres to allow more density and would cluster allow a change in sizes of homes throughout a parcel

Rick Quill, E. Market Street, questioned if there would be any consideration to waive fees for density (if Lewes decided to require fees for density) when a developer was building affordable/workforce housing. *Mr. Beaufait* stated the concerns with density are the two evacuation roads in the City and safety issues for the community. The County allows more density in their clusters; the Committee did not consider a fee to allow for more density; Cluster 2 does allow for basic density plus 30 percent.

Mr. West discussed the development scenario for three properties including: Brittingham Tract, Highland Heights/Mariners Retreat, and Canary Creek. The map for each property was reviewed and included a summary table listing for comparison of:

- Total Acres
- Wetland Acres
- County conventional units
- County cluster (no fee) units
- County cluster (recreation fee) units
- Proposed conventional units
- Proposed cluster option #1 units
- Required open space option #1 (acres)
- Proposed cluster option #2 units
- Required open space option #2 (acres)

Mr. West stated the numbers for comparison in the table are based on the formula and may change according to the ordinance. The map of annexation areas included in the 2015 Comp Plan was reviewed for: Residential; Mix; Open Space; and Areas of Concern.

Atty. Mandalas explained 'contract zoning' stating developers will sometimes agree to annexation if given a specific district. The City must demonstrate that the zone selected would not only be accepted by the developer but is one that considers the neighboring communities. Zoning actions must look at the character of the surrounding neighborhood for the new district. There is concern that the new districts being created for purposes of annexation would not be in character with the surrounding neighborhood.

Atty. Mandalas questioned if a property in the City boundaries could be requested to have a change in zoning to one of the new districts for development. *Mr. West* stated this would not be possible under the 'purpose statement'. *Atty. Mandalas* stated the purpose statement would not protect the City in court if an applicant shows that their development is in character with the surrounding neighborhood. Language will need to be crafted for the purpose statement to address this concern.

Discussion included:

- Majority of the annexation areas are adjacent to residential districts
- The two new zones are considered 'transitional zones' and would not be for anything inside the City because all surrounding neighbors have assumed the lower height issue; there is an issue with height restrictions in reference to Beebe Hospital
- How to address large properties within the City limits that are not yet developed and have nothing comparable in either direction
- Developer comments to the Annexation Committee about their concerns for height restrictions and density

Mr. McKay questioned *Atty. Mandalas* about the basis for a successful challenge to override a decision by the City. *Atty. Mandalas* stated because the new zones really are not wanted in other areas of the City but are for the purpose of enticing developers to come into the City, are we saying this is not a zoning district that would benefit the surroundings. A neighbor may state that their surrounding area in the City does not look like what is being brought in to a district that will be harmful to their health and welfare. This may be considered a successful challenge.

Mr. West stated a cluster/open space development is largely open space and the Commission will be providing a definition for open space. Specific provisions are needed for open space in the development review process. Plans for ownership, maintenance, and management need to be submitted to the City.

Discussion of the table of uses:

- Consider list of conditions and provisions for conditional uses in the AX-Mix zone with only a few conditions listed in the current ordinance
- Draft by *Atty. Mandalas* of open space definition for the LPC March meeting
- Arboretum considered a botanical garden
- Article 13, Page 103 of Zoning Ordinance states a public hearing and approval by MCC are needed for conditional use application; special exception goes before the Board of Adjustment
- Conditional use approval is needed before a site development is submitted
- Owners of the Brittingham property are interested in continuing agriculture; crops are permitted in the City but not livestock
- Should there be a more general and less specific category of conditional uses; need to consider if the more specific item listed in the zoning code would be then be excluded; explain the purpose is to simplify the list of uses and not to exclude others listed in the code

Ms. Carnahan stated the scenarios and options need to be reviewed for questions or concerns on conditional use to be sent to *Mr. West*, and the open space definition will be discussed for a decision to be made at the March meeting to send a recommendation to MCC.

Mr. Beaufait stated the issue of conditional use was also a concern for the committee. There is also the question of how this can be defined to be limited to newly-annexed property and not be imposed on property in the city. Developments not annexed will be approved by the county's guidelines and will contain things Lewes does not want. The committee would like this completed quickly because there are opportunities that will be missed.

Lewes Planning Commission Minutes - March 28, 2018

Presentation and consideration of a recommendation by the Annexation Regulation Review Ad-Hoc Committee for the development of two (2) new zoning districts for newly annexed property.

Ms. Carnahan stated she will be sending a report to MCC in the morning based on LPC comments and ideas including the comments from Mr. Panetta. The report will accompany the proposal.

Mr. West stated the purpose of these zoning districts is these districts do not apply anywhere in the City and are primarily for areas outside the City to be annexed. One of the considerations for annexation is what the zoning is in the County. This is criteria that the developers consider for coming into the City. The objective of this process is also to look at zoning strategies consistent with the Comprehensive Plan for areas to be annexed.

Discussion included:

- ❖ Design option requirements including 30-foot forested buffers cannot apply everywhere, but would apply to the cluster options and not to conventional lots; set standards for landscaping in the farm-field developments
- ❖ Encourage cooperation and greater participation between the City and the Lewes BPW; the County has requested BPW waive or reduce connection and impact fees for properties to be annexed; reducing or waiving the connection and impact fees for property to be annexed and developed in Lewes would help the development financially to meet the criteria stated; this reduction or waiver would give the City an advantage in negotiations with developers and the County
- ❖ BPW to consider alternatives to its current plan to facilitate annexation to protect Lewes from surrounding unwanted development; cluster option could reduce the infrastructure by BPW for lower costs

Mr. Beaufait stated 30-foot buffers are needed in the cluster options and do not decrease the lot size. The Annexation Committee has a BPW Board member on the committee. The reduction or waiver of fees was discussed, but the Board is firm on offering no concession because if this is done for one developer, it will need to be done for everyone.

Mr. Owen stated if unimproved land is bought by a developer, the developer is required to provide services except for the connections. In the past, BPW has required an area that has been built to have everyone agree to connect with all impact fees charged at one time. BPW is now working on an agreement to front the costs of the infrastructure and to have homeowners be able to connect one at a time. Low-interest loans are available from the State with BPW being responsible; there are income limits required to qualify. Each homeowner is responsible to pay for the pipe from their property to be connected to the main pipe and averages about \$6,000 per unit.

Mr. Owen stated further discussion is needed after the zoning is decided and set.

Mr. West stated continued discussion from the last meeting concerns the provision for OS; the zoning ordinance contains a definition, but the subdivision ordinance does not; LPC will look at this further while moving forward with the zoning update.

Mr. West continued with discussion including:

- Current ordinance states a setback and a yard requirement are OS; levels of OS being active or passive, public or private; permanent OS is referred to as protected OS
- Comprehensive Plan gives a number for how much OS is in Lewes including permanently protected active parks, maintained passive areas, permanently protected private OS; in the annexation district it is called protected OS; State's definition is permanently protected OS for State programs
- Consider suggesting to MCC to add a definition for the annexation districts of OS; the 10% required by the developer to be permanent protected OS outside the yard areas be added to the subdivision ordinance; cluster district OS could be defined as common OS
- Definition should say what the OS is and the regulations to state where it is and how it is configured; will the 30% or 50% designated OS belong to the Homeowners Association or be deeded to the City; management plan is needed that will state who owns the land and who will be responsible for the maintenance; clause added that will say 'shall be designated or accepted' or 'shall be dedicated'
- Concern that these zoning districts could be applied inside the City; AX Residential and AX Mix Districts match the annexation strategies map in the Comp Plan which can be added into the purpose statements; add language to the purpose statements to state 'shall always be within the City'
- Concern that the AX Mix allows many uses by condition and must state these uses can only happen in the area outside the City adjacent to Savannah Road and Kings Highway; made clear in 5.1 that these areas where new zones apply are outside the City; also state cannot be applied to the existing City limits to continue to be used as the City becomes larger

Ms. Carnahan stated there is a neighboring state with transitional zones between wetlands and buildable land. When the size of the buffer is decided, the developer can average the buffer being a shape that is narrower or wider than the agreed buffer size in certain areas, but it would need to average the agreed figure. This may give flexibility to a developer and still protect the wetlands. County buffers are 25 feet for wetlands and tidal wetlands are 50 feet; New Castle and Kent Counties are 100 feet. This averaging option must be made 100% clear that it cannot be applied to anything already in the City.

Mr. Harris stated his concern is the more things are open to negotiations, the more the regulations become negotiable. There is also a concern about there being a minimum in the averaging that the developer cannot exceed anywhere on the property.

Mr. Mandalas stated there is no negotiating in approval of a land development coming before LPC. If the developer meets the set of regulations, LPC is obligated to approve. This idea is to bring the subdivision, annexation, and zoning districts to a level of sophistication not seen before in an effort to compete with what is outside the municipal boundaries.

Mr. West did a summary of the information sent by Mr. Panetta:

- Uses and structures in all districts: The concern about how manufactured and modular homes are grouped together; Annexation Committee discussed and decided these should be split in the annexation districts; need to be reviewed by LPC for the zoning update; questioned the City's intent to encourage manufactured homes in the annexation districts; to be allowed as a permitted or conditional use
- Formula: Netting-out of wetlands discussed by the Annexation Committee; need to be consistent with the County who does not net-out the wetlands; the County may increase the size of their

buffers to be stated in their Comp Plan, and Lewes would need to make this change also; a provision for the County states no lots can contain wetlands and Lewes matches what the County has now

ACTION: *Mr. McKay made a motion to recommend to Mayor and City Council adoption of the two annexation zones as presented from the Annexation Committee to include comments made by the Planning Commission and the report from Mr. Panetta for Council's consideration; Mr. Hoechner seconded the motion, which passed unanimously.*

City of Lewes Code, §170-19:

- E. Planning Commission review. Upon receipt of the Parks and Recreation Commission and City Engineer and Board of Public Works first reports, the Planning Commission will arrange for an initial public hearing on the proposed major subdivision. The Planning Commission may conduct such meetings as it deems desirable before or after this public hearing in order to address possible alterations, changes, and modification of the proposed major subdivision. Notice of the time and place of the public hearing shall be published in a paper of general circulation in the City at least 15 days prior to the time and date of the hearing. The Planning Commission's review shall include, but not be limited to, consideration of the following:
- (1) Compliance with the provisions of this chapter, Chapter 197, Zoning, and any other applicable provisions of the Municipal Code of the City of Lewes.
 - (2) Integration of the proposed major subdivision into existing terrain and surrounding landscape.
 - (3) Minimal use of wetlands and floodplains.
 - (4) Preservation of natural and historical features.
 - (5) Preservation of open space and scenic views.
 - (6) Minimization of tree and soil removal and grade changes, except to ease flood concerns.
 - (7) Screening of objectionable features from neighboring properties and roadways.
 - (8) Provision for water supply.
 - (9) Provision for sewage disposal.
 - (10) Prevention of pollution of surface water and groundwater.
 - (11) Minimization of erosion and sedimentation, minimization of changes in groundwater levels, minimization of increased rates of runoff, minimization of potential for flooding and design of drainage so that groundwater recharge is maximized.
 - (12) Provision for safe vehicular and pedestrian movement within the site and to adjacent ways.
 - (13) Effect on area property values.
 - (14) Effect on schools, public buildings and community facilities.
 - (15) Effect on area roadways and public transportation. The Planning Commission, by majority vote, may require a traffic impact study conducted by an outside agency at the expense of the applicant, should conditions warrant such a study.
 - (16) Compatibility with adjacent area land uses.
 - (17) Effect on area waterways.
 - (18) Whether estimated costs to be borne by the City during construction, if any, can be met from available City funds which reasonably may be anticipated to become available to the City and applicable to subdivision purposes.
 - (19) Whether the estimated expense to the City can be justified on the basis of estimated tax returns which would accrue to the City within a reasonable period of time.

- (20)** Recognition of scenic byways and walkability.
- (21)** Job creation.
- (22)** Providing diverse housing options.

