

LEWES PLANNING COMMISSION
Regular Meeting Minutes
March 28, 2018

The regular meeting of the **Lewes Planning Commission** was held on **Wednesday, March 28, 2018 at 6:30 P.M. in Lewes City Hall** in accordance with proper notification with the following present: Chairwoman Kay Carnahan, Drew McKay, Nina Cannata, Joe Hoechner, Mark Harris, Richard Kirschner, Steve Rogers, City Planner Tom West, City Solicitor Glenn Mandalas, Ex-Officio City Councilwoman Bonnie Osler, and Recording Secretary Jackie Doherty. Thomas Panetta and James Linnen were excused. City Councilman Fred Beaufait, City Councilman Dennis Reardon and Tom Owen of Lewes Board of Public Works were also present.

1. Presentation and consideration of minutes from the February 21, 2018 meeting.

ACTION: *Mr. Hoechner made a motion to approve the February 21, 2018 meeting minutes with the proposed changes by Mr. McKay; Mr. Kirschner seconded the motion, which passed unanimously.*

2. Reports and updates from City Planner.

Mr. West reported discussions continue for the Beebe property rezoning on Savannah Road for workforce housing. There was a meeting with the applicant on March 13th to discuss the concept plan changes and the property to be R-5 zoning. There was also a meeting with the applicant, State Department of Housing, and NCALL to discuss workforce housing and opportunities for low-interest financing, possible price-point changes, and how to give the City affordable housing while balancing it with growth management.

Mr. McKay stated Southern Delaware Alliance also met with the applicant who stated he would agree to a contract that would contain a waiver of the connection fees by the Board of Public Works to then be able to offer a rent reduction based on the percentage of the reduction. There is also a town meeting scheduled for October to discuss 'affordable housing' not 'workforce housing'. The applicant has agreed to participate in this meeting as a panelist. The possibility of the applicant building a homeless shelter was also discussed.

Mr. West stated the Ice House rezoning was denied by Mayor and City Council (MCC) who requested that Mr. West check into zoning options for industrial properties surrounded by R-2 zoning. LPC agreed that residential seems to be the right use for the Ice House property, but the number of lots and the configurations are the issues. An applicant who is redeveloping an industrial site may be eligible for Brownfield Funds, but there are no sites that are eligible within Lewes because these have not yet been designated. Since the hearing, the developer has submitted alternative plans that include a road from New Road thru to Carey Lane. A minor subdivision request was submitted last week for two lots at Lewes Beach and this will be an agenda item for the April meeting.

Mr. West continued reporting:

- There will be a public hearing scheduled to take place before the next MCC meeting on the Town Center parking amendment
- TAP project survey work continues at Savannah and American Legion Road
- Transportation Improvement District strategy work with DeIDOT based on review of their report on assumptions for traffic volume; proposed changing the one district into two to include Cape Henlopen district on the other side of Route 1 and Lewes on this side of Route 1 has been discussed; concerns about the district crossing over New Road
- New Road Amendment being discussed by the Byway Committee
- Budget adopted for online training opportunities to be available to LPC; budget also allows equipment for printing maps working with the University of Delaware and Board of Public Works for the GIS work
- Municipal boundary changes have been submitted for the census including Highland Acres; will continue working to submit all the new address information
- FEMA training on mapping system showing details of property elevation

Mr. West stated he has not heard anything back from the State regarding their review of the Comprehensive Plan.

3. Reports from Land Use, Resources, and Administrative subcommittees.

Land Use/Marine District Subcommittee: *Mr. McKay* reported the data collection is nearly finished; *Mr. Rogers* arranged an interview for this morning with one of the business owners in the community; will now consider what to do next to decide what is recommended to MCC. The next meeting on March 24th at 4:00 P.M. will be to evaluate options to have all the data collected together to decide whether to make technical zoning amendments to the existing ordinance, or include discussion related to the input received from the community through the surveys and interviews regarding what is wanted for Lewes in the next 20 years and how it will impact zoning. The issue is what the Marine District will look like in 20 years; what are the factors to consider; are there recommendations for enhancements to help preserve the district; what changes are needed for the district for the next generation. This will be a public meeting with comments accepted. *Mr. Panetta* will provide a summary of the data to present to MCC by May.

Administrative Subcommittee: *Ms. Carnahan* reported work continues to complete the new list of definitions. *Ms. Cannata* is working on drawings to be included in the ordinance. *Ms. Carnahan* stated she contacted Beebe Medical Center about giving a presentation on their expansion plans for Lewes and is waiting for their answer to schedule the meeting.

4. Reports and updates from LPC members.

Mr. Hoehner reported he attended the DelDOT meeting on Monday to discuss Five Points. Another meeting is scheduled for the last Monday in April, this may not be a public meeting but only for the stakeholders.

Mr. Reardon stated the DelDOT meeting scheduled for the end of April is a working-group meeting that will be open to the public.

5. Presentation and consideration of the rezoning of recently abandoned paper streets: Smyrna Avenue, Dover Avenue, Harrington Avenue, Hartley Avenue, Georgetown Avenue, Leipsic Avenue, New Castle Avenue, Seaford Avenue, St. George's Avenue, Viola Avenue, and Wilmington Avenue from Residential Beach (R3) to Open Space (OS). The proposed rezoning from Residential Beach (R3) to Open Space (OS) will be considered for two vacant parcels off Smyrna Avenue (SCTM 335-4.15-69.00 and 335-4.15-70.00).

Ms. Carnahan stated *Mr. West* provided information and surveys of the parcels for review.

Mr. West explained the process stating these unimproved streets were abandoned as streets and turned into OS to include two parcels owned by the City that would be cut off. The two parcels owned by the City will also be part of the OS. All but one of the streets were vacant, and according to the Code, these would remain vacant with no zoning applied. There was zoning for the two parcels and the street on Smyrna Avenue. The surveys were done for the land to be joined into the larger parcel. There was a hearing in November needed as part of the process to bring the request before LPC. According to the Property Review Ad Hoc Committee, this will benefit the corner property owners to have full use of their properties, and with the additional OS in the City, will help the homeowners with their floodplain insurance.

Discussion included:

- Concern that the neighbors will be encroaching on the land
- Add gravel with a fence located 30 feet in from Cedar Avenue to designate as a free parking area for Lewes Beach
- Can the three parcels that are 5,000 feet be sold instead of being OS; lots are nonconforming; flooding is an issue; classified as wetlands
- Two parcels on Smyrna are behind the houses on Cedar with OS/marshland on either side
- The paper street of Smyrna on the west side of Cedar and the two lots are included in the OS

Rick Quill, 407 East Market Street, asked how many paper streets are not being converted to OS. If these streets were to be improved, would it be the responsibility of the City.

Mr. Reardon said there are four on Cape Henlopen Drive and three on Cedar. *Mr. Mandalas* stated these are the ones at the beach with others located throughout the City. Yes, the City would be responsible for the improvements.

ACTION: *Mr. McKay made a motion to recommend to Mayor and City Council approval of the eleven (11) abandoned paper streets from Residential Beach (R3) to Open Space, and for two (2) vacant parcels off Smyrna Avenue—as identified by the Chair—from R3 to Open Space; Mr. Rogers seconded the motion.*

Mr. Harris questioned if residents are using any of the paper streets to drive to the rear of their house, and do they understand there are no rights to access on the streets.

Mr. Mandalas stated none of these paper streets are used as the sole access to their homes.

Ms. Carnahan stated there was a very well-attended public hearing held by the Ad Hoc Committee. Homeowners who had two road frontages that impacted the shape of their homes, now had one that would impact the shape of their home. It was made clear that the residents did not want additional development in the area.

Mr. Reardon stated there are other paper streets in the City that have remained paper streets because homeowners were using these to access their properties with some residents permitted to build a garage.

ACTION: *After discussion, the motion passed unanimously.*

Ms. Carnahan asked to make a proposal based on the motion reading the definition of permanent open space into the record. There has never been a request for property to be zoned permanent open space. Could LPC consider asking MCC to make these parcels permanent open space?

Mr. Mandalas stated there is not a zoning district for permanent open space, but the definition does include protecting the land by legal means. The recommendation to MCC would be to zone the parcels OS and then to take the next step by legal means to permanently protect the land as OS. This would include conservation easements and deed restrictions to provide an additional level of protection.

Ms. Osler questioned if this could be reversed in the future and the concept of municipalities doing something permanent.

Mr. Mandalas stated any future council could make the determination that they would want to undo what this council has designated as permanent open space. There is a general concept that one council cannot bind the hands of a future council. It would not be unlawful or illegal for MCC to designate through conservation easements and deed restrictions, even though this is new territory since Lewes is on the leading edge of protecting open space.

Mr. West read the zoning definition of permanent open space into the record explaining agriculture or open space easements that are placed for protection and how these can be undone. There has also been discussion of cluster districts in annexation that generate open space and need for the designation as permanent OS to be included in the definition.

In reference to discussion of developing any of these parcels, *Mr. Reardon* spoke of how DNREC regulates wetlands and that there is a series of regulations that prevent development.

ACTION: *Mr. McKay made a motion to recommend to Mayor and City Council consideration of designating the abandoned paper streets and the two vacant parcels off Smyrna Avenue as permanent open space; Ms. Cannata seconded the motion, which passed unanimously.*

6. 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.

Ms. Carnahan stated the April meeting will begin at 7:00 P.M. with the agenda to include the two-lot subdivision at Lewes beach.

Mr. McKay stated the Land Use Committee meeting scheduled for April 24th is an important meeting in terms of the Comp Plan. April 16th will be the Rock Hall tour to begin at 10:30 A.M. with everyone invited.

ACTION: *Mr. McKay* made a motion to adjourn; *Mr. Hoechner* seconded the motion, which passed unanimously.

The meeting adjourned at 8:45 P.M.

Respectfully submitted,
Jackie Doherty, Recording Secretary
Lewes Planning Commission