

# The City of Lewes



## STAFF REVIEW

FEBRUARY 21, 2019

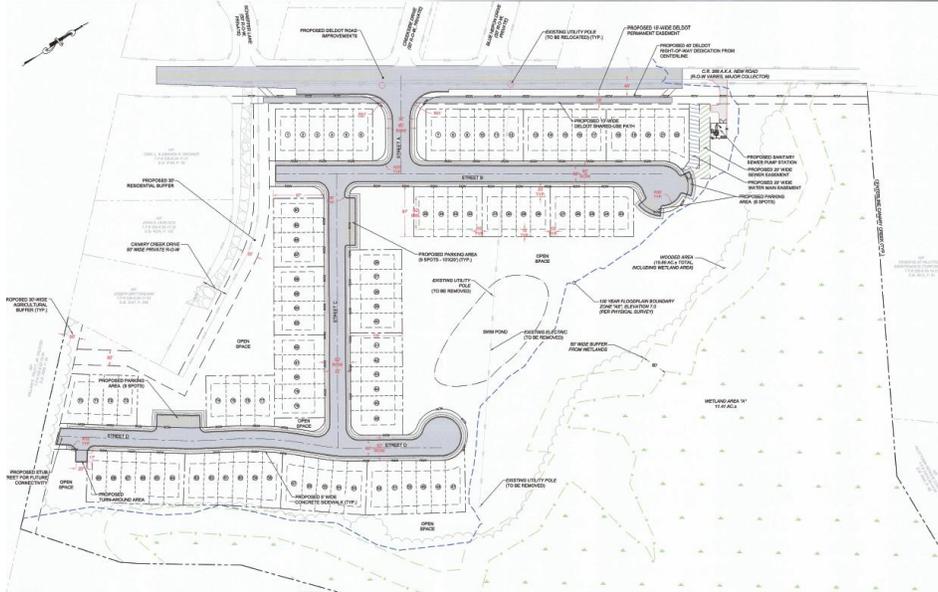
<b>Application Title</b>	Lewes Waterfront Preserve
<b>Application Type</b>	Preliminary Consent - Major Subdivision
<b>Owner</b>	7-11 Market Inc.
<b>Equitable Owner</b>	Setting Properties, Inc.
<b>Tax Map and Parcel</b>	335-8.00-17.00
<b>Size and Location</b>	34.64 acres
<b>Comprehensive Plan Designation</b>	Residential
<b>Zoning District</b>	AX-RES Annexation Residential (Cluster Option 2)
<b>Present Use</b>	agriculture
<b>Proposed Use</b>	residential dwellings and permanent open space
<b>Online application material</b>	<a href="https://lewescommissions.wordpress.com/reviews/dev_reviews/lewes-waterfront-preserve/">https://lewescommissions.wordpress.com/reviews/dev_reviews/lewes-waterfront-preserve/</a>

### I. BACKGROUND INFORMATION:

The Lewes Waterfront Preserve is a proposed residential development that would contain ninety (90) townhouse lots on a tract (known as the Brittingham property) located on New Road near the Canary Creek Bridge. The property was annexed into the City of Lewes in November 2018. An application, including a site plan prepared by Civil Engineering Associates dated December 5, 2018, was submitted to the City of Lewes on December 6, 2018 for preliminary consent review.



According to the proposed plan the dwellings would be contained in 18 structures containing 4 to 6 units per structure. The plan shows that the property divided into residential lots (one for each proposed



1 - To view full size open [http://www.ci.lewes.de.us/pdfs/Cover Sheet - Preliminary Plan.pdf](http://www.ci.lewes.de.us/pdfs/Cover_Sheet_-_Preliminary_Plan.pdf)

dwelling) along with common area that contains open space and utilities. The lots range in size from 2,716 sq. ft. to 4,678.7 sq. ft., the typical lots are 100' deep and 28' wide and wider lots for end units (typically 38' or slightly larger). In addition to the building lots the proposed plan indicates that 23.88 acres will be used as open space. More details on the lots and open space are discussed later in the review. The site also contains 3.48 acres for proposed streets and ROW, plus an additional 0.64 acre of private ROW that contains Canary Lane which serves adjacent residential lots. The property is bordered by existing residential properties that are within Sussex County across New Rd. and along a portion of the western edge. Other areas to the west and south, which are within Sussex County, are in agricultural use. Areas to the east, across Canary Creek are common open space maintained by neighboring homeowners associations. New roads, with sidewalks, would be constructed by the applicant that would be offered for dedication to the City. In addition a multi-use path is proposed to be constructed along the property frontage on New Road.

## II. PLAN APPLICATION

An official application package was submitted to the City on December 6, 2018.

As part of the submission the following information was provided as part of the initial application:

- Written documentation identifying the applicants;
- A conceptual plat plan that complies with § 170-19 A (2) of the City Subdivision Ordinance.
- A letter from the Lewes Board of Public Works certifying that utilities are existing and available;

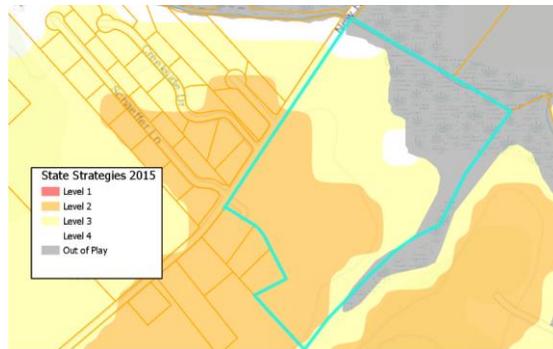
- Payment of major subdivision application fee;
- Documentation of Public Notification; and
- An Applicant Engineer’s Report that complies with § 170-19 A (6) of the City Subdivision Ordinance.

III. Compliance with adopted policies:

Based upon the information presented, the City of Lewes Code and the Comprehensive Plan, staff submits the following regarding the application for Subdivision Preliminary Consent approval:

A. State Designation

Portions of the project are located within Level 2 according to the Strategies for State Policies and Spending. Level 2 includes lands in the City that are adjacent to or intermingled with areas that are developed although environmentally sensitive features or other infrastructure issues may present issues that will need to be addressed during the review and permitting processes. Some



portions of the tract, in or near the floodplain fall within Level 3 which are areas that are not designated for near term development according to State policies. Areas on the eastern side and southern edge primarily areas with wetlands and in the stream are designated Out of Play due to significant legal and/or environmental constraints suggesting those areas should be held in some form of permanent open-space protection. Based on the application the majority of proposed development occurs in areas defined as Level 2 and small portions of Level 3. On January 18, 2018 a PLUS Review was conducted by the Delaware Office of State Planning and Coordination for the application. As part of that review it was stated that State investments could support growth at the location but that consideration should be given to environmental features which are present.

B. City Comprehensive Plan

- a. Use designation - The proposed residential lots are consistent with the use designation “Residential” for this area as defined in the City of Lewes Comprehensive Plan, Future Land Use Map (see Map 10 at [http://www.ci.lewes.de.us/pdfs/Appendix\\_B\\_Maps2.pdf](http://www.ci.lewes.de.us/pdfs/Appendix_B_Maps2.pdf)).
- b. Several portions of the City Comprehensive Plan address concerns with development on properties containing wetlands or within the floodplain. As mentioned in the Comprehensive Plan strict attention will be placed on ensuring that any future development meets or exceeds floodplain requirements contained in the City’s zoning ordinance and building code. These issues will be addressed more fully in latter sections of this review.

C. City Zoning Ordinance

- a. Permitted Uses – The proposed use, townhouses, are permitted by right and are in compliance with the AX-RES Annexation Residential zone.
- b. Lot Dimensional Regulations - The proposed lots comply with the lot area and bulk regulations, as listed below, for development in the AX-RES zone.

From Section 197, Attachment 2 of the City of Lewes Zoning Code.

Square Feet/Dwelling (Lot Standards)	2,000
Lot width (feet)	25
Lot depth (feet)	60
Setbacks (feet)	
Front yard	20
Side yard	10
Rear yard	15

- c. Floodplain regulations – The development of buildable lots, as proposed by the application, should address the need to ensure that each lot could meet or exceed the requirements outlined in § 197-73, Floodplains of the Zoning Code. In addition prior to any construction activity applicants would need to obtain a building permit ensuring that all proposed construction activity would be in compliance with the zoning provisions and applicable Building Code requirements. As part of these subdivision review evaluations should address § 197-73 E (3) which states that no development activity that would affect the flood-carrying capacity of the flood plain be permitted. Additional information on these considerations, as well as addressing compliance with State and Federal regulations will be covered in the later section “Flooding”. In addition the City Engineer’s Report will address compliance issues concerning lots and facilities.

D. City Subdivision Ordinance

- a. Process Requirements - The submittal for Preliminary Consent approval has complied with all of the required provisions for Initial Application under § 170-19 A, making it a complete application.
- b. The Planning Commission preliminary consent review evaluates the proposed application to criteria listed under § 170-19 E of the City Code.
- c. Other Subdivision Ordinance considerations:
  - i. Water, Sewer, Electric and Stormwater systems – Planning Commission review requires evaluation of compliance to ordinance provisions. Refer to City Engineer’s Report for details and recommendations on these requirements.

E. City Agency Reviews

- a. Parks and Recreation Commission (PRC) review – The application for Preliminary Consent has been reviewed and submitted for consideration by the Planning Commission (see attachment). As noted in § 177-11 of the City Code applicants are responsible for the street tree plantings. The applicant is advised to coordinate the placement and type of street trees as well as the review of long-range landscape projections and plans with the Lewes Parks and Recreation Commission prior to final plan approval.
- b. City Engineer and Board of Public Works report – The report for Preliminary Consent has been completed and submitted for consideration by the Planning Commission.
- c. Reports from other agencies – Copies of reports that have been created by other agencies, that are required as part of the subdivision approval, must be submitted to the City of Lewes.

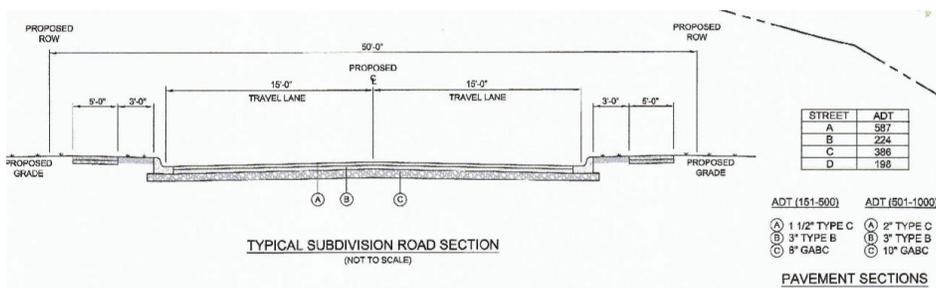
IV. Considerations

In addition to review for consistency with current policies and regulations a number of considerations are evaluated as part of the review for preliminary consent. Some require evaluations conducted by City agencies, others are overseen by external agencies. Some can be addressed completely as part of the preliminary consent review whereas others require detailed assessments that are typically addressed during final plan review.

A. Site Access

According to information provided with the application vehicle access will be provided using a proposed internal road network with access from New Rd., adjacent to Creekside Drive. The applicant is proposing to build the new roads to City standards using a 50' ROW comprised of 2 travel lanes (15' lanes), with curbs/gutters and 5' sidewalks on each side along with 3' unpaved section between the sidewalks and curbs (see typical roadway section below). The

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proposed streets will be offered for dedication to the City and would be maintained as public streets. Based on the submitted plan the development will contain a total of 204 parking spaces, 180 would be on lot spaces and 24 would be overflow spaces that are located off of the internal roads. The applicant also provided a breakdown (by road segment) of anticipated average daily trips (ADT) based on the number of proposed dwelling units. Additional details on the internal road network can be found in the City's Engineer Report for the proposed subdivision.

As part of the State PLUS (Preliminary Land Use Service) review a number of comments were provided by the Department of Transportation. According to the letter submitted to the City the applicant will be required to:

- Adhere to standards for developments on the New Road Corridor Byway as defined in the Lewes Scenic and Historic Byway Corridor Management Plan (see [https://www.deldot.gov/Programs/byways/pdfs/lewes\\_cmp/CMP\\_Lewes\\_Final.pdf](https://www.deldot.gov/Programs/byways/pdfs/lewes_cmp/CMP_Lewes_Final.pdf)). These include:
  - Restrictions on billboards and some types of signs;
  - Addressing requirements that will be included in the New Road Master Plan that is currently being developed;
  - Providing a Shared Use Path (SUP) across the entire property frontage;
  - Employing context sensitive designs with regard to screening or buffering which includes some required landscaping treatments in the ROW or dedicated easments; and
  - working with representatives of the Historic Lewes Byway Committee.
- Working with DeIDOT as part of the processes for review and approval of site access;
- Contributing to an Area Wide Study Fee used for defined off-site improvements including replacing and raising the Canary Creek Bridge and upgrades to New Road. The applicant is also expected to provide dedicated ROW (40 ' from the current centerline).
- As part of the development review, the applicant will be required to submit to DeIDOT a record plan prior to issuing a "Letter of No Objection". The plan will be required to show improvements, a traffic generation diagram, and compliance with Manual standards for all access and street improvements. As with other required review the Applicant show file copies of the plan and resulting correspondence to the City to maintain as part of the application file.

#### B. Sedimentation and Erosion Control

A detailed sediment and stormwater plan will be required prior to any land disturbing activity taking place on the site. The plan review and approval as well as construction inspection will be coordinated through the Sussex Conservation District. Contact Jessica Watson at the Sussex Conservation District at (302) 856-2105 for details regarding submittal requirements and fees.

#### C. Flooding

A portion of the planned development area lies within the mapped 1% and 0.2% annual chance flood zone as mapped by FEMA on the effective Flood Insurance Rate Maps (FIRMs). The image on the right (from the digital or DFIRM Maps) shows the areas in the 1% (AE) or 100 year flood zone in orange. The 0.2% (X) or 500 year flood zone is shown in tan. These areas correspond to the mapped flood areas shown on the Site Plan and



other documents submitted with the application. Based on the current plan none of the proposed structures. Prior to construction certifications should be provided to ensure that residential structures are outside of the floodplain; construction of all living facilities should also be in compliance with City requirements which requires the floor to be above the identified base flood elevation plus 18 inches of freeboard. Similarly the proposed roads and support facilities must be designed and constructed to avoid failure as a result of the identified flooding conditions. According to the Grading Plan the bulk of grading is located outside of the floodplain. The applicant may need to apply for a FEMA Conditional Letter of Map Amendment (CLOMR). If that is required a copy of the letter should be furnished for City reference as part of final plan review.

In addition to on-site impacts on-site construction or disturbance must avoid increasing off-site flooding problems resulting from construction. The City is in the process of evaluating the cumulative and localized impacts of flooding from development in conjunction with coastal storm impacts and sea level rise. Information resulting from this analysis is expected to provide greater understanding of these conditions and be factored into development decisions.

In addition to existing flooding conditions this location is subject to increased flooding as a result of sea level rise as documented by the State which has recommended that those conditions be factored into land development decisions. State maps depicting future inundation risk from sea level rise (see <http://www.dnrec.delaware.gov/Pages/SLRMaps.aspx>) show the areas of concern. As noted in the PLUS review the proposed plan avoids building within the projected areas of concern however the location of structures and infrastructure adjacent to the current floodplain could be impacted by future conditions.

#### D. Wetlands

Portions of the site adjacent to Canary Creek and in the forested area along the southern property line contain wetlands. According to the application a wetlands delineation was performed by Watershed Eco in July 2018. According to the delineation the site contains 11.41 acres of wetlands. Based on the current plan all development activity will occur outside of the

area of wetlands. The plan also shows a 50' buffer around the wetlands areas which is in compliance with the current ordinance.

#### E. Utilities

The submitted application contains information on water supply, sewage collection and stormwater collection. A report provided by the City Engineer of behalf of the Lewes Board of Public Works contains additional details regarding the systems and compliance with the City Code.

#### F. Historic Resources

As noted by the State Historic Preservation Office (SHPO) as part of the State PLUS review, the parcel contains an identified archeological site, the Derrickson Site. During the PLUS review it was noted that the probable location of the site was in the northeast portion of the tract which is to remain as protected open space, it was mentioned that detailed information from an earlier assessment was not available. Although it is possible the Derrickson Site is included in the open space area, the applicant should continue working with the SHPO to determine the recommended methods for investigating the status of the site and a possible archaeological survey of the parcel. Results from the investigation should be provided to the City so that the information can be factored into any final development decisions.

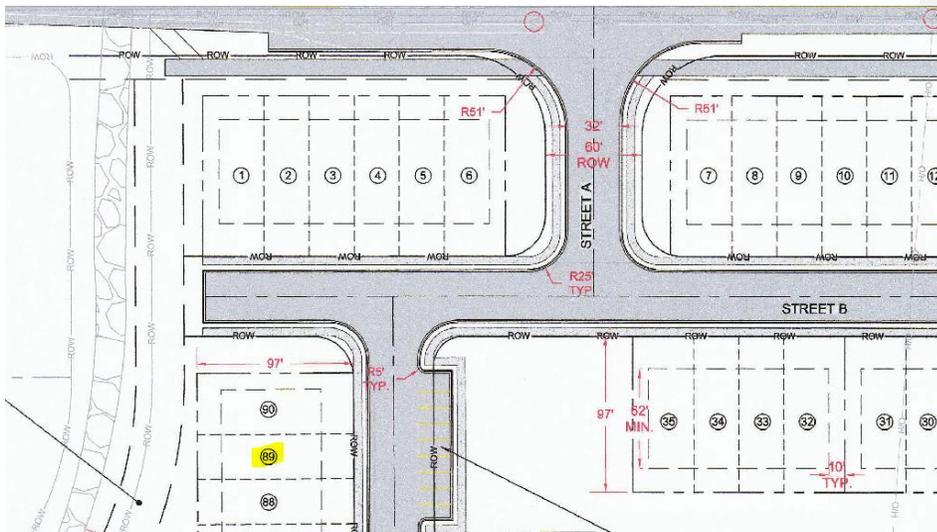
#### F. Other Note

##### Lot Layout

The proposed development uses Cluster Lot Option #2 as permitted in the AX-RES zone. As noted earlier the uses and lot sizes comply with the requirements for that the zone. The cluster option also contains standards for buffers, screening and open space design (see § 197-50 of the Zoning Ordinance) that are intended to create a cluster design layout that effectively addresses adopted policies (land use, resource protection, housing). A cluster design option provides for development to be placed on portions of a tract while maintaining other portions as permanent open space. Based on the proposed site plan the layout meets many of the City's adopted policies most notably by locating structures on portions of the tract least encumbered by sensitive environmental features and avoiding impacts to the adjacent floodplain. The plan also incorporates suggested improvements that have been identified for new developments along scenic byways such as providing a shared use path that will be protected by an easement and proposed landscaping along the edge of the Byway Corridor.

A cluster option, typically allows greater flexibility over conventional development approaches, since areas designated for open space and lots can be arranged to achieve defined criteria. During the preliminary consent phase of the development review process, it is common to consider possible refinements that can help achieve a design, under current zoning, that most effectively meets local policies. Although the current design meets the defined standards outlined in § 197-50, the Planning Commission should consider opportunities that maintain the same number of dwellings while providing the most effective design in terms of meeting land use and other policies. For instance one issue that has been raised as part of the conceptual design involves the transition between the proposed structures and New Road. Although the proposed design includes more area between the lot lines and the road, including an expanded ROW (40 feet from the road center), a 15 foot easement

for the shared use path, and a 10 area that would be landscaped to create a vegetated buffer there has been a lot of interest in seeing a wider area to buffer the road and the townhouse structures. Although additional alternatives may be worth considering one idea could involve a shift of one or two lots (such as lot 89 and perhaps lot 90) from their current location near the intersection of Street B and C to an alternate location (such as in current open areas along Street D). By relocating Lot 89, approximately 28 feet wide, to an alternate location the current cluster (Lots 1 through 35) plus their street segments could shift 28 feet further away from New Rd. This refinement could result in a wider buffer area that more effectively meets objectives expressed in the Corridor Management Plan while also providing greater privacy for the future residents whose homes would be adjacent to New Rd. Under this hypothetical scenario Lots 36 through 88 would remain in place; Street A would be lengthened and Street C would be shortened.



Other options have been suggested and will be included in the record for consideration by the Planning Commission during their preliminary consent review. As suggested above an objective of the Preliminary Consent review stage is to consider the conceptual plan and possible refinements; if preliminary consent is approved the focus would shift to assessing impacts and making needed adjustments during the final plan preparation and review stages.

#### Open Space

According to the proposed application 68.9% or 23.88 acres of open space are proposed, the zoning code requires 50% or about 17.5 acres for open space. It should be noted that the area used for stormwater management 0.64 acres cannot be counted as protected open space under § 197-50 C (6) (c) of the Zoning Ordinance, however, discounting for that area still provides more area in open space than is required under the current ordinance. The amount, location and use of open space

meets the current provisions under § 197-50 C, except as noted above. As part of final plan review the applicant should prepare and provide further documentation that outlines all common open space ownership and maintenance responsibilities as described in § 197-50 C (4).

During earlier reviews of the concept plan (during rezoning and annexation proceedings) there was discussion about a possible trail alignment that would traverse the property and provide connections between New Rd. and the Lewes Georgetown Trail. Although that is not currently included in the plan material for preliminary consent review it would be useful to evaluate that opportunity and seek to have a concept alignment identified, if possible, that can be included in a final plan.