PARKS, RECREATION, AND COMMUNITY ENHANCEMENT COMMITTEE

The Parks, Recreation, and Community Enhancement Committee meeting was held on December 14, 2015, at 3:30 p.m. with Chairman Anderson presiding. Members present were Mr. Hosfelt, Mr. Caldwell, and Mrs. Horsey. Mr. Lewis was absent. Members of Council present were Mr. Cole (arrived at 3:55 p.m.), and Mr. Hutchison. Mayor Christiansen was also present.

AGENDA ADDITIONS/DELETIONS

Mr. Hosfelt moved for approval of the agenda, seconded by Mrs. Horsey and unanimously carried.

Review of Active Recreation Area Plan - The Grande, Building 4: Planned Neighborhood Design - Senior Citizen Housing Option (Planning Reference C-15-04)

Members were advised that The Grande, Building 4 project would be reviewed as a Conditional Use Site Plan to establish a Planned Neighborhood Design development of Senior Citizen Housing. The plan proposed construction of a four (4) story 62,240 S.F. apartment building consisting of 48 units (Building 4) and other associated site improvements to join the existing apartment complex, which consisted of three (3) apartment buildings now known as The Grande. With this project for a fourth building, the complex would consist of a total of 192 apartment units of Senior Citizen Housing.

Mrs. Dawn Melson-Williams, Principal Planner, advised members that use of the Planned Neighborhood Design Senior Citizen Housing option would obligate the developer in terms of the type of resident that would reside in the complex. Mrs. Melson-Williams advised members that the per dwelling unit calculation required 150 square feet of Active Recreation Area per dwelling unit by code, which would total approximately 28,800 square feet in this case. The three (3) areas that were highlighted as the Active Recreation Area would provide almost 22,000 square feet in built amenities, resulting in a deficit. Mrs. Melson-Williams explained that the developer was seeking to resolve this by using a cash-in-lieu payment, which would be designated for the Parkland Reserve Fund, instead of constructing additional amenities. One (1) reason cited for utilizing this process was that there was not much green space left on the site for additional amenities. Mrs. Melson-Williams stated that staff had reviewed the Active Recreation Area plan and provided a series of comments and recommendations. Staff had also advised that the cash-in-lieu payment was one (1) of the options to resolve the square footage deficit and identified procedures and clarifications that would be necessary for the development plan. Mrs. Melson-Williams stated that the Active Recreation Area Plan was being brought to members for their review and comment, noting that their recommendation would be forwarded to the Planning Commission, who would meet later in the week to consider the plan as a whole for development of Building 4.

Noting that current development was geared toward senior citizens, Mayor Christiansen inquired if there were arrangements within the plan to accommodate families with children or singles if the property should change hands. Responding, Mrs. Melson-Williams stated that the three (3) current buildings were built as market-rate apartments; however, the developer had chosen to target the senior housing market. During the Summer of 2015, they took the step of placing deed restrictions in accordance with the Fair Housing Act at the federal level, which would require the head of household for at least 80% of the units to be aged 55 or over. Mrs. Melson-Williams indicated that

the process that the project was currently moving through to construct Building 4 would specifically designate the entire project as a senior citizen housing project, which is for those aged 55 and over. Changing the designation would require removal of a deed restriction and could possibly involve some procedural issues related to compliance with the City's Zoning Ordinance, because the density that the developers were achieving was potentially only achievable as a senior housing project. Mrs. Melson-Williams stated that if steps were taken to make the complex non-senior housing, the City would have to go back through this process again. She indicated that, in terms of the recreation area, there was a variety of amenities that would probably appeal to a variety of residents should a change happen.

In response to Mayor Christiansen regarding the types of trees that would be included, Mrs. Melson-Williams advised members that there were existing trees throughout the project that ring the buildings on the outside between the buildings and the parking lot. In addition, trees had been planted in the central area around the stormwater management facility in the last five (5) years. She noted that there were tree planting requirements for the overall site, stating her belief that regulations required over 90 trees.

Responding to Mr. Caldwell, Mrs. Melson-Williams confirmed that at least one (1) member of the household must be aged at least 55 years, noting that the City's Zoning Ordinance requires this to utilize the senior citizen housing option type of project. She explained that the ordinance refers only to the head of household and there were no other limitations on other members of that household.

Mr. Caldwell questioned if there was a detailed agreement with the Modern Maturity Center, which is adjacent to the project. In response, Mrs. Melson-Williams stated that there is a walking path between the apartment complex and the Modern Maturity Center that is wide enough for golf cart access between the two (2) facilities that the residents of this facility could take advantage of. The developer had indicated to the Planning Office that the annual membership fee to the Modern Maturity Center is paid as part of the lease agreement for each of the units. She noted that there may be other fees to utilize specialized amenities or meals at the Modern Maturity Center. As to whether individual residents would know what is in the agreement and what they can utilize, Mrs. Melson-Williams stated her belief that this was part of the lease document, which was not submitted to the Planning Office. She explained that staff had asked for this document if the developer was going to claim the Modern Maturity Center as part of the active recreation component to meet requirements; however, they were not resting on this as their Active Recreation Area.

Mr. Caldwell asked if staff had granted any exemptions in regard to Building 4 as far as recreational activity plans or if all requirements must be met, including the 28,800 square footage requirement. Responding, Mrs. Melson-Williams explained that the 28,800 square foot requirement must be met as demonstrated on the plan or by going through a different type of process. In this instance, the developer was looking to use a cash-in-lieu payment.

In response to Mr. Caldwell as to whether or not staff would accept the cash-in-lieu payment, Mrs. Melson-Williams advised members that this was one (1) of many options. Staff had received notice in writing earlier in the day that this was how the developer intended to solve the deficit.

Responding to Mr. Hosfelt, Mrs. Melson-Williams explained that the cash-in-lieu payment is based on a formula related to the appraisal for construction financing, and the City's code outlines what is utilized for that calculation. The number was unknown at this point because it would be calculated once the developer supplies the appraisal. Mrs. Melson-Williams explained that there are specific guidelines in the Zoning Ordinance that describe what that appraisal is.

Mrs. Horsey stated that she was intrigued by the option of inside recreation space and asked what could be put inside a building that might satisfy the requirement for active recreation. Responding, Mrs. Melson-Williams indicated that other projects had included indoor facilities that were most often part of a clubhouse facility. She explained that meeting room areas and fitness centers could have been options; however, the developer had not put this forward.

In response to Mrs. Horsey regarding the cash-in-lieu amount, Mrs. Melson-Williams reiterated that the appraisal was needed to calculate this amount and procedurally there was a mechanism to report the amount of the payment to the Parks, Recreation, and Community Enhancement Committee and to the Planning Commission. She stated that this payment is an up front cost that must be made prior to receiving a Certificate of Occupancy, and in this case she felt that a building would probably not be started without this payment being made.

Mrs. Horsey questioned whether the current landscaping on the property was thriving now and if the landscaping that had been previously planted was up to what was required for the three (3) existing buildings. She noted that making sure that plant material thrives had been a problem over the years. Responding, Mrs. Melson-Williams advised that code requires plantings to survive one (1) year. She assured members that staff would confirm the plan meets the number of trees required and check the life expectancy of those trees, noting that required trees would be replaced if they die.

Mr. Hosfelt moved to recommend approval of staff's recommendations regarding the Active Recreation Area plan for The Grande Building 4 as a Planned Neighborhood Design for senior citizen housing. The motion was seconded by Mrs. Horsey and unanimously carried.

Review of Non-Conforming Uses

Mrs. Ann Marie Townshend, Director of Planning and Community Development, reviewed a presentation entitled, "Non-Conforming Uses" dated December 14, 2015 ***(Attachment #1)***. She explained that non-conforming uses are those uses that are not permitted under the provisions of Article 3 of the Zoning Ordinance, and some of these uses in the City predated a rezoning of the property, an amendment to the Zoning Ordinance text, or zoning altogether, since some of these properties dated from well back into the 1950s and1960s.

Mrs. Townshend reviewed the provisions of non-conforming uses set forth in Sections 1.1, 1.2, and 1.5 of Article 7. She advised members that Section 1.5 addressed objectionable uses and included provisions for continuing a non-conforming use a specified time period following the effective date of the ordinance, which grandfathered in certain things. She stated her belief that the ordinance

became effective in 1976. Mrs. Townshend indicated that staff was working on clarifying some of the definitions. She felt that this was the most pertinent piece of this section of code as it related to some of the issues that had come up recently.

In regard to how staff enforces the sunsetting of non-conforming uses, Mrs. Townshend explained that before staff issues a license or permit, they make sure that the property has not been vacant for a year. Owners of non-conforming properties that have been registered as vacant for more than a year are notified that they must be restored to single-family homes. If there has been a fire, staff verifies that the repair cost does not exceed 75% of replacement value and checks for other relevant criteria. She indicated that most of the non-conforming uses that staff had dealt with were in the downtown residential area. Mrs. Townshend noted that there was a provision in the Code that mentioned sunsetting non-conforming uses 20 years after the 1976 effective date of the ordinance; however, to her knowledge, there was no effort in 1996 or anytime thereafter to determine what uses should have been sunsetted at that time. Nothing had typically been done if there had been a non-conforming use and continuous existence.

Mrs. Townshend advised members that if staff were to move forward, significant research would be needed to determine code amendment dates, property rezonings, and non-conforming properties. She explained that staff would have to determine whether some of the non-conforming uses were truly non-conforming or if they would be considered legitimate conditional uses that would need to go through the Planning Commission.

Mrs. Townshend stated the need for consistency and for a change not to be implemented with one (1) or two (2) properties but based on an evaluation done across the City. If based on timing, she felt it would be appropriate to do this in the context of the City of Dover Comprehensive Plan with subsequent comprehensive rezoning. Mrs. Townshend also expressed concern regarding the unintended consequences of enforcement, noting that many non-conforming uses coexist without any issues at all. She explained, for instance, that some churches and funeral homes would be closed if staff was unable to determine that they had ever received conditional use approval. Mrs. Townshend questioned the ramifications for property owners who had been managing their property in accordance with other codes.

Mr. Hosfelt questioned the reason for the provision that a structure cannot be restored other than for a conforming use after damage from any cause exceeding 75%. Responding, Mrs. Townshend explained that this threshold was set at a particular point in time and explained that it was to protect both the homeowner and the insurance company, stating the desire not to put someone in an upside-down mortgage. Mrs. Townshend noted that she had spoken with Councilman Hutchison a number of times over the years about whether there was a need to look at the number of houses that had been converted to multi-family dwellings. She noted that there was a related provision in the code; however, questioned if a code amendment was needed so that there would be something more updated that would sunset things in a more transparent way, rather than taking a piece of code from 40 years ago and suddenly saying that it would be enforced.

Mr. Hosfelt questioned whether there was adequate time and staff to do the research that Mrs. Townshend had referred to. Responding, Mrs. Townshend stated that staff could fit it in; however, they would have to go through every use that is not permitted. She noted that most of these uses would be in residential zones, although there would be some in other zones as well. Mrs. Townshend indicated the probable need to come up with a Geographical Information Systems (GIS) tool.

In response to Mr. Hosfelt as to whether the locations of these properties were already known, Mrs. Townshend stated that staff knew where some of them were, but not on a grand scale. She felt it would be a significant undertaking to make sure that this was done in a fair way.

Mr. Hutchison noted that he and Mrs. Townshend had discussed many times that it was not permitted to convert a residence into an apartment in a residential area, noting that this could not be allowed to happen. Responding, Mrs. Townshend stated her belief that the issue of conversion was addressed in a code amendment adopted in 2003. She stated that one (1) possible approach would be to start marking 20 years from the date that this provision was adopted. Mrs. Townshend noted that the code referenced the effective date of the Article 7 ordinance. She indicated that her preference, in terms of non-conforming uses, would be to revisit this article of code to come up with a better process for addressing these situations, rather than trying to apply language that had been there for 40 years without really being used and applying it to current situations.

In response to Mr. Hosfelt, Mrs. Townshend stated that this was something that could be used to turn around properties that had been converted from single-family homes into apartment buildings. An option would be to amend Article 7 to include provisions that would apply to family structures that had previously been converted by a specific year. She noted that when "20 years from the effective date of this ordinance" is specified, it takes research to find the effective dates of the ordinance and its amendments.

Mrs. Horsey questioned if these provisions would prohibit a family from having a boarder or renting out a certain area of their dwelling. Responding, Mrs. Townshend stated that this situation is governed by a different section of Code, noting that currently the definition of family addresses this and it is stated that a family can have no more than one (1) boarder.

Mr. Anderson advised members that there was a club on North Kirkwood Street that was being rented out for activities and did not seem to fit in a residential area. He questioned if this would fall under the 20-year provision. Responding, Mrs. Townshend stated her belief that it would fall under the 20-year provision and that staff would need to determine how long it had been there. She indicated that if the City were to enforce non-conforming expirations, this must be done fairly across the board.

Mr. Anderson questioned if it would be fair to start enforcement in an area where there had been scores of neighborhood complaints. Mrs. Townshend agreed that this would be fair; however, she felt there was a need to amend the code to give the authority to address individual non-conforming uses, perhaps on the basis of an appeal by neighbors. If it was not desired to expire all

non-conforming uses, she felt the code should be amended to provide a mechanism for holding a hearing, perhaps before the Board of Adjustment or the Planning Commission, to begin some type of proceedings to expire a use. Mrs. Townshend noted that there were liquor stores in some residential zones that may not receive as many complaints as the property Mr. Anderson mentioned; however, she felt that residents may have an interest if they knew there was an opportunity to address them.

Mr. Anderson stated the need for mapping to find out what is non-conforming in the City to determine if there is an overall problem and to look at the complaints that had been received to see if they line up or not. He indicated that he was unsure if there was a need to develop new Code or to enforce the existing Code, noting that residents were specifically asking for enforcement.

Mrs. Townshend stated her opinion that a legal opinion should be obtained if the City were to take action specific to one (1) establishment that was generating complaints. She expressed the desire to make sure that the City did not put itself in a position to be challenged for targeting a specific location.

Mayor Christiansen concurred, expressing the need for maintenance of standards. He stated that the City would be putting itself in harm's way if it chose to look the other way on other non-conforming properties.

Mr. Anderson suggested starting by taking an inventory, and Mrs. Townshend agreed.

In response to Mr. Hutchison regarding the time required to address non-conforming uses in the whole City, Mrs. Townshend estimated that working with GIS staff to obtain an inventory would probably take a couple of months.

Mr. Hutchison asked if a case-by-case procedure could be put in place in the meantime. Responding, Mrs. Townshend reiterated that she would want a legal opinion if a case-by-case rather than across-the-board procedure were to be used so that there would not be an accusation of targeting any specific location. However, she noted, for instance, that if building code violations were being discussed and it was determined that a property had been vacant for more than a year, she would start the process of reaching out to the property owner, noting that staff had done this on a routine basis and would continue to do so.

Responding to Mr. Hutchison, Mrs. Townshend confirmed that there were many properties that had been converted to apartments and were still actively being used all over the downtown area, including the Downtown Development District (DDD) target area.

Mr. Anderson stated the desire to: 1) develop an inventory; 2) establish a resident appeals procedure; 3) establish a clear standard that everyone could understand and could be universally applied.

In response to Mr. Caldwell regarding whether a legal opinion was needed in regard to any approach taken, Mrs. Townshend advised members that staff typically works closely with the Deputy City Solicitor and gets his feedback when working on Code amendments that involve property rights and would do so in this case.

In view of the holiday schedule, Mr. Hosfelt suggested asking Mrs. Townshend to come back before the Committee in March to provide an idea of what the situation was City-wide.

Mr. Anderson felt that the issue regarding resident appeals concerned a lot of people in different areas of the City and should be part included, and stated that a March date seemed reasonable to him.

Mr. Hosfelt moved to recommend that Staff be requested to prepare a residential appeal process and to also look at those properties within City limits that are clearly non-compliant with the uses for review by the Committee during their March meeting. The motion was seconded by Mr. Caldwell and unanimously carried.

Mr. Kirby Hudson, Assistant City Manager, suggested implementing a color palette in the downtown area.

By unanimous consent, members agreed to consider Agenda Item #3B, Concerns - Park Lighting (Kirkwood and Division Streets), prior to Item #3B, Concerns - Availability of Soccer Fields, due to the absence of the party interested in Item #3B.

Concerns - Park Lighting (Kirkwood and Division Streets)

Mrs. Ann Marie Townshend, Director of Planning and Community Development, advised members that Police Chief Paul Bernat had contacted her and Mr. Harry Maloney, Electric Director, about lighting at the basketball court at Kirkwood and Division Streets. She indicated that the Electric Department had developed a cost estimate to replace this lighting, noting that existing lighting had not been used in over 20 years and was in very poor condition. Mrs. Townshend indicated that a design was being developed, lighting would be installed and, provided that all goes through, Police Chief Bernat had gotten money through bank settlement funds that would be used to pay for the improvements. She indicated that hopefully within the next few months there would be lighting on the basketball courts that would be set on a timer.

Mr. Anderson thanked the Police Department for working to find these funds.

Mrs. Townshend noted that Mr. Anderson and Mr. Sudler had mentioned the issue of fencing around the playground on Kirkwood Street. She noted that she had observed that this fencing was in poor condition. Staff had contacted the fencing company that the City has on contract on multiple occasions and they were supposed to provide an estimate but had not yet done so.

Mayor Christiansen suggested that a new fencing company be found. Responding, Mrs. Townshend stated her intention to look at other vendors on the State contract to get estimates both to replace the damaged sections and to replace the entire fence. She noted that this could be done without bidding out the project. Mrs. Townshend expressed the desire to replace the entire fence around the playground with something a little more sturdy that would look very much the same.

In response to Mr. Anderson regarding what was needed, Mrs. Townshend stated that staff needed a contractor to look at what is there and provide options and quotes.

Mayor Christiansen questioned if a better grade of fence that would not be conducive to sitting or leaning on it should be used, perhaps with spikes or a rolled top. Responding, Mrs. Townshend indicated that she was unsure if spikes along the top were necessary. She stated that staff could look at the placement of benches to see if more benches should be added. Mrs. Townshend indicated that the fence did not look as though it had been vandalized but had received long-term wear.

Mr. Hosfelt moved to recommend approval of Staff's recommendation regarding lighting and fencing at the Kirkwood and Division Street property. The motion was seconded by Mr. Caldwell and unanimously carried.

Concerns - Availability of Soccer Fields

Mrs. Ann Marie Townshend, Director of Planning and Community Development, advised members that the Central Delaware Soccer Association (CDSA) started using the fields at Schutte Park in 1989 or 1990 at the invitation and request of the City and had used those fields since that time. She noted that the CDSA had grown and merged into Delaware Union a couple of years ago. During the last couple of years, there had been other programming on the fields at Schutte Park, including Delaware Diamond Girls Lacrosse in the spring and the City's field hockey program. Mrs. Townshend explained that when the City's Recreation Needs Assessment was done, members of the Committee and the public expressed the need to improve in providing affordable recreation to City residents, and soccer programming had been requested. The cost of Delaware Union's program had increased over time, with a current registration fee of $70, as well as a minimum fundraising charge and a requirement to pay for each participant's uniform jersey.

Mrs. Townshend advised members that staff had been hearing that people wanted a lower cost option for soccer. Mr. Steve Pickering, Sports Coordinator, advised her that he had been speaking to the YMCA, who was interested in a partnership with the City and that the City of Milford and City of Harrington had City recreation leagues with a $40 registration fee. Working with the YMCA and Holy Cross School, Mr. Pickering developed a soccer program for the City. In May 2015, staff let Delaware Union know that the City was going to start its own soccer program and would be using its fields at Schutte Park. Shortly after that, Mrs. Townshend met with Mr. Dan Simmons, Dover Recreational Vice President, Delaware Union, and it was determined that a portion of the Schutte Park fields would be available to Delaware Union in the fall, where both the City's program and Delaware Union's program would be held. Mrs. Townshend stated that in November 2015, she was asked to attend a meeting because of Delaware Union's concern that they would not have a place to play if they did not play at Schutte Park. She subsequently met a number of times with Mr. Simmons in the hope that everyone would be able to use the fields. Mrs. Townshend followed up with Mr. Pickering, who expressed concerns about damaging the fields by trying to do too much in a small area.

Members were provided correspondence from Mrs. Townshend to the Committee dated December 14, 2015, RE: Schutte Park Fields ***(Attachment #2)***. She reviewed the concerns and possible alternatives for accommodating both the Delaware Union and City of Dover soccer programs. Mrs. Townshend explained that she had spoken to Mr. Simmons the previous night but they were unable to meet earlier in the day and he had not yet seen these proposals.

In response to Mr. Hosfelt, Mrs. Townshend stated that the unimproved area of Schutte Park being discussed for Delaware Union's use was a triangular-shaped piece of property at the intersection of Hazlettville and Wyoming Mill Roads where the power lines come into the property. She indicated that this area was cut off from the rest of the park because of berming. Mrs. Townshend stated that there would be an issue with parking, it was not a convenient walk from the rest of the park, and there would be a need to provide some type of temporary access and allow parking on the grass on a temporary basis.

Mr. Hosfelt noted that the grass would not be there for long if parking was allowed on a temporary basis.

Mr. Hosfelt stated his understanding that everyone had been able to work together in the fall and questioned if this was because the size of the league diminishes in the fall. Responding, Mrs. Townshend explained that in the fall the southern field, near the Little League Park, was used; however, the Delaware Diamonds Girls Lacrosse program had reserved this area for the spring.

Mrs. Horsey commented that when her children went through CDSA their playing fields were at William Henry Middle School. Mr. Caldwell suggested that the fields at William Henry Middle School might be more beneficial to Delaware Union.

Responding to Mr. Hosfelt, Mr. Pickering confirmed that he had developed the City of Dover's soccer league during the fall of 2015 and stated that the fields had held up well so far because both areas in the park had been used. He explained that if the City ended up using only one (1) area, this would double the amount of use on each side of the park, and the City's league would be relegated to only half the fields that they had before. Mr. Pickering stated that there were over 200 City participants the very first year and expressed concern that fields would be taken away as the league was growing. He also felt that there would be confusion among the parents, who would be going to City staff with questions regarding both leagues, and staff would not have answers regarding the Delaware Union league. Mr. Pickering felt that this would cause frustration for everyone, including the City's clients. He advised members that the City's programs had a good reputation in the community and feared this kind of confusion would hurt the City's program.

Mr. Anderson questioned the impact of extending the times and having leagues run in the morning and afternoon. Responding, Mr. Pickering stated that this would ease the problem of participants' centralizing. The City could use both field areas in the morning, and Delaware Union could use them in the afternoon, utilizing the City's goals that would already be set up. Mr. Pickering stated that the City had also offered Delaware Union use all day on Sunday. He noted that there would be a parking issue. Staff would not be able to provide inside programming in the Pitts Center itself because this would require parking for a third program.

Mr. Hutchison questioned if there was a problem with the fields before the City created a new soccer program and if locations other than Schutte Park had been looked at the for City's program. Responding, Mr. Pickering stated that the City of Dover had considered only Schutte Park since the City had no other fields that were large enough for the league. He indicated that Mallard Pond was not large enough, nor was Dover Park, which had only one (1) multi-purpose field.

Mr. Hutchison stated that there had been an effective soccer program for 25 years through the City's partnership or relationship with Delaware Union. Responding, Mr. Pickering stated that the City did not have a partnership with Delaware Union but rented fields to them. He advised members that the City now offered an alternative program at a third of Delaware Union's cost to its citizens. The City had reached out successfully, in accordance with its mission, to bring in kids that would not have played soccer if Delaware Union had been their only option because they would not have been able to afford it; however, having both leagues there at the same time on the same two (2) fields would make it overcrowded.

Mr. Hutchison reiterated his concern that the City had a relationship with a Delaware soccer program with over 500 kids and that displacing them was now being discussed so that the City could create a new program that had caused problems. Mrs. Townshend requested that any criticism regarding the decision to start a league be directed to herself, as Director of Parks and Recreation, rather than Mr. Pickering.

In response to Mr. Hutchison, Mr. Pickering reiterated that 200 kids participated in the first offering, not including children from Holy Cross and the YMCA.

Mr. Cole informed members that both of his children played in the City's soccer league and were athletically not ready to move onto the level of the Delaware Union, where his nephews play soccer. He stated that the City league was well run, affordable, and there were many diverse people playing in it. Mr. Cole felt that there must be give and take in any relationship and in negotiations. He felt that Options 1 and 2 included in the staff memorandum would not displace anyone in any way, since Delaware Union would have access all day Sunday or Saturday after 1:00 p.m. He indicated that he had also personally been in contact with the Capital School District to facilitate interaction at William Henry Middle School so that both programs could be successful.

Mr. Dan Simmons, Dover Recreational Vice President, Delaware Union, stated that Mrs. Townshend had been great to work with and commended her and the City for allowing Delaware Union use of the fields this year, and for all of the support they had received over the last 25 years. He explained that he had been in his role for a year and was learning about the past. Mr. Simmons apologized if somebody's feelings somewhere had been rubbed the wrong way or if things had been taken for granted. He explained that their league was able to come to Schutte Park more than 20 years ago and run a program that many kids participated in, noting that the league had also played at William Henry Middle School. Mr. Simmons indicated that he was doing research to see if it was safe to play at William Henry and hoped to meet with the school principal to do a walk through, noting that it may be feasible to use the fields this spring.

Mr. Simmons stated that if their program was kicked out of Schutte Park, they would do something, noting this would be expensive. He advised members that he had heard several reasons for the City's program, including cost and competition. Mr. Simmons stated that if Delaware Union had to incur the expenses of another field, then they would try to offset this, hopefully through sponsorships or raising fees, which he felt would not help anyone. He felt that the history of the Delaware Union program and the success that the program and their participants had experienced boded very well for the City of Dover. He advised members that soccer programs are rising programs, since the kids in Dover High School's and Caesar Rodney High School's soccer program had come through CDSA.

Mr. Simmons explained that there was some contention about the Delaware Union/CDSA merger and a feeling that Delaware Union was no longer a local community. He stated that the purpose of the merger was strength in numbers and the goal was to provide better service. Mr. Simmons stated that Delaware Union pays referees and those of its coaches that are licensed, who go through national certifications so that they can teach other coaches and help teach players. He noted that they have Dr. Lew Atkinson on staff, who is with the national coaching team, and they do everything they can to help educate players and parents.

Responding to Mr. Anderson regarding the staff recommendations, Mr. Simmons indicated that Delaware Union had met with the Capital School District and was not able to say if this was a bad or good alternative, stating his hope that he and Mr. Toriano Giddens, Principal, William Henry Middle School, would be able to set something up. He indicated that Delaware Union would be amenable to extending their day at Schutte Park and would reschedule to make that arrangement work for their families. Mr. Simmons was unsure how starting at noon or 1:00 p.m. and playing games later in the day would benefit the families of these 400 plus kids, since families are involved in other community or extracurricular activities. He felt this could potentially work if kids were allowed the opportunity to play in the morning on one weekend and a different time on the following weekend.

Due to time constraints, Mayor Christiansen recommended tabling this issue until a meeting could be held with Delaware Union.

Mr. Hosfelt agreed, provided that someone from the Committee would be involved in that meeting.

Mr. Hosfelt moved to defer this matter until the Committee's next meeting, scheduled in January, seconded by Mr. Anderson.

Mr. Anderson felt that everyone would like to resolve this in time for registration in January.

Mr. Simmons stated that he was flexible and Delaware Union was willing to do whatever was needed, noting that the organization had worked very well with the City throughout the last 25 years and wanted to do everything he could to continue this relationship. He requested the date and time in January when a meeting would be held.

The motion to defer this matter until the Committee's next meeting, scheduled in January, was unanimously carried.

Mr. Hosfelt moved for adjournment, seconded by Mr. Caldwell and unanimously carried.

Meeting adjourned at 4:56 p.m.

David L. Anderson
Chairman

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Attachments
Attachment #1 - Presentation - "Non-Conforming Uses" dated December 14, 2015
Attachment #2 - Memorandum from Ann Marie Townshend dated December 14, 2015 RE: Schutte Park Fields

Non-Conforming Uses

PARKS, RECREATION & COMMUNITY ENHANCEMENT COMMITTEE

DECEMBER 14, 2015

ATTACHMENT #1
PR&CE Committee Meeting of 12-14-2015

Zoning Ordinance, Article 7

- Non-conforming uses
  - Use is not permitted under Article 3 of the Zoning Ordinance.
  - Presumably use predates zoning, a rezoning of the property, or an amendment to the text of the Zoning Ordinance
- Non-conforming building
  - Use is permitted under Article 3 of the Zoning Ordinance
  - Does not conform to the area requirements (setbacks, lot sizes, etc.)
  - Presumably predates zoning or current area requirements

Non-Conforming Uses

- 1.1 Any nonconforming use, except those nonconforming uses specified in subsection 1.5, may be continued indefinitely, but:
  - 1.11 Shall not be enlarged, extended, reconstructed or placed on a different portion of the lot or parcel of land occupied by such uses on the effective date of this ordinance, nor shall any external evidence of such use such as traffic, noise, vibration, smoke, dust, odor, heat or glare be increased by any means whatsoever; or
  - 1.12 Shall not be changed to another nonconforming use without a special permit from the board of adjustment, and then only to a use which, in the opinion of said board, is of the same or a more restricted nature; or
  - 1.13 Shall not be reestablished if such use has been discontinued for any reason for a period of one year or more, or has been changed to, or replaced by, a conforming use. Intent to resume a nonconforming use shall not confer the right to do so.

Non-Conforming Uses

- 1.2 Except as provided in paragraph [subsection] 1.4 below, no building which houses a non-conforming use shall be:
  - 1.21 Structurally altered or enlarged; or
  - 1.22 Moved to another location where such use would be nonconforming; or
  - 1.23 Restored for other than a conforming use after damage from any cause exceeding 75 percent of the replacement cost of such building, exclusive of foundations. Any such building damage[d] to a lesser extent may be restored, but not enlarged, and the nonconforming use reinstated within one year of such damage; [however,] if the restoration of such building is not completed within the said one-year period, the nonconforming use of such building shall be deemed to have been discontinued, unless such nonconforming use is carried on without interruption in the undamaged portion of such building.

Non-Conforming Uses in Residential Zones

- 1.51 In any residence zone, any nonconforming use of open land, including such uses as a parking lot, junkyard, or open storage yard for materials or equipment, may be continued for three years after the effective date of this ordinance, or after annexation of the property into the City of Dover, provided that, after the expiration of that period, such nonconforming use shall be terminated (see also article 6, section 1.12). Any "house trailer," as that term is defined in article 12 hereof, that was located within the limits of the City of Dover at the effective date of this ordinance [November 22, 1976], or that was in place on any land subsequently annexed into the City of Dover, in any zone other than the mobile home park zone (MHP), shall constitute a nonconforming use and shall be permitted to be maintained as a nonconforming use indefinitely. However, such house trailer shall be required to connect to city sewer and water mains, if available, and such house trailer shall be subject to and shall comply with all other city codes and ordinances applicable to structures and residences.

Non-Conforming Uses in Residential Zones

- 1.53 In any residence zone, any non-conforming use of buildings which is not permitted under the provisions of this ordinance may be continued for a period of:
  - (a) Twenty years after the effective date of this ordinance, or
  - (b) Forty years after the initial construction of the building containing such use or of any addition thereto adding 50 percent or more to the floor area occupied by such use, whichever is the longer period, provided that, after the expiration of that period, such nonconforming use shall be terminated. However, no such nonconforming use shall be permitted to continue for a period exceeding two years, unless such use shall be operated in conformance with performance standards established in article 5, section 8.
- Other provisions relate to signage and student homes in residential zones

How Do We Address Non-Conforming Uses?

- Before issuing a permit or license
  - Check to make sure it hasn't been vacant for a year
  - If there has been a fire, verify that the repair cost doesn't exceed 75% of replacement
  - Check for other criteria
    - Has it been changed to a conforming use?
    - Are there other factors that would cause it to expire?
- Most cases are in Downtown Residential District – Former multi-family conversions

We Have Not....

- Reviewed uses in residential zones 20 years after effective date or 40 years after initiation of use (Section 1.53)
- Addressed non-conforming uses in continuous existence
- Challenges with doing this:
  - Significant research needed on code amendment dates, rezonings, and each property deemed to be non-conforming
  - Some non-conforming uses are also permitted as conditional uses, should these be grandfathered?
  - Need consistency across city and zones
  - Unintended consequences of enforcement– could adversely affect many properties, including churches, service organizations, etc.

MEMORANDUM

Department of Planning, Inspections & Recreation
P.O. Box 475
Dover, Delaware 19903
Phone: 302.736.7196 Fax: 302.736.4217

Date: December 14, 2015

To: Parks, Recreation & Community Enhancement Committee

From: Ann Marie Townshend, AICP

RE: Schutte Park Fields

I have spent much of the last week talking with internal staff and the Dover Recreation League President for Delaware Union to try and develop a compromise that will accommodate the needs of the City's recreational soccer league and Delaware Union's recreational program. In discussions with our Sports Coordinator, he is concerned that too much density in play on the Schutte Park fields could adversely impact multiple City of Dover recreational programs. In addition to having insufficient parking to meet the demands of more densely placed soccer fields, Mr. Pickering is concerned that the intensity of activity on the fields would leave them in poor condition for our summer field hockey league, which begins shortly after soccer season ends. Additionally, due to the parking demand that this would create, little if any programming could be planned inside the John W. Pitts Center on Saturdays during the spring. At the request of Councilman Anderson, I contacted Capital School District, and they have indicated that the fields at William Henry Middle School could be available to Delaware Union for their recreational program. The following are what I believe are the best alternatives to accommodate both programs.

1. Delaware Union could hold their recreational soccer season for the spring 2016 at William Henry. If our staff can be helpful in facilitating interaction with the Capital School District, we would be glad to help.
2. Delaware Union could hold their recreational soccer season for spring 2016 at Schutte Park on Saturdays beginning at 1:00 p.m. and/or Sundays all day.
3. The unimproved field area on the west side of Schutte Park could be evaluated and potentially used by Delaware Union. This may create challenges, because there is no parking, direct road access or restroom facilities. A temporary parking area would need to be developed, and access to Wyoming Mill Road would need to be negotiated with DelDOT.

I look forward to working with all parties involved to find a solution that is amenable to all programs and parties involved.