CITY OF DOVER
BOARD OF ADJUSTMENT MINUTES
November 16, 2016

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, November 16, 2016 at 9:05 A.M. with Chairman Sheth presiding. Members present were Chairman Sheth, Mr. Hufnal, Mr. Keller, Colonel Ericson and Mr. Senato.

Staff members present were Mrs. Melson-Williams, Mrs. Purnell, Mr. Cook, and Mr. Glenn Mandalas (serving as Attorney for the Board). Staff members Mrs. Townshend and Deputy City Solicitor William Pepper also were present as related to the related to the Appeal Application.

APPROVAL OF AGENDA

Mr. Hufnal moved to approve the agenda as submitted. The motion was seconded by Mr. Senato and unanimously carried 5-0.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF OCTOBER 19, 2016

Mr. Keller moved to approve the meeting minutes of October 19, 2016 with the necessary corrections he described, seconded by Mr. Hufnal and unanimously carried 5-0.

OPENING REMARKS CONCERNING MEETING PROCEDURES

Mrs. Melson-Williams, Principal Planner stated that the meeting today will be conducted in accordance with the agenda. There is one (1) agenda item. The Appeal application will be introduced, then the Board will hear testimony from the applicant and from the Department of Planning and Inspections. A public hearing will be conducted.

If the Board needs to consult their Attorney Mr. Mandalas, they will adjourn to discuss legal matters. If the applicant must leave, they can contact the Planning Office at 736.7196 to learn of the Board's decision. A formal notice of the Board of Adjustment's decision will be mailed to the applicant.

All public notice for the Appeal application on this agenda was previously completed in accordance with code requirements. The meeting agenda was posted in accordance with the Freedom of Information Act requirements.

NEW BUSINESS

Applicant #V-16-15

Property at 823 East Loockerman Street. Georgia Heininger-Trader has appealed the decision of the City Planner to the Board of Adjustment regarding the issuance of Building Permit #15-1192 on October 14, 2015 and the issuance of the Certificate of Occupancy on December 2, 2015 associated with the permitting and placement of a manufactured home as a one-family detached dwelling unit on the property at 823 East Loockerman Street. Property Address: 823 East

Loockerman Street Dover. Subject property is zoned R-8 (One Family Residence Zone). The Tax Parcel is ED-05-077.06-02-55.00-000. The current property owner of record is Brenda Redlich.

Exhibits for the Record: Appeal Application with Attachments submitted by the applicant, the Staff Summary Document, a series of exhibits and the Department response.

Legal Notice was published in the Delaware State News – on November 6, 2016 and property owners within 200 feet of the subject site were notified by regular mail in accordance with the established procedures for Public Notice. As the applicant (appellant) is not the property owner of the subject site, the Planning Office also sent a Letter of Notice of the Appeal Filing on October 27, 2016 to the current property owner of record at 823 East Loockerman Street.

[Explanation of Packet Items Provided to Board]

Mrs. Melson-Williams gave a brief overview and description of the Appeal application by referencing the Staff Summary Document and Exhibits.

Chairman Sheth questioned if there was any member present who had a conflict of interest and there was none.

Presentation by the Applicant:

Representative: Mr. Eric Andersen, Counsel present on behalf of the appellant.

Mr. Andersen thanked the Board for the acceptance of the Appeal for the issuance of the Building Permit and the Certificate of Occupancy. He meant that because there has been quite a bit of confusion as to whether anyone can appeal a decision of the City Planner to the Board of Adjustment. When he attempted the first time to do an Appeal, the City Clerk's office informed him that only the applicant of the Building Permit and the Certificate of Occupancy could Appeal to the Board of Adjustment. A lawsuit was filed in the Court of Chancery because of that. Vice Chancellor Noble did not decide either way whether an Appeal before the Board of Adjustment was appropriate or not, but he did order discovery. The reason the packets are so thick is because you have deposition transcripts and email documents from the proceedings before the Court of Chancery. Vice Chancellor Noble retired and Vice Chancellor Glasscock III was assigned to the case. Vice Chancellor Glasscock III determined that yes, anyone on the street can appeal the decision of the City Planner. Those proceedings have been stayed at the Court of Chancery pending a decision at the Board of Adjustment as to what will happen in terms of whether the Building Permit and the Certificate of Occupancy will be nullified and void. When the Appeal was made in October, they found the forms for the Board of Adjustment still have not been adjusted or changed. At the current time, the forms available at the office have information where only the applicant for the Building Permit and Certificate of Occupancy can do an appeal. His client had to cross out some of the items in the form so that someone in the community other than the applicant can appeal to the Board of Adjustment. He wanted to make it known that the forms are still not updated as of today and they need to be adjusted. The good thing is although we have had all of these proceedings they are still operating on a clean slate. Ms. Redlich does not have a title to her trailer. If the Board

finds that there is an error and the City Planner made a mistake by issuing the Building Permit and Certificate of Occupancy, Clayton Homes can bring a truck and haul the mobile home away after the disconnection of the water, gas, and sewer. Contrary to popular misconception Ms. Redlich cannot rely upon the mistakes of the City Planner. Cases were provided to Mr. Mandalas which include *Miller v. Board of Adjustment (of Town of Dewey Beach)* and *Voshell v. Board of Adjustment (of Kent County)*. It basically states that if the City Planner makes a mistake and the builder or someone relies upon that mistake, the Board of Adjustment cannot throw up its hands and say it is too late. They relied upon a mistake and built this structure and set this mobile home. This argument has been made time and time again and the answer is there is no equitable estoppel or no vested rights in the mistakes of the City Planner. If the Board finds that a mistake was made, the Building Permit can be nullified and the Certificate of Occupancy can be pulled and the trailer or mobile home can be removed. He asked if any of the Board members had any questions before he went into the presentation. He would prefer to make it a conversation as opposed to a one-way presentation. He is prepared to make his presentation, but he wanted to see after review of the packet if there was anything currently on the minds of the Board members.

Mr. Senato stated that there was a lot on his mind. From his standpoint he asked for a presentation based on the information submitted by Mr. Andersen, the Court of Chancery, and the City. He suggested referencing the particular item, pages, or subject matter when speaking. They could make notes accordingly. That is his opinion and in his mind that is the best thing because if you continue to make a presentation; with a non-presentation it can be confusing.

Mr. Andersen stated that he had two (2) housekeeping items. The packet as it was sent to him was in black and white and the photos did not come out very clearly. He handed out some clear color photos of the subject property and neighborhood. (Exhibit M1)

Mr. Senato mentioned that the Board had photos that was early in the construction where there was no skirt on the building, but basic foundation. The Board also has a photo from the City Planner's packet which includes different photos which gives a different impression of what is there on the site rather than the original black and white photos.

Mr. Andersen stated that the other housekeeping item was there was a Staff memo prepared for the Board and he noticed that the memo does not reference Chapter 66 of the *Code of Ordinances*. The City Planner in her presentation does reference the Chapter and provides the citation. He wanted to point out that in terms of deciding this case you should look at both Appendix B which is the zoning section of the *Code of Ordinances* and Chapter 66 in determining whether this mobile home should have been put on this lot. It is not just having your blinders on and looking at the zoning statutes. There are other ordinances in the Code that control zoning and they are in Chapter 66.

Mr. Andersen stated that the presentation will consist of two (2) parts. First, how did we get here, who did what and when. Second, the legal argument, path, and the reason why the Building Permit and Certificate of Occupancy should be nullified.

Facts: On September 3, 2015 a Building Permit application was submitted by Clayton Homes on behalf of the Henry's. The problem is when the Building Permit was submitted the Henry's did

not own the lot, but Ms. Redlich did and she did not apply for the permit. Notwithstanding this problem, Clayton Homes filed a certification in lieu of oath affirming that all the facts in the Building Permit were true. But it turns out that the application was not true. Ms. Redlich owned the home and not the Henrys at the time the application was submitted. He brings this up because Article 8, Section 1 of the *Code of Ordinances* provides that any Building Permit issued in violation of the City Ordinances shall be null and void and shall have no affect without the necessity for any proceeding for reverification or nullification thereof. Just on this simple fact the Board can pull and nullify the Permit because it was inaccurate. On October 14, 2015 there was an approval by the City Planner to put the mobile home in an R-8 zone. October 22-26, 2015 there are emails going back and forth between the City Planner and City Counsel whether they made the right decision to approve the Building Permit. The emails are included in the packet. Basically, it states that we have a problem. Chapter 66 of the *Code of Ordinances* states that mobile homes can only be placed in a mobile home park zone; it cannot be in an R-8 zone. On October 26, 2015 the mobile home is placed on the lot. The next day, Councilman William Hare admits that the City made a mistake by approving this Building Permit. On November 1, 2015 Councilman Hutchinson and Lewis admits the City made a mistake by approving the Building Permit. He is pleading for my client not to sue the City in the Court of Chancery. On November 2, 2015, Thomas Trader (his client's husband) walks into the office and attempts to file an Appeal of this Building Permit and was turned away by the City Clerk stating that he did not have standing to file this Appeal. Twenty-one days later on November 23, 2015, the complaint was filed with the Court of Chancery and on the same day the complaint was forwarded to Mr. Pepper because he is typically Counsel to the City. Keep in mind that the City has knowledge of this lawsuit. The sale on the mobile home has not closed. The mobile home is on the lot, but the closing has not happened, but the suit is filed. This is what happens after the complaint is filed when everyone knows that his client and a lot of people at Edgehill Acres have a problem with this mobile home in their subdivision. Ms. Redlich takes the complaint to Clayton Homes and asks what should she do. On December 1, 2015 even though they have full knowledge of the lawsuit, they just decide to go ahead and try to get this done as quickly as possible. On December 2, 2015 the City Planner issues a Certificate of Occupancy to Ms. Redlich knowing full well that there is a problem. Now keep in mind that Ms. Redlich also never applied for a Certificate of Occupancy. If you look in the papers there is a form filled out by someone, but it was not signed by Ms. Redlich. Maybe someone from Clayton Homes sent it in; he had no idea. Again, this is another situation where Ms. Redlich does not apply for the Certificate of Occupancy, yet one is issued. Another reason under Article 8, Section 1 that a Certificate of Occupancy can be nullified under that basis. There is also an email from the Mayor to the City Planner stating that with the litigation pending why was the Certificate of Occupancy issued. What are we doing? Clayton Homes asked lender Tidewater about the status of the funding because they wanted to close as soon as possible before any decision is made on whether this mobile home should be on the lot. During those communications, Clayton Homes admits that they did not tell the lender Tidewater that there was litigation pending. This was admitted in the transcripts. After the Certificate of Occupancy is issued, there was an illegal propane tank removed from the mobile home and a permanent natural gas connection was made on December 8, 2015. On December 18, 2015, Ms. Redlich signs the Uniform Loan Application at closing and affirmatively states that she is not party to any lawsuit, which is not true. She admits in her own deposition that she did not tell her Closing Attorney about the Chancery lawsuit. Therefore, the Closing Attorney or lender is unaware of the lawsuit, so Tidewater funds the closing. During this litigation he has asked multiple times where is the actual Title. Did Ms. Redlich actually receive

the Title to this mobile home? Nothing has been produced. He does not have anything to support this, but he thinks that Clayton Homes knows that they have a problem. He does not think that they will issue the Title until they know the issue has been resolved, but he does not know that for sure. It seems to him that something very routine about not producing the Title and showing that Ms. Redlich was the property owner seems very suspect to him. They have left the application believing that Ms. Redlich is not the owner of the property yet.

Mr. Andersen stated that there are two ways in which the Board of Adjustment can nullify the Building Permit and the Certificate of Occupancy. First, there is Article 3 which describes what types of properties can be in an R-8 zone. Basically unless you are raising a field and garden crops, vineyards or an orchard, you can construct a one family detached dwelling. If you want to construct anything else in the R-8 Zone, you would need Planning Commission approval as well as for places of worship, railroads, public utilities and country clubs. In the *Code of Ordinances* there is a definition for "mobile home" even before all the changes that were made after this case. Nowhere in Article 3 does it state that a mobile home can be put in a R-8 Zone; even the Planning Commission could not approve it. Mobile home is defined and there is nowhere in the definition of the R-8 Zone that a mobile home can be put in the R-8 Zone. Then you look and ask what is a "one family detached dwelling" and ask if it is defined anywhere. You then go to Article 12, there is a nice definition of what a dwelling is and is not. One thing it states that a dwelling is not and that is a house trailer. Therefore, you cannot put house trailers in a R-8 Zone. If you look in the packet in the City's response, it is stated that Ms. Redlich's home is not a mobile home or house trailer, but a manufactured home. That term is not defined anywhere at the time this application was approved. Now, there have been many changes made to the *Code of Ordinances* since this case which are not applicable to this proceeding. We are just dealing with the state of play at the time of the Building Permit and Certificate of Occupancy. At that time there was no definition of manufactured homes. The City Council dealt with manufactured homes in an indirect way in Chapter 66. Chapter 66 states that for permanently placed mobile homes where the wheels are taken off and it is permanently placed on a foundation and on piles, it must be in a mobile park zone. There are three (3) places in the code of regulations that state that there are no mobile homes in the R-8 Zone. The City states in their paperwork that they do not look at Chapter 66. If he was to say that to a judge that he is looking at one law book, but not the other, he would be thrown out of court. How can a City Planner say that they are not going to enforce Chapter 66 which states that mobile home should be in a mobile home park? He just did not understand. On that basis you can nullify the Building Permit and the Certificate of Occupancy. We can also go to Appendix B, Article 8, Section 1 which is also attached as part of the Staff memo which has been provided. On the basis that Ms. Redlich did not apply for the Building Permit or Certificate of Occupancy, there are two ways the panel can nullify the Building Permit and the Certificate of Occupancy. This is the end of the presentation and I am ready for any questions.

Representative: Mr. Constantine Malmberg III- Attorney representing Ms. Redlich and Mr. & Mrs. Henry

Mr. Malmberg stated that he was not going through the substantive issues of the decision that the City made. His client through her parents and Clayton Homes made an application to build a house on a lot in the City of Dover. The application was granted by the City of Dover after it was duly considered by the appropriate people at the City of Dover. His client and parents then invested

significant funds in acquiring the property and placing the home on the property which now has a mortgage. He is not aware of any notice to a mortgage company that is a real party interest here also. In all respects his client is completely innocent of any improper or wrong doing or mistake whatsoever. He stated that he will be talking about two (2) points which is standing and timely filing of an application. The City Code provisions dealing with Appeals of Administrative decisions provides that any person aggrieved may appeal the administrative decision (in this case of the City Planner) to the Board of Adjustment which is in the Code. It has been in the Code and Mr. Anderson and his client is charged with that knowledge. The fact that they do not like the way the forms are formatted does not excuse their failure to file in a timely fashion in the Appeal of the administrative decision of the City Planner. Mr. Anderson made a statement that was overly broad and inadvertent. He stated that the Vice Chancellor decided that any person, any man on the street could Appeal any decision and that is not an accurate statement. Case law by our Supreme Court relying on the U.S. Supreme Court has interpreted the term "an aggrieved person" which is a term from the Ordinances. An "aggrieved" person does not mean "any" person. In the case *Nicholas v. State* following the U.S. Supreme Court lead, "aggrieved" was interpreted to mean "to have standing to an Appeal a party must show there is injury in fact and an interest arguably within the zone of the interest to be protected or regulated by the statute. The invasion must be concrete and particularized in actual or amend not conjectural or hypothetical." So you cannot just not like the decision and Appeal and not just any person on the street can file an Appeal. The person has to have actual harm to them of some sort and be able to show that harm before they can Appeal a decision. What you do not have before you is any evidence whatsoever that Ms. Heininger-Trader has suffered any harm that would give her standing to Appeal. Her home is a little over a 1000 feet away from the property at 823 East Loockerman Street; there is no direct line of sight to this home, so she cannot be offended by its looks. Although, it is in the same general neighborhood, the value of the home is in keeping in accordance with the Assessor's Office of the City of Dover with the values of the other homes. He stated that he had an affidavit by Cheryl Bundek and the assessed value of the neighboring properties. He asked to submit them as part of the record (Exhibit M2). Amongst the things that you will see on there is the property immediately next door has a lower assessed value than this property. The unsubstantiated allegation is this home somehow reduces the value of other properties in the neighborhood and that falls a little short when it is actually valued higher than other properties in the neighborhood.

Mr. Keller asked what was Cheryl Bundek title? Mr. Mandalas responded that she is the City Assessor.

Mr. Malmberg talked briefly about the second issue of the timeliness of the Appeal. As previously mentioned, the Ordinance clearly states that an aggrieved party can Appeal a decision by the City Planner or other administrative officer of the City. Mr. Andersen is an attorney and his client is also charged with the knowledge of that information. This Appeal was filed approximately more than a year after the application was filed by his client and just under a year after the Building Permit was issued by the City of Dover. In that period of time, his client has financed and moved into the property. His client is currently living in the property. Although there is no specific timeframe set forth in the Ordinances for an Appeal to be filed, the Ordinance does use reasonable language. He would suggest that a year after a Building Permit has been issued with all the time that has gone by and the reliance on the issuance of that Building Permit by his client that the date is not a reasonable action with the City of Dover. Finally, a little lesson of how it works when you

buy a piece of property and put a home on it that is a manufactured home. Under certain circumstances if you buy a manufactured home and put in a Class C foundation and once the home is placed on the Class C foundation the Title is retired and it becomes real property. With all that has happened with this property, this home did not get transferred from Ms. Redlich. It does not get transferred to Ms. Redlich as previously mentioned until the Title is retired and it becomes real property and through the acquisition of the deed for real property it becomes Ms. Redlich's. The speculation by Mr. Andersen about where the Bill of Sale is or the transfer of the Title to the property is just a fundamental misunderstanding of how the system works. There is no transfer of the Title to the manufactured home, but a transfer of the property. It is just like a stick built home. It is an improvement to the property that becomes real property and is now encumbered by a mortgage. It is also a mortgage company that is relied upon and is not present today. He wondered if there was even relief that could be given with a real party interest not being included in the proceedings. It is his understanding that the City is going to address the substantive issuance of the Building Permit. For those two (2) reasons of the lack of standing from Ms. Heininger-Trader to even file the Appeal and have it heard based on the Nicholas case which is the Supreme Court case in Delaware and as well as the lack of timely filing of the Appeal are two (2) reasons the Appeal should be denied or dismissed.

Presentation by Department

Representative: Mrs. Ann Marie Townshend, Director, Mr. William Pepper, Deputy City Solicitor.

Mrs. Townshend was sworn in by Mr. Mandalas.

Mrs. Townshend testified that Mr. Pepper will have some comments but she wanted to speak a little to the substantive issues. She wanted to follow-up on Mr. Malmberg's reference to the Code. It is very specific in regards to the ability to Appeal to the Board of Adjustment if you are aggrieved by a decision of the City Planner. It is also very specific in Title 22 Chapter 3 of the *Delaware Code.* It is not just the City Code, but also the State Code that has the appropriate route. Sometimes it becomes an issue of semantics. She wanted to correct the record on terminology. Mr. Andersen repeatedly referred to the home as a "mobile home." She will admit that our Code unfortunately in many ways was not kept up-to-date over years. Based on what was seen from this, the City did a very comprehensive update of the terminology, definitions, and requirements on all of these types of housing. She wanted to make a correction in the Memo that was submitted. She indicated that the Permit was issued in September 2015, but the Building Permit was actually submitted in September 2015 and issued in October 2015. As she referred to the information that was provided in the packet there is a publication regarding manufactured homes (see Planning Office Response to Appeal). On page 6 in the gray box at the bottom of the page that has "Factory Built Housing Definitions," manufactured homes have a very specific definition. It is a "factory built housing unit designed and constructed to meet the U.S. Department of Housing and Urban Development (HUD) Code." It is very specific that "factory built units built to meet the HUD Code and constructed it after the Code took effect on June 15, 1976 are classified as "manufactured homes." There is a real distinction in terminology that is important to this because if you go on a mobile home is a "factory-built unit constructed on a chassis and completed before June 15, 1976. Prior to the HUD Code, mobile homes were not subject to uniform construction or safety standards."

Then it goes on to define the term "trailer". Before this Permit application came, in the months leading up to this and not specifically on this property, the Office had started to receive phone calls about can a manufactured home be built on a single family lot. The Planning Office determined that there had been cases where it had been approved in the past, but the Office also looked very specifically at the definitions. The definitions that were reviewed are in the attached memo (Planning Office Response to Appeal)

- Dwelling detached: A dwelling unit designed and intended for use by only one family.
- Dwelling Unit: A building or entirely self-contained portion thereof containing complete housekeeping facilities for only one family, including any domestic servants employed on the premises, and having no enclosed space (other than vestibules, entrance or other hallways or porches) or cooking or sanitary facilities in common with any other dwelling unit. A boarding [house] or rooming house, convalescent home, dormitory, fraternity or sorority house, hotel, inn, lodging, nursing, or other similar home, house trailer, or other similar structures or vehicles shall not be deemed to constitute a dwelling unit.
- Then Mr. Andersen referred to the term "house trailer" Trailer, house: Any vehicle mounted on wheels, movable either by its own power or by being drawn by another vehicle, and equipped to be used for living or sleeping quarters or so as to permit cooking. The term "house trailer" shall include vehicles if mounted on temporary or permanent foundations with the wheels removed."

She pointed out two (2) main distinctions. A double-wide manufactured home is brought to the site on wheels and axles. In that respect it may seem like it fits with that; however, when it is assembled on the site those pieces come off. So while it is on wheels, it is not a complete dwelling unit; it is not an occupiable dwelling unit. It's not a trailer; it is brought together on site. Additionally, when the city office did code research on this they went back as far as 1968 because this is really when zoning really came to be. There were some zoning provisions prior to that, but really zoning came to be a big part of municipal government in 1968. As the City reviewed the definition of "house trailer" was the same in 1968 as it was afterwards. Since that time again HUD came into the picture in 1976 with standards and definitions for manufactured homes. She submitted for the record *Delaware Code*, Title 22 Chapter 3 which is the State statute that enables municipalities to enact zoning ordinances. (Exhibit M3)

Mr. Mandalas questioned whether the other attorneys involved received a copy of the *Delaware Code,* Title 22 Chapter 3 and the City Assessor document. Mr. Diaz handed out the copies. Mr. Mandalas asked that Mr. Malmberg and Mr. Andersen receive a copy of both documents. Mrs. Townshend stated that she had just asked Mr. Eddie Diaz to make copies as Mr. Anderson was testifying. The contention was that we should look to provisions of Chapter 66 as they relate to zoning. There are very specific reasons why Chapter 66 of *Dover Code of Ordinances* does not have the legal authority to regulate zoning. That relates specifically to the enabling legislation at the State level. Chapter 3 of Title 22 of the *Delaware Code* gives municipalities the authority to zone, but also gives very clear perimeters about how zoning provisions are adopted. The provisions at the State level requires public hearings. Whereas, the other ordinances adopted by the City of Dover do not have the public hearing and notice requirement. For the provisions of Chapter 66, we have no evidence to indicate they were adopted in accordance with the State requirements that governs zoning. We would submit that again Chapter 66 was in error in any references to zoning especially because the specific provision that mentioned zoning in that chapter of the Code was

under a section for taxation. There is no evidence that it went through the process or that there was any intention. It was poorly constructed and again this is another reason when this issue came up and it was evaluated. The entire code was updated by the City to address the issue and eliminate any confusion and to add clarity. Also attached behind the Memo is the Council Action Form recognizing that the definitions as they existed in the Code did not restrict this use. She brought forward to City Council an Action Form that had two steps of changing the Code to address the issue. At that point Council had indicated that they did not want this type of housing in the zone. We stand by that it was a permitted use at the time the Permit was issued, but we understand the interest of Council not wanting it to continue going forward. The First Reading was in November of 2015 and a new definition was provided for "one family dwelling" that added a permanent dwelling unit placed on a permanent foundation and specifically adding that manufactured homes and mobile homes are not considered a one family dwelling. Going forward it is very clear a Permit would not be issued. It was not issued in error, but issued based on the definition in place at the time the Permit was received. Mr. Andersen talked about the Permit being issued in error, but if you look at the complaint that was filed in Chancery Court, Mr. Andersen repeatedly refers to the issuance of the Permit as an issuance of a backdoor variance. She is not seeing consistency in the claim that is being made. When it seemed and looked like it might not be successful on the appealing of it being issued in error, the claim was changed to make it a backdoor use variance. She is pretty sure the Board is well aware of the standards for a use variance.

Mr. William Pepper, Deputy City Solicitor first touched based on Chapter 66. As Mr. Mandalas will tell you and that you probably already know, in order to zone property and regulate usage a *Zoning Ordinance* has to go through a very specific process. It needs to be introduced by Council and be referred to the Planning Commission for public hearing and consideration, then a recommendation goes back to City Council and then Council takes action. There is no evidence. In fact looking at the minutes from 1970, when Chapter 66 was added to the Code that Chapter was not referred to the Planning Commission. Therefore, it is not a *Zoning Ordinance* and it cannot regulate the use of land in the City of Dover. That is the Hornbook Law and if you practiced in Land Use you would understand. Mrs. Townshend touched on a lot of what he was going to say because this case is really a statutory interpretation exercise, what is a "dwelling unit?" It is pretty clear that the Redlich structure satisfies the first sentence of that definition of Article 12 in the *Zoning Ordinance*. It is not a house trailer because the Code defines a house trailer as Mrs. Townshend's memo points out. The Redlich structure was manufactured in a factory that came to East Loockerman Street in multiple pieces where it was assembled on site. The definition of a house trailer is a fully assembled unit that comes and is placed on a lot and there is no further assembly. Then we come to the phrase following a house trailer: "similar structure or vehicles." What does that mean? There is a principle of statutory construction that holds a meaning of an unclear word or phrase should be determined by the words immediately surrounding it. Another principle says that when a general word or phrase follows a list of specifics, a general word or phrase would be interpreted to include only those items of the same class as those listed. He submits to you "a similar structure or vehicles" should be interpreted to mean recreational vehicles, motor homes, and campers, not manufactured homes. It does not include a manufactured home that is built in a factory and transported to a site where it is assembled. If it was so construed then it would also prohibit modular homes which are constructed in factories, transported to sites, and assembled. The Planning Office correctly interpreted the section of the *Zoning Ordinance* that permitted, at that time, the Redlich structure and permitted it to be installed and occupied on the

property on East Loockerman Street.

Chairman Sheth asked Mr. Mandalas whether he had any guidance for the case at this point. Mr. Mandalas replied to be quite honest there were a lot of thoughts that he had during the presentations, but he thinks the presenters and attorneys have done a good job of framing the issues that are relevant to this case. He did not have guidance at this point other than it's question time.

Chairman Sheth questioned what they were dealing with? Mr. Mandalas stated that you are dealing with purely an Appeal. Often times the Board will sit to hear variances which is a different animal than what you have today. Today is an Appeal of a decision of the Director of Planning to issue a Building Permit and Certificate of Occupancy. So the question for the Board is as they read the *Code of Ordinances* was the issuance of the Building Permit and Certificate of Occupancy proper or improper under the ordinances. There have been arguments made about Chapter 66 versus the Zoning Chapter. The reason this becomes relevant is when you sit in an Appeal capacity the Code states that the Board shall have the authority to hear and decide Appeals whether there is any alleged order, requirements, decisions, or determination made by the Administrative Official in the enforcement of the *Zoning Ordinance*. It is clear that the Board's role is to interpret the *Zoning Ordinance.* There was an argument today about whether or not Chapter 66 is part of the *Zoning Ordinance.* It does not appear in the Code under Zoning which is Appendix B, but Mr. Andersen has made an argument that you cannot leave out Chapter 66 because it specifically references zoning. Other parties have said that because it did not go through the procedure that was required to adopt zoning ordinances, Chapter 66 cannot be a Zoning statute. He thinks that is a relevant issue. The Board is sitting in a capacity today where they are to review the Code within the arguments that are being made and interpret the Code as best as you can.

Colonel Ericson questioned Mr. Pepper regarding a letter that was written to the City Planner concerning his position on this matter regarding Chapter 66 and asked for a quick summary. Mr. Pepper replied that at that point it was not clear whether it had gone through the proper process to become a zoning ordinance. Subsequently, he had discovered that it had not and he thinks that his email indicated that it was not clear whether it was a zoning ordinance. It is now clear that it is not because it was never referred to the Planning Commission. There were no public hearings before the Planning Commission and Planning Commission did not make a recommendation back to Council. So, it cannot be a zoning ordinance.

Mr. Keller also had a question regarding the email dated October 26, 2015 (Exhibit 1C-Exhibit D): "The wrinkle is that Chapter 66 also contains a definition of permanently placed mobile home which purports to pull the structures excluded from the definition of mobile home back into the definition of mobile for the purpose of zoning. Section 66-3, entitled real property taxes, purports to allow permanently placed mobile homes only in the MPH Zone. The problem with using Chapter 66 is that it is not in the zoning code and section 66-3 is labeled as a taxation section. It is not at all clear that the 1986 amendment was referred to the Planning Commission as is required for zoning ordinances. See Appendix B, Article 10, Section 5." He questioned whether there was still some ambiguity, if you will, as to whether there should be a proper attachment to Chapter 66 when looking at zoning definitions or matters. Mr. Pepper replied that there is no ambiguity; Chapter 66 does not come into play in a zoning discussion.

Colonel Ericson questioned in the Chancery Court case, Mr. Andersen stated that on August 24th the Henry's transferred (gave) the property to their daughter Ms. Redlich. He asked if Mr. Anderson had any proof that it occurred on that date, because there seems to be some concern when that actually occurred. Mr. Andersen replied that in the production there was a transfer document and he could provide a copy of what was produced by Ms. Redlich. Ms. Redlich can also produce a copy of the transfer. No one is disputing that date, as he thinks he has that date correct.

Colonel Ericson questioned whether the property actually transferred. Mr. Andersen replied yes, it did.

Colonel Ericson questioned in signing the forms for the application that is being discussed, since it was the parents ("The Henry's") giving the land to their daughter could they legally be acting in behalf when they signed as owners. Mr. Andersen replied they could have if Ms. Redlich gave a Power of Attorney, but none was produced. They were not legally permitted to act on her behalf.

Mr. Keller questioned that at the time Ms. Redlich was not a minor child, Mr. Andersen replied no.

Mr. Keller questioned whether when relating to the transfer of Title are we talking about a Title to two (2) different things: Title to the lot itself (the real property) and at the time, the manufactured house by virtue of a Title or Permit transfer. Mr. Anderson replied that he was correct, there were supposed to be two (2) transfers. One is the transfer of the lot to Ms. Redlich which happened after the application for the Permit which is a serious problem in and of itself. Then there is the transfer of giving Title from Clayton Homes of the mobile home to Ms. Redlich. Now, Ms. Redlich's counsel is saying that there is no such document. There is no proof and there will never be proof that the second transfer actually happened, because it just happens by operation at law. He disagrees at that point. This home has a VIN number just like his car has a VIN number, somehow or someway there needs to be a transfer of that VIN number to her. It could be either a transferred on a document issued by the Department of Transportation, like your title to your car. The VIN number is 08C024646NCAB. It was essentially a car.

Colonel Ericson questioned who was the owner associated with the VIN number. Mr. Andersen replied Clayton Homes.

Mr. Hufnal questioned by Title of that VIN number who did it get transferred from Clayton Homes to? Mr. Andersen replied that it is still with Clayton Homes.

Mr. Hufnal mentioned they retired the vendor number and then it became associated with the property and can now be transferred by deed, is that correct? Mr. Andersen replied that is what Counsel said. He did not have a document, but he has requested a document. He does not have a document of proof even through all the litigation that has happened that there was the retirement turning the mobile home into and part of the land.

Mr. Hufnal mentioned that it stated on December 2, 2015, the City issued a mobile home retirement letter and a Certificate of Occupancy to Ms. Redlich. Mr. Anderson stated that the City did do that,

but Clayton Homes has to do something. They have to transfer the VIN number.

Mrs. Townsend stated for clarity that it is extremely common that contractors apply for permits for property they do not own as well as for the Certificate of Occupancy. When you sign a Building Permit application, you hereby certify that you are the owner of record or a contractor authorized by the owner. (Exhibit 2A) There was nothing about the issuance of this Permit or the application of this Permit that was out of the ordinary from our normal protocol. The date that the application for the Building Permit was received on was September 3, 2015. Again, we frequently go to the City parcel inventory and Kent County PRIDE site where they have property owner information. Upon looking at the PRIDE site this morning the sale history of the property shows the date of September 17, 2015, which is after the date of the application. She thinks Mr. Anderson is trying to make an issue out of something that is quite honestly is not an issue. Again, this is a standard Permit that was reviewed as any other Permit.

Chairman Sheth questioned whether the ordinance no longer existed? Mrs. Townshend replied correct. We have at this point the entire *Dover Code of Ordinances* which have been scoured for any references to mobile homes, manufactured homes, and trailers to make sure that the terminology is up-to-date, correct, not confusing, and that the requirements are clear. Any references to zoning have been removed from Chapter 66 in its entirety.

Chairman Sheth questioned who adopted or drafted the new ordinance? Mrs. Townshend replied it was done by Mr. Diaz with her oversight, but he did the hard work.

Chairman Sheth questioned if the new ordinance was initiated by Mrs. Townshend. Mrs. Townshend replied yes. It was clearly in response to Council's concerns.

Chairman Sheth questioned when the Permit was issued that there was no choice but the interpretation of the existing? Mrs. Townshend replied exactly.

Mr. Keller asked for clarification for matters that may be directed to the Planning Commission. Site Development Plan Approval, Article 10 Section 2 notes that "Site Development Plans shall be required according to the following criteria" sets out certain sizes, dimensional matters regarding structure, etc., but in subsection 2.13 Zoning Review indicates that the "City Planner or designee may approve the site development plan in conjunction with Building Permit review. It appeared to him that this matter did not warrant going to the Planning Commission. Mrs. Townshend replied correct. Mr. Keller stated that however in your review, Section 2.2 Objectives notes that in your consideration as to whether or not it would go before the Planning Commission or be approved by the Planning Office, it reads "in considering and acting upon Site Development Plans, the public health, safety and welfare, the comfort and convenience of the public in general and of the residents of the immediate neighborhood in particular shall be taken into consideration and appropriate conditions and safeguards may be prescribed as may be required that the results of approval may, to the maximum extent possible, further the expressed intent of this ordinance and the accomplishment of the following objectives in particular." Section 2.28 states "Consideration shall be given to the physical orientation and architectural characteristics of proposed buildings, the relationship of proposed buildings to existing buildings and to other proposed buildings, and their contributions to the overall image of the immediate vicinity by

considering the building and architectural design guidelines as set forth in article 5, section 19. Design characteristics of proposed buildings and building additions shall not detract or devalue existing buildings in the immediate vicinity." He fully realizes that valuation of buildings and/or devaluation of buildings can be somewhat subjective. He was curious as to whether or not you gave any thought or action with regard to considering those various things in light of "the immediate neighborhood in particular and the residence thereof" when considering to go ahead with the approval process absent the Planning Commission. Mrs. Townshend replied no, we treated this like we would treat any other new home Permit. There are cases where somebody builds a home that may not be attractive by your standard or my standard. If something meets the definition, especially when it is just a Zoning Review, there is nothing that triggers Planning Commission. Our level of discretion to apply standards that are not specified clearly would put us in a position of being perceived as arbitrary and would risk the integrity of the code. Section 2.2 is where to the degree that there are layout issues such as the driveway would be better suited further from an intersection or in some cases you have an alley behind the property and we would prefer you take access from the alley. If the structure is permitted by Code, we would definitely be beyond our role to say while it is allowed by Code but we are not sure that the neighbors are going to like it. In addition to just being perceived as arbitrary, especially when you are talking about housing, she also thinks that could put them in a position to have to deal with Fair Housing challenges if we start to pick and choose.

Mr. Keller questioned Mrs. Townshend's comment regarding her being aware of several other subdivisions or properties wherein a mobile home and manufactured house has been put in other locations. He could not help but think that when looking at Edgehill Acres which is a 50-60-year-old well-established neighborhood with perhaps only 1-2 vacant lots when this came before your office with an application for a Building Permit that it did not give some pause as to the type of structure being proposed (this is not a matter of discrimination). Mrs. Townshend replied that there is no basis in the Code for us to do that. She would make the argument if you look at that neighborhood and someone came in with a two-story structure it would be out of character, but would it be appropriate for us to say no you cannot build a two-story because everything else here is a ranch? If you try to utilize discretion that is not clearly in the Code, you put the City in a difficult position of being inconsistent and arbitrary.

Mr. Keller stated that when those types of issues arise monthly the Board addresses those very types of issues. He questioned why perhaps it was not submitted to the first level of consideration and important judgment. Mrs. Townshend replied that the majority of what the Board of Adjustment reviews are applications where a property owner, business owner, or person wants to do something that is not permitted by the Code. We did not believe this to be an area where it was ambiguous in the Code. We make judgment calls every day in administrating the *Zoning Ordinance.* Neither the State Code nor the City Code is set up to indicate that we should be bringing the judgment calls on a daily administration item to either the Planning Commission or the Board of Adjustment. We find issues and we then try to bring forth amendments to resolve them. In our daily administration, we administer the Code as written.

Mr. Hufnal questioned that during the receipt of the Application, it shows on the physical land boundary survey and shows a proposed double wide home. This should have raised a flag that it is different from (what was just handed out of) the homes that are in the immediate neighborhood.

Why wouldn't an inspector or someone question why this particular property was being put there? He understood the statutes. Mrs. Townshend replied that she is not saying that people cannot question it, but again you look at the definitions in the Code as they exist and that is what guides the decision. She thinks we would be in a really tough position if we review the Ordinance and say we believe this is permitted based on the language we have in the Code in front of us, but we are worried the neighbors might not like it, so we are going to subject it to a different level of scrutiny.

Colonel Ericson questioned would it cause you any concern to see that the application for the Building Permit listed the owners as the Henry's, but signed by them and also the contractor. Mrs. Townshend replied no. When she looked at PRIDE and when the Application came in, you would have seen the Henry's as the owners because it shows the sale as 2-weeks after the Application came in. For the intake of an Application, the way our process flows is when an application comes in it is logged by the front office staff, it is checked for any delinquent taxes, we look at it on the map to see if it is in the flood plain and make sure all paper work is there. Once all that is completed then it goes to various Departments: Building, Planning, and simultaneously to Public Works. Any checking of ownership and delinquent taxes is completed when the Application is submitted and logged. She cannot tell you what the property record stated on the date it came in, but when she looks at it today it has a date of 9-17-15 as a sale. There is nothing to her that sends up a flag in terms of the ownership.

Mr. Malmberg stated for clarification, this is very much a joint effort between the Henry's who are the parents of Ms. Redlich who was helping out their daughter by first acquiring the land and then by financially helping to get the project underway and the home built for her. So it is a joint effort between them and Clayton Homes. It is very typical as Mrs. Townshend indicated for the contractor to participate or lead the effort in the joint effort. It is a distinction without a difference. These are family members. It is not like the Application was taken out in some whole different person's name that was unrelated or had nothing to do with it. It was a joint effort amongst these three (3) entities: the parents, daughter, and the home manufacturer. It is a distinction without any substantive merit in his view, but I guess you ask what you can when you are trying to pass something. Mr. Andersen is correct if this was a mobile home (as he keeps on calling it) and the Title was not retired and it was not turned into real estate then it would be a transfer Title like you do with a mobile home or a vehicle, but this is a manufactured home and as Mrs. Townshend testified the City issued a letter permitting the Title to be retired. So you do not have a transfer of a Title, you have a Certificate of Occupancy and it being retired at Motor Vehicle once it has been proven that the taxes are cleared, etc. He did not do this closing, but Mr. Andersen and I both know that a closing occurred because he had received a copy of the summons sheet. The summons sheet shows that the home became real property; it has a mortgage on it, title insurance and it relies upon that all of this has taken place. So this is not a mobile home or vehicle, it is a manufactured home whose parts were put together and assembled on a foundation. It is a single family home under the definition of the City of Dover's single family homes. Whether or not the architecture perfectly aligns with the homes that were built there 50-60 years ago is also again in his view not a significant fact.

Chairman Sheth stated that the Board has a tough situation that we have a responsibility to interpret the Ordinance or variance. He is glad that the City has corrected the mistake by changing the

Ordinance, but unfortunately the decision made on the old ordinance. The Board members know we can be subjective. Any other questions?

Colonel Ericson questioned whether the suit that was filed in Chancery Court indicated that there was injury or harm done to the people because the property value was decreased. The information that was just received indicates that the house next door is evaluated at a higher amount of money than this actual building itself. So how do you determine that the property values are dropping because of this one building? Mr. Andersen replied that the date of the affidavit was yesterday. This affidavit was not produced to the Court of Chancery. This is an extremely self-serving affidavit with no scrutiny and he has not been able to cross examine Cheryl Bundek. He asked that the affidavit not be considered because of unfair surprise. There has been so much litigation about this case and to submit and sign this the day before the hearing is completely unfair. He would have had an expert come to the hearing to dispute what this would have said, but since this is an unfair surprise and it should not be considered. But if in an instance someone still feels like you still have to consider this document, a property assessor does not determine or it has not been determined in looking at the affidavit whether or not the property values in the entire neighborhood went up or down due to the placement of the trailer home. He was informed that there was an attempt to refinance the property and it failed because of this trailer.

Chairman Sheth ensured Mr. Andersen that the Board was not being influenced by the information. The Board's responsibility is the interpretation of the existing old ordinance.

Colonel Ericson questioned Mr. Andersen how he determined or came to conclusion that the property value went down because of this mobile home (as you call it) was put there. Mr. Andersen replied that they did not go to trial so he did not hire an expert. The case started, there were a few depositions and the case was stayed. He does not have something similar to Cheryl Bundek, as expert or appraiser. If he had known that he needed to bring one, he would have brought an expert to testify on that topic.

Colonel Ericson stated that it seems that you put a relatively new building into the area where there are homes that are 50-60 years old and in his mind usually that would raise the property value unless it was really out of the ordinary.

Mr. Andersen stated that there were members of Edgehill Acres who will be speaking to those very issues. It would be ok to listen to what they have to say in terms of the value of their property.

Colonel Ericson questioned whether the person who signed the grievance was acting on behalf of a group of people in the subdivision. Mr. Andersen replied yes. The way things are done in the Court of Chancery is a punitive class action. In the class it is all of the members of Edgehill Acres. When you file the case it does not automatically become a class action. The class has to be certified, meaning there has to be a process and notification. His client can act as the class representative on behalf of all of the homeowners in Edgehill Acres. We never got to that process, so right now she is acting on her own behalf as an individual in the Court of Chancery and she is acting on her own behalf in this Appeal. If we win this Appeal and the Building Permit and Certificate of Occupancy are struck down, he will transmit that decision to Vice Chancellor Glasscock III and we are going to proceed. Then the Vice Chancellor will know that there was a mistake made and hopefully all

the class members will benefit if the class is certified. At this moment, the class representative is acting on her own individual behalf with this Appeal.

Colonel Ericson commented that he did not realize until it was brought up that Ms. Trader lived so far away from the property and how would she suffer injury being this far away or her property would be significantly dropped because of it. Mr. Andersen replied that he would let Ms. Trader speak exactly to that as she has personal knowledge and it is very personal to her.

Ms. Georgia Heininger-Trader was sworn in as part of the proceedings by Mr. Mandalas.

Ms. Georgia Heininger-Trader testified that she resides at 720 E. Loockerman Street. She lives about a 1000 feet away from the subject property, but of course this does enhance her situation as well as everyone else close to subject property at 823 E. Loockerman Street. Mainly the reason being is because it affects the whole neighborhood. We live in an R-8 zone and we had a double-wide mobile home come into our development and set up on a lot. This is why we are here today. It is uncommon for a mobile home to be placed in R-8 zone when specifically it should be in an MHP (Mobile Home Park) zone according to the ordinances and zoning. This is what she got out of it. You can play with the words as much as possible and as much as you want to, but it all comes down to R-8 zone is specifically for housing. She knows the terms get twisted around a little bit with manufactured homes. A Beracah home is a stick built home that was actually built in the manufacturing facility. It is much more different than what you see at 823 E. Loockerman Street which is a double-wide mobile home. She lived in a 10-foot-wide mobile home when she got married the first time in Kentwood Estates, so she knows what a mobile home is. Going back to Mrs. Townshend's discussion about it not being like ranches in the area on Edgehill Acres on East Loockerman Street or South Halsey, they do have two stories. They are not discriminating against the home that was brought in or Ms. Brenda Redlich because mainly they welcome everyone to come. Unfortunately, her mobile home belongs in a mobile home park. She does not think anyone else will differ with her. Again, we can play with the words as much as we want, but a mobile home belongs in a mobile home park. She certainly hopes that she has graduated from the 40+ years to now from a mobile home park to a street property in a housing development. All homes are pretty nearly the same and that is why we have a development. She thanked the Board of Adjustment for the meeting and she appreciates their time and honestly in this matter. East Loockerman actually served as a very unique development back in the 50's and 60's. It was actually developed by Richter & Myers Development Group who are very fine builders. There are a lot of people and pillars from the City of Dover that actually lived here such as the Richters, Tutors and the McGinnis. She thinks everyone in this room knows all of them. It was a pretty prominent development back in the day coming directly from in town all the way to East Division Street. She enjoyed it as she grew up here. She used to play with several children that lived there. She lived on the outskirts as a potato farmer. She would ride her bike in. She loved the azalea bushes and maple trees on the sides of the street. She hoped that one day she would live there. She's living there now and enjoys it. Our concerns and possibly consequences that we find that may be an issue is the market values. Also, the equities and appearances. We have a lot of elderly on our road right now as well as a lot of renters. It is pretty much getting to be a melting pot there which is unique for any of these types of developments actually in Dover. This is why a lot of people could not come here today because they cannot come out in their walkers, wheel chairs or they may even have oxygen tanks as some of our residents do. They are all involved in this with

me. She is going to be their voice today. She might be a 1000 feet away, but the weight is laying on the shoulders of the elderly people who cannot be here today, but have pretty much lived here all their life. She did a little bit of research as far as the appraised and real estate goes. She had a couple of meetings with some real estate people. Unfortunately, the situation is too new because we do not really have any basis or data to actually state what the actual effect is going to be. One of the prominent appraisers here in Dover told her that there would definitely be a regression in the value. It could be a $1000 or more, but again they do not know that yet. But do each one of us decide to wait to find out when we get ready to retire or moving on to 55+ or to another state to retire to find out whether that is going to hurt us down the road. We are actually asking for relief in this matter. She believes when she looks at the documents or settlement of Ms. Brenda Redlich's contract and various papers of the court I see the figure she has paid for the land, mobile home, and set up, etc. It looks to her as if Ms. Redlich could have purchased a home right in the development instead of having a mobile home come in and it could possibly be better built. She knows she likes Edgehill Acres mainly because of the building. Today, you buy a home and they are all put up so quickly that they are not that resilient or sturdy. She has a little brief segment to read on an actual original deed dated November 25, 1959 for this property on 823 E. Loockerman Street. This of course was signed off by Mr. Glen Richter and Mr. George Myers, the original owners. You do not have this because she just found this late last night. She referred to Item #8 on the deed: "No more than one single residence shall be erected on any said lot in Edgehill Acres and no apartment house, duplex, or any other multiple type dwelling shall be erected in Edgehill Acres without the written consent and approval of the grantors and their heirs and assigns." Now, I think we all know what "erected" means (built). Do you agree that "erected" would be built? She looked it up in the dictionary this morning and that is what she came up with. Therefore, if you are going to go ahead and build upon that lot, you are not going to go ahead and bring something in on wheels. Maybe the equipment and materials to build the home, but you would not go ahead and bring in a mobile home on wheels that is titled with Motor Vehicle and place it on that lot. That is not what Richter and Myers intended. Richter and Myers intended on having a development that they could be proud of and that was harmoniously altogether where the homes were somewhat alike. They were up until this point. Be it remembered that the subject property at 823 East Loockerman Street is a mobile home; it will always be a mobile home. She does not care if you take the wheels out from underneath or put it on a foundation. The foundation that it is sitting on is set up for Chapter 66 which is a mobile home zone. She applied for a Permit through the City of Dover roughly 12 years ago to enlarge her shed. Her prior shed was maybe a 4x6 sitting on concrete blocks. Of course, as she did not mind doing this because it looked much better being on a pad; She had to do this for her 10x10 shed as well as pour a pad and have it lock bolted down. This mobile home does not even have that, it does not even have a solid foundation; it has cement blocks. The cement blocks were brought in after the mobile home was brought in.

Chairman Sheth opened the public hearing.

First seeking those in favor of the application. Mr. Mandalas stated that today speakers will be limited to three (3) minutes because there is a fair amount of speakers.

Mr. Thomas Holt who lives at 865 East Loockerman Street. The property in question is right down the street from his property. Ms. Brenda Redlich grew up in the neighborhood and she stayed in the neighborhood. Before she bought the lot she took care of the lot as well as mowed the lot. After

she moved in the mobile home, she has redecorated to a point where it is very nice. She has done an excellent job on it and it blends in well with the neighborhood. She has been a very good neighbor. She takes care of the grass, does everything. In fact, she is better than some of the other neighbors that we have. We have no problem with her as a neighbor.

Mr. Duke Caviski was sworn in by Mr. Mandalas.

Mr. Caviski testified that he and his wife Earnestine live at 846 East Loockerman Street. He just wanted to piggy back off of the last gentleman comments. He has no relationship with the current owner. He does not know her and has never met her, but he has no problem with the house she is living in now. He agrees with the last speaker that stated that the property is well maintained. We have lived in our house for a little over 18 years and he is not concerned that the new house in any way devalue his property. He thinks it will be a big mistake for the Board to make the decision that the property has to move. He thinks the home should stay.

Mr. Keller asked if he might lend clarification of exactly the question that should be posed as to "in favor" or "against".

Mr. Mandalas stated that when he says "in favor of the Appeal" is that you would like the determination by the Board that the Building Permit was improperly issued. So if you are in favor of the applicant or the Appeal then you are in favor of the finding that the Building Permit was improperly issued.

Mr. Tom Trader was sworn in by Mr. Mandalas.

Mr. Trader testified that he and his wife Georgia Trader live at 720 East Loockerman Street. He came in on November 2, 2016 to talk to the City Planning Office to Appeal. He spoke with Ms. Traci McDowell. She knew a little about what was going on in the neighborhood and that there was no Appeal process. She admitted to him that there was a problem in the matter and they should talk to their councilman. We talked to our councilman prior to all this and we are still talking to our councilman.

Ms. Mary Bell was sworn in by Mr. Mandalas.

Ms. Bell testified that she lives at 801 East Loockerman Street, two doors down from the mobile home. My husband and I brought our home in 2015. She worked two (2) jobs and saved up $40,000. They wanted to have the protection of a neighborhood, subdivision, and development (if you will) inside Dover. We decided that we were not ready to live outside of town. We have several children that are very active in the community. So they thought that Edgehill Acres was it with nice older homes, solid bones, hardwood floors, original toilets, which is always a plus, indoor plumbing. They brought their home for a fair price and two months later a mobile home was wheeled in. My husband and I have fought many fights over the purchase of their home; it has affected them, their marriage, and their family. She would have never purchased a home two doors down from a mobile home in a residential neighborhood in old Dover. She would not have done it and spent the money. She would have taken her money and value elsewhere. Maybe inside the

City of Dover, she does not know. They love their house very much. They tried to refinance the house and the appraiser said that there is no way I can give you a fair value currently. We had to abandoned the effort because they wanted to add a bedroom onto the house. Now it will have to wait for a while. She came to City Council and questioned this from the beginning. This Code cannot be right; it has been set for 30 years since 1985. It states no mobile homes. Even the inspectors she believes questioned Mrs. Townshend as to whether the mobile home should be there. This is a mobile home and it's not supposed to be here. She thinks that there is a lot of interpretation in the Code that needs to happen. She has checked and it is now beautiful and well written, but at the time in October 2015 it was not clear. What was clear was that mobile homes were not allowed in subdivisions or developments; we live in Edgehill Acres which at the time falls under that. If it came in, it had to be on a permanent foundation, but the Code also stated that it was only for taxation and valuation purposes and that it had no impact on their zoning which was limited to MHP. She understands the City is trying to say that Chapter 66 was not appropriate at the time. It was not done properly and things have changed; she gets that. But at the time of subdivision, we were not allowed to have mobile homes in the area. She believes that was the correct definition that the mobile home was defined; maybe a single family home was not defined. She and her husband are talking about leaving the City. She does not want to live on a street with the integrity and character and the true intent of their historic neighborhood has been damaged. It sticks out; it is different. They looked at purchasing a mobile home, but they did not. They chose a stick built home that had history. They live in the architect's home for Edgehill Acres and they are all different. She has the original plans to her house. They are all unique, but they are all stick built. Men and women came to the property and erected homes; they were not wheeled in. At the end of the day the mobile home trailer does not affect her or the fact that she is her neighbor.

Mr. John Graham was sworn in by Mr. Mandalas.

Mr. Graham testified that he lives at 711 East Loockerman Street in Dover. When he moved to Dover, Delaware in 1990 he rented a home on Edgehill Avenue in Edgehill Acres. He like the quality, construction, brick, stucco, and design of the 1950-1960 homes on East Loockerman Street so much that his first house that he purchased was on East Loockerman Street in 1993 where he resides today. Last year he was speaking to a neighbor and he mentioned that the lot at 823 East Loockerman Street was sold and a house was going to be started very soon. He was excited for the new owner and to know that the empty lot would have a house built on it soon. The excitement for the new home at 823 East Loockerman Street changed quickly when he walked by a few days later to see a doublewide mobile home placed on this lot. Homeownership should be an exciting time for all of us. It should not take away the aesthetics, the character and your current or future property values from others or from the homeowners that live within the area. Today, he is asking for the Board to reconsider the placing of this mobile home at 823 East Loockerman Street and to understand the property owners are affected by it as well.

Mrs. Sylvia Holt was sworn in by Mr. Mandalas.

Mrs. Holt testified that she has lived at 865 East Loockerman Street for 29 years. She was not going to testify, but for 27 years there has been an empty lot at 823 East Loockerman Street. She has watched drug dealers, people parking there all night, people walking their dogs and not picking up the dog waste. Finally, she met this young lady Ms. Brenda Redlich and she was so glad to

hear that they were going to have somebody move in that empty lot. No, we do not have a problem with her manufactured home. She has a problem when she hears her neighbors say that yes years ago their property and development was a well-established development. It is not like that anymore. The older people have passed away that lived in these homes. In fact, this morning in the paper she noticed that they had lost Mr. Lynch who lived on their street. What is happening now is that the kids are selling the homes to investors and the investors are renting the homes. The couple that came down to speak she was not even aware they lived on the street. That is because the street has changed so bad. She asked as a group whether everyone present had been down on the street just to see what they are here for today? To see what they are protesting against, this manufactured home. She wishes you would take the time and drive down her street and see this home that has been put up in this lot that was empty for years. Look at the other homes. Yes, Mrs. Trader needs to go and look at some of the other homes in her area on that side of the street and worry about those properties and not worry about the properties on her side of the street. Please walk by or drive by and see what this home looks like. She is a welcomed neighbor on our end of the street. Thank you for your time.

Mrs. Brenda Redlich was sworn in by Mr. Mandalas.

Mrs. Redlich (owner of the property) testified that she struggled to build a stick home as her neighbor referred to, raising her daughter as a single parent. She was living in Camden in a 1900 square foot home with a two car garage and her daughter was in college. She thought she was just working to pay her bills. Then she decided she wanted to downsize financially and square footage. She started to look at the market and homes. She believes Georgia stated that she could have brought a home in her neighborhood for about what she paid where she now lives; she is probably right. Would I have enjoyed that home? No, she would not have. It would have appeared to have been built in the 50's or 60's and would need major remodel of which she could not afford. So, she started looking at her options. She looked at the manufactured homes and the quality of them. They were very nice and nicely built. Then she thought about a lot. She got on the Internet and starting looking at lots and mainly what she was seeing was located in Persimmon Tree Park. She rode out there and found that it was not what she wanted. She begins to look for more lots. She found one on-line and the realtor Mr. Andy White Scarborough called her back after he contacted the City. The City stated that the type of home would be allowed there. That is when she put her home up for sale in Camden in 2014. It did not sell that year. She asked her parents if they would buy it (the lot) and she would repay them when her house sold. She took care of the lot as stated by Mr. Holt. She hauled her lawnmower from Camden over to 823 East Loockerman Street for two years cutting the grass. After her home sold is when all heck broke lose. If the City had told her initially that there was even any question that this may not happen, that her house would not be allowed there, she would have walked away and looked for another lot. This is the one she saw. She knew the Cullivers, Richters, and the Hayes growing up because she hung out in those neighborhoods. It was very nice. She had great memories. If the City had said no (I'm non-confrontational) she would have said nope, I will just keep looking because I do not want there to be any questions as to whether her home can be on this lot or not. But the City said it was allowed. That is what brought her to ask her parents to buy it, knowing that her house was allowed there. She would have taken no action if that had not occurred. So, please understand where she is coming from. She appreciates the Board's time.

Chairman Sheth stated that this will be the last person to speak and asked that it be brief.

Ms. Rosemary Staniszewski was sworn in by Mr. Mandalas.

Ms. Staniszewski testified that she lives at 778 South Halsey Road (the street behind East Loockerman Street). They have lived there since 1969 for all of the reasons people have given such as good homes. Through the years, they have looked at moving to other places and decided they like where they are. They have added on to their house and contractors have said homes are not built like this anymore. She is sure that this house on East Loockerman Street is very well maintained. She has no doubt that the lady will be a very good neighbor. What she has listened to is very subjective and that is not what she is concerned about. Hearing one neighbor say she went to refinance and what she was up against, that is my concern. We have lived here all these and will probably die here. She also thinks of what if she wants to sell her house and her property value has gone down because of that. Her fear is exactly what the lady said had the City said to her there is a problem here, and that is her big concern. Her big concern is things were not properly taken care of and she is concerned about that.

Chairman Sheth closed the Public Hearing.

Chairman Sheth questioned if there was any additional correspondence for the record. There was none.

Mr. Keller commented that he needed to readdress a question to Mrs. Townshend. It was in regards to information (clarified it was in Department Response) attachment memorandum related to Chapter 66-Manufactured Homes and Trailers, Section 66-3 – Real property taxes. "A permanently placed mobile home as defined in section 66-1, and the lot upon which it is located shall be considered as being real property for purposes of valuation, assessment and taxation in accordance with section 47 of the Charter, but shall be considered a mobile home as defined in section 66-1 for purposes of zoning and shall only be permitted to be located in the mobile home park zone (MPH), as spelled out in Appendix B to this Code (Article 3, Section 8)." He had not seen a reference while he was shuffling through paperwork that he has a copy of Appendix B. He is wondering what Article 3, Section 8 how it defines the mobile home park zone and its allowance of certain types of structures regarding zoning. Mrs. Townshend replied that if she goes to the Code as it is today, it is now changed. It is no longer the MHP zone, it is the Manufacturing Housing Zone. Essentially the MHP zone was the zone set up for manufactured home parks. Dover East, Persimmon Park Place, and Wild Meadows that's the communities. That is the section that is referenced there.

Mr. Keller read "This section shall not apply to permanently placed mobile homes that were in place on January 1, 1985, which shall continue to be licensed in accordance with section 66-2." This gives him some impression that if there was a mobile home placed wherever prior to January 1, 1985 they could perhaps remain as nonconforming. Mrs. Townshend replied yes. Mr. Keller stated that he seemed to believe that the mobile home should have been placed in a MHP zone. Mrs. Townshend replied again, to reiterate the testimony previously stated by herself and Mr. Pepper, that Chapter 66 is a licensing section of the code and it does not have the authority to regulate zoning. It did not go through the process specified in State statute to be able to regulate

zoning; therefore, this section of the Code was erroneous in its attempt to regulate zoning. When you are looking to determine how to apply the *Zoning Ordinance* you have to look within the *Zoning Ordinance* because that is the section of the Code that is set up under the enabling statute for zoning.

Responding to Mr. Keller's question as to what specifically does Article 3 Section 8 refer and apply? Mrs. Townshend replied that Appendix B, Article 3 Section 8 was the Manufactured Housing Park zone.

Responding to Mr. Keller's question whether you could distinctly or definitely say within that zone what is to be placed there? Mrs. Townshend replied that it states what types of uses are permitted in that zone, yes. That zone does not regulate other zones.

Responding to Mr. Keller's question that Appendix B is subordinate to what, Mrs. Townshend replied that Appendix B is the Zoning Ordinance. Mr. Keller stated correct. Mrs. Townshend stated that Appendix B is not subordinate to Chapter 66; it is entirely separate and unrelated.

Mr. Keller stated that he is sensitive that Appendix B, Article 3 Section 8 applies to the placement requirements for a mobile home. Mrs. Townshend stated that it only applies to placement or regulating of uses within the Mobile Home Park Zone at that time. It does not regulate anything beyond that zone. It does not regulate what you can do in the R-8 zone or the C-1 zone or any other zone.

Mr. Keller stated that he was still troubled with the ambiguity between the mobile home park zone. Mrs. Townshend stated that this is the precise reason the code was amended subsequently.

Responding to Chairman Sheth whether the new ordinance would be better, Mrs. Townshend replied that the new ordinance is infinitely more clear and organized statutorily correctly; so she thinks so.

Responding to Mr. Senato whether at the time of the application, he presumed she was involved through the entire situation, Mrs. Townshend replied that she was not. Mrs. Townshend questioned if he was questioning the Application of the Building Permit? Mr. Senato replied the signing, approval and issuance of the Building Permit. Mrs. Townshend replied she was not involved in the issuance of the Building Permit.

Mr. Senato questioned whether there is a rule or law within the City as to the authority person(s) that signs Certificate of Occupancies or Sign Permits of the regular staff. Mrs. Townshend replied under the *Zoning Ordinance* the authority for administering the *Zoning Ordinance* is the City Planner. As you know because you have worked with them, we have a number of Planning Staff in our office. Majority of that work is delegated to them and when questions come up and someone does not like the determination of the Staff then it comes to her.

Responding to Mr. Senato whether Mrs. Tracey Harvey was a Planner, Mrs. Townshend replied yes, she is a Planner.

Mr. Senato questioned whether at the time of the application either by the owner of the home or builder and from his reading, the zoning was not clear or was a probability that the law covered that type of home in that type of neighborhood at the time. Mrs. Townshend replied again before the application came in and as Mrs. Redlich testified her real estate agent had contacted the City prior to her purchase of the lot. So we had fielded the question, not just in relation to this lot, but in relation to other lots. She had talked internally with Staff; they all read the definitions together and they all came to the same conclusion. When the Permit application came in and although she was not involved in the review of the permit specifically, she had discussions with Staff in response to some of the inquiries they had received before. The action on the Permit was consistent with the discussion and the direction that she had provided after doing a thorough review of the definitions and the Ordinance.

Responding to Mr. Senato whether the approval was made to offer a Building Permit to allow that particular unit on that particular site, Mrs. Townshend replied yes.

Mr. Senato questioned the discussion of the manufactured home not being allowed, but there have been changes in the Code with mobile homes, manufactured homes, and modular homes. At the time HUD came up with changes and the mobile home definition was changed in the sense. If a home is transported to an area and put on the lot and the wheels and the mobility of that particular home to be removed is not there and a permanent foundation is then built under the home to secure it in a solid mass, then it is not considered a mobile home by which it is transported. Mrs. Townshend replied that the distinction as it relates to manufactured homes has less to do with how it comes to the site than it does with the construction and safety regulations in place at the level of HUD that govern how they are constructed. Again, this is housing policy and why she provided documentation from the Delaware State Housing Authority because there are definitions that are very common in the Planning profession because things have evolved. If you look at the information provided, it states that a manufactured home is specifically defined. The key things are it is built to a HUD Code standard and it is built after 1976 because that is when the standard came into effect. A mobile home predates that and is not built to any governing safety standard. A modular home in contrast is built in a factory and assembled on site, but is a different type of construction; it is not built to HUD code, but it's built to the International Code standards.

Chairman Sheth reiterated that the question is whether or not you agree or disagree with the Ordinance interpretation and if the City made a mistake issuing the Building Permit and Certificate of Occupancy.

Mrs. Townshend stated that the Chairman's point is that she can answer questions that are related to why they made the decision, but in terms of the appropriateness of it is a question for Mr. Mandalas.

Mr. Senato stated that he gets the impression that the Permits and all that was going on should not have gone on and should have been caught by the City at the time based on the information he has.

Chairman Sheth stated to Mr. Senato that he has the right questions, problem is that is the reason the Ordinance was changed so it would not happen again. Mr. Senato replied that he realizes that, but are we dealing with something prior to the change? Mr. Mandalas replied that you are dealing

with a Code that was in place when the Permit was issued. The legal question before you today is did the Director of Planning properly issue the Building Permit under the Code that was in place at that time. Mr. Senato replied that he understood.

Colonel Ericson's noted regarding the appraisal value of the property that was given he assume in the court of law they could not consider that as evidence because both sides had not examined the paper work or brought in witnesses. It seemed that it would be allowed here because we are just looking for facts and the standard rule of evidence is relaxed a little in this case. He asked if this was true. Mr. Mandalas replied that it is true in some respects. There is a Delaware case that basically says that even in the context of the Board of Adjustment proceeding the applicant (but appellant in this case) should have the ability to review and consider any information (documentary evidence) that is going to be submitted to the Board. It is a fair question, but he will counsel and advise that your role is truly one of statutory interpretation. Property values while they may be relevant in some respects. As a matter of Code interpretation what did the Code say at the time and should the Permit have been issued, he's not sure that the property values today have real relevance in that context.

Statements

Colonel Ericson stated that this is a very confusing case. There is a lot going on and it is obvious that the Codes were written some time ago and had not kept up with what was changing in the industry. Certain practices have been going on for many times and it looks to him like the normal practices that they do have were followed. We talked about property values and he heard the fear of the people living there that their property value would go down, but he has no way to assess whether it will go down or not. The homes are older and we had a horrible housing market crash in 2002, 2007-2008 where there are more renters and new people moving in. Others are thankful that there is no longer an empty lot because the community is safer having something there than what they had. He questioned whether the City Planner used due diligence, consider all the factors, and it was consistent. The fact that there was precedent where other R-8 communities did have manufactured homes and single residence buildings in their properties; so this is not the first time this has come up. The question was asked by Mr. Andersen that we had to throw out the Building Permit and a Certificate of Occupancy because the wrong person signed as owners. When he looks at this, it is really a family project. The Henry's owned the lot to begin with for many years and they decided to give it to their daughter in which they did. They had a contractor who was involved in the whole process and the whole family is involved. They requested a Permit and a Certificate of Occupancy and they got it. To him that is the bottom line and according to the City Planner that is normal procedures. Based upon that he would say that he would disagree with the Appeal and that is his thoughts of the matter.

Mr. Hufnal stated that with everything that has taken place today with the comments, volume of paperwork it appears that there is a lot of ambiguity in the Code. They had to deal with it when looking at the case, but we have to decide on whether the Department interpreted the statutory interpretation correctly or if they errored in that decision.

Mr. Senato concurred with his other colleague, but one of the main things under the Code for guiding the Board of Adjustment is hardship.

Colonel Ericson responded that the use or area variance criteria is not applicable here; it is an Appeal of the decision. Mr. Senato replied he knew that.

Chairman Sheth stated that he shares the same feeling that all of the Board members have and that was the reason Mrs. Townshend and her Staff changed and proposed the Ordinance that City Council approved so we do not have to go through this ambiguity again.

Mr. Keller stated that as he somewhat expressed in some of the questions that he posed that he was somewhat troubled by the lack of further in-depth look at the initial application for a Permit. While the R-8 zoning allows a single family home, it does not specifically say that a mobile home as defined otherwise perhaps in the MPH zone or what have you. Nor does this specifically prohibit, but he would have thought in all fairness that it would have been viewed as perhaps a contentious point from a number of aspects mainly and initially the 50-60-year-old established subdivision and the makeup of the housing within that with the requested permit for placement of a manufactured mobile home. He is also somewhat still concerned with the considerations that in his estimation should perhaps should have been given to the provision which he earlier quoted about the approval process for a Site Plan approval which could in fact be appropriately done by the City Planner as the provisions provide for, with a qualifier on the objective portion of that scenario. He again feels as though that there should perhaps not have been a closer look at the elements contained therein: the immediate neighbors, the complexion by virtue of housing within that subdivision, and the requested place what he thinks was pretty clearly a manufactured mobile home. He is less concerned about the matters regarding who signed the Permit because on variance applications a variance will run with the land and we are always concerned and have given specific attention as a Board to the applicant being duly authorized by the underlying fee holder to proceed with the variance request. This and the Appeal is also pretty commonly known that a contractor if you will would be the one applying for the Permit to proceed with an authorized construction, in this case licensed by an owner. He is still puzzled as to why there seems to be a question as to the Title of the structure itself.

Chairman Sheth stated that he thinks in this case if it goes to the Court of Chancery that all the questions that have been raised will be addressed.

Mr. Keller continued on to say that he could not concentrate on what may or may not happen, but only the decision. Chairman Sheth responded by saying that the questions are right, but unfortunately this Board has to make a decision whether the City made a mistake or not ordinance wise. We may not agree at all with the Ordinance, but he is glad that the City rectified the mistake and changed the Ordinance. It is troubling that the Board has to make a decision.

Mr. Senato questioned during the initial offset of all this in 2014-2015 with the City Planning organization knowing what kind of development that is (all stick) wouldn't it automatically click in somebody mind that there would need to be some kind of either public comment or public hearing or notification to the people in the area that there is a potential application. In his opinion and comment that somewhere along the line the City Planning Department made an error.

Colonel Ericson responded by saying that the Board has to get down with the basics as to what

does the law say and how it was interpreted. He looked at Chapter 66 and it shows confusion. Those are people who are worried about taxation and how they are going to handle these; it is not a zoning regulation. If you look at Appendix B it is a zoning regulation. It was not written very well. The precedent has been set that they put these types of units into R-8 facilities before. The City Planner went to their attorney and asked for clarification. There was a lot of review process and they came up with being consistent with what was done in the past. From his mind, he is prepared to make a motion if the Board agrees or if they want to talk about it more.

Mr. Mandalas stated that it is appropriate to make a motion and there can still be discussion after the motion as long as it is seconded.

Colonel Ericson moved that the Board uphold the decision of the City Planner regarding the issuance of the Building Permit #15-1192 on October 14, 2015 and the issuance of the Certificate of Occupancy on December 2, 2015 associated with the permitting and placement of the manufactured home on a one family detached dwelling unit on a property of 823 East Loockerman Street based upon the testimony given and the documents received. The motion was seconded by Mr. Senato.

Mr. Mandalas questioned for clarity that the motion is to uphold the decision the City Planner as to both the Building Permit and Certificate of Occupancy issuance and the motion to deny the Appeal in effect and be in favor of the Planning Department. If you vote for the motion you are denying the Appeal. He asked if it was clear.

Chairman Sheth questioned for clarity that the motion was seconded by Mr. Senato. Mr. Senato replied he did.

Chairman Sheth asked if there were any questions. There were none.

Vote/Reason

Mr. Keller – With regard to the processes that have taken place with the voluminous amount of information provided as to actions both at the time of and as well as since the Building Permit application made. He still has reservations about the depth into which the Office of Planning took to evaluate proceeding with the issuance of the Building Permit because of the type of structure to be placed thereon, as well as, with full knowledge of somewhat (in his mind) of a conflicting zoning category MHP zoning. With that reservation, he votes no.

Colonel Ericson – Yes, the question in his mind was due diligence done by the City Planner when she made her decision. In her mind, she is consistent with precedent that was set before and has been supported by the attorney on this matter. It is acknowledged that the Zoning Code is not kept pace with the definitions in the Code itself and since this case it has been improved. The Building Permit in his mind was a family matter. They hired a contractor to complete the work and it was done properly.

Mr. Senato – Yes and concurred with Colonel Ericson comments.

Mr. Hufnal -No, there has been a lot of testimony today and he is going to go back on the ambiguity of the Code because it was not clear enough. You had to jump back and forth between several sections to even decide on what an answer would be. Certainly, the application that came in gave enough information to certainly raise a red flags as to why this may not have been suited for that area. They errored in their statutory interpretation of the Code.

Chairman Sheth – Yes, no matter how much we disagree with the old Ordinance, the Board responsibility is the interpretation of the Ordinance. He is glad that the City rectified the mistake. If you look at the reasons and if the Planning Department would have said no at that time, again it would open the question about swing or appealing about you saying no, even though the ordinance states you can. Mr. Andersen argument was partially right, but then he says that Chapter 66 is not counted in the Zoning Ordinance. That was one of the troubling points. So how can he blame the Planning Staff that they did not follow the Ordinance. Again, he consistently asked Mr. Rodriquez and Mr. Mandalas what was the Board's responsibility, agree or disagree with the City Ordinance that is what the Board has to follow. The Board should make the City Council people very vigilant that they have responsibility consistently to check all of the ordinances. Otherwise, we will have consistent mistakes. If he would live on that neighborhood property, he would probably have the same complaint; but beside the point, he votes yes.

Mr. Mandalas stated that there are 3 in favor of the motion and 2 not in favor, the motion carries and the Appeal is denied.

Mr. Hufnal moved to adjourn the meeting, seconded by Mr. Senato and unanimously carried 5-0.

Meeting adjourned at 11:57 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary