CITY OF DOVER PLANNING COMMISSION
March 16, 2015

The Regular Meeting of the City of Dover Planning Commission was held on Monday, March 16, 2015 at 7:00 PM with Vice Chairman Mr. Tolbert presiding. Members present were Mr. Holden, Mr. Cregar, Mr. Holt, Mr. Baldwin, Ms. Still, Mr. Ambruso and Mr. Tolbert. Dr. Jones and Colonel Welsh were absent.

Staff members present were Mrs. Townshend, Mr. Cook, Mr. Jason Lyon, Mrs. Dawn Melson-Williams, Mrs. Mullaney and Mr. Nick Rodriguez. Also present were Mr. Toren Williams, Mr. Julian Pellegrini, Mr. Chip Hazel, Mr. John Paradee and Mr. Bob MacLeish. Speaking from the public were Mr. Adam Gerber, Mr. Mark Boller, Mr. Leonard Roberts, Ms. Sharon Reed, Mrs. Holly Pfeifer and Mr. L.D. Shank.

APPROVAL OF AGENDA

Mr. Tolbert stated that application S-15-03 on the agenda tonight would be moved to the beginning of New Development Applications.

Mr. Cregar moved to approve the revised agenda to include moving application S-15-03 to the beginning of New Development Applications, seconded by Mr. Ambruso and the motion was unanimously carried 7-0 with Dr. Jones and Colonel Welsh absent.

APPROVAL OF THE PLANNING COMMISSION MEETING MINUTES OF JANUARY 20, 2015

Mr. Baldwin moved to approve the Planning Commission minutes of January 20, 2015, seconded by Ms. Still and the motion was unanimously carried 7-0 with Dr. Jones and Colonel Welsh absent.

APPROVAL OF THE PLANNING COMMISSION QUARTERLY WORKSHOP MEETING MINUTES OF FEBRUARY 18, 2015

Mr. Holt moved to approve the Planning Commission Quarterly Workshop minutes of February 18, 2015, seconded by Mr. Baldwin and the motion was unanimously carried 7-0 with Dr. Jones and Colonel Welsh absent.

COMMUNICATIONS & REPORTS

Mrs. Townshend stated that the next Planning Commission meeting will be held on Monday, April 20, 2015 at 7:00 PM in the City Hall Council Chambers.

Mrs. Townshend provided an update on the regular City Council and Utility Committee meetings held on January 26, 2015, February 9, 2015, February 23, 2015 and March 9, 2015.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATIONS

Mrs. Townshend presented the audience information on policies and procedures for the meeting.

OLD BUSINESS

1) Requests for Extensions of Planning Commission Approval:

A. S-13-03 Lands of Boyles at 527-529 South State Street – Request for a one year extension of the Planning Commission approval granted on March 18, 2013 for Site Development Plan application and Architectural Review Certification (HI-13-01) to permit the construction of a parking lot. The property is zoned RGO (General Residence and Office Zone) and is subject to the H (Historic District Overlay Zone) and SWPOZ (Source Water Protection Overlay Zone) Tier 3 – Excellent Recharge Area. The property is located on the northeast corner of South State Street and Elm Terrace. The owners of record are William and Lisa Boyles. Address: 527-529 South State Street. Tax Parcel: ED-05-077.09-05-47.00-000. Council District 2. *Final Site Plan approval was granted on November 16, 2013.*

Mrs. Melson-Williams stated that the applicant has made a request for a one (1) year extension via a letter that the Planning Office received dated February 9, 2015. This Site Plan application moved through review with the Historic District Commission in February 2013 and then the Planning Commission took action on the Site Plan in March 2013. The applicants moved through the process to finalize the Site Plan. The Site Plan was finalized in November 2013; however, from the date of original Planning Commission action the plan approval is only good for two (2) years. Two (2) years ends the last day of March so they are seeking a one (1) year extension of that plan approval. The Code does allow for the Planning Commission to grant this additional one (1) year extension to the Site Plan.

Mr. Cregar questioned if they had any issues that would preclude the Commission from granting the extension? Responding to Mr. Cregar, Mrs. Townshend stated no.

Mr. Cregar moved to approve a one (1) year extension for S-13-03 Lands of Boyles at 527-529 South State Street as the Ordinance allows for this extension to be granted, seconded by Ms. Still and the motion was approved unanimously7-0 with Dr. Jones and Colonel Welsh absent.

NEW DEVELOPMENT APPLICATIONS

1) S-15-03 Building for Islamic Society of Central Delaware at 777 South Little Creek Road – Public Hearing and Review of Site Development Plan for a place of public assembly building of 28,502 S.F on a 3.8 acre property. The property is zoned C-2A (Limited Central Commercial Zone). The property is located on the north side of South Little Creek Road and west of JH Brown Boulevard. The owner of record is Islamic Society of Central Delaware c/o Usman Sandhu. Property Address: 777 South Little Creek Road. Tax Parcel: ED-05-077.11-01-03.00-000. Council District 2. *Waiver Request: Alternative Format of Opaque Barrier.*

Representatives: Mr. Toren Williams, Architectural Alliance; Mr. Julian Pellegrini, The Pelsa Company; Mr. Chip Hazel, The Pelsa Company

Mrs. Melson-Williams stated that this application is for a building for the Islamic Society of Central Delaware. The project site location is 777 South Little Creek Road. This parcel of land is 3.8 acres and is zoned C-2A (Limited Central Commercial Zone). The proposed use is a place of assembly building which is a permitted use under the C-2A (Limited Central Commercial Zone) District; however, the size of the project does require a public hearing with a Site Plan review before the Planning Commission.

There is some revised information that was received late last week regarding the project. On the Commissioner's desks this evening is some revised information related to the building area and the off-street parking calculation for this project. In discussions with the applicant at the DAC Meeting, Staff asked for clarification on the floor area of the building. There is a first floor, a partial second floor and also a basement area that includes occupied space. The applicant did present to Staff a revised building area calculation by floor which then results in a total building floor area of 38,649 S.F. That is important because it then changes the off-street parking calculation for this property. The off-street parking for this type of use is based on a floor area calculation at a ratio of one (1) parking space per two hundred (200) S.F. of floor area. The required parking for this project is one hundred sixty-nine (169) parking spaces. By Code you are allowed to park up to 125% of that number so the maximum parking that could be designed on the site is a total of two hundred eleven (211) parking spaces. The Revised Plan that accompanied those numbers shows that they are proposing a total of two hundred four (204) parking spaces for the project site. The project site includes parking in what would be between the building and South Little Creek Road and this also encompasses the required handicapped parking spaces for the project site.

This property, while it has frontage on South Little Creek Road, the driveway access will come from John Hunn Brown Boulevard which is the basic entrance drive into the Clearview Meadows subdivision. At the time of the development of the subdivision there was planning to provide access to what is this vacant tract of land with that Subdivision Plan. So there is a forty (40) foot cross access easement that was already previously established and they are making use of that for their entrance. It occurs where there's a split in the boulevard median near the entry from South Little Creek Road.

The building architecture is a masonry building. There are portions of it that are two (2) story in height and it includes a pitched roof system. Overall the building is a U-shaped building; one wing is more of a gymnasium space. Central to the facility is the assembly area and then the other wing is more offices, meeting rooms and classroom type spaces. As noted before, the proposed use is considered by the *Zoning Ordinance* as a place of public assembly and is permitted in the zone. Other site elements of note for the site will be requirements for bicycle parking and they are planning that near the building. There is a requirement for a dumpster for trash collection and recycling services. The parking lot is required to be lit to adequately provide safe lighting for the parking and on any of the pedestrian areas on the site. Pedestrians will be able to make use of a new sidewalk along the frontage of South Little Creek Road and then a connecting sidewalk into the site from John Hunn Brown Boulevard as well.

From a landscaping component the *Zoning Ordinance* requires that the site be planted with fifty-six (56) trees. They are showing them along South Little Creek Road, within parking lot islands and other areas near the building and then to the north of the building between it and what are a series of townhouses that are part of the Clearview Meadows subdivision. This area of the north property line near the townhouses also has an opaque barrier requirement. The applicant is requesting a waiver to consider an alternative format to that barrier. They are proposing an opaque fence six (6) feet in height and then a series of evergreen plantings on the new building side of the fence. The Code requires that the format actually be the plantings towards the residential side of the fence. They are asking for a reversal of that thinking that the fence would be more amenable to the adjacent property owners and give a better and clearer defined edge to their property.

The DAC Report includes a number of plan comments related to its completeness and corrections to be made. The information provided this evening related to building area and the new off-street parking calculation would be included by reference into the DAC Report. They have also as part of that DAC Report, included the other agency comments. Those include comments from the City's Public Works Office and Electric Department. There are comments related to providing water and sewer services to the facility. The City's Fire Marshal has provided comments to ensure that fire protection needs are met through a variety of measures including appropriate fire lanes and due to the size of this building it is required to have a sprinkler system. The other agencies outside the City include DelDOT. This developer will be required to enter into a Traffic Signal Agreement and this is a signal that eventually could be placed at the intersection of South Little Creek Road and John Hunn Brown Boulevard. The developer of Clearview Meadows is already a party to that agreement. The other thing to note related to transportation is that this project is within the Transportation Improvement District that has been established along the Route 13 and Bay Road corridor areas related to how off-site improvements will be facilitated. The project site is also required to have Sediment and Stormwater Management Plans and they are working with Kent Conservation District in that regard and the Kent Conservation District has provided comments.

Mr. Ambruso questioned how this request for the usage as a facility of public assembly differs from those that come in a request for the construction of a church? Responding to Mr. Ambruso, Mrs. Townshend stated that it doesn't, it's the same classification in the *Zoning Ordinance*.

Mr. Ambruso further questioned about schools? Responding to Mr. Ambruso, Mrs. Townshend stated that schools are a different classification in the *Zoning Ordinance*; they are educational facilities.

Mr. Ambruso stated that he heard the word classrooms being used earlier. Responding to Mr. Ambruso, Mrs. Townshend stated that's a use that would be incidental.

Mr. Cregar stated that it was no different than a church having classrooms for Sunday School or any other educational stuff. Responding to Mr. Cregar, Mrs. Townshend stated yes.

Mr. Holden questioned if there was some discussion over the square footage that was leading towards the amount of parking spaces? It seemed that the Revised Plan is calling out a different total allowed than the narrative did. He didn't know if he missed something. Responding to Mr. Holden, Mrs. Melson-Williams stated that when they met with the applicants to go over the Development Advisory Committee's initial report, it came to their attention that the facility had a basement area. By the *Zoning Ordinance*, the definition of floor area includes areas on the basement level that can be considered occupied space. It does not count storage rooms or mechanical system areas but if there are places where people can be such as other rooms, then that has to be added into the floor area calculation. It had not previously been provided; it was a clarification that the applicant was asked to make. Because it is a multi-floor building they needed to clarify by floor what that floor area is. This results in a larger floor area number overall for the project site which then changes the off-street parking calculation that they are allowed to have.

Mr. Holden stated that the Revised Plan is claiming a greater number of allowed spaces than the narrative. Did their Revised Plan jive with Planning Staff's understanding or is there some discretion there? Responding to Mr. Holden, Mrs. Melson-Williams stated that along with the

Revised Plan Staff put together a cover memo that re-did those calculations. Previously, if you are looking just at the DAC Report as issued those numbers were lower and there was a concern that they were potentially overparking based on the floor area that Staff was aware of at that point in time.

Mr. Holt questioned how large their congregation is or how many members will the church have? Responding to Mr. Holt, Mr. Williams stated that right now the religious facility is designed to hold up to six hundred (600) people. That includes the ground floor and also the mezzanine level.

Mr. Holt further questioned what days the group would meet? Responding to Mr. Holt, Mr. Williams stated that primarily that would meet on Friday between 1-2PM, at off-peak times.

Mr. Williams stated that they agree with comments made by Mrs. Melson-Williams. They are proposing roughly a 35,000 SF religious facility that's two (2) stories tall with occupied spaces in the basement. The basement consists of mechanical storage, some additional offices, a commercial kitchen and some public gathering space. As you come upstairs, the main ground floor plan is a prayer hall that's two (2) story with all administrative offices to the left hand side which he calls the administrative wing, and a two (2) story lobby space as you come in off axis directly to the center of the building. As you come upstairs, they have a mezzanine level that overlooks the two (2) story prayer hall but gives them additional space for prayer. Then there is a classroom wing that is basically above the administrative wing.

They are planning on an all masonry building. The prayer hall erupts about two (2) stories tall, masonry all the way around it and they will keep the hard edge as you come all the way around all four (4) sides of the building and then step it up to a lighter material dry-vit but still kind of keeping a monochromatic look. They have other masonry accents that kind of bring some flare to the building. They are trying to keep into the context and not overpower the site but also based on what the owner was looking for and giving them a representable look.

Mr. Pelligrini stated that he wanted to touch on a couple of things; primarily the location of the bike rack that was discussed at the DAC meeting. If you look at the part of the building that is housing the classrooms and office parts, just south of that is going to be where the nine (9) bicycle parking locations will be. Earlier plans will show a dumpster in that area but now on these plans that have revised that to be in front of the gymnasium and they have also enlarged it to account for recycling. On this Site Plan you can see that the fire lane is a gray line coming into the entrance and around to the front of the building, down a parking aisle and out through a center parking aisle. It's been verified with Aashto turning movements that a fire truck will be able to fit through there. He also wants to briefly touch on stormwater management since that was a big part of their parking design. They did maximum the parking but they did keep in mind that they need to attenuate stormwater flows that were in excess due to the new development. They are proposing an infiltration facility that will handle not only the amount of stormwater that's in excess but also the treatment of it. The Record Plan that was mentioned in the DAC meeting and to show the right-of-way dedication is currently still in progress and will be submitted shortly.

Mr. Tolbert opened a public hearing.

Mr. Adam Gerber – Hudson, Jones, Jaywork & Fisher at 225 South State Street Dover DE 19901

Mr. Gerber stated that he is here this evening on behalf of a group of members of Cornerstone Church who own the property next door. Their church is on the property immediately adjacent to the subject property. There are a few requests that they would like to make. The first request is that the Planning Commission add a request that the owners of this property install some sort of buffer or barrier between their property and the applicant's property. One purpose of the Site Plan review is to minimize the impact of this plan on adjacent properties and theirs is the immediately adjacent property. It appears from the proposed plan that a buffer will be installed. It will be installed on other boundaries of the property and they request that a fence or other barrier be installed on the line that divides their two (2) properties. There is already some sort of tree line; he believes there may have been a historic tree line or hedgerow between their properties. They ask that those trees not be removed and if impossible they would like some sort of barrier, at the very least some of the fifty-six (56) trees that were mentioned be put on our property line between these two (2) properties. There are a number of reasons for this request. For one, aesthetic purposes to clearly delineate the property line as well as for noise cancellation. They also have a specific concern which is foot traffic. There is already a great deal of foot traffic coming across their property and they would assume the applicant's property as well, from the neighborhood behind their property that goes into the shopping center containing Target and Safeway. They are concerned with the development of this property that there will be even more foot traffic so they are asking that some type of barrier be put up to discourage that foot traffic and try to divert it onto the sidewalks in this area. In many ways, this would also help the applicant too because foot traffic would not be going across their property but would be diverted onto the sidewalk.

In addition to the foot traffic, they also have some concerns about automobile traffic. When you are talking about two hundred four (204) parking spots, they are concerned with the increase in automobile traffic. It is already difficult at times for members of their church to get into the parking lot with the shopping center there and of course if you have this many additional parking spots being added there will be a significant amount of increased traffic. He reviewed the plan and did not see that a Traffic Impact Study had been done. Maybe he missed it but if not, they would like to ask that one be done if possible. They had another concern or question on a point of clarification and that was whether this application was being made as a place of worship. He believes that is now clear from what has been discussed and from the DAC Report. Therefore, they are getting the increased number of parking spots.

Another concern is the amount of impervious surface or cover that's listed. It looks like on the application that it is almost 2.5 acres of impervious surface between the parking lot, the building and the sidewalks. They are obviously concerned about that because they are the adjacent property and they are concerned about run-off. He knows there are some plans in place but they would just like to ensure that the run-off from the vast amount of impervious surface will not in directed onto their property in any way. The last concern is their concern about run-off, not just from that impervious surface after construction but the run-off during the construction itself. Any large scale project such as this would require significant changes to the topography of the lot. As a result, some of the lot will be disturbed; to a significant extent they must assume and during that process they also assume that there will be erosion and run-off from this lot so they want to make sure that some sort of environment study has been done to make sure there's not going to be any run-off or contaminates that will enter onto their property. They are right next to each other and the fact that

there's a big ditch in between them, they are concerned that some of the run-off will go into there. They would like an environmental study to be done too if that can be added to the requirements.

Mr. Mark Boller – 80 Sipple Road Dover DE 19901

Mr. Boller stated that his concern for the property is of environmental nature. He doesn't know if the Commission knows but this site was a landfill and if you look at the site there is a construction debris component. They were looking at purchasing the property and they were afraid of it because all of the debris that was there. If you also notice it is not a secured site so he doubts that there are any manifests or documentation of any kind of waste that went into this landfill. Obviously, they noticed construction debris and with some of the dwellings that were on the property in the 1950's and 1960's, lead paint was an issue and asbestos was an issue. Since it isn't a secured site, he has been an environmental professional for thirty (30) years and he has made a lot of money cleaning up uncontrolled dump sites where heating oil tanks turn into hazardous waste sites, where farm fields turn into hazardous waste sites or actually Superfund sites. They are interested in doing an environmental assessment to find out what actually is on the site. They know there is construction debris but what else is there? Is there midnight dumping? There's no documentation of anything that was taken in there. They would like that documented with an intrusive assessment; a Phase 1 or Phase 2 where there are borings drilled on the site and that the site is fully environmental assessed to make sure that there are no contaminants on that site. Their reason for those concerns are that they are going to be putting in a basement and part of that basement they are going to be doing excavation. When you do excavations, he has done enough to know that if asbestos and lead are there or any other contaminants, there's a chance for airborne contamination. He recently did a job for the New Jersey Department of the National Guard where they had to do constant air monitoring for asbestos and use personal protection devices. If that's happening on the property they are immediately adjacent to, and use they have concerns about those airborne contaminants impacting their people, the neighborhood on the other side of the property as well as those airborne contaminants coming onto their property and they being responsible for clean-up. There is a lot of foot traffic through the property. If any of these airborne contaminates come onto their property, then they have a third party liability of citizens walking through their property and being exposed to any potential impacts. They know that there is construction debris. They know that it is an undocumented site and there was no site security and they are interested in making sure that they monitor the impacts of what they are seeing on this site and that they know that there are no long term human exposure issues and that there is no long term exposure to their property value. If there are contaminants that have leached into their property, they need to know about it.

Mr. Gerber spoke for a total of twenty-three (23) people from Cornerstone Church.

Mr. Leonard Roberts – 100 Ladybug Drive Dover DE 19901

Mr. Roberts stated that he lives on the corner of Ladybug Drive and ~~South Little Creek Road~~ (Babb Drive). He is trying to look at the map but he would like to know where the access would be to go to the mosque and also the traffic flow because he is located on the corner of Ladybug Drive and ~~South Little Creek Road~~ (Babb Drive). Will that traffic be diverted through Clearview Meadows? If so, the impact that they have now between the buses coming down that street going out through South Little Creek Road. They have put in a request to have the bus transferee to make a U-turn. Now he is concerned about having two hundred (200) cars. Where will this entrance be to the mosque and how will it affect Clearview Meadows traffic in and out of their area?

Mrs. Townshend used the Site Plan displayed to show the entrance location for the mosque. The entrance will be directly across from the first entrance to Mer Way.

Ms. Sharon Reed – 102 Henry Drive Magnolia DE 19962

Ms. Reed stated that she has been a life-long resident in Dover. She is worried mainly about the legal aspect of it. With most churches, the police and different people can have access if a problem were to occur. She is wondering with this mosque, would the police be under State law? Responding to Ms. Reed, Mrs. Townshend stated that everything within the City is under the jurisdiction of the City police and they enforce both City Ordinance and State law.

Ms. Reed further questioned if they would be allowed on the premises of that church? Responding to Ms. Reed, Mrs. Townshend stated absolutely, just as there are on any other private property.

Ms. Reed questioned if the police would be able to enforce the law? Responding to Ms. Reed, Mrs. Townshend stated yes.

Mr. Tolbert stated that you can't ban the police from enforcing the law.

Mr. Tolbert closed the public hearing.

Mrs. Townshend stated that she wanted to address the issue of a Traffic Impact Study. Mrs. Melson-Williams mentioned during her briefing on the project that this is within the Transportation Improvement District. This is the area where the City is working with DelDOT to do a large regional study for transportation improvements and there will be fees assessed to properties that are developed within the Transportation Improvement District boundaries. This project will be subject to whatever the outcome of that agreement is. It does not require a Transportation Impact Study on its own because they are doing the larger study for the district.

Mr. Cregar stated that he has a question that relates to other issues that were brought up regarding environmental factors and this being at one point some kind of dump site. What do we know about that from a City standpoint? Responding to Mr. Cregar, Mrs. Townshend stated that she is not aware of anything. Typically, private property owners to get their financing have to do some degree of environmental study; that ends up being more of a private issue. The stormwater management and run-off issues that came up, they are under the jurisdiction of the Sediment and Stormwater Regulations for the State of Delaware which includes erosion and sediment control during construction and stormwater management from a long term basis. That is something that is managed under the State Sediment and Stormwater Regulations.

Mr. Cregar stated that there was the issue brought up by the attorney about the buffering and landscaping on the west side of the property. Any comment from Staff regarding that? Responding to Mr. Cregar, Mrs. Townshend stated that she doesn't have any concerns, there was some question about cross access but she guesses if there's not the interest in cross access and that's fine. She doesn't believe it's a requirement but she would defer to the applicant on that issue. From a Staff standpoint they don't have any concerns about buffering between the two (2) properties.

Mr. Cregar stated that they did designate that there would be a certain number of trees and landscaping that would have to take place on the site itself. Responding to Mr. Cregar, Mrs. Townshend stated yes.

Mrs. Melson-Williams stated that the only buffering requirement based in the *Zoning Ordinance* is related to the northern property line where this property as a non-residential use abuts the residential use of those townhouse lots. That's the only place where there's a buffering requirement. The subject property's western property line is adjoining another non-residential use; there is not a required buffering by ordinance. That is an area that is on this plan proposed as part of their stormwater management swale system. It appears there is some landscaping that is proposed in that area but not through the entire length.

Mr. Holt stated that he had a concern on the cross access. One gentleman expressed concern about foot traffic going back and forth. What kind of material would the opaque buffer be? Were they going to try putting a fence there? Responding to Mr. Holt, Mrs. Townshend stated that it's the prerogative of the Commission because currently the applicant has not proposed a fence in that location; there's a swale system. If it is something that the Planning Commission wants to see like a fence and denser landscaping as a buffer then that would be something to be discussed this evening by the Commission.

Ms. Still questioned if the buffering and the access across the parking lot and the other issues that were brought up by the attorney were something that the Commission is addressing here? Responding to Ms. Still, Mrs. Townshend stated that the issues that the attorney brought up include the buffering, the transportation study which she has already mentioned and the stormwater management. Those are within the prevue of the Commission to address.

Mr. Holden moved to approve S-15-03 Building for Islamic Society of Central Delaware at 777 South Little Creek Road including Staff recommendations, which included the placement of the fence relative to the vegetative buffer along the northern property line. He thinks it's in compliance with the zone and he thinks they have put together a good plan. The motion was seconded by Mr. Holt.

Mr. Cregar stated that with the waiver for the opaque barrier, they are going with the revised information regarding where they are going to put the fence and then the landscape buffer and then hold the fence more to the inside of that property line more for maintenance. Responding to Mr. Cregar, Mrs. Townshend stated yes, usually the vegetation is on the residential side of the fence. In this case, the Commission is approving a waiver that would allow the fence on the residential side of the vegetation.

The motion was approved by roll call vote 7-0 with Dr. Jones and Colonel Welsh absent. Mr. Holden voting yes, for the reasons stated in the motion. Mr. Cregar voting yes, in support of the recommendations of the DAC Report and the Staff recommendations and waiver that they granted. Mr. Holt voting yes, for the reasons given earlier and for the information in the packet and the DAC plan. Mr. Baldwin voting yes, based on the recommendation that has been put forth and plus it fits with the adjoining property which has a similar facility. Ms. Still voting yes, based on the motion and the recommendations of the DAC Report and the plan as proposed meets the requirements of the Site Plan requirements. Mr. Ambruso voting yes, he feels they meet the requirements as set

forth. Mr. Tolbert voting yes, the building itself is very attractive and he is sure the services will be very appealing to those that attend and it will be a blessing to the neighborhood and the community.

2) MI-15-01 Comprehensive Plan Amendment 2015 – Public Hearing and Review for Recommendation to City Council regarding a series of Amendments to the *2008 Comprehensive Plan*, as amended. The Amendments include consideration of the following: a request for amendment of Map 12-1: Land Development Plan to revise the Land Use Classification of a property as associates with rezoning application Z-15-01 and amendments to the text of Chapter 13 – Growth and Annexation Plan for *Comprehensive Plan*. Ordinance #2015-01.

A. Consideration of Amendment to Map 12-1: Land Development Plan Map – Request for a parcel located on the east side of North State Street between the Silver Lake bridge and Lepore Road to revise the Land Use Classification from Residential Medium Density to Commercial on Map 12-1: Land Development Plan Map. Property Address: 801 North State Street. This is associated with rezoning application Z-15-01.

B. Consideration of Amendment to Chapter 13 – Growth and Annexation Plan – Amendment to Chapter 13 – Growth and Annexation of the *Comprehensive Plan* to amend the text to delete the Cost Revenue Analysis Model and the delete the requirement for its use as a means of reviewing annexation proposals within the Category 2 Annexation Areas.

Representatives: None

Mrs. Townshend stated that this is two (2) amendments to the *Comprehensive Plan*. One is an amendment to Map 12-1: Land Development Plan Map. This is a request for a parcel located on the east side of North State Street between Lepore Road and the Silver Lake bridge to change the land-use classification from Residential Medium Density to Commercial. The property affected is 801 North State Street. This is associated with the Rezoning application that is next on the agenda. When you look at the surrounding properties, the property to the rear of the subject property is zoned RG-3 and is a Medium Density Residential but when you look at the other properties that front along North State Street area, they are principally commercial properties. This change would be consistent with those commercial properties. The other piece of the *Comprehensive Plan* amendment is an amendment to Chapter 13 – Growth and Annexation Plan. What that would do is eliminate the requirement to use the Cost Revenue Analysis Model that was developed in 2004 when they reviewed annexation proposals. That is a very complex model that requires routine and regular updating. They had almost no annexation applications for a number of years and the model became very much out of date. In addition, when they did use the model the largest annexation that they used the model to look at was what ended up becoming the Dover High School property. When they evaluated the annexation of that property they were looking at the tax revenue and utility revenue associated with approximately three hundred (300) dwelling units and now they have a property that is tax exempt and the utility usage is much different. For the amount of effort and expense that it takes to maintain the model, they believe that they can do a basic analysis that is less complex and might even yield better results. They wanted to take the language out but not take out the idea that they would do analysis of the cost and revenues associated with annexations. The *Comprehensive Plan* amendment is open as a public hearing.

Mr. Cregar stated that he had some concerns and comments to address with the Commission. As he has thought about this proposed change, he feels very committed to his position on this application. He recognizes that an argument can be made to amend the Land Development Plan Map from Medium Density Residential to Commercial; however, he believes that there is an equally logical argument to not to change this designation. The City of Dover is actively engaged in an effort to re-energize its Downtown Area with the Downtown Development District. There has been considerable time, effort and money directed to this cause. They have sat in their Quarterly Workshops and been updated on the progress of these efforts. There's a pool of money established for qualifying construction projects, State Historic Preservation tax credits available, City of Dover incentives which include licensing fee waivers, transfer tax abatements, permit fee waivers, impact fee waivers and others. The Kent County government has offered incentives along with Downtown Dover Partnership. All of this is in an effort and commitment to move this Development District forward. Yet tonight they sit here and are looking at the possibility of creating another commercial pocket just 1.3 miles north of the center of this Downtown Development District. Why would we approve such a change that provides further competition to our efforts to attract residential and commercial to the Downtown District? There are a number of properties already zoned Commercial that are available for development and re-development purposes which do not require such a change to our *Comprehensive Plan Map*. It would be his hope that those interested in commercial and residential development would be encouraged to look at some of the Downtown Development opportunity sites that are available. What he is asking for is not easy. In January, the Commission heard a Conditional Use application to permit a church in a once retail operation. As difficult as that decision was, the Planning Commission heard the voice of the merchants to give the Downtown District time to allow the efforts to take hold. They voted to support the on-going efforts in that Downtown District. What he is asking is that they continue to support that District by not creating another commercial pocket just up the street. Additionally, it seems to him that there is an assumption that the current residential classification and zoning will not provide for the orderly development of this property. He does not subscribe to that belief. The efforts in the Downtown District will take time but there is no compelling reason to amend the *Comprehensive Plan* at this time. He is willing to wait; he is willing to give the District time before they create further competition. For these reasons, he is not going to support the changes in this Amendment Map.

Mr. Ambruso stated that he wanted to point out that Mr. Cregar, what he has offered this evening is food for thought. Sitting here as a member of this Commission, he can't recall any time where they involved their selves because of a financial hardship that a decision could possibly bring about a competitor. He doesn't think that they have ever taken into consideration that just because there is a business located in one area then they are not going to grant somebody access to a particular facility because there is already one in a different area. That doesn't help the free enterprise system. Responding to Mr. Ambruso, Mr. Cregar stated that they continue to shoot themselves in the foot; there's no compelling reason to create another commercial zone when there are existing commercial zones that are already in existence that are under developed today.

Mr. Ambruso stated that it's their responsibility to either say yes or no if something falls within parameters of what this body is supposed to enforce. He doesn't really think that they should take into consideration the financial implications, that's up to the individual investors; people who are taking the risks. Responding to Mr. Ambruso, Mr. Cregar stated that it is their responsibility to look at the Land-Use Map and determine whether or not this proposed use is something that they want to address in changing the map; they don't have to change the map.

Mr. Ambruso stated that no they don't have to change the map but they have someone who is asking them to change the map and who is willing to invest his/her money, not any of ours into a project to contribute to the well-being of Dover.

Mr. Holden stated that he has heard two (2) different arguments and he finds some pieces in both that strike true to him. He leans more towards Mr. Cregar's stance in that why convert what's Medium Density Residential adjacent to a very success Medium Density Residential neighborhood? What is the driver and what is the driver to change the course that the City has chosen with the *Comprehensive Plan* to chart for the City? It's not a choice against a competitor or to allow economic advantage to another. This is the path that the City has chosen in how the land should be developed. Do we want to change the nature of what more of the lakefront looks like? Do we want to say that it shouldn't be Medium Density Residential just because somebody would like to develop it under another use? Those are all valid questions to ask. He personally thinks that it has great opportunity; it hasn't been turned into Medium Density Residential not for lack of opportunity but for the house was occupied for long term time. He doesn't know that it doesn't have a future as a very vibrant and economically supportive of the City Medium Residential neighborhood. It might be a good commercial venture; does that do well for the City? He thinks that have to lend some credence to the *Comprehensive Plan* and why it was preheated and there has to be good reason to change that course that has been charted.

Mr. Tolbert opened a public hearing.

Mrs. Holly Pfeifer – 112 Overlook Place Dover DE 19901

Mrs. Pfeifer lives at the property adjacent to the property up for discussion. She sees no reason to change it from residential. It's adjacent to their community; it affects their community. Like what was said be, she doesn't see that there's any reason to change the look of the lakefront. The other concern they have for their community is that if you go commercial adjacent to it, would they be required to do some sort of screening like what was mentioned during the previous application heard tonight? To make sure that foot traffic can't come through and driving traffic can't come through. They are a U shaped community and if you allow cars to come in from State Street, they will cut through to get to Lepore Road or to get out to Route 13.

Mr. L D Shank – 801 Gold Coast, LLC at 801 North State Street Dover DE 19901

Mr. Shank stated that he is the managing general partner of 801 Gold Coast, LLC; the applicant on the request coming up. He is not here to practice, he has given a lot of thought to this thing and it's an economic driver that he chose to invest in. He talked to most of the people in the Overlook; they have been cordial. They have some very legitimate concerns. Mr. Cregar also has some very legitimate concerns but everybody in this country has the right to go bankrupt. All he was thinking was that this piece of property could probably generate somewhere between $4-7 million of tax ratable. He thought that was the kind of driver that would inspire somebody, not necessarily him; he is not that kind of developer. What he is trying to do is bring this thing to the marketplace; let the marketplace decide what's going to happen. He thinks everybody knows by his track record that he is a firm believer in Downtown Dover, he has invested significant amounts of money preserving things on The Green and things on Governors Avenue and he is going to do the same thing here if he has something to do with it.

Mr. Tolbert closed the public hearing.

Mrs. Townshend stated that since there are two (2) specific amendments, in the past the Commission has taken them one at a time and then a motion for each. Staff would then forward it to Council in that same way.

Mr. Cregar moved to deny MI-15-01A Consideration of Amendment to Map 12-1: Land Development Plan Map for the reasons that he stated earlier and there's no compelling reason to amend this residential zone to commercial at this time, seconded by Mr. Holden and the motion to deny was approved by roll call vote 6-1 with Dr. Jones and Colonel Welsh absent. Mr. Holden voting yes, due to his previous comments. Mr. Cregar voting yes, in accordance with his previous comments. Mr. Holt voting yes, due to previously stated comments. Mr. Baldwin voting yes, based on the last meeting held where they had such a strong drive to maintain the Downtown Dover area and he agrees that they need to focus on that area. Ms. Still voting yes, in concurrence with all previous comments. Mr. Ambruso voting no, predicated on his thoughts and expressions stated earlier. Mr. Tolbert voting yes, stating that it's problematic issue and he sees valid comments on each side of the issue. He knows that there are problems in the Overlook development and they are already surrounded by commercial establishments.

Mr. Holden stated that he understood that the deletion of Cost Revenue Analysis Model is a very comprehensive, costly, and time intensive to up keep. Do they have an alternative other than they will look at something? He is concerned that they will do away with it, it goes by the way side and there's nothing done. Responding to Mr. Holden, Mrs. Townshend stated that in absence of the model; Staff would look at based on the zoning what they would expect the tax revenue on a piece of property to be. What would they expect based on how they think at that point it's going to be developed? What would they expect the impact fee and utility revenue to be and then cost accordingly? It would be similar to what they would have done previously but less technical and less cumbersome.

Mr. Holden questioned if the Chapter needed to be amended to add the language in? He has full faith that that's what would happen tomorrow but what would happen in a year from now when they don't have the same people at the same desks? He thinks it's a very valid thing to approach and he doesn't want to lose it. Responding to Mr. Holden, Mrs. Townshend stated that she will add language and send it out to the Planning Commission for their information and then make sure that it gets into the Council Report.

Mr. Cregar stated that it just becomes a pending matter in that regard. Responding to Mr. Cregar, Mr. Holden stated that there could be an alternative described to include it.

Mr. Cregar moved to recommend approval to Council for MI-15-01B Consideration of Amendment to Chapter 13 – Growth and Annexation of the Comprehensive Plan with the considerations that were discussed about an alternative, seconded by Ms. Still and the motion to recommend approval to Council was approved by roll call vote 7-0 with Dr Jones and Colonel Welsh absent. Mr. Holden voting yes, for reasons previously stated. Mr. Cregar voting yes, for reasons previously stated. Mr. Holt voting yes, for all the reasons explained to him by Mr. Cregar. Mr. Baldwin voting yes, based on the before mentioned statements. Ms. Still voting yes, based on all previous statements. Mr.

Ambruso voting yes, based on all previous statements. Mr. Tolbert voting yes, in concurrence with the comments explained by Mr. Holden.

3) Z-15-01 Lands of 801 Gold Coast, LLC at 801 North State Street: Rezoning from RG-3 to C-2A – Public Hearing and Review for Recommendation to City Council on a rezoning application for a 1.943 acre ± parcel. The property is zoned RG-3 (Group Housing Zone). The proposed zoning is C-2A (Limited Central Commercial Zone). The property is located on the east side of North State Street between the Silver Lake bridge and Lepore Road; the property is adjacent to Silver Lake. The owner of record is 801 Gold Coast, LLC c/o Luther D. Shank III. Address: 801 North State Street. Tax Parcel: ED-05-068.09-01-13.00-000. Council District 3. Ordinance #2015-02. *Associated with request (MI-15-01) for Comprehensive Plan Amendment as land use classification to Map 12-1.*

Representatives: Mr. L.D. Shank, 801 Gold Coast LLC

Mrs. Townshend stated that there may be a question for the applicant regarding this application because if the Comprehensive Plan Amendment is not approved then the rezoning cannot be approved. If the rezoning is denied then there is a prohibition to coming back within a year with a similar rezoning request. It's a question for the Commission; the Commission can defer the hearing until such time that Council has made a decision on the Comprehensive Plan Amendment. The Commission can proceed with the hearing but again they are tied to the result of the plan amendment.

Mr. Shank questioned if he had an option of tabling the application? Responding to Mr. Shank, Mrs. Townshend stated that as an applicant he could withdrawal the application. It would be the Commission's decision to table it if they so chose.

Mr. Tolbert questioned if Mr. Shank wanted to withdrawal the application?

Mr. Holden questioned if there was a benefit for the application to defer it versus withdrawing it? Responding to Mr. Holden, Mrs. Townshend stated that she believes that way they would know what the outcome of Council action is because the Planning Commission is on recommendation to City Council.

Mr. Shank stated that he would like to follow Mrs. Townshend's lead and defer the application and let Council get their word in on it.

Mr. Cregar moved to defer Z-15-01 Lands of 801 Gold Coast, LLC at 801 North State Street: Rezoning from RG-3 to C-2A, seconded by Mr. Holden and the motioned was unanimously carried 7-0 with Dr. Jones and Colonel Welsh absent.

4) SB-13-06P Revised Jefferson Terrace (previously known as The Meadows) Subdivision on Jefferson Terrace – Public Hearing and Review of Preliminary Subdivision Plan to create five (5) residential lots from an existing parcel totaling 4.23 acres ± of land. The property is zoned R-10 (One Family Residence Zone) and R-8 (One Family Residence Zone). The property is located south of but not adjacent to Wyoming Avenue and west of Monroe Terrace. The proposal includes an extension of the street known as Jefferson Terrace. The owner of record is Penntex, LLC. Address: Jefferson Terrace. Tax Parcel: ED-05-077.17-06-20.01-000. Council District 2. *Waivers granted*

approval by City Council on 1/13/2014: Increase Length of Dead End Street and Increased Percentage of Lots on Cul-de-sac. This submission is Revised Preliminary Subdivision Plan which supersedes the previous submission SB-13-06P filed for review in February 2014.

Representatives: Mr. John Paradee, Baird, Mandalas & Brockstedt; Mr. Bob MacLeish, MacLeish Management LLC

Mrs. Melson-Williams stated that this application is a Preliminary Subdivision Plan. It was here once before the Planning Commission as a Conceptual Subdivision Plan; that happened in November 2013. The applicant had actually filed this Preliminary Subdivision Plan during the winter of 2014 but chose to hold that back from further review and did some additional work on the project. The application is labeled "Revised" just to keep it straight in the Planning Office.

It is a property that is located west of Monroe Terrace. This project proposes an extension of Jefferson Terrace moving west as a cul-de-sac street with a series of five (5) residential single family lots. There is a residual tract to the land. Previously, this application had two (2) waivers that were approved and those were recommended by the Planning Commission and then went onto City Council for final action. Those were waivers to exceed the maximum length of the dead-end street and then to allow an increased percentage of lots on the cul-de-sac itself. The property for the most part is zoned R-10 (One Family Residence Zone) with an R-8 (One Family Residence Zone) for a portion of the property.

Mrs. Townshend stated that there is a portion of the property that is within the flood hazard area. This portion is on lots 3 and 4. According the *Zoning Ordinance*, this area needs to stay as natural open space. There is also a portion of the land that is designated as wetlands and again this cannot be built and requires a buffer. Regarding the street, they have a cul-de-sac. The Planning Commission had previously recommended and City Council issued the waiver on the number of lots that front on the cul-de-sac as well as the length of the cul-de-sac. There is a thirty-six (36) foot paved width and a sixty (60) foot right of way on the Jefferson Terrace extension. There is a total of 1.7 acres in woodlands and that is proposed to remain. The non-woodland acreage is 2.53 acres which requires thirty-seven (37) trees. There are seven (7) existing trees so thirty (30) trees will need to be planted. As for active recreation, this project falls under the small developments and is exempt from providing active recreation on the site. The formula for a cash donation in lieu of active recreation is included. One thing on the Utility Plan that she wants to point out is that this will be served by a private force main and grinder pumps that will be owned and maintained by the property owners and the appropriate easements and details need to be included within the deeds to note this information. There are other comments that have been submitted by the other DAC agencies.

Mrs. Melson-Williams stated that on page 8 of the DAC Report the Planning Staff under "Recommendations suggested as conditions of approval to meet code objectives": Number 1 is related to this new street extension of Jefferson Terrace. They are recommending that the appropriate water and sanitary sewer service connections should be established for all existing and proposed lots that front on this street. This project proposes five (5) new lots but there are several existing lots which would now front on this new street. Staff is recommending that with this initial construction that the taps and laterals be completed for those other properties so to avoid future disruption of what would be a newly paved street for the City should those other properties develop

and need such services. The other thing that they do note under recommendations is a proposal for sewer service for these five (5) new lots that is somewhat unusual in that it makes use of a private force-main system. The Public Works Department has included a number of comments on how they will be looking at that and how that system would have to make connections to what ultimately becomes City utility infrastructure.

Mr. Holt stated that he is a little confused on the private sewer system. Why did the City allow this? Was the expense too great? Responding to Mr. Holt, Mr. Lyon stated there were site constraints; the topography was so flat that the only alternative to the private force main would be to essentially backfill the entire subdivision which causes concern for stormwater run-off and the like. This was the alternative that was provided by the engineer. The Public Works Department could not say no to that, other than to provide the recommendation that an agreement be put in place that proper maintenance and repair is delegated to the private ownership.

Mrs. Townshend stated that it's not a private system in terms of treatment; it is a private force main that will feed into the City's transmission system. It's not like a community septic system; it simply conveys the wastewater to the City's collection.

Mr. Holt stated that he now understands that it is still going to be a part of the sewer system but how about the expense to that? Is that going to be put on the property deed that the people in that development will have to maintain this system? Responding to Mr. Holt, Mr. Lyon stated that is the proposal.

Mr. Holt questioned if the owners would be aware of that stipulation when they purchased the properties? Responding to Mr. Holt, Mr. Lyon stated that the Department of Public Works will not sign off until they review the agreement and have it signed off by the City Solicitor.

Mr. Paradee stated that this is a perhaps a little unusual for the City but not entirely unusual in Kent County, Delaware. What they propose to do is have a Declaration of Maintenance Covenant that will be recorded prior to deeds being conveyed out. That Declaration will make clear that each property owner will share the responsibility for maintaining that line. They are willing if the Department of Public Works wants them to include language. They could actually provide language that would give the City the authority to enforce that maintenance obligation and assess the properties. This is what Kent County does with their stormwater management facilities currently. He is confident that this can be done in a way that will be enforceable and would give the property owners notice of what their obligations are.

Mr. Holt stated that everything would be obvious and above board when the buyer's purchase the property. Responding to Mr. Holt, Mr. Paradee stated yes, they could do something that was recorded as a matter of record and disclosed to the property owners before they ever bought so that they would understand.

Mr. Paradee stated that they are also comfortable with the first recommendation that Staff mentioned on page 8. They have no problems complying with those suggestions/recommendations. With the waivers that had been granted, the application complies with all code requirements. There are two (2) requirements in the DAC Report that he would like to touch on briefly. It's his understanding after speaking with the Department of Public Works that these are boilerplate notes.

The first one is on page 2 of the DAC comments under Water. It's number 4 and it reads "all water mains within the proposed subdivision must be looped; no dead end mains are permitted. A wavier to this requirement may be granted with a proper technical infeasibility presented by the owner." As you know, this project obviously sits on a dead end street; a cul-de-sac which the City has granted a waiver to allow the applicant to exceed the length of the street. Obviously, it's going to be infeasible to loop that system. Nevertheless, there is a fire hydrant in the cul-de-sac so the system can be flushed which is typically the concern from an engineering perspective in looping. He just wanted to point out that there will in fact be no loop on this but there is a fire hydrant in place that will allow the system to be flushed. The second comment that he wanted to bring up in the DAC comments is on page 4; it's number 6 under Streets. It reads "Street right-of-way lines at intersections shall be connected with a curve, the radius of which shall be at least 25 feet. The required radius may be increased by the City Engineer if the increased radius is necessary for public safety." At this particular intersection, the properties that would be implicated would be private properties that they don't own or control. The current radius at that intersection is twelve (12) feet and they would propose to keep it at the current twelve (12) feet. That is something that he is comfortable that they can work out with the Department of Public Works but he wanted to mention that because they can't possibly comply with the twenty-five (25) feet. Other than those comments, this application complies with all code requirements and they are agreeable to and accept all of the Staff comments and conditions of approval.

Mr. Cregar questioned if there were any comments to Mr. Paradee's comments about the twelve (12) foot radius? Responding to Mr. Cregar, Mr. Lyon stated that the City of Dover Public Works can provide a waiver administratively for this situation; very much the same way that they would provide a waiver for the water main loop. Technical infeasibilities dictate those sort of situations.

Mr. Tolbert opened a public hearing and after seeing that there was no one wishing to speak, closed the public hearing.

Mr. Ambruso moved to approve SB-13-06P Revised Jefferson Terrace (previously known as The Meadows) Subdivision on Jefferson Terrace, to supersede the previous plan that was reviewed in February 2014 and to acknowledge that Mr. Paradee stated that the Staff recommendations and the DAC comments would be observed and that he's acknowledged them and agreed to them, seconded by Mr. Holt and the motion was approved by roll call vote 7-0 with Dr. Jones and Colonel Welsh absent. Mr. Holden voting yes, for the reasons stated in the motion. Mr. Cregar voting yes, for the reasons in the DAC comments and those previously stated. Mr. Holt voting yes, for the previous statements and the DAC comments. Mr. Baldwin voting yes, for reasons previously stated. Ms. Still voting yes, for reasons previously stated. Mr. Ambruso voting yes, for the reasons mentioned in the motion. Mr. Tolbert voting yes, they have already looked at this application and waivers have already been previously approved.

NEW BUSINESS

Meeting adjourned at 8:47 PM

Sincerely,

Kristen Mullaney
Secretary