CITY OF DOVER PLANNING COMMISSION
February 18, 2014

The Regular Meeting of the City of Dover Planning Commission was held on Tuesday, February 18, 2014 at 7:00 PM with Chairman Colonel Welsh presiding. Members present were Mr. Holden, Mr. Cregar, Mr. Tolbert, Mr. Baldwin, Dr. Jones, Ms. Still, Mr. Ambruso and Colonel Welsh. Mr. Holt was absent.

Staff members present were Mrs. Townshend, Mr. Cook and Mrs. Mullaney. Also present were Mr. Gregg Moore, Mr. Bob MacLeish, Mr. Alan Perry, Mr. Doug Barry, Mr. Tony Ashburn, Mr. David Edgell and Mrs. Susan Edgell. Also speaking from the public were Mr. Henry Cochlan, Mrs. Mary Ann Polling, Mr. Jacob Brickman, Ms. Jouimi Patel and Mr. Jay Patel.

APPROVAL OF AGENDA

Colonel Welsh stated that applications S-14-01 and S-14-02 on the agenda tonight were to be heard at the January 21, 2014 meeting that was postponed.

Also, application S-14-03 Tower Commons at 50 North DuPont Highway is not scheduled to be heard. Application SB-13-06 Jefferson Terrace (a.k.a. The Meadow) Subdivision on Jefferson Terrace was withdrawn as well (per letter dated February 18, 2014 provided to the Commission).

Mr. Tolbert moved to approve the revised agenda to include the removal of applications S-14-03 Tower Commons at 50 North DuPont Highway and SB-13-06 Jefferson Terrace Subdivision on Jefferson Terrace, seconded by Dr. Jones and the motion was unanimously carried 8-0 with Mr. Holt absent.

APPROVAL OF THE PLANNING COMMISSION MEETING MINUTES OF DECEMBER 16, 2013

Ms. Still moved to approve the Planning Commission minutes of December 16, 2013, seconded by Mr. Holden and the motion was unanimously carried 8-0 with Mr. Holt absent.

COMMUNICATIONS & REPORTS

Mrs. Townshend stated that the next Planning Commission Quarterly Workshop is scheduled for Wednesday, February 19, 2014 at 12:00 noon in the City Hall Conference Room.

Mrs. Townshend stated that the next Planning Commission meeting will be held on Monday, March 17, 2014 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 27, 2014 and February 10, 2014.

Mrs. Townshend introduced William "Bill" Cook, Planner I.

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-12-06 West North Street Mini Storage at 1351 West North Street – Request for a one year extension of the Planning Commission approval granted on April 16, 2012 for Site Development Plan for the construction of two mini storage buildings for a total of 108,940 SF with boat and RV storage parking and associated site improvements. The parcel is zone IPM (Industrial Park Manufacturing Zone). The property is located on the north side of West North Street east of Mifflin Road. The owner of the property is RES-Data, LLC and SSS-Data, LLC. Address: 1351 West North Street. Tax Parcel: ED05-076.14-01-07.00-000. Council District 1. *Final Site Plan approval was granted on January 15, 2014.*

Mrs. Townshend stated that this plan has actually progressed through the approval process. Staff has recently just finished signing the final plans so the applicant should be going under construction shortly but they need the extension to avoid the project expiring before they begin.

Application for S-12-6 West North Street Mini Storage at 1351 West North Street was approved for a one year extension and the motion was unanimously carried 8-0 with Mr. Holt absent.

NEW BUSINESS

NEW DEVELOPMENT APPLICATIONS

Mr. Holden recused himself from applications S-14-01 and S-14-02. His employer is the engineer of record.

1) S-14-01 NBR Properties at 850 New Burton Road – Public Hearing and Review of Site Development Plan to permit the construction of a 20,000 S.F. office building with the associated site improvements on a 1.671 acre parcel. The property is zoned C-1A (Limited Commercial Zone). The property is located southwest of the intersection of New Burton Road/Queen Street and West Street. The owner of record is NBR Properties, LLC. Property Address: 850 New Burton Road. Tax Parcel: ED-05-076.00-01-23.00-000. Council District 2. *A previous plan S-10-21 was reviewed by the Planning Commission on September 20, 2010 and granted Final Plan approval on December 14, 2011; that plan has expired in addition to another plan S-08-26 for the site. Waivers Requested: Elimination of Loading Space and Partial Elimination of Curbing.*

Representatives: Mr. Gregg Moore, Becker Morgan Group; Mr. Bob MacLeish, NBR Properties LLC

Mrs. Townshend stated that the Architectural Elevations and the Site Plan were on display. The proposed Site Plan is for construction of a 20,000 S.F. office building on a 1.671 acre parcel. The property is zoned C-1A (Limited Commercial Zone) and is located at the southwest intersection of New Burton Road / Queen Street and West Street. This application came before the Planning Commission two other times. S-10-21 was reviewed by the Planning Commission on September 20, 2010 and received Final Site Plan approval on December 14, 2011 which has subsequently expired. The applicant has requested elimination of a loading space and partial elimination of curbing. The Commission members have all of the comments from the DAC agencies. The site as presented meets the code requirements.

Mr. Moore stated that this plan being presented was the same plan that was seen by the Planning Commission in 2010. It was fully approved by all of the agencies and ready to be built; the market has just slowed down the progress.
Mr. Tolbert questioned if the Commission had made any mention regarding the flat roof on this building? Responding to Mr. Tolbert, Mrs. Townshend stated that there was discussion of the architecture and the flat roof the second time that the application came to the Planning Commission. Her recollection is that the architectural features of the building and the overall presentation were sufficient to counteract the concerns of the flat roof.

Colonel Welsh stated that the changes were made to the roof the second time that the application was seen by the Planning Commission. There were changes in the roof line and the structure line. Responding to Colonel Welsh, Mr. Moore stated that they added some cornice works to break it up and give it some detail and some elevation.

Colonel Welsh opened a public hearing.

Mr. Henry Cochlan – 17 Sherwood Ct Dover DE 19904
Mr. Cochlan stated that his backyard is a direct line of sight to the current building. A two story building puts them within line of sight to his bedroom which brings up privacy issues. In the front of the building there is currently a rather large tree which a lot of birds congregate in. This tree creates decent privacy to his bedroom. Is the applicant planning to cut down this tree? Responding to Mr. Cochlan, Mr. Moore stated that he was not exactly sure of which tree he was referring to.

Mr. Cochlan stated that it was a bush on the curb line located at the front of the property. Responding to Mr. Cochlan, Mr. MacLeish stated that it was probably within the State right-of-way and they will be making them take it down; it's a requirement of DelDOT.

Mr. Cochlan questioned if that bush was on the applicant's property line? Responding to Mr. Cochlan, Mr. MacLeish stated no, that the bush is located within the easement required by DelDOT.

Colonel Welsh close the public hearing.

Mr. Tolbert moved to approve S-14-01 NBR Properties at 850 New Burton Road, to include the waiver for partial elimination of curbing and the waiver for the elimination of loading space and all DAC comments, seconded by Mr. Cregar and the motion was unanimously carried 7-0 with Mr. Holden recused and Mr. Holt absent.

2) S-14-02 Winner Ford at 591 South DuPont Highway – Public Hearing and Review of Site Development Plan to permit the demolition of an existing showroom buildings and the construction of a 31,000 S.F. auto dealership showroom/service building with the associated site improvements on a 9.1717 acre parcel. The property is zoned C-4 (Highway Commercial Zone). The property is located on the northeast corner of the intersection of South DuPont Highway and Public Safety Boulevard. The owner of record is Hawaiko II, LLC c/o Deanna Hynansky and lessee is the Winner Automotive Group. Property Address: 591 South DuPont Highway. Tax Parcel: ED-05-077.00-01-12.05-000. Council District 2. *Waiver Requested: Consideration of A Tree Mitigation Plan.*

Representatives: Mr. Gregg Moore, Becker Morgan Group; Mr. Alan Perry, Winner Automotive Group

Mrs. Townshend stated that this application is for property located at 591 South DuPont Highway. The proposal is to demolish two existing showroom buildings and to construct a 31,000 S.F. showroom building on the site. The property is zoned C-4 (Highway Commercial Zone) and located on South DuPont Highway. There is an interesting discussion on the parking. One of the things that Staff had a challenge dealing with is how to differentiate the parking from car display space. One of the things that the applicant has specifically requested is tree mitigation. They are required to plant 115 trees on the site. They have requested to do mitigation and work with the Dover Housing Authority to plant the 115 trees on Dover Housing Authority properties which Staff believes is an effective way of doing mitigation. There is not a lot of space to plant the trees on-site and as the applicant has noted, trees and new cars don't necessarily mix. The Tree Mitigation Plan would be part of the approval.

Mr. Moore stated that the applicant accepted the DAC comments. It will be a totally new showroom. They are also taking down what used to be a previous showroom.

Mrs. Townshend stated that she did not go over the architecture of the building; it's a metal panel building.

Mr. Moore stated that the building would be a metal panel and glass mix. They are also changing the façade on the building in the back which is the service area so it's very clear where the entrances are located. There will be service modifications on the inside of this building as well as some upgrades to the appearance of the building with new overhead doors.

Dr. Jones questioned if the Tree Mitigation Plan was already receptive to Dover Housing Authority? Responding to Dr. Jones, Mr. Perry stated that Dover Housing Authority has agreed to accept the tree mitigation. They do not have a planting plan but they have three properties that are ear marked. He believes that the three properties were in the letter that was sent to the Planning Department. They are very receptive to having the trees planted on their properties.

Mrs. Townshend stated that the trees would be planted at Simon Circle and Manchester Square. Dover Housing Authority has acknowledged agreement through a letter. It's not uncommon to work after the fact to determine where on the sites, but they know in this case there is sufficient land to accept the trees.

Dr. Jones questioned the timeframe for the tree mitigation? Responding to Dr. Jones, Mrs. Townshend stated that this would be done before the Certificate of Occupancy is issued.

Mr. Tolbert stated that his question was answered. He was concerned with how many trees would go in each development at this point and how it would be monitored. Responding to Mr. Tolbert, Mrs. Townshend stated that they would end up with a Landscape Plan for each location that would show the planting plan and then Planning Staff would go on-site and count the trees before signing off on the Certificate of Occupancy.

Colonel Welsh opened a public hearing and after seeing no one wishing to speak, closed the public hearing.

Mr. Ambruso moved to approve S-14-02 Winner Ford at 591 South DuPont Highway to permit the demolition of the existing showroom and the construction of the proposed buildings also to include the waiver request for tree mitigation, seconded by Dr. Jones and the motion was unanimously carried 7-0 with Mr. Holden recused and Mr. Holt absent.

3) MI-14-01 Comprehensive Plan Amendment 2014 – Public Hearing and Review for Recommendation to City Council on a series of Amendments to the *2008 Comprehensive Plan*, as amended. The Amendments include consideration of the following: a series of addendums to the text of the *Comprehensive Plan* and a request for amendment of Map 12-1: Land Development Plan to revise the Land Use Classification of a property as associated with rezoning application Z-14-01. Ordinance #2014-03.

   A. Consideration of Addendum to Comprehensive Plan text – The Addendum relates to a number of ongoing planning projects taking place during 2014. The Addenda includes the following items: addendum to Chapter 9 – Transportation Plan regarding a Transportation Improvement District for the Route 13 and Bay Road Corridors; and an addendum to Chapter 11 – Housing and Community Development Plan regarding the Central Dover Community Plan.

   B. Consideration of Amendment to Map 12-1: Land Development Plan Map – Request from a parcel located at the northeast corner of McKee Road and College Road to revise the Land Use Classification from Office to Commercial on Map 12-1: Land Development Plan Map. Property Address: 1205 McKee Road. This is associated with rezoning application Z-14-01.

Mrs. Townshend stated that the *Comprehensive Plan* amendments that are being reviewed are two amendments. One is an addendum to the *Comprehensive Plan* text specifically: addenda to the Transportation Plan Chapter and the Community Development Plan Chapter of the *2008 Comprehensive Plan.* As it relates to the Transporation Plan Chapter, Staff has provided an addendum that reflects the City's desire to enter into a Transportation Improvement District agreement with the Delaware Department of Transportation and complete the requisite study that is related to that Transporation Improvement District. One of the things that has been found under the new DelDOT regulations is that the re-development of Route 13 is very much stifled by the scope of any traffic study. In talking to DelDOT about how the City can work in this context, it was determined that the Transportation Improvement District was the way to go. She and the City Manager have been meeting with DelDOT to make progress toward the agreement with DelDOT. One of the things that the regulations state is that in order for them to participate in a Transportation Improvement District it has to be recognized in the *Comprehensive Plan*.

The other addendum is to the Housing and Community Development Plan Chapter. This is specifically related to the ongoing study *Restoring Central Dover.* This study is being led by NCALL with funding through the Wells Fargo Foundation. They are doing a very detailed analysis of the Downtown neighborhoods. They did a survey of residents door to door with over 200 surveys in the area. They also did an extensive land use survey where they have identified the use of each

property within the study area. They have done a building condition survey where they have identified areas where buildings are in more distress than others. There will be a very extensive public input and public relations component that will come later this spring.

Staff thought it was important to capture this into the *Comprehensive Plan*. The idea is that once the *Restoring Central Dover* study and the Transportation Improvement District are done and once Staff completes the Recreation Needs Assessment a more thorough update of the *Comprehensive Plan* will be done with all of this new information.

The other part being considered tonight is a map amendment. This property is located at the corner of College Road and McKee Road. It is also subject of a rezoning this evening. The site at 1205 McKee Road is currently shown as Office in the *Comprehensive Plan*. The applicant has had an Office Site Plan in the past. There has not been a lot of activity in the office area and they are looking to change the designation of that to Commercial and to rezone it to Commercial as well.

Staff did receive the PLUS comments from the State today. She was able to review them briefly and one comment stands out. On page 3 of the letter in the DelDOT comments, they state that there is supposed to be a map in the *Comprehensive Plan* that references the Transporation Improvement District. They are refining the district so they should have a better concept of the boundaries after tomorrow's meeting. They can put an exhibit into the *Comprehensive Plan* of that area with a notation that as they continue negotiating with DelDOT that the map may be tweaked before the final. Again, when the study is done and a full plan updated then that boundary would be included in any updates to the *Comprehensive Plan*. While it seems like a big comment on paper but based on how the City has been working with DelDOT she thinks it truly is a matter of taking the most current and creating a Map Exhibit based on that.

Colonel Welsh questioned how to proceed with this application? He further questioned if they were making a recommendation to City Council? Responding to Colonel Welsh, Mrs. Townshend stated yes. In the past two separate public hearings were held just for clarity of the record.

Colonel Welsh stated that they would begin with the Addendum to the *Comprehensive Plan* text.

Mr. Holden stated that the amendments make sense to him and that he is supportive of them. However, he is curious if Staff has a sense of where the defined graphic area for the TID would be? Responding to Mr. Holden, Mrs. Townshend stated that they are looking primarily at properties that front along Route 13 and Bay Road from Scarborough Road to Webbs Lane as well as to the terminus of where Route 1 and Route 10 meet.

Mr. Holden stated that the intent behind it and to remove the burden of a very burdensome TIS for development is a wonderful path to take and he is very supportive of it.

Colonel Welsh opened a public hearing and after seeing no one wishing to speak, closed the public hearing.

Mr. Ambruso moved to recommend approval to City Council for MI-14-01 Comprehensive Plan text amendments to include Chapter 9 – Transportation Plan regarding a Transportation Improvement District for the Route 13 and Bay Road Corridors and also an addendum to Chapter 11 – Housing

and Community Development Plan regarding the Central Dover Community Plan, seconded by Ms. Still and the motion was unanimously carried 8-0 with Mr. Holt absent.

Colonel Welsh stated that the second element would be an amendment to Map 12-1: Land Development Plan Map.

Mrs. Townshend stated that as she previously said, this is associated with Z-14-01 Lands of College Road Offices, LLC at 1205 McKee Road. In order for the rezoning to be consistent with the *Comprehensive Plan*, the *Comprehensive Plan* amendment would need to be favorable.

Mr. Cregar stated that he was confused because if the Commission is looking at approving a change in the *Comprehensive Plan* before they have dealt with the issue of the actual zoning, is the Commission saying that they are in favor of the rezoning? Responding to Mr. Cregar, Colonel Welsh stated that they would not be approving they would be recommending to City Council. They would then hear a request for rezoning that would also be a recommendation to City Council.

Mrs. Townshend stated that Mr. Cregar was somewhat correct. Typically, if the Commission was to recommend in favor of the *Comprehensive Plan* amendment, they would subsequently recommend in favor of the rezoning. In terms of the public here tonight, if anyone wants to speak with regard to the rezoning they should also come forward to speak about the *Comprehensive Plan* amendment.

Mr. Cregar stated that it sounds to him by recommending a change to the *Comprehensive Plan* they are saying the zoning then is a good thing. He questioned why this is being done when they have not had the public hearing on the actual rezoning? Responding to Mr. Cregar, Mrs. Townshend stated that there would be a hearing on the *Comprehensive Plan* amendment where she would expect to hear the same comments that would be heard on the rezoning. This is why they do these applications together. The challenge is almost one of sequencing. City Council cannot approve a rezoning unless it's consistent with the *Comprehensive Plan*. In order to say yes to the rezoning, the *Comprehensive Plan* needs to be changed first. When a rezoning comes forward the applications are always done on the same night so that the people who were noticed on the Rezoning application are also given the opportunity to speak on the amendment of the *Comprehensive Plan*.

Colonel Welsh stated that changes to the *Comprehensive Plan* also have to go through the PLUS process with the State Planning Office.

Mr. Holden questioned if it would be true to say that the *Comprehensive Plan* amendment might seek favorable review at City Council and be approved but the rezoning may not? Responding to Mr. Holden, Mrs. Townshend stated that in some cases that would be a problem. In this case that would be possible because right now the property is zoned CPO (Commercial Professional Office Zone). The CPO (Commercial Professional Office Zone) is one of the zones that is listed in both the Commercial category and the Office category. In this case, changing the *Comprehensive Plan Map* does not commit you to changing the zoning; approving the *Comprehensive Plan* does not bind them to the rezoning.

This is an issue every time a case like this comes up. Even when the *Comprehensive Plan* was done in 2008-2009 there was a real concern because they were bringing forward the Map before they brought forward the Rezoning and that Map commits them to certain Rezonings. It has always been

an awkward thing to deal with but they are kept together so that they can be dealt with at the same time.

Colonel Welsh opened a public hearing.

Mrs. Mary Ann Polling – 1175 McKee Road Dover DE 19904

Mrs. Polling is the Executive Director for Westminster Village. She questioned if DelDOT was involved in this process. Responding to Mrs. Polling, Mrs. Townshend stated that DelDOT had the opportunity to review the *Comprehensive Plan* amendment and the rezoning. Typically, DelDOT doesn't provide a lot of comments at that stage. At the point of a development proposal, there would be significant DelDOT involvement in that both of the roads involved are DelDOT roads. They would have to get entrance plan approvals and deal with any traffic related issues related to their development.

Mrs. Polling stated that she was not opposed to this; it's a piece of land that is of no use. They wanted to buy it but didn't. It is a very congested intersection; she has the City of Dover Police on her property everyday monitoring the traffic. They sit on her property because people are reckless and inappropriate in their driving.

Mr. Jacob Brickman – 1233 McKee Road Dover DE 19904

Mr. Brickman stated he and his wife disagree with the Rezoning because that would allow someone to put pretty much anything they want at that location up to a gas station. He has an adjoining property and he highly disagrees with the Rezoning. He has a petition from Mr. Merton Walton who lives at 1239 McKee Road Dover DE 19904 which is adjacent to his property. Mr. Walton also disagrees with the Rezoning of the property. They all disagree because of not knowing what could be developed at that location. He also disagrees with the *Comprehensive Plan Map* amendment.

Colonel Welsh stated that there is no application being heard tonight. If the rezoning recommendation goes forward and the *Comprehensive Plan* change goes forward that doesn't mean anything specifically is going to be built there. The applicant would still have to make an application with a specific item of construction which would also have a public hearing for people to voice their concerns at that time.

Mr. Brickman stated that he and his neighbor talked to the Planning Office to see if there was a specific plan for that property and the Planning Office told them no; the applicant would be able to put anything at that location if they get approval of the Rezoning.

Mrs. Townshend stated that when a zoning classification is applied it allows for any of the uses specified in that zoning classification. What Colonel Welsh is clarifying is that before anything could be built there it would be subject to a Site Plan application that would come before the Planning Commission. It would also be subject to a public hearing. Typically, when you have a use for a Site Plan that is permitted, they are looking more at things like buffering or things that mitigate any issues with neighboring properties. It's not whether or not that will be allowed to go; it would be how it's done. Anything listed in that zone would be permitted with a Rezoning but subject to Site Plan review.

He gave a copy of a Petition opposing the Rezoning at 1205 McKee Road Dover DE 19904.

Ms. Jouimi Patel – 1005 College Road Dover DE 19904

Ms. Patel stated that she owns two businesses next to this property. She is worried that if any gas station or liquor store is built, how she will survive. Right now she is struggling with her business; she is not getting enough business. It is hard for her to survive there. She took a loan from the bank; how will she be able to pay that loan? She doesn't know what will be going at that property. She is fine if it is an office building or any medical office since that would bring business to her. If it's a gas station or grocery store she will not be able to survive.

Mr. Jay Patel – unknown address

Mr. Patel stated that he is a resident near that road. There is too much traffic at this intersection. There are too many accidents. He opposes the *Comprehensive Plan* Map amendments. He gave a copy of a Petition opposing the Rezoning at 1205 McKee Road Dover DE 19904.

Mrs. Townshend stated that there is a section in the State Statute that specifies that if a certain proportion of property owners adjacent within a certain vicinity who are objecting, it requires a supermajority of City Council. Just looking at some of these addresses, a lot of them are not going to be within that allotted area but Staff will put these together and map the results to make sure so that when it goes to City Council they know if they will need a majority or a supermajority to be able to approve the Rezoning.

Colonel Welsh closed the public hearing.

Mr. Holden questioned if Mrs. Townshend had a sense for the change in potential traffic or trips due to the change in zoning classification? Responding to Mr. Holden, Mrs. Townshend stated that she thinks until there is a use there is a good amount of guesswork. She does know that when they did the *2008 Comprehensive Plan* they looked at a request for this area to be Commercial and because of concerns at that point it ended up as Office in the *Comprehensive Plan* and CPO (Commercial Professional Office Zone) from a zoning standpoint. Part of the challenge is that they have the uses of traffic which would need to be addressed during any development application but that's still not a perfect world. The flip side of that is that they have what appears to be a pretty saturated market in terms of office space. There have been a number of properties where the zoning and the plans have been office but the demand was not there. This is why when reviewing these applications they look at the goals of the *Comprehensive Plan*, the surrounding zoning classifications and the surrounding land uses.

Mr. Cregar stated that at the same time there is commercial across the street and a commercial center less than one mile down the street. They could also make the argument that there is adequate commercial in the area as well.

Mrs. Townshend stated that they are seeing more people say that they can't fill their office space versus they can't fill their commercial space. Again, it's a balancing act.

Dr. Jones questioned if the school was within the notice area? Responding to Dr. Jones, Mrs. Townshend stated yes.

Dr. Jones further questioned if there was any kind of response from the school district? Responding to Dr. Jones, Mrs. Townshend stated no. The problem with those large entities is that they never quite know who gets the Public Notice. They don't know if it goes to Accounts Payable or if it just ends up in someone's inbox. That is always a challenge when they have a State agency or a large entity within the notice area.

Dr. Jones questioned if it is a large entity do that have any obligation or responsibility to make sure that they do not have any concerns? Responding to Dr. Jones, Mrs. Townshend stated that the Capital School District is on their Development Advisory Committee list so the District in addition to getting that notice; they would have received the DAC agenda distribution.
Ms. Still questioned if they would be hearing anything from them at this point in time? Responding to Ms. Still, Colonel Welsh stated no.

Mrs. Townshend questioned if the Commission members wanted to hear from the applicant since the action on this bears on their other application? Responding to Mrs. Townshend, Colonel Welsh stated that the applicant could absolutely speak.

Mr. Holden moved to reopen the public hearing, seconded by Dr. Jones and the motion was unanimously carried 8-0 with Mr. Holt absent.

Colonel Welsh opened the public hearing.

Mr. Tony Ashburn – 872A Walker Road Dover DE 19904
Mr. Ashburn stated that Mrs. Townshend knows whats going on in Dover. They engineered this property six (6) years ago and it's been for sale ever since for office use and there have been no takers. He is trying to find a way to sell the property because no one is interested in office buildings. Since Eden Hill Medical Center was built that has caused a lot of vacant doctor's offices in Dover. Now there are plans for another building just as big as the existing building. It looks as though the supply of office space is far exceeding the demand. It is a hardship sitting with this property in its current zone.

Colonel Welsh closed the public hearing.

Mr. Ambruso stated that he is usually a pro-business person but at the same time he feels for the applicant. At the same time, there are six or seven other people that he understands where they are coming from. He would really hate to see them put their selves in a position where they end up with pig and poke because of a change in zoning. Even though some people may say that it's progress. But often times progress is nothing more than the exchange of one inconvenience for another inconvenience.

Colonel Welsh stated that he lives very close to the intersection being discussed tonight. Everyone agrees that this intersection is a mess. He kind of closes his eyes while going through it sometimes. He has seen people run the lights and make turns after the lights have changed and he doesn't see how the intersection, the way it is currently designed, could handle any more traffic. He has heard comments tonight about a gas station going up on this property and that would be the last thing that he would support at that intersection. He does not think that it would be a safe establishment. It seems to him that an office would be a much more stable environment in terms of ins and outs than

retail establishments would be, specifically a gas station. He thinks DelDOT has their work cut out for them whatever comes down the pipe; that intersection is going to require a total re-design.

Dr. Jones stated that if you have ever had to pick-up a child from North Dover Elementary School at 3:00pm or are going through that area during that time, the traffic is not moving. There is a traffic jam because the buses are waiting to turn into the school. That is why she asked the question regarding the Capital School District.

Colonel Welsh stated that the traffic is that way from 4:30pm to 5:30pm.

Dr. Jones stated that it is actually that way from about 2:30pm because parents come in and line up to pick up their little darlings. She used to be in that traffic picking up her niece. The traffic is like that for a very long time.

Colonel Welsh stated that College Road has become a major access point for the Dover Mall, Down Downs, for west Dover and also for people coming from Maryland. The traffic in both directions is very heavy. He has sat through two or three light cycles trying to get through the intersection.

Dr. Jones stated that she also lives in that section of the country as well.

Colonel Welsh stated that if the Commission does recommend approval of this amendment as well as the application to rezone the property to Commercial, he can assure everyone that any application that comes forward is going to get pretty good scrutiny from this body.

Mr. Cregar moved to recommend denial to City Council of MI-14-01 Comprehensive Plan Amendments 2014 for the amendment to Map 12-1: Land Development Plan Map for the property address 1205 McKee Road, seconded by Mr. Ambruso and the motion carried by roll call vote 7-1 with Mr. Holden, Mr. Cregar, Mr. Baldwin, Dr. Jones, Ms. Still, Mr. Ambruso and Colonel Welsh voting yes and with Mr. Tolbert voting against and Mr. Holt absent.

Mr. Ambruso questioned if six months down the road the applicant finds a buyer and the purchaser knows exactly what they want to use the property for could they apply for a variance at that time? Responding to Mr. Ambruso, Mrs. Townshend stated that they would apply for a Use Variance. A variance would go to the Board of Adjustment and Use Variances are very tough to approve. There are very few circumstances where a property would meet the legal standard to approve a Use Variance. It could potentially come back to the Planning Commission but it would have to be more than one year to apply for a Rezoning again.

Mr. Ambruso questioned if the applicant were to withdraw his application tonight then he would not have been refused the Rezoning. Responding to Mr. Ambruso, Mrs. Townshend stated that if the applicant withdraws his application then he would be able to reapply without a time restraint. They only open up the opportunity once a year to request an amendment to the *Comprehensive Plan* so it would be December 2014 before they would entertain an amendment to that unless City Council voted otherwise.

Mr. Ambruso stated that the applicant could sell the property to someone and find out that it's a conduit for retired nuns. Or the applicant would come back to the Planning Commission saying

these people want to purchase the property and turn it into a Wawa. Everyone in the immediate area would know what the use is for which would change the complexion. Responding to Mr. Ambruso, Mrs. Townshend stated yes it would to a degree but what Mr. Brickman stated earlier still remains. There have been times when a property has been rezoned based on what is expected to be there. That may or may not develop and then it sits with that zoning and is open to anything that is allowed in that classification. It's still a risk.

Mr. Cregar stated that under CPO (Commercial Professional Office Zone) there are a number of Conditional Uses that are retail related that could be applied for. Responding to Mr. Cregar, Mrs. Townshend stated yes, but she thinks the way that is stated is if the office complex reaches a certain size. She has been working on a review of the Commercial, Office and Industrial Zones. They are really close to having something to bring forward especially now that there is a new Planner on staff and she will be doing less Site Plan and Permit review. One of the things that they did look at and is in their current draft is changing the CPO (Commercial Professional Office Zone) to allow some of the retail uses as a Conditional Use. So this could be resolved in a matter of six months just by making a change in that zone.

4) Z-14-01 Lands of College Road Offices, LLC at 1205 McKee Road: Rezoning from CPO with COZ-1 to C-2A with COZ-1 – Public Hearing and Review for Recommendation to City Council on a rezoning application for a 3.46 acre ± parcel. The property is zoned CPO (Commercial Professional Office Zone) and subject to the COZ-1 (Corridor Overlay Zone). The proposed zoning is C-2A (Limited Central Commercial Zone) and subject to the COZ-1 (Corridor Overlay Zone). The property is located on the northeast corner of McKee Road and College Road. The owner of record is College Road Offices, LLC. Address: 1205 McKee Road. Tax Parcel: ED-05-067.00-02-51.00-000. Council District 4. Ordinance #2014-04. *This associated with request (MI-14-01) for Comprehensive Plan Amendment as a land use classification to Map 12-1.*

Representatives: Mr. Doug Barry, T&M Associates; Mr. Tony Ashburn, Ashburn Homes Inc

Mr. Barry stated that the applicant would like to withdraw his Rezoning application at this time.

5) Z-14-02 Lands of David & Susan Edgell at 405 North State Street: Rezoning from R-8 to RG-1 – Public Hearing and Review from Recommendation to City Council on a rezoning application for a parcel of 11,250 square feet ±. The property is zoned R-8 (One Family Residence Zone). The proposed zoning is RG-1 (General Residence Zone). The property is located on the northeast corner of North State Street and Washington Street. The owners of record are David and Susan Edgell. Address: 405 North State Street. Tax Parcel: ED05-068.14-01-72.00-000. Council District 3. Ordinance #2014-02.

Representatives: Mr. David Edgell, Owner; Mrs. Susan Edgell, Owner

Mrs. Townshend stated that this was a Rezoning request for a parcel of 11,250 square feet located at 405 North State Street which is the northwest corner of State Street and Washington Street. The applicant is requesting a Rezoning from its current zoning classification R-8 (One Family Residence Zone) to the zoning classification RG-1 (General Residence Zone). The request is in order to be more consistent with the Downtown atmosphere and more importantly to be able to build a free

standing garage. The lot coverage requirements are different in R-8 (One Family Residence Zone) than they are in RG-1 (General Residence Zone) and they would not be able to build the garage under R-8 (One Family Residence Zone). When looking at the surrounding properties the properties across State Street on the west side and also along State Street south of Washington Street are zoned RG-1 (General Residence Zone). This is the first property as you go north of State Street that is zoned R-8 (One Family Residence Zone). The uses are generally very similar; the main difference between RG-1 (General Residence Zone) and R-8 (One Family Residence Zone) are the bulk standards. This is consistent with the *Comprehensive Plan*; it shows this area as Medium Density Residential and both zoning classifications are consistent with that land use classification.
She disclosed that she is neighbors and friends with Mr. & Mrs. Edgell for a number of years and has been a colleague of Mr. Edgell as well. She did not review this application but the other Planning Staff members are not present tonight so she had to present the application.

Mr. Edgell stated that he thinks the Staff Report speaks for itself. The reason for the Rezoning application is to build a free-standing garage. The issue is their lot coverage is not quite enough to build a garage that would hold both cars and the contents of their shed which includes lawn mowers, tools, bicycles, etc. They would like to build a garage big enough to fit their needs in a zone that allows them to do it.

Mr. Cregar questioned why the applicant was going through a Rezoning and not a variance? Responding to Mr. Cregar, Mrs. Townshend stated that this is something that Planning Staff and the applicant discussed prior to making the application. When looking at the lot size which is 11,250 square feet ±. The minimum lot size for the R-8 (One Family Residence Zone) is 8,000 square feet. She thinks it's harder to make the case for "exceptional practical difficulty" even though it probably could be done since it's in the Historic District. She and the applicant talked about both avenues and ultimately it was Mr. Edgell's decision.

Mr. Edgell stated that the house was built in 1926 prior to the zoning even being adopted. The R-8 (One Family Residence Zone) is really a suburban zone with suburban bulk standards. RG-1 (General Residence Zone) fits their property and home much better to allow a garage. He struggled with what was the "exceptional practical difficulty" given his lot size and configuration other than his house was built prior to the Zoning regulations. He likes where the house is on the lot; it just doesn't fit with R-8 (One Family Residence Zone).

Mr. Cregar stated that it just seemed that the whole variance process had been created for these kinds of situations and it seems like they are using a hammer instead of a screw driver. The applicant has to go through two public hearing processes to do what he wants to do. He feels confident that when looking at what the Board of Adjustment has done in the past with some of the older City lots they would say yes to the applicant building a garage. That is his concern besides the fact that they are jumping the RG-1 (General Residence Zone) into this R-8 (One Family Residence Zone) which goes north up that side of the street now. He wants the applicant to build his garage but he doesn't get why they are Rezoning the property in order to do it. Responding to Mr. Cregar, Mrs. Townshend stated that a good argument could be made for either Rezoning or a variance and maybe it's because people like Mr. Edgell who is a Planner tries to stay within the lines instead of getting permission to go outside the lines. If it were not adjacent with RG-1 (General Residence Zone) properties, she thinks that she would have more concern with the Rezoning.

Mr. Cregar stated that if they are thinking within those lines then why wouldn't they look at what needs to be done in that area completely at their next *Comprehensive Plan*. Responding to Mr. Cregar, Mr. Edgell stated that it is supported by the *Comprehensive Plan*; it does recognize that neighborhood as a Medium Density Neighborhood. Their street and Washington Street is kind of at the edge of that Old Dover neighborhood which he would argue does follow further north to the cemetery. Fairview is more of a later development pattern and is definitely a different character. They talked with Staff at great length about the two options and what would be the most appropriate course of action. He and his wife agreed that this would be the most appropriate and cleanest way to do what they wanted to do without asking for an "exceptional practical difficulty", which he does not believe that they have. They do not have a garage now; it is difficult but it's exceptional. It is something that they would like to do and they think this is the right way to go about it.

Colonel Welsh questioned because of the location of the house and the historic property, do they have to give approval of the design standards they are using? Responding to Colonel Welsh, Mr. Edgell stated they are not located in the Historic District but he will say that they talked in great length about how to make the garage consistent with their historic home. The garage will be in the back of the house in the backyard off of where the driveway is located now currently. It will not be visible from State Street, only visible from Washington Street.

Colonel Welsh opened a public hearing and after seeing no one wishing to speak, closed the public hearing.

Mr. Tolbert moved to recommend approval to City Council of Z-14-02 Lands of David & Susan Edgell at 405 North State Street: Rezoning from R-8 to RG-1, seconded by Mr. Cregar and the motion was unanimously carried 8-0 with Mr. Holt absent.

Meeting adjourned at 8:24 PM

Sincerely,

Kristen Mullaney
Secretary