CITY OF DOVER PLANNING COMMISSION
September 16, 2013

The Regular Meeting of the City of Dover Planning Commission was held on Monday, September 16, 2013 at 7:00 PM with Chairman Colonel Welsh presiding. Members present were Mr. Holden, Mr. Cregar, Mr. Tolbert, Mr. Holt, Mr. Baldwin, Dr. Jones, Ms. Still and Colonel Welsh. Mr. Ambruso was absent.

Staff members present were Mrs. Townshend, Mrs. Melson-Williams, Mrs. Harvey Ms. Duca and Mrs. Mullaney. Also present were Mr. Greg Scott, Mr. John Paradee, Mr. Rhett Ruggerio and Ms. N. Taylor Collins. Also speaking from the public were Ms. Tricia Arndt, Mr. Eric Czerwinski, Mr. Joe Hutter, Ms. Judy Orr, Mr. Charles Salkin, Mr. Kelly Phillips and Mr. Thomas Smith.

APPROVAL OF AGENDA

Mrs. Townshend read an email from the City Manager regarding application C-13-10 West Denneys Road Elevated Water Tank for City of Dover.

> *Dear Mrs. Townshend,*
>
> *On behalf of the City of Dover Department of Public Works, I am requesting that the above referenced application be postponed until further notice from my office. We working to address a number of inquiries received with respect to this application. In addition, we are going to review all available options for siting of this facility prior to rescheduling of the required Public Hearing.*
>
> *Best Regards,*
> *Scott D. Koenig*

Colonel Welsh stated that if anyone was there as a resident of Maple Glen or someone else who may be interested in the water tower, it will not be heard tonight.

Colonel Welsh stated that application C-13-09 Bee Hive Beauty Shop at 27 West Loockerman Street would not be heard due to inadequate public notice.

Mrs. Townshend stated that C-13-10 West Denneys Road Elevated Water Tank for City of Dover would not be heard tonight.

Mr. Tolbert moved to approve the revised agenda as submitted, seconded by Mr. Holt and the motion was unanimously carried 8-0 with Mr. Ambruso absent.

APPROVAL OF THE PLANNING COMMISSION MEETING MINUTES OF AUGUST 19, 2013

Ms. Still moved to approve the Planning Commission minutes of August 19, 2013, seconded by Mr. Baldwin and the motion was unanimously carried 8-0 with Mr. Ambruso absent.

APPROVAL OF THE QUARTERLY WORKSHOP MEETING MINUTES OF AUGUST 20, 2013

Mr. Holt moved to approve the Quarterly Workshop minutes of August 20, 2013, seconded by Mr. Tolbert and the motion was unanimously carried 8-0 with Mr. Ambruso absent.

COMMUNICATIONS & REPORTS

Mrs. Townshend provided an update on the regular City Council and Utility Committee meetings held on August 26, 2013 and September 9, 2013.

Mrs. Townshend stated that the next Planning Commission meeting will be held on Monday, October 21, 2013 at 7:00 PM in the City Hall Council Chambers.

Mrs. Townshend stated that Ms. Cornwell has moved on to Kent County and they are in the process of recruiting and hope to have the position filled by November 2013.

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-11-21 Inner City Cultural League/Dover Cultural Center at 39 South West Street – Request for one year extension of the conditional approval granted on December 21, 2011 by the Planning Commission for a Site Plan to permit the construction of a 4,085 S.F. building and associated site improvements. The subject site is one parcel of land consisting of 0.5923 acres ± (25,800 S.F.). The property is situated on the east side of South West Street in the block between West Division Street and Forest Street just east of the railroad corridor. The property is zoned C-2A (Limited Central Commercial Zone). The owner of record is Downtown Dover Partnership. Property Address: 39 South West Street. Tax Parcel: ED-05-76.08-06-02.00-000. Council District 4. *The Final Site Plan approval was granted on December 4, 2012 but the project has not commenced construction.*

Mrs. Townshend stated that this application is not actually due to expire until the end of December 2013; however, the applicant submitted their request for the extension. They are diligently working on getting underway due to the environmental issues related to the Brownfield Site Cleanup and the conditions of that. There are a number of issues that are causing delay. They expect to be underway by spring 2014.

Mr. Tolbert moved to approve a one year extension for S-11-21 Inner City Cultural League/Dover Cultural Center at 39 South West Street, seconded by Mr. Holt and the motion was unanimously carried 8-0 with Mr. Ambruso absent.

2) Appointment of the Architectural Review Oversight Subcommittee of Planning Commission (in accordance with *Zoning Ordinance*, Article 10 §2.28)
   a) Report on Search for Subcommittee Members

Mrs. Townshend stated that Mr. Holden and Ms. Still were working on recruiting qualified people to serve on this committee. The names that have been submitted of the people who have been

contacted and are willing as well as interested in serving are Ms. Sarah Keifer, Director of Planning Services for Kent County and Dr. R.G. Chandler, Director of Architecture at Del-Tech Community College.

Ms. Still moved to approve the appointment of Ms. Sarah Keifer and Dr. R.G. Chandler as members of the Architectural Review Oversight Subcommittee, seconded by Dr. Jones and the motion was unanimously carried 8-0 with Mr. Ambruso absent.

NEW BUSINESS

1) S-13-17 Lands of Rabail Enterprizes, LLC at 484 North DuPont Highway: Waiver Request – Review and Consideration of a Waiver Request for the Elimination of Upright Curbing as associated with the Administrative Site Plan for the construction of 1,350SF ± of new impervious surface (parking lot). The property is zoned C-2A (Limited Central Commercial Zone). The site is located at the northwest corner of North DuPont Highway and Lakeview Drive. Property Owner: Rabail Enterprizes, LLC. Property Address: 484 North DuPont Highway. Tax Parcel: ED-05-068.13-01-39.00-000.

Representatives: Mr. Greg Scott, Scott Engineering

Mrs. Melson-Williams stated that this application is related to the property at 484 North DuPont Highway. Currently, it is moving through a review process in the Planning Office due to a proposed change of use of the building which was originally constructed as a single family house. The current owner is proposing a commercial use of the building. As such, it requires a new Certificate of Occupancy and a Site Development Plan must be processed. In this case, since they are not adding to the building the Site Plan can be processed through the Administrative Site Plan process. The applicant is proposing improvements to create a parking lot on the site which will add new impervious surface to the property. Currently as designed, the project does not include the upright curbing that is required around parking facilities per the *Zoning Ordinance,* hence their request to the Planning Commission to seek a waiver to eliminate that curbing. Planning Staff is recommending approval of that elimination of curbing finding that it appears to be necessary to assist in accommodating stormwater management on the site. As always, they recommend that anytime curbing is eliminated that curbing bumpers be utilized at the head of any parking space. With this project, Staff notes that the applicant will need to work with DelDOT regarding any improvements along North DuPont Highway which is a State maintained road and the City of Dover Public Works Office related to any entrances off of Lakeview Drive which is on its southern border.

Mr. Scott stated that a substantial portion of the site is already paved and has concrete around it. Some of it from an old foundation and garage that was located on the property but also from sidewalk and concrete entryways that are around the building. To put curbing around the perimeter of the parking now would raise the height of the top of the curb and obviously the grade that then remains behind it would block water. Three-fourths of the rear yard of this property which is grass drains to the front of the property and then the entire front and side yards along Lakeview Drive also drain to the front of the site. There are two (2) catch basins located at the entry way coming off of Route 13. One of catch basins is one that DelDOT got permission to install on the property to accommodate draining off of Route 13 years ago. To put curbing in now it would impede or block the drainage that currently goes to those catch basins. It would require that all the existing concrete and paving be ripped out and the

grass grade be raised up which would be difficult to drain it away from the house the way that the foundation is now, which is the reason why they are requesting a waiver. The applicant does not have any problems putting any concrete bumpers in for parking cars. They have already talked to DelDOT with regards to the Route 13 entrance. This entrance will be closed off and they deferred the decision for the closing the entrance off at Lakeview Drive to the City of Dover since it is a City of Dover street. The position of the existing entrance, whether it remains or has to be shifted will be worked out with the City of Dover staff.

Dr. Jones moved to approve S-13-17 Lands of Rabail Enterprizes, LLC at 484 N DuPont Highway Waiver Request of the elimination of upright curbing, seconded by Mr. Baldwin and the motion was unanimously carried 8-0 with Mr. Ambruso absent.

NEW DEVELOPMENT APPLICATIONS

1) Z-13-03 Lands of Rhett Ruggerio at 109 East Division Street: Rezoning from RG-1 with H to RGO with H – Public Hearing and Review for Recommendation to City Council on a rezoning application for an 11,340 S.F. ± parcel. The property is zoned RG-1 (General Residence Zone) and H (Historic District Zone). The proposed zoning is RGO (Residence General Office Zone) and H (Historic District Zone). The property is located on the north side of East Division Street between Pennsylvania Avenue and Maple Lane. The owner of record is Leg Hall, LLC c/o Rhett Ruggerio. Address: 109 East Division Street. Tax Parcel: ED-05-077.05-02-55.00-000. Council District 3. Ordinance #2013-14.

Representatives: Mr. John Paradee, Pricket Jones; Mr. Rhett Ruggerio

Mrs. Townshend stated that this application is for the rezoning of property located at 109 East Division Street from RG-1 (General Residence Zone), also H (Historic District Zone) to RGO (Residence General Office Zone) also subject to H (Historic District Zone). This is approximately 11,340 S.F. of land that is located on the north side of East Division Street just east of Pennsylvania Avenue. In looking at the surrounding zones on that side of Division Street, the properties adjacent to this property are zoned RG-1 (General Residence Zone). In looking at the larger surrounding area, the block between American Avenue and State Street just north of Division Street is zoned RGO (Residence General Office Zone). There is property across Division Street that is zoned RGO (Residence General Office Zone). Again, all subject to the H (Historic District Zone). There is also One Family Residence Zone in the area. The Comprehensive Plan shows this area as Residential Medium Density. In terms of the Comprehensive Plan, RGO (Residence General Office Zone) is one of the permitted zones in the Residential Medium Density classification. By definition in the *Zoning Ordinance*, RGO (Residence General Office Zone) is considered a residential zone. There are uses that are permitted in this specific RGO (Residence General Office Zone) that are not permitted in the current RG-1 (General Residence Zone). One permitted use is professional offices which is the purpose of the application. There are other types of permitted residential uses such as multiplex townhouses, rooming houses and garden apartments. There are also a number of conditional uses such as antique shops and a bed and breakfast. Citywide, the RGO (Residence General Office Zone) is a closed zone which means that properties are not eligible to be rezoned to RGO (Residence General Office Zone) but it specifically states that RGO (Residence General Office Zone) is a closed zone except in the Downtown Redevelopment Target Area. This property

is located in the Downtown Redevelopment Target Area which means that it is eligible for the rezoning classification.

The other agencies have included their comments. In order for a conversion from residential to office, it would require an administrative review to make sure it complies with all of the applicable building and fire codes.

Colonel Welsh questioned if Mr. Paradee agreed with all of the DAC comments and recommendations? Responding to Colonel Welsh, Mr. Paradee stated yes.

Colonel Welsh opened a public hearing.

Ms. Tricia Arndt – 11 Pennsylvania Ave Dover DE 19901

Ms. Arndt stated that she had submitted comments and a petition to the Planning Office earlier in the day. She hoped that the documents had been distributed to the Commission members. She briefly went over some of the statements made in the documents submitted. The residential area in the vicinity of the streets of Pennsylvania Avenue and American Avenue and Maple Lane and beyond is a solid block of single family homes all zoned RG-1 (General Residence Zone). The RGO (Residence General Office Zone) zoning proposal for 109 East Division Street would be the first rezoning in their neighborhood and it is neither consistent nor acceptable. The RGO (Residence General Office Zone) designation opens the potential for future uses such as businesses, professional or government offices, rooming houses, garden apartments, art galleries, gift shops and all the uses that were mentioned earlier. None of these uses exist now and she does not want them to in the future. Neither do her neighbors. She circulated a petition amongst her neighbors and has over twenty (20) signatures. They represent the immediate neighbors to the proposed rezoning proposal. On the map, you can see that everyone surrounding the area is opposed to the rezoning as well.

Her reasons for being opposed to the rezoning were future uses of the property. Should the property be rezoned and then sold, they will have no say on what types of business might come to the area. She is very concerned because this is a residence and a neighborhood and they would like to keep it that way. Any parking for additional future uses as well as for Mr. Ruggerio's business would be in the alley. That alley is adjacent to her backyard. She has concerns about additional parking and traffic in the alley. The alleys are used mostly by the residents and by the City as well. They are infrequently traversed by cars. More often the residents use the alley to walk their dogs and to meet with one another. Middle school children use the alleys to go to school since the school is located behind the neighborhood. On a personal note, her kids ride their bikes in the alley. She has small children and she does not want additional traffic; it is a safety concern. She bought her house because she fell in love with house, the location and the neighborhood. Having businesses coming into her neighborhood with affect her quality of life, her neighbor's quality of life and her home value is a very big concern. Not only for her but for all people who signed this petition.

In closing, the purpose of land use and zoning districts specifically is to segregate uses thought to be incompatible, prevent new uses from interfering with those existing and to provide stability in residential areas. Simply put, zoning regulates private land for the common good. While the new property owner at 109 East Division Street is personable, respectful and will likely be a good neighbor, rezoning this property leaves her and her neighbors vulnerable to unpredictable and undesirable future uses. She has no qualms with his intent to conduct his business in the manner he has stated to her,

such as limited hours and supported by only two (2) employees. But this rezoning approval has consequences far beyond one man's vision for his company. The residents have been here, some for generations and they are more permanent than businesses that come and go.

Mr. Eric Czerwinski – 34 Maple Lane Dover DE 19901

Mr. Czerwinski stated that he lives caddy corner from 109 East Division Street. He shares Tricia's concerns with having this property rezoned. As she mentioned, every house on this block is residential. They do not have one office space anywhere close to this current house. The alleys are very narrow. They are old alleyways, not to a standard width, that were established around 1915. 109 East Division Street is actually the original farmhouse to the entire area. It was built in 1857 and owned by the peach orchards. The empire style house next to it was actually built for the farmer's daughter around 1888. He is not just talking about the aesthetics of the property but with the rezoning, it requires six (6) parking spots and that is not possible. When the current occupier moved in, he tore out all of the English style gardens in the back yard. Their concern was that they were going to have a parking lot in the back yard of this house. The access to this property is extremely narrow; the access is unacceptable and inadequate for that kind of business.

Mr. Joe Hutter – 48 Delaware Avenue Dover DE 19901

Mr. Hutter stated that he was located down the street from the proposed rezoning. Mr. Ruggerio has done an excellent job of telling the community exactly what he wants to do and he is doing a great job of putting the home into the historic value of that area. They all have some historic value within the area. The two (2) homes next to him have been in the same family since they were originally built. One was a Sears and Roebucks home; a 1-2-3-4 home. So there is some historic value to that whole area. His problem is not so much what Mr. Ruggerio is doing now but it is the consequences. What happens when Mr. Ruggerio sells the home? He and his father flipped homes, that's a business and it's great. What if he is trying to do that now? Mr. Ruggerio's answer is "well I am putting so much money into it; it is not going to be worth as much as I have into it." He does not want another business coming into his neighborhood. There are children who play in this neighborhood. Again, Mr. Ruggerio is doing a wonderful job, he has already sunk thousands of dollars into this home that, not knowing if he is going to get approval for rezoning. That to him is wrong. People cannot just go and do what they want to do in hopes of getting approval. He is begging the Planning Commission to not approve this rezoning. If there is a compromise, could there be any type of provisional use that Mr. Ruggerio could have that would not move on to subsequent owners if the property was sold? He does not know the laws and has not researched it but it seems to him if an art gallery can do it, why can't he? He does not like when someone starts work before they are approved to do so. Mr. Ruggerio was very upfront with the community about what he was doing. He does not agree with the rezoning of the property.

Ms. Judy Orr – 101 Delaware Avenue Dover DE 19901

Ms. Orr stated that she wanted to share a different point of view of the neighborhood. Her mother resides about three (3) houses down from the proposed rezoning area and she lives about eight (8) houses away. The whole area is a family. They care about each other. It is Mayberry. It is their town, their community, their family. When her father passed away on April 22, 2013, she had a neighbor trim the hedges without asking. They had Mr. Joe Hutter mow the grass without asking as well as selling her father's boats. Families with mothers residing two (2) houses down; they are afraid. They welcome Mr. Ruggerio if he was coming to the neighborhood as residential and he would be lucky to have them as family. But as a business, they do not know and they cannot predict what is

going to happen in the future. She has a son who may get her house or her mother's house one day. There are generations upon generations; it is a very special group of family. It is a close knit family and they do not want to lose that. They care and support each other and they do not want this rezoning to be approved.

Mr. Charles Salkin – 15 Maple Lane Dover DE 19901

Mr. Salkin stated that he and his wife live just around the corner from 109 East Division Street. He has questions on some of the same topics that have been raised. He appreciates the good work done by the new owner and the sensitivity to most aspects of the historic character of the house if not the entire property. He does have concerns about how that is going to play out under the plan that has been presented by the applicant and more particularly about future use. Perhaps, the Commission could answer a few questions for the entire neighborhood tonight or table this application until the questions can be answered.

The first question is regarding the parking lot. He is led to believe that there is going to be only two (2) parking spaces on this site but that in the future the property could be expanded by the current owner or by a future owner to include six (6) or more parking spaces. He thinks everyone would like to understand that situation better. Two (2) parking spaces, deed restricted might be acceptable. Six (6) parking spaces in the future would be an unconscionable intrusion into their neighborhood as just described by the previous speaker. The ingress and egress through the alley from Division Street is not an acceptable access point for any commercial operation. It is narrow, it is unsafe, and the sight lines are poor. These are really one way streets that people occasionally, on very rare occasion drive both ways on. In all of the time that he has been in the neighborhood and he walks the alleys every morning and sometimes in the evening, he has never seen two (2) cars meet down these alleys. They would like to keep it that way. He is curious to know if this has been accessed by the City of Dover and/or by DelDOT.

Hours of operation concern him. The offices of the applicant seemed like they would be compatible with neighborhood use, typically Monday through Friday normal business hours. Is there anything to stop this from being used 24 hours a day with multiple shifts? He thinks that most of the people in the neighborhood do not really understand the answer to that question.

The City Staff assessment of the property makes mention of the fact that there are other properties in this neighborhood in this same zoning category as proposed here. He thinks that is rather disingenuous given that from a house on State Street to the corner property on the north side of Division Street, there is no commercial activity. It is entirely residential and institutional. He believes it should stay that way. He is already concerned about the loss of vegetation. He understands each landowner has a prerogative but there has been a loss of particularly trees and shrubs and he would hope that there would be some commitment or even restriction on this property to get the neighborhood some green cover again so that it does not have the appearance of a commercial property. He is also curious and concerned about their status as being located in the Downtown Redevelopment Target Area. Those of us who live in the Historic Districts of the town, particularly north of Division Street do not believe that they live in a redevelopment zone and do not want that to happen to their community.

Finally, he understands that one of the parking spaces needs to be ADA compliant. He would assume that if the parking space needs to be ADA compliant then the sidewalks and the building need to be ADA accessible with the appropriate ramps, signs and investments to infrastructure. He believes that

everyone should understand that better and understand what that will look like in the back yards of the immediate neighbors. He would like to know from the Planning Commission if the placement of deed restrictions to protect the neighbor's interests and to assure that the applicant's assertions continue into the future under the ownership of the subsequent owners is a possibility to become a requirement for the applicant.

Mr. Kelly Phillips – 103 East Division Street Dover DE 19901

Mr. Phillips stated that he lives directly next door to 109 East Division Street. He had originally signed a letter of support for Mr. Ruggerio in the original discussion as to what the plans were with the rezoning. He does not know much about zoning or rezoning and he does not have any problems with Mr. Ruggerio's business or running his business from the house. It would be as the other neighbors stated future use. Would they turn into South State Street with lawyers and bail bondsman? He sees that a lot of the other applicants have filed for a conditional use. He would be more in support of a conditional use clause versus a rezoning.

Mrs. Townshend read a letter from Mr. Chris Banning located at 9 Pennsylvania Ave Dover DE 19901.

> *I am writing this letter to represent my views in my absence at tonight's rezoning hearing. My name is Chris Banning and I am the owner of 9 Pennsylvania Avenue which adjoins the property in question for the rezoning. Originally, I had signed a letter in support of the rezoning however, after further research and thought I am retracting my support for the rezoning. When I purchased my home I did so after searching throughout Kent County. I chose my property for its location and quiet neighborhood. I am concerned about the impacts of a rezoning and its future impacts to our neighborhood as I currently know it. I know Mr. Ruggerio and I do support him and his business; however, I believe the best way to handle this is a conditional use variance to operate rather than changing our neighborhood by rezoning. In closing, I would support a conditional use variance however, I strongly object to a rezoning.*
>
> *Thank you,*
> *Chris Banning – 9 Pennsylvania Ave Dover DE 19901*

Colonel Welsh closed the public hearing.

Mrs. Townshend stated that Mr. Salkin had asked about the number of parking spaces. There are two (2) parking spaces that are located in the garage on the property and the applicant was proposing to use the gravel area next to that. Based on the square footage of the building as an office use, six (6) parking spaces would be required; however, under a separate action, separate hearing, separate from a rezoning, the Planning Commission could waive a portion of that parking requirement. At this point there is a required parking space count of six (6), two (2) of which are in the garage, two to three (2-3) could be accommodated on that current gravel pad and they would be able to request a reduction from the Planning Commission.

In terms of ingress and egress, she would defer to Sharon Duca. This is not something that DelDOT would review as the access is off of a City alley and there would be no access from Division Street. The DAC comments did not have anything specific about the access.

Ms. Duca stated that typically when a project is in the rezoning phase, the City would not look at those specific details because that has to be addressed during the Site Plan development phase. For this property to have access off of the alley it would have to be reviewed in terms of sight distance and those types of obstacles to make sure that access could be made safely into the public road.

Mrs. Townshend stated that in terms of hours or operation, under the RGO (Residence General Office Zone) an office is not a conditional use it is a permitted use so there would not be the ability for the Planning Commission to restrict hours.

Regarding the Downtown Redevelopment Target Area, it is a large block of the interior of the City that goes from Cecil Street, follows State Street down to Delaware Avenue and then goes east to the river, goes down to Hope Street, west over to the railroad tracks and back up to Cecil Street. The purpose of the Downtown Redevelopment Target Area is to allow property owners in that area incentives for redeveloping and investing in their properties. The idea of the Downtown Redevelopment Target Area is not commercial development. In some cases it is commercial development but on the whole it is redevelopment. For instance, when building a new house in that area the building permit fees could be waived, impact fees if applicable could be waived and taxes on the value of improvements could be waived. The Downtown Redevelopment Target Area is not something that is intended as a detriment or to say that this is a depressed area. It actually gives people an incentive to invest in the area.

In terms of handicap accessibility, they would be required to provide handicap accessibility to the property. They have discussed access to the rear which would be mostly screened from public view. In terms of how the parking ties in that is something that needs to be looked at.

On the issue of deed restricting a rezoning, the City would not be able to enforce any deed restrictions. Typically, contract conditional zoning is not a accepted practice because it does not give you the assurances you are looking for and then in the future when the City is unable to enforce those conditions it tends to leave people unhappy.

The other issue that came up in both written and verbal comment is the issue of conditional use versus rezoning. The property is zoned RG-1 (General Residence Zone) and offices are not a conditional use in the RG-1 (General Residence Zone). That is certainly something that the City could explore. With a conditional use, if the office were a conditional use in the RG-1 (General Residence Zone), the Planning Commission would be able to apply conditions such as number of employees, hours or operation and parking spaces; the types of things that the residents have expressed as concerns. The City *Zoning Ordinance* does not allow for that conditional use. The rezoning was the path that was perceived. A conditional use is something that could be looked at.

Mr. Paradee stated that he wanted to start by touching on two (2) very important legal concepts that emanate from the City of Dover Comprehensive Plan. The first is the property is located in the Downtown Redevelopment Target Area. Mrs. Townshend explained the incentives and it is important that the Planning Commission under that the City Council has identified this area as an area that should be encouraged for rehabilitation and redevelopment of this nature. So if the Commission is not going to consider favorably applications like this; a blue ribbon submission, then what kind of message does that send to people who might be looking at properties in the Downtown Redevelopment Target Area about whether they should make investments in rehabilitating their properties? The second point is that the Comprehensive Plan actually designates this property as Residential Medium Density so

something more than what has been there historically is what the Comprehensive Plan recommends. These two (2) points are important because under Title 22 Chapter 3 of Delaware Code which governs municipalities, your Comprehensive Plan is supposed to have force and effect of law. That is basically your City Council saying this is what we have declared to be our intent for the future of this property. That has significance; it is not just some whimsical expression. It is something that this City has studied and decided as the future zoning policy for this property.

He heard a lot of the testimony from the public saying that they do not really have a problem with what Mr. Ruggerio is proposing and they should not. It is in fact as the Staff Report suggests, compatible. There are a lot of professional offices up and down Division Street and in this area. In thinking about the type of use that Mr. Ruggerio is proposing; he is a legislative lobbyist. He has an office where he maintains a filing system and a telephone but the bulk of his work is done at Legislative Hall. So he comes into the office in the morning, gets his coffee and heads down to Legislative Hall and that's where his work is done. It is not a business where he sees a lot of customers or a lot of traffic. It is a very low intensity use; there is very little traffic is any at all. There is very little noise or inconvenience. He would submit to the Commission that it is a less intensive use than a General Residential Use which would be a 24 hour use. When Mr. Ruggerio is done at the end of the day, he closes up his shop and goes home; this property is dark. No one is there, it is quiet and there is no activity whatsoever. He pointed out that it really is a five star blue ribbon type of proposed use that would be compatible. He would submit that it is a plus for the community because the property would be rehabilitated; it's an investment and an improvement.

Before Mr. Ruggerio bought this property it was run down. The purpose of the Downtown Redevelopment Target Area is to encourage people like him to come in and rehabilitate properties. That is a good thing for the neighborhood and this is a great example of how and why it should work. From the neighbor's perspective, nothing is going to change other than good things. The property gets fixed up and the use is very low intensity. It is a net plus for the community and it is compatible. He thinks most of the concerns from the community were what could happen if Mr. Ruggerio did something different with the property; if he decided to sell it or lease it. He expressed that Mr. Ruggerio has purchased this property and invested a lot of money fixing it up because it's his intent to stay there permanently. Mr. Ruggerio has no intention of leasing it to anybody.

Obviously at some point in the future the property will be passed into someone else's hands and they cannot control that. However, they are open to talking about that issue. They would be willing to meet with the neighbors to talk about a possible compromise. He thinks Mrs. Townshend expressed that the City does not have the ability to place private deed restrictions on the property. But they are open to considering any and all avenues for compromise; whether that be some other form of application or some other type of relief to alleviate the concerns that have been expressed. The bottom line is this is the type of use that the City of Dover Comprehensive Plan and the City fathers have recommended be made at this location and this is the kind of user that they should be encouraging. So do not punish him because of fears about what could happen in the future. If the Commission members are not inclined to support the application tonight then they would request that the application be tabled which would give them the opportunity to talk to the neighbors about alternatives. Again, they think that this is the type of application that the City fathers contemplated you would be seeing in the Downtown Redevelopment Target Area.

Mr. Cregar questioned a recommendation from Staff stating if rezoned it may require a Site Plan. Is this a maybe or it will it require a Site Plan? Responding to Mr. Cregar, Mrs. Townshend stated that it will require some sort of Site Plan review but it may not be anything that comes to Planning Commission. It would most likely be an Administrative Site Plan review unless it requires a waiver that Staff cannot administratively deal with.

Mr. Cregar further questioned if the applicant requests a waiver from parking, would that come to the Planning Commission? Responding to Mr. Cregar, Mrs. Townshend stated yes, that would come to the Planning Commission.

Mr. Cregar questioned if the applicant requests a waiver from parking and it is granted, does that stay with the property or does it stay with the use that is intended at that point in time? Responding to Mr. Cregar, Mrs. Townshend stated that the parking waiver would stay with the use because the parking is calculated based on the use. For instance, if a restaurant went in at this location it would likely not cover that use because it would have an increased parking requirement. For any use where it is calculated based on square footage, it would translate to that use.

Mr. Cregar stated that in the existing zone a property owner could have an accessory home occupation that's less than 30% of one floor (in the building). So if the applicant lived there could he have the business at this location? Responding to Mr. Cregar, Mrs. Townshend stated yes.

Mr. Cregar questioned if the applicant was living at this location? Responding to Mr. Cregar, Mr. Paradee stated that the applicant was not living there.

Mr. Tolbert questioned if he understood correctly that there was no access off of Division Street? People would have to come in from the alley. Responding to Mr. Tolbert, Mrs. Townshend stated that there is no access off of Division Street. The site is bounded on the east and the north by an alley. Access is currently from the alley on the north but it would need to be worked out off of one of the alleys.

Mr. Tolbert further questioned if this presents a problem since the only access to that site is through the alley? Responding to Mr. Tolbert, Mrs. Townshend stated that it would be reviewed under a use scenario by Public Works.

Mr. Holt stated that he noticed that the neighbors are not as much concerned with this business but maybe a future business. He does not know if there is any way that this can be navigated so that this would not happen.

Colonel Welsh stated that once the zoning is changed, nothing can be done.

Mr. Holt stated that he can sympathize with the neighbors. If he lived in that area, he would feel the same way they do.

Mr. Cregar questioned if the Downtown Redevelopment Target Area talks about reusing buildings that are already zoned? Isn't that part of what the City wants to do? Responding to Mr. Cregar, Mrs. Townshend stated yes.

Mr. Paradee stated that Mr. Cregar's question reminded him that they have a plot of the property that shows the proposed parking plan. He wanted to submit that for the record along with a brief explanation. The proposal would be to have two (2) parking spots in the existing garage and then three (3) parking spaces next to the garage in an area that would remain gravel; it would not be paved and is consistent with what is there now. It would be Mr. Ruggerio's intention to ask this body for a waiver to allow the sixth parking spot to be out front of the property on Division Street. Typically, if Mr. Ruggerio had clients come to visit while he was in the office that's where they would park. It is highly unlikely given the nature of his business that people would fill up any of the parking spots out back.

Mr. Cregar stated that in his opinion, at that particular location where there are left hand turns onto Kings Highway along with other traffic, the traffic would be going around the right side of the traffic that's making turns. If someone parked there, they would be taking their life into their hands. It is a bad spot to park.

Mr. Paradee stated that his client asked him to offer a suggestion. He wants to be a good citizen and do the right thing. He has asked if the Commission would be willing to table the application. He would like to have the opportunity to meet with the neighbors, try to work through their concerns and come up with a solution that would be acceptable to everyone. He has also asked that if the members of the Commission have any specific concerns that they would like addressed in that process, they would be happy to do so.

Colonel Welsh stated that he finds twenty-three (23) signatures on a petition from such a small area to be significant. He thinks that it is something that the Commission should not take lightly. In his opinion, the Downtown Redevelopment Target Area is just an area of boundaries that has been identified as needing targeted redevelopment for commercial properties. The Comprehensive Plan is the same way. The zoning that exists at this property is the zoning that is approved by the present Comprehensive Plan which is residential. Although a lobbyist would be a very low intensive use, he just has a hard time particularly with the testimony that has been heard tonight allowing that to change the family residential area. He has admired that area since he has moved here in 1973. He thinks that it is a beautiful area and he can certainly understand the concerns of the residents that live there. There is a lot of vacant commercial property in the City of Dover right now and he thinks there are other places that might be suited to a professional use. The biggest concern that he has is that once they change the zoning of that property it will then be zoned for commercial use. Although he is sure that Mr. Ruggerio is a honorable and trustworthy person, there are no guarantees that he can offer for future use. There are no guarantees that can be giving to these current property owners.

Dr. Jones questioned if there was a possibility that the pending designation of the request could be conditional? Responding to Dr. Jones, Mrs. Townshend stated no, not without a change in the Code.

Colonel Welsh stated that if a motion to table is made, there are no questions concerning the motion. It is simply voted up or voted down.

Mr. Cregar questioned if a motion to table would be something that has happened in the past? Responding to Mr. Cregar, Mrs. Townshend stated that it has happened in the past. She cannot recall any rezoning applications but it has certainly been done on Site Development Plan applications. She knows there have been some rezoning applications that have been deferred because she remembers

having to defer itemsoff of the City Council agenda as well. She cannot recall any applications that were tabled.

Colonel Welsh stated that he does not know where there is room to compromise. Either it is zoned RG-1 (General Residence Zone) or RGO (Residence General and Office Zone); it will be one of the other. One of the concerns that he heard tonight from the neighbors is that they are concerned that once it becomes a commercial use that it opens the door. That is why there is limited ability to compromise regardless of what they come up with.

Mr. Holt moved to table application Z-13-03 Lands of Rhett Ruggerio at 109 East Division Street: Rezoning from RG-1 with H to RGO with H until the applicant brings it forward, seconded by Dr. Jones and the motion fails by roll call vote 3-5 with Mr. Tolbert, Mr. Holt and Dr Jones voting yes and with Mr. Holden, Mr. Cregar, Mr. Baldwin, Ms. Still and Colonel Welsh voting against and Mr. Ambruso absent.

Mr. Paradee stated that his client has asked if it would be okay from him to address the Commission.

Colonel Welsh stated that the hearing portion has been closed so a motion from the floor would need to be made to open the hearing portion in order for the client to comment.

Mr. Tolbert moved to open the hearing to allow the client to speak, seconded by Ms. Still and the motion was unanimously carried 8-0 with Mr. Ambruso absent.

Mr. Ruggerio stated that one of the reasons why he made the suggestion to go back to the neighborhood is because before today he did not realize there was this level of concern in the neighborhood. He has definitely heard the concerns about things like parking and future use. He reached out to as many neighbors as he could. He wants to be someone who is welcomed into the neighborhood and not someone who is not wanted there. His intention is to try to meet with the neighbors about going back to the drawing board. Not necessarily on this application but about what they had talked about prior to the meeting which was the possibility of a conditional use or deed restrictions or even rezoning where it protects them for future use at that facility; so that there is not this sort of thing that they do not want to see.

Mr. Cregar questioned if this rezoning is denied, that does not keep the applicant from coming back with a different rezoning? Responding to Mr. Cregar, Mrs. Townshend stated that if the rezoning is denied, the applicant would not be permitted to apply for a rezoning that is the same or substantially the same for one year. The action of this body does not approve the rezoning. This body makes a recommendation to City Council and they approve or deny the rezoning.

Dr. Jones stated that in view of the discussion and testimonies, she is not sure she is hearing an adversarial kind of situation. Is there an order to withdrawal the application and resubmit?

Mr. Ruggerio stated that he would suggest that the application be withdrawn so that he and the neighbors can go back to the drawing board to reach an agreement.

Colonel Welsh stated that he has heard an overwhelming plea from the surrounding community not to allow this to happen but he did not hear anyone come down and say that this guy is trying to shove this

down our throat. They all had good things to say about Mr. Ruggerio. He is not really sure where to go from here. Can the Commission allow the applicant to withdraw their application? Responding to Colonel Welsh, Mrs. Townshend stated that a motion would have to be made for the applicant to withdrawal.

Mr. Tolbert moved to allow the applicant to withdrawal application Z-13-03 Lands of Rhett Ruggerio at 109 East Division Street: Rezoning from RG-1 with H to RGO with H, seconded by Mr. Holt and the motion was unanimously carried 8-0 with Mr. Ambruso absent.

2) C-13-08 The Galleries on the Green at 325-331 South State Street – Public Hearing and Review of a Conditional Use for the establishment of an art gallery and studio within the existing building located at 325-331 South State Street known as the Parke Building. The property is zoned RGO (General Residence and Office Zone) and H (Historic District Zone). The property is located on the east side of South State Street between North Street and The Green. The owner of record is Henry R. Horsey. Addresses: 325-331 South State Street. Tax Parcel: ED-05-077.09-05-26.00-000. Council District 4.

Representatives: Ms. N. Taylor Collins, Parke Green Galleries

Mr. Cregar recused himself from this application. He lives in this building.

Mrs. Harvey stated that the Conditional Use Plan is to permit an art gallery and studio on the first floor of the existing office building located at 325-331 South State Street. The property is zoned RGO (General Residence and Office Zone) with H (Historic District Zone). The site is an existing two (2) story brick office building known as the Parke Building. The second floor of the building will remain as apartments. The existing building is located in the City of Dover's local Historic District and listed in the National Register of Historic Places as the Dover Green Historic District. Any exterior changes including signage are subject to the Architectural Review Certification process and compliance with the design standards and guidelines for the City of Dover Historic District Zone. The Parke Building consists of four (4) office spaces that are interconnected by the interior doorways where each flows into the next, addressed from 325-331 South State Street and located on the same parcel. There are no proposed changes to the exterior of the building. Planning Staff did receive a letter of support from Willow Rock Gardens, LLC.

Ms. Collins stated she is the spokesperson at this time. Another partner is Mrs. Susan Johnston and her husband is President of Wesley College. Ms. Jan Crumpley is the third partner.

Mr. Holt questioned the parking? He understands that the apartments are going to remain in the building. Responding to Mr. Holt, Ms. Collins stated that they were not making any changes at all to the apartments. The bottom offices have been vacant for quite a few years. There will actually be no changes to the building at all. They are just going to paint the interior of the building.

Mr. Holt questioned the hours of operation? Will they be open eight (8) hours a day, seven (7) days a week? Responding to Mr. Holt, Ms. Collins stated that they would probably be open 10AM-5PM, except on the weekend. First Friday is one of the events that they like to do and hopefully they will have poetry readings and things like that on Fridays as well. The tours are held on Friday evening with the First State Heritage Park but they would be doing compatible things. All of them are very history minded and they understand that they are in the building where the Constitution of the United States

was first ratified on the site of the Golden Fleece Tavern. They are all very aware of that fact and they do want to promote the history and be a bridge between the Green Historic area and Downtown Loockerman Street. They feel that they will be a catalyst to get people down to Loockerman Street to shop.

Colonel Welsh opened a public hearing.

Mr. Thomas Smith -126 Hampton Drive Dover DE 19904

Mr. Smith stated that for twenty-three (23) years he owned Delaware Made General Store. Seventeen (17) years on South State Street and six (6) years on Loockerman Street. For those twenty-three (23) years, he was very involved in Downtown revitalization, serving as the first President of Main Street Dover and as a member of various boards and committees dedicated to revitalization of Downtown Dover. He thinks that what has been discovered is that there is no magic formula or silver bullet that will save our Downtown but that revitalization is a puzzle with many pieces. The arts and arts related businesses are pieces of this puzzle that work in many successful Downtowns all over America. For many years, small office space was at a premium around The Green; however, that has changed as law offices have consolidated and many functions that necessitated being near the Kent County Courthouse have been replaced by electronics and the internet. They now see vacancies in office space near The Green, some for many years. A new use can be found for some of this space, a space for small retail businesses. The area is ideal for that type of use. Arts related retail will help to bring in a new demographic to our Downtown; one which will also utilize other businesses and restaurants as well. The designation of The Green as part of the National Park system will also bring in new visitors and their demographic will fit very nicely into arts and related businesses. He fully supports the request for the change of zoning because new arts related businesses will help to revitalize our Downtown and help to insure the area around The Green continues to be a living historic area that everyone can be proud of.

Colonel Welsh closed the public hearing.

Mrs. Melson-Williams stated that she wanted to make sure that the Commission members saw on their desks the two (2) letters that the Planning Office had received in regards to this application. Attached is a letter dated September 10, 2013 from the Friends of Old Dover. In reading from that letter, the Friends of Old Dover would like to extend their support for the proposed Conditional Use for the establishment of an art gallery and studio at this property. They note the interaction of these artists with the local art community and that letter is signed by the President of the Friends of Old Dover, Mr. Larry Josefowski. The second letter is also dated September 10, 2013 from the Kent County and Greater Dover Delaware Convention and Visitors Bureau, signed by the Director, Mrs. Cynthia Small. It is a letter of support on behalf of the Executive Board of Kent County Tourism for the Parke Green Galleries. They make reference to Downtown Dover as well. As Mrs. Harvey noted, there is a letter received this evening, dated September 1, 2013 noting support of the gallery and it is signed by Ms. Heather Hotaling-Giglio, the co-owner of Willow Rock Gardens, LLC.

Colonel Welsh stated that whoever wrote the letter that accompanied their application packet was very eloquent. It was a very compelling letter. He thinks that this proposed use would be a wonderful use for the City of Dover and an ideal location for it. He looks forward to coming down to purchase art at this location if the application is approved.

Ms. Collins stated that they are so fortunate to have the honorable Mr. Henry Horsey working with them. They have tried for over a year and a half with other business owners and he has just been more than kind and such a friend to the City. They cannot say enough about him.

Mr. Holden moved to approve C-13-08 Parke Green Galleries at 325-331 South State Street to utilize the first floor for an art gallery and studio as it is supported by the community and is in type and scale with the immediate neighborhood, seconded by Mr. Holt and the motion was unanimously carried 7-0 with Mr. Cregar recused and Mr. Ambruso absent.

Meeting adjourned at 8:33 PM

Sincerely,

Kristen Mullaney
Secretary