CITY OF DOVER PLANNING COMMISSION
June 17, 2013

The Regular Meeting of the City of Dover Planning Commission was held on Monday, June 17, 2013 at 7:00 PM with Chairman Colonel Welsh presiding. Members present were Mr. Shomo, Mr. Tolbert, Mr. Holt, Dr. Jones, Ms. Still, Mr. Ambruso and Colonel Welsh. Mr. Holden and Mr. Baldwin were absent.

Staff members present were Mrs. Melson-Williams, Ms. Cornwell and Mrs. Mullaney. Also present were Mr. Mike Riemann and Mr. John Canuso. Also speaking from the public were Mrs. Belinda Baker, Mr. Peter Thompson, Mrs. Kara Okonewski, Mrs. Della Hopkins, Mrs. Loretta Peer and Mr. David Okonewski.

APPROVAL OF AGENDA

Colonel Welsh stated that in making a motion to approve the agenda, Commission members should acknowledge that application S-13-11 Woodmill Apartments Storage Building and Revised Active Recreation Area that was removed from the May 20, 2013 meeting and has not be forwarded so it will be scheduled for a future meeting. Also, application SB-13-03 Lands of KW Lands at 1570 North DuPont Highway will be removed from tonight's agenda and will be scheduled for a future meeting.

Dr. Jones moved to approve the revised agenda as submitted, seconded by Mr. Holt and the motion was unanimously carried 7-0.

APPROVAL OF THE PLANNING COMMISSION MEETING MINUTES OF MAY 20, 2013

Mr. Shomo moved to approve the Planning Commission minutes of May 20, 2013, seconded by Ms. Still and the motion was unanimously carried 7-0.

COMMUNICATIONS & REPORTS

Mrs. Melson-Williams stated that the next Planning Commission meeting will be held on Monday, July 15, 2013 at 7:00PM in the City Hall Council Chambers.

Mrs. Melson-Williams stated that on June 26, 2013 there is an educational opportunity in the "2013 Planning Law Review" Webcast. It will be hosted at the Kent Administration Building. This is one of the series of webcasts that the American Planning Association Delaware Chapter and in this case, the Kent County Planning Office are co-sponsoring. The Webcast is free and if the Commission Members would like to receive more information on it, contact Planning Staff.

Mrs. Melson-Williams provided an update on the regular City Council and Utility Committee meetings held on May 28, 2013 and June 10, 2013.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATIONS

Mrs. Melson-Williams presented the audience information on policies and procedures for the meeting.

OLD BUSINESS

1) Requests for Extensions of Planning Commission Approval: None

NEW BUSINESS

NEW DEVELOPMENT APPLICATION

1) MI-13-10 Nottingham Meadows: Revised Active Recreation Area – Public Hearing and Review of revisions to the Active Recreation Area for the Nottingham Meadows Subdivision. The Revised Active Recreation Area is to eliminate the proposed pool and clubhouse and then provide cash in-lieu payment for the Active Recreation Area. The plan also includes a Parcel Consolidation & Lot Line Adjustment Plan to expunge 105 lots and reconfigure 11 lots. The property is zoned R-8 (One Family Residence Zone) and a portion is subject to SWPOZ (Source Water Protection Overlay Zone) Tier 3 – Excellent Recharge Area. The subdivision is located on the south side of Hazlettville Road and west of Wyoming Mill Road. The owner of record is Siobain-VI, LLC. Address: Nottingham Subdivision. Council District 2.

Representatives: Mr. Mike Riemann, Becker Morgan Group; Mr. John Canuso, Tradition Homes

Ms. Cornwell stated that this application is for a revision to the Active Recreation Area for the Nottingham Meadows Subdivision. Planning Staff notes that there is a Parcel Consolidation Plan and a Lot Line Adjustment Plan that are being reviewed administratively by Staff and they do not require any Commission approval. The comments for this application have been combined into one report but the only thing Planning Commission needs to review and approve tonight are the revisions to the Active Recreation Area. Based on their Administrative Plan for a Parcel Consolidation, they are proposing to have one hundred eight (108) residential lots which will require 29,700 SF of Active Recreation Area on the site. That is 275 SF per dwelling lot. Based on their application, they are proposing to do cash in-lieu instead of the Active Recreation Area. The original approved subdivision included a clubhouse and swimming pool to be located near Brittingham Drive and Wellington Avenue. What they are proposing to do is leave a little over 12,000 SF of a passive open space and instead of the clubhouse and swimming pool, do the cash in-lieu payment. Their argument is that they are in a close proximity to Schutte Park that provides recreation for the area.

Ms. Cornwell further stated that Staff has made multiple recommendations regarding the application. One recommendation is that if they do get this application approved that they provide the rest of the sidewalk along Hazlettville Road to provide the pedestrian access. Staff also notes that the Parks, Recreation and Community Enhancement Committee of the Council reviewed and made a recommendation of approval of the cash in-lieu option at their June 10, 2013 meeting. In the DAC packet, there was a copy of the Parks, Recreation and Community Enhancement Staff Report that also made a series of recommendations. One of which was if the cash in-lieu payment is approved, that it is based on an appraisal that the applicant will need to provide to the City so that the calculation can be done for the amount of cash in-lieu that will be accepted, as well as the sidewalk connection. There were a number of other agencies that did provide comments. For example, the Public Works Department, DelDOT, the Kent Conservation District and the Planning Office.

Mr. Riemann stated that Nottingham Meadows was recorded in 2006 as a two hundred eleven (211) lot single family development. The original project has about 59,000 SF or active open space which was required based on the two hundred eleven (211) lots at that time. In that active open space was a clubhouse and pool amenity. Since then, there has been one of the worst housing crashes in recent

history. The project currently sits today with about half of the project developed in terms of land area and about sixty eight (68) lots that have actually been developed in the front half of the development. Since that time, the property has been foreclosed on and the bank does own this development. Mr. Canuso is the contract purchaser looking to move the development forward and what they are presenting tonight is a plan to continue to move this project forward and get it finished. As Ms. Cornwell stated, their proposal is to now provide for a cash in-lieu for the active open space based on what is now the required active open space based on one hundred eight (108) lots. The total subdivision will go from two hundred eleven (211) to one hundred eight (108) lots because the rear portion of the project is going to be expunged. All of the lots will be consolidated and sold to a farmer and it will go back to agricultural land. There is already a farmer lined up to take that portion of the property forward. The project would still include the portion of Wellington Avenue. That road would be completed as part of this project which would help complete the front half of the development. Essentially, everything from half of the development towards Hazlettville Road would be finished and everything from the half of the development back, would go back to an agricultural preservation. The purpose for the modification to the active open space is simple. The development at one hundred eight (108) lots does not work with a clubhouse and pool in the development. The financial numbers do not work for that particular instance and makes this project a viable project to move forward. The active open space that will be required based on one hundred eight (108) lots is 29,700SF. The cash in-lieu calculation would be done in accordance with the City of Dover Code and there are very detailed criteria, which they would follow. They do agree to finish the sidewalk along Hazlettville Road. As everyone is aware, the new Wyoming Mill Road re-alignment is now finished. As part of that project there are actually pedestrian crosswalks and lights and there is some sidewalk there but it does not connect to the sidewalk at the entrance to Nottingham Meadows. This is something that the applicant would finish and they think that this is a reasonable request given the fact that their cash in-lieu payment would go to Parks and Recreation. Given the proximity of Schutte Park, they think that makes sense so they agree with that Staff recommendation.

Mr. Riemann further stated that the developer has met with a number of property owners in the development. They have also received a Petition which was signed by twenty eight (28) property owners within the development. So they have had a meeting with some of the property owners to explain the project to them and get their support. In addition to the property owners in the petition, they have also met with the property owner that is directly adjacent to the active recreation space, which he is present this evening and will more than likely speak. The design that Ms. Cornwell was referencing, which has a small amount of passive open space about 12,000 SF between this particular property owner's lot and the two (2) new lots that are in the new open space, were at the request of this property owner who wanted to see a passive buffer between his lot and the new adjacent lots within the active open space. As Ms. Cornwell mentioned, they did receive a positive recommendation from the Parks, Recreation and Community Enhancement Committee at the last hearing. So in summary, these changes are really a path forward for this project. It allows the project to be finished to a more complete subdivision, allows the project to be turned over to the Homeowners Association as opposed to sitting the way that it is today. There really is no Homeowners Association that is legally defined for the subdivision so that allows this process to happen. It allows the remaining lots in the development to be completed which is obviously important for the community.

Colonel Welsh questioned the area to the south that will be returned to farmland for agricultural use, will that land be leased to a farmer or a sale of property? Responding to Colonel Welsh, Mr. Riemann stated that it would be a sale of property.

Colonel Welsh questioned if Mr. Riemann and the developer were in agreement with the DAC comments and the stipulations set forth in the petition? Responding to Colonel Welsh, Mr. Riemann stated yes.

Mr. Tolbert questioned if the lots shown on the diagram of the subdivision with dots were properties that have houses built on them but have not been sold? Responding to Mr. Tolbert, Mr. Riemann stated no, those lots have houses on them and have all been sold.

Mr. Holt questioned if the Homeowners Association could be formed after this application was approved? Responding to Mr. Holt, Mr. Riemann stated yes, this process will allow that to happen and the HOA exists but has not been turned over to the residents.

Mr. Tolbert questioned if they have talked to the homeowners about the Homeowners Association and are they willing to the accept responsibility? Responding to Mr. Tolbert, Mr. Canuso stated that the underlying documents that form the Homeowners Association are recorded on each of the properties. One of the things they mentioned when meeting with some of the residents from the neighborhood was that they are trying to make it so that the cost to maintain the property and to run the association would be as minimal as possible. Putting a clubhouse and a swimming pool there would make it ridiculously expensive for these one hundred eight (108) homeowners to maintain. As of now, what they are proposing is a landscape maintenance fee to maintain the entrance way and the remaining small passive recreation area. He does not have figures but it would be a minimal expense on a monthly or yearly basis.

Dr. Jones stated that there were thirty (30) out of sixty eight (68) responses. She questioned what attempts have been made to contact all owners in the development? Responding to Dr. Jones, Mr. Cansuo stated that they reached out to a couple of the residents. Mrs. Townshend had given them names of a couple of the residents. They had a preliminary meeting at the site and kind of tasked them to reach out to the community. These residents did hold a meeting with the community to talk about the plan that was being proposed. He has received one email from a resident who was concerned and who was still in favor of the clubhouse and the swimming pool. The main focus of the meeting with the five residents that he met with was that they were adamant that they did not want this clubhouse or swimming pool. The cost associated with maintaining that under Homeowners Association would be thousands of dollars instead of a hundred dollars a year.

Dr. Jones further questioned if they did it discuss with the residents, the Homeowners Association? Responding to Dr. Jones, Mr. Cansuo stated that he discussed it with five residents.

Dr. Jones further questioned if the cost of a Homeowners Association was discussed? Responding to Dr. Jones, Mr. Cansuo stated no, generalized conversations about the cost of landscape maintenance were discussed but only with five residents.

Ms. Still asked for clarification on the numbers for the Active Recreation Area of 29,700 SF and the passive open space of 33,076 SF. Responding to Ms. Still, Mr. Riemann stated that the 29,700 SF is based on the City's requirement for one hundred eight (108) lots times 275 SF. That is the required active open space which they would be proposing a cash in-lieu to supplement that requirement.

Ms. Still questioned the additional 33,076 SF? Responding to Ms. Still, Mr. Riemann stated that it is just passive open space that exists but they do not get any credit for that, it does not go towards any requirement.

Mr. Ambruso questioned how many lots were already sold? Responding to Mr. Ambruso, Mr. Riemann stated that there were sixty eight (68) occupied lots.

Mr. Ambruso stated that when these people who bought the sixty-eight (68) lots, they bought because they were told that there would be this Active Recreation Area. So they had a reasonable expectation of being confronted with expenses of maintain a clubhouse and pool. Responding to Mr. Ambruso, Mr. Riemann stated that this was a fair assumption. The clubhouse and pool was part of the approved plan so that is part of the subdivision. It was part of the subdivision when the residents purchased their lots.

Mr. Ambruso questioned if Mr. Riemann thought the residents saw the clubhouse and pool as a plus when purchasing their lots? Responding to Mr. Ambruso, Mr. Riemann stated the Commission would hear from some residents who think it's a plus and maybe some residents who think it's not, which is why we are here tonight for this public process to allow that discussion to occur because they do want to make a change to that amenity that was part of the public plan.

Colonel Welsh opened a public hearing.

Mrs. Melson-Williams stated that there were two items received by email. One email is dated June 3, 2013 from the property owner at 228 Saxondale Lane, Venkat Subramaniyam. In the email, it states that the person is strongly opposed to the conversion and reduction of the open space that is currently proposed. They wanted their opposition to be recorded as part of this discussion. They note that with growing cities, open spaces are a rarity and request the help to preserve all open spaces. The second email is dated June 4, 2013 from a co-owner of the property at 228 Saxondale Lane, Akila Venkataraman. This person again believes that this open space is for the use and enjoyment of all the residents of the community and is somewhat disturbed about the change in plans that are proposed. They note that they are in opposition to any change to the open space requirements in the subdivision.

Those two emails are entered for the record and a copy of the Petition that was received this evening which includes signatures representing twenty eight (28) properties in the subdivision. The intro of this document reads

To: The City of Dover Planning Commission

The undersigned, residents of the Nottingham Meadows Subdivision in the City of Dover, hereby request, the Planning Commission approve the following:

1. *Revise Active Recreation Area to eliminate the proposed pool and clubhouse and then provide cash in-lieu payment for the Active Recreation Area; and*
2. *Reconfigure Lots 198-205, making the lots larger to eliminate the small open space area; and*
3. *Add Lots 212 and 213 in the area where the Active Recreation Area was; and*
4. *Expunge 105 lots on the west side of the subdivision.*

Mrs. Belinda Baker – 437 Beuvale Ln Dover, DE 19904

Mrs. Baker stated that she is here tonight to see what is going on, she missed the first meeting but she would like for this meeting and these attendees to understand that the first meeting with the five people was not an announced meeting to the community. Those five people do not speak for Belinda Baker at 437 Beuvale Lane Dover, DE 19904. So whatever was discussed at that meeting that was not open to the community, she is not in agreement with. A clubhouse and swimming pool was a selling feature for that property when we purchased our home and with no notification until now did they come to the understanding that the clubhouse and swimming pool are no longer an option. The petition was something that could be signed but it was never really discussed what it was that they were signing. She is only here to speak for herself and she would like this Committee to understand that when they say there was a meeting to discuss the proposed changes, it was not held with the community. She does not know how those five (5) selected people were picked, the meeting was at someone's home and those select few were the only people present at that meeting. Evidentially, whatever comments were made at that meeting were accepted as comments as speaking for the whole community but it was not.

Colonel Welsh questioned if Mrs. Baker was still in favor of the clubhouse and swimming pool? Responding to Colonel Welsh, Mrs. Baker stated that she was not sure because she has not really heard enough information. She is here tonight because she wants to know exactly what it is that the developer is proposing. The clubhouse and swimming pool were a selling feature for her and this maintenance for the little bit of grass that they have, she feels the community can come together and cut that. So as of this hour, yes, she is in favor of the clubhouse and swimming pool.

Mr. Peter Thompson – 22 Brittingham Drive Dover, DE 19904

Mr. Thompson stated that of the five (5) people at the meeting, he was one of them. It was not anything more than to hear what the builder was going to propose to the City in order to make the changes to the subdivision. It was nothing official; these five people have no say for the entire community. The reason the five (5) of us were present at the meeting is because they have been working with the homeowners group since day one. They developed the mailing list and a communication link. They called a meeting for May 22, 2013 and they placed a sign at the entrance of the community. The mailing list is composed of sixty two (62) addresses, everybody on that list received notification. About half of that mailing list or residents showed up at the meeting that was held at Wyoming Methodist Church. At the meeting, they talked about what the developer was proposing, they did not take pro or con. They put some things out about what might happen and the petition was talked about so that the people who were in favor of the changes could sign as supporting the change. Not everybody signed at the meeting; some people are against the proposed changes. Their property is right next to the proposed area. When they moved there, they could care less whether there was a clubhouse and swimming pool or not. That was not their motivation for moving here but it was definitely a plus. But it was a big plus back in the 1970's and 1980's when swimming pools were the big thing to do. Kent Swim Club cannot keep their doors open; Maple Dale and Wild Quail are offering swim memberships. So he thinks that the interest is waning. He thinks that they could do something to permit above ground pools on properties which would be a different issue. But the game has changed because of the change in ownership of the property. They have decreased to one hundred eight (108) lots, which will be tremendously hard on that amount of property owners to maintain a clubhouse and pool. He urges the Commission to approve this change. Nothing was done under handed. The five people at the meeting have no say for the community; they have taken the initiative to organize the mailing list just as a communication link.

Colonel Welsh questioned that as he understands, the meeting that occurred was not to enter into any agreement or to make any commitment? Responding to Colonel Welsh, Mr. Thompson stated absolutely not. The first time he saw the developer was at this meeting. He told them what his plans were and they mentioned things that could possibly be changed. The developer stated that is was willing to talk with the residents after the deal is consummated. So he thinks there is an agreement on both parts. He is not going to come in, wave a wand and say here is a magic trick for you. He has the interest of the residents of the community.

Mrs. Kara Okonewski – 424 Beuvale Ln Dover, DE 19904

Mrs. Okonewski stated that she wanted to commend Becker Morgan Group for sending out the notices through certified mail to all of the residents so that they were able to attend. They have had meetings in the past and the attendance has been less than desirable. Less than usually half of the community does come to the meetings. To talk to only 7% of the community does not give a fair perspective. That 7% of the community does not accurately represent the community. Those who do not care one way or the other do not relate to her or several of her neighbors. She has children; she has those summer time needs where "Mommy needs a pool because she needs a break time." They purchased their home knowing that they would be paying a premium price in the City of Dover to not only have one of the most beautiful neighborhoods but also to have those amenities available for us to use, at a purchase price, with a yearly fee, understanding that they were going to be paying around $300-$400 a year for the maintenance of the swimming pool. They have never once as a community been presented with a number as to what it would cost to mow the lawn or what it would cost to maintain the pool. Only once when she sees a number, can she say that she is for or against no longer having the clubhouse and swimming pool. Also the 4 or 5 residents who attended the first meeting are self-appointed. They have not spoken with anyone in the community; they have not come to the community and asked if they could fairly represent the community. It is so important that we not only represent the young, the old, the tall, the new, with children, without children. It needs to be all people in the neighborhood because it is not a one type neighborhood. It is very much a collection of people and very wonderful people but they are all very different in their needs and what their financial situations are and what their needs are for the community as well. She will not object to pulling out the clubhouse and swimming pool but there must be amendments made to the Homeowners Association. It currently does not allow a bird bath or a small kiddie pool for her child to play in, which is ridiculous in her opinion. If something is going to be taken from them, then something also needs to be given. When the meeting was held with thirty (30) out of the sixty eight (68) homeowners, that Petition was in no way stated to them that it would be used as an official petition presented at this meeting tonight. They were misled and she needs to make sure that this is noted tonight. They were asked "Do we need a pool?" and told to sign the Petition if their answer was no. The meeting that took place was a disgrace. It was shameful to be at the meeting and it got out of hand very quickly. If no changes are going to be made to the Homeowners Association, if she cannot have a bird bath or kiddy pool for her child to sit it then she is not in favor of doing away with the clubhouse and swimming pool. She also does not want a farm, she wants all two hundred eleven (211) lots filled She wants every house along with the pool and the clubhouse because that is why she purchased and spent several hundreds of thousands of dollars.

Mrs. Della Hopkins – 113 Derbyshire Ave Dover, DE 19904

Mrs. Hopkins stated the fact that when her and her husband purchased their home, they knew that this would be a great neighborhood due to the fact of riding through other neighborhoods. When they

purchased their property, it was indicated to them that there would be a Homeowners Association but after all of the homes were built and the development was completed. To this day, the development has not been completed. She understands that there was a home market crash but the neighborhood has gone this far without a Homeowner's Association and without any communication of saying when or how it would take place. The community did have several meetings where a lot of the homeowners attended and expressed what they felt. They did have a committee that took time to meet with the new developer but she feels that they did not speak on their behalf. Also in the last meeting referencing all of these changes in regards to the clubhouse and swimming pool, there were a lot of questions that were not answered and they were not satisfied with that. Yes, the meeting did get out of control due to the fact of not enough information. But it was said to the community, that the meeting was just to see whether or not the clubhouse and swimming pool were wanted by homeowners. Again, they never knew that the Petition was going to get to this state. They just signed it and now here they are. There were a lot of people who were not present at the meeting who would normally attend community meetings who asked neighbors to get the information for them. There were also people who did not attend because they live in other states and come to their homes in Delaware on weekends and then go back home. So therefore, they were not able to participate and give their opinions. She feels that even if it is one hundred eight (108) lots, let's wait until the whole development is completed and then organize the Homeowners Association. She lives on the back row where the road comes through and there was a great deal promised to them. She had to fight to get the row of trees along the back of her property until they were planted. She appreciates Mr. Steven Cohen taking the time to do this and giving his word to her to get this project done. But there are so many things that were said in the last meeting held that they felt a little misled. They also felt that if anything that was said or anything that should have been conveyed to the community should have been said by the owner who plans to take over the development. The developer should have presented himself to the community so that they know who they are dealing with. There were just so many questions that the five (5) people who attended the meeting with the developer could not answer. So the community left the meeting with nothing but questions. She feels that since there has not been a clubhouse or swimming pool for this long, why do they need it now? There are other people who have installed pools. They have above ground pools and in-ground pools as well. She also feels that if this change is going to be made, then do it right; complete everything, let the community come up with something that can suffice everyone's needs. She believes that with everyone coming together as one, they will all understand where each other are. She could not understand how those five (5) people present at the meeting with the developers knew what the community as a whole would want. Let everyone address their needs.

Mrs. Loretta Peer – 308 Gillibrook Ln Dover, DE 19904

Mrs. Peer stated that when they purchased their home, the clubhouse and the swimming pool were a selling point and the Homeowners Association was going to be based on two hundred eleven (211) homes, not on one hundred eight (108) homes. As of now, she has waited so long that she does not need the pool anymore. She needed the pool when she first purchased the home. Technically, as the original builder went bankrupt, they do not have a Homeowners Association in place. If the new owner would present them with some guides for a Homeowners Association, then maybe someone would be interested in going along with their plan. As for the five (5) men who have kept this group together, they are all volunteers. They would go around and speak with everyone in the community. They got the meeting rooms together where meetings could be held for the community to attend. At the very first meeting that was held, committees were setup and their committee was for being the liaison between the City of Dover and the community. She applauds the volunteers because they have stuck their necks out and they have tried to help the community.

Mrs. Della Hopkins – 113 Derbyshire Ave Dover, DE 19904

Mrs. Hopkins further stated that it was mentioned that there was common area that needed to be maintained. She believes that it is located at the entrance of Nottingham Meadows, which they have volunteers who take care of the plants, the mulch and grass. She believes that at one of the meetings held by the community, they had paid that person who takes care of that. But what other common ground would there be? Everyone takes care of their own property. Outside of the pond, she believes that at one time they had volunteers who cleaned that area up. Responding to Mrs. Hopkins, Mr. Riemann stated that the passive open space that would be maintained is the pond area. So the mowing of the pond and also the long term maintenance that goes along with that as well because over time those ponds require a certain level of maintenance other than just mowing. Also, the area that runs along Wyoming Mill Road and then all the way up Hazlettville Road is open space area.

Mrs. Hopkins further stated that this was a very small portion of land to maintain. She questioned if this would be the only other area outside of coming in to the development? Responding to Mrs. Hopkins, Mr. Riemann stated yes, that was correct. That would be the area that would be required to be maintained. If the clubhouse and the swimming pool were built, then there would be a lot more maintenance.

Mrs. Hopkins questioned the comment that Mr. Riemann made about extended care for it outside of just mowing? What would this maintenance cost? If Homeowners Association fees are going to be collected from the community to maintain the common area at the entrance of the development and then the pond, what other maintenance costs will be involved to take care of all of this? Responding to Mrs. Hopkins, Mr. Canuso stated that he thinks there is a little confusion regarding the Homeowners Association. The Homeowners Association was originally setup by the original builder, Stover Homes LLC. It was or should have been part of the homeowner's agreement of sale. They should have a copy of the Homeowners Association documents. The Homeowners Association has been recorded, therefore is a lien on the homeowner's properties. What they are proposing to do is to essentially activate it and put it in the hands of the homeowners so that the residents can amend it to allow pools or bird baths on their properties. He does not want to make these decisions for the residents of the neighborhood. The Homeowners Association is already established; it is already recorded against the residents' properties. The By-laws which stipulate everything within the development are already recorded.

Mr. David Okonewski – 424 Beuvale Ln Dover, DE 19904

Mr. Okonewski stated that they currently have what he would say, major still water in the pond. As part of the new plan, there was some whisperings that there may be some rehabilitation of that stormwater pond, to bring it up to the standard Delaware storm pond code. Is this part of this Comprehensive Plan or not? Responding to Mr. Okonewski, Mrs. Melson-Williams stated that what they are seeking tonight is in regards to the Active Recreation Plan. If there are issues with the stormwater management pond, the Kent Conservation District has an inspection program related to ponds. However, it is the responsibility of the designated group to perform whatever necessary maintenance that may be needed for the pond. In this case, it would be the developer entity until those common open space areas are turned over to different organization, such as a Homeowners Association. The Homeowners Association documents do indicate that the pond and its maintenance needs such as grass mowing, cleaning or repair of the pond would ultimately be the responsibility of the Homeowners Association in the future.

Colonel Welsh stated that the Commission is here to act on the cash in-lieu payment for Active Recreation Area. They are not here to hear about the creation or the activation of the Homeowners Association. That is something that the residents need to work out with the builder. He wants to keep the focus on the Active Recreation Area and whether or not to accept payment in-lieu of it.

Colonel Welsh closed the public hearing.

Mr. Ambruso questioned that if the Commission members recognize the cash in-lieu payment and the homeowners decide that they do not want the payment in-lieu, will they still have an avenue to pursue? Responding to Mr. Ambruso, Colonel Welsh stated that if the Commission members approve the cash in-lieu payment tonight then it will be a done deal. The payment will be in-lieu of the Active Recreation Area, be it a clubhouse and pool or be it an exercise area or park. Once the Commission members make their determination tonight, it will be done.

Mrs. Melson-Williams stated that what the Planning Commission is considering tonight is what the Active Recreation Area should consist of within this subdivision. Originally, the Active Recreation was approved as a pool and clubhouse. The applicant is here tonight asking that the Active Recreation Area be satisfied by a cash in-lieu payment; a payment in-lieu of constructing an Active Recreation Area in that subdivision.

Mr. Ambruso stated that he thinks the situation is a little sad because they are dealing with a moral issue to some extent when it comes to the homeowners. But on the other hand, here is a developer who has picked up on a project that was not really doing anyone any good. They feel that we do not want to run off people who want to invest in the community. Often times people do not realize that they the Planning Commission is charged with the responsibility of voting in the affirmative on matters that fall within the bounds of what is legal. It is really sad that the residents did not get their homeowners rules and regulations started before this issue came up.

Dr. Jones stated that it appears to her, even with the issues that they are to consider tonight, communication has been less than desirable. Maybe not enough information was given to the residents. She is uncomfortable with the fact that information and communication does not satisfy those individuals who have signed the Petition. She would like to see some more conversation. She suggests that maybe a facts sheet would be helpful so that the residents cannot or will not say they did not understand something.

Mr. Holt stated that swimming pools are very expensive to maintain, especially large pools. There are a lot of laws that come with pools, such as having to be fenced or having lifeguards. The Homeowners Association would incur tremendous expenses if the swimming pool was constructed. He can certainly see how they could save money by not having a pool. Pools are expensive to maintain and they are only used for one third of the year, depending on the weather.

Mr. Tolbert stated that there has been an obvious lack of information and the homeowners are being asked to make a decision but they do not have the information necessary to make the decisions regarding the clubhouse and pool as well as the costs to maintain these amenities. They need that information to make an intelligent decision and he has not heard it tonight.

Mr. Shomo stated that everything that has been said, he agrees with. The residents have to have the facts in order to make a decision. He knows that it is a difficult situation with the new developer taking over at the bankruptcy.

Mr. Canuso stated that he would like to apologize for the lack of communication. They got involved with M&T Bank a while ago; they have been negotiating with them for a long time to try purchasing the property. Like everyone has said, Nottingham Meadows is a beautiful community and it is a shame that it has gone the way it has. It has been a long process to get this property under contract; they have had a lot of meetings with Mrs. Townshend that go back about eighteen (18) months. He was the builder that came in to finish the four (4) houses that were partially constructed in this community so they have been involved since that time with trying to purchase the property. In negotiating with the bank, it had become evident that they was no market for a two hundred eleven (211) lot subdivision even though there were sixty eight (68) homes completed. It would have been financially unfeasible to try and develop a property that large. When they finally came to terms with M&T Bank, they gave him exactly forty-five (45) days to make a decision which ends on June 30, 2013. This is not something that is on the table; build the clubhouse or not build the clubhouse. This is a question of whether they move forward or not move forward.

Mr. Canuso further stated that the property right now still has a lot of approvals still needed. They will have to get Kent Conservation District approval and the City of Dover Public Works Department approval. This is obviously the biggest decision that has to be made on this project for them to move forward with it. But there are certain changes coming within the stormwater management regulations within the State of Delaware and they will probably take effect January 1, 2014. Once this happens, this project will become unbuildable under the current plan. He is throwing this information on the table, saying that if this application does not get approved and move forward tonight then he is not sure it will.

Mr. Canuso stated that there are ten (10) lots in the middle of the community that are not built and who knows what will happen to them at the end of the day. When they first got under contract, the first thing they did was contact Mrs. Townshend. She suggested that they speak with Mr. Jim Murray, who was one of the owners in this community who was actively involved in trying to get the community together, meet with the people and get the mailing list ready. They thought that is was a great idea. Normally, the developer would come before the Planning Commission first and the notices for the community would go out. They thought they would meet with Mr. Murray to go over their idea. They did not go to these five (5) people of the community for recommendations; they conveyed their plan to these five (5) people for feedback. He stated that within thirty (30) days to get a community together to communicate their plans for the development and then present to the Planning Commission would be impossible.

Mr. Canuso further stated that he remembers meeting with Mrs. Townshend and Mrs. Melson-Williams and discussing a timetable for them to get in front of the Commission; they had one week to make it happen. The reason that they are on such a time constraint is because they have such a limited window with M&T Bank in order to purchase the property. They also just purchased another property from M&T Bank outside of the City, the Stoneridge community. This community was mostly built; there were five (5) lots that were left empty and there was a partially completed house and also a partially completed clubhouse. They made connections with some of the homeowners from this subdivision, told them their plans and ended getting approval to tear down

that partially completed clubhouse. That was with a community that had ninety (90) lots with only five (5) lots left to build on. The residents were looking at an estimated $1,000 per unit to maintain a swimming pool on a yearly basis. He understands that it may be what the residents bought into but it is just not feasible to do that at this point.

Dr. Jones questioned if the process had been completed for the purchase of Stoneridge? Responding to Dr. Jones, Mr. Canuso stated yes.

Dr. Jones further questioned since he has an established relationship with the bank, would the bank allow a time extension? Responding to Dr. Jones, Mr. Canuso stated that they have been negotiating so long with M&T Bank that they want the feasibility period to end on June 30, 2013 and for them to close on the property by July 15, 2013, which they are ready, willing and able to do.

Colonel Welsh stated that he was not aware of the limited timeframe with the bank. He too was very concerned about the lack of communication. He thinks there needs to be some improvement. He also thinks the Homeowners Association, whether active or not, needs to appoint someone as the Chairman or President of that organization so that they can hold meetings that do not get out of control. The clubhouse and the swimming pool were the reasons some of the residents bought in this community when there were supposed to be two hundred eleven (211) lots. The cost to the residents on an annual basis would have been much less then it will be now with one hundred eight (108) lots. In lieu of the fact that the developer is willing to complete the project, all be it smaller than it was, he certainly commends them for that. He thinks as homeowners, the residents should be very thankful as the project is floundering and under bank ownership. Again, he is concerned about the communication. He thinks these residents deserve to know what something may cost. Although the clubhouse and swimming pool were off of the table, the residents were concerned about the cost would be to maintain the development. He feels that the developer could have come up with a ballpark figure for the residents. As far as common areas and passive recreation areas, it is common for the Homeowners Association to pay the fees to maintain the entrance and those common areas. He thinks those fees will be relatively small. As a Homeowners Association, if they choose to take it upon themselves to maintain these areas and it can be done successfully, he sees no reason not to do so. He thinks the alternatives are not there; he thinks they need to move forward.

Mr. Tolbert moved to approve MI-13-10 Nottingham Meadows: Revised Active Recreation Area for a cash in-lieu of payment along with the DAC Comments, seconded by Mr. Holt and the motion was unanimously carried 7-0 with Mr. Holden and Mr. Baldwin absent.

Meeting adjourned at 8:24 PM

Sincerely,

Kristen Mullaney
Secretary