CITY OF DOVER PLANNING COMMISSION
March 18, 2013

The Regular Meeting of the City of Dover Planning Commission was held on Monday, March 18, 2013 at 7:00 PM with Vice Chairman Tolbert presiding. Members present were Mr. Holden, Mr. Shomo, Mr. Holt, Mr. Baldwin, Dr. Jones and Ms. Still. Mr. Ambruso and Colonel Welsh were absent.

Staff members present were Mrs. Townshend, Mrs. Melson-Williams, Ms. Cornwell, Mrs. Duca, and Mrs. Mullaney. Also present were Mr. Gregory Moore, Mr. Garth Jones and Mr. Ian Cohen. Also speaking from the public were Mr. Jerome Emerson, Mrs. Denise Jones, Ms. Kelly Harris, Mr. Leonard Roberts, Mr. Vincent Carney, Mr. Skip Cohen, Mr. James Jones, Mr. Chris Lindbloom, Mr. Clarence Richardson and Mrs. Linda Lushbaugh.

APPROVAL OF AGENDA

Dr. Jones moved to approve the agenda as submitted, seconded by Mr. Holt and the motion was unanimously carried 7-0 with Mr. Ambruso and Colonel Welsh absent.

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

Ms. Still moved to approve the Planning Commission minutes of February 19, 2013, seconded by Mr. Holden and the motion was unanimously carried 7-0 with Mr. Ambruso and Colonel Welsh absent.

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

Mr. Baldwin moved to approve the Quarterly Workshop minutes of February 20, 2013, seconded by Dr. Jones and the motion was unanimously carried 7-0 with Mr. Ambruso and Colonel Welsh absent.

COMMUNICATIONS & REPORTS

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

Mrs. Townshend provided an update on the regular City Council and Utility Committee meetings held on March 11, 2013.

Mrs. Townshend noted that the workshop held on February 26, 2013 for Discussion of the Role and Scope of the Historic District Commission and Historic District was well attended. Several good ideas about procedures were received and a survey will be forthcoming.

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: None

NEW BUSINESS

NEW DEVELOPMENT APPLICATION

1) Applicant's Request:
   a) Applicant's Request to Consider Amending a Condition Previously Adopted (Approved) Regarding S-12-12 Delaware State University Applied Optics Research Building: Site Development Master Plan – Request to consider amending the Condition of Requiring Parcel Consolidation as associated with the conditional approval of the Site Development Master Plan for Delaware State University Applied Optics Research Building project. The three phase project on the Delaware State University Campus consists of the relocation of three existing modular buildings (4,280 SF, 1,696 SF and 1,696 SF) and the construction of two Applied Optics Research Buildings: Building 1 of 4 stories and 30,700 SF and Building 2 of 5 stories and 44,232 SF (total of 74,932 SF of new building) along with associated site improvements. The subject property is zoned IO (Institutional and Office Zone) and is subject to the SWPOZ (Source Water Protection Overlay Zone) Tier 3 – Excellent Recharge Area. The property is located on the west side of North DuPont Highway north of College Road. The owner is State of Delaware c/o Delaware State University. Address: 1200 North DuPont Highway. Tax Parcels: Portion of ED-05-057.00-01-21.00-000, ED-05-057.00-19.00-000 and ED-05-057.00-01-20.00-000. Council District 4. *This Site Development Master Plan application received conditional approval at the Planning Commission Meeting of June 18, 2012.*

Representatives: None

Mr. Holden recused himself from this application. His employer was the engineer of record on this project.

Dr. Jones also recused herself from this application as well, due to teaching at the University.

Mrs. Townshend stated that a request from Delaware State University was received requesting that the Planning Commission amend one of the conditions of approval granted by the Commission on June 18, 2012. The request is related to S-12-12 Site Development Master Plan for the Applied Optics Research Building.

In consultation with the City Clerk and the City Solicitor, it was determined that under *Robert's Rules of Order*, the condition that the University is requesting can be amended but it would take the Planning Commission making a motion to amend their previous motion before it could be discussed. The applicant is requesting that the condition that multiple parcels on the campus be consolidated as a part of the application approval, be amended by the Planning Commission. The request has been placed on the agenda by Staff so that the Planning Commission has the option of amending the motion that was approved on June 18, 2012. The Commission cannot initiate discussion on the request unless a motion is made and seconded to amend the motion of June 18, 2012 granting conditional approval of the Site Development Master Plan as that motion relates to the requirement of the parcels to be consolidated. If such a motion is made and seconded, the floor can be opened for questions of the Staff or the

Applicant and discussion. Only the condition that is on the published agenda in reference to the parcel consolidation can be part of the discussion or amended motion. If a member of the Planning Commission wishes to discuss the request, they can make the motion even if it's for reasons of discussion.

Ms. Still stated in accordance with notice given on the published agenda, I move to amend the motion of June 18, 2012 approving S-12-12 Delaware State University Applied Optics Research Building Site Development Master Plan, by removing the condition that the parcels be consolidated, seconded by Mr. Baldwin and the motion was unanimously carried 7-0 with Mr. Ambruso and Colonel Welsh absent.

Mr. Holt questioned if the parcel would be kept separate and not merged in with the rest of the University property? Responding to Mr. Holt, Mrs. Townshend stated that the condition that was part of the approval is that the multiple parcels that make up Delaware State University would be required to be consolidated. Also as part of that consolidation for the land hooked parcel that crosses College Road, a parcel line at the road would be added. North of College Road there are three (3) parcels and not all of them have frontage. Also the SWPOZ (Source Water Protection Overlay Zone) is used in terms of how things are calculated. For a number of reasons, Staff had recommended that the parcels be consolidated. She deferred to Mrs. Melson-Williams since she has done the plan review of this application and is better prepared to talk about the locations of the parcel lines.

Mrs. Melson-Williams stated that this was part of the Site Development Master Plan review that occurred before the Planning Commission in June 2012. There are three (3) parcels of land identified by tax parcel I.D. numbers that make up the Delaware State University Campus. It was a recommendation of Staff to consolidate those parcels into one tract of land. The Planning Commission had previously made that recommendation with a previous project in 2009 that the existing three (3) parcels be consolidated and that the one parcel that is divided by the current location of College Road be separated into two (2) parcels as that area of the Campus is zoned differently. The area south of College Road was subject to a previous plan for development of its own that has since expired. The recommendation to consolidate the parcels was made because several of the parcels lack frontage on a public street and it also would add convenience to how Staff has to calculate the provisions for the SWPOZ (Source Water Protection Overlay Zone) when it comes to the limitations related to the impervious surface coverage limits of that zone. The applicant did make a letter request and submitted a boundary survey document as well as an aerial photograph. The Planning Staff included the full Development Advisory Committee Report that the Commission members were issued and acted upon in June 2012. A copy of the Notice of Decision letter related to the action taken in June 2012 and also the excerpt of the Planning Commission meeting minutes from that date which includes extensive testimony about the parcel consolidation both from Staff and the applicant's representative that appeared at that meeting.

Mrs. Townshend stated that a "yes" vote is a vote to eliminate the requirement that the parcels be consolidated.

The motion to amend the approval removing the condition of parcel consolidation was unanimously carried 5-0 by roll call vote with Ms. Still, Mr. Baldwin, Mr. Holt, Mr. Shomo, and Mr. Tolbert voting yes. Mr. Holden and Dr. Jones were recused and Mr. Ambruso and Col. Welsh were absent.

AX-13-01 Lands of Sipple's Used Cars at 1174 South Governors Avenue – Public Hearing and Recommendation to City Council on the Rezoning Request associated with the Annexation of one parcel of land totaling 8,250 SF +/- located at 1174 South Governors Avenue. The property is currently zoned BG (General Business District) in Kent County. The proposed zoning for the property is C-2A (Limited Central Commercial Zone). The property is located west of South Governors Avenue south of Lynnhaven Drive. The annexation category according to Dover's *2008 Comprehensive Plan* is Category 1: High Priority Annexation Area and the land use designation is Commercial. The owner of record is Sipple's Used Cars, Inc. Address: 1174 South Governors Avenue. Tax Parcel: ED-00-086.05-01-12.00-000.

Representatives: **None**
Mrs. Townshend stated that the request is for an annexation and rezoning. The Planning Commission's role in this is to review and make a recommendation to City Council as it relates to the rezoning. The current zoning of the property is BG (General Business District) in Kent County. The proposed zoning is C-2A (Limited Central Commercial Zone) in the City of Dover. The property shows in the City of Dover's *Comprehensive Plan* as a Category 1 High Priority Annexation Area. It is one of the areas that is largely surrounded by the City. The potential land use for annexation indicates that it would receive a commercial designation if annexed into the City of Dover. The requested zoning is C-2A (Limited Central Commercial Zone) and looking at the surrounding zonings, all of the properties that are within the City of Dover and adjacent to the subject property are also zoned C-2A (Limited Central Commercial Zone). Looking at the properties there is a church and Creekstone Office Complex which are both zoned C-2A (Limited Central Commercial Zone). The properties that are in Kent County are BG (General Business District). The C-2A (Limited Central Commercial Zone) is consistent with the surrounding land uses and zoning classifications as well as with the *Comprehensive Plan*.

Mr. Tolbert questioned if this was a used car lot? Responding to Mr. Tolbert, Mrs. Townshend stated that it was not a used car lot. The property was owned by Sipple's Used Cars and this property is a residential parcel. It's zoned business but it is used residentially.

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

Mr. Holt moved to approve AX-13-01 Lands of Sipple's Used Cars at 1174 S Governors Avenue, recommending to City Council a rezoning from BG (General Business District) to C-2A (Limited Central Commercial Zone), seconded by Dr. Jones and the motion was unanimously carried 7-0 with Mr. Ambruso and Colonel Welsh absent.

C-13-02 Offices of E-Z Pass at 22-24 West Loockerman Street – Public Hearing and Review of a Conditional Use Plan to allow for the establishment of an office on the first floor of an existing building at 22-24 West Loockerman Street. The property is zoned C-2 (Central Commercial Zone) and is subject to the H (Historic District Overlay Zone). The property is located on the south side of West Loockerman Street west of South State Street. The owner of record is Downtown Dover Partnership. Address: 22-24 West Loockerman Street. Tax Parcel: ED-05-077.09-04-16.00-000. Council District 4.

Representatives: Mr. Gregg Moore, President of Downtown Dover Partnership; Mr. Lou Colon, Executive Director of Downtown Dover Partnership

Mr. Holden recused himself from this application as his employer is the engineer of record.

Ms. Cornwell stated that this is a Conditional Use application for the use as an office on the first floor of the property located at 22-24 West Loockerman Street. The property is zoned C-2 (Central Commercial) and is subject to the Historic District. The use as an office on the first floor on West Loockerman Street for properties located between State Street and New Street requires a Conditional Use. The Planning Commission previously reviewed and approved the Site Plan for improvements to the rear plaza area in December 2012. Building Permits have also been issued administratively for other work inside of the building. The office use is to establish E-Z Pass on the first floor of the building and a small portion of that area will be used as retail. They will also be using about 2,000 square feet of the basement. A number of the site items have been addressed as part of the Site Plan. The other agencies reviewing this application have provided their comments in the DAC Report.

Mr. Moore stated that they are pursing E-Z Pass as the tenant for this building. Their hope is that once DelDOT actually chooses the E-Z Pass vendor, they will be able to negotiate with them and put them into this building. He wanted to be clear that there are currently two (2) vendors vying for that E-Z Pass program and they are unable to negotiate until DelDOT has elected a vendor. The one specific detail that they are aware of is that sixty (60) people will be in the building.

Mr. Moore further stated that they are not exactly certain what the layout of the building will be. When they filed the application, they were hoping that they would have a retail component on the frontage. He believes that there will be retail but this will have to be worked out once the vendor is selected. If approval is given they would like to be granted approval to have office on the first floor and then provide Staff their layout once they know what it will be.

Mr. Tolbert questioned if the office located at the Toll Plaza will still remain open? Responding to Mr. Tolbert, Mr. Moore stated that he believed there would still be a small function of E-Z Pass at the Toll Plaza. This is actually a back of the house E-Z Pass where they have a call center, they do paperwork and they will have customers make payments.

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

Dr. Jones moved to approve C-13-02 Offices of E-Z Pass at 22-24 West Loockerman Street, along with the Staff recommendations, seconded by Mr. Shomo and the motion was unanimously carried 6-0 with Mr. Holden recused and with Mr. Ambruso and Colonel Welsh absent.

S-13-03 Lands of Boyles at 527-529 South State Street – Public Hearing and Review of a Site Development Plan application and Architectural Review Certification to permit the construction of a parking lot. The property is zoned RGO (General Residence and Office Zone) and is subject to the H (Historic District Overlay Zone) and SWPOZ (Source Water Protection Overlay Zone) Tier 3 – Excellent Recharge Area. The property is located on the northeast corner of South State and Elm Terrace. The owners of record are William and Lisa Boyles. Address: 527-529 South State Street. Tax Parcel: ED-05-077.09-05-47.00-000. Council District 2. *Waiver Requests: Reduction in Parking Requirement and Elimination of Curbing.*

Representatives: Mr. Garth Jones, Becker Morgan Group

Mr. Holden recused himself from this application as his employer is the engineer of record.

Mrs. Melson-Williams stated that this is a Site Plan application for the Lands of Boyles located at 527-529 South State Street. It is a proposal for a parking lot to be constructed at the rear of the building that is located on the site. Since the property is located within the City of Dover's Historic District, it has been reviewed by the Historic District Commission and a recommendation regarding the Architectural Review Certification for the project has been forwarded to the Planning Commission. Specifically, it is a separate report titled "Architectural Review Report Recommendation Report". The Historic District Commission considered the application at their meeting held on February 21, 2013 and they are recommending approval of the Architectural Review Certification. However, since this application has to come before the Planning Commission for Site Plan review the Planning Commission will take final action in regards to that Architectural Review Certification. This action will need to be part of the motion or as a separate motion. Reference can be made to the Architectural Review Recommendation Report and the comments and recommendations of the Historic District Commission, making any additions or changes that are deemed necessary for certification of the project.

Mrs. Melson-Williams further stated that the project involves construction of a parking lot to the east of the building that fronts on State Street. This is a corner property located at South State Street and Elm Terrace. The parking lot would take access off of an alley that runs to the rear of property. It is a parking lot consisting of seven (7) spaces and it would be paved. Other aspects of the site include a proposal for a fence that would extend along South State Street, Elm Terrace and to the entrance of the parking lot. The fence is proposed as a black decorative metal fence, four (4) feet in height with the exception of the corner visibility area at South State Street and Elm Terrace where the height of the fence is limited to three (3) feet by code. The other aspects related to this project include landscaping. There is a proposal for shrubs along the Elm Terrace frontage of the property. The site with its existing trees, meets the tree planting requirements of the *Zoning Ordinance*. Along the north side of the property there is an existing shrubline that has been trimmed recently that provides screening for the parking lot on that side.

Mrs. Melson-Williams stated that the applicant is requesting two (2) waivers in regards to this project. The first, being a waiver from the up-right curbing requirement. Parking lots typically require up-right curbing unless deemed to be removed due to stormwater management practices. The applicant is seeking to build the parking lot without the up-right curbing seeing that the current drainage flows across the property. In this case, the drainage would flow from the parking lot through a grass area on the site that will be lawn as part of this project. The second waiver is a request for a reduction in the required parking for the site. The property is zoned RGO (Residence General and Office Zone). Currently, the building consists of three (3) apartments. Those apartments would require a total of seven (7) parking spaces on site which this parking lot proposal would accommodate. However, the RGO (Residence General and Office Zone) of the property also allows for the use of the building as offices and since this application was being presented to the Planning Commission, Staff recommended that the applicant pursue a waiver reduction related to what would be a parking requirement for office use of the building, should that happen in the future. Based on the size of the building, the office use would require ten (10) parking spaces. However, the *Zoning Ordinance* allows for a parking waiver to be considered. The Planning Commission can actually grant a waiver for up to

50%. The applicant's request is for a 30% reduction, bringing the parking requirement down to the seven (7) spaces that they are proposing. The project is within the redevelopment target area for the Downtown. It is eligible for a 20% parking reduction because of its location. The applicant has provided some reasoning for their request noting mass transit in the area and the ability to walk in the area due to existing sidewalks along South State Street and along the Elm Terrace frontage of this property. The property also proposes a bike rack to be located on site which meets the bicycle parking requirements of the Code.

Mrs. Melson-Williams further stated that this project was reviewed by the Development Advisory Committee for the City of Dover and those agencies have provided their comments. The City's Public Works Office has asked for some calculations related to stormwater management to ensure that the run-off from this parking lot can be adequately handled by what exists in the area. DelDOT has no comments on this application as they are not taking access off of a State maintained road. The alley is a City of Dover alley. Kent Conservation District notes that they are not reaching the thresholds that require a full storm-water management plan for their review.

Mr. Jones stated that they did meet with the DAC Committee and they are in agreement with the comments. As Mrs. Melson-Williams mentioned as part of the request, we are asking for two (2) waivers. One waiver request is the elimination of the up-right curbing. Right now the drainage flows across the site and they would like to continue that pattern. It will flow across a lawn area which they believe will provide water quality treatment although it's not required. The second waiver request is to reduce the parking requirements for an office use from ten (10) spaces to seven (7) spaces, in case this is ever changed into an office use.

Mr. Tolbert opened a public hearing.

Mr. Jerome Emerson – Christ Episcopal Church 523 South State Street Dover DE 19901

Mr. Emerson stated that he was representing Christ Episcopal Church. They are neighbors to the property in discussion. He rises in support of the project. One reason is that they are exceptionally good neighbors. They have assisted with snow removal and bush removal. Getting the parking off of Elm Terrace and in behind the house will really improve the traffic flow which goes into the Church's main parking lot. So they look forward to this project taking place and they are very supportive of the Boyles property and their proposal.

Mr. Tolbert closed the public hearing after seeing no one else wishing to speak.

Mr. Baldwin questioned if a reduction in parking was granted, did the applicant see any conflicts between the people living in the apartments and the office workers? Responding to Mr. Baldwin, Mrs. Townshend stated that in the case of having office uses there would no longer be apartments in that building. The property is zoned so that it can be either apartments or offices so it's likely to be one or the other not both.

Mr. Baldwin moved to approve S-13-03 Lands of Boyles at 527-529 South State Street, along with the two waiver requests for up-right curbing and the reduction of parking spaces and also the Architectural Review Certification, seconded by Dr. Jones and the motion was unanimously carried 6-0 with Mr. Holden recused, and with Mr. Ambruso and Colonel Welsh absent.

MI-13-04 Clearview Meadows PND: Revised Active Recreation Plan and Minor Subdivision Plan – Review of Revised Active Recreation Plan #2 to eliminate the swimming pool facilities and add a community building within the Active Recreation Area of the subdivision. Public Hearing and Review of a Minor Subdivision Plan for lot revisions to relocate one lot and to create two additional lots for a total of 305 residential lots. The subdivision is located on the north side of South Little Creek Road, south of North Little Creek Road and east of Babb Drive. The subdivision is zoned R-8 (One Family Residence Zone) and RM-1 (Medium Density Residence Zone) and subject to the AEOZ (Airport Environs Overlay Zone). The owner of record is Shirliz, LLC. Tax Parcel of Active Recreation Area: ED-05-077.07-06-98.00-000. Tax Parcels Affected by Minor Subdivision: ED-05-077.07-06-96.00-000, ED-05-077.07-06-98.00-000 and ED-05-068.19-06-24.00-000. Council District 2. *Clearview Meadows went through the PND (Planned Neighborhood Design) process as C-04-01 and SB-04-04P with approvals granted by the Planning Commission in April and September 2004. Construction of the subdivision is underway with 63 of 303 dwelling units complete.*

Representatives: Mr. Ian Cohen, Shirliz, LLC

Mrs. Melson-Williams stated that this was an application associated with the subdivision known as Clearview Meadows. The subdivision is located off of South Little Creek Road just east of Safeway and also has a connection onto North Little Creek Road as well. There is also a connection onto Babb Drive near the Luther Village project. There are two items for consideration by the Planning Commission. The first is a Revised Active Recreation Plan which is being referred to as Revised Recreation Plan #2. Also a Minor Subdivision Plan that is associated with it. The Clearview Meadows subdivision was a project in the PND (Planned Neighborhood Design) Option that was initially reviewed in 2004. This subdivision moved through the review process with the Planning Commission and ultimately a Record Plan dividing the property into the lots that are present today was recorded in September 2005. Final Construction Plans were approved in January 2006. The project as approved consists of a total of 303 residential lots with a mix of single family dwellings, townhouses and duplex units. The project has been under construction and is now currently owned by a different developer than the one that took it through the process originally.

Mrs. Melson-Williams further stated that the applicant is requesting a revision to the Active Recreation Plan. Any of the Active Recreation Plans that come before the Planning Commission first go through review with the City of Dover's Parks, Recreation and Community Enhancement Committee to look at the technical side of the active recreation component and what they are providing. That occurred with this Revised Plan #2 with the Parks, Recreation and Community Enhancement Committee most recently. This Committee has issued a recommendation of support of the revisions to the Active Recreation Area. The proposal for the changes to the Active Recreation Area consists of the following: the elimination of what was a swimming pool that was proposed on the project and the associated bath house. A copy of this was actually submitted to the Planning Commissioners. It also involves the relocation of a gazebo seating element and the addition of a community building with an associated parking lot. With this plan, the swimming pool was originally on the eastern side of what is a large park like Active Recreation Area that is centrally located in the subdivision. With the change, the swimming pool is eliminated and more of a walking path is just located in that area. The community building is proposed on the western end of this park area at the terminus of what is John Hunn Brown Road, the entrance road from South Little Creek Road onto the site. The community building has interior space that consists of exercise room, a small meeting room and a large meeting

room along with associated restroom facilities, storage and a small kitchen area. The Active Recreation Plan continues to include the playground area and the large walking path network system that creates a loop through the park area as well as the inter-connections to the street network of the subdivision. With this proposal for changes to the Active Recreation Plan, it precipitated some revisions to the lot layout for the project site. With the location of the community building, it requires that one lot be relocated. It is a single family residential lot and it is proposed to be relocated to the eastern side of the park area and then an additional lot created in that space as well. A second additional lot is proposed in the northern end of the subdivision closer to North Little Creek Road in what was previously an open space area. Even with these changes to the open space areas the project continues to meet the land area requirements for open space for the PND (Planned Neighborhood Design) as well as the amount of Active Recreation Area necessary for the subdivision which is based on the number of units within the subdivision itself.

Mrs. Melson-Williams stated that the plan was reviewed by the Planning Office; they have noted some of the technical side of things related to construction and some updates to the plan which will be necessary with the lot revisions that are proposed. The project also moved through the City of Dover's Development Advisory Committee and there are advisory comments from the City of Dover's Public Works Office related to water and sewer service with what will be the new lots. DelDOT has no comments specifically to this plan; they just note that the subdivision is part of some Letters of Agreement related to off-site improvements. They will be working with the developer in regards to implementation of those items. The Kent Conservation District notes that this aspect of the project does not require the development of a detailed sediment and stormwater management plan. That was done as part of the overall subdivision and the large stormwater management facility already exists on the property. There were a variety of attachments in the provided packets, including a revised layout for the community building which changed the location of the driveway due to some existing utility infrastructure that was located where it was originally proposed. There are also detailed estimates regarding the improvements for the Active Recreation Area.

Mr. Cohen stated that Shirliz, LLC acquired the property about a year and a half ago, looked at the plans in detail and have reviewed all of the economics that are tied into the subdivision that was previously approved. They have determined that it is a much more practical amenity to create a community center as opposed to a swimming pool. Being in the development business for decades and their experience with swimming pools in developments of this size do not generally get installed or properly used until you have approximately 80% of the community in place and paying dues sufficient enough to support that. The subdivision currently has about sixty five (65) units either under construction or completed and therefore getting to that 80% level is probably a decade away. The reality is that they can create and develop a community center that can be used now as opposed to something that may happen in the future. They did hold a community meeting where many people were in support of the Active Recreation Plan but he was aware that there were some people present who may be to the contrary of this plan. Their concept is to move this project forward. It languished from many years and they are dedicated to getting this project moving. They believe that the community center is the appropriate amenity to put in place as part of the overall community and should enhance the ability to move the project forward.

Ms. Still questioned the time frame that they were anticipating for this construction? Responding to Ms. Still, Mr. Cohen stated that subject to getting a Building Permit, they would hope to be under way this year constructing the community center as well as some of the environs around the community

center.

Mr. Tolbert questioned if they intended to put a pool inside of the community center? Responding to Mr. Tolbert, Mr. Cohen stated no, the pool would be eliminated altogether.

Mr. Tolbert opened a public hearing.

Denise Jones – 124 Nob Hill Road Dover DE 19901

Mrs. Jones stated that she was a resident of the community and that she had also previously worked for the prior developer of the community in 2007. She and her husband were under the understanding that there was going to be a pool and they have been anticipating this for many years. They have been living at their residence for five (5) years and the pool has still not happened. There are many homeowners who have been or are currently deployed that they have discussed this proposal with. They all have been in agreement that we are anticipating or waiting for the pool. The homeowners had not heard anything regarding not having the pool until they received a certified letter two weeks ago. The revisions of where the developer is planning to construct the community center is right at the end of the main street. They live four (4) houses away from this location. According to the plan, the parking looks like it would be a nightmare for everyone living on Nob Hill Road. Single family homes are on one side where there is plenty of parking, her parking is in the rear and guests will park in the front. She has worked in many developments that have had this situation and it does not work. She said they all would like to have the pool as they were promised in their development. If the developer does not want to give them the pool then use the two additional lots that they would be creating and turn them into a dog park.

Kelly Harris – 108 Nob Hill Road Dover DE 19901

Ms. Harris stated that she had sent an email to the Planning Office prior to this meeting. She is a resident of the community. There are a total of seven (7) rental properties, one (1) vacant townhome and one (1) vacant single family home on just Nob Hill Road. This leaves roughly ten (10) occupied homes on this street. A few people that she spoke with were still in favor of the swimming pool and they want to see progress in the neighborhood due to the fact of being stagnant for so long. She does not feel that it is a good idea to put a community building within the neighborhood unless it will have a pool. She explained that it is not like she lives in an apartment and can move when her lease is up. She bought into something that she thought was going to be there and a buying point was the swimming pool. She had print outs from a Realtor's website, advertising not only a pool but also a club house for the three (3) new homes being sold. She also had case law from Case 08C08010JTV Reserve Management Lot vs. Thirty (30) lots. It states in Paragraph 15: "The original declaration reserves development reserved a generic right to modify restrictions; however, the exercise of such a right is not unlimited where a developer seeks to enforce an amendment to restrictions against non-consenting owners who bought their lots before the amendment was affective. The amendment must be reasonable in light of the original intent of the developer and the lot owners. If it is not reasonable it is invalid. Reasonableness may be ascertained from the declaration of restrictions and all of the intended facts and circumstances relevant to the nature of the development." She said that she had not seen any numbers showing how much a pool is going to cost, how much the recreation center is going to cost or how much her Homeowners Association fees are going to increase. She attended the meeting held on February 13, 2013 where no one was able to get an opinion in. The developers basically said this is what we are planning to do. There were fifteen (15) homes that attended out of around sixty (60) homes. She

does not know how that is a positive outlook from a number of people if not even half of the community attended the meeting. She also had an email from someone who was not able to attend the meeting, stating that she was also in favor of the swimming pool.

Leonard Roberts – 100 Lady Bug Drive Dover DE 19901

Mr. Roberts stated that he is a resident of the community. He felt the pool was just one issue; there are a lot of issues in this development. They lost the original contractor PCS Homes; now they have Smart Homes LLC. At their closings on their homes, they were not told that they had a lot of restrictions on their properties. He has a restriction line in the center of his backyard. He is not able to place a shed or a fence there. It is intolerable that he is mowing the lawn for the City. When he finally received the paperwork for this Revised Plan, it stated Lot 284 no fence or shed. In the original copies of the prints, a stockade fence is supposed to be up along Lady Bug Drive to around Nob Hill Road, which was an agreement with the neighboring church. When he went to the City of Dover he questioned if the builder can put up a stockade fence at this location, why can he not put up a fence on his property? The City's reasoning is because the land is designated as farmland. A permit for a shed was disapproved by the City of Dover due to him having a restriction. He can only build ten (10) feet from the back of his house. He feels that this is similar to living in New York City. He is caring for the lawn, but he cannot put up a fence to keep robbers from coming across his property. People are disrespecting his wife in his own back yard and he feels that this is unreasonable. The plan as a whole needs to be looked at because to him, 95% of this community has restrictions on every property. He lives in a duplex on the corner right behind Safeway and Target. He has all of that property and cannot do anything with it. He has dead trees that should have been taken down because you can pull the bark off with your fingers. This is a disaster waiting to happen at his house. He cannot find out if he owns the trees or if the City owns them. The City told him that the trees are on common ground. He feels that there are a lot of things going on in this development that need to be looked at by City Council. He also has a room inside the house that gets cold air because the cold air return is under the third bedroom. A lot of things need to be inspected because he feels like he threw his money out the window by purchasing this home.

Responding to Mr. Roberts, Mrs. Townshend stated that there is forty (40) foot no building line. In the PND (Planned Neighborhood Design), there is a required forty (40) foot buffer along the perimeter of the project boundary and that forty (40) foot buffer is on a number of private lots. This is a problem that they have here and a couple of other places have the forty (40) foot buffer in place as well.

Vincent Carney – 120 Lady Bug Drive Dover DE 19901

Mr. Carney stated that the forty (40) foot no building line was not explained to them when they purchased the homes in this development. He was misled on a lot things when he purchased his home. As far as in the back of his house, there are a lot of trees and the markers start further back where he cannot build or place anything there. He said his grass is supposed to go further out but the developer decided that they were not going to put it that far out because of the church. With the first developers, there supposedly was a deal that the church would cut the trees down if the developer built them a parking lot. The parking lot was built for them but then they decided to leave the trees up. As for the swimming pool, his wife is in favor of the pool. He thinks that instead of taking away the pool now, they should hold off on it until they have more houses built and more income going towards the Homeowners Association fees and then it can be considered again. If they construct the pool now, it will be hard on the people living there now because there

are not enough people to pay towards maintaining the pool. He also feels that he should be able to place a shed on his property since he was told while purchasing his home that he would be able to have one.

Skip Cohen – 132 Nob Hill Road Dover DE 19901

Mr. Cohen stated that he was also a resident of the community. The Homeowners Association that they keep paying into month after month is now $13,000-$14,000 in arrears. He has no idea where the money is going to because they are not seeing any results. As members of the Homeowners Association, he does not see any progress. He has lived here since December of 2010. He and his wife own one of the corner townhomes and they hear a lot of talk and promise from the developers. He had with him, an ad from a Realtor about tot lots, walking trails, swimming pools; all of the things that at issue here. Things that they were told initially that they would have but they do not have. What they see out of their front door is heavy equipment that has been sitting there. It has been used but not to develop anything of any value to a homeowner. They are clearing areas but there are a lot of empty lots. All that they have seen in the last two (2) plus years is heavy equipment and portable potty. Another thing that concerns him is that while there has been a delay, promises and no action the development remains empty. This is inviting all kinds of crime. People are cutting the tops off of the sewer grates. There was a quarter ton air conditioner that was stolen and they attempted to steal a second one. One evening they looked out of their window and a vehicle was set on fire.

James Jones – 124 Nob Hill Road Dover DE 19901

Mr. Jones stated that he moved into the development in 2007. At that time, a lot of amenities that have been mentioned this evening were promised. They have dealt with a lot of neglect in the community. When it snows they have buses that come through from the City. It's like they are not thought of as a community. They have trailer homes to their left, a community business to their right. It is a pathway for people to cut through with motorcycles or off-road vehicles. The other night they witnessed a drug bust in the open area of the neighborhood. He feels giving them a recreation area and picnic grounds would hoard a lot of outside people that come to use the facilities. He knows that this recreation area would not be managed by the Police or any security agency. He believes that a pool would at least allow some kind of management for people coming and going. If they are left with an open area they will be dealing with the youth who have nothing else to do but come there and hang out. He thinks that a managed pool would be something that would allow some kind of regimentation of people that coming and leaving that property. A pool would also be nice.

Chris Lindbloom – 35 Mer Way Dover DE 19901

Mr. Lindbloom stated that he feels opposite of what has been said so far. He is in agreement with making this change. The main portion is that they have not progressed; there are issues with crime from developments around them. As of right now, no one can say anything about promises that have been maintained except from their current developer. The current developer said that the homeowners would not have to pay from snow removal anymore and they have upheld their end of the deal. This is what caused them to be in debt dramatically as an HOA. From the standpoint of where the community center will be located compared to where the pool would be located is another issue. The pool would be located at the narrowest wedge of the community in between where the trailer park homes are and the walkway which is now a connection to North Little Creek Road. By moving the community center to the opposite side of the development which would be

near the retirement home side, they would cut out the direct line of traffic that they have crossing through the back end of the neighborhood. There would be a lighted building with very nice landscaping and a lot more traffic to it from the community would help eliminate that pass through from the other communities that they do not want walking through. As a total plan, the other concern that they would run into with having a pool is the personal insurance that has to be paid for as an HOA on that pool. If there were injuries caused from people that get into that pool that they do not want in the pool at 2 AM due to not having a building there, not being very well lit, that creates a long term liability to the homeowners of the community. He is in agreement that the location should be moved. It will also help progress the buildings forward because there will an actual amenity already there.

Clarence Richardson – 104 Nob Hill Road Dover DE 19901

Mr. Richardson stated that he feels if you have a building with light, who will take care of this building? The building will have to be secured somehow. The community which is already hurting because a lot of the promises made have never happened. He is sure that the new developer has good intentions on the things he is saying but the fact remains that there are not a lot of people in the community that can support what the developer plans to do. It seems to him that if more people came to the meeting then maybe they could have this discussion and it could be timelier than what they have now. Their main concerns are things that the previous builder did not handle. Another main concern will be the security issues because they have had fires and Police chasing people through the neighborhood. But because it is not the most secure area, a community center will still need to be monitored. He has had things broken into before but believes that locks help honest people stay honest. They do not do lot for people who really want to tear up something. This Revised Plan seems to be more of a short term situation in which the developer is trying to promise something that seems good. But in the long term, it will be more of a nuisance. The community center will be something that none of the property owners really wanted and someone will have to take care of it.

Linda Lushbaugh – 135 Lady Bug Drive Dover DE 19901

Mrs. Lushbaugh stated that she and her husband are property owners of a property in the community. They have been property owners since 2008. She believes that what we have here are promises that have been broken and angry people. They have lived in different states in medium income developments with pools and they have done very well. These developments seem to attract young families with children and the homes all of sudden become more desirable to those types of people because there is something to do with the kids in pool areas. It does bring other activities to the area for example swim clubs. They can see only good things and overall they bought into the area with the pool being one of the major deciding factors. They are in favor of the pool.

Mrs. Townshend stated that she would like to acknowledge three pieces of correspondence for the record. There is an email with attachments from Kelly Harris who spoke tonight from 108 Nob Hill Road. There are also emails from Wendy and Paul Waddell at 15 Mer Way and Mr. and Mrs. Delroach at 110 Nob Hill Road. All of the emails are in favor of the swimming pool.

Mr. Tolbert closed the public hearing after seeing no one else wishing to speak.

Dr. Jones questioned if the developer was aware of all of the issues of the neighborhood? Responding

to Dr. Jones, Mr. Cohen stated yes, they were aware of the entire development plan.

Dr. Jones further questioned the words "development plan", as in issues that have been brought to the attention of this Commission tonight? Responding to Dr. Jones, Mr. Cohen stated yes.

Dr. Jones stated that Mr. Cohen indicated that his years of experience tell him that approximately 80% of the development needs to be complete before the pool is properly supported. She questioned the proper support for the community center. She further questioned if there was a possibility that there would be additional assessments for the residents because of the community center versus a swimming pool down the road? Responding to Dr. Jones, Mr. Cohen stated that it would be far less expensive. The community center is built by the developer; there is no cost to the homeowners to build the community center. The maintenance of the community center as time progresses is the primary cost to the community. In terms of the long term one versus the other, the swimming pool can be used maybe four (4) months a year in this climate and a community center can be used twelve (12) months a year. Therefore, there is electricity, maintenance and basic cleaning that will have to occur twelve (12) months a year. That cost is probably minimal compared to tens of thousands of dollars that have to be put into a swimming pool. Pools do require a significant amount of maintenance as they age. They do believe statistically that it is far less expensive to have a community center operational than a pool.

Dr. Jones questioned far less expensive to whom? Responding to Dr. Jones, Mr. Cohen stated that once the pool is built or once the community center is built, it is basically the Homeowners Association's responsibility to maintain those items.

Dr. Jones questioned if this information had been communicated to the Homeowners Association in terms of a projection? She further stated that it sounds like there had been very poor communication prior to his time. She questioned has there been communication regarding this matter? Responding to Dr. Jones, Mr. Cohen stated that he disagreed with that. There was a meeting held on February 11, 2013 where every single member of the community was invited. He believed that someone had mentioned earlier in the night that only fifteen (15) out of the sixty (60) members of the community were in attendance. From his seat, most of the people seemed to be fine with the Revised Plan. They did not discuss specific budget matters but the issues that she had mentioned were all brought up.

Mr. Baldwin questioned that since the selling point of the residents who purchased homes was the pool, is he amendable to having another meeting with the residents in order to get more of a representation? Responding to Mr. Baldwin, Mr. Cohen stated that he did not know that it would do any good. He did not know what more could be presented. They are dealing with something that could be done today versus something that would be done years from now. People talk about having a pool and they talk about issues in the overall community but he believes that the community would have a lot more problems with the pool physically being there at this point in time than a community center by leaps and bounds.

Mr. Baldwin further stated that Mr. Cohen commented that when the meeting was held, costs were not reviewed. Responding to Mr. Baldwin, Mr. Cohen stated that they did review costs in general terms, but a specific budget was not prepared. The developer was very direct as to the costs of the swimming pool maintenance versus the community center maintenance. If the Planning Commission does not approve the Revised Plan then the pool will stay there but it will not get built for years. They are the successor developer; they inherited the plan, reviewed it and realized that it makes more sense. The

original plan did not show a pool, the original developers had a pool instituted as a second plan instead of tennis courts. This revision would be the second revision of the plan. He sympathizes with the people who bought homes from PCS Homes that were told otherwise, but they are not the original developers they are the successor developers and their plan is to build the community center. They believe that it will bring more people to the community. More people and more activity is better for the community as a whole.

Mr. Holt questioned if a program could be set-up for the people who were in favor of the pool where they could purchase memberships in order to off-set the cost of a pool? Also, maybe open up the pool to outside people provided that they pay the membership fee as well? Responding to Mr. Holt, Mr. Cohen stated that this process would not be allowed by the documents that are presently in place. This would create a commercial use of the property. They would be dealing with the State of Delaware, a private pool versus a public pool which creates other issues.

Mr. Holden stated that he appreciated Mr. Cohen's efforts and he thought that his efforts were above board in reaching out to the development to express his proposed path. What he has heard tonight is eight (8) individuals in favor of waiting for a pool and one (1) in favor of going forward with the community center. He would lean towards supporting the eight (8) individuals who want what they view they were promised and that they do not mind waiting for. He did not hear anybody demand that the pool had to happen today. He would be in favor of tabling the application if Mr. Cohen wanted to reach out the community more. Maybe there were more people who really support having the community center that the Planning Commission has not heard from. He is also sensitive to the other issues that have been raised that are not things that they can address at this time such as the buffers on lots and the crime. He strongly suggested to the community to reach out City Council or to the Community Police. But the issue at hand today is that the residents are say that they will wait for the pool.

Mr. Tolbert questioned how many members were on the Homeowner's Association Board? Responding to Mr. Tolbert, Mr. Cohen stated that they were four (4) members on the board at this time.

Mr. Tolbert further questioned if the residents of the community pay a Homeowner's Association fee? Responding to Mr. Tolbert, Mr. Cohen stated yes.

Mr. Tolbert questioned if the pool was installed, would the Homeowner's Association fees increase for the residents? Responding to Mr. Tolbert, Mr. Cohen stated that the fees would increase dramatically. If the pool had to be installed today, the fees would increase exponentially.

Mr. Tolbert further questioned if the residents were aware that the fees would increase? Responding to Mr. Tolbert, Mr. Cohen stated that he believed that the residents were aware of this.

Mr. Tolbert questioned if this issue was addressed during the neighborhood meeting? Responding to Mr. Tolbert, Mr. Cohen stated that the issue was addressed at the meeting.

Mr. Holden motioned to deny the request MI-13-04 Clearview Meadows PND: Revised Active Recreation Plan and Minor Subdivision Plan due to the community being willing to wait until they reach the critical mass necessary to support a pool, seconded by Mr. Baldwin and the motion carried

by roll call vote 6-1 with Mr. Shomo, Mr. Baldwin, Mr. Holden, Ms. Still, Mr. Holt, and Mr. Tolbert voting yes and with Dr. Jones voting against and Mr. Ambruso and Colonel Welsh absent.

Meeting adjourned at 8:34 PM

Sincerely,

Kristen Mullaney
Secretary