CITY OF DOVER PLANNING COMMISSION
QUARTERLY WORKSHOP
February 20, 2013

The Regular Quarterly Workshop Meeting of the City of Dover Planning Commission was held on Wednesday, February 20, 2013 at 4:00 PM with Chairman Colonel Welsh presiding. Members present were Colonel Welsh, Mr. Tolbert, Mr. Baldwin, Dr. Jones and Ms. Still. Mr. Shomo, Mr. Holt, Mr. Ambruso and Mr. Holden were absent.

Staff members present were Mrs. Townshend, Ms. Cornwell and Mrs. Harvey.

Planning Commission Comments and Concerns

Colonel Welsh stated that he was very pleased with the response that was received from the training held last month at the Paradee Center. Each member of the Planning Commission is appointed and is given books and materials when they become Planning Commissioners. He doesn't think that the members are given enough preparation for how to be Planning Commissioners. This translates into members having issues during the meetings, in terms of members being afraid to ask questions. He feels the more training that the members receive, the more effective that they will all be as Commissioners. This will help them to better serve the City of Dover. He is going to be encouraging all members to take as many of the training courses as they can, providing that they are relevant. Some training courses are not relevant most of the members have already had for example the Fair Housing training. Some members have not attended that training, but are encouraged to do so.

Mrs. Townshend stated that there is a Fair Housing training session offered on Friday, February 28, 2013 from 6:00PM to 8:00PM at the Dover Public Library.

Mrs. Townshend stated that there is also a Planning Ethics Webinar that is being offered by the Delaware Chapter of the American Planning Association. Ms. Cornwell is one of the actresses in this training. The webinar is going to be held in March 2013 and that it is going to be broadcasted nationally. It's an ethics session about the ethical challenges in the workplace. The Planning Ethics Webinar would be a webcast that could be shown in the City Hall Conference Room. She would get the exact date of the webinar to all Planning Commission members.

Colonel Welsh stated that another issue that he sees as the Chairman is having a difficult time getting other members to make a motion. It is always the same members who end up making all of the motions. If the rest of the members never jump in and get their feet wet then they will never be comfortable making a motion. As a Chairman, it is awkward to ask for a motion and receives total silence. He believes that some members are bashful or that they are afraid of making mistakes. If an issue presents when members try to make a motion, Planning Staff or another Commission member will step in to assist in making the motion.

Mr. Tolbert stated that when he was appointed to the Planning Commission, Mr. DiMondi was still a member and everyone knew that he would make all of the motions. He was afraid initially to make a motion because he was not sure what he was doing. He found that it was better to just jump in and give it a shot. The more that you do it, the more comfortable you will feel.

Mrs. Townshend stated that Planning Staff will make sure that when a motion is approved that it is worded properly for future processes. If the motion being made during a Planning Commission meeting does not give them that level of comfort, then they are going to assist with making the motion. An application may be coming back to Planning Commission again because Planning Staff had a discussion with the applicant because they thought that the Planning Commission said something was not required. After listening to the recording of the meeting and hearing that a Planning Staff member had added to the motion, she was able to tell the applicant that there was a specific requirement.

Colonel Welsh reiterated that there needs to be more participation from the floor. Questions need to be asked that will help the member make a motion. He has found that the motion can be made almost directly from the agenda.

Mrs. Townshend stated that the cover sheet for the DAC Report always contains the waiver requests. The Planning Staff can start adding the waiver requests on the agenda so that the members can use the agenda to make motions.

Colonel Welsh stated that one of the reasons that he wanted to continue to have the Planning Commission Workshops is so that they could discuss what has been done in the past. They could not discuss what is coming in the future. If any of the Commissioners had questions or concerns about previous applications, that this was an excellent quorum to raise those questions.

Mr. Baldwin stated that he had a concern in reference to when a contractor has requested to use City property for certain things but they don't return it the way they received it. He was specifically referring to the Saulsbury Road Park. He thanked Mrs. Townshend for fighting with CVS to get the sign back. They requested to use the Saulsbury Road Park as a staging area for their construction materials. The monument for Dr. Williams was removed and the sign was removed but when they were returned several months later at Mrs. Townshend's request, they did a very poor job. Before the monument was removed it was placed on a nice berm. The sign was there and it had a peach blossom tree planted behind it. Now when you go by, the sign is crooked and the monument is on the ground and looks like it is sinking into the ground. If someone wants to borrow City property, it should be put back the way it was when returned. He believes that the Planning Commission should have some type of leverage to make them do so.

Colonel Welsh stated that this was a good point and that he would think that there was a moral obligation if not a legal obligation for them to return the property to what it was formerly.

Mr. Baldwin further stated that he was surprised that the grounds keeper did not complain because the heavy equipment that was brought in created ruts in the ground. These ruts were never fixed so now the grounds keepers have a difficult time when cutting the grass.

Mrs. Townshend stated that she would talk to the Public Works Department about the issue. The City may be able to request a bond or an escrow when someone requests to use City property, so that if there are problems in the end the City can have it restored properly.

Colonel Welsh questioned that when someone requests to use City property, is it something that is bound by any type of legal documents? Responding to Colonel Welsh, Mrs. Townshend stated

that she was not sure because the request does not come through the Planning Office. She could check with the Public Works Department on the process.

Colonel Welsh stated that it may not be too late to get the company to restore the Saulsbury Road Park now.

Dr. Jones questioned if anyone knew if there were pictures of the Saulsbury Road Park prior to the contractor using the property? Responding to Dr. Jones, Mr. Baldwin stated that he did have pictures.

Colonel Welsh questioned if Mrs. Townshend would look into this? Responding to Colonel Welsh, Mrs. Townshend stated that she would follow up with Public Works to see if there was any recourse for not returning the property to what it was previously. She would update Mr. Baldwin and Colonel Welsh on this matter.

Dr. Jones questioned about two (2) houses on Walker Road? They have been there for many years and that they are an eye sore. Responding to Dr. Jones, Mrs. Townshend stated that they were on the Administrative Dangerous Building List. There has not been the problem of people getting into the homes like they have had with some of the other houses on this list; therefore, other houses on the list are being demolished ahead of them. They will have to take both houses to City Council for demolition.

Mr. Tolbert stated that 39 Primrose Drive had been demolished during the week prior.

Mrs. Townshend stated that this was a property where people were continually getting into the house. They had to repeatedly send out the Police and the Code Enforcement Officers. Unfortunately, there are a lot of houses that need to be demolished but the ones posing the biggest public safety risk will be demolished first.

Mr. Tolbert questioned the properties where there is illegal commercial activity in a house, if that problem is dealt with or not? Responding to Mr. Tolbert, Mrs. Townshend stated that they try to deal with these situations. The problem is being able to document that there is truly commercial activity at these homes.

Mr. Tolbert stated that he knew of two (2) houses in the Persimmon Park Place development where these types of activities were taking place. 27 Primrose Court has tires in front of the house and a whole stack of tires in the back of the house. 35 Primrose Court has vehicles brought to the house from McKinney's Towing Company.

Dr. Jones stated that in regards to the participation during Planning Commission meetings, she is one who is reluctant to make motions. She wants to understand what she is saying a little better; however, she is getting more comfortable. She needs to get comfortable with terminology and the process of applications. Responding to Dr. Jones, Mrs. Townshend stated that the application comes in, it gets distributed to all of the agencies and then the DAC meeting takes place internally. That following week, the reviewing agencies meet with all of the applicants. The report is then finalized and distributed to the Commission members. At that point there should not be any surprises to the applicant. They should know what is going on. There should not be

any problems with the reviewing agencies once the application has reached this point. Usually there are things that have to be done after Planning Commission but there should not be any deal breakers.

Dr. Jones further stated that it is getting better. When she first read the applications she was confused as to what they were saying. As she reads the applications more and more that it will become easier.

Dr. Jones asked for an explanation of the philosophy behind tree mitigation? Responding to Dr. Jones, Mrs. Townshend stated that there is a tree planting requirement. Any development application that comes to the Planning Commission, the applicant is required to plant one (1) tree for every three thousand (3,000) square feet of lot area. In some cases where they have a buffer requirement, the trees that are used as part of the buffer cannot be counted as part of the tree planting requirement. For example, the Dover High School had to plant trees for a buffer; however, they could not use those trees as part of their tree calculation. They had thousands of trees to plant. In that case, the application went to the Board of Adjustment and received a variance so that they could count some of the buffer trees towards the tree planting requirement. Another project with big tree mitigation is the Garrison Energy Center. Their tree planting requirement is three hundred seventy (370) trees. Due to the nature of their site and because of the lease restrictions that relate to being adjacent to the Solar Park, they have very little land where the trees can be planted. The Planning Office is working with the Department of Public Works Grounds Division to identify locations in the City of Dover where the applicant can plant three hundred seventy (370) trees, instead of planting the trees on their site.

Mr. Tolbert questioned if there was overlapping between the functions of the Board of Adjustment and the Planning Commission? Responding to Mr. Tolbert, Mrs. Townshend stated that there was not an overlap but there are some projects that will come to both committees. For example the 7-Eleven project; it went to Board of Adjustment because of the size of the lot. They could not lay the site out to meet the setbacks. She will frequently remind the Board of Adjustment members during their meetings that they are only looking at certain things of the application. For example with the 7-Eleven project, the Board of Adjustment was only looking at how far they were from their front property line and how far they were from their rear property line. Also, the Board of Adjustment determines if there was a justification that meets their legal standard for granting an exception to meeting the requirements of the setbacks. The Planning Office tries very hard to keep the Board of Adjustment focused. The Board of Adjustment is only looking at one thing on the plan and the rest is not a part of their role. The Planning Commission does not have to approve that layout shown to the Board; however, they cannot say that they are not approving this layout because they are not in agreement with what the Board of Adjustment has approved. The Planning Commission can however, not approve an application because of an issue that they have the ability to approve or not approve.

Mr. Tolbert questioned whether or not the Board of Adjustment decisions have to go to City Council? Responding to Mr. Tolbert, Mrs. Townshend stated no they do not and neither do the Planning Commission decisions. There are a lot of municipalities in Delaware where Site Plans and Conditional Use Plans go to City Council for approval.

DEPARTMENT OF PLANNING AND INSPECTIONS UPDATE

Summary of 2012 Ordinance Amendments

Mrs. Townshend stated that there were handouts attached to the agenda. One being the listing of ordinances completed in 2012. These related to the permitted uses in the Agricultural Zone, allowing alcohol in restaurants in the RG-O Zone within the Historic District, updates to the sign regulations, the regulation of bamboo and the changes to the Airport Environs Overlay Zone (AEOZ).

Summary of 2012 Applications

Mrs. Townshend stated that another handout outlined the application volume for the Planning Commission for 2012. The total was on track from the previous year with 79 applications reviewed. This was still a significantly reduced volume from the prior years. For example, in 2007 there were 163 applications reviewed. They are starting to see some things pick-up.

Colonel Welsh stated that he predicted that before anyone's term expired, they would experience four (4) hour long meetings again. As the economy begins to pickup, they would have a high volume of agenda items and applications.

Dr. Jones questioned the regulations of how long a meeting could last? Responding to Dr. Jones, Colonel Welsh stated that they would not start a new application after 10:30PM.

Dr. Jones requested a brief description of each application type. Responding to Dr. Jones, Mrs. Townshend stated that the Board of Adjustment is a variance. The applicant is requesting relief from one of the requirements of the *Zoning Ordinance*. Annexations are where applicants want to add land to the City of Dover. Conditional Uses are where the Planning Commission can say yes, no or yes with conditions. A Site Plan is for the construction of new buildings or additions. Subdivisions are where new lots are created. A Rezoning is where the zoning classification is changed. Miscellaneous can be anything. For example, zoning text amendments, parcel consolidations or minor lot line adjustments. Unified Signs is where an applicant brings in a campus of signs. The Historic District Commission sees applications located within the Historic District and then they make recommendations to the Planning Commission.

Other Project and Research Activities

Mrs. Townshend stated that the City of Dover has created a Bicycle and Pedestrian Sub Committee. The first meeting of that group will be held on Tuesday, March 5, 2013. They could end up with code changes after this meeting. The reason for this Committee is to find out what needs to be done to make the City of Dover a more pedestrian and bicycle friendly place. One thing that was done in the past in terms of the *Zoning Ordinance*, was the addition of a bicycle parking requirement. There could be things that come up that may affect how applications are reviewed.

Mrs. Townshend stated that last year she worked with the business community, the real estate community and the Chamber of Commerce to develop changes to the sign regulations. The sign regulations were approved in the fall of 2012. The Planning Office was going through a very in depth process of reviewing the Commercial Zones which are very out dated. They are planning to look at everything, from the uses, to the setbacks, to the lot coverage. In terms of the uses, they are trying to keep it more general. For example, instead of listing 25 different retail uses there will be a category for retail uses along with a definition.

Mrs. Townshend stated that beginning in July 2012, the nature of the Department that she oversees has expanded. She now has Planning, Community Development, Code Enforcement, Building Inspections, Licensing and Permitting, Fire Marshal's Office and Recreation.

Educational and Training Opportunities

Ms. Cornwell stated that there will be another Institute for Public Administration (IPA) class coming up on March 15, 2013. The next class offered is "Land Use and Development Administration" and the deadline to register is March 8, 2013.

Ms. Cornwell stated that Tuesday, February 26, 2013 a Workshop will be held at the Dover Public Library to discuss the role and scope of the Historic District Commission and the Historic District. The first presentation will be at 4:00PM, followed by a repeat presentation at 5:30PM.

Training: Review of *Zoning Ordinance*

Ms. Cornwell gave a presentation reviewing the *Zoning Ordinance.*

Mr. Tolbert questioned if an interpretation of the zoning requirement has ever been challenged? Responding to Mr. Tolbert, Mrs. Townshend stated that it has never been challenged in the City of Dover. There is a substantial body of case law across the country that supports the fact that if it is not stated in the District Regulations then it is not allowed.

Dr. Jones questioned if something is prohibited under a particular *Zoning Ordinance*, do applications come forward that ask for exceptions or waivers? Responding to Dr. Jones, Mrs. Townshend stated no.

Colonel Welsh questioned if at some point the Planning Office could create a handout that could be given to the Commissioners to be used as a reference sheet? Responding to Colonel Welsh, Mrs. Townshend stated yes, this type of handout could be created.

Mr. Tolbert questioned if the Silver Bullit located on North DuPont Highway was now occupied? Responding to Mr. Tolbert, Mrs. Townshend stated yes, the building is now occupied. One of the tenants is KCI. She is unsure of the other tenant.

Colonel Welsh stated that he feels they have an obligation as the Capital of the First State, to try to do something about the architectural standards that are expected. An *Architectural Review Ordinance* was created and it has made a difference. When he first started on the Planning Commission, applicants were coming with no elevation, no drawings and no description of construction materials. A few of the Commissioners began demanding that applicants come forward with elevations and architectural renderings. He thinks that they have made some progress but feels that this community has a long way to go to get to where they should be.

Mrs. Townshend stated that she and the Planning Staff are glad that the Planning Commission has set a bar and expects compliance with that bar. When Planning Staff meets with applicants, they don't always bring in their "A" game first. She tries to suggest things that she thinks they should improve before submitting an application. She tells the applicant, this is what the Planning Commission is going to be looking for based on the *Zoning Ordinance* and our experience. If the applicant comes back with the same submittal then Planning Staff knows that

the applicant will have a tough road ahead of them. She has told applicants that the Planning Staff does not just make up things because they are trying to be difficult. They want to help them through the process.

Dr. Jones questioned when this type of scenario takes place and the applicant is advised but does not make changes, is the Planning Commission made aware that Staff is not in favor? Responding to Dr. Jones, Mrs. Townshend stated yes, the Planning Commission will know. It will be noted in the Staff Report.

Colonel Welsh stated that the longer that you are a member, you will see through interaction with other Commission members what the standard is. The Planning Commission set a higher standard in the late 1990's. He thinks this community, as being the Capital of the First State still has a long way to go for setting an even higher standard. The Commission is doing a great job with holding the developer's and applicant's hands to the fire to get what they think is going to be appropriate. In the future they will be able to raise the standard even higher.

Mr. Tolbert questioned if there should be some type of discussion or training before the Commissioners regarding what their architectural standards should be so that all members are on

the same page? Responding to Mr. Tolbert, Colonel Welsh stated yes, the Planning Staff should be able to generate something. The architectural standards are defined in the *Zoning Ordinance*.

Mrs. Townshend stated that it was defined in the *Zoning Ordinance* but it was in general. It is in reference to the architecture tying in to the surrounding area.

Dr. Jones questioned what was being built on the corner of Wyoming Avenue and State Street? Responding to Dr Jones, Mrs. Townshend stated that it was going to be Dr. Ditty's office; a dental office.

Colonel Welsh stated that this project was a really good example of someone accommodating the requirements of the Planning Commission. When the application was first presented, the building had a flat roof with a couple of pitch points and it looked terrible. The Commission as a whole turned the application down. The applicant then returned to the Planning Commission during the next meeting with a new architectural plan including everything that the Commissioners had asked for plus more. If the members had not done anything then there would have been another flat roof building in Dover.

Colonel Welsh stated that the next Quarterly Workshop would be scheduled in May 2013.

Meeting adjourned at 5:44 PM

Sincerely,

Kristen Mullaney
Secretary