CITY OF DOVER PLANNING COMMISSION
October 17, 2011

The Regular Meeting of the City of Dover Planning Commission was held on Monday October 17, 2011 at 7:00 PM with Chairman Hemmig presiding. Members present were Mr. Hemmig, Colonel Welsh, Mr. Baldwin, Mr. Holt, Mr. Shomo, and Mr. Ambruso. Mr. Tolbert, Mr. Nichols, and Mr. Friedman were absent.

Staff members present were Mrs. Melson-Williams, Mrs. Townshend, Mr. Koenig, Ms. Cornwell and Ms. Metsch. Also present were Reverend Clifton Holmes and Mr. Richard Vetter.

APPROVAL OF AGENDA

Mr. Holt moved to approve the agenda as submitted, seconded by Colonel Welsh and the motion was unanimously carried 6-0 with Mr. Tolbert, Mr. Nichols and Mr. Friedman absent.

APPROVAL OF THE PLANNING COMMISSION MEETING MINUTES OF SEPTEMBER 19, 2011

Mr. Shomo moved to approve the regular Planning Commission meeting minutes of September 19, 2011, seconded by Mr. Ambruso and the motion was unanimously carried 6-0 with Mr. Tolbert, Mr. Nichols and Mr. Friedman absent.

COMMUNICATIONS & REPORTS

Mrs. Townshend stated that the next Planning Commission Quarterly Workshop is scheduled for Tuesday, November 22, 2011 at 4:00 PM in the City Hall Conference Room.

Mrs. Townshend further stated that on November 9, 2011 at 4:00 PM there is an Audio Web Conference scheduled for "Social Media and Ethics" that will be held at the Clarion Hotel in New Castle as part of a combined Annual Meeting for the Delaware Chapter of the American Planning Association.

Mrs. Townshend further stated that on your desks this evening is an announcement for an upcoming League of Local Governments dinner meeting to be held on November 17, 2011 at 6:00 PM at the Sheraton Hotel. The reason we bring this to your attention is that there is a presentation on Land Use and Ordinances that may be of interest to the Planning Commission members.

Mrs. Townshend further stated that she would now update you on the status of the House of Pride properties that the Conditional Use covers for inspections. She has not received reports from the inspections; however, most of the code violations in terms of the property maintenance code violations were corrected. On two of the properties there have been fire code issues identified that have been the subject of fines. To date, those items have not been resolved. She will be meeting with the Fire Marshal, Code Enforcement and Ms. Cornwell to determine how we need to address this issue.

Mrs. Townshend provided an update on the regular City Council of September 26, 2011; the Parks Recreation Community Enhancement Committee, the Legislative & Finance Administration Committee, the Utility Committee, and the regular City Council meetings of

October 10, 2011.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATIONS
Mrs. Townshend presented the audience information on policies and procedures for the meeting.

OLD BUSINESS
There was no old business for discussion.

NEW DEVELOPMENT APPLICATIONS

MI-11-11 Request for Street Name Change: Slaughter Street to Jerusalem Way – Review for Recommendation to City Council of a Request for a Street Name Change for the one block segment of Slaughter Street which runs in a north-south direction between West North Street and West Loockerman Street just east of the railroad corridor. The new street name proposed is Jerusalem Way. The request was filed in accordance with *Dover Code of Ordinances,* Chapter 98, Article II, Section 98-45 Street name change procedure which also references Appendix A: *Land Subdivision Regulations,* Article VI, Section A. Streets. *The name change procedure requires review and comments by the Development Advisory Committee (DAC) and review by the Planning Commission prior to public hearing and consideration by the City Council.*

Representative: Reverend Clifton Holmes, New Jerusalem Baptist Church.

Mrs. Melson-Williams stated that this is a petition that was received by the City. The *City of Dover Code of Ordinances* in Chapter 98 has a specific procedure for street name changes in how that happens. The petition was filed and the review process begins with the Development Advisory Committee. Comments were provided from the Development Advisory Committee that she will highlight and then it moves onto the Planning Commission for review. You are to consider the request this evening. There is no hearing that is required and your action this evening is a recommendation regarding the name change request along with your reasons for doing so.

Mrs. Melson-Williams further stated that the background report talks about the short segment of Slaughter Street, specifically the segment of Slaughter Street that is one block in length and runs in a north/south direction between what is West North Street and the terminus of Loockerman Street near the train station. This request is to change that street segment from Slaughter Street to Jerusalem Way.

Mrs. Melson-Williams further described some history about the area; it appears that the name Slaughter Street for that street segment was identified in the late 1800's. One of the property owners in the vicinity and of this street segment was a T. Slaughter. This name appears on some of the historical maps marking ownership in the area. There are a number of other names that actually were used including Negro Street for this street. Basically, the street does not come into existence until around 1885.

Mrs. Melson-Williams further stated that today, for the segment of Slaughter Street on the west side is the Duncan Center building. The Duncan Center is addressed off of West Loockerman Street; however, access to the parking facilities for that building comes off of Slaughter Street.

On the east side of Slaughter Street, only one building remains which is the church building that is currently occupied by the New Jerusalem Baptist Church. In requesting the street name change, there are some provisions within the *Land Subdivision Regulations* that go to the naming conventions for streets and the proposed street name "Jerusalem Way" follows these conventions.

Mrs. Melson-Williams further stated that the Planning Staff is recommending approval of the street name change and our comments include that there will, if successful, have to be notification of that street name change as well as installation of new street signage in the area. The other reporting DAC agencies include the Public Utilities Department that comments on the need for updated street signage should the change occur. There were no specific comments that DelDOT had on the change. The Kent County 911 Addressing Center notes that they have no objection to the proposed street name of "Jerusalem Way."

There were no comments from any Planning Commission members at this time.

Reverend Holmes stated that he would appreciate your consideration this evening for this request. In all due respect to Mr. Slaughter who this street was named after, we have had a problem with some confusion with the other part of Slaughter Street with people stopping all the time to ask for directions as well as confusion with mail delivery. This will help with the confusion and is the reason for the request of the name change. He also noted that several members of the church's Board of Trustees were also present in the audience in support of the request.

Mr. Hemmig stated that there is no public hearing required for this application.

Colonel Welsh moved to forward a recommendation of approval to City Council for MI-11-11 Request for Street Name Change: Slaughter Street to Jerusalem Way, seconded by Mr. Baldwin and the motion was unanimously carried 6-0 with Mr. Tolbert, Mr. Nichols and Mr. Friedman absent.

MI-11-07 Text Amendment: Revisions to Article VII of the *Land Subdivision Regulations* regarding Homeowners Associations – Review for Recommendation to City Council on a series of Amendments to the *Land Subdivision Regulations,* Appendix A – Subdivisions, Article VII – Special Provisions by re-lettering Section B as Section C and adding a new Section B. Homeowners Associations. The proposed ordinance clarifies the requirements and responsibilities of existing and new homeowners associations in regards to open space/common areas and allows the City to complete delinquent maintenance responsibilities not performed by the homeowners associations and to bill the property owners for the incurred costs. Ordinance #2011-15.

Representative: None

Mrs. Townshend stated that this is a proposed amendment to the Subdivision Regulations, Article VII Special Provisions, which would create a new section regarding Homeowners Associations. Currently, Article 5 Section 10 of the *Zoning Ordinance* already requires that in areas that have required open space that a Homeowners Association be formed and membership

mandatory. This text amendment would reinforce that within the Subdivision Ordinance and then go a step further. In the case where a Homeowners Association is not functioning or maintaining the open space that is part of their charge, it would allow the City to address Code violations such as tall grass, if there are issues with the stormwater management facility, and dead trees if there is wooded open space. It would allow us to correct the problem and bill back to the homeowners in the subdivision through their individual tax bills the cost of that maintenance. We are finding more and more that Homeowners Associations are having a very hard time existing. A lot of property owners do not pay their dues. In some cases, the Homeowners Associations have never been active and the City gets calls when the grass gets high asking when we are going to come cut the grass. If we are going to have someone cut the grass, then the reality is that it is the Homeowners Association that is supposed to do that. This has become a real problem with the number of subdivisions that have not reached completion and where land was never turned over to the Homeowners Associations. We suspect that Homeowners Associations are not formed as they are supposed to be and anticipate this being a growing problem.

Mrs. Townshend further stated that this does not necessarily solve the problem; however, allows us to be able to recover the costs if we have to go in and maintain areas. As an example, and this is not one that would be covered by this because it is one of the ones where the open space was never turned over; however, we have had to cut some of the common open space in the Village of Cannon Mill in the last year and it is around $1,000 every time we have to cut it. Those kinds of charges will eat up our Code Enforcement budget and then we would have no way to recover the costs.

Mrs. Townshend further stated that the Subdivision Ordinance does not required that things come before the Planning Commission when it is proposed that they be amended; however, because the Planning Commission oversees the land development process and *Land Subdivision Regulations* govern the land development process, Staff made the recommendation that this be sent through the Planning Commission for a recommendation to City Council.

Mr. Holt questioned, as he does belong to a Homeowners Association, will you be able to do any kind of warning like a two (2) or three (3) weeks warning notice before you have to take action which may let the Homeowners Association see if someone in that group would want to pitch in together to get the job done before you have to step in? Responding to Mr. Holt, Mrs. Townshend stated that the short answer is yes. The challenge that we have is that the violation notice would go to whatever the address is on the tax rolls for the Homeowners Association. In some cases, it goes to someone who was the President when they first took over ten (10) years ago and now no longer lives at that address. We do send notice to the address of record for the Homeowners Association; however, we do not necessarily have an updated address and cannot be sure who is getting it and what they would do with it.

Colonel Welsh questioned that he is assuming that the City Solicitor has taken a look at this? Responding to Colonel Welsh, Mrs. Townshend stated that yes, he has.

Colonel Welsh further questioned that he is curious as to how we can make membership in Homeowners Associations mandatory and what method we have to enforce that? Responding to Colonel Welsh, Mrs. Townshend stated that the way that we enforce it is through the deed

restrictions which we review before the subdivision is recorded. It has been mandatory under the *Zoning Ordinance* since the early 1990's. It has been on the books; however, it has not been in the Subdivision section from a functional standpoint of individual lots with common open space this is a subdivision issue. When property owners buy into a subdivision, they are made aware of the deed restrictions and they agree to them. When the conditional approval of the development is that the Homeowners Association be formed and the membership mandatory, that becomes part of the deed restrictions that gets recorded.

Colonel Welsh further questioned if it is the City Ordinance that directs the membership as mandatory? Responding to Colonel Welsh, Mrs. Townshend stated that yes it is.

Colonel Welsh further questioned how the City would enforce that? Let's say you have a Homeowners Association with 30 homes and there are two (2) people who are saying they are not going to pay their dues. Responding to Colonel Welsh, Mrs. Townshend stated that we cannot necessarily enforce the membership mandatory portion; however, what we can do is if we have to incur costs, we can bill it to all the homeowners. This is a problem throughout the State where Homeowners Associations were formed to manage common areas in residential developments most significant of which is the stormwater management. In the State stormwater management regulations, as they are implemented through the Kent Conservation District, rely heavily on the Homeowners Associations. Through the approval processes, we have delegated that role to the Homeowners Associations and it is now starting to catch up with us.

Colonel Welsh further stated that the Homeowners Associations bill for what the City has to come in and do or contracts someone else to come in and do the work. Responding to Colonel Welsh, Mrs. Townshend stated that each property owner would be billed.

Colonel Welsh further stated that if he were a property owner and a member of the Homeowners Association and the issue is not on his property then the issue is on the portion of open space. For instance, where he lives, he has a drainage ditch that the City comes out a couple of times during the summer and cuts. If this were to be the responsibility of the stormwater management of the Homeowners Association and he as a conscientious homeowner went out there with a weed whacker and lawnmower and takes care of all of the stuff that is on his side of the drainage ditch; however, the person on the other side does not do anything, why would he be a part of the billing process because this person failed to do his area?

Responding to Colonel Welsh, Mrs. Townshend stated Foxhall would not be affected by this because the common areas are City owned; but, in areas where the common area are privately owned, they are collectively owned by all of the property owners and are the collective responsibility of the property owners. The only other way to do it is to have the City assume that burden and from a budget standpoint, we simply could not do that. The Town of Smyrna has this type of Ordinance on their books so we did look at that before developing this.

Mr. Ambruso stated that he belongs to an Association as a property owner outside the City. With issues, this Civic Association places liens on properties for non-payment.

There was no public hearing required for the text amendment.

Colonel Welsh moved to forward a recommendation of approval to City Council for MI-11-07 Text Amendment: Revisions to Article VII of the Land Subdivision Regulations regarding Homeowners Associations, seconded by Mr. Baldwin and the motion was unanimously carried 6-0 with Mr. Tolbert, Mr. Nichols and Mr. Friedman absent.

NEW BUSINESS

PRESENTATION

***Dover/ Kent County MPO Regional Bike Plan for 2030*, adopted September 2011**

Representative: Mr. Richard Vetter, Director of the MPO.

Mr. Vetter provided a Power Point presentation on the Regional Bike Plan (Attached). He also provided a map handout showing recommendations from the Plan that focused on the greater Dover area entitled "Dover Kent MPO Bicycle Plan Project Recommendations" showing the location of on-road and off-road projects.

Meeting Adjourned at 7:43 PM

Sincerely,

Diane Metsch
Secretary