CITY OF DOVER PLANNING COMMISSION
March 21, 2011

The Regular Meeting of the City of Dover Planning Commission was held on Monday March 21, 2011 at 7:00 PM with Chairman Hemmig presiding. Members present were Mr. Hemmig, Mr. Tolbert, Mr. Shomo, Mr. Baldwin, Mr. Nichols, Mr. Ambruso, Mr. Holt, and Mr. Friedman (arriving at 7:13 PM). Colonel Welsh was absent.

Staff members present were Mrs. Townshend, Mrs. Melson-Williams, Mr. Koenig, Ms. Cornwell, Mr. Albert, and Ms. Metsch. Also present were Mrs. Carolyn Fredrick, Mr. Ed Ide, and Mr. Conny Malmberg. Also speaking from the public was Mrs. Nancy Wagner, Mrs. Joyce Breasure-Herrick, Mr. Bill Tolbert, Mr. James T. Flamer, Mr. L.D. Shank, Mr. James Hutchison, Mr. Bill Shavicky, Mr. Ron Gogan, Mr. Mark Prata and Mr. James Galvin.

Mr. Hemmig stated that there is a revised agenda on your desk this evening adding Item #2 under Old Business: MI-11-04 Treadway Towers Parking Waiver Request: Revisions.

Mr. Hemmig reminded those in the audience that application C-11-01 Because We Care Veteran's Shelter at Healing Wings Christian Center is being delayed until next month due to a public notice problem.

APPROVAL OF AGENDA

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

APPROVAL OF THE REGULAR PLANNING COMMISSION MEETING MINUTES OF FEBRUARY 22, 2011

Mr. Tolbert moved to approve the regular Planning Commission meeting minutes of February 22, 2011, seconded by Mr. Holt and the motion was unanimously carried 7-0 with Mr. Friedman and Colonel Welsh absent.

APPROVAL OF THE QUARTERLY WORKSHOP PLANNING COMMISSION MEETING MINUTES OF FEBRUARY 23, 2011

Mr. Shomo moved to approve the Quarterly Workshop Planning Commission meeting minutes of February 23, 2011, seconded by Mr. Nichols and the motion was unanimously carried 7-0 with Mr. Friedman and Colonel Welsh absent.

COMMUNICATIONS & REPORTS

Mrs. Melson-Williams stated that there are two educational opportunities. One was held last week on March 16, 2011 that was an audio web conference entitled "Mitigating Hazards through Planning" held at the Kent County Administration Building, co-sponsored by the Delaware Chapter of the American Planning Association and the Kent County Department of Planning. The second educational opportunity falls next week. A workshop entitled "Exploring Form Based Codes" being held on March 29, 2011 beginning at 4:00 PM in the Kent County Administration Building, Room 220. That session will be presented by the Renaissance Planning Group which was here back in the fall doing work on the Dover Transit Center Neighborhood Plan charrette. The event on "Form Based Codes" is co-sponsored by the Dover

Kent County MPO and the Delaware Chapter of the American Planning Association.

Mrs. Melson-Williams provided an update on the regular City Council and Utility Committee meeting of February 28, 2011 and the regular City Council meeting of March 14, 2011.

Mr. Friedman, arriving at 7:13 PM, questioned regarding Planning activities what the outcome was on our actions for the House of Pride? Responding to Mr. Friedman, Mrs. Townshend stated that there were inspections done on February 18, 2010 and all of the interior corrections had been made. There were a couple of minor things that were in progress at that time. With regards to exterior items, we decided to give them until April to be able to have the weather cooperate.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATIONS

Mrs. Townshend presented the audience information on policies and procedures for the meeting.

OLD BUSINESS

S-10-03 South Dover Plaza at 560 & 600 Bay Road – Request for a one year extension of the Planning Commission approval granted April 19, 2010 for a Minor Lot Line Adjustment Plan and Site Plan to permit the construction of a 142,825 S.F. shopping center and associated site improvements. The project is located on two parcels of land totaling 12.9371 acres ± and is zoned C-4 (Highway Commercial Zone). As part of the application, the two parcels are to be consolidated into one parcel. The subject area is located on the south side of Bay Road across from the Kent County Levy Court. The owner of record is S.H.E. Holdings, LLC. Property Address: 560 & 600 Bay Road. Tax Parcels: ED05-077.00-01-09.00-000 and ED05-077.00-01-09.00-000. Council District 2.

Representative: None

Ms. Cornwell provided an explanation and reasoning for the request for extension.

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

Mr. Friedman moved to approve a one year extension for S-10-03 South Dover Plaza located at 560 and 600 Bay Road, seconded by Mr. Holt and the motion was unanimously carried 8-0 with Colonel Welsh absent.

MI-11-04 Treadway Towers Parking Waiver Request Revision – Reconsideration of request to utilize the "Combined Spaces" provisions of the Parking Regulations within the *Zoning Ordinance* (Article 6, §3.8) to be able to lease parking spaces to the Post Office (for Post Office vehicles). The property is located at 9 East Loockerman Street. The property owner is Colonial Investment & Management Company. The tax parcel number is ED-05-077.05-04-52.00-000. *At the February 22, 2011 meeting the Planning Commission approved the original request setting the required parking spaces as 123 spaces under the "Combined Spaces" provisions.*

Representative: None

Mrs. Townshend stated that if you will recall Colonial Investment and Management Company had come to the Planning Commission last month with the request to have their parking considered under the combined spaces provision of the parking regulations within the *Zoning Ordinance.* At that time, the discussion related to Treadway Towers wanting the ability to lease excess parking spaces to the Post Office for employee parking. It was discussed in a meeting and a request letter from Colonial Investment said that the parking would be utilized between the hours of 6:00 AM and 3:00 PM.

Mrs. Townshend further stated that after the meeting, Staff found out that there was a little confusion between the Post Office and Colonial Investment Company in terms of what the request actually was for. Colonial Investment found out after the fact that it was actually in fact the Post Office mail delivery trucks parking that the Post Office was wanting to lease from Colonial Investment Company. Because the discussion and request specifically mentioned allowing them to lease those parking spaces between the hours of 6:00 AM and 3:00 PM for employee parking and that this would be round the clock parking for the Post Office vehicles, Staff believed that this did need to come back to the Commission.

Mrs. Townshend further stated in terms of the idea of excess under the combined spaces provision of the *Zoning Ordinance,* if there are two uses that have separate peaks, you can apply the parking requirement for the use that has the higher parking demand. In this case, the restaurant Frazier's has the higher demand which would require 123 parking spaces. The 123 parking spaces are what was accepted and is what the Code would allow you to accept; however, the discussion included the idea that those spaces would be available other than 6:00 AM to 3:00 PM. Staff wanted to clarify this and request that the Planning Commission now consider that 123 parking spaces is what would now be available and the other 17 parking spaces they could do as they wish. Staff is aware that the parking is underutilized here and does not feel it would create a parking problem to allow it. In addition, the property is located in the Downtown which is served by a variety of transportation such as transit, pedestrian access, and bicycle access.

Mr. Hemmig stated that Staff is saying that 123 parking spaces are enough for the restaurant twenty-four hours a day.

Mr. Friedman stated that he was not here last month when this request was initially approved. Is there a rule where he would not be able to vote on this application? Responding to Mr. Friedman Hemmig stated that this would be correct; however, he was welcome to make comments.

Mr. Friedman questioned if anyone for the restaurant had been notified and discussed this? Responding to Mr. Friedman, Mrs. Townshend stated that she was not sure about the restaurant specifically; however, she has spoken with Colonial Investments, owner of the parking lot. What this would do is authorize Colonial Investment to have 123 parking spaces and that would give them in excess of seventeen (17) parking spaces. If they need to discuss this with Frazier's before they enter into an agreement, this is not in ink yet and could do so.

Mr. Friedman further stated that he would envision the possibility of some negativity. While the owner of Frazier's would like to have the parking lot overflowing with people so that he can make some money, with government vehicles in this parking lot when people get heated up in the evening, he is concerned about the potential of liability issues.

Mr. Ambruso moved to grant approval of MI-10-04 Treadway Towers Parking Waiver Request Revision with regards to the waiver request concerning parking as requested for 123 parking spaces, seconded by Mr. Nichols and the motion was unanimously carried 7-0 with Mr. Friedman abstaining from the vote and Colonel Welsh absent.

NEW DEVELOPMENT APPLICATIONS

S-10-11 Revision to Modern Maturity Center at 1121 Forrest Avenue: Building Addition – Public Hearing and Review of a previously approved Site Plan to consider a request to remove a required cross-access easement. The project is located on one parcel of land totaling 13.6 acres ± and is zoned IO (Institutional/Office Zone) and subject to the COZ-1 (Corridor Overlay Zone). The subject area is located on the north side of Forrest Avenue west of Saulsbury Road. The owner of record is Modern Maturity Center Inc. Property Address: 1121 Forrest Avenue. Tax Parcel: ED05-076.07-01-25.00-000. Council District 1.

Representatives: Mrs. Carolyn Fredericks, Executive Director, Modern Maturity Center; and Mr. Ed Ide, i3a Consulting Engineers.

Mrs. Townshend stated that a diagram would be passed out that shows the Modern Maturity Center location of the cross access and the access points from the properties to the east directly to Route 8 and Saulsbury Road.

Mrs. Townshend further stated that the Modern Maturity Center has requested that the requirement for cross access between the Modern Maturity site and the adjacent property to the east be eliminated from the approved Site Plan that is currently under construction. This is cross access that is in the way of an easement and construction of pavement to the property line.
Mrs. Townshend further stated that according to the *Zoning Ordinance*, Article 3, Section 27.64(d) where cross access is addressed as it relates to the Corridor Overlay Zone: "The cross access shall be provided among abutting uses of similar categories whenever possible to provide linkage between properties as an alternative to re-entering the corridor to access both existing and future neighboring properties." The location of the cross access easement is to the northeast of the Modern Maturity Center building. It would be an extension of the east-west drive aisle. The requirement is that the access be constructed to the eastern property line of the Modern Maturity Center property.

Mrs. Townshend further stated that in order to eliminate the requirement of the cross access easement, the Planning Commission would need to determine that the neighboring uses are not of similar use categories. While currently a rezoning proposal is pending before City Council that would allow the Dove View Apartments to reside as housing not restricted to senior citizens, any housing in this location is likely to have senior citizens as residents even if they are also non-senior residents as well. You can also have employees of the Modern Maturity Center living adjacent to their work and they may not be seniors. Some residents of the apartments would likely be patrons of the Modern Maturity Center campus. Additionally, patrons of the Modern Maturity Center campus would most likely make use of the TD Bank and Walgreens Pharmacy especially with a medical office being on that campus.

Mrs. Townshend further stated that the purpose of the cross access is to eliminate traffic entering the corridor, in this case Route 8, to access an abutting use. Concerns have been raised by the Modern Maturity Center as to conflicts between the younger users of the potential apartments and the senior citizen users of the Modern Maturity Center. In addition to being a senior center, the Modern Maturity Center has developed into a regional multi-functional campus that provides services for a variety of age groups. Staff notes that in addition to the senior center and the adult daycare that is currently under construction, the Modern Maturity Center operates a conference and banquet facility that hosts events for people of a variety of ages. There is also a physical therapy practice on the campus as well.

Mrs. Townshend further stated that the issue of safety has been raised by the Modern Maturity Center in terms of conflicts between seniors and cross traffic. Staff also has safety concerns related to the growth of the Modern Maturity Center campus over time. The initial building was designed with one access point to Route 8. The Modern Maturity Center has since grown from one thirty-five thousand (35,000) square foot building to with the addition to the rear currently under construction, a campus of multiple buildings in excess of 88,000 square feet of floor area. Since the initial building, a large addition was built to the east which houses the conference and banquet facility. In 2005 a new building was constructed to the rear with 43,000 square feet and currently the addition that is under construction is over 14,000 square feet. With the size of the campus, as it has expanded over time, one access point is no longer sufficient for providing emergency access and for peak traffic times. The cross access required by the *Zoning Ordinance* would improve the emergency access related to fire and EMS services. It would also provide another exit in the event of an evacuation of the campus or if a large number of patrons were leaving at the same time such as after a large event.

Mrs. Townshend further stated that additionally, as the campus has expanded, the parking circulation layout has not changed in order to improve the safety of the parking lot. She and Mr. Albert are currently taking a class at the Modern Maturity Center and with this matter pending, have spent a good amount of time observing the parking lot circulation and layout with safety in mind. We have identified a number of areas for circulation improvements that would likely improve safety. Currently, there are no clear paths of travel or crosswalks to provide pedestrians through the parking lot to identified locations.

Mrs. Townshend further stated that in 2005 when the Modern Maturity Center brought forward a Site Plan, one of the requirements of that Site Plan was that the path of travel be extended south from the new building to the original building. That was never constructed. In 2010, when they came forward with the Site Plan that is under construction currently, Staff had made the recommendation that the clear path of travel be a requirement of the Site Plan at that time. The Modern Maturity Center did not want to provide that and the Planning Commission ultimately allowed that not to be a part of the plan. Addition of cross walks and possibly signage or stop signs at identified points would allow drivers to prepare for pedestrian crossing at identified points rather than coming out between cars and potentially any location in the parking lot.

Mrs. Townshend further stated that if you look at any major campus or shopping center most of them, especially if they have come through recently, have cross walks in place so that you are directing pedestrians to single points of crossing rather than crossing throughout. If you go to the Greentree Shopping Center, even as old as that is, there are crosswalks. Safeway, Target,

North Dover Shopping Center, and Kohl's all have crosswalks. At Kohl's there are stop signs at the crosswalks so that drivers know to stop because that is where pedestrians are crossing. That type of facility would improve the safety and eliminate conflicts that currently exist between vehicles and pedestrians. Additionally, the drive aisle between the building and the parking lot is one way and two ways up to another point. The only indication if you were driving from the east to the west, are faded pavement markings. There are no stop signs or stop bars, nothing to tell you that you have to turn right. Again, you have potential conflicts of vehicles and pedestrians or vehicles and vehicles. Signage in terms of one-way signs or must turn right stop signs could reduce the potential for conflict in this regard. The concrete pork chop would also eliminate that; however, Staff believes that it could also be achieved by signage.

Mrs. Townshend further stated that finally, due to the location of the exit point from the Modern Maturity Center, all the way to the southwest of the Modern Maturity Center property, the likelihood of cut-through traffic that would not be users of the Modern Maturity Center facilities is highly over estimated. The idea of cutting through from those areas is unlikely; however, if you are turning right and want to go west, you have an access point (located on the diagram that was handed out.) If you want to go to the east, it is certainly going to be easier to access Saulsbury Road at one of those points and go to the light rather than going west to then come back east. Staff believes that the likelihood of significant cut-through traffic is over estimated.

Mrs. Townshend further stated that the issue of cross access was discussed by City Council during the review of the Comprehensive Plan Amendment and Rezoning Request for Dove View. Three (3) Council members expressed concern about the interconnection. There were seven (7) members present that night and the other four (4) remained silent. City Council ultimately deferred action on the rezoning and Comprehensive Plan Amendment request until the Planning Commission has taken action on this request this evening. Staff notes that the Comprehensive Plan Amendment request and Rezoning request, if approved, would not preclude age restricted housing or senior targeted housing at the Dove View location. We would also note that the Plan for Dove View has expired and any current or future owner will need to make application to the Planning Commission for Site Development Plan for any use to commence on that site. Therefore, at that point, if it is determined that the neighboring use is in compatible and would cause problems for the Modern Maturity Center, that requirement could be eliminated at that point. The only way we will get cross access, and we have complained about it as we have seen it out on Route 13 with Home Depot, is when we have an application. If you remove the requirement tonight and Dove View ultimately develops as age restricted housing which is could, or age targeted housing you would be unable to go back to the Modern Maturity Center and ask that they build it. You can only require it at an application.

Mr. Ide presented a board for presentation purposes. He has had the opportunity to sit with Mrs. Fredericks for quite some time to understand what the concerns were last year with respect to site access between the two sites particularly with Dove View as well as the pharmacy and the bank. Last year when we presented before you the requirement for the interconnection, it was located on the northeast corner of the site which was roughly back where the existing daycare center is being built as we currently speak. The discussion at that point in time was that the Dove View site being an age restricted community was of similar use to the Modern Maturity Center and that we should evaluate whether or not the access should go in or not based on those merits because Dove View is contiguous to our site. As a point of reference, this being the Modern Maturity

Center, the Fountainview site, the pharmacy, and bank at the other locations shown on the board. We evaluated the cross access and whether or not it made sense to do that or not and after discussions with Mrs. Fredericks and through discussions with the Planning Commission, we found some common sense with putting the cross access in because there was some similarity between Dove View and the Modern Maturity Center in being age restricted. We found no commonality between the pharmacy or the bank of being similar use of the way that we understand and the way the code interrupts this.

Mr. Ide further stated that in looking at this, we thought as a compromise that maybe it did not make sense for the access to be at the far northeast corner and we asked that the access be positioned more to the Center where there was an existing golf cart and pedestrian crosswalk already previously approved under a different application. To set the record and what our position was then versus what it is right now, we looked at Dove View as being an age restricted community and we thought that there would be folks that would come from Dove View over to the Modern Maturity Center. From a standpoint that is more common than it is if it was not age restricted. He has also had the opportunity to sit down with Mrs. Townshend and more in-depth to Mr. Albert to gain their understanding and perception of safety and whether it was a safety issue between both of the sites. We decided, at that point, to try and figure out a way to mitigate or negotiate this. When he went home he was talking to his wife regarding this and we looked at the TV and saw Mrs. Fredericks on the television and her adamancy about not having the site access because of safety issues made his mind up that it is an issue.

Mr. Ide further stated in looking at some of the comments from the DAC and also looking at several issues that have come up since that point regarding safety, we do recognize that there is a safety issue as far as folks coming from Dove View and entering the Modern Maturity site. Although we agree in theory that it is hard to imagine that someone from Dove View is going to traverse through the Modern Maturity site only to sit at the light that is at the Modern Maturity site only to get out onto Route 8, we do believe that a majority of the time those folks will utilize their own existing entrance that they have off of the side of the bank to exit that point or also go to Saulsbury Road.

Mr. Ide further stated that safety is a concern. As far as traversing between the two buildings, the building in the front versus the building in the back, folks do not walk that path to get from the one building to the building in the back, they currently drive that path. At the last Planning Commission meeting that interconnection between the interconnectivity of the site was removed from the project. This obviously is a sensitive issue as you can tell from the many folks in the room and he understands the passion the City has as far as this interconnection point; however, it is also apparent that it is also a sensitive issue across the state. He just read an article the other day regarding the Delaware Senate approving a bill not to allow interconnectivity or restriction on entranceways into age restricted communities. This is something folks are facing up north and as we evaluate the Modern Maturity Center where the bulk of their clientele is elder citizens, we do also recognize the fact that they do open it up to weddings and other civic events like you folks attended the other day.

Mr. Ide further stated in looking at some of the comments from Staff as reflected in the DAC Report, we do agree with some of them. One of the things that had opened his eyes was from the discussion regarding the event that you folks attended the other day at the Modern Maturity

Center and a comment that was made that is also reflected in the DAC Reports was that if you are able to open another access point into the site. If you had congestion which is actually not congestion but stacking, as pointed out along the front portion of the building, and then stacking along the western side of the existing site, that is what the intent is for. The Department of Transportation has evaluated the entrance based on every single building that has been placed there and they tell us whether or not the site entrance is adequate or whether it is not adequate for the amount of patrons entering or exiting the site. Our number one concern is safety of the Modern Maturity Center patrons, secondly is safety for Dove View and the adjacent property owners. The fear that any one of us would have is if there is an event whether it is in the day or whether it is during the evening time and you have the site filled to capacity which per the last Plan revision was 505 parking spaces. He has personally been there when the parking lot was full. If you have an opportunity for a second means of egress or ingress, you have the ability for half of the patrons to decide to go to Route 8 or the other half or more decide to go whichever direction they want to go; whether they go through the side access and navigate around the building it still allows those folks to come into Dove View and navigate the Dove View subdivision streets in order to go to Route 8 or navigate Dove View streets in order to get to Saulsbury Road. Both of those points of egress have no control. The Modern Maturity Center with all of its members as well as all of those folks who visit the site enter the site at one location and they exit the site at one location which is the intent of mitigating and controlling the flow in and out of the Modern Maturity Center onto Route 8. If you allow the other entrance to go in, it no longer mitigates that control. Folks have access to Route 8 at two locations or they have access to Saulsbury Road at two locations.

Mrs. Fredericks stated that on May 17, 2010 when we appeared before the Planning Commission for the Site Plan approval for the adult daycare facility, we raised the issue many times about the cross connection between the Modern Maturity Center to a site that may at some point or may not be a 55 plus community. Numerous times that evening we were told it would be a 55 plus community. She was concerned about the safety of the clients who attend the Modern Maturity Center because any type of connection or road translates into more traffic coming onto the property, but she understood. She did not like the decision, but she understood it. The connecting road became a condition of receiving the Certificate of Occupancy for the new building that is under construction and should be completed sometime next month. No matter that the apartment project could be tied up for years; we were instructed that we were to build a connection to the property line before a Certificate of Occupancy would be issued for the adult daycare center facility.

Mrs. Fredericks further stated that last month the Planning Commission decided to change the zoning for the apartments eliminating the age restriction. At that meeting, I stated that while I believe that there is a need for affordable senior housing something needed to be done to the apartments so she did not object to the zoning change. She did object to the road connection to that non-aged restricted apartment complex. She has a letter from the attorney representing Dove View apartments and in this letter he says "This cross access easement which is currently unconstructed is a bi-product of previously approved Plans for our properties. As we discussed given the cross access easement does not confer any tangible benefit to our property which currently has three (3) different points of access from bordering streets, my client CRM Mid-Atlantic Properties, LLC does not object to the elimination of the cross access easement from your project. To that end you can certainly relay this objection to the City of Dover Planning

Commission when you appear before them on March 21, 2011." (A copy of the letter was provided.)

Mrs. Fredericks further stated that her concern is for the safety of the clients that we serve at the Modern Maturity Center. A cross connection would generate additional traffic through our parking lot and that additional traffic would create significant problems. The Modern Maturity Center has been in existence without a cross connection and with only one point of entrance and one point of exit since it has opened. We have a signalized access point which has functioned well. You might have to wait a while at the light but at least the traffic pattern is controlled and much safer than trying to enter onto Route 8 from either the bank or the drug store. Her fear is that once the customers of the bank and the drugstore learn that with some driving around the Modern Maturity Center property they can access a light which will allow them to turn either right or left turn the Modern Maturity Center could become a new exit for those businesses.

Mrs. Fredericks further stated that the Modern Maturity Center serves a population that needs to be protected and not infringed upon. An open road or connection from a non-aged restricted community to our center is just asking for trouble. We have many events that take place in the evenings. An 80 year old woman walking to her car alone at night could become a target to someone who is need of some fast cash. Not that this incident couldn't happen now, it could. Open access to an apartment complex would make it easier for our clients to become victims of crimes. The Modern Maturity Center also serves as a DART bus hub so she feels that they are doing their part to alleviate some of the concerns about the traffic on Route 8.

Mrs. Fredericks further stated that the Delaware State Senate passed a bill restricting entrance into 55 plus communities. Part of that bill states that residents in age restricted communities need protection from unwanted traffic. While we are not a housing complex, Modern Maturity Center is a community that is age restricted for 50 plus and we probably have a lot more vehicles in our parking lot than you would ever find in a 55 plus community. She asks you to consider the safety of all those who participate in the programs at the Modern Maturity Center. Please protect us from unwanted traffic on our campus.

Mr. Friedman stated in reading the May minutes for the last approval he remembers that the access easement was added not to provide a transiting facility for people to get from point A to other points. It was provided for people to get from point A to Point B that is to say from the housing to the Modern Maturity Center. If that is no longer going to be a consideration, he almost hates to hear himself say this because he is real strong about interconnectivity especially when it relieves major roads; however, in the same way that Dover Downs does not wish to have connectivity from the Dover Mall to Leipsic Road run right through its property, he can understand why the Modern Maturity Center does not want it either. Plus, the type of turning that would have to happen for someone to make it to that light as you suggested would not be an easy matter. You would definitely have significant problems. Having said that, he is very much in support of removing that requirement if in fact we remove the requirement for that facility to be a 55 plus community.

Mr. Friedman further stated that he does not understand; however, if you reduced the number of units on that property by the number suggested down to 144 units, the per-unit cost skyrockets. It is the bank that is doing this so he assumes they are aware of how much money they are going

to have to have in land only which is pretty significant. He questions the logic and questions whether this is a logical project given that limitation. It is $22,000 per apartment under the old number of apartments and $15,600 under the new that is a pretty significant difference.

Mrs. Townshend stated that she would like to respond to the issue of the compatibility and pending rezoning. Typically that issue of compatibility would be determined when that next property comes in because right now it is a zoning issue that could end up being age restricted. It is currently zoned Institutional and Office and it could end up being leveled and putting up a school there. At that point, it would be determined if those two uses are compatible. If you don't have it here and it does end up developing as a compatible use, you cannot come back and impose it later. That is the Staff's concern and the problem that we have ended up with in other cases where we have not required it on one and then regret it later. The issue is that there zoning does not mean that it will or will not be age restricted; what it means is that it would be, instead of Institutional and Office zoning, it would be a high density residential zoning.

Mr. Hemmig opened a public hearing.

Mrs. Nancy Wagner – 283 Troon Road – Stated that she has previously been a member of the Modern Maturity Center Board; however, she is not now this year. She is opposed to this project and is not speaking for a group. She has three (3) concerns: legal, fiscal, and safety issues. From the legal perspective, she thinks you run a slippery slope when what you do is try to project what might happen in the future so that you rule on it now so that you cover your bases and that offers problematic issues. When you go to the language, it is not abutting, the language states "whenever possible." If you look carefully at the words used in all of these recommendations they are words like "the goal of the Corridor Overlay Zone," "Recommend," and "Likely" that is very suggestive. These are not words that have the authority of law, they are simply suggestions. DelDOT has their comments about City and the State Code in reference to this. Initially, the bank was not required to build a connection when it did their piece. With regards to the fiscal issues, I think you need to consider the cost of the road. This is a non-profit organization and by the way the City does not support the Modern Maturity Center financially in anyway, so where are they going to get the money? They get their money from foundations for programs, from foundations to build a building, foundations don't build roads. She is at a loss to say where they will get the money to do this. Then there is the issue of snow removal if it in-fact becomes a road that you want people to use to connect through. Who is going to remove the snow and who is going to pay for it? Then there are liability issues and quite frankly have you ever required a non-profit to build a road? If so, she would like to know who. The Staff has concerns; she read the comments, with suggestions without merit, the comments were vague and not specific so let her be specific. There are fifty-three (53) handicap parking spaces at the Modern Maturity Center, there is a five (5) mile per hour speed limit that tells you the kind of traffic and issues that you required and felt were appropriate for that facility. There are one-way directions in the lot and it is clear to her that probably people from the bank will cut through there because it is easier to cut through and get a light to be able to turn to head east. Who will be on duty to monitor the speed of people coming through, will it be the Police? It is the duty of the Committee to look after the best interests of the citizens of Dover; and therefore, if you decide to require the connection with the zoning change, it will probably change the likely compatibility. She would like some answers to some questions.

Mrs. Wagner further stated that she would like the legal language that definitively fits this situation. She does not think that what she read tonight does. She would like an answer as to how the Modern Maturity Center would raise the money. She would like an acknowledgment that the City will accept responsibility to patrol or monitor the traffic going through there as it concerns the safety of the citizens. She would like acknowledgement that the City will be liable for any injuries. It will be built only at the insistence of the City because we have repeatedly requested that we do not have this. You basically have a City employee who is doing a very good job and is very knowledgeable at what she is doing and the people who work here to follow the latest theories and the latest plans for traffic; however, you also have a facility that provides services for senior citizens which will be harmed and the public safety compromised by these demands. I ask that you oppose the demand as required and that the Modern Maturity Center not build this connector.

Mrs. Joyce Breasure-Herrick – President, Board of Directors, Modern Maturity Center – Stated that she has spent many hours since the last hearing thinking about how she could get you to see our people and activities at the Modern Maturity Center, the individuals as opposed to a zoning ordinance. The people of the Modern Maturity Center provide services and our members are a unique group. She would like to tell you that they are wonderfully fit and agile; however, that is not always the case, it is not even with me. The populations of citizens that cross the road where the new connector would look like it goes are from two full rows of handicap parking. Our participants are often vision impaired, hearing impaired, physically walking with canes, walkers or personal assistance and sometimes not able to respond quickly when required to protect their own safety. Our activities start around 6:00 AM with one of our swim groups and often go until midnight so now we are looking at darkness as an issue as well. We have large events for example the Valentine's dance had 500 in attendees and the Saint Patrick's Day dance last week which you all missed had 400. If it is a Thanksgiving meal, it could be 800 people during the middle of the day. Our volunteers deliver home bound meals to Dover area citizens and we also prepare and then transport hundreds of meals to the other centers in this County. Because many of the Modern Maturity Center programs are not funded by anyone but the Modern Maturity Center, the Modern Maturity Center does do a lot of catering of events including proms from 300 to 600 in attendance and a prayer breakfast with 700 in attendance at 7:00 AM. I believe that if this property were already an existing school, the issue of connectivity with entities that are not like it would not be an issue. Please see our members as precious as those in a school zone and stop this road through our parking lot. She is well aware we can mark, put up signs, and paint the ground and do all sorts of things. We can also tell you that people will do what they want to do. Last week she sat at the stop light on Route 13 going south where Route 1 comes in and the two people in front of her, one was texting, and one was on the phone; the light turned completely green, they did not see it turn green and the semi tractor trailer coming down the ramp didn't care and went right straight through a red light. She can put up all the stop signs she wants in the world and she still has no way of controlling the people. People are unfamiliar with the Modern Maturity Center lot and they will go where what looks like the easiest and fastest way and the wrong direction through our members and she can assure you not at five (5) miles an hour. She has been on the Board for over twelve (12) years. There has been construction of three major extensions and the issue of connectivity has never been brought to the Board or to her Executive Director. Please let us maintain a closed parking area for the safety of all those who use our center.

Mr. Bill Torbert – 427 E. Brady's Lane – Stated that he would like to address part of something else that someone else has not said. He is also a member of the Elks Club and we are presently going to have a super highway on Saulsbury Road. When it gets complete, he does not know how he is going to get in or out of the Elks Club. If this road goes through and people are trying to get out and go through this parking lot for the apartments and try to get out on Saulsbury Road especially to turn left, it is going to be one mess. If he builds an apartment house there, he would not want to live there because of all those people coming through if that is what is going to happen with that connector. It is going to be a mess for anyone living there and children playing in the street if they are going to allow people under 55. He sees a real safety concern by putting the cross access in there especially trying to get out when they have big things going on and they do have big things going on every day at the Modern Maturity Center. He was pleased and it was a pleasure to serve as Board Director and on the Board of Directors for fifteen years. He did not run last year as his time was up so he got out. He hopes that you really consider this because it is very important for the safety of the people not only in the Modern Maturity Center parking lot but the future apartment house and all those people getting on the road.

Mr. James T. Flamer – Owner and Operator of Forever Blessed Lawn Service – Stated that a lot of people who are going to speak tonight are going to probably speak from within the inside looking out. He happens to be the ground maintenance person for the Modern Maturity Center going on eight (8) years. A good nine (9) months out of the year he is at the Modern Maturity Center two or three times a week to do the upkeep and he has seen it all. When he read in the paper today about the cross access easement he had his concerns in reference to safety. Believe him it can be crowded there and he thinks that if you open another driveway, per say an easement, it is going to get even harder. His concern is for safety. He has a sixteen (16) foot trailer that he moves from time to time and on Thursdays when he is there doing the lawns everyone knows that it is grass cutting time. He really feels that it is important that you look this over really well for the safety of everyone at the Modern Maturity Center. He has been there eight (8) years and has seen several fender benders and most of the time it is something that is real subtle. He believes that if you have an easement there will be other traffic that is going to be shooting through and he feels that someone is going to really seriously get hurt. Also, the buses that are out there and like. He said he is out there early in the morning around 6:00 AM when the drivers are getting their coffee. From time to time, he might see a parked car out there that is not from the Modern Maturity Center and he thinks that if they had this easement it is just going to open it up to other people to come and do whatever. His main concern is for his safety as far as being a business and working at the Modern Maturity Center and his employees that are there for their safety as well. If we have so much traffic running through he feels that it will just be unsafe.

Mr. L.D. Shank – 309 Corey Lane, Odessa, DE – Stated that his family is the adjacent property owner to the Modern Maturity Center, Dove View and to TD Bank. When this project was initially conceived, it was with the idea of having not only Dover's but Delaware's first senior community where people could walk or roll in their wheelchairs to their friends, nutrition, health club, their money, to their drugs, and to whatever the market would supply to them. He realizes that emotions know no laws of logic. However, the gentleman behind him gave him his three minutes; however, he is only going to take thirty seconds and he will be out of here in three minutes before he faints from this heat. The bottom line is do not do anything rash; don't slam

the door shut. He agrees with these people as they have been great neighbors; however, this is huge. It is called the market and we do not know what the market is going to give us. We already know that the market has given us a bankruptcy so if nothing else make sure that people can walk or roll to their friends, their health club, and their nutrition.

Mr. James Hutchison – 15 Glen Eagles Court – Stated that he is here tonight as a Board member of the Modern Maturity Center and before he make his comments he would turn and ask that everyone who is here tonight for the Modern Maturity Center to please raise their hands. (A hand count was not taken as the hands were raised and put down too quickly). We are here tonight because we are concerned. We are concerned about safety. He is retired from the Dover Police Department as the Chief of Police. He spent twenty-five (25) years of his life in the Police Department here in the City of Dover and he has deep concerns about the application here this evening in allowing a road connector between the two. He goes to the Modern Maturity Center on a regular basis and as it has already been said, there are trucks there unloading, there are buses, and there are people getting in and out of their vehicles. The Modern Maturity Center represents over 20,000 members. There is no other organization in this City or County that represents that many people. He urges each and every one of you as you make a decision on this application tonight that our number one concern that we come here tonight is safety. He urges you to deny the easement between the two.

Mr. Bill Skavicky – 150 Winterton Lane, Dover – Stated that he is a retired Delaware State Trooper and also a Defensive Driving Instructor for the AARP. He holds classes as the Modern Maturity Center. He has personally seen many times issues that they have with the way that the parking lot is setup as you drive into the parking lot and pull into a parking space, your vehicle is angled. If you allow an easement, most of the time, these people are going to be coming in the easiest access that they have which is going to be the wrong way. It is going to be in the area in which we have handicap parking. Most of the time the people that take these handicap spaces have impairments that do not allow them to back up properly and a lot of times the few fender benders that were talked about were simply where someone was backing up as someone was coming down the road and they did not see them. With a speed limit of five (5) miles per hour we are not talking major accidents. If you allow an easement to come through that center, you are talking about people who would be coming through there at twenty-five (25) miles per hour and thirty (30) miles per hour just to make it out to the light because the accessibility will be available to them. He does not think that this is a good idea.

Mr. Ron Gogan – 124 Tammy Drive – Stated that he is not a member of the Board merely a caregiver for one of the clients at the adult daycare facility. I am extremely concerned for the safety of what would happen in the parking lot if we allow an easement to go through this place; however, as it has been mentioned here a couple times this evening already, they want to put this easement in just in case it may be needed in the future. He would like to put a "just in case" too. Much has been talked about the safety already. He understands that this easement is holding hostage of the Certificate of Occupancy of the facility of this building "just in case" it may be needed in the future. Should this happen to go through and it is approved, passed, and requires for them to have to put this easement in, he asks that this not hold up the occupancy of this building. A lot has gone into it by the volunteers to get this building ready with a lot of heartache and fun and most important a lot of hard work. The clients of this facility are looking forward to occupying this new building. He would ask that you consider this as well just in case

it winds up being approved and that it not be tied to the requirement of the road to be completed just in case it is needed sometime in the future.

Mr. Mark Prata – Representative of Solvern Properties – Stated that Solvern Properties owns a number of apartment complexes and manages them in and around the City of Dover. He is here to ask a question of the Modern Maturity Center. Would you consider a contingency on installing the connector road if come next month or whenever City Council is scheduled to hear the rezoning of Dove View if it stays a 55 plus community? We have done some research and have found that there is a definite need for an age restricted community in the area and we fully support all that the Modern Maturity Center does; you do a fantastic job. We are interested in purchasing the property and have reached out to the current owners, the bank with consideration of purchasing it. We also know that there are two other developers that have reached out to the new owners also interested in this kind of community.

Responding to Mr. Prata, Mrs. Townshend stated that the hearing for the rezoning is next month; however, even if the rezoning is approved, you could still go in and put in an age restricted community.

Mr. Prata further stated that he understands your concerns of it being a market rate apartment complex and the cross over between younger people and older people and your concern for safety. The question is if it stays a 55 plus community would you consider putting in the connector road?

Mr. James Galvin – 825 Westview Terrace – Stated that first he would like to talk to you as a Staff member of the Kent County Metropolitan Planning Organization. For those who do not know, we have the transportation planning for Kent County. We directly work with DelDOT and the surrounding municipalities in the County. We just finished the Neighborhood Plan for the south side of Downtown which brings him to the first point that he would like to make. You are all invited to the meeting on March 29, 2011 to learn about "Form Based Codes," Mr. Clarence Eng from the Renaissance Planning Group that helped with the Neighborhood Plan is going to be leading that discussion and it will be a great opportunity. Second, you have my comments I made in the DAC Report. He would like to add a few things to that report. While the City has a requirement for the way cross access should be offered, he wants to read to you the cross access requirements that were a part of the Delaware Route 8 Plan that was adopted by the MPO Council in 2008. "They would like a two way connection between McDonald's and the signal to Kenton Road and an interconnecting street from Independence Boulevard to Mifflin Road" which is pretty significant and he does not know if it requires the purchase of any homes. "An interconnection between Independence Boulevard and Bennington Street, interconnection between Dove View and Modern Maturity Center, interconnection between Heatherfield Way and Stoney Drive, and then Heatherfield and Cranberry Run." All of these are recommendations to preserve the Delaware Route 8 Corridor. What he does want to mention is that he lives in the neighborhood and travels Route 8 a lot and while he might find traffic along Route 8, when you get out beyond Mifflin Road, the traffic really lightens up. Many of the cars that are on Route 8 in the stretch between Saulsbury Road and just beyond Mifflin Road are there on short trips to get from one place to another; they are not there travelling through. A few cars will continue on and do not crowd out Route 8. He is here to support the Staff recommendation of maintaining

the cross access easement. Cross access easement is not a local road; it is simply a way for people to get through so the City should accept no responsibility for it.

Mr. Hemmig stated that before they close the public hearing we do have a couple of letters that were presented on your desks this evening.

Mrs. Townshend stated that a letter was received from a Mr. Donald Leiter who references that he is on the property daily for swim therapy and "Meals on Wheels." He does AARP Driver Safety and is aware of the driving hazards and pedestrian problems of seniors. Essentially, the drive aisles are in constant use by senior drivers and pedestrians in addition to private and public buses and to permit an access road onto the Modern Maturity Center property from a mixed age use population would endanger the lives of persons for whom the Modern Maturity Center is serving. He is supporting removal of the cross access easement.

Mrs. Townshend further stated that a letter was received from the City of Dover Fire Department Chief who is writing to offer support of the vehicular cross access easement that would connect the Modern Maturity Center, Bank and Pharmacy. It would be highly beneficial to emergency responders for reasons as follows: it would create more than one access and to the commercial buildings should one access be blocked due to traffic being backed up at lights, and it would allow for more areas for apparatus placement in the event of a large scale emergency as timing plays a key role in getting control of the situation. This letter is from Jack Fortney, Jr., Fire Chief.

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

Mr. Baldwin stated that his concern is that in the event of large events, it is rather hazardous trying to get out of the Modern Maturity Center. What would be our position if the City Council denied the rezoning request? Responding to Mr. Baldwin, Mr. Hemmig stated that we have to hear this because they put a hold on the rezoning application until they know what we have decided on the cross access easement. He does not know if our decision will affect theirs greatly; however, they decided to wait to hear what our decision was regarding the cross access easement.

Mrs. Townshend stated that we are looking at this as Dove View and senior apartments versus non-senior apartments and that is because there are buildings there. We do not know at this point if these buildings are even salvageable so for all intents and purposes you are looking at a vacant piece of property next door that is either going to be zoned as it currently is as Institutional and Office or be zoned General Residence for Mid-Rise apartments. That is all City Council is considering and they wanted to wait to make that decision until they hear what the Planning Commission's decision was on this; however, again, no matter what happens on the Dove View property, it will have to come back to you and at the point, you will know whether it will be age restricted, apartments, or something we have not even envisioned.

Mr. Tolbert stated that an offer has been presented tonight by a previous speaker that there is a possibility that the Dove View site will be developed as an age restricted development. Will that have an impact on the Modern Maturity's stand on the cross access easement? Responding to Mr. Tolbert, Mrs. Fredericks stated that as Mr. Shank shared with the group initially when we

worked out the arrangement between the apartments and the Modern Maturity Center. There was no cross access road; it was a walking path between a 55 plus community and a small path for a golf cart. She would maintain that this would be the safest thing to happen there should it be a 55 plus community.

Mr. Nichols stated that he has a great concern tonight and it seems like the consensus of the group that is here do not want a cross access for vehicles. He believes that as Mr. Torbert said, originally it was a small walking path for a golf cart or wheelchairs to get across. That has since changed and there is a lot of contention here. We have to look at what we have in the place that provides for elderly people, safety, traffic, or whatever you have it does not matter. There is a lot of forethought that has to go into this decision on whether you are going to have cars going across there or you are going to have wheelchairs going across there. Laws and codes can be changed and that is one thing that can be done. Years ago his wife had an accident and we went before the JP Court and the Chief was there; his comments were if you are going up a road you do not have the right-of-way if you have a green light and that is exactly what he said.

Mrs. Townshend stated that she would like to address the issue of chronology of approvals of terms of what was required and when. In 2005, when the rear building for the Modern Maturity Center came before the Planning Commission there was no requirement on that plan for cross access. In 2006/2007 when Dove View came before the Planning Commission, there was the pedestrian access that was mentioned that was going to be pedestrians and golf carts; however, there also was, at that point, a note required to be on the plan for a cross access easement for vehicles at the northwest corner of the Dove View site with the idea that if the Modern Maturity Center came in at a future date, they would be required to connect. When the Modern Maturity Center came in 2010, they had a great concern about an interconnection point there that would essentially be bringing traffic through the parking lot and that is when it was moved to this location further south on the site. A vehicle access was part of the Dove View plan. It was not a part of the 2005 Modern Maturity Center Plan.

Mr. Tolbert questioned if it would be improper for the Modern Maturity Center to request a waiver of that access that is in contention tonight? Responding to Mr. Tolbert, Mr. Hemmig stated that this is essentially what they are doing with this request.

Also responding Mrs. Townshend stated that the Code does not give waiver ability. She thinks the issue becomes, in your consideration of this, whether they are similar use categories and that would be how you determine whether or not it is required.

Mr. Friedman stated that he is a practitioner of golf carts and they are going to be a part of our future and to turn a blind eye to those would probably not be wise. He unfortunately had the opportunity to use a wheelchair recently and he does think that a cross access easement that would allow people to walk and roll without their vehicle between the two sites is a smart move. If he were a senior citizen, he would be interested in living in a facility near the Modern Maturity facility. He hears nothing but marvelous things about the Modern Maturity Center. If he is the one to make the motion, his intention would be to include that type of access easement request in the motion as he thinks that it is wise and a smart move for the future.

Mr. Koenig stated that he realizes that this is a very emotional and highly charged issue for everybody; however, he would like to take us back to some of the technical arguments associated with both the Staff recommendations and the general planning issues and engineering issues associated with site development throughout the City. As we have heard in the testimony tonight, this is a large regional multi-use facility. There was testimony that they have 20,000 users and many of them live outside of the City he would assume. We have in the neighborhood of 500 parking spaces. We had testimony that indicated dinners, lunches, and various functions that have 500 to 1,000 people attending and there are currently no restrictions on the type of programming that can be offered at the Modern Maturity Center so it can be geared toward seniors or towards anything that the facility wants to gear the programming to. To his knowledge, there are no zoning restrictions on the type of programming they can offer as long as it is approved by the Board of Directors and it can happen within that zoning category. Staff has been working on the issue of cross access for more than twenty (20) years. That goes back to a number of residential communities and across the board to commercial facilities and is an issue that we have struggled with for the past twenty (20) years. If you look at the residential code, if you have more than twenty (20) housing units in a residential subdivision, you now have to have a second point of access to be constructed. That was a code change that has happened in the last twenty (20) years so multiple cross access is a very large part of community planning in the City of Dover. The cross access easement was intended to be a dual way easement. People who were on the properties to the east of the Modern Maturity Center would have access to go to the Modern Maturity Center and the people who are visiting the Modern Maturity Center would have the same access to the properties of TD Bank, Walgreens and any undeveloped property. In his opinion, these are probably real types of uses the people at the Modern Maturity Center who are visiting that facility are likely to go to the bank or to the drug store on the way to the Modern Maturity Center.

Mr. Koenig further stated that the cross access, in the Staff's opinion, improves the issue of public safety. Right now the facility is served by a single entrance, a single point of access. When we talk about public safety, we are talking about ambulance service, EMS service, and also fire service. The fact of the matter is a single point of entry is subject to a single point of failure. If there is ever a point where either an accident or equipment malfunction jeopardizes the access to the Modern Maturity Center, they are essentially cut off from emergency services. In his opinion, while that is not a likely condition, it is a condition that needs to be planned for and people need to be aware of it when you are making decisions at this level.

Mr. Koenig further stated that at this point, we simply do not know what is going to happen with the Dove View complex and whether it will be an age restricted complex or if there is going to be an apartment complex or something else. But the fact of the matter is the cross access easement was a requirement of the approval of the Modern Maturity Center and whether it is a 55 plus community versus an apartment community it is still a development application to the east of this property where there would be cross access easements in place. The apartment plan, at this point, has expired and Staff as well as the Planning Commission will have the opportunity to essentially redesign the cross access conditions, alignments, and where those access points may go on the former Dove View site when that site comes back for review because it cannot be constructed under the current conditions out in the field. We are being sidetracked in some cases by the fact that we have two very large vacant structures out there neither that we know at this point will be able to remain intact because of the extended amount of time they have been open

to the weather. When talking about this site, we need to review it as it is a vacant piece of land without any structures on it.

Mr. Koenig further stated coming into his final points, there is currently a condition of approval for the Modern Maturity Center expansion that was approved a few months ago that requires the cross access easement to be constructed. It is not a road; it is an access area. It is a condition of approval for that expansion and it is a condition of approval that will be required to be constructed to get a temporary or final Certificate of Occupancy on that property as it stands today. It is not a negotiable item. The item before the Commission is whether you are going to remove that condition as has been requested by the Modern Maturity Center.

Mr. Koenig further stated that when we talk about some of the issues related to the drivers he thinks as the Commission we need to assume that the people who are driving on the property are safe drivers because when we have testimony stating they have concerns about people driving and backing up and being impaired at five (5) miles per hour these are the same drivers that are exiting the facility out onto state roads and the highways at 45 and 50 miles per hour. They have driver licenses and we need to consider them as safe and adequate drivers as if we were reviewing this as a facility that has all types of people coming and going from it. From the technical merits for the application the Staff feels that it is appropriate to require and keep in place the prior approval of cross access. That does not necessarily equate to some of the emotional argument that is in front of us. From the technical merits of the application, the cross access is required and should be in place and constructed so that in the future when the adjoining property is brought forward for development, we can finish the access and interlock these properties.

Mr. Hemmig stated that he is very torn between the matter as he is an advocate for cross access for interconnectivity. Where we have not achieved it, it has become a major problem especially along the commercial Route 13. This is not particularly a heavy commercial district considering it is residential and the Modern Maturity Center is serving the senior residents; however, at the same time it is very important to maintain this access. It may be something we may consider that it is not necessary where we originally located it. We originally had an agreement on cross access at the locations indicated on the Plan before you tonight. That is not necessarily a fixed location. There are other ways to look at this to make it a safe cross access. If you go back to the aisle between the last angled parking and the first perpendicular parking if the cross access was back there and that aisle was somehow curbed off with stop signs so that people coming across would have to make a couple of stops along the way you are not going to have fast traffic. There are realistic possibilities to do this safely in his opinion. He understands the concern about seniors; however, if it is somewhere midway back there you are talking about where the angled parking is for people coming forward and people parking in the perpendicular parking as going to the back building. You will not have as much pedestrian parking back in that area. We need to think a little bit outside of the box and consider how this can be achieved; however, by keeping and maintaining safety.

Mrs. Townshend showed on a map on the screen where interconnectivity is currently located.

Mrs. Fredericks stated that if we are acting like the property next to us is a vacant property, how can it have a similar use to the Modern Maturity Center? She will also say that the focus of the

Modern Maturity Center is programs for people who are 55 plus. The other things that we do are simply to generate funds so that we can provide those programs for those who are 55 plus. The other thing is even if you are not calling it a "road" she believes that it is twenty-four (24) feet wide. It has curbs on the side and has a sidewalk and even at this small area the estimate is over $25,000 dollars to construct it so that kind of constitutes a road to her. It is twenty-four (24) feet wide and is two lanes. This is what they were instructed to do to come up with an alternate site. We have buildings that are located on the property where you are talking about possibly changing it to where it would bring it right through the middle of the parking lot. She begs to differ with your alternate site.

Mr. Friedman moved that they consider the request of the Modern Maturity Center to remove the required cross access easement and act in favor of the removal to the extent that vehicular traffic will not be permitted; however, that the pedestrian and golf carts/wheelchair access be constructed so that those types of transition can occur and that additional structures not be built to prevent vehicular movement in the case of emergencies.

Mr. Friedman stated that he does not want real deep culverts in the case that a fire truck needs to get across the grassy area. You have two pieces of ground and if you don't want people to transit them dig a nine (9) foot ditch and they can't get across and the fire truck would not be able to get across. He is not sure how to put that into a motion; however, he does not want a road built. However, he would like for the Fire Department to be able to access the Modern Maturity Center given the volume of people that come to their events if that is possible.

Mr. Hemmig stated that proper procedure is that we have a motion on the floor; however, before we can have discussion on the motion we need a second on the motion. Is there a second on the motion?

Mr. Ambruso moved to second the motion.

Mrs. Townshend asked Mr. Friedman to repeat the motion. Responding to Mrs. Townshend, Mr. Friedman stated what he mentioned above; however, added not to put up concrete barriers that cannot be removed. A concrete barrier that you can get out and remove would be fine but do not eliminate the Fire Departments access to give them an additional access point.

Mr. Hemmig stated that your proposal is to create a pathway that a fire truck could go through; however, otherwise if not needed, it would be otherwise restricted to golf cart size.

Responding to Mr. Hemmig, Mr. Friedman stated that it happens all over the country where you drill a hole and you put a concrete pole in it and as long as the concrete pole sits in it, you cannot drive through it. You pick it up and you can drive through it.

Mrs. Townshend stated they could put a sixteen (16) foot wide path and a bollard or two in.

Mr. Tolbert stated that some types of signs would be required prohibiting thru traffic. Responding to Mr. Tolbert, Mr. Friedman stated that people are not going to get out of their car and pick up a concrete pole and drive through.

Mr. Koenig stated that if that proposal is going to be considered, he would ask that this be tabled because that really needs to be reviewed in depth by Staff because sitting here and trying to design it while talking about it at a Commission meeting is not appropriate in his opinion.

Mr. Hemmig stated that he feels that we would need input from emergency services such as the Fire Department, Police and so on. He feels that this is a proposal with merit.

Mr. Friedman stated that it did not seem to be complicated to him; however, he does not want to stall this whole process and he would be glad to amend and remove it from the motion.

Mr. Friedman stated that he would amend the motion to remove that portion (Fire Department access) if it which is supported by the second on the motion. The motion is now cross access just for the pedestrian and golf cart type vehicles.

Mrs. Townshend started that you need to move to amend the motion to remove that emergency access and need a second on that and then vote on the amendment.

Mr. Hemmig stated that we have a motion to amend the original motion. Do we have a second on that amendment?

Mr. Nichols moved to second the motion.

Mr. Hemmig questioned if there was any discussion on the motion to amend the original motion? What we are voting on now is to amend the original motion to remove the requirement to allow any kind of future access for fire trucks or any other emergency vehicles basically anything other than larger than a golf cart.

Mr. Hemmig ask all those in favor of Mr. Friedman's motion to amend the original motion to say aye, all were in favor 7-1 with Mr. Hemmig in opposition and Colonel Welsh absent.

Mr. Hemmig stated that the original motion is for a golf cart or wheelchair and for pedestrian access, further discussion on that motion? Mr. Hemmig questioned how do we define what is a golf cart width path that would restrict vehicular traffic?

Responding to Mr. Hemmig, Mr. Friedman stated that he would say it would be a hard surface of a width substantial enough to accommodate a small vehicle like a golf cart and not substantial enough to accommodate a vehicle.

Mrs. Townshend stated that a typical multi-use path is going to be either eight (8) or ten (10) feet wide.

Mr. Friedman stated that he would be glad to have the golf cart path be ten (10) feet. Responding to Mr. Friedman, Mr. Hemmig stated that this would be wide enough to get a car through. Mr. Friedman stated then let's not make it ten (10) feet. He did not know that he needed to be specific about the width. He thought that you could figure that out.

Mr. Ide stated that a golf cart width is five (5) feet.

Mr. Hemmig stated that what he is trying to say here is if you create a golf cart path and you build it to any type of specification, it is probably going to be wide enough to get a car through. This is why he is concerned about your motion and getting into those technicalities.

Mr. Koenig stated that we are not designing anything lately with golf cart access because we just do not have that in the manual at the moment.

Mr. Friedman questioned how wide a sidewalk is? Responding to Mr. Friedman, Mr. Koenig stated that a sidewalk is five (5) feet wide.

Mr. Friedman further stated that he would suggest that the width of the golf cart path be five (5) feet wide and that would not be sufficient for a vehicle, but would be sufficient for a vehicle of that size.

Mrs. Townshend stated that the problem would be that it wouldn't be sufficient for a golf cart if there are pedestrians on it as well. The question is do you want it to be a golf cart path or do you want it to be a sidewalk connection? Do you want it to be a multi-use path?

Mr. Friedman questioned why she was asking a question that he has already answered. He wants it to be a golf cart path sufficient for a golf cart, but not sufficient for a vehicle so that a vehicle would not be driving on it. Maybe you could do that by signage. He did not know that they were going to design it or that we were going to describe it.

Mr. Tolbert questioned if it was incumbent upon us to get into that specificity as to the width and the motion? He does not think so; this is ridiculous.

Mrs. Townshend stated from a process standpoint, whatever gets approved tonight and Mr. Ide and I have talked about some changes that need to be made to the Site Plan, this will need to be put on a Site Plan and we will have to have a revised set of final plans. Our concern on the Staff end is without knowing what the Commission wants in terms of width we cannot really approve it.

Mr. Friedman questioned what we called it the last time we had it on the books? The last time we approved this before we made it a vehicular access we called it a golf path and pedestrian walkway. How was it described at that time, lets describe it the same way, do you remember?

Responding to Mr. Hemmig, Mrs. Townshend stated that there was not any design for it as part of the Plan.

Mr. Friedman further questioned was it not approved as a cross access so, how ever we described it then lets describe it that way again or has something changed? Responding to Mr. Friedman, Mrs. Townshend stated that it was a note on the Plan.

Mr. Ide stated that he agrees with everybody's comments on this. He also agrees that God forbid there is an emergency and that the Route 8 entrance is blocked and that Mr. Koenig's suggestion about emergency egress is a concern. One suggestion is that you could make the access on that

side large enough for a fire apparatus to get through by use of mountable bollards which are items that are placed that only a fire truck or emergency vehicle or someone who is not suppose to be there can ride over top of those. You can place them to where a golf cart can ride through a five (5) foot path and then have a three (3) foot path on the other side of that so that pedestrians can walk safely. The suggestion would be five (5) foot, have the mountable partitions in the center, and then three (3) foot to the right or left of that to allow pedestrians to go through and in the case of emergency fire apparatus can access the site.

Mrs. Townshend stated that she thinks that this is a good suggestion; however, she would be hesitant to have us accept something for fire apparatus access that the Fire Department has not agreed would be acceptable to them because there are fire access types of surfaces that have been done other places that our Fire Department will not accept as fire access. If we want to do that, she is all for it; however, the motion can either say in a way that meets the specifications of the Fire Department or it comes back. The cleanest way would be to have it come back so that you know what you are approving.

Mr. Ide stated that his reservation to that is that the existing building that is under construction is going to be done within the next month and as it stands right now, the access point for vehicular traffic is a condition of that Certificate of Occupancy. He does not think that it is fair to require the owners to wait for that. If you can create a motion that would allow for emergency vehicular access and then gear the access to golf cart and allow us to work with Staff, he feels that is an acceptable motion.

Mr. Hemmig stated that not to belittle the point; however, it is your presentation here tonight, your request, that has created this situation so we have to deal with it so if it takes another month, it takes another month. We want to do it right and in line with the Code and what the requirement is of emergency vehicles.

Mr. Friedman stated that he is beyond perplexed here. He is sitting here as a Planning Commission member making a motion that he would like access to be between these two properties; however, he does not want it to be vehicular access. He would like it to be wide enough for a human being to walk and wide enough to accommodate a wheelchair and/or a golf cart. If it accommodates those things, it cannot accommodate a vehicle. Those things are smaller than a vehicle. By definition, you should be able to figure out how wide it should be. They would not go through this access easement at one hundred miles an hour; they are going to slow down and make sure they are going to be okay.

Mr. Hemmig stated that there is a motion on the floor that will restrict all vehicular access including emergency and fire. Responding to Mr. Hemmig, Mr. Ambruso stated that he would leave out the emergency and fire. He feels that should be excluded.

Mr. Hemmig stated that this is what his motion is doing. As it stands right now his motion is for golf carts and pedestrian access only, does the second on the motion understand that this is what the motion is? Responding to Mr. Hemmig, Mr. Nichols stated that yes, he does.

Mr. Hemmig asked for a vote on the motion. All were in favor of the motion 7-1 with Mr. Hemmig opposed and Colonel Welsh absent.

(Note: The following two applications were heard in conjunction with one another as they pertain to the same property)

MI-11-01 Comprehensive Plan Amendments 2011 (Part B) - Public Hearing and Review for Recommendation to City Council of an Amendment to the *2008 Comprehensive Plan*, as amended, for a request to revise the Land Use Classification associated with a series of properties of application Z-11-02. Ordinance #2011-08. *Consideration of this request for Land Use Classification revision (Items #18-21) associated with rezoning application Z-11-02 was rescheduled at the February Planning Commission Meeting.*

Z-11-02 Lands of College Road Management Inc, Kent Storage Facilities Inc. & Loralex Company, LLC at Railroad Avenue - Public Hearing and Review for Recommendation to City Council on a rezoning application consisting of four parcels of land totaling of 30.78 acres ±. The property is currently zoned M (Manufacturing Zone). The proposed zoning is RG-5 (General Residence Zone for Mid-rise Apartments). The subject property is located north of College Road and east of the railroad corridor and Railroad Avenue. The owners of record are College Road Management Inc., Kent Storage Facilities, LLC and Loralex Company, LLC. Property Addresses: Grove Street and Railroad Avenue. Tax Parcels: ED05-067.00-02-53.00-000, ED05-067.00-02-54.00-000, ED05-067.00-02-55.00-000, and ED05-067.00-02-56.00-000. Council District 4. Ordinance #2011-04. *This application was removed from the February Meeting agenda due to complications with the Public Notice requirements.*

Representative: Conny Malmberg, Principal of the Project.

Mrs. Townshend stated the proposed amendment to the *2008 Comprehensive Plan* Part B, as you recall, this was pulled from the list of amendments from last month due to an error in public notice, no fault of the applicant. This is a request to change the Land Use Classification from Industrial to Residential High Density on property adjacent to Railroad Avenue and Grove Street just north of College Road behind College Settlement. The application includes four (4) parcels of land currently zoned IPM and shown as Industrial in the Comprehensive Plan. It did come forward to the Planning Commission as a manufacturing subdivision for a builder/contractor yard or something of that nature. The challenge was that the only access was adjacent to the railroad tracks which created issues with DelDOT approvals in terms of queuing on the tracks and being an unsafe condition. The only other potential access is to come through College Settlement. The applicant is requesting to change the Land Development Plan to allow for High Density Residential because since they will need to take access through a residential community, a residential use would be more appropriate than an industrial use.

Mrs. Townshend further stated that again, the Comprehensive Plan recommends that High Density Residential be dispersed throughout the City along arterial roadways in close proximity to other High Density Residential uses, schools, neighborhood commercial areas, transit service, and other compatible non-residential land use areas. In terms of this particular property, it is located just off of College Road which is identified as an urban minor arterial in the Comprehensive Plan. It is near but across the railroad tracks from North Dover Elementary School. It is also near Delaware State University. A number of employers include the College Road Business Park adjacent to the site and on the other side of the railroad tracks are other high

density residential development and transit services. The railroad tracks do impose somewhat of an impediment accessing these services by foot. There is no neighborhood commercial in the immediate location. There is limited road access. Access will need to be addressed at the time of development and there are environmental constraints that could make it less suitable for high density. There are significant woodlands on the eastern portion of the site wetlands as well. It is adjacent to the Fork Branch Natural area.

Mrs. Townshend further stated that Staff would suggest that Medium Density Residential would be more appropriate and that would allow for up to eight dwelling units per acre. High Density would support more than that. We do believe that residential is more appropriate because the access will need to take place through the residential development of College Settlement.

Mr. Malmberg stated that the original plan that we did some engineering on was an industrial yard or a contractor's storage yard. There is a lot of need for that because of restrictions, especially the County on outdoor storage on people's lots and houses. With regards to contractor equipment, we went through the process with DelDOT and their concern was that left turning traffic onto the existing industrial road which is Railroad Avenue has a fifty-five foot wide access which would be adequate. We would be queuing on the railroad tracks that are immediately to the left of the four (4) parcels that make up this application except for the one in the middle which is Mishoe Towers. Left hand turning traffic would be queuing on the railroad tracks and they were concerned with big vehicles. There was really no good way of getting in there. We looked at jug handles and things like that and there was just no good right-of-way to make it work. The College has tried to purchase the property a couple of times, but has never been able to get it together to pull the trigger so that caused a lot of the delay between then and now. We need to move forward and are looking for a reasonable use of the property. High Density Residential made the most sense to them and requires access again for safety reasons not most likely down Railroad Avenue but through College Development or Grove Street that would require some improvements on our part. DelDOT disfavors if not actually prohibits industrial traffic through residential neighborhoods. It is fairly obvious that it had to be residential since we cannot access it very well for industrial purposes down Railroad Avenue and it does not make sense to go through the residential neighborhood. Staff supports the change in zoning from its current Industrial use. He questioned if he is doing their zoning and the Comprehensive Plan change together?

Responding to Mr. Malmberg, Mrs. Townshend stated that it is two separate public hearings; however, the case is the same for both so you can address both now.

Mr. Malmberg further stated that the Planning Department supports the residential use because of the logical reasons that he just illustrated. The only difference we have is whether it is High Density Residential or Medium Density Residential and the reasons that they suggest Medium Density Residential are reasons that I would suggest you support High Density Residential. The site has a very distinct drop-off almost like a cliff with it being a fairly high site and then it drops off significantly down to the stream that runs down underneath the bridge next to DSU. The site is contiguous to DSU and the site is about thirty (30) acres. Twelve to thirteen of those acres are on the other side of the drop off which is basically all wetlands which leaves about seventeen (17) acres. Three (3) of those seventeen acres are under restriction until 2019 for monitoring because a long time ago part of this site was used for encasing bad stuff, some sort of hazardous

materials in concrete and then shipping it out. There are monitoring wells on those three acres of the site which makes them unusable for the next eight (8) years. Because of other constraints of setbacks and things like that, by the time you factor all those things in, engineering, roadways, and parking, we would not request and would commit to not putting more units in there than would be allowable under the Medium Density Residential which is 240 apartment units; however, we need a high density zoning classification so that we can achieve that because without that because of design constraints, he does not think with three story garden style apartments were permitted under the zoning classification suggested by Staff, we would be able to achieve the density. We would commit to not exceeding the 240 units which Staff is okay with; however, we would like the design ability to design buildings that would allow us to achieve those 240 units.

Mr. Malmberg further stated that a couple of things that would suggest that you support this position are that this is on an arterial roadway which is supportive of the high density zoning that has been requested. There is, as noted by the Staff report, the transit services available. It says it is not supporting commercial use; however, this property is adjacent to DSU and less than a mile from the Acme Shopping Center and Dover Downs. It is a logical place for this use of the property and for construction and design we think it is important to have the High Density Residential zoning that we have requested.

Mr. Holt questioned that they would rather go with the High Density than the Medium Density is that correct? Responding to Mr. Holt, Mr. Malmberg stated that the request is for RG-5 and was surprised that it was not supported by the Planning Staff. Responding to Mr. Malmberg, Mrs. Townshend stated that the height issues would prevent, without a PND, clustering of the density in a taller building.

Mr. Friedman stated that his understanding in reading that the Staff's concerns were primarily the environmental constraints and those are defined specifically as the cliff drop off and the wetlands that reside below. Responding to Mr. Friedman, Mrs. Townshend stated yes, these were the concerns.
Mr. Friedman stated that with regards to the limited street access, he did not quite understand that. Are we talking about percentage, could you explain further? Responding to Mr. Friedman, Mrs. Townshend stated that they are not public streets so there is quite a bit that needs to be figured out.

Also responding to Mr. Friedman, Mr. Koenig stated that not to mention that they are not public streets; however, there is property that is not actually in City limits so there is property that is located in Kent County. These are paper streets that were platted many, many years ago and in some cases, there may be encroachments on those platted paper streets. The City has not monitored this because the streets are located in Kent County. There are a number of challenges related to access to the property that would have to be resolved for future development.

Mr. Hemmig questioned did you do the calculations for how many units you could build with Medium Density versus High Density? Responding to Mr. Hemmig, Mr. Malmberg stated that Medium Density is easy to figure out; it is eight (8) units per acre and there is thirty (30) acres so it is 240 units. High density he does not even know if there is a density limit.

Also responding to Mr. Hemmig, Mrs. Townshend stated that High Density is based on the minimum square footage which is 900 square foot per unit; however, the arithmetic only gets you so far because as Mr. Malmberg indicated, once you factor in certain things like parking. Interjecting Mr. Malmberg stated that his figure would be forty-five (45) units per acre and unless we are going to build a skyscraper that is not going to happen. He would be willing to commit to not creating more than the 240 units which would be under the Medium Density category. It just gives us more design flexibility for buildings that could actually get to that point if we are down to a useable twelve (12) acres.

Mrs. Townshend stated that we cannot, through the zoning process, restrict any commitments made during the rezoning process. It cannot be enforced as conditions on a development application. That becomes the challenge; however, again the site restraints are going to push down the density from a theoretical density of forty-five (45) units because the land area is not there to support it once you take out the restrained portions. The other option would be under the Medium Density zoning classification a Planned Neighborhood Design could be implemented to allow for the bulk standard waivers to get that density higher up.

Mr. Hemmig stated that we essentially have a situation where we have to take Mr. Malmberg's word for it; if we allow High Density that he will not exceed 240 units.

Mrs. Townshend stated that you can do two public hearings at once consecutively since we discussed both matters.

Mr. Hemmig opened the public hearing for MI-11-01 Comprehensive Plan Amendments 2011 (Part B) and after seeing no one wishing to speak closed the public hearing.

Mr. Hemmig opened a public hearing for Z-11-02 Lands of College Road Management, Inc., Kent Storage Facilities Inc & Loralex Company, LLC at Railroad Avenue.

Mr. James Galvin – Staff Member of Kent County MPO – Stated that in the comments that they made on the rezoning application, which we technically do not do, one of the things that we are concerned about is maintaining rail access into the City and County. The fact that this property is immediately adjacent to the rail line and they share a right-of-way, the MPO would like to see some kind of buffer between the rail line and the residential units. He is not sure how you could use the property, but something to make it part of the project so that you do not have the immediate nuisance of the rail with the residents of the property.

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

Mr. Hemmig stated that this is one of his major concerns as well and apartment complex right next to the railroad tracks. He has the occasion to be in JP Court quite often and that is a brick building of masonry construction and it is a good 100 feet away from the railroad tracks and that building shakes like crazy when a train comes through even at a very slow speed. He does not know why anyone would want to live in an apartment right next to railroad tracks. Will you be able to meet the MPO's recommendation of the buffer?

Responding to Mr. Hemmig, Malmberg stated that he assures you that it would be in both the uses best interest as well as the railroads best interest to give as much separation as possible for the reasons that you just stated.

Mr. Friedman moved to forward to City Council approval of MI-11-01 Comprehensive Plan Amendments 2011(Part B) from Industrial to Residential High Density, seconded by Mr. Tolbert and the motion was unanimously approved 8-0 with Colonel Welsh absent.

Mr. Friedman moved to forward to City Council approval of Z-11-02 Lands of College Road Management, Inc., Kent Storage Facilities, Inc., and Loralex Company, LLC at Railroad Avenue with the four (4) parcels of lands associated with it and rezoning it to RG-5 as requested by the applicant, seconded by Mr. Nichols and the motion was unanimously carried 8-0 with Colonel Welsh absent.

MI-11-02 Text Amendments: Solar and Wind Energy Amendments - Public Hearing and Review and Action on a Recommendation to City Council regarding proposed amendments to the *Zoning Ordinance.* The proposed ordinance would allow solar energy systems and small wind energy systems as accessory uses in all zoning districts, and set standards for such systems within residential zones and non-residential zones. The proposed amendment adds a new Article 5 Section 20 to the *Zoning Ordinance* and additional definitions to Article 12. Ordinance #2011-01.

Representative: Staff

Mrs. Townshend provided an overview of the application

Mr. Holt questioned that what you are saying is if you put a wind power unit on your house it would be just for your house you could not be selling to your neighbors. Responding to Mr. Holt, Mrs. Townshend stated that yes that is correct.

Mr. Tolbert stated that there are a lot of areas in Dover, because of the closeness of properties to each other they would not be able to put in that kind of wind power unit. Responding to Mr. Tolbert, Mrs. Townshend stated that this is correct. There are some places where it would not be feasible because the setback is essentially the height of the tower plus one blade so you are looking at probably fifty (50) feet from the property line. In some cases, that may not be a bad thing because this is one of those things where it is new area and is a challenge. If you are real close that's where you end up with neighbors complaining about the noise of your wind turbine.

Mr. Holt questioned if Staff had any action on this now with anyone putting them in? Responding to Mr. Holt, Mrs. Townshend stated that we have not had wind. If you drive up Saulsbury Road you can see that The Little School, NCALL, and the City of Dover's Electric Administration building have solar roof mounted solar panels. We were approached by a developer/property owner who owns a campus and they looked into putting solar panels on the roofs. Because of the design of the building, the roof would not have supported them. That is when they started looking at the idea of ground mounted and we determined that we need to set a standard because the Code was virtually silent on it because we have not had this.

Mr. Nichols questioned what is the height of a free standing tower for wind? Responding to Mr. Nichols, Mrs. Townshend stated that they are typically high; however, she does not know specifically, but her understanding is they tend to be about fifty (50) feet high. They would have to be setback by whatever the height of the tower plus one blade from the property line.

Mr. Nichols stated that there would be no wind at fifty (50) feet. The wind would not be there and would have to be higher than that. The big towers are 240 feet tall and the propeller blades are 240 feet in diameter and they are out where there is a lot of wind. There is hardly any place around here where the wind would be restricted and would never turn it. Responding to Mr. Nichols, Mrs. Townshend stated that anyone who is going to get a wind turbine for their house or for their business, it would be on them to determine what the specifications are. Again, wind varies depending on where you are so it would be on that person to determine if it is going to work for them and how high it would need to be. What we would look at is if it is determined that it needs to be seventy-five (75) feet then we would need to determine that it is seventy-five (75) feet plus the length of the blade from your property lines.

Mr. Tolbert stated that in this letter that we have, they make mention that there are devices that do not use those propeller type uses and that they may be better for some sites. Responding to Mr. Tolbert, Mrs. Townshend stated that it appears that way. In looking at the letter it appears that the turbines with the propellers are the types of systems that Mr. Malkiewicz is concerned about. However, that specifically is what the State statute gets at and severely limits our ability to limit them so unfortunately, we are not able to take something and change it from the minimum of what the State lets us do.

Mr. Hemmig questioned on line #36 Paragraph B under 24.12 regarding the sound not exceeding five (5) decibels above the existing average noise level, how would you ever determine that and how is it enforceable? Responding to Mr. Hemmig, Mrs. Townshend stated that this is where we just took what the State gave us. If we were going to have to do that we would have to get the measuring equipment or hire someone with that measuring equipment.

Mr. Tolbert questioned if the Police Department would have this measuring equipment for when they receive noise complaints? Responding to Mr. Tolbert, Mr. Koenig stated that this is different. This type of sound study would be similar to what they do on Federal road projects where there are Federal funds. If they have to do some noise attenuation studies you would hire that type of contractor and they have all kind of standards on how they measure decibels and what is average and what is not average. It is not cheap.

Mr. Hemmig stated that regarding Line #80 where it talks about the setbacks being one times the height for the propeller. No where around here is a maximum height stated; however, aren't there going to be some height restrictions with regards to the Air Force Base or FFA requirements on maximum heights of towers in City limits? Responding to Mr. Hemmig, Mrs. Townshend stated that the issue is that this is the area where the State preempted us on this. She does not believe that they can actually give a maximum height as long as it meets the setback. If there is something in terms of FFA with a small wind system they are not going to be high enough to get into the FFA concerns. She is not sure about the Air Force Base. The Air Force Base would have more concerns with a large wind energy system field. The idea is that these are going to be smaller because the generations are less.

Mr. Hemmig stated that he would like to talk about the removal of solar energy system that is not being used or is in disrepair. There is no timeframe given on how soon it has to be removed. Should we have something in there such as six (6) months? Responding to Mr. Hemmig, Mrs. Townshend stated that we had some extensive discussion about decommissioning and the concern was that once you set a time, the issue becomes when it comes into a state of disrepair then you address it. What we did not want to do, if for instance there is an accessory solar structure and it is maintained but it is not operational for whatever reason, as long as it is maintained and can be useable, immediately non-use is not the problem. The problem is when they start to deteriorate and then they become a nuisance. If we set a timeframe, we could end up causing something to be removed that could be fully functional if you change tenants.

Mr. Hemmig further stated that on Line #119 where you define small wind energy system you say primarily to reduce on-site consumption. That leaves them open for non on-site consumption? Responding to Mr. Hemmig, Mrs. Townshend stated that typically as she understands it, anywhere that people have solar or wind systems that are for that specific property, there are typically cycles where they may produce more than they need and then can sell it back into the grid. She does not know if this is regulated by the Public Service Commission; however, there is a mechanism for doing that and becomes secondary when there is an excess that they are not using.

Mr. Hemmig opened a public hearing.

Mrs. Townshend stated that a letter was received from Michael J. Malkiewicz, Esquire who is a City resident. He wanted to bring a couple of issues to our attention. He talks about the height of the propeller. Windmills are sold that have vertical centrifugal wing devices rather than a propeller and the noise created by the propeller or the noise of the vibrations of the structure that the windmill is attached to. Damages caused by the structure and the windmill can come apart during a storm were issues of concern. Some of the windmills that can be purchased by residents and installed on their roofs or attached to their homes have given rise to nuisance complaints by neighbors who are bothered by the constant noise or thumping of the propeller. Essentially, his concern is the issue of windmills rather than centrifugal wing device; however, this is an area where the State has preempted us in terms of the legislation that they have passed.

Mr. Hemmig stated that we cannot add anything to say the tower plus any moving parts? Responding to Mr. Hemmig, Mrs. Townshend stated that the height is the tower plus the blade. In terms of something that spins horizontally and not vertically, we would end up looking at the overall height because it is not higher than the tower. In terms of the central part of his concern, she does not think that we are able to say that you cannot do the propellers.

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

Mr. Ambruso moved to forward to City Council a recommendation of approval of MI-11-02 Text Amendments: Solar and Wind Energy Amendments, the proposed ordinance that would allow solar energy systems and small wind energy systems as accessory uses in all zoning districts and set standards for such systems within the residential and non-residential zones, seconded by Mr.

Tolbert and the motion was unanimously carried 7-0 with Colonel Welsh absent and Mr. Friedman leaving at 9:26 PM.

NEW BUSINESS

Dover Transit Center Neighborhood Plan

Mr. Hemmig stated that this Plan was presented to us at the Quarterly Workshop last month and they have requested that we make a formal motion to bless the Plan which we could not do at that Quarterly Workshop as we cannot vote on items at that meeting.

Mr. Tolbert moved to endorse/approve the Dover Transit Center Neighborhood Plan as presented, seconded by Mr. Baldwin and the motion was unanimously carried 7-0 with Colonel Welsh absent and Mr. Friedman leaving the meeting at 9:26 PM.

Meeting adjourned at 9:46 PM

Sincerely,

Diane Metsch
Secretary