CITY OF DOVER PLANNING COMMISSION
February 22, 2011

The Regular Meeting of the City of Dover Planning Commission was held on Tuesday, (Due to Holiday) February 22, 2011 at 7:00 PM with Chairman Hemmig presiding. Members present were Mr. Hemmig, Mr. Tolbert, Mr. Shomo, Mr. Baldwin, Mr. Nichols, Colonel Welsh, and Mr. Ambruso. Mr. Friedman and Mr. Holt were absent.

Staff members present were Mrs. Townshend, Mrs. Melson-Williams, Mr. Koenig, Ms. Cornwell, Mr. Albert, and Ms. Metsch. Also present were Mr. Gregg Moore, Colmcille DeAscanis, Pete Ksenish, Mr. Bob Munion, Mr. Leonard Iacono, and Mrs. Laura Switsky. Also speaking from the public was Mr. Leonard Iacono, Mrs. Carolyn Fredericks, Mr. James Hutchison, and Mrs. Joyce Breasure-Herrick

Mr. Hemmig stated that there is an amended agenda on your desks this evening as Item #2 under New Development Applications Z-11-02 Lands of College Road Management Inc, Kent Storage Facilities, Inc., and Loralex Company, LLC at Railroad Avenue has been removed due to inadequate public notice.

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

APPROVAL OF THE REGULAR PLANNING COMMISSION MEETING MINUTES OF JANUARY 18, 2011
Mr. Shomo moved to approve the regular Planning Commission meeting minutes of January 18, 2011, seconded by Mr. Tolbert and the motion was unanimously carried 7-0 with Mr. Friedman and Mr. Holt absent.

APPROVAL OF THE EXECUTIVE SESSION PLANNING COMMISSION MEETING MINUTES OF JANUARY 18, 2011
Mr. Tolbert moved to approve the Executive Session Planning Commission meeting minutes of January 18, 2011, seconded by Mr. Nichols and the motion was unanimously carried 7-0 with Mr. Friedman and Mr. Holt absent.

COMMUNICATIONS & REPORTS
Mrs. Townshend stated that the Planning Commission Quarterly Workshop will be held tomorrow at 4:00 PM in the City Hall Conference Room. With regards to that meeting, there will be a presentation regarding the neighborhood planning charrette for the area around the new Transit site.

Mrs. Townshend further stated that the American Planning Association is holding an audio web conference "Mitigating Hazards through Planning" which will be held on March 16, 2011 at 4:00 PM at the Kent County Administration Building.

Mrs. Townshend provided an update on the regular City Council and Utility Committee meeting of January 24, 2011 and the regular City Council meeting of February 14, 2011.

Mrs. Townshend further stated that a letter was placed on the Commission member's desks this evening. As you recall, last month you took action with regard to the House of Pride. Of the nine (9) properties that were under the Conditional Use permit, two (2) were removed as they were vacant. The remainder was given thirty (30) days to come into compliance. Staff has determined that two (2) of those seven (7) had not had the initial inspection done yet. These were inspected that week and the follow-up inspections are scheduled for tomorrow, Wednesday, February 23, 2011. On Friday, February 18, 2011 the Fire Marshal's Office and the Code Enforcement Division conducted inspections of the other five (5) properties. The Inspectors determined that the violations identified in the previous report had been satisfactorily corrected. There were a number of small corrections that were underway on Friday that will be inspected later this week. Additionally, there were a number of other violations that were identified and were given two (2) weeks to correct those violations.

Mrs. Townshend further stated that one of the things that they talked about with Staff, the Fire Marshal's Office, and the Code Enforcement Division is the challenge of this issue being addressed during the winter months with the Planning Commission having stated that they would want to review it annually. Staff would like to start that annual review in August which would be six (6) months from now, then a year from that so that we are not up against the issue of what happens if they are not compliant in the middle of winter.

Mr. Hemmig questioned if there was any discussion from the floor with the proposal by Staff to start the annual review in August of this year?

Mr. Shomo stated that he felt that it would be a great idea.

Colonel Welsh stated that he understood why; however, his only concern is the greatest risk for fire or hazard identification is in the winter months. He feels that we will see them in compliance and that they will continue to stay in compliance. He agrees that it would be less disruptive to do it in the summer months.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATIONS

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

OLD BUSINESS

There were no requests for extension of Planning Commission approval.

NEW DEVELOPMENT APPLICATIONS

MI-11-01 Comprehensive Plan Amendments 2011 - Public Hearing and Review for Recommendation to City Council of a series of Amendments to the *2008 Comprehensive Plan*, as amended, by replacing Table 12-1: Land Use and Zoning Matrix and Map 12-1: Land Development Plan. The amendment to Table 12-1 is to add zoning classifications to the Open Space land use classification in the Land Use and Zoning Matrix. The series of amendments to Map 12-1: Land Development Plan Map will revise the Land Use Classification from Open Space for certain properties to more appropriate classifications based on the property uses and surrounding uses.

Representative: Staff

Mrs. Townshend stated that there are two (2) Staff recommended changes to the *Comprehensive Plan*. Both are fine tuning things that happen as the Plan is implemented. You will recall that back in July; the Planning Commission looked at the rezoning of properties to the Recreational and Open Space (ROS) zoning classification that had been created earlier in 2010. When Staff was going through to determine which properties to bring forward for rezoning to that classification, we picked up some errors. Essentially, areas that for example may have been a house that somehow were made green on the Land Development Plan Map. We did not bring forward a recommendation to rezone the uses that are not consistent with the Open Space classification to the Recreational and Open Space zoning. The first part of this application is to correct the areas that were picked up in the green areas on the Development Plan Map which is what is expected in the Comprehensive Rezoning phases when you get into more of the parcel level analysis rather than the broad brush that you do at the Comprehensive Plan level.

Mrs. Townshend further stated that if you look at the table that was included in your packet, you are looking at numbers 1 through 16 which are essentially properties that were painted green in the *Comprehensive Plan* that when we went to apply that zoning classification, we determined that this was not in fact the current use or the intended used for those areas. This is a clean-up for the *Comprehensive Plan*.

Mrs. Townshend further stated that the second part of this relates to the implementation of the Recreational and Open Space Zone. Staff is proposing a number of amendments to the Land Development Plan chapter in the Land Use and Zoning Matrix which is Table 12-1 of the *Comprehensive Plan* that would, instead of having the language of: "Lands that are on the Land Development Plan as Open Space are not proposed for rezoning. They will remain as zoned as of this printing. Once an Open Space Zone is developed, some areas will be proposed for rezoning for this designation." Following the implementation of the Open Space Zone or what turned out to be the Recreational and Open Space Zone, recommendation is to amend this Table as it relates to Open Space by putting the ROS (Recreation and Open Space Zone) and the RC (Recreational and Commercial Zone) as the appropriate zoning classifications for that Land Use category.

Mr. Hemmig questioned if there were any Commission member comments or questions at this time and there were none.

Mr. Hemmig questioned that the second part of the Open Space is going to be Recreational and Commercial Zone, what is the commercial part? Responding to Mr. Hemmig, Mrs. Townshend stated that these two zoning classifications are the classifications that would be acceptable in this area. When Staff was looking at what to rezone to recreation and open space areas, the Maple Dale Country Club is shown as Open Space in the Comprehensive Plan. They had some concerns about rezoning that as it would take them from Recreational and Commercial Zone to the Recreational and Open Space Zone. At the time of the proposed rezoning, they voiced their concerns on the record and the decision was recommended by the Planning Commission and approved by City Council to have them retain their zoning of RC. When you look at what the appropriate land use classifications are, it makes more sense to change the table then it would to change the map.

Mr. Hemmig further questioned regarding Table 12-1 where there are general land use categories and low and high density, he noticed certain zonings are in more than one category. Responding to Mr. Hemmig, Mrs. Townshend stated that essentially, the intent of this Table is to give guidance so that when a rezoning application comes before the City, the Planning Commission, City Council and Staff that you can use that Table as a basis to determine if this is what the *Comprehensive Plan* intended. In some cases, for instance, a zoning classification that falls into more than one would be the R-8 which is a one family classification. It is a single family detached zoning designation which has some of the lower density attributes; however, it is a higher density than some of the others.

Mrs. Townshend further stated that in terms of #3 listed in the report this is being pulled out entirely. It will be brought forward next month as a separate amendment to the *Comprehensive Plan*. The other applicant initiated Comprehensive Plan Amendment is a change in classification from Institutional to Residential High Density.

Mr. Hemmig questioned if there was a representative at the meeting for DoveView and if they would please come down to the podium.

Representative: Mr. Gregg Moore, Becker Morgan Group, Inc. representing Sun Trust Bank.

Mrs. Townshend stated that in the report what you have is the verbiage provided by the applicant to justify the change in the *Comprehensive Plan* as well as the analysis of Staff. Essentially, DoveView, if you will recall, was previously approved as a Senior Citizen Housing Option project under the PND for 192 dwelling units and age restricted for 55 aged and over. The apartments were under construction and construction ceased in about 2008 and nothing has moved forward. What we have now is two (2) partially completed buildings and an expired Site Plan. Regardless of the zoning classification and whether it remains what it is zoned now or whether it is rezoned, you will see it back as a Site Development Plan application.

Mrs. Townshend further stated that the applicant is requesting to use the housing style and the housing density that was approved for DoveView, but not have it age restricted. It is clear that they will not be able to achieve the number of units that DoveView was approved for because there are parking issues. DoveView did not provide 2.25 parking spaces per unit because when it was senior housing it was less. She believes, based on what DelDOT recommended during the PLUS review, that there will be a Traffic Impact Study required or at least the discussion of that with the potential of paying into the area-wide study. What they are looking to do is utilize the infrastructure that was put in place for DoveView and to capture a portion of that density through multi-story apartment buildings; however, not age restricted. They are requesting, in terms of the *Comprehensive Plan*, a change to Residential High Density in terms of the zoning which will be #3 on the agenda; they are requesting RG-5. This will be a separate action by the Planning Commission once the Comprehensive Plan Amendment is dealt with because the two are tied together. It is important that the applicant speaks on the matter and that the public speak during the public hearing.

Mr. Moore stated that Sun Trust Bank has been in suit with the previous developer DoveView, LLC and prevailed in that suit. Around the 16th to the 20th of February a new deed was filed in

the name of the bank and that deed is CRM Mid-Atlantic, LLC which was setup by the bank to own it. This transfer to the bank has just occurred in the last week or ten days and what the bank is trying to do is act quickly and get this property back into productive use. They want to clean the property up and bring on a developer to continue to build or rebuild these buildings. They understand to do that they have to go back through the Site Plan process and have talked to Staff with regards to the process of doing that. We, at Becker Morgan Group, have evaluated the plan and believe that there will be significantly less units than you have seen before in an RG-5 project with 2.25 parking spaces per unit under the RG-5 zoning classification. It was 1.25 with the senior project with 246 parking spaces to serve 192 units.

Mr. Moore further stated that they have done a Concept Plan for the bank and have estimated for them the total number of units as an RG-5 project would be somewhere around 120 and 144 units not 190, so it is coming down significantly. We believe that a whole building will be dropped off of the plan as there will not be four (4) buildings; however, there will be no more than three (3). There will be fewer units with less folks on the property with it being a non-senior project. The banks intention is to sell this project to a developer who will be the entity that reconstructs, operates, owns, and managers the new project once we get it conceived and the bank is prepared to continue through the Site Plan process. We also need to go through a complete building evaluation to make sure we do the right thing with these buildings because they have been sitting there for a number of years. There are structural and environmental evaluations that they are doing to make sure that we properly bring these buildings back into service without causing a problem.

Mr. Hemmig opened a public hearing.

Mr. Leonard Iacono - Stated that he has some concerns regarding what the request is. From afar, he has been following this project as a major developer in the area. From what he understands, this original project was initially approved for condominiums. There was then a trade-off done changing it from a condominium unit to allow for age restricted apartments. He questions the validity of putting out and lifting age restricted requirements given what the original intent was. He does not know where all of this is going at the end of the day; however, if he is correct, this is the history here. He personally thinks that it should stay that way.

Mrs. Carolyn Fredericks – Executive Director, Modern Maturity Center – Stated that she believes that there is a great need for affordable senior housing in Dover. She understands the buildings need to have some work done and obviously she would like to have a nice neighbor there as well. Her concern is, and we have filed the appropriate paperwork, to get rid of the connectivity between the two properties should the zoning be changed.

Mr. James Hutchison – 15 Glen Eagles Court- Stated that he is currently a board member of the Modern Maturity Center and for the record, he feels that it is very important that you keep in mind the Modern Maturity Center has over 20,000 members. When he looks next door at the DoveView Apartments, the complex itself was originally designed for senior citizens that have changed. Making it compatible between the two facilities is not so at this point. He would urge all of you to consider that for a public safety point of view. When he looks at the number of people who are going in and out of the senior center every single day many of these people are much older than average and have disabilities and some have severe disabilities. So again, I urge

you to look at this as far as any connection between roadways for the application and the Modern Maturity Center.

Mr. Hemmig stated with regards to clarification we are not considering any connection tonight on whether it should exist or not. That will be a separate application by the Modern Maturity Center should they desire to bring that forward. Tonight, we are only considering the land use consideration and the rezoning of that property.

Mrs. Joyce Breasure-Herrick – President, Modern Maturity Center - Stated that she would like to encourage you to consider the wonderful opportunity Dover has to use the facility, the Modern Maturity Center and have dedicated senior citizen housing which we desperately need in Kent County and specifically in Dover. What a wonderful environment it would be for someone to be able to come out of the apartment or condominium cross a little bridge, come into our facility for medical services, physical therapy services, lunch, line dancing, art classes, and higher education classes. It needs to be 55-plus housing as we desperately need the housing.

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

Mr. Hemmig stated that he would like to clarify that the Commission is considering Items #1 thru #17 on the Land Use Classification Map. Items #18 through #21 apply to the item that was taken off of the agenda this evening. Under the proposed amendments, we are considering Items #1, 2 and 4 for Land Use Classifications under MI-11-01 application.

Colonel Welsh stated that while not applicable at this time his concern has to do with the senior housing as DoveView. He does not know the details as to why construction stopped on DoveView. He would assume it has something to do with finances. He does not know if it had anything to do with demand. While all of us envisioned having senior housing and hoped that it would be, it certainly has been an eyesore for a couple of years. The question is do we continue with the eyesore or do we go with someone who will move forward with this project and develop it as something other than the original intent of senior housing. Did they not foresee a need for senior housing in the area?

Responding to Colonel Welsh, Mr. Moore stated that the bank has been trying to find a partner/developer to take the project on as it has been in a lawsuit trying to get control of the property and has not been able to find any partner or developer to take it on as a full senior development. The bank believes that this is because of the market as it has dropped significantly for senior housing. They believe to be able to market this property and bring it back into use. They are going to need to be able to do that with more than just senior apartments given the realities of what has happened. Their goal is to bring it back into code compliant construction standards and continue the construction. They need to be able to do that with the diversity of the housing with not just the senior option.

Colonel Welsh further questioned if there was no chance that the bank may be willing to stay with it to try and find a developer for senior housing? Responding to Colonel Welsh, Mr. Moore stated that the bank does not feel that it is viable as a senior only project.

Mr. Hemmig questioned if Sun Trust Bank or your firm as representative or the potential developer has done any actual market surveys to indicate that a rental apartment would be as or more viable than a senior housing apartment? Responding to Mr. Hemmig, Mr. Moore stated that they have met with, talked with, and negotiated with developers to take it over. They will be bringing a partner in to actually do the construction because they are a bank and this is not what they do so they have relied on their partners. The name that this comes from, CRM Mid-Atlantic actually has the expertise and that is what they are drawing on to make that conclusion which is why he is here tonight.

Mr. Tolbert asked if their plan is to develop the site for both senior citizens as well as others. Responding to Mr. Tolbert, Mr. Moore stated that yes they would. As you have heard this from other developers such as the Seskinore project which was one that started as simply a senior project and struggled in being able to market to others than just seniors. They came back and said that they could have a more viable project if they could open up to non-seniors. Clearly this is a good position for senior apartments as they have elevators and the project can be good for seniors to live there; however, at a 140 plus or minus units, we do not believe that it is viable in this market to be able to bring it back into and pump the money in that is necessary to redo the buildings.

Mr. Tolbert further stated that the question that comes to mind is that when you develop a site for seniors as well as others, seniors require additional kinds of amenities in their apartments than people who are under senior citizen age, would that not be a problem? Responding to Mr. Tolbert, Mr. Moore stated that no in fact, the two buildings that are there, their strategy will be to follow through on the way that they were being built to accommodate only seniors. Our project will accommodate seniors and will attract seniors in a large way; we do believe that. However, we do not believe that at the numbers we are at, the senior housing is viable with just seniors. We need to have the opportunity to get others to make it financially viable for a developer and reconstruction of the buildings. There is significant reconstruction to consider in these buildings because they have been open for so long. They have environmental issues, there are some structural issues and they are evaluating those; so, it is not like they are just going to come in and start putting siding on these buildings. There is a lot of money that needs to be pumped in to some degree to go backwards a little before we can go forward to get them into a code compliant component of a building.

Colonel Welsh stated that this is the thought process that he had as we were going along and we heard the testimony from the public. Just because it is no longer age restricted does not mean that seniors cannot obviously rent an apartment there and move in and still have full use of the Modern Maturity Center and the other facilities. It is an ideal location with the bank right there, Walgreens, and the Modern Maturity Center. He would think this would attract a great number of seniors. Responding to Colonel Welsh, Mr. Moore stated that the bank and the developers that they have talked to have the same idea. There will be a large amount of seniors that will want to come here because of the position of where it is and what it offers. The numbers are just not strong enough to revitalize the whole project.

Mr. Ambruso questioned what they are voting on separately? Responding to Mr. Ambruso, Mr. Hemmig stated on the proposed amendment there are three (3) items. The first item will be the Land Use and Zoning Matrix Table to include the new Recreational and Open Space Zone and

the Recreational and Commercial Zone. The second item is the Land Development Map plan change Items #1 through #17 to change the existing land use classification to what is shown as proposed. To take them out of Open Space and put them into one of the various residential or institutional land use classifications. The third item will be the specific land use classification change from institutional to Residential High Density for what is known as the DoveView apartments. Their zoning will be a separate issue.

Colonel Welsh moved to forward to City Council approval of MI-11-01 Comprehensive Plan Amendments 2011 to adopt the Land Use Table and the changes associated with it. That we adopt the map that depicts the Land Use changes (Items #1-16) and that we make a recommendation to change the Land Use classification for DoveView Apartments (Item #17). This excludes Items #18 through #21 on the Land Development Plan Map changes. Seconded by Mr. Tolbert and the motion was unanimously carried 7-0 with Mr. Friedman and Mr. Holt absent.

Z-11-03 DoveView Apartments at 101-405 DoveView Drive – Public Hearing and Review for Recommendation to City Council on a rezoning application consists of one parcel of land totaling of 6.735 acres ±. The property is zoned IO (Institutional/Office Zone) and subject to the COZ-1 (Corridor Overlay Zone). The proposed zoning is RG-5 (General Residence Zone for Mid-rise Apartments) and subject to the COZ-1 (Corridor Overlay Zone). The property is located on the north side of Forrest Avenue (Route 8) just west of the Saulsbury Road intersection. The owner of record is CRM Mid-Atlantic, LLC and SunTrust Bank. Property Addresses: 101-405 DoveView Drive. Tax Parcel: ED05-076.07-01-30.00-000. Council District 1. Ordinance #2011-05.

Representatives: Mr. Gregg Moore, Becker Morgan Group, Inc.

Mrs. Townshend stated that this application is similar to the previous application that you just saw in terms of surrounding Land Uses. There are other properties adjacent to this property that is zoned C-2A (Limited Central Commercial), one is vacant, the other is TD Bank, Walgreens Pharmacy, and another parcel that is zoned C-2A as well. To the north of this site is property that is zoned Institutional and Office and is the location of The Academy of Dover which is a charter school. Immediately west of the site is the Modern Maturity Center where you heard people associated with the Modern Maturity Center speaking. In terms of the *Comprehensive Plan* in order for this to go through, it is dependent upon that plan change. There is language in the *Comprehensive Plan* that addresses High Density. We have included the bulk standards for what RG-5 would include. She would state for the record that the Site Development Plan associated with DoveView has expired and those approvals were specifically for senior housing; therefore, the Site Plan will have to come back for consideration at that time.

Mr. Hemmig stated for clarification if the Land Use Classification change fails to pass City Council, then this rezoning would become null and void. Responding to Mr. Hemmig, Mrs. Townshend stated that City Council will be made aware that they go together and if they approve one the other will also need to be approved unless they go back and reconsider the first one.

Mr. Moore stated for clarification that he is aware that there was a tax bill that was due on this parcel of land that had not been paid by the developer. The bank was advised by its legal counsel that upon the deed being recorded, they would pay the bill. That bill has now been paid.

Colonel Welsh stated that to clarify a point for those who testified previously from the public, this is only a recommendation for a rezoning application. For those who had concerns regarding connectivity with the Modern Maturity Center, that would not be considered until they come forward with a Site Plan for the apartments.

Mr. Moore stated that they will reach out to the Modern Maturity Center with them separately. Now we have the chance to make that connection before we file a plan before the Commission so that we can talk to them about what we plan to do.

Mr. Hemmig opened a public hearing.

Mr. Leonard Iacono – Stated that he would like to make a comment about the whole aspect of this project. He challenges the bank to produce a market study that states that the need for senior housing is not required. He also suggests, as a major developer in Dover and one of the largest apartment owners here, no one has ever contacted him regarding the ability of taking the project over and developing a senior housing project. If the bank contacted someone, he has no idea who they contacted. He still does not understand the connection between the fact that the City already changed it from a condominium project to a senior housing project and is now changing it back. He just does not understand the whole flow.

Responding to Mr. Iacono, Mrs. Townshend stated that it has always been senior housing. Changing it to a condominium project is a form of ownership not a unit type. Essentially, what we have seen from the beginning has always been apartments as a unit type. Initially, the intent in that they would be condominiums for sale and then it changed to apartments; however, from a zoning standpoint there is no difference. The *Zoning Ordinance,* in terms of the housing style, specifically states multi-family; it does not state multi-family condominium or multi-family rental.

Mr. Iacono stated that it would be his error because he was under the impression that it started off initially as a condominium project and then went back to the City to request that it be a rental property and specifically a senior housing project. Responding to Mr. Iacono, Mrs. Townshend stated that it was "senior" from the beginning and was initially intended to be condominiums. They asked if they needed approval; however, Staff stated that approval was for senior housing and not necessarily the ownership or rental aspect of it.

Mr. Iacono stated that if the bank is still interested in considering a senior housing aspect; he would be interested.

Mrs. Carolyn Fredericks – Stated that her concern is that she does not know what the timeframe is for the Site Plan and when it would come back; however, the condition of her receiving a Certificate of Occupancy for her building was to build that connection. She is going to be ready to obtain a Certificate of Occupancy by the first of April because their building is almost completed. She is unsure how long the process would take before they would come back with their Site Plan.

Responding to Mrs. Fredericks, Mrs. Townshend stated that in terms of the Modern Maturity Center at this point, it is part of their Site Plan. They have received the request from the Modern

Maturity Center to come to the Planning Commission which will happen next month with their request to remove that interconnection cross access.

Colonel Welsh stated that to throw out an opinion he stated that they may want to think about this for awhile because he really thinks that it would be mutually beneficial for both of you to have that interconnectivity both for bringing new people into the Modern Maturity Center and having that use. Responding to Colonel Welsh, Mrs. Fredericks stated that they would discuss this issue next month as it is a major safety issue.

Mr. Nichols questioned when DoveView was proposed to be built, wasn't interconnectivity there at one time and they wanted to bring the road across the ditch over to that point and they abandoned the road idea; however, there would still be a small path across there to get back to the Modern Maturity Center? Responding to Mr. Nichols, Mrs. Townshend stated that there were two things. One, there was a small pedestrian golf cart type access between the two properties. There was also, at that point, even though there was not anything on the Modern Maturity side there was the requirement to provide a cross access easement on the DoveView side; however, they were not required to build it until something happened at the Modern Maturity Center. When Modern Maturity Center came through for their expansion that is currently underway, the location where the interconnection was put at DoveView was something that caused them (Modern Maturity Center) concern. It was at their request that the interconnection in terms of the location on their property was moved further to the front of the property. When DoveView comes in or the vacant parcel or anything adjacent we will have to determine how that connects with the Modern Maturity piece if it stays.

Mr. Nichols further stated that this area was originally shifted he believes to the back. Responding to Mr. Nichols, Mrs. Townshend stated yes and now has been shifted to the front because of concerns of traffic going through the parking lot and the ability of going around the front of the building.

Mr. Hemmig questioned that the Modern Maturity Center's Certificate of Occupancy is tied to completion of the interconnectivity, has that been built? Responding to Mr. Hemmig, Mrs. Fredericks stated that they have not built it yet and our building is almost completed. When they finish with their building, they cannot obtain a Certificate of Occupancy until that interconnectivity has been completed.

Mr. Hemmig further stated for clarification, this zoning is taking the property from I/O to RG-5. Under the I/O we were able to do a Conditional Use for senior housing. Under the RG-5 can it still be senior housing? Responding to Mr. Hemmig, Mrs. Townshend stated that they could voluntarily age restrict it under RG-5 or they could come back with another senior citizen PND under the RG-5. RG-5 does not preclude it from being senior housing; it just does not require it. Under the I/O, the residential uses aside from the senior citizen PND are prohibited.

Colonel Welsh moved to forward to City Council recommendation of approval of Z-11-03 DoveView Apartments located at 101-405 DoveView Drive from I/O Institutional Office subject to the Corridor Overlay Zone (COZ-1) to RG-5 General Residence Zone for mid-rise apartments and subject to the Corridor Overlay Zone (COZ-1), and for reasons stated in the Staff Report

and general discussion this evening, seconded by Mr. Nichols and the motion was carried 6-1 with Mr. Friedman and Mr. Holt absent and Mr. Ambruso opposed.

Mr. Hemmig stated that he would like to remind the public that this would be heard at the next City Council meeting on March 14, 2011.

S-11-02 C.F. Schwartz Building Addition at 1530-1536 North DuPont Highway – Public Hearing and Site Development Plan Review to permit the construction of a 24,444 S.F. building addition and the associated site improvements on a 7.83 +/- acre parcel. The property is zoned RC (Recreational and Commercial Zone) and C-4 (Highway Commercial Zone). The property is located on the west side of North DuPont Highway at the intersection with Rustic Lane. The owner of record is C.F. Schwartz Motor Company. Property Address: 1530-1536 North DuPont Highway. Tax Parcel: ED05-057.00-01-06.00-000. Council District 4. *Waivers Requested: Elimination of Sidewalk, Elimination of Curbing and Elimination of the Arterial Street Buffer. Consideration of Tree Mitigation Plan.*

Representatives – Mr. Colmcille DeAscanis, CDI Engineering; Mr. Pete Ksenish, Kent Construction; and Mr. Robert Schwartz, C.F. Schwartz Motor Company.

Ms. Cornwell provided an overview of the project.

Mr. DeAscanis stated that regarding the sidewalk waiver request as part of the DAC comments, we acknowledge most of them and we plan to incorporate them. We had some comments regarding the DelDOT comments so we set up a meeting subsequent to the DAC meeting. We went through each of the comments and had a very good conversation with them. DelDOT is requiring a separate sidewalk and is something we realize we are going to have to do. Staff recommendation was not to approve this sidewalk waiver request.

Mr. DeAscanis further stated that one of the main comments from DelDOT was the requirement of a TIS (Traffic Impact Study) because this is a 24,400 plus foot expansion and is classified as new car sales; however, that is not really what it is. The reason for this project is that Toyota is requiring them to have a repair service physically included in the new car sales structure. Rather than using the adjacent building on the same lot, they want to construct a whole new facility in the back of it. We are trying to generate new business and increase sales. DelDOT agreed with this and agreed to waive the need for a Traffic Impact Study requirement and have us pay a fee in lieu of on any future plans.

Colonel Welsh questioned if they were withdrawing their request for a sidewalk waiver? Responding to Colonel Welsh, Mr. DeAscanis stated that he would still have them vote on it and acknowledge that DelDOT has their own requirements for that.

Mr. Nichols questioned Mr. Koenig if the pumping station had been moved yet? Responding to Mr. Nichols, Mr. Koenig stated that it is currently being abandoned. He is not sure if they have actually released the property; however, they have shored the lines up. There was discussion at the Staff level that we would release the 25'x25' or 30'x30' piece of property and convert the wet well to a manhole and abandoned the need for that property there. He does not feel that it is

ready today; however, in conjunction with this project, they were going to move forward with that abandonment.

Mr. Nichols further questioned if all the sewer lines have been installed on this property? Responding to Mr. Nichols, Mr. Koenig stated that he believes so; however, they still have some clean-up to do on the property, but there is no more digging to do on the Schwartz property.

Colonel Welsh stated that he had elevations; however, no concept of color. Can you tell what the color combinations will be that you will be using? Responding to Colonel Welsh, Mr. Ksenish stated that basically the colors are going to be what would be considered the Toyota standards. They will have a nearly white cream color primary finish and will have some of the panel systems that will be the Toyota silver and then there will be red striping that will be indicative of all of the Toyota branding. The balance of it, which would be the split face block. We are going to try and blend the old buildings with the new building so it would still be the earth tones while still satisfying Toyota's need for standard colors.

Colonel Welsh further questioned if they had considered Staff's comments regarding the east elevation side that faces to the west?

Responding to Colonel Welsh, Mr. Ksenish stated that they have considered it; however, we have not made a final decision. We would like to hear what Staff is really looking for and how much of the area. Toyota has gone to great lengths of determining where they want their branding to be; and in fact, it has dictated the majority of the footprint. The one area that they were not concerned with is the road front on Rustic Drive. This was the one area that the owner was trying to save some money by using the building standard. There are some other panel systems that we are using on the north side of this site mandated by Toyota; however, they are three to four times more expensive than the panels that they are proposing on the south side. We would suggest, because of the market and the fact that Toyota is forcing his hand to do this project, we would really like Staff to consider not making that a requirement because it would present a financial burden to the developer. We could raise the split face a lot more effectively than trying to change to a different panel. We will do what we need to do to move forward.

Colonel Welsh further stated to gain his approval; you will need to do something to that face on that side of the building as there is a lot of traffic that goes on Rustic Drive to see a flat sided building with no contour to it and any windows or doors. Responding to Colonel Welsh, Mr. Ksenish stated that there are several windows and doors in it which is meant to emulate the adjacent showroom building and they feel that it ties in nicely with the existing building. If you look on the north side of their elevations, you will see that there is a flatter panel that has an embossed finish. We would be willing to do that; however, at a significant cost impact.

Colonel Welsh further stated that if you look at the west/south elevation, you have a large eighteen (18) foot door; however, you also have four (4) windows that break that up and he can't imagine that windows would be that expensive to install.

Mr. Ksenish provided a map depicting the building and how it was situated on the property. The highway side of the new building has a fifteen (15) foot aisle way between the existing showroom and the new building so that it will not be visible at all from any viewable angle. The

area described on an architectural elevation along Rustic Lane will not have split face. The bottom side is up to water table height and then it will have a panel system that will be very close to the colors that exist currently on the main showroom building. This will be the tan/white color with the silver banding that Toyota is mandating on the entire façade. The area up front, which is located on the north side, is Toyota brand and they wanted the color differential from their new car delivery and the rest of their buildings so that people know where to go. This is all mandated by Toyota so we really did not have a choice on the colors or the cost associated with the panels. It is only the back side of the building. Because of the property line, there was really no way to offset or to give any real depth or change in elevation.

Mr. Hemmig questioned as it stands now, that south elevation, when you get past the whole back section, will all be one color? Responding to Mr. Hemmig, Mr. Ksenish stated that yes, it will be all one solid color and it will have a different color for the brick banding. If we were forced to we could use the other panel to break it up. They would question what Staff would recommend and what a compromise could be and how large of an area would they have to do it on. From the owner's point of view, dressing up the back of the building does not do anything for him to help sell cars.

Mr. Nichols questioned the construction above the split face, what would that be and how is it framed? Responding to Mr. Nichols, Mr. Ksenish stated that this would be a metal building and four (4) foot on center horizontally with a steel frame.

Mr. Hemmig stated for clarification under the recommendations suggested as conditions of approval on page 4 of the DAC report Item #1: Staff recommends architecture for the south side; it should not read the west side.

Mr. Ambruso stated that since he has been on this Commission, it seems that we spend a little too much time in the area of the décor of these buildings that are going up. The business community that is footing the bill on a lot of this, it seems to him, that we should be more concerned with the Land Use Zoning requirement and not the color of these people's buildings or the number of windows they have. He thinks that this is something that should be worked out as the projects go along with Staff. He does not feel that this body should be passing judgment.

Responding to Mr. Ambruso, Mr. Hemmig stated that they got into this because years ago applicants were not even required to provide an elevation or a picture of what the building looked like and were not putting any parameters on it. As a result, we were starting to get a lot of very unusual colors of garishness and unusual shaped buildings. We decided about ten (10) to twelve (12) years ago to require elevations to at least get an idea of what the building would look like. We now have an Architectural Review Subcommittee for the Planning Commission so that if there are disputes and issues cannot be ironed out at this body, we can refer to this subcommittee and then bring forth recommendations to the body and for the applicant.

Mr. Ambruso stated that he understood; however, most people who come before this body are reasonable people who are making a very large investment. They want to put up something that is going to compliment their site. Responding to Mr. Ambruso, Colonel Welsh stated; however, on the same token there are many who do not and you have only to look at Route 13 to see what happens.

Mr. Hemmig stated that he appreciated the comments and perhaps you are the calming voice that we need so that we do not go overboard on recommendations; however, find a compromise.

Mr. Ambruso further stated that he would recommend no windows as it is a security issue because they will have expensive vehicles and automotive parts stored in this building so they would want as least amount of windows as possible. Responding to Mr. Ambruso, Mr. Ksenish stated that this is the reason the windows are seven (7) feet high for security purposes because it is a major shop.

Mrs. Townshend stated that she would add that it goes back to ten (10) years ago, the *Zoning Ordinance* does specifically instruct the Planning Commission to address the architecture of the building and is addressed in Article 5, Section 19 in terms of the orientation and the façade. Proposed buildings on corner properties shall reflect a public façade on both street frontages. In terms of the direction given in the *Zoning Ordinance* to the Planning Commission, it is within the pervue of the Commission.

Colonel Welsh suggested that this would be a discussion that should be held at one of the Planning Commission Workshops as there are new members who were not here and do not know the history or the background.

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

Mr. Nichols questioned where the fifty-seven (57) trees are to be planted, down by the river? Responding to Mr. Nichols, Ms. Cornwell stated that they will be planted somewhere within the riparian buffer. There is a planting program that is going on with the City and the State to plant trees within the riparian buffer. They could end up anywhere within the riparian buffer as there is no set location at this moment.

Mrs. Townshend stated that they are working with Mr. Bill Cooper from the Grounds Division to identify those. There is a lot of planting going on in the Silver Lake Park. They did plant a number of trees on the property adjacent to Loockerman Street near Mirror Lake. This is the corridor where we have been focusing those planting efforts recently.

Mr. Hemmig stated that there was a recommendation in the report from DelDOT about creating interconnectivity with the Sheraton property. Could the applicant address that and any progress that has been made? Responding to Mr. Hemmig, Mr. DeAscanis stated that they talked about this at the DAC meeting. At that meeting, they acknowledged that interconnectivity does exist. We brought it back to DelDOT and they also agree that it does exist. What spawned that was the Subdivision Engineer was going shopping and got stuck in the C.F. Schwartz parking lot and could not find his way around and added this in stating he wanted to discuss it. We did discuss it and they agreed that there is interconnectivity there. We will make a note on the plan to maintain interconnectivity to the adjacent Sheraton. There is the rear drive that does go all the way around off of West Rustic Lane. They were doing sewer improvements and blocked off West Rustic Lane at the back so once that was blocked off, he had to double back and tried to get around the site and got lost.

Mr. Hemmig questioned if Staff has seen this interconnectivity? Responding to Mr. Hemmig, Ms. Cornwell stated that there is a photograph showing interconnectivity. One additional parking bumper needs to be moved and then you can get through without any interruptions between the Sheraton and the C.F. Schwartz building. Responding to Ms. Cornwell, Mr. DeAscanis stated that it was planned and constructed for that and typically you would use the back road coming off West Rustic Lane. It just happened to be closed.

Colonel Welsh moved to approve S-11-02 C.F. Schwartz Building Addition with denial of the request for the sidewalk waiver and granting the elimination of the arterial street buffer, the tree planting mitigation plan, the partial elimination of curbing and he would ask that they work with Staff to come up with some façade changes on the south facing side of the building to help break up that appearance, seconded by Mr. Tolbert and motion was unanimously carried 7-0 with Mr. Friedman and Mr. Holt absent.

S-11-03 Courthouse Parking Lot on West Water Street – Public Hearing and Site Development Plan Review, Conditional Use Review, and Architectural Review Certification to permit renovations to the existing parking lot and the expansion of the parking lot to a total of 152 parking spaces. The parking lot is intended to serve the Kent County Courthouse Building. The two properties (total of 1.95 acres) are zoned C2-A (Limited Central Commercial Zone) and subject to the SWPOZ (Source Water Protection Overlay Zone); and RGO (Residential/General Office Zone), H (Historic District Zone), and subject to the SWPOZ (Source Water Protection Overlay Zone). The properties are located on the north side of West Water Street in the block between South Governors Avenue and South State Street. The owner of record is the State of Delaware. Property Addresses: 439 South Governors Avenue and 101 West Water Street. Tax Parcels: ED05-077.09-03-51.00-000 and ED05-077.09-03-53.00-000. Council District 2. *Waivers Requested: Partial Elimination of Curbing Elimination of Opaque Barrier Fence Component. Associated Application: HI-10-11.*

Representative: Mr. Gregg Moore, Becker Morgan Group, Inc.

Mrs. Melson-Williams provided an overview of the application.

Mr. Moore stated that all of the sidewalks will be brick pavers compatible with the brick paving that is going in at the Courthouse to make the two projects look similar and that includes all of that along Water Street, all of the interconnectivities that Staff picked up into the parking lot, and then we have a section where we have benches and bicycle parking that will also be brick. In addition, we are requesting and agree with staff and the DAC report, the lighting standard that we are showing in the document you see in color and we are asking to use the existing gas light fixtures that are actually on the site. There are about eleven (11) of them there and are more ornate than this. They are the identical fixture that is being used at the Courthouse so we are trying to match the two so that this lot looks like the Courthouse. We inspected those fixtures and they are in good shape and feel that we can repaint them and put them back in service and make them look good.

Mr. Moore further stated that they have had a meeting with their neighbors regarding the opaque barrier and they want to make sure that they leave their fence there and have been very vocal about that. They actually have some fencing on our property that they had put up and we will let

them leave that there as it does not interfere with our parking lot. We are agreeing to provide the one neighbor an access into his property through our parking lot since he does not have access. We have crossed out a spot where we will have one space reduced so that he can do that.

Mr. Moore further stated that the Downtown Dover Partnership has met with Mark DeVore and there is discussion about part of this parking lot being operated by the Downtown Dover Partnership related to permits and other parking that could be distributed by the Partnership. There is not an agreement between them and he is actually the President of the Downtown Dover Partnership so we are not here telling you that agreement has been made; however, Mr. Neaton has been meeting with Mr. DeVore so that discussion is on-going.

Mr. Nichols questioned the entrance into Mr. Jackson's property. There are three (3) parking spaces; are they Mr. Jackson's or are they part of the parking lot? Responding to Mr. Nichols, Mr. Moore stated that there is access directly into Mr. Jackson's property that they are going to maintain just as it is today. There is also access into Gerry Street's parking lot and we will maintain both of those. We will respect whatever agreements that are of record between those two properties and this parking lot. The other parking lot has some folks that park in that lot that is permit parked through the Downtown Dover Partnership. That is why the discussion is occurring between the two. Since we are over parked meaning for the State of Delaware Courthouse we have that flexibility to allow some of that to be permit parking.

Mr. Nichols further questioned if a part of this parking lot would be permitted parking? Responding to Mr. Nichols, Mr. Moore stated that for the Courthouse, no. The Courthouse parking will actually be designated and signed as Courthouse parking. There are 126 parking spaces that are required so we will make sure we have those designated for the Courthouse. Beyond that number, they are in discussions for possible permits through the Downtown Dover Partnership. This is a management issue with the Downtown Dover Partnership and the State of Delaware.

Mr. Hemmig stated that you were talking about who will be parking there, will there be any control over visitors, employees, and Courthouse uses and non-Courthouse uses? How will you control who parks there? Responding to Mr. Hemmig, Mr. Moore stated that they will have signage with way-finding and identification signs. The Courthouse is also going to be doing a handout that will show folks who are coming to the Courthouse where they can park designating this area. There will be identity to this parking lot to the Courthouse. We have two routes into the Courthouse and are why we are being detailed in trying to match the lights and the bricks so that there is the appearance that they are the same. This will not be metered or charged parking.

Mr. Hemmig further questioned that the Landscape Plan shown here this evening is a lot nicer than what was presented in their package, which one will be the actual landscaping? Responding to Mr. Hemmig, Mr. Moore stated that we have removed some of the density of trees along Water Street at the discussion at the Historic District Commission meeting. There was discussion that if we were to hedge or densely put trees there, there was some security discussion and we are actually opening that up. We are; however, adding trees and hedge to account for the opaque barrier along the two neighbors on Governors Avenue. We are reducing it along Water Street and increasing it along those two residential neighbors.

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

Mr. Tolbert moved to approve S-11-03 Courthouse Parking Lot on West Water Street and to include the Architectural Review Certificate HI-10-11 and to include approval of the waiver request for partial elimination of curbing and elimination of the opaque barrier fence component. Approval of the Conditional Use for the west lot and the Site Plan review of the main lot, seconded by Colonel Welsh and the motion was unanimously carried 7-0 with Mr. Friedman and Mr. Holt absent.

MI-11-04 Treadway Towers Parking Waiver Request – Public Hearing for 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. 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.

Representative: Mr. Bob Munion, Representative, Colonial Investment and Management Company.

Mrs. Townshend stated that the Postal Service approached Colonial Investment to discuss with them the possibility of leasing some of the parking spaces at Treadway Towers for their employees to use. Mr. Munion contacted me as he was aware there was a little bit of history. Back in 2002, the Lobby House had applied to the Planning Commission for expansion and at that point in time, they had requested the twenty (20) percent parking reduction which was not granted by the Planning Commission. Ultimately, they did a small expansion of the parking lot and a small expansion to Frazier's. With this history in mind and looking at their parking on site, what she advised was in order to lease the parking lot you would have to determine that there is actual excess in terms of Code. This is why this is being brought to the Planning Commission.

Mrs. Townshend further stated that under the parking requirements in Article 6, Section 3.8 the Planning Commission can look at combined spaces where essentially you have one lot with two or more uses that have different peaks. You have the ability to allow parking at the higher, for one of the uses, whichever one has the higher requirement. In looking at 20,317 square feet of office space, this yields a requirement of 68 parking spaces. Looking at the seat count in terms of the bar and restaurant component of Frazier's that would yield 123 parking spaces. There are currently 140 parking spaces on site. What the request would be is to allow the 123 parking spaces to meet the requirement so that the access can then be utilized by the employees of the Post Office. These parking spaces would be assigned between the hours of 6:00 AM to 3:00 PM for those employees. You are still looking at Frazier's having their peak in the evening hours and there would be the 140 parking spaces available.

Mrs. Townshend further stated that in looking at this we attached the aerial photography for the area from 2002, 2007 and 2009 which she thinks demonstrates that the parking that is there is not fully utilized. In terms, from a practical standpoint, this is going to put them in a deficiency. Staff does not believe, nor does the applicant believe that this would.

Mr. Munion stated that his understanding is that what the Post Office has requested it is not for trucks; it is for employee parking and for their earlier shift that starts at 6:00 AM to 3:00 PM. Those spots would then become available again for restaurant use in the late afternoon through the evening.

Mr. Tolbert stated that his understanding is that there was talk that the Post Office was going to move out of that area relatively soon. What happens to any lease agreement that may be made now? Responding to Mr. Tolbert, Mrs. Townshend stated that this would essentially be in place as long as the Post Office is there. At this point, the Post Office does not have any plans to move.

Mr. Nichols questioned if these parking spaces for the Post Office be designated just for them? Responding to Mr. Nichols, Mr. Munion stated that they have requested that they have their reserved spots in the section closest to the Post Office. Our thought at this time was that we would have signage with a period of reservation for them so that it would be clear that they would be open again at 3:00 PM for general use.

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

Mr. Tolbert moved to approve MI-11-04 Treadway Towers Parking Waiver Request, seconded by Mr. Ambruso and the motion was unanimously carried 7-0 with Mr. Friedman and Mr. Holt absent.

MI-10-20 Eden Hill Farm TND: Phase 2 Revisions – Review and Consideration of the Interpretation of Pattern Book guidelines for Townhouse Setbacks within the Eden Hill Farm TND Residential District. The property is zoned TND (Traditional Neighborhood Design Zone). The owner of record is Hill Farm Associates, LLC. Property Address: southwest of intersection West North Street and Saulsbury Road. Tax Parcel: portions of the overall parcel ED-05-076.00-01-13.00-000. Council District 2.

Representatives: Mr. Leonard Iacono, Hill Farm Associates; and Mrs. Laura Swiski, Northpoint Engineering.

Mrs. Melson-Williams stated that before you this evening is a request for the Planning Commission to consider an interpretation of the Pattern Book Guidelines for the Residential District of Eden Hill. The report starts out with giving background information about the Residential District. You will remember that most recently they appeared before you in November in regards to some of the elements associated with Phase 2 of the Residential District. The follow-up application to that to our office was application MI-10-20 which was submitted for Administrative Plan review. That involved a series of lot revisions in Phase 2; specifically, a series of properties in the area of Ruth Way which runs north/south and the area between Ridgely Boulevard and Little Eden Way, the northern part of Phase 2.

Mrs. Melson-Williams further stated that with the Administrative Review of that, Planning Staff review was looking at a Record Plan that revised a number of lots from what were twenty-five (25) foot wide townhouse units to twenty (20) foot wide townhouse units which is a permitted lot

width within the Residential District previously approved by the Planning Commission. The issue that we then identified was from Staff's interpretation that these series of townhouse lots could not meet the side yard setback requirements as prescribed in the Pattern Book. In the report, there is a chronology of events and our noted information about our review of that Administrative Plan.

Mrs. Melson-Williams stated that the applicant took exception to our interpretation; and hence, they are before you this evening so that the interpretation on the townhouse setbacks specifically the side yard setbacks can be determined. She has done some graphics to help explain this. The Pattern Book, as it exists, shows townhouse lots in groups of two. The map showed to blocks of units. Each block has multiple units to it and has a series of lots; however, the two townhouse buildings as the big picture and building there is a split that has to happen into two groups.

Mrs. Melson-Williams further stated that the Pattern Book describes the setbacks for them in two options. When you have two groups of townhouses, you can either bring the buildings close together and provide a five (5) foot setback on each lot which would be a total of ten feet between buildings of townhouses or in the second option it presents is a wider width of a side yard setback of fifteen (15) feet on each lot for a total of thirty (30) feet between buildings. The second option with a building setback of fifteen (15) feet allows for a porch setback of ten (10) feet. This is what the Pattern Book presents.

Mrs. Melson-Williams further stated that their proposal in looking at the specific block between Ridgely Street and Little Eden Way is proposed for building groups of more than two townhouses. The Pattern Book is silent on what do you do if you have more than two groupings? It was not presented in any fashion or discussed so Staff looked at a number of things to interpret what the side yard setbacks in that situation would be. We listed a number of things that we took into consideration on Page 7 of our report in focusing on the intent of the TND and how did it present other features of the TND intent wise. Staff's interpretation is shown here first in that our interpretation was for the first two groups or buildings of townhouses you could reduce it to that five (5) foot side yard setback and five (5) feet for a total of ten (10) feet. Once you move beyond a group of two adding group #3 then the separation had to be fifteen (15) feet side yard setbacks on each lot for a total of thirty (30) feet and then that system would repeat for more than three (3).

Mrs. Melson-Williams further stated that the applicant, in their interpretation of their request, is seeking that in the case of groupings of more than two (2) buildings that the first split between buildings would be the five (5) side yard, five (5) foot setback on each lot for a total of ten (10) feet and then when you move between the second and third building again you could use the five (5) side yard, five (5) foot side yard setback with a total of ten (10) feet between the two buildings.

Mrs. Melson-Williams further stated that the things that Staff looked at in making this interpretation was how it fit with the general intent of the TND. One of the things that we particular made note of was making building corners special and unique. With our interpretation, in this scenario, it gives you the opportunity to make the sides of four (4) different areas special. With the wider split between buildings you would have the opportunity to make them special and then on the ends. The applicant's request is that the only opportunities for

making the corners special exist on the far ends of the grouping. The narrowness between the sets does not allow for that type of special unique feature in those areas because of the lot width that you are looking at. In this case, with twenty (20) foot lots in this scenario, they could do a lot width of twenty-five (25) feet for that unit and move onto another twenty-five (25) foot lot.

Mrs. Melson-Williams further stated that the use of porches is found in the Pattern Book to be very significant. With this interpretation, it allows porch elements to be included both on the fronts and potentially on the sides of dwellings. This evening you are asked to consider the interpretation of side yard setbacks and what is intended for the situation when they are in groups of more than two (2) buildings within the same block. Whatever action is taken tonight, we recommend that this be a part of the Pattern Book document.

Mrs. Townshend stated that she would like to add in terms of Staff's review of this and our interpretation of the Pattern Book and the materials that we have drawn on. One other thing that is important to mention for the record is that the Pattern Book gives a degree of flexibility and also provides the standard. In balancing those items, the flexibility with the standard, if this were not a TND and was a regular townhouse community, what standard would they be held to? If you look at the RM-1 and RM-2 zoning districts at the end of the townhouse buildings the side yard is thirty (30) feet. That is not thirty (30) feet between buildings; that is thirty (30) feet between the end unit and the lot-line and then another thirty (30) feet between the end unit and the lot-line. Even with the fifteen (15) feet and fifteen (15) feet they are getting half of what they would have to do in a standard townhouse development. There is nowhere where it allows the five (5) feet. Even with the Staff's interpretation, there is still a degree of flexibility; and however, the ability to provide for opportunities for porches. When they have come before, there has been the discussion of options that they could include. Once you have set the lot-lines that are one option (porches) that can't even be included on those end unit lots.

Mrs. Swiski stated that while in their opinion this is a simple matter, it could be complex without having a visual aid to look at so Staff has provided a wonderful overview. There are a couple of other items that are worth mentioning. In our original plan that we submitted to you last fall, we proposed to have two (2) groups instead of three (3) groups. We proposed to have a group of six (6) and a group of seven (7), a group of six (6) then seven (7), and so on with the park in the center. We applied the setbacks to the fifteen (15) foot separation on each side of the townhouse groups and the fifteen (15) foot end setbacks which we felt gave a nice appearance. At the request of Staff and as discussed at the Planning Commission, we were asked to see if we could split these two groups into three groups to make smaller, more diverse appearances for the grouping. We did agree to do that and what we proposed was to do a group of five (5), a group of three (3), and a group of five (5) again. Based on the way that we reviewed the Pattern Book, we viewed the image as a typical showing of here is where the setbacks are on the street and here is what the setbacks are next to a park and here is what the setbacks are if you have two (2) groups or more of buildings next to each other. Her point to the Planning Staff was that the Pattern Book certainly did not show three (3); however, it did not need to show three (3) because it was showing a typical setback between two or more groups. It is actually the way that a lot of Ordinances are written.

Mrs. Swiski further stated in switching from our preferred configuration of two groups of six (6) and seven (7) to the group of three (3) what we were able to do with our interpretation of the

Ordinance was to put wider setbacks on both the street and the ends and in-between the units than we believe were required. With our group of five (5), three (3), and five (5) and using the twenty (20) foot wide building, we are actually able to have a twenty (20) foot building setback on both the corner and next to the park, which in our initial discussions with Staff, were the areas that they were most concerned about. We were also able, instead of having the buildings be separated by ten (10) feet in the interior groups, able to add an extra five (5) feet between each of those three (3) groups for a total separation of fifteen (15) feet instead of the ten (10). The total length of the block has not changed; it is how we are shifting buildings that are an issue here. We felt that it was more aesthetically pleasing and more in keeping with the character of what we see in Downtown Dover to have them more evenly spaced out and to give the ends special importance. This was our initial discussion that the ends be important. Northpoint Engineering did not create the Pattern Book; it was created before our involvement. Last week Mark Prada phoned Gregg Moore, Becker Morgan Group, Inc. the organization that did create the Pattern Book and asked what their intent was when they created it. He agreed that his intent was that this was to show a typical separation when townhouses were next to townhouses. Regardless of the number of them, it was suppose to be a ten (10) foot building separation. She respectfully stated that she thinks that what the Staff has done is they have decided that in addition to having the ends be special, they would like for the middle to be special also. She can respect that desire; however, she has to say, for her that is interpreting after the fact. This is coming up with reasons why the Pattern Book, in their opinion, was silent on the issue. In their opinion, it very clearly showed what a typical separation between buildings would be and they are applying what they would like to see happen. This is the reason for having a Pattern Book; however, in this case, we honestly believe that what we are proposing will give a much more consistent and attractive appearance.

Mr. Iacono stated that he finds himself repeating himself every time he comes before the Planning Commission so he apologizes. Having lived this project he wants to reiterate for the hundredth time that there is a very bold writing in the beginning of the Pattern Book that it is simply a guide. It is not meant to be interpreted as whatever is set-forth will be etched in stone because due to ever changing economy and the need to change designs as we go along, based on consumer demand, we reserve the right to make the changes.

Mr. Iacono further stated that we made this change at the request of the Planning Staff to break up a six (6) and a seven (7) pack into a five (5), three (3), and a five (5). We felt that was a good recommendation by the Planning Staff and it is more aesthetically pleasing. We submit that if you want to do an interpretation of planning that we can revert back to that. He also takes exception to the fact that comments are being made by Mrs. Townshend that is outside of the TND, this is the TND. Other ordinances that are in the City do not govern what happens here. He is under constant pressure from Ryan Homes to give them a product that they can try to sell and at the end of the day stay within the guidelines or the intent. When we went back to Ryan Homes and told them what the Planning Staff had suggested, a five (5), three (3), and a five (5) they were fine with that and is exactly what we did.

Mr. Iacono further stated that as far as the Pattern Book goes, there is no identification on what you do when you have three (3) buildings. The project was developed with two (2) building sections and the one section is separated by a park and we are still maintaining that, we are not changing that. There is no way to assume that because there are three (3) buildings instead of

two (2) buildings that the setbacks would be any different. He is confused as to why he is here because we did what we thought we were asked to do. We are now back to changing the separation. This goes against the grain that we talked about so we can just go back to a seven (7) pack and a six (6) pack. Our interpretation is that it shows against the buildings, against a park, and against the corners, all of which we are maintaining. We have not changed anything and are following the Pattern Book.

Colonel Welsh stated that as a matter of record, he agrees with you as he feels that it is more aesthetically pleasing to have the five (5), three (3) and five (5) and it would be his desire. What he does not agree with Mr. Iacono's comments is that the Pattern Book is a guide which it is; however, happens to be a guide that we approved for the total neighborhood design for Eden Hill. That does not mean that you can make arbitrary or wholesale changes to it.

Responding to Colonel Welsh, Mr. Iacono stated that he understood. The Pattern Book was a very extensive undertaking based on a lot of research, travel in the country some of which people in the City attended with us. However, at the same token, when we looked at the Pattern Book and we developed it, we tried to duplicate what was done in other TND's. This was the only project in the country where the Pattern Book was developed before the project was improved. This is why there was a provision put in that it is a guide and that it may need to be changed. He apologizes if he made it sound like doing something arbitrarily. He realizes that everything he does has to be blessed by the Planning Commission.

Mr. Hemmig questioned that he would like to clarify that the original groupings of seven (7) and six (6) were broken up at Staff's request? Responding to Mr. Hemmig, Mrs. Townshend stated that she is unsure if this was discussed the last time it came back to the Planning Commission. If you recall this is the portion of Phase II where you had essentially gave them approval up to that point.

Mrs. Melson-Williams stated that she believes that it was part of the recommendations of moving into Phase II with the townhouse styles as one of the ways to help improve the architecture. Currently, as recorded, the lots in this area are twenty-five (25) feet wide and there are two sets of five (5) and then the break for the park and then two sets of five (5). There are a total of ten (10) lots. Their initial proposal was a total of thirteen (13), hence the six (6) and seven (7); however, it has not been recorded. In order to continue to use the twenty-five (25) foot wide townhouse units, they will need to move lot lines.

Mrs. Townshend stated that she would like to address the question of why we are here. The way that the TND is structured it gives Staff the ability to do things administratively; however, the Planning Commission, on a number of occasions on the record, has stated their concerns regarding the "erosion of character" of Eden Hill. As the City Planner, she is going to be bringing things to this body if she has any doubts. This is one of those areas where again the Pattern Book is silent. Knowing what the Pattern Book says about porches and what this does in terms of the ability to put porches on some of the units is why we are here. You may be seeing more of Eden Hill because she is going to ere on the side of caution.

Mr. Hemmig questioned that Mrs. Melson-Williams seemed to imply during her presentation that they are basically proposing twenty (20) foot wide units, does it make any difference

whether you have a five (5) foot setback between these two sets of buildings or a fifteen (15) foot setback as far as the widths of the units themselves within that row of thirteen (13)? Responding to Mr. Hemmig, Mr. Iacono stated that it would have an impact.

Also responding to Mr. Hemmig, Mrs. Swiski stated that the impact they would have is that because the corner radius on the street are curved, the units that are on the corners would have to be pushed back by about eight (8) feet because otherwise, for the corner of the building we would have to use a minimum width lot, which in this case would be thirty-five (35) feet; twenty (20) feet for the building and fifteen (15) feet for the setbacks. This is the only way that we could maintain the same number of units. By pushing the units back, what that does is take an already relatively small rear yard and compress it even further. Depending on how the rest of the units were developed, either the entire grouping of five (5) would have to be pushed back, or it could be gradually stepped towards the street so that perhaps once you get towards the end of this group of five (5) you would be closer to the street and have a reasonable size back yard.

Colonel Welsh further stated that one of the thoughts that he had in considering this is what are you really going to gain with the thirty (30) feet between the buildings? He would not want a porch where he would be sitting on his porch and looking at his neighbor ten (10) feet away from him. Responding to Colonel Welsh, Mrs. Townshend stated that one of the porches that has currently been constructed has that small of a break.

Mr. Hemmig further stated that one of the other comments that he would like to make concerning this is the fact that we have been tossing around the term "block." He wants to clarify the fact that in this context a block does not mean from one street to another it means a group of buildings where they have two blocks. In the Pattern Book it is quoted as specially stating "specifically corner units of important terminus to a block of townhouses"; it does not say two or three. He does not want to influence the Planning Commission; however, in his opinion, he feels that the five (5) foot setbacks are okay.

Mr. Iacono stated that he did not want to give anyone the delusion that we do not work well with the Planning Department. The Staff has been very good to work with and you are going to have differences of opinion and it happens as this is a business environment.

Mr. Hemmig stated that one consideration that they might have if a motion is made that they approve the five (5) foot setbacks is that you cement the total number of units that can be in a block before a major break has to occur or has that already been thought of? Responding to Mr. Hemmig, Mrs. Townshend stated that she does not believe that it has.

Colonel Welsh questioned when they would start getting some of the wider townhouse units? Responding to Colonel Welsh, Mr. Iacono stated that he would be very candid in saying he would be the first one to love to see this. He is not happy with the fact that we had to change from the twenty-five (25) feet to the twenty (20) feet. From a financial standpoint, he takes a big hit so he has every incentive in the world to want to see us get back to someday bigger lots or bigger units. He has been pushing Ryan Homes to push the duplex units which are very big. They have started to market them and are starting to sell them.

Colonel Welsh stated that his concern is as we have four different variations of townhouses, so far we are only seeing one. Responding to Colonel Welsh, Mrs. Townshend stated that there are two models that are being built out there. There is the two story unit and a three story unit, all twenty (20) foot wide.

Mrs. Melson-Williams also responded by stating there are five (5) different variations of townhouses that are still there.

Colonel Welsh stated that he would hate to see Eden Hill Farms be all twenty foot wide townhouses. Responding to Colonel Welsh, Mr. Iacono stated that so would he. That is why we limited, to a point that we would have to come back to the Planning Commission if we get past Little Eden Way.

Mr. Iacono stated that unrelated to Eden Hill he also owns Senators Lake which is a project of fifty-four (54) units that he developed off of Silver Lake Road. They are twenty-four (24) foot wide townhouses and Ryan Homes has sold zero. They have been marketing these for over a year. The road, curbs, and paving are all in and they have not sold one unit.

Mr. Tolbert questioned if the twenty (20) foot wide townhouse would be cheaper than twenty-five (25) feet and you are stating that they are more difficult to sell? Responding to Mr. Tolbert, Mr. Iacono stated that yes, they are. The twenty-four (24) foot wide townhomes are more difficult to sell because of the price. The reason they are marketing the twenties is to capture the consumer.

Mrs. Townshend stated that there is no public hearing required for this application.

Colonel Welsh moved regarding MI-10-20 Eden Hill Farm TND: Phase 2 Revisions to approve the five (5) foot side setback between building groupings for the three (3) separate buildings that comprise the block for this particular area as this would be more aesthetically pleasing making everything balanced, seconded by Mr. Tolbert and the motion was unanimously carried 7-0 with Mr. Friedman and Mr. Holt absent.

Meeting adjourned at 9:36 PM

Sincerely,

Diane Metsch
Secretary