PETITION TO AMEND ZONING DISTRICT

Before The Dover City Council
December 8, 2003

Applicants/Owners	Carl Moore 144 Old Leipsic Road Dover, DE 19901
Location:	Southeasterly corner of Old Leipsic Road and Plaza Lane
Property Address	190 Old Leipsic Road
Size:	0.25 acres +/-
Present Zoning:	R-10 (One Family Residence)
Proposed Zoning:	C-1A (Limited Commercial Office Zone) All uses permitted in the Neighborhood Commercial C-1 Zone (including convenience retail stores such as drug stores, grocery stores, luncheonettes, variety stores or combinations thereof; personal service stores such as, but not limited to, barber shops, beauty parlors, and tailors, provided that where steam pressure is used in clothes pressing it shall not exceed 60 pounds per square inch. Service establishments furnishings services other than of a personal nature, but excluding gasoline filling stations and motor vehicle storage, repair, or service.), with no limitation on size of establishments; residences conforming to the regulations set forth in Article 3, Section 2 (RG-2). banks or businesses, professional or governmental offices; other retail and service establishments but excluding: Gasoline filling stations and motor vehicle storage, repair, or service, except that gasoline pumps shall be permitted as an accessory use subject to conditional use approval by the planning commission pursuant to Article 10, Section 1; wholesaling, warehousing or storage; the manufacturing, printing, assembling, converting, altering, finishing, cleaning or any other processing of goods on the premises except as permitted in the C-1 Zone; and excessive traffic generating uses, such as theaters, "drive-ins," bowling alleys and other commercial, recreation, restaurants, etc.
Present Use:	Residential (Manufactured Home)
Proposed Use:	Same with Race week vendors
File Number:	Z-03-06

Findings and Recommendations of the Dover Planning Commission

This petition was considered at the November 17, 2003 meeting of the Planning Commission. The following members were present: Chairman Friedman, Mr. Nichols, Mrs. Horsey, Mr. Sadusky, Mr. Holt, Mr. Winsley, Mr. DiMondi, Col. Welsh, and Mr. Von Reider.

The Planning Commission recommends that this request for rezoning from R-10 to C-1A be approved. The motion for approval of the rezoning passed 6-3 of those members present (Sadusky, Welsh, and Friedman in opposition). It is noted that a prior motion to deny the rezoning failed to achieve a majority with a vote of 3-6 (Sadusky, Welsh, and Friedman voting in favor of denial).

The Planning Commission also recommended looking at this area comprehensively for potential rezoning from residential uses to a commercial use. This motion passed 9-0 of the members present. Staff notes that this will involve analysis of the area to propose an amendment to the Land Development Plan of the *Comprehensive Plan Update 2003* for review and approval followed by the process for comprehensive rezoning of the area.

The procedure for rezoning (amendment to the zoning map) is outlined in the *Zoning Ordinance* Article 10 §5.

In taking this position, the Commission considered the following points:



Surrounding Land Uses:
The area of petition consists of 0.2495acre +/- parcel of land located on the east side of Old Leipsic Road at its intersection with Plaza Drive. To the west of this site and across Old Leipsic Road are the lands of Dover Downs, zoned RC (Recreational Commercial). This area is the principal location of the Dover Downs facility. To the north and south along the easterly side of Old Leipsic Road are residentially zoned with single family residences. Some of these, parcels include non-conforming manufactured homes. To the east of this site are lands owned by Dover Downs and other individuals which serve biannually as campgrounds associated with the races. Except for during race weekends, this area is a small residential community. The following pictures depict the immediate neighborhood.



View North



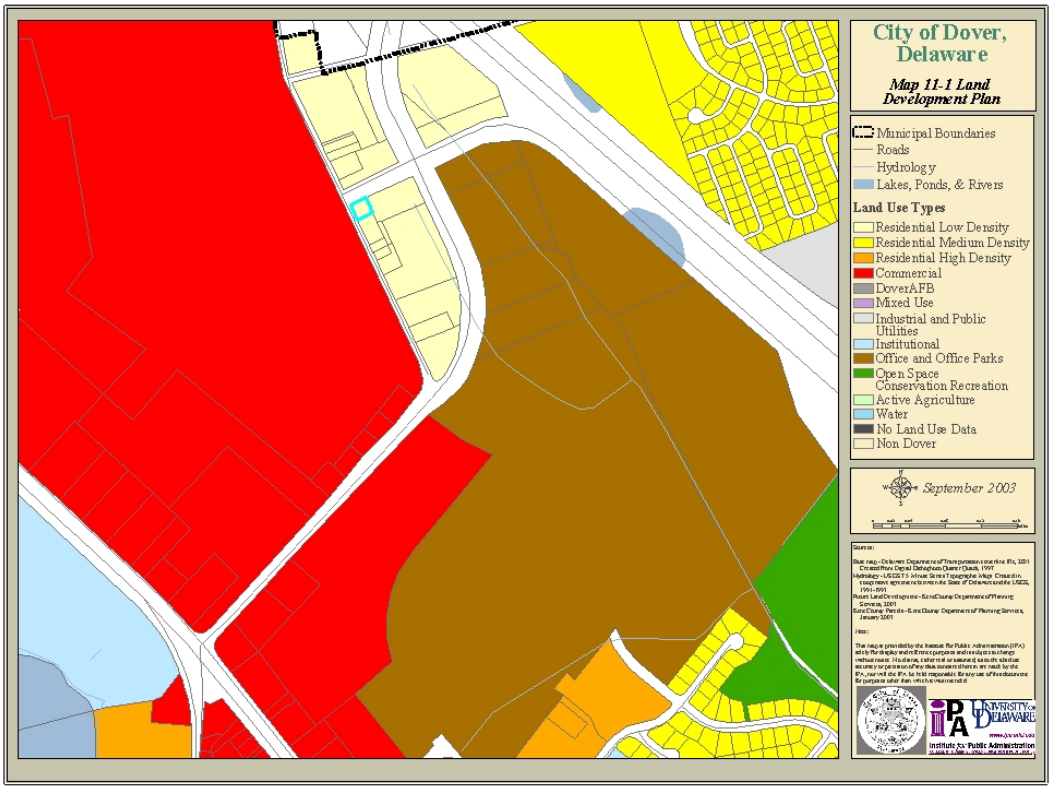
View South



Adjacent property to the west

Comprehensive Plan:

In the *2003 Comprehensive Plan Update*, the Land Development Plan recommends that this property be used for low density residential purposes. The 1996 Comprehensive Plan recommended the same use for this area. See the attached Land Development Map.



Other Considerations:

This rezoning application is an exact duplication of application Z-98-03. On May 18, 1998 the Planning Commission recommended denial of the request to rezone the property to C-1A. On June 8, 1998 the City Council, acting on the Planning Commission's recommendation denied the request. After its decision Council stated that they had carefully considered the applicants dilemma and testimony at the public hearing and requested the Legislative and Finance Committee to draft an amendment specifically for race weekend parking of vehicles and campers on residential properties. The Committee forwarded an ordinance amendment which made specific provisions for the parking of vehicles on residential properties during race events. This ordinance passed yet prohibited commercial vendors from operating on residentially zoned properties specifically:

> 5.5 Race Weekend Parking. During any ten-day period prior to or two-day period following a Saturday or Sunday during which auto racing is occurring, property within a residential zone may be used for the commercial parking (for a fee) of motor vehicles including recreation vehicles with self contained units for sanitary facilities. Commercial parking does not include the parking of commercial vehicles for use by commercial vendors and sales representatives.
> (Ord. of 10-12-98)

This application attempts to once again rezone the property to allow for the parking of vendors during racing events.

Recommendation of the Planning Staff:

Although staff understands the applicant's rationale for the rezoning it cannot support the rezoning of the property to C-1A. Based on the 2003 Comprehensive Plan Update and the Land Development Plan Map recommendation for this area, the Planning Staff recommends that the rezoning from R-10 to C-1A be denied. Rezoning of this property to C-1A, would allow for any of the permitted uses given in Article3§12 of the Zoning Ordinance. The expansion of commercial zoning to this property would signify an expansion of business and commercial ventures in the area year round. In accordance with sound planning practice a property should not be rezoned with specific conditions that apply only to the owner or a specific property owners desires or a temporary situation. Suggesting that specific conditions applying only to this property for race vendors during race events as a condition of rezoning is considered, in staffs opinion, akin to "Contract" or "Conditional" zoning.

Public Comments:
The application was represented by Mr. Carl L. Moore, 144 Leipsic Road and Mr. Steve DeBarr of Earl D. Smith, Inc.

The following appeared and spoke in regards to the rezoning application:

- Roger Murray – 126 Old Leipsic Road: He spoke in support of the rezoning application.
- Denis McGlynn – 1131 N. DuPont Highway, President of Dover Downs: His statement noted information regarding the ordinance (parking of vehicles on residential properties), safety, and procedures for vehicular and pedestrian traffic in this area during race events.

Agency Comments from DAC Report:

- Department of Public Works has no objections to the rezoning.
- DelDOT has no objections to the rezoning.

Advisory Comments to the Applicant:

1) The applicant shall be aware that approval of any rezoning application does not represent Site Plan approval. A separate application process for Site Plan approval is required for the development of property.

2) Finally, the exhibit submitted for this application reveals several nonconforming situations. The applicant should be aware that any changes to the use or structures on this property would require permits.

Attachments to the Report:

- Development Advisory Committee Application Review Commentary (comment sheets) from the following:
  - Department of Public Works
  - Delaware Department of Transportation
- Exhibit Location Map
- Minutes (Draft copy) of the Planning Commission Meeting of November 17, 2003 in regards to Z-03-06

CITY OF DOVER PUBLIC WORKS

CITY OF DOVER

DEVELOPMENT ADVISORY COMMITTEE

APPLICATION REVIEW COMMENTARY

STAFF D.A.C. MEETING DATE: October 30, 2003

APPLICATION: Lands of Carl L. Moore – Rezoning from R-10 to C-1A

FILE#: Z-03-05 **REVIEWING AGENCY:** City of Dover Public Works

CONTACT PERSON: Scott Koenig or Andrew Riggi **PHONE#:** 736-7025

THE SUBJECT PROPOSAL HAS BEEN REVIEWED FOR CODE COMPLIANCE, PLAN CONFORMITY AND COMPLETENESS IN ACCORDANCE WITH THIS AGENCY'S AUTHORITY AND AREA OF EXPERTISE.

THE FOLLOWING ITEMS HAVE BEEN IDENTIFIED AS ELEMENTS WHICH NEED TO BE ADDRESSED BY THE APPLICANT:

CITY AND STATE CODE REQUIREMENTS:

1. Our office has no objection to the proposed rezoning of the parcel from R-10 to C-1A.

RECOMMENDATIONS SUGGESTED AS CONDITIONS OF APPROVAL TO MEET CODE OBJECTIVES:

1. Our office recommends that an easement be provided the existing trailer of the adjacent parcel which is partially located on the subject parcel.

ADVISORY COMMENTS TO THE APPLICANT:

IF YOU HAVE ANY QUESTIONS OR NEED TO DISCUSS ANY OF THE ABOVE COMMENTS, PLEASE CALL THE ABOVE CONTACT PERSON AND THE PLANNING DEPARTMENT AS SOON AS POSSIBLE.

CITY OF DOVER

DEVELOPMENT ADVISORY COMMITTEE

APPLICATION REVIEW COMMENTARY

D.A.C. MEETING DATE: October 30, 2003

DELDOT

APPLICATION: Lands of Carl L. Moore – Rezoning

FILE#: Z-03-06 REVIEWING AGENCY: DelDOT

CONTACT PERSON: Richard A. Woodhall PHONE#: 760-2262

THE SUBJECT PROPOSAL HAS BEEN REVIEWED FOR CODE COMPLIANCE, PLAN CONFORMITY AND COMPLETENESS IN ACCORDANCE WITH THIS AGENCY'S AUTHORITY AND AREA OF EXPERTISE.

THE FOLLOWING ITEMS HAVE BEEN IDENTIFIED AS ELEMENTS WHICH NEED TO BE ADDRESSED BY THE APPLICANT:

CITY & STATE CODE REQUIREMENTS:
DelDOT has no objections regarding this plan.

RECOMMENDATIONS SUGGESTED AS CONDITIONS OF APPROVAL TO MEET CODE OBJECTIVES:

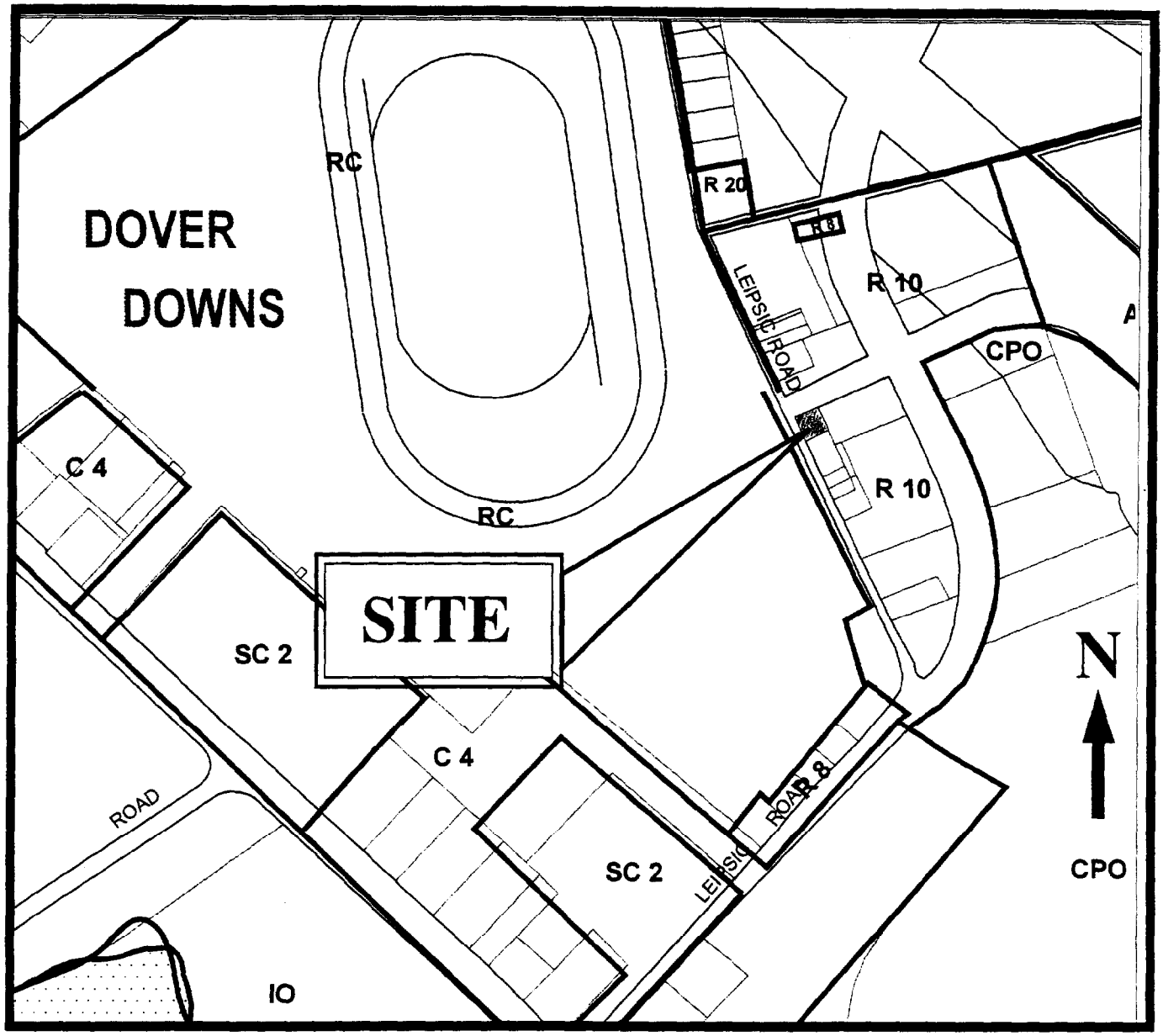
ADVISORY COMMENTS TO THE APPLICANT:

If you have any questions or need to discuss any of the above comments, please call the above contact person and the planning department as soon as possible.

City of Dover

Application No. Z-03-06

Department of Planning & Inspections



Applicant: Lands of Carl L. Moore

Owner: Carl L. Moore

Date: 11-17-03

Tax Parcel No. ED-05-058.17-01-13.00

Site Area: 0.2649 Acres

From: R-10 **To:** C-1A



EXHIBIT 2

COUNCIL MINUTES 12/08/04

RECEIVED
DEC 4 2003
OFFICE OF THE CITY CLERK

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF
STATE PLANNING COORDINATION

December 4, 2003

The Honorable William P. McGlumphy
City Council President
City of Dover
P.O. Box 475
Dover, DE 19903-0475

RE: Carl Moore Rezoning Request – Comprehensive Plan Compliance

Dear Mr. McGlumphy,

I am writing this letter to clarify the State's position on the rezoning request from Carl Moore. Our understanding is that Mr. Moore has requested rezoning from a residential zone to a commercial zone. Upon review of your recently adopted and certified comprehensive plan, the parcel in question is designated for residential use. Approval of this rezoning request would be inconsistent with your comprehensive plan, and therefore in violation of Delaware law for the following reasons:

- Title 22, Section 702 (c) of the Del. C. states, "*The comprehensive plan shall be the basis for the development of zoning regulations as permitted pursuant to Chapter 3 of this title.* Should a jurisdiction exercise its authority to establish municipal zoning regulations pursuant to Chapter 3 of this title, it shall, within 18 months of the adoption of a comprehensive development plan or revision thereof, amend its official zoning map to rezone all lands within the municipality in accordance with the uses of land provided for in the comprehensive development plan." (*emphasis added*).

- Title 22, Section 702 (d) of the Del C. states, "After a comprehensive plan or portion thereof has been adopted by the municipality in accordance to this chapter, *the comprehensive plan shall have the force of law and no development shall be permitted except as consistent with the plan.*" (*emphasis added*).

Local jurisdictions are empowered to draft comprehensive plans, and those plans are to be used as the basis for developing local zoning ordinances and maps. Recent amendments to these sections of the State enabling legislation (most recently HB 255

in 2001) make it very clear that jurisdictions are required to follow their plans once adopted, and that the plan does have the "force of law" and must guide local land use decisions, such as zoning.

The City has a very well thought out and thoroughly researched comprehensive plan that should serve Dover well for the next five to ten years. Although Mr. Moore's property is a small property, approving a rezoning that is inconsistent with your adopted and certified plan is in violation of Title 22, Section 702 of the Del C. and represents a dangerous precedent that we strongly advise against. Such a precedent could ultimately jeopardize the implementation of many other, more significant aspects of your plan. We encourage the City Council to follow the City's comprehensive plan and deny this zoning request.

Please do not hesitate to contact me at (302) 739-3090 if you have any questions, or if you would like to discuss this matter any further.

Sincerely,

Constance C. Holland, AICP
Director

Cc: Dover City Council
James Hutchison, Mayor
Anthony DePrima, AICP, City Manager
Dawn Melson, AICP, Acting City Planner
Janice Green, City Clerk

Legal Opinion.

LAW OFFICES
SCHMITTINGER AND RODRIGUEZ, P.A.
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DOVER, DELAWARE 19901
TELEPHONE 302-674-0140
FAX 302-674-1830

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PAUL H. BOSWELL
JOHN J. SCHMITTINGER
DOUGLAS B. CATTS
WILLIAM D. FLETCHER, JR.
CATHERINE T. HICKEY
CRAIG T. ELIASSEN
WILLIAM W. PEPPER SR.
CRYSTAL L. CAREY*
SCOTT E. CHAMBERS*
FRED A. TOWNSEND III
NOEL E. PRIMOS
DAVID A. BOSWELL
WALT F. SCHMITTINGER
R. SCOTT KAPPES
JEFFREY J. CLARK
BETH B. MILLER
KYLE KEMMER
MARY F. HIGGINS

*ALSO ADMITTED IN MARYLAND

HAROLD SCHMITTINGER
OF COUNSEL

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FAX 302-645-1843

ODESSA OFFICE
ODESSA PROFESSIONAL PARK
POST OFFICE BOX 626
ODESSA, DELAWARE 19730
TELEPHONE 302-378-1697
FAX 302-378-1659

December 5, 2003

Janice C. Green, CMC, City Clerk
City of Dover City Hall
P.O. Box 475
Dover, Delaware 19903-0475

RE: **Rezoning Request -- Comprehensive Plan Compliance**

Dear Janice:

I just received your e-mail questions propounded by Council President McGlumphy on Friday morning, December 5, 2003, at 9:17 A.M., so I am rushing a reply as requested so that my note may be considered by Council before the public hearing on this rezoning application to be heard on December 8, 2003.

Our City Manager, Anthony DePrima, our former Planner, and our acting City Planner, Dawn Melson are more qualified to answer your questions than I am and I would defer to them in what I am going to tell you in this letter.

Fairly recent legislation passed by the General Assembly created the Office of State Planning Coordination and Mrs. Holland is the Director thereof. Her office is given broad and sweeping powers over County and Municipal zoning and annexations by municipalities. Proposed annexations, adoption and amendment of comprehensive plans and other related matters must be submitted to her office prior to action being taken by the municipality. I suspect this is the reason for her letter, i.e., having received notice of the rezoning application being inconsistent with our adopted comprehensive plan.

The section that she refers to, i.e., that the comprehensive plan has the force of law and no development shall be permitted except as consistent with the plan has been a part of our State legislation for quite some time and we have always been astute in

following this in all proposed rezoning applications. The comprehensive plan can be amended, but again, this must be cleared through Ms. Holland's office and I am sure that we follow that procedure.

Regarding the application of Carl Moore, File Z-03-06, which will be heard by Council on Monday night, you will note that the Planning Commission recommended that this entire area be looked at for potential rezoning from residential to commercial use. Your staff correctly noted that this would require an amendment to the Land Development Plan of the Comprehensive Plan Update 2003. In this particular application you will note that your staff recommends against approving the rezoning application, it being an unsound planning practice to rezone property with specific conditions that apply only to the owner or that specific property and for a temporary situation. With that in mind, I will attempt to answer your six questions and for the convenience of Council, I will restate them.

1. **What effect does the letter from Mrs. Holland have on the decision to be made by Council on Monday night? What do the comments really mean?**

   Her comments mean that it would be in violation of our comprehensive plan and state law to grant the rezoning application without amending our comprehensive plan. Since our plan was recently revised, she questions the appropriateness of a revision at this early date.

2. **What effect does it have on any rezoning requests of the future?**

   None as long as the requests are consistent with the then-effective comprehensive plan. If not, then we need to consider whether the plan should be amended consistent with the rezoning application.

3. **Should the City determine the legality of future rezoning requests before presenting to Council to refer to Planning Commission and setting a public hearing and not accept them if the are in violation of State law?**

   I believe your planning staff probably points out to the applicant that the application is not consistent with the comprehensive plan and that this may be a major impediment in granting the rezoning application. Despite this advice, if the applicant still chooses to proceed, then I see nothing wrong with that procedure.

4. **It costs money for applicants and if the City is aware that they will not be able to approve a request (by**

State law) how legal is it for us to take their application fees?

As stated previously, I believe that our planning staff gives this advice to the applicant.

5. **Is the City in violation of holding a hearing if the request is in violation of State law?**

No, because the comprehensive plan can always be amended, which is necessary to conform to changing situations that could not be contemplated at the time the comprehensive plan was adopted. These changes are recognized as being permissible by State law.

6. **What effect does it have on the historic District and the decisions relative to it?**

None.

Very truly yours,

NICHOLAS H. RODRIGUEZ

NHR:cef

EXHIBIT 4
COUNCIL MINUTES 12/08/04

Green, Janice

Copy Druitt & Pitts

12/2/2003

From: DePrima, Tony
Sent: Tuesday, December 02, 2003 10:36 AM
To: Williams, Beverly C.
Cc: City Council; Green, Janice; Horvath, Jeffrey
Subject: FW: Recent Decision by Planning Commission-Carl Moore Rezoning

(Note: Janice can you please place paper copies in packet of Councilmen who do not receive e-mail)

Bev,

As per your request, the following is a response to your inquiry regarding the Carl Moore rezoning.

1. I strongly support staff's position. The recommendation of the Planning Commission goes against the newly adopted Comprehensive Plan. The Plan hasn't even come back from the printer yet. This sets a very bad precedent because it is the first rezoning after the Comprehensive Plan adoption. My recollection is that City Council abided by the Plan for several years after its initial adoption in 1996.

If City Council agrees with the arguments of Mr. Moore as did the Planning Commission, then the proper action would be to deny the rezoning without prejudice (which would allow it to be re-considered within one year), and ask staff to evaluate it for a Comprehensive Plan amendment along with all of the property in that general area. A Comp Plan amendment would require a more rigorous review. In fact, this was the second motion of the Planning Commission. I think sending it back for Comp Plan Amendment Consideration would set a very good precedent.

2. I believe that rezoning against the Comprehensive Plan will also violate some new State statues regarding municipal zoning. After asking Dave Edgell, he sent me an e-mail of his opinion. I will forward that to you and the rest of Council.

3. During 50 weeks out of the year, this is a residential area. I believe that is why it has remained in the Comprehensive Plan as such. I do not believe, as one Planning Commissioner stated, that this area was overlooked during the Comp Plan review.

4. The last time this issue came up, I recall there was testimony regarding traffic and safety from the Police Department. I think that you should ask the police to be prepared to give their opinion on this.

-----Original Message-----
From: Williams, Beverly C.
Sent: Monday, November 24, 2003 4:57 PM
To: DePrima, Tony
Subject: Re: Recent Decision by Planning Commission

Tony,

Please consider this a formal request. I am very curious about the recent decision by the Planning Commission to overrule our Comprehensive Plan, right after it had been approved by the State. Please email your thinking about this action and please copy your response (s) to all members of Council and the Mayor.

Thanks,

Bev

Green, Janice

From: DePrima, Tony
Sent: Tuesday, December 02, 2003 10:39 AM
To: Williams, Beverly C.
Cc: City Council; Green, Janice
Subject: FW: Delaware Code Reference re: Moore rezoning

Here is the information I received form the State Planning Office that I reference in my previous email to you.

-----Original Message-----
From: Edgell David (OBUD) [mailto:David.Edgell@state.de.us]
Sent: Wednesday, November 26, 2003 11:57 AM
To: DePrima, Tony; Melson, Dawn
Subject: Delaware Code Reference re: Moore rezoning

Tony and Dawn,

As per our conversation yesterday, here is Title 22 of the Del. C. I have highlighted what I think to be the relevant section for the issue we discussed, which is section 702 d. which states that the plan has the force of law and that no development may occur except as consistent with the comprehensive plan. This has been in the code since HB 396 in 1996. I've also highlighted section 702 c. which makes it very clear that the comp plan is the basis for the zoning ordinance. This section was added in 2001 with HB 255. Considered together, I think it is clear that you should not rezone unless that new zoning is consistent with your adopted comprehensive plan. If you want to look through the code yourself it is online at:

http://www.delcode.state.de.us/title22/c007/index.htm#TopOfPage

Hope this helps. Have a great Thanksgiving!

David

TITLE 22

Municipalities

CHAPTER 7. PLANNING COMMISSION

§ 701. Establishment; membership.

Any incorporated city or town may at any time establish a planning commission under this chapter. A planning commission established hereunder shall consist of not less than 5 nor more than 9 members. Such members shall in cities be appointed by the mayor, subject to confirmation by the city council, and in towns where there is not a mayor shall be elected by the town commissioners. When a planning commission is first established the members thereof shall be appointed or elected for terms of such length and shall be so arranged that the term of at least 1 member shall expire each year and their successor shall be appointed or elected for terms of 2 to 5 years each. Any member of the planning commission so established in a city may be removed for cause after a public hearing by the mayor with the approval of city council; members of the planning commission elected by town commissioners shall be removed by them for cause after a public hearing by a majority vote. A vacancy occurring otherwise than by expiration of

term shall be filled for the unexpired term in a city in the same manner as an original appointment and in a town by the town commissioners. Such a planning commission shall elect annually a chairperson and a secretary from among its own number and may employ experts, clerical and other assistants. It may appoint a custodian of its plan and records who may be the city engineer or town clerk. (22 Del. C. 1953, § 701; 49 Del. Laws, c. 415, § 1; 59 Del. Laws, c. 463, § 1; 70 Del. Laws, c. 186, § 1.)

§ 702. Comprehensive development plan.

(a) A planning commission established by any incorporated municipality under this chapter shall prepare a comprehensive plan for the city or town or portions thereof as the commission deems appropriate. It is the purpose of this section to encourage the most appropriate uses of the physical and fiscal resources of the municipality and the coordination of municipal growth, development and infrastructure investment actions with those of other municipalities, counties and the State through a process of municipal comprehensive planning.

(b) Comprehensive plan means a document in text and maps, containing at a minimum, a municipal development strategy setting forth the jurisdiction's position on population and housing growth within the jurisdiction, expansion of its boundaries, development of adjacent areas, redevelopment potential, community character, and the general uses of land within the community, and critical community development and infrastructure issues. The comprehensive planning process shall demonstrate coordination with other municipalities, the county and the State during plan preparation. The comprehensive plan for municipalities of greater than 2,000 population shall also contain, as appropriate to the size and character of the jurisdiction, a description of the physical, demographic and economic conditions of the jurisdiction; as well as policies, statements, goals and planning components for public and private uses of land, transportation, economic development, affordable housing, community facilities, open spaces and recreation, protection of sensitive areas, community design, adequate water and wastewater systems, protection of historic and cultural resources, annexation and such other elements which in accordance with present and future needs, in the judgment of the municipality, best promotes the health, safety, prosperity and general public welfare of the jurisdiction's residents.

(c) The comprehensive plan shall be the basis for the development of zoning regulations as permitted pursuant to Chapter 3 of this title. Should a jurisdiction exercise its authority to establish municipal zoning regulations pursuant to Chapter 3 of this title, it shall, within 18 months of the adoption of a comprehensive development plan or revision thereof, amend its official zoning map to rezone all lands within the municipality in accordance with the uses of land provided for in the comprehensive development plan.

(d) After a comprehensive plan or portion thereof has been adopted by the municipality in accordance to this chapter, the comprehensive plan shall have the force of law and no development shall be permitted except as consistent with the plan.

(e) At least every 5 years a municipality shall review its adopted comprehensive plan to determine if its provisions are still relevant given changing conditions in the municipality or in the surrounding areas. The adopted comprehensive plan shall be revised, updated and amended as necessary, and re-adopted at least every 10 years.

(f) The comprehensive plan or amendments or revisions thereto shall be submitted to the Governor or designee at such time as the plan is made available for public review. The municipality shall provide sufficient copies for review by the Governor's Advisory Council on Planning Coordination. The Advisory Council, within 30 days of plan submission, shall conduct a public meeting, at which time the municipality shall make a presentation of the plan and its underlying goals and development policies, except when the Advisory Council determines that the comprehensive plan, amendments or revisions are fully consistent with statewide land development goals, policies and criteria as adopted by the Governor or Cabinet Committee on State Planning Issues. Following the public meeting the plan shall be subject to the state review and certification process set forth in § 9103 of Title 29. If the Advisory Council determines that a public meeting is not required as provided above, the plan shall be submitted directly to the Governor or his or her designee for certification provided in § 9103 of Title 29. Any proposed comprehensive plan that has been submitted to the Office of State Planning Coordination prior to July 13, 2001, for review shall be exempt from the requirements of this subsection.

(g) Municipalities shall provide to the Office of State Planning Coordination by December 31 of each year a report describing implementation of their comprehensive plan and identifying development issues, trends or conditions since the plan was last adopted or amended. (22 Del. C. 1953, § 702; 49 Del. Laws, c. 415, § 1; 71 Del. Laws, c. 477, § 1; 73 Del. Laws, c. 186, §§ 7-9.)

David L. Edgell, AICP
Principal Planner
Office of State Planning Coordination
(302) 739-3090
(302) 739-6958 fax
http://www.state.de.us/planning/

TO: Dover City Council
Mayor James L. Hutchison

SUBJECT: Petition to Amend Zoning District, re: 190 Old Leipsic Road

DATE: December 4, 2003

Honorable Mayor, Ladies and Gentlemen of City Council,

As a member of the City of Dover Planning Commission, I was instrumental in supporting the application by Mr. Carl Moore to rezone the property at 190 Old Leipsic Road from R-10 (One Family Residence) to C-1A (Limited Commercial Zone). My reasons for supporting this action are presented below, and I pray that you will give them due consideration prior to your meeting on Monday, December 8th, 2003.

I plan to be present during City Council meeting on December 8th, and will be glad to discuss this matter further in the public forum.

I fully support this application for rezoning for the following reasons:

1. The Planning Staff's recommendation to deny this as being a "Contract" or "Conditional" zoning ignores the reality that these few properties have become, through attrition, an incongruous island of residential zoning surrounded by one of the largest public entertainment and commercial enterprises in the entire State of Delaware.

2. The Comprehensive Plan Update shows this strip as being retained for residential use, but there is no point. Zoned residential, this property has extremely narrow marketability. And if you believe that there is any future potential for residential **re-**development, just ask any local realtor. I did, and I haven't found one yet that would consider this as an area for future residential improvement. Therefore, to try and retain it as residential zoning goes against the desires of the owners and all good common sense.

3. This is an obvious example of passive spot-zoning. We often justify denying rezoning when it would create "spot-zoning", yet here we are denying a rezoning in order to retain spot-zoning. And why would the Comprehensive Plan show the properties along the north side of Leipsic Road, from behind Home Depot, eastward, as desirable for rezoning to Commercial, when these are some of the nicer-looking frame homes in this area, but not consider the same for this patch of Old Leipsic Road?

4. There is no attempt to contain race-week vendors to the grounds of Dover Downs, and many of them are spread out 1000's of yards beyond Dover Downs' property borders. So why are we trying to restrict Mr. Moore's property from also providing space for vendors, particularly when they are in the closest proximity to Dover Downs, as well as fronting two of the roads upon which a huge majority of pedestrian traffic flows to and from the race track?

5. The City's own actions recognize that these are commercially viable properties. In a previous concession, City Council has allowed these properties to be used for automobile parking during race weeks and, as well, allows Old Leipsic Road to be completely turned over to Dover Downs and closed off for their use as a pedestrian walkway, and for their "golf-cart" traffic, which eliminates the possibility that the residents on this road can come or go from their properties at will. The residents become virtual prisoners at the expense of the Race Track events and their properties are forced to become part of the commercial enterprise every time Dover Downs hosts a racing event. It is time to codify this recognition in a permanent rezoning action that reflects the reality of the situation, not some fantasy that these will be renewable residential properties.

The City of Dover, along with the State of Delaware's Rt 1 project, has contributed to the residents' current dilemma, but the City is failing to help rectify the situation by their refusal to appropriately rezone these properties.

I believe the property owners have struggled long enough to try and maintain this area as residential, but I also see that they are finally recognizing the futility of their situation. If they can recognize this, I believe it is time that we, the governing Commissions and Councils of the City of Dover also recognize it, and allow the inevitable conversion to commercial use to begin.

Sincerely,

Michael von Reider
Planning Commissioner, 3rd District