

# **COUNCIL COMMITTEE OF THE WHOLE**

## **AGENDA**



**SEPTEMBER 12, 2017 - 6:00 P.M.**

**REVISED**

**CITY HALL COUNCIL CHAMBERS, 15 LOOCKERMAN PLAZA, DOVER, DELAWARE**

**REVISED BY REMOVING "PRESENTATION - RESTORE THE VOTE - EX-OFFENDER DISENFRANCHISEMENT: RESTORATION OF VOTING RIGHTS (NELSON L. HILL, VICE PRESIDENT/DIRECTOR OF ORGANIZING - UNITED FOOD & COMMERCIAL WORKERS UNION, LOCAL 27)" FROM THE LEGISLATIVE, FINANCE, AND ADMINISTRATION COMMITTEE AGENDA**

PUBLIC COMMENTS ARE WELCOMED ON ANY ITEM AND WILL BE PERMITTED AT APPROPRIATE TIMES. WHEN POSSIBLE, PLEASE NOTIFY THE CITY CLERK (736-7008 OR E-MAIL AT [CITYCLERK@DOVER.DE.US](mailto:CITYCLERK@DOVER.DE.US)) SHOULD YOU WISH TO BE RECOGNIZED.

### **LEGISLATIVE, FINANCE, AND ADMINISTRATION COMMITTEE**

- 1. AGENDA ADDITIONS/DELETIONS**
- 2. EVALUATION OF REQUESTS FOR PROPOSALS (RFP) - ENTERPRISE RESOURCES PLANNING (ERP)**  
(STAFF RECOMMENDS AUTHORIZATION FOR THE ACTING CITY MANAGER TO ENTER INTO A CONTRACT WITH TYLER TECHNOLOGIES FOR THE PURPOSE OF ACQUIRING AN ENTERPRISE RESOURCE PLANNING SYSTEM AND AUTHORIZATION TO RETAIN THE SERVICES OF BERRY DUNN TO ASSIST STAFF WITH THE IMPLEMENTATION PHASE OF THIS PROJECT. TOTAL COST NOT TO EXCEED THE AUTHORIZED BUDGET UNLESS OTHERWISE APPROVED BY CITY COUNCIL.)
- 3. PROPOSED CITY OF DOVER ETHICS INITIATIVE**
- 4. UPDATED MEMORANDUM OF UNDERSTANDING (MOU) FOR PRELIMINARY LAND USE SERVICES (PLUS) REVIEW**  
(STAFF RECOMMENDS APPROVAL OF THE MEMORANDUM OF UNDERSTANDING)
- 5. PROPOSED CODE ENFORCEMENT POLICY AND VACANT BUILDING ORDINANCE CHANGES**
- 6. ADJOURNMENT OF LEGISLATIVE, FINANCE, AND ADMINISTRATION COMMITTEE MEETING**

### **PARKS, RECREATION, AND COMMUNITY ENHANCEMENT COMMITTEE**

- 1. AGENDA ADDITIONS/DELETIONS**
- 2. REQUEST FOR DOG PARK AND PASSIVE PLAYGROUND - ACORN FARMS**

**PARKS, RECREATION, AND COMMUNITY ENHANCEMENT COMMITTEE (CONTINUED)**

**3. PROPOSED RESOLUTION NO. 2017-11 IN SUPPORT OF DELAWARE OUTDOOR RECREATION, PARKS AND TRAILS (ORPT) GRANT APPLICATION - DOVER PARK MASTER PLAN AND SCHUTTE PARK PHASE I IMPROVEMENTS**

(STAFF RECOMMENDS ADOPTION OF RESOLUTION NO. 2017-11)

**4. UPDATES**

**A. CONTINENTAL PARK**

**B. CITY OF DOVER PARTNERSHIP WITH NCALL - POP-UP PARKS**

**5. ADJOURNMENT OF PARKS, RECREATION, AND COMMUNITY ENHANCEMENT COMMITTEE MEETING**

**ADJOURNMENT OF COUNCIL COMMITTEE OF THE WHOLE MEETING**

/TM

S:\AGENDAS-MINUTES-PACKETS-PRESENTATIONS-ATT&EXH\COMMITTEE-AGENDAS\2017\09-12-2017 CCW AGENDA-REVISED 09-11-2017.WPD

## **ACTION FORM**

<b>PROCEEDING:</b> Council Committee of the Whole – Legislative, Finance and Administration Committee	
<b>DEPARTMENT OF ORIGIN:</b> City Manager's Office	<b>DATE SUBMITTED:</b> 8/30/17
<b>PREPARED BY:</b> Kirby A. Hudson, Assistant City Manager	
<b>SUBJECT:</b> Evaluation of Requests for Proposals (RFP) – Enterprise Resources Planning System ( ERP)	
<b>REFERENCE:</b> RFP # 17-0031FN; March 3, 2017	
<b>RELATED PROJECT:</b>	
<b>REVIEWED BY:</b> City Manager & Controller	
<b>EXHIBITS:</b> Project Memorandum – May 4, 2017	
<b>EXPENDITURE REQUIRED:</b> \$2,444,000 est.	<b>AMOUNT BUDGETED:</b> \$2,506,000
<b>FUNDING SOURCE (Dept./Page in CIP &amp; Budget):</b> Page 210, FY18 CIP Budget	
<b>TIMETABLE:</b> Implementation to start of October 2, 2017.	
<b>RECOMMENDED ACTION:</b> Authorization for the Acting City Manager to enter into a contract with Tyler Technologies for the purpose of acquiring an Enterprise Resource Planning system and authorization to retain the services of BerryDunn to assist staff with the implementation phase of this project. Total cost not to exceed the authorized budget unless otherwise approved by City Council.	

### **BACKGROUND AND ANALYSIS**

By way of background, the Finance Department solicited proposals (RFP # 16-039FN) for consulting services to assist the City with an Enterprise Resource Planning (ERP) project. The City selected Berry Dunn McNeil & Parker, LLC (BerryDunn) as the consultant to successfully guide the City through the initial project of Phase I which included, the ERP needs assessment, software development, vendor selection for Phase II consultant, and contract negotiations with the ERP vendor selected.

Request for Proposals were solicited for an ERP solution that would best meet the City's requirements in March, 2017. There were two entities that responded to the Request for Proposal – ERP System Selection Project. They were Edmunds and Associates and Tyler Technologies. After staff's due diligence and with the technical assistance of BerryDunn, staff is recommending the City to enter into an Enterprise Resource Planning Technology Implementation Contract with Tyler Technologies. The Tyler proposal provided the best in class functionality and provides the City with a long-term solution for the future. The initial pricing of the proposals is outlined in the attached Project Memorandum from BerryDunn.

The City staff has selected the City-Hosted Deployment as the ERP solution at an estimated one-time cost of \$2,193,832 and an annual maintenance cost of \$200,220. Maintenance cost will start upon the installation of each module as we work through the 3 year project schedule. The City has requested price in the E-notify services (annual cost \$24,200) for customer alerts/notifications and the ECitation for Police Code enforcement operations. These items are being included in the final contract negotiations so the final pricing will vary but will remain within budget. We would also like to retain the services of BerryDunn to assist with the implementation phase of this project. Their proposal for that service is \$186,665, which is within \$5,000 of two proposals submitted in the original consulting RFP. A recap of the estimated cost is as follows:

Continued – Action Form  
RFP – Enterprise Resource Planning System (ERP)

City-Hosted Deployment one-time cost	\$2,008,885
Estimated cost of Tyler Travel expenses	184,950
Estimated cost of City Hardware requirements	62,000
Service Code Escrow (emergency access to ERP)	1,500
BerryDunn consulting services	186,665
Total Estimated Cost	\$2,444,000

The annual maintenance cost comparison to our current systems is as follows –

Enterprise Solutions	Current	Tyler
Sungard H.T.E.	\$98,500	\$220,220
Egov – bill presentment vs. Tyler ENotify	70,800	24,200
ADP – Time & Attendance, H/R & Payroll	110,000	Incl. Above
I/T H.T.E. Programmer	70,000	N/A
Total Annual Cost	\$349,300	\$244,400

## City of Dover ERP System Selection Project

### PROJECT MEMORANDUM

TO: City of Dover Evaluation Committee  
FROM: BerryDunn Project Team  
SUBJECT: Proposal Summary Memo – Cost  
DATE: September 11, 2017

The purpose of this memo is to present a preliminary analysis of the cost proposals received in response to the City's RFP to inform the Evaluation Committee of the potential costs going forward. The costs presented in this memo are subject to adjustment based upon this further analysis. Footnotes have been provided to clarify any assumptions made or additional analysis conducted to arrive at the cost detail requested in the RFP.

#### City-Hosted Deployment

Vendors were asked to propose costs for a City-hosted or "on premise" deployment. These proposed costs are presented in the next three sub-sections of this memo.

##### *1.1 One-Time Costs by Cost Area*

The following table contains proposed one-time costs for a City-hosted deployment presented by cost area.

**Table 1.1: One-Time Costs by Cost Area for City-Hosted Deployment (\$)**

Cost Area	Edmunds	Tyler
Software License Costs	\$267,900	\$954,617
Software Customization Costs	\$0	\$34,425
Interfaces/Integration Costs - CRITICAL	\$100,000	\$3,300
Interfaces/Integration Costs - DESIRED	\$0	\$0
Data Conversion Costs - CRITICAL	\$123,500	\$156,100
Data Conversion Costs - DESIRED	\$0	\$0
Professional Service Costs	\$26,680	\$327,300
Training Costs	\$0	\$524,140
Server Hardware Costs	\$13,795	\$9,000
Expenses (miscellaneous)	\$0	\$184,950
<b>Total</b>	<b>\$531,875</b>	<b>\$2,193,832</b>

## 1.2 Recurring Maintenance Costs

The following table contains proposed recurring maintenance costs for a City-hosted deployment presented by year.

**Table 1.2: Recurring Maintenance Costs by Year for City-Hosted Deployment (\$)**

Year	Edmunds	Tyler
Year 1 <sup>1</sup>	\$53,362	\$0
Year 2	\$55,262	\$208,940
Year 3	\$56,920	\$219,386
Year 4	\$58,630	\$230,356
Year 5	\$60,390	\$241,874
Years 6-10	\$330,228 <sup>2</sup>	\$1,403,329
<b>5 Year Total</b>	<b>\$284,854</b>	<b>\$900,556</b>
<b>10 Year Total</b>	<b>\$615,082</b>	<b>\$2,303,885</b>

## 1.3 Total Costs (One-Time and Recurring Maintenance)

The following table contains proposed total costs for a City-hosted deployment presented by year.

**Table 1.3: Total Costs by Year for City-Hosted Deployment (\$)**

Year	Edmunds	Tyler
Year 1 <sup>3</sup>	\$585,527	\$2,193,832
Year 2	\$55,262	\$208,940
Year 3	\$56,920	\$219,386
Year 4	\$58,630	\$230,356
Year 5	\$60,390	\$241,874
Years 6-10	\$330,228 <sup>4</sup>	\$1,403,329
<b>5 Year Total</b>	<b>\$816,729</b>	<b>\$3,094,388</b>
<b>10 Year Total</b>	<b>\$1,146,957</b>	<b>\$4,497,717</b>

<sup>1</sup> Tyler waived the maintenance fee for the first year.

<sup>2</sup> Edmunds listed the cost for Year 6 and indicated a 3% increase for Years 6-10, the total was calculated based on a 3% annual increase as indicated by Edmunds. They did not provide the Year 6-10 total as requested.

<sup>3</sup> Tyler waived the maintenance fee for the first year.

<sup>4</sup> Edmunds listed the cost for Year 6 and indicated a 3% increase for Years 6-10, the total was calculated based on a 3% annual increase as indicated by Edmunds. They did not provide the Year 6-10 total as requested.

## Vendor-Hosted Deployment

Vendors were asked to propose costs for a Vendor-hosted or deployment. These proposed costs are presented in the next three sub-sections of this memo.

### *2.1 One-Time Costs*

The following table contains proposed one-time costs for a Vendor-hosted deployment presented by cost area.

**Table 2.1: One-Time Costs by Cost Area for Vendor-Hosted Deployment (\$)**

Cost Area	Edmunds	Tyler
Software License Costs	\$267,900	\$0
Software Customization Costs	\$0	\$34,425
Interfaces/Integration Costs - CRITICAL	\$100,000	\$3,300
Interfaces/Integration Costs - DESIRED	\$0	\$0
Data Conversion Costs - CRITICAL	\$123,500	\$156,100
Data Conversion Costs - DESIRED	\$0	\$0
Professional Service Costs	\$26,680	\$327,300
Training Costs	\$0	\$524,140
Server Hardware Costs	\$0	\$4,000
Expenses (miscellaneous)	\$13,795	\$184,950
<b>Total</b>	<b>\$531,875</b>	<b>\$1,234,215</b>

### *2.2 Recurring Maintenance Costs*

The following table contains proposed recurring maintenance costs for a Vendor-hosted deployment presented by year.

**Table 2.2: Recurring Maintenance Costs by Year for Vendor-Hosted Deployment (\$)**

Year	Edmunds	Tyler
Year 1	\$53,652	\$617,080
Year 2	\$55,262	\$617,080
Year 3	\$56,920	\$617,080
Year 4	\$58,630	\$617,080
Year 5	\$60,390	\$617,080
Years 6-10	\$330,228 <sup>1</sup>	\$3,177,962
<b>5 Year Total</b>	<b>\$284,854</b>	<b>\$3,085,400</b>
<b>10 Year Total</b>	<b>\$615,082</b>	<b>\$6,263,362</b>

<sup>1</sup> Edmunds listed the cost for Year 6 and indicated a 3% increase for Years 6-10, the total was calculated based on a 3% annual increase as indicated by Edmunds. They did not provide the Year 6-10 total as requested.

### 2.3 Total Costs (One-Time and Recurring Maintenance)

The following table contains proposed total costs for a Vendor-hosted deployment presented by year.

**Table 2.3: Total Costs by Year for Vendor-Hosted Deployment (\$)**

Year	Edmunds	Tyler
Year 1	\$585,527	\$1,851,295
Year 2	\$55,262	\$617,080
Year 3	\$56,920	\$617,080
Year 4	\$58,630	\$617,080
Year 5	\$60,390	\$617,080
Years 6-10	\$330,228 <sup>1</sup>	\$3,177,962
<b>5 Year Total</b>	<b>\$816,729</b>	<b>\$4,319,615</b>
<b>10 Year Total</b>	<b>\$1,146,957</b>	<b>\$7,497,577</b>

#### Lowest Cost Option by Vendor

### 3.1 Total Costs for Point Allocation

The following table contains proposed recurring maintenance costs for the lowest cost deployment option proposed by each vendor.

**Table 3.1: Total Costs by Year for Lower-Cost Hosting Option (\$)**

Year	Edmunds	Tyler
Year 1 <sup>2</sup>	\$585,527	\$2,193,832
Year 2	\$55,262	\$208,940
Year 3	\$56,920	\$219,386
Year 4	\$58,630	\$230,356
Year 5	\$60,390	\$241,874
Years 6-10	\$330,228 <sup>3</sup>	\$1,403,329
<b>5 Year Total</b>	<b>\$816,729</b>	<b>\$3,094,388</b>
<b>10 Year Total</b>	<b>\$1,146,957</b>	<b>\$4,497,717</b>

<sup>1</sup> Edmunds listed the cost for Year 6 and indicated a 3% increase for Years 6-10, the total was calculated based on a 3% annual increase as indicated by Edmunds. They did not provide the Year 6-10 total as requested.

<sup>2</sup> Tyler waives the maintenance fee for the first year.

<sup>3</sup> Edmunds listed the cost for Year 6 and indicated a 3% increase for Years 6-10, the total was calculated based on a 3% annual increase as indicated by Edmunds. They did not provide the Year 6-10 total as requested.

The following procedures are to be considered for adoption by Council. The Council shall approve the following Ethics and Financial Disclosure Initiative, herein referred to as the Initiative. In order for Councilmembers, Council-appointments, Mayoral-appointments and the Mayor to better serve the constituents of the City of Dover in an open, transparent fashion and to further be held accountable for any conflicts of interest, the Initiative is proposed for consideration.

The following actions shall be taken by each of the designated persons:

1. Councilmembers shall file financial disclosures annually with the Public Integrity Commission. Councilmembers shall submit proper and necessary documentation by August 1<sup>st</sup> of each calendar year.
2. Committee and Commission appointees shall sign an acknowledgment decree of the ethics policies of the City of Dover. The document shall be read, reviewed, and signed by all appointees by the time of their appointment or re-appointment.
3. Councilmembers, Council-appointments, Mayoral-appointments, the Mayor and all city employees shall undergo and receive annual training on the City of Dover's ethics policies and procedures.

## ARTICLE II. - CODE OF CONDUCT

### Sec. 30-31. - Applicability; statement of policy.

- (a) *Applicability.* This article shall be applicable to all elected and appointed officials and all employees of the city.
- (b) *Statement of policy.* The proper operation of democratic government requires that public officials and employees be independent, impartial, and responsible to the people; that governmental decisions and policies be made in the proper channels of the governmental structure; that public office not be used for personal gain; and that the public has confidence in the integrity of its government. In recognition of these goals, there is hereby established a code of conduct for all city employees and officials. The purpose of this code of conduct is to establish ethical standards of conduct for all such officials and employees by setting forth those acts or actions that are incompatible with the best interests of the city and by directing disclosure by such officials and employees of private financial or other interests in matters affecting the city. The city council finds and declares as matters of public policy goals and objectives for all city employees and elected and appointed officials, the following:
  - (1) *Public trust.* In our democratic form of government, the conduct of officials and employees of the city must hold the respect and confidence of the people. They must, therefore, avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated.
  - (2) *Standards.* To ensure propriety and to preserve public confidence, officials and employees of the city must have the benefit of specific standards to guide their conduct and disciplinary mechanisms to guarantee uniform maintenance of those standards. Some standards of this type are so vital to government that violation thereof should subject the violator to criminal penalties.
  - (3) *Public service.* In our democratic form of government, it is both necessary and desirable that all citizens should be encouraged to assume public office and employment, and that, therefore, the activities of officers and employees of the city should not be unduly circumscribed.
  - (4) *Performance of duty.* Elected city officials are obligated to uphold the fundamental legal principles of our system of government, as set forth in the United States Constitution, the state constitution, and the city Charter, as well as all applicable provisions of federal, state and local law and court decisions. They are bound to do so, and the failure to so act shall constitute malfeasance in office.
  - (5) *Fairness.* City officials and employees shall strive for the highest standard of fairness in all of their activities and shall not grant any special consideration, treatment, or advantage to any citizen beyond that which is available to every other citizen.
  - (6) *Use of private information.* In the course of their official responsibilities, city officials and employees are often privy to categories of information which are of a private nature and are legally protected from public disclosure. City officials and employees shall maintain the privacy of such information, and they shall not take advantage of such information for personal gain, or the personal gain of friends or family.

(Code 1981, § 2-8; Ord. of 7-13-1998)

### Sec. 30-32. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Close relative* means a person's parents, spouse, children (natural or adopted), and siblings of the whole and half-blood.

*Commission* and *ethics commission* mean the city ethics commission as established by this chapter.

*Compensation* means any money, thing of value, or any other economic benefit of any kind or nature whatsoever conferred on or received by any person in return for services rendered or to be rendered by the official or employee, or by another.

*Employee* includes all persons who receive compensation as an employee of the city or a city agency, and shall not include persons that are elected or appointed to serve as mayor, city councilmember or a member of any city committee, commission or board, whether paid or unpaid.

*Financial interest.* A person has financial interest in a private enterprise if:

- (1) He has a legal or equitable ownership interest in the enterprise of more than ten percent (one percent or more in the case of a corporation the stock of which is regularly traded on an established securities market);
- (2) He is associated with the enterprise and received from the enterprise during the last calendar year, or might reasonably be expected to receive from the enterprise during the current or the next calendar year, income in excess of \$5,000.00 for services as an employee, officer, director, trustee, or independent contractor; or
- (3) He is a creditor of a private enterprise in an amount equal to ten percent or more of the debt of that enterprise (one percent or more in the case of a corporation the securities of which are regularly traded on an established securities market).

*Matter* means an application, petition, request, business dealing, contract, subcontract, or any other transaction of any sort with the city.

*Official* means any elected or appointed official of the city and all members of any committee, commission or board appointed by the mayor of the city or appointed by the city council.

*Official responsibility* means any direct administrative or operating authority at any level, either exercisable alone or with others, either personally or through subordinates, to approve, disapprove, recommend or otherwise direct action on behalf of the city.

*Personal or private interest* means an interest in a matter which tends to impair the independent judgment of an official or employee in the performance of his duties with respect to that matter.

*Private enterprise* means any activity conducted by any person, whether conducted for profit or not for profit, and includes the ownership of real or personal property. The term "private enterprise" does not include any activity of the city, of any political subdivision, or of any agency, authority, or instrumentality thereof.

(Code 1981, § 2-9; Ord. of 7-13-1998)

Sec. 30-33. - Prohibitions relating to conflicts of interest.

(a) *Restrictions on exercise of official authority.*

- (1) *Prohibited participation.* No city employee or official may participate on behalf of the city in the review or disposition of any matter pending before the city in which he has a personal or private interest, provided that, upon request from any person with official responsibility with respect to the matter, any such person who has such a personal or private interest may nevertheless respond to questions concerning any such matter. A personal or private interest in a matter is an interest which tends to impair a person's independence of judgment in the performance of his duties with respect to that matter.
- (2) *Impairment of judgment.* A person has an interest which tends to impair his independence of judgment in the performance of his duties with respect to any matter when:

- a. Any action or inaction with respect to the matter would result in a financial benefit or detriment to accrue to the person or a close relative to a greater extent than such benefit or detriment would accrue to others who are members of the same class or group of persons; or
  - b. The person or a close relative has a financial interest in a private enterprise which enterprise or interest would be affected by any action or inaction on a matter to a lesser or greater extent than like enterprises or other interests in the same enterprise.
- (3) *Statutory responsibility.* In any case where a person has a statutory responsibility with respect to action or inaction on any matter where he has a personal or private interest and there is no provision for the delegation of such responsibility to another person, the person may exercise responsibility with respect to such matter, provided that, promptly after becoming aware of such conflict of interest, he files a written statement with the ethics commission, fully disclosing the personal or private interest and explaining why it is not possible to delegate responsibility for the matter to another person.
- (b) *Restrictions on representing another's interest before the city.*
  - (1) *Prohibited.* No city employee or official may represent or otherwise assist any private enterprise with respect to any matter before the city.
  - (2) *Exception.* This subsection (b) shall not preclude any city employee or official from appearing before the city or otherwise assisting any private enterprise with respect to any matter in the exercise of his official duties.
- (c) *Restriction on contracting with the city.*
  - (1) *Prohibited.* No city employee or official shall benefit from any contract with the city, nor solicit any contract, and shall not enter into any contract with the city (other than an employment contract).
  - (2) *Ownership of enterprise.* No private enterprise in which a city employee or official has a legal or equitable ownership of more than ten percent (more than one percent in the case of a corporation the stock of which is regularly traded on an established securities market) shall enter into any contract with the city (other than an employment contract) unless such contract was made or let after public notice and competitive bidding.
- (d) *Postemployment restrictions.* No person who has served as a city employee or official shall represent or otherwise assist any private enterprise on any matter involving the city, for a period of two years after termination of his employment or elected or appointed status with the city, if he gave an opinion, conducted an investigation or otherwise was directly and materially responsible for such matter in the course of his official duties as a city employee or official, nor shall any former city employee or official disclose confidential information gained by reason of his public position, nor shall he otherwise use such information for personal gain or benefit.
- (e) *Unauthorized disclosure of confidential information.* No person shall disclose any information required to be maintained confidential by the ethics commission under section 30-34(d), 30-35(b) or 30-73.
- (f) *Abuse of office.*
  - (1) *Political contributions.* No elected city official shall agree to sponsor legislation, or to influence in any manner the formulation or passage of legislation, in exchange for political contributions or promises thereof.
  - (2) *Substantial interest.* No elected city official shall vote for, or promote in any manner whatsoever, legislation affecting any subject matter in which he has a substantial interest. Any such interest shall be disclosed by said elected official prior to a vote on any such legislation, and said elected official shall vote "abstain" when called upon to vote.
  - (3) *Use of city property.* No city official or employee shall request or permit the use of city-owned vehicles, equipment, materials, or property for personal convenience or profit, except when such services are available to the public generally or are provided for the use of such official or employee in the conduct of official business as a matter of municipal policy.

- (4) *Personal gain.* No city official or employee shall utilize the influence of his office or position for personal pecuniary gain, or to avoid the legal consequences of his personal conduct.
- (g) *Criminal sanctions.*
  - (1) *Penalties.* Any person who knowingly or willfully violates any provision of this section shall be guilty of a misdemeanor, punishable for each such violation by imprisonment of not more than one year and by a fine as provided for in Appendix F—Fees and Fines.
  - (2) *Time limitations.* A prosecution for a violation of this section shall be subject to the time limitations of 11 Del. C. § 205.
- (h) *Contracts voidable by court action.* In addition to any other penalty provided by law, any contract entered into by any city agency in violation of this chapter shall be voidable by the city agency; provided that in determining whether any court action should be taken to void such a contract pursuant to this subsection, the city agency shall consider the interests of innocent third parties who may be damaged thereby. Any court action to void any transaction must be initiated within 30 days after the city agency involved has, or should have, knowledge of such violation.

(Code 1981, § 2-10; Ord. of 7-13-1998; Ord. No. 2009-09, 6-22-2009)

Sec. 30-34. - Established.

- (a) *Appearance of violation.* Each city employee and official shall endeavor to pursue a course of conduct which will not raise suspicion among the public that he is engaging in acts which are in violation of his public trust and which will not reflect unfavorably upon the city and its government.
- (b) *Private interest; gifts.* No city employee or official shall have any interest in any private enterprise, nor shall he incur any obligation of any nature which is in substantial conflict with the proper performance of his duties in the public interest. No city employee or official shall accept other employment, any compensation, gift, payment of expenses or any other thing of monetary value under circumstances in which such acceptance may result in any of the following:
  - (1) Impairment of independence of judgment in the exercise of official duties;
  - (2) An undertaking to give preferential treatment to any person;
  - (3) The making of a governmental decision outside official channels; or
  - (4) Any adverse effect on the confidence of the public in the integrity of the government of the city.
- (c) *Interest in private enterprise.* No city employee or official shall acquire a financial interest in any private enterprise which he has reason to believe may be directly involved in decisions to be made by him in an official capacity on behalf of the city.
- (d) *Disclosure statement.* Any city employee or official who has a financial interest in any private enterprise which is subject to the regulatory jurisdiction of, or does business with, any city agency (and any city official who has a financial interest in any private enterprise which is subject to the regulatory jurisdiction of, or does business with, the city agency on which he serves as an appointee) shall file with the ethics commission a written statement fully disclosing the same. Such disclosure shall be confidential and the ethics commission shall not release such disclosed information, except as may be necessary for the enforcement of this article. The filing of such disclosure statement shall be a condition of commencing and continuing employment or appointed status with the city.
- (e) *Private gain.* No city employee or official shall use his public office to secure unwarranted privileges, private advancement or gain.
- (f) *Confidential information; prohibited activity.* No city employee or official shall engage in any activity beyond the scope of his public position which might reasonably be expected to require or induce him to disclose confidential information acquired by him by reason of his public position.

- (g) *Disclosure of information.* No city employee or official shall, beyond the scope of his public position, disclose confidential information gained by reason of his public position, nor shall he otherwise use such information for personal gain or benefit.
- (h) *Sexual favors.* No city employee or official, in the course of his public responsibilities, shall use the granting of sexual favors as a condition, either explicit or implicit, for an individual's favorable treatment by that person or a city agency.

(Code 1981, § 2-11; Ord. of 7-13-1998)

Sec. 30-35. - Waivers of restrictions and advisory opinions.

- (a) *Authority of ethics commission.* Notwithstanding the provisions of sections 30-33 and 30-34, upon the written request of any city agency or of any individual who is or was a city employee or city official, the ethics commission may grant a waiver to the specific prohibitions contained therein if the ethics commission determines that the literal application of such prohibition in a particular case is not necessary to achieve the public purposes of this chapter or would result in an undue hardship on any employee or official. Any such waiver may be granted only by written decision of the ethics commission. Any person who acts in good faith reliance upon any such waiver decision shall not be subject to discipline or other sanction hereunder with respect to the matters covered by the waiver decision, provided there was a full disclosure to the ethics commission of all material facts necessary for the waiver decision.
- (b) *Waiver information confidential; exceptions.* Any application for a waiver, any proceeding and any decision with respect thereto shall be maintained confidential by the ethics commission, provided that:
  - (1) *Applicant's request.* Public disclosure shall be made by the ethics commission upon the written request of the applicant;
  - (2) *Violations.* The ethics commission may make such public disclosure as it determines is required in connection with the prosecution of any violation of this chapter;
  - (3) *Evidence of crime.* The ethics commission shall report to appropriate federal, state and/or city authorities substantial evidence of any criminal violation which may come to its attention; and
  - (4) *Public record.* In the event that a waiver is granted, the waiver decision and the record of all proceedings relating thereto shall be open to public inspection.
- (c) *Advisory opinion authorized.* Upon the written request of any city employee or official, the ethics commission may issue an advisory opinion as to the applicability of this chapter to any particular fact or situation. Any person who acts in good faith reliance upon any such advisory opinion shall not be subject to discipline or other sanction hereunder with respect to the matters covered by the advisory opinion, provided there was a full disclosure to the ethics commission of all material facts necessary for the advisory opinion.
- (d) *Advisory opinion confidential; exceptions.* Any application for an advisory opinion, any proceeding and any decision with respect thereto shall be maintained confidential by the ethics commission, provided that:
  - (1) *Applicant's request.* Public disclosure shall be made by the ethics commission upon the written request of the applicant;
  - (2) *Violations.* The ethics commission may make such public disclosure as it determines is required in connection with the prosecution of any violation of this article; and
  - (3) *Evidence of crime.* The ethics commission shall report to appropriate federal, state and/or city authorities substantial evidence of any criminal violation which may come to its attention.

(Code 1981, § 2-12; Ord. of 7-13-1998)

Secs. 30-36—30-70. - Reserved.

## **ACTION FORM**

<b>PROCEEDING:</b> Council Committee of the Whole: Legislative, Finance, and Administration Committee <b>AGENDA ITEM NO.:</b> Item 4 of September 12, 2017 Meeting	
<b>DEPARTMENT OF ORIGIN:</b> Department of Planning & Inspections	<b>DATE SUBMITTED:</b> 9/1/2017
<b>PREPARED BY:</b> Planning Office: David S. Hugg III and Dawn Melson-Williams, AICP	
<b>SUBJECT:</b> Updated Memorandum of Understanding (MOU) for Preliminary Land Use Service (PLUS)	
<b>REFERENCE:</b> Preliminary Land Use Service (PLUS) – State Review process	
<b>RELATED PROJECT:</b> N/A	
<b>APPROVALS:</b> Planning Commission discussion of DRAFT MOU for PLUS at August 23, 2017 Planning Commission Quarterly Workshop.	
<b>EXHIBITS:</b> See attached Updated MOU for PLUS; Excerpt of Planning Commission Quarterly Workshop Meeting Minutes	
<b>EXPENDITURE REQUIRED:</b> \$ ----	<b>AMOUNT BUDGETED:</b> \$-----
<b>FUNDING SOURCE (Dept./Page in CIP &amp; Budget):</b> <u>N/A</u>	
<b>TIMETABLE:</b> City Council Meeting of September 25, 2017	
<b>RECOMMENDED ACTION:</b>  Review of Updated MOU by the Legislative, Finance, and Administration Committee for Recommendation and signature by City Council and other participating parties.	

### **BACKGROUND AND ANALYSIS**

The City of Dover currently has a Memorandum of Understanding (MOU) regarding the Preliminary Land Use Service (PLUS) review process with the Office of State Planning Coordination (OSPC). The Planning Staff worked with the OSPC Staff in development of a Memorandum of Understanding (MOU) for how development activities within the City of Dover will be reviewed under the Preliminary Land Use Service (PLUS). See the following link for more information on PLUS: <http://stateplanning.delaware.gov/plus/> The current MOU was adopted in February 2004 following the establishment of the PLUS process in Delaware Code (29 Del. Code, Chapter 92. Land Use Planning). <http://delcode.delaware.gov/title29/c092/sc02/index.shtml>

Since 2004, about forty-seven (47) land development plans and rezoning applications in Dover have participated in the PLUS Review process. This is approximately 6% of the land use change/land development applications (Annexations, Conditional Uses, Site Plans, Subdivisions, and Rezoning applications) filed with the City in the 2004-2017 timeframe. Additionally, thirteen (13) applications associated with the 2008 *Comprehensive Plan* and then Comprehensive Plan amendments were reviewed through the PLUS Review process. A number of other projects received waivers from the PLUS Review process.

The City Planning Staff again working with OSPC Staff reviewed the current MOU to develop the Updated MOU for PLUS. The City of Dover Planning Commission reviewed Draft Updated Memorandum of Understanding for Preliminary Land Use Service at its Quarterly Workshop on August 23, 2017. The following items are included:

- **Draft Updated Memorandum of Understanding for PLUS between the City of Dover, Delaware and the Office of State Planning Coordination** (as presented to Planning Commission)
- **Excerpt from Meeting Minutes** of the Planning Commission Quarterly Workshop on August 23, 2017. This includes their discussion of the Draft Updated MOU and its associated recommended changes.

**Memorandum of Understanding  
between  
The City of Dover, Delaware  
and the  
Delaware Office of State Planning Coordination**

**WHEREAS**, the State of Delaware has determined that certain local land use decisions have far reaching and complex effects on the region, resulting in development which often requires the commitment of finite resources by the various levels of government as well as private investors; and

**WHEREAS**, coordinated review of certain development activities would result in a more efficient, effective and timely use of resources and would also achieve consistency and coordination between the various levels of government and other interested parties; and

**WHEREAS**, under Title 29, Chapter 92 of the Delaware Code, local land use planning actions by local governments are subject to pre-application review processes by the Office of State Planning Coordination (OSPC); and

**WHEREAS**, under Title 29, Section 9205 (c) of the Delaware Code, the OSPC shall, through a Memorandum of Understanding, exempt a local jurisdiction from the provisions of the Land Use Planning Act or modify the pre-application process when the local jurisdiction has a Certified Comprehensive Plan and imposes a more stringent review of projects;

**NOW, THEREFORE, IT IS HEREBY AGREED AND UNDERSTOOD** by and between The City of Dover, Delaware and the Office of State Planning Coordination as follows:

- A. Nothing in this agreement shall be construed to deny The City of Dover its final decision-making authority over proposed land use planning actions in the corporate limits of The City of Dover. Additionally, any comments received from state agencies, pursuant to Title 29, Chapter 92 of the Delaware Code, shall not exempt applicants from the responsibility of meeting all requirements set forth in The City of Dover's adopted land use regulations.
- B. The Development Advisory Committee (DAC) of The City of Dover will continue to review development proposals on a monthly basis, and will continue to include representation from various state agencies as is currently the practice.
- C. The following land use planning actions are and shall remain subject to State review under Title 29, Chapter 92, Delaware Code:

- 1. All residential projects containing 125 or more dwelling units.

DRAFT FOR DISCUSSION  
Last Revised May 22, 2017

2. Any non-residential subdivision or site plan involving new construction of structures or buildings with a total floor area equal to or exceeding 75,000 square feet.

3. Any application for rezoning or annexation that is inconsistent with The City of Dover's Comprehensive Plan Update certified February 9, 2009, or as amended, except where the non-conformity is of a minor, relatively insignificant nature. A rezoning shall be considered a minor variation from the Comprehensive Plan when the following conditions are met:

- a. The rezoning is of a unique circumstance and can not set a precedence for other lands in the vicinity of the rezoning.
- b. The relative size of the rezoning or the variation from the land use recommended by the Comprehensive Plan is so minor that it would have no impact on the goals and objectives of the Comprehensive Plan.
- c. The proposed zoning is adjacent to or in the immediate vicinity of other similarly zoned lands and would not alter the pattern of development in the area.

Upon notification of a rezoning in the City of Dover that meets these criteria, the State will concur in writing to the City thereby waiving the PLUS review process in that instance.

4. Any project of any size proposed to the east of Delaware Route 1 and north of South Little Creek Road, except that projects within the Garrison Oak Technical Park do not require PLUS review unless they involve new construction of structures or buildings with a total floor area equal to or exceeding 75,000 square feet .

5. Any local land use regulation, ordinance or requirement referred to the Office of State Planning Coordination by The City of Dover for the purpose of providing the City with advisory comments. These include the modifications to the City's zoning and subdivision ordinances that implement the Comprehensive Plan.

6. Any development projects voluntarily submitted by the developer to the Office of State Planning Coordination for review.

7. Any other project which is required to be referred to the State for pre-application review by City of Dover regulations.

8. Any amendment, modification or update to The City of Dover's

DRAFT FOR DISCUSSION  
Last Revised May 22, 2017

Comprehensive Plan, as required by Title 22 of the Delaware Code.

9. All projects in the Downtown Dover Redevelopment Target Area, defined by The City of Dover Code shall be exempt from State review unless voluntarily submitted by the developer or The City of Dover.

- D. The City of Dover shall, at the time of the required pre-application meeting, identify those projects meeting the criteria defined in this agreement for State review, direct applicants whose projects meet State review criteria to submit necessary documents to the Office of State Planning Coordination (OSPC) in order to initiate the PLUS review process, and not accept applications for those projects requiring PLUS review until such time as the OSPC has issued comments, as defined in Title 29, Section 9204 (c) of the Delaware code, to the applicant and The City of Dover.
- E. In special circumstances, the Office of State Planning Coordination may waive the pre-application requirements of Title 29, Chapter 92 of the Delaware Code. Where such waiver is granted, the Office of State Planning Coordination shall provide a written explanation of the causes for the waiver to the relevant local jurisdiction and the applicant. These circumstances may include, but are not limited to, a local government's imposition of a more stringent review of projects enumerated in §9203(a) than required by Title 29, Chapter 92 of the Delaware Code, and/or projects expected to provide an extraordinary benefit to the State and the local jurisdiction through economic development, job creation, educational opportunities, public services or facilities, agricultural preservation, or protection and enhancement of the natural environment.
- F. This Memorandum of Understanding may be revised from time to time as circumstances warrant, only with the concurrence of both The City of Dover and the Office of State Planning Coordination.

DRAFT FOR DISCUSSION  
Last Revised May 22, 2017

Signature Page

\_\_\_\_\_  
The Honorable Robin Christiansen  
Mayor, City of Dover  
Dover, Delaware

\_\_\_\_\_  
Date

\_\_\_\_\_  
The Honorable Timothy Slavin  
President, Dover City Council  
Dover, Delaware

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mr. Fred Tolbert  
Chair, Dover Planning Commission  
Dover, Delaware

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mr. David Hugg  
Acting Director  
City of Dover Department of Planning

\_\_\_\_\_  
Date

\_\_\_\_\_  
Constance C. Holland, AICP  
Director  
Delaware Office of State Planning Coordination

\_\_\_\_\_  
Date

## **CITY OF DOVER PLANNING COMMISSION**

**August 23, 2017**

### **Excerpt from Meeting Minutes – DRAFT**

The Regular Quarterly Workshop Meeting of the City of Dover Planning Commission was held on Wednesday, August 23, 2017 at 12:00 noon. Members present were Mr. Roach, Mr. Holt, Mr. Baldwin, Dr. Jones, Mrs. Welsh and Mr. Tolbert. Mr. Holden, Ms. Edwards and Ms. Maucher were absent.

Staff members present were Mr. Hugg, Mrs. Melson-Williams, Mr. Diaz, Mr. Swierczek and Mrs. Mullaney.

Also present was Mr. David Edgell from the State Planning Office.

#### **DRAFT PRELIMINARY LAND USE SERVICES (PLUS) MEMORANDUM OF UNDERSTANDING**

Mrs. Melson-Williams stated that the City of Dover currently has a Memorandum of Understanding that was written in 2004 that basically establishes what type of applications occurring here in the City of Dover have to first go through the State PLUS review process. The State PLUS review process is actually established in Delaware Code. Delaware Code establishes some thresholds but the Code provisions there also allow for local jurisdictions to change those thresholds as appropriate to serve their types of projects that they see. She is going to have Mr. Edgell explain how the PLUS process works in the State level piece and then we will talk about what they are bringing to the Commission today.

Mr. Edgell stated that the idea behind the PLUS process is that all of the various State agencies have some role in the land development process. You are probably most familiar with DelDOT; for instance, they often require a Traffic Impact Study or an Entrance Plan if it's on a State maintained road. DNREC has multiple environmental regulations. Sometimes the Historic Preservation Office is involved. Years ago, it was kind of difficult for local governments to access all of that information in a timely manner and in a way that they could make a good decision and understand what the State requirements would be. The PLUS process was put together back in 2004 and the idea is that before a project goes before a local government like the City of Dover, the State agencies all come together and have a meeting and review those projects and provide both the developer, the applicant and the local government with basic information about what the requirements at the State level will be. The agencies also provide recommendations because unlike Dover, not many other towns or cities in Delaware actually have a Planning Staff that has all of the knowledge and expertise that these people sitting here do. So, a lot of the smaller towns and jurisdictions really rely on the State Planning Office, DelDOT, DNREC and the other agencies to provide them with recommendations and information about some of these projects. The State law kind of sets up some thresholds for what is a project that goes to before PLUS and the State requirements are anything fifty (50) residential units or more or 50,000 SF of non-residential building space or more. As Mrs. Melson-Williams mentioned, while they were putting it together the idea was that some local

jurisdictions the requirements of fifty units and 50,000 SF may be a good baseline. For instance, their smaller towns want to send everything through because they don't have the expertise of a Planning Staff. Other towns like Dover have a Planning Staff and a DAC process. There may be not every project needs to go through but may be the larger ones that have more of a State impact or a regional impact might be worthwhile. In 2004, they agreed on this MOU that he believes the numbers are 125 or more residential dwelling units or 75,000 SF of commercial building space. There are a couple other things in here, notably back then, east of Route 1 was an area where the idea behind the Kent County plan and Dover's plan at the time was to preserve that area for the most part so anything east of Route 1 was seen. They would from time to time come back and review the MOU with the towns and counties and see what was working and what was not working and make amendments if need be. It just so happens that in 2017 they are here and it's overdue. They met with Mr. Hugg and Mrs. Melson-Williams and came up with this Draft.

Mrs. Melson-Williams stated that she has looked through the types of applications that have gone through PLUS review over the years. They have had multiple PLUS review applications every year since they have signed that original MOU. Every year that they had a *Comprehensive Plan* amendment that automatically has gone through the PLUS review process. Because they set their thresholds at those higher levels of 125 dwelling units and 75,000 SF of non-residential building area, that really just pushed the really big things that we see in Dover to the process. If we had left it at fifty dwelling units, they probably would have tripled the number of things that would have had to go through the PLUS review process. They felt comfortable enough that the smaller things for Dover could be dealt with at the Staff level and didn't really need to go through that State review process. Some of the bigger things were the Chesapeake Utilities new campus on Bay Road went through the process. The Blue Hen Apartments with its first phase and second phase and the Leander Lakes Apartments also went through the process. The series of school projects within the Capital School District went through the PLUS review process and some of that is related to school planning at the State level that's required to go through. From the request for annexation for the land that ultimately became Dover High School through the new Dover High School Plan; those things went through the PLUS review process in Dover. Some of our larger requests for shopping center development have gone through it. The most recent application is the Bay Road Commercial project that the Commission just saw in July. The office building project that was directly beside that didn't reach the level of 75,000 SF to have to go through the PLUS; review process. It's been a number of applications over time. Some subdivisions such as the Eden Hill project when it was initially getting started went through PLUS so it's really the big things. Anytime an application goes through PLUS review, Staff is noting that in the DAC Report that is provided to the Commission. They also try to provide the State comments that are issued on any kind of application to PLUS as well as the applicant's response to those PLUS comments so the Commission will see those in their packets.

Mr. Edgell stated that the way that the law is written, the thresholds are one as to what's required to go through but any developer or applicant can go through on their own desire. If you have a residential subdivision of fifty units in Dover and they decide that they want to go through the PLUS Review they can. He is not sure if that's ever happened but it would be possible.

Mrs. Melson-Williams stated that the one thing that they have also dealt with over the years is that there is the ability to seek a waiver of the PLUS Review process. They have done that

several times, in some cases because of a project already went through the process and try number two is very similar to what already went through. In some cases, rezonings can be considered a Minor Variation and they don't have to go through the process.

Mr. Tolbert questioned what Staff's feelings have been with requesting waivers? Responding to Mr. Tolbert, Mrs. Melson-Williams stated that for the most part they have been granted. Some of them related to the hospital project; obviously, it's not going anywhere. There are some waivers that can be sought for more of the economic reasons. There are also some waivers related to the Garrison Oak Technical Park because the original park went through and as they were seeing individual lot development, they think a number of them also got waivers.

Mr. Edgell stated that what the law says is that the reasons for a waiver have to be related to some extraordinary benefit to the local government and State related to economic development or environmental preservation. The one that he can really remember is the Bayhealth Campus. When they were building their new multi-story parking garage, they came through and asked for a waiver. The reason was that they felt like they could use the extra months' time because they had a deadline to get their permit and they felt that they could use the extra time. Also they had seen a plan before for that site and not much was changing with the entrances or any utilities. That was kind of the rationale for the waiver and his Director, Connie Holland took the responsibility to grant the waiver. He would say that they do grant most of the waivers with good reason. They have turned a few down but not in the City. The only reason that they would turn one down is if they feel as though the agencies need a chance to see it and that it might be something to do with a permit or some kind of reason that they would need to see an application.

Mr. Roach questioned how long the PLUS Review usually takes? Responding to Mr. Roach, Mr. Edgell stated that it's about a month and a half. The applications are due the first working day of each month. The meetings are the fourth Wednesday of each month and twenty working days from that, the letter is issued to the applicant and the local government. After that, the applicant which is usually the developer has to respond to it in some way. When people are really rushed to get to their local government deadline, they have allowed them to go kind of concurrently to some extent just so that the letter is available by the time the Planning Commission would see the application. They have tried to make it user friendly and there's no cost to apply. It's really designed so that you don't have to have a plan as detailed as you would need to go before the Planning Commission. You can have a Concept Plan for your shopping center (and not necessarily on the back of a napkin) but a more general plan showing the locations of the buildings on the site and the parking lots. They can take that and provide comments. As soon as they can give the applicant information, that is information that they can use as they design the project and consequently the local government gets a better plan without the concerns that there will be some other outstanding State requirement.

Mr. Tolbert questioned if the Commission had to be involved in a request for waiver? Responding to Mr. Tolbert, Mrs. Melson-Williams stated no.

Dr. Jones questioned that in the matter of the one hundred twenty-five residential dwellings is there a requirement to go through PLUS or not? Responding to Dr. Jones, Mrs. Melson-Williams stated that there is a requirement to go through PLUS if you are proposing one hundred twenty-

five dwelling units or more.

Dr. Jones stated what happens in the case of a developer who ran into trouble and stopped developing. At that time, there were one hundred twenty-five or two hundred dwellings. A new developer comes in to continue to development in that area and there are less than one hundred twenty-five dwellings so the process just goes through the Planning Commission? Responding to Dr. Jones, Mrs. Melson-Williams stated that it depends on what the project is. If it were a subdivision that was already plotted for over the one hundred twenty-five units and they started it and stopped, the lots are still there and the plan approvals for the subdivision still exist. If they were going to what they call re-plat or redesign, meaning change where the roads are, change where the lots are and things like that then they might be into a process depending on the chunk that they are redesigning.

Mr. Edgell stated that they get that question a lot. A lot of times it's things that aren't started yet and they come back and want to redesign it. They always review it. The PLUS Review never expires. As long as they are keeping with the same general plan or the same number of units or reducing the units, it usually doesn't have to go through the review process again. There are times when people say we were going to build one hundred units and now we are going to build two hundred units and we are changing all of the roads. That would be a new plan and it would have to go through the PLUS Review again. Another instance is a developer has a 2005 plan and they are coming through in 2017. It might be worth it to go through again because all of the rules and regulations that have changed since 2005.

Mr. Tolbert stated that the Eden Hill development changed dramatically from the original concept. Responding to Mr. Tolbert, Mrs. Melson-Williams stated yes and no. For the Residential District, the Commission saw a Revised Implementation Plan that kind of re-organized the residential portion of where active recreation was going to be approached and the mix of unit types. They did not require that to go back through the PLUS Review because the overall Eden Hill project had gone back in 2004 and the Residential District was basically still in the same place and the road linkages were still in the same place. It was just more internal re-organization that happened with that.

Mr. Edgell stated that if they start changing roads or adding units then sometimes it triggers a review.

Mrs. Melson-Williams stated that what they have for the Commission today is a Draft of the updated MOU. It starts with the typical "whereas" statements that kind of establish what it is and then it outlines how the process kind of works and that it doesn't supersede their current DAC process that the City has. It establishes what types of projects would be required to go through the PLUS Review process for the City of Dover. The ones that they are recommending to hold are residential projects, still keeping that threshold at one hundred twenty-five dwelling units. One hundred twenty-five is referenced in the *Zoning Ordinance*. There are some other things that once you hit that threshold, you have to have so they kept that number the same. For non-residential plans, it's new construction with a total new floor area of 75,000 SF. That's going to capture the bigger things but the one restaurant building on an individual site isn't going to have to go through this PLUS Review process. It's the large, either industrial or multiple building shopping centers that would probably rise to that level to have to go through the process. There's

an update to the certification date of the most recent *Comprehensive Plan*. Their *Comprehensive Plan* is due shortly for its ten-year review or update.

Number three deals with the Minor Variation provision which is established in the *Comprehensive Plan* that allows for a waiver. The zoning always has to comply with the Land Development Plan which is the land-use component of the *Comprehensive Plan*. Sometimes that map may need a slight tweak and this kind of allows for those minor variations. They just saw one that was a Minor Variation when they dealt with the lodge property on College Road where the main building was good from a rezoning standpoint for the land-use classification to go to institutional but there happened to be two little parcels that were also owned by the Lodge that in the plan were shown as Residential but collectively they could make the case for it being a Minor Variation. The driveway crossed one of them and the other one was a grass lawn. It really would be meaning to function with the land-use classification of the institutional use and allow the zoning. They want to maintain that opportunity to seek Minor Variations for the small and minor things that mapping doesn't always pick up when dealing with large scale properties.

Number four is where they are proposing a particular change. The current MOU has the statement that a project of any size, if it is east of State Route 1 and north of South Little Creek Road would be required to go through the PLUS process. It so happens that that area is where the Garrison Oak Technical Park is located which is a City owned industrial park. They have seen development of three lots out there with soon to be four with the Advantech project. The overall subdivision went through that process but having the individual lots having to go through PLUS just because of where they are located doesn't seem to make sense unless there is a proposal for something that is rather large out there that would meet that kind of large threshold test of 75,000 SF. Then they think that it may have larger or more broader implications than somebody just building a building. What was seen most recently was the Advantech office and facility that was much smaller than that on an individual lot and the lot already exists and the street already exists to get there. This is a proposed refinement to that locational requirement. Mr. Edgell can probably talk about why east of State Route 1 is a particular concern which is why this is part of our MOU. It goes back to before the City's most recent *Comprehensive Plan*.

Mr. Edgell stated that it actually goes back to when they were designing Route 1. Route 1 went east of Dover. At that time from what he can gather, it was the idea that the business community was very concerned that since they had this new road which will have interchanges and be limited access that all of the businesses would go out east of Route 1 and it would be like a new commercial district. There was also great concern about agricultural preservation and the natural resources in that area and not wanting to have Dover and parts of Kent County sprawl out towards that way because now there is this new road access being granted. Over the years, there was an MOU with Kent County and the City was a part of it at the time. The idea was that they would focus their development on the Route 13 corridor. Anything east of Route 1 they would try to maintain as lower intensity, more rural type of an area. That kind of exist today. Kent County has a growth zone that is basically bounded by Route 1; anything east of Route 1 in their plan is rural. All of the growth and utilities in the growth zone are focused on the inside. For Dover's Plan, they do have the Technical Park that we are discussing now but for the most part it's lower intensity and lower residential housing and things of that nature in that area. That's kind of the history and reason for it. This is really just to catch anything that would go out there

to make sure we take an extra look at it and make sure that they are all aware of what's happening and if there is any kind of advice or information that they can give about that area.

Mrs. Melson-Williams stated that South Little Creek Road was shown as the southern boundary because once you are south of there, the implications of the Airport Environ Overlay Zone associated with the Dover Air Force Base are somewhat limiting as to the type of new uses that can happen in that area because of that overlay zone and what it's rules cover.

Mr. Edgell stated that you have Horsepond Road which is mostly industrial with the Kent County Aero Park and the AEOZ really says that you don't want to have a lot of residents out there. Industrial and warehousing is probably the right thing because it's not going to be bothered by noise and other things. That is kind of why that area was excluded because once you get down in that area, it's an industrial kind of area.

Dr. Jones questioned how she gets to the Garrison Oak Technical Park? Responding to Dr. Jones, Mrs. Melson-Williams stated that it is off of White Oak Road. Take the bridge that goes over Route 1 and it's on the left.

Mrs. Melson-Williams stated that the other items are that it gives them the ability for any kind of proposed ordinance they could actually refer them to the PLUS process to get State input on if they chose. There is also the voluntary submission that can occur that's documented. Any amendment or modification to our *Comprehensive Plan* had to go through this process as well as the Plan itself. Then they do have a very specific exemption for any project that is in the Downtown Redevelopment Target Area. If it for some reason met the threshold test of the unit count or the size count, because of its location in the Downtown Redevelopment Target Area it would not be required to go through PLUS because that is where they want activity to happen.

Mrs. Melson-Williams stated that basically the rest of it is that the City is supposed to help out in the applicant's understanding of this process. During their pre-application meeting they want to make sure that if it is a project that is going to meet those threshold tests to have to go through PLUS that they are letting the applicant know. The management of the application process for PLUS is all at the State level. We are just a helpful agency that tells the applicant to go through that process first. There are the provisions for the waiver ability. There is a signature page which ultimately includes the Chairman of the Planning Commission, the City Planner, City Council and the Mayor to agree to the memorandum as well. They wanted to bring it to the Commission today. They will have to move forward to presenting it to City Council so that they have the same kind of understanding about it to ultimately get the signatures for it.

Version 3 August 11, 2017; final August 18, 2017

## Code Enforcement Policy and Vacant Building Ordinance Changes

As a result of increasing concerns about the time associated with resolution of code enforcement actions, the difficulty in collecting on fines or alternatively causing buildings to be brought into compliance, and the implications of the various exemptions to the vacant building ordinance (VBO), staff has reviewed our authority and proposes the following changes to procedure and code provisions:

### **Code Enforcement Procedures -**

Current policy involves a five step notification to a violator/property owner or agent, each notice providing a time period for compliance and a graduated penalty. In many cases the property owner simply does not take action resulting in an extended period during which the violation is pending and often results in the failure to pay the penalty. State Code at Title 29, Section 2901 lists those actions for which a municipality can apply unpaid penalties as a tax lien. Among those that can be assessed are grass violations, vacant building fees, service charges, demolition costs and unpaid taxes. Collection of these, however, only occurs when the property is sold or through a public sale. Other violations relating to building maintenance, for example, cannot be added as a lien to tax bills. Note: Section 2901(g) would seem to allow actions on exteriors such as fixing a sagging porch or failed steps or broken windows – inquiry made to Solicitor.

The amount of time allowed between notices, that is the time allowed to come into compliance, may be too lenient or applied inconsistently. Some consideration is appropriate because certain corrective actions, such as grass cutting, could be affected by weather while a building repair might be governed by the lead time to obtain materials or secure a contractor.

Recommendation: reduce the number of violation notices to no more than three with the third being charged to the maximum fee or penalty that is allowed. (Policy change)

Recommendation: adopt a schedule for compliance that reflects reasonable opportunity for correction of the violation, that is applied consistently (with limited discretion if appropriate) and that is strictly followed-up. (Policy change)

Recommendation: when a violator responds with proposed corrective action, require the owner to submit a signed agreement or statement of intent (excluding grass violations probably) setting forth the timelines and steps for completion recognizing any specific conditions or constraints that might apply, such as lead time for materials. (policy change)

### **Court Action when compliance is not obtained:**

There seems to have been limited instances where legal action has been taken (seeking a warrant to appear in JP Court) when notification has been unsuccessful. Admittedly the courts are busy, taking action may involve time of staff and the solicitor, justices are frequently reluctant to impose large fines, etc. But the City is left with unpaid penalties and the problems are not resolved until some action triggers declaration as a dangerous building or other threat to the public.

Recommendation: clearly note on the violation notices that legal action may be taken and then do so as needed. Preferably we should seek an order to bring the property into compliance rather than seek civil penalties as the public interest is better served by a compliant property.

Proposed changes in penalties/fines for violations of building code provisions:

1<sup>st</sup> offence (warning) \$25.00. the intent is to inform the person involved that a violation has occurred and provide a period during which the matter is to be resolved. Amount of time to correct not to exceed 30 days, unless a statement of intent has been executed and signed by the person and the Building Official.

2<sup>nd</sup> notice (same violation) \$250.00. this penalty is intended to be punitive and issued for failure to undertake the necessary corrective action. Amount of time for corrective action not to exceed 15 days unless a statement of intent has been executed and signed by the person and the Building Official.

3<sup>rd</sup> notice (same violation) \$500.00. This penalty reflects an apparent or deliberate disregard for the citation and/or requirement to take corrective action. Amount of time for corrective action not to exceed 15 days unless a statement of intent has been executed and signed by the person and the Building Official.

Continued violation- as soon as practical after expiration of the time allowed following the 3<sup>rd</sup> notice the violation shall be presented to Justice of the Peace Court for issuance of a warrant to appear. At such hearing the City's primary request shall be to have the person resolve the code violation or secure a demolition permit. Monetary recovery is not the priority.

The Statement of Intent shall be a binding agreement between the person and the City setting forth the understanding of the nature and extent of the violation, detailing the necessary corrective actions, explaining the circumstances, if any, that may delay resolution of the matter, setting a date for all corrective actions to have been taken, and providing for necessary inspections. Failure to honor the terms of the agreement shall be sufficient basis for the City to seek legal relief, bypassing any subsequent steps.

City of Dover  
RECEIVED

AUG 29 2017

August 29, 2017

CITY MANAGER/MAYOR

Mahala Duffy  
104 Teak Court  
Dover, DE 19901  
[Mahala.Duffy@gmail.com](mailto:Mahala.Duffy@gmail.com)

Robin Christiansen  
The City of Dover Mayor's Office  
P.O. Box 475  
Dover, DE 19903-0475

Dear Mayor Robin Christiansen

My name is Mahala Duffy and I am a resident in the Acorn Farms community. As a resident, I have spoken with my fellow neighbors and on behalf of our community I am submitting a request for consideration to build a dog park and passive playground. Our community is family friendly with many small children and pets. This addition to our neighborhood will be a great way to encourage unity and outdoor recreation. The ways that these additions can be utilized are limitless. I have included a petition with over 50 signatures from residents of the Acorn Farm community.

Thank you again for your time and consideration. If you have any questions I can be reached at 302-423-5993.

Sincerely



Mahala Duffy

Enclosure

This petition is to request a Dog Park and Playground for Acorn Farms Park at One Acacia Place, Dover, Delaware. This dog park will be a park designed for the residents of Dover to be able to walk their dogs and provide their children a safe environment to play.

## Please Print Clearly

Last Name	First Name	Address	Contact Number	Email Address	Signature
McGlothlin	L				
McGlothlin	Linda	2 Acacia	244-2457	Lindabdc22@aol.com	Linda McGlothlin
Thulstrup	Harry	266 Shadybrook	319 229-8173	comcast.net	Harry Thulstrup
Ripoll	L	214 Shadybrook	(856) 392-5534	urconsultant@gmail.com	Ripoll
Kipp	Rachel	218 Shadybrook	(513) 403-7410	rkipp22@gmail.com	Rachel Kipp
Shurtz	Don	218 Shadybrook	302-650-4820	danshortz@gmail.com	Don Shurtz
Hudson	Tihara	223 Shadybrook	267-838-1978	tihara@gmail.com	Tihara Hudson
Ulf	Charles	285 Shadybrook	302-563-0181	Charles.ulf@verizon.net	Charles Ulf
Forbes	Cara	2 Shadybrook	302-394-4444	caraforbes@yahoo.com	Cara Forbes
Wycher	CHEMICA	210 SHADYBROOK	302-604-0800	cawycher@yahoo.com	C. Wycher
Santos	YOSLIN	222 Shadybrook	302-428-8804	Yoslin.Santos@gmail.com	Yoslin Santos
Taylor	Dandi	36 ACACIA	302-735-9778	estebec2@hotmail.com	Dandi Taylor
Linton	Jennifer	215 Shadybrook	302-677-0850	iriejenny@comcast.net	Jennifer Linton
Blann	Cathy	48 Acacia	(662) 593-3930	reddtop90@aol.com	Cathy Blann
Kendall	Wilson-Lamarine	46 Acacia Pl	301-204-4491	trentk1204@gmail.com	Kendall Wilson-Lamarine
MAKES	Mal	44 Acacia	302-241-63	MacMarsh10@yahoo.com	Mal MAKES
DEASIA	FOYE	49 ACACIA	302-747-3777	foyed@comcast.net	Deasia Foye
Theresa	Hali	49 ACACIA PL	302-883-5518	thereshal158@yahoo.com	Theresa Hali
Edmonds	Alicia	47 Acacia Pl	302-700-6012	lycra.edmonds@earthlink.net	Alicia Edmonds
Teteh	Nah-Aiswei	41 Acacia Pl	802-625-9199	Nahaiswei@hotmail.com	Nah-Aiswei Teteh
Kreshian	John & Tetyana	39 Acacia Pl	302-674-1271	tkreshian@yahoo.com	John & Tetyana Kreshian
McCulley	GREG	42 Acacia	(302) 394-0000	AMcCulley@gmail.com	Greg McCulley
BATES	Kevin	42 Acacia	(302) 47-3857		Kevin Bates
Butler	Darshan	78 Acacia			Darshan Butler
Benjamin	Suryana	30 ACACIA PL		suryanab@comcast.net	Suryana Benjamin
Woodard	Andrea	26 Acacia Pl	302-736-3008		Andrea Woodard
Toro	Anthony	24 ACACIA			Anthony Toro
Cowthier	Parcell	20 Acacia	762-220-0338	Parcellc@yahoo.com	Parcell Cowthier
Santos	Angela	103 Linden	423-7830	angels500@gmail.com	Angela Santos
Pace	Michael	107 LINDEN	734-9299		Michael Pace
WUCHER	Wendy	119 LINDEN			Wendy Wucher
SHYVER	DEENA	123 Linden	359-4452	DSHYVER@earthlink.net	Deena Shyver
Boring	Brittany	110 Linden	302-632-2625		Brittany Boring
Rooney	Matthew	118 Linden	267-688-0666	Rooney31@verizon.net	Matthew Rooney
Rooney	Colleen	118 Linden	215-432-9893	Irishgirl2@verizon.net	Colleen Rooney
Novak	Nicole	122 Linden	302-528-6523	drcn1968@yahoo.com	Nicole Novak
HAYMAN	WADE	221 mah	302-241-7101		Wade Hayman

# Please Print Clearly

Page 2 of 2



State of Delaware  
Department of Natural Resources and Environmental Control  
**Delaware Division of Parks and Recreation**  
89 Kings Highway  
Dover, Delaware 19901

June 20, 2017

David S. Hugg III  
Interim City Planner  
15 Lookerman Plaza  
Dover, Delaware 19901

Dear Mr. <sup>David</sup>Hugg:

Thank you for submitting three Outdoor Recreation, Parks and Trails (ORPT) pre-application requests for Dover. The Division of Parks and Recreation has received 26 eligible pre-applications totaling \$3.77M in grant request statewide with approximately \$1M of ORPT funds to distribute. The Joint-Council Grant Review Committee met last Tuesday to discuss distribution of the grant funds. The committee is comprised of Division staff and governor-appointed members of both the Council on Greenways & Trails and the Park Council who provide funding recommendations to the Division on behalf of the ORPT Program.

The Joint-Council reviewed each pre-application for eligibility, readiness and the potential for phasing each request over 2 grant cycles. The committee decided to cap sponsor requests at \$100,000. Therefore, Dover should consider submitting an application requesting \$30,000 for the Dover Park master plan and \$70,000 for the Schutte Park project. The Dover indoor facility request is not eligible for ORPT funding. You can submit applications for additional funding in future grant cycles for the eligible projects. All ORPT applications will be reviewed and final awards decided this fall. However, there is no guarantee that the mentioned grant amounts will be awarded.

You will receive an ORPT Park Application via email. All completed applications are **due Friday September 8, 2017**.

If you have any questions regarding the Grant Agreement or the grant process, please contact me at 302 739-9241 or [Robert.ehemann@state.de.us](mailto:Robert.ehemann@state.de.us).

Sincerely,  
Handwritten signature of Robert Ehemann in blue ink.

Bob Ehemann  
Program Manager, Division of Parks and Recreation

**PROPOSED COUNCIL RESOLUTION NO. 2017-11**

**A RESOLUTION IN SUPPORT OF DELAWARE OUTDOOR RECREATION, PARKS AND TRAILS (ORPT) GRANT APPLICATION - DOVER PARK MASTER PLAN AND SCHUTTE PARK PHASE I IMPROVEMENTS**

**WHEREAS**, the City of Dover has worked with residents in the Dover Park neighborhood to begin a process to restore Dover Park to its Anchor Park status and has approved and adopted a master plan for the future development of Schutte Park; and

**WHEREAS**, the City of Dover has filed ORPT Grant pre-applications with the Delaware Division of Parks and Recreation for both purposes and has been authorized to submit formal ORPT applications in the amount of \$30,000 for the development of a Master Plan for Dover Park, and \$70,000 for Phase I improvements at Schutte Park and the City has set aside funds in the Parkland Reserve and General Fund to support these efforts; and

**WHEREAS**, the City of Dover designates David S. Hugg III, interim Director of Planning and Community Development and Parks and Recreation to manage the project and coordinate ORPT Program requirements for reporting and reimbursement; and

**WHEREAS**, the City understands that these improvements funded through the ORPT Grant Program will remain in outdoor recreation uses in perpetuity.

**NOW, THEREFORE BE IT RESOLVED** by the Mayor and Council of the City of Dover that the application for ORPT Grant funding for Dover Park and Schutte Park is authorized and the City of Dover shall abide by all the requirements of the ORPT Grant Program for reimbursements and stewardship responsibilities.

**ADOPTED: \***

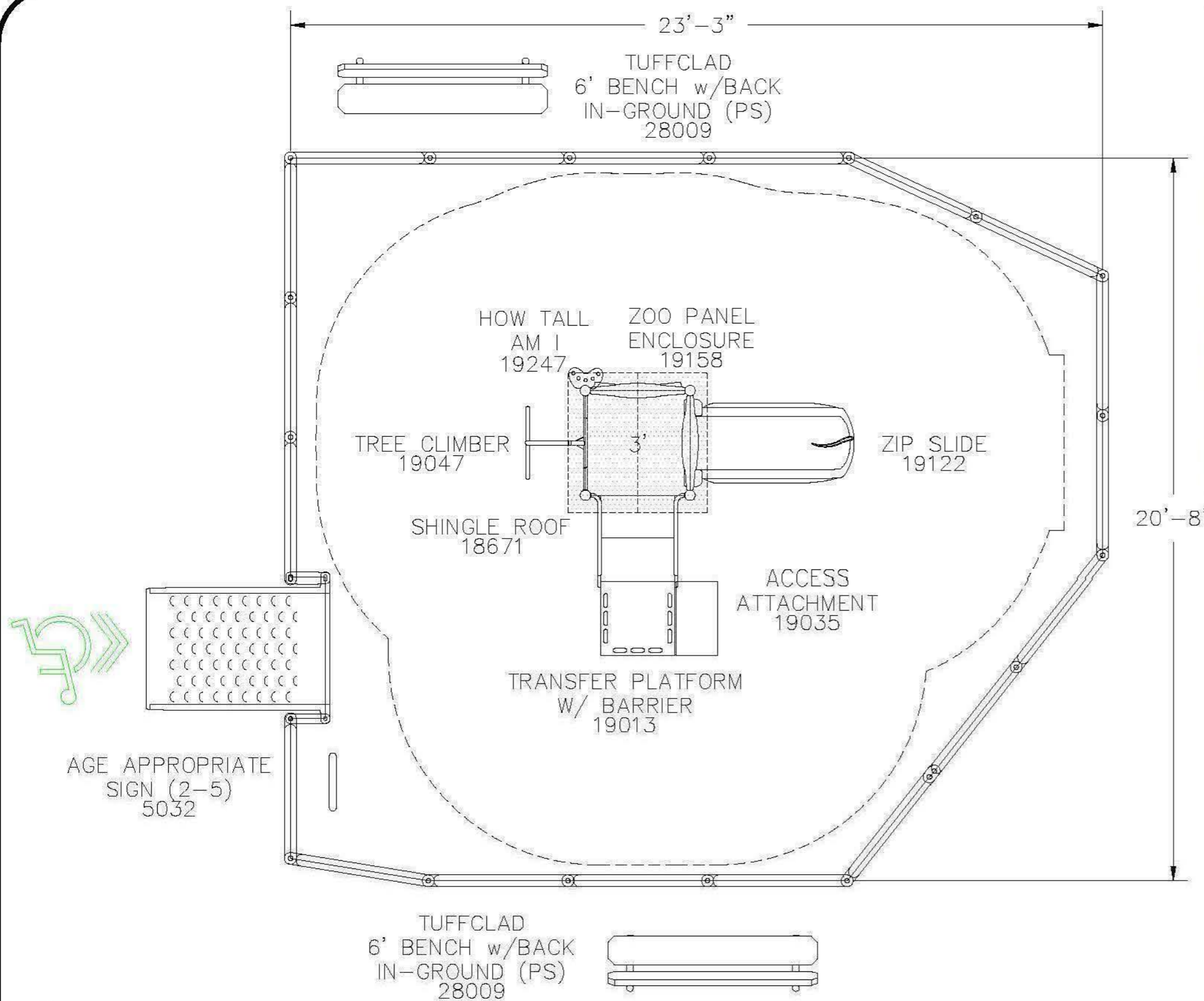
S:\RESOLUTIONS-PROCLAMATIONS-TRIBUTES\2017\DRAFT\RESOLUTION NO. 2017-11 DELAWARE OUTDOOR RECREATION, PARKS AND TRAILS (ORPT) GRANT APPLICATION\Resolution No. 2017-11 IN SUPPORT OF DELAWARE OUTDOOR RECREATION, PARKS AND TRAILS (ORPT) GRANT APPLICATION.wpd

\_\_\_\_\_  
ROBIN R. CHRISTIANSEN  
MAYOR

\_\_\_\_\_  
TIMOTHY A. SLAVIN  
COUNCIL PRESIDENT

Actions History

09/12/2017 - Scheduled for Introduction - Council Committee of the Whole/Parks, Recreation, and Community Enhancement Committee



#### GAMETIME PLAYCURB BORDER SYSTEM:

- (19) MODEL #4862 - 4' X 3.5" X 12" TALL STRAIGHT CURBS (BLACK)
- (1) MODEL #4858 - 12" ADA ACCESS RAMP WITH ADAPTERS (BLACK)
- ALL ANCHORED WITH 3/4" X 30" GALVANIZED STEEL STAKES AT EACH END.

#### LOOSE FILL SAFETY SURFACING:

- 429 SQUARE FEET REQUIRED
- GTIMPAX ENGINEERED WOOD FIBERS
- 12" COMPACTED DEPTH (25 C.Y.)
- SINGLE LAYER OF GEOTEXTILE FABRIC.
- ADA ACCESSIBLE

THIS PLAY AREA AS SHOWN COMPLIES WITH THE AMERICAN WITH DISABILITIES ACT ACCESSIBILITY GUIDELINES.  
VISIT [www.access-board.gov](http://www.access-board.gov) FOR MORE INFORMATION.



THE PLAY COMPONENTS IDENTIFIED IN THIS PLAY AREA ARE IPEMA CERTIFIED. THE USE AND LAYOUT OF THESE COMPONENTS CONFORM TO THE REQUIREMENTS OF ASTM F1487-11.

**GameTime**  
A PLAYCORE COMPANY  
Enriching Childhood Through Play.  
150 PlayCore Drive SE  
Fort Payne, AL 35967  
[www.gametime.com](http://www.gametime.com)



City of Dover  
Continental Park  
Proposed Playground for Ages 2-5

Representative  
Brian Lewis, Cunningham Recreation - Phone (800) 233-0529

This play  
equipment is  
recommended  
for children ages  
2-5

Minimum Area Required:

Scale: NTS

This drawing can be  
scaled only when in  
an 11" x 17" format

**IMPORTANT:** Soft resilient surfacing  
should be placed in the use zones of all  
equipment, as specified for each type of  
equipment, and at depths to meet the  
critical fall heights as specified by the U.S.  
consumer Product Safety Commission,  
ASTM standard F 1487 and Canadian  
Standard CAN/CSA-Z-614

Drawn By:  
CDG

Date:  
08/16/2017

Drawing Name:  
89529-01