

Planning and Zoning Commission
February 26, 2014 – 6:30 pm
Milton Library – 121 Union St

Transcribed by: Helene Rodgville
[Minutes are not verbatim]

1. Call to order – Lynn Ekelund

2. Roll call of members

Virginia Weeks	Present
Linda Edelen	Present
Tim Nicholson	Present
Mark Quigley	Present
Lynn Ekelund	Present

3. Additions/Corrections to agenda

Lynn Ekelund: Are there any additions or corrections to the agenda? Hearing none, I have an agenda item memo from Robin Davis dated 2/19/14 stating that Item 6.b. of the agenda, ordinance to amend Chapter 174 of the Town Code relating to the residency restrictions of sex offenders has been postponed indefinitely. Is that correct, Seth?

Seth Thompson: That is. The issue is going to be taken up we understand by the State legislature, so they're potentially going to enact a Bill or at least introduce a Bill; we'll see if it passes that will presumably have an effect as to whether or not a town such as Milton can have these Ordinances that differ from the State Code, or if they are allowed to have them, if there are some restrictions put on towns at the State level. So it would really be premature to go forward at this point.

Unfortunately, we could be in the position where all the effort is essentially wasted, if the State Legislature says Towns can't have these, you just are left with the State Code or if they put on restrictions that anything we would suggest at this level and the Council would approve at it's level, could potentially have to be redone anyway, depending on what those restrictions are.

4. Approval of agenda

Lynn Ekelund: Okay, thank you. Hearing that, can I have a motion to amend the agenda to reflect the indefinite postponement of Item 6.b.

Linda Edelen: So moved.

Mark Quigley: Second.

Lynn Ekelund: All in favor say aye. Opposed. Motion is carried.

5. Approval of minutes – November 19, 2013 & January 15, 2014

Lynn Ekelund: Can I hear a motion to approve the November 19, 2013 minutes?

Mark Quigley: I move to approve.

Linda Edelen: Second.

Lynn Ekelund: All in favor say aye. Opposed. Motion is carried. Can I have a motion to approve the January 15, 2014 minutes?

Linda Edelen: I move to approve the minutes.

Tim Nicholson: Second.

Lynn Ekelund: I do have one correction that I would like to make on Page 10 of the January 15, 2014 meeting; about midway down the page where I'm speaking, where it says "I live on Union Street and I am totally in favor of any home occupation, at least on Union, Federal, anything on the list that isn't sub-division in Milton. If you have cars parking in front of homes." That should be "I am totally not in favor...". Any other corrections or additions?

Seth Thompson: You would need to revise the motion then to indicate that you're approving the minutes, as amended.

Lynn Ekelund: Could I have a revised motion?

Mark Quigley: I move to have it revised.

Tim Nicholson: Second.

Lynn Ekelund: All those in favor say aye. Opposed. Motion is carried.

6. Business – Discussion and possible vote on the following items:

- a. Review of the Town Code Chapter 188 and Chapter 220 relating to subdivisions and large parcel development districts.

Lynn Ekelund: I note that we have two handouts. One is Town of Milton Chapter 188, Sub-division of Land and the other is Chapter 220 of Zoning. I don't see here why this was placed on the agenda for... Is it just a discussion item?

Seth Thompson: At this point, this is going to be the first step in what I imagine will take a little bit of time to figure out how the town would like to revise it's sub-division ordinance, especially with regard to we've discussed the issue of timing, previously; as far as when improvements need to be installed. By its nature, that tends to involve in the discussion the large parcel development district, since very often, the sub-division requirements are modified within that large parcel development district. So, I think the Council has charged the Commission to look at those items. We've noticed them both, because again, it really is important to kind of look at the inner play between Chapter 188 on sub-divisions and also the Zoning of the Large Parcel Development District, that could override that sub-division ordinance requirements. So I think, the Town Engineer is here to get some information from the Commission in terms of what issues he would like to have the town review from an engineering standpoint, basically. It is difficult in terms of when you're the Town Engineer or the Town Solicitor. We don't want to substitute ourselves for the policy making that occurs through the Town Council, as elected officials and through the advice and recommendation of the Planning and Zoning Commission, as an appointed commission. So, to the extent that we can say this is legal, this is not legal, this is a good idea, this is a bad idea; all of that's fine, but we just don't like to... I don't want to speak too much for Carlton. I'm sure he's going to correct if I get too far off base, but we don't like to substitute our ideas for what would be a good policy without making it abundantly clear that it is a policy decision and you guys should weigh in on that.

Mark Quigley: Seth, what really is the difference between? I think I understand it, but what's the difference between the sub-division and the large parcel development? Is there really a difference between them?

Seth Thompson: There is. The easiest way to think of sub-division is when you're taking one parcel, one slab of land and you're dividing it into multiple lots, so really that's... and your town has a few different types of sub-divisions, you have minor sub-divisions, major sub-divisions, partitioning, that sort of thing, but that's where you're taking one tax parcel

and you're making it into multiple tax parcels, so that rather than building one item on that parcel, you can build multiple items on that parcel and seemingly it ends up being a development. That's kind of the most common scenario. So that's your sub-division. The large parcel development district is really a zoning classification and it's an overlay, so there's an underlying zoning classification and then on top of it, is this large parcel development district overlay that allows the concept and maybe this might be more Carlton's territory than mine, but the concept of it is so that as you create this large project, you have a little more latitude in terms of what you would normally required under your sub-division ordinance or under your zoning ordinance, so you can alter setbacks, you can alter roadways, that sort of thing. It was designed really as a tool for some creative land development. Truthfully, I think the concept's stems out of... or at least I'm most familiar with it, outside of Washington, DC, Northern Virginia and Maryland and a lot of that was kind of redevelopment. Here that's not necessarily our situation. Normally we do have a blank piece of land. It's not something that's being redeveloped, it's being developed for the first time. But that's the reason that they're both noticed. It's important that if you look at what's required under the sub-division, you understand too that you have this potential zoning mechanism that can kind of change certain of those requirements.

Linda Edelen: Does it change what's underneath it and can it go across a zoning district; can it just sit on top... this is zoned this way, this is zoned this way, now I have this overlay?

Virginia Weeks: Does it not work the way the Historic District overlay works?

Seth Thompson: That's another good example of an overlay. Only in the Historic District is an overlay of additional requirements. This is, again, conceptually, the large parcel development is an overlay of flexibility.

Linda Edelen: Who benefits from this flexibility?

Seth Thompson: Well, I suppose the goal was that people coming in and developing a large tract of land, could do a mixed-use project; something where it can be a little more creative to avoid a scenario where you are just developing a sub-division that has very similar, or the exact same, cookie-cutter houses on all of the same shaped lots, that sort of thing. It was designed to get away from that. Five Points might probably be the best example of one that's fairly successful around here. I think the concept was to minimize traffic congestion, because people seemingly are able to walk. The concept is to have some open space gathered somewhere, so rather than everybody have the same size yard, that nobody really gets to use for some large function, you would have this large designated open space area.

Linda Edelen: You can include restaurants...

Seth Thompson: That's the concept. Yes.

Mark Quigley: Sounds very similar to the meeting last night with the Comprehensive Plan.

Seth Thompson: I wasn't here, but that probably was a topic of conversation.

Mark Quigley: Oh, you weren't here. Actually it sounds very similar to last night, when we start this new Comprehensive Plan, to have mixed use, a variety of different housing, what our needs are. I know they made the major change out at Heritage Creek. They were going to put commercial and that has dwindled away because of the economy; so we definitely need more flexibility. It almost seems like we need one of our something, since I'm here a short time, we've had a workshop or two, where we actually banged out quite a few ideas and accomplished things with some of the challenges that these LPD's have had in the past; where our hands are tied, the citizens are upset, and by law we're pretty much obligated to sometimes just go forward.

Seth Thompson: Well you're right in terms of... It's interesting, it always depends on the context. Sometimes you're just acting and for the most part you're normally just acting in an administrative manner, that you're reviewing something that already meets the Code, like your site plan review; but you do have some ability to attach reasonable conditions in order to make sure that that site plan blends in with its neighbor's, for instance. On occasion, you're acting in your legislative power; at least you're acting in an advisory role to Council with its legislative powers, as far as rezoning and that sort of thing. As far as defining your Zoning Code, the Town Council, that's one of their legislative functions that the State Legislature has given to them, but I think your point is well taken that once you enact your Code, very often you're stuck with what you allow. To give kind of a good example, if somebody comes in for a rezoning and they say well I plan on doing this, it's helpful to often envision what that project would be, except for if a parcel is rezoned, it's allowed to be anything that's within that new zoning classification. It is helpful to picture how it would blend in based on that individual project, but it's important to realize that the greater context of what the application is asking you to do. To your point, very often we think of a specific project when we're looking at these Codes and trying to go through and figure out, well what makes the most sense. I guess I would just caution to not get too focused on any individual project, because you do tend to be stuck with what's in the Code, that if something is an automatically permitted use, other than attaching conditions to it through a site plan process, you're not going to be able to say no, you can't put up that motel, if it's one of the permitted uses within that zoning code.

Virginia Weeks: I don't mean to be naïve, are you Mr. Savage? Nice to meet you. You asked us to come with a list of recommendations this evening; that's what it says on our agenda items.

Carlton Savage, Pennoni Associates: Good evening. We were tasked at the last Council Meeting with coming up with an idea and recommendations and review of the existing Chapter 188 and 220 Zoning Code, particularly how it relates to the LPD. A lot of the issues that Council has been faced with relate to the LPD and they're looking for recommendations on how to keep it, but kind of polish it, I think is what their intent is. I don't want to speak for Council, but that's what I gathered. To start that process, they would like me to start here at Planning and Zoning to get your recommendations on topics to look into, to help me hone in on what areas you feel may need some polishing and help looking into on the engineering side. I don't want to rewrite your Code, based on what my opinion is, I want the opinion of everybody in the town.

Virginia Weeks: My question really is, how do you want to proceed with this, because of what was in the packet which said, "Input from the Planning and Zoning Commission is also requested. Mr. Savage has asked that each commission member review these Chapters and prepare a list of items they feel need to be reviewed, changed or updated." Do you want to go on with that? Are we prepared to do that? I spent several hours getting that ready, so I just want to know, is that what we're going to do tonight or are we putting it off?

Carlton Savage: That's perfectly fine. I requested that either a workshop or Council or some entity, maybe Council will appoint somebody to come up with a list and I believe Council's recommendation back to Mr. Davis, here, was to start with Planning and Zoning and then work from there and work up and maybe that generates a workshop; maybe that generates a list of questions, so if that's the way you would like to go, then that's your decision.

Virginia Weeks: Well, I don't know. The LPD is about four pages long. Do you want to grab

it and go through it and see what recommendations we have and Mr. Savage could make a list?

Lynn Ekelund: Sure.

Carlton Savage: Sure.

Virginia Weeks: Not that it's the definitive list, but it gets us started.

Mark Quigley: If it's something that's going to get us started, for sure, but I think it would be nice to have all the commissioners here and people with the full history of a lot of the issues that we've had... No. You don't want that. Okay.

Virginia Weeks: I think this is only a starting point.

Mark Quigley: Well yes, a starting point is great. I love the starting point.

Virginia Weeks: I would expect Mr. Savage and Mayor Jones that once these recommendations are looked at, something will come back to us to recommend, either approval or disapproval to the Council, a final version of it. No?

Mayor Jones: The idea was to put this challenge into the hands, particularly of the Commission here, who deals with this quite frequently on any of the sub-divisions that have come before you, new or old; so that you have worked it, you've felt the frustration, where can you recommend to Pennoni and thus to the Council, improvements can be made to help the town's approach to these codes.

Virginia Weeks: I'm just trying to figure out the process. I gather that we will make these recommendations, you'll get other recommendations from other places; somebody will write up an amendment to the ordinance; it will come back to us for review; and then we'll review it, make a recommendation and pass it on to Council. Is that correct?

Seth Thompson: That's how the process should work, since it would be an amendment to your Zoning Code. There will also be a public hearing where the public can obviously comment, but ideally that would happen where we have kind of a final product. Certainly it sounds like the Mayor is going to want some public input, probably before we reach that point. That makes sense. This is an important item.

Virginia Weeks: I want to be sure that this is going to come back to us so this is not the definitive time or anything else.

Seth Thompson: It's going to have to come back to you in the form of a more organized and written proposed ordinance.

Virginia Weeks: Okay.

Seth Thompson: It sounds like we'll go through Section 20, one by one, which is good. I guess if I can spark some thoughts here, one of the items that I think is very important with the interplay between the sub-division ordinance and our LPD, is whenever you guys get those sub-division site plans to look over, the sub-division plans, very often the comment is, well this is exactly what's in the Master Plan. The Master Plan is part of the LPD, so that's an example of the interplay there. Sometimes that Master Plan, like Heritage Creek, has a very specific Master Plan, so when you come for your normal sub-division plan review, very often the applicant says well this is what's already been approved and that's often very confusing for you and rightfully so. It's also then very confusing for Council. Wait a second, we've already approved something that governs this? And the answer is yes, in that very often the applicant puts a lot of detail in that Master Plan. Detail that you'd normally see in a sub-division plan, so once the Master Plan is approved, as part of the LPD Zoning, as they build in phases and submit applications for sub-division approval, your hands are somewhat tied in that you've already approved something. The normal sub-

division process doesn't really apply. They have a very good and very legally binding fall back of saying, well this is what's on the Master Plan. It's already been approved. So that's just an example as we go through Section 220-20, to think about this Master Plan, this is something and maybe it's helpful to think of the Master Plan too, as... I've often referred to it as the 30,000' level that this is supposed to be just a general concept and then, as you get into the sub-divisions you see more of the individual lot layout and then as you get into the site plans, you see more of how the buildings are going to be, within the sub-division or within that particular site plan. I hope that sets up what we're looking at here. Again, the Master Plan is this kind of grandiose concept of mixed use and big open space and parks and trails and that sort of thing.

Mark Quigley: I just have one more question before we start. Seth, is there a level of a percentage of change that is legally allowed when these changes do come along, for us to be able to adapt with it; instead of our hands being tied? Because we have the public coming in. I've only seen a few of them, but you see the Cannery Village, you see the Heritage Creek, so is there something in the State law?

Seth Thompson: It really is up to the Town. As far as on the State level, you have your Comprehensive Plan, but that doesn't get into the nitty gritty of what would go into a sub-division. Your Code really defines what's going to be in that Master Plan, although I think the way it's set up and we'll see it as we go through, there are minimum requirements, but somebody like Heritage Creek has put in a lot of information in their Master Plan, so all that detail ends up getting approved; then you can have somebody on the opposite end of the spectrum that comes in with a fairly vague, I would almost call it a concept plan, as far as what they think the large parcel development district is going to look like. Maybe they just meet the minimum, as far as the Master Plan submission. That's something I think that Planning and Zoning and then Council's going to need to consider; do we set up some requirements? Do we try and strike the appropriate balance where we have some detail on that Master Plan, but not so much that it wholly overrides the purposes of the normal sub-division and site plan process.

Virginia Weeks: One of the first things I noticed, is that there is no definition of "overlay" in our definitions and I think we should add a definition of "overlay". How do you feel about that?

Lynn Ekelund: If there is no definition, I think we should. Seth?

Virginia Weeks: We have two overlays in Town, we have the LPD as an overlay and the Historic District and I know that at some point, I believe... Three, we have another one?

Councilman Collier: Town Center.

Virginia Weeks: Is Town Center an overlay?

Lynn Ekelund: That's an overlay? I thought it was a zoning designation.

Virginia Weeks: I think that's a zoning designation.

Lynn Ekelund: That's a zoning designation.

Seth Thompson: I will double-check, but I think it is it's own designation, same with R-1, R-2, R-3. Let me look.

Virginia Weeks: And I know that there's been some confusion, not meaning to go to a particular development, but with Cannery Village about this is a large parcel development, this isn't a sub-division, so I think we need to clearly state in the Ordinance that it is an overlay, upon a sub-division, and must meet the requirements of a sub-division and get that off the table.

Seth Thompson: I think that makes sense. Putting it in the Code in an express manner is fine. I think that's important. Again, conceptually, if you're used to being in the Code, you understand the difference, but I think when somebody picks up the Code, let's say it's a person from out of town, or somebody that's looking to buy into a neighborhood, it isn't abundantly clear, so that's something that I think makes sense.

Virginia Weeks: I would also change the very first, where the title is Large Parcel Development District. I think we need to add the word "overlay" into that, just as it is in the Historic District. Overlay and make sure it is defined as that. What do you think? Any comments?

Mark Quigley: Anything that gives us more flexibility when the public comes in after these developments have been approved, I'm in favor of. Again, I'm only here a short time, but we've had several times and we always go to Seth for what's the law? What's the legal ramification of this? Nine times out of ten, our hands are tied and the public, the citizens are very upset many, many times and we're here, just kind of rubber stamping, rubber stamping, so that's why I suggested the workshop. We've done very well with the one or two workshops that we've had. This is great, because we're here right now...

Virginia Weeks: Do you want to table this and 188 and do a workshop?

Mark Quigley: No, everybody's invested.

Linda Edelen: I'd like to hear what you've got.

Lynn Ekelund: No, I think we ought to get started.

Mark Quigley: Everybody's here and invested their time. I'm in for it, but it sounds like we're a little unprepared from the scope of the exercise here, so this is the beginning, let's go forward, but let it be said that items that give us more flexibility with the rule of law behind it, with our Solicitor, I think is really the way we need to go. It's for both sides. It's for the developer, the citizens and for us.

Lynn Ekelund: I'm thinking flexibility is one thing; but I think we want consistency as well and if it says Historic Overlay District, I think if they are going to be overlay districts, they ought to be like for like.

Seth Thompson: I completely agree. If you're taking the vantage point of somebody that's new to town, it isn't abundantly clear that it's an overlay, although that's how it's been treated. To Mark's point, I think when he's talking about flexibility, and we'll get to it, it sounds to me like Mark's point is that the Master Plan shouldn't go into such detail that you essentially preempt your normal sub-division process. The normal process, where the Council, and before that the Commission, because during the sub-division process you review initially and then it goes up to Council vs. the site plan which only stays here. It sounds like we want to avoid a scenario where that Master Plan is so detailed, that it essentially usurps your ability to attach reasonable conditions and ask for reasonable accommodations during the regular sub-division process.

Lynn Ekelund: And I agree with that totally.

Virginia Weeks: The next thing I saw, is rather petty, but it's there. It's the second line of a, where it says "That reflect the urban design and scale of the Town of Milton." I don't think of Milton, as urban. I think of it as a design and scale of Milton. I'm afraid that urban is a planning and it has a definition and I don't think we fit into urban.

Seth Thompson: Most people don't like to reinvent the wheel, so I think that this terminology came from somewhere else and I have a feeling that's kind of a vestige of where it was used in redeveloping something, some project within an existing city vs. what

you guys have, where Heritage Creek is on the outside of town, so to speak.

Virginia Weeks: The other thing that... a.3, it says appropriate... and I'm getting down to some nitty gritty here, now because this gets thrown back at us, so it needs to be in a.3, third line from the bottom, it says appropriately proportioned streets, shallow setbacks... One of the problems with the LPD is that there is no definition for the setback. If you look in the Ordinance it refers to the density chart and if you look at the density chart, it refers you back to the Ordinance, so there are no setbacks set anywhere and I think that needs to be tightened somehow. I'm not sure that we want houses 10' from each other; each house having a 5' setback in the back. Somewhere we're going to have to work in there that the setbacks are to be reviewed by Planning and Zoning and establish, maybe on a sub-division by sub-division or a phase by phase basis.

Mark Quigley: I think it is phase by phase, because at Heritage Creek we have an issue with the wetlands in the back and the setbacks. That was another place where our hands were tied. The developer was very gracious and incorporated it in the area.

Virginia Weeks: You know the appropriately proportioned streets – what does that mean? The streets have to meet Code.

Seth Thompson: I think we have a couple of comments here.

Mark Davis, Pennoni Associates: Just to kind of bring the focus on the comments that you're making, in the LPD Code, itself and we've taken a cursory review of the Code. How this Code became the LPD was developed and I'm not sure how many of the Board members here were actually sitting here when this code was done. This is based on a traditional neighborhood design. It's called a TND and as Seth stated earlier, it's a type of design that you see in big cities, Washington, DC. Some of the more traditional is where this is being done right now is in Massachusetts, and some of the urban areas of Massachusetts were TND and it talks about smaller streets. It talks about walkable neighborhoods, smaller streets for traffic calming. It does have flexibility in lot sizes and setbacks, so as this code, I believe was developed, some of the flexibility and some of the issues that Mr. Quigley was talking about, as far as flexibility and what you're able to look at when an applicant is presenting this application for a TND or an LPD design. It is an overlay. In Section 16d, it talks about a superimposed district, so technically, although it's not the overlay definition, it does talk about how it is a superimposed district, over the initial zoning designation that's already for that property, so if that property is zoned R-1 and you allow the LPD, I believe that might be the start of your definition for overlay.

Virginia Weeks: Where were you referring to that again, please?

Seth Thompson: 220-20d.

Lynn Ekelund: Second page, see where my thumb is?

Virginia Weeks: I have a different one. I copied the one that we have in our book. Thank you.

Mark Davis: So if you notice though, although it doesn't say it's an overlay, it just says it's a superimposed district, which is the overlay, over top of the initial zoning district that's the underlying district of the property in question. Then, if you continue on and some of the comments that you've already started with, if you talk about the Master Plan submission, which is in Section G, if you go to Items 2, 3 and 4, that's where this body here has the ability to look at the applicant, as they're presenting their project to you and you can either accept, because it talks about in number 3 “that the minimum lot and yard requirements and maximum height requirements of the zoning district in which the LPD is located, need not

apply; except that the Town shall ensure an appropriate relationship between the proposed land uses and existing land uses near the boundaries.” So the applicant comes into you and they present their project and they're going to come to you and say we want smaller lots, we want smaller setbacks, but it's up to the board here and it's up to the Town Council, to say if that's appropriate or not, because that's how it's written. The Code is written really well, because it allows that flexibility. It allows you to look at a project on a case by case basis and to say whether or not those setbacks, whether they're 6' off the property line or 10' off the property line, the applicant has to present that to you in a manner that is going to be representative of what the Town wants. They have to look at safety. These things are already written in here and then it further states that you may impose conditions, in item number 4, so you can impose additional conditions on top of the applicant that will be in harmony with the Town, that will be part of what the Town wants to see in a project, as it's being presented. So maybe some of the concerns that have been brought up, although Pennoni is new to representing the Town, some of the concerns that we've heard about can be addressed, because your Code is already written that way. It just needs to be looked at a little bit more carefully, and as that applicant is presenting it. So when we talked about the differences between the sub-division code and the LPD code, if they're presenting an LPD project, you have that flexibility in here to either accept what they're presenting to you, in reductions to your existing zoning requirements, being setbacks, lot sizes... There are some things in here that Carlton and I have reviewed, in that we think that we might need to caution you in making some revised changes to the Code and we can talk about that, either now, or we can talk about that at a later date as we continue to move through this process of looking at the LPD, but it's just based off of the concerns that we've been listening to at some of the Council Meetings from some of the public on how certain developments have been constructed, how they've been brought before the Town, and there might be a couple of small recommendations that we have, at this point. Again, we've just taken our first stab at reviewing this Code, but again, your Code, on the whole, is written fairly well and it just needs to be looked at and it would be our job, as your Town Consultant, to advise you on how to look at some of these projects when they're presented before you to make sure that you're making that decision that everybody in town here wants to be made, for each project.

Virginia Weeks: So what you're saying is we don't have to follow the sub-division ordinance when we're looking at streets and curbs and alleys.

Mark Davis: No, because this LPD code supersedes that. It's superimposed on top of that. That's the problem. We probably need to have language written in there that some of the aspects of the sub-division code, if the sub-division code is something... He can tell me if I'm incorrect or not, but I think this... when you approve the LPD on top of the Zoning Code, or as a project, it is superimposed on that which gives that developer, that landowner presenting the project, the flexibility to present to you a different project than what you're sub-division code actually spells out and I'll just, again, these are some of the recommendations. In another section, in Section P, it talks about the modifications of development standards; street width, design and layout, however construction requirements with respect to payment sections, may not be modified. So, with that, the street widths that were presented on some of these projects, if they're talking that they cannot be modified, then that is a specific requirement that is outlined in the LPD, those street widths should never have been modified. The construction cannot be modified. The street width and

design, however construction requirements, so it does state however construction... So it says here that street widths can be modified. That's right. We were talking about that. That's how some of those street widths get reduced. You can still do traffic calming measures in projects without reducing the street width down to a point where it's going to be very difficult for your town, your maintenance crews, to be able to provide maintenance to those streets. All this is written already in this code and it's the ability of this board here and the Town Council, to say yes or no. You can say yes you'll accept those street widths, as the developer is presenting those to you, or you could say no, you want the code as written; or as part of this exercise of re-looking at the LPD code, you could strike this from the Code; making sure that the street widths that you have assigned in your sub-division code are adhered to on every project and I think that's some of the concerns that we've heard, within the Town that there are some issues with street widths and parking widths, things of that nature on some of the newer projects within the Town. I just wanted to clarify a couple of issues here, again the Code's written really well. It just needs to be looked at. You have that flexibility in this Code to make whatever recommendations you may want, on any project that comes in, as far as when it goes to the LPD. As Seth said earlier, you can apply conditions that you may want to see on a project.

Seth Thompson: Actually I think that's helpful. I'll bring it to a concrete example of the interplay that we've been talking about. If, in the process, the Planning and Zoning Commission recommends and then the Council approves the modification on the setbacks, then the Master Plan would reflect smaller setbacks, so when we then receive the sub-division application, it would reflect those smaller setbacks and you guys, very often, I could see you saying well wait a minute, these setbacks don't fit within this R-1 zoning. Well that's true, but the LPD overlay was used to modify those setbacks. It seems like that's the scenario that we often come across, where the Planning and Zoning or the Council says well, we'd really like to have these setbacks; or why are these setbacks not the same as all other R-1 zones? Because it was approved as part of the Master Plan to modify those setbacks to make them smaller.

Virginia Weeks: Absolutely, but we have also come here when developer's have come in to look at different phases of LPD's in the past. They say this Code allows us to have this modification. In other words, what they're saying is it doesn't allow you to disallow us this modification. That's my concern.

Seth Thompson: I would agree that the Code still gives you the authority to say, that's just not appropriate in this particular circumstance. Part of this is not just the language of the Code. Most of it, might have been, in prior applications of the Code. Sometimes you have a very good law and people don't understand it when they're applying it and then you get situations that don't make a lot of sense or they're lost opportunities to have done things in a better fashion. I understand your point, though, but something like the LPD... and this is part of the reason it's in Zoning, really, is it's more of a legislative decision. You couldn't expand the setback necessarily, because that would run counter to the whole purpose of the LPD, but it isn't a site plan where you are essentially stuck with that permitted use and you just can figure out landscaping and lighting and that sort of thing. You have a little bit more discretion when it comes to approving an LPD. I think the problem is a lot of the decision making is front loaded on this and maybe it's just when those LPD's went through, people didn't realize, we're going to be stuck with this, so we can't change what we've approved on the Master Plan, when we go through the regular sub-division process. I have a feeling

that's what's happened in the past.

Lynn Ekelund: I've been on Planning and Zoning for four years and everything that I have ever had to do with a Large Parcel Development District, whether it be an overlay or whatever you want to call it, has always been front loaded. I've never looked at something from scratch. It's always been no you can't, because this has already been approved; no you can't, because this is... So perhaps the Cannery Village or the Heritage Creek LPD's, or the Master Plans, perhaps the LPD District overlay, whatever we want to call it, wasn't implemented in the best way. What I was hoping, is not to... and again, I didn't go through because I didn't read it that way, that we were to go through it line by line and come up with recommendations. I thought what we were going to do was come up with some off the cuff, or seat of the pants, or four years of sitting here with frustration and come up with some of the problems that I've experienced and it's always been we're stuck with this. It wasn't implemented in my mind correctly. How can we look at, instead of looking at this, look at the Master Plan for Cannery Village, look at the Master Plan for Heritage Creek and go whoa, this stinks. Let's never do this again. This is how we can possibly change it and I agree with Mark entirely, because I know whenever I see Heritage Creek, sorry guys, I like you, but it's like of for God's sake, when is it ever going to be over? I keep saying to them, how many more phases are there going to be, because all we're doing is rubber stamping. We identify a problem and we're told, no, we can't do anything about this problem, because of the Master Plan; because of the LPD; then we get all of the citizens up in arms and there are going to be babies dying and front loaded and rear loaded. We're saying we couldn't do anything. I think what we should do is and I don't know whether it's good or bad code. I know that I'm frustrated with the way the Code has been implemented in the past. I think if we were to look at some of the more egregious mistakes from the other LPD's and look to see whether this language could have been perhaps, finely honed, or wordsmithed better to prevent anybody from doing as poor a job as was done. That's what I was kind of hoping we were going to do, rather than just go through... and I understand that there are times when no, we're not urban, we're rural, or we're mixed, or whatever; but I was just kind of hoping we could come up with some concrete examples and go this stinks. Let's make sure we never do that again and if we've got to change it, change it.

Seth Thompson: I think your comments are right on point and again, that seems from my perspective having been here for four years, that seems to be the most frustrating element; is that these Master Plans were approved before and you're stuck with the level of detail that was approved on those. It could be that the engineer's, as we were just discussing, maybe we want to remove some of the development standards, that can be modified in the LPD. We need to recognize that we're not Washington, DC and we don't need to have smaller streets because we're trying to fit this redevelopment project in an old section of town. That just doesn't seem to be our present circumstance. So maybe that's one of the issues, but it's also one, where the more people understand it, I think probably the better the application, as it goes through the process, because I think that's right. I'm sure it's very frustrating when you get that sub-division application, or when you get that site plan application and it doesn't make any sense. Well it's on the Master Plan. So the problem is, you have this weird in-congruence where conceptually the Master Plan is supposed to be something that's fairly general, but the ones that the Town has approved, or at least one that I'm thinking of, is very detailed. People might not, when they go through, they might be thinking generally about this Master Plan. I like the fact that there's a good blend of park

area and a good blend of types of houses. They're not looking at the fact that some of those houses have rear entries and that sort of thing. So when you get into the more nitty gritty sub-division and site plan process, you're stuck with what was on the Master Plan.

Virginia Weeks: Do we need to require a Master Plan for an LPD? Since it's an overlay, couldn't we just... do we need to require one?

Seth Thompson: Well the interesting thing is, the way it's structured, the developer is the one that comes in and really by submitting for the Master Plan approval, he's the one that's asking for that zoning designation; so it's not a zoning designation that the Town places on somebody involuntarily. In that sense, it's different from your Historic Preservation District, where you might go through and the town might say, there's a certain amount of time that has passed since we drew these lines. Now these homes seem to be more contributing structures, we're going to expand that Historic Preservation overlay and that's kind of thrust upon people vs. the LPD, I believe it's at least 25 acres coming in and saying I'd like to have this designation, so that I can get creative when it comes to designing my development.

Mark Quigley: I have a question and a comment. I remember one particular meeting we had here, with Heritage Creek again, and they were looking us to review and we up here, saw a change that nobody really saw. It was more of a common sense change, but being that they went through a soft cost, they had equipment ready to go, it seemed or appeared that we were discouraged to actually execute, I think on what Mr. Davis was just saying. How do we handle that? We're legally stuck in the middle. I remember we had the engineer for the developer and we had Ben Gordy here and they were pleading their case. They wanted X, Y, Z done and I remember we all deferred to you and we all saw it, but this makes sense to make the change. Nobody saw this on the paper. What do we do in a case like that? Because there, we probably could have made, or possibly made a change, that would have satisfied the people in the development and then we would have been heroes, per se, because we actually did what we're unable to do.

Seth Thompson: This is somewhat related to what I've thought about, when that Master Plan has a lot of detail and as you're going through that sub-division process or that site plan process, there is that common sense change...

Mark Quigley: It was the level of economics that stopped us, because they were ready to go and...

Seth Thompson: I can see the developer not wanting to have to submit a revised Master Plan because of the money that they're going to spend on that. In other words, the developer might have been fine with the change at the sub-division or site plan level, but recognizing that that would then require them to submit an application for a revised Master Plan, is a discouraging matter. So we'd have to revise the Master Plan, which means we couldn't go forward with this right away, anyway, because if there is (I believe it's the term substantive), which I know the Commission and really I'm not a big fan of, but I think if there's a substantive change to the Master Plan, it needs to go to a public hearing and go through that process. I don't remember exactly the circumstances that you're talking about, but it could well have been that type of situation, where the developer's ready to go, they have the heavy equipment ready to move some earth and ready to build some houses; they don't want to go through the process of revising their Master Plan.

Virginia Weeks: That's in H-2, which is a problem. It says, "no public hearing shall be required for approval of amendments to the Record Master Plan, unless changes proposed

significantly alter a provision.” We've had Capstone come in and say this area where we're going to put single family homes, we're now going to put multi-family homes and that's not substantial because two years ago, it wasn't substantial, so it's not substantial now. That word “substantial” is a problem, because the people who have bought lots, because they wanted to be surrounded by single family homes, all of a sudden, we're being told our hands are tied, because this is not a substantial change; and they're losing what they paid for.

Seth Thompson: I can tell you your staff is not going to love being placed in an awkward position. That is one area, that I think could use some work, in terms of defining the amendment process, because again using the significantly alter, it's difficult. I think probably the staff gets a lot of pressure when somebody comes in and they don't want to go through that public hearing process. Well this isn't significant to me. Well okay, that's clearly a subjective word, so it would be better to define “significant”; if they're altering the number of dwelling units, you could define it that way. As far as what's significant, if they're revising where a road is going to go, or a sidewalk is going to go; maybe that's significant. But that is an area that needs some attention, I would say. The preliminary Master Plan goes to Council for approval, but then the final only goes to Planning and Zoning and any amendment would then only go to Planning and Zoning, which is a little bit odd. Your sub-division ordinance at the preliminary and final, at both phases, it goes from you to Council. Now your site plans at preliminary and final, they just stay here. The LPD is a mixture of those two, where at the preliminary phase it's you and then Council, but then at the final phase it's just you, or for any modifications, it's just you. I identified that as an area that could use some additional language, especially with that term significantly in there, otherwise people try and exaggerate what is insignificant, especially because I think the resident's that are already in that Master Plan community, are going to have a very different definition of what's significant.

Mark Quigley: That's why I asked you earlier about the percentage of change. Is there a number, a percentage, something that's recognized statewide that triggers that particular mechanism?

Seth Thompson: Zoning is interesting in that every municipality is allowed to have its own code, so we can look to see what other towns have done, but as far as some sort of guidance, in terms of legal precedent, it's very often not applicable to your exact language, because your exact language is going to be different from other people's. That's not the case when it comes to Board of Adjustment variances. That language is often very similar, so you can look to the County, or look to other towns for guidance there, but when it comes to something that's purely a zoning matter, unless your code reads similarly to what's already been interpreted, you're not able to look for that kind of guidance. Well, this is what other towns have done and this is what courts have found to be reasonable, as far as town actions. The nice thing is, though, since you have control over your zoning, you can define what's significant. You're not stuck with just that word itself. You can define what is significant, in terms of this town.

Virginia Weeks: I think that one of the problems is that the board has been cowered. Developer's come in and they get very tough and they say things like, well you know if you don't approve this, they're not going to have their swimming pool for this summer, or this or that. When they discussed the plans two years ago with the people in the development and I think we're sometimes unsure on exactly how much, not only can we, but should we say

time out. Because the first thing that happens is that if we say no, this is not ready, the first thing that happens is Milton isn't friendly.

Seth Thompson: Right.

Virginia Weeks: And I think we've really been covered somewhat and we need to have, perhaps, a good work session on exactly what we can and can't do and what we should and shouldn't do and understand our rights better.

Seth Thompson: I've gone through training sessions with other municipalities where the different duties are broken down into how much discretion you have; whether it's an administrative function vs. a legislative function vs. a quasi-judicial function, because those are important distinctions and unfortunately, it's not spelled out for you within your Code. This is a quasi-judicial function, where we receive evidence and make a determination based on this standard within our Code. We can potentially do that. We could. I think your point is well taken. Unfortunately, part of that is the nature of development, where they wait, very often it's wait, wait; we've sold enough units, or we have enough money down, let's go forward on this project and we need that approval now. There's certain things that you're not going to be able to help, other than the fact that your Code doesn't require you to make a decision on the spot.

Virginia Weeks: We need to remember that we're working for Milton. The other thing that I'm concerned about is that once an LPD is passed, I know that the Capstone guys felt there were some properties that Mr. Reed owned on Front Street, where Dogfish is now, that adjacent properties could just be incorporated at their will. They could take this lot and say I've bought this lot and now I want it to be in the LPD.

Seth Thompson: Well, it's really a rezoning, because again the LPD is a zoning, so they can't...

Virginia Weeks: I would like it clear that they have to come back, that you cannot just add adjacent lots.

Seth Thompson: And your Master Plan, I will look, I know that there's a process for adding property into the Master Plan, but again, since it's a zoning designation, it needs to be reflected on the Town Zoning Map.

Virginia Weeks: In the LPD, did we have industrial land in the LPD and we don't have a definition of Industrial LPD and we don't have a definition of Commercial LPD? Do we want in an LPD, which is a housing development, do you really want a Commercial, or do you want like a Town Center sort of business? I mean, do you want somebody to come in there and be able to produce pipes in the commercial area, or sell pipes with a lot of outside storage, the way you have on Route 16? Or do you envision more Town Center type commercial and the LPD permits things like Universities and so on to go in. Do we want to allow, just allow, that sort of intrusiveness into a housing development, or do we need to look at what uses should be allowed in there?

Seth Thompson: See that's very interesting, because I view that as really a conceptual debate and that is something that you, as a Town, need to have, because Milton is different from every other town. When you're in a city and you have a bunch of different uses that are very close to each other, it makes perfect sense to have very broad language. But when you're getting these LPD's on the edge of your corporate limits, does it really make sense to have heavy commercial uses in the middle of potentially a residential neighborhood?

Virginia Weeks: Maybe rather than commercial, we need to look at some sort of neighborhood business or Town Center, that might allow cafes and restaurants and so on,

but not box stores.

Seth Thompson: I wanted to find the exact language, it's Section 220-20b, the Permitted Principal Uses... I think the one concern, Ginny, and definitely correct me if I'm wrong, but it's number 15, under sub-section b where it says commercial and neighborhood business uses of convenience and necessity to the development as a whole. You don't like that broad term commercial. I understand your point.

Virginia Weeks: To have a bakery there. To have a restaurant there. Have a hairdresser, that's fine. To have Dry Zone there, no.

Seth Thompson: It's not just purely commercial, they do need to be for the convenience and the necessity to the development as a whole, but of course that language is open to interpretation. Well, is it beneficial to have a factory in there, because it provides jobs. Somebody could make that argument with a straight face. Was that the intent of your LPD? Probably not. I understand your point that the term commercial is a little bit difficult to swallow in that it's very broad.

Virginia Weeks: So I don't know if we want to switch that to Town Center type businesses or something else. Just a thought.

Seth Thompson: The nice thing in working with a Zoning Code that's already in existence, I often tell people just go and look at the list of uses that are Permitted Uses in different districts, because then it gets your mind thinking as far as, well what uses are out there and where would I draw the line? I think we're going to get to that in our home occupation issue later on tonight, but you have to look down that list of uses and start to think, in my mind there has to be a line somewhere, where it wouldn't be appropriate to be in an LPD anymore.

Virginia Weeks: Do you want to see CVS in the middle of Cannery Village? It's that sort of thing. I'm thinking of Five Points and what's happened there and how unhappy the people in Five Points are.

Linda Edelen: How unhappy they are?

Virginia Weeks: With the CVS being built. Yes.

Linda Edelen: Oh, yes.

Seth Thompson: I think a lot of this, the developer envisions a very... it's always nice and the work-ups tend to be nice, that you envision a family restaurant and a barber shop and professional offices, unfortunately it doesn't always work out that way, so that commercial space can go to a chain store, a chain drug store, that kind of thing.

Mark Quigley: Actually, it could have been a library and that was turned down.

Virginia Weeks: I just would like to see that we don't have large stores in the middle of these LPD's.

Linda Edelen: I've got a question about the interaction. When something is not addressed in the LPD, does that mean... and is addressed in the zoning?

Seth Thompson: Then they're going to be bound by the Zoning Code, so in other words if they're not allowed to modify it through the LPD, then your regular Zoning Code should apply.

Linda Edelen: I'm looking specifically, and this has always troubled me, of the performance guarantees that are required. They're not addressed at all, here.

Seth Thompson: We get back to the whole sub-division, because an LPD should be a sub-division and that's where the performance guarantees are required, so when they come in for that sub-division approval, that's when the performance guarantees should be given to

the Town. It wouldn't be when they get their Master Plan approved.

Mark Quigley: We had a developer in here, Seth, as you probably recall, who said that because it was an LPD, Cannery Village, he didn't have to post a performance bond.

Linda Edelen: And apparently he didn't.

Mark Quigley: And he didn't.

Linda Edelen: The Town did not require that, but why... I don't know why the Town didn't? But why did it have any option?

Seth Thompson: Legally that isn't what should have happened. That isn't how the LPD works, where you can modify your setbacks, you can modify your streets, you can modify your parking, you shouldn't modify performance guarantees. I think that was more a product of oversight, as opposed to some intentional waiver on the part of the time.

Virginia Weeks: That's why I suggested then in the definition that perhaps you reference that it is an overlay on a sub-division and make sure that the sub-division...

Mark Quigley: I think the Mayor in that interview in the newspapers today said that that would never happen again, if I read it properly.

Linda Edelen: What did I miss?

Mark Quigley: It's in the News Journal.

Mayor Jones: I just want to assure you that when you have to pass, because you feel your hands are tied and you pass it on to Council, Council has to do the same action and I share your frustration. I guess my question is, basically, who benefits from the LPD? Do we need it and any Ordinance, Code, LPD or what you call it, should be advantageous to the Town of Milton first. Always first. Now Mr. Thompson has taught me over the years, that a developer has the right to understand what they can expect and that you cannot change the rules mid-stream, but as you're putting down Codes, Ordinances and Laws, it always does need to be the focus of Milton first.

Mark Quigley: I agree and I'll take it to the next step. I think it needs to be a win win.

Win/lose never works. Milton has that reputation of win/lose and Ginny and I go through this occasionally, I am pro pro business, with common sense. I'm not looking to give the Town away, but I think it's got to be a win win.

Virginia Weeks: I agree.

Linda Edelen: Could we get rid of the LPD?

Virginia Weeks: Absolutely.

Seth Thompson: You could do it, it's part of your Zoning Code. You're free to do away with it. Now it would be prospective as the Mayor mentioned. Again, the ones that are in existence, you're stuck with those.

Virginia Weeks: But the ones that have been zoned for LPD, would lose that zoning.

Seth Thompson: That's right.

Virginia Weeks: Because they have not put in an application and they have not begun.

Seth Thompson: Right, but they wouldn't need to modify what they've already built, basically.

Virginia Weeks: No, ones that haven't built anything, I'm talking about. We have two big parcels, we have the Sam Lucas and you have one just up here, Dr. White's place.

Seth Thompson: Have they put in applications for Master Plans?

Virginia Weeks: That was withdrawn. The developer never bought the land. I believe. Isn't that correct, Mr. Davis?

Robin Davis: Yes.

Virginia Weeks: So those two we could help by not having an LPD and you have to think, do you want an LPD there? Maybe we just need a work session.

Seth Thompson: To Mark's point, when developer's are committed and well financed, these can be great projects. It's like anything with discretion. If you give somebody some latitude, they might do great things with it, or they might do the bare minimum. If you set a specific set of requirements, you know they have to comply with those, so there's a benefit to that. At the same time, those are constraints. It's really a philosophical difference and I don't mean to say that a developer would come in and try and get away with the bare minimum, or try and pack houses onto a given parcel, because they have an LPD. You do have the ability to say no, that's just unsafe. If you say, we're getting rid of our LPD, then you don't have to worry about that, but you're also not going to have that developer that comes in with some creative idea where it turns out to work very well, that it has a large park in the center and everybody loves it. That's the problem.

Tim Nicholson: I think the issue and alluding to removing the LPD, may also hurt the Town in terms of you've taken away the ability to do this, which I think the Town wants development. That's what I've been hearing. Maybe think of going in a different direction and setting a standard that can be acceptable to the Town to do a parcel like this, but you set guidelines, more strict guidelines, that would benefit both the Town and the developer. What would you like to see type precedence? Yes, you bring the houses closer, so it feels like a town, but not reduce the road widths so that you have no ability to snow plow and do things like that. So maybe you create a road section that would work for that development and I think that was my intent, when I asked for you guys to brainstorm and think about what the Council wants, or what the Planning and Zoning and the Council want, in terms seeing the Town moving forward, because I think everybody has that fear of the LPD, another one coming in and the same things happening. That's why this process is here and I think that's why this process is here and I think that's what everybody's looking to do. As you think about it, just think about what you want to see, not what you hope to avoid, I guess is what I'm kind of getting at.

Lynn Ekelund: Anybody else, because we've got a very full agenda tonight. In addition, I think we've gotten a good start here. I agree with what you have said, as far as what do we want? I have been approaching it personally, from what do I never want to get stuck with, ever again? And I do believe that in addition to having a what we want, we should have a parade of horrors list, that we never can find ourselves in this position again and then say... I know a bunch of us, I know myself over the past four years, it's gee, this would have been nice, but we can't. So if we can reach back into our memory banks and think about what we thought was nice, then maybe we could have a parade of horrors and wouldn't this be super list. I think that might be a good workshop to have. We've got a start here. I know Mayor Jones you wanted to talk to some other folks, Council, probably Economic Development, maybe everybody could come up with the good, the bad and the ugly; put it all together and then everybody put their heads together. But I do think and I'm just saying it because I would like to try to get on with the other agenda items. I think we've made a good start on this and unless somebody has something else they'd like to add. Move on? Okay. Thanks a lot.

- b. Ordinance to amend Chapter 174 of the Town Code relating to the residency restrictions of sex offenders. Referred to the Planning & Zoning Commission by Town

Council. **(POSTPONED INDEFINITELY)**

- c. Written advisory report for an ordinance to amend Chapter 220 of the Town Code, entitled “Zoning”, relating to section 52 – antennas, towers, and satellite dishes.

Tim Nicholson: I have a comment, Lynn, on that. I thought that Federal Law regulated satellite dishes. Am I wrong on that?

Seth Thompson: It does and if you look... We discussed it last time, that your Ordinance can cover anything in the Historic Preservation District and indeed, bar somebody from putting up a satellite dish, but that's only for the Historic Preservation District; although I did hand out an updated copy of the Ordinance, where I added in, also properties included or eligible for inclusion on the National Register of Historic Places. I think we had talked about that at one point and that was an oversight on my part. I needed to put that language in, so that's why it's in extra bold. It wasn't in your last draft. So again, when it comes to the Historic Preservation District, you can say I'm sorry, but it can't be on the front of the house, even if the front of the house is the only place that is going to get reception.

Tim Nicholson: In the Historic Preservation District.

Seth Thompson: Yes. Right. So in terms of properties outside of the Historic Preservation District, there are limitations and the FCC put those on, so what I did was on your draft, you could see... I'm looking at Section 220-52, where it says “any such antenna, tower, microwave dish or satellite dish shall only be located in rear yards, or if not visible from street level, along the entirety of the front lot line, in side yards. However, this restriction shall not apply to any property for which the owner, tenant, or user provides evidence to the Town Code Enforcement Officer that the restriction unreasonably delays or prevents the use; unreasonably increases the cost of installation, maintenance or use; or precludes receiving or transmitting an acceptable, quality signal.” That language is taken from the FCC. Basically, the way it is set up is that if somebody can get reception in the rear yard or on the side yard, that isn't visible from the front lot line, then that's where it has to go. If the only place and again, we're only talking outside of the Historic District, if the only place where they get reception is in the front yard, well then, this is the exception. They just have to show the Code Enforcement Officer proof that that is indeed the only place where it goes. Now whether that's a written statement by the installer, that's going to be up to the Code Enforcement Officer, but that's so that our ordinance is in compliance with Federal Law. So you can require it, as long as it's not the only... you can keep it out from in front of the house, as long as that's not the only place where they get a signal.

Virginia Weeks: Does that mean that the title of this an ordinance to amend Chapter 220 of the Town Code, entitled “Zoning”, regarding the Historic District, that should be taken out, because it's now not just the Historic District?

Seth Thompson: I put the Historic District and antennas, towers and dishes, because I'm modifying that first section, is 220-21g; which is your section of the Code that's only on the Historic District and then the second part, is amending... we also cleaned up that penalty language; sorry Section 3 of the Draft Ordinance is amending Section 220-52, which applies everywhere. So that's why I put... we're really amending the Historic District and we're also amending the Code, as it relates to...

Virginia Weeks: All in this one ordinance.

Seth Thompson: Correct.

Virginia Weeks: Do we not need to put Town of Milton or something? Milton? The

Historic District?

Seth Thompson: I suppose we could put it in there. I can tell you, you guys can't amend somebody else's Code, but that's fine. So the Town Code of Milton? Or the Milton Town Code?

Virginia Weeks: I just think that maybe... It doesn't matter. I just think that the top means regarding the Historic District and antennas, towers and dishes. It doesn't say to me that it's town-wide.

Seth Thompson: I see.

Virginia Weeks: It's probably immaterial.

Seth Thompson: It's a point that's well taken. I think if it said "regarding antennas, towers and dishes within the Historic District", I think you're probably right, that somebody isn't going to be on notice that we're dealing with antennas outside of the Historic District.

Virginia Weeks: If somebody read that title, when they have a public hearing, or something, I'm afraid that they would think it's only referring to the Historic District.

Seth Thompson: Okay.

Lynn Ekelund: I agree with Ginny, because I had the same comment before she made it, that I thought that something had been left out. I think for clarity, for a public hearing...

Seth Thompson: Would you just prefer the title to be regarding antennas, towers and dishes?

Virginia Weeks: An ordinance to amend Chapter 220 of the Town Code, entitled "Zoning", regarding the Town of Milton, the Historic District, and antennas, towers, and dishes. What do you think?

Seth Thompson: I think the problem still exists.

Lynn Ekelund: I do too. It's awkward.

Virginia Weeks: Or make two separate amendments. One for the zoning ordinance and then a particular one for the Historic District.

Seth Thompson: Again, the other thing we could do is just say regarding antennas, towers and dishes. Because really all of it relates to those.

Virginia Weeks: That's fine. That's good.

Lynn Ekelund: That makes more sense.

Seth Thompson: And I hope everybody got their copy of the Advisory Report Template that I sent out. Again, we're trying to implement a good process here, and my handwriting is terrible, so I actually brought my computer that I could type up our Advisory Reports, if the Commission thinks they're at that point, where we can identify for the Council what the Commission discussed and why they recommend or don't recommend whatever it is. I'm sorry. One other point that I did add, after our last meeting, as I was going through notes and we didn't take a formal vote on it, but I put it in the Ordinance so you could see what it would look like, we can obviously just take it out tonight and approve, without; but if you look at the top of the second page, I believe somebody had suggested an 18 month period of time within the Historic District, people had to come into compliance with the ordinance. So in other words, even if somebody has a pre-existing satellite dish, on the front of their property in that Historic District, this would give them 18 months from the date that Council passes the Ordinance, if they pass the Ordinance to remove the satellite dish. I don't know if that's something the entire Commission's in favor of, or if this is something they purely want to be prospectively applied, meaning we're grandfathering in any satellite dishes.

Tim Nicholson: Do we really have that much of an issue in the Historic District, in Town. I'm trying to think.

Seth Thompson: On that, I defer to Robin, because it could be something that essentially isn't worth the fight. If there aren't a lot of dishes in there, then... because this is something that I think people might be bothered by, on a theoretical level. Wait a second... Something's already there and now you're changing the rules so that I'm going to have to remove a dish. I'll turn it over to Robin.

Robin Davis: I'm just trying to run down homes, Federal Street and Union Street. There may be a few.

Virginia Weeks: The red house, has one on it's porch.

Robin Davis: And there's one here on Federal Street.

Lynn Ekelund: The one catty-cornered across from me on Union.

Robin Davis: But they're not in the District.

Lynn Ekelund: Oh, that's right, that's across the street, so they're not in the District.

Robin Davis: They're not in the District, even though that does look... but it's not in the District, so there might be, if there's five, that's probably all.

Lynn Ekelund: I think that that would be just about all encompassing, five.

Robin Davis: Probably I would say that.

Seth Thompson: So would the Commission to just have that issue not placed in the Ordinance. In other words, I would remove the bold language at the top of Page 2, the notwithstanding Article 9, and that Article 9 is your pre-existing non-conforming buildings and uses, so I would remove that language and really the application would just be prospective.

Mark Quigley: Would it benefit the Ordinance that if the Town Employees actually went and documented these particular ones to stay and anything thereafter would need to be put in the back? Because I know Georgetown specifically had everybody put them in... I don't know if they have a Historic District, but everybody had them...

Seth Thompson: I read through their ordinance. That seemed ripe for a challenge, if you're one of those people. Now maybe, again, they have to have it so that the front is only the place...

Virginia Weeks: First I want to share with you all that I have asked the Mayor to not... My appointment is up at the end of March and I am not seeking reappointment, so I'm just telling you what I'm telling you here. The future gold of this town is the downtown area and within that downtown area is the Historic District and I think that to allow houses that already have antennas attached to their front porches, or the front of their house in the Historic District, not to have to move them because they should be grandfathered in, is wrong. I think that the 18 month is an important part of this ordinance, because at some point, you've got to decide, are you going to let houses look like TV antennas in the Historic District or do you want something that tourists are going to want to come and look at and enjoy, as we grow?

Linda Edelen: Are you suggesting that this come out?

Virginia Weeks: Seth asked us if we wanted it out? No?

Seth Thompson: That's right. The 18 months, I think that was just a suggestion by the Commission previously. It can be longer than that. I wouldn't advise going shorter than that, because I think the longer the period, the more easily defended it is legally.

Virginia Weeks: I think there are houses on Broad Street, there's some on Federal, there's

some on Union, there's one or two on Federal Street that have it in the side yard, although you can't really see it; but the ones that have them plopped on the front of the house and so on, either you respect your Historic District, or you do away with it.

Seth Thompson: I think the 18 months, this might have been a figment of my imagination, but I know at one point we discussed the contracts that come with those dishes; that it could be that after 18 months somebody moves onto a different dish and then the old dish is there, but the people don't come and take it back, so this ordinance would require them to come and take it off of there. The 18 months seems to fit with somebody's contract with those satellite TV companies.

Virginia Weeks: As I remember the conversation, we thought that was a fair amount of time to give somebody to get their dish moved to the side or the rear of their house in the Historic District.

Tim Nicholson: They would still have an exemption if their signal was bad, correct?

Seth Thompson: Oh yes, that's right.

Tim Nicholson: So it might not work anyway.

Seth Thompson: Not in the Historic District.

Lynn Ekelund and Virginia Weeks: Not in the Historic District.

Virginia Weeks: This is written in the Historic District. This is not written town-wide.

Seth Thompson: Right. This is only in the Historic District, that they have to remove it.

Tim Nicholson: Okay, then I misunderstood.

Seth Thompson: I'm sorry. I misspoke a minute ago.

Tim Nicholson: I don't have a satellite dish.

Seth Thompson: I suppose that's good. If somebody did, they would be essentially non-compliant with this ordinance, they probably shouldn't be voting on it.

Tim Nicholson: I don't have any Conflict of Interest.

Linda Edelen: So?

Lynn Ekelund: Seth, are you saying that we need something like this?

Seth Thompson: I'm saying that's purely a policy decision for you guys.

Lynn Ekelund: Are you saying legally from being able to defend this, that we should have something like this?

Seth Thompson: No, the more important language in terms of any defense to a legal challenge, is the language that is for the properties outside.

Lynn Ekelund: Okay, then I want it out.

Virginia Weeks: You want the 18 months out?

Lynn Ekelund: Out.

Virginia Weeks: You want it to be immediate? Or that they don't have to?

Lynn Ekelund: No, I want it to be immediate.

Seth Thompson: Oh, sorry. You want them to have to comply immediately. I see.

Lynn Ekelund: Well, not in the next 30 seconds.

Seth Thompson: I was discussing the prospective. You do need to give...

Lynn Ekelund: We have to give them some notice and you're suggesting that 18 months is...

Seth Thompson: And I'm basing that on, there is Delaware precedent where it was in the context of a sign ordinance, which I would argue is actually, probably... a sign ordinance would probably require a longer period of time, so the sign ordinance that was upheld in Delaware Courts, I believe was three years.

Tim Nicholson: Seth, I think what you're saying is we should keep this in there.

Lynn Ekelund: If we should keep it in, let's just keep it in.

Seth Thompson: I don't care whether you grandfather it or not. I wouldn't go below 18 months, if you're not going to grandfather these.

Lynn Ekelund: Oh, I'm not grandfathering. Then I suggest we keep this in 18 months.

Virginia Weeks: Do we need to put in there that there will be no grandfathering or does that cover it enough?

Seth Thompson: That covers it. The notwithstanding article 9, means, sorry, even if you were here before the Town had a Zoning Ordinance, then you need to come into compliance with this, within 18 months.

Virginia Weeks: Okay.

Lynn Ekelund: Alright, any further discussion on this? Can I hear a motion?

Tim Nicholson: What's your motion, Lynn? What are you looking for?

Lynn Ekelund: To approve the ordinance we've been discussing.

Virginia Weeks: When this went to Council, was there not something about we had to do a fee or a punishment or a penalty? Was there not? May I ask the Mayor, why are these returned to us, please?

Tim Nicholson: She's not Planning and Zoning though.

Virginia Weeks: They sent them back to us for a reason.

Seth Thompson: Right. No, the Council wanted written Advisory Reports on...

Lynn Ekelund: They wanted an Advisory Report.

Virginia Weeks: Okay. I remember the Mayor holding them up and saying this one needs a penalty, this one needs a fee, this one... so I never understood it when that was said and so...

Seth Thompson: In terms of penalties, you're going to fall under the normal, somebody doesn't comply with this, they're going to fall under the normal penalties that are already in your Zoning Code and I think you have separate penalties for...

Virginia Weeks: I think it's \$99 a day or something like that.

Seth Thompson: Yes and the Historic Preservation District has separate penalties, but there are penalties in place. In other words, if somebody doesn't comply with a different element of the Zoning Code, then you'd refer to the Article on the remedies and the penalties.

Virginia Weeks: So do you know why this was returned to us?

Seth Thompson: Yes, for the written Advisory Report. I figured we would vote on this and then discuss what I'm going to type up in the Advisory Report.

Virginia Weeks: This was not an Advisory Report? Okay.

Lynn Ekelund: Can I hear a motion?

Linda Edelen: Tim?

Tim Nicholson: I did.

Lynn Ekelund: Oh, you did? Did we get a second?

Linda Edelen: I seconded.

Lynn Ekelund: Can I have a roll call vote:

Virginia Weeks	Yes
Linda Edelen	Yes
Tim Nicholson	Yes
Mark Quigley	Yes
Lynn Ekelund	Yes

Seth Thompson: Okay, so that was 5 to nothing and now we need to discuss Issues Considered and I suppose grandfathering.

Lynn Ekelund: Federal requirements; dividing Historic District in the rest of the town. I'm on a roll. Changed fine...

Seth Thompson: I think there were some references to the Fee Schedule. We took those out because it's a fine, as opposed to a fee.

Lynn Ekelund: It's a fine. Not a fee.

Seth Thompson: So those are the issues we considered, but now we need the reasons for the recommendation.

Lynn Ekelund: Madame Mayor, I'm going to ask you a question, because we're going to be going through these Advisory Reports for each of these Ordinances. When you're listening to the issues that we are considering, is this the type of information that you all had in mind when you were rejecting the ordinances and saying we need an Advisory Report?

Mayor Jones: What Council did do was table them until we received an Advisory Report.

Lynn Ekelund: But are you looking for the type of issues that we just were speaking of, town wide vs Historic District, fees, Federal...

Mayor Jones: Yes and my point would have been, also in the form of a question, when it does refer to a new ordinance, just wanting to make sure that it is always accompanied by some teeth of some sort that can be enforced.

Lynn Ekelund: Okay, thank you.

Linda Edelen: In the one word statements, like grandfathering and Fee Schedule, that's okay form for you? We don't have to do a narrative?

Mayor Jones: I have a feeling that it will be a little more elaborated by the time the report comes back.

Seth Thompson: We get paid by the word. So I think one of the most important ones and we were just discussing it, the issue of grandfathering. What was the reason for using 18 months? Is it that you felt, honestly it's based on my advice, is it you felt that was a legally defensible time period and you didn't want to have it longer than that?

Virginia Weeks: We were advised it was a legally defensible time period.

Mark Quigley: And I also believe, I'm not sure if Georgetown was one year, or they gave their folks 18 months town wide. So it seems to fall in line with what other municipalities are doing.

Seth Thompson: It almost goes without saying, but I take it, do you view this ordinance as something that promotes the aesthetic value of the Historic District? I take it that's...

Lynn Ekelund: Absolutely.

Seth Thompson: I don't mean to put words in your mouth, but sometimes we focus...

Tim Nicholson: That's part of what we want you to do.

Seth Thompson: Sometimes I focus on the nitty gritty.

Mark Quigley: Stabilizing effect on the character of the town.

Tim Nicholson: Are we done with this?

Seth Thompson: It's up to you guys. Is there any other reason that you would want Council to know that you voted in favor of recommending this ordinance? And if the answer is no, then...

Virginia Weeks: How about to help preserve the value of the Historic District.

Seth Thompson: And when you say value, do you mean individual home values?

Virginia Weeks: The economic value to the Town.

Seth Thompson: Okay.

Lynn Ekelund: Anything else for the Advisory Report for the antenna ordinance?

- d. Written advisory report for an ordinance to amend Chapter 220 of the Town Code, entitled “Zoning”, relating to parking.

Seth Thompson: I think our parking ordinance did not have any changes. We did a pretty good job of vetting that one, I think.

Lynn Ekelund: I went through it and I didn't have any questions or changes.

Virginia Weeks: And the recommendation on that would be to bring us into conformance with how...

Lynn Ekelund: Let's vote on it first and then we'll do the Advisory Report.

Virginia Weeks: Okay.

Lynn Ekelund: Does anyone else have any comments on this, on the zoning relating to parking.

Tim Nicholson: No.

Linda Edelen: No.

Lynn Ekelund: Then can I have a motion to approve?

Tim Nicholson: I'll move to approve.

Mark Quigley: I second it.

Lynn Ekelund: Roll call vote:

Virginia Weeks	Yes
Linda Edelen	Yes
Tim Nicholson	Yes
Mark Quigley	Yes
Lynn Ekelund	Yes

Lynn Ekelund: Motion passes. Now we need the Advisory Report for the ordinance entitled Zoning relating to Parking.

Seth Thompson: One of the big issues, obviously, is changing jurisdiction from the Planning and Zoning Commission over to the Board of Adjustment. So I'm going to put that as the first issue to be considered.

Lynn Ekelund: That was the big one.

Seth Thompson: In terms of other items, we removed that 50% limitation, as far as shared parking; take the movie theater and the office building, where they can share parking and really, that returned the discretion to the Board of Adjustment to say whatever they felt was appropriate, as far as that's their parking arrangement.

Lynn Ekelund: We also changed residence to structure.

Seth Thompson: And the reasoning behind that was the way it read, you weren't allowed to park in front of a residence on the lawn, but the implication was you could park in front of a commercial structure.

Lynn Ekelund: Correct.

Seth Thompson: If you look at the top of the fifth page, we removed the word “automobile”, because I think that was just confusing. We always talk about off-street parking. We don't identify it as automobile parking vs. bicycle parking.

Tim Nicholson: Motorcycles?

Seth Thompson: At the very top, we just struck the word “automobile”, so it just refers to off-street parking, to make the Code consistent.

Linda Edelen: Did we effectively delete the potential for a waiver and just put it in the hands of the Board of Adjustment?

Seth Thompson: Correct. I would view that and this is getting into the reasoning, but I think what we had discussed is that it goes hand in hand with the jurisdiction; that's really what the Board of Adjustment traditionally does; but also you wanted to create a more uniform process, obviously. We added in the language and Council hadn't seen this, unfortunately; but they will when it gets forwarded to them under §F, the Construction; there was actually, if you read through the minutes, there was a very, I thought good discussion, as far as the word “paved”. We changed it to “constructed” and then went through the materials that the then Town Manager said were acceptable. I think that's helpful, that when somebody walks in and says, well I need to construct a parking area. Okay, good. I don't have to hunt down the Town Engineer to find out what materials are appropriate.

Lynn Ekelund: And it looks like we cleaned up the parking definitions within Town Center, as well.

Seth Thompson: Right and really what that was doing, was making it consistent.

Lynn Ekelund: That's what I meant by cleaned it up.

Seth Thompson: Yes.

Lynn Ekelund: I guess now we're down to reasons for recommendation.

Seth Thompson: Yes, I believe so. So again, the issues we talked about jurisdiction from Planning and Zoning to Board of Adjustment; the reasons for that recommendation, is it the more traditional role, I take it.

Tim Nicholson: That's where it belongs.

Lynn Ekelund: Yes.

Seth Thompson: And I know we discussed consistency, rather than Planning and Zoning granting a variance, that's really something the Board of Adjustment would do; so consistency.

Lynn Ekelund: Anything else for the Advisory Report on this?

Seth Thompson: I'm going to put down avoid loophole, with regards to the residence vs. structure.

Lynn Ekelund: And then I think also providing some guidance as far as changing it from “paved” to “constructed” in the type of services that the Town will accept.

Seth Thompson: Any other comments that anyone would like included in the Advisory Report?

Lynn Ekelund: Hearing none, let's move on.

- e. Written advisory report for an ordinance to amend Chapter 220 of the Town Code, entitled “Zoning” relating to special uses.

Seth Thompson: This is a good order. This is the ordinance that Planning and Zoning relinquishes jurisdiction and gives it to the Board of Adjustment, as far as special use permits. So the only other item, and this is really a clarification, if you look at the copy I handed out, Section 3 has changing Planning and Zoning to the Board of Adjustment in all of the individual zoning classifications, so when you look at R-3... I didn't realize that normally what happens is you have your separate process for your Special Permitted Use

and you don't bother duplicating; that's where you would go in the individual districts for those Special Permitted Uses. I'm kind of two minds on that. It's helpful that when somebody's looking at that, if they just open up, well my property is zoned R-2. What are my special uses? Where do I go? Okay, great, it's right there. That's helpful and at the same time it is a little duplicative, but it's not the worst thing. So I had contemplated just seeing if the Commission wanted to just strike Planning and Zoning Commission, so that somebody would then refer back to the normal procedural section, as far as special Permitted Use, but I suppose it's fine to just substitute in the term Board of Adjustment, so the people can just look and say okay, this is my zoning classification; there is the list of special uses and I don't have to change the page to know where to go to file my application.

Mark Quigley: Streamlined, straightforward, less confusing.

Seth Thompson: So that was the only additional item on this one.

Lynn Ekelund: Any further discussion on this ordinance? Can I hear a motion to approve?

Tim Nicholson: Motion to approve.

Mark Quigley: Second.

Lynn Ekelund: Vote:

Virginia Weeks	Yes
Linda Edelen	Yes
Tim Nicholson	Yes
Mark Quigley	Yes
Lynn Ekelund	Yes

Lynn Ekelund: Motion passes. Now we need the Advisory Report.

Seth Thompson: I imagine, the issue considered is really jurisdiction from Planning and Zoning to the Board of Adjustment. I take it the rationale is similar to what we said about parking, that it's the more traditional role of a Board of Adjustment. The only other item, we did add in the term "substantially hazardous" or "inconvenient" or "incongruous" with neighborhood surrounding it and I double-checked, because I was operating off of memory, but indeed in Title XXII of the State Code, they use the word "substantial" when it talks about the substantial detriment to the public good, substantially impairing the intended purpose of the zoning ordinance, so that word substantial, when it comes to special Permitted Uses, appears in the State Code, which unlike what we were talking about before, it would be helpful that somebody could look at how other towns have applied the State Code or how other Counties have applied the State Code, to get a definition of what other Towns have deemed substantial impairment or substantial detriment. I'll note that as another issue, since it's only one word I think it's probably good to have that flagged, so to speak. Along those lines, I would view the reason for changing that, is that we had a good discussion about it before; without the word "substantial" in there, one person could argue that it's even the smallest bit inconvenient for them to have that special use near them, so I think it does probably more fit with what's done under the State Code, but also the concept of one person shouldn't be able to completely override a special use application for a small, small item. Anything else?

Lynn Ekelund: I think that's good. Anybody else?

Seth Thompson: I feel like I'm doing a lot of talking.

Tim Nicholson: You are. That is okay.

Mark Quigley: It's okay.

- f. Ordinance to amend Chapter 220 of the Town Code, entitled "Zoning" relating to Home Occupations

Lynn Ekelund: Last item.

Seth Thompson: I had circulated a draft. I really have to say in going through and reading the minutes, I thought that the Commission really thought through this with a great, great deal of foresight, but also real consideration for it. I received a couple of comments from Ginny afterwards, so I put the in and I received one comment from Robin, so I put them in that bold type again for you to consider. If you look at the one in front of you, Robin brought up the issue of people that use don't really occupy or use a home occupation to see anyone or do anything, other than they use it as a mailing address for their business. So I put in number 6 on page 2 there as part of the definition of home occupation and this is really just another one of the examples, use of the address for licensing or receipt of mail related to the occupation, profession, enterprise or activity. The intent there is if somebody has a business, but it's not something they do at their home. It's really a business where they go on-site and work with clients elsewhere, but they use their home as their business address, their business mailing address for licensing purposes or receiving mail. I don't know what the Commission thinks about that, but that would be one way we could spell that out.

Virginia Weeks: I think we discussed that. That would be like a realtor, who has his/her business and her brokerage in her home, but doesn't really receive anybody, doesn't do anything and uses it just where he/she keeps their businesses run out of Milton, or a construction guy; although he may not be building houses in Milton, he's running his business from Milton and from an address.

Seth Thompson: Right. Exactly.

Linda Edelen: Isn't this even less than that?

Seth Thompson: It really is even less. Again, it's one of the other examples of what would be included in a home occupation. The net affect, if you recall, we kind of set up a two-tiered system, where under both tiers you have to meet that definition of home occupation. Then if it's a home occupation where only one customer, patron or client comes at a time and there's no alteration, then it's that automatically permitted use. All those requirements under 220-51(a), then there would be that automatically permitted accessory use. If they don't fit within that, then they would still be a special Permitted Use. We're just adding this in as a definition of a home business. Somebody knows that if they're only receiving mail there, but they're not having more than one customer come to them, then they should be okay to file their business application with the Town and ask for a home occupation.

Tim Nicholson: I have a question regarding this. What if somebody has an LLC and they have property parked in there and that LLC's information is being sent to an address in Milton?

Seth Thompson: When you say property parked there...

Tim Nicholson: For protection purposes, asset protection; where the LLC is the owner of the property.

Seth Thompson: When it comes to an LLC, somebody might title the vehicle in the LLC's name. Obviously, people use that as a means of protecting assets. You're right. For the most part, it's probably to protect the home that those assets, in your example, are in? So that if

there's some sort of liability that it's just limited to the LLC property.

Tim Nicholson: So does that fall under this? How does that work?

Seth Thompson: We'd have to start with the definition, so I guess the initial question is, whether they're conducting an activity within the dwelling or an enclosed accessory building; it's incidental or secondary to the use of the building; that's related to an occupation, business, profession, enterprise or an activity. I think under your example, they're in essence, storing something there is what you're saying.

Tim Nicholson: Right. There's no actual activity.

Seth Thompson: Normally when somebody stores something, at some point, they then move it. Do you know what I mean? I'm having a difficult time envisioning a scenario where somebody has property that's in an LLC, but they're just keeping it in a house and they're not selling it, they're not using it for any other business purpose.

Tim Nicholson: Right. So it sounds like it would not be included in this.

Seth Thompson: Yeah, I think it's difficult to say they're engaged in a business activity, if they're purely just keeping it there.

Tim Nicholson: Right.

Seth Thompson: I'm trying to think of a business that would do that. Is there a business of... Linda, you looked like you had a question.

Linda Edelen: I don't know why I did that. Well it's a static thing, storing something, but it's related... I don't know.

Tim Nicholson: Storage, relative to paper. It's a mechanism that people use.

Seth Thompson: I guess I would view if it's just paper, if it's just information, it's akin to getting mail, right? Is that fair to say?

Tim Nicholson: Right.

Linda Edelen: Do you have an example of somebody who's doing that?

Tim Nicholson: Maybe the Mayor has her properties in an LLC, for an example.

Seth Thompson: Oh, you mean the house is titled to an LLC?

Tim Nicholson: Yes.

Seth Thompson: I'm sorry. I thought... The definition of the home occupation doesn't really depend on how the house is titled, it's really whether there's a use in addition to the use as a residence. It wouldn't hinge on... Because a lot of people put a home in trust, for instance, as they get older, but that wouldn't automatically equate to a home occupation. No, the ownership...

Tim Nicholson: So it would not fall within this?

Seth Thompson: It wouldn't really matter. Just like if it's some other occupant's, that's not an owner, but a friend or a relative that's living in the property and they're using that property for something that would qualify under our home occupation. That's going to trigger it as well, so it's not title dependent, if that makes sense.

Mark Quigley: Maybe just because the LLC, a Limited Liability Company, sounds like a company and if the mail is triggered that way and it's on the tax record... you know.

Seth Thompson: Right. I think it's important to just focus on the use of the property. How is that property being used? It doesn't matter if it's being used by the owner of the LLC. I'm trying to think of a scenario where that would come into play. Did we reference family members at one point? No, we removed that, because that did seem a little bit odd, so it says if the activity is conducted solely by one or more resident's of the dwelling unit. That, even further, emphasizes the fact that it's not an owner; the ownership doesn't matter. It's a very

practical... who's living there and how are they using that property, in addition to using it as a residence. Ginny had asked... her language was something about auto repair...

Virginia Weeks: Auto repair, machine repair, you know...

Mark Quigley: Garage repair service?

Seth Thompson: Right. So I used one of the defined uses from our Code. I put in service/repair garages. The machine... there wasn't anything that jumped out at me from your defined uses, as far as the machine works and it is difficult, because when we start talking about machines, I know at one point we discussed somebody repairing watches, because that's one of the items that we mentioned repair service providers for small items, such as watches and computers. Obviously a computer is a machine. I think the auto repairs... I understand you not wanting somebody to be...

Virginia Weeks: I don't see how it could be done inside a building; the building would have to be mammoth or secondly, they would be doing it on the outside and then storing everything inside.

Seth Thompson: We do allow them to use the enclosed accessory building.

Virginia Weeks: You're not going to run a car in an enclosed accessory building.

Tim Nicholson: Unless you want to die.

Linda Edelen: But a lawnmower or a snow blower, small machines.

Seth Thompson: That would fall under our small items.

Mark Quigley: Isn't that part of what we referenced from Lewes, their Code.

Seth Thompson: Let me take a look. I brought that. Lewes references repair services, watches, clocks, small appliances, computers, electronic devices and then, I think, as one of their items that you cannot have... I thought that they had put in there auto repair, but they didn't. Anyway, that was one of Ginny's suggestions, so I just put it in the draft Ordinance so that you could review it and see if you thought it made sense. I can give you the definition from your Zoning Code of what the service/repair garage is, as well. It's a building or premises used for the repair of motor vehicles, including painting, detailing, cleaning and the sale of related parts and accessories. A junkyard or auto salvage yard is not to be construed to mean or be the same as a garage. This is one of those examples, if somebody's working on their car in their own garage, I wouldn't think of that as a home occupation. I think it needs to be... because you're not going to fall under the occupation, business, profession, enterprise or activity and I don't want to tie it just to profit, but I assume that the Commission doesn't want the Code to be interpreted to apply to people doing work for themselves. I think the concern is more, doing it for a profit. Having those things happen on a consistent basis.

Tim Nicholson: Right.

Linda Edelen: So what are we doing with that language? It seemed like it was quite broad the way you read it.

Seth Thompson: To fix it, we're dealing with home occupations here.

Linda Edelen: I'm fine. I'm fine.

Virginia Weeks: The only other thing that I thought of and probably doesn't mean much, is if home occupations are on State streets, what are they going to have to do with approvals from the State.

Seth Thompson: It's one of those things that we don't have jurisdiction over it, so we can't really control. The only thing we can control is our zoning approval, but if the State comes along and says if you want to use that as some accessory, commercial use, you're going to

have to put in a parking lot or put in a DeIDOT entrance and that's what they're going to have to do.

Virginia Weeks: Is the Town going to require that if there's a change in use on a State street, that the person get permission from the State before they can do that, Robin? So if somebody wanted to be licensed to make wedding cakes in their home, they would have to go to the State and get permission if their house is on Union Street?

Robin Davis: Yes, that is correct.

Virginia Weeks: We need to make that abundantly clear to people.

Seth Thompson: Does the State offer waivers for people that aren't going to have customers visiting the property?

Robin Davis: I don't know that. I think so, but I don't know that. They might have a letter of no objection, but you still have to go before them and fill out some sort of paperwork.

Seth Thompson: But the bottom line is, we can't control it.

Robin Davis: Correct. We just require that some sort of paperwork from DeIDOT prior to issuing a business license. Yes.

Virginia Weeks: Okay, thank you.

Seth Thompson: Since we dealt with the ordinance changing things from Planning and Zoning to Board of Adjustment, that's the other change that you see in this draft.

Tim Nicholson: Right.

Lynn Ekelund: Do we have any more discussion on the ordinance to amend Chapter 220 of the Town Code, entitled "Zoning" relating to Home Occupations?

Tim Nicholson: You have my motion.

Linda Edelen: Second.

Lynn Ekelund: Roll call vote please:

Virginia Weeks	Yes
Linda Edelen	Yes
Tim Nicholson	Yes
Mark Quigley	Yes
Lynn Ekelund	Yes

Lynn Ekelund: Motion passes.

Seth Thompson: We need to go over the Advisory Report. As far as issues considered, I would say taking the broader view, the question was are there some home occupations that are appropriate as an automatically permitted accessory use and obviously, based on the ordinance, the answer has been yes, but then there are others that still should go through that special Permitted Use requirement.

Virginia Weeks: So we define the parameters of what would be acceptable.

Seth Thompson: Speaking of definitions, I suppose we also came up with a better definition of home occupation, so we started with that and then divided those home occupations into the automatically permitted accessory and then the special Permitted Use.

Lynn Ekelund: And I think we added a couple of occupations that we felt should not be home occupations at all.

Seth Thompson: That's right and that's actually an interesting... I thought that was a good addition that these certain uses are just not eligible to be considered home occupations.

Mark Quigley: What did we actually with the fee regarding that?

Seth Thompson: This is something that we can put as an additional recommendation. You guys did discuss, potentially, what tiering the fee. That wouldn't be in this. That would be in the Fee Schedule, but tiering the fee for certain home occupations that aren't intrusive as a cheaper fee vs. the ones that fall into the other category and require a little bit more examination. I don't know if you want to just note that as something that you would recommend to Council, that when they review the Fee Schedule...

Linda Edelen: We made that recommendation.

Seth Thompson: I think the problem is it's not an issue considered when it comes to the ordinance; but it is an additional item that we could note. Is that a fair summary of what you were thinking that certain home occupations should have a lower fee?

Mark Quigley: I remember, myself, I said the ones that are just pass-through basically have a fee of maybe only \$10 and the others will follow the normal Fee Schedule.

Linda Edelen: At least if the _____ are given some consideration.

Seth Thompson: Okay. Any other reasons for the recommendation? Obviously, this issue has been floating around for a period of time, since really I think the genesis was there was a list of people that have licenses for businesses, but aren't approved as home occupations or didn't want to go through the special Permitted Use process.

Virginia Weeks: That we tried to define the parameters of a home occupation that could be automatically permitted, but at the same time did not interrupt the residential identity of the zone or the district.

Lynn Ekelund: I think, at all times, at least I was cognizant and I know Ginny was cognizant of the fact that, it is a privilege to have an occupation, whether it's a home occupation or not, in a residential district and while we wanted to be as liberal as possible, we still wanted to make sure that the impact of any of the home occupations was not going to be detrimental to the residential nature of the neighborhood.

Virginia Weeks: And that if it is going to be a pass-through, it's not requiring that the resident's around it know that this is going to happen, therefore, that's why it has to be totally unobtrusive.

Seth Thompson: I think that's a very valid point that the special Permitted Use process, the neighbor's are going to get their say vs. if something is automatically permitted as an accessory use, there isn't going to be that hearing. I think that's a very valid point. Anything else?

Linda Edelen: I think you did a good job of meshing that. That was tough.

Seth Thompson: The home occupation? I didn't do it, you guys did it.

Linda Edelen: Well we did it, but you did it.

7. Adjournment

Lynn Ekelund: Can I hear a motion to adjourn?

Linda Edelen: Move to adjourn.

Tim Nicholson: Second.

Lynn Ekelund: All in favor say aye. Opposed. Meeting adjourned at 8:39 p.m.