

**Town of Milton
Planning & Zoning Commission
April 15, 2008**

Members Present:

Virginia Weeks	Louise Frey	Ted Kanakos
Bill Brierly	Gene Steele	Michael Filicko

Others Present:

Robin Davis	Debbie Pfeil	John Brady	Bob Kerr
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Michael Filicko called meeting to order at 7:15 p.m.

Nomination and Election of new Chairperson and Secretary

Ted Kanakos: I make a motion that we move the Nomination and Election of new Chairperson and Secretary to after completion of the Executive Session, which would make it number 6 on this agenda. This would require us to move the Executive Session to number 6a on the agenda.

Michael Filicko: Ted, is this so that legal counsel could be here to represent Planning & Zoning Commissioners?

Ted Kanakos: Yes. This would give us a little visibility on the nomination and election.

Gene Steele: Second.

Michael Filicko: All in favor. Roll call vote:

Louise Frey	Opposed
Virginia Weeks	Aye
Ted Kanakos	Aye
Bill Brierly	Aye
Gene Steele	Aye
Michael Filicko	Aye

Motion Carried.

Approval of the Agenda

Ted Kanakos: I move that we approve the agenda.

Virginia Weeks: Second.

Michael Filicko: All in favor. Roll call vote:

Louise Frey	Opposed
Virginia Weeks	Aye
Ted Kanakos	Aye
Bill Brierly	Aye
Gene Steele	Aye

Michael Filicko Aye

Motion Carried.

Policies, Procedures for the Planning & Zoning Commission

Debbie Pfiel: Thank you very much. I'm Debbie Pfiel from URS and we were asked by the Mayor and Council to provide a general training for the Planning Commission tonight. There are no other items on the agenda for consideration of applicants, so we were asked to work within a weeks' timeframe and put this together, and we've also been asked, effective today, to present a version of this, and modify a couple of slides for the Board of Adjustment, the Historic Preservation Board, and also provide it for the Town Council. So you will not be the only ones getting this. What we have is a general slide. I'll be presenting the beginning and Mr. Brady would be in the middle and Bob Kerr would be at the end. We also did a draft run today with your Mayor and Town Manager present. On today's agenda, we have the introduction, the purpose, the Planning Commissioner's role, legal functions, public meetings and ethics. As I introduced myself, we also have Bob Kerr, who is the Town Engineer and he's got the longevity with the consultants. Mr. Brady will be late, but he will be here. After this, we will be making this into a PDF format and emailing you and if anybody doesn't have email, then we'll go ahead and print it out for you.

Michael Filicko: I believe you stated that this Power Point presentation will go before Planning & Zoning, Board of Adjustment, and Town Council. Is the purpose of this going before all four commissions to have some continuity?

Debbie Pfiel: The purpose is that we have not gotten into specific technical questions with each board. As we get done with this, you will see it is very general, its due process, its legal functions, its how to perform proper meetings, so there will be a lot of good information that would assist all the Boards and Commissions to do their job better or new members to understand and learn the process.

Michael Filicko: Thank you.

Virginia Weeks: After all the Boards have seen this, will there be a meeting of all of us together so we're all on the same page?

Debbie Pfiel: I have not been requested to do that. I know that the Council on Thursday is going to be making a decision regarding if Ordinances and Procedures are going to be changed and who will be selected from each Board or Committee on that, but at this time I don't know the decision of the Council. We were just asked to do the training.

Virginia Weeks: No I meant just about procedures, because obviously, we could ask some questions, the Board of Adjustment could ask some questions and it could all impact on one another.

Debbie Pfiel: I think you will see during this presentation we don't get very technical at all. I'm going to run through this and if you could save your questions to the end or write them down, that would be great. Just to for time constraints for you. I know everybody might have different questions. This is pretty much for the audience. Tonight is a business meeting; it's not a public hearing. So this is actually what would happen between the consultant and the commissioners. Under the Purpose title: the purpose of this is to offer guidance using ethics and integrity examples and they are real life

examples, which will be helpful; review the role of the Planning & Zoning Commission within the town; discuss public meetings; and assistance in understanding of due process. Under Town Goals are usually identified with implementation. For implementation in your confidence of plan; your capital improvement plan, if it's applicable for this Municipality; and, your annual budget. These are the three documents that usually prompt your goals. Then your Rules and Regulations and Laws come from those documents. Some factors used when developing your goals: some of the factors I researched are certain things you can do. In house, with commissions certain things you need your consultants involved in, for any kind of expertise or examples, or should you use resources such as State, Federal, University assistance, as well. Another factor, when you develop your goals is your funding. Are your fees covering some of your processes and procedures? Any leftover monies in the budget you can use to put into the cost of your goals, etc. For example, if you feel that we are rewriting the Town Codes, that can cost anywhere from \$5,000 to \$500,000, depending on the scope of the work. The other thing is the requirements. When you are developing your goals there are State, Federal, Local and Charter requirements that must be met. Those will be top priorities when they establish the goals. We're bringing this up because they are coming on a budget cycle, as well. So if your account has specific goals for next year, we're hoping based on the information from the Planning Commission and the Boards, and the citizens, that there is some money that's put forth to the effort of rewriting ordinances and improving your planning process. Planning Commissioners ask, what is planning all about? You've probably seen this before if you've taken any kind of planning courses or new Mayors or new Council or new Commissioners classes. As a process, Planning strives for an open approach to determining community needs, setting goals and priorities, and developing a guide for local government decisions and the future of development of the area. Planning also includes economic, social and cultural interests in the community and people from all walks of life. I really like that second bullet because what might not be a service for you as your personal interest may be a service that another individual in the community needs. You are representing everybody when you are on the Planning Commission. Planning produces a document, a Plan, that should be used by the Commission, public officials and private citizens to make informed decisions about the future of their community, including roads, houses, businesses and public buildings, and by private citizens in making decisions about where to live or work or how to develop their property. I think everybody here is really aware that the basis of everything starts with your Comprehensive Plan. What is the role of the Commission in the planning process? In general, Planning Commissioners advise their local governing body on comprehensive planning and land use issues and may make related decisions that are delegated by the governing body. As you will see, if we further get into training if we are delegated by the Town Council. We have started some spreadsheets on processes. They have been released to the Council, and, if we are involved in that type of training it's nice to know who has the authority for final decisions. That is always a question in Milton. Is it the Planning Commission or is it the Council or is the Historical Preservation Board or any other committee? That is truly spelled out in your codes. There are some gray areas. As you know, on any code you can ask for a legal interpretation. We do have 14 examples of procedures that we were asked to do and present to the Council, and we're envisioning that that will take place in the next level, which would be the Committees and

Commissions. Generally, the Commission has three basic roles: advisory, regulatory and procedural. These three are very, very important. It's kind of the way I would probably see the meat and potatoes of the process. Advisory, regulatory and procedural look like three little words, but they are really important and the role of the Planning Commission is very important, as well. Also as a listener, counselor, gatherer of facts and information, public voice facilitator and land use compliance regulator. I don't want to scare you to be off the Board after I read all this and I'm sure everybody gave you all this information when you signed up or got asked to be on the Board. The Commission is charged with running a fair meeting, making fair decisions, and conducting itself properly. To be the best commissioner you can be, of course you need tools to do the job. If you do not have any of these tools, then please email Robin or get with Robin so he can give them to you. The biggest one you probably need to start off with is the Town's current comprehensive plan. That includes your maps, they're very important in the documents. Sometimes you have them on a larger scale and sometimes you have them as an 8-1/2 X 11. That's very important. That is a tool you should be bringing to your meeting or using as a review tool when you get each plan, each application. The next one is very important. It's your zoning and sub-division codes of Milton. I wish these documents were ever easy in any municipality. Every day you find something new in some section, side section, sub section, definition. Those are very important in the role, because that truly says what are the regulations, rules and requirements that your applicants must follow. The third one is the official zoning map. This is also important to have as a tool, because when you are looking at something, rather than look at the piece of property, I think everyone is familiar with the look around the properties around the neighborhood to see the other zonings, not necessarily uses, but zonings, because the zoning will give you the buy right law for certain uses. Staff and/or consultant review comments are very important because they also give you leverage with the professional company or leverage to use an outside source that might not have any kind of consideration, financial, personal, involvement with citizens that are involved in any kind of groups. You will be able to find out that our comments are specifically more black & white, more technical and more planning is involved. State and/or County review requirements, if applicable: at certain times you will have preliminary land use (which is called PLUS); from the State you'll have comments that I think you've all dealt with those before. They are an important part of the process. They make very strong recommendations, not a lot of requirements, but a lot of recommendations, and, you can go through those on each application and feel what is important to the Town of Milton for recommending. Another thing you need is advanced meeting packets. I don't know how much we hear this from all the other Municipalities. Some people still get meeting packets the day of their meeting. I can tell you from your experience, as well, if you wait until the day of the meeting to open up your packet, you feel like you do less of a job, you feel like you're hurried and you can't get out to be able to look at a surrounding area to see what is going on. So the advance meeting packet is kind of doing your homework. The tributes of an effective planning commissioner: these are strong. They came from two different web-sites that I mashed together. Patient, self-confident, willing, a good listener, enthusiastic, objective, courageous, sense of humor, public spirited, dedication of time and integrity. If you could write a resume for any person serving on a government

board, officials or leadership, these are some of the qualities that are important which enable you to fulfill and complete the role that you are requested to do.

Michael Filicko: May I ask you a question now?

Debbie Pfiel: Yes.

Michael Filicko: Could you go back to Planning & Zoning Commissioner's role, the first slide? The second paragraph says "Planning includes the economic, social and cultural interests in the community and people from all walks of life". Debbie, and my committee members, that is what has been my goal for this commission, since I have been appointed. Unfortunately, if you would please go forward a couple of slides, it seems to me that the second bullet: zoning and sub-division codes of Milton, that is what we are designated to do. We have to follow the zoning and sub-division codes and my first question about the integrity, the quality of life following the zoning and sub-division codes of Milton, does not address that first issue that I brought up. It just is our role is following the zoning codes, period. That's what I would like to see change.

Debbie Pfiel: In the aspect of change, are you looking for tools that would help you, I believe the only person that has been privy to that is Ginny in the Comprehensive Planning meetings. Are you looking for design standards that would assist you as a better tool to be able to say this is the way we prefer things to look or feel or preserve the character vs. somebody not knowing when they come to the Board and the Board not collectively as a whole group, knowing what they want from the Applicant or the consistency for each applicant? Would you feel that would be a helpful tool for you?

Michael Filicko: Debbie, please go back to where I was. Right here, this is what I want us to do. Economic, social and cultural interest in the community and people for all walks of life. That is what I want our goal to be. And we are limited to what is written in the zoning code, period.

Debbie Pfiel: I will pose the question to the rest of the Board and maybe you can address this.

Virginia Weeks: I think, Mike, if I understand correctly, you are saying that there is a conflict between that and the zoning ordinances. I think, Debbie, that perhaps the problem is that when we redo the Comp Plan next year, those are issues that can be stressed that would result in changes in the ordinance to reflect what happens in the Comp Plan. Is that what you're saying?

Michael Filicko: Yes.

Debbie Pfiel: Ginny brought up a good point. A sentence like that would not belong in a zoning code, because, what you feel is your social interests, I guarantee if we all went behind door number 9 and took a quiz, they would all be different. Collectively, you probably won't have a document that says collectively we feel that in Milton we should have 7 restaurants and they should provide seafood and steaks and beer, but no wine – so it won't be that restrictive and maybe you feel that that is great for the community. I may not, maybe I want wings, and it may be that Bob wants some Daiquiris and Margaritas or any other kind of food. That's a very general statement and Ginny brought up a good point that that does belong in the Comp Plan and I'm sure there would be some wording to that affect in the Comp Plan, but very vague. What the Comp Plan does is lay down the goal. The zoning ordinance will take it to a law; however, not everything should be 100% black & white, either. Sometimes when you get black & white, you can not have

anything else, other than what that says, but I think the rewrite of the zoning ordinances is very important to match your Comp Plan.

Michael Filicko: In recent meetings, it has been black or white. That's what we have been limited to.

Bob Kerr Town Engineer: If I may add something. Maybe looking at it from the other side, the zoning ordinance has very specific things that you must or must not apply. In doing so, you are to make sure that the economic, social and cultural interests are carried out uniformly, so that if somebody comes in and wants to build a sub-division of \$2,000,000 homes, they are treated the same way as someone who wants to come in and build low-income or affordable housing, it is treated and they are held to the same standards. You may negotiate and request certain amenities in both that are slightly different, but as far as if one has to have sidewalks, both have to have sidewalks, in accordance with the Comp Plan.

Michael Filicko: I'm with you there, Bob.

Bob Kerr: Think about this, \$2,000,000 homes, why did we make them put in sidewalks? They're all going to drive cars and they are never going to walk. That's part of what this paragraph is saying. We all have certain things that we like. We, as consultants, try to keep out personal opinions, as much as possible. We're here for the facts. You get to play a little bit more with that portion, but it's really how the rules are applied.

Michael Filicko: It seems to me that the rules are not always in the best interest of the Town, but we have to follow them because they are the rules.

Bob Kerr: If what I think we need to ask everyone to start doing, and I know I've kind of started a little list in my office when I go through things, when you read something in the ordinance or there is something specifically you don't like, write it down, so when we get to the point of rewriting ordinances and it sounds like Mayor and Council are ready to start that process now, that we have a list of this isn't working; this is too liberal; this is too restrictive; we're going to need to generate that information. It's very difficult to sit down and look at 60 or 70 pages of ordinance and sit around the table with X number of people and where do we start? What's wrong? It's a difficult process to get started without that list of this isn't working, etc.

Michael Filicko: That's a very good point.

Bob Kerr: Just saying there's problems with it, doesn't solve the problem. Let's address the problem. What sentence or paragraph needs to be looked at?

Michael Filicko: I agree with you, Bob. I believe when the last zoning ordinances were written, a consultant was hired from X company, but what he did was used the exact ordinances from the last Town that he wrote the ordinances for, and in one of the sentences he forgot to leave out the Seneca Indians, and we paid this X company quite a bit of money to do a duplicate.

Debbie Pfiel: If I can cut you off there, somebody had to adopt it, so while I'm not defending the consultant, it had to go through Public Hearing, it had to go through process: the public, stakeholders, the Commissions, the Boards and if people were cut out of that process, I understand. You have a very active group that's concerned about everything but somebody had to vote on that and when they vote on that, using due process, they have made it a law. That's where I am trying to educate everybody to say, trust me, we have monthly meetings and do not agree. Your frustrations on your Planning Commission process are felt by Robin, on a daily basis, Bob Kerr, Debbie Pfiel

and John Brady. We don't agree with all of the writings in there because we do this at other municipalities, as well, and we have some recommendations and some streamlining and some red tape and clarification. However, the people that vote on this make this the law.

Michael Filicko: I just have one other point. It's something I tried to do when the zoning ordinances were written. There is a town on the Eastern Shore of Maryland, similar in age to the Town of Milton. I approached that town and wanted to get information on who wrote the zoning ordinances for the Town. Unfortunately, when I presented those people's names to the people in power in the Town at the time, their decision was we used company X the last time, so we're going to use company X this time.

Debbie Pfiel: I'm sorry, but that's within their power.

Michael Filicko: I know it is.

Debbie Pfiel: I'm sure everybody in here could probably name a different consultant, have a different idea, even some people could even write the documents themselves with their knowledge, but that's up to the powers that be. Are there any specific questions on this before we get into the legal side?

John Brady: The legal functions for the Planning & Zoning Commission, there are two different parts that you do. The first part is under the: What decisions does the Commission have the legal authority to make? Legislative – that's when you review ordinances, make recommendations regarding adopting or amending a plan or other implementation tools. You've done that when you recommend ordinances to be adopted; you've done that on Plan review. The second part you do is when it's your determination when you serve as a quasi judicial decision-making body. When you make a decision such as for the final Master Plan, it does not go back to council. When you make that decision, you are applying the local ordinances to make decisions regarding zoning and land use. Those decisions are appealed directly, not to the Council, but to the Superior Court. The big issue on that is that you have to follow the rules very carefully. The example I gave earlier today, was what happened in the Town of Middletown. Middletown Planning & Zoning and Town Council adopted a Comprehensive Plan, establishing a growth zone in the Town in new annexed areas. A developer came in and wanted to put a Wal-Mart there. In a split vote, Planning & Zoning adopted the recommendation from Town Council, and it went up to the Court. The Court reversed saying that Planning & Zoning did not keep an adequate record below, they didn't have a proper discussion, they didn't enunciate the factors required, so it came back to Planning & Zoning a second time. Then it went to Town Council. The second time it came back, there was still a problem, and it came back from the Courts a third time. The third time, the Court has said it has been through the process enough, and the Court permitted the Wal-Mart to be built there. What Municipal lawyers have learned from that is if you don't cross the T's and dot the I's and follow the ordinance exactly you're creating an automatic reversal. That's why it is very important here, that when we follow the process, we have the opened meetings where the only thing that you can go in Executive Session is to discuss personnel. There is no personnel to discuss in the Planning & Zoning Commission. Pending or potential litigation and land acquisition. You're not going to acquire land. The only time you can go into Executive Session is for pending or potential litigation. It is noticed on the calendar tonight, because many of you are named parties in the lawsuit and have been substituted. That's under the Executive Session.

When we're down here open meetings is what I am covering now. So, very rarely will you see an Executive Session. Tonight I'm just going to discuss the status of the lawsuit. Number 2: Every record that is filed in Planning & Zoning is deemed to be an open record, under the FOIA. We have to make sure that everything, including emails that are received, anything like that, if that's the basis that you've made a determination, it's got to be given to Robin and put in the record. Number 3: Voting requirements. For procedural votes, you can do "ayes" or "nays". When it is a vote of substance, you have to do a roll call. That's why I asked the members to say their name, i.e., John Smith, yes and the reasons why I am in favor of something. If there is an issue and the reasons why come more from a quasi judicial decision, under Number 2, if you're approving a plan and you find it is in conformance, you don't have to enunciate the reasons. But, if you are voting against something, you always need to enunciate your reasons, to be part of the record. Number 4: Conflicts of Interest. We're going to go over this a little bit later when you get to questions, but if there is a Conflict of Interest, we operate under the Public Integrity Commission at the moment, Title 29 of the Delaware Code, Chapter 58 you have a financial interest or you have a personal interest in an issue, then you may need to recuse yourself. Recusal means you have to leave the table and leave the room. That's the safest way so it does not show that you had any participation in what was covered. Then afterwards you could come back in. We have a couple of scenarios I'll be going over later on Conflict of Interest. I'm using the most recent Public Integrity Commission decisions; they're in Court now. I have one, Craig Carciou??? got one, and we'll see what the Court says. It's the first time they have issued advisory opinions telling Planning & Zoning members they could not participate. We're watching that case very carefully. It's out of Dewey Beach. Yes.

Bill Brierly: The Public Integrity Commission, how much authority do they really exercise. I think the example where Mayor Don Post had appointed a brother to be on a commission or board. That appointment has to be approved by the entire Town Council, but yet the Public Integrity Commissions aid that there was an ethics violation...

John Brady: That's right. That's pending also in the Court, and since it is pending litigation I'm waiting for a Court decision. I argued he wasn't appointed, but that's in the pending litigation part.

Bill Brierly: What I'm getting at here is, first of all, how did it end up in Court? Did the Public Integrity Commission take it to Court? What authority do they have, is what I'm getting at?

John Brady: No. The Public Integrity Commission issued an opinion. When they issue an opinion it can either be advisory or binding. An advisory opinion is what was issued in that case. The legal basis why the Town took it to Court, was because an advisory opinion, according to the law, has to be asked by the Public Official. There were two complaints filed, neither public official asked for an opinion, but they went ahead and issued an opinion and they really did not give due process, in my opinion. That's pending in Court. We had oral argument on the 15th of January and it should be due for a decision any day now. The Public Integrity Commission deals with ethics matters in all jurisdictions, unless a jurisdiction has established its own Code of Conduct, with its own Board and that Code of Conduct has to be approved by the Public Integrity Commission. They have the power to issue opinions on State and Municipal officials, and their opinions hold the force of law and there is a limited right of an appeal to correct a

decision that may have been improperly issued by the Public Integrity Commission. In 13 years, they've never been overturned. They've also had no court cases challenging their jurisdiction to issue an opinion. Now they have two.

Bill Brierly: So the opinion they issue has the force of law, meaning that what comes out in their opinion is pretty much something that has to be adhered to?

John Brady: Correct. Commissioner Frey.

Louise Frey: Thank you, John. For a conflict of interest, who determines, do we as individuals determine if we have a conflict, or is that to be done by you, or I don't think in the ordinances it says if you live within 200 ft. of an application, you have to recuse yourself? Am I right on that?

John Brady: That's correct. There is nothing in the ordinance. When you determine a personal or public interest under the Code of Conduct, they say, as follows and the guiding comments are: "If..." Okay. It reminded me that I went over this afternoon and did 42 other things since then. The three things where I ask that they do that and look at it is:

1. When a Commissioner has a personal bias or prejudice concerning the interested party, a representative of the party to a matter before the Commission. [A personal bias or prejudice doesn't mean against, it could be necessarily for, as well. If it's a family member or somebody like that, that's doing it, or somebody related to, that may be an issue. Normally, what I have had in the past or Commissioners come to me and say should I participate on this and I talk to them and I give them a confidential opinion, yes or no. It's then up to them whether or not they want to accept that opinion. The other way they can do it, is knowing it enough in advance, they can ask the Public Integrity Commission Counsel for an advisory opinion and they Public Integrity Commission Counsel will give that opinion, if they have enough working time. I have seen the requests go in at 9:30 in the morning and the Public Integrity Commission Counsel email an answer back by 2:00. Debbie Pfiel: Is the common practice a rule of thumb? As we've learned as consultants with legal situations, if you feel there's a Conflict of Interest, the usual determination by the lawyer is, do not take action on it and recuse yourself just because of perception or potential litigation? John Brady: The rule of thumb I give is there may not be an actual Conflict of Interest, but if there is an appearance of a Conflict of Interest, it's better to walk the high road and not participate, but that is a personal decision that a member has to make. We have additional material that can help if that comes down. The David King decision is one of the two decisions that I talk about. In that case, Vice Chair of the Dewey Beach Planning & Zoning, before anything was filed with Dewey Beach about the Ruddertown Project, sent out a memo to 12 people saying he was concerned about a project coming in and going 68 feet. A complaint was filed on that, but they didn't treat it as a complaint, they treated it as an advisory opinion and the Public Integrity Commission ruled that he should not participate on anything involving that project. The initial opinion came out in October. What was pending, we discussed it, but he had a private attorney and the private attorney and I talked and we had disagreements on how to interpret that decision. When the final decision came out in January, some other matters had been voted

on between October and January and now there has been a threat of litigation against the Town of Dewey Beach, because he continued to participate in stuff from October to January. What I have to do when he is Vice Chair, and the Chair is not there, if a question comes up involving their representatives or anything involving that project, I have him leave the table. I have a designated next Vice Chairman, and that person handles all of those questions, until the matter is resolved. That is just done out of an abundance of caution, until the appeal is done. I had never seen a decision like that before by exercising Freedom of Speech about what could possibly happen, because if you read what the law was in Dewey Beach, for them to come in for 68 feet, when the rules say 35 feet is the cap, it would have gone to the Board of Adjustment. They chose not to go to the Board of Adjustment. They chose to file a new zoning ordinance and the new zoning ordinance went to Planning & Zoning. And because the Chair was dealing with issues involving his now deceased mother, a former Commissioner in Dewey Beach, the Vice Chair ran several meetings where the issue came up and he responded. That is where the problems came in. The complaint in that matter was filed by a Dewey Beach Town Commissioner, who is no longer Commissioner against a Vice Chair, who is still a Vice Chair and it just turned into a 42 page opinion that when you read it, it makes no sense, but it says if you ever say something bad about a project, before a project is even considered by the Board you're on, that decision says, you can not participate in the project. Some people have called that decision ridiculous. It's in Superior Court right now and I'm waiting to see the opinion on that. I think the Commission far exceeded its authority, but since that is, Bill, as you asked a few minutes ago, the current status of the law, I have to tell you about the David King decision and tell you that is an issue that is coming up and if it does come up and you've had any preliminary discussion, then you may wish to recuse yourself.]

2. A close personal or financial relationship with any party or party representative. [That's pretty straightforward. That is an immediate ground, if, for example, a homeowner's association comes in and asks for approval for a project or something and the member lives in that sub-division, or I hate to use an example like Cannery Village and you live in Cannery Village, I would tell you since you pay into that association, and you have an interest in that, it may be best for you just to recuse yourself from that issue, because you would get a benefit if their clubhouse was approved, or something like that. The financial benefit may be when you sell your property because those developments that have a clubhouse or a pool usually you get more for that house than if you are in a development that does not have that. Ted Kanakos: We had something before the Commission last week, Casa San Francisco. I live on that block and I have feelings one way or the other, but am I not allowed to participate? Would I have to recuse myself on that? Should I? This is a real situation that's right here now. John Brady: I understand what Robin is waiving. What I'm about to say is potential litigation is a topic in your Executive Session tonight. Virginia Weeks: If, for example, somebody has a Conflict of Interest and chooses not to recuse them self and it is a blatant Conflict of Interest, do we just ignore it? John Brady: What happens is this, there

is a third decision of the Public Integrity Commission that came out last fall against the President of the Laurel School Board. The complaint filed against the President of the Laurel School Board is he used his influence to have his daughter hired as the school nurse. The Public Integrity Commission ruled on the complaint without going through and issued an opinion saying that the conduct was bad and they referred it to the Attorney General's office. The person who was complained about never had a hearing, never went through the process, and was never even given notice that they were discussing any of this. They issued an opinion and referred it to the Attorney General's office. An adverse party on a zoning issue, can file an appeal, as they did in *Adele Jones vs. Indian River Board of Education* in 1993. Ms. Jones was a tenured school teacher who was fired by a recommendation of the Hearing Officer and it was affirmed by the School Board. One of the School Board members, who voted to fire her, had a daughter who was failed by Ms. Jones. That person voted to fire Ms. Jones. The Court said that person said that person should not have participated. A second person to participate was a person who had another personal Conflict of Interest with Ms. Jones over some issue. I note that Ms. Jones is now the President of the Indian River School Teachers in the Delaware State Education Association. I say that, because the Appeal sent it back to the School Board. The School Board had two new members by the time it came back and she was voted to be kept. That was one where the person who had a Conflict of Interest and did NOT recuse themselves, caused the issue to be overturned and sent back. The Court will not necessarily order the relief requested which is I want my job back, but they'll send it back to the Board and make sure there's an impartial Board of "disinterested persons". People that don't have a personal interest in order to do that. Unknown Speaker: For example, say there is a piece of commercial property in town that comes in to be developed. And a member of the Board owns one or two of the adjacent/adjoining pieces and chooses not to mention it, although it might be on the site plan, and chooses not to recuse themselves, we as a Board or you as the attorney, we do nothing and we let them continue voting? John Brady: If I'm made aware of it, I always do something, so if I see something or hear of something, I've stopped people from participating. If somebody has an issue it should come to my attention and anything that comes to my attention I keep confidential. I don't say who told me. I just go to that member and say there's a problem here. If you are X involved in this type of thing, you need to recuse yourself and not even be in the room or sit in the back row. Unknown Speaker: One other thing I wanted to ask. I understand if there is a Conflict of Interest, you suggest that the person not only leave the Board, but leave the room. I want to know, considering that he does have an interest and it may well be financial, and he should have the right to protect himself, why that person can not announce that he is recusing and say why and become a member of the audience and put his thoughts forward on why he doesn't like it.

Approval of Minutes

Linda Rogers: Next to minutes, does anyone have any corrections or additions to the minutes of February 19, 2008?

Dean Sherman: Item 2 and 3 seem to be incomplete. I have a draft copy but I don't know if it's final or not. Very last Linda Rogers we have a second motion for the second and it stops here, I think it's a typo. I think the motion we approve the minutes as amended.

Linda Rogers: With the corrections?

Dean Sherman: With the correction!

Linda Rogers: We have a motion to approve the minutes as submitted with the correction. Is there a second?

Louise Frey: Second

Linda Rogers: We have a motion on the second to approve the minutes as submitted with correction. All in favor? (Response) "I". Oppose – (No response)

Michael Filicko: Our agenda today is:

1. To nominate and elect a new Chairperson and Secretary
2. Any additions or corrections to the Agenda
3. Approval of the Agenda
4. Business
5. Executive Session
6. To nominate and elect a new Chairperson and Secretary
7. Discussions pending and/or potential litigation
8. Adjournment