

**Town of Milton  
Planning & Zoning Commission  
The Milton Theater  
May 20, 2008**

**Members Present:**

Ted Kanakos	Al Perkins	Ed Kost
Virginia Weeks	Michael Filicko	Gene Steele
Louise Frey		

**Others Present:**

John Brady	Debbie Pfeil
Bob Kerr	Robin Davis

**Virginia Weeks called the Public Hearing portion of the meeting to order at 7:00 p.m.**

**Preliminary Site Plan Approval – 127 Broad St**

The applicant, Catholic Diocese Foundation, is requesting a preliminary site plan approval to construct an adult care facility at 127 Broad St. The property is zoned TC (Town Center) and is further identified by Sussex County Tax Map and Parcel # 2-35-14.19-87.00.

Virginia Weeks: Is anybody here to speak in favor of this, and, is the applicant here?

Mark Dunkle: I'm an attorney with the law firm of Parkowsky, Gert and Swayze, 116 West Water Street in Dover, King Street in Wilmington, and an office now on Pine Street in Georgetown. I am here on behalf of the Applicant, and with me tonight is Rochelle Vibel. Rochelle is the Executive Director of the Catholic Charities for Delaware. With her are Leah Sullivan, who is associated with the Casa San Francisco; Gary Couples, who you probably already know from ECI Engineering; and, Bill Beiler, who is our architect. Bill is really for the next stage of this process that hopefully we will go on to, which will be the Historic Preservation Commission review, but he is also here for any questions. We are very pleased to have this opportunity to present this site plan application. You probably know that the Casa San Francisco is already in existence and operating on Broad Street and this is really a site plan application to consider constructing a new facility that would be able to still serve the community, but would probably be a more compatible neighbor and be a little better fit with the surroundings. The Applicant is committed to staying here in Milton and staying at the site and think that this would essentially be a nice upgrade. We really appreciate the work that your staff has done and your consultants, the reports both from Cave and from URS have been reviewed, and, for the most part, we agree with all of the comments. There are a couple of clarifications and some questions and Gary Couples, with ECI, the engineer, will address almost all of those shortly. I know lawyers talk too much and nobody wants to listen to them anyway, so what I am going to do is tell you first, very briefly, that Rochelle Vibel will be coming

up to the microphone to talk to you and address the questions that revolve around the operations of the new facility; they are operations related and from what I glean from the consultants report really is that there is a question about the parking; why the parking requirements in the new application are less than the existing parking that's there; and Rochelle and Leah will address that. Other issues related to the proposal that we think help make it an even more compatible fit with the neighbors and I know that they have reached out and contacted and spoken to the neighbors. One of the neighbors, Ms. Betts, is here tonight and I've had a nice chat with her. At this time, I would like to ask the representative of Catholic Charities, Rochelle Vibel, to come up.

Rochelle Vibel: Good evening. My name is Rochelle Vibel and I'm Executive Director of Catholic Charities and I really appreciate the opportunity to speak with you this evening. Catholic Charities is very proud to operate Casa San Francisco along with many other programs that we operate throughout the State of Delaware and the Eastern Shore of Maryland. Casa San Francisco has been serving the needy in our community for over 25 years, from our site at 127 Broad Street. At this point in time, we operate a number of different programs out of 127 Broad Street. Those programs include a shelter, in which we house up to 10 adults for a maximum of 30 days each. The program is run by a licensed social worker, who is a program manager, and Leah Sullivan is our licensed social worker, who works out of that property on a daily basis. We also have staff, on site, which include a case manager, who works with each of the residents to help them transition out of Casa, into the community, to get a job, find affordable housing, and, we also assist them with learning living skills so that they can get their medications, do their laundry, find clothing, transportation, etc. The residents that we house at Casa come to us and go through an intake process, during which we do background checks and ask a number of questions to make sure that these folks are appropriate to be housed within the shelter. The Milton Police work with us on a daily basis to perform that function. Once they are clear, they are able to join us for housing, as long as they agree to comply with our requirements. One of the requirements is that they are in the facility by 9:00 p.m. They are not permitted to come in and out of the facility and we do have a security guard on staff that works throughout the night to make sure that there are no issues. Another program that we operate, out of Casa, is a brown bag food cooperative. We actually distribute food to the needy throughout Sussex County from a number of remote sites. The Casa site is one, but we have several others where folks sign up for the brown bag program based on their need and their income, and they, in fact, pay a stipend, of about \$3.50, for a bag of groceries and the food co-op distributes food twice a month. The other program that we operate out of Casa is called Crisis Alleviation, which means that needy folks are able to call and talk to our counselors and find opportunities to help them with whatever crisis they might be in, at any time. That could be assistance with an electric bill; it could be marriage counseling; it could be a referral for medical care; it could be any number of things. We also operate an emergency food pantry out of Casa. All of these programs have been operating for many years and our intention, when we are able to build the new facility, is to continue the operation of the programs, as they are today. The new facility is intended to be an improvement to the community; it is not an expansion of our program. It will be a continuation of the program that we currently house today. In addition to improving the neighborhood, the new building is hoping to improve the facilities for our residents. We do feel, in fact, very honored to work with

some of these folks and I am very happy to say that we have quite a number of success stories of folks who have graduated from our program and who have become wonderful, contributing members to our community and we would love to continue in a new facility and be able to offer them more comfortable surroundings and that type of thing. We have worked with a number of our neighbors and continue to address any problems that they might have. They are free to call us 24 hours a day. We work very closely with the Milton Police and have very few problems at this point in time. There was some question that Mark asked us to address regarding parking, and, Leah Sullivan, who is our program manager, will be happy to work with all of you or talk with all of you about the parking that we have suggested in our plan.

Leah Sullivan: Good evening. I am Leah Sullivan. I am the program manager for Casa San Francisco, and, I was asked to address issues regarding parking. We currently have 12 parking spaces. The new plan calls for five. I feel like this is doable, because we have eliminated the 2 programs that created a need for parking at Casa, over a longer period of time. One of those was the community hot meal that was served daily. That program was discontinued in July of 2007. 20-40 people came to Casa daily to eat and they rotated through the parking lot as the food was served over the course of an hour to an hour and a half, and that program is no longer there. Recently, due to a staff resignation, we also stopped providing the English as Second Language classes, which brought another 5-10 people, twice a week, to Casa for a 2-3 hour class. There are eight staff members currently at Casa. One of them works in the Georgetown office of Catholic Charities, so she is not physically located at Casa. That is our crisis worker, who runs the Crisis Alleviation Program that Rochelle was speaking about. There are two shelter staff members; one is full-time, one is part-time. Their shifts begin at 4:30 p.m. and they work until 11:00 p.m. The security guards come on at 11:30 p.m. and stay until 7:30 a.m. We hire them through a contract. They are not actually employed by Catholic Charities. That leaves five staff that are there. Of the remaining staff; three are full-time and two are part-time. The full-time staff is there from 8:30 a.m. until 4:30 p.m., Monday through Friday. The two part-time staff, the lady who runs the kitchen, leaves between 12:30 and 1:30 p.m., Monday through Friday; and our secretary is off on Wednesdays, so she is there four days a week.

Mark Dunkle: I will clean up at the end, after Gary, but there's a parking waiver provision in your code that we think we meet because we are in the Town Center District, as mentioned in the reports and is one of the basis for that and also we have taken a measurement and we think we are about 404' from the Municipal Parking Lot, which is pretty darn close to 400', which is an alternate basis for you to grant a parking waiver. Finally, for this facility, there is no specific defined parking allocation. It's up to you and what Leah has explained is that the five parking spaces would be quite sufficient for this operation. I would like to ask Gary Couples to come up and address the specific comments that are in the Cave and the URS reports that there is some clarification and explanation for.

Gary Couples: Good evening. My name is Gary Couples. I'm a registered professional land surveyor and a professional planner; I'm the President of ECI, we are an engineering, land planning and surveying firm, located in Rehoboth Beach, Delaware.

Virginia Weeks: One question, for clarification. For those at the far end who may have

trouble seeing, is that an exact replica of what we have before us that was submitted to us?

Gary Couples: That is an exact replica with some annotations, to show you some distances that we have measured in the field. Normally, they would not be part of a preliminary plan. They are an answer to the questions raised by your consultants in written correspondence. With your indulgence, what we can do this evening is go through the review of your consultants' letter on a line by line basis, if you so desire, or we could just simply go through the issues only where we have some discussion. It would be up to the Board as to what your pleasure is.

Virginia Weeks: Do you have a presentation to make?

Gary Couples: Yes, I do and my presentation is based upon your consultant's review. As you know, we were here two months ago with the concept, and, as a result we have filed a preliminary plan which is what we are going to be discussing this evening. What I simply wanted to do is go through your consultants' review.

Debbie Pfeil: If I may make a recommendation. What they are asking to do is to go through our comments as to the ones that they may have some issues with. The rest of them should be incorporated in the plan. Is that what you are pretty much stating at this time?

Gary Couples: That's correct, Debbie.

Virginia Weeks: This is my first time as Chairman, so we're trying to establish a way to go forward. Is it appropriate at this time to let the gentleman finish his presentation and at that point, if any of the members have questions on what he has said they can ask them then; or, should we wait until the business part of this meeting?

Debbie Pfeil: I think your previous order of business that's been used, is that they do their presentation, the public is for or the public is against and during the business section, we go through the details with the Commission.

Gary Couples: Okay, very good.

Ted Kanakos: Based upon the advice of our counsel, he is indicating that he would much rather go through it right now.

Virginia Weeks: You are free to go through it right now.

Ted Kanakos: I have to recuse myself right now and sit in the audience.

Gary Couples: Thank you. What I am going to reference are two pieces of correspondence: one prepared by URS dated May 12, 2008 and the second a Memorandum to the Planning & Zoning Commission dated May 12, 2008 by Cave Associates, Inc. In our review of the URS correspondence, the issue related to setbacks on the property has come up: the discussion as to what is the front, what is the rear, what is the side yard of the property? We have elected to continue with the address being 127 Broad Street. The front of the building will be Broad Street, for the purposes of our presentation and for the purposes of addressing into the future, where we have no intention of changing the address. Although, it would appear that the front door of the building fronts on Mulberry Street, there is also a side door that fronts on Broad and it doesn't really matter. Your consultant has already addressed that issue, in correspondence to you, so the lot is 127 Broad Street. With regard to parking, now Leah Sullivan has provided you with the basis for how we established the parking. In our previous discussions with the Planning & Zoning Commission, we had 6 parking spaces, and at the request of the Chairman, Ms. Weeks, what we've done is we've taken one of

those spaces, and we've shown it to you, it's ghosted on this plan and converted it into a landscaped area. So that's how we ended up with a reduction from 6 to 5 spaces. It was done in deference to some suggestions made by the Planning & Zoning Commission. With regard to the off street parking waiver, it is true that we are within the Town Center. In addition, we have taken a dimension from the far corner of this property which, if you look at this, it would be the southeastern corner to the nearest corner of your Municipal Parking Lot and found that distance to be +/- 404'. We did not go out and measure that physically. We utilized an aerial photograph and scaled the distance from an aerial map. It's a more or less figure, but it gives you an idea as to how far we are from the Municipal Parking Lot. The other issue brought forth under parking, which is shown denoted as Item C, states that there is no exit or entrance drive connecting a parking area and a street within 30'. We've actually measured those dimensions and if one were to measure from the center line of our proposed drive, it goes through the parking lot to the center line of the intersection of Mulberry and Broad, you'll find that that dimension is 58'. If you look at the dimension from the near curb of the parking lot to the far curb of Mulberry Street, that dimension is 34'. That fits within the 30'. In addition, there's a shaded area here on the plan that we have highlighted that is a part of your plan that shows the existing driveway. So you can see that we're not deviating much from where the driveway that currently services the Broad Street side of the complex, we've moved it perhaps 8'. We've done that to improve the geometry and the flow through the parking area. With regard to Item D, which is off- street loading and unloading, this facility currently does not utilize an off- street loading and unloading facility. They really have no need for it. I think that portion of your ordinance probably addresses more commercial areas, where you may have a loading dock, something of that nature, and require a loading and unloading space. We really don't require that. It's not necessary to go forward with this project. With regard to General Comments: we do anticipate two sign placards that would be at either entrance to the building. Bill Beiler, who is the project architect, will address those signage requirements with you, but we're not anticipating a commercial sign. It would be a sign that would be something compatible with the neighborhood. There is another question about an unidentified shaded area on the plan. That, in discussions with Bill Beiler, is a grate that provides access to underneath the building, to the crawl space. That's what that shaded area is. There are other issues with regard to the typo, where Item E, Note 11, typo is "us" and it is **use**, so we do have a typographic error on the plan. Regarding phasing, we do not really anticipate that there's going to be any phasing with this project, at all. The idea would be to construct this facility. When it is completed, then we will demolish the existing facility and construct a parking lot, so there's no phasing involved with the project. With regard to the Memorandum prepared by Cave Associates, by Bob Kerr, the issue of the exit drive, I believe we have already addressed that in our discussion with regard to the URS review. He did bring out, under Item 7, and he is correct, that during the concept review, elimination of one of the entrances or one-way traffic pattern should be considered. We've brought that up with our client, and our client feels that they need the circulation that the current plan affords and that's pretty much what they need to do. We also looked at a one-way traffic pattern and we thought that might just be confusing. Because, inevitably we would put a one-way sign perhaps at Mulberry Street and show one-way at Broad and inevitably somebody is going to come off Broad and turn into a one-way street or one-way access

lane. It isn't a street; it truly is just a parking lot. As it is set up right now, as the plan is prepared and before you, it is developed along a two-way access. So, we could have access off of Mulberry Street, and access into the facility off of Broad Street. We've talked about the front of the building being 127 Broad Street. With regard to handicap ramps, etc. those issues will be addressed as part of a final plan and they will be affirmatively addressed. Stormwater: we will have to develop a stormwater plan that meets the Sussex County Conservation District requirements for this project. With regard to discharge in Mulberry Street, quite candidly when Mulberry Street was just recently upgraded, we were involved in that project and I believe that there will be a way to accommodate the stormwater flow from this project. Honestly, the anticipated increase is minimal, if any at all. Again, we have not, at this point, done those calculations, but again, looking at lot coverage, we don't feel that there is going to be a significant increase. We don't feel that that will be an issue, at all. It is recognized that we have to get approvals from a whole bunch of agencies to include DelDOT, DNREC, Sussex Conservation District, Tidewater Environmental Services and the Fire Marshall, as well as this body and other bodies within the Town of Milton. At this point, I think I can conclude my presentation, and I would be more than happy to answer any questions that members of the Planning & Zoning Commission may have.

Virginia Weeks: We will discuss this during the business part of the meeting, however, does anybody have a question for this gentleman, that includes other people, neighbors and so on, that are here and should be apprised of before they speak? For example, will there be a smoking area?

Gary Couples: I think that is something that our architect can address for you, but yes, I am sure there will be.

Louise Frey: Is there going to be lighting on the building?

Gary Couples: No. There will be outdoor lighting.

Louise Frey: Outdoor lighting is what I am talking about.

Gary Couples: Yes, there will be outdoor lighting. As a matter of fact, there is lighting shown on the plan.

Louise Frey: Will it be shielded so the neighbors won't be disturbed?

Gary Couples: It's just going to be conventional lighting, like a post light. The same as you would have in any other residential situation.

Mark Dunkle: On behalf of the Applicant, I have a couple of clean-up items on the consultant's reports. There was in Caves' report a request to reduce the fence height at Broad Street. That's certainly a good idea, because it helps with site distance and so, of course, that will be done. I think that might have been in both reports. We'll make that revision. There was a suggestion about whether there should be a fence height reduction or relocation along the boundary that really is the boundary with the Betts' property. And we really would like to keep that fence at its full legal height and its full distance to provide that screening for Ms. Betts' property. The proposal is a vinyl fence, but again we know that this application goes on to historic review and so the materials and this style are certainly going to be subject to that consideration, but for purposes of this plan, we have proposed a vinyl fence of substantial height, steel reinforced. I just wanted to comment that in the Cave report, we agree with all of the General Comments from No. 11 through No. 18, and in the URS report, all of the General Comments that are under Paragraph No. 3. Hopefully, we have tried to zero in on some of the questions to give

you some information on them. There was a question regarding an area outside for smoking, and Bill Beiler, if you could come up to the microphone, and in your package of the site plan, Bill can direct you to that most likely area, and also I might ask Leah to come up just to explain the rules for the residents. You're not going to have couches and furniture out on the front porch and things like that, so I think they can address those issues.

Bill Beiler: Good evening. My name is Bill Beiler; I am a registered architect in the State of Delaware and have a practice in the Dover area. One of the discussions in regard to the smoking area, we had discussed the possibility of having a smoking area here in a grassed area toward the rear of the building, in here for the residents. There may be some other discussion and suggestions yet that might come forth in regard to just specifically where that will be, but right now we are planning for that to be back in this area in here.

Mark Dunkle: I think we have addressed that issue for now and I will not be calling any more witnesses up, unless you have any other questions. We are again asking for a waiver under 7.25 regarding the parking and do believe we meet at least one of the mandatory requirements for that, being in the Town Center, as well as we are quite close to being near the Municipal Parking Lot, if that was even necessary. We don't think that is necessary. We think that the parking that is shown is sufficient. Just as a general matter, we believe that the application does meet all the requirements of the code of the Town of Milton. It would be in compliance and we believe that you can find that the site plan does meet all the legal requirements and will be revised to the extent that those revisions are necessary. We also understand that there is a requirement to move on to the Historic Preservation Commission review for any demolition and there are requirements there that have to be established regarding the existing building. This is the first step related to that. Unless there are any questions, we'll conclude our testimony in favor.

Virginia Weeks: Do any members of the Board have any questions that have not been addressed? Is there anybody else in the audience who wishes to speak in favor of this project? Please come forward and state your name and address.

Susan Fewell: I live at 206 Mulberry Street. I am across from the present Casa parking lot and I've been there for 15 years. I have seen the plans and spoken to Leah, who works at Casa, yesterday. I was a little bit reluctant about the change. I'm always reluctant about change. But, as far as I'm concerned, being across the street from a house, rather than an extensive parking lot, is a much nicer thing. I was concerned about having the house be so much larger, but Leah explained to me, very thoroughly, that the services are not extended, but the services are made more comfortable for the 12 people that they could house. I understood very well that having more bedrooms would allow for women and men both to come in and out of the house as the program was designed for people who are out of housing. It's a very lovely program. I think the house is being constructed to improve the program for people who do not have housing. Considering the economy, and considering how pinched I feel, and I work full-time, my heart goes out to the people who need a very nice space in an emergency situation. I think Casa does a wonderful job and I think the house is being constructed to allow them to do even better. I think along with a few other people, I would be one of the few people impacted by a new and larger structure, for me I welcome looking across the street at a house, rather than at a parking lot. I worry about the people on Broad Street, but I hope that if they have a concern, they will come up and speak. From my angle, across the street from a

house like that, is much nicer than a parking lot and its much nicer to be able to think that Casa will be able to do a better job for people who need temporary housing and especially for people who are handicapped. The present house does not accommodate people, they can't get in the doorway, and, the rooms are not set up right for having homeless people who are also handicapped. That hit a cord with me. I think that's very important. As I understand from what Casa is trying to do, this will allow them to provide better service for the people who need them. I am in favor of it.

Virginia Weeks: Is there anybody else that wants to speak in favor of this project? Is there anybody who wishes to speak in opposition of this project? Please come forward and state your name and address.

Larry Adams: There seems to be a total disregard for the historic district.

Virginia Weeks: May I have your address, please?

Larry Adams: I don't live in Milton. I happen to own the property next door, 125 Broad. 127 Broad is on the list of the National Registry of Historic buildings. And, it is gone, and you are tearing it down.

Virginia Weeks: May I explain something to you? The attorney will correct me if I am wrong. We are only charged with looking at this plan, as presented to us, and seeing if this plan, as presented to us, fulfills the ordinances of the Town of Milton. This Applicant will have to go before the Historic Preservation Commission. Should we approve or disapprove this plan, it will not say that we are in favor of this happening, nor against this happening. It will simply state that this is within the ordinance and within the boundaries of what the ordinance of the Town of Milton allows. They will, on all matters of demolition, change, building design have to go before the Historic Preservation Commission. Whether or not they will be permitted to remove the building that is there, I have no idea. That is not something that is in our purview. Before they can do anything with this plan, they will have to have the permission of the Historic Preservation Commission. Is that correct, Mr. Brady?

John Brady: That is correct.

Virginia Weeks: Does that answer your question?

Larry Adams: Yes, however, I share the longest property line with Casa San Francisco. They stated that they were trying to reach out to the neighborhood and I've never been contacted by anybody from Casa San Francisco. I share a long, better than 200' of property. There's a parking lot there now, a 6' high wood fence and two dumpsters there and at anytime you can come across and look in my yard and there will be broken booze bottles, beer cans, hypodermic needles occasionally, used condoms, generally trash. I don't call that being a good neighbor.

Virginia Weeks: I don't either.

Larry Adams: It's something I don't appreciate and it looks like its going to go on. It's going to be moved from the back of the property to the front of the property. You talk about a security guard, but is it going to be a litter guard? There are plenty of places for the trash to go other than across the fence.

Virginia Weeks: Thank you. We will talk about this during the business portion of this meeting. Is there anybody else that wishes to speak in opposition to this project?

Myron Burton: I live at 124 Broad and I own 128. And I agree with Mr. Adams and the things that have happened on his property, because I have seen it, he is not making it up. I do think my experience of living over there for about 8 years is that Casa has cleaned up

their act a lot. But, down the road it could get uncleaned again and I used to complain about certain things and I was always told there's nothing they can do because they have to listen to what the church has to say. So, on that, I'll leave it for whatever it is they do over there. As far as the parking, I live there, at 124. There are always 2-3 cars that belong to Casa San Francisco on my street, at any given time during the week. It never ends. And, as far as the lady that spoke before, she doesn't want to look at a parking lot, well, I don't want to look at a parking lot either. My house is looking right on to where they would tear down the old house, which would be like a gap in somebody's front tooth for that lovely little historic block that should continue to be renovated and fixed up. It used to be when Casa went in there, Broad Street was one of the worst streets in this town, but it is also one of the earliest streets in this town. And now we have had quite a few people who have spent a great deal of money, doing these homes over very carefully and have made them much, much nicer. I think that the need for Casa is still there, but it is not from the people who live in Milton. Or even close to Milton. Most people here are pretty well fixed and the area has changed and it seems to me that it would be much better if it was moved to an area that was more accessible, not in a nice, quiet little neighborhood that is mainly residential. There is no place for them anymore. They really do not need to be there anymore and it seems they can service their people a lot better than being in a little residential neighborhood.

Virginia Weeks: Thank you very much. Is there anybody else who wishes to speak in opposition of this request? Is there anybody that wishes to speak neither for nor against, but to the request? Having no other speakers, we close the public hearing. Thank you.

**Meeting called to order at 7:50 p.m.**

### **Swearing In of new Commission members**

Virginia Weeks: We have two new Board Members on the Planning & Zoning Commission, and, none of us has ever been sworn in.

John Brady: I will swear in the entire Planning & Zoning Commission. I "state your name" do promise to uphold the ordinances of the Town of Milton as I execute my position as a member of the Planning & Zoning Commission. I further acknowledge the public trust that I have accepted and will seek to work in the public interest without the consideration of any personal gain. Congratulations.

### **Introduction of new Commission members**

Virginia Weeks: I would like to introduce Al Perkins, who lives in Cannery Village and Ed Cost, who also lives in Cannery Village. This gives the distribution of the Planning & Zoning a city-wide representation, which I am glad to see. Mr. Perkins, would you like to introduce yourself to the Board and the public, please?

Al Perkins: Yes, my name is Al Perkins and as previously stated I am a resident of Cannery Village. I have been in the area now about 8 months and I'm looking forward to serving on this committee and making sure that we accomplish all the things that this wonderful town would like to see accomplished by the Planning & Zoning Commission. Glad to serve you citizens.

Virginia Weeks: The gentleman next to me is Ed Kost. Ed, would you care to introduce yourself to the Board and the public?

Ed Kost: I am Ed Koss and I live in Cannery Village, actually right next to Al. I moved here last June and felt that if I could contribute something to the town, I should, and that's why I volunteered to become a member of the Planning & Zoning Commission and be of some help.

Virginia Weeks: Your background has a bit of planning in it.

Ed Cost: Yes, I am a retired landscape architect and planner.

Virginia Weeks: Before we begin, I would like to take a moment to say that everyone on the board, as is everybody in the town, is horrified about the accident that Linda Rogers suffered on Thursday evening. Our hearts and our minds go out to her and I just want to take this time to recognize Linda and her family and the fact that Linda contributed to this board for some 20 years and to say thank you, publicly, to her. Does anybody else have anything that they wish to say? Thank you.

### **Nomination/Election of Secretary:**

Virginia Weeks: The secretary's job, as I understand it on this board, is simply to take some sort of notes and prepare, not minutes, but an action sheet, so to speak, for the Council for their next Town Council meeting, which is always about 10-15 days or so after this meeting. That's the job. Do we have any volunteers? Then we go the hard way.

Louise Frey: I would like to nominate our senior member, Mike Filicko, for Secretary.

Virginia Weeks: Mike Filicko, will you accept that nomination?

Mike Filicko: I'm sorry, but I will not accept that nomination.

Virginia Weeks: Do we have somebody else that would like to step forward and act as Secretary? Then we will have discussion. As I see it, we are a Chairman and six people on this Board. That means at the most, we would have to do 2 reports a year. Is this Board willing to share the responsibility of writing those action sheets?

John Brady: The ordinance specifically says you have to elect a Secretary.

Virginia Weeks: I intend to elect a Secretary.

John Brady: Okay. You can not go any further tonight without electing a Secretary.

Virginia Weeks: Can we discuss the Secretary's responsibilities as we see them since they are not set in paper anywhere?

John Brady: The tradition for Secretary has been they write a written report for submission to the Town Council each month. The audio tape is done by the Project Coordinator and the minutes are transcribed by a town employee or stenographer.

Virginia Weeks: Exactly, so it is my understanding that the Secretary's only job is to write sort of an action report for the Council. Is that correct? Is there anything in the ordinance that says that job can not be shared?

John Brady: What it says, is one member must be selected as Secretary.

Virginia Weeks: So it could be that one member is selected and then resigns in two months.

John Brady: Yes, you can have elections every month, but you're not going any further tonight without a Secretary.

Ed Kost: Mr. Brady, this action report, what is it supposed to look like? Is this an edited form of the transcribed minutes?

John Brady: In the past, it was presented to the Town Council that on 5/20/2008 a meeting was held. Preliminary site plan was considered from the Catholic Diocese and 5 other matters of business were before the Planning & Zoning Commission and you would list the votes for those business items. Business Item a, for example, the vote was 4 to 2, that's how it would be listed. The full details are in the minutes. If the matter is forwarded to the Council, the full minutes are also forwarded to Council.

Ed Kost: If you looked at Item a then, all you would really say was that it was a 4-3 vote, that's all and attach it to the minutes?

John Brady: And the motion if it was granted, or denied, or tabled?

Al Perkins: Basically, you are just updating the agenda.

John Brady: In essence, it has turned into editing the agenda into a two-paragraph report that is filed with the Town Clerk, 7 days before the meeting.

Al Perkins: Would this report have to include things like subject to? This was approved and subject to the following... and list all the subject to?

John Brady: Stipulations...

Virginia Weeks: Wait just a moment. Mr. Davis, please?

Robin Davis: Will everyone please say their names and everybody has to speak to the microphone. We're having a hard time hearing.

John Brady: Stipulations are usually part of the motion. For example, hypothetically speaking, in 8b the request was granted subject that the extended preliminary approval would expire on 5/20/2009. So you would have to list the specification or the condition that was part of it in the motion.

Ed Kost: When you say in the motion, that's the motion by so and so subject to the following?

John Brady: That would be in the official minutes. What the report would say would be as follows: "Planning & Zoning met on 5/20/2008. A public hearing was held; then a new Secretary was elected; new members were welcomed to the board; all members were sworn in; and then the following action was taken. And that would be 8a, b, c, and, d. The chair also spoke about the contributions from Linda Rogers and everyone wished good health to her, as soon as possible." That would be your report.

Ed Kost: Does the Secretary type this himself or herself, whoever does it?

John Brady: Usually it is typed by the Secretary. Mr. Brierly typed it and the Secretary before that typed it and turned it into the Town Clerk 10 days prior to the Town Council meeting, which is the first Monday of each month.

Ed Kost: All right, I'll volunteer to be the Secretary.

Virginia Weeks: Many thanks, Mr. Cost.

John Brady: Now, somebody has to nominate him; somebody has to second it; and then you have to have a vote.

Virginia Weeks: May I have a nomination for Mr. Cost?

Ted Kanakos: I nominate Ed Cost as the Secretary.

Louise Frey: Second.

Virginia Weeks: All in favor.

Roll Call Vote:

Ted Kanakos	Yes
Al Perkins	Yes
Virginia Weeks	Yes
Michael Filicko	Yes
Gene Steele	Yes
Louise Frey	Yes

Motion carried.

**Additions or corrections to agenda**

Virginia Weeks: Are there any additions or corrections to the agenda? None being offered, the Agenda stands. Do we have a motion for the approval of the agenda?

Gene Steele: I make a motion to approve the agenda.

Al Perkins: Second.

Virginia Weeks: As it is a procedural vote, we can all vote in unison. All in favor “Aye”. Opposed? None. Motion carried.

Approval of Agenda. – Unanimous approval of Agenda for May 20, 2008.

**Approval of minutes – March 18, 2008.**

Virginia Weeks: Do we have any changes to the minutes of March 18, 2008? No? There being no changes to the minutes of March 18, 2008, I ask for a motion to approve the minutes, as presented.

Ted Kanakos: I make a motion to approve the minutes from March 18, 2008.

Louise Frey: Second.

Virginia Weeks: Since it is a procedural vote, we may all vote in unison. All those in favor “Aye”. Opposed? None. Motion carried.

**Business**

**Request for Extension of Preliminary Approval -Commercial/Retail Site Plan**

Request from Milton Park Center, LLC for the extension of preliminary site plan approval for a one story 12,457 square foot retail building on 1.32 acres in the Milton Park Center located at the corner of RT #16 & RT #5. The property is zoned C1 (Commercial) and is further identified by Sussex County Tax Map and Parcel # 2-35-14.15-68.00.

Virginia Weeks: Does anybody on the Board have any comments? Is there anybody here representing the Applicant? Has everybody on the Board read the reasons why? Does the Applicant have anything to add to the letter that was sent? Can I have a motion, for or against?

Ted Kanakos: I make a motion to approve a request for the extension of the preliminary approval.

Al Perkins: Second.

Virginia Weeks: Motion made, and seconded. Is there any discussion of the motion?

John Brady: Is one additional year what you are asking for tonight? Is it out of your hands at this point? One year is a good starting point.

Virginia Weeks: We have a request that the person making the motion amend it to make it a one year extension.

Ted Kanakos: I make an amended motion to approve a request for the extension of the preliminary approval for one year.

Al Perkins: Second.

Virginia Weeks: I would like a roll call vote:

Ted Kanakos	Yes
Al Perkins	Yes
Ed Kost	Yes
Virginia Weeks	Yes
Michael Filicko	Yes
Gene Steele	Yes
Louise Frey	Yes

Louise Frey: Ms. Weeks, I have one other question for the Applicant. Were you aware that there are banners on the light stanchions in front of Happy Harry's? Was that approved? The light stanchions, the light poles, was that approved?

Virginia Weeks: Excuse me. This is not on the agenda.

John Brady: It's not on the agenda, but that is a code enforcement item that we can refer to Mr. Dennis to check into tomorrow because if the banners were not approved, they can not be hanging from the light stanchions.

Louise Frey: I have already asked him about it and they are still up.

John Brady: Okay.

Motion carried.

### **Request for Extension of Preliminary Approval -Commercial/Retail Site Plan**

Request from Milton Park Center, LLC for the extension of preliminary site plan approval for a one story 6,429 square foot retail building on 10.15 acres in the Milton Park Center located at the corner of RT #16 & RT #5. The property is zoned C1 (Commercial) and is further identified by Sussex County Tax Map and Parcel # 2-35-14.15-68.01.

Virginia Weeks: Is there any discussion? Can I have a motion, for or against?

Ted Kanakos: I make a motion to approve a request for the extension of the preliminary approval for one year.

Gene Steele: Second.

Virginia Weeks: Motion made, and seconded. Is there any discussion of the motion?

Michael Filicko: Is one year the maximum amount allowed?

Virginia Weeks: Yes. There being no further discussion, I would like a roll call vote:

Ted Kanakos	Yes
Al Perkins	Yes
Ed Kost	Yes
Virginia Weeks	Yes
Michael Filicko	Yes
Gene Steele	Yes
Louise Frey	Yes

Motion carried.

### **Request for Extension of Preliminary Approval – Major Subdivision**

Request from Shipbuilders, LLC for the extension of preliminary approval for a major subdivision of a parcel of land located on Mulberry Street. The property is zoned R1 (Residential) and is further identified by Sussex County Tax Map and Parcel # 2-35-14.00-565.00.

Virginia Weeks: Is there a representative of the Applicant present? Does anybody on the Board have any questions for the Applicant?

Robert Sevensky

: I am a landscape architect with Ramesh Batta Associates in Wilmington.

Virginia Weeks: Does anybody have any questions? Is there still flooding in Shipbuilders?

Robert Sevensky: From what I understand, the situation has not been taken care of at this point. This site in particular, we are designing for stormwater management, but just for these seven lots and from what I understand, the sub-division, I believe, was looking to be approved in order that they can borrow money so they can fix whatever stormwater problem did exist out there.

Virginia Weeks: This links to the stormwater problem, because you say that until this is improved you can not borrow money to fix the problem?

Robert Sevensky: That's what I understand and I don't know if I should be giving that type of testimony or not. I'm basically charged with getting this sub-division approved.

Virginia Weeks: Do you know if a formal letter has been written to the Town Council about this or an agreement or anything?

Robert Sevensky: I am not aware of that.

Virginia Weeks: Can the attorney answer that?

Tim Willard: For those of you that don't know me, I used to represent the Town of Milton and I've hung on to this particular issue, as your attorney. Ultimately there was some litigation involved and that's why I learned of this hearing tonight and the request for the extension. I've spoken to Robin Davis, as well as Bob Kerr. When this sub-division was granted on May 29, 2007, you recommended approval and the Town Council put conditions on it. One of those conditions was that they address the larger stormwater issue that was referenced. As those conditions also said that unless the stormwater issue was addressed, and this is separate from those lots, but in the same sub-division, then Certificates of Occupancy would not be issued and there was a date placed on that. In any event, they would not be issued past January 1, 2008. The Applicant has

moved ahead and is asking for an extension to submit their final site plan. If you all entertain that, I think it is important to put in that approval, that in fact it is not a change of condition, but it is a reminder to the Applicant that the final site plan should include those plans for stormwater improvement. In addition, if they move ahead at their own risk, without completing that, then it's possible that no Certificates of Occupancy would be issued for any of these properties until that stormwater is complete. Just for the record, to the extent that there was a January 1, 2008 deadline in there that referenced Certificates of Occupancy, it was unrealistic and by approving this extension you would, in essence, be recognizing that that date was severable and that those conditions are not waived. To answer your question, it is a condition of the sub-division going forward that the larger stormwater be addressed. I don't know if this engineering firm was involved with that sub-division application, that's why I'm riding this to make sure.

Virginia Weeks: Is there some sort of a written agreement with the Council on this?

Tim Willard: Yes, well there should be conditions. I have copies of them that are actually in the file and attached to the preliminary approval. The applicant should be aware of them.

Virginia Weeks: Is there anything in writing with the Council?

Tim Willard: Yes, absolutely, the approval of the preliminary sub-division included conditions.

Virginia Weeks: I don't remember when this went to Council. Unfortunately, we don't get those notes.

Tim Willard: I think ultimately, it was approved by Council on May 29, 2007.

Virginia Weeks: Has it gone to Council? It's never gone to Council.

Tim Willard: Until it's final.

Virginia Weeks: Doesn't it go after preliminary site plan, before final, on a major sub-division?

Tim Willard: I recall that the conditions of the sub-division did go to Council, but it's a vague recollection.

Virginia Weeks: I don't think so, that's why I am asking.

Tim Willard: I don't have the record on that. We went to a lot of meetings. The Applicant agreed to these conditions ultimately. The point is, the preliminary sub-division was approved with a condition that the stormwater be fixed. So, you can grant the extension if there's just cause to proceed with the sub-division. I just think it's important to note for the record that as part of the approval of the preliminary, that the larger stormwater issue had to be addressed.

Virginia Weeks: I don't believe Council has seen this yet and I want to know when it is going to go to Council.

Tim Willard: Do you mean the request for the extension?

Virginia Weeks: No, the preliminary site plan. Aren't they supposed to review it before we get the final site plan? No? On a major sub-division?

Bob Kerr, Cave Associates, and Town Engineer: The sub-division approval process is submitted and goes to Mayor and Council, who may or may not comment at that time, forward it to Planning & Zoning for preliminary approval. Outside agencies and construction drawings are prepared and approved. It comes back before you for a final approval and your recommendation to forward it to Council and Council at that time gives the final approval. I can not recall the actual date, but I believe Tim did address

this with Council; the conditions as far as stormwater and the corrections of the storm drainage in Shipbuilders Village. But as far as the sub-division portion of it, it may have been discussed as part of the settlement, and it may not have been in an open Council meeting, it may have been in one of the Executive Sessions.

Tim Willard: That's probably how it went down, because there was a litigation pending so this was a way to give the city some teeth and allow the applicant to go forward with the sub-division. The case is open, it has just been idle. The point of my being here tonight, is as you look to address this extension, and there may be in fact just cause, to give them an extension, we worked very hard to make sure that condition was part of it and the Applicant should be on notice that they have to pursue that if their sub-division is going to come to fruition.

Ted Kanakos: What is the actual request? Why is there a request for an extension?

Tim Willard: I don't know the answer to that question.

Ted Kanakos: I read the letter, but it seemed nebulous.

Robert Sevensky: We have completed the plans and we have made our submissions. We just did that as of last week, I believe. So we have not actually received anything back yet to move forward formally to actually submit back to you. The way I understand it is, the way everyone else that would need to comment and has to comment first, before you will get the plans back again.

Ted Kanakos: Have you been with this project since the beginning?

Robert Sevensky: No I have not.

Ted Kanakos: This is why everything is being pushed forward?

Robert Sevensky: I am getting familiar with it the last month, month and a half.

Ted Kanakos: I understand. Thank you.

Virginia Weeks: He was the attorney of record?

Tim Willard: I represent you, the City today.

Ed Kost: I'm new to this particular project. If we would give an extension for existing preliminary approval, that's what is being asked of us, and you are suggesting, or point out, that the preliminary approval that's granted already has conditions. We would simply be extending preliminary approval with those conditions.

Tim Willard: Correct.

Ed Kost: We granted one for a year. We could grant say a month, or any period of time that we so desire, not to exceed a year.

Tim Willard: Your statute says up to a year.

Ed Kost: By granting such an approval, do we undermine anything that the Town has previously done?

Tim Willard: That's a very good question. One reason I wanted to address this issue, personally, is those conditions had one phrase in them that said, in essence, the teeth of this would be that no Certificates of Occupancy would be issued unless the stormwater was completed and approved by the city. I mean in the ground and working, in any event, not later than January 1, 2008. That was a pretty ambitious term and it's my position if you approve this extension and having addressed this on the record, that term would be what we call severable and it wouldn't destroy the other conditions. It would just apply for whenever they go to get their Certificates of Occupancy. I think Mr. Brady agrees with me.

John Brady: What he said was, if you make a recommendation to extend it, it's up for a year. The permit process they go through takes a minimum of at least six months. Sometimes you get permits back in less time. Permits go to DelDOT and they sit there for a while before they come back. They also had to go to other agencies including DNREC, including the soil conservation service for Sussex County and they also had to go to the Town Engineer. You got it also, so that's why we put up to one year for good cause. The second part of that is when you renew it; it should be subject to the conditions previously put on, so that it doesn't slip. All the conditions that were previously imposed, if you should find there is good cause, and with the issues that they brought up, there seems to have established good cause for the extension and you want to make sure that it is subject to the previous conditions.

Ed Kost: If we were to not grant this extension, and the Shipbuilders project collapses and the repairs to the stormwater system don't go forward, they would collapse simultaneously. That would be a reasonable assumption as to what would occur.

John Brady: Possibly. Is there still pending litigation? There could be a result of that litigation that the Town has to take care of it all itself.

Ed Kost: In which case, spanning a reasonable extension subject to conditions is probably the best method to proceed.

John Brady: Correct.

Virginia Weeks: My question is when does this go to the Council, because apparently in the year since they've been here it has not gone to the Council for the Council to formalize anything on the stormwater and for us to be sure that's what they want? Debbie, I'm sorry if I'm giving you a headache. I just want to know, when does it go to the Council? It says here after preliminary approval it goes to the Council, in the sub-division rules.

Tim Willard: My recollection from back last spring is it did and it was thoroughly vetted in Council, but I just don't have the record.

John Brady: It was discussed in Executive Session of Council, that's why Council can't comment on it specifically.

Virginia Weeks: So we have never gotten anything back from Council.

John Brady: No. Because the case is not over yet. We are still riding along at the moment until the case is resolved and the final plans are done, there probably won't be a response back from Council.

Virginia Weeks: Mr. Brady, do you have a copy of the sub-division rule? In the sub-division ordinance, No. 17-31 Major Sub-Division Preliminary Review. g) Once the preliminary site-plan has received approval from Planning & Zoning Commission, the Applicant shall contact or file with all necessary agencies for their review and approval prior to the Applicant coming back before Planning & Zoning Commission and the Town Council for final approval.

John Brady: Correct. That hasn't happened yet.

Virginia Weeks: Okay. So when does the Council get to put it's stipulations on this project?

John Brady: Under 17-32 Final Approval is when the Council gets to do that, that's on the next page.

Virginia Weeks: Okay. So after it receives final approval from us, the Council can still put conditions on this.

John Brady: Correct.

Virginia Weeks: And at this point, we don't know what conditions the Council cares to put on it.

John Brady: I don't recall when they reviewed it, that they sent any comments to you under 17-31c, that was before I got this. That would be back with Mr. McGuillen.

Virginia Weeks: No comments were sent back to the Planning & Zoning Commission Mr. Willard.

Tim Willard: I don't believe so. I believe you all looked at the sub-division. These conditions were worked out over some time. You approved it. These conditions, because of the reasons we already talked about, went before Council and if they come back for final and you all recommend approval final, it goes to Council. Council is going to be tuned in to this stormwater issue. I know that.

Virginia Weeks: There is no written agreement yet with the Council on the stormwater issue.

Tim Willard: There is preliminary approval of the sub-division, with conditions.

Virginia Weeks: But the Council has not voiced in on those conditions, as of yet.

Tim Willard: Yes they have in reference to what we have already talked about, the litigation.

Virginia Weeks: Fine, but we don't have a copy of what those conditions are. That was never given to us.

Tim Willard: I represent to you that they are what you approved. That was what was presented to Council.

Michael Filicko: Is there anyone here who has the notes from our meeting last May, so we're not doing this from memory.

Tim Willard: In the packet I got, your minutes from May 29, 2007 were attached, I think. Yes they were attached. I don't know if they were with your agenda.

Virginia Weeks: We received one page, a copy of your letter or the gentlemen's letter.

Tim Willard: Mr. Kost's analysis of the situation was probably pretty sound. That is, you have a preliminary site plan; they are asking for an extension because of the agency problems; the record should reflect that the stormwater condition travels with this; so the issue, really, before the Commission is, whether or not to approve the extension.

Virginia Weeks: I want to make it perfectly clear. I have no problem with the extension. I just want to make sure that the stormwater issue travels with it and that we have had some sort of feedback from the Council and that the Council knows what is going on.

John Brady: The court case is not resolved. Mr. Willard is in the process of trying to resolve that. He called it idling, that means it is waiting for the court to act on it further. Because of the confidential nature of those court proceedings, some of your questions tonight can not be answered in this open forum. Since you are not directly a party to the litigation, and the Council is, the Council has been given those answers previously by Mr. Willard and by me. The problem is that one of the parties has been dismissed, as we told the Council about six months ago, there are still two parties in the lawsuit; and, the lawsuit preliminary ruling was given to the Council, but the final ruling has not been made. And until that final ruling is made, the parties were encouraged to negotiate and part of the negotiation that happened last year, was that the Applicant came in for a sub-division and agreed, as part of that, to conditions to resolve that and that's where we are

right now. I wish I could tell you more, but I can't. The Court of Chancery would get really mad at me and I like practicing law.

Ted Kanakos: Excuse me. I have a question for Mr. Willard. I recall at the meeting about a year ago, although this is in litigation, I had asked you if Mr. Capano under all circumstances would ultimately be responsible for alleviating the flooding. Now I'm hearing that, because I had asked you this specifically and I remember he jumped up and said, "Yeah, if you just give me the money I'll get the job done." I said, regardless of what happens with the litigation, would he be ultimately responsible? And they said, yes.

Tim Willard: Yes. The owner or successors are responsible for correcting the stormwater as they move forward with the sub-division. That's, the only condition.

Ted Kanakos: But if they are in litigation and prove to not be responsible, and, Mr. Capano said he would still complete it. Would he still have to do that? Would he sue for damages to the other people? In other words, there is only one person that was going to get this job done, is my understanding. And that was Mr. Capano. So regardless of whatever litigation was in process, he would be responsible. You said, "Yes". I have the minutes. Now, I'm hearing that the Town is part of this litigation and we might lose and back and forth. What's the situation?

Tim Willard: That was pending before this. It is still the situation, that the owner of the sub-division is responsible for the stormwater. It is a condition of their sub-division approval. They can't sell houses there or get Certificates of Occupancy unless they do. And that's what I'm telling you. Maybe I'm not doing a very good job of it. If you all want to grant this...

Ted Kanakos: I'm afraid of this being sloughed off down to a new owner, and another owner. It's been six times already.

Tim Willard: Ironically, in your interest, so am I. That's why I'm here tonight to make sure that the engineers are aware of this condition, because they have changed hands or something. It's part of the condition. That's all I'm doing and I think Mr. Koss phrased it right.

Ed Kost: Mr. Willard, if we were to approve the extension, we can approve an extension for up to one year, what would be a reasonable period of time to make this an extension that puts pressure on a developer to move forward, but not give him a whole year. Do we really need to give him a whole year? What would you recommend?

Tim Willard: I'm not sure of the status of their agency approval. As far as these extensions, I'm seeing them in other towns and I'm sure Mr. Brady is also. The County is entertaining changing their "staleness statute", changing theirs to two or three years, because with DelDOT or DNREC it is just really hard sometimes to get permitting. Another year, I don't think this is unreasonable. If you do it for less, there's a chance they could be here in six months or three months, but I don't know the status of their agency approvals.

Virginia Weeks: We have sub-divisions that come through here, major large sub-divisions, LPD's that somehow manage to get their approvals within a year. Would you tell me what's holding you up please?

Robert Sevensky: I just became familiar with this project, personally, within the last month, month and a half. Prior to that I don't know what the direction was from our client, from the Applicant, to the other gentleman that was handling it in our office, what their past history was?

Virginia Weeks: Can you tell me when the applications were submitted to the appropriate agencies?

Robert Sevensky: Within this past week. Mr. Kerr was one of the recipients, middle of last week.

Virginia Weeks: So for the entire year last year, nobody submitted the applications?

Robert Sevensky: The plans were being worked on. We did an entire set of engineering drawings and a record plan and a general development plan and you will all get copies of those.

Virginia Weeks: That's for the seven houses.

Robert Sevensky: For seven, correct. But there still is a stormwater management area; there is still a landscape plan. Seven houses or seven hundred houses, there's still all those requirements that need to be met and still the same number of agency approvals, as well. Fire Marshall; DNREC; soil conservation district; we still have to make the same number of applications.

Ted Kanakos: When I had asked you before what the problem was, you said that you had just become acquainted with this work, but your firm has had this from the beginning.

Robert Sevensky: There was another gentleman in the firm who had direct communication with the Applicant, and I don't know what their past history was.

Ted Kanakos: So basically nothing has happened with your firm up to this point. You waited 53 weeks to submit certain paperwork?

Robert Sevensky: Within the past several weeks, I have become aware of it, but I don't know what the direction was from the Applicant to the other gentleman in our office and he does not work there any more, so I can't really speak on behalf of what direction he received from the Applicant.

Ted Kanakos: If this happens for another year, then it's over. Somebody better get cracking.

Robert Sevensky: The way I understand it, it probably would be over, but again, our plans have been completed and they are submitted. We are just waiting for reviews and approvals so that we can come before you again for a final.

Ted Kanakos: Madam Chairman or Mr. Brady, if this doesn't go forward in a year, the wastewater or stormwater management does not get done, and then nobody is responsible for it again?

John Brady: It's still in litigation. It would still fall in. Mr. Willard has been handling that litigation and I don't want to speak for him, but that was one of the issues in the litigation and one of the issues when it came before the Board a year ago, that one of the conditions for the sub-division approval was the responsibility for that would be with the developer.

Al Perkins: I have a follow up question for the Chair and Mr. Brady. Is there a way for us to approve this extension, with the contingency that this agreement travels with our approval? Is there a way to do that?

John Brady: The extension, if you made a motion tonight, to extend it for one year until May 19, 2009, subject to the previous conditions and subject to the stipulations with the sub-division approval, that would keep in place, and I think Mr. Willard will agree with me, all the conditions that were approved last year on the 30<sup>th</sup> of May.

Virginia Weeks: Mr. Brady, could we once again reiterate that carried with this extension, would be the fact, that the owner has stated that no matter what the outcome, he is responsible for fixing the stormwater problem, as presented by Mr. Willard?

John Brady: I defer back to Mr. Willard on that, he's been the one handling the litigation.

Tim Willard: The condition of moving ahead with the sub-division is that the owner, or their assigns, or anybody that they sell it to, has to fix the overall stormwater and with these preliminary conditions that were approved, there was actually an engineering design or the conditions said that it has to be approved by Mr. Kerr, so the answer to that question is "yes". If, and your question is a good one, they just walk away and say "no" we're not interested, then we are at square one. Then there are some litigation issues that Mr. Brady is correct, I would rather not discuss right now, but this is leverage. As they start to spend more money, this becomes more realistic that they will see this condition through and we're starting to see that now and that's a good thing.

Ted Kanakos: So if the market comes back, the water drains.

Tim Willard: It's all about the market, right?

Virginia Weeks: The simple fact is, Mr. Willard, that I don't have in front of me the list of what the conditions were. That's why I am concerned. I would feel more comfortable either stating that we grant an extension as was advertised and presented by you with the conditions presented by you this evening, in addition to whatever else is there. For some reason, we did not get a copy in our packet.

Tim Willard: I can submit for the record the conditions I have.

Robin Davis: They were submitted with your original package. When you received the original package, they were in there with the preliminary. When they come for preliminary, those conditions and findings are part of your package.

Virginia Weeks: Could you please state the conditions for us? Could you loan me your copy afterwards?

Tim Willard: Thank you, Mr. Brady. It's hard to get to and if you'll hand this out and the only caveat is this was the one that was provided by Robin to me, and, it appears to be the one that was approved. It's a finding of fact, as well as other conditions, but there's just the condition in there involving the stormwater.

Michael Filicko: Mr. Willard, it's my recollection going back several years, that at one point that property, was to house a swimming pool and a clubhouse. Mr. Capano, again, if I recall correctly, came before us and said that he is Shipbuilders and, no disrespect to Mr. Capano, but he did say "if you don't approve this, then I can't fix the stormwater". We granted him approval to the best of my knowledge. It has been a year and the stormwater issue is exactly the way it was one year ago. I don't understand why Mr. Capano has not acted on that, and, frankly why he isn't here before us now.

Virginia Weeks: We've been through that and I frankly think we've gone past it at this point.

Michael Filicko: Correct, but he did say that.

Virginia Weeks: It's a compromise, and you know that the situation in a compromise is you know it's a good compromise when nobody's happy. I just want to read to the Board, if I may, the "Shipbuilders LLC Sub-Division No. XXX Proposed Findings and Conditions: No. 7: The proposed sub-division is subject to the conditions imposed will not adversely affect uses, values of the environment of the areas. In addition, the Developer has agreed, and the Town required in conjunction with the development of

these lots, to complete and correct the stormwater management system that exists within the entire Shipbuilders development, especially on Main Sail Avenue during heavy rains where heavy flooding occurs. The plan shall be in accordance with the recommendations set forth in the Dovefield Associates Report, consisting of discharging the stormwater from Shipbuilders project to a pipe system installed along the adjacent Rubino Lands and to be carried for final discharge into the stormwater basin located on the school property, with the requirement that both Rubino and the school shall have to provide appropriate easements in favor of the Town of Milton, or other plan approved by the Town Engineer and SCD. Consequently, the entire sub-division will benefit from the approval of these lots.” Does that answer the panels’ questions? That being said, does anybody have any other questions for the Applicant? No more questions. I ask for a motion.

Ted Kanakos: I make the motion that we extend the Applicant’s request for preliminary approval until May 19, 2009, but being subject to all previous conditions, including the conditions and proposed findings of fact, as read into the record by Madam Chair preceding the motion.

Ed Kost: Second.

Virginia Weeks: Is there any discussion on the motion?

Ed Kost: Is it my understanding that you are proposing a one year extension?

Ted Kanakos: One year extension. That’s until May 19, 2009.

Ed Kost: Would we want to consider only a six-month extension and make them come back? Put pressure on them to get approvals.

Ted Kanakos: No, I don’t think so. But how does the Board feel? That’s how my motion reads. Does anyone choose to amend it?

Gene Steele: As Mr. Willard stated, with the approvals from the different agencies, six months might not be long enough and you’re just going to start at Point A again. At Mr. Willard’s request, he’s also stated that the one year is adequate and they know at the end of that one year, that’s it, we’re finished with it. I think the one year is adequate.

Virginia Weeks: The only other question that I have about the motion is that no Certificates of Occupancy would be given after January 1, 2008, those are previous conditions. Do you want to change that to 2009, because 2008 has come and gone?

Ted Kanakos: I will rescind my amendment and we will discuss it a little more and get it right.

Michael Filicko: Could someone please explain to me why Mr. Capano has not done anything.

Virginia Weeks: I believe the gentleman explained that they need to get the approvals so they can borrow money on this sub-division in order to fix the stormwater?

Robert Sevensky: I don’t know if that’s the exact reason. I shouldn’t be putting words into anyone’s mouth and I can’t give professional testimony to that affect, but that might be the bottom line. The thing is, this does need to be approved and he’s aware of the problem that exists out there; and, he was here one year ago and he agreed to fix the problem, which is the bottom line. These plans were just completed last week and we’re just merely asking for the extension in order to follow through with the approvals so that whatever he needs to do at this end, he can actually do, to comply with the requirements that the Planning & Zoning Commission set before him a year ago.

Virginia Weeks: I guess the big question is, he’s had a year and nothing’s gotten any better and the Town is still dredging out there. When is he going to move on it?

Robert Sevensky: Ma'am, I don't know the exact time. As soon as the plans are approved, we're taking it as far as we can as engineers, but as far as the rest of it, I can't answer that.

Virginia Weeks: Implementation is what we are looking for.

Robert Sevensky: I can't commit to any type of schedule. I'm here merely asking for the extension of the approval for the one year. Beyond that, we get into legal questions and attorney type questions, which I'm not qualified to answer.

Ted Kanakos: I don't think we can answer that question.

Virginia Weeks: That's it. It's finished.

Ted Kanakos: This is the parameter, this is the economy and he's not going forward because he can't afford to, doesn't want to, it's it.

Virginia Weeks: Ted, your motion. Have you figured out how you would like to make it?

Ted Kanakos: It's basically the same and I make a motion to approve...

John Brady: I have something you may want to consider. When you have a Certificate of Occupancy and you fail to give a Certificate of Occupancy to somebody who has paid for a house, you have it where they have paid; they are denied getting into the house. If the purpose of what you want to do is to get the stormwater fixed, and the second purpose you want to do is to make sure those things are addressed, before any further building commences, then why don't you make it that you modify that condition and Mr. Willard, I hope, is listening to my suggestion here, that before the building permits are issued, that the stormwater situation is rectified.

Virginia Weeks: Thank you. Now we're cooking.

Ted Kanakos: The Certificate of Occupancy is issued to the purchaser of the house. They're not a condition of buying the house? Would a realtor have to say that this does not have a Certificate of Occupancy?

John Brady: For a new structure, the last thing that is gotten before someone can move in is a Certificate of Occupancy, issued by the County, saying it's okay to live there. The sign-off on that is that First State Inspection Agency checks and makes sure the electrical is all right; Tidewater would check to make sure that the sewer is hooked up correctly; the City or the Town of Milton would check to make sure the water is hooked up; and, there would be compliance with the other permits that are in place. That's why I think it would be a stronger condition to have it for the building permits, because then you must have it rectified before any other houses are built. The builder has to supply at settlement a Certificate of Occupancy, or else they can not live in there legally.

Ed Kost: Mr. Brady, I've got a question. I'm not originally from Delaware. Can the Town of Milton require a Performance Bond from a builder?

John Brady: It is not currently listed in the sub-division requirements. As some of the members of the board know, I am also licensed in New Jersey and New Jersey has different laws that handle the building and the Townships there can require a Performance Bond, but Delaware does not have enabling language to require that at this time.

Ed Kost: I'm not sure what you mean by enabling language.

John Brady: The Town does not have language in the ordinance requiring it at this time. Other towns in the state do require it.

Bob Kerr: If I may add something, the Town in a sub-division has a Performance Bond for the installation of the infrastructure: the roads, curb, sidewalk, that type of thing. This sub-division does not have a requirement or a necessity for construction of streets. The streets already exist. They will have to add sidewalks on one side of it, but that's about the only infrastructure other than things specific to each lot.

Ed Kost: Mr. Brady, could we, as part of this motion, request that the Council consider requiring a Performance Bond prior to final approval for the stormwater improvements?

Ted Kanakos: Just a quick question? Do we have the ability to rewrite this entire agreement all over again into an extension?

Virginia Weeks: No, but if we are going to change it from Certificates of Occupancy to Building Permits...

Ted Kanakos: Well, this is pretty long. I think we should find a way of putting it down a little more concisely, rather than just reading it off and making amendments and changes. I couldn't read seven sentences in a row.

Bob Kerr: At this point, I'm just trying to gather information.

Virginia Weeks: We're just trying to figure out how we are going to do it. If you want to make a motion at this point, Ted, to extend it to change it that no building permits will be given until the stormwater is fixed.

Ted Kanakos: I thought that was already an agreement.

Virginia Weeks: The problem was, Mr. Brady, would you correct me please if I'm wrong?

John Brady: There was a representation made by Mr. Capano. It was incorporated in the conditions. There was no requirement that anything had to be executed in writing and that's what I think you were looking for tonight, a written agreement. That has not been done because there was still litigation pending and to the extent that we have not required it, and I'm not familiar with any other, we're not at the final step where the final t's are crossed and the l's are dotted, we're getting closer, but the question for the Commission tonight is actually, the just cause and the motion does not have anything about just cause. In your previous two motions for matters a and b, you found just cause. The motion has to address just cause, and if you reject it that could be an issue down the road, because we have no requirements. All that you have to show is just cause. And then under final under 17-37, we can put additional conditions in, which include stormwater system, which is letter j. So what I think you're trying to get to, can be covered, but not as part of tonight.

Virginia Weeks: I think the problem here is that the Performance Bond needs to expand it. Would that include all of Shipbuilders, or just what they are building now?

John Brady: I'm going to yield to Mr. Kerr, because he knows Shipbuilders a little better.

Ed Kost: Just a second. Mr. Brady, we're at extension to preliminary. Will these plans come back for final approval, and at final approval, and then we could request Performance Bonds? So we get another bite at the apple?

John Brady: Yes.

Virginia Weeks: I would ask the maker of the motion if he was willing to make the motion for the extension of one year; including what I read into the minutes that was previously approved (the proposed findings and conditions); and, that we take Mr. Brady's suggestion and rather than extending the Certificates of Occupancy, change it to

a building permit after January 1, 2009, if these conditions have not been met. Is that what you said?

John Brady: I don't think you need the date anymore. We can delete the January 1<sup>st</sup> date because if they come in with the stormwater plan, and they say here it is and this is going to work, then having an arbitrary date before they can get building permits, doesn't seem to abide by the agreement. I think by taking that date out and just having it that before building permits are issued, the stormwater issue has to be resolved and I think it makes it clear for everybody.

Virginia Weeks: I would also like to ask, Mr. Willard presented us with this and loaned it to us. I would like this to become a copy for the record.

John Brady: Robin, did you hear me say Mr. Willard can have a copy back because it looks like it is fading.

Virginia Weeks: Okay. Is there any more discussion on the motion?

Louise Frey: Madam Chair, what motion is this? The first motion has not been rescinded.

Virginia Weeks: Does the maker of the motion wish to modify his motion?

Ted Kanakos: Yes. I propose a motion to approve the requested extension of the preliminary approval for one year, subject to all the previous conditions, as well as those conditions presented by Mr. Willard this evening, as well as the leadings of the proposed findings and conditions by Madam Chairwoman and there will be no approval of building permits until the stormwater problem has been corrected.

Virginia Weeks: Does the second of the motion agree?

Ed Kost: Yes, I agree. Second.

Virginia Weeks: That being said, I would like a roll call vote:

Ted Kanakos	Yes
Al Perkins	Yes
Ed Kost	Yes
Virginia Weeks	Yes
Michael Filicko	Yes
Gene Steele	Yes
Louise Frey	Yes

The request is passed.

### **Final Site Plan Approval – Milton Theater Parking Lot**

The applicant, Milton Development Corporation, is requesting final site plan approval for a parking lot to be located off Front Street behind the Milton Theater. The property is zoned TC (Town Center) and is further identified by Sussex County Tax Map and Parcel # 2-35-14.19-112.00.

Virginia Weeks: Is there anyone here to speak for the Applicant?

John Critea: Yes, my name is John Critea and I reside in Prime Hook Beach, or what was left of Prime Hook Beach after the storm last week. I am a volunteer here at the museum and I've been working on this parking lot for a little while. We were here before you at

your March meeting and at that meeting we presented our final site plan and after some discussion, you had given a list of six items that you asked us to address on the site plan, revisions and/or additions to that site plan. We have made those corrections and additions and I would like to go through those quickly with you right now. Just as a matter of orientation, this is Union Street; this is Front Street; this is where you are sitting right now in the theater; this is the theater as it sits right here; and, this is where the parking lot would be, behind the theater, right out those two doors right there. The six items were:

1. The surface of the parking lot – What would it be? It will be a type C hot mix. You asked that it be shown on the site plan and that a cut of that be made, and we have put that here, which is 2-1/2” of paving over 4” of stone, over the existing base in the ground under it.
2. Landscaping – A clarification on that. We have two landscape areas: one in the area down here which is beyond the Navy Wall and, in that area, we are recommending five sweet magnolia trees. Someone had raised the issue of whether or not that was an appropriate type of landscaping for that area? Well, a sweet magnolia is also called a swamp magnolia and if you’re familiar with that area, it’s very swampy down there and I have a letter in the file for you from Libby Zando at Zando Design, indicating that the sweet magnolia is the perfect tree to put in that particular area. The second landscape area is a small area right here off the roadway, and in there we are recommending seasonal and annual flowers. A little bed will be created.
3. A question was raised about the lighting on the parking lot – There are two existing lights right here on the corner of the building, lighting the steps and the parking lot and a second one that is a 300 Watt flood. These are two 150 Watt floods here and it gives ample lighting in the entire parking lot. Those are on from dusk to dawn and they operate all night long.
4. The curb – we had originally 29’ shown in the plan. You asked that that be extended and we did extend it to here; and, then the issue was raised about what about the rest of it up to the existing curb on Front Street, and we did add that additional 86’, so we now have a total of 136’ of curbing that will be added all along Front Street, with an opening where you go into the parking lot itself.
5. Elevations – whether the elevations can assure proper drainage on the whole site. We have shown those on the site plan, with both proposed and existing drainage, so that we are assured that we have adequate drainage on the whole site.
6. Someone had asked how does the water get through the wall? – Two ways: in some areas it flows over the wall and then it also (according to the picture in the file) shows where an existing pipe sits with a catch basin in the parking lot, two catch basins actually. One is up by the gas tanks and one in the middle of the lot and that

drains right out through the wall and into the swampy area, into the flood plain area.

Those were the six items that you had asked for and we made those changes on the site plan and I'll be glad to answer any questions that you might have on the final proposed plan.

Virginia Weeks: I have a question. Bob (Kerr), since there are going to be two catch basins and those are going to empty into a wetlands, does he need approval for that?

Bob Kerr: It's my understanding that he already has that approval.

John Critea: From Sussex Conservation District.

Bob Kerr: Yes, they issued a letter of no objection.

Al Perkins: I just want to clarify that the changes you made to landscaping, was there any changes made to the number of parking spaces?

John Critea: No. We actually didn't change the landscaping; we just clarified what went in there and answered the question about the swamp magnolia or sweet magnolia.

Virginia Weeks: I have a question about the landscaping. On the small piece next to the entry way into the parking lot, what's there to protect annuals and perennials? Shouldn't there be some bushes and something more substantial to keep cars from running over it?

John Critea: Well, the curb will keep the cars from running over it here and it will just end along the edge and it will be a typical raw edge on the other side and I don't think we have to worry about cars running into it. Annuals will be annuals and we'll change them periodically and perennials will grow as perennials do.

Virginia Weeks: Couldn't you consider putting a bollard up to keep cars from backing on to it.

John Critea: I don't think we would want to put a bollard. A bollard is not going to look good there in the landscape area. We might consider some landscaping ties along the edge of it to keep people from backing into it. I don't think you would want bollards there.

Virginia Weeks: Just something to protect it.

John Critea: Yes, we'll make sure we protect it.

Virginia Weeks: How will you do that? Will you put landscaping ties?

John Critea: We'll put landscaping ties there.

Michael Filicko: Item No. 1, this is an impervious surface, correct?

John Critea: This will be an impervious surface. Water will not soak through this, but it will go to the drain on the site and drain out through the Navy Wall into the flood plain area.

Ted Kanakos: One question. You said there was 2-1/2" of blacktop over 4" of stone, over the existing stone as well?

John Critea: What we'll do is grade that existing stone. There is anywhere from 4 to 8" of stone there right now and we'll regrade the entire lot to meet the drainage that we need to have in the overall parking lot, and, then we'll be assured that there will be at least 4" of stone under the paving area. If we

don't, we're going to have a problem with it. That's a typical section for this type of paving.

Virginia Weeks: I have a question for the City Engineer. Mr. Kerr, are you satisfied with the lighting? Do you feel that it is adequate? Will it reach the far ends of the parking lot along Front Street?

Bob Kerr: Based on observations standing at the back door, I think I can say yes, but as far as what's shown on the drawing, there's nothing that details the lighting levels that are provided. There's not a foot candles or type of fixture given, but having stood at the back door, at the last Council Meeting, I believe it was sufficient.

Virginia Weeks: I just want to make sure that somehow or other when the motion is made that that is included, that the lighting is to take care of the whole parking lot and be sufficient.

Michael Filicko: Question for the Engineer. Is there any environmental hazard from the drainage from the cars, meaning oil, antifreeze running directly into the Broadkill River?

John Critea: I think the answer to that is that there is always that danger, on any parking lot, wherever you have cars with the drainage going off into any other surrounding area, which usually goes into the storm sewer system, which ends up in the lowest point, which is usually where the water is.

Virginia Weeks: It is my understanding that the Sussex Conservation District okayed this plan.

John Critea: Yes, they have and there is a letter in your file to that effect.

Virginia Weeks: Any other questions for the Applicant?

Debbie Pfeil: I had one comment that I did not hear if it was addressed. It's on page 3 of my letter. I have no objections to this application, with the exception that the plan references a deed access easement with the neighboring property. Has this been completed, and as it's not included with this submittal, is the neighboring property even on board with the proposal? We don't know and we're technically landlocking their back part.

John Critea: Thank you for reminding me about that, Debbie. There is an easement into the property here, which is for the benefit of the Post House, which sits right here. The Post House is owned by the Milton Development Corporation. The only reason why we haven't drafted that formal easement is, I don't like to give lawyers anymore money and time than I have to in preparing easements, such as this. We wanted to make sure we had an approved final plan before we prepared that easement. That will be submitted as soon as we need to put it together and we get the approval here.

Debbie Pfeil: A recommendation to the Planning & Zoning Commission, contingent upon the deed being prepared. Thank you.

John Critea: That's certainly acceptable.

Virginia Weeks: The other thing is, do we need to address the loading berths, since this is a business that is not expanding and has been here always and never had a loading berth, do we need to give them a waiver now that they're doing a parking lot?

Debbie Pfeil: All of those comments were addressed at preliminary. Usually new items are not brought up at final. They are addressing the concerns from the conceptual and preliminary, and the engineer and planners comments.

Virginia Weeks: I just saw in your May 12<sup>th</sup> memo, this is the lead to be discussed with the Applicant regarding the anticipated amount and type of delivery.

Debbie Pfeil: The reason I put that in, is because we don't get a copy of the minutes, to be able to ensure that that was in there, so we always cover our company on your preliminary comments.

Virginia Weeks: I presume that if I remember correctly, that he did not require it and we gave him a waiver. I just want to make sure it's done formally. Okay. Are there any other questions for the Applicant? There being none, thank you very much. May I have a motion please?

Ed Kost: I make a motion that the final site plan approval for the Milton Theater parking lot be approved, subject to the addition of landscaping ties in the area near the entrance and that final approval plan will be subject to approval and recording of an easement between the Milton Development Corporation and the Post House property and that lighting be reviewed by the Town Engineer to see that it is sufficient for the entire parking lot.

Ted Kanakos: Second.

Virginia Weeks: Any discussion of the motion? Roll call vote, please:

Ted Kanakos	Yes
Al Perkins	Yes
Ed Kost	Yes
Virginia Weeks	Yes
Michael Filicko	No, due to the negative impact on the environment that this parking lot will have.
Gene Steele	Yes
Louise Frey	Yes

The motion carries.

Someone has asked for a five minute break, any objections?

Ted Kanakos: I ask to recues myself from the next issue.

Virginia Weeks: Absolutely.

### **Preliminary Site Plan Approval – 127 Broad St**

The applicant, Catholic Diocese Foundation, is requesting a preliminary site plan approval to construct an adult care facility at 127 Broad St. The property is zoned TC (Town Center) and is further identified by Sussex County Tax Map and Parcel # 2-35-14.19-87.00.

Virginia Weeks: We're calling this meeting back to order. It is 9:20 p.m. Any comments from the Board? Any questions?

Ed Kost: The site in question is in the Town Center zoning district. The site in question was developed prior to the Zoning Board. Is the site in question, as it currently exists, a conforming use?

John Brady: Yes. When they adopted the zoning ordinance, for Town Center, in looking through the descriptions, they had to accommodate all the current uses and the initial thing that was asked of me, several months ago when they came in, was what was the classification and I ruled at that point, under Section 2.1 of Article 4.4.2c, it was an adult care facility primarily. That was approved and that's what the Certificate of Occupancy is from the Town for that use.

Ed Kost: As an approved use, I'm speaking specifically now to say, parking. There were 9 parking spaces on site and that is approved. We are now being asked to approve the demolition and creation.

Virginia Weeks: No, not the demolition.

John Brady: Right. Section 7.2.5 covers off-street parking in the waivers. At the time it was placed into it, it already existed. Current, now, would require thirteen spots and in looking at it, and what was the original discussion since they are in the Town Center District, which is sub-part 3, they qualify to use part of the parking lot, which was built as a municipal lot, in those parking spaces. The issue that came up from the gentleman who is still here, was the number of cars they park on Broad Street.

Ed Kost: That's not my question, that's not what I'm addressing. What I am looking at is this building that's going to be built, will be here for many, many years into the future. The Catholic Charities may not use it and at some point may move on and sell it to someone else, and will the parking that is on-site now, say it got converted into rental property, they rent out apartments. Would we be approving something and setting some sort of precedent that if the use would change...

John Brady: It would go under our Change of Use Provisions to see if it was a permitted use. For example, we don't have hotels in the Town Center District. Any change of use would go through that review.

Ed Kost: So if there was a change of use, and theoretically, if this were sold in 10 years and they wanted to put rental apartments in here, the number of parking spaces would govern the number of people who could occupy the building.

Debbie Pfeil: If it changes to any other use than what it is, it would be subject to regulations, for example: 3 or more apartments, it would go to the Fire Marshall; you will have a request to go to DelDOT for the change of use for the entrance; The Town has a current process for site plan change to go through a process for any type of change in use, whether it be a retail store, doctor's office, apartment, it would have to go through the change of use process and meet those code requirements through the site plan process or if there is a mechanism for a waiver, in place. Those can be granted. This is specifically parking for this specific use. Hope that clarifies it a little bit.

Virginia Weeks: Are there any other questions? I have one regarding landscaping. I believe the Town Code requires that shrubs and bushes that go in have to be 2' tall and the juniper that you are proposing doesn't satisfy that requirement.

Mark Dunkle: I would like to address that. We are going to meet all the Town requirements for landscaping, as part of your approval, and noting that change, we will meet all requirements for landscaping. This diagram is shown, but we would have to comply with your conditions.

Virginia Weeks: The trees need to be at least 7', according to the ordinance.

Mark Dunkle: Again, we will comply with whatever the specifications of the ordinance is. Absolutely.

Virginia Weeks: As we go through this, the parking spaces, does anyone have any comments on the parking spaces? Are you all satisfied with five parking spaces?

Gene Steele: I have a question on the parking. The Applicant stated that they did not need the extra parking spaces because of the resignation of a staff member. What happens if you get a new staff member? Would these English classes continue?

Mark Dunkle: I will ask Leah Sullivan to address this issue. I think the testimony was basically, they eliminated the ESL program.

Gene Steele: They eliminated that program, based on the resignation of a staff member. If you have another person come in to apply for that position, would you start the classes again?

Mark Dunkle: I will let her answer that directly.

Leah Sullivan: No, we do not have plans to fill that position, or start those classes again.

Al Perkins: It wasn't clear to me, how many of the parking spaces are you going to anticipate will be used, on any given day? I understand the number of staff members, but it wasn't clear on the uses of the parking spaces, whether they will be fully utilized or not.

Leah Sullivan: On any given day, I anticipate 4-5 spaces will be used.

Virginia Weeks: Did I misunderstand you that you have 3 full time employees from 8:30 to 4:30?

Leah Sullivan: No, you did not misunderstand.

Virginia Weeks: And 2 part-time employees.

Leah Sullivan: That's correct.

Virginia Weeks: The same hours?

Leah Sullivan: No, those are different hours.

Virginia Weeks: What hours?

Leah Sullivan: One part-time is only a half day, she is there until 12 to 1:30, that's the kitchen lady. The other staff is there 4 days a week.

Virginia Weeks: Basically, at most times there would only be one extra parking spot available?

Leah Sullivan: Correct.

Ed Kost: I have a question on the 5 offices and 5 bedrooms. It says sleeping for 12, how is this sub-divided. How is it broken down?

Leah Sullivan: We are anticipating 2-3 beds per room. One of the rooms will be fully handicap accessible. There will be fewer beds in that room. Currently, because of how our bedrooms are set up, we only have one room each for men and women. We are expecting that we could be more flexible with how our beds are divvied out, depending on the demand that we have for shelter.

Ed Kost: At any given time, the maximum would be 12?

Leah Sullivan: That's correct.

Virginia Weeks: Any more comments on the parking? How about loading docks? A waiver for the loading docks? Where will you all be parking, during construction? And, how long do you expect construction to last?

Rochelle Vibel: The staff members will park in that the municipal parking lot, which is within 404'. The construction period, according to Gary, would be six months, approximately.

Virginia Weeks: Signage, I believe would be addressed by the Historic Preservation Committee, not by us. The other thing that was suggested that we need to discuss here, should the fence between this and its neighboring property be lowered to 3-1/2'? The Board needs to address that. Any thoughts, or leave it at 8'?

Debbie Pfeil: That was a recommendation from me. That's an option for the Applicant. They can do it in the code 6' tall to the property line. Not on Broad Street, on Mulberry Street. So it was a recommendation to the developer if they were willing to do that, it is not a requirement in the code.

Virginia Weeks: Am I correct that the exit and entrance on Broad Street meets the 30', Bob?

Bob Kerr: As I believe Mr. Couples stated, there is not a definitive definition of how the measurement is done. Typically, we have gone from right along the right-of-way line and it is closer than 30' to the intersection of the right-of-ways, and I believe the word right-of-way is used in the definition. It does not meet under that condition.

Virginia Weeks: That's the condition we have historically used, I guess that's the one we'll continue using. Mr. Brady, how would that be handled? Would that need to go to the Board of Adjustment for a variance.

Bob Kerr: Debbie and I are verifying the wording of the ordinance, if you'll give us just a moment.

Virginia Weeks: The other thing is, in Item No. 10 from Mr. Kerr, it says that the Commission should determine which street is in front of the property. The problem with this, as I see it, feel free to correct me, is that if we make it on Broad Street, then it meets the dimensional requirements. If it's on Mulberry Street, if we make it a Mulberry Street property, it will have to probably go to the Board of Adjustment because then the lot will not be 150'. Is that correct? Any thoughts on that?

Gene Steele: What is the current mailing address for the building that stands now?

Virginia Weeks: Broad Street, but it fronts right on Broad Street.

Bob Kerr: If I may, the mailing address really has nothing to do with what is considered the front of the property.

Virginia Weeks: Who decides what is the front of the property?

Bob Kerr: In order to be a conforming lot, it must be 100' deep. The only way this lot can be conforming in that regard, is if Broad Street is considered the front. If Mulberry Street is considered the front, then the lot is not deep enough. It's approximately 60' deep.

Virginia Weeks: Should this board decide that Mulberry would be the address, then it would have to go to the Board of Adjustment for a variance.

Bob Kerr: It has nothing to do with address.

Virginia Weeks: If it's a Mulberry Street lot...

Bob Kerr: If it fronts on Mulberry Street you are creating a non-conforming lot, which I don't believe you can do, but I would let Mr. Brady answer that. The Applicant has stated during the public testimony that they are using Broad Street as the front. That keeps it a conforming lot. The only difficulty that this presents is that the bathroom shown on the southern section of the building extends closer than 10' to the property line, because then there becomes a 10' setback off of that property line, as a requirement.

John Brady: When I was asked about the use, and I told you the use was adult care, it is the intent of zoning codes when they are applied not to create additional non-conforming uses. In understanding that, that would have looked at that lot, that's why the lot would be a conforming use and a conforming lot under our code fronting on Broad Street and that's why I think it has to be looked at as fronting on Broad Street. When it was put into the Town Center, you would not want to create, by virtue of a new zoning district, a new zoning classification, a non-conforming lot, without some mention of it. I could not find anything in the minutes that created it as a non-conforming lot. I would tend to agree with the Applicant, that the lot has to front on Broad Street.

Virginia Weeks: I agree, however, I think it's a decision that lies with the Town, rather than the Applicant. I would rather see it that way.

John Brady: Right. I think as part of your motion you can say it is a conforming lot with the front being on Broad Street.

Virginia Weeks: Exactly. My point was I did not want it to front on Broad Street because the Applicant said so, but that the Town said so.

Ed Kost: If the lot fronts on Broad Street, according to the Town Engineer, that means the entrance on Broad Street would have to be non-conforming because it is too close to the right-of-way. We would have to give the variance to the rear yard because it is less than 10'. No matter what we do, we're going to have some problem here.

Bob Kerr: In order to meet the setback, the building has to be moved approximately 4' to the north.

Ed Kost: Or you get a variance.

Bob Kerr: You can't get a variance. They would have to go to a different board.

Ed Kost: How about the entrance distance?

Bob Kerr: The entrance distance is a separate issue. It would my interpretation it's closer than 30' to the intersection of the right-of-way lines.

Virginia Weeks: Is that an important adjustment?

Bob Kerr: I don't know that there is an adjustment for that. The Board of Adjustment deals with things such as a setback or an area, but I'll pass it down and get you a legal opinion.

John Brady: The only setback we have in the Town Center District is a rear yard. That's 10', so I think that's the only one you have to consider.

Gary Couples: Madam Chairman, Gary Couples with ECI. If that's going to be an issue, because I think that your Counsel is correct that it's 10', we can move the building at will. If we have to meet a zoning requirement, we are more than happy to do that. On another issue, I think I would like to respectfully disagree with Mr. Kerr, with regard to the 30' that we're talking as far as the separation. Within the ordinance there is no definition as to where that 30' is measured from. We've provided you with two measurements: one the center line of the driveway to the center line intersection of Mulberry and Broad; and, from a dimension of outside a curb to outside a curb, in the dissertation prepared by URS, there is discussion about the method of showing that measurement. We feel that the 34' curb to curb, or the 58' center line to center line, adequately addresses that issue.

Debbie Pfeil: If I may, for the record. That's not a scapegoat for the developer, or for the City. I put that in there because I have never aroused this situation as your City Planner in Milton, nor have I had this experience before, so I defer to the Planning & Zoning Commission and the Engineer for the precedent that has been set.

Virginia Weeks: Mr. Kerr, what is the precedent?

Bob Kerr: There is a typo in mine, and it doesn't refer to the right section, so I'm trying to find it right now so I can read it to you.

Ed Kost: Mr. Brady, if you look at the site plan, it currently has two entrances. Can we say to the developer, theoretically, you have to eliminate the Broad Street entrance; you can only use the Mulberry Street entrance? You have the lot front on Broad Street. Or, conversely, can we simply say because for some reason they have to have, for instance, they have to have the Broad Street entrance, that we don't have the right to deny them the use of that entrance? Is there an existing entrance there?

Gary Couples: Yes, there is. As a matter of fact...

Ed Kost: If there is an existing there, this may be a moot discussion. We're talking about using an existing entrance.

John Brady: As I recall, there is an entrance on Broad Street and an entrance on Mulberry Street.

Gary Couples: There is an entrance on Broad Street and two entrances on Mulberry Street.

Bob Kerr: And many more parking spaces.

Virginia Weeks: There is a driveway on Broad Street actually, and two entrances into the parking lot on Mulberry Street. Mr. Kerr, I have a question for you. The parking lot entrance on Mulberry Street is fairly close to the

house. The house is fairly close to the street. Is that so close to the house that it is going to affect being able to look to the left to see oncoming traffic?

Bob Kerr: Probably not, because the house sits behind the sidewalk and when you put your bumper up, even with the curb, you will be able to see down the street.

Virginia Weeks: Because the sidewalk there is not very wide.

Bob Kerr: It's not very wide, no. It will be tight; it's one of the reasons why I think a one-way pattern is better. There's as much paving on this site as the existing site. The existing site has more than twelve parking spaces, and you're only getting five on this one. There will be five people using those spaces, so essentially one person would have to use the handicapped space. As far as the 30' distance, it's my opinion that according to Section 7.2.1.5 – No exit or entrance drive connecting a parking area and the street, shall be permitted within 30' of the intersection of the two public rights-of-way. It doesn't have anything to do with center lines; it doesn't have anything to do with curb lines. It is right-of-way. The right-of-way from the intersection of the right-of-way to the edge of the curb that they show is 25'. You can say that it's to the center line of the drive; there is nothing to say that it is or it isn't. If you had a 40' wide driveway that would start to change where the edge would be.

Virginia Weeks: Would you explain how we arrived at the 24' cross? Would you show us on this please?

Bob Kerr: The right-of-way line is also the property line and from this point, this corner of the property, to this point scales approximately 24-25'.

Virginia Weeks: How much is on the other side?

Bob Kerr: 5-6'. If you have a one-way traffic pattern, the entrance does not need to be 24' wide.

Virginia Weeks: The other concern is that having that two-way, I would not be so happy with that two-way coming out onto Broad Street, because very often there are so many cars parked there by clients, or other users of Casa San Francisco, that it really creates, especially with the 6' high white vinyl fence, a blind as to what is coming down Broad Street.

Bob Kerr: Broad Street by the requirement of the Zoning Code, the first 8', can not be higher than 3-1/2', and it is for that specific reason so that you can see over the fence. The first 8' back must be 3-1/2'.

Virginia Weeks: Between these two houses; between this property and the neighbor's property?

Bob Kerr: Yes. Perpendicular to Broad Street, the first 8' must be no higher than 3-1/2'.

Virginia Weeks: So that has to come down to 3-1/2' according to the ordinance. Thank you. Now gentlemen, what do you want to do about the parking entrance? Historically, the way we do it in Milton, it appears to be scaled to 24'.

Gary Couples: One solution is that we can request a waiver of the 30' to the 25' that Bob scaled. Or in the alternative, bear in mind, however, that this is already an existing entrance. It exists right now.

Virginia Weeks and Bob Kerr: At what width?

Debbie Pfeil and Bob Kerr: It's not shown on the plan we received.

Gary Couples: We had the [unintelligible].

Virginia Weeks: I presume that the house is wider than 24'.

Debbie Pfeil: It's not in the legend.

Bob Kerr: I see a setback line, but there is no gravel line.

Gary Couples: Right along here you can just see the gravel, right here and right over here.

Debbie Pfeil: I would just like to make a comment about the plan, the board and this is just as your Town Planner, I have not had a chance to look at the board that is the board that has been revised with our comments. So, our comments particularly are in response to the Plan that was submitted previously, with the package.

Virginia Weeks: Then, perhaps, the best thing to do is to table this until you have a chance to do that?

Mark Dunkle: You asked us a question about what alternatives there are, and I've spoken with the Applicant, and we're agreeable to have a one-way entrance and exit, one way out of Broad Street and that would then expand the distance from the intersection since it is a one lane, to over 30'. Then we would be in compliance. We really want to serve the community and try to get through the approval process and we'll make that concession.

Virginia Weeks: Will that driveway be wide enough to meet code at that point?

Bob Kerr: Yes, it would be wide enough to meet code. There may have to be some minor revision in order to be able to pull into a parking place, but I think it can be accomplished. The other thing that I would like to add is, remember that after you give or if you choose to give preliminary approval, one of the requirements is that they will have to meet, is to go before DelDOT and obtain an entrance permit. DelDOT may place all kinds of restraints on the entrance also on Mulberry Street. They will not say anything about Broad Street, although they will look at it as part of their application; the number of entrances and their relationship.

Virginia Weeks: At that point, they would tell them that it would be approved for only an exit.

Bob Kerr: They would tell them what DelDOT chooses to tell them.

Ed Kost: When you are talking about one way, are you talking about a narrower driveway.

Bob Kerr: The driveway entrances can be narrower, because you don't need to get traffic passing.

Ed Kost: To meet the requirement, though, the entrance on Broad Street definitely has to be narrower, because that drawing will have to be modified.

Bob Kerr: Yes.

Ed Kost: In which case, we should table this until revised drawings can be resubmitted.

Bob Kerr: You may choose to table it or you may choose to put conditions in your motion, to approve that the driveway is to be modified so that it meets

the town ordinances, and, subject to review, and, then you look at it, and, its final.

Virginia Weeks: One of the problems we have here, is that often we are told after we do things, that we shouldn't be changing things at the final. If this comes back to us, and, it is not working and then we have to change it, then we're told that we really should not be making changes at that time.

Mark Dunkle: Madam Chairman, what we are responding to is your parking lot approval that you just had and the gentleman brought it back and it covered the six issues. That's the situation we would like to be in, comparably. You saw their preliminary plan and there were six issues; he came back tonight and addressed those six issues. That is exactly what we would like to do in this plan. That's the normal process in a preliminary plan; you can point out and the staff points out the things that we need to change and then we make those changes and come back. If we didn't make the changes and follow your list, then you would turn us down. This is why we are here, for preliminary. We would much rather, again, because we have to go on to Historic Preservation, we have another review process, to address these couple of concerns which don't seem to be major and they are part of the recommendation. The one-way street was a part of your consultants' recommendation, so it's not new. We would like to address those concerns so we can move on.

Debbie Pfeil: If I may address the Applicants' comment. That was actually the third time that the parking lot has come for the Milton Theater. They tabled it in preliminary, just to give you some history. I do want to say that as far as this application with the parking lot, and, the comment made by the Chairperson, the reason this is being brought up now, at preliminary, is according to the City Engineer it does not meet your code requirement. That's the reason it was brought up; based on our comments that are received at preliminary. I think one of the recommendations you may want to go through is what other items do you have to address on the Applicant and determine if it is enough to table or enough to move forward with stipulations. Parking is probably one of them.

Ed Kost: What we're also talking about here, is because the property now fronts on Broad Street, the building has to be moved to meet the 10' rear yard requirement. Now, we're also saying that we are going to require one-way entrance off of Mulberry, exiting on to Broad Street, which is going to change the entrances by moving the building. It may change the entrance location. I don't think these are minor alterations.

Debbie Pfeil: I'm not arguing that fact. I'm letting you know there are two items to be discussed. I would recommend that you get through the rest of the review and see how many you have.

Ed Kost: I was speaking to the attorney for the Applicant. I don't consider these minor changes.

Virginia Weeks: If they move the house, the entryway has to be moved. If the entryway is moved down, it may affect the number of parking spaces.

Bob Kerr: It might actually increase the parking by decreasing the width of the entrance.

Virginia Weeks: That would be good. Anybody have any other questions?

Louise Frey: Bob, do you think that those two lamp posts are sufficient?

Bob Kerr: I would like to see, as part of your recommendation that lighting foot candles be provided so that we see how much light is being provided in the parking lot. Both that there is enough light, but at the same time, that there is not too much light that it illuminates the adjoining properties.

Virginia Weeks: The other thing that we discussed earlier was a smoking area. I would like to see that. That's a big issue with people. You said that the front porch would not be used as a smoking area. Is that correct? That you were looking at the grassy area behind?

Leah Sullivan: That is correct.

Virginia Weeks: I don't think people want to be walking up and down. It's sort of like a shooting gallery there, a little bit. With people lined up.

Mark Dunkle: Ms. Weeks, as part of the laundry list, which it sounds like where we are headed, we agree to designate that area as the outside smoking area.

Virginia Weeks: Thank you. Is there anything else that the Board wishes to discuss? I would also like to have the drawings have the setback dimensions noted, please. Is there anything else that the Engineer or the Consultant wants to bring up?

Bob Kerr: I believe the other items in my memorandum the Applicant indicated that they were in agreement with making those changes. I believe they said from somewhere around number 11 through the end.

Virginia Weeks: Well, mostly after that it's the handicapped issues; the areas for the residents to smoke in.

Debbie Pfeil: From the Town Planner aspect, if they are in agreement with the letter, then you would be doing stipulations contingent upon the letter of the Town Engineer and the letter of the Town Planner, in connection.

Virginia Weeks: Do they need to be read into the record, or is that sufficient?

John Brady: That should be sufficient.

Virginia Weeks: What was your concern about the building restriction line along the east side of the property?

Bob Kerr: By showing the building restriction line along the east side of the property, that was what started my concern over where the setback was, where the front was. There doesn't need to be a building restriction line along the east property line, if the back property line is perpendicular to Mulberry Street; but there does need to be one shown there and the building moved, approximately 4'.

Virginia Weeks: Does anybody on the Board have any objections to it fronting on Broad Street? Any more discussion? I am awaiting the motion now.

Michael Filicko: I would like to make a motion that we approve this preliminary site plan, based upon the agreement that the changes be made that were stipulated by the Town Engineer and the Town Planner.

John Brady: The recommendations of the Town Engineer and the Town Planner are recommendations. The Applicant, through the Applicant's

attorney, agrees to certain changes, that's where the stipulation would be. You need to specifically have them for the record. My recollection was that there would be a designated smoking area marked on the property; that there would be a one-way traffic pattern; that there would be a moving of the building 4'; and, a revision to the plan to show those changes. Did I miss anything else? I was trying to keep notes as things were being discussed? That the lighting would have a candle footprint for the lighting in the parking lot...

Virginia Weeks: And, that the plan would be amended to show that the landscaping conforms to the ordinance.

John Brady: And, that any other requirements of our Town Ordinance would be complied with on the submission, including, but not limited to: landscaping; the first 8' of the fencing should be 3-1/2'; and, that the parking be considered as the additional parking necessary, be waived, because it was in the Town Center. Is that also part of your motion, Mr. Filicko?

Michael Filicko: Yes, sir, it is.

John Brady: Okay. Is there anything else that I didn't cover?

Virginia Weeks: Do we want to waive the parking or require that they have at least 5, if not 6, parking spots?

Michael Filicko: How many spots are there?

Debbie Pfeil: 4 and a handicapped.

Michael Filicko: 4 and a handicapped.

Virginia Weeks: What is the hatched spot for?

Bob Kerr: That's the new handicapped standard, so that people could get in and out of handicapped access vans. There are 4 standard...

Gary Couples: Typically they would be on the right side of the vehicle, then, so it is shown on the wrong side.

Virginia Weeks: That's why I was confused. So are you going to move that to the right hand side?

Gary Couples: Yes.

Michael Filicko: One other thing that I would like to add and Mr. Brady I don't know if I can legally.

John Brady: If you can't, I'll stop you.

Michael Filicko: All right. What I would like the employees to do, is to not park on Broad Street, but to park in the public lot.

John Brady: Can't do that. It's a nice thought and thought counts, and I'm sure the neighbors would like it, but legally you can't impose that on a preliminary site plan.

Michael Filicko: Could the applicant volunteer?

Leah Sullivan: No.

Michael Filicko: No? All right, I tried.

Virginia Weeks: So let me recap. The motion is that you approve this request subject to the changes suggested by the Town Engineer; that the plan show a designated smoking area; a one-way traffic flow through the parking lot; that the building to move to satisfy the rear setback; that the candle power of the lighting be shown for the parking lot; that the landscaping be annotated to be

in conformance with the zoning ordinance; that the fencing be reduced to 3-1/2' where needed; that the hatched parking spot be switched with the handicapped; and, that all other requirements of the zoning ordinance be noted, and adhered to.

John Brady: And a parking waiver that Mr. Filicko wanted.

Virginia Weeks: And, a parking waiver that requires 5 spots, minimum.

John Brady: There will be 5 spots on the property, of which 4 will be regular spots and 1 be a handicapped spot in conformity with state law and the balance of the parking spots are waived for parking available in the Town Center, approximately +/-404' from the boundary of the property.

Virginia Weeks: Does that limit him to 4, if he can fit another one in with the reconfiguration of the house?

John Brady: It's a minimum of 5, actually. Four regular and one disabled, which is the correct term, not handicapped.

Al Perkins: Second.

Virginia Weeks: Any further discussion on this motion?

Ed Kost: I disagree with the motion. I think that there are so many items. We are asking a completely revised plan and I don't think we should send the plan to the Council, until it has been revised, and we've seen it, and agreed to it. I think we are sending something and we don't know what we're sending.

Virginia Weeks: This is never going to Council. Council will never see this.

Ed Kost: If it never goes to Council and it will come back here as final, and it may not meet these requirements, then what? There is a possibility.

Bob Kerr: When it comes back as final, Debbie, Robin and I are to review it to make sure it meets with the conditions that you have placed on it this evening.

Ed Kost: Suppose it can't.

Bob Kerr: Then we would not make a recommendation to you to approve it, or they would have to come back to you, or another Board. We could not meet this if they ask if they can have a waiver, or a change in our approval.

Ed Kost: In other words, we really don't know what we are going to get until it shows up here as the final plan.

Debbie Pfeil: Actually, that's an opinion of each Commissioner to make. If you make a list of contingencies, it is the City Staff and the City Consultants' responsibility to make sure that those have been placed on the Plan, before they come back to you. If they are not met, or they can't meet the Code, we would then have to analyze each change, to see if it goes to this Board, if it goes to Board of Adjustment, if it goes to Town Council, what the procedures would be on things that they can not meet. If they can not meet those stipulations, they can also come back to you for a preliminary again, to see why we can't meet these and these would be the revisions. It is each Planning Commissioner's single interpretation for the vote.

Ed Kost: My opinion is that we might as well get the answer now, rather than let this thing go sliding forward and have all these people come back and go through this whole rigmarole a second time. I think they can be back here. How long would it take to have revised plan prepared?

Mark Dunkle: We're happy to comply with the motion that's pending and the list of conditions, and then the consultants would review it in detail. I actually think, if you table it and we come back, you'll double the time because if we revise the plan according to the list of conditions that you've worked out in this careful motion, then we submit it to your staff, and then they review it. They will tell us you didn't get it right, and we'll revise it for them. So before it gets to you it will be in compliance. Otherwise, we're going to have a whole other hearing. It seems to me that the motion you have pending is much more efficient and will get you a much more detailed and compliant plan, then having us come back. That's my answer to your question.

Ed Kost: I tend to disagree. The staff's job is to supply us with their review. Our job is to take their review and eventually say we agree or we disagree. What's happening here is we are simply postponing making a final decision. We are making everything subject to it goes to the staff and it drifts all over the place, instead of eventually having a plan sitting here and this Planning Commission saying, fine, it's approved. You have a choice. Do it now or do it later. I would rather do it now.

Virginia Weeks: Thank you. Is there any further discussion? This is a good time to justify your vote. So is there any other further discussion?

Al Perkins: I would just like to react to my colleague, Ed's, comment. I understand your concerns clearly. At this point, my reaction is I'm a little more comfortable with the conditions that we have. I'm confident that our Consultant's and our Attorney are going to ensure that the Applicant complies with what we put in the motion, so I'm comfortable in trusting that process. I understand that you are not. That's one of the reasons I would vote to approve.

Virginia Weeks: You understand that when it comes back, and correct me if I'm wrong here, other than these changes, we're not really supposed to make any changes from what comes back to us. This is it. Is that not so?

Debbie Pfeil: The conceptual plan that was discussed that started out, I'm going to go back and go through the process again, should have enlightened everyone (and I know we have some new members), so the conceptual plan discussed as much as you could possibly think of at that time, as a sketch. And you give them proper guidance so that they could design properly. The second step is preliminary, where they come in and get in more detailed drawings; there are more requirements met; there's a determination if things have been met or not, just like tonight you have two that are not Code compliant, that would result in a change. At this time, is when you should be looking at the entire project, if you did not do that at conceptual, so there should not be new items per se that would change the site immensely at final, and the theory behind that is because you have required in your Code for them to go to outside agencies. If you make a change at final, they may have to go back to DelDOT, they may have to go back to Fire Marshall, they may have to go to any other agencies that are required, and, start that process over again. You have conceptual, which is not required, but highly recommended. The Applicant chose to come, which I think is a good process, and you have

preliminary, which like I said, this is the chance where if you have anything on this plan, you haven't listed on your laundry list or you want to add to it, if you want to table it or make it conditional, it is up to the Planning & Zoning Commission. New items are not usually brought up at Final, because you've had two times to look at this and guaranteed one, maybe two times, to look at this Plan and come up with those items.

Virginia Weeks: Any more discussion on the Motion? This requires a roll call vote.

Al Perkins	Yes
Ed Kost	No
Virginia Weeks	No. The chair in agreement with Mr. Koss.
Michael Filicko	Yes
Gene Steele	Yes
Louise Frey	Yes

The motion carries.

### **Adjournment**

Gene Steele: I make a motion to adjourn.

Louise Frey: Second.

Meeting adjourned at 10:15 p.m.