

**Milton Town Council Meeting  
Milton Theatre, 110 Union Street  
Monday, January 5, 2009, 7:01 P.M.**



1. **PUBLIC HEARING** portion was called to order by Mayor Post at 7:01 p.m. Let it go on the record that C Prettyman, C Abraham, Vice Mayor Betts, C Hudson, C DUBY, C Martin-Brown and myself as Mayor are all present for the public hearing. This public hearing is in cooperation with the Sussex County Council and the Delaware State Housing Authority to allow citizens an opportunity to participate in the development of an application to the State of Delaware Community Development Block Grant Program. At this time I would like to turn it over to Mr. William LeCates, who will take it over at this point and talk about the program.

Bill LeCates, I'm the Director of Community Development and Housing and I'm here tonight to give a brief presentation on the Community Development Block Grant, on its parameters and guidelines set forth by the Delaware State Housing Authority and H.U.D. Each year Sussex County and my staff apply on behalf of communities that wish to participate in the program and tonight, as the Mayor said, it is a chance for the citizens to have a say on the different applications that will be submitted or activities. Block Grant is funded from H.U.D. to the Delaware State Housing Authority, Kent County Levee Court, Sussex County Council and all the municipalities in both counties can apply on the giving of the amount of funding each year. The amount of funding this year is about \$1.9 million. I just found out I have \$2 in my drawer sheet. Historically 70% of that \$2 million goes for housing rehabilitation for homeowner occupied, which is the main criteria of the program; demolition is an eligible item and then code enforcement; and then 30% of the \$2 million can be what roughly comes out for infrastructure projects, however, I think I said it last year that Milton was the last municipality to receive infrastructure funding; for Mulberry and Espen were solvent for about 4 years now, it's been a while, 3 years, but that was the last one they funded. Generally speaking, because they figure with legislative funding, and I know that's been cut; everything's been cut; but this is the only program that helps the homeowner occupied for low to moderate income citizen. That's the main criteria of the guidelines. Streets, walks, water and sewer projects, hook-ups are eligible projects and we have applied for these for many communities. The guidelines that H.U.D. sets forth each year for community development block grant to apply is for a family of one, must be no more than \$30,850; a family of two \$35,250; a family three \$39,650 and it goes all the way down to eight, etc. If someone doesn't want to talk about this tonight, please call my office at 855-7777; I'll also leave some of these in the back for your information. We are starting the waiting list. There are about 22 names that I went over with George earlier, that are presently on the waiting list; but the other guidelines are that you must be a permanent property owner, in permanent residence; basically it says that the property owner can not make the necessary improvements themselves or afford them; taxes must be current in the Town and in the County; the home must be insured or insurable; homeowner must sign a non-

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interest bearing lien which is ten years for anyone 62 and under and five years for anyone 62 and older. At the end of that term if the house is not resold, it would go to a zero balance. Those are the guidelines. I would like to go over some basic information that we have in the past for Milton. This goes back a long time and we do it as a status report. In the last 19 years, since I've been the Director, Milton has received over \$1 million and about 76 jobs; I know we've done 3 to 4 infrastructure projects; if someone is interested in this information, I can provide it to you. I have already handed in out to Mayor and Council. This current year Milton received \$90,000; we have one job almost completed; four more to write up and they will come from the waiting list of 22 people; we will be going out for a bid meeting and the first four that are eligible on that list will be served before the end of the year. The funding period of the program runs July 1 to June 30, so we're applying now. The Grant has to be up there in February and in July the new funding year begins. It is the citizen's meeting if there are any questions.

C Prettyman: Mr. LeCates, you said the Grant is from July 1 of this year until June 30 of next year.

Bill LeCates: Yes, sir.

C Prettyman: Those people that have already had some work done on their homes, can they reapply to have more work done?

Bill LeCates: They can be put back on the list, but they would have to wait, if they already have a lien, it has to be an emergency and explained, because we do need to get through the rest of the people on the waiting list; to give them an opportunity.

C Prettyman: Thank you.

Mayor Post: Any other questions? Are there any questions from the public? Thank you very much. We will now close the Public Hearing at 7:09 p.m.

2. **Public Participation** portion of the meeting was opened on Monday, January 5, 2009 at 7:09 p.m.

Katherine Grieg, 326 Union Street: I'm speaking tonight as a member of the Milton Garden Club, and not the President. Last month I promised you I wouldn't be back again, but like a bad penny I've sort of turned up again. I wanted to pursue something that had been started and first of all, I would like to say, I'm glad to see C Betts back and moving around. This has been a terrible, terrible month of December for greens and planters. We have had three of the big fat planters blow over and the tops break right off of them. Greens were blowing all over the place. New Year's Eve there were about four of us running around trying to set everything upright and we were kind of feeling sorry for ourselves until we heard that Irish Eyes in Lewes was on fire, and then it didn't seem like such a big deal. That has been a problem and I don't know what we're actually going to do about it, because there is not enough room in the base of those planting sections to put rocks or anything. We'll just have to continue setting them up or do something. The reason I'm here tonight is that I did send a letter to all the Council members asking that the Garden Club be included in the donation money for the non-profits. We are doing pretty much everything that we can possibly do to raises money. As an example, we have a couple of fundraisers every year at restaurants where we get 10% of the

food money taken in; two years ago at Irish Eyes we took in over \$300; this year we had it again and we received \$106. That is how everything is changing as far as trying to raise money. I don't what else we can do. We have scheduled a third restaurant fundraiser at Green Turtle and I don't really know what we could do to possibly raise more money on our own. The alternative would be that we would plant less flowers, because none of us get paid and to give you an example, the week before the Holly Fest, when we did make about \$1,500 at Holly Fest, selling things that the Garden Club Members had put together and greens we had collected; we had very little expense in that; but for that week myself, I worked about 75 hours working on that. So we are working very hard and I would like for you to consider including us in your budget. Thank you.

Norman Lester, 111 Morgan Way. I just have a couple of items and I want to address these to the Treasurer and the Personnel Committee. The first item to address is the Town Manager's contract, which was signed and dated February 5, 2007. The contract calls for quarterly reviews of all expenditures. Can the Treasurer tell us if they have been made? No? This is like you not signing the other affidavits. You haven't looked at any expenditures. Okay, for the benefit of taxpayers during this last period, this last fiscal year, there has been \$4,347 spent on food, mostly at Irish Eyes, but I have asked for copies of documentation and proof of those expenditures, but I have been told that they do not exist. I imagine that you may not be able to look at anything, but, anyway that's a forfeit of your responsibility.

C Abraham: What period of time did you say that was?

Norman Lester: The last fiscal year.

Mayor Post: The contract is \$5,000.

Norman Lester: But that's taxpayer money and I'm sure that people.

Mayor Post: That \$5,000 is allocated in his contract for Town expenditures.

Norman Lester: It's not a Town expenditure.

Mayor Post: Yes it is, because...

Norman Lester: You can't prove it.

Mayor Post: Mr. Lester, there are receipts for absolutely everything.

Norman Lester: I've asked for them and they're not available.

Mayor Post: We don't have them listed that way.

Norman Lester: I've asked for copies and they are not available.

Mayor Post: Mr. Lester, I do want to go back to the fact that it's very easy to make accusations or come up here and make comments, as you do. The fact is that our secretary is now doing what you stated, regarding the affidavit. I have no problem saying that publicly. But I also want the public to be very well aware that it has never been done in the Town of Milton, ever, ever. Even that may be in the Charter, maybe it's something that needs to be removed from the Charter; but we have written it with legal consultation in a way that is less liability and less responsibility for our Treasurer, who is a volunteer.

Norman Lester: That's a step in the right direction. My next question refers to the budget; and I looked at October's statement, which is the first month of the fiscal

year. The statements printed out go from September 20<sup>th</sup> through October 20<sup>th</sup>. The affidavit signed by the Treasurer and signed by the Town bookkeeping department says that the Financial Statements for the month of October. Here's my question... Because it also goes on to say that it was simply used by the Edmund's Software Accounting Program, which means that somebody just pressed the button and it printed it out.

Mayor Post: It's not that simple. I know you think it is, but it's not. It's not that simple. It's one of the worst programs out there, but go ahead.

Norman Lester: It doesn't matter. Ms. Abraham signed the same statement saying it was for the month of October. If it's not for the month of October...

C Abraham: Year to date as of 10/20, it's here.

Norman Lester: But the statement here says it's for the month of.

Mayor Post: That is how our month runs. Yes, we're ten days out. I know that you would like to have them for the full month. We do not do them ever for the full month. Simply for the night of the meeting, they are printed out as of the night of the Council Meeting, for our expenditures for the month. We certainly can not approve something that the Treasurer is signing off today, that still has another ten days out. So our month does run 10 days early. You're correct.

Norman Lester: Right, but there is something that can be done and even Sombar agrees with me on this point. At the end of the month, you can accrue unpaid bills and income and that's apparently not done, so he says, this is Sombar the independent accountant, that these budget statements essentially distort it. I just agree with it.

Mayor Post: It's not distorted, it is what it is. If you want to go into next month's and add the ten days, then you would have the 30 days or the 31 days, whatever the month. You would have to do a merging of two months and you might have to do some review on that.

Norman Lester: But you have an accounting staff that can do that.

Mayor Post: It is interesting though, that our own Town Auditor, whose recommendations we follow very stringently, has never made that recommendation.

Norman Lester: That's not his place.

Mayor Post: It is his place, because that's why we are paying him. You are totally incorrect. That is his responsibility. You don't understand that, but it is.

Norman Lester: You're not an accountant and I understand how this stuff can be done. And I understand his responsibilities.

Mayor Post: I know you're an accountant and I know that you...

Norman Lester: He said it's distorted. I agree with him, it's distorted.

Mayor Post: It's not distorted. Distorted is when you're making up the thing. Distorted is really projecting 10 days that you don't have the accurate numbers. The fact is that we are doing it actual. I know you don't want us to do it actual, but we're actual to the day that it is released to the Council, for review, which is the day that we meet at our Council meeting.

Norman Lester: I'm sorry. It's wrong.

Mayor Post: It's not wrong; it's how we choose to do it.

William Patterson, 208 West Shore Drive, Milton. It came to my attention, recently, in the Rails for Trails, that once this project would be completed that the onus of maintaining this would fall upon the homeowners or the development in which it was near and if that be the case, my opinion is that I oppose that, because I don't feel that it would be right for individual homeowner's to have to help maintain State property.

Mayor Post: In the original application, it was done that way and that is how it's written, but obviously it's not going to become the responsibility of the homeowners. As a matter of fact, in the original application it is written to become ownership of Cannery Village, as far as the first Phase was to become ownership and fall under the holdings of Cannery Village. That's not going to be the case. You will be listening to that later on in the meeting, as far as how it plays out. This is Phase I. Absolutely, it would be either the State or the Town that would be responsible, depending upon who is going to be retaining ownership, after the meeting today.

C Hudson: Sir, we received in our packets, a copy of a letter dated April 12, 2007 and it was addressed to the Honorable Don Post, Mayor, Town of Milton. This is a sponsored, administered on alignment agreement between Delaware Department of Transportation and the Town of Milton and it was signed by the Attorney General and Don Post and one of the parts of this agreement it says "agree to maintain the project 100%, upon completion". So the Town of Milton would have 100% responsibility for the maintenance of the project. My understanding was that whatever was proposed, this trumps it right here and this was signed back on April 12, 2007.

Mayor Post: I think we wanted to get clarity and I very well understand, but also we want to get clarity with the State; because how it reads under the Grant proposal is "once the project is complete, Cannery Village, LLC is willing to accept deed to the property from the Delaware Transit Authority and assume perpetual maintenance of the property and improvements thereupon". We absolutely want to get clarity that there's an understanding from the State that that is not going to be; even though the Grant was applied that way; it was received that way.

C Hudson: Also, I would ask our attorney to review this document that you signed.

Mayor Post: It's in here. She has a copy of that, as well. We'll be discussing that further as we move into Rails to Trails and we certainly are not going to put that burden onto either Wagamon's or Cannery Village. We're doing this as a joint project for the entire community of the Town of Milton.

Cliff Newlands, Oysterman Drive, Wagamon's West Shore. My first question was the same as Bill's about the Grant for Rails to Trails. You mentioned that last month about the grant. The second question I have is the viability of doing this whole project from Lavinia all the way over to Federal Street. It's less than one mile. From what I understand from the DelDOT site, is that anything East of Milton will probably never get done because nobody knows who owns the land. Unless somebody champions the project West of Milton, I don't think that's going to get done either. That railroad track, from what I read on DelDOT is not going to

be deactivated; so it could be a Rail with Trail that I understand; not a Rail to Trail. What's behind Wagamon's, would the tracks be removed, or what?

Mayor Post: I would assume that project would be treated the same way all the way over.

Cliff Newlands: They call them Rail to Trail OR Rail with Trails – there are two different terminologies that get used on the DelDOT site. That's what's confusing.

Mayor Post: I would think since Phase I is Rails to Trails...

Cliff Newlands: But that's just the one Phase Federal to Chestnut.

Mayor Post: I thought the whole thing was written under Rails to Trails.

C Prettyman: We have someone here that is going to discuss that later.

Mayor Post: We're going to be discussing that later, because there are a lot of things to discuss regarding this project, including the trestles that are supposedly in very bad condition. So we're in Phase I right now. It will be a while before we see Phase II, I think.

C. Hudson: In our committee meeting, Gene Dvornick was present and what he described was from Chestnut to Lavinia, would be Rails to Trails; remove the track all together; and, what he said was that from Lavinia West to Ellendale would be Rails with Trails; and possibly a restaurant out there; and maybe some of you are familiar with Lewes; they used to have a dinner rail mystery dinner sort of thing where you get on the train and you have a play and dinner; that went from Lewes to Harbeson and Gene Dvornick said that from Lavinia over, the tracks would remain; unless I hear something different later on.

Mayor Post: We can discuss this once we get into the Council Meeting.

Virginia Weeks, 119 Clifton Street. Good evening. I see here that tonight you're going to vote on the design for 506 Union Street. I'm not offering an opinion on that or anything. I just want you to know that in this stage, it has received preliminary approval and it has several things that had to be done and to come back for final approval. It has not been back to us for final approval. That's happening this month. In the design that you approve, I would just ask that you stipulate one way or another that it must conform to the Zoning Ordinance. In other words, it can not be of a size greater that it doesn't fulfill the requirement for buffers and parking and turn around space, etc. That's all.

Mayor Post: You're correct, but everything does have to, unless it gets variances.

Virginia Weeks: I was just afraid that if you got a design and you said that this is great and we're going to approve this; and later on we find out that it's not been approved. I would just ask that you take that in mind.

Mayor Post: We always go according to our Zoning Commission, unless they get a variance. We're closing the Public Participation portion of this meeting at 7:27 p.m.

3. **Milton Town Council** meeting was opened at 7:27 p.m. on Monday, January 5, 2009.
4. Please stand for a moment of silence led by Vice Mayor Betts.

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5. The Pledge of Allegiance by all in attendance.

6. Roll call:

C Martin-Brown	Present
C Duby	Present
C Hudson	Present
C Prettyman	Present
C Abraham	Present
Vice Mayor Betts	Present
Mayor Post	Present

7. Additions or corrections to the Agenda

C Duby: Mr. Mayor, I would like to move that we take item 14 d, under Old Business and move it up to the first item of Old Business as item 14 a. The person who is here to speak to this issue has to leave because of a medical situation. Also, I also move for the removal of item 15 g under New Business, appointment of members for the Neighborhood Watch Committee and tabled to a future meeting.

C Prettyman: Second.

Mayor Post: We have two motions and a second. All in favor say "aye". Any opposed, say "no". Motion carried.

8. Approval of the Agenda

C Prettyman: So moved.

Mayor Post: All in favor say "aye". Any opposed, say "no". Motion carried.

9. Presentation of the Minutes from August 19, 2008, August 27, 2008 and December 1, 2008

C Prettyman: I make a motion that we accept August 19, August 27 and December 1, 2008 minutes, as presented in writing.

C Abraham: Second.

Mayor Post: Any discussion?

C Martin-Brown: Yes, Mr. Mayor. On the August 19<sup>th</sup> minutes, on page 8, there's no page numbers, it is alleged on page 8 that I said quite a bit in paragraph 2, following Mr. Lester's intervention and I did not say any of that. I'm a little concerned because the other minutes also have language ascribed to me and this is the third time that the minutes have ascribed to me language that I haven't stated. I know I talk a lot, but I also remember what I say. This is the third time so I want to flag it. We may have voices that sound very similar on the tape. I think it was C Hudson. We have the same problem on page 13 in the December 1, 2008 minutes, which is ascribed to me and I didn't say it. The reason I'm picky about this is because some of these utterances that I have not made, put me on the record on positions that I am uncomfortable with.

C Prettyman: C Martin-Brown on page 13, where are you talking about?

C Martin-Brown: It's actually page 12, the one before it. It starts towards the bottom.

C Prettyman: Oh, C Martin-Brown I will discuss this for a moment. Is that where you are talking about it?

C Martin-Brown: Yes, Sir. I don't know procedurally how you wish to go Mr. Mayor, but if I can flag these 2 and then make a...

Mayor Post: I think the only way to go, unless there is more clarity, C. Martin-Brown.

C. Martin-Brown: Yes, just as long as my name is struck from the record.

Mayor Post: I know you want to make sure that they were not actually yours. I know you should know what you've said. Then we need to place any time that happens, and then we should put COUNCILPERSON UNKNOWN.

C. Martin-Brown: Fine, so if we adopt the minutes...

Mayor Post: Where was that second one? Julie is trying to find that so she can make the adjustment.

C Prettyman: It's on the bottom of Page 12, about the fourth line up.

C Abraham: Her name is not underlined.

C. Martin-Brown: I think, Mr. Mayor, if the process is that the minutes be adopted as corrected, with the question mark who the speaker is.

George Dickerson: I was hoping the Mayor would relay this.

Mayor Post: He's suggesting in the future, that every time we comment, we just state our names which certainly would bring clarity for any confusion in the future. So every time we comment, we should just state our names. It should work, it would just add a few more words.

10. Approval of Minutes by Council

C Prettyman: I amend my motion to approve minutes of August 19, 2008 approved as corrected and the December 1, 2008 approved as corrected.

C Abraham: Second.

Mayor Post: We have a motion and a second; any more discussions? All in favor say "aye"; opposed; motion carried.

11. Approval of Written Committee Reports

C Prettyman: I make a motion that we accept those written committee reports as presented to Council.

COUNCILPERSON UNKNOWN: Second

Mayor Post: We have a motion and a second; any more discussion to the written reports? All in favor say "aye"; opposed; motion carried.

12. Town Manager's Report

George Dickerson: As you saw in your package when you received those last week, that the Complaint Reports and the Work Order Reports are now a regular part of that. I've been giving those out in my Town Manager's report, each month to stress the importance of those and identify those issues that we have. I think for the entire year, it was noteworthy to mention with the Complaint Reports that there actually

199 complaints that came into Town Hall; of which, as of today, there are only 14 outstanding of that 199 and they are in the process of worked through. Work Orders, which Allen's department handles, 585 of those complaints and there is zero outstanding, so all of those that came in have been completed. That is now a regular part of your package.

I think something that's very noteworthy is that starting actually last June we started looking at the arrears that were occurring with both our utility building, which is now water; and also with our outstanding tax bills. We had a meeting with our Town Attorney, with regard to the tax bills and how should we go after those that are delinquent. In that, though, there are some interesting things that we did at Town Hall that I think are very important. On June 10<sup>th</sup>, there were 317 utility delinquencies that totaled \$98,230.79; in actively pursuing those to aid in the collection of the delinquent accounts, multiple notices were sent out within the past six months. In doing so, as of today, there are 62 delinquencies, instead of 317; and against that \$98,230.79 we have just in delinquencies now we have \$22,942 and we actually collected \$75,288 of those delinquencies for that. Property taxes on June 10<sup>th</sup>, we had 324 delinquent properties totaling \$102,973.63; delinquent notices were sent out and we actually have seven properties that were turned over to our Town Solicitor so that the lien process can begin on those; the delinquencies today total \$27,000, so we actually collected \$75,313.27. I think that is noteworthy that within that six month period that's a considerable collection against those outstanding amounts. You also need to know we work with those people that come in. If people have a problem with their water and they come in and make arrangements with us, we try to work with those people. Those persons who actually may get cut off, most recently when the quarter ended; or those that just ignore us force us to take the harsh step of cutting those off. This month, property tax billing will go out and we will actually be billing out of the 1,700 properties, \$569,000 approximately is what the tax billing will be.

C Prettyman: Mr. Dickerson, could you go back for me just a minute. With the water, how much did you say we got in from that?

George Dickerson: We got \$75,288.72.

C DUBY: That's for the delinquencies?

George Dickerson: Yes. That's not the total.

C Prettyman: And with the property taxes?

George Dickerson: That was \$75,313.27.

I am pleased to announce that General Code, you know the codification of our ordinance and that process that we've been going through, which is quite labor intensive, we have received that manuscript. There will be meetings that will be taking place within departments. Obviously, a copy of that will be going to our Town Solicitor. We have received that manuscript and the due date for that return is the latter part of February, 2009. We're up against a time window to get that turned around and back, but we're going to be scheduling those meetings to make sure that a review of that document coincides with any suggestions that General

Code has made and hopefully, perhaps by fall we can actually go into print of that document. A nice thing about what happens is that when that's all said and done, you will be able to go to our web-site and you bring up, for example, our Town Ordinances, and there's a search engine and you plug into the search engine and let's say you want to search for something about "dog"; every ordinance that we have that may say anything about a dog or another topic in the search engine that you choose when you put that in; it's going to key all of those ordinances that have anything to do with that subject matter in there; so that will be a very easy reference; which is wonderful. Right now it's a hunt and peck method or best you can remember what a key word or words are in an ordinance.

Our January year-end report: last year was our first annual year-end report and it seemed to be a large success and we got a lot of real positive comments even at Town Hall and I'm sure even Council did, as well, with regard to the content of that. That's about 75% done, but that will be going out probably the third week of January, so I'm thinking somewhere around the 23<sup>rd</sup>.

I was asked, as part of another memo with regard to Rails to Trails, I did pass out a memo and I don't want to discuss that now, as Rails to Trails will be discussed a lot tonight, but you have a document there in an email that was provided for me by our Finance Director, which there was a question about locating the funds within the town as to what we received and where they were and who has them. You should have that detailed memo in front of you as to where those monies went.

Mayor Post: I know there was \$60,000 you couldn't find, but it was interesting that it was with DelDOT.

George Dickerson: It was transferred and that never came to the Town.

Mayor Post: It was good that we finally located that.

George Dickerson: The next thing I have of importance is to read some bullet information into the record about our upcoming election:

- The Municipal Election information for 2009 is that the election will be held Saturday, March 7, 2009. This will be placed on our web-site; we already have this information out there; it will be published in the newspapers; and you will have all of that information. The polls will be opened from 8 a.m. through 6 p.m.
- Deadline to file for office: A candidate must file a Certificate of Intention or A Statement of Organization no later than seven days after declaring his/her candidacy; deadline to file for office is January 26, 2009 at 4:30 p.m..
- Forms to file for the office: I will navigate you through this now to find the forms on our web-site. To access the Certification of Intention or Statement of Organization Forms, interested parties may obtain the forms from Town Hall or print the forms from the Town Web-Site. If you would like to print them from the web-site, log in, type Election in the white

search block at the top of the page, when the options appear, click on "Elections", then either the "Certificate of Intention" or the "Statement of Organization" form. If you are unaware of what form to pick, the guidelines for the form are in there, because one of them is if you think you're going to collect any campaign funds over \$2,000, that's the difference in the forms.

- Affidavit's for Absentee Ballots: Affidavits can be picked up at Town Hall during office hours or mailed to registered voters upon request. The Affidavit must be completed and returned to Town Hall before noon on March 6, 2009.
- Absentee Ballots: Absentee ballots can be issued to registered voters who have completed an affidavit beginning January 29, 2009 through March 2, 2009. If the registered voter needs the ballot after March 2, 2009, they may come to Town Hall and pick up the ballot. All absentee ballots must be received by the Election Board by the close of the election polls at 6:00 p.m. on Saturday, March 7, 2009.

COUNCILPERSON UNKNOWN: I'm not sure. I may have misunderstood. I think I read in the paper that Cape Henlopen School District granted an easement for drainage for Shipbuilder's.

George Dickerson: Yes, they did. Actually, that's been an ongoing project that the Mayor had actively asked me to pursue and in doing so, one of the things that we did that was necessary, is that connection from Shipbuilder's Village, the problem was always drainage on that back end. We have now identified connecting from that storm drain, when we had easements along the town property, but what we did not have were a couple of things. One was the connector behind the school which is not close to the school grounds, actually it is back in the woods a little bit and Mr. Prettyman was very helpful in taking that before the School Board and having that approved, so we now have that easement from the School Board.

Mayor Post: The original easement was in that development, so now we have both.

George Dickerson: We have everything that we need at this time so start that project and my understanding that a final, before any work can be done or the subdivision, which is going to be approved out at Shipbuilder's, which is coming before Planning & Zoning on Thursday the 20<sup>th</sup>, upon that approval; conditioned before they can build anything; the developer must put that in. That's very close to being completed.

Mayor Post: Also, he has all of his materials; he's had them out there.

George Dickerson: He has some out there, yes.

Mayor Post: So he has the pipes, he has the sand, he has the stone; he has everything that he needs which has been sitting out at Shipbuilder's and I know sometimes people don't understand why things take the time they do; but they do. You have to go through the bureaucracy and we just got the second easement; I just signed off on that last week or the week before. As soon as the plan is reviewed at Planning & Zoning and that moves forward, this has been a complicated project and a complicated issue at hand, but I think we've resolved it and it won't be a burden

to the taxpayers; because ultimately it probably would have been a burden and we had gotten estimates and we were looking at a project, I think over \$300,000 to complete. I think by working together and everybody being very cooperative, such as the Cape Henlopen School District; the gentleman who owns the land on the hill who gave us easements for the property; and as well as the developer now, as long as he keeps his word to move forward, we're in a good position now at a very, very minimal cost to the Town and the taxpayers.

George Dickerson: It just leads me to one other thing, which is, now that we have the easement for the corner of Magnolia. If you're coming South on Union Street, and you attempt to make a right on Magnolia, as anyone would, that's a real hard right to make there with the way that the property comes out. We now have an easement from Mr. Draper that softens that corner, so you will now see a new sidewalk from in front of the Historical Society down to the corner; and then you will see a softening of that turn radius going back into Magnolia and some curbing being put in there to help that particular area and soften that turn.

Mayor Post: I want to say that Vice Mayor Betts has dealt with that a lot in the past.

Vice Mayor Betts: I would just like to thank Mr. Draper for getting the easement for the Town.

George Dickerson: There's one other piece that we've been missing and it's the easement was missing in action and that was the Charles Jones' easement on the small little triangle piece which completes Governor's Walk over here and working with your former Town Solicitor, not Mr. Brady, but Tim Willard, his office just last week found that easement and now we do have it. So Mr. Jones was correct when he said he had signed the easement and it was missing in action.

Mayor Post: We knew the easement was signed because we were in those meetings.

George Dickerson: I'm pleased to tell you that we have it, so that little portion that has been such a pain, is falling into place.

Mayor Post: Now we can do the walk, because we have the funding for the walk to finish that brick walk back there.

George Dickerson: Yes.

C. Hudson: Back in August, because we were going to vote on the 2008-2009 budget, I asked for a copy of the DEMA Grant and you responded on September 2<sup>nd</sup> and said that you had asked the Chief for a copy of the DEMA Grant. Have you ever received a copy of the Grant?

George Dickerson: Never received it. Don't know anything about it.

C. Hudson: Also, I put in a FOIA request at the behest of the members of the Emergency Preparedness Committee and the Neighborhood Watch members and have not received a copy of the DEMA Grant.

George Dickerson: It doesn't exist, as far as I know. You'll have to ask the Chief.

C. Hudson: We still do not have a line item in the budget for that.

George Dickerson: For a DEMA Grant? Specifically, what are you referring to because we may have other grants that have been paid...?

Mayor Post: It was the grant...

George Dickerson: For the radios?

Mayor Post: We have not received...

George Dickerson: I know the Chief had talked about a grant for \$1,600 for the radios; but I don't know anything about that.

Mayor Post: Grants do not go into the budget until they are finalized and approved and the funding has been received. That's something that...

George Dickerson: I can tell you that we haven't received the money.

Mayor Post: I can also tell you that Mr. Dickerson has no information about this grant. I know which you are talking about and supposedly the Chief does have a copy of it; I know he's been out over the holidays and I believe he was sick today, so...

C. Hudson: I have an August 2007 memo. This is from "Marty McLee, who is a supervisor of DEMA. I have reviewed your sub-grant application and I have sent your paperwork to the Director for signature with the following adjustments: decrease the total amount from \$9,440 to \$7,900; decrease the number of radios from 17 to 10; next year if you still need the other radios, you can request them in the 2007 grant." Now from October of 2007 to May of 2008, we purchased radios, materials for signs, hats, totaling almost \$3,400, with a check signed for this DEMA grant money. Some money received back in and yet there is no line item in the budget.

George Dickerson: What you have to remember is these are reverse grants. Let me explain what that is. A reverse grant is where the Town makes the expenditure based on that amount and then we are reimbursed on the back end. I can only tell you that on all of those expenditures, if as you have there, that the Chief would have requested those through the normal process: if it's over \$500 it would require a purchase order, that would be received, but I don't even know if we are talking about the same grant or the same radios that you're inquiring about.

Mayor Post: I think we are and at the same time also it would show as revenue, under Grant Revenue (coming in).

COUNCILPERSON UNKNOWN: I'm not speaking...

Mayor Post: We're not going to show money in the budget that we do not have or have not received. It's not like they've given us \$5,000 or whatever it is. I think there is \$5,000 or \$6,000 remaining on that grant. It's not going to show in the budget because we don't have it and you don't know if the State, with their financial situation, you may never get it. You're not going to show it as revenue, because we don't have it as revenue until we actually get it into our hands. Some grants are released without any really strong contingencies with them. The money comes in and you have it sitting there in an account and that's going to show as revenue.

C. Hudson: Mr. Dickerson, may I ask you a question? I'm not talking about the \$1,600 that the Town voted to spend. I'm talking about the \$7,900 grant approved by the [garbled] of the Town and on an email dated September 8, 2008, Matthew Rockwell states "Chief, we have approximately \$4,305 left in the DEMA grant." So, the Town has been spending money on this grant, signing checks, receiving funds and yet there is no...

Mayor Post: That's totally the Police Department; it has nothing to do with the Town Hall.

C. Hudson: I thought it had to do with our budget.

Mayor Post: No, the Chief does his own budget and we approve it and we vote on it. You need to ask the Chief where it shows in his budget.

George Dickerson: As an example, other grants such as Highway Safety money for working special DUI patrols, the officers actually go out, work that, they come back in and report those hours, because they are paid at a special hourly rate. The Chief reports that to us; we actually pay that; and then he submits the voucher for payment and the State sends us the money. So those are the kinds that are actually paid in advance and then come back. I can only tell you that we would have documentation that supports anything that the Chief has given us; whether it relates to that grant, you have more information on it than I do.

C. Hudson: Actually, I think the Chief has more information; but what I was working up to, since he's not here; when we get to the police report I will ask Lt. Cornwall a question and then hopefully he can relay that to the Chief. Thank you.

13. Written Reports from:

a. Maintenance

C Prettyman: I make a motion that we accept the monthly Maintenance Report for December, 2008, as written.

Vice Mayor Betts: Second

Mayor Post: We have a motion and a second; any more discussion to the maintenance report? All in favor say "aye"; opposed; motion carried.

b. Project Coordinator/Code Enforcement

C Prettyman: I make a motion that we accept the Project Coordinator/Code Enforcement Report for December, 2008, as written.

Vice Mayor Betts: Second

Mayor Post: We have a motion and a second; any more discussion to the Project Coordinator/Code Enforcement report? All in favor say "aye"; opposed; motion carried.

c. Police

C Prettyman: I make a motion that we accept the Police Report for November 21 to December 20, 2008, as written.

Vice Mayor Betts: Second

Mayor Post: We have a motion and a second; any more discussion to the police report?

C Prettyman: Not to the police report, but I do have a comment to make Lt. Cornwall. I have gotten some complaints in the last couple of weeks about the police cars flying down Mulberry, Union and Federal Streets. I don't know if they are going to something or not, but people are kind of leery that they may be backing out and hit the police car or the police car could hit them. I'm just saying if it's not a dire emergency if they could slow down a little bit. C Hudson, I know you have something for Lt. Cornwall.

C Hudson: Lieutenant, getting back to this DEMA grant, I'll keep it brief. This says that "on September 2<sup>nd</sup>, the Chief came to my office and stated a grant had been obtained for radios through DEMA. I asked for a copy of the grant for our

records so that a line item could be created to both receive and expense the money. As of this email, I have not received a copy of the grant.” I’m quoting Mr. Dickerson here. What I’m interested in is the \$4,300 left in the grant, because first of all the Council sat here and voted approval of \$1,600 to buy radios, when there is still money left in this grant, specifically for radios, that’s the one item that Marty McLee specifically said “10 radios and next year if you still need the others, you can request them.” My question is would you please ask the Chief to go ahead and purchase the radios through the DEMA grant that we’ve been asking for since August of 2007. Thank you very much.

Mayor Post: I would just like to also ask you to make sure that the Chief will be there at the meeting on the 20<sup>th</sup>, because I plan on attending that meeting as well on the 20<sup>th</sup>.

C Hudson: So the next Neighborhood Watch meeting will be January 20<sup>th</sup>, Tuesday, at 6:00 p.m. in the Milton Library.

Vice Mayor Betts: I would like to commend them on the Juvenile Detention arrests are down and we noticed that the DUI’s are down, so I do think you’ve done a pretty good job this month, so thank you.

C Prettyman: I think they do a good job all year. I’m sorry, Lt. Cornwall that I didn’t get anything more in on the good side, but you all do keep the Town quite protected.

Vice Mayor Betts: I just wanted to make you smile after all that. Thanks.

C Hudson: Again, I want to say on a very positive note, we have received flashlights, signs, hats; actually compared to what I’ve seen in other Neighborhood Watches, this one has been very active and has so far gotten quite a bit done. Thank you for your cooperation

Mayor Post: Any more discussion? All in favor say “aye”; opposed; motion carried.

#### 14. Old Business

- a. Review and possible vote on waiver of two parking spaces under conditional use for Bark Avenue’s retail sale of dog treats and accessories – 309 Union Street (2-35-14.19-168.00)

Mayor Post: Is the Applicant here?

Joanne Mattioni, 309 Union Street: The original condition when we applied for the conditional use required us to have two parking spaces. We have since learned through DeIDOT that we legally can not have the parking spaces, so we need that condition to be lifted.

Mayor Post: This was housecleaning. Last month, we waived the conditional use for the grooming salon, only. This is now the waiving for Bark Avenue itself. It’s still on the record and it needs to now be on the formal record, that the Town does have the right to waive that conditional use for two parking spaces.

C Duby: I would like to move that we waive the two parking space requirement for Bark Avenue

COUNCILPERSON UNKNOWN: Second.

Mayor Post: We have a motion and a second; any questions to the motion?  
We'll do a roll call vote, so that it is on the record as such, so there won't be any confusion:

C Martin-Brown	Yes
C Duby	Yes
C Hudson	I'm not entirely sure about this so I will abstain from voting on this.
C Prettyman	Yes
C Abraham	Yes
Vice Mayor Betts	Yes
Mayor Post	Yes

Motion carried.

Joanne Mattioni: Thank you.

- b. Rails to Trails discussion and vote by Council to 1) abandon project totally, 2) Cap and cover without release of liability, 3) Brownfield Program which will relieve liability issue, or 4) Possible other options

Mayor Post: At this time we wanted to bring all the players here tonight and I want to thank everybody that has come. Kyle Lampron representing Ten Bears Environmental; Paul Will representing DNREC; Michael Lane representing Becker Morgan Group, Inc.; Mike Davidson representing Mike Davidson Excavating; Jeff Niskoda representing DelDOT, and anybody else that you might have brought with you, if you would all step forward. I want to certainly thank you for coming. I think it was best to have all the players here so we can make a very sound decision tonight on our next steps for this project. Some of our concerns are the fact that when we received Ten Bears Environmental report, it mentioned certain contaminants that are associated with this project, that have contaminated the soil. Other people came forward and said, it was just some weed killer. My understanding now is that it is more than just weed killer and that now it's to the point that one solution was possibly doing the cap and over without release of liability; and I don't like the issue at hand. We could not possibly be released from liability, even though some groups are making recommendations that we do this. You're going to hear me put it on the table back to the State; that if the cap and cover is a great way to go; then I'm going to propose that the State keep the property and we move forward with the project and they assume the liability. Another is the Brownfield Program, which my understanding is that is a good solution; because it will be handled as a Brownfield Project, which removes the contaminated soil and it reduces the liability for anyone with the property. It does create the possibility of some length of time to move this project along. We've been told by the other state department that it could cost us the losing of our grant, so that is an issue at hand, as well. Can we hear from Ten Bears Environmental first, because I want their take on the contaminants that are on the site.

Kyle Lampron, Ten Bears Environmental, 606 Federal Street: We did a Phase I Environmental Site Assessment and a subsequent limited surface holes evaluation on behalf Becker Morgan and the Town of Milton and what the Assessment identified was an approximately 0.5 to 1.5 foot thick layer of an industrial waste that is beneath the railroad track. The material was very commonly used, historically, in building railroad beds, so it's a common occurrence for railroads; it's a by-product of industrial combustion; it's like a gravel; coarse sand; it's an ash. We took samples of the material and submitted it to a laboratory for analysis; had them analyze it for metals, PAH's which are polynuclear aromatic hydrocarbons and PCB's and the lab results indicated that we had PAH's in the material at levels exceeding State standards. Basically, it's an approximately 0.5-1.5 foot thick layer of industrial material that has some elevated concentrations of substances of environmental concern beneath the track, in the near surface. That's the primary concern at the property.

C Hudson: Have you done any similar assessments of any other Rails to Trails in any other Towns?

Kyle Lampron: We haven't, no.

Mayor Post: Do you do soil sampling?

Kyle Lampron: That's our business. We do it all the time.

Mayor Post: Have you done, maybe not Rails to Trails, have you done any of the railroads, at all?

Kyle Lampron: We've done railroads, railroad tracks, but the material has been used elsewhere, also; it's been used for fill in inner cities that have been developed on marsh land in the late 1800's or early 1900's they used this industrial waste to bring these sites above the water level. We've worked with those sites and it's a similar material.

Mayor Post: That's your business, looking for contaminants and seeing if there is any reason to be concerned.

Kyle Lampron: Environmental Site Assessments, soil investigations...

Mayor Post: Not that it can't be an issue that can be addressed and taken care of, but it's an issue that needs to be addressed.

Kyle Lampron: It should be addressed.

Mayor Post: What I understand from reading your report you specifically don't recommend the Town to accept the land without some type of an idea of how this is going to be addressed. It's for us to make the decision on how we're going to address it and I'm not going to put you on the spot to tell us how you think it should be addressed; but is that true that the cap and cover or the Brownfield would be the way to handle this type of contamination.

Kyle Lampron: There are a couple of different scenarios of how you can handle it. The cap and cover is one; you could do an excavation and off-site disposal. Those are two scenarios which deal with the material and to handle it appropriately. It's how you get there, is where the difference is, you can do it outside of a State program with some approval, in a sense, from the State, saying we agree with the approach that you are taking; but not actually take it through a program and that's where you don't get the liability protection from

the State. The other option would be to use a similar solutions for the material; cap and cover or excavation through a State Brownfield Program; and that's where the State is involved step-by-step to provide some protection.

Mayor Post: So they're both cap and cover, but one would be treated as a Brownfield cap and cover and the other where we would be given a "comfort letter", which didn't give me a lot of comfort, when they weren't releasing us of the liability; but they call it a "comfort letter". Can you talk about that?

C Prettyman: Can I ask one question? This cap and cover that you're talking about; when that is done; whatever is contaminated is being pushed further down in the ground?

Kyle Lampron: No.

C Prettyman: Are we lifting it up?

Kyle Lampron: The best scenario would be to leave it where it is and try not to disturb it; leave it at the same depth; and then maybe build on top of it; put some gravel and an asphalt cover on top of it. What you're doing is removing it from the zone of human contact, so people are not exposed to it.

C Prettyman: So you would seal the contaminated part so it doesn't go further down into the ground?

Mayor Post: Can we possibly hear from each of these gentlemen and then ask all these questions? Because they might answer the questions, because the DNREC gentleman is right behind and he's going to be speaking to this same subject; let him speak and then at the end we'll come back for questions.

C Prettyman: I will write my questions as we go on.

Mayor Post: Thank you C Prettyman. You make your notes up, but if we let the DNREC gentleman speak, I think you will see that he's going to cover some of those issues. I want the whole public to hear and everybody sitting up here everything on hand and then we can analyze it and ask the questions after that.

C Hudson: I do have a question of Mr. Lampron's study, since he brought up his study.

Mayor Post: Can we hold that question; the study is what it is; can we hold that question until afterwards, because obviously you have it right on your mind and let's give each of these gentlemen an opportunity to speak. I appreciate every one of them attending and I want them each to have that opportunity to give their talk on this subject; and their expertise; whether it's advice or whether it's comments or whether it's possible things for us to consider; I would like each of these gentlemen to have that opportunity; we process all that information; if you have questions as we go along, write them down and we will ask them at the end.

Paul Will, Program Manager with DNREC's Site Investigation and Restoration Branch, Newcastle, DE office: I've been working in the management position for about 15 years and a lot of what you've already been talking about, I've been dealing with for 15 years. In case you're not familiar with what we do, with DNREC itself; DNREC, as you know, has many different branches; several different divisions; many different offices that handle a number of

different issues that we deal with in the State: soil, groundwater, air, wetlands, lots of different things. The branch that I manage out of, we deal primarily with facilities and properties that have had releases of hazardous substances which have impacted the soil, the groundwater, surface water bodies, and wetlands and things like that. We've heard the term Brownfields being talked about here. Brownfields is a relatively new program that we've been dealing with within the SIRB Branch (Site Investigation Restoration Branch). We've been dealing with Brownfields sites primarily for about going on 5 years now. Our program was the Delaware Brownfield Development Program which was enacted in July of 2004 and for those who may have heard the term Brownfields, but aren't quite familiar with what exactly it is and know it's not just a field of brown grass; we've actually had people ask if that is a brown field. It is, but that's not really what we're talking about. A Brownfield Site is a site that is vacant, abandoned or under-utilized with an actual known or perceived threat of contamination, which is holding up the redevelopment or the development of that property. An example of a Brownfield Site maybe in the Town of Milton may be an abandoned gas station and it's been sitting on the corner for a number of years and it's had a For Sale sign or a For Lease sign on it. Everybody knows it used to be a gas station, but there's nothing happening with it and maybe the reason nothing is happening with it is because developers or potential buyers are concerned about the contamination, which is usually associated with old gas stations; leaking underground tanks; although you don't find many of them these days; most of us get our gas and stuff from these big super Wawa's and these huge Valero's with 18 pumps and their little convenience store, but we're really talking about Joe and Tony's garage that used to have two gas pumps and three garages, where guys would do work on cars. Places like those which have just been sitting there vacant for a number of years and people don't want to get involved with those, like I said, because of the environmental threats that are associated with them; and not just facilities like that; this Rails to Trails that Kyle and I have been talking about for the past month or so, we've had some conversations; this is an area that used to be a railroad track bed and especially years ago, railroads had a nasty predisposition of using a lot of PCB's in their oils and their lubricants and thus some of the track beds have been contaminated by those and a lot of other petroleum constituents; therefore, they are contaminated. Those qualify as Brownfields, as well. The Brownfields and I think this is what the Town of Milton is interested in hearing, the Brownfields Program is an excellent program for people just like the Town of Milton, and I believe that the Town does not own this property right now.

Mayor Post: The State owns it.

Paul Will: DelDOT owns it right now; but Milton is looking to acquire the property.

Mayor Post: We would, ultimately we will be acquiring it.

Paul Will: The benefits of the Brownfields Program for the Town of Milton would be that if Milton comes forward to DNREC and is willing to enter into an agreement to do probably some subsequent investigations, because we have

very limited data right now; they enter into this agreement; they receive the liability protection right then. There are liable free at that point. Plus, two, because they are considered a city/municipality organization, they are eligible for up to \$1 million to perform investigations; to perform any remediation associated with any contamination that we find on this railroad bed. That in itself is the real reason why a number of people enter into the Brownfields Program is to take advantage of the funding; because, let's be real; cleaning up some of this stuff in certain areas can get very, very expensive. So the State has the ability and we do have a fund, that Hazardous Substance Clean-up Fund, that is a fund that is funded by the taxes on the sale of petroleum products in the State; it's a certain percentage; everybody is familiar with the 9/10ths that they see next to the gas price at the pumps; that's the little portion that goes into this fund. As everyone knows, with the price of gas, especially 6-8 months ago being very high, there was a significant amount of money that was going into that fund. We've never had an issue with the funding of our Brownfields Program. The State or the General Assembly, I believe, allocated \$5 million out of our Hazardous Substance Clean-up Fund to pay for specific Brownfield issues within the State. We have \$5 million allocated to that fund, per year. Last year, prior to the great economic meltdown that we've all experienced, we were very busy. There were a lot of people coming forward; buying properties; redeveloping properties, especially up north, the whole City of Wilmington Waterfront that everyone has read about or seen a lot of activity up there. Last year was the first year that we actually ran out of money. This year because of the economic downturn, we're not seeing nearly the amount of work that we were doing, so there really is a significant amount of money that is still there. But, I would caveat that with get it while it's hot. With the economic climate in the State, here today, who knows where tomorrow? All bets are off. I'm pretty confident that funding should not be an issue. Timing, you mentioned, is a concern of the Town. The sooner the better. The normal Brownfields process and we budgeted this out last year in rather lengthy meetings with environmental consultants, developers, people within the State; normal process is about 7 months. But I think a project this size, that could be expedited to 5-6 months and I thought Kyle had said we're looking at maybe June as being the drop dead date where this has to be done by. That's doable, but you can't wait too long; because there is a process if you go into the Brownfields Program; there is a State law stipulated process where we have to do carry this out. There needs to be subsequent investigation done; DNREC needs to receive a report from the consultant; we need to review and approve that report; and then we need to take whatever we're going to do before all of you. That's required by State law. That's called a Proposed Plan of Remedial Action. That goes before the public; everyone has a chance to comment on that; if someone needs to further discuss that in a public hearing, they are afforded the opportunity to call a public hearing and discuss the plan further and then the Hearing Officer for the State makes a determination whether or not the plan needs to be amended or not. In most cases, if it's a good project; and I would fully support this project,

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because it's a good project; I don't know why DNREC would stand in opposition to it, I really don't. It should go through pretty smooth. Kyle and I have had some informal, preliminary discussions; as I said DNREC has not seen any of the data; we've just had discussions on it; it certainly doesn't sound like anything earth-shakingly disastrous out there. We have some minor contamination that can be handled, in my opinion, through this cap and covering; and to answer C Prettyman's question on what exactly does this capping and covering do; the types of contaminants that we're dealing with here, at the levels that we're seeing, at least preliminarily are not very mobile, at all. Capping and covering the site is simply eliminating the contact. No one can come in contact with it. If you put enough cover over it to where no one can come in contact with it; it's not going to get squished down into the ground. There are certain contaminants that will do that; that will sink; but I don't believe we're dealing with those here. We're dealing with your general industrial contaminants that you do find in a lot of rail beds; we find them all over, especially up north in the industrialized areas of Wilmington; we deal with them all the time; and a lot of them are handled through cap and cover. Kyle was correct in saying that one of the other options would be to excavate and remove; excavate and dispose and take it somewhere and get rid of it and replace it with clean fill. Obviously, when you are doing something like that, the dollar amounts go way up; as opposed to covering it. In this case, it's going to be a trail anyway; concrete/asphalt covered trail along with... Whenever you are leaving contaminants in place, there needs to be what is known as an Environmental Covenant placed on the property. The Environmental Covenant just simply says that prior to doing any excavation; any additional utilities that might be needed within this trail; you need to contact DNREC first; it doesn't mean you can't do it; you just need to contact DNREC first and let us know what you're doing. We may remind the Town if this all goes forward, that if you are going to do any trenching through this, it would be a good idea if the workers wear protective gloves and overalls to keep the dirt off of them and be aware that it is not pristine down there. That would be what would be left on the property. As I mentioned, I know liability was a very big concern. Liability protection within the Brownfields Program with DNREC actually kicks in once the site is certified as a Brownfield. There's a certification process and that application is included; I believe there is a draft of the application that is included in the packet that I gave you this evening; it's all available on line too at [www.dnrec.state.de.us](http://www.dnrec.state.de.us); it's all there under our Brownfields tab. As I said, liability protection, if Milton decides to come forward and do it, their liability-free from the beginning; as soon as they submit that application. If Milton is interested in obtaining funding from the State to do this; and I don't know why you wouldn't; it's there; it's not necessarily a blank check that you get; you have to spend it and turn in the receipts and the State reimburses you. A lot of people think we just give you a check and off we go and everything is great. The auditor's would not like that at all. That's really it and I left a card with Julie to give to the Town Solicitor. Mr. Keith Brady is the Deputy Attorney

General that has been assigned from DOJ to handle nothing but Brownfields' issues and cases and agreements and things like that; if there are negotiations that would need to take place with the Brownfield Development Agreement; that's the agreement that you would enter into if you went into the Brownfields Program; you would negotiate with him on what's to be included in the agreement.

Mayor Post: You'll remain here for any questions.

Paul Will: Absolutely.

Mayor Post: We'll now move over to Jeff Niezgoda from DelDOT.

Jeff Niezgoda, DelDOT: It's nice to see a lot of familiar faces here. I helped the Town facilitate the Mulberry Street projects, several years ago, and that was a big success. One of the things, just to step out of line a little bit, Julie [Powers] had asked me to talk about the funding aspect on the contract and what monies are currently available. In the letter or the document that was brought up here, there are some numbers that aren't quite correct; I'll just give you what I know and you can make the corrections, as needed. The funding for the project comes through the Transportation Enhancement Program and it's a program that is both state and federally funded. It's a community driven program; communities like the Town of Milton approach the department through the application process; the project has to qualify under one of twelve categories in order to be eligible for funding; it has to be relative to surface transportation, of which this project meets all the qualifications. Currently, we have \$340,000 in federal enhancement funds.

Mayor Post: Is that where it says \$365,000? Because we didn't have much to go on to piece it back together.

Jeff Niezgoda: It says DelDOT TEP Program on my document that I got from a friend; it said \$345,000.

COUNCILPERSON UNKNOWN: Our says \$365,000.

Mayor Post: So you're saying \$340,000 there.

Jeff Niezgoda: If you have that, that was correct. It's \$340,000 in federal enhancement funds; then I have a capital budget of state funds that I'm able to utilize, as well, so I contributed an additional \$25,000 in state enhancement funds to give us a total of \$365,000; and then as the one letter indicated here, Rep. Carey had contributed \$60,000 of his community transportation funds. That \$60,000 was; this program has a matching contribution; it's an 80/20 program; that's a federal requirement. The State of Delaware, because we have additional capital funds in the program; passes along a cost savings to the Towns, so we reduce your match requirement. In this case, if you have a \$400,000 project; at 20% you would be looking at an \$80,000 match. What we did was to reduce that by doing a sliding scale; we pass along this cost savings to you and then we make it up with the state dollars.

Mayor Post: We weren't supposed to be asking any questions, but; if you're going to give us the right numbers, I have to have the right numbers here.

You're saying that \$60,000 from George Carey is the match.

Jeff Niezgoda: Correct. Your match is met 100%.

Mayor Post: I think there are some other matches, too.

Jeff Niezgoda: Yes, the other monies that are listed here in this document that was up-front are monies of which I have no control over currently. The only monies that I have control over are the monies that I have listed and those monies are secured and they're in our accounts. When you have CTF contributions, I think what you guys are used to doing is, like if there is a project that the Town is going to do and one of the Representatives or Senators or whatever the case may be, are going to contribute some of their legislative funding. You work through a representative of our department; an agreement is drafted; once the agreement is drafted I think you get 10% up-front and then when you incur the costs, then you're reimbursed the full amount or whatever the cost of the bill is. In this case, with this program being matching contributions and the fact that we have federal money in the program; the monies are transferred into a state-to-state contract number assigned to this particular project and managed internally. Although it is a sponsored administrative project, meaning the Town of Milton is administering the contract, it's a reimbursable program. As you incur costs, you send the bills to us; we process them and we can reimburse you up to \$425,000. Anything in excess of that will be 100% the responsibility of the Town. You have to keep that in mind. The current construction low bidder, and Michael can talk about this a little bit later, is well under; so we have some flexibility there; we have a pending design proposal from Becker Morgan for construction inspection services; that they are going to have to do in reviewing applications for payments; assisting the Town with day-to-day inspection of the contract; things of that nature; and then, depending on what the decision is for the environmental assessment, there could be some additional costs from Ten Bears Environmental that they have there. All of these, however they do it; I just need to be made aware of. I know the construction bid price and from conversations that we've had with him, Mike Davis Excavation has agreed to still honor those; and I will tell you that you're very lucky because they are only responsible to uphold those bid prices for 30 days after the bidding is open. We're talking about 1-1/2 years later. I don't know if there are any questions about the federal money; it is a reimbursable program; the money is all encumbered through us to the Town of Milton. We won't have a contract with the contractor; I won't have a contract with Becker Morgan; I won't have a contract with Ten Bears Environmental; it will be contracts that the Town of Milton have with them. We have the agreement that was referenced before and that is our binding financial contract with the Town of Milton. The responsibility of the trail, that was discussed before also, there was talk once that it is property that is currently owned by the State of Delaware; it was our intention to turn the property over to the Town of Milton; once the project was completed, they're making it that much easier. I have talked to our real estate department and there are agreements and custodial resolutions, that can be drafted between the department and the Town of Milton that basically state that we, as a State, will

continue to own the property and that you will maintain the facility that's built. In other words, you'll maintain the trail, the lighting fixtures, all the site amenities, all the things that are built as part of this project. We can continue to maintain the lands, itself; that really depends on what the decision is on how to move forward; with a capping project. I will tell you this, the Rails to Trails program is very new to the State of Delaware. We have a lot of railroad corridors that aren't utilized any longer by the railroads, Norfolk Southern, CSX, whatever the case may be; I heard talk about the Georgetown to Lewes, but that will actually be a Rail With Trail; where the trail will be adjacent to the track and the track will stay in place. In this project here, it's Rail to Trail, meaning that the rail will actually be removed. The least amount of disturbance to the ground is going to benefit the project in the long run. I think there are ways that we could possibly do that, by capping it; by raising the elevation. Knowing the area, there is construction or buildings on both sides. This corridor is really pinched, so there's been a lot of disturbance to the area already and I don't know if there's anything else that you need me to talk about, unless there are some questions.

Mayor Post: Yes, we'll probably be asking questions, but I just want to give Mr. Lane a chance to talk and if there is anything that he needs to add to this.

Michael Lane, Becker Morgan Group, Design Engineer: I have talked to Mike Davidson Contractors about some of the methods that we have been discussing: the option of cap and cover; removing about a foot and a half of material. They are now trying to put together a rough cost estimate and see how much that might be; removal of possibly a foot and a half and then an addition of two feet to cover the whole trail. There are going to be some problems, as you move closer to each side of the streets, because you're going to have to excavate to match the existing grade, because we're not covering the street. As you get closer, you're going to have to dig down into that. We're going to have some mitigation of material. That's a given. So we'll have to have some of that removed and dealt with. The contractor is certified to handle the hazardous material, so you can rest assured that the contractor is able to handle that. I'm hoping that after talking with Jeff earlier this evening, that we might come up with a compromise if you're comfortable with capping and covering it, maybe it's not two feet; maybe it's just a foot. Jeff and I felt comfortable with maybe not going to that extreme, because the site is pretty flat; you don't have that much grading out there and some of the trail moves around in there within that alignment to take care of some grading problems that we've encountered. Maybe a foot to reduce costs would probably be better at this point. There is going to have to be some additional analysis by Ten Bears Environmental. We know we're going to have some more information on the contaminants so that if there is any removed and it goes to a certified dump, then the dump knows what is in the soil. That has to be done and we need to move forward on that. There are some other concerns in this memo that was up at the podium. The contractor is responsible for all aspects of the project, from start to finish. He

will come in after the site is remediated or he will be part of the remediation; but in any case he will be finishing the project. My understanding is that it will probably be a two month project, with final capping of asphalt of less than one day. It can move pretty quickly once you get started with this type of option. The Brownfield option, in our opinion, after talking further about it, would probably not hit the June deadline; you will probably go over that; and so the funds that DelDOT has encumbered, you will lose. So we're concerned about that. We're comfortable with the cap and cover type of option.

Jeff Niezgoda: I can add a little bit to the fact about the deadline. This project has been on the books since about 2006; the monies were allotted to the project in 2007; the bids went out about 15 months ago; the monies that I encumbered to the project have carried over from one fiscal year to the next; already one cycle on the state side, as well as the federal side. Our state fiscal year is from July 1 through June 30 and the federal one is from October 1. With that said, in the way our new financial situation is, more particularly about state monies, Rep. Carey's monies were monies that he had in a coffer that were given to him through the General Assembly. He has use of that money, to spend that money, during that fiscal year. I pulled that money out of his account and we put it into this project, back in 2007. The project wasn't done, of course; we went from 2007 to 2008; that \$60,000 is still there, but it's now not Rep. Carey's money; it's money that I had to pull out of my capital program funds that I'm allocated each year to cover that. Because if you don't use the State money and there are balances, you have to honor awards, but you have to cover it with your new money. So now I've gone from 2007 to 2008; now I've gone from 2008 to 2009; so when that \$60,000 originally was set up; now you're looking at about \$180,000 and we haven't spent a penny of it. If you look at it in real terms. I don't have the ability to carry that money over to next year. This is not a decision that I'm making; this is internally through our financial department. We have to clean the books up and we have to make projects that have been on the books for quite some time. That's what the reason is and we've pretty much set a deadline of June 20 to expend this project out completely; all the payments will have to be made by then.

Michael Lane: One of the other issues that the Town of Milton is concerned about is the disposal of the railroad ties, the tracks themselves. My understanding is DelDOT possibly has a contractor that can remove all of that; so the Town will not assume any responsibility for storage or removing. At this point, if there are any questions, I'm available to answer them.

Mayor Post: We're going to ask questions now.

C Martin-Brown: Thank you, Mr. Mayor. When Ten Bears Environmental did their soil assessment, did you check for arsenic?

Kyle Lampron: The question was did we check for arsenic? We did. We tested for arsenic; it was included in the suite of metals that we analyzed.

C Martin-Brown: And the findings on that Sir?

Kyle Lampron: They were below state standards.

C Martin-Brown: They were below state standards.

Mayor Post: It's on that report.

C Martin-Brown: But I didn't know if it was below state standards.

Mayor Post: The contaminated ones are on that; the elevated contaminants are on that report.

C Martin-Brown: Mr. Mayor am I hearing correctly that the dilemma we face is to not take advantage of the Brownfield program, which offers liability vs. losing money from DelDOT's department for the project? In the federal system, which may not work at the state level, the Department of Energy and EPA have often undertaken MOU's to transfer funds cross-agencies to hold in escrow so that the initial work, for instance, of Brownfield work can be completed without losing those monies.

Jeff Niezgoda: It wouldn't be the federal money that would be in question. It's more the state money.

C Martin-Brown: I understand that. But I'm saying that there is federal precedent; is there state precedent for an inter-agency transfer of funds between DOT to DNREC to hold on account to allow the Brownfield program to be completed and not lose the money you have on the table to actually build the thing and move the rails and blah, blah, blah.

Jeff Niezgoda: I can't speak for DNREC's financial situation, nor do I really understand our financial parameters. We basically go with what is being told to us; but I do know we're two state agencies and pretty much work the same way. We can transfer money easily from one agency to the other; it's not going to take away the responsibility of somebody being accountable for the money; from fiscal year to fiscal year.

C Martin-Brown: I understand that, but if it leaves your agency at the beginning of the fiscal year is required or at the end of the fiscal year and it comes at the beginning of the new fiscal year for another agency, that often meets the requirements of fiscal disbursements. Going back to that, the Brownfield Program at the federal level is about 30 years old. It was on my watch nationally when Love Canal happened and the problems of porosity of asphalt and soil and gravel and cement, over time, are very real. If what the Ten Bears Environmental found exceeds the state standards, which are pretty much based on federal requirements, then I have a real concern about this dilemma we find ourselves in; because I'll be dead 20 years from now; it's not my problem; but my grandchildren's kids could be going along there and have health problems as it takes time. When they capped Love Canal areas, they've been percolating ever since, off and on. I'm concerned about the public health aspect over a longer period of time. That's all I'm going to say, Mr. Mayor.

C Hudson: Are you saying that we have a Love Canal situation behind the...

Paul Will: We do not have that situation. Please we do not have that situation.

C Martin-Brown: I'm saying that whenever there are contaminants in the soil that over time can escape where they have been entrapped; the problem hasn't gone for good. I was just wondering how we could take advantage of both of

these excellent opportunities in some way that meet the requirements of your fiscal managers. That's the issue, Mary. It's not...

C Hudson: What I'm trying to say this is if you have a Brownfield situation, then treat it as a Brownfield situation; but if we don't have a Brownfield situation then maybe we're overreacting. So my question is, if you just cap and cover this with asphalt, what are the chances of someone getting cancer who rides their bike along that sidewalk. What we're talking about is taking out these railroad tracks and ties and putting in a sidewalk and what are the chances that some nurse or patient from Milton Medical Park or Angerstein's client or sales rep is going to sit down there, have their lunch on a bench and end up getting cancer.

Paul Will: In my opinion, and I'm not a doctor, let me state that up-front, if you're containing this with the types of contaminants that we have there, those chances are zero.

C Hudson: Thank you.

Paul Will: You probably have more of a chance with the cigarette hanging out of their mouth while riding their bike.

C Hudson: Like Irish Eyes, a cigarette and there you go.

Paul Will: Let me just also say that with all my years, I'm very, very educated on the whole Love Canal and this is NOT Love Canal. I don't want to alarm anybody that way.

C Martin-Brown: What I'm wanting to say about Love Canal is it was an eye-opener for me in terms of how the state and municipal levels all were trying to get a coordinated way to deal with it, as a Brownfield.

Paul Will: I don't think anyone will argue that Love Canal was a catastrophic failure on many ends.

C Martin-Brown: But the other question is a retrospective epidemiological survey performed 30 years from now, that's when you need to be able to say the risk is minimum.

Paul Will: I would say that.

Mayor Post: So if the risk is zero, then why can't we do a cap and cover from the State of Delaware and get instead of a "comfort letter" get a "no liability letter". That's a simple solution. That's not a problem. The problem is that when the state has told us they don't want the liability or to release us of the liability I have a little problem with that, because I think the best solution if we are maintaining it, we might as well own it and if we own it I don't want any liability risk. It's as simple as that. You can sit there and say what are the odds that a tree falls and somebody gets killed; it happens; or get struck by lightning; it happens; and you can sit there and say that cancer probably would never happen; but you don't know. We don't have enough studies. I work in public health and I know that there are not enough studies to determine yes or no it could not happen. Why put yourself in that risk, if you don't have to?

Paul Will: I would agree with you, Mr. Mayor.

Mayor Post: I understand that these funds have been carried over; but again, we have not been thrown the plate of contamination until recently in regard to the

contaminant part of it. Now we have to address that and we are addressing it. The sad thing is that why can't we take the land; we use the Brownfield and you hold the funds over for a few months; if they can expedite this to a point where it's done hopefully even prior to June; I know that's pushing it; but I mean they are very ready and willing to step forward; we would know if we decide that the Brownfield within a short period if we get accepted or how quickly can we move this along.

Paul Will: If you do decide to go the Brownfields route, a lot of the pressure falls on to Kyle because he's the firm that is going to go out and do the sampling, write the reports that we need to review and time will be of the essence to get those reports to us, so we can prepare a proposed plan to go before the public. So it really falls to the private sector to get that report done.

Mayor Post: Let me go to Kyle. Are you up and ready for something like this; if it would go into that direction? Do you have the ability at this time to focus on a project like this?

Kyle Lampron: Most definitely. I think initially what we need to do is have a meeting with all parties involved and put together a concrete schedule with the contractor, with Becker Morgan, with DNREC and set timetables for these milestones that need to happen. But it certainly is doable at our end.

C Prettyman: Once all your work is done and everything, how long does it take to expedite the grant? If we go with Brownfields, we'll have to apply for the grant and what is the process and the time line there?

Paul Will: The process for actually getting this whole thing started, as I mentioned earlier, was actually certifying the site; completing that application; someone from the Town sending that into the State; we issue a letter saying it is a certified Brownfield site; you're eligible for this amount of money for this project; and then entrance into the Brownfield Development Agreement is what officially makes this a project. At that point your clock starts ticking, as far as your time.

C Prettyman: From the time we send you the application and you get it back to let us know it's approved, what is that time frame?

Paul Will: Less than a week. I would see to it because of the time-critical nature of this that it's done in less than a week. The Town Manager can fill that out and I'm sure if you're already engaged with Ten Bears Environmental, they can assist you with that.

C Hudson: One of you gentlemen said that Rails to Trails was fairly new in Delaware, but have there been other Rails to Trails done in Delaware? I thought that there had been some done.

Paul Will: I'm not familiar with Rails to Trails but I generally am familiar with the northern portion of the state, there have been some Greenway Projects done, but I don't know if those are similar to Rails to Trails.

UNIDENTIFIED SPEAKER NOT CLOSE TO THE MICROPHONE: We've done one Rails to Trails project around Brandywine Park, but there were some contaminants up there but the project was to elevate; we didn't excavate into the existing ground at all, so we didn't disturb anything.

C Hudson: That was my question; was it treated as a Brownfield?

UNIDENTIFIED SPEAKER NOT CLOSE TO THE MICROPHONE: No, absolutely not.

Paul Will: I think that was prior to our Brownfields Program that that was done. There is a relatively new state park up near the Claymont area, right along the Delaware River, Fox Point State Park; that used to be a rail line that literally connected Wilmington with the steel mills in the very northern portion of the state. The rail lines ran right along the edge of the river. That was all covered. The rail lines were taken out and that was basically a cap and cover; not done as part of Brownfield. That's a similar type project that was done; with similar contaminants, as well.

C Hudson: We've been talking about liability and I have a number of us on my side of the table and down to the end have lived here while the canning company was still in operation and from my recollection right now the train stop on the tracks are on the west side of Chestnut; they didn't originally stop there; they went across Chestnut Street, under Chestnut sidewalk; and into Cannery Village. We capped and covered that. There's the precedent we have right here in this Town.

Paul Will: I was involved in that investigation/remediation of the cannery.

C Hudson: Our own town already has cap and cover.

Paul Will: There is precedent in the town, even, for doing this. Yes.

C Martin-Brown: Does the town have liability for that area, that has been capped and covered?

Paul Will: The liability for that project would have been whoever entered into it, and I can't remember who entered into the agreements with us, whether it was the Town or whether it was Mr. Draper. If it were Mr. Draper, he would have the liability protection for that.

C Hudson: But the Town has the responsibility for Chestnut Street, itself, and that's ours and that was capped and covered. It was not treated as Brownfields.

Mayor Post: No, there's nothing on Chestnut Street that... This goes from Chestnut to...

C Prettyman: What she's saying is...

Paul Will: If that portion of Chestnut was involved in that cannery project that we did, that liability protection would have went with that project; and I think that would have been Mr. Draper's liability protection.

C Hudson: So our precedent is that we have capped and covered in the past.

Paul Will: Yes, it's definitely been before. This won't be earthshaking new science here. It's been done before.

C Hudson: Other than reducing our liability, that's the only advantage to going with Brownfields.

Unidentified Speaker: The other is the money that's available.

C Duby: This is the question that I have. What is the estimate of what the project, without remediation, will cost? Will it use all the money that you have, in other words, is there any money in the DelDOT money to cover remediation, if we did not get the grant for Brownfields.

Unidentified and garbled speaker: ...

C DUBY: \$284,000.

Unidentified and garbled speaker: ...

C DUBY: Does anybody have an estimate as to what cap and cover would cost?

Unidentified Speaker: Let me just add to that. The base bid was approximately \$282,000; and I apologize for not having the real numbers in front of you; but it's somewhere right around that. There is some additional cost through change orders that you will receive from the contractor for whether he is being asked to mitigate; remove this material; and then bring in select fill or whatever they need.

C DUBY: This would be the remediation process.

Unidentified Speaker: There would also be additional costs of the existing rails and the ties that are out there for him to remove and dispose of them. We talked to him about a salvage cost; whether he would give a credit back to the project; and he said yes, but the grading, there's like an 85 grade on the iron that's out there, which you will not get much money for right now; it's just a sad grade of iron. In speaking with one of the Directors of our DART section, they have indicated now that Delaware Coastline has indicated that they are actually going to be in here this week taking out some of the rail that they own. And there's a switch back there that they want to get back too; so that's going to decrease the amount of additional cost that we're going to have to the contractor. If you say \$282,000, you can figure about \$300,000.

C DUBY: So we're talking about it being within the realm of possibility that if we did not have a Brownfield grant, we could cover the cost of all of this within the money that we did get.

Mayor Post: Without the liability.

C DUBY: Now, that's a separate issue. Now that's the cost issue. The liability issue, if we chose not to apply for a Brownfield grant and to get that money and that release of liability, what would our liability status be, from the standpoint of DelDOT? Would we be liable for this in perpetuity?

C Prettyman: Wouldn't the liability on that fall within our Parks and Recreation?

C DUBY: I don't think we need to decide where it would fall, it would fall within the Town, is what I'm asking. Does the Town have liability or would the State have liability?

Unidentified Speaker: And again I apologize for not actually knowing the specific answer to that question, but I'm figuring in the conversations I have had with a realty throughout the department, that as part of the [unintelligible] custodial resolution and agreement that will be drafted; that will acknowledge all of these facts; and who would continue to maintain the land liability; if you want to call it that. I don't know, for a fact, that it is not our intention as a department to maintain the project as built, per se; the trail and all of the amenities and things.

C DUBY: I think it is clear that maintenance would come to us; but liability is really a separate issue; so I guess maybe can our Counsel give us a...

Mary Schrider-Fox: I have a couple of questions in that regard, then, because we're actually just chatting about...

Unidentified Speaker: Just with that too, I just want to stress the importance of understanding how this program works. This isn't DelDOT telling you what to do. This is your project; I'm here just to...

C Duby: I realize that. But the decision that we have to make, it seems to me, is two-part. My opinion after listening to all of you, that the ideal would be to go with the Brownfield; get that money, etc., etc.; but if we really risk losing all of your money by doing that, then what I'm trying to figure out is let's say we don't do that; what's our liability and what is our cost; what you're telling me, I think, is that it is within the realm of possibility that we could still do remediation, the cap and cover, within the money you have. If we go with Brownfields, the State takes the liability; is there a way around the liability issue with you and it sounds like you're saying you think that it's possible that the State would enter into an agreement by which we would maintain the property, but the State would still own it and have liability.

Unidentified Speaker: Correct. I did discuss that with our Chief Real Estate Agent and he never said no, at any time.

C Duby: I think our attorney may have some additional questions for you.

Mary Schrider-Fox: I just want to make sure that my notes are correct. What you're referring to now is what you were talking about earlier, the custodial resolution.

Unidentified Speaker: Correct. That's the term that they gave me.

Mary Schrider-Fox: And that's when the State continues to own it and we would maintain it or the Town would maintain it.

Unidentified Speaker: Maintain the trail facility.

Mary Schrider-Fox: I'm going to say practical responsibility. One of the questions that came up...

Unidentified Speaker: Above-ground responsibilities.

Mary Schrider-Fox: Exactly.

Mayor Post: Is that including liability?

Unidentified Speaker: A liability from the standpoint of the contaminants, no. From the liability standpoint from falling on the trails and things like that, I'm not a lawyer.

Vice Mayor Betts: The contamination liability would reside with you; if there's any liability.

Unidentified Speaker: We own it right now, so we have the liability.

Vice Mayor Betts: If we cover it over and take charge of it, in taking care of it; if something should happen from the contamination; then it would be the State's liability.

Unidentified Speaker: Again, this is going to have to be something worked out in writing.

Mary Schrider-Fox: This would be something that would have to be negotiated. What I'm hearing from you right now is you can't give us an answer today; what we've done before is we keep the contaminant responsibility or liability,

and you take on other maintenance and responsibilities and other liabilities. The question has come up along here, throughout the discussion tonight, well, what if somebody falls off their bike. My assumption is that if the Town is taking possession, custody and control over the property, for maintenance purposes, for use purposes; the guy who falls off his bike, if he's got a cause of action against somebody; it's going to be the Town.

Unidentified Speaker: He's going to sue the State; he's going to sue the Town; he's going to sue everybody; he's going to sue all adjacent property owners.

Mary Schrider-Fox: That's something that would be addressed in that custodial resolution.

Unidentified Speaker: Yes, I would expect that to be.

Mary Schrider-Fox: We can't get an answer tonight to the question of does DelDOT have a certain position with respect to if they keep nothing else; if they keep ownership and responsibility for contaminants; do we have an answer to the second piece of the question; we can't really say that, can we.

Unidentified Speaker: As far as the contaminants are concerned. We maintain a liability today; and nothing is going to change other than a trail is going to be built out there; so I would assume...

Mary Schrider-Fox: So, we could make a somewhat safe assumption that that particular liability might not be passed on to us through the custodial resolution.

Unidentified Speaker: If the trail isn't built, who has the liability? We do.

Vice Mayor Betts and C Doby: If it's built though...

Unidentified Speaker: If you build the trail, that's all going to have to be worked out in the agreements and we'll leave those up to the lawyers.

C Doby: I think we need a little bit more definitive answer.

Unidentified Speaker: Our Attorney General would be better suited to answer that.

C Prettyman: I think we need to wait and hear from Ten Bears Environmental when they do their...

Mayor Post: They're done.

C Prettyman: Well, wait a minute, then I missed something over here. I thought that...

Mayor Post: There's another one if they do the Brownfield, then they would have to do; but if we don't go Brownfield, then they're done. At this point, we have their report; we have everybody's remarks from the agencies; and now...

UNIDENTIFIED COUNCILPERSON: Could all these attorneys get together and give us that in some form of an agreement that we would not have liability.

Unidentified Speaker: If he's available tomorrow, I'll talk to our Attorney General tomorrow.

UNIDENTIFIED COUNCILPERSON: Because we could have a special meeting maybe and get this...

Mayor Post: I don't even know, do you need a special meeting if somebody was comfortable with... Each month we're ticking with this. The whole issue here is to spend the DelDOT money and that's fine, I understand that; then you could make the motion tonight, I would think, contingent upon that they would release

us of any liability in regards to the contaminants and it would still remain as state ownership.

C Prettyman: I agree with that. I don't think we need another meeting, because it's just going to hold things up. I think we need to move on this.

Mayor Post: If people are comfortable.

C Prettyman: Exactly what you just said Mr. Mayor. I think it's a very peaceable one and I think it's something that we need; if they want to discuss more about it, okay. That's where we need to jump and move.

Mayor Post: They can discuss it. I know where I would go with that because now I'm more comfortable. I don't want the Town to have the liability. I'd go Brownfield, if we have the liability and we take the risk with you for the \$300,000 or \$420,000; if you're saying that the State will sign off on it and maintain it and continue it; reach an agreement with the Town where they assume the liability for anything in the future for the contamination of that property; I have no problem with that. I don't understand why we cannot create...

C Prettyman: As long as we get it in writing.

C Duby: I think we can craft a motion that has those contingencies in it; but I think there's the contingency of the liability issue; on that issue, it sounds like what you're proposing, is what I would propose too; which is if we can get what we want in terms of liability; we'll go with that. If we can't we will go with the Brownfield.

Mayor Post: Absolutely.

C Duby: In terms of the money, while it sounds generally like that money would cover the remediation, as well as the construction; do we want to have a contingency there as well? Let's assume we get what we want in terms of liability; we get the assurances from DelDOT we want and we go ahead and say that; and then it turns out that the \$425,000 isn't enough to cover it; are we taking the responsibility that we as the Town will kick in more money; which we know that we don't have lots of.

UNIDENTIFIED COUNCILPERSON: My understanding was that a lot of things were options; we don't have to have benches; we don't have to have trash receptacles; we don't have to have lighting; basically what we're talking about is putting a sidewalk between Chestnut and Federal.

Mayor Post: Then why even bother. I would go back to the theory if you're going to do it, do it right.

UNIDENTIFIED COUNCILPERSON: The rails are terrible; the ties are terrible; this would be a wonderful addition of beautification to this Town; if you lived there you would want to say yes; please bother.

Mayor Post: And do it right.

C Duby: I think the issue here is not what we would like to do; obviously we would like to have the whole thing; but it's our fall back. If we say we think that the money we're getting from DelDOT will cover all this. If, in fact, we go through all of this; we get what we want in liability; and it turns out that we're

short; then rather than our kicking money in; which we don't have; we'll stop here and do another grant to get the benches and the lights.

Mayor Post: Absolutely. Does that contract include all of it right now? It includes the benches, the lighting and all that.

Unidentified Speaker: All the amenities were covered in the contract.

Mayor Post: Do you feel that how it stands right now that we could do it all and have a finished product with this Phase I, with the current funds of \$425,000 and take care of this cap and cover; without doing it with the Brownfield?

Unidentified Speaker: I really would need to talk further with ??? to discuss with them their costs for remediation with their adding a foot or two feet and then I need to clarify an issue, because, I think Kyle you could talk better than I can about the dumps certification for further analysis and characterization of that hazardous material. We still need to do some further analysis of that material for the dump.

Kyle Lampron: That's pretty simple if materials are going off-site, the facility is going to require further analysis before they accept it; just to determine that it is not a hazardous waste; something that would be characterized as a hazardous waste, as opposed to regulated waste. There are certain analyses that they run to determine whether it has to go to a hazardous landfill, something like Cherry Island up in Wilmington.

Mayor Post: Because another option if the timing was perfect would be to go the Brownfield; get the Brownfield done quickly because we have somebody that looks like they would push it as quickly as possible; have it in several months; I would think the cost would be going down some over here, because some of the things that the contractor over here would have included, would be things that would have been addressed with the Brownfield; and I might be wrong with that approach; so we would be at a further point ahead that it would seem to me that we would quickly come in if we did our time line correctly; because things like benches and all of that can be pre-bought; they need to be ordered and they could get in here; and the same way with the entrance and the lighting. There's a lot of things that if it was creatively done, that you would have the best of both worlds if the timing worked.

Paul Will: Yes, I think that's right. I guess one thing that I'm trying to understand, from DNREC's point of view here, entering into the Brownfield's Program is going to provide you with an approved investigation and it's going to provide reimbursement for the investigation back to the Town. I'm not quite privy to what the construction aspects of it are, so if stuff has to come out, stuff has to come out; if they're saying that the design requires stuff to be excavated, Brownfields' sites in the past have incorporated removed materials right back into the project; you simply place that material underneath, if the design allows for it; if stuff needs to be removed from the sides of the walk, it could be placed underneath the walk and contained; it doesn't even have to leave the site; therefore, you don't have to worry about a disposal facility, and requirements; and things like that. So, to me, the Brownfields does sound doable. With your timing, you all need to make that decision and my recommendation would be to

do it sooner, rather than later; because the longer we wait the harder it's going to be to get to that finish line. There is a process that needs to take place.

C DUBY: I have a motion so that at least we'll have some language and then people can amend it or whatever. I move that we move forward with the Rails to Trails Project, utilizing DelDOT funding, we have already been awarded, contingent upon our receiving assurance from DelDOT within the next two weeks that once the project is completed, the State will retain liability as to any contaminants in the soil or railroad equipment. If such assurances are not forthcoming from DelDOT, I move that we make application as soon as possible, time being of the essence, to enter into the Brownfields Program through DNREC; such investigation and remediation to be completed in time for us to complete the project and collect DelDOT funding by June 20, 2009.

Unidentified Speaker: What this means is that we get, within a very short period of time, assurances from Delaware that they will retain liability for the contaminants that we will go forward with cap and cover.

C DUBY: If they come back to us and say no, you would have liability for the contaminants; then this gives the Town the authority to just immediately go ahead and make the application for Brownfield.

C PRETTYMAN: I second the motion.

MAYOR POST: We have a motion and a second; is there any discussion to the motion?

C MARTIN-BROWN: C DUBY could you add the word "written and recorded" agreement, with the State, please.

C PRETTYMAN: I didn't hear you.

MARY SCHRIDER-FOX: I would just like to interject to say that I'm not sure that you are going to get a recorded agreement in less than two weeks. In the event that that is one of the terms agreed upon, it eventually would get recorded so that it would run with the land, but it just may not be done within the next few weeks. The terms might be capable of being negotiated.

C DUBY: How about if I say "assurances from DelDOT within the next two weeks (such assurances to be ultimately recorded with the land)".

C MARTIN-BROWN: It ought to have language in there that says in writing.

C HUDSON: [garbled] recorded.

C MARTIN-BROWN: Well, no, there's a difference. If you have a letter from the State assuring the Town of the elements that C DUBY has in her language, that the State retain liability, then that has to be received in writing.

MAYOR POST: We will have that with an agreement, with whatever that custodial resolution will be.

JEFF NEIZGODA: The problem I see, and I think she was hitting on this (I'm sorry but I don't know your name) is this isn't something that's going to be something [I didn't see you guys do that].

C DUBY: We were supposed to be doing it all evening, and none of us have.

MAYOR POST: And that's why we have a problem with it, because we all do it.

JEFF NEIZGODA: With agreements like this there are a lot of people that sign off on it. I think the understand will be clear within hopefully two weeks; I'm not

going to sit here and tell you that with 100% certainty that this document is going to be fully executed in two weeks.

Mayor Post: No, that's impossible.

C Duby: What's the name of the document a "custodial" what?

Jeff Neizgoda: A "custodial resolution".

Mayor Post: That will come back in front of Council to vote on. What we're trying to say is that they're giving us the understanding that they are not going to hold us liable for the contamination.

C Duby: Here's the way I've amended it, C Martin-Brown, see if this works. "Contingent upon our receiving assurances from DelDOT within the next two weeks (such assurance, ultimately, to be recorded and run with the land through a custodial resolution); that once the project is completed, the State would retain liability as to any contaminants in the soil".

C Martin-Brown: I find that very helpful.

C Duby: I amend my motion accordingly.

C Prettyman: I second your amended motion.

Mayor Post: We have a motion and a second, as amended. We'll do a roll call vote:

C Martin-Brown	Yes
C Duby	Yes
C Hudson	Yes
C Prettyman	Yes
C Abraham	Yes
C Betts	Yes
Mayor Post	Yes

Motion carried. Thank you all for coming. I greatly appreciate it.

Mary Schrider-Fox: I have one brief follow-up question. Which attorney in your department should I contact? Would that be Mr. Schrank?

Mayor Post: I want to call a 5 minute recess at 9:17 p.m. and we will start promptly back here in 5 minutes.

Mayor Post: I am reconvening the meeting at 9:23 p.m. Note: C Abraham has left and so has Vice Mayor Betts.

- c. Council Approved Donations – discussions and possible vote on the allocation of the remaining \$4,500 placed in the 2008-2009 Fiscal Budget

Mayor Post: In front of you, you've had a couple of things submitted. I know the Garden Club; the Cat Snippers; and the Milton Historical Society have all submitted. We tabled the Milton Historical Society last month and now we'll finalize these.

C Prettyman: I'm talking about the Milton Garden Club and the grant that we would like to give to them. I really feel that they really service the community quite well all year long and whatever we can, I think we should give to them.

Mayor Post: We have \$4,500 at hand.

C Prettyman: I would like to make a motion for the Milton Garden Club to receive \$1,500.

C Martin-Brown: Second

Mayor Post: We have a motion and a second; any discussion? I do want to reiterate what C Prettyman said; I feel that they are at a different level than many, because they are doing a service for the Town; when I talk about a service, I'm talking about a direct service for the Town that we would have to pay for. As I said before, we could pay to have the Town landscaping and beautification or we can use it through volunteer services with off-setting costs. Just so people are aware, there are also some downtown beautification funds that I have also turned over to the Garden Club to use, to help them off-set their costs. Last year alone, they contributed all the other things and they gave a very good, detailed budget; but the iron around the planters was \$12,000; and they contributed a lot of that; we contributed too; but they contributed too. Is there any other discussion regarding the Garden Club donation of \$1,500?

C Martin-Brown	Yes
C Duby	Yes
C Hudson	Yes
C Prettyman	Yes
Mayor Post	Yes

Motion carried.

C Hudson: I would like to make a motion that we donate \$1,000 to the Milton Historical Society, at their request, and \$1,000 to the Cat Snippers, at their request. We've heard over and over again all of the good deeds that they've done and I don't think I need to go into a lot of detail.

C Prettyman: I agree with you on the Cat Snippers what they have done and they're still doing a great job for the Town and to try to solve this problem with these cats. I have no problem with the Cat Snippers getting \$1,000.

C Martin-Brown: Mr. Mayor, should that be a separate motion?

Mayor Post: I thought that was where he was going. Do we have a second on the...

C Prettyman: I'm doing just the Cat Snippers.

Mayor Post: No, we have a motion on the table for \$1,000 to the Milton Historical Society and \$1,000 to the Cat Snippers. Anybody that wants to second that motion, please second.

C Duby: I will second that motion.

Mayor Post: Any discussion regarding that?

C Prettyman: Yes, I have a discussion regarding that I do agree with the Cat Snippers getting the \$1,000; I do not on the Milton Historical Society; because they raise money and they can continue to raise money. I think that we really need to stop and look at what's coming down the road for us at this time when everybody is tightening up their belts. I know we borrowed from reserves this year; I just don't see giving everything away, at this time.

C Hudson: I don't think at this particular time we're giving everything away; we're starting with \$4,500; we're only talking about \$3,500 total between the \$1,500 for the Garden Club; \$1,000 for the Cat Snippers; and \$1,000 for the

Historical Society; which comes to \$3,500 total. Also, please remember that the Historical Expansion District Survey we allotted \$15,000 for that and it only costs \$13,000; so there's another \$2,000; so if anyone should come forward, there's still a little bit of money left for anyone else that wants to ask for a donation. These people right now have put in letters; they've made specific requests and I think they've done a terrific job for this town.

C Prettyman: It's not a guarantee if they put in a letter.

C Hudson: I would like to see us move forward with it.

C Martin-Brown: Is it opened for discussion, Mr. Mayor; because I would like to see each of these motions, individually. We started out with the Garden Club as a separate motion and I'd like to continue with each organization having a separate motion.

C Hudson: I will modify my motion then. I make a motion we donate \$1,000 to Cat Snippers.

C Duby: Second.

UNIDENTIFIED COUCILPERSON: On that proposal, in terms of discussion, could we consider that we do a reimbursable, so that the donation to Cat Snippers is for sterilization services; but if you're feeding 45 cats; the question is how much money do we need for sterilization or should it all be donated towards sterilization?

UNIDENTIFIED COUNCILPERSON: It's like asking the theater for a seat, but you don't want to pay for the heat.

Mayor Post: Or we only want to pay for the Garden Club geraniums.

C Duby: I think the letter from Cat Snippers makes clear that \$1,000 will pay for spaying 12 cats. It says in the first paragraph.

Mayor Post: That would be 12. You're right. That's a lot of money.

C Hudson: They included all the rest to show that they are worthy of this \$1,000. They do a tremendous job.

Mayor Post: We have a motion and a second. We've discussed it. Let's take a roll call vote:

C Martin-Brown	No
C Duby	Yes
C Hudson	Yes
C Prettyman	Yes
Mayor Post	Yes

Motion carried.

C Hudson: I make a motion that we donate \$1,000 to the Milton Historical Society.

C Martin-Brown: Second

Mayor Post: Any discussion on this motion? Roll call vote:

C Martin-Brown	Yes
C Duby	Yes
C Hudson	Yes
C Prettyman	No

Mayor Post Yes  
Motion carried. That will leave a balance of \$1,000. We're ready to move forward.

- d. Discussion and vote as to whom to use for the Town-Wide Tax Reassessment  
Mayor Post: You have in your packet...

George Dickerson: If I may, Mr. Mayor. I was asked at the last meeting to attempt to find other businesses that do tax reassessments. In diligently looking through them, you have one in your packets, that you have had time to review, which was Tyler Technologies. They are going to be contracting with Dover; they already do Smyrna and they are doing Milford. As you see in the second page of that memo, its \$150,000 to \$185,000; it would be my recommendation that we stay with PTA and we know it's about \$85,000; and get it done.

C Prettyman: I agree with you and I thank you for all the work that you've done, Mr. Dickerson.

Mayor Post: Can we have a motion?

C Prettyman: I make the motion to go ahead with PTA to do the Town-Wide Tax Reassessment.

UNIDENTIFIED COUNCILPERSON: Second.

Mayor Post: Any discussion to this motion? We'll do a roll call vote:

C Martin-Brown	Yes
C Duby	Yes
C Hudson	Yes
C Prettyman	Yes
Mayor Post	Yes

Motion carried. That will start right away, Mr. Dickerson?

George Dickerson: Yes. I talked to Mr. Riley when he was in Town Hall today and told him this was coming before Council; I'll give him a call in the morning; he knows that it will start; and he will try to have it done no later than August; so it will actually start in 2010.

15. New Business

- a. Consideration of the Community Development Block Grant Program – Mr. William LeCates

Mayor Post: That was our public hearing that was presented in front of us earlier this evening.

C Prettyman: I make a motion to accept Community Development Block Grant that Mr. LeCates presented to us this evening.

George Dickerson: There is also a resolution that goes with that; that's why we placed that on the agenda that way. Mr. LeCates gave it to me tonight. The resolution is just the formality that's needed by Mr. LeCates to actually disperse the monies.

Mary Schrider-Fox: Should you read the resolution and then we have a motion to approve the resolution?

George Dickerson: Yes.

Mayor Post: The Resolution reads as follows: "Endorsing Project to be submitted to the Delaware State Housing Authority for funding from the U. S. Department of Housing and Urban Development authorizing David B. Baker, Sussex County Administrator, to submit application. WHEREAS, the Town of Milton resolves to apply for Community Development Funds from the Delaware State Housing Authority; in accordance with appropriate regulations governing Community Development Block Grants, State of Delaware Program for Block Grants as contained in Section 570.488-499 24CFR U.S. Department of Housing and Urban Development; and, WHEREAS, the Town of Milton has met the application requirements of Attachment "E", Delaware Community Block Grant Programs Policies and Procedures citizen participation requirements; and, WHEREAS, Sussex County plans on accomplishing the requested projects with CDBG funds; and, WHEREAS, the Town of Milton hereby agrees to allow Sussex County to accomplish the projects in the targeted areas of Milton, and, WHEREAS, the Town of Milton and Sussex County are in agreement with this activity. NOW THEREFORE BE IT RESOLVED that the Town of Milton and Sussex County that they endorse and grant permission for the following activity: Application, rehabilitation, infrastructure/demolition, total infrastructure project cost is unknown at this time. Total CDBG grant request is \$90,000; matching funds in the amount of \$0 will be provided by the Town of Milton General Funds. Note: to be used for infrastructure projects only. I do hereby certify that the foregoing is true and correct. Copy of Resolution Number tbd passed by the Town of Milton, Sussex County on the 5<sup>th</sup> day of January, 2009. We give Mayor Post the authorization to sign Resolution; to be signed by the Council Members, as well. I do hereby certify that the foregoing title of Resolution Number tbd, adopted by the Town of Milton is the same title of Resolution Number tbd, to be adopted by the County Council of the Sussex County on a date to be determined, by Robin A. Griffith, Clerk of the County Council." "The Resolution, WHEREAS, the Town of Milton recognizes the importance of fair housing for the citizens of Milton, and, WHEREAS, the Town of Milton supports the goals of the Federal Fair Housing Law, NOW THEREFORE BE IT RESOLVED that the Town of Milton heartily encourages all parties involved in the renting, selling or financing housing in the Town of Milton to ensure that no person shall, on the grounds of race, color, national origin or sex be discriminated against or denied a fair and equal opportunity to housing and BE IT FURTHER RESOLVED that the Town of Milton, when acting as administrator of a Community Development Block Grant is hereby authorized to make such actions as deemed necessary to affirmatively further fair housing in connection with the said Community Development Block Grant. Respectfully submitted, Donald Post, Mayor."

C DUBY: My understanding is that we are not getting any money for people to use to rehab houses or anything; it's totally infrastructure projects; like street projects.

George Dickerson: No, this is totally for housing.

C DUBY: But it says at the end this is only to be used for infrastructure projects.

George Dickerson: That statement is incorrect. I only received this tonight and handed it to you. This is not for infrastructure projects; this is all for housing rehab of which there have been four houses, I believe Mr. LeCates mentioned in his public hearing; that have been identified to receive these funds, out of a 22 person waiting list.

C Duby: Then that's not the resolution we want to pass; because at the end it says "Note: this is to be used for infrastructure projects only". If we accept that, then we can not give any money to those projects.

Mayor Post: We don't give anyone anyhow.

Bob Kerr: I'm not familiar with this particular resolution; but ones in the past the only time that there is a matching portion required is for an infrastructure project. If you're going after housing only, there is not that requirement. So what they are saying, if you provide infrastructure, you must give a match, or you're not eligible; the higher the match, the more likely to receive the grant.

Mayor Post: That is why we need to leave that blank, because it does not affect infrastructure; so we need to strike the dollar amounts and everything in the section that says "total infrastructure project cost is zero; total CDBG grant request is blank; matching funds in the amount of zero will be provided by the Town of Milton, General Funds. Note: to be used for infrastructure projects only."

C Duby: So, the note refers to the matching portion only.

Mayor Post: We will leave all those blank.

Bob Kerr: The total funds you may have to fill in, but not the part about infrastructure or matching.

Mayor Post: The total CDBG grant request would be \$90,000.

C Duby: Anything related to infrastructure we leave out and then that note doesn't apply to us because we are not doing any infrastructure projects.

Mayor Post: That's the problem. He brought it with him and asked for it to be voted on. But the application would only be addressing rehabilitation, even though there is infrastructure and demolition, as well. But it will only be addressing rehabilitation.

UNIDENTIFIED COUNCILPERSON: Do we need a motion to adopt that resolution, Mr. Mayor?

Mayor Post: Yes. We have two resolutions that I have read. We need acceptance of both those resolutions.

C Duby: Mary [Hudson] had moved earlier that we accept the Grant; so she needs to withdraw that motion and then make a motion that we accept the Resolution.

C Hudson: I withdraw the original motion and I make a motion that we accept the two resolutions.

C Martin-Brown: Second.

Mayor Post: We have a motion and a second; any discussion? Roll call vote:

C Martin-Brown	Yes
C Duby	Yes
C Hudson	Yes

C Prettyman Yes  
Mayor Post Yes

Motion carried.

- b. Discussion and possible vote on the design of the proposed medical office at 506 Union Street (2-35-14.15-16.00)

Mayor Post: You have that information in front of you. If anyone is here, please come forward and state your name?

Unidentified Speaker: I want to make a comment, as one of the group of bikers that invades Milton every other Saturday; I think that Rails to Trails is a great project. On this, I have nothing to say. I'm here if anyone has any questions. You'll see that we have approvals from DelDOT; the Fire Marshall and Soil Conservation and they're all included with the submission.

C Martin-Brown: Mr. Mayor, during the public participation session tonight, Mrs. Weeks asked if our approval tonight is just on this design; that the rest of the requirements made by Planning & Zoning around the building, must still be reconsidered and finalized and approved by Planning & Zoning. Is that correct?

Mayor Post: As I state, always, to anyone that comes in front of us unless it's through the Board of Adjustments do have to adhere to our zoning ordinances and restrictions and therefore, are legally addressed through those.

C Martin-Brown: She said that.

Robin Davis: If I may, Mr. Mayor, Robin Davis, Project Coordinator. What you are reviewing right now was a condition that was put on by Town Council for the conditional use. They are still required to go through the site plan process, which they have been going through with Planning & Zoning. You are only required to look at the design of the building today. Planning & Zoning will be going back and taking care of the parking, the site plan and things like that.

C Martin-Brown: That's very helpful. Thank you.

Mayor Post: All we're doing is looking at the plan here; what they've submitted; it's a condition that we've put on it; it has nothing to do with setbacks, driveways, signage, anything else.

C Martin-Brown: I just wanted that clear for the record.

Unidentified Speaker: I would just like to make one comment. There was a requirement that the Council had that the Deed have language in it and I gave Robin a copy of the Deed that would be signed and recorded before any building permit; I didn't see a reason in doing it until we have the building permit and are prepared to start. I gave the proposed language to Robin.

Mayor Post: To me this property blends very well into the neighborhood. My only concern is if it is a residential area, the property should look residential and I feel it does; you've got the dormers; you've got the porches; you've got the bay windows; it looks really good. So it blends very well with the Old Town.

Unidentified Speaker: Hopefully, you won't know that it wasn't always there.

C Prettyman: I would like to make a motion on the Howard Medical Office, 506 Union Street to accept it as presented to us this evening.

C Duby: Second.

Mayor Post: We have a motion and a second; any discussions to the motion?

We'll have a roll call vote:

C Martin-Brown	Yes
C Duby	Yes
C Hudson	No
C Prettyman	Yes
Mayor Post	Yes

Motion carried. Thank you very much.

- c. Discussion and possible vote on the revisions to the record plan for Phase 2A of Heritage Creek due to minor lot line adjustments.

Mayor Post: You have that information in front of you. If anyone is here, please come forward and state your name?

Mike Cobin, George Miles & Burrer: We're the Project Engineers. I have with me Lincoln Davis and Ben Gourdy representing the developer. Basically, I'll try to be brief with the explanation and I would be happy to answer any questions that you have. We're asking for some revisions on the townhouse lot lines within Phase 2A of Heritage Creek and that's to allow a little bit wider townhouse model to be installed; going from 25' to 28' on the interior units. In order to accommodate those lots, we're basically talking about a 300 sq. ft. adjustment on those lots, more or less. In order to accommodate those, some of the single family lots were made slightly smaller. All those are still within the requirements for minimum size and minimum width.

Mayor Post: It looks to me as if there are 11 lots involved. It's what it shows here on the Heritage Creek Phase 2A lot line revisions; and it just shows how much the minus sum are reduced 300 and one I see is reduced to 427. It goes from Lot 45 goes, for example, from 5,800 to 5,500, which is a 300 sq. ft. deduction. The same way with Lots 46 and 47; Lot 94 has a 427 sq. ft. reduction; Lot 95 has 119 sq. ft. reduction; Lots 96, 97 and 98 have 118 sq. ft. reduction; Lot 103 has a 300 sq. ft. reduction; Lot 104 has a 353 sq. ft. reduction; and, Lot 10 is a 1 sq. ft. reduction. It's just site line adjustments.

C Duby: The red lines show where they were.

Mike Cobin: Yes. They are fairly minor adjustments.

Mayor Post: I'll need a motion on the table first.

C Prettyman: I make a motion for the minor lot line adjustments for Heritage Creek for Phase 2A for Section 1733 of the sub-division.

UNIDENTIFIED COUNCILPERSON: Second.

Mayor Post: We have a motion and a second; any discussion to the motion?

We'll have a roll call vote:

C Martin-Brown	Yes
C Duby	Yes
C Hudson	Yes
C Prettyman	Yes
Mayor Post	Yes

Motion carried. Thank you very much.

- d. Discussion and possible vote on letter Request for Alterations to the Heritage Creek Application: 1) Delay of Route 5 12" Water Main Connection, 2) Deletion of Alleyway PCC Valley-Gutter, 3) Alteration of Approved Pavement Section, and, 4) Clarification of Acceptable Graded Aggregate Section Under Curb.

Mayor Post: The Council Members can make their comments on this, but I also want Bob Kerr and/or Robin Davis to make comments. Do we want to address this one issue at a time or all the issues together?

C Prettyman: I'd like to go one at a time because it's easier for me to stay on page.

- 1) Mayor Post: Delay of Route 5 12" Water Main Connection, if you would summarize your proposed change.

Mike Cobin, George Miles & Burrer: Basically what we're talking about here is the section of water main beyond the entrance, running across the school property and up to the corner of Cannery Village. This was part of a loop system. We've gotten approval from the Fire Marshall's office to delay that portion of the main. Mr. Kerr has reviewed it and he recommended two conditions and both of those are acceptable to the developer.

Mayor Post: Mr. Kerr or Robin, I know you've done a written response which we can see in your comments regarding the Carey Community's Heritage Creek; but number one if you could speak to this

Bob Kerr, Cave Associates, Town Engineer: Having reviewed the available water pressure, this line comes through Cannery Village to serve Heritage Creek. There is sufficient flow and pressure to delay the installation; however, I'm always concerned, that especially in these economic times, at how long it might be before that line would be constructed. So to place conditions on it, both the maximum number of units that can be constructed and I recommended 35; and also that if two years elapse, so that the developer would have to put this in within two years; with the stipulation that a one-time one-year extension be provided, provided the request is made prior to it expiring.

Mayor Post: Also, I see here that the developer has offered to post a Letter of Credit with the Town of Milton and we would make that part of the motion, if we would require that.

Bob Kerr: You have a Letter of Credit now for construction of the project.

Mayor Post: So we already have one in hand.

Bob Kerr: It is certainly within your right to request a separate Letter of Credit; but you already have one.

Mayor Post: Reading: "This Letter of Credit shall remain in the Town's possession until such time as the aforementioned...". So it's all part of the original Letter of Credit, is that what you're saying.

Bob Kerr: It's my understanding it is, but I would probably turn to legal representation.

Mary Schrider-Fox: I haven't seen the Letter of Credit and don't know anything about it; so I can really comment on that right now. I wouldn't want to lead you astray.

Mayor Post: We might want to just make that a contingency that there is a Letter of Credit; whether it exists or not is what we will determine; but that there would be a Letter of Credit; if it exists, then great.

George Dickerson: I can tell you that there is a Letter of Credit that we have received; it is in hand; actually Tempe [Steen] got it at your agency, and she made comments with regard to that Letter of Credit and I see no problem in this going forward or being a hold-up.

Mayor Post: It wouldn't hurt to put it in the motion that a Letter of Credit is secured.

Bob Kerr: There certainly is a Letter of Credit that covers Phase 2A. My only question would be that if this is not part of 2A, that it also covers it.

C Duby: I move that we approve the delay of the Route 5 12" Water Main Connection, as requested by the developer at Heritage Creek, with the two conditions set forth by our Town Engineer, which we understand the developer has agreed to; and also with the contingency that the Letter of Credit we have on file will cover this and if not, then the developer would provide an additional one.

C Martin-Brown: Second.

Mayor Post: We have a motion and a second; any discussion to the motion? We'll have a roll call vote:

C Martin-Brown	Yes
C Duby	Yes
C Hudson	Yes
C Prettyman	Yes
Mayor Post	Yes

Motion carried. Thank you very much.

2) Mayor Post: Deletion of Alleyway PCC Valley-Gutter.

Mike Cobin: What we're asking, in the original preliminary site plan, before GMB got involved in the project, the plans showed a concrete valley gutter down the center of the alleys. We questioned the existence of that thing at the time. It kind of fell through the cracks and we never really got around to eliminating it from the plan. We're basically asking you to do that now. There's no Town requirement for that valley gutter. It would actually run right down the center of the alleys, longitudinally down the alleys.

Mayor Post: In each alley it would be in the center.

Mike Cobin: Yes, sir, in each alley. There are a lot of practical problems associated with that to get pavement lined up exactly with the gutter over that length. If you're doing a valley gutter across a roadway, you're only talking about 22 ft. length; it's not that difficult a problem to do; when

you're talking about hundreds of feet of longitudinal length, both sides of this thing, to get the pavement mated up to it exactly is a nightmare. Even if you were to do it correctly at installation, the asphalt has a different settlement rate than the concrete and they wouldn't stay mated up for very long; once they become out of line, flow would be encouraged to run down the side of the valley gutter and you would start to have bird baths in the paving and you would have freeze and thaw cracking.

C Hudson: What other way of controlling the stormwater run-off would you have if you eliminate this valley gutter?

Mike Cobin: Typically the valley is just formed in the asphalt, it's like a reverse crown; instead of a crown roadway, you have the two sides of the alley are directed towards the center and that valley is created just by the asphalt.

C Hudson: What would the advantage of this have been, because it was stronger than just having asphalt graded to the low spots?

Mike Cobin: I really can't give you an advantage. It was put in there by the land planner originally who thought it was a good idea at the time.

Mayor Post: You're saying it's going to be a natural thing. You wouldn't build up the center so the water drains into the grasses vs. lying in the alley.

Mike Cobin: Not in the alleys.

Mayor Post: I know. I'm familiar with an alley issue right now, where water lays.

Mike Cobin: Because there are no curbs on those alleys. In order to keep water from being directed towards the property, it is directed towards the center.

Mayor Post: I'm familiar with a property where the water lies right now in the alley. It drives me nuts; not on my property; but another family member that's in a development and I don't understand that because I would rather see the water run off instead of lying in a huge puddle until it drains by natural sun.

Mike Cobin: All the alleys have stormdrains installed.

Bob Kerr: One of the reasons that the alleys drain to the center is because of the garages along the alley. They set fairly close to the edge of the paving and if you have a normal crown, then the water tends to run towards the garages; and possibly into the garages; it becomes a little more of a nightmare to make sure that it drains properly.

Mayor Post: You couldn't go from yard to house. I understand that. If you do the proper sloping then and you have the right drainage as far as the piping and all; I would assume that it will work correctly.

Bob Kerr: The slopes of the cross section of the alley, both across the alley and longitudinally or along the alley, are the same with or without the concrete gutter. The only that's coming out is actually the physical concrete. It will look the same; if you would cut a section through it, it would look the same; just minus the concrete.

Mayor Post: I do want to make a correction to Mr. Davis in regards to the memo dated December 22, 2008, with a copy also sent to Mr. Dickerson and Mary Schrider-Fox and I know it states here that GMB's comments...

Mike Cobin: There's a letter from GMB...

Mayor Post: I got these two all mixed together now because they were attached together. It's my fault because I turned it over. It is the GMB one. I just want clarification on the verbiage. "We feel that the alley as designed and drain sufficiently without the valley gutters and that the gutters represent an unnecessary expense to the developer, now, and to the Town in the future." I wanted to go on the record that they will never be totally expensed to us because we do not accept the alleys.

Bob Kerr: Not true, Mr. Mayor. In Cannery Village the Town, at my recommendation, did not accept the alleys because of the sharp turns. The Town Maintenance staff and I were both concerned with the ability of the snow removal equipment to make the turns in Cannery Village. In Heritage Creek, it's a straight shot from street to street; and therefore, it was acceptable to accept the alleys. It was really in Cannery Village that we took the exception of not accepting the alleys; normally the alleys are accepted by the Town.

C Hudson: I make a motion that we accept delete the alleyway PCC valley-gutters.

C Duby: Second.

Mayor Post: We have a motion and a second; any discussion to the motion.

We'll have a roll call vote:

C Martin-Brown	Yes
C Duby	Yes
C Hudson	Yes
C Prettyman	Yes
Mayor Post	Yes

Motion carried. Thank you very much.

3) Mayor Post: Alteration of approved pavement section.

Mike Cobin: Basically what we would like to ask you to do on this one is to allow the road classifications for Phase 2A to be revisited. We've gone through and taken a look at the classifications as they are set up in the Code and I'm not going to ask you to approve our interpretation of that; I think that still needs to be reviewed by Mr. Kerr; but what I would like is for you to allow us to go back to him for the roads in Phase 2A to do two things. One to see if we can agree on the change in the classification and the second would be to see if there is an alternate roadway section that could be approved. That process is also allowed in your Code.

Mayor Post: Mr. Kerr do you want to make your comments and recommendations that we may want to consider.

Bob Kerr: I have no problem with reviewing the pavement sections and coming back to Mayor and Council with a recommendation; part of the

problem that we had during this process was I met with Mr. Dickerson and Mr. Davis, about the project; there was nothing in the Town Ordinance about how to go about the changes. During construction where the location of a catch basin, comes up; it needs to be moved a foot or something to meet the old conditions. My office, working with the town staff, we kind of just take care of it and don't bother you with those kinds of problems. This one kind of kept raising the level of does it go back to Planning & Zoning for their review of the construction drawings; or does it come to Mayor and Council; just exactly what process you wanted to follow; was it something that George could sign off on; or something that Robin and I could decide on; or Planning & Zoning; so that becomes part of the question. What detail do the drawings have to be completed revised and resubmitted and go through the process or is just a letter; it was all of those types of things that brought this up and at the time that we were looking at this, they were paving Phase 2A; and at this point I believe that the base paving for all of 2A is in place.

Mike Cobin: Phase 2A is in place.

Bob Kerr: It was a timing issue and I apologize that it took me longer than I had wishes to respond to the letter, but we were in the middle of a waste treatment plant start-up when this letter came in. I spent many more days than I thought I would at that site. Certainly we can review it, but part of what I would ask is how you want us to proceed; as far as, do we come back to you or Planning & Zoning; exactly how that approval process moves forward.

C Duby: What you're asking for has already been done?

Mike Cobin: Yes, the roadways in 2A have been completed; but what we're asking for now is for a reconsideration of the roadways that will be in 2B.

C Duby: And they would be done like the ones in 2A; or...

Mike Cobin: No, we would propose to do those differently. What we're asking for is allowed in the Code in Section 17. Basically, what happened was when this was originally designed back in 2005 the two heaviest road classifications were used to simplify matters; but as you know, asphalt prices since that time have gone up considerably, so now...

Mayor Post: Are we talking about the thickness?

Mike Cobin: Yes, sir.

Bob Kerr: Your sub-division ordinance requires a certain structural number that is assigned based on the number of housing units and there are many ways of meeting that structural number. If you put more inches of stone, you put less inches of hot mix. You do have a minimum hot mix thickness; but there's various ways to do it; you may put 4" of hot mix and 12" of stone; or 3" of hot mix and 15" of stone; it gives you the same structural numbers.

Mayor Post: Is that based on soil content?

Bob Kerr: The Town of Milton uses a single soil classification and this is very similar to what DelDOT does, except that they have both a "good" soil

and a “poor” soil. You have essentially adopted the “poor” soil conditions, because that way we don’t have to go out and do the sampling. Everybody thought the soil out there was going to be very good; there have been several places where we were very surprised and they had to undercut a length of the street and bring fill back in from another portion of the property to make sure it was good. It was really a surprise that it was such a poor soil quality, as it turned out to be.

Mayor Post: By doing it this way, does that reduce the longevity of the street.

Bob Kerr: As long as the same structural number is reached, the surface life should be approximately the same; within a year or two; and typically we talk about a 20 year design life for a sub-division street such as this. We hope to get more than that; but we talk about it as a 20 year life.

Mike Cobin: You would not know the difference from the outside.

Mayor Post: It’s all underneath according to the plan.

Mike Cobin: For that class of pavement. We are requesting that some of the streets be dropped in classification.

Bob Kerr: That would be part of what we would have to discuss; which streets the soil structural number can be changed.

Mike Cobin: There would have to be agreement on that.

C DUBY: That we will not be voting on tonight.

Mayor Post: As long as we’re not going to vote on that tonight; I think that should go back to Planning & Zoning.

Bob Kerr: My preference would be that you direct me to proceed with negotiations or discussions with GMB and direct where I take those results; whether it’s something that George can handle; Planning & Zoning or Mayor and Council. On an original sub-division, it goes through the Planning & Zoning process; but when it comes to you for sub-division approval you are also accepting the construction drawings as part of Planning & Zoning’s recommendations to you. So where you want that line to stop is Robin and I have many hours of discussion on it already.

Mike Cobin: I think that if this was new, if this had not been formally approved, that we would simply propose the pavements based on those rates and they would be reviewed by Mr. Kerr.

Mayor Post: I would feel more comfortable to know exactly what streets and the grade of each street and how they are rated.

Mike Cobin: That information is in the letter and I thought it would be simpler if we allowed the town staff...

Mayor Post: So it says which streets are going to be?

Bob Kerr: They have a proposed change of the classification.

Mike Cobin: But there hasn’t been any specific comment to those classifications.

Mayor Post: That’s what we rely on our Engineer for his review on those streets.

Bob Kerr: With your authorization I will do that and I will take it either back to you or back to Planning & Zoning. What I need to know is where to go with it.

Mayor Post: You need authorization to review these and then bring it either to us or to Planning & Zoning.

Bob Kerr: Yes, whether Planning & Zoning is the final or whether it goes to Planning & Zoning and then you or just you or just Planning & Zoning. There's nothing in the Ordinances that directed how this kind of a change should be addressed.

C Martin-Brown: Would you entertain a motion that this matter of the alterations be referred back to the Town Engineer, Mr. Kerr, and upon concluding his discussions with the developer; that Mr. Kerr and the developers agree that conclusions be sent forward to Planning & Zoning for final resolution.

C Duby: Second.

Mayor Post: We have a motion and a second; any discussion to that motion?

C Prettyman: I don't understand why it would have to go back to Planning & Zoning. After our Engineer and our Town Manager have discussed it and we have everything in writing, I think it should go back to us.

Mayor Post: Because our Town Engineer has not reviewed it.

C Prettyman: I said after he has.

Mayor Post: It's just like right now with the things we just voted on and made the recommendations. We need his expertise to review it and then bring his recommendations back to us. This is something that is not in the final process. They have stated in this case; that this is something that needs to be reviewed. They made these recommendations of which streets they would like at certain ratings. Our Engineer needs to review that he needs to make his recommendations back that say Heritage Boulevard will be fine to do that. This is how I'm reading into this and it can either go to Planning & Zoning or us and you can make even more complicated by bringing it to Planning & Zoning and coming back to us. I just think that we need to finalize it with your expertise as the motion was made and then come back to somebody and I don't care if it's Planning & Zoning or Council. Okay, we have a motion and a second; we'll have a roll call vote:

C Martin-Brown	Yes
C Duby	Yes
C Hudson	Yes
C Prettyman	Yes
Mayor Post	Yes

Motion carried. Thank you very much.

- 4) Mayor Post: Clarification of Acceptable Graded Aggregate Section Under Curb.

Mike Cobin: On this one, Mr. Kerr has clarified that in his letter.

Mayor Post: Would you like to speak to this, Mr. Kerr?

Bob Kerr: If we may, since the curbing for Phase 2 is in; and I think it is clarified in this; if in the interest of time if you would just say that we can go through the same process, as the last one; where if there is something to be made, I'll take it back to Planning & Zoning for their approval.

C Martin-Brown: So moved.

C Prettyman: Second.

Mayor Post: Any discussion? We'll have a roll call vote:

C Martin-Brown	Yes
C Duby	Yes
C Hudson	Yes
C Prettyman	Yes
Mayor Post	Yes

Motion carried.

Mike Cobin: Thank you very much. Mr. Mayor, I have one quick question. Would this be the general way you would like these changes to be made with Planning & Zoning handling them? As long as it is not a lot line; which specifically is your purview.

Mayor Post: I think those things that are absolutely defined as Council's responsibility, you should come in front of us; all others should go to Planning & Zoning because that is their responsibility.

Mike Cobin: Thank you very much because that will help Robin and I immensely.

Mayor Post: If we need to vote on that, we can put that on the next agenda or we can just say that this will be the new procedure.

Mary Schrider-Fox: You probably should at some time.

Mayor Post: We can get that on the next agenda; we can vote it in and then we have it on record.

e. Discussion and possible vote on Request for Lien Certificate Letter process.

George Dickerson: There is a problem that is recurring that usually comes from attorneys offices making requests for one short notice sometimes very angrily for any outstanding either utilities or meter readings or those types of issues dealing with settlement sheets, usually at an attorney's office. What happens is that Julie Seichepine who handles those receives calls from an attorney's office that they need the information today and they're reading to go to the settlement of that property at 1:00 p.m. and they call us at 12:00 p.m. wanting this to be done. First, we're trying to put a time span in there and in this respect, the City of Newark are the ones that use this particular format; and it works very well for them. In conversations with them, the request for this would be sent out to those attorneys's that deal with us. Basically what it does is it also helps us to recoup the time, where sometimes you get it one week and the settlement didn't go that week and it's the next week, so they want a lien update and on and on and on. What this does is to set a timeline for getting it to us; if they don't get it to us within that time, a fee is set for that which you will find on the second

page, processing fee schedule and it recoups our time. I would ask that you accept this and that this be implemented so I can start this tomorrow.

C Martin-Brown: I make a motion that this request for Lien Certificate Letter process be approved by Mayor and Council.

C Prettyman: Second.

Mayor Post: We have a motion and a second; any discussion? We'll have a roll call vote:

C Martin-Brown	Yes
C Duby	Yes
C Hudson	Yes
C Prettyman	Yes
Mayor Post	Yes

Motion carried.

- f. Appointment of two new members for the Economic Development Committee: Ms. Pat Sexton and Mr. Robert Howard

Mayor Post: We would need a recommendation or a motion for their appointment.

C Prettyman: I make a motion that we accept Ms. Sexton and Mr. Howard as new members of the Economic Development Committee.

C Martin-Brown: Second.

Mayor Post: We have a motion and a second; any discussion? We'll have a roll call vote:

C Martin-Brown	Yes
C Duby	Yes
C Hudson	Yes
C Prettyman	Yes
Mayor Post	Yes

Motion carried.

- g. Discussion and possible vote on tree moratorium

C Prettyman: I make a motion that we should table that for the next meeting.

C Duby: Second.

Mayor Post: We have a motion and a second; any discussion?

C Duby: Yes, and the reason I seconded the motion is that we've not gotten any material on this that I've seen.

C Prettyman: I have it here dated November 17, 2008; and then April 18, 2008.

C Duby: I'll see that you get a copy of this.

C Duby: I'll check and if I need a copy I'll get it from Town Hall. I would like time to review this since I obviously missed it and that's why I seconded C Prettyman's motion.

Mayor Post: We'll have a roll call vote:

C Martin-Brown	Yes
C Duby	Yes
C Hudson	Yes

C Prettyman                      Yes  
Mayor Post                        Yes  
Motion carried.

16. Executive Session: Discuss Land Acquisition, Litigation and Personnel  
George Dickerson: Listed on the agenda is this matter, if needed. I have no need for this discussion.
17. Adjournment  
C Doby: I move that we adjourn at 10:31 p.m.

