

**Milton Town Council Meeting  
Milton Theatre, 110 Union Street  
Monday, January 7, 2008  
7:00 p.m.**

1. **PUBLIC HEARINGS:** Mayor Post called the meeting to order at 7:05 PM

For the record:

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

We are going to hear the applicants, James & Nancy White, are requesting the rezoning of their property from R1/R3 zoning to R1/R3 zoning with an LPD (Large Parcel District) overlay and for preliminary approval of an LPD (Large Parcel District) master plan. The property is located on Atlantic Avenue further identified by Sussex County Tax Map and Parcel # 2-35-14.00-132.00, 132.01, 132.02 and 132.03. If the applicants are here they can go ahead and proceed with the presentation.

Preston Dyer: What we have proposed and received P&Z approval for the master plan as a preliminary. We are incorporating the acreage for 370 units. The breakdown is as follows: 177 single family dwellings, 48% of the project; 118 single family attached product, 32%; and 75 multi-family units, 20%. The density for the entire project is 4.96 units. At this time I would like Mr. Eger to present the details of the project. C Prettyman: You stated 370 total lots, but I see here in the report 3 future lots which will bring it to 373 units. Preston Dyer: That is correct. I failed to mention that. There are three additional units that we have purchased. Those are shown as dotted lines and some point in the future we would be annexing and incorporating those into the project as well. That is my error.

Dave Eger: I'm with Townscape Design, Landscape Architect for the Riverwalk at the Broadkill. I'd like to describe the structure of community and how it relates to the Town of Milton. In your packet that board is described as the community structure plan. As you enter from Atlantic Avenue, the two main entrances to the community going together at a park referred to here as the Northern Park. As you proceed through the community, what we refer to as a main street concept, terminating at the views to the Broadkill River. One of the important features of this plan is the fact that this road has no street access points on it. The homes that face it have porches and front doors facing the street with narrow front setback similar to what you would see in the downtown areas. The automobile and vehicular access is from the rear or from the side of those lots so that it's free of driveway cuts and allows for on-street parking. This main street has two anchors. The Northern Park which is naturalistic and the Southern Plaza Area which is more formal. The density is focused toward the middle of the community. The open space on the plan is 30% and is generally located in different configurations. The next board is the key features include the North End Park, the trail connection that runs east and west, the tree line Main Street. There's potential for ground floor retail. An overlook sight as referred to on the board as the south end civic space with views to the water. There's a forest preserve and a trail system along the eastern edge of the property. There's a brick kiln and overlook opportunity for the river. On the western side of the property a series of smaller open spaces that are either gardens or landscape open spaces. There's a fire retention site to the north, a sitting area just to the south of that, a larger more open green located next to the trail system. There's a hand-out in the packet that refers to height, area and bulk requirements. Single Family Detached: They are generally located to the perimeter of the site.

Max height is 30.5 ft., min. lot area is 5000 sq. ft., and min. lot width is 50 ft. Front setback is 10ft, corner side front yd. 10 ft, side lot line is 5 ft, the rear is proposed for 10 ft., the porch front is 5 ft. Accessory buildings are 3 ft from the side and 5 ft from the rear. Single Family Semi-detached (Duplex): Maximum building height of 40 ft, min. lot of 3000 sq. ft., min. lot width 30 ft. The setbacks are the same as the single family detached. Multi-family buildings: Maximum building height of 40 ft., min. lot of area of 2500 sq ft. which is consistent with the code, min lot width of 20 ft. also consistent with the code. Setbacks are the same as single family detached. Commercial or Clubhouse land use: Max building height of 40 ft. and setbacks of 10 ft in the front, 10 ft on the side of street side, 5 ft for the side, 10 ft for the rear. Non-rectangular lots are described further in the handouts. A landscape plan has been provided in the package. The plan reinforces the general community design and structure. For example, along the main street the plantings are very formal and ornamental. The landscaped parks are informal as are the bio retention sites. Moving east to west the plantings go from formal to informal utilizing a high percentage of native species. As mentioned there are four types of land uses. Each has different parking requirements. Single family detached by code has two off-street parking spaces per unit. Semi-detached (Duplex) by code has 2.5 off-street parking spaces per unit. Each of these unit types are parked on the lots. The multi-family code allows for 2.5 spaces per unit. Commercial will vary depending on use. Some of that's 5000 sq. ft. In the plan for the multi-family we are providing two spaces off-street. Approx 400 ft from where the multi-family buildings are located is an area for additional parking. They would accommodate the .5 space per multi-family unit plus there an additional 50 spaces available from the commercial use. More detail is provided in the handout. The street lighting within the community along all the public streets shall be the Town of Milton Grandville fixture on 12 ft. fluted poles. They will be supplied by Delmarva Power. Signage: We are going to be providing signage for this community similar in character, style and size to Cannery Village. There is a bus stop proposed in the community. In the handout we have provided more detail.

Mark Davidson, Design Consultant's Group: One of the items under the LPD section of the code talks about trash containment. The single family and semi-detached units will have the standard Town of Milton roll out trash cans which will be stored in the garage. For the multi-family and commercial buildings there will be trash containment areas that will be screened and fenced per the code. One of the requirements that came out of the State Planning Meeting was storm water management. We met with Jessica Watson of the Sussex Conservation District to talk about this. This project does border the Broadkill River which is a titled river. Based on the regulations for the state we are able to seek a water quantity waiver which means we have to take care of the quality of the storm water prior to discharging off the site. In the beginning we were proposing an underground treatment system that would be located at the lower end of the site. Since the plus application, state planning and other recommendations from DNREC we're proposing landscape bio-retention areas. We're looking at consideration of green technology type design where we utilize some of the small areas that are going to be dedicated for small park areas. We're going to design rain garden parks where we direct the storm water from the roofs and streets to these areas and using local vegetation to treat the storm water prior to discharging into the Broadkill River. We are on the Broadkill Watershed. Although not mandatory at this time they are working on the TMDL, pollution control strategy aspect. If you look at the protocol shown in the booklet by utilizing this type of storm water treatment system we are going to be able to reduce the nitrogen and phosphorous below the mandated protocol at this time. We feel this is a much better design. In the preliminary master plan we do show a conceptual layout of the water distribution system within the site that will tie into the water system along Atlantic Avenue as well we show a conceptual sanitary sewer layout as well as a proposed location of a pump station. As you come into the sight we'll be able to gravity feed to the existing system. The remaining site will gravity to an area that will have a pump station.

Dave Eger: One item I forgot to mention is the sidewalk system. What we have in this community is an interconnected street system and we've proposed sidewalks on both sides of the streets so there is a continuous sidewalk system. The trail system interconnects with that so there is integration with both the trails and the sidewalks. Sorry I didn't mention earlier.

Preston Dyer: Our initial plan had a large portion of the very tall multi-family product located along the river. There was also an expanse of commercial that was incorporated. As a result of feedback from different hearings and from some of the Plus comments the result was to consider the impact of the development on the vistas along the Broadkill River. What we did is move the road back that came along that frontage and substituted single family lots in that area for the taller structures which were criticized as not keeping with the character of the Town. We've moved the project back from the Broadkill. We have an average of 57 ft. from the 404, which is the federal wetland line. We have an average of 111 ft. from the state line to the property lines. We also modified the forest area. Mr. Kerr encouraged a 100 ft. building restriction line on that easterly property line. We've maintained the integrity of that. As Mr. Davidson explained to you we've incorporated different natural features rain gardens bio infiltration best management storm water practices in that area. We also have a walking trail as well. What the Plus directed us to and what this plan reflects is a non-fragmented forest which is actually bordering and immediately adjacent to the wells property which is in ag preservation. If you notice the outside perimeter of the project you will see and the LPD ordinance encourages this that we would have consideration of the adjacent properties. What we've done is put the single family homes that border the adjacency of the neighboring properties. As you move into the property you will recognize we have the attached single family product. As you move into the core and then in the red area is where the more dense multi-family and commercial opportunity and/or the clubhouse will be located. Eger indicated that there is the possibility where the brick area is located that is a possible location for the club house. We haven't made that determination at this time. When looking at storm water management we've tried to incorporate best management practices. With the bio infiltration from a lay perspective it would be green technology that would allow the water to be treated to any discharge point. The quality of this forest being non-fragmented becomes an evaluation of the value of the forest being protected. With the state forest and Dept of Nat Resources wanted to protect it again due to the continuity of the Wells property. We've made every effort to incorporate the natural aspects of this property. We have endeavored to make it consistent with a plan. We did a study of Milton from a historical perspective. What we mirrored in this particular layout is our effort as reflecting the existing sections of Milton. The suggestion was that it would be incorporated into Milton. That it would not be a gated community. Therefore, we have followed those suggestions. We have incorporated a walking path. We have encountered an easement issue with regard to the actual connection of that. We have a connection over to the amenity which is the little league park as well to encourage the pedestrian connectivity of this project to Town. We think that is the value added to us and it's an enhancement to the community and to the utilization of the downtown area. That was the major reason we eliminated the bulk of the commercial so as to not compete with the downtown area. The major aspect of the plan would be the different pocket parks which are incorporated throughout. We were encouraged by Mr. Eger to provide different recreational opportunities. The focal point is still the main drive coming into the project. One item we reviewed at P&Z is parking. We have additional parking for the units that are located in those areas and for the additional .5 parking space we are utilizing on-street parking. The national trend for traditional neighborhood development is to utilize on-street parking. The incorporation of this makes sense from a couple different perspectives. One is rather than a new parking lot which would increase the amount of impervious area thereby exacerbating the storm water issue by utilizing the on-street parking and you have as P&Z has agreed to you have the prerogative to allow that. The on-

street parking comfortable fits. It also has the calming affect of protecting the pedestrians. It really does have a downtown feel. With regard to streets and sidewalks there is one issue in the proposed conditions and that was that the parallel parking would be 10 x 22. In Cannery Village the parallel parking that was approved there is 7-1/2 x 22. I would ask for consideration of the same type dimensions approved in Cannery Village for this particular layout as well for the on-street parking. The lighting, landscaping and signage as well as the bus drop-off area have been reviewed and been incorporated. There was an issue of the passive vs. active open space. We do have the opportunity for a tot lot in one of the various pocket parks that are available. Dr. White has been very proactive in making sure that our plan included on part of our property that we would be purchasing that we would include that land and earmark it for utilization by the little league park. So a portion in the Northeast corner will be earmarked for the continuation of that use. That is also the reason we have the pedestrian path connectivity for that activity as well. We also agreed at P&Z the portion of the lots that back up to and adjoin the preserve on the Broadkill we would provide additional landscaping along that as well as a 10 ft. rear yard setback. So as to be a good neighbor on the Broadkill. Mr. Kerr in comment #14 indicated there may be an issue with regard to the size of the multi-family lots. We're not aware that is an issue. We have agreed with the comments that Mr. Kerr had with item #16, no left hand turn permitted onto Chandler Avenue or departure from Riverwalk Blvd. Mr. Kerr was correct with regard to the right of way. We have corrected the open space calculation as it related to that. We've also agreed in his #5 to realign the entrance so as to provide the proper connectivity. Everything in your packet addresses issues and conditions we must be meet which are 11 items for your LPD ordinance. It also addresses those items we have changed over time for the master plan. The item which I addressed was the parallel parking space in item #9. Item #13 says that all streets are to be dedicated and we agree with that. We would have the same proviso that we have at Cannery Village which would be the alleys would not be dedicated and would be maintained by the HOA Item #20 a b c & d would be changed to reflect that handout which you have which is the bulk height and setback table as well as those particular lots which we included in the handout Mr. Eger reviewed. The last issue regards improvement to Atlantic Avenue. We went to DELDOT and it was suggested by a letter from McCormick Taylor that a 2" hot mix overlay be provided for Country Rd, which Sussex Rd 22A. I believe in Mr. Kerr's comments he suggested that a similar improvement be made to Atlantic Street. The DELDOT requirement was would be that it would be addressed to City specs. What we requested at P&Z was that we ask for consideration of a credit of the annexation fee. We suggested that the Town would actually seek the bid so it wouldn't be a question of us seeking a particular contractor to perform that work so that the Town had comfort in doing that. We would be paying an annexation fee of \$8000 per acre. We asked that that would be offset against if the Town wanted the 2" overlay on Atlantic and if DELDOT wanted the 2" overlay on Country Rd that the cost of the overlay. Again, we're not aware that a sidewalk was suggested but if one were to be that that would be an additional cost again from which a credit could be taken from the annexation fee. I'm open to any questions. C Hudson: Would you please tell me the width of the buffer between Riverwalk and Wells property? Preston Dyer: The building setback is 100 ft. C Hudson: Is it 630 or 800 trees you plan to plant? Preston Dyer: to the best of my knowledge 630. C Hudson: Any particular diameter? Preston Dyer: On the landscaping plan I believe it was specified but I'm not sure. Dave Eger: For the deciduous trees the diameter varies from 1-1/2" to 2" up to 3 - 3-1/2 inch. C Hudson: Would it be possible to have a sidewalk on Atlantic Avenue? There's going to be a lot more children walking up that way. They won't just be cutting through the preserve and going through Riverwalk to the little league park. A lot of them will be going up and down Atlantic Avenue. Preston Dyer: We said we had no opposition to that. Again, would ask that would be included as a credit on the annexation fee, but if that were Council's desire certainly with the amount of sidewalk we we're putting in walkways we have certainly endorsed. The State of Delaware did a study for their Parks & Recreation where they found that in the State of Delaware clearly the walking opportunities are by far the highest and most heavily

used amenity of anything that you can place in the community. We would certainly endorse that as well. C Hudson: I think that would be very important along that street with the increased traffic and the amount of families and children walking on the road now.

Mayor Post: Are you willing to do the sidewalk and the 2" out to Union St from the entrance on your money. So often, as we know with developers, they do make improvements that are going into the developments. I would like to see these be requirements on behalf of the developer. Preston Dyer: I would ask for the same treatments as Key Ventures. Mayor Post: That would be fine because if you would like to provide us a million dollar profit on that deal which is what we were getting from Key Ventures for the land in exchange. We're getting 20 acres. If you'd like us to do it and give us 20 acres I'd be all for it. The issue here is that the land at Key Ventures out at Sam Lucas offsets the annexation fees and that land in exchange is being sold for a profit of \$1MM. I don't want a misconception in the community. They're giving us back 2 acres for the maintenance yard. We're selling 18 acres to Tidewater for \$1MM profit. We would have brought in impact fees of \$500M. Preston Dyer: What improvements were they required to make by the Town? Mayor Post: They're providing the land. That's another whole issue because that isn't a Town road there. Preston Dyer: Country Rd is state maintained road. From a historical perspective annexation fees are not profit centers. They are being paid for specific purposes. If you look back, and we mentioned this at P&Z which I think was very pervasive in their consideration. When the annexation fee came in we agreed to be bound by that. In order to try to be a developer we agree to that. Mayor Post: Annexation fees are used for capital improvements. We developed a bucket list of capital improvements we would use annexation fees in the budget. They're to improve Town infrastructure.

Joe Reed: I'm also a member in Chestnut Properties. First on that connectivity through phase II of the preserve on Broadkill we're still working on that. There's about 100 ft we don't own we're trying to get an easement through or purchase. Just so I'm clear, are you asking that we install sidewalks and do a 2" overlay from the entrance to Union St? C Hudson: As far up and down Atlantic Avenue as you could get it. People walk from downtown all the way out to the little league park. Joe Reed: A lot of time with DELDOT you do your road frontage like on your project. If you improvements to a county road. Mayor Post: You would do you sidewalk on your property. Joe Reed: And that's what I believe we did in Phase II at the Preserves of Broadkill. We put some sidewalk out there along the road frontage. I guess what I was asking are you suggesting we would do from Union St to the project and then the Town do from the project to the little league field. Mayor Post: I was referring to the 2" overlay and C Hudson was talking about the sidewalk. So that's something we would have to. C Hudson: To answer your question, from the entrance to Union. Joe Reed: Right, that's what I thought he was asking.

Mayor Post: Is that the final review? Preston Dyer: We submitted the second time and then they sent a letter back saying we had addressed their concerns.

C Martin-Brown: I have a few questions. I read in the minutes that the agreement with P&Z was an 8 ft setback in the back. Now tonight I'm hearing very clearly that the commitment to the Council is a 10 ft setback from the back property lines on all your single family homes. Am I correct? Dave Eger: We've always had 10 ft I believe correct me if I'm wrong. The adjoining property had an 8 ft setback, but we've agreed to a 10 ft. That may be the difference. C Martin-Brown: That's what I wanted clarity on. The second thing was the natural buffer between Preserve on the Broadkill Phase I and where you're going to be developing. There's that old cliché if it's not broke don't fix it. Could that natural buffer be retained? It has a lot of integrity for soil stabilization, etc. It would be less expensive. Preston Dyer: It was a suggestion at one point that we provide a landscaping plan for that area. We're completely open

to that. C Martin-Brown: That's actually between you and Preserve. I would like as one Council member to register that interest. The side setbacks in your plan are now 5 ft. Is that a lock down figure or is their wiggle room up to 6 ft or even 7. I know you're in the business of building a profitable house. Because in the Town we have a higher setback for single homes. Dave Eger: The side yard setback in the handout is proposed at 5 ft. The side along the street is 10 ft. So if you're along the street is larger. C Martin-Brown: I was asking if the side parts of the property, not the front and the back, but the sides of single family homes the setback could be increased from 5 to 6 or 7 feet. Preston Dyer: It's been my experience. Again, we've been building in Cannery now for some time. I think if you look at aesthetically I believe that it's very pleasing. C Martin-Brown: It's aesthetically very pleasing. What I'm hearing is there's a lot of awareness of what's going on in each other's single family homes. Third, the issue, your bio gardens for rain catchments, which is very good direction you're moving. One of the things some of us in the room are aware of is that in these storm water management systems whatever they are, natural or technical, that most HOA members are not aware that they are responsible for the maintenance of those. This is a point I don't know the answer to. Does a developer design the parameters and provisions of an HOA? Preston Dyer: Yes C Martin-Brown: I would like to have you be very clear in your HOA agreement that the homeowners are responsible. So if that becomes overgrown or not receptive or silted in or whatever that this is something they need to be aware of. And the real estate sales people need to be aware as well. On the same level you're very helpful declaration and your math that says this land was once agriculture. The agriculture historic use of that land which would be positive, negative or not relevant is in the HOA agreement. So that people who are particularly vulnerable to any kinds of medical problems can't not know about it and then take some action against the HOA or the developer or the Town. The question of height. There are very lovely multi-family garden apartments that do come at the 30.5 height. Do you already have an LPD? Preston Dyer: That what we've asking for. C Martin-Brown: Oh you're asking for it. The LPD does allow a 40 ft, but in a regular subdivision you're restricted at the 30.5. Is that correct? Preston Dyer: Yes. In the table that we handed out it shows the three different heights being appropriate for the three different houses. C Martin-Brown: Just so I understood that the LPD had not been a finished transaction. That was important. Last but not least I noticed that Mr. Kerr's report to the Council had several very interesting pages that I wish I had done many years ago as a bureaucrat. I would like Mr. Kerr to tell me, if not my colleagues on the Council, why in the recommended document those spaces are there. Bob Kerr, Cabe Associates acting as the Town Engineer: I prepared a memo for P&Z's review of the documents. As part of that there was a draft recommended conditions. The same thing has been prepared for the other LPD's that have been brought into the Town. The first being Cannery Village. There are certain things I wanted to make sure that P&Z was aware of and how they wanted the blanks filled in was more or less up to them. There was some discussion on the items. Some were filled in so we not. A motion to recommend the Mayor and Council to move forward was then made and passed by P&Z. C Martin-Brown: So those blank spaces reflect pending guidance back to P&Z. Bob Kerr: The intent of the document in being forwarded to you would be that one of the things you are doing this evening is looking at the rezoning to an LPD zoning classification overlay. A preliminary master plan is part of that requirement. They go hand in hand. P&Z makes recommendations and you can add to those recommendations or delete recommendations. There should be some final documents so that 6 months a year from now whenever it comes up there's some record a little bit more than just the minutes of the meeting that you can go to and say here's what we're supposed to do. A couple of things that you just mentioned that you would like to see them do at this point there are recommendations of something that you would like to see them do. They're not part of a motion or part of an agreement. Cannery Village was the first project that went through an LPD. This document went back and forth for 5 or 6 months. There were several meetings in which it was all ironed out. I believe when it finally came before Mayor and Council it was more or less a complete document. I didn't prepare the draft then. Eric Evans who

was the Code Enforcement Officer was doing the drafts and keeping them up to date. C Martin-Brown: That's very helpful Mr. Kerr. Thank you for your clarification.

Preston Dyer: For one point of clarification. The tables that we have presented reflect what you indicated with the height for the detached single family being 30.5. The height for the semi-detached being 40 and the multi-family being 40. And 40 as well for the commercial. So that reflects your understanding. I just wanted to make sure. C DUBY: I have a couple of questions related to this issue of a credit on the annexation fees. I wondered if you or perhaps Mr. Davidson could give us any kind of an estimate as to how much money we're talking about the Town forgiving by way of a credit. Preston Dyer: The same question was asked at P&Z. We haven't had the opportunity to get an estimate. Mr. Davidson might have square footage figure for a 2" overlay. I don't know. Mark Davidson: You might be looking somewhere in the vicinity of \$40 a linear ft. with 2" asphalt overlay. The distance being maybe 1800 ft. or 2000 ft. Probably around \$80M.

C DUBY: I'd like to ask you from the standpoint of your experience in doing developments perhaps in other locations have you been in a situation before where you have had something like as a developer you either agreed to or were asked to provide changes or upgrades to a town street or public street because of the additional wear and tear on that street that's anticipated by the development you're putting in where you've gotten a credit or some sort of repaying from the town for that work. Preston Dyer: I think the best answer is the historical perspective. I can address that to some degree. Dr White could address the rest of it. From our perspective, we felt that we had this process under way prior to the annexation. We had the very same thing happen in another municipality. The annexation fees as you are aware are a very recent phenomenon that hadn't existed previously and I think that perhaps from a point of equity was when we had to address this issue which the mayor is correct, we addressed the issue prior to entering into the annexation agreement. When we did that we had a conversation that Dr. White had made an effort to file the details which are somewhere. Then we endeavored to pursue the project and then when this was enacted we said what we're going to do is endeavor to be a good developer from the Town's perspective and agree to make efforts to abide by that. We did in the annexation agreement address with some degree of specificity the off-site utility improvements. I believe that's paragraph 4 or 5 in the annexation agreement that specifically says that we would not be responsible for off-site utility improvements that were covered by an impact fee. We had the conversation, not as it related to street improvements, which are off-site improvements, but as to off-site utility. If you look at the annexation agreement you will see that language is included and the Town did agree and signed off on that. So we had the concept. At point my experience of a 370 lot subdivision does not create the threshold for a traffic impact study which is 215 lots. When we first started the project this was a 680 unit development. At that point the likelihood of a traffic impact study was much higher. If you take the multi-family, which is a lower traffic generator I would be willing to bet that it was very close to that 215 margin and we were not under the impression when we entered into the annexation agreement that it would be of the magnitude to require off-site improvements. My experience with DELDOT has been that when in doubt the developer pays. C DUBY: I want to make clear I understand how all this came about. DELDOT asked you to do the overlay on Country Road. How did Atlantic St. get into the mix? Preston Dyer: That is correct. Mr. Kerr. Joe Reed: The DELDOT letter does address both Atlantic Street and Country Rd. I was only taking that information and repeating it. Preston Dyer: The DELDOT letter said Atlantic Ave to city specifications. Specifically it says 2" overlay on Country Rd Atlantic Avenue to city specifications. C DUBY: As a public official I have a little trouble with the concept of the need for it. Let's assume for a moment you're putting in this development with all these people, houses, cars, etc. that will produce the need for a better street in that location. It's difficult for me to get my mind around the fact then the Town should say well since you're coming in there you're causing the need for

this therefore we'll pay for it and knock it off your annexation fees. I have a little trouble with that. I understand the history. I understand the newness of annexation fees. As a public official who has a fiscal responsibility to protect public funds it seems a little difficult to take that one and say sure. Mayor Post: C Doby we have not been to this level with the San Lucas property. I think it's premature to tell them what we're going to do with their streets. We've not had this hearing. Joe Reed: I don't believe we have ever paid annexation. When we've come into a town or in the county made the recommended road improvements or paid annexation fees. My assumption was that the town would use the annexation fees to make any of those capital improvements that may be required. It's totally separate from the sewer. It is our belief that if the town felt Atlantic St was going to need upgrade as a result of this that's what these annexation fees were going to.

C Prettyman: I was going over the Nov 20, 2007 P&Z meeting page 20 where Mr. Dyer commenting that 62 acres with the annexation fees being paid on. He went on to talk about transfer tax which he estimated to be \$4.4MM to be split between the Town of Milton and the State, \$740M in building permit fees and the annexation fee would be \$496,320. Why isn't on the total amount of acres? Tom Brady: Because some of the acres were already in the town at the time the annexation went through. Even though the whole parcel is 70 acres its only 62 acres of which the annexation fee is being paid on. Preston Dyer: That's correct. That was actually me speaking. C Hudson's figure was correct. Approx 63 acres at \$8M an acre or \$496M. The discrepancy between that and the total acreage is because may years ago, 14 acres was already in town. Nelson Carroll: I'm a member of Preserve on the Broadkill, LLC. I came here to question the proposal for the border between Preserve on the Broadkill property and the new development. What I've heard is entitled to praise rather than criticism. I'm very pleased that there will be a buffer and there will be additional landscaping and thank the developers for providing that.

Jeff Daily: I'm a resident of Cannery Village. I would invite the Council to give ear to the residents of the community because after living there since March I along with my neighbors have learned about some unforeseen challenges in our development. They could in fact impact parking in the new development as they have in Cannery Village. One of the problems is with the alley ways. C Martin-Brown brought this up where the setbacks were noted. If in fact there is adequate setback from the rear of garages to the alleyway then two cars can be parked behind the garage. What we're finding is there is often times only 5 ft between the garage door and the alleyway which necessitates pulling cars into the garages. There are also a number of dwellings that face common park areas. So there is no parking in front of the house. For those residents who only have 5 ft of driveway space onto the alleyway and no parking in front it's getting rough on them. This does impact overall parking available. I would ask Council to look at this. We're finding this is becoming a quality of life issue. From my experience with the kind of bio-treatment runoff, pumping and re-filtering this is a massive undertaking. These kinds of rain gardens and the infrastructure that they require are far more than existing root systems purifying water. This is exact science. C Martin-Brown brought up with the homeowners will inherit in the future. If we're talking about 12-18 berms and little pool collecting areas this is not sufficient but any stretch of the imagination and I want my City Council to be aware of this. The other thing that I have difficulty with. There is no standard in this entire region for what constitutes quality landscaping or buffer. We have technology where we can do computer renderings of what adequate landscaping and buffers will look. Those pictures should be presented and be part of the public record. Preston Dyer: The gentleman is correct, but hasn't seen, you have a landscaping plan in your packets with has a sufficient degree of specificity both for protection and understanding so I'd like to clarify that point. Secondly, the storm water management is purview of two agencies. They're both related. DNREC and Sussex Conservation District under which the authority is delegated from the DNREC for SCD to approve plans. I can assure

you that this has been the subject of much discussion with SCD. I can also assure you that the HOA restrictions and covenants will contain details as to the obligations of the HOA. I would also say that the cost of doing bio-infiltration and bio-retention for the developer is much greater than some of the hard type storm water management features. While I appreciate the concern I would say that we are endeavoring to do this in a very environmentally protective manner, one that's going to cost us a lot more and I think the end result will be much better. I would also say that the protections that are afforded are two levels of government oversight being again SED and DNREC and they do this on a regular basis. So I would submit to you that this isn't some cavalier approach that we have dreamt up. We provided a nutrient management plan which is voluntary. I feel as though there's a bit of condemnation for trying to do it and what I would consider from my perspective. I respect other peoples opinions. We felt this was the better approach. Mayor Post: I know it's hard for the public because they're just getting a snapshot but the information show in the packet has over 150 pages and provides a lot of detail. Our zoning permit says that we can have a landscape architect review the plan at their cost as well.

Jeff Wells: We own the property to the east of the project. It's all wooded from the ballpark to the river. They're putting a walkway and a buffer which is nice. But one more thing I would like to see is a fence down there so the people have a distinct line as to where the development ends. I can see trouble with people wandering through the woods not knowing where the lines are. They just go they do it now. With this much more development it's going to get worse. As to Mr. Daily's comments. I probably know the soils in those woods better than anyone in this room. There's a lot of clay in ground and it washes in its natural state. When you put that many more roads and houses it's going to wash worse. If proposed dikes don't work there will be a lot of washouts. There other restrictions that the ag preservation requires the developers to abide by. One is that they need to be in so many feet of our property. It has to be notified in their deeds. I don't know all the laws that they have to go by. They have bigger setbacks. It has to be in their deeds when their lots are sold. I'm not against the development. It's next to a town. That's where the development should be. I don't think they need this much density that close. I am concerned with the people living in the development going to the walkways not know where to stop. Joe Reed: We would be agreeable to putting some type of wood fence. Almost like a split rail fence. Preston Dyer: Mr. Wells is correct about the provisions in the deeds. The buffer and the setback that we are proposing exceed what is required under the provision for the county as it relates to ag preservation land and the states provision as well.

Rich Miller: I live in Cannery Village. Earlier the utility issue had been put on the floor. I just wanted to re-emphasize that it's more than just the electric power utility that's causing problems. Comcast and Verizon are also concerns, at least in our community. We've had cable on our sidewalks for the better part of a year. I've been working very closely with Code Enforcement. They've been very responsive, but there is this brick wall that even their facing with these utility operators. In our case the street lights because of the other utility wires on the sidewalk we have a liability issue. Because you can't negotiate the sidewalk in the dark because of the telephone lines. So it's a compounding issue. The other comment I'd like to introduce is Chestnut Properties, at least in my mind, has been very responsive to our needs. And as they gear up for this new project I want to be assured that they have the resources and commitment to finish their existing projects. Preston Dyer: Certainly not only the residents but our lenders have the same concern. As you are aware this project has been going on for some time which is unfortunate for all of us. Nonetheless, that has been the history. We definitely have, and we've spoken to many of you about this, made a significant commitment because we do believe in the town of Milton. We certainly have had a very favorable rapport with the homeowners of Cannery Village. We definitely would pledge to them to continue in that regard and even increase that. We do appreciate the concern of

an additional project. The timing of the projects will be such that that will not present a challenge or an issue. One other point that I did not mention with regard to a previous question. This layout has fewer of what they call mew orientations. But when we shifted to a less dense and a higher degree of single family orientation we reduced the need. Again what I would say is with the proximity of the on-street parking it really does present an opportunity there for that town feel. We don't want to be under parked in any case.

Jim Welu, 30231 E Mill Run: I like the idea that this is part of the Town of Milton; it's not a gated community. But if we put too much emphasis on buffers we're creating a gated community. I'm all in favor of keeping all the natural buffers that are there. But to create new buffers I'm not sure that's in the best interest of creating a community. The connectivity link is pretty far down on the Atlantic Avenue end of the property to connect with Preserve on the Broadkill Phase II. I believe the developers of this are the owners of Phase II of the Preserve on the Broadkill. If there's anyway to have connectivity link higher up, closer to Chandler St. I'm looking at the people that live in this community and want to go downtown they have to go almost to Atlantic Ave; it's like going around Robin's barn. I think Preserve on the Broadkill should have had a connectivity link way up in their community so that this whole community could be connected. My understanding of annexation fees is they contribute to a community which is going to have increased capital costs because of development. The Town does not have increased for the schools since that's a county function. But we do have some increased costs. I think the major one is probably roads and sidewalks. There ought to be some use of those funds for the increased costs you're going to have from this development. There's another development facing the Town on Bay Ave, I believe the Railey family owns it. They're going to impact County Rd immensely too. I don't know who makes these decisions but I think somehow the cost need to be reimbursed or redirected. Nelson Carroll: In answer to the problem of walking. There is a provision for a walkway between Phase II of Preserve on the Broadkill and the White property. That was arranged with the plan provided for the Town Council. Mayor Post: Isn't that kind of central. It's an excellent location. It goes into the wooded area. Joe Reed: Mr Welu's comments were all good ones. If you feel a pedestrian connection with the Wells property is appropriate we would agree to that. Just to clarify. We, Chestnut Properties, bought Phase II of the Preserve on Broadkill for the connectivity. He was saying it would be better closer to Chandler Street further down on the plan. As shown on the plan that's as far we can go.

Ginny Weeks: The borders along the Broadkill to whom does that land belong? Is a conservation easement to prevent clear cutting? Preston Dyer: There's a 57 ft average from the rear property line to the 404 wetland line. Common elements for the property. Ginny Weeks: The 404 wetland line, is that on the river? Is it in the trees? Preston Dyer: On the river side. In the trees. Ginny Weeks: Who owns those trees? Preston Dyer: That would be common elements for the property. Ginny Weeks: All those trees we see on the plan is part of anyone's private lot. Preston Dyer: That's correct. Ginny Weeks: Is there conservation easement to prevent clear cutting? Preston Dyer: What we had talked about was the same thing that was presented at the Preserve on the Broadkill. The same time of restrictions on the clearing. There was selective clearing that was done there. That was same type of approach that we had proposed in this particular area? C Martin-Brown: Could you elaborate on what you call selective clearing? Preston Dyer: Mr. Eger could probably address that better because he's dealt with this in various communities. Dave Eger: At its minimum selective clearing would just be the removal of dead and diseased wood and certain branches that would be prone to breakage. It can also be the removal of invasive, non-native species in the trees. There might even be some limb clearing that applies to the water. It can limit the number or no tress to be cleared. It's a limitation on the clearing.

C Martin-Brown: To go back to Mrs. Weeks question. How does that get locked down in writing as a binding element of an agreement? Dave Eger: I would suggest that when we come back with our final plan propose to you what we believe should be the selective clearing and that becomes the approval. Then there would be restrictions on any additional clearing by the HOA. Preston Dyer: The other point is there already is a good and proper example of that at the Preserve on how that's been done. There's kind of a model that's already been established for that. Mayor Post: I think it would be good to put in writing. There was some extensive cutting on Phase II, which was a mistake. Preston Dyer: While I understand that I don't have any problems, I think sometimes we have difficulty because we provide Council and P&Z with too much information for the particular approval we're seeking. This is a preliminary master plan. We're talking about the last strokes of the pen before the ink dries before we start selling lots. There's also a state wetland line. There are trees in state wetlands. And there are trees in the 404 wetlands. So you have two different nomenclatures and two different types of classifications.

Jim Welu: Could I get one point of clarification. You are correct Mr. Post and Mr. Carroll. I have walked the sidewalk to nowhere. Is that sidewalk in any way connected with a public walkway? Mayor Post: My understanding that's the plan, but there is a small area that's in question that they do not have access to. So legally they will not be able to go until they get an easement that will create the connectivity. There's a property in between. Or possibly the Town may need to take some kind of action. Libby Zando, 210 Chandler St: I disagree with Mr. Welu about the buffer in only the respect I think some vegetation really needs to be included. This is a very major change for adjacent homeowners not only in the Preserves who haven't been there very long but in other neighborhoods along Atlantic St. who have small lots and are going to be inconvenienced by sound, dust, debris for a long time as this neighborhood unfolds. I'm not included to think in terms of strict vegetation, like strips of Leland cypress that really do bind you in. I think the town should toughen up your rulings that when people do plant that they're maintained. That they plant large enough material. That it makes a significant impact in terms of height and density. We do need to take into consideration that you don't have a single house being built behind you in old Milton and you have an old tree that needs to come out.

Mayor Post closed the public hearing at 9:28 PM and called for a short break.

## **2. Public Participation - Mayor Post opened the Town Council at 9:44 PM**

Nancy Davis, 115 Mermaid Lane: For the last 3 I have been requesting street lights on Shipbuilders Blvd. There are 5 islands on that Blvd. The first 2 have lights. The last 3 are dark. If I did not have neighbors that left their lights on the entire night it would be a black hole. Can you please tell me what the status is? I'm really trying to be patient. C Betts: We put lights out there. Nancy Davis: The placed lights over where the row houses are but they're not on the main blvd that goes in. Mayor Post: Could someone please follow up with DPL? Allen Atkins: I'll look into it. Nancy Davis: Shipbuilders Village the lights are 20 ft tall at the most. When I get out on Union Street Mulberry there way up in the poles so you've got a much bigger arch of light that you walk in. The other thing is I'm very interested in trees on Tobin between Willow and Clifton. There is a black walnut tree. Around that walnut tree there is an invasive vine. It's a winter creeper, Uwanamus, I've already had it identified. If we could get some help to get rid of that vine so it doesn't kill the walnut tree. Mayor Post: Allen will you check that as well?

Gwen Fulmer, 411 Federal Street: Which puts me right across hazard lane from the house that was denied a demolition permit and then was demolished? My question is how did they get permission to demolish the house after they had been denied? If they didn't have permission to demolish it are there going to be repercussions? I have the feeling if I did that there would be severe repercussions. I think

there should be. Is there any legal action? Have they gotten approval for plans for the house they're constructing? Robin Davis: The Wagner's came before the Historic Preservation Board originally requested to have the exterior of the house redone. That was approved. After they started working on the house they found the structure was eaten up with termites. They had a structural engineer come and prepare a report and forwarded it to the Historic Preservation Board. The first meeting the structural engineer went over his report. The committee members felt there wasn't enough information from that individual and requested the town have their own structural engineer come in and do a report. We paid another structural engineer to do another report. The report said the structure was in bad shape, but didn't go as far as to say it needed to be torn down. At that point the members voted to deny the demo permit. Told the Wagner's to go back and said they needed to rebuild. That's as far as my end of it was. The P. D. Camenisch should come in with the building plans to have that basically redone. The plans were approved by First State and he went ahead and started the rebuild of the house off of the new siding, the windows and the structural items inside the house. Mayor Post: There's nothing left of the house so technically shouldn't they not be going before the Historic Preservation Commission for building the new house for approval. I feel they've skirted an issue and have made a joke out of this issue. I think they should be imposed the \$100,000 fine on this type of action. There's not a home in this town that isn't from the 17 or 1800's that doesn't have a problem. I think there is a serious fault and we need address it. We should not listen to an engineer. The Historic Preservation and Cultural Affairs should come down here and address whether a property can or cannot be saved. C Prettyman: In looking at what's being done the house has not been torn down the house being is being renovated back to what it was. I look at the home that I live in they tore it down; they left the foundation, there were two or three boards that were left there. They built it back better than it was. I know that Mr. Camenisch has gone into great details and taken pictures to rebuild that house back to what it was. In the building we call Town Hall they tore that down to almost nothing and rebuilt it better than what it was. It's called renovation. As long as he left the foundation and I believe on the inside the stairway was left. That's called renovation. If you don't like it you'll have to change the law. As it stands today, Jan 7, 2008, its okay. Mayor Post: I think its demolition and in a court of law would probably be proven as demolition. Because there are no exterior walls standing. All there was is a new brick foundation. Probably 15 years ago it was moved to that site. The foundations only about 15 years old. I don't see how anybody can say that's renovation. It's new construction. If anything they should be going before the Historic Preservation Commission for approval of their design. George Dickerson: I appreciate you position, but at Town Hall when this was looked at there's nothing in our ordinances that prohibit what's being done at that house. Mr. Dennis has been there. We've taken pictures. Some of the original timbers that could be saved were saved. If you want to change it you're going to have to do the ordinance. Perhaps the ordinance in the way its written needs to be looked at passed to the Ordinance Committee for review to prohibit. Give us the tools to work with if you wanted it stopped. Mayor Post: When you're talking about rewriting ordinances, maybe what we need to do is define demolition. C Martin-Brown: Mr. Town Manager I think there's another issue here. That is that when I was on the Board of Adjustment when it was still part of the historic review process this issue came up. We have a very knowledgeable people on that Board that included Mr. P.D. Camenisch. Mr. Camenisch, myself, Marion Jones & John Collier and Matt Dotterer all practitioners. Jack Vessell who was the godfather and made happen and brought into Lewes all those derelict bug infested rat traps that are now \$800-\$900M in the Shipbuilders Area. Mr. Vessell and Mr. Camenisch agreed that there was no old building beyond the reach of historic restoration. They were clear when this issue came before the new Historic Group. Mr. P.D Camenisch is not on that group. I'm not on that group. They were very clear they did not want this house demolished. The spirit of those minutes shouts to this issue. The Town Hall that you now occupy never was leveled like this. A wall at a time. A door at a time. A timber at a time. If you had referred back to the minutes and what the sentiment was on that committee about this it would have been very difficult to use the

wordsmith of an ordinance to justify 98% gutting of that building. The first application I might add was to knock the whole thing down and build one that looked just like it. That's in fact what's happened. That was aggressively rejected by that Board of Adjustments. I'm a little irked that the rulings of these Commissions are not considered applicable in deciding among the Town's staff how best to deal with this situation. Mayor Post: What's done is done, but it needs to be addressed quickly in the future of this Town. C Hudson: I was sitting in the audience of those meetings and our Town paid to have structural engineer evaluate that building and even the engineer who evaluated it for the property owner there was nothing ever said that it was termite ridden. It mentioned the house was out of plumb and other things that match my house exactly. The floors are sagging, walls don't match. It was never said that it was so structurally unsound that it needed to be torn down. They were denied a demolition permit and it was inspected by a structural engineer. I am appalled that it was torn down. It just makes this Town vulnerable to anybody who would come in here and just buy something. C Duby: I think there are two issues here that we shouldn't confuse. One is what we do about this now that it's happened. But the other one is that the staff has spent a lot of time with these ordinances to try to figure out how to go after these folks. How to go after them is another issue. What they're recommending is that we look at the ordinances so that when something like this happens we have the tools that we need to go after it. Mayor Post: Furthermore, when 100% of the building comes down the staircase propped back up should they not go before the Historic Preservation Commission. Anybody building on a new lot would have to do the same thing. They should to go back before the Historic Preservation Commission with their site plans with approval with the dimensions and how that house is going to look. George Dickerson: I have two comments. One is that I appreciate the preservation of something. The preservation of this home and the condition that it was in based on my being told what the condition was when it was inspected by a very knowledgeable inspector that we hired with experience here. We have no ordinance that we can put into place to have any punishment. Here's what I suggest. Have Mr. Brady review the same ordinances that we have. If I'm wrong then I'll stand up here next meeting and tell you so. I also resent staff being taken to task at a public meeting and said what they should have been doing. We did exactly what we empowered to do by ordinance. Mayor Post: At the same time I want to say that's quite all right, but I would also at the same time see somebody here from Historical and Cultural. We're agreeing to disagree. We're going to get our ordinance straight. We're going to get it in place. We've learned a big mistake here. It's sad that we had to sacrifice another structure in this town in the historic district because people don't get it. C Martin-Brown: What happened to the new ordinances that were completed this past January? Mayor Post: Supposedly they still do not have the teeth that it needed. I agree with the Town Manager that Mr. Brady should review them. We don't have much recourse on this issue. C Betts: I do want to say that I don't want it to go on record that we are blaming the Town's staff because they have done what we had failed to do. Mayor Post: I'm with C Hudson. I'm blaming P. D Camenisch and the property owner and feel both of them should be taken to task on this issue. I do feel this has not happened. I there are some things that we could take them to task on. Lendon Dennis, Code Enforcement: I just want to state for the record. Before the house was actually torn down when I came on board I understood the process that it went through I also knew this was going to happen looking at the ordinance before it got to that point when they started to put up a new wall that was still existing to the old part of the house. I stated that what was going to happen because the ordinance did not give us anything to bind them to what they were denied in doing. However, because of the ordinance they can get around the renovations. If you were to change the ordinance I would have no problem in stopping them or enforcing it where we can fine them. Right now as it stands our hands in tied. Mayor Post: You've done an excellent job on enforcement. You've done that on other issues and you certainly have taken a stand. I know very well you're not afraid of this. I'm just angry with ourselves for having lousy ordinances. This is just very frustrating.

Jim Welu: I watched 409 Federal Street being taken apart bit by bit and I know that if I want to remove the shingles from a porch roof and redo it I've got to get a building permit. I don't understand why if they wanted to do these very things they didn't have to have a specific permit to remove all the roof rafters? What I saw happening was it was taken down bit by bit and nothing was shorn up. I don't if they thing just collapsed one morning of it that was when they did the demolition. It seems to me every step along they way they needed a building permit for everything they were doing.

3. Call to Order – Mayor Post called to order at 10:16 PM

4. Moment of Silence – Councilwoman Betts

5. Pledge of Allegiance to the Flag was said by all.

6. Roll Call	C Martin-Brown	Present
	C Duby	Present
	C Hudson	Present
	C Prettyman	Present
	C Abraham	Present
	C Betts	Present
	Mayor Post	Present

7. Additions or Corrections to the Agenda

C Betts: I make a motion to table f Amendment to Zoning Ordinance Article 11.0.1- Establishment and Duties of the Board of Adjustment. C Prettyman: I think we should table b Rezoning of White Property from R1/R3 zoning to R1/R3 zoning with an LPD (Large Parcel District) overlay and for preliminary approval of an LPD (Large Parcel District) master plan. Mayor Post: C Martin-Brown can we table item i Resolution to donate funds to specific organizations. C Martin-Brown: So moved. C Betts: I amend my motion to include b Rezoning of the White property and also i. the Resolution to donate funds to specific organizations. C Abraham: Second

8. Approval of Agenda

Mayor Post: We have a motion and a second. All in favor, motion carried.

9. Presentation of Minutes: December 3, 2007

10. Approval of Minutes by Council

C Prettyman: I make a motion we accept the minutes as written. C Betts: Second Mayor Post: We have a motion and a second. All in favor, motion carried.

11. Committee Reports – Mayor Post

12. Town Manager Report

George Dickerson: I'd like to bring up Virginia Lucas, our Finance Director, and thank her publicly for the great job she has done for us. I would like her to tell us what's she'll be doing when she leaves us. Virginia Lucas: I would like to thank the Mayor and Council, the Town Manager, Stephanie, Robin,

Allen just everybody that I work with because it has been a wonderful experience. I've gained a lot from working here. I'm not leaving because I hate anybody. I'm actually leaving to pursue my career. I want to become a CPA. I have to test for that. I have to work for a CPA firm for several years and I got offered a very nice position as Chief Financial Officer for my fiancé's family business in the next 5 yrs. I want to pursue all of that before I can do it. I've enjoyed everybody that I work with. C Prettyman: I want to thank you for all that you have done for the Town of Milton and putting up with me. George Dickerson: Although Virginia is leaving I do want to introduce to Council Jennifer Cornell. In the application process when we advertised for hiring for this position we got about 10 applications. We weeded those down to four. Stephanie and other staff did the interviews. I was in on the last round of interviews. Of the four applicants that were remaining Jennifer came out. She's a graduate of Wesley College in 2003 with a Bachelors Degree in Accounting and minors in both Business Administration and English. During college she began working for a CPA firm in the area. After college she accepted a full time position with them, Davis & Smith Accounting Associates. During her five years with the company she earned the position of Senior Accountant. She has tax preparation, planning experience, business, individual, non-profit clients. She also worked extensively with payroll, monthly postings and reconciliations. She independently earned her certification as a Quick Books Pro Advisor for 2006 and 2007. She was born in Western Massachusetts and was raised in Felton from the time she was 8 yrs old. She now lives in Milton where she moved here with her husband in 2007. Please welcome Jennifer. Jennifer Cornell: I'm very excited about this position and I really looked forward being involved with everything in the Town of Milton. George Dickerson: Virginia is staying on a little while to help with training to make the transition as smooth as possible.

Gave handouts regarding Source Water Protection requirement and went over with council. Updated council on Fire Marshall Violation. RFQ's will be ready at the end of this month. The bids are expected to be open on Feb. 26 so that we can move forward with the minor issues that were addressed by the Fire Marshall's office. Wagamon's West Shore – When the lighting was put in that the Town requested went back and researched the records and there was a letter in the file which kind of committed the Town to paying that. Based on that the Town agrees to pay for the electric power to these lights while we are petitioning the State of Delaware to include such funds in our municipal street aide. This letter was signed by former Town Manager, Hal Godwin, committing the Town to pay for these street lights. It doesn't have a specific end date. Handouts given on Complaint Report. All the complaints we received through December 31, 2007 have been resolved except 4. Gave update on Inclind (Website Designer) Sometime in the middle of February they will be launching our new website which will be more user friendly. I want to thank Allen and his staff. Those who had leaves and raked the leaves to the curb that was a big success. There is a letter in your handout from the Historical Society which came from Melanie Huff thanking Council members for the \$5,000 contribution. There is also a handout on the 306 Mill Street Code Violation. It was inspected by CC and been declared emergency condemn. First State Inspections did the inspection. It's in deplorable condition. This handout is explaining the process which is now place. There is still a 45 day period of time after they receive notice. We will either demo it or they will. We've had numerous complaints on this property. Cliff Newland (Property Reassessment) – I went through and looked at the analysis. There were some questions raised by your statistics that you presented for the reassessment. This is a response back to him. C DUBY: I still think we need to set up a time for a workshop on reassessment early in this year. Let's do whatever we need to do prior to the next council meeting.

### 13. Town Solicitor Report – Given by John Brady.

14. Written Reports: It was recommended that either the written report or minutes be posted on the website. A motion and second will be made on each written report.

A. Maintenance – C Prettyman I make a motion to accept on the Maintenance Report dated Dec 2007

B. Code Enforcer – C Prettyman I make a motion to accept the Code Enforcer Report for Dec 2007

C. Police – C Prettyman I make a motion to accept the Police Report dated Nov 20, 2007 and the final report of Dec 2007

D. Planning & Zoning – C Prettyman I make a motion to accept the P&Z Comm Meeting Mins held on Dec 11, 2007

E. Board of Adjustment – No report

F. Historic District Review Comm – C Prettyman I make a motion to accept the Hist Dis Rev Comm minutes dated 12/6/07

G. Economic Development – No report

H. Milton Development Corp – C Prettyman I make a motion to accept the Milt Dev Corp dated Dec 2007

I. Streets and Sidewalks – C Prettyman I make a motion to accept the Street Comm Mins dated Jan 7, 2008

J. Water Committee – No report

K. Zoning Ordinance Review/Rev – No report

L. Historic District Expansion – No Report

M. Parks and Recreation – C Prettyman I make a motion to accept the Parks & Rec Jan 7, 2008

N. Personnel – No Report

O. Health and Env. – C Prettyman I make a motion to accept the H&E report dated Nov 27, 2007

P. Emergency Preparedness – C Prettyman I make a motion to accept the Em Prep report dated Nov 20, 2007 C Betts: I second Mayor Post: We have a motion and a second, any discussion. C Hudson: Will Council members be able to make comments on any of these reports in addition to them being posted on the website. Mayor Post: I think we discussed this at the last meeting that we were going to go to this type of format and see how it works. We made a motion and a second. C Prettyman: I make a motion that all committee reports are done in writing to expedite the time and we would have them prior to the meeting. C Abraham: Second Mayor Post: We have a motion and a second C Duby: In the interest of time tonight we accept them as written. Then worry about what we did last month at a different date. Mayor Post: Absolutely. We get it on the agenda next month, vote on it and are done with it. C Prettyman: I make a motion that we accept the committee reports as written this evening. And at the Feb meeting we bring it up for discussion and finalize. C Duby: Second Mayor Post: We have a motion and second, any further discussion, all in favor, motion carried.

## 15. Old Business

### a. Use of Golf Carts on Town Streets

John Brady, Town Solicitor – No under current state law

### b. Sussex Soil Conservation District – for discussion and possible vote to withhold Certificates of Occupancy for violations determined by Sussex Soil Conservation District

George Dickerson – Mr. Brady at the end of the statements I'm going to be asking for you perhaps to research this and I'll tell you what the issue is. On more than one occasion we have had a case that Jessica Watson who is the Program Manager for Sussex Conservation District has asked to Town of Milton to withhold certificates of occupancy for homes that are built when the subdivision has problems with draining or soil conditions which would fall under their jurisdiction. The last time that this occurred happened in Shipbuilders with Gemcraft Homes. At particular time we were asked to withhold the CO for those homes. They took us to court and they said you can't do that. The issue with soil conservation is that first of all they are funded by Sussex County. It's a Sussex County Council issue. With the guidelines they use here's the problem. They are inspections that are made by their inspectors going out and looking at subdivisions for drainage issues. There are two problem areas. One is Wagamon's West Shore with some drainage issues. They want us to be the enforcement arm to withhold a CO until those are corrected. My understanding in further investigation is that Sussex Conservation District makes the recommendations. First of all they have no teeth to enforce their own ordinance. In other words, they do not have any penalty section or the ability to stop a subdivision from actually working or doing anything. Now they want us to do that as a secondary enforcement agency. In discussing further with Jessica I told her I would support any recommendations within their law of the Sussex Conservation District.

John Brady: Yes I will research it. My initial reflection is no, we can't do her request. I'll have a full report next month.

C DUBY: I make a motion to defer the issue of the Soil Conversations District request to Town Solicitor for research.

C Prettyman: Second

Mayor Post: We have a motion and a second. Any discussion to the motion? All in favor, motion carried.

## 16. New Business

### a. Awarding of bid for Governor's Walk project

George Dickerson: The lowest bidder was \$23,500. The next highest bidder was \$43M. There were some up to \$122M. Scott Hoffman from Cabe Assoc after several attempts to contact them sent a certified letter on December 31 trying to get up with them. I sent an email to Mr. Brady asking how long we have to contact this person before we move to the second highest bidder which is Paul Devilbus at \$45,200 and has done other parts of the project.

Mayor Post: So can we award to Mr. Devilvus.

Bob Kerr: There was a response to one phone call. It was prior to Christmas where he said he had been out of town. He would review things and get back with Scott. Nothing happened. That's when Scott tried additional phone calls and the certified letter.

John Brady: Under Delaware law when you award a bid you have to award it to the lowest responsive bidder. If it is the Town Council's determination for the failure of Bayshore to respond to the phone calls and inquiries to firm up the bid process you can go to the next bidder which would be Devilbus Landscape Architects. If you do that tonight please in your motions state the reasons why you doing that to make it legally defensible for me. In lawsuits

like this, it has happened before, when a bidder has failed to respond to inquiries to finalize the bid before the final awarding of the bid the Court of Chancery has upheld it for the awarding to the next responsive bidder as long as the motion said that to the effect. This letter documents it very well. The bids were opened on December 13. The 13, 17 & 18 there was a phone call, 19<sup>th</sup> there was a response message. Calls were made on Dec 20 & 21 and a certified letter was sent on December 31, 2007. There has been no further response to any of these inquiries as of the date of awarding the bid 10:50PM and climbing on 1/7/2008. Therefore the motion would be from the members of Town Council to award it to if you should so desire the next responsive bidder who has been contacted and is willing to perform at this price.

George Dickerson: Paul Devilbus \$45,200.

C DUBY: Second

Scott Hoffman: If I may add one thing. The brick supplier has indicated that the low bid is just about the same as the material costs alone.

Mayor Post: We've got a motion which has been read into record by our attorney, John Brady, to accept the second bidder with the dates and time of the reasoning to why the Council has chosen to go to the second bidder. Any discussion? 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.

b. Rezoning of White Property from R1/R3 zoning to R1/R3 zoning with an LPD (Large Parcel District) overlay and for preliminary approval of an LPD (Large Parcel District) master plan.

c. Sidewalk Waiver Request- Cannery Village Phase 3A

Bob Kerr: On the original preliminary subdivision drawings sidewalks are shown on both sides of the street running along the storm water pond. The final construction drawings have come in for my review and the sidewalk on the storm water pond side of the street has been eliminated. There are no houses along that side of the street. The developer has requested that the sidewalk be deleted because of the slope of the land making it difficult to do that. The Town's ordinance requires curb and sidewalk for new construction and they're asking for a waiver of that requirement. There is a sidewalk on the opposite side of the street that will have all of the houses.

C Hudson: This map is dated 2005 and it does not have a sidewalk on it, but it does have a sidewalk on it. But it does have a pond. And then the approve parts, the little map that you gave us that said approved, it had a sidewalk on it, but it didn't show where the pond had been redesigned to accommodate the sidewalk.

Bob Kerr: The pond was constructed as part of Phase I. It's been there for several years. It was constructed prior to getting the preliminary approval which is the small drawing. The larger drawing was submitted sometime in the process of 2005 as part of the erosion and sediment control. It was not submitted to the Town until just recently. The process is they got the preliminary approval and then they go through getting the outside agency approvals which includes soil conservation, fire Marshall, DNREC those types of approvals.

C DUBY: What's the reason for having a sidewalk other that it was in the original drawing? Is there a safety issue?

Bob Kerr: One thing is that the Town ordinance requires both curb and sidewalk on both sides of the street. It's a waiver from that. Mr. Brady told us that it's something P&Z cannot waive it has to come before Council. We've even had discussions whether Council can waive that or whether you have to revise the ordinance.

C Abrahams: I feel that someone from Cannery Village needs to be here with a request.

Blake Thompson, member of Chestnut Properties: It's a sidewalk that goes to nowhere its way in the back and probably would be better if someone wasn't walking along there they could slip I suppose. Across from it is the big parking lot. I don't think it's an outlandish request.

C Hudson: You could actually say it's a safety issue to have it. It's one of those amenities that people buy into when they buy in a development because you have walkways around the perimeter where you don't have to keep crossing streets. This part of our ordinance that there are sidewalks on both sides it should have been planned. There's sidewalks other places but it wasn't even planned to have a sidewalk there but this ordinance was in affect a year before this drawn. They should be there is my opinion.

C Prettyman: I make a motion we go ahead and accept the subdivision request for a waiver for the sidewalk section 17.22 (U) and 17.35. This is a portion of the key plan for Phase IIIA

C Duby: Second

Mayor Post: We have a motion and a second, any discussion. Roll call vote

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

Motion failed to pass

d. Install Board of Elections for 2008

Neva Baker – who currently resides on it would be the inspector for the entire process.

James Jefferson; Thomas Arkinson, III; Robert Howard and Pamela Batton. They would be the 5 with two alternates which would be Jane Duffield and Karen Long.

C Prettyman: I make a motion that we accept them.

C Betts: Second

John Brady: You need an inspector, two judges and Board of Election. The BofE should be separate from the two judges. The two judges are there to be with the inspector and then any appeal of the decision of the inspector goes to the judges.

Mayor Post: Neva Baker will be the inspector, James Jeffereson and Thomas Arkinson, will be judges; Robert Howard, Pamela Batton, Jane Duffield and Karen Long will be the Board members.

C Betts: I make a motion to accept.

C Prettyman: 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
C Abraham	Yes
C Betts	Yes

Mayor Post                      Yes  
Motion carried

e. Appointment of Town Treasurer and Asst. Secretary

Mayor Post: Joanie Martin-Brown is named Assistant Secretary. Town Treasurer will not be named tonight.

C Betts: I make a motion to accept

C Prettyman: Second

Mayor Post: We have motion and a second, any discussion. All in favor, motion carried

f. Amendment to Zoning Ordinance Article 11.0.1- Establishment and Duties of the Board of Adjustment

g. Appoint to Board of Adjustment to fill vacant seat formally held by Denise Suthard

Mayor Post: I'm appointing Alexander Dunan for that position

C Betts: I make a motion to appoint

C Abraham: 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	
C Abraham	Yes	
C Betts	Yes	
Mayor Post	Yes	

Motion carried

h. Appoint of two persons to the Historic District Review Commission

Mayor Post: I recommend we put Sarah Harkins and Amy Kratz on the Historic Preservation Commission.

C Martin-Brown: So moved

C Duby: 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	
C Abraham	Yes	
C Betts	Yes	
Mayor Post	Yes	

Motion carried.

i. Resolution to Donate funds to specific organizations

C Hudson: Back in May we were talking about doing a booklet similar to Milford which shows walking tours, pictures of the Town's historical buildings, maps, health tips, etc. The \$12MM Fairplace Foundation has given the Town \$3900 so we can have our own booklet. I was told they normally don't deal with anything this tiny because they are a big foundation but they thought this was so interesting so

I'd like to present this to the Mayor. Our committee will be working on this. I invite volunteers to come to the Health & Env Comm meetings which will be next month on 22<sup>nd</sup>.

17.EXECUTIVE SESSION: Discuss Pending, Potential Litigation and Personnel

18.Adjournment

C Betts: I make a motion we adjourn. C Prettyman: Second. Mayor Post: We will adjourn at 11:08PM  
All in favor to adjourn. Motion carried.

Respectfully submitted,

Julie Powers