

**Town of Milton
Planning & Zoning Meeting
Milton Library, 121 Union Street
Tuesday, November 19, 2013
6:30 pm**

**Minutes are not Verbatim
Transcriptionist: Helene Rodgville**

1. Call Meeting to Order – Don Mazzeo called the meeting to order at 6:30 pm.

2. Roll Call of Members

Don Mazzeo: We'll do a roll call of Members

Barry Goodinson	Present
Lynn Ekelund	Present
Linda Edelin	Present
Mark Quigley	Present
Don Mazzeo	Present
Virginia Weeks	Present
Tim Nicholson	Absent

Don Mazzeo: Again, as a reminder to all members of the Commission, any time you comment, please state your name for the record, so that when we have our minutes, we have the correct person saying what they have said.

3. Additions/Corrections to the Agenda

Don Mazzeo: Do we have any additions or corrections to this evening's Agenda?

4. Approval of agenda

Don Mazzeo: Hearing none, I'll accept a motion to accept the agenda.

Lynn Ekelund: Motion to accept the agenda.

Barry Goodinson: Second.

Don Mazzeo: All in favor to accept say aye. Opposed. Motion carried.

5. Minutes of October 15, 2013

Don Mazzeo: Do we have any comments, questions or corrections or deletions for those particular minutes? Hearing none, I'll accept a motion to approve the minutes of October 15, 2013.

Lynn Ekelund: So moved.

Mark Quigley: Second.

Don Mazzeo: All in favor say aye. Opposed. Minutes are approved.

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

- a. The applicant, Fernmoor Homes at Heritage Creek, is requesting a final subdivision review/approval for Phase 5 of Heritage Creek further identified by Sussex County Tax Map and Parcel # 2-35-20.00-56.00

Don Mazzeo: Do we have a member of the applicant here this evening? Representation, thereof?

Mike Coven, George, Miles and Buhr, Project Engineer: Good evening. We're here before you this evening for bringing back to you final for Phase 5 at Heritage Creek and if you recall, it's the area behind the community center area, the enlargement here. All the agency approvals have been attained. The Town Engineer has completed his review. There was one question in his letter that I want to address, real quick. There was a question in Mr. Kerr's letter about whether the conservation easement covered the area behind Phase 5 and it is, in fact, for the wetlands in the entire development.

Don Mazzeo: Okay, that's good.

Mike Coven: And that gets recorded with Phase 4.

Don Mazzeo: That was with Phase 4, when we had the original conversations back when?

Mike Coven: Yes, Sir.

Don Mazzeo: Okay. Alright.

Mike Coven: The only other question that's outstanding that I know of are the signs for the one area that has homes that face open space and this plan was sent to you about two days before I got the package from Robin, so I think we have a better idea of what's after, but I would like to get a little bit of specific direction from you folks this evening, about exactly what you want us to show. For lack of any more specific information, this plan at C-14, said "Garage and/or directional signage to be installed for Lots 185 through 197, as directed by the Town of Milton, to aid emergency personnel in finding the residences"; and then there were two directional signs located here; install sign for addresses per Town of Milton standards. Since then, we got the package from Robin that shows the signs that are being used at Cannery, so we can add those details to this sheet if you like. There was some discussion between Robin and I that for the signs that actually go on the garages, that the record plat might actually be the most appropriate place for those to be, since that work would take place after the infrastructure was completed and gone; then the folks building the houses wouldn't necessarily have these plans on hand. So really what we're looking for is a little bit of direction; how detailed do you want this to be shown? Robin, are these finalized now?

Robin Davis: No.

Mike Coven: From speaking to Robin just now, I think what we're looking at, if you look at the Series I signs, at the sidewalks we would have one that looks like the one at 208 Sundance; those would be at the sidewalks and then the Series III, if you look at the top, number one there, that would go on the back of the directional signs for Bank Lane here, to alert them that they need to come forward to where this sign is.

Virginia Weeks: These are really ugly.

Don Mazzeo: Disregarding the fact that they may or may not be the prettiest, these are consistent now and I'm asking our Town folk, particularly, Robin, I guess; these are now going to be consistent with what is going to be placed within Cannery's new signage?

Robin Davis: Correct. Actually the examples you have there are what was approved for Cannery Village.

Lynn Ekelund: Yes, these are all Cannery Road...

Don Mazzeo: Yes, but I'm saying these are the approved...

Robin Davis: Yes they went to Quillen Signs and already spent some money on them.

Don Mazzeo: So at this point then, what you're looking for Mike, you want it to look like what your other signage is out there, or do you want it to look like this? Is that what you're asking?

Robin Davis: I think the request from the Town was that they match; Heritage Creek matches the signs that Cannery Village was approved.

Don Mazzeo: I would agree with that, to be honest with you.

Robin Davis: The only thing that we were discussing again, as Mike said, if an ambulance comes down, which this is Arch Street from the main entrance, and hits the address at Bank; that's what the alley is, Bank Lane; if we put the EMT signs on both sides, the arrow's going to be pointing basically to say keep going towards Lanner Lane...

Don Mazzeo: Which is not correct.

Robin Davis: If you put it on one side, that way if they do for some reason, come around and come here, that they will see that and then these signs will direct them left or right down the sidewalk. Then there was also the garage signs; they're to go on the back, so if for some reason they do go down the alley, at least they'll know what the address is and what road it's actually on.

Don Mazzeo: Okay.

Virginia Weeks: How wide are the alleys?

Robin Davis: I'm thinking 15'.

Virginia Weeks: Is it possible for emergency trucks and large trucks to make that turn without knocking the signs down, if they're placed where you want to place them?

Robin Davis: By placing the signs here, really you should not have any big trucks go down that alley anyway.

Barry Goodinson: But if you're directing EMS vehicles down there, or pointing in that direction...

Mike Coven: You're actually directing them to the sidewalk.

Robin Davis: Yes, this arrow, if you notice the first arrow, it's pointing for them to continue on. That arrow will be in the sidewalk area to point them down the sidewalk; that one will point them up the street towards the sidewalk.

Virginia Weeks: The address on the alley is different from the address on the

sidewalk; or is it the same address?

Mike Coven: It's the same address. To answer your question, an ambulance wouldn't have any trouble getting into the alleys; but you couldn't get a fire truck in there easily. They would prefer to use the front.

Virginia Weeks: So if there's ever a fire and trucks have to get back in that alley, it's not going to be easy for them to do so, right?

Mike Coven: No, they would have to pull a hose down the...

Virginia Weeks: They couldn't fight the fire from the front of the house; they can bring the truck to the back and put a ladder up. Wonderful. Okay.

Mike Coven: There's a fire hydrant there too, actually.

Virginia Weeks: Okay, thank you.

Robin Davis: They can have access through your community center is going to go here. There's parking so they can pull through and access, closer to those homes here.

Mike Coven: The Fire Marshall asked for a hydrant at the end of that lot.

Don Mazzeo: Probably for that very reason.

Barry Goodinson: Robin, I have a question. Have they done some temporary mock-ups of these signs and tried them over at Cannery Village to see if they make sense?

Robin Davis: Not that I'm aware of.

Barry Goodinson: It seems like that would be a smart investment. I see lots of signs that are really confusing and they seem to make sense on paper; or at least in the minds of the people who understand the neighborhood. They can take what they know of the neighborhood and connect it to what's on paper and it all makes sense to them; but for someone who's not familiar with the neighborhood, which is the problem we're trying to solve here, the signs may muddy things up. This is sort of second guessing what they've done and this is probably not the right venue. I would recommend that you do temporary signs until you know that they're actually doing the job that you want them to do, before you invest all the money in signage and then discover that the arrows that you thought were so clear, are actually confusing to people that are unfamiliar with the neighborhood.

Mike Coven: I would actually make the suggestion that we use generic terms to point these out on the plan. You can make an argument for staying with that, in case this standard does evolve. Right now, it just states that they have to be installed to the town standard. I'll happily detail these out, however you want us to do them, but as it stands right now, if something changes in the way that they do that, when they start to go about trying to put these up, then you'd be covered.

Don Mazzeo: From the engineering standpoint?

Bob Kerr, CABE Associates: Mr. Coven's suggestion of leaving it to be in accordance with the Town Standard probably is best at this time, because there is a great likelihood as the signs are installed in Cannery Village, that there may be changes made to how it's done and that whatever the final

outcome, just has to be replicated in Heritage Creek might be the best way to proceed.

Don Mazzeo: It's a more generic statement that says, then whatever the Town Standard is, you will follow, as long as it is on the final design paperwork.

Mike Coven: Yes, Sir.

Bob Kerr: It will simply be up to when final approval is given or when the town accepts the streets, that they make sure that the signs are the way they want them at that time. You won't be able to go to the drawing and determine if they're correct. You have to go to the Town Standard that's in effect and that is a little troubling, because they could change two or three times during that period, but at what point are you more or less locked in?

Don Mazzeo: We are locked in as a Town upon accepting the roads; that's the time we're locked in. Is that true?

Bob Kerr: That is true.

Don Mazzeo: Okay, so if the signs are not in the appropriate fashion when we're about to accept the roads, that's the time to change them and somewhere, I think it was in your notes perhaps; I'm not sure; yes, it was that who's going to pay for this signage between now and the time that the Town accepts the roads with the signage; who's paying for it? I will assume the applicant is doing all of that.

Bob Kerr: I might question that because of the signs on the garage; it is possible that Phase 5 could be accepted by the Town, with several homes still to be constructed within Phase 5 that the developer has finished Phase 5 and moved on; not that he's left the sub-division, because of 6, 7, 8 or however many phases, but the signs on the garage may not be put up by the developer. I know at this point, the developer... All the houses are being built by the developer essentially; but things change and someone else could buy a lot and have another house, or another builder construct the house. That's not that plan. I don't believe that's the plan they have, but thinking ahead, somebody has to think of that.

Mike Coven: I could amend that suggestion, then and leave that plan as it is, but show the specific garage signs on the record plat.

Don Mazzeo: That would be what I feel is appropriate; that covers you as the developer here and the Town because they're not going to accept that, unless it meets the...

Mike Coven: And that part's not likely to change. The directional signage could well change between now and whenever we finish.

Don Mazzeo: Okay.

Mike Coven: Does that make sense?

Don Mazzeo: It makes total sense.

Linda Edelen: When do you expect that you might be building these homes? Twelve months, 24 months.

Ben Gordy, Ocean Atlantic Management: At this time, we really can't say. It's all dependent on sales. We're actually, hopefully, starting construction on part

of Phase III within the next couple of weeks. We actually just posted our bond, I believe it was last week; so I would say at the earliest we're probably looking at close to twelve months before we'd start construction; it could be shorter; it could be longer; we hope it's a little sooner, but can't really say at this time.

Linda Edelen: Thank you.

Don Mazzeo: Any other questions from members of the Committee?

Barry Goodinson: Yes, I just have a quick one. This handout that you've given us with the signage from Cannery Village and you say that you're going to follow their lead. Do you mean in terms of the content or in terms of the design? Are these posts and blade holders, the same ones that you're currently specing for this community? Because I don't want you to have to say oh gosh, we've got to do this whatever design this is and then realize that it doesn't fit your streets that you've already speced out.

Mike Coven: This is the first time I've seen that, so...

Barry Goodinson: I just want to make sure we don't so tightly define what they're supposed to do and then we put them in a corner, making them have to choose this particular model.

Robin Davis: I put that on there to show the poles that the arrows would be going and I think the fluted poles match what's at Cannery Village. But I wasn't going for the decorative holders or just...

Barry Goodinson: I know this is sort of for illustration purposes. I just don't want us to unintentionally require you to use something that you didn't intend to.

Seth Thompson: It sounds to me, I might define it as you're going to use a functionality of these signs; but not necessarily the exact design.

Barry Goodinson: Okay.

Seth Thompson: Does that make sense to you? It will have the EMS arrow, but it doesn't have to be that font, that sort of thing. Okay.

Don Mazzeo: Any other questions or comments or concerns?

Bob Kerr: When we were talking about it being accepted at the time of final acceptance by the Town, it may be appropriate to require the developer to submit what the actual sign is going to look like and have the Town approve it at that point in time. It's the type of thing that they might put up... they're getting close to finishing Phase 2A. They put up the sign, but something happens and it's six or nine months before it actually gets accepted; and the standard changes and somebody comes along and says you have to change the signs; so they change the sign...

Don Mazzeo: That's what Barry was kind of alluding to.

Bob Kerr: And it changes again, so if the Motion would include words to the effect that "subject to review by the Town prior to the signs being erected" and once that approval is given, that this sign, in this location, that that becomes the point in which that particular sign is approved; so we don't go back because the Town changes a light fixture, as kind of their standard; we

don't go back through a sub-division under construction and change light fixtures. Or we don't change paving thickness or sidewalks and that type of thing.

Don Mazzeo: Do we have something procedurally in place today that would then tick a time box that says you've got to go back to Town for final approval. Oh wait a minute, we have to do signage approval first? Is there a process or a procedure that would make that happen? I see Robin shaking his head no, so how would we then and I'm not suggesting that you provide that insert; just how we would make that happen?

Bob Kerr: Just as part of the Motion to approve and Seth, jump in if I've overstepped the legal bounds, that developer shall submit signage shop drawings, is what we call them in the industry, prior to erection of special alley signs or whatever we're referring to these signs; prior to their being placed for final approval by Town. Essentially, what we're trying to do this evening is recommend to Mayor and Council that they accept everything on these drawings and we're more or less locked in at that point. We don't change the pavement thickness after it goes to Mayor and Council and we don't change anything else; but in this case, it sounds like we want to leave it open for six, nine months, a year, or eighteen months until Cannery Village becomes the guinea pig to try it out.

Don Mazzeo: Thank you. Any other comments? Hearing none, I will accept a Motion then...

Lynn Ekelund: Hold on. I thought you were talking about any other sign comments. I have one question. I'm looking at the... and it could be that I'm just not computing something, I'm looking at the letter to Doug Boner, November 7, 2013 from Tidewater Environmental Services. The first sentence is Tidewater Environmental Services, Inc. ("TESI") is the owner and operator of the Milton Wastewater Treatment Plant and the future owner and operator of Heritage Creek Phase 5.

Mike Coven: Once it's constructed. That's all that means.

Lynn Ekelund: Once it's constructed, TESI is going to be the owner and operator of Heritage Creek Phase 5?

Mike Coven: Wastewater. Just wastewater.

Don Mazzeo: Semantics.

Lynn Ekelund: Okay. I just read that and went what! What don't we know about. I mean, it is Milton.

Don Mazzeo: We will stipulate that you will have wastewater added there.

Lynn Ekelund: Okay, thank you.

Don Mazzeo: The application is still opened for questions and queries, comments. Hearing, seeing none, I will accept a motion; it's kind of an interesting motion, I guess, to make recommendation to Mayor and Council to fill in the blank somebody.

Seth Thompson: I think we have two issues. One of the conditions would be that the garage signs be reflected on the record plat and then the other would

be that the shop drawing of the EMS directional signs would be presented to the Town, prior to their erection.

Don Mazzeo: So we're looking at just two conditions as it relates to this specific application. They may be broad, but...

Seth Thompson: Right, but it would be a recommendation to Town Council for approval, with those two conditions.

Bob Kerr: The first one, the record plat, would need to be changed; should the second condition also be added to the record plat, just so it is?

Seth Thompson: I think the difficulty with adding the second one to the record plat is that... the point is that the signs might change location, the directional signs might change location.

Don Mazzeo: I don't think you'd want to do that.

Mike Coven: Can I add that the record plat's that we'll submit to Council will have those details on them, so when they see them, they'll have that.

Don Mazzeo: That would give them clarity, because we're a little on the cloudy side.

Seth Thompson: It is nice, just in terms of commenting, the issue here isn't nearly as widespread as it is in Cannery Village. I think it's also only the access issue. You don't have the scenario and maybe I'll be corrected if I'm wrong, but where houses across from each other have different addresses. Fortunately, we're not wrestling with as large of a bear this time.

Don Mazzeo: Okay. A motion to...

Lynn Ekelund: Alright, I move that we recommend to Town Council that they approve Fernmoor Homes at Heritage Creek final sub-division or Phase 5 of Heritage Creek, further identified by Sussex County Tax Map and Parcel # 2-35-20.00-56.00 with two conditions. The first being that the garage signs are reflected on the record plat and the second being that the shop drawing of EMS directional signs is presented to the Town for approval, prior to their erection.

Don Mazzeo: We have a motion on the table. Do I hearing a second?

Linda Edelen: Second.

Don Mazzeo: All in favor say aye. Opposed. Motion is carried.

Virginia Weeks: I abstain. I wasn't here for the discussion, so I abstain from the vote. Thank you.

Don Mazzeo: Virginia Weeks abstains. The motion has passed.

- b. Ordinance to amend Chapter 220 of the Town Code, entitled "Zoning", related to parking

Don Mazzeo: Moving on to our next agenda item under Business. B, c, d, and e – these are all ordinances to be discussed and I would like our Town Solicitor to present each of them individually so we can do that discussion.

Seth Thompson: The first ordinance is an ordinance to amend Chapter 220 of the Town Code, entitled "Zoning", related to parking and you should have that in front of you. My style for this, we tend to do it at the State Legislature, a strike through means that language is in existence in your Code and we're

deleting it; underlined, means that we're adding that language to the Code. So this is a result, in part, of our discussion number one, in terms of jurisdiction; so as you can see on the second page, it changes Planning and Zoning to the Board of Adjustment, in terms of who would have the jurisdiction to vary the number and circumstances of parking spaces. And it does that, as well, down in number 8. It again changes Planning and Zoning to reference the Board of Adjustment. It removes the language saying "without requiring a variance"; because that's what a variance is. Then it also takes out that 50% limitation. That's something that probably Planning and Zoning would want to determine. It could be that if you have a movie theater and a doctor's office, a doctor doesn't need anymore parking and then you can limit that impervious surface overgrowth, that a lot of Towns are going through. The 50%... if Planning and Zoning doesn't think that's appropriate, I could certainly leave that in there. That's clearly an item up for discussion, as really is everything. I don't think these Drafts are beyond critique by any stretch. I'm always open to suggestions. Then you have the Table, in terms of the number of required parking spaces.

Don Mazzeo: And we've made no changes to that.

Seth Thompson: That's correct. I did note at one point and I'm looking for, at the very end of Sub-Section a, it's in number 10; it says "Parking shall be prohibited in the lawn area in front of a residence in any district." An old cannon of construction is, that if you include one term, you're excluding all the others. So that's why I noted that by putting in the term "residence" you're basically saying that you can't park in front of a residence on the lawn, but you can do it for something that's not a residence. I'm not quite sure that's what was intended there. I think we require everything to be paved, so if it's a commercial use, I can't imagine somebody's allowed to park in the lawn, but I just wanted to note that on there. You guys hadn't mentioned anything, but as I was going through with a little bit finer tooth comb, I noticed that and I see Robin, so we'll move along, but he might have some thoughts on that later. So after the table, I'm not quite sure why the term "automobile" was used in sub-section c there; we just define them as parking spaces. We don't define them as automobile parking spaces. It's kind of the same concept where would somebody come and say this is a semi-tractor/trailer; it's not an automobile. Perhaps it was an attorney that got paid by the word. I know that we're accused of that a lot. I removed the reference to approval of Planning and Zoning in sub-section d and then the commercial districts, I took out the reference to Town Center; because parking isn't required in there currently; so it seemed a little redundant to me. Then I added in where it would belong... I added in that new d, 3; where it says any parking within the Town Center shall not be required to provide off-street parking, because we're talking about parking, so you would expect to find that reference here. It's also referenced in the Town Center section of Chapter 220. I wanted it to be placed here, so that people would recognize that. Off-street parking, I'm changing it so that it may be varied; instead of the term waived. The waiver

makes it sound like it's either all or nothing; I put varied, because again, the Board of Adjustment might deem it worthwhile to have X number, 50% of the norm, that sort of thing. I just left it up to the Board of Adjustment pursuant to their authority. The other standard was something that had been given to Planning and Zoning looking at adequate public off-street parking; evidence of satisfactory off-site parking. Those would be examples of what you would seemingly present to the Board of Adjustment. But by limiting to that in our Code, you're eliminating them coming up with some other explanation as to why the parking should be varied; so that's why I eliminated that. I'm certainly willing to take any suggestions, any questions, but the main purpose again was to return it to the Board of Adjustment.

Virginia Weeks: Mr. Chairman, right where you were talking, Seth, in f, where it says Construction of Parking Areas. All off-street parking areas shall be paved with a suitable, all weather, dust resurface. I'm concerned about the word "paved", because I think there are other materials out there now, that are not pavement; that are dust free, that could work very well and if it wasn't paved, it could be pervious, rather than impervious.

Seth Thompson: I'll turn that over to perhaps the engineer. I don't know if he's aware of materials that... Paved isn't a defined term, in your Code, so you're just left with plain meaning.

Virginia Weeks: Yeah, but I'm afraid it's going to cause problems because right now, the way the Town interprets it, is pretty much hard top.

Bob Kerr: Yes, we have had that discussion before. We have offered, I don't believe anyone ever took it up, that it can be a surface treatment, a hot mix, concrete, it could be brick, cobblestones; that is considered a hard surface. We've had people that wanted to use oyster shells or pea gravel or something like that, that we didn't allow, because that generally gets dragged out onto your main streets and that's really the purpose for requiring a hard surface.

Barry Goodinson: Could we just use the word "composed", rather than "paved".

Seth Thompson: That's fine with me.

Barry Goodinson: Okay.

Virginia Weeks: I have no idea if that's... or hard surface or whatever, but something other than paved.

Mark Quigley: I have a question. What about tar and chip; what does that fall under?

Bob Kerr: I use that as one of the examples that would be acceptable, tar and chip. I'm not sure that composed would define it, because a driveway composed of gravel, like a pea gravel or something like that, would be dust free, but to the way I would interpret it, that's something that would be dragged out onto the street over time.

Barry Goodinson: Do we need to add something that addresses that issue of loose material not being dragged out into the street?

Seth Thompson: That would be one way to do it. Changing it to constructed

with a suitable, all-weather, non-transient...

Barry Goodinson: Non-movable. Not crumbly.

Don Mazzeo: Non-removable. You can't do that either.

Linda Edelen: Anybody have a Thesaurus someplace?

Seth Thompson: I guess you could use the term "permanent", but...

Barry Goodinson: Stable.

Seth Thompson: Stable might work.

Don Mazzeo: Permanent and stable. That gives it both sides, because if you're putting in your little pea stone, or whatever, it may be stable, but it's not permanent, because it's movable.

Virginia Weeks: And if it's something that's movable like that, then I think we need to add the language that it shall be well maintained, so that if it is some form of stone or something and eventually they get all knocked down into the dirt, you don't see ruts and dirt and so on; that the Town has the ability to make sure that they are well maintained.

Seth Thompson: Mr. Kerr's saying it's always difficult when you introduce a somewhat subjective term, like "well maintained", without then giving it a little bit more of a definition.

Virginia Weeks: Have at it.

Linda Edelen: Is paved really such a bad word? I mean we all sort of know what that means.

Don Mazzeo: It's not that it's a bad word, per se, it's an interpretive meaning.

Virginia Weeks: It's a limited...

Don Mazzeo: It could mean, as Bob Kerr has said, it could be asphalt, it could be concrete, it could be blocks.

Linda Edelen: Are all those acceptable?

Don Mazzeo: What I've said so far, yes. But if somebody puts in the pea gravel, or the oyster shells, while it is a paved item, it's not going to remain in it's paved location; it will be dragged out into the public.

Robin Davis: I know we're probably getting way off, but personally, I would like to see it defined in there, exactly what it is; asphalt, concrete, they're done. It's done. That way, nobody can come in and say well Robin, how come you didn't let me put clam shells, or pea gravel, I've got something that's not going to cause any dust.

Don Mazzeo: But it's not a listed acceptable item. So what you're recommending for us to do is to add the term paved equals this, this, this, this and this.

Robin Davis: I know you limit when you do that, because there's always new stuff coming out; I understand that, but it puts me in a spot when I have to define dust free.

Barry Goodinson: The concern I have is that and I think the whole notion of paving, we are pushing people towards the use of impervious surface and I think we generally would like to see less impervious surface and encourage people to use surfaces that water can percolate and we're not going to have a

lot of run off. So I'm not sure how to address this, but I think Ginny's comment about paving, using the word "paving", directs people in that direction and I don't know. I'm thinking too that I don't have a problem with gravel and oyster shells, if there's a requirement that there be an apron. You see this all the time in residential uses where you've got a clam shell driveway, but then close to the street, you've got an apron that's been composed of cobbles that keep all of those loose materials where they belong, as the traffic's going in and out.

Robin Davis: This is talking about parking areas and how would we do it out at Food Lion, with a parking lot full of cobblestones?

Barry Goodinson: That's a good point. There may be an issue of parking areas of this size and above, need to be... I know, it's complicated, but it's an important issue.

Bob Kerr: Backing up to something that you started out with was pavement and it could be including and give a list, and other surfaces acceptable to the Commission. That puts it a little bit back more on you, but it doesn't allow somebody just to come in and say I want to use beach sand.

Seth Thompson: You do see that in laws that typically there's some sort of evolution with the law; so they list the items and you'll see, or items of similar or better X qualities. So we could do it that way. Basically we could list the surfaces that are approved by the Town now and then... I guess it gets the issue off of Robin's back, if we say that it will be approved by Planning and Zoning in the site plan process, is what it would be. I'm trying to think of the context in which this would happen, because single family residences are exempt from this, so it wouldn't be somebody coming in, building a house.

Robin Davis: It's the same thing with a lot of things in here, that an individual will come and say, I looked at your Code. Tell me what dust-free is. Tell me what I can't use. They say I can't look at your Code and say I can use this. It's the same thing in the Historic District. Tell me what I can use. That way I know, by reading it in the book. There it is. Again, it saves me from having to make that decision, is this dust-free or is this not dust-free.

Mark Quigley: I think that makes some sense to some degree, but I spoke to several engineers over the last couple of months and you may be able to confirm this or validate it, but they said, like up in New Castle County, it may be 15 pages, but it tells people exactly what they need to do and as long of a process as it is, the engineer's, the builder's, they love it; the community loves it; and it's clear. It's clarity.

Don Mazzeo: It's very specific is what they can and cannot do. There's not a question. There's not a cloud hanging out there.

Mark Quigley: Another thought is and this just popped up when we were talking about surfaces that do percolate; are we looking to add an aspect of green to this; while it's open and available? Get ahead of ourselves a little, instead of...

Don Mazzeo: Do you want to tackle tonight definition of paved; or do we

want to just indicate tonight... and keep it just paved, with a subsequent definition to follow? Can that be done as far as sending it back to Council, or will they need or want more?

Seth Thompson: No, I think you can give an Advisory Report that lays out certain options, because ultimately they have to pass it anyway. We could take it in either direction or we could set it up where those were simply Planning and Zoning's thoughts that we could try this, or we could try this.

Virginia Weeks: Bob, what was your definition of hard surface?

Bob Kerr: It doesn't say hard surface. The original one said parking areas shall be paved with a suitable all-weather dust resurface. It doesn't say a hard surface. It just says suitable... Go the silly route, somebody could put down AstroTurf and that would be a dust resurface.

Virginia Weeks: Okay.

Bob Kerr: Definitely all-weather. If I could add with New Castle County, having done several projects for the county recently that had to go through their Planning and Zoning, if it's slightly outside of what they were thinking about, you're so lost in that process. When we do a pumping station for them, we have been rejected several times because sewer service isn't available. We're building a sewerage pumping station, and we can't get approval because there isn't a sewer system available; because their rule is, if a system isn't available, you can't get site plan approval. So they've almost gone to the nth degree and it's written around housing developments, so if it's outside of a housing development or a shopping center, it just doesn't fit. What I'm trying to say is, you just have to be careful when you come up with that all inclusive... I always like adding in, unless otherwise approved by the Commission, or words to that effect.

Don Mazzeo: I happen to like that caveat at the end. You can have any or all of these, but check with us. Come back to us.

Seth Thompson: And it would occur in the site plan process, because we're talking about something that's not a single family residence.

Don Mazzeo: Right. Non-single.

Bob Kerr: Yes, if we could go back to the recent propane storage, their preliminary site plan showed a stone driveway and one of my comments, was that it needed to be just what we're saying here and I was kind of assuming that they would go with hot mix; well they wanted to do concrete. We also had someone, I believe it was the school a few years ago, that was looking at porous concrete so that the water drains right through it and it's still kind of a new thing, but there are people doing it. We've had porous hot mix for many years and cobblestones and all kinds of pavers. We're doing a project right now for the Delaware State Fair that's using asphalt pavers; kind of different.

Virginia Weeks: I mean if you look further down, it says the individual spaces shall be visibly marked with paint or other durable material. That sort of let's clam shells and pea stone out. You can't paint pea stone or clam shells to have a permanent marking of the space, so if we could get a list Bob of

what materials for hard scape that are both pervious and impervious, back to us; maybe we could do that and add at the end, or with the consent... But if you have to pave it, you can't do it on pea stone and have it remain more than an hour and a half.

Don Mazzeo: Or the next rain. I think that's an excellent idea, that we come back with a listing of both impervious and pervious type of surfaces, as recommended by the Town Engineer...

Virginia Weeks: That fulfill the other requirements, such as they could be painted.

Don Mazzeo: Correct. So as a recommendation back to Mayor and Council, is that we agree with the changes that were presented...

Barry Goodinson: Just one... I think while we're doing this, as Seth pointed out, that using the word residence implies that it's okay to park on the lawn in front of a non-residence. I think we should make it broader and not restrict it to residences.

Virginia Weeks: I agree.

Lynn Ekelund: I agree.

Don Mazzeo: Take the word "residence" out completely and it shall then read "Parking shall be prohibited in the lawn area in front of any building, in any district, except on the driveway of such structure." Call it structure, in case it's a barn. I guess that's a structure, too.

Linda Edelen: What section are you on?

Don Mazzeo: We're on Section 10, second page. Right about the Table of Required Off-Street Parking Spaces. Go back to your first page.

Linda Edelen: Oh.

Barry Goodinson: There's a footnote.

Don Mazzeo: See the footnote, it implies that the prohibition is not...

Seth Thompson: I'm looking at your Zoning definitions and the argument is that the term "structure" is broader, based on your definitions, because "Structure is a static construction of building materials framed or components structural parts for occupancy or use including buildings, stadiums, platforms, towers, sheds, display stands, storage bins, signs, fences, reviewing stands, gasoline pumps, mobile dwellings, and the like." So structure sounds broader than building; which is any structure which is wholly or partially enclosed with an exterior wall, is permanently fixed to the land, has one or more floors and a roof and is intended for shelter housing or enclosure of persons, animals or chattel." So structure is the broader of those terms.

Don Mazzeo: Structure? Okay.

Mark Quigley: Does it need to be one, or can it be both?

Seth Thompson: I'm sorry.

Mark Quigley: Structure or building?

Seth Thompson: I would think of structure as encompassing... If it's a building, then it's definitely a structure.

Don Mazzeo: But not every structure is a building.

Seth Thompson: Correct, so if we're doing the _____ diagrams, is that one fully encompasses the other.

Don Mazzeo: I heard you mention fence. That's not a building, it's a structure.

Mark Quigley: We don't want people talking on the lawn, basically.

Don Mazzeo: Why don't we just say that; no parking on any lawn areas. Period. Paragraph and then stop. So we'll change that to structure.

Bob Kerr: If I can ask Robin a question. At one point and it might have been just in the Historic District do you remember when we ran into the problem someplace in here, that the definition of a fence, said it was a structure, because people had to get a demolition permit to tear down a fence in the Historic District and had to go through the whole process.

Don Mazzeo: Was it because it was in the Historic District?

Bob Kerr: No.

Don Mazzeo: Because it was a structure.

Bob Kerr: In the Historic Preservation Section, a fence was considered a structure.

Robin Davis: When they talked about demolition, they said, demolition of any structure has to have a structural engineer report, so technically if I'm tearing down my fence in the Historic District, I'm going to have to get a structural engineer to come in and say it needs to be torn down.

Don Mazzeo: Or you could go to the Board of Adjustment and asked to have that waived.

Robin Davis: It's never really happened, but that's the actual wording of the Code.

Seth Thompson: We're not touching that one tonight.

Don Mazzeo: No, we're not touching that one tonight.

Seth Thompson: Okay, unless there are other questions, I think I have my guidance on that one.

Don Mazzeo: Any other comments, before we move onto the next Ordinance? Thank you.

- c. Ordinance to amend Chapter 220 of the Town Code, entitled “Zoning”, related to Special Uses

Seth Thompson: This is somewhat in keeping with what we talked about previously, this is giving the special use permit authority to the Board of Adjustment, as opposed to Planning and Zoning. In think the only other change that I made, if you look on the third page, I'm in Sub-Section D1b, I added in the word “substantially detrimental” and then I did that again in D2a and that follows with the State Code, because the argument is that anytime you allow a use, the argument is there's going to be some level of detriment. If you're the neighbor and you allow that special use next door, there's going to be a little bit more noise to that one person, so that's why the State Code uses the term

“substantially detrimental”; that the neighbor can't come in and say what was at 30dB, is now at 33dB.

Mark Quigley: I have a question. What would be the trigger then? Using 30 as the baseline, what would be the baseline?

Seth Thompson: It's interesting because I think it's helpful to mirror the State Code language here, because then, at least, you can go to the case law that has interpreted the State Code and you can follow along with it and say, at least in this set of facts a 10% rise in noise...

Don Mazzeo: In fact, in your example, it went from 30dB to 33dB, that is 10%, therefore that would be substantial.

Seth Thompson: That's right.

Don Mazzeo: I don't know if anybody could actually discern a 3dB change...

Seth Thompson: It is somewhat difficult. It's going to be a fact sensitive inquiry, whenever the Board of Adjustment is dealing with these things, especially because it's really supposed to be measured in terms of detrimental to the health, safety and general welfare of everybody in the neighborhood. Again, it's not just that one neighbor.

Don Mazzeo: So the basic gist of this particular Ordinance, was just to change this over to Board of Adjustment?

Seth Thompson: Right.

Virginia Weeks: Here we go again. You know, when we do a Conditional Use at the end of a year, the person has to come back in and get permanent approval; that gives him a year of doing his business and it gives the neighbors or the neighborhood, if there are any complaints, a time to come in and address those complaints. I don't know if... If you give somebody a special use and he gives testimony that it's not a substantially detrimental, I hate the word substantial, because I'm sure you've seen in the LPD's a “substantial” change in the Master Plan; and who defines what's substantial? There is no definition of it. So if we're going to use the word “substantial”, having them come back almost like a year later, just to review how it's been going and if there are no complaints, fine and then if there are complaints, or they can be called back to the Board of Adjustment in the first year if a neighbor has a serious complaint. You have to give some sort of protection. There is no definition of “substantial”.

Seth Thompson: I understand. You're right. It's open to interpretation. I suppose we could set up criteria as to how we determine what's substantial. For the most part, it's set up where basically the people around that particular property, the onus is on them to come in and say this is the parade of horrors that's going to follow this. But you're right... I guess the problem when you walk down the path of having permission only good for a year, it's really more of a Conditional Use and I would view a special use exception as being something that's more in fitting with the neighborhood, than a Conditional Use. So if you're thinking of it as a spectrum, you have your automatically Permitted Uses, where it's going to be abundantly clear that that's appropriate within this neighborhood; then you probably have your special permitted use, where it's something that's within the

character of the neighborhood, but we want to double-check and make sure. A Conditional Use, as we talked about last night, your Code allows for it to be in any Zone, for any particular use.

Virginia Weeks: Also, I want to know, if we give somebody or if the Board of Adjustment gives somebody a Special Permitted Use and they start having delivery trucks at 6:00 in the morning, which is not substantially detrimental maybe; what appeal do the people that live around there, have?

Seth Thompson: In that scenario, you're not going to know ahead of time what they're going to do; so even without the word "substantially" in there, again people are left to predict. Do you know what I mean? So you're going to be left with your regular Town Code. We do have business hours, I guess.

Virginia Weeks: Because it's my understanding that the Council wants to make a special use of a home... I thought it was going to be a home employment thing. A home business; not the... We want the special uses to go; they didn't give us the home one. Okay. Terrific. No problem. Thank you.

Seth Thompson: No problem, but just to kind of return to that, again the special uses aren't something that's completely out of the character of the neighborhood, so I'm trying to think of a more likely...

Virginia Weeks: No, I was mistaken. Thank you.

Don Mazzeo: In essence then, we have no commentary changes to your particular thoughts.

- d. Ordinance to amend Chapter 220 of the Town Code, entitled "Zoning", relating to Section 52 – Antennas, towers, and satellite dishes and regarding penalties

Seth Thompson: I expect a little bit more commentary on the next one. Or at least, I hope so, because otherwise the Town Solicitor is writing policy and that's not my favorite thing to do.

Mark Quigley: So far, so good.

Seth Thompson: This is dealing with two topics. The penalties topic, initially when we discussed this, I was under the impression this would only be in the Historic Preservation District, in terms of regulating where people would be able to put antennas and satellite dishes. As I was going through in the Historic Preservation District, I noticed that their penalties refer to fines designated on the Fee Schedule and I'm trying to get those things cleaned up as I come across them, because a fine is truly a penalty; it's for doing something that's against the law vs. a fee that is something you charge to get permission. That's exactly right. So that's the first section of this ordinance, is just cleaning that up. It's taking out references to the Fee Schedule and instead it would just be under the normal enforcement provisions for zoning and specifically for the Historic Preservation District. There are a couple of specific ones, for instance, apparently if you tear down a structure you face a minimum fine of \$100,000.

Don Mazzeo: Have we ever had an instance where we received that \$100,000, Robin?

Robin Davis: No.

Seth Thompson: I didn't think it my place to change that number. I just thought I would point that out.

Robin Davis: I think with that change, the thought was if you put the penalty at a high enough figure, somebody will demo their structure. I think that's what it was for. I think it came from the case in Dover where Mr. Zimmerman decided to knock that building down and said I'll pay the fine.

Don Mazzeo: It's cheaper.

Seth Thompson: So the second section of the ordinance is really the more substantive and you see that you already have some language describing antennas, towers and satellites, so in that first sentence; again, this is currently existing in the Code, no antenna, tower, microwave dish or satellite dish used for any other purpose than that of personal use of the structure, will be permitted in any district; so basically it's saying that you can't have a commercial antenna, tower, microwave dish or satellite dish, unless you were to fall under one of the other sub-sections, sub-section b that says and I don't love this language either; but it says that it would be reviewed on a case-by-case basis and approved by the Planning and Zoning Commission on an as needed basis when it would be a benefit to the community of the Town of Milton resident's. So that's for your commercial antennas. I always think it's important to go back and look at the definitions. You do have a definition for antenna in your zoning ordinance. You have a definition for your satellite TV antenna and then you have a definition for a minor antenna. I think tower is also defined. A tower is defined. That's where we started, where the Code was. Basically it says you can only use your personal antenna for personal reasons. If you want a commercial antenna, you have to go to Planning and Zoning. I added in the new language, in terms of the placement, because Council, at the last meeting, said we would like this to apply, not just to the Historic Preservation District, but throughout town and that's any such antenna, tower, microwave dish or satellite dish and again, I used the same terminology from earlier in that section; shall only be located in rear yards, or if not visible from the street level along the entirety of the front lot line in side yards. The reason I did that, again the concept is seemingly to preserve aesthetics and values that go along with aesthetics; the problem is since it's not just in the Historic Preservation District, you do have some FCC jurisdiction there, so you can't wholly prohibit somebody from having an antenna. So, if for some reason, their antenna needed to be in a side yard, you would need to allow that, unless you're in the Historic Preservation District, where you can ban it. That was how that sausage got made, that municipalities are allowed to wholly ban them in Historic Preservation Districts. Anywhere else, people are allowed to put them wherever they want. I shouldn't say people are allowed to put them wherever they want; you're allowed to regulate it to a certain extent; you just can't wholly deprive them of that opportunity. Then I added in any property owner, tenant, or user shall make all reasonable efforts to limit or eliminate the visual impact on the adjoining properties such as screening by landscaping. That might be more of

an antenna on the ground. I don't how you would landscape your roof; I guess you could do that. You'd need a flat roof or something along those lines. So that was the language that I came up with. I modeled it a little bit after I think Georgetown's; I didn't put anything in there in terms of the size of an antenna. Your Code doesn't really have anything in terms of the... I suppose, Robin, they'd be still subject to the building height. Right. So when it comes to antennas they factor is it 42'?

Robin Davis: It's 30-1/2'.

Seth Thompson: 30-1/2'.

Virginia Weeks: Are you saying that outside of the Historic District we can not forbid these to not be seen from the street scape?

Seth Thompson: You can enact reasonable regulations, so that if... What you can't do is wholly prohibit somebody from having it, so let's say you have a scenario where there's a house and the reception is fine wherever it is; then the Town could require them to put it on the backside and not have it be visible. The difficulty is if the only place they get reception is the front of the house.

Virginia Weeks: It seems to me I was told that Georgetown enacted an ordinance; I have a copy of it here; and that they have had no dishes in the front of any houses ever since, because they're very tough on the company, not on the person.

Seth Thompson: That's interesting. I pulled theirs to look at it and you're right that it doesn't make that exception in terms of... it doesn't craft it in a way that they need to comply with this, if they have to. I'm sorry, if they can. They haven't been challenged by it, I guess on the FCC.

Mark Quigley: That's what I was going to say. How do they enforce that? How do they make it so difficult for these companies? Does anybody know?

Seth Thompson: I don't know.

Virginia Weeks: Maybe we should call the Town Manager and find out.

Barry Goodinson: Just a clarification. So what we're saying is throughout the Town people can have satellite dishes, antennas, etc. as long as they are not visible from the front... as long as they're not in the front or visible from the street. That's basically it.

Seth Thompson: Right, because again, the concept is the visual impact, so I thought that was the easiest way to measure. I suppose you're still going to have some visibility on the neighbors, but if the concern is kind of the overall esthetics of the Town, then taking the front property line, street level, is probably the easiest way. It still gives them a large so hopefully you're not going to run into any scenarios where somebody says your ordinance prevents me from putting it in the only place I get reception.

Virginia Weeks: Do we have a height restriction on this? No?

Seth Thompson: No. And that's what I asked Robin. The antennas would still be subject to the overall height restriction.

Linda Edelen: Is it assumed that you can put it on your roof?

Seth Thompson: Is it assumed?

Linda Edelen: Yes.

Seth Thompson: You can. Robin was pointing out and I think I mentioned we have a definition for antenna and then we have a definition for “minor” antenna...

Virginia Weeks: Which allows 40', which is higher than all the rooves.

Seth Thompson: Yeah.

Virginia Weeks: Which is not a good thing.

Seth Thompson: It's also odd that that would be the “minor” antenna.

Linda Edelen: I have a Dish. Is that an antenna; because it's on my roof?

Mark Quigley: Dishes are included in the Ordinance.

Linda Edelen: Yes, it is.

Barry Goodinson: But if it's not visible from the front yard, or from the street, then it's not an issue.

Linda Edelen: In my alley it is.

Don Mazzeo: That's not the front.

Seth Thompson: We use the front lot line as the easiest way to make that determination, but...

Bob Kerr: I always think about how it can be used against you. In my subdivision one of my neighbors was going to put one up and we do have the same rule that he can't be in the front yard and he was going to cut down about 30 or 40 trees in order to get it in his backyard; because he couldn't get reception because of the trees and that didn't go over big either.

Seth Thompson: That's an interesting point.

Don Mazzeo: Then you would have to go into another ordinance; planting a tree; removal; or...

Barry Goodinson: I'd love to see that on the agenda at some point.

Seth Thompson: Like Rehoboth and...

Barry Goodinson: Yes, we did it in DC.

Don Mazzeo: I've done it before, too. I have no problem with it.

Virginia Weeks: I'd just like to say that walking around Town, I find it disturbing the number of these satellite dishes that are popping up on the fronts of houses and in front lawns and so on. It reminds me of the rural areas of Kentucky. It doesn't remind me of a city or a town that's trying to portray an image of a well developed, well maintained, well cared for historic area and I would certainly like to see that it says that it cannot be seen from the street.

Seth Thompson: You bring up a good point in terms of “grandfathering”; but these would be pre-existing, non-conforming structures, so whatever is there now, would still be permitted to be there.

Virginia Weeks: Do the people buy these when they... Do they purchase these?

Seth Thompson: As opposed to just leasing it basically? That's a good question. I don't know.

Virginia Weeks: In other words, can the company be made responsible to remove it when that contract finishes?

Don Mazzeo: Or relocate it?

Barry Goodinson: Or if the homeowner moves.

Robin Davis: I have a smaller satellite at my house because I can't get cable. When I switched from Direct TV to Dish Network, Direct TV did not come and get my satellite dish. It's mine. I've paid for it as part of the package, so I kept everything.

Linda Edelen: They don't want to come back.

Robin Davis: I don't think it's worth it to them to do it.

Virginia Weeks: Well maybe we should make them do it.

Mark Quigley: How do you track what's out there existing and what's new? What do we have satellite dish police person out there now?

Don Mazzeo: Yes, satellite police person.

Seth Thompson: I take it they don't pull building permits or anything. That's a legitimate concern, the enforceability of it.

Mark Quigley: So there's not much teeth in this.

Virginia Weeks: Why don't we have a talk with the Georgetown Town Manager or somebody and find out how they're doing theirs; because it seems to be working.

Mark Quigley: I'm in Georgetown tomorrow. I'll see if I can go and...

Virginia Weeks: If you could give Gene Dvornick a call and maybe you could just discuss it with him and bring it back to us if you would. Is that okay?

Mark Quigley: Sure. I'm going to pass by Gene's house first, to see if he has one. I just have a question. I see that you took out the references to fines and I understand that you say that it's designated in the Fee Schedule, but if someone does violate this, what recourse is there? Is there a fine?

Seth Thompson: There is. That's right. You would fall under the Section of that Chapter that governs enforcement and fines already. The argument is that by referring to the Fee Schedule, you're overriding that and our Fee Schedule doesn't say anything about this, so I suppose a lawyer could argue that the fine is zero dollars...

Mark Quigley: Because it's not in there. Okay. That's great. Thank you.

- e. Ordinance to amend Chapter 188, Subdivision of Land, - timing process for the installation of utilities

Seth Thompson: The next... and I didn't draft this ordinance, because this is something, unlike the ones that we've just looked at, I really need some more guidance and when I asked Council for some more guidance, they said get some guidance from Planning and Zoning. This is an Ordinance that would amend Chapter 188, Sub-Division of Land with regard to the timing process for installation of utilities. We see this a lot and people don't realize that under our sub-division ordinance, there's no timetable as far as when the developer has to install everything; they normally have a financial incentive in doing so, because they're typically paying for a performance bond every year on the outstanding infrastructure, so that's what keeps them motivated and if you talk to most developer's they would always rather be selling more houses, than less,

obviously so their timetables in their minds; maybe they tend to be just optimistic people; but the Town has run into that issue where unfortunately with the real estate market turning south; things have been left open ended and you end up driving over streets that don't have top coating; lights aren't installed; so that's really the question and this is, again, more policy and I think that's why the Council asked that Planning and Zoning give it some serious thought. In the past when I've looked at top coating, for instance, you have to balance the fact that the Town is seemingly going to get those roads, so if you were to require the developer to do the top coating at say 25 or 30% build-out; the Town is going to get some roads that a lot of heavy equipment has driven over. But then you have to balance that on the other side with if you wait until 100% build-out, well there are a lot of people that bought into that neighborhood very early on who had to wait a really long time for their roads. So that was one issue that the Council did deal with previously and we kind of came up with the compromise of 85%; that as soon as 85% of the lots in that sub-division or that phase were constructed upon or sold, a combination of those two things, that the top coating needed to go on. I view streetlights and I think the Town has seen this issue come up, as more of a public safety matter; so the question is do you require those to go in much earlier? I think the developer's push back would be well that costs us money because we then have to pay for those lights to be on, as well as to be installed very early on and they're going to be in front of empty lots. So those are two easy examples of what has been facing the Town and I think the Council was hoping that Planning and Zoning... really they were hoping to get a nice think tank going here and figure out what would be a good way to address this going forward? The one element of this is seemingly all of the current sub-divisions are under the sub-division ordinance that was in effect at that time. So we're trying to prevent a problem from continuing to occur going forward.

Don Mazzeo: So are Mayor and Council looking for results of a discussion this evening for their next Council Meeting. I hope not!

Seth Thompson: I think this needs to be a much more deliberative process where a lot of thought is given and frankly, it might be something where the Council posts a notice and invites developer's to come in, to give their side of it; because they're running it from the business end and if we set it up where it's just not going to work, then Milton is a less attractive place to...

Don Mazzeo: Exactly, we're not businessmen.

Barry Goodinson: You mentioned the top coating and the streetlights. Are there other things that need to be factored in, because it just says installation of utilities; which is kind of broad. If we could define exactly what we're talking about, it might focus our conversation a little bit.

Seth Thompson: Our current code just refers to improvements, so it would be the sidewalks, the curbing... Streets, street signs, sidewalks, curbs, streetlighting, shade trees, buffer yard plantings, grading filled top soil and protection thereof, culverts and stormwater retention ponds, stormwater system,

sanitary sewers, water mains, all utilities example gas, electric and other means, pipes and conduits.

Don Mazzeo: What section are you in?

Seth Thompson: 188-37.

Virginia Weeks: The sub-division one.

Don Mazzeo: That's what I'm looking for.

Virginia Weeks: It's in our book.

Don Mazzeo: Now our homework will be for next month's agenda. Robin, make sure that it's on there, that we will have a discussion referencing 188-37.

Virginia Weeks: May I ask Robin to also bring us a more clarified view from the Council of what it is they're looking for? Do they want us to look at the paving and the sidewalks and the curbs? All of this? Or just streetlighting? What is it that they specifically want?

Seth Thompson: I know that the streetlighting has been a direct issue; again because of the public safety; although sidewalks, sidewalks seem to be a problem, as well.

Barry Goodinson: Rather than having Robin do shuttle diplomacy. Last night the conversation was all about opening up conversation between this body and Council, so I think one of us could have that conversation, just in service of that goal and then that way, Robin has a zillion other things; he doesn't have to be...

Don Mazzeo: As Chair person I will contact the Mayor directly and we'll find out precisely what the Council was directing us to do.

Seth Thompson: One way to do that, we discussed it last night, might be just having a Commission Report, in addition to a Committee Report, on the next Council agenda. That get's Council there at once. It will get people thinking about it. You might get a lot more input from people that way.

Mark Quigley: I have a comment. I think up in our development, with the streetlighting in particular, that they encouraged the developer to put the lights up and then there was some type of a credit given towards the bill or the Town agreed to pay that bill until the roads were turned over; because they were going to be paying it anyway. So maybe it's a little meeting in the middle there; it encourages...

Virginia Weeks: There's also been a problem in the fact that sub-divisions and developments have not been treated equally in the past. Some have gotten the lights turned on earlier and the Town paying for them; some of them later; and they really need to establish, so businesses and people buying and everything. Everybody knows what the rule is.

Seth Thompson: That really hints at the lack of protocol. Some developer's might just think hey I got a great deal on lights right now; I'm going to go ahead and put them in.

Bob Kerr: I do remember that there was a problem with Wagamon's West Shores that a former Mayor and Council or Town Manager, I'm not sure who, but basically wrote a letter saying we'll take over payment of the streetlights and that became an issue for several subsequent years. The Town became very

anxious to accept the sub-divisions so they could get street aid, because until it's accepted they can't get street aid, which is how the Town pays for it.

Mark Quigley: Actually I think Gene Dvornick had something to do with the lighting up there, now that this is all...

Virginia Weeks: Up in your development?

Mark Quigley: I'll ask him when I see him tomorrow.

Virginia Weeks: I also think that when that was developed, was Bob Blaney on the Council?

Lynn Ekelund: I don't know if he was on the Council at that time...

Mark Quigley: Yeah, I think he was.

Lynn Ekelund: But he might have been.

Virginia Weeks: He might have been.

Seth Thompson: Any other questions for me on that one? I'm sorry I couldn't present you something more formal to consider, but again I like to think of myself as an attorney and those aren't black and white issues; me imposing my own thoughts from the legal realm on developer's and on residents.

Don Mazzeo: On that particular item, I will contact Mayor directly and determine; Mayor and Council directly; to determine what their direction is in a more specific fashion than utility; it's kind of broad. Anything else on that one? I think not.

f. Request for a moratorium on LPD activity

Don Mazzeo: I will ask Ms. Weeks if she would like to expound upon that.

Virginia Weeks: Oh certainly or perhaps our friend down there, who already lives in an LPD. I'm not opposed to the density or anything else, but this particular piece of zoning ordinance is very loosey, goosey. There are things in it... You can't define things, like what is the substantial change in the Master Plan?

Don Mazzeo: We've had substantial conversation already on that matter.

Virginia Weeks: I'm sure. What are the setbacks? There are no setbacks. If you take it out right now, you can look in the LPD Ordinance and it says that setbacks are as noted in the density table and you go to the density table and it says for an LPD it's as noted in the ordinance. It's like a Marx Brothers thing. There's quite a few things that we need to look at and to improve, to allow an LPD to go forward.

Lynn Ekelund: Let me ask, Ginny, how long of a moratorium do you foresee and I'm not saying I disagree with you; because I totally agree with you.

Virginia Weeks: Six to nine months.

Lynn Ekelund: Six to nine months.

Don Mazzeo: And in that six to nine months, what would you expect to happen between Planning and Zoning and/or Mayor and Council.

Virginia Weeks: I would expect Planning and Zoning maybe to have a couple of workshops and to just go through it line by line. It's not that long an ordinance and to review it and see how we can improve it. For example, in

the paving of the streets in Cannery Village; at one point the developer has come back and said, this isn't a sub-division, it's an LPD. Well it has to state clearly and it states it sort of, but this is an overlay, similar to the Historic District and that it will be held to all the rules and regulations of a sub-division; because we don't want to have that argument time and time again.

Linda Edelen: What I don't see in the LPD is the Performance Guarantee.

Virginia Weeks: That's actually in the sub-division.

Linda Edelen: Yes, but it's not...

Virginia Weeks: And it's unfortunate that it wasn't... I don't know the history of that; way back when they should have been charged 125%; if it was an act at the time. I don't know if that was an enforcement at the time, but that is already included; once it's a sub-division, they have to do it.

Linda Edelen: Well, we need...

Virginia Weeks: We can actually add it to the LPD, but it's not really... the LPD is not a sub-division law, it is an overlay.

Seth Thompson: Ms. Weeks is exactly correct, but when we talk about the LPD, that's the zoning, so...

Virginia Weeks: It's not even the zoning, because within the LPD, there are different zones.

Seth Thompson: Right, it's an overlay on top of a different...

Virginia Weeks: It's an overlay, like the Historic District.

Seth Thompson: That's the easiest way to think about it, but it is a zoning classification; it's an overlay zoning classification, so that's why it was a little bit silly to say that something isn't a sub-division when they sub-divided land because of it's zoning overlay. That would be like somebody saying that I can divide up my parcel that's in the Historic Preservation District, because it's in the Historic Preservation District. It just doesn't compute. I think the one thing, to be clear about the proposed moratorium, would be... it sounds like you and I don't want to put words in your mouth, but it sounds like you would propose a moratorium on receiving any Master Plan submissions, because that's really...

Virginia Weeks: Exactly, or an application. The simple fact of the matter is a moratorium on applications. There are no applications right now. There are none that we know of that are coming down the line.

Don Mazzeo: This is the time to do it.

Virginia Weeks: So it seems to be an appropriate time to do it, rather than to wait and once an application is in, then you can't...

Barry Goodinson: Yes, we would be perceived as singling them out.

Virginia Weeks: We would be too late. So it seems to be the applicable time to do it.

Seth Thompson: I think that... I'm going to make another little caveat here. It would be for new applications, as opposed to an application to say...

Don Mazzeo: No grandfathering.

Virginia Weeks: Absolutely, this would not affect Cannery Village nor

Heritage Creek, only new applications.

Seth Thompson: It's interesting to me because I feel like people have kind of seen that this concept might not be the best and I could see somebody coming in looking to revise basically... actually we've had calls for submissions for revised Master Plans, so we wouldn't want to prevent that obviously; if the applicant decided to do that, it would just be on new applications.

Don Mazzeo: So we would like then to have a notation going forward, a recommendation going forward, to Mayor and Council to have a moratorium on the LPD applications for up to the next nine months.

Virginia Weeks: For the health and sanity of both the Town and the Planning and Zoning Board.

Seth Thompson: I don't think you can do up to nine months, just because when it comes to a moratorium, the argument there would be if it's up to nine months, one month is less than nine months; if it's up to nine months, therefore six...

Don Mazzeo: Six to nine months.

Seth Thompson: I guess if you're making the recommendation, then Council can do with it what they...

Don Mazzeo: There you go. During that moratorium period.

Virginia Weeks: The other thing I'm concerned about is I would like to get this done before we have to do any work on the Comprehensive Plan.

Don Mazzeo: Absolutely. What is our time frame on that? I guess Robin would be most knowledgeable.

Robin Davis: The next Comprehensive Plan Review, Update or Amendment is due May, 2015.

Barry Goodinson: The Mayor mentioned last night that she wanted to get this thing moving, so I think we'll probably be hearing something from her and the Council soon.

Virginia Weeks: A question for Robin. Robin how detailed of an update is it?

Robin Davis: We're only required at this time to do a review and that could be as simple as looking over it, signing off on it and saying it's okay.

Virginia Weeks: When was the last time we did a complete update?

Robin Davis: The last change that we did was in 2010. It was not originally going to be a full-fledged update, but since the changes that were done by the Town were approved by the General Assembly and signed by the Governor, the State Planning Office has said it is classified as an update; so our 10-year required update, or full-fledged update, is not due until 2020. So for the fifth year, we're only required to do a review and/or an amendment. There are three steps Review, Amendment and a full-fledged Update. But they classified what we did in 2010 as an update, because it was signed off by the Governor, even though technically what we did was not an update.

Virginia Weeks: Just for the information, what happened was at the time we had a consultant on and that consultant went in September, I believe it was, to the Council Meeting and asked the Council to approve a Comprehensive Plan

course of action, without bringing it to Planning and Zoning first. Council approved it and it limited us to looking at very little, very, very little and we were told that that was all we needed to do at that time, because the next one was going to be the big comprehensive review and now we find out that's not so either, so take it as you may, I think we need to do a little more than just a quick review.

Barry Goodinson: I agree. I think we don't want to do what is minimally required, we want to do what needs to be done and clearly there's a lot of moving pieces here and there's a lot of opportunity we want to take advantage of, so I would recommend that we do something that's much more substantive.

Mark Quigley: I have a question for you Seth. Are there any limitations on the moratorium; the number of moratoriums you can put out or time limits; or can you continue to just run them on consecutively?

Seth Thompson: You can. I guess you face the political ramifications of that.

Mark Quigley: Right.

Seth Thompson: That's really what happens, but there isn't a state law or there isn't anything in your Code or your Charter that prevents you from doing that.

Mark Quigley: Nine months, six months, it just seems such a short period of time in our world to get anything done effectively.

Don Mazzeo: It would be if we were utilizing a monthly meeting forum for that; this would have to be as Ginny has suggested, a workshop session where you could have two, maybe even three, inside of a two month period; four inside of a two month period. You may not get all seven members at each of them. It's just the way that things work, but yes, it would work in a nine month period, I think. It would be more intense, rather than just a month to meet.

Seth Thompson: In terms of your Comprehensive Plan, I think it's good to... I came in at the very end of the last Comprehensive Plan Update, so I wasn't there at the beginning, but I think Ms. Weeks is correct that the impression was given that there would be a more thorough analysis the next time around. The difficulty is always allotting money to do that. I think that's so. I guess that's where the Commission is going to have to really make a nice sales pitch to Council that that's a necessary endeavor and expense.

Don Mazzeo: Alright, so we'll move forward with a request for a moratorium by way of Mayor and Council vote. We can't vote that here.

Bob Kerr: Mr. Chairman, if I could just add, the LPD Ordinance has many flaws in it, but some of the things that Ms. Weeks said were actually the things that the State Planning Office liked so much about your LPD Ordinance. The fact that this Commission sets the setbacks; it says that you have the authority to recommend the setbacks to Council. That was one of the things that was promoted by Livable Delaware and the State Planner's Office when this was put together. Same thing with some of the changes to road

designs and those types of things. We talked earlier about impervious surfaces. Well that was the big thing about Livable Delaware; get the roads as narrow as possible. As an engineer, I didn't like it, but it got shoved down my throat. Whether it was substantially changed, I always asked the Commission, you have to decide if it's a substantial change and your predecessor's were the ones who said, no, we think we can move forward. So there are things in here that I don't like, but there's an awful lot of things in here that that was the whole reason it was written that way, so it doesn't matter to me whether the whole thing would be thrown away, but you're giving up something that has become almost a standard throughout the State; this ordinance was touted by the State Planner's Office as something they like to see, to other communities.

Virginia Weeks: Nobody's looking at throwing it away, Bob. We're looking at finding out why we have alleys that hooks and ladders can't get down, if there's a kid burning in the back of a house. We're looking at why emergency trucks can't get around the corners of streets and around roundabouts. We're looking about where in the ordinance does it say we set the setbacks. It doesn't say that.

Bob Kerr: The Planning and Zoning Commission using the Large Parcel Development may recommend the following development standards be modified and building setbacks are one of the things listed, so that was your job in doing LPD's, was to set the setbacks.

Virginia Weeks: I think it needs to be clearer.

Bob Kerr: Well, possibly.

Barry Goodinson: We've run into lots of bumps along the way. The biggest headaches that we've had in this room have been around LPD issues and the fact that we don't have really any tools at our disposal to tweak and to improve the plans that have been brought forward, because once the Master Plan is approved, then nothing else can be done. So I think some of the procedural things need to be addressed, as well. Seth was talking last night about how generally you give preliminary approval and then as the design is developed and they come back to you and they flesh things out, then you have input. We don't have that opportunity with these.

Bob Kerr: I believe you did. I believe the previous Council, or Commissions, made the choices they made, with the knowledge. As the one who was sitting here, I said I don't believe the road system in Cannery Village will work. You can't get fire trucks around it. I recommended that you not accept the alleys, for maintenance by the Town, because your trucks can't get up and down and your Fire Chief, at the time, stood up and said I can get a hook and ladder truck down any street in Town and with that Mayor and Council voted to accept it.

Virginia Weeks: To be honest with you, I'm looking at it, you guys just approved the fifth phase of Heritage Creek and these gentlemen said they can not get a hook and ladder or a large fire truck down the alley. If my child is in

the back of a house and it's burning and I need a hook and ladder to get a ladder to him, and it doesn't happen, I'm going to come to this Town and say what did you guys do?

Bob Kerr: And if you live in Wagamon's West Shores there are no back alleys to get a hook and ladder down to get to the back of your house, at all.

Virginia Weeks: But you can go on the lawns.

Bob Kerr: Mmmm. Perhaps. We'll agree to disagree.

Don Mazzeo: Alright, I think we've pushed that one to the limit at this point. We're going to make sure we have a request to Mayor and Council for the moratorium.

- g. Implementing a procedure for Planning & Zoning Commission members input to monthly agendas

Don Mazzeo: Effective immediately from my perspective, any member who would like to have something put on the agenda for the subsequent month, email it to me directly, not to Robin. Robin's already getting inundated and at any one point in time, I don't think there's a set of rules and regulations for Planning and Zoning membership activity. If there is, I'm not aware of it.

Seth Thompson: No, you're right Mr. Chairman. You basically just fall under FOIA, so again you have to have it at least seven days in advance, but if you want to act as the gathering body in organizing the agenda to make sure that the items with the top priority are placed on that agenda, I think that makes sense. I always tell people that under Delaware Rules, anybody can request something to be on an agenda, but it is good to have somebody that then sets the priorities, because otherwise some agendas end up with thirty things and not necessarily are all of them important.

Don Mazzeo: Significantly important.

Lynn Ekelund: Substantially important.

Don Mazzeo: But basically from the standpoint of this Commission and these members; you all have my email obviously, send me an email, but make sure that it is at least ten days prior to our meeting date; a minimum of ten days. If you want to send me something tonight when you go home for next month, that's fine. Don't do it two days before the meeting, because it's not going to happen.

Virginia Weeks: Thank you.

Don Mazzeo: So we don't need any other discussion on that. Moving forward, regardless of who the chairperson is, I would suggest that that be put into a procedural... Maybe we can develop a procedural manual here. We'll talk about that later.

- h. See Below

- i. Proposed ordinance amending the zoning code to reflect a discretionary referral by Town Council to the Planning & Zoning Commission

Don Mazzeo: Let's go down to "i" where there is a proposed ordinance the Zoning Code to reflect the discretionary referral by Town Council to the Planning and Zoning Commission.

Lynn Ekelund: I had asked that you put this on our agenda. This is the Ordinance that was tabled at the Town Council Meeting...

Don Mazzeo: Two months ago.

Barry Goodinson: This is the "shall" to "may".

Lynn Ekelund: It's the "shall" to "may" and I suggest that we vote to recommend that Council not enact this ordinance. I suggest that we do that this evening and get that recommendation to them.

Virginia Weeks: I agree, but I would ask for something more. I think that we have to have a position paper to present to them on why we think they should not do it. I think we need to make it a little bit more difficult than just saying no we don't recommend this and why we don't recommend it and what the reasons are.

Lynn Ekelund: I agree with you.

Virginia Weeks: Since my friend's sitting here to my right is a wordsmith by trade.

Lynn Ekelund: I second that nomination.

Virginia Weeks: I would ask that he head it up. I think we're all willing to help him with that, or that we needed a workshop sometime quickly and draw up a position paper.

Lynn Ekelund: I suggest that since we're all here, that we do vote to recommend that they not enact this and then develop the position paper for presentation.

Virginia Weeks: Absolutely.

Don Mazzeo: It's going to be a two-step process.

Virginia Weeks: Fine.

Lynn Ekelund: But I think we ought to do this right now.

Don Mazzeo: Any other comments?

Linda Edelen: I concur.

Mark Quigley: Is that a legal instrument at that point, this position paper?

Seth Thompson: Really the term I would use would be an advisory report.

Virginia Weeks: Okay.

Mark Quigley: Okay.

Virginia Weeks: An advisory report.

Don Mazzeo: An advisory report, but my suggestion is that it will be a two-step process, unless I hear otherwise I think we're all in agreement that the Planning and Zoning Commission requests that that ordinance is not enacted.

Seth Thompson: Your recommendation is that...

Lynn Ekelund: I think we recommend, we don't request.

Don Mazzeo: We don't want it to be made.

Seth Thompson: The Code uses the term recommend.

Don Mazzeo: Whatever the terminology is, this Commission is opposed to

having the word “shall”.

Virginia Weeks: We don't think it serves the town well.

Seth Thompson: You're opposed to changing the word “shall” to “may”.

Linda Edelen: Are we saying that we don't want to change it? We want it to stay the way it is.

Lynn Ekelund: We want it to stay the way it is.

Barry Goodinson: Right. And we made that case last night in various ways, but this seems to be more formal.

Mark Quigley: But you want the formal vote.

Lynn Ekelund: But this is formally recommending it.

Don Mazzeo: I think we need a motion to do this.

Seth Thompson: It would be good to have a motion and then an individual vote.

Lynn Ekelund: Can I ask, if we recommend that this not be enacted, in order for them to enact it, do they have to have 80%?

Seth Thompson: Correct.

Lynn Ekelund: I like it.

Virginia Weeks: But was this referred to us?

Don Mazzeo: They'd need a 4/5ths vote.

Virginia Weeks: This hasn't been referred to us.

Seth Thompson: It hasn't been, no, but it says for every proposed amendment...

Virginia Weeks: It's not required.

Seth Thompson: Right.

Virginia Weeks: Wonderful.

Don Mazzeo: At this point I will ask for a motion that recommends that the Town Council does not enact this ordinance change; and whatever the numbers are, you have them there. Question, before we vote?

Linda Edelen: The question is, are we not... It doesn't appear that we are taking our own advice and our own desires by acting on something that hasn't been referred to us by the Town Council. Doesn't it have to be referred to us before we can...

Virginia Weeks: No.

Lynn Ekelund: No.

Don Mazzeo: No.

Seth Thompson: I'm looking at Section 220-99 and the language says every proposed amendment shall be referred, but then the language if you take the interpretation that that's not required...

Linda Edelen: So we can do it ourselves.

Seth Thompson: Right. You would be looking at that as two independent items, so again the referral isn't mandatory, but if there's a recommendation for disapproval of the proposed amendment, then it would require the 4/5ths vote.

Linda Edelen: Should they pass it anyway, it still has to come back to us. Do

we get a second bite? Because in order to change the amendment as it exists, which is what they want to do, they have to...

Seth Thompson: I gave them that advice, that they should follow the protocol.

Lynn Ekelund: It's just as they did when they changed the restaurants, Seth basically turned himself inside out, to make them come here and they said no.

Seth Thompson: All I give is advice.

Don Mazzeo: This is an advisory report that we're...

Lynn Ekelund: We're going to give some advice too.

Linda Edelen: I'm done.

Don Mazzeo: Okay, I'm asking for a motion.

Lynn Ekelund: I move that we recommend that Council not enact an ordinance to amend Chapter 220 of the Town Code entitled "Zoning" relating to amendments to the Zoning Code.

Don Mazzeo: And I'll look for a second to that motion.

Virginia Weeks: I have a question. Seth, it says the Planning and Zoning Commission shall report in writing its recommendation thereon to the Town Council and Code Enforcement Officer, accompanied by a full statement. Are we required to give them a written...

Seth Thompson: It sounds like you're doing it as a two step process.

Virginia Weeks: Yes.

Don Mazzeo: Right.

Seth Thompson: That's the impression I would...

Virginia Weeks: Then I would like them to know that our written report will be forthcoming.

Don Mazzeo: Will follow in subsequent...

Lynn Ekelund: I'd like to amend my motion to include that a written report for the reasons of Planning and Zoning's recommendation not to enact this ordinance, will follow and be presented at the December Town Council meeting.

Seth Thompson: I think you have to do it in January, because you'll approve it at your December meeting, the advisory report.

Lynn Ekelund: Okay.

Linda Edelen: But what will they do at their December meeting?

Seth Thompson: They tabled it at the last meeting. I don't know if it's coming back on the agenda or not.

Virginia Weeks: They have to have a public hearing and everything yet, don't they?

Seth Thompson: It requires a public hearing. We're already going to be within the 15 days now. It would have needed to go to the newspaper already.

Don Mazzeo: We have an amended motion on the table. Do I hear a second?

Barry Goodinson: Second.

Don Mazzeo: And on this I will ask for a roll call vote:

Virginia Weeks	Yes
Barry Goodinson	Yes
Lynn Ekelund	Yes
Linda Edelen	Yes
Mark Quigley	Yes
Don Mazzeo	Yes

- h. Results and next steps needed related to the November 18, 2013 meeting between Town Council and the Planning & Zoning Commission
Don Mazzeo: I want to skip “h” temporarily.

Don Mazzeo: I believe the only thing left on our agenda at this point in time is “h” and because of my personal problems, I was unable to attend last night's meeting and it just works out that I put this on this agenda, long before I knew I was going to have this problem, but I would like to hear each of who was there; and I guess it was just me who was missing, your impression of the meeting that occurred last night between Mayor and Council. Was it productive? Counter-productive? Did you gain any insights? Did they gain any insights? Do you believe anything occurred in a positive or negative fashion? And if we need to take some subsequent actions, what would they be? That's a lot of words I just threw at you.

Mark Quigley: I arrived at 7 p.m.

Don Mazzeo: So the meeting was almost over.

Mark Quigley: Pretty much.

Don Mazzeo: Okay.

Mark Quigley: I thought it was 6:30 and they tried getting in touch with me; but it would up being 6:00, so it seemed for the last hour that I witnessed, it seemed to be fair, somewhat open-minded, but I think I missed more of the meat and potatoes of the earlier part of the meeting. I don't know if anybody else will fill in from there, but I figured I was there for the least amount of time, so let me start.

Don Mazzeo: Okay. Jump in, whoever wants to start. Next.

Seth Thompson: From my perspective I thought we made an important distinction that there seems to be some confusion. Hopefully we cleared up some of the confusion, in terms of the interplay between Planning and Zoning and Council, in that I think some people thought a sub-division is a site plan and vice versa; or perhaps that those processes would match each other exactly and they obviously don't in that you guys deal exclusively with site plans. They don't go to Council. The other distinction that I thought was important, that we went over in some detail was that the process of getting an application whether it's for a site plan, or whether it's a sub-division, is really a separate issue in terms of if Milton is being business-friendly; then the process of amending your Zoning Code, so it's kind of what rules we live by vs. how we're implementing those rules as

people go through the process. So I thought that was a big takeaway. It seemed to me that people were concerned more about how applications are moving through the process, than the process itself. There were also some concerns raised in terms of do our current zoning regulations kept up with the times? We didn't go into more detail on those sorts of issues, but I think it was important that Council expressed the fact that any applicant's that are disgruntled, that's not necessarily something that we should hastily change the Zoning Code to fix, because you end up with this hodgepodge of a Zoning Code, so it seemed to me that I was left with the impression that there was going to be some effort on a broader scale, to make sure that our Zoning Code is still doing what it was intended to do and coming up with a fair balance between business interests, personal interests, residents and that sort of thing.

Barry Goodinson: One of the things that came out too, was trying to put the brakes on for us to change the Zoning Code and waiting until after the Comprehensive Plan is updated, so therefore whatever changes that are made, would be in service to this vision that we've crafted and I thought that was a helpful thing. The tone at the beginning of the meeting felt a little rocky. Now I was a few minutes late, so I spent most of the beginning part of the meeting wondering what was going on, but it felt a little tense at the beginning, but I think we were pretty clear that we were frustrated with... we understood the frustrations about the speed and we don't want to slow things down, but we also want to make sure we're making our decisions with all the information that's available. One point that came up that I think was very important, was that in some respects when people come to the Town and want to put a project forward, oftentimes they're dealing with staff at Town Hall, who say yep let's get this going for you and really are working to get this thing moving along and then the expectation is when it comes to Planning and Zoning, everything will move right through, but the fact is there may be things that were left undone because of DelDOT or because of other government organizations, so there's been this false expectation that things are going to go through smoothly. So what we need to do is start managing the expectations, because then we get left holding the bag. If somebody comes to the Town and says I want to do this and they say great, let's work with you and it's DelDOT that hasn't provided the information, we're the ones that have to break the news to them, that their application is incomplete and there's nothing we can do and we look like we're the problem. So we're going to have to work really hard at managing expectations at the outset and not encouraging people to put applications before us until they've got all their ducks in a row.

Don Mazzeo: We do have a checklist, do we not, Robin? Any application coming forward has to have the criteria fulfilled before it comes to Planning and Zoning?

Robin Davis: Yes. It's got to meet the requirements of the Code before the application will even be put on the Planning and Zoning agenda. History, way back before I was even here, Bob could probably push it more than I could, Planning and Zoning would grant preliminary and final approvals at the same meeting, contingent upon all the outside agency approvals. So we could end up with a plan that Planning and Zoning could have given final approval for that maybe DelDOT or the Fire Marshall said no, this needs to change up and our plan never looked somewhat close to what the Fire Marshall said. That, in itself, speeding the process up, caused issues. That's what I think some of the let's slow this down some... Unfortunately the applicant having to go through Fire Marshall and DelDOT and other outside agencies they cannot be done before they submit preliminary applications to us; because then they'll submit to DelDOT; get approval from DelDOT; it comes to Planning and Zoning and Planning and Zoning says no, you've got to do these extra five or six things; now they're back going to DelDOT again. So that's where, unfortunately, we have no control. If DelDOT says it's going to take them two years... And I've always been when somebody calls, come in and sit down with me. I'll explain it to you. I cannot tell you if it's going to take six months or two years. I can't. That's DelDOT. That's Soil Conservation. I don't know the rules. I don't know the regulations. I don't want to know the rules or regulations because they change. So that's the problem. I talk to the Mayor, I talked to a Council Member, I talked to somebody else; I talked to a business owner, I talked to... They're not talking to the right person. They're not coming to the Town, so they're getting this expectation from somebody that thinks they know the Code, or thinks that their business is a good idea, or your sub-division is a good idea and there are flaws to it. So I think a lot of the expectations are being brought on not from Town staff; they're getting information from I think I want to come into Town, so I'm talking to my neighbor. My neighbor says I like the idea. Or a council member that likes the idea, but doesn't tell them what's in that book and I'm the one that has to tell them, well that's not just as easy as you think it is. Or here are the steps you have to go through. If they come in and sit down at that first meeting, the people we usually deal with know that book, if they've been here before, if they've done it; the George, Miles and Buhr's, they've done this before. They know the process. We catch it from those people and unfortunately we're going through a process now with a parking lot. The applicant's didn't know the process, don't understand the process, they are not in the business of knowing our process. She wants to open a restaurant. That's all she wants and she doesn't understand why, now, she has to do the DelDOT requirements; why can't I open without them? So it's those people that don't understand more. And unfortunately it's a small business person that comes in and says I want to just open a restaurant downtown, what do I need to do?

Don Mazzeo: If they came to Town directly, without speaking to anyone from outside, period; they would get a checklist; they would sit down with you, or someone from Town, that gives them exactly what's inside this box that has to get done before you get out of the box and start moving.

Robin Davis: They would sit down with me, yes and I would say this is what I need from you. I usually give them copies of the Code, the Section, the preliminary site plan requirements, here you are; or, if you're a home occupation, or if you're a Conditional Use, here's the Codes that you have to follow. They are given that stuff right at the beginning, here it is. I try not to sugar coat it, it's the same thing that people that come for variances; I just like my house sitting here, so I need to be 5' closer to the property line. I'm not a voting member, but I'm pretty sure you're not going to get your variance. I try to be up front as much as I can, but some of the responsibility is on that individual coming to the Town first. Yes, we've had this preconceived notion that the Town is not business-friendly and may be some of our ordinances are a little tough, but we have to balance that too. We don't want to open the floodgates and let a free-for-all in, because that's what we're going to end up with.

Don Mazzeo: You're not going to get any argument over that, from here.

Mark Quigley: I have a question, so what happened in this case then? They got the checklist and they just failed to go to DelDOT for this parking lot issue; because on that checklist it sounds like that DelDOT should have been in there someplace that you need to go to DelDOT and have them check X, Y, Z.

Robin Davis: They went to DelDOT, they did. It's the same thing with us, if you follow our site plan requirements and put everything on the plan that's required, you're not going to end up with a three-time review from our Engineer. It's the same thing at DelDOT. If you submit a plan that's only got half the stuff, DelDOT's going to say here's what you're missing. Come back.

Mark Quigley: So it was incomplete?

Robin Davis: There were several submissions to DelDOT. Chuck Adams who submitted the application for Mr. Jefferson, he's a surveyor; I spoke with him, I think I spoke with Bob, I think Chuck spoke with Bob several times on the phone prior to him submitting his application, so he did the leg work prior to coming. There wasn't a major problem during the preliminary site plan review for that; we approved that at one meeting. Once DelDOT and Soil Conservation got done, we got all the information, we got the approvals from them, we approved their final at one meeting. So technically they were two meetings with the Town of Milton. So you hear out that the Town's giving me a hard time, the Town is doing this and our Code requires that we cannot give you a final until we get all the outside agency approvals.

Don Mazzeo: That's in black and white, there's no question about that.

Robin Davis: And they know that. It's part of the paperwork I give them, so again, I'm not saying it's a perfect scenario from start to finish, but that's what we're dealing with and I don't see our ends of it are really that complicated. Yes, tweaking, yes. There are things that I see in there that probably are not needed but...

Virginia Weeks: Robin, for your own protection, when you give them these copies of the Codes and the lists of the things that they have to do and so on, do you make them sign a receipt saying they've received it?

Robin Davis: No, I've thought about that several times and that's probably something that should be done; here's your packet, per se; that you received it. Without having to do what Seth has to do, every phone call that he has to document; maybe I need to start doing that. I hear people say well I called Robin two days ago. I don't see where I've got any messages that you called. Or I called or I dropped this off on Tuesday; how come it took you until next week to look at it? A lot of the calls I don't document, because there's just so much going on, that would take more time off of my day.

Don Mazzeo: You would spend more time to document than to actually respond to some people.

Robin Davis: But in the case and again I'm not trying to throw any criticism to anybody, I'm speaking with the owner and halfway through the process the tenant is coming in the other half of the process, mad because the owner's not telling her what's going on and how come I'm not telling her?

Don Mazzeo: It's not your responsibility.

Robin Davis: I'm supposed to tell the owner and that's where I'm going to. If that owner's not pushing the information to you, I can't do anything about that.

Barry Goodinson: I just have a question. You guys have a better sense of the longer history here and it was my thought that some of the... the change to the restaurants downtown felt to me a very specific response, to a very specific situation. Is all of this kind of bad press, not bad press...

Mark Quigley: It's bad press.

Barry Goodinson: Well it is bad press, because it's put in the press; but the reaction of certain council members and their antipathy toward Planning and Zoning; is it specifically because of this particular situation or is this the most recent example? And it just reinforces the preconceived notions from other projects.

Virginia Weeks: May I address it for a moment?

Bob Kerr: Just one quick thing. Many years ago, previous person sitting to my left, four of us sat down to put spreadsheets together of exactly how... a flow chart, of how you went through. You did this, you did this and if this was done you dropped down here... Well jokingly and it almost got passed out to everybody about item four, was where does Council stand,

or where does the Mayor stand? If so, go from step four go to step thirty and there was enormous pressure to ignore whatever was necessary to pass certain things. Mayor and Council had a vote one time and permitted an applicant to not follow DeIDOT requirements. You don't have to do that.

Virginia Weeks: We had a case when I was on Planning and Zoning of a Conditional Use for a business and the person came into the meeting and we asked them questions; how many days do you want to be open; do you want to be open on Sunday? No, never on Sunday. What time do you want to be open? We want to be open the times... How about from 10 to 5? Oh well that's not early enough. Well how early do you want to open? 9:00. Fine. 9:00. How do you want this? How do you want that? And we gave them everything they wanted, except for one thing which was the boarding of animals and that was going to occur in a shed that had neither electricity nor water. So we said no, there's no boarding. There's no exercise room for these animals or anything else. That was on the third Tuesday of the month; by the next Council Meeting on the first Monday, there was a letter of complaint that we had ruined their business, when if Council had just simply read the minutes, they would have seen that everything they requested they were given. Everything. The DeIDOT thing was going to be a problem because you were going to need a 30' wide driveway; parking was forgiven; they didn't require parking, so they wouldn't have to and yet bad mouthing Planning and Zoning, running around and saying I'm going to sue you, I'm going to do this and that's just how it happened; but they were given everything they specifically asked for and yet I don't know what happened between our meeting and whenever they wrote the letter, two days later.

Bob Kerr: When reviewing a site plan, there are oftentimes things that are on the site plan that have no Code requirement; whatever that happens to be. In the case that Robin was just talking about, they've now told him that they don't want to do this, this, this, this that's shown on the site plan. It's too expensive. Well, Robin and I had the conversation this week of how do you issue a Certificate of Occupancy for things that you say are discretionary. If they had not shown it on the plan, you may or may not have approved it, but you would proceed on. You showed it on the plan. You signed off on presenting it as what you planned to do and now to come back and say we're not going to do this, but you're picking on me. It puts Robin in a really bad spot.

Virginia Weeks: And us.

Lynn Ekelund: And us.

Mark Quigley: And us, yes.

Bob Kerr: Yes.

Don Mazzeo: I don't think we're going to solve the world's problems on this tonight...

Bob Kerr: How about Milton's?

Mark Quigley: How about just Milton? And a little clarity.

Don Mazzeo: They can find another problem.

Bob Kerr: Milton downtown.

Linda Edelen: I just have one comment to make about the meeting. I just felt it was good to be in the same room.

Barry Goodinson: I agree.

Mark Quigley: Yes.

Virginia Weeks: I don't know that we convinced any of the Council Members not to change "shall" to "may", but it was good to be in the same room and to at least open the dialogue. Absolutely.

Lynn Ekelund: I agree with that and I also think that no minds were changed, but I do believe that everybody came away from the table realizing why we all thought, what we thought.

Barry Goodinson: I think there were some minor misconceptions that had led to large misunderstandings that I think were clarified. I also think we had an opportunity to present ourselves a real flesh and blood people, who have brains in our heads, rather than the caricatures that they have... certain people have chosen to form and I think we challenged that at least and I think...

Don Mazzeo: And to that point, I will just make one comment. Each and every one of us sitting at these tables tonight, our name was presented to or by the Mayor to the Council and I don't recall... maybe one vote, every one of us had a unanimous acceptance to Planning and Zoning. If there was ever a question, it was never posed by Mayor and/or Council, so to your point, Barry, we are nameless people; well at the time that we were probably appointed. Yes. To some degree, but you know what, the name was there and nobody said well I don't know that person; what's his qualifications? Nobody every questioned it. I rest my case.

Virginia Weeks: I think the basic problem that we all have to realize is that the Town is growing. It is no longer a tiny little town in Sussex County. It now has a lot of people from outside that have different points-of-views and require different things and require... You can't do things on a handshake here anymore. You can't have it.

Don Mazzeo: We're not the busy bee corner anymore. I guess the final question I would have related to the meeting last night, was there anything that came out of it, that suggests we should have a next step to take either with or for Council; perhaps requesting a follow-up meeting with them at some future date? Did anybody get the impression that they were willing to have another meeting.

Barry Goodinson: Yes, I think they were willing.

Mark Quigley: I'd like to call them on it then, because I was only there, again, an hour.

Don Mazzeo: And I wasn't there at all and my apologies.

Mark Quigley: I like the aspect of communication. I think the more we communicate with them, the better it's going to be.

Don Mazzeo: Okay.

Barry Goodinson: One thing we did specifically ask for was when things are referred from Council to Planning and Zoning, that there be some type of instruction that says this is what we want you to do; this is the background...

Don Mazzeo: Recognizing that every one of us cannot attend every Council Meeting when they make this recommendation to forward that to Planning and Zoning; you're hearing nothing except it's on the agenda. Tell me something about it.

Seth Thompson: The difficulty too is at least when the Town Manager was here, very often the council member would go to the Town Manager and it makes perfect sense, when you're trying to keep your costs in perspective and use your town staff and say I have this idea, can you draft this ordinance; or I have this idea... But the problem is that doesn't make me a very good liaison to you because it doesn't always come through me in terms of the impetus for them.

Don Mazzeo: Alright, any other comments on the meeting?

7. Adjourn

Lynn Ekelund: I think I'd like to move to adjourn.

Virginia Weeks: Second.

Don Mazzeo: All those in favor say aye. Opposed. Motion is carried. Before we leave I would like to make one comment. This is going to be Bob Kerr's last session with Planning and Zoning and I'd like to thank him personally for his input over the many, many years; certainly with the months and years that I've been with him or he's been with us. Personally speaking I thank you and we will miss your input.

Bob Kerr: It has been a pleasure.

Lynn Ekelund: I agree, Bob.

Virginia Weeks: We will miss the occupational history, that's for sure. Thank you, Bob.

Lynn Ekelund: We're going to miss the institutional memory.

