

**Town of Milton
Planning and Zoning Commission
Minutes
December 12, 2006**

Members Present:

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|------------------------|----------------------|---------------------|
| Linda Rogers | Ginny Weeks | Carol Bruce |
| Michael Filicko | Richard Greig | Dean Sherman |
| Gene Steele | Louise Frey | |

Others Present:

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| Robin Davis | John Brady | Bob Kerr |
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The meeting was called to order at 7:15 pm.

Corrections or Additions to the Agenda

Linda Rogers: My understanding is that there's going to be a correction of Item #1, James and Nancy White is going to be a conceptual plan rather than a preliminary plan. Item 2, the application from Chestnut Properties, there is a letter here to request that it be withdrawn at the present time. Are there any other corrections or additions?

“”: Would you mind explaining what the difference is between conceptual and preliminary.

Linda Rogers: Conceptual is just a concept of what they're doing; preliminary is actually getting ready to move it forward to Council. We now have to approve the agenda.

Dean Sherman: So moved.

Carol Bruce: Second.

Linda Rogers: We have a motion and second to approve the agenda. All in favor – “Aye”, opposed – none. Motion carried.

The review of minutes of September 19, 2006.

Linda Rogers: Does anyone have any changes, corrections, or would like to entertain a motion?

Louise Frey: I wasn't here for the 19th and was marked present.

Linda Rogers: Okay. Anyone else have any corrections or changes? Would anyone like to make a motion?

Gene Steele: I make a motion to accept the minutes for September 19th.

Linda Rogers: As corrected?

Gene Steele: As corrected.

Dean Sherman: Second.

Linda Rogers: We have a motion and a second. All in favor – “Aye”, Opposed – none. Motion carried.

Linda Rogers: First item on the agenda is the conceptual plan of James and Nancy White and the rezoning of their property from R1/R3 to R1/R3 zoning with the LPD overlay for conceptual review and approval, possibly. Is there anyone present on behalf of this application?

Pret Dyer: Good evening. For the record, my name is Pret Dyer. I am a member of the applicant. I think you all should have before you individual packets. On the first page is a comparison of the plan on the left which depicts the annexation plan which was provided when we did the original annexation of the property when it was zoned both R1 and R3, and to the right you have the proposed new plan. Again, this is not the plan that was reviewed previously. It's the plan that we are proposing tonight for conceptual review. And I can go through a listing of all of the changes. As you remember, there were 370 lots approved in the annexation that was also depicted in a covenant that runs with the land that we placed on voluntarily for 370 units. The plan that you see to the right, which is the proposed changed conceptual plan, depicts 341 lots. That is, as you can tell, a reduction of 29 lots and throughout the presentation I'll give you the justification and reasons for doing that. As you can see, the number of large single family lots remains the same at 10. The amount of single family 55 x 110, which are front-loaded lots, I think the very important thing to note here is there's a combination; and when we go along further, you will be able to distinguish between those lots which are rear-loaded through the alley and those which are front-loaded from the street. The number in the annexation plan was 33 lots; the number for the conceptual plan depicts 98 lots. The single family 50 x 100 foot lots are 72 on the annexation plan to 95. The duplexes essentially are the same; there is a reduction in the number of duplexes from 96 to 90. The major change that you will see that results in the increase in the number of single family lots is the elimination of 159 multifamily lots which were depicted in the bright yellow on the annexation plan located toward the river at the end of the property from the entrance. Those have been eliminated entirely, and if you look at the pink area on the revised plan, you will see 48 multifamily flats depicted in two separate buildings at the junction of the main entrance and the park. The 8,000 square feet of commercial, the restaurant itself, has been eliminated. We do have the opportunity through parking to retain 4800 square feet of commercial at the corner of the L-shaped building which would be located on the left side of the end of the main entrance. If you look at the open space, it's essentially the same at 34% to 30%...I will review that as well. The height of what we're looking at for the height restriction...there was a great deal of discussion about heights...we would look as the conceptual basis we believe (and we're checking with several different architects at this point that this would be the case) that in all of those areas that are not the multifamily pink, that we would be able to abide by the 30 ½ foot height restriction that's depicted in your code. The height of the multifamily, of course, would necessitate the forty-foot height restriction. We believe that all the areas, except the pink, will be able to be built within the 30 ½ foot height restriction. We're still waiting for confirmation from several architects that we're dealing with to substantiate that, but that is what we're looking at this time. And any contrast with the pink area, which is also located within the R3, and as you are aware with the LPD, you can spread that out throughout the R1 and the R3; but in that particular area, that would be a change.

If you look at the percentages of the change on the annexation plan, there were 31% combination of different sizes of single family. The conceptual plan that's on the right hand side delineates 60% single families, so that's a substantial change in the number of single family lots. Duplexes remain essentially the same, approximately 26% for both plans, and the multifamily component on the annexation plan comprised 43%, but on the conceptual plan it comprises 14%. I think, fundamentally, from the previous meeting and the issues that were discussed, we went back and talked to Mr. Eagar, and asked him what could be done to address those issues. What we deduced, with his assistance, is if you look at the annexation plan on the left, on the riverfront, you see a very high concentration, in fact all of it, was the very dense townhouse multifamily product. Likewise, as you went further into this site, there's also the concentration of duplexes well beyond that. Mr. Eagar suggested that, in order to modify the plan for some of the considerations and the concerns that were raised, that we would change the mix from the predominance of the multifamily townhouse to the predominance of the single family. The way he was addressing that and the manner he described was that he could make the argument that if you look at the revised plan, it would match up much closer to a number of the existing portions of town. We told him we would consider that.

The second major issue and item that was addressed was regarding the trees and clearing; and much of the discussion centered on the opportunity which exists at the Preserve on the Broadkill to have some select clearing because of the single family lots along some of the more critical areas. So that's what we substituted were the single family lots which would have the same opportunity for that selective clearing that was presented and, I believe, recommended by some of the members of the commission. So if you can look at the two plans and compare them, you can see where that opportunity for selective clearing in these items will exist.

Carol Bruce: Could you go ahead just so there's no misunderstanding, either you or somebody, actually point to that and reiterate it on the plan.

Pret Dyer: I apologize to the people in the back, but in this area along the riverfront, and selectively along the sides, where the trees currently exist and we're actually saving the trees, and we were talking about the critical mass of the non-fragmented forest, but instead of the townhouses, which would not have the opportunity given the lot sizes and the amount of coverage which was mentioned existing on the Preserve on the Broadkill to do that, so we changed that and put the single families there. And if you look at total count, it's not surprising if you look at the density of those compared to the density of this, that we lost 29 lots in the process of doing that. Is that helpful?

Carol Bruce: Yes.

Pret Dyer: Again, the relative percentages of the mix of the lots, we think, are very substantial because the concerns seem to be that we needed to more adequately reflect what was occurring within the town, and we felt this was something that addressed a number of the issues that have been raised. We've also looked at, on the second page, the rectangles that show all the different lot coverages, and I think what's important for that drawing where the blue outlines are, the differences are whether the product is front-loaded or rear-loaded. As you can see, all of the units would reflect a two-car garage and would also have parking paths or two spaces. We would actually be over-parked on each and every lot, actually. I can go through the setbacks, but again the difference is that if you have a community where you only have rear-loaded product, then your setbacks are

going to maintain consistency. In this case where you have a mix of both, your setbacks are going to fluctuate. And we gave a detailed table for you to look at and understand if you have any questions. The front-loaded product obviously would have the garage in the front with the parking paths in the front, and the rear-loaded would be like the ones in Cannery Village where you have the front porch and the alignment of the product very close in proximity to the street to get that particular feel.

Carol Bruce: I'm glad to see on the corner lots an increased setback of an additional 5 feet. Of the lots at the bottom, are any of those setbacks increased from what they were before?

Pret Dyer: Yes, I think they're increased with regard to the front-load products.

Joe Reed: Hi, good evening, Joe Reed, with Chestnut Properties. A concern was raised about the lots back in the Preserve on Broadkill, right here, and about a buffer. I think his lots, he mentioned today, and I haven't verified this, are roughly 80 feet deep and I believe he said an eight foot rear-yard setback, and at our last presentation, the setback proposed along that area was 5 feet. First of all, I think those lots along that side are 110 feet deep, so they're a little bit deeper than what exists in the Preserve, although his are wider. But there is a 10 foot rear-yard setback minimum on all those lots, and then on some of the wider lots, to 15 feet rear-yard setback.

Carol Bruce: This gives us some idea of some kind of buffer is really important

Pret Dyer: The next drawing in your packet shows a scenario from A to E and with the different circles and then the magnification of those circles. The magnification of those circles would be depicted in each individual block, and the reason that we did that is, as you're aware in your code, different lots require minimum front footages, and I think the nomenclature for the layout, according to Mr. Eagar, is that lots of this nature are many times referred to stem lots. We asked him to illustrate to you that, at the setback line, those particular lots would still meet your front minimum footage requirements. So, when you look at illustration A where you see the two red diagonal lines, at that point if you were to scale those, that would meet the minimum lot frontage requirement. And likewise, B through E also. The reason that those are required, in trying to lay the site out and not utilize the flexibility of having these larger lot sizes, many times you're left with that radius on the curve, and that necessitates doing this. As you're aware, if you do a straight grid as in other towns, everything's rectangular and you don't have that, but when you look at these all of these, they all have a radius point. That requires that particular type of treatment and likewise in the county, the requirements are also met successfully by demonstrating that minimum frontage at the point of setback (front yard, in this point.)

Ginny Weeks: Are those front loading lots?

Pret Dyer: Yes.

Ginny Weeks: So what's on the street would basically be all driveway?

Pret Dyer: Well, not all driveway, whatever portion of it is the driveway to get into it. Each one of the lots and the configuration of them would be different. Maybe I don't understand your question.

Ginny Weeks: You show two lots here that are shaped like pieces of a pie.

Pret Dyer: Correct.

Ginny Weeks: With the narrow edge at the curb.

Pret Dyer: Yes.

Ginny Weeks: At the curb, how wide would these lots be? Would that be all driveway?

Pret Dyer: No.

Ginny Weeks: You have trees planted in the middle of them in this rendering...will they have room for trees?

Pret Dyer: Sure. And then finally, I don't think you have a copy of this, which Mr. Davidson is going to be handing out. What you have before you is an enlarged portion of the area in your revised plan that is depicted in pink of the two buildings and then the commensurate buildings which are represented surrounding those. As you look at the bottom of the page, where something similar to a fishhook is, that would be the area where the park would be located and the proposed walkway to be constructed there, just to give you an orientation, that would be the end of the roadway. As Mr. Eagar explained previously, that section of the roadway coming in, all of product in that particular area would be rear-loaded, so as you drive in, you're not seeing garages. You'll have the attractiveness of the fronts of the houses, and the terminus of the main roadway expands into a median which will invite you into an open space park area, which we think is the dominant feature here. And that's why Mr. Eagar suggested that would be the correct location to provide the multifamily product. I think another concern that was raised is regarding the view across the river. And if we had the very large, tall product located at the edge of the property, perhaps the possibility would be that could be above the treescape or canopy of the trees. By having the single family in the front, you still have the availability of the exposure of the potential commercial and the multifamily lots, but without having the imposing structure and elevation impact that seemed to be an issue that we tried to address. If you look at the drawing at the hashed area on the corner, which would be apex of the L, the bottom portion of that, Mr. Eagar has suggested that (I think what he did was assumed 48 units at 2 ½ spaces, which is what your code requires, 120 total would be code required, 59 would be parked under, 38 would be parked in various spaces there, and there would be 23 on the street. Likewise, he made a calculation of the potential for the commercial of 4800 square feet that would require 27 spaces. He did a count of on-street parking, and in just this particular area, there would be 50 on-street provided, and 29 on-street surplus. So, we could easily accommodate that if we decided to do that. It's important to me to be able, from a concept basis, to illustrate to you that parking is not going to be an issue with the revised plan.

Carol Bruce: Could you, again so that everyone is clear including me, point to the area of the multifamily, because the buildings that were originally going to be commercial are multifamily.

Pret Dyer: Well, the second plan would be correct. But I think the important consideration is the architecture of that particular area in pink is that the design of that'd be essentially similar to and close in style to the downtown area that currently exists in Milton. So we would be doing the cornices, and trim items, the parapet walls, the flat roof, to give you that. If you pictured coming down the main street, you would have the homes at the front of the property with the porches and the porch furniture, etc. and at the terminus of that roadway, you would still have that warm feeling with the fronts of those mimicking the existing downtown commercial area. Mr. Eagar was very influential in making sure that when you looked at this plan and drove in here, you would feel as if you were in the rest of the town. I think it's noteworthy that when you do this, the attributes,

which is not to say that the annexation plan has not addressed several issues, because it did as well, but I think the revised plan addresses a number of the issues which were raised the last time. If you go back to the original concept plan before we had the first meeting, and then look at this, I think you would see an entirely different concept, because I think the density on the first one was 6 or 7 units per acre, and this is 4.4. That's a substantial reduction from where we originally started.

Another issue is there's some on-street parking provided for the brick kiln area, and parking for that. We will provide some on-street even though we're way over-parked in the rest of the project. Unless Mr. Davidson or Mr. Reed has anything to offer, that's a brief overview.

Ginny Weeks: What about the clubhouse?

Pret Dyer: That's a good point. We have the availability of putting the clubhouse here since we're dealing with an architect. Since we have made a change in the Cannery Village clubhouse, we are looking at Cannery Village to provide a clubhouse with an indoor salt-water pool as well a spa. What we're thinking of doing is to make that membership available to all of the owners in here and utilizing that because the degree of that facility we feel will be a very nice addition to that project, and to this one as well. Again, the architect who's dealing with that, seems to be of the same mind as Mr. Eagar, in feeling that utilization of the park area, instead of putting the clubhouse here where the terminus is of that, he felt that that needed to be public space and not utilized. If you look at your second plan, that's where it showed the clubhouse there, and he felt very strongly that that area needed to be enhanced and not utilized by a building.

Joe Reed: If I could just add something on that also, we had a number of discussions that should be answered, unless the LPD requires any, but we believe that with an in-town like this in walking distance to downtown and the library and restaurants...it's not like doing a subdivision out in the country where that amenity is a necessary feature. And I also sensed some problem or resistance from the commission of having this clubhouse that was only for the community and not available to the rest of the town, and some issues like that; but in my opinion, developing a project in town like this, that is not necessary. If we out on Rte. 30, five miles from here, I'd say you should have these amenities in your community, and for those people who do want that in addition to what the town already offers, we'll be building a nice facility at Cannery Village and thought that could be available to them there too. That's kind of our thinking on that and it did seem like it was problem area...the fact that there would be this private amenity for the community exclusive from the rest of the town, and that's not the case. The other point, since we're in this pink area of Cannery Village, I don't want there to be any confusion, when we had the meeting there a couple of weeks ago there was that multifamily Hampton Court product talked about for Cannery Village, nothing along the same lines is what we're thinking for this multifamily product. At our next presentation, this is a plan based on some feedback, and that if we go with it, we'll present more details and some architectural renderings, but it's going to look more like a downtown, almost commercial building, probably brick, but flat roof, cornices, a lot like you see in downtown Milton. But we have some pictures from over in Kentlands and Lakelands of their old architecture. It won't be like Hampton Court or those typical condos that you'd see on Rte. 1. That's not at all what that building will look like. Thank you.

Linda Rogers: Any other questions or comments?

Dean Sherman: This concept about who's going to be using the clubhouse at the Cannery...is that something that you guys feel you need to offer as an option in an effort to require some type of clubhouse for this community? Because I'm thinking it could make life complicated over at Cannery to invite another community in to use their clubhouse...if it's just for a marketing thing, I'm not...I'm in favor of having one as a meeting place, but not a place where it's actually written that membership would be required.

Pret Dyer: Yes, we're probably dealing with that from a conceptual basis at this point, but to be sure of what you're saying...we probably wouldn't make it mandatory membership...it would probably be optional membership. I definitely agree with that.

Joe Reed: I don't know exactly how that works, but apparently it has been done in some other areas...it was suggested that sharing the amenities could be a possibility. I don't think many people buying in here want to use that option.

Dean Sherman: Well, I was just curious. We've heard quite a few pitches in the last several years and that's a new one.

Pret Dyer: Well, I can tell you Mr. Eagar came up with this one.

Dean Sherman: It seems to me that it would complicate things but if there were a potential buyer, would he want to go all the way across town to use that facility?

Pret Dyer: That's a very valid point.

Ginny Weeks: Is the pedestrian walk going to be incorporated in this new plan?

Pret Dyers: Yes, you can see it would be here in the park, and we planned to emphasize those sidewalk areas that along this area, and actually have some special treatments on certain portions, maybe break enhancements in certain areas, things of that nature.

Another suggestion was instead of having a number of the trails going in some of the areas, we'd basically try to limit (I don't know how many feet of sidewalk there is), what Mr. Eagar felt was the amount of sidewalk that we were putting in here was more than enough in terms of...he didn't want to impact areas that were supposed to remain in their natural state.

Ginny Weeks: Should we approve this tonight, will you have to return to the Plus program to re-present this?

Pret Dyer: Probably.

Linda Rogers: Does anyone have any questions of the applicant?

Michael Filicko: The Plus report. It's hard for me to ascertain, when they mention Lots 56, 57 and Lots 115 through 121, Lots 136, Lots 159 through 175... they talk about the significant amounts of grading, which would be necessary resulting in extremely steep slopes adjacent to non-tidal wetlands?)

Pret Dyers: The important thing is the question that was just asked...that's the second plan. So, the relevance of what you're pointing out is exactly right. The relevance of that, I don't think, impacts this. What was just mentioned is going to have to be resubmitted, because what you're talking about there, is if you look at the old plan on the drawing, where you have the large, tall multifamily townhouses in those particular locations, it would require all those things that we talked about. With this, with the single family lots, it would be the same advantage that we talked about with the selective clearing that would be in the rear. Many of those would be in the rear setbacks of the single family lots. I think your point is well taken, but those issues are not germane to this particular plan, and we will have to go back through that process.

Pret Dyer: I have one more question. The impervious surface of this plan: is it greater or less than what it was?

Mark Davidson: Less.

Ginny Weeks: Do you know what the percentage is for...because it was 48%...

Mark Davidson: That is correct.

Ginny Weeks: That's okay. Do you expect it to be quite a bit less?

Mark Davidson: I would say it would be a little below the average if it's going to increase the single families and the elimination of the multi-families, and the elimination of the multi-families plus the alleys, it will decrease (unintelligible conversation)

Ginny Weeks: Are you going to have to rethink how you're going to handle the runoff water, because I believe the PLUS report states that they're adamantly against it going into the Broadkill.

Pret Dyer: Right. We're going to address that. It's interesting because every municipality and every other project in the area does the exact same thing, so I'm sure there will be an elaborate discussion on that issue.

Michael Filicko: Mr. Dyer, are these buffers here in the green on this that will be surrounding the adjacent neighborhood, I'm talking about where the Argos live...I believe it's in the quarter right there...will there be a landscape buffer there to separate the neighborhood.

Pret Dyer: I think I'd say the same thing with regard to the setbacks that exist. If we had the increase with regard to setbacks, it'd be the same thing. It's interesting. When you're the last project in, Preserve on the Broadkill has 8-foot rear-yard setbacks, and now we're talking about us having larger setbacks and a buffer. So, when you're the last guy in, the rules seem to get changed.

Michael Filicko: Well, we learned from our mistakes.

Pret Dyer: Yes, but the code doesn't require this point. We did listen to you and listened to Mr. Blayney, and increased the rear-yard setbacks...

Michael Filicko: What you can do is to protect the integrity of the town, and I'm not trying to...

Pret Dyer: Another thing is if you went back to our original plan, that was to have a high degree of multifamily that was immediately adjacent and contiguous with the single families, so we did change that to reflect single families at the same time.

“”: I'd just like to make one point like that...I don't know where Argo's is, but this one's for sale right here. I think this is a relative of ...

“”: Argo's is right next to the white...

“”: There was one other that we found that wrapped around, and we purchased that property. This one right here. I don't think it's in town, but we're coming back to see...

“”: Parcel 129, which...

“”: Suffard?

“”: No, that's right here, and we tried to do that so that we could connect this walk, and then we've got a walk...

“”: That's where I wanted a landscape buffer.

“”: This property's for sale, right here, I didn't think their last name was Argo....

“”: No, it's not.

“”: Argo's the one right above it...the first one is a relative of Dr. Nancy White ...

“”: Right, that property, I don’t know what exists there now, what they have in the back, but I think if someone buys it, we can’t put any improvements any closer to their property line than they can to our property line. So I guess I’m having a little trouble following....

“”: You do have plan on putting some landscape vegetation at the back of that property...

“”: And, we also have the same setback that we do, so there’s no protection that they’re not going to put up a shed or some other type of structure... We will have restrictive covenants that prevent that sort of thing...they can’t put up a metal shed or something right next to the property...

“”: And in the county when you develop and you adjoin as we’ve done here, we have a nice buffer along that...

“”: A nice buffer, but typically residential to residential, there’s not the buffer required, at least in my experience in other jurisdictions. But when you’re going residential to agricultural, a buffer’s required.

“”: The papers you handed us at the last meeting, there was a section called “White Property Annexation Analysis of Economic Benefit, etc.” and after that, came the illustrations for houses, and then there was this page, and on it, it said that the proposed lots that you intend to add to this subdivision, three lots (?), I would like to know if those are added, do they automatically become LPD or not? Are they under the same rules and regulations as the rest of the subdivision, or should that not be here?

“”: You have the conceptual plan in front of you; I’m sorry, I’ve been in a murder trial the last couple days andTonight you have in front of you the conceptual plan. You don’t vote on approving the conceptual plan. The only thing you make back is written comments pursuant to Section 6.1.3.1; you can make that as part of a written comment back. When it comes in for a preliminary site plan, one of the comments you could make back is that they’re going to incorporate that issue, prepare an annexation agreement and ask the council to annex that so it can all be part of the large parcel overlay district attempt.

“”: Thank you. That’s what I wanted to know. I didn’t this to become an accepted piece of evidence.

“”: For whatever it’s worth, and I’m not sure this helps, but what we intend, Mary, is that we’ve shown our intention there...we have an alley there, we’ve planned three alley-loaded lots that front their own (atlantic posts ?) served by the rear alley.

“”: The other point is that you code allows additional land to be added after the fact on LPD, at least from my understanding of the code.

“”: It’s 4.8.12

“”: I was getting ready to say that. He beat me to it.

“”: Bob, do you have any other comments?

“”: Just that if you could provide some guidance to these...in the subdivision ordinance, it basically eliminates pipe-stem lots...the width of the lot is measured at the building restriction line, and if it’s just the standard subdivision would be 20 feet back, or something like that. I believe that the LPD does allow you to modify that, but that’s something that you need to make as one of your recommendations or allowances. Another would be, on the single family rear-load setbacks that are shown, I believe in the picture illustrated at the top of the page, they show a garage being attached to the house, and the way the house and garage are attached, you really don’t have the ability to go half way. The rear-yard setback would be the 10 feet. If they aren’t attached, they can go

back; but if they are they have to be moved in, so it is something that has to be pointed out.

“”: Can you just explain a little bit to me what the multifamily class? Would they be vertical units, multi-floors, single floor unit.

“”: I believe the concept is a three story building and they'll be individual flats stacked on top of each other.

“”: Is it more like a townhouse?

“”: No, it's not a vertical. Each unit is on a single floor.

“”: How does that differ from an apartment?

“”: I think the nomenclature for an apartment would be a rental and a flat, condominium, multifamily, whatever you want to call it, would be a sale. That would be my distinction.

“”: I have a question regarding the parking of the multifamily unit. We are code less in the LPD it's not needed, requires 2 ½ off-the-street parking spaces per unit. That's 120 for the multifamily. That means 23 are on the street. At what point does that go to the Board of Adjustments for a variance or what happens with that.

“”: You are allowed to modify the parking requirements for an LPD. Cannery Village and Heritage Creek are the other LPD's in town. Part of their parking is on-street. They don't have all their parking off-street.

“”: In this building where there are 23 parking spots on the street is where at one time there might be a 4800 square-foot commercial building or restaurant, in the same place?

“”: Yes.

“”: So that would be an additional 48...

“”: They're shown on there

“”: 27...is it one every 200 square feet? There are an additional 27 on the street, so that's a total of 51 on-street parking for that, correct?

“”: Yes.

“”: Another question that may be a little early to ask. When discussing the annexation, there was discussion of maintaining a ball field. Will that be addressed? It is still going to be a state property, or how is it going to be designated?

“”: They'll still have the perpetual use of that area.

“”: Are there any other questions on the floor?

“”: This is kind of an off-the-wall question. How do you compare or contrast the quality of the houses that you're building with Blayney, Sando, etc.

“”: First of all, here we don't final architecture, so I don't really know. We have architectural styles that we use...

“”: I'm asking about quality...

“”: I don't have a builder at this point selected. It would be presumptuous to have that without approval at this point. I'm not trying to be evasive, but it's like starting a process, and there are incremental steps taken to accomplish it and selecting the builder is the last one.

“”: And it may be, we don't know what the market's going to be, that we are selling individual lots to people who are choosing their own builder and meeting our architectural guidelines just as the Blayneys are doing. I'm not sure what you're referring to. I think what the Blayneys have built up there have been a couple of duplexes but I believe most of the homes up there have been by individual builders that the individual lot owner has contracted with. That used to be the way it was always done

in Sussex County. Now, we have these national builders much like what's happening in Cannery Village. I personally think that the look of the project when it's all done and you have a builder with a master plan of one like our Cannery Village pattern book, like this house is going to have a corner wrap around porch, that one's going to have something else, I think it makes for a very nice looking development when it's done, rather than have individual homeowners go in and put up what they deem to be attractive, but not everyone else finds it attractive. I sense that you must think that's an inferior quality. I don't know the answer to that.

“”: I'm not trying to be judgmental but my point is that I think most of us on this commission are concerned about the quality of the town and the changes that occur can have an adverse effect on the community as well as positive effects. I thought maybe you might have some conceptions on that.

“”: We envision it to be a very high end community; it's a project that warrants that type of pride, and I think we'll get result by building a quality product. The higher end market will bear that quality.. If I had to make a comparison to the Preserve on Broadkill, because we bought Phase 2 of the Preserve on Broadkill, also even though we haven't built anything there yet, but we're still putting in all of the infrastructure...the brick sidewalks, were going in today, they're laying those...same thing there. Blaney deserves a lot of credit for that. That's following what they did in Phase 1. The site work on that project was very expensive. If I had to make the comparison, because we're under those same restrictions, I do envision the average house size in here may be slightly smaller that at the Preserve...they're still going to be nice size homes, but the average square footage probably being in the 1600-1800 square foot range, not 2500 square feet. I think the Preserve on Broadkill requires that a two-story house be 2400 square feet. We will definitely have restrictive covenants and architectural guidelines in place to insure that it's a quality product. I feel what we've done in Cannery Village to date has been quality. There are a number of communities in the area that I don't think are quality. I'm not ashamed of that project, and I feel that if anyone rides through there would say that's a quality project, and I'd be surprised if they didn't.

“”: I have an economic answer to your question. When we first started the project, we envisioned seven units to an acre for 532 units. Before you this evening with 341 units is 191 lot unit reduction, so I can tell you from an economic perspective the deal hasn't gotten stronger, so the return, by having single family, we think that what we've done is given the town an enhancement of the increase in single family homes by a substantial percentage and reflective of what the rest of the town is. I think that's a pretty good example of what we're delivering.

“”: And, we didn't just come up with that 7 units an acres out of the sky. I think that was based on a planning meeting with the commission and that was the directive we were given, so we designed accordingly. We're at 4.48 now; I saw another project in the process of a potential annexation that's in that 6 range currently. We feel the density is reflective of the fact that we're trying to create quality product, and not just put inferior units in.

“”: I was asked that question today, too, when I ran into Bob Blaney, who said are you going to be doing modular or double-wides, or...No, absolutely not.

“”: Does anyone else have any other comments or questions for the applicant?

“”: I have one more thing to add... These areas here... will there be an alley going through here, or what?

“”: That is along the main road where the property line is behind those dash lines.

“”: And this is an alley or driveway across this lot to serve this one?

“”: The reason for that is to be able to maintain the visual of all of those houses fronting the road.

“”: Would that be by easement?

“”: Yes, it would.

“”: Does anyone else in the audience have any questions or comments? Mr. Blaney?

“”: Just to set the record straight, and as Mike said we learned from our experiences and mistakes. Hindsight is 20-20. Phase 1 of Preserve on the Broadkill, we did not put a landscaping buffer between our property and Doc White's property. At the time it was cornfield or a soybean field. However, in Phase 2, which Mr. Reed and Mr. Dyer purchased last year, while the code does not call for a landscaped buffer or trees between an established community and Preserve on the Broadkill Phase 2, it was brought to the attention of the commission then that people who lived on Barringer and back up to Phase 2, wanted some tree buffers between the back of their lots and the new homes in Preserve on the Broadkill Phase 2. We hashed out this question, and it was Mr. Kerr who came up with the solution: If we, the developers were going to maintain those trees, again on the back of the lots behind Barringer St. lots, we would have to maintain them and would have to put an alley back there to maintain the trees. So, what the commission agreed to and the record plan reflects, is that yes, we have planted trees on the back of the lots of Phase 2 that back up to Barringer St. lots. Now that's on the record plan, and the current owners of Phase 2, along with purchasing the land, purchase the record plan as well as the covenants. So they will be installing those trees behind Barringer. What I'm asking the commission to consider is to encourage the developers of the Riverwalk and the Broadkill to place trees on the rear of the lots that border the north end of Preserve on the Broadkill, again for the same reason, because now Preserve on the Broadkill Phase 1 is an established community. And I'd like, even though it's not required in the code, to see some trees planted in the rear of those lots. That's my only point. Thank you.

“”: Does anyone else have any comments or questions?

“”: The plant list, from three weeks ago. I'm looking at the height? Are these heights correct? The cherry tree, 1-3 feet high that will be planted; the red maple, 2-3 feet; the willow oak, 1-2 feet in height; I'm thinking it's a mistake but it's right there.

“”: I would guess that's the caliper in inches, but what we have said before and are still agreeing to, with regard to the street trees that we would be planting, would be at least a couple of inches in caliper and I think we said a minimum of eight feet in height to start with. And I can address briefly what Mr. Blaney just asked for. We don't have problem doing a planting along the rear of those lots. We have as much incentive to do that as they do, and in fact, it was Barringer with the Preserve on Broadkill that started the plan. We would have done it anyhow; we let that contractor do that work. No one wants to look in someone's back yard and some are not the most attractive. But on the back of yours, that hedge or whatever's there right now, do you know if that's on Doc White's property, or on the back of your lot?

“”: I really don't know. I think it's on both.

“”: Does it make any sense to leave that there or should it come out?

“”: It’s really up to you in the sense that I think most of the.....is on Doc White’s property, and most of it’s briar and trash trees.

“”: Yes, we would do that planning.

“”: Does anyone else have any questions or comments they’d like to make?

“”: I would to request that the preliminary plan be sent to our town planner.

“”: It’s not a preliminary, it’s a conceptual...

“”: The next plan you submit. Preliminary plan? Will that be the next submitted plan?

“”: If they get approval of this...

“”: If they get approved tonight for the conceptual.

“”: You don’t approve a conceptual, according to the zoning ordinance. You acknowledge receipt, you make comments back, and they’re to utilize those comments into the next plan that they file, according to the zoning ordinance.

“”: I would like to request that the next plan they file be sent to our town planner.

“”: To file?

“”: No, to give to the engineer. We have a town planner.

“”: Who?

“”: Robin. Who is doing the planning for Cannery Village?

“”: Debbie from URS is looking into the questions about the issues of (?).....as of now, and she is a planner.

“”: I would like the plans to be sent to her. And to add to that, I would certainly appreciate if this didn’t come back to us until we have Bob’s report, the planner’s report, and the press report back, before we go into any preliminary master plan approval.

“”:Mr. Dyer, we didn’t receive the plus report until around 1:00 P.M. today. It would be good if we would each have a little time to ingest the....

“”: Mr. Brady, I have a question. The town planner, I understand, was hired to do the Blaine’s plan. Do we have the authority to send plans to her for review that will be charged to the town?

“”: Were not charging the town, we charge the applicant.

“”: I have a question as to us having the authority to do those things? I don’t know exactly what they were hired to do.

“”: I have not seen the final contract for the comprehensive plan. I did not know that she was hired or the company was hired as the town planner, per se. My understanding was that they were hired to do the one project that could be a recommendation that comes out of the comments that we usually make back. But I would have to check with the Town Manager. My review of what was in that contract was that they were hired for the specific purpose of doing comprehensive land plans, and they were not hired to do individual site plan reviews, even for the large overlay district zone. You can take that as a comment if the majority of the commissioners agree that it is a comment that can be go back, but I don’t know if it’s enforceable, per se, because I don’t believe we had a town planner under contract to those types of reviews at this point.

“”: That was one of the questions I was going to ask. Does Milton have a town planner?

“”: My understanding is we do not have a town planner, per se. We have a town engineer, a town solicitor, but we don’t have, and the contract that was done with URS was just for the required comprehensive land use plan.

“”: Could I just say one other thing? I hear you talking about the quality. From years of knowing..... he does real quality housing, and I don't think he would come to Milton with anything less than.

“”: Okay, does anybody have any other questions of the applicants, the engineers, or anyone? So, what type of comments would you like to make to the applicant as far as changing the....., landscaping here and there, if we went to the lawyer to check into whether we have the authority to send the plan to a planner for review before they come back for the preliminary, so that all these things are done before we see it again, right? We'll check and see if we can legally do that, if that's what they were hired to do or whether we can or can't ...

“”: And I'll have that answer for you for next Tuesday night's meeting

“”: Alright, and are there any other particular comments you'd want back to the applicant to actually be put on the preliminary?

“”: I would like everyone to have a copy of the plus(?) report in plenty of time

“”: We want copies of everything at least a week in advance.

“”: Anything else?

“”: I'm concerned. Mr. Dyer, I want to personally say thank you for your good work. I think we're on the right road, but I am concerned about the amount of street parking being asked to be forgiven, and I ask you to see what you can do about the parking. Because in the end, 51 spots, I've counted them, but I'm sure all around this block, there aren't 51 spots. People with company visiting, or other necessary interim parking, are expected to park on the street, and that's a lot of street parking.

“”: Again, from our analysis of the town, street parking is a...if you look at any municipality, we are constructing the streets at our costs. We are providing for that parking availability and then turning that street over to the town. So we recognize that, but I will tell you that in these types of projects, on-street parking is a very dominant and desirable feature. If you look at the TND developments, the larger developments in Gaithersburg and different models across the United States, and I think if you go into any municipality, go into downtown, go into major urban centers, into any plotted town, in Milton you have the dominant effect and impact of on-street parking and it's desirable because it's proximate thereto for the people instead of having it as a remote lot, by having it in front of someone's house if they have a guest. We're already providing for the entire project, but for the multifamily in excess of your parking requirements, that's without regard to the on-street parking that we're paying to pave and to provide because we think it's a good thing for someone who has a visitor to be able, for instance if my 91 year-old aunt comes to visit me and she gets to park right in front of the house, we think that on-street parking is very desirable. I personally believe that your ordinance with regard to the LPD allows for on-street parking to be provided, but I think that in your normal codes, without that, by not recognizing on-street parking, it's a very short-sighted perspective as the code is written. What you're saying about the code is correct, but the LPD does allow you to provide that proximate attractive parking because its people don't park there all the time, but when they do need it, it's very close and available. Again, I would reiterate that these are things that we've visited in other communities and that's probably one of the dominant features of the availability for recognition of on-street parking.

“”: Agreed. I have no argument with what you said. I just think that an excess of 30% of it being on-street, I’m asking you to see what you can do to reduce it.

“”: You asked the question before about impervious. The alternative is that we’re still going to have the street, and then we would have a remote parking lot that would be 100% impervious, so there’s the answer. The answer is that we can increase the amount of impervious area by providing something that’s already in the right-of-way of the street. That’s the alternative.

“”: And there would be parking on both sides of these streets?

“”: Yes.

“”: And how wide are the streets?

“”: We’ve gone through this with Cannery Village, I don’t have the exact dimensions. We provided safety analysis, and Mr. Kerr can speak to that; we provided a study that was done to insure that when you have parking on both sides of the street the amount of pedestrian accidents that you have are greatly reduced because you have calming...if you go into Cannery Village, you’ll have on-street parking, and then you’ll come into an area where the curbing actually juts out, and that’s called a “calming device,” so that people don’t race down the street. So, again, those are attributes that we think are positives, building mega parking lots for multifamily additional parking that you can’t provide under the unit? Providing that, I think, and I’ve done a lot of commercial development, I believe to be a huge negative as opposed to very nice streetscapes...we’ll have the trees, etc. That’s my personal perspective with regard to the on-street nature.

“”: I guess looking at the parking spots and looking at the future Milton because you’re going to see a lot of retirees who are moving into the town, and with the parking spots close to those dwellings, you’re probably going to have a more inviting community because it’s close, they can park, go into the house...because in looking at some of the housing that you’re seeing coming into the town of Milton, we’re talking about the working individuals, they might not be able to afford, so it seems you’re gearing yourself more now to the retirees coming into the town. And I hear what Ginny is saying, but I’m also thinking of what’s going on...

“”: I just want to make sure that the parking is adequate, that if we have companies with people there, if you’re going to end up having a commercial space, with 4800 square feet of commercial space, that you’re going to have to be able to park within a block and half of your house.

“”: Yeah, and that analysis was just this area right around here...there’s no on-street parking being counted in the entire rest of the development even though it’s provided. But one thing, because I thought this was more of a workshop meeting, the commercial is something I’d like to get some feedback on, as to whether you want it or not. We have some serious questions about the viability of it anyhow. At least in the last plan, there seemed to be, unless we misunderstood, some desire to have a restaurant, perhaps a little bit of boutique retail. If that’s not something you want now, we can eliminate it from the plan.

“”: Did it say not, according to the design plan?

“”: There’s 4800, but that’s something potential, that parking that she’s speaking of showing the 50 spaces roughly on-street, is based on the requirement of the multifamily and 4800 square feet of commercial. We’re very receptive to....

“”: I have no objection to having commercial there. If it's a viable thing, you're allowed to have it, and I have no objection to that. I just want to make sure that the parking is adequate.

“”: I can answer that I'm pretty safe in saying that if we have to build separate parking lot somewhere for that, if we can't count the on-street parking, I can assure you we don't want to do that commercial. We're receptive. If you don't want the commercial, we'll take it out.

“”: In response to your question, if you look at the solid parking spaces that are in orange, there are 50 of those. There are 50 required and there are 50 solid. If you then count the rectangles, there are 29 extra there. So what he has depicted here is just within that one block area, we given you 29 extra parking spaces that you're concerned about us not having enough of. So we've met the 50 and we've provided just in that one radius 29 extra on-street parking spaces, because I just counted them.

“”: Okay. What is this red area here?

“”: Underground parking.

“”: Does anyone else have any comments? If not, make a motion.

“”: The motion basically would be to acknowledge receipt of and return the following written comments to the components of the conceptual plan for their consideration in the incorporation of the submission of the preliminary site plan as required under the code.

“”: Okay. Will someone make a motion?

“”: Actually, I wrote it. I'm not ready to put my name on here, and until the written comments made by the commission are addressed.

“”: You need to make a motion stating the following comments, and then you discuss the comments, and then that's the final part of that, and then you cap that.

“”: Alright. I, Michael Fillipo, make a motion pursuant to 6.13.1 to acknowledge that James and Nancy White's conceptual site plan was received and discussed at the December 12, 2006 special meeting of the Town of Milton Planning and Zoning Commission with the following written comments made by the Commission.

- 1.) We have the plus plan within one week prior to our next meeting and you, as well have that, correct? So we're not getting into within the last hour, just like we both did today. And it comes with the packet, also with the engineer's comments....

“”: And gives the town as amenable a planner's report.

“”: And you want tree-lined buffers between this development and Preserve on Broadkill, correct? They did discuss the height of the trees being 7-8 feet. Anyone else have any comments that they want passed along? City developer's to be included on the preliminary plan.

“”: Well, earlier on, when I made the comment about the quality of the houses, I wasn't being fatuous. What I was concerned about was that we don't seem to have any control over the quality of housing built in town. You come in as a subdivision, you worry about parking spaces, trees, driveways, all kinds of other minor relevant issues, but they're not major issues. We don't seem to have any movement here on this commission to protect ourselves in terms of the quality of the houses being built in Milton.

“”: But the town has a building code that has to be adhered to and zoning doesn't have any control over the building code. That's the Town Council enforcing the building code.

“”: Are you saying that the Planning and Zoning Commission cannot become involved in that issue?

“”: No, I’m saying we don’t have control over the building code.

“”: I understand that. We are missing a major point in our opportunity here on this commission to protect the town, and we’re not addressing it.

“”: Well, I don’t think we have the authority to address the building code issues, do we Mr. Brady?

“”: I don’t think it’s Planning and Zoning’s job to do, just as we don’t have any authority over the traffic or law enforcement in this town either, and so many times, the commission gets side-tracked. But it’s just one of several things in town that Planning and Zoning doesn’t play a role in. It would be just like making the argument as the Planning and Zoning doesn’t get involved with pet issues or traffic violations or maintenance and upkeep of the sewer or the Christmas decorations in town. There’re a lot of things the commission doesn’t decide. That’s not to say that what you’re talking about isn’t important to the town, but this is not the role Planning and Zoning would get involved in. I’m not trying to be sarcastic.

“”: Did we mention the description of the mature trees?

“”: Seven-eight foot trees?

“”: Yes, and I believe that when (name unintelligible) was here last week, they suggested a caliber of 3 inches. I believe she said that should be the minimum to get good growth.

“”: There’s an ordinance that addresses the size of the trees.

“”: So you will be presenting a landscape plan as well?

“”: There would be 11 things needed...there’s a list of 11...

“”: You may want to bring a comparison to our ordinance to help illustrate that to those who aren’t aware of it.

“”: Does anyone else have any comments of what they want to see on the preliminary plans? If not, do we have a second to the motion?

“”: Second.

“”: One thing that may help, too, is in the next presentation, maybe you could help explain and define the criteria to the people who are designing and doing your planning. Maybe that would help satisfy the commission’s need to feel that this planning is being done by a professional. That’s something you’re used to doing time after time with the presentations, and the commission doesn’t really know who’s doing planning, what their qualifications are, and try to identify who’s helping to do this planning. This could be in the interest of clarification.

“”: Okay, we have a motion and a second. Is everyone comfortable with all the conditions that we have and the comments that are being passed along to have all the preliminary plans submitted?

(Vote was carried unanimously.)

“”: The Cannery Village trade property was withdrawn...

“”: I just think they ought to pick up a 91-year-old and not make her drive up for dinner.

Item #4 Meeting Procedures and Deadlines

“”: The next item on our agenda is discussion on meeting procedures and deadlines.

“”: Very briefly, what I’m trying to do, as you saw tonight, is to prepare motions probably typed, (tonight’s were handwritten) of your comments so Robin has an accurate written record of what happens so when someone asks of our Town Council exactly what happened as part of a motion, you have that information. I look at it as a win-win situation that you know exactly what you passed in writing that night, and then when people ask about it, you have it. And if I can figure out how to bring a laptop and printer, I’ll type them. But, otherwise, you’ll see it hand-printed as we go along, incorporating your comments, and then that will be included in the record and typed up as part of the final minutes. Last month I may have talked too much; this month I’m trying to be nice and precise because I promised Madame Chair that we wouldn’t be here 4 ½ hours or she can kill me.

“”: I’m not going to say anything. Does anyone else have any questions of the attorney in reference to procedures and deadlines?

“”: When applicants come and present us with drawings, etc. on the easel, if they haven’t already submitted a set to Robin with the equivalent, should those not be kept for our records?

“”: They should, but the issue is...I’m going to change your question slightly: When they bring something in the night of the meeting and you feel you haven’t had enough time to review it, you already have in place deadlines, and they have not been enforced recently, so my suggestion is that you put the word out that the submission deadlines are in place, and if the packet is not complete by the deadline in the zoning ordinance that the matter will be passed to the next meeting, so that you have the appropriate time to review. The only other thing is that you can’t control, and I say this because I’ve dealt with them, when plus puts a report out because plus is an arm of the state, and you can’t tell the state to do anything. So with all due respect, you can control what is in the town’s hands, the town engineer, the town solicitor’s comments, and you can control what the applicant does, but if the only thing that comes in late is the plus report, that is considered to be outside the control of the applicant. So if you feel you need more time, and I can understand that, and I had this emailed to me at 2:00 P.M. so I was reading it today for tonight, that you already have the power to defer if you do not feel you have sufficient time to review. You don’t want to do a “rush to judgment” that’s going to reflect mistakes. Having a clear record of part of that will make it easier so everyone knows exactly what you did, and the steps you took, and there’s a written record of what you did.

“”: Thank you. Does anyone else have any questions in reference to this? If not, the next...

“”: (Unintelligible conversation) You can bring it up...

“”: Previously, in September, I made a request that we to look at traditional use procedures and Mr. Brady had agreed to do that, but we haven’t gotten around to doing that. I’m not in a big rush and it can be deferred until January.

“”: I didn’t bring it with me tonight so I’m going to ask you to defer until January.

“”: Does anyone else have anything?

“”: The only other thing I wanted say is, Madame Chair, for your meeting next week, you will have a packet in the next few days regarding the resolution of both the litigation and the issues dealing with Shipbuilders Village, that will in your records near Friday. I

apologize it's less than the five days. There are three attorneys working on the case. That's the problem.

“”: Mr. Brady, you said you will be here?

“”: I will not be here because the “Golden Oldies” visit from Mr. Willard advising me next week is his final act on (unintelligible)

“”: Mr. Willard will be here next week to wrap up because he started with that issue and he'll finish it up.

Item #5 Review of the Zoning Ordinance Amendment to Article 8, Section 8.0.7, Paragraph 5

“”: This states they want to amend the zoning ordinance by adding to the first sentence the words “or verbal” following the “written”.

“”: I have a question for the attorney, please. Is a verbal warning enforceable in court?

“”: Absolutely. You have to give notice. Verbal warning can be notice on the file of record by the defending enforcement officer and if the ordinance permits it, it can be enforced in court. You're trying to give notice, as long as you give notice of a violation. What has been delaying these in the past is by doing the written, and in the thirty days, the issue came up with a sign that was erected without the proper permits or without the permissions, and when they looked to try to do it, they saw that there was an “onerous burden” on the town and it would take up to 70 days to get a sign taken out. This order cuts that period down to ten days. If they don't comply, then the sign can be removed and stored. And that's both for Article 8 and Article 13 in two sections where you deal with signs

“”: The next thing is to amend Article 8, Section 8.0.7, Paragraph 5 by striking from the third sentence the words “within ten days” and adding to the second sentence the word “verbal” following the word “written”. Now why do we want to strike the ten days out? Why do we want to say that they have to correct the problem in 10 days, if I'm reading it correctly? “If the foresaid is not complied with, said sign shall be removed, repaired, replaced within ten days after receipt of the notice.” Why do you want to take the “ten days” out? Are you just adding the word “verbal”, or maybe I'm confused. I mean, don't you want to give them a time that they have to fix it or am I reading incorrectly?

“”: What it was supposed to say and, I'm re-reading it now, is that either written or verbal notice within the ten days, and it should be saying adding to the second sentence following the word “verbal” or “written”, and in the third sentence, What was designed here was that the sign in question be removed. They were given ten days to act. You have to give a time period, and ten days should be sufficient.

“”: So, we're leaving the “ten days” in; we're not taking out the ten days” to correct the problem.

“”: I need to fix that. “In ten days”. I think that's a typing error.

“”: So what you're saying here is that it could be either verbal or written?

“”: That's what it's supposed to say. Correct. And I think that's what Robin and I talked about when we put this together. I think I just got it typed wrong.

“”: Because it would be like simultaneous; first Robin or someone gives the verbal, or if you bring it in writing. And we're going to leave the ten days, if what you're saying.

“”: Yeah, what it's supposed to say is like the other part of it, like number one, “or verbal”, “within ten days after receipt of the verbal or written notification”.

“”: So actually all we’re doing is adding the word “verbal” in the sentence; we’re not taking the “ten days” out, correct?

“”: Correct, so I’ll fix that right now, and make that on the comments going back from this commission to the town council that that’s how you wish it to be changed.

“”: Okay, and then, we’re striking the third sentence and replacing with “the code enforcer shall have the sign in question removed and the bills for the cost of removal shall be sent directly to the property owner.” So that is...

“”: You still have to say who the town is. It’s a legal entity and we try to make it specify that it’s the code enforcement officer who has that responsibility.

“”: Okay, is everyone comfortable with all of this? Then, we need to make a motion on these...do we make a motion on all of them or on each one. What are we doing?

“”: We make a motion all of them at once.

“”: Mr. Brady

“”: I changed in line 3, the second line, it should say the fourth sentence. In the second one, it says, by adding, taking the second line out, the number 2, delete everything from striking through the word “and”, and it says, “now to be further amend Article 8, Subsection 8.07(5) of the zoning ordinance by adding to the second sentence the words “or verbal” following the word “written”. And in the first one, I think I actually got it right.

“”: Okay, so do we do all of these and then make a motion on all of them? There are two more. Or do you want to do all of Section 8 at one time?

“”: It would be better to do it for Article 8 first, and then Article 13.

“”: Okay, is everyone comfortable with this, that is, the changes that we want to recommend to town council?

“”: Yes. The ten days is staying.

“”: Can someone make a motion?

“”: I move that we approve these as presented and amended.

(The motion was seconded and was carried unanimously.)

Item # 6 The Amendment to Article 13, Section 3.1, Procedure for Abatement of Violation, Subsection 3.1.1

“”: The next thing is the amendment to Article 13, by adding the word “or verbal” after the word “written”. It’s probably the same thing as the other one, so that it can be either verbal or written, is that correct?

“”: That’s correct.

“”: Okay, is everyone comfortable with that?

Item #7 – Amendment to Article 13, Section 13.1 Procedure and Abatement of Violation Subsection 3.1

“”: The next thing is to further amend Article 13, Section 13.1 Procedure and Abatement of Violation Subsection 3.1 by striking from the sentence the words “fourteen days.” Now why do we want to take the “fourteen days” out?

“”: The basis for taking the “fourteen days” out is, it gives fourteen days when the violation is not a violation.

“”: It does what?

“”: The way the ordinance reads now is to give fourteen days when a violation is not a violation. If you look at the way it reads, it says, “Fourteen days after notification, the condition shall be considered a violation. So...

“”: That’s the only time.

“”: Right. That’s the only time. It’s like two, three weeks, when we know it’s a violation, but we’re winking and it’s not a violation. What this now says is, that we’ll change it to “after notification, the condition shall be considered a violation and subject to appropriate penalties.” So, you give notice and if they don’t immediately respond, then you can go because of what it says here is that each week the violation continues shall be a separate offense. You inadvertently were giving two or three weeks when you could be in violation. And this’ll now say, “Not exactly.” When you get that notification, you have to act within a reasonable time, and if you don’t, there’s a violation, and there’s no two-week period where it’s not counted as a violation. That’s why that entry “fourteen days” is my legal recommendation to take out.

“”: Is everyone comfortable with that?

“”: Do we need to have a time certain in that the way we did in the other? Do we have to have “a reasonable time “is that what we’re going to leave in, or should it say five days, six days?

“”: No, a violation’s a violation. There shouldn’t be any time allowed.

“”: Right, but down below the Section 13.1.3, it say, “in the event the violation is not remedied within the time allowed”. What is the time allowed?

“”: I guess that would be back in fourteen days.

“”: I know. That’s why I’m asking.

“”: The Code Enforcement Officer would be giving the notice and would be saying, “You must resolve this immediately.” If they don’t act immediately, it would go the Justice of the Peace Court. Under another ordinance, I’m the one who has to prosecute it Justice of the Peace Court. I’m not going to prosecute somebody the day after he gets the notice. I look at it as “willful”; if they don’t do anything, then we have notice, and the notice is either done verbally or as it says, or by certified mail, or by other mail, and we can show that they had notice, and they didn’t act, then I have the “willful” part, where the culpability level is not established, and culpability is under the criminal code, because this turns into a violation, you have to have a “knowingly” requirement, they have to know the violation, and the Court will not convict them if they did not know. And that’s why we’ll have to have actual notice if they fail to act. I think the letter would come from the Commission to the effect of, “We found this violation. You must take of this immediately. If you do not act immediately, then you may receive a summons to appear in Court. Under our ordinance, each week that this violation is in place, is a separate offense.” But, Madame Commissioner is correct. When you read it, in the sense it should be Ordinance 13.11 and 13.13, you probably eliminate “if the violation is not remedied within the time allowed”. You should probably change in 13 “time allowed” to within five days, or ten days.” That’s where you would fix it now.

“”: But now, can we fix that tonight?

“”: Yes. You can amend that right now, and make that as part of the recommendation to go to town council at their next meeting.

“”: So, what do you feel is the appropriate time, say “within whatever that time will be”, what do we feel is appropriate?

“”: Five business days.
“”: Five business days?
“”: Well, it may depend on the violation.
“”: As an example, the house that was built on town property where they started a foundation, it takes a little bit longer to get rid of that than it did to have someone remove a sign that’s illegally put in their yard.
“”: Yes, they’d respond to it within five days.
“”: This is true.
“”: But this says “if the violation is not remedied”
“”: Right. So that would be included...(inintelligible conversation)
“”: In that case, they would tear the foundation down and fill the property.....
“”: (Unintelligible conversation – four people talking at once)
“”: How about within the...hmmm
“”: (More unintelligible conversation)
“”: Would it work to say....
“”: Is it possible to specify the amount of time in the letter sent out?
“”: Yes, we need to do it....
“”: That’s how I think it should be; I believe you could do a Number 3, further amend Article 13.13.1 Procedures for Abatement of Violation by inserting a 1.3 after the word “allowed by the Code Enforcement Officer”. And that specifies who does the time and the discretion. The standard and judicial view would be was his timing arbitrary or egregious, did they give him enough time to act?
“”: So you’re saying that the best way to do it would be is within the allowed by the Code Enforcement Officer.
“”: Yes.
“”: Is everyone comfortable with that? Is there anything else for Article 13?
“”: That should do it.
“”: If not, we can entertain a motion.
“”: I move that we approve the changes to Article 13, Section 13.1 and 13.1.3 as amended.
(Motion was seconded and carried unanimously.)

“”: Do we have a motion to adjourn.
(Motion was seconded and carried unanimously.)

Meeting was adjourned at 9:10 P.M.

Transcription by Barbara A. Coral