

1 MS. ROGERS: Okay. We are going to open
2 tonight's meeting of the Planning & Zoning Commission.
3 Are there any additions or corrections to the agenda?
4 Okay. We were given some information in our packet in
5 reference to the historic -- No? What do you want me to
6 do then?

7 UNKNOWN SPEAKER: Stephanie is here to talk
8 about the historic preservation for the --

9 MS. ROGERS: So we want to add that onto the
10 agenda?

11 MS. STEPHANIE PARKER: Well, I understand
12 that you guys got the proposed ordinance revisions at
13 the very last minute, and I can certainly come to
14 another meeting when you have more time to review it. I
15 just wanted to come to be here to answer any questions,
16 if anyone had any questions.

17 MS. ROGERS: So we will probably have to put
18 it on next month's agenda, giving everyone the
19 opportunity to review the information that we have.
20 Okay. Sorry for your inconvenience.

21 (Unintelligible.)

22 MS. ROGERS: I don't know. Where is it?

23 UNKNOWN SPEAKER: Sorry I'm late, everyone.

24 (Unintelligible.)

1 UNKNOWN SPEAKER: You have to have a written
2 excuse.

3 UNKNOWN SPEAKER: Oh, yeah? We don't have
4 that.

5 MS. ROGERS: Well, we didn't get anything.

6 UNKNOWN SPEAKER: I'll write you one.

7 UNKNOWN SPEAKER: We didn't get anything.

8 MS. ROGERS: So we didn't get anything.

9 MS. PARKER: Oh, okay. Well, hopefully, it
10 will be gotten to you --

11 MS. ROGERS: It will be gotten next month.

12 MS. PARKER: -- very soon.

13 MS. ROGERS: Okay. Well, then there will
14 be -- Does anyone else have any additions, corrections,
15 changes to the agenda? We don't have any minutes to
16 approve either. Okay. We don't have any minutes to
17 approve.

18 So the next thing is to discuss the storm
19 water drainage issues in Shipbuilders Village. Is this
20 two separate items?

21 (Unintelligible.)

22 MS. ROGERS: And we are probably going to
23 discuss the major subdivision of the parcel of land
24 located on the northwest corner of the intersection of

1 Mulberry Street and Shipbuilders Boulevard, property
2 further identified by Sussex County Tax Map and Parcel
3 2-34-14.00-565.00.

4 Is there anyone present on behalf of the
5 application or request?

6 UNKNOWN SPEAKER: Ms. Rogers, the record
7 should reflect that the Applicant looked at me.

8 MR. VINCE ROBERTSON: Thank you, Ms. Rogers;
9 Vince Robertson from Griffin & Hackett. I'm here on
10 behalf of the Applicant. Because this is old business
11 and because we had a public hearing back in July of
12 2006, at which time, you know, the record was opened and
13 closed with comments by me and members of the public.

14 And I'm not sure exactly what needs to be
15 presented this evening. It was deferred at that point,
16 and I think so Mr. Brady and perhaps Mr. Willard could
17 review some of the documents that were submitted, which
18 included an old site plan that was signed off by the
19 mayor.

20 There was some information that was
21 submitted regarding storm water management on the
22 entire -- oh, excuse me -- the entire Shipbuilders
23 Development.

24 So I'm not prepared to make a presentation.

1 I don't know that it would be appropriate to do so,
2 since we had a public hearing and the record was opened
3 and closed at that time. I don't want to, you know,
4 prejudice members of the public that spoke last time
5 around or may be here this time around.

6 So I guess unless there are specific
7 questions for Mr. Willard or the Commissioners, you
8 know, that's pretty much the conclusion of my remarks.

9 MS. ROGERS: Well, first of all, as you have
10 heard, we didn't get any of this information until 4:00
11 this afternoon, so we haven't had a chance, really, or
12 an opportunity to review anything that was submitted to
13 us. But we are here to hear whatever comment that you
14 have.

15 MR. WILLARD: Well, yeah, maybe -- Tim
16 Willard, for the record. Is this okay?

17 UNKNOWN SPEAKER: A little closer.

18 MR. WILLARD: Closer? Jack, one, two. Is
19 that -- Thank you very much. My name is Tim Willard,
20 and I actually represent the Town of Milton, although
21 I'm not your Town Solicitor.

22 In this regard, there has been a storm water
23 problem in various areas of Shipbuilders. And I stayed
24 involved with that and, actually, there is still some

1 litigation pending. This -- and I have talked to your
2 Town Solicitor, Mr. Brady, about this application, and I
3 think Mr. Robertson sort of summarized the procedural
4 posture here. That is, there are 2.4 acres, and you
5 cited the tax parcel number at the entrance of
6 Shipbuilders.

7 But the Applicant has requested to subdivide
8 into six lots, 10,000-square foot lots, and leave about
9 30,000 square feet of recreational area. I don't -- you
10 know, Mr. Robertson and I talked about this. And you
11 know, I think what they are looking for is some
12 recommendation to go to Council to approve or deny and
13 for the reasons why. I mean that is ultimately what you
14 do when you look at a subdivision.

15 And this thing has just been floundering out
16 there. And Mr. Brady called me a few times about it,
17 and I told him the storm water issue is still
18 unresolved.

19 And let me tell you this, that with this
20 application pending, I suggested to the Applicant that
21 they address the storm water issues in Shipbuilders in
22 its entirety, because it's a problem. And on behalf of
23 the Town of Milton, we think the developer has a
24 responsibility to take care of that problem. And that

1 dialogue continued, and in fact, Mr. Robertson gave me
2 some proposed conditions. I added language to them.
3 And we have -- I think you may have a first draft of
4 that next week, and I can give you another draft of it.
5 And if you have to defer this and put it on another
6 calendar to digest it, you know, that is obviously
7 understood.

8 The subdivision plan -- do you all have
9 that? It was the one originally submitted. If I can
10 just stand up (unintelligible).

11 UNKNOWN SPEAKER: Is this the one that --

12 MR. WILLARD: Yeah, that's it.

13 UNKNOWN SPEAKER: Is this the one you
14 brought to us last summer?

15 MR. WILLARD: Yeah. That's the one that is
16 still pending, isn't it?

17 MR. ROBERTSON: Yes, there was -- yes, it's
18 the same one. And as I said with the record last time,
19 there was a site plan that you have in front of you.
20 There were several exhibits that remain in the Town's
21 record which included the October of 2000 approved and
22 recorded site plans, copies of the Duffield Report, and
23 letters from Sussex Conservation District.

24 All of that is in the record. So we are not

1 submitting anything new this evening, nor in
2 anticipation of this evening, because the record, as I
3 said, was opened and closed at the time of that public
4 hearing in July of this summer, 2006. So you know,
5 that's -- and the Commission deferred, like I said, so I
6 think Mr. Brady requested an opportunity to review the
7 information that was submitted.

8 And Mr. Willard and Mr. Brady and myself
9 have been talking about it, as Mr. Willard stated. One
10 of the things was to, you know, get it back on agenda.
11 So hopefully, from my point of view, a decision could be
12 made -- and a favorable one -- but if nothing else, just
13 to keep things in front of the Commissioners so that we
14 could keep it moving forward.

15 MR. WILLARD: If I can maybe address the
16 issue that Mr. Brady was going to look into, because I
17 think -- you know, I've been gone for a few years. But
18 I think I looked into it at one point. And in the
19 context of the litigation with Shipbuilders and
20 Gemcraft, we have done various title searches.

21 And one thing that I have in my possession,
22 based on a title search that we did was -- it's page 69,
23 if you care, for the record, I think -- or book 69, page
24 50. And it's a 2000 -- the year 2000 plot plan for

1 Shipbuilders Village. And it includes this parcel. I
2 don't really, quite frankly, unless I compare it to an
3 older one, know what was changed on it. But the land in
4 question -- that is 2.4 acres right at the entrance --
5 it says reserve for future development. And this has
6 been recorded and presumably approved by the Town, which
7 it has to be, because it's got the Mayor's signature on
8 it.

9 So all I can tell you about that -- I know
10 there was some question, and I, too, have seen like the
11 1988 or '89 master Shipbuilders thing that referred to
12 this as open space. It's not uncommon, whether it's in
13 a town or a county sometimes to have changes in major
14 subdivisions, and maybe that happened. This development
15 has changed hands.

16 But you know, my obligation in addressing
17 this particular issue is to see what was recorded,
18 because that ultimately is what dictates what the plot
19 plan is. So that's what I found. And Mr. Robertson --
20 it seems like years now, but when we went to this issue,
21 that's what I finally found. And I said: Yeah, Vince,
22 I think you're right. It's not barred, at least by the
23 plot plan. You know, whether a private citizen says
24 equitable -- maybe standing to challenge it, that's a

1 different issue. But based on the plot plan that is
2 recorded as of the year 2000, this particular plot is
3 not barred from that. In fact, it was reserved for
4 development.

5 So that's all I can answer on that. Your
6 Town Solicitor, I don't know if he's got comments or
7 researched it. But that's what our research shows.

8 On the subdivision itself, normally, or it
9 used to be, when your town engineer -- does Mr. Kerr
10 still work for you guys?

11 UNKNOWN SPEAKER: Yes. He's unavailable
12 tonight for a death in the family.

13 MR. WILLARD: Oh. That's too bad. But you
14 know, you review the site plan for just statutory
15 engineering requirements. In the particular case, I've
16 given it a preliminary review, although I'm not an
17 engineer, just for technical things like do the lots
18 meet the size? Do they have the 75-foot frontage? They
19 are on an existing road, you all, so you have an open
20 space ordinance if you just take this as a separate
21 subdivision, which requires five percent.

22 They are keeping, I believe, 30,000 feet,
23 which they would be required to keep approximately five
24 and showing a pool area and building. So it looks as

1 far as the size and frontage that it meets your statute
2 requirement.

3 What I'm most concerned about is that the
4 storm water system be -- that it be required to be fixed
5 for the entire development, because that seems to be an
6 issue and may be an issue in pending litigation. You
7 are not here to resolve that litigation. You just --
8 the Applicant is knocking at your door to ask to cut up
9 a few more lots. And to the extent this Commission is a
10 recommending body and can recommend approval, denial,
11 based on statutory requirements, you also can impose
12 conditions that are within your guidelines for
13 subdivisions.

14 And one of those standards of subdivision
15 speaks to the streets and sewers. It says must lend
16 themselves for harmonious development of the town and
17 enhance the public welfare in accordance with the design
18 standards. So I think you have the authority to set a
19 condition to require the developer to fix the storm
20 water system.

21 So when Mr. Robertson said that the
22 Applicant would be willing to do that, as they
23 presumptively were a couple of years ago when things
24 kind of blew up and we ended up fighting about it, and

1 we've been stalled. Now, based on doing this, they
2 said: We will do that.

3 So starting with his proposed conditions --
4 which some are boiler plate and the subdivision meets
5 the standards -- we've added language. I'll just read
6 out loud to you, because it's very short. And this is
7 just proposed; that if you recommend approval of this
8 subdivision, that these conditions would be attached to
9 that. It would be recorded, and they would be
10 actionable.

11 In addition -- and I quote -- the developer
12 has agreed and the Town required, in conjunction with
13 the development of these lots, to complete and correct
14 the storm water management system that exists within the
15 entire Shipbuilders Development, especially on Mainsail
16 Avenue -- and it probably should include the other
17 avenue next to there, but that's more illustrative --
18 during heavy rains where flooding occurs. The plan
19 shall be in accordance with the recommendations set
20 forth in the Duffield Associates Report consisting of
21 discharging the storm water from the Shipbuilders
22 Project to a pipe system installed in the adjacent
23 Robino lands and to be carried for final discharge in
24 the storm water basin located on the school property,

1 with the requirement that both Robino and the school
2 will have to provide appropriate easements in favor of
3 the Town.

4 So there's some significant ifs there. I,
5 however, added in there that that should be attached to
6 these proposed conditions as an exhibit and also
7 included the language: Or another plan approved by the
8 town engineer and Sussex Conservation District.
9 Consequently, the entire subdivision will benefit from
10 the approval.

11 And then as one of the conditions, as
12 improvements are made to these six lots, if you think
13 they are appropriate, the developer shall comply with
14 the requirements set forth in the drainage improvement
15 plan from Duffield Associates Report or another plan
16 approved by the town engineer and Sussex County
17 Conservation District consistent with paragraph seven,
18 which I just read. No certificate of occupancy shall be
19 released for lots in the proposed subdivision until the
20 storm water management project is complete and approved
21 by the town engineer, in any event, not later than
22 January 1, 2008.

23 And then the current developer,
24 Shipbuilders, these conditions apply to the developer's

1 successors and assigneds and shall be recorded with the
2 subdivision plot in the Sussex County Recorder of Deeds.
3 Purchasers of the proposed subdivision lots are
4 expressly notified of these conditions and that
5 certificates of occupancy may be withheld until the
6 storm water management system is complete and/or
7 declaratory and compensatory relief may be sought by the
8 Town.

9 So on behalf of the Town, I just tried to
10 put some teeth in the proposed conditions, saying:
11 Okay. If these six lots are not barred by what has been
12 previously recorded, if they meet your statutory
13 requirements for size and frontage and technical things
14 like that, then this is a condition that I believe is
15 reasonable. The Applicant, in negotiations with them,
16 seems to be okay with them. That is, if the subdivision
17 is approved, this would be the law of the land for that.

18 And to the extent you are just getting this
19 tonight and there is more information, I know you may
20 have to consider it and talk to your Town Solicitor. I
21 can just tell you that John and I have spoken about
22 this. He hasn't seen this document.

23 But the action you need to decide is what
24 your recommendation should be to Council, whether to

1 approve this subdivision or not and with what
2 conditions.

3 And on behalf of the town, I'm trying to
4 propose some conditions that may alleviate some problems
5 you've had there. Your contemplation of other aspects
6 of the subdivision are certainly your province for
7 discussion.

8 Do you have anything you want to add, Vince?

9 MR. ROBERTSON: No. Like I said, really,
10 since we relied on the record that was made during the
11 public hearing, I would just rather have that stand
12 alone. The proposed conditions that we submitted were
13 based upon the evidence that was in the record. There
14 wasn't anything new in that. Mr. Willard -- and those
15 were submitted to Mr. Brady and Mr. Willard.

16 Mr. Willard, as he stated, added some
17 additional language there on behalf of the Town. So I
18 don't have anything else to add.

19 UNKNOWN SPEAKER: Tim?

20 MR. WILLARD: Sir?

21 UNKNOWN SPEAKER: What are the issues with
22 the storm water?

23 MR. WILLARD: When it rains a lot,
24 Mainsail -- and maybe there is a resident here that can

1 testify.

2 UNKNOWN SPEAKER: It doesn't --

3 MR. WILLARD: It's a nightmare. You can't
4 get to your house.

5 UNKNOWN SPEAKER: We're lucky we live on the
6 opposite side of the drainage ditches. But yeah, it
7 comes up enough to the wheels, the tops of the wheels of
8 the cars.

9 MR. WILLARD: Yeah, and I've seen --

10 UNKNOWN SPEAKER: I've seen the Town or
11 somebody who has pumped water out of the --

12 UNKNOWN SPEAKER: Yeah. They have pumped it
13 (unintelligible.)

14 UNKNOWN SPEAKER: Maybe it's --

15 MR. ROBERTSON: It's the developer. They
16 have a -- they have a pump there.

17 UNKNOWN SPEAKER: Yeah, the developer was
18 doing it. The developer was doing it. But I guess
19 Mr. Capano at one time said he's not paying them
20 anymore. So now the Town is paying Christiana
21 Excavating to come out and do it. That's the last I
22 heard, the Town was paying.

23 (Unintelligible.)

24 UNKNOWN SPEAKER: Yes, because the Town

1 feels that it's a safety issue for the road.

2 MS. ROGERS: But the towns aren't -- the
3 streets aren't dedicated to the Town yet, are they?

4 UNKNOWN SPEAKER: No. But in the ordinance,
5 in the charter, the Town has the responsibility for the
6 safety of the residents. And it was determined at that
7 time that if Mr. Capano or Shipbuilders' sub wasn't
8 going to do it, the Town needs to take care of that.
9 And then we will argue that out with Shipbuilders.

10 MS. ROGERS: And are we still issuing COs
11 and everything there?

12 UNKNOWN SPEAKER: Yes. Well, actually, the
13 COs are actually completed. Everything is done in there
14 except for the six lots and I think two lots in the
15 back.

16 MS. ROGERS: Oh.

17 MR. WILLARD: They -- in fact, the Town
18 withheld COs because of the flooding. And the Court
19 said you can't under these circumstances. And those
20 circumstances were at the time, you know -- it was kind
21 of involved.

22 MS. ROGERS: But they could probably stop
23 building permits, but that's too late, too, because they
24 are built out.

1 MR. WILLARD: Yeah. I guess. I don't know
2 the status. It sounds like they are built out. I mean
3 hat you're addressing -- What you are addressing is a
4 subdivision on a smaller portion of this subdivision
5 that was never divided. The history of this -- I'm
6 getting more involved in this. And Mr. Robertson lives
7 and breathes this in the county -- is that it probably
8 wouldn't even done this. I think we've all tightened up
9 a little bit. You know, they didn't form a homeowners
10 association. They really didn't -- they don't want to.
11 There's not the will to. That's -- I don't know if it's
12 been taken care of, the property itself. What the
13 Applicant is proposing is to keep some recreational
14 area.

15 And I would even submit, although I haven't
16 done it in these proposed conditions that -- or maybe
17 you have addressed it, Vince -- is that there be some
18 condition, also, to make an effort to form a homeowners
19 association.

20 But since this is on your plate and you
21 really have to make a recommendation to Council, you
22 know, whether it's thumbs up or thumbs down, I think it
23 would be really prudent to consider saying enough of
24 who's responsible for this flooding. There is a problem

1 out there. I believe the developer should fix it. And
2 this is a way to say: You have to fix it. And they
3 seem to be agreeing to it, with the idea of also
4 knocking at the door, because they have this property
5 they can't do anything with. There is no homeowners
6 association.

7 You know, whether it's even appropriate to
8 put two, three more lots on the entrance and then two or
9 three on Mulberry is another question. It's not a large
10 subdivision, but --

11 UNKNOWN SPEAKER: I remember this as having
12 two parts. The first part was the flooding, that issue.
13 The second part was you brought to us a proposal to do
14 something with that property right off Mulberry Street,
15 right in front of the development.

16 That particular proposal, in my opinion at
17 the time, was completely unacceptable, the way it was
18 designed, the way the property was appropriated. But we
19 didn't get that far, because we postponed this and
20 postponed this.

21 But that's the second part, that you want to
22 develop this -- okay -- and do the problem with the
23 flooding separately. That's a little bit different than
24 saying: We will do it if you let us develop this. Is

1 that what you are asking?

2 MR. ROBERTSON: With all due respect, we
3 went through at the public hearing this entire project.
4 And we completed the hearing, and we hit all of the
5 ordinance requirements that are in the Town of Milton's
6 Code with regard to these properties and whether or not
7 they meet, as Mr. Willard said, all the technical
8 requirements set forth in the ordinance.

9 So I disagree with that statement, with all
10 due respect, as to -- it made it sound to me -- and
11 maybe I misunderstood -- but that you assumed that we
12 hadn't got to the point where we had a full public
13 hearing and whether we presented evidence.

14 I mean unfortunately, it doesn't look like
15 the Town brought the evidence that we submitted back
16 this evening, because there were large boards that had
17 the blow-ups of the original 2000 Shipbuilders site plan
18 that had the site plan that we've submitted. We've
19 submitted the Duffield report at that time.

20 One of my questions to the Town was: Do you
21 want me to leave these documents with you, because they
22 are part of the record? I was told: Yes. And
23 Mr. Brady wanted to review those documents. He wanted
24 to look, as Mr. Willard said, to confirm that what we've

1 proposed is the area reserved for future development.
2 So we have had a public hearing. And as I said, the
3 record was closed on that, and the exhibits were all
4 submitted that showed that we complied with the Town's
5 ordinances with regard to the subdivision of this
6 property at the corner of Shipbuilders and Mulberry.

7 UNKNOWN SPEAKER: And you are talking about
8 the session we had last summer?

9 MR. ROBERTSON: The public hearing that we
10 had --

11 UNKNOWN SPEAKER: The public hearing.

12 MR. ROBERTSON: -- last summer. I mean it
13 was advertised as a public hearing. The public
14 testified. I presented evidence. I presented evidence.
15 It was what it was. I mean I'm not mischaracterizing
16 it. That's what it was.

17 UNKNOWN SPEAKER: I had a question the
18 Commissioners could help me with. Sorry about tonight;
19 I had a car crisis. But as I remember from that public
20 hearing, there was a lot of back and forth, a lot of
21 controversy. It did not feel to me in any way like a
22 settled issue. But am I the only one remembering it
23 that way? I didn't have the feeling we were anywhere
24 near feeling comfortable with this development. But I

1 would love to hear what somebody else remembers.

2 UNKNOWN SPEAKER: Robin, do you have the
3 minutes from that meeting, by any chance?

4 MR. DAVIS: No, not with me, no.

5 UNKNOWN SPEAKER: As best I recall, there
6 were some people here from Shipbuilders who had issues
7 with the development of this (unintelligible). And at
8 that time to address those, we were shown some previous
9 plots that indicated this was designated for future
10 development. Okay. Then I think, if I'm not mistaken,
11 I made the point that development -- future development
12 was, you know, a number of things. And I considered the
13 building of the clubhouse, the construction of the pool,
14 the construction of the tennis and basketball facilities
15 to be development and not so much to limit the
16 development into strictly dwellings.

17 And I think maybe we deferred it based on
18 the fact that you may want to or someone may want to
19 have an opportunity to debate that or contest that
20 (unintelligible). Without the minutes, you know, I feel
21 I'm working on recall here. So it's --

22 UNKNOWN SPEAKER: I can't remember what you
23 said.

24 UNKNOWN SPEAKER: There would be no

1 additional -- and Mr. Willard's narration of all of this
2 would be, to me, a little bit -- would be strictly based
3 on the fact that we were ready to approve this as a
4 subdivision, then we should just certainly try and build
5 in whatever we need to resolve the storm water issue.
6 And I would agree with that.

7 UNKNOWN SPEAKER: Yeah, that's --

8 UNKNOWN SPEAKER: If we were to decide that
9 this would be an appropriate subdivision, we want to --
10 we really want to try and do a little housekeeping and
11 hope to clear up this storm water issue that's in the
12 back. And that makes some good sense. But I'm not too
13 sure that we're -- based on what I recall the public
14 hearing, the way the public hearing went, there was some
15 concern from a number of people who live in there that
16 this was always marketed and always promoted to them, as
17 buyers in there, as being some type of open/recreational
18 space.

19 And based on that, the fact that it was
20 developed as that, I felt that, you know, we should
21 not -- that we should basically make a recommendation to
22 Council to not approve it.

23 UNKNOWN SPEAKER: I guess, I guess --

24 UNKNOWN SPEAKER: And you weren't here. You

1 weren't here when all that went down.

2 MR. WILLARD: No. And I'm gathering that
3 you probably looked at Mr. Brady and said: Can you get
4 back to us on that? And maybe --

5 UNKNOWN SPEAKER: And in all fairness to the
6 Applicant, as well, because again, I -- you know, in
7 reading some definitions on what the Town language
8 determines to be developed versus open space versus --

9 MR. WILLARD: Well, let me share this with
10 you while I've got it in front of me. And you know, I
11 can talk to Mr. Brady about his finding on this. I am
12 kind of here to surgically, say: Gosh, if you guys are
13 considering this, please --

14 UNKNOWN SPEAKER: Right.

15 MR. WILLARD: -- do everything you can to
16 make them fix the storm water.

17 UNKNOWN SPEAKER: And we agree with that.

18 MR. WILLARD: Okay. So we are all on the
19 same page there. And these proposed facts or additions,
20 actually, with an attached engineer's plan, plus it
21 would have to put in a final, and plus I put in there
22 that it would happen within a year. Then we would be in
23 the driver's seat as far as making it happen.

24 But in the plot I'm looking at -- I'm not

1 sure of the date. I think this is a 1990 or 1989
2 plot -- it includes this area, the 2.4 acres, and it is
3 designated as recreational. Subsequent to that, a plot
4 was amended. I don't know what else was changed. But
5 it was approved by the Town and recorded and changed to
6 a development area.

7 So my argument to you, as far as how you
8 interpret the word development, would be by comparison
9 or negative implication that it was perhaps what you
10 think it was, recreational, and that the Applicant or
11 developer made an application to change it so they could
12 develop it.

13 And I think maybe one of the reasons was
14 they didn't have a homeowners association, and it was
15 just in a big vacuum, as far as who was taking care of
16 it. That's speculation on my part.

17 UNKNOWN SPEAKER: No, no, no, there was --

18 MR. WILLARD: But it seems more like the
19 record indicates that the change was made to develop it
20 versus recreation.

21 UNKNOWN SPEAKER: There was issues brought
22 up at the public hearing. People -- you know, there's a
23 lot deeper roots to this thing than we're getting into
24 (unintelligible) between the developer and the

1 homeowners. And that's something that I think the Town
2 needs to stay out of.

3 MR. WILLARD: Yeah, and I think -- and I've
4 actually counseled as far as the sewer situation and
5 stuff like that that the homeowners -- you know, there's
6 nothing to say. They don't have a private act here.
7 And the Town actually did what they did as far as
8 pursuing, because we were sued for the COs. And I
9 countersued against Gemcraft and cross-claimed against
10 Shipbuilders, because it was sort of a nothing to
11 nothing. You know, that takes a long time, and the
12 rains keep coming.

13 And I'm here tonight on behalf of the Town
14 to say: If you are all considering this, you know,
15 please consider these proposed conditions.
16 Mr. Robertson has been very forthcoming in negotiating
17 with me.

18 UNKNOWN SPEAKER: Well, that --

19 MR. WILLARD: So I understand you have a
20 bigger issue to deal with, and you might have to deal
21 with your Town Solicitor, as far as getting your
22 advice -- his advice.

23 UNKNOWN SPEAKER: Right.

24 MR. WILLARD: As far as what has been

1 recorded, it seems to me that my research shows that
2 it's -- based on recorded documents, that doesn't refer
3 to you. Obviously, you can have opposition from
4 adjacent homeowners. You have that a lot.

5 UNKNOWN SPEAKER: Well, that is what I
6 recall, that there was some concern by the homeowners in
7 there that this shouldn't be developed period. It's a
8 no-brainer to say if we decide to do it, to go ahead and
9 incorporate --

10 UNKNOWN SPEAKER: Right.

11 UNKNOWN SPEAKER: -- the language necessary
12 to resolve it. That's a no-brainer. That can certainly
13 be done. But without the minutes, it's difficult for me
14 to remember July's meeting. But it seemed to me that we
15 had people standing in here --

16 MR. ROBERTSON: We had -- it was full.

17 UNKNOWN SPEAKER: -- that were concerned
18 about the development of this or the subdivision of this
19 corner, period. And based on that, I mean --

20 MR. ROBERTSON: Can I make a suggestion?

21 UNKNOWN SPEAKER: You can do whatever --

22 MR. ROBERTSON: Because Mr. Brady and I have
23 had some discussions about this, as we stated,
24 Mr. Brady, I think requested after the July meeting, and

1 rather than me state, I guess, sort of in hearsay
2 fashion what Mr. Brady's discussions with me were -- and
3 in light of the fact that it appears that you don't have
4 the exhibits that we presented nor the minutes in front
5 of you. And again, sort of unfortunately, Mr. Brady
6 isn't here to talk about what, you know, our discussions
7 were in his opinions, I'm comfortable with a deferral on
8 it so it can be put back on an agenda at some point when
9 Mr. Brady is present.

10 We had the minutes here, and we can make
11 sure that the Town's got all the exhibits, you know, and
12 everything else that was presented during the hearing.

13 UNKNOWN SPEAKER: One thing I would like to
14 put into the record, the verbal record anyway tonight is
15 that that two other things that I remember from the
16 residents. One is that I think a show of hands showed
17 that pretty much everybody who had bought a lot in there
18 was promised all these recreational facilities and the
19 use of them. And that was used as one of the big
20 selling points.

21 And the other was that, in fact, there were
22 two attempts to start a homeowners association, one with
23 quite a large number of people. And both were, to some
24 degree, squelched or made difficult by the builder.

1 Everybody had been promised use of the community center
2 and so on and so on when the first homeowners
3 association wanted to meet. And there were far too many
4 to meet in any one home. There were 50 or 60 people.
5 They wouldn't let us use the community center.

6 So I shouldn't say us, but -- you know, to
7 me, those things are so clear. And the fact that we
8 would even discuss anything else until they fix the
9 drainage problems, to me, is just beyond belief.

10 MR. WILLARD: Well, what you have to --

11 UNKNOWN PERSON: But I'm only one person.

12 MR. WILLARD: But -- yes, I'm sorry to
13 interrupt. But what you have to realize is that in
14 approving or denying a subdivision, there is criteria to
15 do it. And some of it is pretty discretionary. But if
16 a property is zoned a certain way, you have the right to
17 subdivide it if you meet all the statutory requirements,
18 but you have to check them off. And I don't mean that
19 it's been done in this case, because you know, we don't
20 have the minutes from the public hearing that considered
21 it.

22 But some subdivisions -- or I don't want to
23 say by right, but you just can't deny them just because
24 somebody doesn't want them. I say that as a gross

1 generalization. But in this case, as I said again, my
2 concern is the storm water.

3 What I would like to do is forward these
4 proposed findings that Mr. Robertson and I at least
5 negotiated to Mr. Brady. And hopefully, you all can put
6 this, as I say, on maybe the next agenda or something
7 and have all the minutes and everything.

8 UNKNOWN SPEAKER: Yes. It would be good to
9 see those minutes from that meeting and really go over
10 them.

11 UNKNOWN SPEAKER: The plot of the drawings
12 that we have (unintelligible) refers to another plat by
13 McCann recorded in 1994. And there's a -- everywhere we
14 turn, there is information, like in the deed, that
15 refers to that plot as being a recreational area. So I
16 mean -- I mean if there's no other discussion, I mean I
17 would make a motion that we defer it to the next meeting
18 to get an opportunity to double-check the minutes from
19 July's public hearing and --

20 UNKNOWN SPEAKER: And check with Brady.

21 UNKNOWN SPEAKER: -- and yeah, give John
22 Brady a chance to weigh in a final.

23 UNKNOWN SPEAKER: One comment, before you go
24 ahead with your motion.

1 UNKNOWN SPEAKER: Sure.

2 UNKNOWN SPEAKER: It would seem to me like
3 the storm water issue is to be addressed and fixed,
4 completed before I could make a vote in favor of this.
5 I mean that's been an issue, it seems, since the
6 Shipbuilders has been built. And to come before us, one
7 thing, to put in more homes when there is a serious
8 issue with storm water management.

9 With all due respect, Vince, I know you are
10 just representing your client, but it seems a little
11 brazen.

12 UNKNOWN SPEAKER: I'm not coming to
13 Mr. Vincent's defense, because it's interesting, because
14 you know, as Robin indicated, the town goes in there and
15 pumps this because of what they believe is their
16 obligation for the safety of the community. The
17 streets, as we can tell, and storm water has never been
18 dedicated over to the city. So part of the city can
19 say: Well, this is not our problem. But the city is
20 not that mean, right? So we take care of the people.
21 And it's a little blurry as to whose responsibility it
22 is.

23 And if maybe a court may decide that, then
24 the homeowners may be holding the bag as far as

1 litigating this or thrashing that out. I think that the
2 developer is responsible, and that is what should
3 happen. The developers somewhat recognize this in at
4 least these negotiations.

5 But when you say no more lots should be
6 built and we shouldn't have any more people there if we
7 have this problem now, it seems prudent that conditions
8 that we drafted are drafted in such a way that says no
9 CO will be issued unless storm water is complete.

10 UNKNOWN SPEAKER: Until January 31st, or
11 January 1st of '08, (unintelligible).

12 UNKNOWN SPEAKER: Well, what it says is: In
13 any event, it should be completed by within one year.
14 Okay. So even if they are not ready to build or issue
15 COs, it should be completed at that time or the Town can
16 seek compensatory or declaratory relief.

17 We can go to Chancery Court and say they
18 have agreed to these conditions by January 1st of '08,
19 and they haven't done it. And my intent there is that
20 takes away the issue of who is responsible. They are
21 agreeing they are responsible by the statement no more
22 houses will go up by that time. I'm just trying to
23 seize the moment. That's why I put it that way.

24 UNKNOWN SPEAKER: So that's basically one of

1 the teeth.

2 MR. WILLARD: That was my intent, so just to
3 get the thing off the dime and say, one, you are
4 responsible; two, it's going to happen by this time.
5 And this is on the backdrop, of whether or not they are
6 entitled to this development or not is an issue that,
7 you know, the Applicant thinks they are, and I think
8 they have met the statutory requirements. And
9 certainly, I know you do respect Mr. Brady's opinion --
10 and he usually has one or two --

11 UNKNOWN SPEAKER: God bless him.

12 MR. WILLARD: I mean we need to get him in
13 this dialogue. But I mean I shared with him where we
14 got to to here. And maybe at the next meeting, you
15 know, we can move it along, one way or the other. So
16 the Applicant can decide what to do and so the people
17 who live in Shipbuilders can decide what to do.

18 MS. ROGERS: Okay. We have a motion to
19 defer --

20 UNKNOWN SPEAKER: You may go ahead with your
21 motion.

22 MS. ROGERS: We have a motion to defer. Is
23 there a second?

24 UNKNOWN SPEAKER: I second.

1 MS. ROGERS: A motion and a second. All in
2 favor?

3 UNKNOWN SPEAKERS: Aye.

4 Ms. ROGERS: Opposed? Deferred. Seeing no
5 other items on the agenda, we have --

6 UNKNOWN SPEAKER: We will have a square
7 dance now.

8 UNKNOWN SPEAKER: Motion to close the
9 meeting.

10 MS. ROGERS: I have a motion to close.

11 UNKNOWN SPEAKER: Second.

12 MS. ROGERS: Carried.

13

14

15

16

17

18

19

20

21

22

23

24

1 State of Delaware.)
2 Kent County)

3

4

5

CERTIFICATE OF REPORTER

6

7

8

9

10

11

12

13

14

15

Cheryl A. Anthony
Delaware CSR
Certification No. 107-PS
(Permanent Certification)

16

17

18

19

DATED: _____

20

21

22

23

24