

1 MS. ROGERS: Call the meeting to order.
2 This is the regular meeting of the Planning & Zoning
3 Commission. It's March 20th.

4 The first item on the agenda is any
5 additions or corrections to the agenda. The request has
6 been made to allow public comment again, to be taken at
7 the time of this public hearing, even though we've had
8 two opportunities prior to this meeting to have public
9 comment.

10 So Mr. Brady, do you need to make these
11 comments all over again?

12 MR. BRADY: Sure. The meeting notice that
13 was published did not indicate this to be a public
14 hearing or either public comment would be allowed on
15 this. This was under Old Business.

16 To recall the minutes that you have, this
17 came in in July of 2006 at a public hearing. You had
18 public comment from about 7:00 that night until about
19 8:20. This was, again, on the agenda in October of 2006
20 and in December at a special meeting in 2006. You
21 allowed public comment, and it was advertised as a
22 public hearing and public comment that night.

23 Under the Freedom of Information Act,
24 Chapter 101 of Title 29, agendas for meetings are to be

1 posted seven days prior. The agenda that was posted for
2 tonight's meeting simply had it under Old Business and
3 said the Applicant, Shipbuilders, LLC, is requesting a
4 major subdivision of a parcel of land on the northwest
5 corner of the intersection at Shipbuilders Boulevard and
6 Mulberry Street, further identified by Sussex County Tax
7 Map and Parcel Number 2-35-14.00-0565.00. There was
8 nothing on the agenda, as posted, that indicated there
9 would be public comment. Because of that, the attorney
10 for the Applicant chose not to be here tonight because
11 it was his belief, after reviewing the agenda, that
12 he -- that it was going to be decided, based on a review
13 of the minutes from the previous meeting, the record,
14 and the documents that were provided.

15 I knew and I was prepared to answer two
16 issues. And I believe all members of the Board got an
17 e-mail today about the 2000 plot plan that had been
18 submitted as part of it that was signed by Mayor Bushey
19 and countersigned by then-Secretary Bob Blaney.

20 I told Robin Davis earlier today or
21 yesterday to e-mail the Board and tell them that you
22 must deem that document as presumptively valid, because
23 it was recorded as a plat and it was signed by the way
24 the charter says it has to be signed, which is signature

1 by the mayor, countersigned by the secretary, and then
2 recorded. And it was properly recorded by my
3 predecessor at the Recorder of Deeds in 2000. And it
4 has not been challenged as of yet, until it came up.

5 Robin also told me that he found additional
6 documents that he thought would be necessary and helpful
7 for the members of Planning & Zoning to review as part
8 of the determination. However, as I told Robin, the
9 record technically closed in December.

10 So if you wish to allow the record to be
11 reopened, you could make a motion to reopen the record
12 and allow additional public comment. But to be fair, I
13 don't think you can do that tonight. There is nothing
14 that shows this is an emergency circumstance under the
15 Freedom of Information Act. So it would be something
16 that would have to be noticed and set for meeting with
17 at least seven days' notice so as the Applicant to be
18 present, if you wish the Applicant to respond and to
19 give notice to the people in the community that
20 additional comment would be permitted, along with the
21 additional documents.

22 I can answer a legal question for you. I
23 can talk about -- I can have Mr. Willard talk about the
24 court case. That's fine. That's been referenced

1 before. But these new additional documents that are in
2 front of you and any pictures or any additional comments
3 that may be made by a member of the public, because it
4 wasn't noticed on the agenda, would not be properly
5 following the agenda under the Freedom of Information
6 Act.

7 So you basically have two choices. As was
8 referenced before the meeting -- but that was just
9 general comments before the meeting -- you could vote to
10 reopen the record and to wrap this up at a special
11 meeting, where the record will close that night, all
12 public comment will end, and you can determine that
13 matter; or you can stay with the agenda that you have in
14 front of you, which would not permit you any additional
15 comment nor would it permit you any comments of the
16 Applicant, because the Applicant or the representative
17 is not present here tonight, based on the agenda that
18 you were just going to deliberate in public under Old
19 Business and make a determination or forgo a
20 determination.

21 The other factor that you need to know is
22 that -- and this is not qualified as an executive
23 session, because it is public knowledge that there is
24 litigation pending on this project -- the next court

1 date for the litigation -- and Mr. Willard is continuing
2 to represent the Town of Milton on that -- is --

3 MR. WILLARD: There's a Court of Chancery
4 office conference April 17th, I think it is.

5 MR. BRADY: And that is why a determination
6 on this before that date may be helpful in the
7 resolution of that litigation. And that's why there
8 were conditions that were offered that you were
9 presented in December and then I have an e-mail, which
10 you haven't seen, because -- well, you may have seen --
11 it has -- it's an e-mail back from the Mayor to
12 Mr. Willard with some other comments that he thought
13 needed to be included in any type of settlement
14 negotiation.

15 MR. FILICKO: This is our present mayor,
16 Mr. Brady?

17 MR. BRADY: Yes, Mayor Post.

18 MR. WILLARD: Actually, this is from George
19 Dickerson. Can I just clarify a few things?

20 MS. ROGERS: Well, I don't know if we are to
21 that point yet.

22 MR. BRADY: Yes. Actually, it's from the
23 Mayor. That's his address.

24 MS. ROGERS: Do we need to let -- First of

1 all, before we get into the discussion on this
2 application, decide whether we are going to have public
3 comment and then get to where he's going to make his
4 comments?

5 MR. BRADY: I think --

6 MS. ROGERS: Are we --

7 MR. BRADY: I think you're at the point that
8 you asked me a question, and I answered it in over four
9 and a half minutes. I apologize.

10 MS. ROGERS: So we need to determine whether
11 we want to open this --

12 MR. BRADY: I think he needs to comment --
13 He may have something else that I haven't covered that
14 he needs to tell you, and then you have to make --

15 MS. ROGERS: Before --

16 MR. BRADY: Before you make any motions to
17 determine anything.

18 MS. ROGERS: All right.

19 MR. WILLARD: And all I would add is just
20 comments referenced to procedure. I don't want to
21 reiterate what Mr. Brady said.

22 I've had several conversations with Vince
23 Robertson, the Applicant's attorney. And his
24 understanding is that, which Mr. Brady says, that the

1 public comment period is closed, and this was just on
2 for Old Business, which is -- you know, it's not that
3 uncommon for a body such as yourselves to have something
4 on schedule just for discussion and decision. He's
5 looking for just a recommendation to go to Council so
6 that they can then schedule another public hearing, and
7 the public will have an opportunity to weigh in then.

8 And I agree with Mr. Brady. I don't think
9 you can hold a public hearing tonight. In fact, it
10 would do more harm than good if you tried, quite
11 frankly. The reason we have a public hearing is to have
12 a beginning and an end to give all parties the right to
13 comment.

14 So that's where we are tonight. I asked for
15 the minutes in December, just to see exactly what was
16 said. My recollection was the same as Robin's -- they
17 don't have them typed yet, for some reason -- was that
18 simply that meeting enclosed the public hearing. But
19 you have one question for your attorney, which was the
20 status of that 2000 plot, which Mr. Brady has already
21 commented on. So --

22 MR. BRADY: And mindful that the opinion I'm
23 giving you is not based on whether public comment is
24 good, bad, or not. I am just explaining the status of

1 the law and what lawfully can be done tonight based on
2 your agenda and can't be done tonight based on your
3 agenda, because recently, the Attorney General's Office
4 has reiterated what you can do on an agenda and what you
5 can't. And I have to tell you what you can do based on
6 the most recent opinions of the Attorney General and
7 what you can't.

8 And the way I read this agenda, what you
9 can't do is open it up to public comment. What you
10 could do is schedule this meeting a week out, have
11 additional public comment, if you wanted, and then close
12 the record and make a vote; or you could make a vote
13 tonight. It's your pleasure as to what you want to do.

14 And also, to say for the members of the
15 public that do want to make comments, that there is
16 still, because of the way of the nature of this
17 request -- this is a recommendation for a major
18 subdivision to Council. This would have to be on the
19 April agenda for Council. And there would be an
20 opportunity to make those comments there.

21 But if the Planning & Zoning wanted to vote
22 and to have a special meeting and reopen it for
23 additional public comment and if, as one of the members
24 says, there are questions for the Applicant, the only

1 way you're going to be able to get those answers -- to
2 have somebody here, because I can't answer on behalf of
3 the Applicant -- you are limited to the records you
4 have, which would be the July meeting, what happened in
5 October and December.

6 MS. ROGERS: Okay. So we have to make a
7 decision and take a vote as to whether you do want to
8 table it tonight, have a special meeting, have another
9 meeting, of which we will open it up to the public, or
10 whether you feel you got enough information to analyze
11 and talk about it, you've thought about it and you know
12 what you want to do and you want to leave the agenda as
13 it stands with the meeting, the public comment closed.

14 So we have to decide by a vote, a motion,
15 which way you want it to go.

16 MR. FILICKO: Do we have to do this prior to
17 me asking any further questions?

18 MS. ROGERS: We have to amend the agenda
19 before we can move forward, correct? Or what kind of
20 question is it?

21 MR. FILICKO: Well, the question is --

22 MR. BRADY: We haven't dated to that point
23 on the agenda yet of Old Business. So if it's
24 specifically about the application, no, you can't ask

1 that question at this moment. Technically, you are at
2 the point of: Do we want to amend the agenda, or do we
3 want to entertain the request to reschedule the meeting
4 by adding a public hearing?

5 MS. ROGERS: Or do we want to just go with
6 the agenda as it is?

7 MR. BRADY: Or go with the agenda as it is;
8 we have three choices.

9 MS. ROGERS: Well, we've got three choices.

10 MR. FILICKO: So I'm not sure if I'm allowed
11 to ask a question or not.

12 MS. ROGERS: You can only ask a question
13 about amending the agenda, and that's what we are doing.
14 You either don't want to amend the agenda and move
15 forward and discuss and review the information we've
16 already gotten from the two -- three previous times
17 we've had it; you want to amend the agenda so that we
18 can schedule to have another time where there will be
19 public comment; or you can amend the agenda where we
20 have public comment from whoever is present.

21 MR. BRADY: The -- let me give you a fourth
22 option, too.

23 MS. ROGERS: Oh, don't do this.

24 MR. BRADY: I'm sorry.

1 MS. ROGERS: What's the fourth option?

2 MR. BRADY: The fourth option is you can
3 decide not to amend or correct the agenda. You can go
4 into Old Business, and then you can decide you may need
5 additional public comment or have questions, and then
6 table it at that point. I have to give you all of your
7 options.

8 MS. ROGERS: Oh. Ginny, what would you like
9 to say?

10 MS. WEEKS: I would like to say that no
11 matter what happens, I'm not going to participate in
12 this, because I wasn't at the December meeting nor have
13 I had the minutes from the December meeting. So I
14 thought that you would have a chance to ask questions
15 and so on, that I feel like what's happening to the
16 extra lot, et cetera, and so on. And --

17 MS. ROGERS: So you were under the
18 impression you would be able to ask questions --

19 MS. WEEKS: Absolutely.

20 MS. ROGERS: -- of the Applicant?

21 MS. WEEKS: Absolutely.

22 MS. ROGERS: Okay.

23 MS. WEEKS: And if I'm not going to
24 participate, I'm not sure you have a quorum.

1 MS. ROGERS: Well that -- Okay. We've --

2 MS. FREY: I have housekeeping questions
3 that I have to ask, but I guess I can't ask it at this
4 point.

5 MR. BRADY: Well --

6 MS. ROGERS: Right now we're dealing with
7 the agenda part, right?

8 MR. BRADY: You're still on number two. The
9 request was, I believe, if I understood Mr. Filicko's
10 request, was to amend the agenda to allow public
11 comment.

12 MS. FREY: No matter what we do tonight,
13 whether we -- but still, the outcome of this will still
14 go to Council for approval and the public will then get
15 a chance to -- is that correct?

16 MR. BRADY: Yes.

17 MS. ROGERS: Yes.

18 MR. BRADY: That is correct. This is a
19 recommendation you make.

20 MS. FREY: And if we make a recommendation
21 for or against, it still --

22 MR. BRADY: Right.

23 MS. FREY: -- goes to Council?

24 MR. BRADY: It still goes to Council. The

1 recommendation for or against, either way, Council has
2 to take that recommendation, put it on the agenda, has
3 to have a public hearing, and then Council has to vote.
4 If they vote in favor, they have to list the reasons why
5 they support the recommendation. If they vote against
6 the recommendation from Planning & Zoning, they have to
7 say why they're against the recommendations. So I guess
8 I can answer those housekeeping questions.

9 MS. FREY: No, that -- I have something else
10 to ask about.

11 7:29:23..UNKNOWN SPEAKER: They have to --
12 If they disapprove, Council has to (unintelligible).

13 MR. BRADY: Council has to do it by a --
14 7:29:34 (unintelligible).

15 MS. ROGERS: I'm sorry. Mike, do you want
16 to open it to public comment tonight, or do you want
17 to --

18 MR. FILICKO: Well, it's apparent, by what
19 Mr. Brady and Mr. Willard have advised us, that we do
20 not open it up to public comment tonight. But what I
21 would like to add is that when this was open to public
22 comment, we were not made aware, nor was the public, of
23 the meeting that was held in the year 2000 with the
24 present Mayor Bushey and Secretary Blaney.

1 MS. ROGERS: I don't think there was a
2 public hearing.

3 MR. WILLARD: Well, if I --

4 MS. ROGERS: It was when they were
5 transferring the development and selling off parts of
6 it, right?

7 MR. BRADY: Right.

8 MS. ROGERS: Isn't that when it happened?

9 MR. BRADY: Somebody signed the -- They
10 signed the plat at that point.

11 MS. ROGERS: So see, it wasn't a public
12 hearing where they were revising the subdivision plot.
13 It was where they sold half of Shipbuilders to one
14 person, and the other half got sold to somebody else.
15 And this piece got sold to somebody. And they were
16 already -- it wasn't even something we had.

17 MR. FILICKO: At --

18 MS. ROGERS: It wasn't like a subdivision
19 review or any of that type of thing.

20 MR. FILICKO: At our last meeting, did
21 Mr. Sherman make a recommendation? Dean, help me here.

22 MR. SHERMAN: Well, it's in the --

23 MS. ROGERS: 7:31:44 (unintelligible) from
24 probably July.

1 MR. SHERMAN: No, it's in here. I read it.

2 MS. ROGERS: Oh.

3 MR. SHERMAN: So my comment then -- and I
4 don't know if that was based on the 2000 plot or not. I
5 can't remember. But my comment then was the whole
6 technical issue and definition of development.

7 MR. FILICKO: Correct.

8 MR. SHERMAN: And that I believed that the
9 property has already been developed. It's been
10 developed as a clubhouse and a tennis court and some
11 amenities. But I'm not sure exactly -- and then I said
12 but that may be -- that may be the debatable --

13 MR. FILICKO: Okay.

14 MR. SHERMAN: -- based on which plan was
15 going to be considered to be the plan document.

16 MS. WEEKS: If you went down there today,
17 Mr. Sherman, you would see that there still is a sign on
18 that building that says clubhouse.

19 MR. SHERMAN: Yeah, yeah. And I mean I
20 think I looked back at the --

21 MS. ROGERS: Well, I still think we're off
22 track a little bit here.

23 MR. SHERMAN: Yeah, I know.

24 MS. ROGERS: I still think we have to decide

1 how we're going to --

2 MR. SHERMAN: But it's in your budget. It's
3 in your stuff.

4 MR. FILICKO: Okay.

5 MS. ROGERS: -- how we're going to do this
6 meeting, whether we are going to do it as it stands --

7 MR. SHERMAN: To open it up tonight -- to
8 open it up tonight without the Applicant here seems to
9 be the worst alternative.

10 MR. FILICKO: Yes. I agree.

11 MS. WEEKS: I think so.

12 MR. SHERMAN: And to do anything tonight and
13 not have you participate doesn't seem to be the thing to
14 do, as well. So even though we would love to get this
15 off our table, it would seem appropriate to table it,
16 open it back up for both sides of the parties and let
17 you do your discovery at future meetings.

18 MR. BRADY: And I will also let you know
19 that I received a letter that was asked to be a part of
20 the record -- and because the person just came in didn't
21 know we were in the middle of discussion, whether or not
22 the record was open or not -- it hasn't been passed out
23 yet.

24 MS. WEEKS: And couldn't, because that would

1 constitute public --

2 MR. BRADY: Correct.

3 UNKNOWN SPEAKER: Right.

4 MR. SHERMAN: Right.

5 MR. BRADY: That's why I'm holding it here
6 at the moment. He knew the right procedure was to bring
7 it to me.

8 MR. SHERMAN: Well --

9 MS. WEEKS: And we couldn't also see
10 whatever it is Robin discovered that he felt was
11 important for us to see.

12 MR. BRADY: Technically, it's not part of
13 the record. Now, I just -- I want to make sure I didn't
14 misspeak. I call your attention to -- we are in the
15 middle of a major subdivision preliminary review under
16 17-31, Chapter 17-20.

17 And it has here the Planning & Zoning has
18 the -- does the public hearing, reviews the plat,
19 satisfies the requirements from Town Ordinance, shall
20 give preliminary site plan approval. Once this
21 preliminary site plan has been approved, it goes back to
22 Planning & Zoning for final approval and then goes to
23 Town Council for final approval. The date -- and they
24 have a one-year time period from when it's given to

1 between preliminary site plan approval and final site
2 plan approval.

3 MS. ROGERS: So does the Council actually
4 have a formal public hearing when it goes to them?

5 MR. BRADY: I'm looking in at, and I thought
6 it said formal public hearing. But the Town Engineer is
7 saying that the way he looks at it, once it comes back
8 from -- it goes from preliminary approval to final
9 approval of Planning & Zoning. Once the recommendation
10 is for final approval from Planning & Zoning, it goes to
11 Town Council. The Town Clerk looks at everything, puts
12 it on the next regularly scheduled agenda to -- the
13 final approval goes to Planning & Zoning and then comes
14 to Town Council for their final approval.

15 It does not say that there is another public
16 hearing at Town Council. And that's why I wanted to
17 clarify. I think I said that, because Ms. Frey asked.

18 But it looks like here it comes twice to
19 Planning & Zoning. But there's only, it looks like, in
20 the ordinance one requirement for a public hearing.

21 So if you have concerns, there are
22 additional people -- and I think you have made that
23 clear tonight -- that have items they wish to put in the
24 record or want to consider before you do preliminary

1 approval, then you can discuss it tonight. Then you may
2 want to table it again -- but understanding we are
3 running out of time, because we have one year and this
4 started in July and we are now in March -- that to get
5 it back up in front of Planning & Zoning for preliminary
6 review, but give notice to the public that the final
7 part of the record will be open, public comment will be
8 accepted, because that was not on the agenda tonight.

9 MS. ROGERS: Well, subdivisions go to
10 Council without a public hearing, because what we have
11 done is made sure it complies with all the regulations
12 and --

13 MR. BRADY: Correct.

14 MS. ROGERS: -- and the ordinance. And
15 that's why they don't have to have a public hearing,
16 because we sent them a product that is supposed to
17 comply with all the regulations of the Town and it also
18 requested they get the other agencies' approvals, as
19 well.

20 MR. BRADY: Correct.

21 MS. ROGERS: Correct?

22 MR. BRADY: You are absolutely correct,
23 Madam Chair.

24 MS. ROGERS: So what do we have to have more

1 of a public hearing about, as far as a subdivision is
2 concerned?

3 MR. BRADY: The question that was asked me
4 was --

5 MS. ROGERS: No. I'm asking you why we have
6 to have more public comment in reference to other issues
7 that are going on within that development and not just
8 look exactly at this plot which was presented to us?

9 MR. BRADY: The answer is you don't.

10 MS. ROGERS: Oh.

11 MR. BRADY: The question I asked was: Is
12 there a way for the people here present to have their
13 materials included into the public record? And the
14 answer -- that's how I started it with, was: This was
15 not noticed as a public hearing. That's why the
16 Applicant is not here.

17 But if because I understand Ms. Edwards is
18 recusing herself, and if Ms. Weeks is saying she wasn't
19 here in December, so she's not going to vote, you may
20 not have a quorum to make a decision, because that would
21 only leave you four of nine voting members.

22 MS. WEEKS: I don't have minutes available
23 to me or anything for the December meeting, nothing
24 available.

1 MS. FREY: Mr. Brady, didn't the Council get
2 this before us, if you look at the 17-31(c)? Or did
3 they recommend it to this Board, but they did --

4 MR. WILLARD: Council usually -- this is my
5 recollection, and this is what the statute says. When
6 Council gets it, they refer it to you.

7 MR. BRADY: It was referred.

8 MS. FREY: It was.

9 MR. BRADY: They didn't consider it.

10 MS. FREY: Oh, okay. All right.

11 MR. BRADY: They just sent it. They said it
12 came in --

13 7:30:42..MR. KERR: They will sometimes look
14 at it. But that's really all in this kind of --

15 MS. FREY: Okay. All right.

16 MR. BRADY: In the June meeting, on the
17 agenda, which was the first meeting I was the Town
18 Solicitor for, it was on the agenda. And I said: You
19 have received this. This needs to be recommended to
20 Planning & Zoning. And it was placed on the July
21 meeting calendar.

22 MS. FREY: Okay. We got nothing formal
23 then.

24 MR. BRADY: In fact, I came back from

1 depositions that night. I was running late, because I
2 was over in Central Maryland for depositions, and that's
3 why I missed it. And I had to wait for the minutes so I
4 could read up on what was said. That's why you deferred
5 it at that night.

6 MS. WEEKS: May I ask a procedural question?

7 MR. BRADY: Yes, ma'am.

8 MS. WEEKS: I think it's procedural. You
9 referred to the site plan signed by former Mayor Bushey
10 and then Secretary Blaney. Was that the original site
11 plan that was approved?

12 MR. BRADY: That's the most recent site plan
13 that's on file.

14 MS. WEEKS: But was it the one approved by
15 this Board and by the city council, or was there a
16 change to it when that was done? And if so, did that
17 change come back to the Planning & Zoning Board to be
18 reviewed?

19 MR. BRADY: That, I don't have the answer.
20 That was before my time as Solicitor, and I think it was
21 actually before Tim's time as Solicitor.

22 MR. WILLARD: Yeah. The one we're looking
23 at, that's all we have. And it was recorded, and I'm
24 told there were no minutes or meetings --

1 MS. WEEKS: There was no previous site plan
2 quoted before that?

3 MR. WILLARD: Right. And just to focus a
4 little bit here, you've had a couple public hearings.
5 And at the close of the last one, the record was kept
6 open. And that happens occasionally, to get something
7 from DelDOT or to get a specific answer.

8 In this case, Mr. Sherman and various other
9 members said: Well, we want our Solicitor to review
10 this plot and give us an opinion. And he's given his
11 opinion on that. And I can't really add more to that
12 other than it was recorded and appears to be a valid
13 document, and you have to give it presumption.

14 One other thing -- and Mr. Brady might weigh
15 in on this. It's not uncommon for somebody to apply for
16 an amendment to a subdivision or to change a
17 subdivision. So even considering the presumption or
18 correctness of that change saying this is reserved for
19 development as opposed to open space, technically you
20 have the authority to change it anyway -- or to
21 recommend -- I'm sorry -- recommend to Council approval
22 or denial, but approval of this subdivision.

23 And the question is: Have they met the
24 statutory requirements? And if you were to proceed

1 tonight under Old Business, you would have that
2 discussion of what is in the record and whether they met
3 the statutory requirement which would include Mr. Kerr's
4 November 17th comments, which you could include as far
5 as your recommendation as conditions, which would
6 include the conditions that I proposed, because I have a
7 very specific interest in making sure the drainage is
8 corrected out there.

9 That's part of your record, and Council
10 would get it. And just because it doesn't -- there's no
11 requirement for public hearing doesn't mean that Council
12 or you can't hold them, quite frankly. That might not
13 give the public much security.

14 But I think Mr. Robertson's position back
15 then was: We've met our statutory requirement and,
16 therefore, it should be approved. And then you had a
17 very legitimate legal question: What about this plot?
18 And then I offered my comments on that. We have a
19 presumption that it's been corrected -- or not
20 corrected, but changed to contemplate development. And
21 in addition, you may have the simple authority -- or the
22 Town may -- to change it now, anyway, as the final
23 action on this piece of property.

24 I think you do have the site plan in front

1 of you, or some have you should, which it should be
2 noted, I think, that it does keep the clubhouse and the
3 pool and 7:42:50 (unintelligible).

4 MS. FREY: The pool is filled in --

5 MR. WILLARD: It's filled in.

6 MS. FREY: -- or has been filled in.

7 MR. WILLARD: And you know, in the spirit of
8 discussion of this application, I mean Shipbuilders was
9 one of the first large subdivisions here in Milton. And
10 hopefully, we're not doing them the same now. You know,
11 they didn't even form a homeowners, and there have been
12 a lot of bumps. So the homeowners are wrestling with
13 it. And you know, it could be, quite frankly, a good
14 thing if they could form a homeowners association and
15 take charge of these issues.

16 One of the conditions that I had proposed,
17 which Mr. Robertson didn't have a problem with, in
18 addition to them completing the drainage within one year
19 or they didn't -- you know, they couldn't get their
20 building permits or COs -- in the event the existing
21 lots within Shipbuilders 7:43:37 (unintelligible) desired
22 to form a homeowners, the developers shall cooperate
23 with the association to establish a homeowners
24 association to integrate the project and the homeowners

1 association. And that proposal is part of your record.

2 MR. BRADY: The documents that aren't part
3 of your record, because the record had been closed, I
4 have them, which means I can't give them to you unless
5 you choose to open the record. You don't have to open
6 the record. But I do have the submissions, and I will
7 take the submissions from the member of the public who
8 is here tonight and put them in as a thing that -- an
9 additional thing, if you choose not to -- if you choose
10 to resolve the matter tonight under Old Business.

11 But I guess what I'm -- my comments should
12 be construed as following: I am not against public
13 comment. You didn't notice it for public comment. You
14 didn't give anybody else the opportunity for public
15 comment, except for the people who showed up. And if
16 you allow public comment without notifying that you're
17 going to do it, the Attorney General's Office is going
18 to make you do it over again.

19 So in the scope of that, you either have to
20 follow the agenda as you do -- as you have, and you
21 decide you can either vote on it tonight, or because of
22 what Ms. Weeks says, that she's not going to vote
23 because she doesn't have the minutes from December to
24 review and hasn't had a chance to familiarize herself,

1 that would -- if she tried to vote, that would be
2 insufficient under a previous Attorney General's ruling
3 that you must review the record and be fully
4 knowledgeable on when you vote.

5 And with Ms. Edwards recusing herself, even
6 though you have a quorum to start the meeting, you don't
7 have a quorum to vote. You have two people recusing
8 themselves and only four people voting out of nine. So
9 you would not have a majority. So --

10 MR. WILLARD: That may obviate any more
11 discussion. Do you pay Mr. Brady by the hour?

12 MS. ROGERS: Don't look at me. I'm not
13 saying. Okay. So Ms. Weeks, you're not going to vote
14 if we open this up and discuss it, correct?

15 MS. WEEKS: Well, I don't think I'm allowed
16 to vote. It was Mr. Willard himself who had been
17 7:45:54(unintelligible) Milton and said that those
18 people that weren't present for the public hearing
19 couldn't vote.

20 MR. WILLARD: Well, actually, that was for a
21 different reason, because the --

22 MS. ROGERS: Well, you were present at the
23 meetings, though, weren't you?

24 MS. WEEKS: I was not present at the

1 December meeting.

2 MS. ROGERS: Oh. Did you want one?

3 MR. WILLARD: A body --

4 MS. WEEKS: And the minutes aren't --

5 MR. DAVIS: There was no public hearing.

6 There was no public hearing at that meeting. The public
7 hearing was only in July. The only thing that was done
8 at this meeting, at the December meeting, was Tim passed
9 out the conditions and findings that he and Vince
10 Robertson had went over. There was some more discussion
11 still about the open space. It wasn't anything else.

12 The members were really upset because those
13 conditions came the night or the previous day. There
14 was -- the meeting -- As you remember, that meeting only
15 lasted -- it was a short meeting, because a lot of the
16 members said they had taken this information and needed
17 time.

18 I have notes that I wrote down. It's not
19 the minutes. But it says at that meeting, the major
20 subdivision for an open area, Tim Willard was present,
21 presented the proposed conditions and finding in
22 reference to the application and storm water problems.
23 Motion to table, needed more time to review new
24 information.

1 MS. WEEKS: And I have never been privy to
2 that information, as well.

3 MR. DAVIS: You have the conditions that you
4 have in your packet. They came in your packet, the
5 conditions that Tim had presented at that meeting.

6 MR. WILLARD: Yes. Just to address the
7 recusal aspect, I recall what you're talking about, and
8 that had to deal with the annexation committee that was
9 not in place at the time. A committee person can, if
10 they weren't present at a meeting -- it's a personal
11 decision. And you've made it sort of soughtfully, like:
12 Well, I haven't looked at the minutes, so therefore, I
13 don't feel I can go forward.

14 MS. WEEKS: I didn't think it was just
15 soughtfully. I also thought it was probably legally.

16 MR. WILLARD: Well, it's going to be your
17 call. If you haven't even looked at the minutes, you're
18 probably right.

19 MS. WEEKS: Minutes aren't --

20 MR. WILLARD: Yeah.

21 MR. BRADY: Was that one that was audio-
22 taped?

23 7:45:55..MR. KERR: Yes.

24 MR. BRADY: It is possible that you could go

1 to Town Hall and listen to the audiotape. That is one
2 of the remediations that the Attorney General's Office
3 has said, for a member who has missed a meeting, they
4 can listen to an audiotape or read the transcript before
5 they vote. And then that would allow the person to be
6 fully up to speed.

7 But if you're asking me right now if, with
8 what you have said, that you have not reviewed because
9 the minutes aren't available, you haven't listened to
10 the transcript, then what you are doing may be legally
11 correct, because that could be the grounds to overturn
12 the decision.

13 MS. WEEKS: If the Applicant's lawyer had
14 been here, I probably wouldn't be in this
15 7:48:41 (unintelligible).

16 MR. BRADY: I understand. And I'm taking it
17 that you've actually decided to hold off on number two,
18 when you are talking about number five, with the right
19 to go back to number two, because you're allowed to go
20 up and down your agenda and using all of that, you are
21 really talking about number five, even though you
22 haven't formally gotten there yet.

23 MS. ROGERS: I'm talking about -- Well,
24 anything anybody wants to talk about, I got --

1 MR. BRADY: I understand.

2 MS. ROGERS: -- some that don't vote, some
3 don't want to change the agenda, some do. We need to
4 decide, to me, are we going on open it up for public
5 comment at another meeting? Because I do not think that
6 it is fair to open it up to public comment tonight and
7 not have all parties available.

8 So the question is: Does the rest of the
9 Board want to, once again, have public comment taken as
10 a part of our record at another meeting? We need to
11 make that decision. Or do we want to go ahead and
12 Ms. Weeks said she's not going to be comfortable with
13 voting, and Mrs. -- Bernice is not going to vote,
14 because she's within 200 feet of this parcel, and it
15 could be a conflict. So we have to answer those
16 questions first.

17 MR. BRADY: Right.

18 MS. ROGERS: If --

19 MR. BRADY: Ms. Weeks could vote --

20 MS. ROGERS: Whoa, whoa, whoa, whoa, whoa.
21 I still got a question.

22 MR. BRADY: I'm sorry.

23 MS. ROGERS: If we vote to go ahead and open
24 this up for public comment at another time and have

1 another public meeting, can we go down the number five
2 tonight and ask them questions we may have, or are we
3 like done for the night?

4 MR. BRADY: You can discuss it --

5 MS. ROGERS: We just couldn't make a
6 decision.

7 MR. BRADY: -- number five, tonight. You
8 would just be -- if you say you wanted to open it up for
9 further comment, then in essence, that would be your
10 motion to table it again to the meeting when you have
11 the public comment and then have the public comment and
12 notice that it is a public comment. And then you could
13 have it under Old Business and resolve both of those
14 items that night.

15 What I was about to say was procedurally, on
16 a vote to have additional public comment, Ms. Weeks
17 would not necessarily have to recuse herself from that
18 vote. Ms. Edwards would, based on her conflict as a
19 conflict with this complete number five.

20 And so it would be under advice of Counsel
21 that she not participate in either of the votes or the
22 discussion. But Ms. Weeks could, if she was not -- she
23 has said that she is uncomfortable making a
24 determination on the matter. The determination would be

1 voting it up or down. But she could make a procedural
2 vote to have additional public comment or to table. She
3 could participate on that, which would maintain your
4 quorum so you could do work tonight.

5 MS. ROGERS: I'll entertain a motion to do
6 one way or the other. Do we want to open it up for
7 public comment at another meeting, or do you want to
8 make a motion to continue with the agenda as it stands?
9 So I need a motion one way or the other from somebody.

10 MR. FILICKO: I would like to make a motion
11 that we hold another public hearing, given the fact that
12 the public was not aware of the 2000 -- the meeting that
13 was held in the year 2000 between Mayor Bushey and
14 Secretary Blaney and all the meetings that we have had
15 were not based upon the fact that this was brought
16 before mayor and secretary.

17 Am I making myself clear, or no? I mean I
18 would like to have -- give the public an opportunity to
19 speak, because we have already decided what we wanted to
20 do out there. And -- or Dean made a motion. Oh, boy.

21 MR. BRADY: I believe your motion -- I
22 believe your motion is as follows, sir. The motion is
23 to have another meeting with this on the agenda, having
24 public comment, as required under FOIA, 29 Delaware

1 Code, Chapter 101, because as a result of the legal
2 determination that you received today, that the 2000
3 plat is legally sufficient and complied with the Town
4 Code, that there are people who thought that may not
5 have given public comment before, because they thought
6 that may be an invalid document.

7 MR. FILICKO: Correct.

8 MR. BRADY: Is that the nature of your
9 motion?

10 MR. FILICKO: Thank you very much.

11 MS. ROGERS: Do we have a second to that?

12 MR. SHERMAN: I could second that.

13 MS. ROGERS: We have a motion and a second
14 to amend the agenda to -- actually, change it to have a
15 public hearing at another time.

16 MR. BRADY: Correct.

17 MS. ROGERS: Okay. We'll open the item up
18 for public comment again at another scheduled meeting.
19 So we have a motion and a second.

20 MS. FREY: May I ask a question? Will the
21 Applicant be here?

22 MR. BRADY: We will notify the Applicant to
23 be here. There are laws against slavery, so I don't
24 think I can drag him here. I can encourage him to be

1 here. But if he chooses not to come -- I'm pretty sure
2 he will come or he will have a representative here,
3 because at a public hearing, they usually show up. But
4 I can't direct him to be here. That's a violation of
5 your constitutional right.

6 MR. SHERMAN: He had better do this, because
7 if not, we don't have the ability to do it, because
8 Ms. Weeks and Ms. Edwards were recused. So we've got to
9 have another hearing.

10 MR. WILLARD: Yes. Mr. Sherman's right.
11 You can't make a decision tonight anyway.

12 MR. SHERMAN: I mean we don't have any
13 choice. Everybody needs to talk and get
14 7:54:46(unintelligible). But we can't do anything but
15 this, because if we don't, we don't have a quorum to
16 vote 7:55:00(unintelligible).

17 MR. WILLARD: You know, I don't want to
18 sound like I'm advocating for the Applicant. But you
19 should be aware of Mr. Robertson is who I dealt with.
20 And he was very conscientious, and he talked several
21 times. And I confirmed with the Town and even John,
22 this is Old Business. So I just want you to be aware
23 that he's not dissing the Commission.

24 MR. BRADY: He's not blowing you off.

1 MR. WILLARD: Yeah.

2 MR. BRADY: He was just -- Based on this
3 agenda, there would have been nothing he could have said
4 legally. And so that's why he wasn't here.

5 MR. WILLARD: And I think the Applicant just
6 wants a recommendation, you know, up or down, and then
7 send it on. Fortunately, the system has a couple of
8 stops and, you know, finals and things.

9 MS. WEEKS: Yes, because if Brady says if I
10 were to participate, it could be a basis for litigation
11 later on, I don't think there's any --

12 MR. BRADY: If you were to vote up or down
13 without looking at that record, there has been -- and I
14 will tell you the case. It's called Indian River School
15 Board, and it was when they tried to fire a school -- a
16 teacher. And there was part of the record that someone
17 didn't read. And the Superior Court reversed it and
18 sent it back for a new hearing. That was that same
19 march on Georgetown in '93.

20 MS. ROGERS: Okay. We have a motion and a
21 second on the floor to have this re-advertised and go
22 before a public hearing on another agenda on another
23 night to allow public comment. All in favor of doing
24 that.

1 MR. SHERMAN: Aye.

2 MR. FILICKO: Aye.

3 MS. FREY: Aye.

4 MS. ROGERS: Aye. Opposed? Okay. So we
5 are going to have another meeting --

6 MR. BRADY: Madam Chair, you should also
7 put -- I'm sorry. You should have that Ms. Edwards has
8 recused herself. Thank you.

9 MS. ROGERS: Okay. Now, that being said,
10 the only thing on the agenda is this under Old Business.

11 MR. BRADY: You can talk about it, if you
12 want.

13 MS. ROGERS: So do you all want to talk
14 about it, or do you want to wait until we have more
15 public comment to talk about?

16 MRS. FREY: I just have one simple question.
17 The map says conceptual plans, and you're talking about
18 it like it's a preliminary. Would there be a
19 difference? And in the ordinance, I didn't see anything
20 where there is a conceptual for a subdivision.

21 MR. BRADY: Ms. Frey, you are absolutely
22 correct. I don't know why it says conceptual.

23 MS. FREY: So that we need a new one.

24 MR. BRADY: It should have said -- it should

1 have said preliminary. But because it's recorded and
2 they put the wrong word on it, I would say you apply it
3 by what the ordinance says. There is no conceptual
4 plan, as I understand it --

5 MS. FREY: For a subdivision.

6 MR. BRADY: -- for a subdivision. It's a
7 conceptual plan. I just think that somebody maybe put
8 the wrong word there. The problem is that was accepted
9 by the Town and signed off by the mayor and recorded, if
10 I --

11 7:57:45..MR. KERR: No, no.

12 MR. BRADY: I'm sorry.

13 7:57:46..MR. KERR: We're talking about the
14 new drawing.

15 MR. BRADY: Okay. We are talking about the
16 new drawing? Then I think the Applicant needs to be
17 notified by Robin or -- Robin that that word needs to be
18 changed.

19 MR. DAVIS: Well, that second drawing has
20 been used since 2004. That's the same drawing, so that
21 is not a --

22 MS. FREY: Yes, I know.

23 MR. DAVIS: -- a new drawing.

24 MR. BRADY: Right. They just need to change

1 that word.

2 MRS. FREY: I know that. I know that, yes.

3 MR. DAVIS: That's been back and back and
4 back.

5 MR. BRADY: They need to fix that word.

6 MR. DAVIS: It's been well traveled.

7 MS. FREY: Because he put conceptual and we
8 are handling it as a preliminary --

9 MR. BRADY: It should say preliminary.

10 MS. FREY: -- would there be any different
11 information required on here for preliminary?

12 MR. BRADY: The preliminary site plan
13 requirements are in the Code. And I believe --

14 MR. WILLARD: I believe Mr. Kerr addressed
15 it in the November 16th --

16 MS. WEEKS: Are we doing site plan --

17 MS. FREY: 2004?

18 MS. WEEKS: -- or subdivision?

19 MS. FREY: Subdivision.

20 MR. WILLARD: 2004, yeah.

21 MR. BRADY: Yeah. Mr. Kerr's letter --

22 MS. FREY: And nothing has been changed.

23 MR. BRADY: Yeah. If nothing's changed
24 since that letter, then I think that's the requirements

1 that needed to be done. And that should have been
2 addressed on that.

3 MS. ROGERS: And this is a site plan review
4 of a subdivision, correct?

5 MR. BRADY: This is a preliminary site plan
6 review of a major subdivision.

7 MS. FREY: And to really get technical,
8 17-31(i), how many times has this come back before the
9 Planning Board, this same plan?

10 MR. BRADY: As I understand it, it was
11 rejected once by the Planning & Zoning Commission,
12 recommended to be rejected by Council. Council rejected
13 it. It was refiled again in the spring, which was
14 permitted. After a year, you are allowed to refile.
15 Then it can come back. And it was referred in June to
16 Planning & Zoning. And Planning & Zoning has about a
17 year to act on it. So --

18 MS. FREY: And they don't have to make any
19 changes? They can just keep submitting every year the
20 same plan?

21 MR. BRADY: They have to wait a year --

22 MS. FREY: A year.

23 MR. BRADY: -- between, and we don't have a
24 three time and out or two strikes and out rule. That

1 may be something that you recommend to the Ordinance
2 Committee to put in.

3 But you are absolutely correct. They didn't
4 need to make a single change. They just had to wait
5 until one year, and they could refile it. And that's
6 what they did.

7 MS. WEEKS: Am I not -- Am I mistaken in
8 thinking that a preliminary site review, which is what
9 you are saying this is? It's not just a subdivision.
10 It's also a site --

11 MR. BRADY: A preliminary subdivision
12 review.

13 MS. WEEKS: Okay. All right. It has
14 nothing to do with the houses or the buildings or what's
15 going there or anything?

16 MR. BRADY: No.

17 MS. WEEKS: That's what I wanted to make
18 sure.

19 MR. BRADY: Correct.

20 MS. ROGERS: Well, for a subdivision, we
21 can't.

22 MR. BRADY: You can't.

23 MS. WEEKS: No.

24 MR. BRADY: You just have to make the

1 recommendation, if it complies with the statute, with
2 the ordinances to fall in. And that is what your
3 decision is limited to.

4 MS. WEEKS: Since this has --

5 MS. ROGERS: The only district that we have
6 that allows us to talk about the type of housing is an
7 LPD.

8 MR. BRADY: Correct.

9 MR. WILLARD: Correct.

10 MR. BRADY: And this is not an LPD.

11 MS. WEEKS: Right -- no. But it seems to
12 have the -- are these the footprints of buildings on
13 these lots?

14 8:00:51..MR. KERR: No. Those are the
15 setback requirements. They can't build outside the
16 dashed line.

17 MS. WEEKS: There's no --

18 8:00:59..MR. KERR: So the house can be
19 placed anywhere within that dashed line on a lot.

20 MS. FREY: There's no driveway and of the
21 roof.

22 MR. SHERMAN: I have a question. I don't
23 understand why the vote can be challenged by Ms. Weeks
24 if they found that she wasn't familiar with --

1 8:01:23..UNKNOWN SPEAKER: Correct.

2 MR. SHERMAN: But Ms. Edwards' choice to
3 recuse herself, is that legal or is that personal,
4 because she was within the 200 --

5 MR. BRADY: She did that as a personal
6 choice, because she felt she lived too close to the
7 property and then she may on -- in that Indian River --
8 if there is too much familiarity with a person with the
9 source of an issue, in that Indian River School District
10 case I sited earlier, in that case they disqualified a
11 member, because they found that there was too much
12 personal involvement because they were --

13 MR. SHERMAN: But this is a much smaller
14 arena. And because most everyone on the -- I guess
15 everyone on the Commission are property owners, and
16 anyone is subject to be within 200 foot of any
17 Applicant. Would that be something that every time that
18 happens, that that Commissioner should step down and get
19 away from it or not?

20 MR. BRADY: It is a personal decision.

21 MR. SHERMAN: Okay. That's all I'm asking.

22 MR. BRADY: Right.

23 MR. SHERMAN: 8:02:28 (unintelligible).

24 MS. WEEKS: May I ask, just to clarify that?

1 Is it -- I stepped down last time on the daycare thing,
2 because I felt it could have a financial impact on the
3 value of my house.

4 MR. BRADY: That was another personal one
5 that wasn't required, but that could have been used as a
6 basis to challenge the vote had you not done that.
7 Because of the personal involvement, there is some case
8 law that indicates a person that is too personally
9 involved or could be construed as too personally
10 involved could be considered biased, and they have had
11 reversal of votes.

12 MS. WEEKS: So in Delaware, there's no
13 requirement to recuse yourself?

14 MR. WILLARD: If you look at -- and I don't
15 know the site -- but the Public Integrity Commission
16 law. And I mean you all have been kind of conservative.
17 But it is a definition of financial interest in there,
18 and that's the test benchmark for a conflict, where it
19 describes what a financial interest is, you know, in
20 terms of how it might even affect a family member. And
21 John or somebody can get you that site.

22 MR. BRADY: 29 Delaware Code, Chapter 58,
23 it's available online at www.de.gov; left-hand column,
24 hit Delaware Code, Title 29, Chapter 58, Public

1 Integrity Commission.

2 MR. WILLARD: I think it's on the right-hand
3 column, I believe.

4 MR. BRADY: Tim rents out for -- no, I can't
5 say that.

6 MS. WEEKS: Thank you.

7 MR. DAVIS: So 8:04:08 (unintelligible).

8 MS. ROGERS: So does anybody else have any
9 questions about what we are allowed to talk about? No?

10 MR. FILICKO: Mr. Brady, that pool area here
11 in the plans, where --

12 MR. BRADY: Yes, sir.

13 MR. FILICKO: -- in eventuality, there is
14 going to -- so this plan before us is incorrect?

15 MR. BRADY: Technically, I guess that should
16 say -- if I understand from looking at the area now,
17 that should say former pool area, because that's filled
18 in and fenced around. But --

19 MS. FREY: That brings up another. Do they
20 have to come back to this Board in order to change the
21 site plan to fill that pool in?

22 8:04:58..MR. KERR: I think I can answer
23 that one for you.

24 MR. BRADY: I'm not sure. So I'm going to

1 yield to the Town Engineer, because he may have an
2 answer.

3 8:05:03.. KERR: Typically not, because if
4 you had a shed on your property, you can remove it.
5 There are some things that have changed in the last few
6 years in town, as far as demolition. But typically, a
7 secondary structure, such as a pool, you don't have to
8 come back before anybody to get permission. Even
9 demolition doesn't come before this body. It comes
10 before the Board of --

11 MR. DAVIS: Historic Preservation.

12 8:05:31..MR. KERR: Historic Preservation,
13 if it's in that district.

14 MR. BRADY: In the historic district,
15 otherwise --

16 MS. FREY: But do they need a permit?

17 MR. BRADY: Apparently not.

18 MR. DAVIS: They are not demolishing
19 anything. They're just filling in, basically, so
20 they're not really tearing anything down.

21 MS. FREY: Isn't there --

22 MR. DAVIS: I don't think there's anything
23 in the Ordinance that says you can't fill a pool in.
24 That --

1 MS. FREY: There's nothing that says what
2 you can -- what you are allowed to fill the pool with?
3 I mean you can't put old tires and old bodies in there
4 or anything like that.

5 MR. BRADY: Old tires --

6 MR. DAVIS: What are you talking about?

7 MS. FREY: Jimmy Hoffa lives.

8 MR. BRADY: Old tires are prohibited by
9 DNREC. Old bodies are prohibited by state law by the
10 limit.

11 MS. FREY: But if they don't need a permit,
12 who's going to check on that?

13 MR. BRADY: You're absolutely correct. It
14 is one of those gaps in the ordinances that was not
15 anticipated.

16 MS. FREY: And that wasn't a change in the
17 site plan by filling in the pool?

18 MR. BRADY: Technically not.

19 MS. FREY: Wow.

20 MR. BRADY: As I said, we've learned a lot
21 from this project.

22 MS. FREY: And learning.

23 MR. BRADY: And still learning.

24 MS. ROGERS: Are we done?

1 MS. WEEKS: Motion to adjourn.

2 MR. SHERMAN: Motion to adjourn -- Second.

3 MS. ROGERS: We have a motion and a second.
4 Adjourned.

5 MR. BRADY: Do you want to pick a date for
6 this public hearing? Do you want to do it as a special
7 meeting? Because you heard Mr. Willard say that he's
8 got a conference on April 17th with The Court.

9 MR. SHERMAN: There's a time limit on it, or
10 a time issue for -- they are scheduling it because
11 there's two attorneys invested. You guys picked the
12 time, or the Town picked the time that it was --

13 MR. WILLARD: When is your next meeting?

14 MR. DAVIS: The 20th.

15 8:07:03..MR. KERR: 20th.

16 MR. BRADY: No. That's today.

17 MR. DAVIS: No, 27th, wasn't it?

18 8:07:06..MR. KERR: No. I think it is the
19 17th, the 17th.

20 MR. BRADY: It's the 17th of April.
21 Unfortunately, it's about 12 hours too late for him.

22 MR. WILLARD: Well, and just to comment on
23 that, it's a reality that I'm here, because I'm
24 defending the Town in litigation. But your decision --

1 No, that's fine. You know, we mentioned the fact that
2 there's litigation on this. And that is the Town --
3 I'll give you a little background.

4 The Town withheld some COs, and Gemcraft
5 sued to release. And Chancery Court said: Yeah, under
6 these circumstances, you have to release them. And we
7 cross-claimed against Shipbuilders and said, you know,
8 you are -- because they went into court and pulled the
9 grenade and said: Well, while we're in there, you are
10 responsible for fixing this drainage. And we counter-
11 claimed against Gemcraft, saying: You're responsible
12 because of your building practices. Okay. So that's
13 what is pending.

14 And when Shipbuilders comes to the Town and
15 says we want to cut up a couple more lots, that's why
16 I'm here and saying: Well, if y'all are going to do
17 that, you know, make them do this drainage plan.

18 And we have an updated drainage plan from
19 Cabe, a very good one, that would do -- the problem with
20 this system, it's a closed system. And the updated
21 system would take a pipe and run it down in back of the
22 school and go into Wagamon's. And it's my investigation
23 which reveals that maybe this was Willard Workman's
24 original plan years ago.

1 But having said all of that, your decision
2 must solely be based on whether this subdivision meets
3 the statutory requirements and whether you want to
4 recommend approval of it with certain conditions. And
5 I'm here just to propose those conditions.

6 MS. ROGERS: And why isn't the developer
7 required to fix the drainage problem with or without the
8 subdivision plan?

9 MR. WILLARD: Well, that's why we are in
10 court. We are saying they have that responsibility.

11 MS. WEEKS: Is DNREC going to let them just
12 put it into Wagamon's untreated?

13 MR. WILLARD: I don't know the answer to
14 that. But the one -- the conditions that we proposed
15 that they would be required to meet all regulatory
16 requirements and also get the appropriate easements to
17 do it.

18 MR. BRADY: If it is --

19 MR. WILLARD: And your Town Engineer agrees
20 this would be a good solution. It was --

21 MS. WEEKS: I think that was a good
22 solution. I think it --

23 MR. BRADY: If it was runoff water --

24 MR. WILLARD: Yeah. But we have to go

1 through that whole process.

2 MS. WEEKS: That's runoff.

3 8:09:31..MR. KERR: Having sat in with some
4 meetings between the Town, the developer, and the
5 developer of Holly Lake and people from DNREC and people
6 from the Sussex County Conservation District, they are
7 basically trying -- the state agencies are trying to do
8 everything they can to alleviate the drainage problem.

9 Shipbuilders was started before the Erosion
10 and Sediment Control Act, so they're not required to
11 have the same storm water requirements that you would
12 have today in a new subdivision. So they are relaxing
13 some of their requirements as far as the quantity and
14 rate of runoff.

15 But as far as the quality of the water,
16 there are many places in town that go directly either to
17 the Broadkill or the pond.

18 MS. WEEKS: I just know that DNREC has been
19 a little sticky about that lately.

20 8:10:23..MR. KERR: On a new subdivision, by
21 the book; this one, because of --

22 MR. BRADY: When it started.

23 8:10:30..MR. KERR: This subdivision started
24 just before the act.

1 MS. WEEKS: Okay.

2 MS. FREY: In your opinion, is that going to
3 alleviate the flooding problems that are there?

4 8:10:40..MR. KERR: I have not seen the
5 detailed calculations. It will alleviate the majority
6 of it, from what I have seen. In a very large storm,
7 there may still be some minor temporary flooding, where
8 the street itself will maybe get an inch or two on the
9 street. But as soon as the storm event goes by, it will
10 drain out quickly; as opposed now, I guess it can take
11 days to drain out, if they don't pump it out.

12 Because of the topography between the site
13 and the pond, they are a little limited to the amount of
14 water that can be carried away. So when you get that
15 summer thunderstorm that almost like a rate of eight or
16 nine inches comes down in just a few minutes, no, it
17 won't be able to keep up. But your typical little rain
18 that we normally have, what's referred to as a five- or
19 10-year storm event, it will handle that.

20 MR. BRADY: I believe there was a major
21 problem in June, maybe the last Sunday in June, when
22 there was flooding over in Seaford --

23 8:11:440..MR. KERR: Yes.

24 MR. BRADY: -- I believe that there was

1 flooding over the majority of town that day.

2 MS. WEEKS: There was.

3 MR. BRADY: But if the solution had been in
4 place then, it would have been less. There would have
5 been some, but not as bad as what it was out there. In
6 fact, I think you needed almost a four-wheel drive to
7 get through most of the development for a large period
8 of time. And I believe -- didn't the fire department
9 have to go out and pump water out? I --

10 MR. DAVIS: I don't know whether --

11 MR. BRADY: You can't answer that question.
12 I think there was some pumping done.

13 MR. DAVIS: I know the Town has gone out and
14 done it several times now.

15 MR. BRADY: Yeah.

16 MR. WILLARD: And this litigation has no
17 guarantee that The Court will say that the developer has
18 to fix it. They could very well say, you know, that the
19 homeowners should be the party that enforces this. So
20 there is some uncertainty there.

21 MS. ROGERS: Okay. Well, since we have to
22 recommend to Council, irregardless of when we have our
23 meeting, unless we have it before Council meets in
24 April, it isn't going to matter whether Tim has a

1 recommendation or not.

2 MR. BRADY: Unless -- I'm sorry.

3 MR. DAVIS: It has to go back to Council
4 first.

5 MS. ROGERS: What?

6 MR. BRADY: What's that?

7 8:12:49..MR. KERR: It does not go to
8 Council until the final --

9 MR. BRADY: Right.

10 8:12:53..MR. KERR: If you approve the
11 preliminary --

12 MS. ROGERS: Oh, so then you have the final
13 anyway.

14 MR. BRADY: Correct.

15 MS. ROGERS: Okay. I got it.

16 MR. BRADY: But if it has a preliminary
17 approval before Tim goes to court next time --

18 MS. ROGERS: I understand.

19 MR. BRADY: -- that may be helpful in trying
20 to resolve the matter.

21 MS. ROGERS: I understand.

22 MR. BRADY: There's also a pending motion
23 against the Town for fees and costs by one of the
24 litigants that is trying to be addressed, also. That's

1 nothing you need to worry about.

2 MS. ROGERS: Good.

3 MR. BRADY: Tim's meeting is the 17th. Your
4 normal meeting would be the 17th. Do you wish to do a
5 meeting Easter week, the 10th?

6 MS. WEEKS: Could we not do it on Monday
7 night?

8 MR. BRADY: I'm sorry. I thought the 10th
9 was a Tuesday.

10 8:13:36..MR. KERR: It is.

11 MS. WEEKS: The 10th.

12 MR. WILLARD: I don't know what your agenda
13 looks like for the 17th. I don't think there is any --
14 that's one week, and you know, if you just put it on
15 that regular meeting --

16 MS. ROGERS: Yeah, but your court date is
17 before --

18 MR. WILLARD: That's fine. I'll deal with
19 it. It's not going to make or break that at all. I
20 mean we're going to have to deal with it one way or the
21 other. This is going to take some time. You have to
22 make your recommendation to Council, and you're going to
23 need to go from there.

24 MS. WEEKS: Children have school vacations

1 on Easter week?

2 MS. ROGERS: Yes.

3 MR. FILICKO: The week after Easter.

4 MS. WEEKS: And people may be out of town.

5 MR. WILLARD: Yeah. I think the 17th is
6 fine with me. I mean I'm not sure if I'm even
7 available.

8 MS. FREY: You don't know if you're
9 available?

10 MR. WILLARD: I don't have my calendar. But
11 you know, if you have your regular meeting scheduled
12 there, as Mr. Sherman or somebody said, maybe you can
13 set a date after Mr. Brady and I confer. The 17th might
14 be fine.

15 MR. BRADY: Well, if you put it for the
16 17th, unless Council is not available, then we'll let
17 everybody know. I'll try and get that worked out with
18 everybody tomorrow.

19 MS. WEEKS: Thank you very much.

20 MS. ROGERS: We are adjourned.

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CERTIFICATE OF REPORTER

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DATED: _____

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