

Milton Town Council Meeting
Milton Theatre, 110 Union Street
Monday, March 3, 2008
7:00 p.m.

Mayor Post called the Public Hearing to order at 7:01 PM

Roll call for Council attendance:	C Martin-Brown	here
	C Duby	here
	C Hudson	here
	C Abraham	here
	Mayor Post	here
	C Betts	absent
	C Prettyman	absent

1. **PUBLIC HEARING: An ordinance to amend Chapter 18, Section 34 of the Code of the Town of Milton, Delaware by Deleting the current wording of subparagraph (f) in this section and Replacing thereto as follows: (f) The South side of Prettyman Street from Federal Street to Chestnut Street.**

Mayor Post: The first reading of this ordinance was Feb 4, 2008. Are there any comments regarding this ordinance change? Would someone like to make a motion to close this public hearing?

C Martin-Brown: I hereby make a motion to amend Chapter 18, Section 34 of the Code of the Town of Milton Delaware by deleting the current working of subparagraph (f) in this section and replacing thereto as follows: (f) The South side of Prettyman Street from Federal Street to Chestnut Street.

C Abraham: Second.

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

2. **PUBLIC HEARING: An ordinance to amend Article 11, Section 11.0 of the Zoning Code of the Town of Milton, Delaware regarding the Establishment and Duties of the Board of Adjustment.**

John Brady: The reading of the ordinance is as follows: An ordinance to amend Article 11, Section 11.0 of the Zoning Code of the Town of Milton, Delaware. Whereas the Town of Milton wishes to amend Article 11, Section 11.0 of the Zoning Code of the Town Milton, Delaware by deleting the first paragraph and replacing thereto as follows: Pursuant to the laws of the State of Delaware as amended the Town of Milton shall establish a Board of Adjustment. The Board of Adjustment shall consist of 5 members who shall be residents of the Town and who shall have knowledge of problems of the urban and rural development and who at the time of the appointment and throughout their term of office shall not be members of the legislative body or employees of the Town. A minimum of two members shall reside in the area of the Town of Milton designated as a historic district. The appointment of an architect, draftsman, builder, engineer or other person experienced in the design and construction of buildings to the board is encouraged. The Mayor of the Town shall appoint such members of the Board of Adjustment and all such appointments shall be confirmed by a majority vote of the elected members of the Town Council. The first reading of this ordinance was on February 4, 2008.

Mayor Post: Anyone have any comments. Can we have a motion to close this public hearing?

C Duby: I move that we close the hearing to amend Article 11, Section 11.0 of the Zoning Code of the Town of Milton, Delaware regarding the Establishment and Duties of the Board of Adjustment.

C Abraham: Second

Mayor Post: Any discussion to the motion? All in favor, motion carried.

3. **PUBLIC HEARING: Whereas, Mayor and Council of the Town of Milton wish to place a moratorium on demolition within the Town of Milton, Delaware.**

John Brady: The reading of the ordinance is as follows: An ordinance to enact a 6-month moratorium on demolitions within the Town of Milton, whereas it is desirable for the Town to review all ordinances referring to demolitions within the Town especially demolitions in the historic preservation district and Town Center. And, whereas it is expected for a proper review to take six months from start to

finish and whereas it is desirable that said review is done and no structures demolished unless there exists an application on file with the Town of Milton and whereas a temporary moratorium on demolitions within the Town of Milton is deemed to be within the Town's public policy. Now, therefore, the Mayor and Council of the Town of Milton hereby enact the following: A moratorium on any demolitions of structures within the Town limits is hereby imposed from March 3, 2008 until April 7, 2008.

- a. Purpose: A moratorium is hereby enacted upon the demolitions to be performed in the Town of Milton for the purpose of permitting a review of all ordinances referring to demolitions within the Town.
- b. Duration: The moratorium shall be imposed to and including October 7, 2008. During the time period no application except for those permitted (c) below shall be accepted.
- c. Exemptions: The following items shall be exempt from the affects of this moratorium ordinance. Any applications for demolition of structures within the Town of Milton received by the Town of Milton before March 3, 2008
- d. Effective Date: This ordinance shall be effective upon enactment.
- e. Termination: The ordinance shall terminate on October 7, 2008 unless extended or repealed prior to that date

Section II:

Severability: The provisions of the ordinance are servable of any and all of it's provisions or any sentence clause of paragraph or the applications thereof to any person or circumstance shall be held unconstitutional or in violation of the laws of the State of Delaware by any Court of competent jurisdiction. The decision of such court shall not invalidate or impair any of the remaining provisions which can be given in effect without the invalid provisions or application.

Mayor Post: Any comment regarding this ordinance from the public?

Ginny Weeks, 119 Clifton Street: I'm here on behalf of the Historic District Expansion Ad Hoc Committee. As you remember last month we gave you a paper that supported your decision to go ahead and have a moratorium. We applaud that you're doing it town wide. However, personally I would ask that you include that it say especially the Historic District, the Town Center and the proposed Historic District overlay so that if in the future you decide to narrow it a little bit that you also include the proposed overlay that the Town is working on.

Amy Kratz, 315 Reed Street: I would like to agree with Ginny Weeks.

John Collier, 301 Coulter Street: While I support the demolition order within the Historic District I have some questions within that District and also outside of that district. Currently, there's one home under condemnation order and I want to know how that impacts that home. Will it remain standing in its condemned state until this is lifted or is that exempt from this? Secondly, in June 2006 I came before this Council with several homes in Town that were in dire need of some action. I find that all of them with the exception of the 500 block of Federal St. actions have been taken. That's outside of the Historic District and I'm sure the people on that end of Federal St would like to see the one with the roof caved in taken down. It's a real eyesore. I would like to know how this moratorium will impact that.

Mayor Post: On the flip side of that the key is to prevent demolition as much as we can. I have been in conversation with some of the family members on the Federal Street property. I've heard the interior is not in bad shape, the roof is in severely bad shape, and there are several family members that are trying to buy it from the current family members that own it. Any home that can be preserved, I truly believe that we should try preserving them and also we need ordinances in place. The purpose of the ordinance is not only to rewrite demolition but to review all of our ordinances that govern, especially the district.

John Collier: I'm talking about the home on Mill and Walnut that's been condemned for quite a few months now. And I'm also speaking of a home on Federal Street. It's been well over 2 years since I brought it before the Council and was promised action.

Mayor Post: For the one on Mill St. there is a sign in the window of that house trying to sell. I think we should be encouraging renovations, restorations vs. teardowns.

John Collier: If you read the ordinance you'll find it's difficult to sell once it's under condemnation.

C DUBY: What's the status of that house? It's been condemned, it's on the market. Does it fit into the exemption if we pass this or will it not fit?

John Brady: If there is a condemnation order in place from the Town that's exempt from this ordinance. Anything that was condemned prior to. The second thing that is exempt is that there was an application for demolition that was denied by the Historic Preservation Commission. The appeal has been delayed until next month for scheduling. That is exempted from this also.

Brenda Burns, 127 Morris Ave: I'm here because we as the Ad Hoc Historic District Expansion Committee recently met with Robin Krowitz. She's with Delaware State Historic Preservation Office. We invited her to come and speak with us because we had what we thought might be ideas for the Town to consider. Since we're working on a historic expansion area and that is a slow process which is going to take about 4 years. We've all been concerned with the demolition that's going on just outside of the historic district and until that area is expanded the house that stand in that area are not protected. The Town is certainly able on it's own to create a historic district. It does not affect process with the National Registry of historic places. As a Town, Mayor and Council, you could certainly expand the historic district yourselves. That's something we would like for you to consider. The other thing is to review the historic district zoning ordinances. They need to be reviewed and rewritten to serve as the functional and legal tool. The ordinances should outline a designation process for historic properties and be in mind the current practice. The split of the roles of the Board of Zoning and Historic Preservation Review Board are not acknowledged in the current ordinances which I think you just addressed. A statement of significance justification for the areas is understudy and should be obtained from Chad which is the Center for Historic Architecture and Design. The ordinances should be as clear and understandable as possible. Model ordinances should be sought. A set created by Rehoboth Beach should be consulted. I understand from Mrs. Krowitz that they have an excellent set of ordinances that pertain to historic preservation. Although they do not have an historic district. We also were given a name by her of Mr. Tom Reed. He's an attorney affiliated with Widener University and very familiar with Delaware Ordinances and historic preservation issues. We feel that he should be contacted for potential consultation to revise the ordinances. We strongly recommend that when you do rewrite the ordinances that pertain to historic preservation that it is someone. I know you had talked about hiring someone to work on the ordinances. We feel it's imperative that you have somebody that is very well versed in historic ordinances. He might be a contact person for you. We also thought that we would like to meet with Town officials, our Code Enforcer, Robin Davis, and Mr. Dickerson to discuss what we're doing so that we're not working at cross

purposes. We also think that documentation should be done before any demolition and the Committee should be as transparent as possible.

Mayor Post: Can we have a motion to close the public hearing?

C Martin-Brown: So moved

C Abraham: Second

Mayor Post: We have a motion and a second. Any questions to the motion? All in favor, motion carried. We will close the public hearings at 7:25 PM and open the public participation.

4 Public Participation

Tina Thoroughgood: Just a short statement by the Milton Cat Snippers. We had another van clinic in February. Another 21 cats got fixed. Please get your animals spayed/neutered so we can quit doing this. I would like to thank the Town for allowing us to do this. It's really nice to have the fire hall available to set up the van. When we have to travel to other towns and we can only do one or two at a time a week. When the van is here we can do 20 some. We have one lady that we've been helping out who had quite a few cats, maybe 20 or so. We have almost completely spayed/neutered all of them. She has passed away and all of her cats are friendly. They are all spayed, they have their shots and we are really trying our best to find them homes. Her husband is not a cat lover. If anybody knows of anyone that's looking to adopt a cat. I have pictures and our phone number. Two of them are a year old and are ready to go. If you know anyone who wants to adopt any of these cats we'd really appreciate it. I'd like to thank the Town; you've been very supportive of us. The more people do on their own the less we'll have to do.

Debra Spellman: I wanted to talk to you about Shipbuilder Village. I haven't read about any mention of Shipbuilder Village since the P&Z meeting of March 20, 2007. The last time that I stood at a Council meeting and spoke about this issue was July 2005. Just for history, I purchased two properties in Shipbuilders in the winter of 2004 and even before I took possession of the properties and ever since there's been considerable flooding. Waterproof boots are required to keep my feet dry if I were to go from my front door to my car parked in my driveway. This flooding is not alleged as Shipbuilder LLC and Gemcraft have claimed in the Court of Chancery. It is very real. It has been over 4 years since I first started screaming about this issue and the only progress that I know of to date is that the developer, Shipbuilder LLC, led by Frank Capano has repeatedly denied responsibility for the ineffective drainage and pointed the finger at the Town of Milton like a young school boy claiming that the Town signed off on the plan. I'm not sure that's progress but at least we know what kind of businessmen we're dealing with. I'm currently seeking my own legal action with Gemcraft and Shipbuilders regarding the flooding issue. Flooding as well as the lack of required lighting and sidewalks as described on my building permit plan are driving my suit. I do want to thank the Town of Milton for babysitting this project and neighborhood for not abandoning us. By buying and manning an industrial pump this pump like crosses my property at the street and exists out the back to the Workman farm. Without this effort both my residences would be under water. I do appreciate your efforts. What I'm here for tonight is that the Town considers fixing it themselves and seeks restitution from Shipbuilders LLC and Gemcraft at a later date. How much longer will you continue to utilize the pump? When will there be a permanent fix? The binder on the street that hold the macadam together is being to fall apart with pot holes appearing and cracks in curbing. And that curbing is \$100/ft. How much long will you expect the residences of Shipbuilders to endure this situation? When is enough, enough? I know you have a lot of other projects and issues going on in the Town, but I haven't read about anything happening with this issue. Because it's in litigation nobody will talk about it. I've talked to Mr. Brady a little bit but it's really all behind closed doors and nothing is official. You are voted in by us and appointed by us and I think that we as a town should be exposed to what's going on and how you're handling it and how we can help. Because it has been long enough.

John Brady: You're right I did respond to your questions earlier. This is the most current update I have. Our former Town Solicitor, Tim Willard, has maintained his representation for the Town in this case. There were two motions for summary judgment; one filed by the Town, one filed by the builders and Gemcraft. Both of them were denied. The court is going to have an evidentiary hearing at some time. When it's scheduled is beyond my control

as Town Solicitor. I will check again with Mr. Willard by the last update I got in December was that there was supposed to be a hearing sometime in the next 6 months. That's why there hasn't been anything. When there is some resolution I can tell you. Until the courts act and it's in the Court of Chancery assigned to Master Glasscock who sits in Georgetown. I have never been able to force a judge to make a decision. If the Court comes out and decides that the Town's responsible I'll confer with the Town and look at the Town's options. The process is the master's report can be appealed within 10 days to a Vice Chancellor of the Court of Chancery that report is either adopted or reversed and then it's appealable within 30 days to the Supreme Court. Best case scenario is a decision if it's fully appealed to the Delaware Supreme Court takes approximately 7 months from when a decision from the lower court is done.

C Martin-Brown: What would be the standing of the Town to file an amicus curie.

John Brady: The Town's already been sued.

C Martin-Brown: What is the recourse out there for the residents to have a class action suit?

John Brady: If the residents file a class action suit it would probably be joined with the current proceeding and assigned to the same judicial officer. Pursuant to Chancery rule 23 there can be a class action suit but because the matter is pending it would probably been combined with the pending matter.

C Martin-Brown: Would that not help the weight of evidence in terms of consideration by the Court?

John Brady: The issue in front of the Court is two limited issues. What was the developer supposed to do and what did the Town approve? That is what is being argued right now based on the contracts and the plan review process and what were the requirements done by the Town at the time the plan was approved.

C Martin-Brown: Do we have all the documentation for those transactions?

John Brady: Mr. Willard tells me he has the complete record at that time.

C Martin-Brown: And we have a complete copy of that record?

John Brady: I believe we have a copy of that in Town Hall. If not I'll make sure it's available for all public documents.

Debra Spellman: I would like to have a copy of everything that you have.

John Brady: We'll make sure it's available at the Town Hall.

Debra Spellman: Are you then saying you are not looking at a fix until you get a legal judgment? Are you saying that if the case is not going to come up for another 6 months and there's a decision and perhaps an unfavorable decision for the Town and you appeal and it takes another 7 months that you're now looking at 13 months from now from even making a consideration to fix that issue up there?

John Brady: The permanent fix. The temporary fix which you talked about was discussed in Court. And that was done without recourse to the determination of the lawsuit. In English, without admitting any liability putting in that pump and having that pump there and keeping that pump in place was done without the Town admitting any liability for anything that's part of the lawsuit. That pump will remain in place until the lawsuit is resolved. Because as you said the pump is helping at the moment. The way it is right now as I understand it sitting out in the open is not the most pleasant thing to look at but it's functional. Therefore, when it's resolved it has to be a functional but also something that is not noticeable. That's why it's a temporary fix in order to resolve things until the case is resolved.

Debra Spellman: So I'm just going to reiterate my question. You're not going to even consider a permanent fix until you have a legal outcome.

John Brady: Until the Court's opinion on who is responsible it would be imprudent to do anything further because that's all the Town was permitted to do at that point. If the Town did something else the Court could say since you went ahead and did this you're now saying you're responsible and therefore I'm not going to take the developer out of the case. I don't think Mr. Willard wants to do that at this point because that could give total liability to the Town. And we don't have any insurance coverage for that.

Debra Spellman: Could I request that some money be put aside in the budget or at some point somewhere for a fix on this road should the Town lose this suit. Just to consider it, please.

Mayor Post: It certainly can be considered for next budget year. The draining is probably one of the biggest issues, but it's not just the street drainage. There are drainage issues in back yards. The fence is falling in on the front. There's a rock pile in the back. There are dead trees. It just goes on and on. In the near future I'd like to establish a task force that will work in each of the communities that we're having some issues, i.e. Cannery, Wagamon's and Shipbuilders who can work closely with the Town Hall. We don't want to wait 30 days out every month dealing with these issues. These things are going to have to be addressed. There are certain ones we can get with code violations alone. Then move forward with these other issues. We're working with soil conservation in Wagamon's with drainage issues, but it seems to me that the exact issues that are out at Wagamon's in back yards are mirrored in Shipbuilders. And we go back to the issue where none of these developments are bonded.

C Duby: We've talked about training for members of P&Z and members of Council about the process of approving a development and so on. I would like to request on the record that when we have that training that we learn something about what we can do if anything upfront before these developments are built to avoid this kind of thing. Whether it's requiring bonding, whether it's looking at thing in a different way, having somebody else examine what's happening with draining and so on. Clearly if it's happening in Shipbuilders and the Cannery and Wagamon's something is not being done by the developers that we should have had the power to make them do. I would like to be sure that's on the agenda for whatever training we have in this process.

Mayor Post: And including infrastructure in place such as lighting. We can understand you don't have the final code on the streets during the developing state. We've got to get things in place for these future developments and address the ones that are existing. I hear you loud and clear. We are going to have to put money aside in the next budget to start addressing some of these issues. Then if we have to take strong litigation action against a developer then that's something we will have to pursue. It's not fair to those people that have made those investments out there to continue. You're right 4 years is a long time. We do have a rough estimate on how much it would cost to fix the draining problems.

Jeff Daily, 211 Grist Mill Drive: I'm unable to let go of Milton's 2008 Municipal election without speaking here tonight. The first item is in reference to the red letter mailing. If you don't know what I'm talking about please ask a neighbor. Then discuss this letter privately and not for very long. Any in-depth discussion of this letter or it's content is nothing but a way to inadvertently honor the person or people who wrote it, then mailed it. In my opinion whoever is responsible for this so called red paper letter acted out of cowardess. Regarding its contents, whether you believe it true, partly true, or wholly incorrect it was an cowardess to put forth the information without claiming responsibility for it. Whether this cowardly act was done by an individual or a group they should come forward even now and take the public humiliation and perhaps even scorned that is deserved. Should they do so however; it is my hope that no one would be anything but forgiving understanding perhaps that election fever had taken its toll. We can only hope to be the best citizens and this applies to all of us that we can possibly be. By the same token a man wrote a letter to the editor of the Cape Gazette about the Red Paper letter. In this man's letter he accused someone and he named what he claimed was the guilty party. Such an accusation of guilt without any proof was every bit as damning of that writer of the letter to the editor. As was the sending of the Red Paper letter but it's author or authors without noting their authorship. The accusation was as shameful as the letters appearance in the Cape Gazette. Both man and newspaper should be held accountable for the breach of civic duty and public trust respectively. Public apologies are in order. What saddens me most is that both these acts beg the question

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what kind of Town is this? What kind of Town produces such wrong headed and wrong hearted thinking? What example is this for our young people? What kind of residence subverts what is sacred to our American way of life, the notion of public trust? What citizen tramples on civic responsibility and accountability? And at the same time undermines a vital American tenant of innocence before proven guilty. What is the answer? Are such people hateful? Ignorant? Or both? Or did they just get caught up in election fever. On another event leading up to the election. I have a special request of vice-Mayor Leah Betts and I will be talking with her. I request that she communicate to the Milton Chamber of Commerce that future candidate forums be free of all campaign buttons and other campaign paraphernalia. This policy as I understand it has been in place for many years was haphazardly enforced at this election forum. Won't you please communicate my request formally as I make my request on my own behalf and as I urge fellow citizens whether chamber members or not to request this simple rule enforcement. To my way of thinking it is a very good rule. To Mayor Post and Council, Town Manager Dickerson, Town Solicitor Brady, and the Board of Elections. I task you all with the means of publishing election results differently than was exercised Saturday evening. What happened on the streets Saturday night at 6:45 PM outside Town Hall was in my opinion shameful behavior. Whooping and hollering and finger pointing by fortunately only a handful of the winners supporters was not only base behavior, but in my opinion a demonstration of a total lack of public decorum and civic pride. This I feel strikes at the very core of what I believe is the greatest obstacle to our Town's success. Call it civility, the act of common decency, whatever you may choose, but a Town lacking in such civic awareness is in fact a very sad place in which to live. We must come up with a way to avoid this in future. Here is a suggestion based on what I feel was sadly an opportunity missed. Here is what the person announcing might have said to the crowd outside Town Hall. "Before the election results are given it is my civic duty to remind each and every one of you that each candidate made a heartfelt decision to run for elected office and worked long hard hours alongside their respective supporters in the democratic process. Honor each and every one of them with your silence when I issue the results. Afterwards, celebrate or as the case may be congregate quietly in your homes or at your respective planned private planned functions. And let us be reminded that we are in the Town of Milton to live and work together in what we hope and be a caring community. A community where each of us is respected for his or her thoughts, feelings and love of this special town as well as this great nation. Silence please, then go about your business quietly and respectfully after I have given the vote count and thank you.

John Brady: Mr. Daily let me just respond to the process that the new election law has. The new election law had it at 5:30 someone had to come out and announce that there was ½ hour left in the voting period. I did that. And then at 6:00 I announced the polls were closed. That's under the law. It also says that the Chief Inspector has to publish and announce the results. Your comments are gratefully accepted as to comments that can be said. The requirements of what the law said is exactly what the Chief Inspector followed. She was to go top to bottom of the two offices and she went right down the list the exact way that the names were on the ballot. I will forward your comments and if you have a copy of it Ms .Manlove is the Commissioner of Elections. Now that almost every Town has had one cycle of elections under the new law they're looking at some clean-up procedures because they have found some problems. For example, in Dewey Beach where I also serve as Town Solicitor the election room was not big enough to count the absentee ballots and do the elections at the same time so they went into two different spots and technically I was told that was improper without notice. Also, the 50' marking came up as an issue because apparently the southern mark was 54' instead of 50 to avoid people congregating in front of a business store. These are some issues that I'm going to send to Ms Manlove. She is at the State Department of the issues so we can send it up for their consideration for the next time. Thankfully we did not have any machine failures. The election flowed fairly smoothly. What did not get in the paper was that 81.2% of the voters turned out to vote. That's a very high turnout and the Town should be proud.

Jim Krellen, 224 Sundance Lane: I have two quick questions. One has to do with a question regarding natural gas service in Milton. Why don't we have natural gas service? The second is in future Council Meetings at least quarterly can we have some kind of financial reporting comparing actual vs. budget and an explanation of the variances.

Mayor Post: We have natural gas with Chesapeake Utilities. However Chesapeake Gas decides where they provide service. If you want to contact Chesapeake Utilities and ask them if they would be interested in going into Cannery Village you can do that. But they're looking at it on a cost benefit to them. At one time they had mentioned that

they would possibly pick up Cannery Village when the loop around, but I don't even know where they are with their lines now. We did approve Chesapeake Utilities well over a year ago.

Marcia Finn: Happy Birthday Greetings to Joanie Martin-Brown today. I'm here to speak this evening for Karen Duffield who is not able to make this meeting. On behalf of the sponsor Irish Eyes Restaurant and Pub I'm pleased to announce and officially invite the Town of Milton to participate in the first annual Irish Eyes St. Patrick's Day Parade. This first ever parade in Milton will be held Sunday, March 16, at 2PM. Monies raised through sponsorships and entry donations will benefit Casa San Francisco and the Milton Fire Dept Training Program. Suggested donations of \$5 and/or a fully packaged or canned item will be collected at the Parade line-up on Atlantic Avenue. Letters of invitation have been sent out to area schools, fire depts., and business organizations and we hope this inaugural parade will attract some very enthusiastic entries. Walkers and their costumed pets are particularly encouraged to be a part of the parade which we hope will become an annual Milton event celebrating St. Patrick's Day. The parade committee thanks the Town Of Milton, staff, it's Town Manager, George Dickerson, and Mayor Post for approving the petition for this parade and is grateful for this opportunity to invite a special community to come out on March 16 and celebrate a special holiday. For further information or to obtain an entry form please contact Karen Duffield at 684-1349 or the Milton Fire Dept at 684-8500.

John Collier: In reviewing some things in the zoning code and town ordinances today in regards to the demolition moratorium I came across an interesting thing in the zoning ordinance. In Section 4.9 I don't know that this historic preservation board has been empowered yet unless there's been an amendment which I could find on the website. Right now there are 13 instances where certain actions taken by the Historic Preservation Board are the responsibility of the Board of Adjustments in the language. I think it would be nice that this get straightened out because I'm not sure what the ramifications are other than in my mind that board has no power until those are changed.

Mayor Post: Mr. Brady believes these have been corrected.

We will now close the public participation at 7:57 PM.

- 5 The Call to Order was at 7:57 PM by Mayor Post
6. A Moment of Silence was asked for by Mayor Post
7. The Pledge of Allegiance to the Flag was said by all
8. Roll Call – Mayor Post

C Martin-Brown	here
C Duby	here
C Hudson	here
C Abraham	here
Mayor Post	here
C Prettyman	absent
C Betts	absent
9. Additions or Corrections to the Agenda

John Brady: I'm looking at 15g and I think its two different things. I think it was supposed to be appointment of Ad Hoc Committee on developing a code of conduct for the Town. And h was supposed say review of charter status at legislature. So because it is something I can do under the Town Solicitors Report and it's something you don't need to take a vote of I will just have you delete the words review of charter status at legislature and I will address that under the Town Solicitors report because there is no need to have a vote on that. If you don't have the appointments you can just delete g and defer g until April. I think it would be appropriate to take 15 after the Approval of Minutes 12. There needs to be a report on the election.

10. Approval of Agenda

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C Abraham: I motion to approve the agenda as amended.

C Duby: Second

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

11. Presentation of Minutes: February 4, 2008

C Duby: On page 3, there's a reference to the Nelson Chamber of Commerce, I believe that should be the Milton Chamber of Commerce.

12. Approval of Minutes by Council

C Abraham: I make a motion to approve the minutes as written with the one correction.

C Martin-Brown: Second

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

13. Town Audit Report- Tom Sombar

Tom Sombar, Sombar & Co.: Hope everyone has a copy of the Audit Reports with them. I'll be hitting the highlights. We provided the audit services the Year ending Sept 30, 2007. On Page 4, this is the Government-wide which is full accrual as opposed to the budget presentation of the Town of Milton's assets. There were two most unusual events among others during the year and certainly the most significant one is the privatization of the wastewater plant and the purchase of the Town Hall along with substantial other street, roads and other infrastructure improvements during the year. The assets of the Town declined \$1.7MM from \$9.6MM to just short of \$7.9MM. An interesting point of that is in spite of \$1.6MM in capital improvements during the year that the cash account only went down about \$610M from \$4.6MM to just short of \$4MM. The Town's still in a very sound cash position. Liabilities increased from just short of \$1.4MM to \$1.427MM or increased \$35M. The net assets or the equity of the Town declined by \$1.7MM from \$8.2MM to \$6.4MM. Big changes there. Turning over to page 6, this is the Government-wide statement of changes in that assets, full accrual meaning the capital assets are not expenses in the year as opposed to the budget year. The Revenue of the Town declined \$394M from \$4.086MM to \$3.692MM. Lots of issues affecting that. Certainly the EDU income in '06, not in '07. There was a \$287M decline in transfer taxes during the year although that was somewhat offset by \$216M of increase in building permits. A decline of almost \$400M in revenue. On the expense side the expenses increased \$953M from \$2.389MM to \$3.3MM producing a increase in net assets before extraordinary item for the current year of \$349M vs. almost \$1.7MM the year before. That a \$1.3MM decrease in net income. The extraordinary item obviously is the transfer of the sewer plant assets out. With that caused the decline in the net assets to \$1.75MM compared to almost the same number of earnings the year before which was just short of \$1.7MM. That being said the net assets of the Town are only \$6.4MM. The 200th Anniversary expenses are in there, there were high legal expenses, a lot improvements made to the streets, lots and lots of things done this year that were not typical.

On page 17 is the balance sheet, which essentially a cash basis statement showing total assets of the Government fund at \$3.7MM, showing the general fund cash at \$3.5MM which is an increase of over \$2MM from 2006. Liabilities at \$129M and fund balances at almost \$3.6MM. What's interesting here is the unreserved general fund balance represents more than 1 years' worth of general fund expenses which is extraordinarily good.

Turning over to page 19, this is general fund income and expenses. Hold that spot and turnover to page 41-51. This is showing those same numbers on a 4 year comparative basis. When you look at page 46 you can see the transfer taxes on the left hand side of the page where it was almost \$1.1MM in '06 and it declined to \$810M in '07. Building permits there were \$172M in '06 and \$389M in '07. On page 47 it showing total revenue for the Town did increase from \$2.2 to \$2.3MM. As you go through and look at the expenditures by group there's not any really significant increase. There is in the Street Dept. obviously with the amount of work done on Mulberry St. this past year. The Police Dept had a very substantial increase. Some of that salaries but it's also so very substantial capital improvements, such as redoing the old town hall to make it more usable as the police department. Admin is up, but that's where the town hall shows up and the other related costs with the town hall of \$815,000, when taken out is not much of an increase, just a one-time

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thing and this is where the cash or the budgetary basis can have some distortions. Code enforcer is up, parks & rec is up; again much is capital expense. There are rails to trails expenses of \$60,000. A lot of things are not very comparable from year to year. There are lot of expenses as well as revenue, the expenses are for the 200th anniversary, so general government, general fund expenses were \$3.4 million for this year compared to \$1.5 million the year before. See on page 50 the town actually lost \$1.1 million, compared to \$663,000 the year before. Compared to 2004 and 2005, 2006 was an exceedingly good year financially, so it does make the changes in 2007 appear more onerous, when actually not. There was a significant transfer of funds from the proprietary fund of over \$3 million, producing a positive increase in the general fund which increased its fund balance, shown on page 51 from just short of \$1.5 million to \$3.5 million so the general fund is in excellent shape.

Turning back to page 22, this is the first separate presentation for the proprietary fund and although they are the same numbers as in the government-wide, turn to page 55 showing the proprietary fund on a comparative basis as far as assets and liabilities. The total assets of the proprietary fund drop from \$7.2 million to \$2.3 million. Some of this is cash movement to the general fund, some was moving of the waste-water treatment plant assets. Liabilities increased from \$1.1 to \$1.2 million and fund equity dropped from slightly over \$6 million to slightly over \$1 million. Large changes.

Turning to page 23, provides a snapshot picture of the proprietary fund. Extraordinary items are shown on page 24. An income of \$265,000, and the \$2.1 million going out, being privatized and the transfer out to the general fund, showing a negative \$4.9 million. Beginning assets of \$6 million, showing \$1 million in the proprietary fund which still represents the water fund for the town.

In conclusion, there is a lot more to the report, very extensive notes. There is information in the special revenue fund, more detail on pages 56 and 57 about the general fund, and proprietary fund revenues and expenses. Some commentary: I can't really comment on whether it was a good or a bad move to do what the town did, as far as the privatization, but it's certainly my experience that the town would have had to substantially increase the sewer rate, water rate, property taxes. I was involved with the city of Lewes when they did their bond issue. Certainly, the bond issuing cost would have cost the town probably half a million dollars, let along the future interest and payments they would have had to make. While not in this report, but some commentary that the town will be receiving significant monies in the future from the Tidewater Company for franchise fees, so the town will be recouping what they lost, which was minimal with the transfer. Therefore, the town is in a strong position both for now and the future. Open up the floor for any questions.

C Martin-Brown: Mr. Sombar, I think it's important that we clarify for people who are new in the community what we transferred to Tidewater was not the land, just the sewer plant.

Tom Sombar: Yes, just the sewer plant. And these were old assets that the town has been placing band-aids on for the past 3 or 4 years, spending tremendous amount of money on a plant that was failing, costing the town a lot of money.

C Martin-Brown: That would explain the penalties as well, would that not, Mr. Sombar?

Tom Sombar: Well, I don't know if there is any penalty, but the town didn't lose the so-called fourth quarter revenue. Basically, when you look at the proprietary statement, you'll see that sewer revenue is down. The fourth quarter, which is July 1 to September 30 period wasn't received by the town, it was received by Tidewater. Tidewater is obligated to repay some of the indebtedness of the town, happening at a later date, they are required to make significant payments to the town, but again at a later date. So the town certainly is much better off, I think, even though these statements reflect some unusual looking numbers as far as the effect of that going out. We felt as auditors, we had to remove those assets, because they no longer are owned by the town, only the land is owned by the town. I believe Tidewater is supposed to tear down and incur the cost of tearing down.

C Martin-Brown: Thank you, Mr. Sombar.

Tom Sombar: Any other questions?

Mayor Post: In the past, even with revenue showing, we were still running in the negative.

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Tom Sombar: There were some positives there, but I think the main thing, Mr. Mayor, is that clearly the very substantial costs that the town would have had to incur to upgrade the plant. Whatever number estimated, it probably would be 1/3 to 1/2 more, when adding engineering fees, construction cost, and before you could get a bond issue, you have to show you have additional revenue to support the repayment of the bond. So right away the citizens of the town would have been faced with higher water and sewer rates, property tax increases. It seems to me that those are fairly frozen right now. Certainly over time, these rates will go up but it seems the Tidewater Company and particularly the new developers who come into town are going to be paying significant fees to the town for their hook ups which will benefit the town in the future. Some it's a short-term detriment for a long-term benefit. Any other questions?

Mayor Post: In two days, we'll have this on the website.

Tom Sombar: I appreciate being able to be of service to the town and encourage any questions at some later date.

14. Committee Reports – Mayor Post

Mayor Post: Under Committee Reports, Neva, did you want to present?

Neva Baker: I'm Neva Baker, chief inspector of the board of elections for the annual municipal election on March 1 of 2008. We have approximately 2,000 residents in the town of Milton, but only 630 registered voters. Of that 630, we had 512 people vote, 438 people came into the office and voted on the machine. We had 74 absentee ballots. We were quite late reporting the results for which I am sorry. Thank you.

Mayor Post: You did a great job. The committee reports will be written and can be found on the website. The Town Manager's Report?

15. Town Manager Report

George Dickerson: With regard to the website, the first thing to report is that the website is almost ready to go. Mid-March is the launch of the new web site which will be user friendly and will contain much more information.

On the rails to trails project, we have received \$25,000 from the Delaware Land and Water Conservation Trust Fund. We were fronting some of the money for the engineering cost; the money from the trust fund will help to reimburse the town. We've been approved for a \$50,000 grant for the rails to trails phase I for the period of January 1 through December 31, 2008.

The complaint report, as you can see, closing the year out with 11 outstanding complaints received at town hall that are in process to be resolved. As discussed in Miss Abraham's meeting, we have found that many of the complaints can be handled in house by reading the meter, installing a new meter, assessing whether the problem is the town's responsibility, etc. A discussion with Julie, Stephanie, or myself, then with Alan, sending someone to assess the problem, expedites the process of complaint resolution vs. calling a committee meeting. We are bringing this before council for your consideration. We would like for the council to consider the administration of the town to handle simple requests and to issue a letter to go back to the committee advising status and to keep Miss Abraham involved. If the complainants are not satisfied with our actions, then we would go back to the committee in an appeal process. Miss Abraham, would you have a comment?

Rhonda Abraham: What I might add is that the committee relies heavily on Alan to give a report, and we find that many times the complaint is just a meter issue. The committee feels that many of the issues could be handled by simple, common-sense decisions, not requiring a group decision.

George Dickerson: So what we hope to do is advise you of our intent tonight and revisit next month for the council's decision to allow us to handle small complaints in-house, grants the credits and adjust the billings through Julie, to expedite the process.

The fire marshal's office has approved the Town Hall renovation plan. Bids have gone out and tomorrow at 10:00 am is a pre-construction meeting at town hall. Mr. Pat Ryan of French and Ryan Architects in Georgetown will be running the meeting and will meet with bidders.

One note to Mr. Sombar's report on the audit: I told staff that I would like them to have that on by 10:00 am tomorrow morning. I've been advised that they would like to have two days to get that on there because it's a complicated process to get these numbers on. So in two days, we will have the audit on the town website, the portion that Mr. Sombar has approved as being the most relevant documents.

As I was ill and in the hospital, I was not at the February meeting. I thank everyone for the cards and calls regarding my health. I received a letter from Miss Hudson, regarding a GPS system that someone mentioned at her meeting. Jennifer is looking up records to research this issue.

We received a letter from Karen Dunfield regarding the St. Patrick's Day parade. The charter states that buses delivering parade participants to a parade must have a permit; however, there is no defined process to issue a permit. As part of the permitting process, the town must receive a letter of no objection from DelDot for traveling down a state-maintained roadway. Miss Abraham is the contact person for those who would like to participate in the parade.

We have the software to produce budget vs. actual; we will make sure that these numbers are out on the back table. Can we also put these on the website, Steph?

Regarding a decibel meter, we are researching locating a company where the decibel meter readings for sound and noise will hold up in a court setting along with training. The cost of the meter is \$5,000 and half-day training is \$800 for about 10 people (police department and code enforcer would have to be trained). Primary operators would be the police department. The meter has been ordered, I believe. All noise is measured in ANSI noise level db readings. The accompanying ordinance describes the point in location from property line. Milton does have a noise ordinance and it does have a noise ordinance with db level readings for different noises at different conditions.

The Sussex soil conservation has asked us if we would become their enforcement arm for holding building permits as well as certificates of occupancy for non-compliance in our developments with flooding issues, etc. Mr. Brady did research that and responded. I forwarded that communication to Sussex Soil district. Mr. Brady's research revealed that Milton's town charter contains no basis for denying a certificate of occupancy (and perhaps building permits, as well).

Mayor Post: Can I just say something on that because when I was out in the community, it came up at Wagaman's? Soil conservation group stated that Milton was the only town that didn't agree to do this. Is that true or false? If every other town in Sussex County has agreed to do this, I certainly think that we should follow. It's my understanding that I was told point blank from the gentleman of soil conservation (third party) that Milton was the only town that did not want to participate.

George Dickerson: The only response that I have, Mayor, is that Jessica Watson who is the Soil conservation program director told me that as well. However, I brought this to the council because Milton found itself in a situation where a builder was withheld building permits for violations that were occurring within that subdivision. They took us to court and we lost.

Mayor Post: I would like to know if any town has successfully upheld the issuance and not lost.

George Dickerson: I do not know the answer to that

Councilwoman Martin-Brown: Mr. Manager, I would also like to challenge that finding for three reasons: As many of you know, I serve on the Broadkill Action Tributary Team and Miss Watson addressed that group which included business community, municipal governments, etc. It is, whether our charter addresses it or not, DNREC and the Soil Conservation Service have both agreed that the municipal levels are the legal implementing/enforcement agent for the Soil Conservation Service. If we don't do that, the Soil Conservation Service has an enforcement process at DNREC that can come down and pursue this matter. The question is then do we alert DNREC that since we are afraid of losing another law suit that they be the enforcing arm on behalf of this community. That question has not been asked to my understanding. I'm also concerned knowing the credibility (and I have to be careful I don't get us into a law suit), but not sure that Shipbuilders has been a starring example of due diligence and just accountable public behavior. So I'm particularly aggravated by this, because we are the only town that's not doing its job.

Mayor Post: But I would like to comment, though, in defense of this because I lived through this lawsuit and I was on council at that time and we absolutely did lose. We were also left high and dry by soil conservation. Therefore, I would still like to say, has the county agreed at their level to uphold issuance of occupancy permits?

George Dickerson: I do not know. I can tell you that I met with the county people. Each county operates differently. Kent County soil conservation has experienced, knowledgeable engineers who did site inspections, reported the findings. For example, they went to one site finding numerous complaints, then called DNREC enforcement officials, who shut the developer down until inspection issues were addressed. There are many issues at Wagaman's that people should be complaining about. I was more than sympathetic to Jessica Watson's position that she basically said that they are an agency that oversee the subdivision, but when it comes to enforcement, they have no teeth. They are reluctant to call the state because they encounter only bureaucratic red tape. I would suggest that I call DNREC officials and ask why they are not enforcing. If they're enforcing in Kent County, why aren't they doing it in Sussex county?

Mayor Post: I would also talk more with Jessica Watson to see if any other municipality has withheld.

George Dickerson: She told me that every other town does.

Mayor Post: I know they do it, but have they actually withheld one that has not ended in litigation? It's very interesting, who knows in the archives of town hall, if I recall, Jessica Watson wrote a letter saying that our town was doing a wrong thing by withholding in our experience. It's great that they've changed their course of action, but in the same time, I would like to know if any municipality has withheld and been successful, because we were not.

George Dickerson: I'll pursue the call to DNREC and call Jessica. I have received a letter from the chairman of the horseshoe crab and shorebird festival, Ellen Passman, asking for a donation. We did donate last year and donations range from \$25-\$1,000. Asking for your consideration. Last year we took a full-page ad (\$35) in the Milton Garden Club publication; asking for your consideration. That's all I have at this time, but will have another agenda item when you'll also hear Debbie Pfiel speak. Thank you.

Mayor Post: Town Solicitor Report.

16. Town Solicitor Report

John Brady: If my eyes don't deceive me, I think we have the Honorable Mike Wyatt, the Mayor of Georgetown, sitting in the audience and some other people from Georgetown, welcome.

The legal update is that no one has sued us in the last 30 days. We have not received any intent of being sued. There have been no cases settled. There have been some issues which we are working on resolving. I was in attendance all day at the elections on Saturday; my role was to deal with people who thought they were registered to vote, but who had registered after the cutoff, therefore ineligible. Other people believed they had registered before the cutoff; an emergency hearing of the election board was held at 3:20 pm on Saturday. Their testimony was given. The board voted that they would be eligible to vote and be registered based on the representations made. As server for town solicitor for several towns, when a voting issue comes up, you go with the intent of the voter. The advice I received from the resident judge, Henly Graves, who would rule on those matters if they were appealed to him in a general election was

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that if there is some evidence that shows that the person tried to register, then give them the opportunity to vote if they were in compliance with the registration. To that extent, there were two provisional ballots cast on Saturday by those two voters, and they did not affect the final vote. Otherwise, everything went very smoothly in accordance with the law and again, Mr. Daly, your comments I've made notes on and will forward to the election commissioner.

Councilwoman Duby: Mr. Brady, I thought you were going to include status of the charter.

John Brady: Oh, I apologize, that's right. The town charter passed the state senate unanimously, and it is pending at the house. According to my calendar, the house will next go back into session on the 11th and I believe I saw that it was set for committee meeting on the 12th. The house goes out the 20th for the Easter break, so there may be some action between the 12th and the 20th before they recess.

17. Written Reports from:

a. Maintenance

Councilwoman Abraham: Motion to approve as written.

Councilwoman Duby: Second

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

b. Code Enforcer

Councilwoman Duby: Move acceptance of the code enforcer's report as written.

Councilwoman Abraham: Second

Mayor Post: We have a motion and a second to approve the code enforcement report as written. Any discussion? All in favor, motion carried.

c. Police –January 21 and February 20 Monthly reports

Councilwoman Duby: Move acceptance of the police report as written.

Councilwoman Abraham: Second

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

18. Old Business:

a. Second Reading and possible vote to Amendment to Zoning Ordinance Article 11.0.1- Establishment and Duties of the Board of Adjustment

John Brady: Ordinance amend article 11, section 11.0 Zoning code the town of Milton, Delaware. Whereas the town of Milton wishes to amend article 11, section 11.0 of the zoning code of the town of Milton, Delaware, by deleting the first paragraph and replacing thereto. Pursuant to the laws of the state of Delaware as amended, the town of Milton shall establish a board of adjustment. The board of adjustment shall consist of five (5) members who shall be residents of the town and shall have knowledge of the problems of urban and rural development and who, at the time of appointment and throughout their term of office, shall not be members of the legislative body nor employees of the town. A minimum of two members shall reside in the area of the town of Milton designated as the historic district, the appointment of an architect, draftsman, builder, engineer or other person experienced in the design and construction of buildings to the board is

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encouraged. The mayor of the town shall appoint such members to the board of adjustment and also the appointment shall be confirmed by majority vote of the elected members of the town council. First reading was February 4, 2003. Public hearing was held March 3, 2008, with the comments that you heard earlier tonight. This is the second reading of the ordinance to amend the zoning code, Mr. Mayor.

Mayor Post: Do we have a motion?

Councilwoman Martin-Brown: I'd like to make the motion that we make the amendment to zoning ordinance article 11.0.1 establishment and duties of the board of adjustment.

Councilwoman DUBY: Second.

Mayor Post: We have a motion and a second. Any questions to the motion? Can we have a roll call vote?

C Martin-Brown: Yes

C DUBY: Yes

C Hudson: Yes

C Abraham: Yes

Mayor Post: Yes. Opposed? Motion carried.

- b. Second Reading and possible vote to Amend Ordinance 18-34 No Parking Area (f) change "North" to read "South"

John Brady: Whereas the town of Milton an ordinance amend section 18.34 to the code of the town of Milton. Whereas the Town of Milton wishes to amend chapter 18 section 34 of the code of the town of Milton, Delaware, by deleting the current wording if subparagraph f in the section, replacing thereto as follows. (f) the south side of Prettyman Street from Federal Street to Chestnut Street. First reading was February 4, 2008. Public hearing was March 3, 2008. Mr. Mayor, this is a second reading of the ordinance to amend the parking code to the town of Milton.

Mayor Post: Do we have a motion for the amendment of the ordinance?

Councilwoman DUBY: I move that we accept the amendment to ordinance 18-34, parking area (f) with the change from north to south.

Councilwoman Hudson: Second.

Mayor Post: We have a motion and a second. Any discussion of the motion? Roll call vote.

C Martin-Brown: Yes

C DUBY: Yes

C Hudson: Yes

C Abraham: Yes

Mayor Post: Yes. Opposed? Motion carried.

- c. Discussion and Vote on possible placement of a moratorium in the Historic District and Town Center zones

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John Brady: Mr. Mayor, last month the issue came up. We did not have an ordinance prepared at that point. We asked that a public hearing be held and an ordinance be proposed. That ordinance was put on the website. So, this would be a first reading of the ordinance tonight. The public hearing would go down as tonight, but the final action would have to be next month. An ordinance enact a six-month moratorium on demolitions within the town of Milton. Whereas, it is desirable for a town to review all ordinance referring to demolitions with the town, especially demolitions in the historic preservation district in the town center and whereas, it is expected for proper review to take six months from start to finish. Whereas it is desirable that said review is done and no structures demolished on their existing application on file with the town of Milton and whereas the temporary moratorium on the demolitions within the town of Milton is deemed to be within the town's public policy. Now, therefore, the Mayor and town council of the town of Milton hereby enact the following moratorium on the demolition of structures within the town of Milton, limit is hereby proposed from date of enactment until October 7, 2008. A purpose the moratorium is hereby enacted upon the demolition to be performed town of Milton for the purposes of permitting a review of all ordinances referring to demolitions within the town, duration of moratorium shall be imposed to and including October 7, 2008. During this time period, no applications except for those permitted in c, shall be accepted. C, the following items shall be exempted from the affects of this moratorium. Any application for demolition of structures within the town of Milton received by the town before today, March 3, 2008. Effective date this ordinance shall be effective upon the enactment. Termination of this ordinance shall terminate on October 7, 2008, unless extended or repealed prior to this date. Section 2 severability provisions of this ordinance are severable if any of the provisions or any sentence, clause, or paragraph of the application thereof to any person or circumstance shall be held unconstitutional in violation of the laws of Delaware by any court or common jurisdiction. Decision of such court shall not invalidate or impair any of the remaining provisions which can be given effect without the invalid provision or application. First reading, March 4, 2008. Public hearing March 3, 2008. I ask that this be scheduled for next month for final enactment.

C Martin-Brown: May I ask a question? It sounded like you changed under now therefore March 3, 2008 to date of enactment that did not change the March 3, 2008 under exemptions to date of enactment.

John Brady: I changed the March 3 because it said imposed for March 3 and we can't retroactively go back to that but we could leave in the date because there was notice for tonight, but that's fully up to you. If you wish to have it upon date of enactment for applications to be filed and considered that's fully within the province of the council.

C Martin-Brown: Mr. Mayor, is it open for discussion on the text?

John Brady: I did the reading. You can have discussion on this text, yes.

C Martin-Brown: Mr. Brady, I'd like to propose that the first whereas end on the second line after within the town.

John Brady: Okay.

C Martin-Brown: This would reflect my colleague's intervention that at the last meeting, Mr. Prettyman said it ought to be town-wide. So it would be within the town. On the third whereas, it would read "whereas until said review is completed, no structure may be demolished and there is an approved application permit in town hall". In other words it can be sitting there but it hasn't been acted upon, which would be a passive approval. Therefore, it should say an approved permit. After "now therefore", the next sentence "a moratorium on any demolition of structures within the town of Milton limits is hereby imposed from March 3" which I would advocate, but may be extended if deemed necessary by an act of the council.

John Brady: And I think I have that part on the back. Unless extended or repealed prior to that date.

C Martin-Brown: Right. The final remark I'd like to make, Mr. Brady, is that in fact this very kind of moratorium was imposed for six months in 2004, and it had a very positive effect of expediting the work of getting these ordinances done. And I think that's an important sunset provision. So thank you, Mr. Brady.

John Brady: Is there a motion now to defer it with those changes until next month?

C Martin-Brown: I so move, Mr. Brady.

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C Hudson: Second.

John Brady: The two that are pending before the board now for the appeal would be exempted, cause they had applied previously. One is pending and one the appeal is pending. So they would not be covered by this.

Mayor Post: And so we have a motion and a second with the changes accordingly as presented by Councilwoman Martin-Brown.

C Martin-Brown: Yes, Mr. Mayor, and a second from Miss Hudson.

Mayor Post: Any discussion? Roll call?

C Martin-Brown: Yes

C Duby: Yes

C Hudson: Yes

C Abraham: Yes

Mayor Post: Yes. Opposed? Motion carried.

d. Historic Preservation Ordinance Commission review of ordinances relating to the Historic District

John Brady: Resolution request for historic preservation commission to review the historic preservation district ordinance regarding renovation demolition. Whereas, council of the Town of Milton wishes the historic preservation commission to review the historic preservation district ordinances regarding renovation demolition within the district for health, safety, and permit requirements and whereas the review of said ordinances shall be completed in order to report back to the Mayor and the town council of Milton July 25, 2008 so that the report of new ordinances if necessary can be presented to the August 4, 2008 town council meeting and referred to planning and zoning for consideration at their August 19, 2008, any public hearing on September 2, 2008, town council meeting and whereas during this time period, public comment will be received until the public hearing at the town council meeting on September 2, 2008. Now be resolved by the town council of the town of Milton that the historic preservation commission review the historic preservation district ordinances regarding renovation demolition within the district for health, safety and permit requirements. This will be the first reading tonight on March 3, 2008.

(?) I don't have a copy of that. I have something else that's a resolution for the Town of Milton, but it's not that language and there are no dates in it. Did we not get a copy of what you just read?

John Brady: It should have been here and these were handed out tonight. They were sent up and they should have been in the supplement package. And Stephanie's not here, so let me show you. It should have looked like this.

Mayor Post: This is the one we have.

John Brady: It looks like out of a modus of caution when the town emailed me saying they didn't have them on Friday, I rewrote them. And I think I did a better job rewriting them with dates the second time around than I did the first time.

(?) Can we have them emailed to us?

John Brady: Sure, I will make sure you get it tomorrow.

(?) Yes, I would like it too, Mr. Brady, thank you.

John Brady: I'll make sure everyone gets it. Public hearing needs to be set for next month, a motion for a public hearing.

Mayor Post: Do we have a motion?

(?) I make a motion we set a public hearing next month.

Mayor Post: Do we have a second?

(?) I second, Mr. Mayor.

Mayor Post: We have a motion and a second. Any discussion? Role call vote.

C Martin-Brown: Yes

C Duby: Yes

C Hudson: Yes

C Abraham: Yes

Mayor Post: Yes. Opposed? Motion carried. Moving into new business.

19. New Business:

- a. Development of new business review process, town center/historic preservation/other district regulations

George Dickerson: Tonight Debbie Pfiel, Robin Davis, and I present our process for an individual to come to our town and open a business either in town center or not in town center. Complaints have been heard that our process is cumbersome and long. We are dealing with planning and zoning ordinances that were approved in 2004 and haven't been revamped since then. I'm sure the intent at that time was to cover all the loopholes and issues arising at that time. It may be time to review the ordinances. With the help of Debbie and Robin, you will see thirteen scenarios of different locations, town center, type of business, in-home use for those who wish to open a business. The first page and the second page of the first scenario as an example is a home occupation. The first page shows ten steps to follow for the first scenario. The ten-step process is actually more cumbersome than shown. The next page shows that within the first step, there are actually six steps. Within the second step, there are seven steps. The resolve is, how as council can you streamline and revamp the ordinance. Debbie will walk through the process to show how cumbersome it currently is. Thank you.

Debbie Pfiel: Thank you, George. I'm here to present some good, bad, and ugly news. I first want to thank the consultants, because it wasn't just myself and Robin. I give credit to Mr. Brady and Mr. Kerr. We've spent several hours on the process to make sure that we agree upon what your code is and if your consultants have to spend that much time interpreting your code, can you imagine what an average tax-payer, home owner, developer has to do. I do have a package to give out, I'll hold it until the end of the presentation. I'd like you to focus on a couple of items to be addressed here. I want to disclose that some of the direct bullet statements do not imply that Milton is doing this or a council person, planning commissioner, citizen or developer is doing this. But we are giving you some hints and observations that we have seen in the last year that may help to identify issues which may be corrected easily.

We have eight steps. Each property is different: has it been vacant, is it on a state-maintained road, does it have water, does it have sewer, what are the zoning rights? The second step is to inform the decision makers with areas of concern. That is where we are tonight. We have thirteen scenarios, we will go through two and provide some late-night reading material. The town council, town manager, and mayor have brought to my attention that changes are needed. The intent of the procedures is to clarify save time and money. This is not just for a developer; this is for your staff, your consultants, everybody involved in the process. Initiate dialog with a joint working committee is what we're going to recommend in this procedure. We want to improve the process with recommendations to council as well as implement the new procedures.

We want to increase awareness with education and planning tools and investigate planning and development fees to make sure they are covering costs.

It is strongly recommended that thorough reviews are completed prior to ordinance adoptions. We are leaving some people out in a lot of the municipalities. First, you want to make sure that ordinances can be enforced by involving and receiving input from the staff, commissions, boards, council, citizens, consultants and developers prior to adoption of ordinances.

Interaction with applicants outside of the process should be avoided. I think I have Mr. Brady's support that interacting with applicants outside the process taints the government process.

It is highly important that the applicant go through the process. Elected officials hear complaints from the applicants, but it's important to let the staff do its job.

It is suggested that we increase customer service with planning and development, by providing tools, brochures, contact lists, procedures, fees and estimates at the counter. These items would be most helpful to developers, staff members, tax payers, and average citizens who want to do things to their property. Providing these tools would be better than expecting Robin to handle all the issues.

It is important to understand that no one person can deviate or waive the requirements of the Town of Milton code.

Treating each applicant the same helps prevent potential/unnecessary litigation.

It is important to avoid a perception of opinionated process and/or too much control. Care must be taken with property rights and to make sure that design standards are in place. It's important to provide positive input to the planning commission of the council. Care should be taken when expressing opinion in public places.

Some of the concerns expressed by developers and citizens include loss of money to the applicant, too many meetings for minor renovations/change of use, the process is unclear to all with too many legal interpretations. Additional concerns have been expressed that unknown changes occur with each meeting and step. These can be prevented by knowing the intent of the conceptual/master plan/preliminary plan/final plan.

Another common area of concern is with boards/commissions/council following the parameters set forth in the code. For example, Milton has empowered the planning commission in certain circumstances with making decisions that will not go back to council. Education can help with this issue.

There is an area of concern with historic district regulations with the parameters and control placed on the properties within. Proper design standards can help.

Identifying the public process and input in each application is important, i.e., letting the citizens know when they can speak at a meeting, the appropriate format, and when there are closed meetings. Some meetings are advertised as public hearings when citizens may speak and other meetings not advertised, but available for citizens to speak as well. Citizens should be made aware when the closed meeting opportunities exist.

Professional and actual process fees should be communicated clearly with estimates given to the applicant.

There are too many people on the planning commission. The standard in most municipalities is five or seven members. Milton has nine members. It is at the discretion of council to appoint the members, but it is perceived that Milton has too many members.

Now we'll look at a special use home occupation permit application. The applicant is in R-1 zoning and the structure is a single family home. They want to have a sewing alteration shop located within the home, proposing not more than 25% for business. The property has access on a town-maintained roadway. For this scenario, the applicant must go through these steps:

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- (1) a pre-application meeting – recommended, especially if the procedures aren't spelled out specifically in the code
- (2) submit special use permit application – they need a legal notice, site plan, some requirements are perhaps not needed for review.
- (3) special use permit application review
- (4) public notice issued
- (5) receive comments on the review and planning commission meets
- (6) planning commission holds a public hearing allowing people to speak for or against the application
- (7) outside agency approvals
- (8) meeting follow up

Each of these steps requires many activities. For example, for a public hearing one must send letters to everyone within 200 feet, enter a legal notice fifteen days in advance, etc. The yearly income from a home occupation may not cover the cost of application. Just the meeting that Robin or the consultants hold is very involved. There are areas of the process that need to be made user friendly, edited, agreement with outside/state agencies, legality/enforcement. Many of the procedures discourage economic development. We should cut out procedures and intertwine boards, versus adding onto the process.

One quick scenario: If the property is in the historic district, the process becomes 30 to 60 days longer because they might want a sign. We need to look at that while the historic district has their own parameters and the planning commission has their own, and the town council has their own, if they don't intertwine, a simple project becomes a four to six-month process for home occupation.

We now will present a change-of-use application. The property is located in the town center district, has been vacant for three weeks. The tenant wants to place an office/retail use in the building. They are not changing any structure footprint, the property has access on a state and town maintained roadway, and the last use was a town-created non-conforming auto repair shop. This application must go through 21 steps to convert a building by improving the outside appearance. It seems unnecessary to hire an architect to redevelop/redesign the building when the applicant can show what is to be done. In some municipalities, the project coordinator/town manager signed off on some change of uses that met design standards. Milton does not have design standards, but having them might empower the staff.

Where does Milton go from here? Everyone knows we have issues with the procedures, but we need to know that changes still allow us to protect and preserve. The recommendation is to initiate dialog with a joint working committee. I've specifically recommended the chair people for this working group: Planning Commission Chair, Historical Preservation Chair, Board of Adjustment, other chairs as well, Council, Mayor, Town Manager, Project Coordinator, Attorney, Planner, Engineer, all involved in the decision-making process.

The objectives of this group are to prepare all existing planning/development procedures. These are truthfully people with individual properties, but we are just going to go over basic procedures with them. The recommendation is that you would assign the appropriate board or commission to review and make independent recommendations. The goal is to streamline and clarify. If you have a joint working committee making decisions and recommendations to council, you've bypassed the group that's going to use that everyday and interpret that everyday in the work that they do for a volunteer board. It's also an education process when you write an ordinance, you've learning something along the way. I know the comp plan committee learns every week. The recommendation is to have it go back to the boards and commissions. They would tweek it, bring it back to the joint working committee which is kind of an advisory board. We would educate while reviewing the procedures. Identify what tools are needed. I keep hearing design standards from everybody, maybe we don't do it town wide, maybe we just do the historic district. Maybe you do commercial first. There are several ways to break the components where you're not eating the whole cow, you're just eating a steak. The working group to meet on a inter-coordination of procedures and recommendations from the boards and commission. After the planning commission says they would like to see things this way and the historic board says they would like to see things this way, bring it back and have the committee massage it on a time line where everyone follows a parallel pattern, to save the developer time and money as well as the staff and the tax payers. Prepare recommendations for council consideration and the working group would actually prepare the ordinances. This is a little different. Rather than write the law first, see the procedures and flow charts first, then write the laws to follow.

The first team is the Town of Milton, staff, council, mayor. The second team is the appointed officials, boards, commissions. When you make decisions about the people who do it, there's always a ramification. Public input is important, not only citizens, but property owners, developers, stakeholders, professional entities. By this, any time we write an ordinance for planning/engineering, I like to farm it out to a couple of engineering firms, who will be the users and their comments are priceless and free.

Team four is professional consultants, attorney, engineer, planner. It takes three people to get through plans to make sure all angles are covered: the pretty, the technical, the legal.

Next the council will review all recommendations, public hearing and distribution of recommendations, open public comment period, and public comment considerations/modifications to proposal, adoption of new procedures, and education.

Need to clarify and simplify the planning, development, and redevelopment application process in the Town of Milton by creating a user friendly approach and clearly identifying the requirements, standards, and procedures. If that is a goal of this working group and the council wants to move forward in identifying some of these issues, I truly think it would be welcoming on all sides. I think there's frustration with all parties involved, from the decision makers, the law makers, to the applicants, to the staff and I believe that just by asking us to identify those areas for you is a large step for Milton to move in the right direction.

You have the 13 scenarios and you can play the game like John Brady where you can guess where all the properties are. These are real processes in place and the scenarios are real people applying in the next few weeks. When George asked us to come up with that, we basically wanted to be honest in areas of concern and each one of you between the council and staff or citizens have raised issues that they would like to see addressed.

Councilwoman DUBY: Debbie, can I ask a question? One of the things that we had asked for, I'm feeling incredible frustration for how long everything in this town takes and I'm just going to have to get used to it, but it's driving me nuts tonight, so pardon me if I get edgy. We have asked you and Mr. Kerr and Mr. Brady to give us a check list of what we have to look at in a conceptual plan and preliminary plan so that we can do this. Assuming that we go forward with this, and I think what you're suggesting sounds wonderful, but it won't happen tomorrow, and we've got a lot of things to look at. I want to be sure that we can still get those checklists from you that will help us now and I understand that we're going to have some training and all of that and I think that will be helpful too. This is going to take a long time to do and I want us to be able to function a little more effectively in the meantime until this process that you're talking about is in place down the road. So I just want to let you know that I hope you're not thinking that this takes place immediately.

Debbie Pfiel: No, actually you have situations to address now legally and I would not recreate the wheel. For example, an LPD application. Your code is a two-page code, specifically says what is determined in the review process. If that is where the immediate question lies, we should have a workshop on those applications coming up or addressing now for clarification, because the one thing that concerns me the most when I go to a meeting is "Debbie what do you think we should do?" I like to take it right out of your code and specifically in your LPD, it gives almost everyone of the ordinances give you parameters of what this step is and what you should look at. But I think what we need to do is not look at things as an annexation of a subdivision a master plan all as a big deal. The annexation is complete, step 1. Step 2 the zoning amendment for the master plan. Step 3, the subdivision process. And I think we have so many new people on council so many new people in planning commission and new staff and new changes that when a situation arises like that we should just open up the book and discuss it at a workshop or discuss it at that meeting before we move on. But I agree, this is not taking place whatsoever what's going on right now because you have people who have invested time and money in what they propose now and I would agree.

(?) Well, we sit here and spin our wheels at meetings over a three inch diameter tree as opposed to a two and a half diameter tree, a barrier here, this and that and I constantly am thinking are we wasting hours of time sitting here talking about these things that aren't even relevant at this point in the process and what is relevant that we're missing. The code helps, I look at that LPD list, but that didn't answer my question about whether we should be talking about the diameter of trees – is this the appropriate place?

Debbie Pfiel: And I think the thing is to look in the parameter of the subdivision code because the question is if you don't get something in this process that is needed to make a correct decision, will you have an opportunity to make that decision? And what probably should happen is that we look at the subdivision code. Does the subdivision code allow the public comment at that time or is it closed to public comment? Does the subdivision code dictate exactly the plantings and where? The concern that I have is that you have a large council number, you have a large planning commission. That could be 18 opinions without parameters of design or landscaping plans. It could be as frustrating for you, as staff, as consultants. I think if there's not action taken to move forward, it will get worse or you will not have development.

Mayor Post: I will agree and you keep saying that on numerous occasions and I don't know how many developers George and I have met with and others at the table. So there are people very interested. I don't know, and George and I have talked, as far as this issue here, it's horrible flawed. We have serious issues, it's inexcusable that we are not getting business to the town of Milton, it has nothing else to do with it but this horrible process. You know, I know a lady that wanted to open a thrift store in an already commercial building and she's expected to have \$3-4 thousand professional plans when no walls are being changed. There are serious issues. This scenario two, if this is what I'm thinking and it's downtown, it is in the historic district and that building is part of the historic district. Everything from one end of the historic district to the other every building is in. We have issues, not the historic district, but the process and what we are requiring. You can go to any other town in Sussex County and open a business in an existing commercial property with no problem. Milford you could probably be open within three days, and I know people who have done it in Milford. The same people that own buildings in Milford that live here in Milton that are trying to get a property rented in Milton that is commercial that can't get it in months. This person here that needs to be open but could take the process could take seven or eight months. The process is flawed, we need to fix it. Just as important is that any person who sees these issues sooner than we do because we don't go to planning and zoning meetings because we're requested not to, we don't go to board of adjustment meetings because we're requested not to or the historic commission, other people have to be proactive too. Staff, yourself, attorney, but this has to stop or we will have no business. We have three empty buildings right now in one row in downtown Milton, unoccupied for over three weeks. Which means we're talking about an 8-9 month process for someone just to walk in and open a store.

Debbie Pfiel: I don't mean to correct you, but that is a different situation. Change of use there could be 12 different scenarios. If you have a town center business district and your historic district and you're going from retail to retail and it's under a year, it's a turnkey with a sign for historic. So every situation there's about 150 scenarios we can see on every single property depending on what was there and what will happen.

Mayor Post: Well, Debbie, my understanding is that if it's one of those things listed as permitted use, it's not a change of use. If it's a permitted use it's already permitted in the town center, it's permitted use.

Debbie Pfiel: Correct. But if it changes, for example, office to restaurant permitted in both districts, it's a change of use from office to restaurant, it's reviewed for parking, building code, the fire marshal will have a change of use, DelDot will be involved as well if it's a state maintained roadway and the towns code says change of use. It's permitted, the question isn't whether they can or cannot do it, it's can they meet all the requirements of the code for that.

Mayor Post: So you're saying, for example, real estate office to a dress shop, that's a change of use.

Debbie Pfiel: That's correct.

Mayor Post: I don't see that in other towns.

Councilwoman Martin-Brown: Are those under town ordinances?

Debbie Pfiel: Right now, correct. And those are town ordinances that are passed by council. I know that sometimes we pass ordinances, there's a lack of education as to why we're doing it, or who would be affected. Just like the historic preservation commission, one thing I did want to bring up before we close was the ordinance that was just passed in the historic district requires you to have a structural engineer report to remove a shed.

Mayor Post: Possibly the thing should say and that's again too an education, it's the dependent question that you're removing a metal shed that was put there in 1980 or an 1820 summer kitchen which has been used for a shed. So there's a difference of terminology that if we're trying to preserve the district there are big differences.

Debbie Pfiel: Also, what determines preservation? Is it on the national registry, did a special event take place or is it just an old structure that hasn't been caught up?

Mayor Post: Once it's in the historic district and if you talk to the historical and cultural affairs, every property within that district has historic significance, even with changes. Therefore, it's historic. It doesn't mean that George Washington had to sleep there. We have that bad habit of thinking that if it's not period 18th century mansion, that it's not worth keeping. I think then you'd be tearing down 70% of the homes in Milton which would be sad and requires education. Each of these steps will require education.

Debbie Pfiel: Correct, on all levels of government. I agree. The intent is not to make things hard but when we use this process every single day with everyone who calls in Milton, every case is different. George and I learned in the passed couple of months, with him speaking to Don, every situation is different depending on what happened or what was there. Sometimes on your downtown, the most difficult reviews you go through are building code and fire marshal. Shouldn't be the town. You usually have to upgrade your building so much that it shouldn't really be the town, it should be let's get somebody in there and look at the sign. So you'll see there are recommendations. I agree that we should address the current applications. I don't want to give the impression that people don't want to go to Milton, but there's a grave concern. The good news is that the intent of your procedures and preservation of character is pretty much the same. But how do you get there?

Mayor Post: You're right about the process. When you have some things a la carte, such as signage or fencing or window style, those decisions could be made within, I agree with you, to speed that process up, as long as it still preserves the integrity.

Debbie Pfiel: It could be as simple as design standards on historic signs, many design standards on historic elevations downtown vs. a full-blown design manual.

Mayor Post: I think is one of the most important things we can do. We do have pressing issues like with the White property that we need to get moving along with that can't wait.

Debbie Pfiel: And what we're looking for is this something you need to digest or is it something that you want to move forward with a working group. We are going to have people simultaneously submit up until the time this gets completed.

Councilwoman DUBY: I'm also concerned though; that we're talking about doing things on several different levels here that affect one another. We've got the comprehensive plan committee doing the design standards, we've got now historic committee looking at historic district ordinances, and now we're going to do this, how do we know that everything is going to fit. Because if they come up with new ordinances and we've already done this process and the process doesn't fit the ordinances, I don't want us to be wasting time and consultant fees and everything else to be doing these things on different tracks only to come out at the end with a result that says now we have a great new process but the ordinances doesn't fit.

Debbie Pfiel: I'll turn this over to John after one comment. There are a lot of irons in the fire. I think what the council may want to do is have a workshop on prioritizing, where you want to spend your efforts and dollars.

Councilwoman DUBY: Prioritizing and coordinating.

Debbie Pfiel: Right, if the design standards are number 1, if procedures are number 2. We're getting ready to submit a comp plan to council. Full-blown update. I think what needs to happen, I talked to George about this, he's going to hit it in your six-month council budget review, where are we at with these things and where do you need to be in three months, what do you want to see done in six months. I agree if we all go off in different directions, this will not work.

Mayor Post: The interesting thing is since we're a small town, all of those people will be at the table. So we will be going in the same direction.

Councilwoman DUBY: Just because we're all at the same table doesn't mean we're going in the same direction.

Mayor Post: That doesn't mean we'll ever do that.

Debbie Pfiel: That was the sentiment George mentioned to me, that advisory committee, that would represent one from each, a minimum, plus your consultants are on board and hopefully will be staying and will be a part of the process.

John Brady: When the town sends the comprehensive plan off to the state planning office for review, I will instruct the town at that point pursuant to a memorandum I've already received from another town from Miss Holland that no zoning ordinances or any ordinances affect the comprehensive plan should be enacted until the state planning office has returned with their comments. When the comments have been returned, reviewed, and approved by the town, and sent back as final submission, then the 18-month window will open to update the ordinances. So you can go on a multiple track basis. However, until the comp plan is in place, the first key thing, there should not be any significant rewriting of the other ordinances at that point. The key word there is significant. Process ones we can deal with. But if you're redefining districts or redoing other types of regulations, that is discouraged while it is pending in the state planning office. But they have never opposed any process improvements while it is under review. I think you'll agree with me on that.

Debbie Pfiel: Yes, and a lot of these things we're working on are implementation items from your last comp plan that were never come to fruition because of several other projects you've had on the plate.

Councilwoman Martin-Brown: Mr. Brady, does that mean that the land that is the town of Milton for the last decade if not the last 200 years when we're working on ordinances are put on hold until a comp plan, because that's an expanding area of jurisdiction, it's not the established core that it applies to.

John Brady: We have a comprehensive plan in place. We can continue to operate under that. We are required by the state planning office to update it every five years as part of state law. That's what we're in the process of doing. What I said was that when we send the proposed plan to the state office for review, the state planning office requests that we don't change zoning districts at that point until the plan comes back. We can work on process issues during that time.

Councilwoman Martin-Brown: Okay. Well, I did want to share something with Debbie, because apart from being a member of the comprehensive development planning process, I can understand from your perspective as a professional how frustrating this whole fire drill seems to be. I would like to go back and focus, I'm troubled that this was brought up with this level of detail and robustness at this point because it really alone should require a working group meeting of the council to digest this in a working group context, not a town business meeting. But having said that, the business meeting is in fact the very next item on the agenda, has to do with a specific piece of land. So, I think that while you're trying to create a chapeau of capacity and kind of trying to corral us all into some kind of integrated process which I certainly applaud, right now I'd like to go back to Councilwoman DUBY's point is we need to know what ordinances are on the table that we have to think about applying in approving some of the agenda items on tonight's meeting and next month's meeting. Could we defer anything about this until we have a workshop on it, invite the public as we always do and maybe open it up to comment? But not to try to do this in a town council meeting of business.

Debbie Pfiel: First, all the council meetings are open to the public.

Councilwoman Martin-Brown: But I'm talking about a workshop of the council which is usually where the public doesn't speak and we may want to think about whether or not we could enable that to happen.

Debbie Pfiel: If I may, the reason we were asked to go tonight is that there are some potential developments that have problems right now that are getting ready to submit that cannot. Out of these 13, there are 10 that are waiting to figure out whether they should invest, develop.

Councilwoman Martin-Brown: Back to you then is what do we need to know about the hard procedural stuff on a site plan to respond to your concern.

Debbie Pfiel: I would say read the code for the application that you have or I can give you the chapters that pertain to that because that is your law now. Whether you chose to proceed with this or not, I agree that my concern and we were going to do this at a workshop setting, this is an introduction. I feel that the parameters should be with a joint working group. If you open it up to the public now, the only thing we've said tonight is we have heard there are issues, we've identified the issues, we've recommended a joint working committee get together to discuss the items or if you chose to have a workshop and go through all 13 of these, I can probably come up with 200 others. We thought we'd stick to 13 to make them real vs. code and your procedures that you have tonight if there's any question at all at any time your lawyer/engineer/planner should be able to open the code and say this is the section, this is the code, this is where I got this for any time for any procedure at any meeting. If not, I'm not sure what we're doing here.

Mayor Post: But as well, Debbie, I think as far as for one thing, I recall with the White property for example. We had received the recommendations from planning and zoning. However, at the interim, we had a workshop that my understanding was that you and Mr. Kerr would pull those things were concerns that had not been addressed at planning and zoning that could be implemented. Some of the things we discussed could not be implemented nor is it the time to do it. Those are the issues we need to address. There were certain things that we were very interested in and even in that LPD and even in the LPD there are a lot of flaws in the LPD and that's a whole other issue. I think for one thing, you could expedite the issue is to pull the elements from the workshop that we did not see in the draft of what we were going to approve of the stipulations for planning and zoning. For one thing, I don't think Mr. Wells was very concerned about some type of border between the farm and the development. Some of those issues that were discussed. I think we found out that the tree thing was irrelevant. There are some things that we will need to address. We still don't know if we want five foot setbacks. We've heard a lot of complaints on that.

Debbie Pfiel: Mr. Brady, pending litigation do you want me to address the process as far as the workshop and the previous submittals?

John Brady: Technically that's a side of the agenda . . .

Debbie Pfiel: Thank you, I'd prefer not to address specific cases.

Mayor Post: But there's nothing here to address. All we were asking is for you to provide us those things that we discussed in the workshop and that were things that during the public hearing, people had commented on. What were the things that we could act upon and what were the things out of our realm that we could not act upon. That's what we want.

Councilwoman DUBY: At what point in the process?

Mayor Post: At this process where we are right now, at the approval . . .

Councilwoman DUBY: I mean we need it for every point in the process.

Mayor Post: Right, I know that, but with this one we have one right on the table. We already had the workshop, we've had the public hearing, we've had planning and zoning, we've had everybody voicing their concerns, so what of those concerns are at this point irrelevant because they can either be addressed at the next level or they can't be addressed at all because of the LPD?

Debbie Pfiel: Mr. Brady, Mr. Kerry and I have provided you the agreement that was drafted the end of January, the redrafted agreement and I'm not sure where that stands. We emailed that to the town manager who forwarded to you for the meeting. I'm not sure where that sits with the council. As far as what you can approve, it's in your code and I can copy those sections for you.

Councilwoman DUBY: I think we've pretty well established that to tell us to look at the code isn't doing the job. I'm an attorney and I've looked at a lot of code so I understand what you're saying. But for some reason, due I think, to the

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complexity of the process, all of these boxes on the screen and the fact that there are a lot of folks around here who have done this for years and years, the chairman of our planning and zoning commission has been doing this for years. I think the way she looks at the process and the way some of us who are new look at the process is very different. Maybe at a planning and zoning meeting for example some things would be skipped over because that's the way she runs the meeting, not criticizing. If we had something simple that those of you who are really steeped on that code and understand it and as you say use it every day so that we would have something very simple to refer to saying that for us to sit here and talk about the design standard of the houses is inappropriate at this point. I apologize, but I don't think telling us to go to the code is going to accomplish that.

John Brady: To avoid any type of complaint for discussing something that was not given proper notice, since this is a pending issue, why don't we place it on the agenda for old business under April 7, 2008 at the next town meeting. Any information that the council members need the consultants will be ready to answer that night.

Councilwoman Duby: No, that's not acceptable, Mr. Brady.

Debbie Pfiel: I cannot discuss the specific property case tonight.

Councilwoman Duby: I'm not asking you to. I don't know what anybody else . . .

Debbie Pfiel: I know the name was brought up.

Mayor Post: Let's just, I guess we can't even do a workshop regarding that issue.

Councilwoman Duby: I don't want another workshop. I want a list. I want a piece of paper that says at the preliminary design step, you do this. At the LPD approval, you do this. At the whatever. That's all I'm asking.

Mayor Post: I understand that. There are still some issues, for example, can we require them to put all their lighting in prior to development? Because every one of these developments that we are dealing with we have lighting issues. So now that you're telling us with 5 foot setbacks even though an LPD tells them that they can have five foot setbacks, I guess we can tell them whatever setbacks they can have. I don't quite think that's fair.

Councilwoman Duby: I think we're asking for a lawsuit if we do.

Mayor Post: Right. So I'm saying what can we do and what can't we do. Because 5 foot setbacks is horrendous for someone to be able to maneuver to a garage.

Councilwoman Martin-Brown: Mr. Brady, are we being asked also, because I was confused the first three meetings ago when I asked stupidly are we here to approve the overlay of an LPD on this particular applicant. And I was told that's why we're here. Well, if that's why we're here and we don't award an LPD then the setbacks become a negotiable thing or maybe they don't. But we don't know whether they become negotiable. If we're here and say, yes, you can have an LPD and we have a majority vote and then we say, but we don't like the setbacks . . . oh we should have done that before the LPD was voted on.

Mayor Post: And we've heard that before.

Councilwoman Martin-Brown: And we've got that. So either we're going to say, which we don't know, does an LPD, if we're here to vote an overlay of an LPD and the majority vote of the council says we don't want to award that until we have a further discussion on setbacks or heights or whatever and if the LPD ordinance rolls over us and shuts down those concerns our citizens are expressing then we may decide to have a vote not to award an LPD. But we don't know.

John Brady: There is a current case from Judge Witham that was decided in the last two weeks that said that even though someone is eligible for certain zoning designation and all the requirements were met that the board or in that case the levy court voted to deny it and it was upheld and it was upheld by the Superior Court of Kent County. That has already been appealed to the Supreme Court and they are in the briefing process now. To the extent that you are asking me the previous

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status of the law was if you deny something that someone had come in and completed everything proper and they were in accordance for and the ordinance said chow, that was an abuse of discretion and previous judges have said you have violated your town zoning ordinance by not passing that and have directed the town to reconsider and pass it. This new decision by the Superior Court of Kent County, the resident Judge Witham took a different change on that decision and that decision is two weeks old. Since it has been appealed to the Supreme Court, you're asking me a legal question that I don't know the answer to. Two and a half weeks ago I knew the answer, now I'm not sure. To the extent that you've asked about certain things tonight about a specific application that is in front of you, as I've told you before since that was not referenced on the discussion for tonight, any further discussion could be claimed to be a foyer discussion that you are prejudging an application that is not properly in front of you. To the extent that I think the best course of action is that you not continue to discuss that application and discuss only hypotheticals, that's the prudent course. If you want something more blunt, then I would say please cease and desist talking about any applications that are not referenced on the new business topic that's being discussed because you are opening the possibility for litigation.

Councilwoman Martin-Brown: Thank you, Mr. Brady. I shall cease and desist, but I do appreciate the opportunity for more clarity which you certainly have provided.

Councilwoman DUBY: And I'm not talking about a specific application. I'm asking for a generic list.

John Brady: And I understand your request and will discuss it with him.

Debbie Pfiel: Thank you.

George Dickerson: A word comes to mind. Esoteric which means a subject matter that is known by the very few. Sometimes I feel that way. When the mayor came to me, there was one topic one that C. DUBY brought up and which was part of the workshop. It was very clear there were some misunderstandings with the document and what I thought was expected of me and the result of those expectations. Mr. Brady showed a picture of the piece of property. What were you supposed to hear and what was your authority to deal with individual items within that lpd? That is one topic. Tonight's discussion – blame me because it is my fault.

John Brady: It still links to process and ties into the whole issue back at the workshop.

George Dickerson: The processes we are encumbered with makes a frustrating situation. Council says "that is what we do with buildings." We are calling on Mr. Brady to interrupt the code and consider the excellent review our engineering firm does for us in trying to pick out all the parts of process for your review, what Robin Davis does for us and what Debbie does for us in coordinating everything. The purpose and intent of tonight is to look at our process which is cumbersome at best and the step that has to be taken to achieve a direct result. Where we are tonight with the process, I ask you to take home tonight and look at the steps on the program to see how we can expedite this. You need to look at changing those ordinances to what you want them to be. If you want the projects that come before us to go through this lengthy process and work with a group to get to the end result, the only way now is to piecemeal each application. Until you change your ordinances, you cannot do anything. Thank you.

Mayor Post: It does not work that way. I do not see how you can keep prolonging this. I know the other issues that exist but until we tackle this issue which will take months we have to take the first step. I think we are failing if we don't take that first step. We are failing the business section and the economic development of this town and the development process. We are failing and we will continue to fail.

George Dickerson: That is not what was presented and what was being asked for.

Mayor Post: I will give council member's phone numbers so your people can call. If you want to empty down town, you will do that. Tonight we are starting to think about what we need to do especially when we look at empty buildings that have sat for three weeks. It is a serious issue. There have been numerous people who want to open businesses in this town and it is too much work. For an elderly woman who wants to open a thrift shop and needs to put \$5,000 out of pocket, it is inexcusable. Do we want an active thriving town. It is hard enough to exist in a small town. We need to rethink the process because when we established the Town Center Ordinance, it was a failure. I will be frank about it. That is why Irish Eyes

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took two years to open. They opened a store in Middletown in a third of the time it took to open here plus extra thousands and thousands of extra dollars. We cannot expect this process to continue. It is not working. Three empty stores. You have to start somewhere. They have seen the failure and I get frustrated with the failure. Everyone needs to see it is not working. People are processing people in the Town Hall and they see the cumbersome process, they need to quickly take action. Same happens with people coming in front of planning and zoning. You cannot expect someone opening in an existing building, in the existing rooms in a commercial building that has been occupied for years as commercial – with zoning thrift shop is different than a fish store – to hire an architect for \$4,000-\$5,000 for a high-tech plan. It was easier to work with the Fire Marshall people.

Councilwoman Duby: Do we want to start with the working group as suggested or what do we do now?

Mayor Post: Right now we need to start the working group. Whether I will agree with everything coming down the road, I don't know but we need to start somewhere. We need to make sure when developers come in front of us, that the process is done right and efficiently and as quick as the law permits. It is only fair to them and to us to protect the future of this town. I understand C. Duby because I get confused also. Procedure is the first step.

Councilwoman Martin-Brown: Mr. Mayor, then we need the landlords on this committee. They set the rents and they could create a partnership. The rents are also a very serious issue.

Mayor Post: I agree with you. We could bring other people into the picture because rents are a big issue.

George Dickerson: Asked to decide how to proceed and how to create a motion to move forward.

Councilwoman Duby: We can put together a motion to start this process by appointing a working group. Do we need a meeting to discuss prioritizing and coordinating or appoint someone responsible for doing this work?

George Dickerson: Council sets up working groups and we will be looking at businesses currently in the mill.

Councilwoman Martin-Brown: Could this working group focus solely on the Town Center and the commercial establishments so we are not bringing in everything. The Town Center will be the focus.

George Dickerson: If Delaware General Assembly can pass legislation that is retroactive, the question I have is there anything prohibiting this Council from passing everything retroactively.

John Brady: It may violate due process requirements on applications. If you prohibit something that was legal when someone applied for it, that is a problem.

Debbie Pfiel: Discussed how to deal with individual applications as presented.

Mayor Post: I think you are saying there are certain areas of the current ordinances that can be modified safely that helps correct where people can open a business in this town at a little quicker pace but through legal process. Do we want to bring those forward because we will have had amendment readings and public hearings? Is that right?

Positive response!

Mayor Post: Instead of the huge process we are going through now. It will take some time to do but it would be things that need to be changed anyway but we could expedite the situation right now. There are some major problems.

Councilwoman Martin-Brown: Are they Town Center or town-wide?

Mayor Post: Probably town-wide but the processed are fairly similar. I don't see a need to restrict anything at this point. When the process is fixed in one place, it carries over. This is one of the biggest pieces of the flawed process we have trying to correct. I agree with Councilwoman Duby that we don't want to become counter productive with one group doing the historic ordinances. There is a way to coordinate to funnel them all into the right direction.

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Debbie Pfiel: Discussed establishing parameters.

Councilwoman DUBY: What are the legitimate things needed to be considered at this point in the process?

John Brady: I understand the theater is normally booked the 3rd Thursday of the month i.e. March 20. If there is sufficient time to get an agenda out, we could have both a workshop and a meeting that night to prepare an agreement for an ordinance revision prepared at a workshop. That gives 15 days to come back for the public hearing on April 7th.

Councilwoman Martin-Brown: Agreed a working group would put together a list of items needed discussed on any application for a zoning amendment with or without an LPD realizing there may be additional steps based on requirements in the code. A zoning amendment procedure would probably be five steps. If an LPD is added, it could be ten steps. These would be different for a preliminary site plan and final plans, etc.

No motion required.

- b. Request for approval to revision of Subdivision Plan- Cannery Village Phase 2B, approval of Subdivision Plan- Cannery Village 2C approval to revision of Overall Record Plan for Cannery Village Phase 1C, 2A, 2B and 2C (including clubhouse).

Bob Kerr: At February 13 Planning and Zoning Meeting, Cannery Village Phase 2B and 2C and a remapping of 1C Clubhouse were presented. A final approval was recommended before Mayor and Council. Everyone has copies of a change requested on the Record Plot. This change has been made and there are fully executed copies. There is an issue with Dogfish where they want a clarification they will not be required to hook to the sanitation system as they are not presently a part of the system. Other than that, the applicant has met the requirements for a revision of Phase 2B, 2C and a revision to the master plan requested by staff and also by Planning and Zoning. There have been so many changes to this portion of Cannery Village. There is one drawing in the Town Hall that has all the lots and all the changes made to date.

Councilwoman DUBY: A note from Robin says the note has been changed read "The Sanitary Sewer shall be provided by Tidewater and sanitary sewer systems should be dedicated to Tidewater." You said they were asking not to be required to use the sewer system.

Bob Kerr: Dogfish Brewery is tied to the sanitary system for their bathrooms and their process water they haul off site and treat at a land application site. They wanted to make clear they were not required to hook to the system as part of this note as the impact fees would be considerable. The original note said the sewer service would be provided and dedicated by the town of Milton. It is only for the process water from the Brewery operation. I can answer any questions and the applicant is here for any questions.

Mayor Post: This only regards phasing.

Bob Kerr: Originally, Phase 2A and 2B were recorded at the same time. This revises a portion of 2B. It changes the type of housing units in one section. It relocates a road slightly. It relocates the clubhouse which used to be shown in Phase 2B and is now in Phase 2C. Phase 2C was not previously recorded and was only shown on the preliminary or on the Master Plan with what was happening in that area. It has now been developed. There is a future Phase 3A and 3B and Phase 4 that will come before you at some future time.

Councilwoman DUBY: Have all the legal concerns about drawings and such been resolved?

Bob Kerr: It is my understanding both Dogfish and Cannery Village have resolved the property line in question is by the signing of this document.

Mayor Post: It is my understanding there will be some parking at the clubhouse but Dogfish will provide the rest of the parking at the Dogfish garage.

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Bob Kerr: That is correct. There is an agreement between the two parties which details how they are able to use the parking lot. The maintenance for the parking lot is also covered.

Mayor Post: Should a statement be on the site plan covering these issues for a clear understanding in the future or should we wait for Phase 2C to be reviewed?

Bob Kerr: 2C is part of this. The document covering the parking has been recorded in Mr. Brady's Recorder of Deeds office.

Mayor Post: It is a deed restriction?

Bob Kerr: I am not sure if it is a deed restriction but the agreement has been recorded.

Mayor Post: Can the agreement be enforced if Dogfish sells the brewery to a large conglomerate by (I assume) the Homeowners Association of Cannery Village? At that point it would be their problem and not the Town's that there would be limited parking at the clubhouse facility?

Everyone agreed this was covered in the agreement and everything is part of the Cannery Village parcel.

Councilwoman Duby moved the revision for subdivision plans in Cannery Village Phases 2A, 2B, 2C, 1C and 2C (including the clubhouse) be approved. Motion was seconded.

Bob Kerr: Mr. Brady, would it be proper for the motion include the notice about Dogfish and the connection to the sewer?

John Brady: Yes.

Councilwoman Duby: Motioned to add the notes on sewer connections with the revision the services will be provided by and dedicated to Tidewater Environmental Services, Inc. rather than the Town of Milton. The motion was seconded. Roll call: Martin-Brown – yes; Duby – yes; Hudson --yes; Abraham – yes; Post – yes. Motion carried.

c. Review and possible vote on Master Plan for Memorial Park renovations.

Scott Hoffman, Cabe Associates, has been working with Parks and Recreation Committee to develop a master plan for improvements at Milton Memorial Park and with Landscape Architectural Services. Matt Spahn of LAS is here to participate in the presentation. We will review the plan and budgetary cost estimates and take a look at a possible funding source to assist the Town in paying for these improvements and review the next steps in the process. In December, met with P&RC to establish what they wanted. In late January we presented a preliminary master plan along with some cost estimates to the Committee. We received comments. Tonight we are presenting the final master plan with additional cost estimates to Council. Matt Spahn presented the master plan to Council.

Adequate changes to the play area were discussed by Council and Matt Spahn.

The Horseshoe Crab Shore Bird Festival on May 24 was discussed. The two 60-ft. hexagon tents are constructed the day before and come down the Sunday or Monday following the event. Most of the area is heavily utilized. However, construction will not be involved this May.

Scott Hoffman: Construction budgets were developed for complete construction. It is a substantial figure. A fairly large contingency has been included at this point to take care of some of the unknowns. Using a phased approach has been discussed. Also, the Delaware Land Conservation Trust Fund may supply some additional funds. They are sponsored by DNREC. It has been used to pay for the trail way project and they have funds dedicated towards park improvements. They involve matching funds and may include such things as volunteer labor. State wage rates would need to be used under this funding. Pre-application is in March of this year and funding would be available in October.

Mayor Post: The budget is excessive in some areas but we are just putting it out for bid. The playground equipment and installation appears higher than when I priced. Also a 30-ft. wooden-structured gazebo should not cost \$120,000. My pricing showed it could be approximately \$65,000.

Matt Spahn: When we get to design stage, a cost engineer's estimate will be prepared for the Town to have for use when the bids come in. This will be a more refined number than numbers shown tonight.

Pricing by Council has shown everything installed would cost a little over \$110,000. The Town would be better off to contract direct to cut the middleman out and have them professionally install. The installation was approximately \$40,000.

Matt Spahn: Our playground equipment number is \$95,000. The gazebo number is high because it is not determined what the structure would be.

Scott Hoffman: Next steps: We have started an RFQ for the playground equipment. We need selection of equipment the Town wants to purchase and approval of the site plan before completing. It takes approximately two weeks from the time we receive the decisions. The gazebo RFQ has not been started yet. We are not under contract to do that until we receive a recommendation from the Committee. Other things involve working with the Committee to develop a phasing plan to spread out cost over several years and are you interested in applying for grants. Then we can bid contracts for future phases. The Town should receive an email in a couple of weeks from the grants administrator asking if there is any interest and then you submit a letter of intent and then an actual application. State wage rates would add an additional 15% to a non-state rate bid.

Councilwoman Duby: We discussed doing the gazebo and a chunk of the playground equipment. This plan is more expensive because more things we would love to have are included. It needs to be phased in some way. Some items are more urgent.

Councilwoman Abraham made a motion was made to approve the Master Plan for Memorial Park and seconded. Councilwoman Duby added that Kathryn Gregg is on the Parks Committee and President of the Garden Club and after seeing this plan has asked for some changes involving water items. I am motioning to adopt the Master Plan as a concept knowing we may tinker with a few minor items. Councilwoman Abraham revised the motion to accept the concept Plan. Scott Hoffman stated the title is Detailed Concept Master Plan. Motion made to approve the Detailed Concept Master Plan and was seconded by Town Councilman Hudson. Roll call: Martin-Brown-yes; Duby-yes; Hudson-yes; Abraham-yes; Post-yes. Motion carried.

d. Discussion and possible vote on the procedures for relief requests from residents on utility billings.

Councilwoman Abraham made a motion to next month's agenda and motion was seconded by Councilwoman Duby. Roll call: Martin-Brown-yes; Duby-yes; Hudson-yes; Abraham-yes; Post-yes, Motion carried.

e. Capital Expenditure discussion and possible vote to expend \$1,600 towards 800 MZH radios per the request of Town Councilman Mary L. P. Hudson.

Town Councilman Hudson: I will be brief. This involves putting a repeater on top of the water tower. There will be six radios; one for each of the leaders in the Neighborhood Watch Community. They will work both ways. If there is a central problem such as tornado funnel reported the police, they can fan out through the six leaders. Also, if someone notices a problem in the community, they can notify the leaders who can relay it to the police. These will help us in all types of emergencies. Mike McNamara stated this is for the Neighborhood Watch for cert training and may be a secondary means for communication for the police department. We need communication capabilities. If anything happens to the antenna on the tower, these radios will still operate but not as well as with the repeater on the tower. Please consider this as a safety item for the Town of Milton.

Town Councilwoman Hudson motioned the Council budget the \$1,600 to budget six 400 MZH radios and Councilwoman Martin-Brown seconded. Roll Call: Martin-Brown-yes; Duby-yes; Hudson-yes; Abraham-yes if the funds can be found in the budget; Post-yes. Motion carried.

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f. Discussion and vote to approve \$15,000 from the \$100,000 already approved for Town Hall renovations for 2008. The purpose of the request is to fund the University of Delaware study/survey for the expansion of the Historic District.

Town Councilman Hudson made a motion to approve \$15,000 for the study. Motion was seconded by Councilwoman DUBY

Councilwoman Martin-Brown questioned if the new historic Ad Hoc Committee would be able to utilize or it is separate and was told it would be added to the \$39,000 already approved and would speed everything up. All connections are established. This would increase the number of houses being surveyed.

Mayor Post wants to see a contract presented to the Town to see specifically what is being given for the money.

Roll Call: Martin-Brown-yes; DUBY-yes; Hudson-yes; Abraham-yes; Post-yes. Motion carried.

g. Appointment of an ad hoc committee on developing a code of conduct for the Town Review of Charter status at legislature.

Item g has been removed.

16. EXECUTIVE SESSION: John Brady stated Council was given material tonight to review. He recommended Council review the documents and have a meeting at a later date and time for discussion.

17. Adjournment: Meeting was adjourned at 11:18 P.M.