

Town of Milton
Planning & Zoning Commission
July 17, 2007
7:00 p.m.

Members Present:

Linda Rogers	Louise Frey	Ginny Weeks
Michael Filicko	Ted Kanakos	Bill Brierly
Dean Sherman	Gene Steele	Bernice Edwards

Others Present:

Robin Davis	Bob Kerr	Debbie Pfeil
Andre Beauregard		

Linda Rogers opened Public Hearing at 7:10 p.m.

Public Hearing

Linda Rogers: Ladies and Gentlemen. First, a reminder to the council members to identify yourselves into the mic before you speak. Anyone in the public that wishes to speak will have to come forward, identify themselves into the microphone and make any comments you choose to make at that time. So, the first item on our agenda is a public hearing for:

The applicant, Key Ventures LLC, is requesting a zoning amendment for R-3/LPD (General and Multi-Family Residential Use District/Large Parcel Development District) located on Sam Lucas Road, Milton, Delaware. The property is zoned R-1 (Single-Family Residential Use District) and is further identified by Sussex County Tax Map and Parcel # 2-35-21.00-44.00.

Is there anyone present in behalf of this application to make a presentation? If so, please proceed to the mic and identify yourself for the record.

Douglas Marshall: I'm an attorney with Hudson, Jones, Jaywork and Fischer and here representing Key Ventures in their application and also with me is Keith Rudy from McCrone.

Keith Rudy: I'm from McCrone and with me is Kevin Purdett, an associate of mine, also with McCrone.

Douglas Marshall: And representing the applicants, the Gabrielli's are here, two of the members of the Limited Liability Co. and we're here requesting change of zone and a development plan which arises out of an annexation agreement that we have with the Town of Milton. Several months back the 86+ acres were annexed into the Town as R-1

and part of that annexation agreement was that we would attempt to have the zoning on the property changed to R-3/LPD which the engineers will explain, and if we could do that with 66+ acres and get number of units that would be allowed under that plan, that would free up 20 acres of our property at the far end of the property as it fronts on Sam Lucas Road to donate to the town for purposes of their sewer plant, building their sewer plant. Now, the portion of the annexation agreement that refers to, that requires us to ask for this, a change of zone, is simply that; that's the only requirement in there; that we asked for the change of zone. There's nothing further. If the planning and zoning commission reviews it and presented to the Town and they approve it, then we'll continue on with the proposed dedication of the 20 acres for the sewer plant. If it's not a good idea and it's not approved, we will simply stay in as R-1 under the original application. So, contrary to what you people may have heard, there is no contract, there's only an annexation agreement that requires us to proceed and attempt to get it zoned, and if it's approved, things happen. If it's not approved, we stay at the zoning that was placed on the property at annexation. The obvious benefits to the town, as you all know based on this application and the annexation, this is part of the growth area for Milton. I'm also involved in Lewes in an annexation of 230 acres with 600 units. The realities in this day and time are that the Towns need help to proceed to provide their current residents with updated sewer/water capacity and other utilities and it appears, in the best interest of the Towns, that it's a situation where they have to grow. The state is currently trying to develop as much of the areas around the Town in as high a density as they can so that they can lower the density in the further outlying areas which make sense because that's where the infrastructure is. The obvious benefits to the Town are annexation impact fees to help build their infrastructure, sewer and water. It's in a growth area and the more dwelling units that you can have the more contributions will be made to the infrastructure. Obviously contribution's is in the way of transfer tax, city tax and a chance for the town to grow on its outskirts in an area that will not put pressure on the main portion of town. It's controversial, but that seems to be the way that the political subdivisions are going; that they want to increase the density in the areas with the infrastructure to help pay for that infrastructure. With every additional unit that you can put in there, everybody's sewer bill and everybody's contribution to the capital cost of the sewer goes down directly in proportion to the amount of the impact fees that are collected. So, 200 impact fees collected if it's R-1, in this case 355 impact fees if it's R-3/LPD. Transfer tax on 200 units or transfer tax on 355. Property taxes the same thing. The ability to build a more affordable house in this type of development plan is obvious. It's location will help not only the city of Milton but also the surrounding people, some of whom are in desperate need of sewer and water utilities. We come to the town with an offer of 20 acres and we think it's a fair thing for the town and the developers are satisfied that under the circumstances with the plant there that they could still market what's left with the additional units. Any questions of me, just of the general situation?

Linda Rogers: How many units exactly are you proposing?

Douglas Marshall: I'll let them address that but 355, based on a recommendation of our engineers and of the town's engineers. Probably the best thing would be at this point to allow our engineers to walk you through the proposed plan.

Keith Rudy: I have my hands full this evening so I'll just leave the mic in the stand. Can everybody kind of see the plan? A copy of the unrendered plan should have been

provided in all the documentation submitted previously. Again, I am an engineer with McCrone. I appreciate the opportunity to be before you this evening to explain our plan. Basically, the proposed project will consist of 355, a mixture of 355 dwelling units of various types. A mix of between 39 single family homes, 100 town homes and 216 multi-family units situated in 12 buildings, and what we've tried to do, or we got doing pointers here... What we've tried to do is we've tried to group these to create a pseudo-neighborhood type effect. So you can see the multi-family buildings are sort of together in one area. At the central portion of the site, we've concentrated the town house units and typically around the perimeter we've interspaced single family lots, in particular on the more secluded areas backing up to wooded areas. Now under the ordinance for R-3 with LPD overlay, the net allowable yield for total units would be something on the order of 593. We are coming before you this evening for 355. So, we are also trying to augment by not providing the minimum for each of these housing types. We have made provisions to provide oversized lots both for the town house units and for the single family homes. On this master plan for example, the single family homes, the minimum lot size is 5,800 s.f. and the maximum is over 10,000 s.f., so it does provide a pretty good diversity and over-sizing; I mean, these are jam packed in there; there's quite a bit of space if you can imagine. Town house lots, typically, the minimum is 2,520 and the maximum is over 10,000 on this plan. And again, with the multi-family units, they consist of 6 per floor, 3 floors so that's 18 per structure and they range from 1,100 s.f. to 1,440 sf. per unit. The parking on the plan; we've tried to provide for ample parking. We'll meet or exceed the code requirements for all home types and I know we've received comments from your professionals, both engineering and planning review. And again, even with their recommendations on how to apply the parking calculations, we will meet or exceed the code requirements. The open space, we've tried to create larger, usable areas of open space and we've tried to mix it up a little bit. We have walking trails situated in open space, little pocket parks if you will, distributed across the plan. We have an open area, community gathering area, centrally located. We also have an approved athletic field and there is quite a sizeable level area and that can be a multi-purpose field, so it could be a soccer field, a football field. We would be willing to work with the commission and your professionals to kind of feel out what exactly kind of field is the craze these days. I think it's soccer but I could be wrong. And with that, we've also included ample parking. We've tried to enhance the buffers. A preliminary landscape plan was included in your package. Again, trying to create screening and buffering between the major avenues and also trying to segregate through combination of berms, hardscaping, fences, things of that nature with landscaping to provide visual barriers. I also want to mention that this project will require a traffic impact study as we are allowed to proceed. DelDot will require an awful lot of improvements as a result of this project and we have allowed sufficient set-aside areas to support improvements that we envision will be required for Cave Neck and Sam Lucas. We tried to respect buffers wherever possible. We've allowed for a minimum of 50' buffer and you can see that that's also reflected in the plans and materials submitted. We did go to PLUS; we did receive comments from PLUS and we responded to PLUS and the end result we received an affirmative letter from the State Office of Planning. Since our last meeting approximately a month ago, those materials were forwarded for your reference. And again, we're proposing sidewalks on both sides of the street, curb and gutter, all the

infrastructure improvements that would be required by your code. So with that, I would open it to any immediate questions.

Linda Rogers: Does anyone on the board have any questions for the applicant?

Ted Kanakos: Yes. How much of this...how many of the units will be rentals vs. purchased homes?

Keith Rudy: At this time, I am not sure that the decision on the multi-family in the structures, the twelve structures, whether that's been decided. It's apartment/condo. I have not received any direction from my client as to which way they're...

Ted Kanakos: Alright, in the PLUS report, you state the number of renter occupied at 197, and the number of owner occupied at 192. I'm sure these figures vary. So it would be about half rental?

Keith Rudy: The numbers that you're quoting from represented in an earlier plan and what we've done is, as part of our responses to the PLUS, we submitted a basic plan to PLUS, we had our hearing and they gave us comments and part of the state mandated process is we had to make changes and resubmit that plan to PLUS and the plan that has been revised taking into consideration their comments is the one before you tonight. So I think the mixture in unit mix is different than what was in the original application.

Ted Kanakos: My basic concern in this issue, if half of this development is rental, I think that we're going to have to have, or address an increased presence in the area and I don't know if anybody has taken this into account. That development is really on the fringes of the Town and with rental, and I hate to equate it to Shipbuilder's Village, there's a lot more crime and there's a lot more problems when you have a lot of rentals in a really confined compound like that. And I think that would put a strain on the police department for sure.

Keith Rudy: Let me address that. We would hope that it would be a 100% owners, but we have no control over that. The units will be purchased. We would like them to be purchased by good, upstanding citizens of the Town of Milton with no rentals. But that's...the demographics are determined by a guess-estimate from the PLUS committee. That was their guess-estimate based on an earlier plan and we certainly don't think that this plan in this area will be any more problematic and hopefully less problematic. I'm not aware of the problems of what you speak, but we're certainly not anticipating any problems. Certainly there will be increased police simply based on the number of people; the number, whether they are homeowners or renters. The realities of it may be different, but we don't have any control over that.

Linda Rogers: Any further questions. Do you have any questions? Bernice, do you have any questions?

Keith Rudy: They're all intended to be individual dwelling units sold as opposed to an apartment building owned by one person who rents; that might have been, maybe I missed their whole point there, but these are individual dwelling units to be offered for sale as individual units and not apartment buildings with 18 apartments. So if they're rentals, it will be the owner who decides to rent it rather than live in it. I apologize for missing your...

Linda Rogers: Bernice? Mike?

Michael Filicko: In regards, is this the PLUS report right here, has your letterhead?

Keith Rudy: That would constitute our response to the PLUS comments. So, typically, well our protocol is we incorporate the PLUS comments and then we have a point by point response. So it would be a comment then a response.

Michael Filicko: Okay. I see that there's going, well, the issue of 10.91 acres of horse land. Is that to be destroyed? Or how is that being addressed?

Keith Rudy: Well, that's an excellent question. Bear with me one moment; let me look at the title block on the data sheet here of the plans, but our intent as part of reworking this plan was to preserve as much woods and wetlands based on a previous plan. If you notice, there are with these single family homes, kind of interspersed through here, there is going to be some encroachment into the wooded area. The exact figure, I'm not sure just yet, but just bear with me. Typically it would be on the order of 10-12 acres of wooded disturbance. Basically, per the package we submitted, the existing wooded area is just over 26 acres of the 66 acres give or take and the remaining wooded area would be approximately 13.5 acres remaining. Now that doesn't include any offset by any of the landscaping proposed, so there is no...that number is straight area for area. It does not include any credit, if you will, for any landscaping proposed. And it also, at this stage of the project, it also does not include any provision for selective clearing. Now clearly we have oversized lots. Some of these lots are, as I mentioned previously, range from 5,800 s.f. to over 10,000 s.f. There will be an opportunity on many of those single family homes, in particular the ones in the wooded areas, where selective clearing can take place. We can protect some of those trees, but until we get further in the process, and work out the grading and drainage, and the actual limits of disturbance, we won't be able to fine tune that number. So that number before you, based on this conceptual master plan represents an absolute worst case.

Bernice Edwards: Looking at the proposed number of units and homeowners, have you included anywhere in the development any recreation for that development?

Keith Rudy: We included a couple of different forms and I can run through that with you briefly. Basically, we have kind of a semi-active area. A detail of that would be community gathering area, so it would be a plaza, a gazebo, that type of area and there could be perhaps a community bake sale or some other type of participation there. Also, in terms of active, we have this large area down in here for the multi-purpose field, a large athletic field. In terms of providing for a clubhouse or a pool or some facility such as that, I guess the more units we have, the less expensive it is for the homeowners to bear the cost of operation and maintenance of that facility. The fewer units we have, the more that those individual residents bear the burden of maintaining and operating that facility. The plan as it is now at 355 total mixed units, does not have any clubhouse/pool facility, although we would be willing to work with the commission and with your planner and engineer if that were something that you would want us to re-evaluate. We would be willing to do that. It comes down to dollars and cents and economics. And really, what we are trying to do, is we're trying to provide a matrix of affordable housing without encumbering those homeowners or landowners with that added expense, so we felt that the plan right now what kind of like a reasonable trade-off between the two.

Bernice Edwards: Well, I guess...one of the concerns that I would have is that everybody is not a retiree. And if we're talking about young professionals coming in who's working, one day is going to have some children and we just need to have a place where it is going to conducive for those individuals that are buying.

Keith Rudy: Your point is well taken. Thank you.

Linda Rogers: Gene, do you have any comments?

Gene Steele: No.

Linda Rogers: Ms. Frey?

Louise Frey: No.

Linda Rogers: Ms. Weeks?

Virginia Weeks: Just one question. Don't I remember that there's a top lot?

Keith Rudy: Thank you, that was an oversight on my part there. There is a provision...

Virginia Weeks: Playground for young children?

Keith Rudy: Yes ma'am. We tried to think of the, too. That was an oversight on my part.

Virginia Weeks: How do you envision...? That's for the community of this development. The soccer field and so on, you don't see that being open to the town or anything at all. That would be up to the homeowners?

Keith Rudy: That is an interesting point. I'm sure, that if it were so desired, something could be arranged to provide access to other members of the town. It shouldn't necessarily be exclusive to the development. One comment that we did receive from the planner, and I think it's an excellent point, is that we would want to have the opportunity to reconfigure this to allow for offsite parking and so that was an excellent point and we'd certainly have the room to accommodate that.

Virginia Weeks: Because there is some concern in town about the lack of facilities for young people, so that's why I was asking. Thank you.

Keith Rudy: Excellent point. Thank you.

Linda Rogers: If there's no other questions....

Michael Filicko: Mr. Rudy, the 10,000 s.f. lots, will they be maintained by the individual home owners or will they be maintained by the association?

Keith Rudy: I believe that will have to be worked out with the HOA documents, but typically if it's a fee simple lot, my understanding is that the maintenance would be born by the individual home owner.

Linda Rogers: Any other board members have any questions? You have no further presentation?

Keith Rudy: Not at this time.

Linda Rogers: Not at this time?

Douglas Marshall: Again, the question about public facilities, it is a good question and it's one that's apropos in any of these annexations. This City of Lewes with the Showfield annexation of the Smith farm is very interested in trying to incorporate this as part of the town as opposed to a development in the town where it would have private swimming pools and private tennis courts and just not be. I think that the trend has been to, and I know in that case the trend is to make bike trails through it and accessible to the people. They have considerably more acreage there to have maybe some parks dedicated, or portions of it, dedicated to the town but certainly the streets are going to be public streets and there should be...it's more difficult because of its location. You're out right at the edge of town so it's not likely people are going to be walking from downtown out to here, but they certainly could ride their bikes and so forth, and we will certainly take that in to consideration if we are able to proceed with this plan.

Linda Rogers: If there are no other questions of the board, we will open for general comments. Is there anyone who would like to make a comment in behalf of this application? Is there anyone that would like to make a comment in opposition to this application?

Janet Turner: I don't know that I'm speaking in behalf or in opposition to. Mine is a comment and I think it's cogent because people are bringing up the experiences of strip carpenters and problems we had there which was lack of enough infrastructure and many, many problems that made it a problematic property. Also, it wound up being a lot of rentals and I think those things could be prevented if the planning and all the infrastructure and HOA issues were properly addressed. I think that they're speaking, you know listening to this things, and heard the full discussion before, but clearly there is a need for us to provide more reasonable housing for many people who work in this county and in this area who cannot afford [afford] it. I think it would be nice to have a recreational facility and a pool because that is going to be an isolated area so that anything we could do to make that a community that might be able to invite people from the regular or the adjacent parts of Milton would be able to participate there, then we don't have it here. So, to me it's a mixed bag here and I think that is something that has to be gone through carefully and for your consideration.

Linda Rogers: Thank you. Would anyone else like to make a comment?

Marianne Lester: I not speaking in favor or in opposition, I just had a question. I wanted to make sure I understood something that the attorney said at the beginning. You said, if I understood you correctly, that you will, if this commission decides not to grant you the R-3, that you would still wish to come in as an R-1 as you've been approved to do. But I guess I wasn't clear, does this decision negate your donation your donation of the acreage for the sewer plant? I guess that's my major question. Thank you.

Linda Rogers: You do not have to respond to that right now. We will come back at the end and try to get questions answered. Does anyone else?

Pauline Stucklik: I guess most of you know me as Polly, probably don't even know my real name. I live on Cave Neck Road, directly across from this project. I would like you to please consider very carefully about changing the density of this project from R-1 to R-3. I do not presume to speak for everybody that lives in our area but I have talked to quite a few people there and we're all shocked, dismayed and very unhappy about the drastic changes to our lifestyle. This proposed development is surrounded on 3 sides by Lucas Road, Cave Neck Road and the Cave Colony subdivision. There are 4 farms and 10 single family homes on both Lucas Road and Cave Neck Road, and all the homes in Cave Colony are single family homes and mostly one story. In fact, some of these homes are still occupied by people who were born there. People who live in a town expect to have buildings and neighbors close by with more traffic, street lights and the usual noise of hustle and bustle of urban life. In our area, the homes are visible but well separated by fields and large yards. The noise from picnics or barbeques is not intrusive and children play ball and other games without fear of their toys falling into the closest neighbor's yards or gardens. The thought of having a small city of 350+ living units with the accompanying side affects of noise, traffic, parking, parking lots, drainage ponds, delivery trucks, street lights and run-offs from driveways and etc, is appalling to us. The owners of Key Venture have invested money in this project and they're certainly entitled to a return on their investment, after all that is how business works. But certainly they

can scale down this project and still make a profit. If an entrance to this development from Cave Neck Road, the increased traffic will be intolerable. The road will have to be widened and turning lanes will have to be installed. Lucas Road is a narrow rural road and will no doubt have to be completely rebuilt and reinforced to handle the heavy equipment and truck traffic that will be located with this project. I don't imagine the residence that live in the Lucas project are very happy and will welcome this additional traffic on their road. There's also an ecological threat. There are two drainage ditches on this farm which flow into the Broadkill River. I have concerns about noxious run-off from the roads, parking lots and driveways, and pesticides and herbicides from lawns and gardens. I recognize that this development is associated with the building of the new sewer plant for the town, but surely a lower density of R-1 zoning is more compatible with this area. The residence in the Cave Neck area do not live in town limits, nor do we vote on ordinances or council people, but the this project will be a part of the Town of Milton and will be governed by it. How you people vote on this zoning request will have a profound effect and drastic changes in our lifestyle and those of our descendents.

Thank you.

Virginia Weeks: Madame Chairman?

Linda Rogers: Is there anyone else that would like to make a comment?

Tricia Bellfield(??): On behalf of Lucas Development community, I would really like to see this zoning to R-3 because we really need this water treatment place that is supposed to be built because we have a lot of people in the community that don't have sewage, don't have running water and it would really benefit our community to a better growth and better homes, so I really recommend it on behalf of the Lucas Development. Thank you.

Gladys Wilkins: I have a letter I wish to read into the record. Let me start off by stating that I am a lifelong resident of Milton and currently reside in the home in which I was born. I wish to go on record stating that I am not opposed to growth; however, I implore the commissioners for responsible, controlled and logical expansion of the Town of Milton. The proposed rezoning of Key Ventures property from R-1 to R-3 should be rejected for the following reasons: The character o the existing community surrounding the applicants property is zoned R-1/LPD for in-town properties and AR-1 for properties in the county. Under quality planning guidelines, higher density projects belong and should be incorporated closer to the downtown core allowing easy access for shopping, public transportations and services. Once rezoned, the property can be built by right with any of the permitted uses within the R-3 zoning, and the addition of the high density condominiums, town homes and apartments will result in significant quality of life deterioration through vehicle noise, vehicle traffic noise, and trash and parking lot light glare. I recognize this project is tied to the towns need for a new sewer plant. During the public education meeting held by Tidewater Utilities, several photographs demonstrating the incorporation of sewer facilities among the single family residential communities were shown. I certainly feel Milton deserves the same. Please respect the community and surrounding property owners by keeping the R-1 zoning for this parcel. I request that a copy of this letter to be incorporated as part of the official record and thank you for your time and consideration of my comments.

Virginia Weeks: Madame Chairman, may I ask the speaker a question, or is that done later?

Linda Rogers: Ask who a question?

Virginia Weeks: May I ask the speaker a question?

Linda Rogers: Yes.

Virginia Weeks: Thank you. Are you aware that the property on Cave Neck that is part of Cannery Village, that corners on Cave on Neck and Sam Lucas, is slated to be commercial, and that the rest of it along Cave Neck is town houses?

Gladys Wilkins: Well, I have property that joins Cannery Village and it, this farm, the Lucas Road separates me from it.

Virginia Weeks: Well, Cannery Village, on the corner of Cave Neck and Sam Lucas, on the side closest, is commercial. I went this morning and looked at the master plan for Cannery Village. It is all commercial. As you come out of Front Street, it's all town houses and to the left, it's a big commercial development, with a large parking lot. Are you aware of that?

Gladys Wilkins: No.

Virginia Weeks: You better...I just want you to know so you're not surprised. That is what the master plan of Cannery Village calls for at that area.

Gladys Wilkins: The plan for Cannery Village. But I'm talking about...

Virginia Weeks: Right, so it's not R-1...

Linda Rogers: And that is the subject that is at hand is this proposal for Key Ventures and Cannery Village isn't, whenever they are on the agenda to be discussed will have to have a site plan review for whatever goes on that corner because I'm not aware of any approval for that phase at this point.

Virginia Weeks: Pardon me?

Linda Rogers: But it is approved to be commercial right at the end of Cannery Village and the corner of Sam Lucas road. However, what the topic of tonight's meeting is, is Key Ventures, not another development.

Virginia Weeks: Right, I just wanted to make sure that people understood that it is not all R-1 zoning out there.

Gladys Wilkins: Thank you.

Virginia Weeks: You're welcome.

Linda Rogers: Anyone else like to make a comment?

Lynn Ecklund: (406 Union Street): I'm in opposition but before I make my comment, I know I can't get my question answered but perhaps you can. The annexation agreement, that these gentlemen have been talking about, calls for not less than 396 units. My question is the 355 that they are talking about now, is that a solid 355 or does that leave 41 units of wiggle room somehow, and if it does, how would those 41 units be developed? Now, for my opposition. I am just very concerned, based on what they are saying, they are talking about 216 apartments/condos/tonight multi-family units, which is practically 61% of the way they are going to be developing this 66 acres. Town homes, 100, which is 28%. That's a total of 89% of this property being developed as apartment complexes and town homes. I don't think that's in keeping with the character and the community of the Town of Milton. I don't like it. The development of this property as it is presently zoned R-1, with 200 homes, I believe is totally in keeping with the town character and will be an asset to Milton for years come. I hope that's what you vote. Thank you.

Linda Rogers: Anyone else like to make a comment?

Donald Carey: Good evening. I know progress is inevitable and this looks like it would be a nice place for a lot of folks to live; however I have some grave misgivings about drafting a modern subdivision on what were only a few years ago a simple little tar and chip farm roads, and if I do the math, we're looking at about 350 housing units which translates to be about 700-800 automobiles that's going to have to go out on these little 2-lane roads where everybody goes to work at the same time. And I just hope we can do something to get these roads before we get to deeply involved with this division. Thank you.

Linda Rogers: Thank you. Anyone else?

Jim Welu: I'm surprised it hasn't been brought up before, but I believe you are being asked to participate in an illegal action tonight if you go along with this request and the reason I say that is in conversation with county officials, with private attorney's in Sussex County. The contract that the Town signed is a contract zoning contract which I've been told is illegal. What that means is that under the contract, if the town grants the higher density zoning, they in turn get a piece of land for \$5, \$10, whatever it is. If this was a private individual, a council member, a mayor, or something getting something in return, it would be called bribery, because the municipality who is making the decision on the rezoning is getting it, it's called contract zoning. You have a contract, you get quid pro quo. It's illegal. I think Mr. Brady will probably say it isn't, but this wouldn't be the first time in advising the Town on certain matters. When I talked with the attorney general's office, they said well it's not an illegal act until the rezoning takes place. Under legal terms, you cannot go to court on an issue until the issue is ripe, which means action has been taken, so there's no way anybody can take court action against this until the Town actually rezones the property and gets a piece in return for the higher density zoning. Something to think about. I find it interesting...I received a thing from the county a couple of weeks ago about 10 applications that were in process by the county that they had sent out for review by the various bodies and all 10 of them had density of 1 or 2 units per acre and I find that interesting, everything seems to be coming into the Town of Milton is looking for high, high density, the maximum you can get. As an urban planner, with urban planning degree background, I find also fault with the overall design of this community. They say it's being designed as a community where you have the single family kind of at the entrance of center, and then in the background you have the higher density zoning. Well, that makes this not a part of Milton; it makes it an enclave onto itself. If you're driving down Rd. 88 right now, Cave Neck Road, you have single-family, $\frac{3}{4}$ acre lots. At best, sometimes you have larger parcels such as Mrs. Stucklik's. What this proposes, you drive into Town, and this will be part of the Town, you have $\frac{3}{4}$ acre lots, single-family homes; then you are going to have 3-4 story multi-family, not rental necessarily, but multi-family buildings, and then back in the background that you won't even see as you approach the town, are going to be the single family, so it's not making a community that's inclusive with the Town, it's inclusive to itself. It's kind of like an island, and I don't think that's good planning as far as the Town goes, because you should be looking at this, I believe, as how it integrates into the Town, and I was not aware of the density of the zoning on the parcel once you cross Sam Lucas but I don't think bad past action is grounds for making new bad recommendations and bad action. I think as you are approaching the Town, you've got to have some sense that this is a residential, basically a single-family, community and I don't think you are going to get

that with this. You are going to get the idea of multi-family dense structures. The best of my knowledge and these are not accurate numbers, but I think about 50% of this land is build-able. Normally in the County, this has a nothing with the town's zoning requirements, but normally in the county, if you have not build-able lands, you don't get density for that. If you have wetlands....let's say you have 50% wetlands, you don't get your 50% density for that wetlands and transfer it to another parcel or part of the land and here what we're doing is giving them a high density per acre and then concentrating on a portion of the land, and that makes it even more dense than is, you know what would be considered under the rational for the kind of increased density. Also, as a member of the Broadkill River Watershed study group, I am concerned with the storm water run-off that is going to come from this community. It looks to me like there are two stream beds that go under Cave Neck Road, right directly to the Broadkill. They're being filtered pretty much by this farmland now and as that density increases, the impervious surface increases; there's going to be more flow of water going towards the Broadkill and I know that the conservation district will receive storm water management run-off is going to say there will be no more flow of water after development by the way the control storm water run-off, but I know for a fact, in one development that I am a neighbor to, we had a tax ditch in a new development called Vincent Overlook, on Cave Neck Road, and that tax ditch was dry for the last 15 or 20 years. Now with Vincent Overlook, not even being developed, just in the process of being developed, that tax ditch has a constant stream of water coming through. There is flow from that farm land which is now being developed. So we can't rely exclusively on the conservation district to preserve our watershed. And then one other issue I would like to raise, because I haven't looked at the plans in detail but the county now requires any new development that fronts any public road, that a walkway be provided and if you drive down Rt. 9, for example, between 5 points and going out towards Harbeson, you will see walkways at the edge of these developments so people can traverse from community to community without being out on the roadway. If you go out on Hudson Rd now between Rt. 1 and coming into Cave Neck Road, you will see the same thing and my question is does the city, the town, require that and if not, are you going to consider that on developments that front public county roads that there be walkways for pedestrians who want to walk their dog, who want to get their exercise, whatever? But I would like to go back to my first point and caution you to seriously consider the issue of contract zoning and you may want to defer this action and talk with some attorney's in addition to the town's attorney about this issue. Thank you.

Linda Rogers: Does anyone else like to make a comment?

Glen Mandalles: I'm an attorney with Crickett, Jones and Elliott, 11 N. State Street, Dover, DE 19901, and I felt compelled to speak only because, well I have a lot of respect for Mr. Welu. We disagree on one point tonight and that with regard to whether this contract zoning action would be right and I can represent to you that today an action was filed in Superior Court, challenging the annexation agreement that the Town Council adopted a few weeks back. So while I disagree with him that this action would be right in court, I agree with him on the point that to the extent that this body recommends and moves forward with a rezoning of this parcel, you would indeed be participating in and further perpetuating an unlawful act of contract zoning. What you have going on here is give and take between the developer and the city. Bilateral negotiations is indeed an unlawful act of contract zoning. For the town the go to the developer and say you have a

beautiful parcel of land; give us 20 acres so we can build a waste water treatment plant and we'll give you the high density; there wouldn't be a problem with that. But here you have give and take in exchange and that's a bargaining away of the municipality's zoning authority. So, I am here to represent to you, and I will present for the record, a copy of that petition that was filed today, if I can hand it up to one of you.

Virginia Weeks: Whom do you represent?

Glen Mandalles: I represent several petitioners that are identified on the complaint.

Dean Sherman: Were there any action taken on that?

Glen Mandalles: It was just filed...

Gene Steele: It was just filed so...

Glen Mandalles: Just filed today, in fact, I don't think the Town has even been served with it. This may be the first copy that the Town has seen...

Dean Sherman: So another words you're not here speaking on behalf of what we have to vote on tonight?

Glen Mandalles: Well, I did and speaking, just to let you know, I think it's fair to make the record clear that there has been an action filed; there is a challenge that this would be an unlawful act...

Dean Sherman: That has nothing to do with what we are voting on tonight. We haven't been served with anything. The Town hasn't been served with anything, so this is moot.

Glen Mandalles: I'm just informing you on the public record at this hearing that there has been an action filed so it's not moot and I just respectfully request that you would reconsider this and not go forward with the zoning.

Michael Filicko: Could you please, you made a couple comments toward the end, something about give and take, and I am just trying to understand what you said.

Glen Mandalles: Sure. It goes to the legal theory of contract zoning. In Delaware, contract zoning is per se invalid. It remains an unanswered issue as to whether conditional zoning is permissible in the State of Delaware. Contract zoning though, pure contract zoning, is a give and take between the developer and the municipality where the developer say, for example in this case, I'll give you 20 acres, but I will only give you that 20 acres if indeed you will give me the higher density to build more homes and to make my project more profitable. Let's face it, I represent a lot of developers; they're in it to make profit and there's no problem whatsoever with that. The problem becomes when there's this bilateral exchange where the developer's saying I won't do this unless you give me a certain zoning. That's what's happening here...I won't give you 20 acres unless you give me a higher zoning. That's bilateral negotiations. Indeed Key Ventures, a representative from Key Ventures drafted the annexation agreement. They're the ones who are making the changes as this whole annexation agreement was being worked out. It was a give and take; certain, indeed if you approve this R-3 rezoning, there will be certain impact fees that are waived; that's another give and take that occurred during this process. It's not unilateral negotiations, which are permissible. If the Town were to go to a landowner and say "You've got a great piece of property. We need to build a waste water treatment plant. Here's what we'll do for you. We're offering you a higher density for that property than what it is currently zoned, if you'll give us 20 acres. And they put it on the table and the developer says 'Sure we'll do it'". That's unilateral negotiations, a unilateral offer, nothing impermissible about that. But when it's bilateral, which you

have here, that's impermissible contract zoning, and time will tell what the Superior Court says, but that's one lawyer's opinion of what's occurred here.

Michael Filicko: Thank you for explaining that to me.

Linda Rogers: Would anyone like to make a comment?

Marian Jones: For most of us, the method with which this property is developed has no real impact on our day to day living after all the newly annexed land, it is part of Milton, just not in our own back yards. Unless you routinely travel Rt. 88, you might not even be aware of this new community. However, if you've taken the time to review the parcel and the lands around it, you will see the Key Ventures property is surrounded on all sides; that's all sides, by single family houses – no condo's, no apartments – single family houses. If you want “development in keeping with Milton's heritage and architecture” as stated on Mayor Post's bio on Milton's website, you need to hold the development of this property to R-1. It is not my intention to financially damage a landowner by limiting the use of his property. However, who will directly benefit from greater density? The landowner. It is not P & Z's responsibility to grant greater density for the purpose of increasing the profit margin for the developer. Please don't allow a greater density just because this property is out of sight, out of mind. Please don't be held hostage because this deal is tied to 20 acres for a waste water treatment plant.

Tidewater is a very capable company and I'm sure they can find their own land. This property shares boundaries with long-standing neighbors. Even those whose property owners are not annexed, and technically do not have a voice, please remember them. Please consider them. This property is one of your Town's gateways. Finally, if you have any doubts about allowing density greater than R-1, please vote no to R-3/LPD. Thank you.

Norman Lester: I own a piece of rental property at 26170 Cave Neck Road and while I agree with most of the previous speakers and oppose that high density, I just have a question. I've had a couple conversations with Mayor Post and a couple other people on the council and one thing really confused me. The opening of this meeting, when the representative for the builder says they're going to donate the land, the 20 acres, and they're donating, and they're going to be paying impact fees, etc., etc., etc. As I was given to understand by Mayor Post, that's not the case. The Town is giving up some of the impact fees. They're not collecting the transfer taxes. It sounds to me, and this other gentleman who's an attorney, may have addressed this issue, but we couldn't hear him back here, but I think there is something deeper going on here, and the public needs to know what is the town going to be suckered into here, just for this 20 acres for this development. Are we giving up more than we're getting. This is a strange issue and I don't think, I've never had anybody give me a clear answer but just from my gut feeling is that we're going to be giving up more money than we are going to get in return, and there's just something...if it walk likes a duck, acts like a duck, it's got to be a duck. Thank you.

Peter Theodore Lightman: I live on Sam Lucas Road. I urge the commission to reject Key Ventures request for R-3 zoning for 2 reasons. First, Sam Lucas Road will not handle all the traffic, which a high density community would generate. Second, so many dwellings crammed into so small an area, will destroy forever the small town, country life quality that we enjoy in Milton. On the other hand, R-1 zoning would preserve Milton's

uniqueness and also allow Key Ventures to realize a just profit on its investment. Thank you. I would like to submit my statement for the record, if I may.

Linda Rogers: Thank you. Ma'am?

Maryanne Stewart: I live on Coulter Street. I have a question. Didn't the lawyer for Key Ventures say they would donate land even if it's kept R-1? That question I feel should be answered before you vote. Thank you.

Linda Rogers: Does anyone have any comments they would like to make? Does anyone off the board have any questions?

Ted Kanakos: Yes. The lady who represented, was it Sam Lucas association or Lucas association, mention that it a benefit of this development would be their ability to get sewer and water. Is this in fact true? They are in the county, and how would this work and what were they told? And who would be responsible if in fact it's....

Doug Marshall: My understanding is that the town is also contracting with the, or going through or attempting to contract with Tidewater Utilities to provide the sewer service. The state of those negotiations I'm not privy to but what I am privy to from the public media, and from discussions with some people involved is, they're seeking to be able to serve other customers rather than the town. There is a dire need for a sewer on some of the Cave Colony lots that are unbuild-able and there's obviously a crisis in that lady's development both of which border on this property. So should the sewer plant be built there, and should it be taken over by Tidewater, it's anticipated that those local people would be served.

Ted Kanakos: Thank you.

Linda Rogers: So my understanding is Tidewater is a private corporation that will be serving the Town as well as individual property owners. We're not limited to anything within the incorporated limits?

Ted Kanakos: I have second question. Are there sidewalks around the perimeter of this development or just internally?

Keith Rudy: That is correct. There are sidewalks proposed on both sides on all streets throughout the community.

Ted Kanakos: Thank you.

Linda Rogers: But not on the perimeter out by the roadways?

Keith Rudy: Actually, that would be subject to the purview of DelDot, and their terminology for it is a multi-modal path. We have, in our plan, allotted for a sufficient easement to accommodate not only the road improvement that would be required that we anticipate and also construction of that multi-modal path. So our plan does have a provision to include that as well.

Ted Kanakos: Are we empowered to request it? Or do we just wait to see if DelDot requests it and if they don't it doesn't show up. This is part of the town. The town has sidewalks.

Keith Rudy: That's right.

Linda Rogers: But this is also not a site plan review process, right now. It's a rezoning process and if I'm correct, which those three over there can answer, that's a part of the site plan review process.

Ted Kanakos: So we cannot address that?

Bob Kerr: That can be addressed this evening but it is addressed at the preliminary site plan and there is the town ordinance that requires curbs and sidewalks for all new

construction so typically that has been a provision along whether an existing street or new street, the curbs and sidewalks are a requirement.

Ted Kanakos: Thank you.

Linda Rogers: Excuse me, you want to ask a question?

Peter Theodore Lightman: By sidewalks on both sides of the street, does that mean sidewalks on both sides of Sam Lucas Road? Because if so, that means two homes on Sam Lucas Road would be destroyed.

Linda Rogers: No, he's referring to internal sidewalks within his development and what we were asking was perimeter sidewalks along Sam Lucas Road only their property side.

Peter Theodore Lightman: Understood. Thank you.

Bill Brierly: I would like to that question about the 20 acres and just for clarification, could you state whether or not the 20 acres would be utilized by the developer if that was going to be retained as R-1 zoning or if it would still be donated to the town if it was retained as R-1 zoning?

Keith Rudy: This is the view of the property in it's entirety. Anyone who's familiar with the property and as you all can see from this rendering, the wooded areas, the wetlands, the ponds, so forth, are on the area that's being retained. The 20 acres that's being offered to the town is the highest 20 acres on the property and it was necessary for that purpose for their plant. By us giving up, or the developer giving up 20%, he gives up much more in the number of single family units. If it were R-1, it would be impossible to give away that 20 acres, because there wouldn't be enough ground left to get to the 200 units. And it would be reduced by much more than 25% because if it's R-1, single family, most of the lots are going to be concentrated in the area proposed to be used for the sewer plant. So the idea that the 20 acres would be given to the town and we would simply develop the rest with 45 single family homes, I think that answers that question. There's no possibility it could be donated without additional density.

Bill Brierly: So stated simply then, if the R-1 zoning is going to be retained in place, then the Key Ventures would be developing all of the property...

Keith Rudy: The 88 acres.

Bill Brierly: ...All the 88 acres for R-1?

Keith Rudy: As R-1, that's correct.

Bill Brierly: Thank you.

Keith Rudy: And then that's the only, I mean, it's not logical to do it any other way. Another issue is the type of housing, I know the sewer plant as I've seen it, and I know the modern technology with the engineers for the city and for Tidewater, it's going to be a beautiful waste water disposal plant. However, that has an impact on the development of the area adjacent to that, so for a sewer plant to be in that location, there would have to be a different style of zoning, different style of house, units; a lot of buffering would have to be done and that's why we think the 355 units is extremely reasonable given that the property immediately adjacent to this, I believe, is 6 units per acre, with commercial. And we think it's a very fair proposal that the city has made. It's not contract zoning, because you all don't have to recommend it and the town doesn't have to approve it. If they think with the sewer plant there that this would be appropriately zoned and appropriately planned and you all think that, then you should make the recommendation to do so. If you don't feel that way, make the recommendation not to. It's not, obviously you're not obligated to do anything nor is the city obligated to do anything. There is no

contract. There's an annexation agreement where they requested us to present this as a possibility and to see how the P & Z commission liked it and how the town likes it. And that decision has not been made. The only decision's been made is to annex 88 acres at R-1. I would like the engineer to address the comments you all, it will be preaching to the choir, because you know that run-off is taken care of, that roads are all taken care of and all the things they asked questions about are taken care of by the multiple steps that we have to go through and the agencies that we've been through, the PLUS committee, so forth. The only thing that I would like to say is that I'm appalled that an attorney from the State of Delaware would come here tonight in an attempt to intimidate a body such as yours, who's involved in the process of determining whether or not this would be appropriate. The issue of contract zoning has been brought up apparently by the applicants funded by, we don't know, and it's not, I wish that you could put that out of your minds, and I'm sure that you will in making this decision. That will be addressed in another forum if indeed it's served on the people involved.

Linda Rogers: Thank you. One more question from the audience.

Marian Jones: I'm not privy to anything but is there any reason that the homeowners on Sam Lucas Road should believe or ought to believe that there will be a speedier waste water removal for them by granting this density thus getting the 20 acres as a gift. I think it behooves the town and I don't know whether this is the commission to do. I think that needs some clarification. Does Tidewater stand to serve them any faster by getting the 20 acres on Sam Lucas Road? Thank you.

Linda Rogers: Does anyone on the board have any questions or comments? No one? If not, I will entertain a motion to close the public hearing.

Dean Sherman: I make a motion.

Louise Frey: I second it.

Linda Rogers: We have a motion and a second. All in favor say "Aye". Opposed – None. Public hearing is closed.

Linda called meeting to order at 8:25 p.m.

Nomination/Election of Secretary

Linda Rogers: First item on the agenda is the Nomination/Election of a Secretary to the Planning and Zoning Commission. Anyone would like to make a nomination for the position of secretary. We've done this before and we need to have a secretary so... It has to be a member of the commission itself to act as secretary and write a report, other than myself. Ok, lawyer, what do we do? This is the second time we've done this. We don't have anyone that's willing to take the position of secretary?

Andre Beauregard: You can still nominate someone and then vote on it?

Virginia Weeks: If that person accepts it.

Linda Rogers: Whether that they like it or not.

Andre: They're on the commission.

Linda Rogers: Well, we need someone on the commission willing to take this position. It would be better if someone volunteered and therefore we would nominate them and vote them in, than to have one forced into a position that they really didn't want to take.

However, it is required that we do have a secretary that does write the report, so we need someone to fill this position, please.

Andre Beauregard: I guess another advice I could give the committee is they could always table it and either go into executive session and talk more about it and get some feelings in it, but I don't know how pressing the position needs to be filled.

Linda Rogers: Well, it needs to be filled. Someone needs to take notes and be able to make a report to council.

Virginia Weeks: Madame Chairman?

Linda Rogers: Yes.

Virginia Weeks: May I suggest we add that to the agenda and that we discuss it at the end of the agenda and decide exactly what is entailed in the secretarial position, etc., and so on?

Linda Rogers: Do it now, I mean it's on the agenda now. I mean, what exactly is your question.

Virginia Weeks: The question is, besides writing the report, what else and what other function does the secretary fill?

Linda Rogers: To the best of my knowledge, the only function is to write a brief report that is submitted to the Town Council, because they also get the same minutes that we get, which is detailed transcript of the hearings that they can read at their leisure at another time. That's my understanding of the position, that you would take just brief notes during a meeting in order to write a brief report, and it's really just a synopsis -- the applicant said this; we had people against; and this is what we voted. And that's basically it. It's not detailed as to who said what to whom about what. It is a general synopsis.

Virginia Weeks: And does it require that the secretary attend the council meetings to give the report?

Linda Rogers: That I don't know because there is nothing in the charter to require any member of any board, I don't believe. It's not mandated. There again, that's a legal question. It's requested but I don't think it's mandated.

Virginia Weeks: Thank you.

Linda Rogers: So do we have anyone willing to accept the position? Or are we going to wait for Mr. Brady to tell us we've got to do it next month? Because somebody's eventually got to do this. We've been playing tennis ball with this position for a long time.

Virginia Weeks: Perhaps it would help, Madame Chairman, if next month we had a copy of one of the reports that had been done in our packet so we can review it and everybody's more familiar and maybe a little more comfortable?

Linda Rogers: Someone want to make a motion to put this on the next meeting's agenda?

Michael Filicko: I make a motion to put this on next month's agenda for review.

Linda Rogers: Is there a second?

Louise Frey: I'll second.

Linda Rogers: We have a motion and a second to put this item on next month's agenda for review again. All in favor say "Aye". Opposed – None.

Additions/Corrections to Agenda

Linda Rogers: Okay. The next is, are there any additions or corrections to be made to the agenda? If not, I'll entertain a motion to proceed with the agenda as submitted.

Dean Sherman: So moved.

Linda Rogers: We have a motion, is there a second?

Ted Kanakos: Second.

Linda Rogers: We have a motion and a second to proceed with the agenda as submitted, all in favor say "Aye". Opposed – None.

Approval of Minutes

Linda Rogers: The next item on the agenda is approval of the minutes for May 29, 2007. Does anyone have any additions or corrections?

Dean Sherman: Motion to approve.

Virginia Weeks: Second

Linda Rogers: We have a motion and a second all in favor say "Aye". Opposed – None. The minutes of May 29th are approved as submitted.

Linda Rogers: Minutes of May 30, 2007. Are there any additions or corrections?

Bernice Edwards: I move to approve.

Ted Kanakos: Second.

Linda Rogers: Motion and a second, all in favor say "Aye". Opposed – None. The minutes of May 30th have been approved as submitted.

Old Business

Linda Rogers: The next item on the agenda is:

The applicant, Key Ventures LLC, is requesting a zoning amendment for R-3/LPD (General and Multi-Family Residential Use District/Large Parcel Development District) located on Sam Lucas Road, Milton, Delaware. The property is zoned R-1 (Single-Family Residential Use District) and is further identified by Sussex County Tax Map and Parcel # 2-35-21.00-44.00.

Linda Rogers: Does anyone have any comments, questions or concerns they would like to make before we asked for comments at the end? Would you like to go with Mr. Kerr and Debbie's comments first?

Michael Filicko: Yes, please.

Linda Rogers: Bob or Debbie, either one.

Bob Kerr: My memo was submitted prior to your last meeting. Do you want me to go through item by item as we have previously?

Linda Rogers: Sure. Well, I'm there again, when I asked this question. This is not a site plan review. This is a public hearing to amend the zoning map by changing it. This is an

application to amend the zoning map. If most of these are referring to is a site plan review process, is it necessary to review all of these things at this time.

Bob Kerr: I believe it is, because not only is it a rezoning, but it's a rezoning for an LPD, which allows you to place conditions on the master plan and so many of those conditions are things that you may wish to consider.

Linda Rogers: Okay. Is everyone comfortable with that? And do you understand that? Yes? Okay.

Bob Kerr: Again, my name is Bob Kerr. First item, and some of these things have been discussed but just to make it easier for me. The proposed development is part of a recent annexation of 86.58 +/- acres. At that time the zoning classification of R-1, Single-Family Residential Use was assigned the parcel, when it was annexed into the town. The applicant has now requested R-3, Multi-Family Residential Use which was requested in the original annexation application. Second item, the applicant, Key Ventures LLC, has requested a rezoning of 66.59 acres from R-1 to R-3, with an LPD, Large Parcel Development, overlay. The remaining 20 acres will remain R-1. Third item, the density control table permits a density of 1 dwelling unit per 4,000 s.f. in an R-3 zoning district. The minimum lot area is 2,500 in an R-3 zoning district. The existing zoning district R-1 permits 1 dwelling unit per 10,000 s.f. with a minimum lot area of 10,000 s.f. Item 4, an area of 66.59 acres of the parcel has been requested to be rezoned to R-3 with an LPD overlay. In accordance with Para 4.8.14 of the zoning ordinance, 508 units would be permitted using actual wetlands and allowing 25% of the remaining area to be streets and then using the total area of actual wetlands and the actual street area which Para 4.8.14 allows, the allowable density increases to 593. The developer has proposed a total of 355 units and based on a gross area, this is a density of 8,170 s.f. per unit or over twice the minimum R-3 density and I'll stop there and kind of go away from what's written for just a minute. As an LPD, that density of 355 units is what stays. If you'll remember, Cannery Village and Heritage Creek are both LPD's and they have a maximum number of units. At that point, once the master plan is accepted, the number of units can't be increased unless they come back before you and council for a change in the master plan. So even though the allowable density per the calculation of an R-3, they allow 508 or 593, this parcel would be limited to the LPD overlay and any conditions you place on it and they have asked for 355 units. Linda, would you like me to just proceed or do you want to discuss any of these things as we go forward. What works best?

Dean Sherman: Bob, I've got a question. Can you clarify that 5, where it says "or over twice the minimum R-3 density"? That sounds strange to me.

Bob Kerr: Yes. R-3 density requires permits 1 unit per 4,000 s.f. and the density, based on, using 355 units and the 86 acres works out to 8,170 s.f., or 1 unit per 8,000 s.f.

Linda Rogers: But we're not supposed to be calculating on 86 acres. Isn't it 66 acres?

Bob Kerr: That is on 66.

Linda Rogers: Oh, okay.

Bob Kerr: It is on just the rezoning portion.

Linda Rogers: Okay.

Michael Filicko: Bob, may I ask a question please? Bob, is, are all of the 66 acres buildable?

Bob Kerr: No. The way the calculation is done for the LPD, you take the gross area minus the wetlands, minus either the actual streets or 25% of the property if they don't have the street layout completed...

Dean Sherman: 25% of...

Bob Kerr: 25% of the property is considered to be street if they have not...

Dean Sherman: 25% of the area of the property less the wetland?

Bob Kerr: Yes. It's total area minus wetlands, minus wetlands, minus 25% of the property...

Dean Sherman: Of that number...

Bob Kerr: And when you do the math when using 25%, they are allowed 508. The applicant has provided the number of square feet or number of acres of roads that will be provided. When you use the actual number it's less than 25% and it bumps the density, or the allowable density up to 593 units. But the way the calculation is done, the wetlands are subtracted from the allowable density. Unlike, if it was not and LPD, your ordinance does not subtract wetlands, it just allows the density to be the density.

Michael Filicko: Thank you, Bob.

Virginia Weeks: A question please. Bob, if, does that count also for R-1, that it would be the density no matter, the wetlands would not be subtracted?

Bob Kerr: Yes.

Virginia Weeks: So they would be allowed almost 350 units as R-1, because it would be 88 acres or 86 acres.

Bob Kerr: Yes. For an R-1 it's a little different in that each lot must be 10,000 s.f. and it works out that you do have to subtract the street, so it's a little less than that, but wetlands would be usable. It could be the back of a lot could be within the wetlands. It's still part of somebody's property; they would be able to build possibly on the front part. On this particular lot there would probably be several areas that houses could not be built so they would have to, they would have to remain as wetlands.

Virginia Weeks: Thank you.

Bob Kerr: Continuing item number 6, Para. 4.8.2.15 allows 1 acre of commercial and neighborhood business for each 50 dwelling units in a planned LPD. No commercial or neighborhood business use has been shown on the drawings or requested. They have shown only residential use.

Virginia Weeks: Question please. On page SL3, Bob, I need to be educated. Under the table where statistics is located...

Bob Kerr: SL3?

Virginia Weeks: Yes.

Bob Kerr: Okay.

Virginia Weeks: Under statistics, there's mention of commercial lot. What does that mean? See the statistics table?

Bob Kerr: Yes, I see it. I do not have an answer.

Virginia Weeks: I would like a clarification of that please.

Bob Kerr: I would think that we ask the developer's engineer to comment. I'm guessing that it may be the apartment areas, or the condo areas, but that is simply a guess.

Keith Rudy: Sheet SL3 is the portion of the lighting plan, the detailed lighting. There is no commercial proposed as part of this application, but if this is the same drawing that

we're both looking at, we would prefer to have for safety and convenience, lighting fixtures within the shared parking in between the larger buildings.

Virginia Weeks: I was just wondering over here why you say parking, commercial lots 1 and 6. Parking, commercial lots 2 and 5. I didn't know what that referred to.

Keith Rudy: It's a description for the lighting fixture only. A commercial is not proposed as part of this application. That would be lighting specifically to the shared used parking.

Virginia Weeks: I just wanted that clarified for the record. Thank you.

Bob Kerr: Item number 7, the breakdown of the residential units is as follows: single family, 39; town houses, 100; apartment or condominium, 216; for a total of 355. This is a condition if you decide to approve this you may wish to have that as a condition. If you recall, Cannery Village had that and over time it was changed slightly. There's more duplexes than was originally anticipated there due to market, but how you wish, and Cannery Village had wording that allowed minor changes in the number of types of units but in the total number of units. Number 8, on sheet T1, the off street parking requirements are shown correctly. The minimum proposed is not shown correctly. The minimum proposed spaces are based in 2 parking spots in the driveway and 1 parking spot in the garage. In the past, P & Z has only counted a garage parking spot as a half space, since many garages are not used for a parking area. This would change the minimum proposed number of parking places for a single family home and town houses to 97 per single family and 250 for town houses. The zoning ordinance does not specifically address this but that's using 1/2 space per garage is how you have used it in the past in both Cannery Village and Heritage Creek. Number 9, please be advised that both the single family homes and the town houses that a double width driveway will be provided in front of each home. This reduces the amount of on street parking because of the number of driveways and small front widths, particularly in the town house area where the lot and the length of a car is almost one and the same so, or the two parking space width is almost the entire front of a town home. Number 10, on sheet T1, note 10 should be completed to identify what the various numbers mean. Item 11 on sheet T1, note 11, the number of lots should be changed to 355 and 5.33 lots per acre. In the maximum net density calculation, the formula should be changed to $66.59 \pm$ acres minus $4.3 \pm$ acres minus $7.72 \pm$ acres = $54.54 \pm$. Item 12, Para. 4.8.11 allows the town to request a sequence in schedule of construction. It is recommended that a sequence in schedule be provided. The town may also wish to limit the number of units that can be built per year. Cannery Village has a limit of 100 units per year. That was done so that there wouldn't be a large influx in that area and to allow a little bit slower growth. That would be your choice whether you wish to have that type of a requirement. Item 13, Para. 4.8.16 allows the development standards to be modified. The developer has not requested modifications to the building setbacks as identified on note 6 on sheet T1. And, item 14, the road section on sheet T2 are in conformance with Chapter 17 of the Town Code. Item 15, at the writing of this and as of this time, I had not seen the PLUS review comments. I understand they have been submitted to the Town, but I have not seen them or had an opportunity to comment on them. 16, on sheet T2, the typical single family lot detail shows a 60% maximum coverage. The zoning ordinance density control table states a maximum coverage of 50% for R-3. And then there's several comments for sheet T2. In note 1, Sussex County engineering should be replaced with

the Town of Milton. In note 6, “and the Town of Milton” should be added to the end of note 6. Notes 8 & 11 should be discussed by the members of the commission. Notes 8 & 11 refer to preserving trees except for necessary to construct roadways, utilities and buildings and then note 11, “woods clearing should be limited to lots, roads and storm water management facilities only. That pretty much covers the entire site. If it’s not one of those things, there’s not too much left, so you may wish to modify that note or address in some manner. The next note, 10 & 13, the streets and roads are to be maintained...it states that the roads are to be maintained by the HOA, but elsewhere in the documents it says streets and roads are to be dedicated to the Town of Milton, so clarification needs to be provided so that everybody knows who’s going to maintain which parts. Under construction notes: number 2, delete Artesan water standards and insert the Town of Milton standards. Similar notes should be provided for the sewage collection and transmission systems and that may change depending on when Tidewater begins to operate the system. Number 18, these comments refer to the notes on sheet C2. Note 1 should be revised to read 216 proposed units x 2.5 = 540 off street parking spaces required. Road 1, which is the road that connects Sam Lucas Road to Cave Neck Road, it’s appropriate to have entrances on both roads but it’s preferred that a direct connection not be provided. This becomes a shortcut where people won’t go up to the existing intersection. By making it a straight shot through, this road picks up a lot more traffic than you would like to see in a residential area, so having some type of an intersection that controls traffic, I’m not a fan of just putting stop signs on streets for the purpose of stopping through traffic; it just needs something to control traffic so realigning the entrance roads should be considered. The commission may wish to consider revising the apartment/condo buildings closest to Sam Lucas Road to place the parking east of the buildings in order that the parking lot not be as visible from Sam Lucas Road. The parking lot is right up against the road and then you have the building behind it; whether it be better to flip-flop those. Next item, coming in off Sam Lucas Road, the road # 2, and the entrance to the apartments are off set such that traffic conflicts may occur. Relocating the apartment buildings closer to Sam Lucas Road will permit realigning the entrance. They would probably take care of this problem. Next, consideration should be given to having 3 entrances for the two buildings near the 1.32 acres storm water management pond. And then they have the additional, extra entrance possibly in the apartment complex is near the proposed culvert on road 1. There are several one way signs. The direction of the traffic flow is not shown or noted which way it’s going. That should be clarified. Several of the roads or driveways in the apartment complex seemed to be unnecessary. They may be for fire lanes but they’re not identified as such. The widths of several of the isles in the apartment complex seem to be smaller or narrower than you would like to see. Much of this can be worked out in greater detail but the concern was that as you start having to increase some of these isles, all of a sudden buildings are moving up closer to property lines or parking lots are moving up closer to roadway surfaces or something like that. Section 17-11 of the subdivision ordinance requires that 5% of the gross area be developed will be considered the minimum amount set aside for public open space and that doesn’t include streets, sidewalks, rights of ways, or storm management ponds. They have proposed a total of 24.29 acres as open space and of this, a little under 3.5 acres would be what they refer to as the active recreational area in the southeast corner of the property. Consideration should be given to reducing

the size of lots 88 & 89 to provide additional open space. The need for parking associated with the active open space in the southeast corner should be reviewed. The only thing that's there is a little bit of on street parking so anybody coming to this area would have to park and walk to it. There isn't anything right there. Item 19, the applicant should be advised and is probably aware that the towns' existing waste water treatment does not have the capacity for this development. The town has selected Tidewater utilities to provide waste water services. The town and Tidewater would have to be contacted to determine when services would be available for this property. Item 20, a landscaping plan as been provided; additional details will be forthcoming during the preliminary and construction review portion if you approve and it moves forward. Item 21, the proposed lighting along roadways uses the Grandville fixture with either 12 or 14 poles. This is similar to what is used throughout town. The lighting shown within the apartment/condo area is different with a fixture on a 25' tall pole so this is going to cast a larger light shadow, so that's something that may be needs to be considered. The commission may wish to require lighting along the walkways and the open spaces behind the town houses. The record plan sheets RP1 through RP5 contain many of the same issues discussed above. The record plan sheets will need to be revised to reflect the commission and Town Councils comments and really don't need to be reviewed until after the preliminary site plan approval. And then attached for your consideration is a draft recommending conditions of approval. This is similar to the one used for Cannery Village and Heritage Creek and certainly you have the right to add and subtract, however you feel. And I would be happy to answer any questions.

Linda Rogers: Does anyone have any questions they would like to ask Mr. Kerr?

Ted Kanakas: And for Debbie also. All of these comments that you have suggestions that you've come up, when are these to be incorporated? Has McCrone and the principals been given a copy of this already? And have they addressed it or since it is in LPD do they have to address it before we vote; I don't know where we are right now.

Bob Kerr: If I may just review the process real quickly. If you chose to recommend a rezoning and approval of an LPD1, that would go before Mayor and Council with a list of recommendations and changes that need to be made. If Mayor and Council then approved it, they would come back to P & Z for the acceptance of the master plan, and any comments or changes or conditions that you place this evening and or Mayor and Council place at their meeting, if they choose to accept, would have to be fulfilled before this body accepts the master plan. After the master plan is accepted, they would submit a preliminary site plan where we get down into a lot more details on where everything is. But the idea is that the master plan be close to what you want to see as the project moves forward.

Ted Kanakas: One more question and then maybe Debbie could help me. I'm very concerned about putting it in boiler plate (???) that there would be no more than 355 residences. Now is this a motion that we make now that carries forward to whatever zoning we, in other words, based on R-3, it can't be 355. Do we do this this evening and make a motion?

Bob Kerr: I think that yes...

Ted Kanakas: That's my primary concern. I don't want to find 590 homes there in two years.

Bob Kerr: If the project moves forward with your approval and Councils' approval, my recommendation would be that the document similar to what's attached to my memo recommended conditions of approval and that becomes, that's part of the recorded master plan, and all of those conditions that you state in this document then become part of the record that must be fulfilled and it stays with the land. If the zoning of 590 or 508 allowable units passes at that point, it's an LPD overlay that limits it to 355 units. In the past, you have permitted certain modification of the type of housing within that, and some of that is typically driven by the market. Cannery Village found there was a bigger market for duplex than the four-plex, so as they developed plans that changed slightly.

Ted Kanakos: So we simply make a motion to accept your recommendations this evening?

Bob Kerr: It's also what the applicant requested so it's just not my recommendations or Debbie's recommendations, it is what the applicant has requested...355 units. We only point out the larger numbers because under an R-3, that's kind of where you start. They can't have, they could not come in and request 650.

Ted Kanakos: But they could 590.

Bob Kerr: If it were only R-3. Once it has the LPD, the Large Parcel Development overlay, it's limited to whatever conditions you put on it.

Virginia Weeks: Question. Bob, Item 12 in the agreement that you gave us to look over, it's about street lighting within the community. Can we put in considering the problems that they had in Wagoman's West and some in Cannery, can we put in there a schedule of when the lighting is to be operable?

Bob Kerr: I would think the answer is yes. As far as I know, and if the attorney needs to jump in, he's the legal man, but I don't understand why you could not have a condition such as before occupancy permits are issued, x number of street lights or some form of that is required.

Virginia Weeks: I would like to avoid to what's happened to Cannery and what's happened to Wagoman's West again.

Bob Kerr: I believe it could be done either at this point or at the preliminary site plan that and part of that would be, or may be, depending on how the property is phased it may be that if it's brought in in several small pieces, that they're not going to build it all at once, that before any occupancy permits are issued, the lights for that particular phase it's a little, street lights would be required. It's a little tough to possibly require all lights are in if they are going to build all at once. So if you have one house and all the street lights on.

Virginia Weeks: No, I was thinking something along the lines that once the certificate of occupancy is asked for on a street, that the streets have it's lights functioning. Thank you.

Linda Rogers: Does anyone else have any questions of Bob. If not, we'll hear Debbie's comments please.

Debbie Pfeil: If I can indulge the commission, I would like to not read the same comments that Bob Kerr had. We have the same type of comments. Basically the applicant is proposing a total of 355 units on a 66.59 acre parcel. We'd like it noted that only a portion of this parcel was requested for zoning amendment. The total acreage is 86.58. It is unknown how their remaining 20 acre parcel will be developed. It will need to be determined what zoning is on the 20 acres during this process. Right now we would interpret that to be R-1. The applicant is requesting a zoning amendment to R-3, General

Multi-Family Residential Use District with and LPD overlay. The plan was not viewed by this office for water and sewer utility services. Those are being completed by the Town engineer. Under procedural, Item 1, the code of the Town of Milton, Article 4.8.7, master plan submission requirements were reviewed for compliance. Number 3, it is understood that this application has been reviewed by the state agencies through the PLUS process, with offices of the State Planning Coordination. The State's review comments were not provided nor the applicant's response comments for this review. These documents should be reviewed as part of this submittal to compliment the recommendations from the state agencies. Number 2, the code of the Town of Milton are (unintelligible) 8.1, intent of Large Parcel District, states "in order to encourage large scale development's as a means of creating a superior living environment, an LPD district shall encourage the following, and if you don't mind, I'm just going to do the unlined bullets there. 1, special and historic relationship with the Town; 2, the community of diversity; 3, human town scale enable interaction; 4, busy days and quiet nights. Under planning technical, Item 1, comprehensive plan, the future land use, exhibit G, future land use potential expansion map, located on the 2003 Milton Comprehensive Plan, designates the site at residential. Two, under zoning regulations, bullet a, Article 4, Sect. 4.8.1, permitted uses, single family detached dwellings, multi-family detached dwellings and town houses. The proposed uses are permitted in the zoning district. Bullet b, Sect. 5.1 of the density control table as follows: A maximum height of 40', 3 stories. Density is one blind unit per 4,000 s.f.; Maximum lot area is 2,500 per s.f.; Maximum coverage, 50%.; Depth of the front yard, 30'; Depth of the side yard, 25' for end units; Depth of the rear yard, 25'; minimum with 25', minimum depth, 100'. Note 6, density controls and LPD district are as described in Section 4.8 of zoning ordinance of the Town of Milton. This applicant is requesting that typical single family lot coverage allows you a 60% maximum coverage as stated on sheet T1. However sheet T1 or T2, sheet T1 of the site data table states that maximum as 50% per unit. It is unknown if all of the lots meet the requirements as stated above. It is recommended that the applicant provide areas with some depths on all lots for verification. The proposed density on sheet T1, should be corrected to included the total number of units including the net density. Item C, according to section 4.8.16, modifications of development standards, the P & Z commission may recommend that the following development standards be modified. The recommendation for approval shall be forwarded to Town Council for consideration for final approval, denial or modification. Item 1, building setbacks; 2, required number of off street parking spaces; 3, landscaping requirements; 4, sign requirements; 5, street width, design and layout. Have the construction requirements with respect to pavement sections, material and tabulation of structural numbers may not be modified. It appears the applicant is proposing a standard type subdivision with 3 types of housing units. The design creativity in a true mixed used overlay is lacking in the application. Many mixed use developments will request a relaxation in setbacks, especially the front yard, a reduction in less traveled streets, rear and side loaded garages, reduction in parking etc. The applicant is not proposing any neighborhood commercial use. It is recommended that the applicant provide a list of any request in relaxations for the Code requirements for verification prior to the agreement being finalized. Item 3, under parking, bullet A, section 7.2.2, required off street parking spaces – the applicable requirements for this plan are single family dwellings, 2 spaces per unit; town houses, I believe Mr. Kerr as

covered this in his previous reading. Item B, Section 7.2.7, landscaping requires at least 10% of the area of the lot usable for off street parking should be devoted to landscaping with lawn, trees, shrubs and other material. The applicant has presented has presented the landscaping on the plan. The applicant would need to state the percentage achieved for the parking area landscaping requirements. Bullet C, Section 7.1.4, buffer landscaping requirements. Two, the particular type of buffer and landscaping treatment shall be as determined by the P & Z Commission, to meet the intent of this section. The applicant has provided landscaping on the plan and would need further direction from the commission during the preliminary process. The applicant would need to further clarify if they have met the planting standards of Section 7.14.3, as it is not stated in the application. The structure appearance is unknown at this time however t is recommend the applicant design the development to ensuring the character of the Town of Milton is continued through the development. Several building enhancement features can be used on metal buildings such as windows, shutter, planter boxes, overhangs, entrances, ornamental trim, and window awnings. Front porch is sideways but a garage is off set structures, multiple metal color coordination. Based on the layout or the master plan, the majority of the building all sides will be visibly seen from the roadways and should be designed to rule out the character. I believe I am referring to the multi-family. Item 5, streets and sidewalks – sidewalks are proposed on all roadway and throughout open space areas. The applicant is to be condemned for this, however the interconnectivity throughout the apartment/condominium area is not shown. The sidewalks will need to be shown throughout the entire plan to include designated crosswalks. The sidewalks are to be built to DelDot and Towns' specifications. The interior proposed streets will be designed to the Town standards as the Sam Lucas Road is a state maintained roadway. They will be built to DelDot standards. Item 6, landscaping – the landscaping is shown on the site plan in detail and the applicants proposing the area of existing woodlands to be preserved. Item 7, lighting – A detailed lighting is shown on the plan. However, it appears the applicant is providing the light pole design that promotes the character of the development which is a Grandville style, throughout the street network with the single family homes but not within the multi-family locations. The multi-family locations are proposing that mongoose type lighting which lacks the extension of the proposed character throughout the development. It is recommended that the applicant use the same type of lighting to preserve and maintain the character throughout the development. It is recommended that additional walkways located around the town homes have lighting provided for safety. However, the light should not too intrusive to the neighbors in the dwellings. (Unintelligible) the style types of the proposed lighting poles. Item 8, open space – the applicant is proposing active and passive open space. The active recreation areas proposed to be the athletic field, the tot lot, are the farthest location away from the most populated structures on the site plan. The location for this proposed active area is understood that it is placed in an area that cannot be developed for more housing. However, it is recommended that the applicant place the active play area in a more centrally located area. Another option to provide closer recreation of the multi-family area is to provide a small tot lot in the proposed lawn area near Cave Neck Road behind the proposed multi-family building. It is unknown the type of athletic field being provided. Clarification with the applicant would need to be recommended during the meeting. If this recreation location remains, it is unknown where the overflow parking

will be located during activities and a potential traffic problem could occur around lots 30 through 37. Item 9, signage – the sign location, design, and size have not been provided. Directional traffic signs will be reviewed by the city engineer. Item 10, drainage – approval will be required by Sussex Conservation District. Item 11, water service – will be reviewed by town engineer. Item 12, sewer service – to be reviewed by town engineer. Item 13, miscellaneous. Item a – it is recommended the applicant provide a centrally located sheltered area for school bus pick-up/drop off. This could be designed to match the proposed character of the neighborhood and provide a safe location for the bus stop. It's further recommended the area be a designated drop-off with a bump out area. Respectfully submitted. I'm sorry, any questions?

Linda Rogers: Does anyone have any questions of Debbie? I have a question for the applicant. The largest building you have proposed was to house 18 units. Did I interpret that correctly, and if so, what are the dimensions of this structure?

Keith Rudy: Okay, bear with me, I have a conceptual picture of what this might look like. Basically all the buildings per the plan are very similar in nature. They are approximately 150'x 50' and they would have, of course it's not finalized yet, but they would have different architectural treatments and facades and things of that nature to offset the different elements of the building.

Linda Rogers: Was I correct that there would be structures housing 18 units? And they are going to 150' long? Is that correct?

Keith Rudy: That is correct.

Linda Rogers: Okay. Does anyone else have any questions?

Ted Kanakos: The lighting in front of these areas would not be the same as the lighting in front of the single family homes?

Keith Rudy: Certainly that is a very flexible item for consistency sake. Lighting immediately outside the buildings and facilities could be the Grandville style. In some of the larger areas of the parking, the (unintelligible) parking between the buildings, it might be more efficient to have perhaps a different style fixture. There are treatments that can be added to other fixtures, instead of having lights at 70' on center, if we had a different style in those parking areas, we could probably reduce the number of lighting and still retain the (unintelligible) required, but that would be something we would work with the planner and engineer. But certainly that is a very flexible item.

Virginia Weeks: I have a question. How are you going to handle mail delivery?

Keith Rudy: It could be handled a couple of different ways. Ultimately, as I understand it, the post office will make that determination for us. I believe in today's budgetary times, the day of home delivery right at your door by the mail carrier on foot is no more. So, it could be a combination. Certainly in the multi-family areas, the condominium complexes, that could easily be handled by a shared box, a dang (??) box, and in certainly along the roads.

Virginia Weeks: One for each building?

Keith Rudy: Typically, and they can be clustered as appropriate. And in typically for the town's and/or single family homes, alternately would be determined by the post office, but perhaps we can get curbside delivery if they would be so inclined.

Virginia Weeks: Thank you.

Linda Rogers: Does anyone else have any questions?

Louise Frey: I do. On the multi-family, is there going to be elevators in there or is that walk-up?

Lynn Ecklund: Who's asking the question?

Louise Frey: Louise Frey.

Lynn Ecklund: I thought you recused yourself from this vote?

Louise Frey: I don't have to now because my husband is no longer on the Council. As advice from Council.

Lynn Ecklund: Excuse me, shouldn't you have made that clear at the beginning of this meeting or...?

Louise Frey: As advice from Council I didn't...

Lynn Ecklund: (Unintelligible) recuse yourself last...

Louise Frey: On the advice from Council I didn't have to.

Linda Rogers: Excuse me.

Lynn Ecklund: Ms. Frey recused herself from this vote.

Linda Rogers: This is a whole new public hearing. It's whole in advertisement.

Lynn Ecklund: I don't have the minutes, but I was assured at the last month's meeting that it was a continuation of the public hearing. I didn't do anything, just jump in and jump out when you recuse yourself. Then again, that's a new one.

Andre Beauregard: I just want the audience that I am here for the council and I answer questions for the council, so don't take offense, but I'll answer any questions that the council may have for me to answer. If the council wants me to answer that, I spoke with the committee person prior to this. I informed her that she doesn't have to recuse herself anymore and she can vote and everything else. I don't think it's a legal problem. I don't know the wordings of the last minutes but as long as it's made known, I'm sure there's a letter you can write to the committee if you find it objectionable, but as far as I'm concerned, legally it's not a problem.

Lynn Ecklund: Okay. I just wish that perhaps council would have said something, I mean Ms. Frey would have said something at the beginning of the meeting like "hey guys, I'm jumping back into the pool". (Unintelligible)

Linda Rogers: Well, we had an entire new public hearing for anyone to make any input that they chose to make. So, we reviewed everything that everyone had to say. It was a whole new public hearing. If you have issues with that, then I would suggest you put it in writing to the council, but we did open a complete new public hearing at this time. It was re-advertised. I believe new public notices were sent, am I correct? Someone answer that for me?

Robin Davis: All new public notices were sent, yes.

Linda Rogers: Yes, so this is a complete, new public hearing that we are having tonight with no references being made to the previous hearing, because we were told it was not properly done. So this was a whole new complete public hearing process for this meeting. Okay, does anyone else have any questions?

Louise Frey: I would like an answer to my question.

Linda Rogers: Oh, I'm sorry, go right ahead.

Louise Frey: Thank you, Linda.

Keith Rudy: I'm sorry ma'am, could you please repeat your question?

Louise Frey: Are there going to be elevators in the multi-family dwellings?

Keith Rudy: I am not sure but I would expect that to be compliant with ADA codes that they would have to have elevators, yes.

Louise Frey: Thank you.

Linda Rogers: Now Bob, Debbie, Lawyer, somebody, I just want some clarification. With the LPD comes a master plan. If and when P & Z desires to make a recommendation to Town Council and say the recommendation is to approve this for R-3 and LPD overlay with a master plan, I was under the impression that the master plan when it went to council, had to have the stipulations, requirements, everything that we wanted on it at that time, and the way I interpreted what you said, we could say, we could theoretically say yes, we want this to be R-3 with LPD overlay, but it's going to come back to us for master plan to get stipulations put on it, then go back to them again to approve the master plan. I just want to clarify how we have to do this.

Bob Kerr: It starts as a preliminary master plan.

Linda Rogers: Which is this?

Bob Kerr: Which is what you are doing this evening. If you make the recommendation to Mayor and Council for preliminary approval, it goes to..

Linda Rogers: But this isn't preliminary...

Bob Kerr: You would make the recommendation to approve the zoning for R-3 with an LPD overlay and that the preliminary master plan that's part of that application with or without conditions be approved by Mayor and Council. Some of those conditions can be kind of typos or minor things that are here this evening. But there's also the condition's similar to what I attached to the back of my memo that just goes through many of the housekeeping items to make sure that the right number of units and those things are all spelled out so there's no question. Typically those conditions for both Cannery Village and Heritage Creek were actually then placed on the drawings, so not only was there a written 8.5x11 sheet of paper but they were also in the drawings. It came back before you to make sure all of those conditions had been met. Such as, if you decided this evening that you only wanted 350 units, not 355 and dictated that lots 1, 3, 5 & 7, 8 were to be deleted, you could make the recommendation to Mayor and Council to accept that with the deletion of those lots. If Mayor and Council agreed and did so, before it became a final master plan, the drawing would have to come back to you to look at to make sure that those 5 lots were deleted. Lost you.

Ted Kanakos: Well, how about all the rest of your items on your list? When do those get addressed? At the same time?

Bob Kerr: Those would be addressed at the same time or if you feel more comfortable having the drawing revised so that you know exactly what you are sending forward; that would be part of what you could do, and I probably have to get a legal way of doing that whether you would require the applicant to come with you with the changes before you make the recommendation to Mayor and Council. I think that would be the way that would proceed.

Ted Kanakos: And that's the recommendation for R-3, tonight?

Bob Kerr: When the recommendation is sent to Mayor and Council for rezoning, it's rezoning plus the LPD and as part of the LPD approval a preliminary master plan must be attached, because that's... Part of the LPD is not to allow a rezoning, because then you lose the ability to control the LPD. Once it's rezoned...

Ted Kanakos: Then we address everything again? If the Mayor and Council approve of what we recommend, and attached to that recommendation that this is an LPD, then everything will come back to P & Z.

Bob Kerr: Yes.

Ted Kanakos: All of your items especially and Debbie's items.

Bob Kerr: If that's part of the recommendation that you forward to Mayor and Council and that Mayor and Council...

Ted Kanakos: So it's not automatic because it's LPD?

Bob Kerr: Only if you say as part of your recommendation, these comments.

Virginia Weeks: Question. Bob, if we decide to approve this, and it goes over to the Council as a preliminary master plan, does that take the place of preliminary site plan?

Bob Kerr: No.

Virginia Weeks: So it would come back for a preliminary site plan where we could change things and address especially your road questions and lighting, etc. and so on?

Bob Kerr: Yes. The only thing would be whether you want to know some of that in more detail before you're comfortable in presenting it to Mayor and Council.

Virginia Weeks: Okay. But it does not preclude a preliminary site plan.

Bob Kerr: Correct. The next step would be master plan then preliminary, then final.

Virginia Weeks: Thank you.

Linda Rogers: Now, when we review a site plan preliminary, we pretty much have to have everything on it before it comes back for final. Is that the same rule apply for a master plan or can we send it to them as a preliminary master plan and then have a list of conditions or stuff we wanted to have on it when it comes back for final?

Bob Kerr: It's my understanding that you can send it to Mayor and Council with a list of comments or recommendations that it not necessarily be on the document but as part of your recommendation they make that part of what they adopt.

Linda Rogers: But then when it comes back for final, we really can't add much more.

Bob Kerr: You can't... No, it would then come back for final master plan approval. The comments that you make would be the ones that you would see that they were answered. If there's a substantial change, such as if you desire to have the road changed and that messed up something else you didn't like, I believe you could comment about that.

Linda Rogers: Okay.

Bob Kerr: But you couldn't, as it came back, if you decided to reduce the number of lots at that time would not be something that you could probably do.

Linda Rogers: It cannot be a major type change, just...

Bob Kerr: Correct.

Linda Rogers: Okay. Does anyone else have any questions or comments? Is anyone ready to make any type of motion? It doesn't have to be a motion to recommend. We have the right to defer and put it on another agenda if you're not comfortable with that. However, if you are comfortable with making some type of recommendation to forward this, then you can. So it's up to the members.

Virginia Weeks: Madame Chairman. I'm still a little confused. I understand that we put this forth as a preliminary master plan. What can we change when it comes back to us for preliminary site plan? I realize we cannot change the number of units.

Linda Rogers: The site plan is the details like when we've seen the site plan before and shows every single individual lot and it shows every single street, sidewalk, where the

lights are going to be in phases. Most likely they are going to develop this in phases. Bob, you can jump in at any time. You'll get just one section of this development to review in a phase, whereas the master plan is the entire concept of what it's going to look like upon completion. And the phases and the site plan review will be the details of each phase.

Virginia Weeks: So at this point we need to pay attention to Bob's concerns about the road, etc. and so on? Especially his idea that it shouldn't be a cut through.

Linda Rogers: Go ahead, comment.

Andre Beauregard: Once again, after reviewing the two memorandums, what you have to give forward to the Town Council is a preliminary recommendation for the R-3. In both memorandums, those can be part of your recommendation to the Town Council to be attached, to be recommended up to the Town Council. They can review it and then they can come back to P & Z and then say specifically, give us answers to these, that and the other thing. But right now you are just giving a general recommendation about the R-3, and that is what you should vote on. Any vote that you do take, obviously you should take the advice of your employees who work for you to make sure that the P & Z has covered everything in the master plan for the R-3.

Linda Rogers: Does that answer your question?

Virginia Weeks: Pretty much. Thank you.

Jim Welu: As a member of the public, can I make a brief comment?

Linda Rogers: No. The public hearing is closed.

Jim Welu: I know the public hearing is closed, but I have heard no discussion by the 9 members of this commission as to the pros or cons of annexation.

Lynn Ecklund: Sir! Sir! You are out of order.

Jim Welu: It's an annexation...

Linda Rogers: Mr. Welu!

Ted Kanakos: Madame Chairman, I am sort of confused on what we should do, to be honest with you. I don't know what we can ensure by this vote or not ensure, and at your suggestion or comment that maybe we should table this until we get some more information, I think if in fact whatever is filed is filed tomorrow or served on the Town, this might be a moot question. I am not intimidated by whoever runs down the isle with the document. Yeah, I'm not intimidated by anyone who runs down the isle with the document, but I think even if this fellow had not run down and served or indicated that it would served or was being served, there's still lots of questions. I am not comfortable in what we can say and what the Council will be able to ignore and what will be chiseled in stone, another what will be the real thing, except with 355 units.

Linda Rogers: Okay.

Ted Kanakos: So I just don't feel I have enough information.

Linda Rogers: Okay, what this body needs to look at is A – land use. The first thing we have to go is okay, where is this piece of ground, how many units do we want to have on this property, do we want it to be mainly single family, do we want it to be mainly duplexes, do we have a problem with one building having 18 units. We have to look at the use of the land itself, where it's located within the boundaries of the Town, how we actually want it to be zoned. The maximum of density that you may say "you know what? I don't want to see over 300 units on this parcel". And Ms. Weeks may say "you know, I think 275 are enough for this parcel". So we have to review that first. Now as

far as the legal questions that have been proposed, that's what we have a lawyer here for. If you have concerns as to whether or not we can actually move forward because of this legal action that was filed, he can answer that question for you. But as far as what we need to review is whether we feel the use that's been presented to us is appropriate for this piece of ground and is the density appropriate for this piece of ground? So if you have a question of our attorney, I'm sure he will answer it.

Andre Beauregard: I was aware of the lawsuit that has allegedly been filed and just for the information for the P & Z, it was filed in Kent County, which I don't know why it hasn't been filed in Sussex County, but it doesn't name P & Z as a party; just the Town Council and the way I see it, it's actually an act of intimidation to stop the voting to go forward, which, I mean it's, I hate to say a terrorist, but I mean that's what it appeared to me that it looked like. And actually, and I don't know if Mr. Marshall would agree with me or not, but I don't believe an attorney can come to a public hearing and say that you all are going to be liable in a suit and then just walk out and actually that could be an offence under the ODC which is the Office of Disciplinary Council, against that particular attorney. So I was surprised an attorney would come forward and deliver that and really has no bearing whatsoever on this committee, P & Z. I hope that answers your question.

Ted Kanakos: Yes.

Virginia Weeks: Madame Chairman, a question for the attorney.

Linda Rogers: Yes.

Virginia Weeks: Just to put this to bed, any discussion on annexation at this point is moot because this land has already been annexed into town, correct?

Jim Welu: I misspoke, I was talking about rezoning.

Virginia Weeks: Correct?

Andre Beauregard: Correct.

Linda Rogers: It's already annexed in. Our application before us is to change the zoning from it's' annexation classification from R-1 to R-3 with an LPD overlay, and we are recommending body to the Council. Does anyone else have any questions?

Bernice Edwards: Madame Chair, could I asked one question. If R-3/LPD, we could say by phases, where we say 250 or 300 homes, like phase one x amount of homes, phase two, is that...?

Linda Rogers: Normally the developer chooses the phases that they're going to develop in the order that they can do them. Like they, and I don't have any idea how they are going to develop, but they may not want to do an entire phase with all single family residential. They may have a phase that's one multi-family building and some others. I mean, I don't know that we could actually say that you've got to bring in a phase that's going to give us a 100 units. I don't know that we can do that.

Bernice Edwards: Thank you.

Virginia Weeks: Could we ask their engineer if they have a plan for phases?

Linda Rogers: Bob, do you want to answer that?

Bob Kerr: I'm sorry Mrs. Weeks, could you repeat the question?

Virginia Weeks: Well, there seems to be some doubt about how, what kind of phases will be used in building this. I was wondering if the applicants engineer has some idea of how they plan to go about that? Would you be kind enough to ask them that?

Bob Kerr: I think that would probably be best answered by the applicant.

Keith Rudy: At this stage and time, we are not really sure how and where the utilities are going to come from. Again, this is a master plan type approach. Typically, I wish it were as easy as saying it's a 100 units here and a 100 units there, but typically an awful lot of information is used to determine phasing. First and foremost, the models that you would like to offer and the order you would like to offer them. Also, it would depend upon how and where the utilities were brought, both sewer and water. The Conservation District is so stringent on the construction phasing in terms of earth disturbing activities, so all of that information is kind of coalesced as we move forward, before we're allowed to move forward. I believe one of the comments was related to a build-out plan or some kind of schedule related to that. Certainly that would be something we would explore and submit to the Town for their consideration, but until we actually are allowed to move forward, we won't have a better feel for exactly how the phasing comes together. In all likelihood, something this large, there will be phases. In all likelihood, there probably would be a desire to phase an offering for each home type of some sort to generate interest and demonstrate the quality of the project, but at this point we just don't know.

Virginia Weeks: Thank you.

Bob Kerr: If I may add to that, and I am trying to use some of the historically what has happened on a couple of the other LPD's in town. Cannery Village, I think they actually offered to limit themselves to 100 units per year, and I'm sorry I don't remember whether that was building permits or occupancy permits, but it was 100 units per year of either starting or actually occupying. Phasing really didn't come into a lot of discussion until they were near the end of some of the preliminary planning just before final when they started dividing it into how they were actually physically going to construct it. Phasing it has as much to do with cash flow as anything, but the requirement that in early discussions between them and the Town, the Town was concerned that they'd wake up one and there'd be 500 new homes out there under construction at one time and the demand that would be placed on the water/sewer service, the police service having to spool up to higher new officers and that type of thing; or the school, coming some September and there'd be 500 residents that appear over the summer that have x number of kids that have to be applied. So that's the purpose of considering putting a limit on the number of units that can be either started or actually occupied. It's worked out, I believe, that Cannery Village is really only running about half of that, if even half, so it may not be as big an issue as what was concerned at that point and time.

Linda Rogers: Does anyone have any questions or comments? Anything you would like to discuss? Does anyone feel they're ready to make any type of motion?

Virginia Weeks: I'd like to make a motion that we send this forward to the Council with the recommendation for R-3/LPD, that the Council require that all of the engineers' concerns, especially those about the roads, etc., be attended to before this comes to preliminary site plan, that they be incorporated into the master plan. I'd also like to ask that we recommend to the Council that the active recreation area be looked into as being open to everyone in the Town, if possible; that the light fixtures be readjusted to less than 25; that the storm water ponds be wet storm water ponds; that the density be 50% as the engineer suggested and that I think that this is not out of character with where this town is going. This is what Cannery Village has been and on the outlying edges of town, this is what we've got and whether we like it or not, it's going to work from the County in to us, or we are going to do it from the inside out. And if we don't do it, the county will. And

so, as seen by the proposal for North Milton, and I think that 355 units is not excessive; we may want to look at a redesign of the multiple units and we would ask the engineer perhaps that could be done differently. But other than that, I find no reason not to approve this, because if it were single family, R-1, we would have over 300 residences out there. Thank you.

Linda Rogers: We have a motion to forward this to the Town Council with a recommendation of approval with stipulations referring to the active recreational area being open to the general public; light fixtures; storm water ponds be wet; 50% density. You feel that it's not out of character for the town and that it be limited to 355 units and also follow all of the recommendations of our engineer and our planning consultant. Is that correct?

Virginia Weeks: That's correct.

Linda Rogers: Is there a second to this motion?

Ted Kanakos: I second it.

Linda Rogers: We have a motion and a second. Roll Call vote:

Ted Kanakos: Yes

Bill Brierly: Yes

Bob Kerr: Linda, if I could interrupt, I'm sorry, but there are many things in both Debbie's and my memo's that require discussion and input so that I think you're a little clearer on what you're voting on. There were notes that were about trees, where it just kind of says...one note, when you read the two notes, it essentially allows all trees to be cut down because one covers half the site and the other note covers the other half so I'm afraid that just saying in accordance with the comments that Debbie and I have made is going to be confusing down the road.

Linda Rogers: Oh, I know. We spent a long time putting Cannery Village and Carey's stipulations on, a long time.

Bob Kerr: Several meetings, yes.

Linda Rogers: But we have a motion and a second on the floor.

Virginia Weeks: Madame Chairman...

Linda Rogers: And...hold on...

Ted Kanakos: Two votes.

Linda Rogers: And we also have two votes taken, so, legal council?

Andre Beauregard: Just proceed with the vote.

Dean Sherman: No

Linda Rogers: No

Bernice Edwards: Abstained

Michael Filicko: I would like to review with Debbie and Bob Kerr, I'm not sure I'm ready to vote.

Dean Sherman: Mike, you've got to vote yes or no on the record.

Michael Filicko: I've got to vote yes or no on the record?

Linda Rogers: Are you ready to recommend or not?

Michael Filicko: I'm not ready to recommend.

Linda Rogers: So no..or yes?

Michael Filicko: I'm not ready to recommend.

Dean Sherman: That's a no vote.

Linda Rogers: Is that a no?

Michael Filicko: Could I abstain, since I am not ready to recommend, I'm not sure?

Bob, help me out here. Attorney?

Linda Rogers: No they can't. You have to vote yes or no.

Ted Kanakos: It's just yes or no.

Linda Rogers: Are you ready to recommend this Town Council with the motion as it has been?

Michael Filicko: I am not ready the way things stand so I am going to have to vote No.

Gene Steele: Yes

Frey: Yes

Weeks: Yes

Linda Rogers: So we have 5 voting in favor of the motion, 3 voting a no against the motion and 1 abstaining from voting. So the motion carries to forward this to the Town Council with only the stipulations that were listed with the motion.

Virginia Weeks: Point of order? At what point are we allowed, now that the City...a motion was asked for and we followed your lead and gave you a motion. Under the impression that what we had done was enough, unfortunately the voting had started before hand. If the city engineer has some concerns, how is it possible to amend the vote to incorporate those concerns?

Linda Rogers: The request was a motion of any type. It could have been a motion to defer; it could have been a motion to recommend; it could have been a motion to deny. So you made the motion to go ahead and forward. But legal council said, because we had a motion and a second, and that we already started with the vote, we needed to proceed with the motion as it was made. And if I am incorrect, he can correct me.

Virginia Weeks: Okay. Thank you.

Linda Rogers: Is that not correct?

Andre Beauregard: Correct.

Linda Rogers: So with the motion and the second that we had, this is forwarded to the County Council with the motion, that additions that were listed. Correct? Town Council, correct? Are there any items for discussion. Oh, yes there are, where's my agenda? Are we done? Okay, we just need a motion to adjourn.

Louise Frey: Motion to adjourn.

Ted Kanakos: I make a motion to adjourn.

Linda Rogers: We have a motion and a second to adjourn. So be it.

Meeting adjourned at 9:44 pm