

**Town of Milton
Planning & Zoning Commission
The Milton Library
August 19, 2008**

Members Present:

Ted Kanakos	Al Perkins	Ed Kost
Virginia Weeks	Gene Steele	Louise Frey
Michael Filicko		

Others Present:

Mary Schreider-Fox	Debbie Pfeil	Robin Davis
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Virginia Weeks called the meeting to order at 7:05 p.m.

Additions or Corrections to the Agenda

Virginia Weeks: Does anyone have any additions or corrections to the Agenda? There being none, agenda is approved.

Approval of Agenda

Virginia Weeks: May I have a motion to approve the agenda?

Al Perkins: I make a motion to approve the agenda.

Gene Steele: Second

Virginia Weeks: Voice vote. All in favor. Opposed. The Agenda is approved

Approval of the Minutes of May 20, 2008

Virginia Weeks: Does anyone have any changes or additions or deletions to the Minutes of May 20, 2008. There being none, may I have a motion to approve the Minutes.

Louise Frey: I make a motion to approve the Minutes of May 20, 2008, as submitted.

Ted Kanakos: Second

Virginia Weeks: All in favor, voice vote. All opposed. Minutes approved.

Business

1. Request for Reallocation of Units - Cannery Village

The applicant, Chestnut Properties LLC, is requesting the reallocation of 70 units from Phase II & Phase III to Phase IV of Cannery Village as a minor adjustment to the LPD (Large Parcel District). The property is further identified by Sussex County Tax Map and Parcel # 2-35-20.00-42.00, 43.00, 53.00, 57.00 & # 2-35-20.11-52.00.

Virginia Weeks: Would the applicant like to step forward?

Pret Dyer: For the record, my name is Pret Dyer. I am a member of Chestnut, the Applicant, and as has been indicated we are asking for a revision allocation of 70 units from Phases II and III to be allocated to Phase IV, making a total of 138 units for Phase

IV. We've had several discussions. We went back through an analysis of what had been done previously to other LPD's. Had the determination that our request was not increasing the overall number of units in the project and that this had been done in other projects, previously, which gave us comfort and confidence of a precedential value for our request. The situation would be if the Planning & Zoning Commission did make a determination that this was a minor request/modification; then we would come back in and provide you with the drawings to reflect what the new LPD layout would be. I would be happy to try to answer any questions that you may have related to this.

Virginia Weeks: One thing beforehand. I would like to introduce Mr. Kost and Mr. Perkins and state that they are both residents of Cannery Village and ask them if they feel a need to recuse themselves.

Ed Kost: At this particular time, I don't know. I would like to see a drawing to know what you're talking about.

Pret Dyer: I understand. The suggestion all along has been we wanted to make the request for the modification to make sure that it was a minor revision; not increasing the number of units; not making any changes that would necessitate a major request; and then at that time we would submit the changes in the drawings for those Phases.

Al Perkins: I don't see the need right now to recuse myself, not knowing what will be presented; I guess I can get to a point that there is information that seems like its going to impact the value of the property, or in the development or something, or my circumstance, we might want to consider recusing ourselves.

Virginia Weeks: I would like to introduce our new Town Solicitor. This is Mary Schreider-Fox from the law firm of Steen, Weiler and Schreider-Fox and we are so happy to see you here.

Ed Kost: May I ask you a question? Would you explain if we approve this as a minor change tonight; and Chestnut brings in drawings showing the change and we find out that we really don't like the change; or there is something about it that we don't like; have we approved something that we can't change later?

Mary Schreider-Fox: That's a very good question and I don't think it comes down to a matter of just like and dislike. For tonight's purposes, we have to make the determination of whether or not the proposed reallocation fits within the guidelines you have in Section 4.8.8; which states: "no public hearing shall be required for approval of amendments to the record master plan, unless changes proposed significantly alter provision of the approved master plan." The term major vs. minor has been used, as I understand it, as a practical matter, but what you really need to determine is whether or not it significantly alters the provision. If you like it or don't like it, that doesn't really matter; it's whether or not it fits into that category.

Ed Kost: How do we make that determination that it's a minor change if we don't have a drawing that shows us what the change is; and I don't have any idea about Section 4.8.8?

Robin Davis: You received a copy of that.

Mary Schreider-Fox: That's part of the package.

Ed Kost: I read that and it still doesn't mean anything to me. Is this is minor change, yes or no?

Debbie Pfiel: Are you asking me as a Planner?

Ed Kost: You're here to advise us, advise me.

Debbie Pfiel: I'll give you a little bit of history first and then I'll advise you. There is some history in Milton that reallocation of units has been approved, as a minor. Heritage Creek was an example; it removed commercial. I think Robin will speak about that later. Minor and major is an eyes of the beholder and it's up to the Planning & Zoning Commission. A precedent has been set by some of our other clients is density; type of units. I can tell you if you choose this to be a minor, the next step is the site plan; and it will be two site plans. It would be the site plan of where they were moving the allocation; which is part of the public hearing and people in Cannery and everybody is notified properly; then where they are going to move them to, as a site plan review. This is a little unique, because you will be looking at two site plans. The decision for one will rest on the other one. If it is considered minor, you'll go through two public hearings for those two pieces of land; the approval and the proposal forward. The reason the site plan was not provided is there was a meeting held with the previous attorney, myself, the engineer, the applicants, the potential owners, the project coordinator, and the lawyer and there was advice given to the applicant that in the past plans have not been submitted for minor or major changes to the LPD, in any of their further submittals. Heritage Creek they came in for a site plan afterwards.

Ed Kost: Are you saying that the total density of the project is not going to change?

Debbie Pfiel: That is correct.

Ed Kost: However, are you saying that the types of units in various sections can be switched around or for instance, if there were say 20 of this type of unit and 40 of this type of unit, we'll now have 40 of these and 20 of those?

Debbie Pfiel: That has happened and I believe Cannery Village did this once before. If I can turn this over to Robin, and then I'll get back to you on your questions, as Robin has some history that he wanted to go over from the very beginning, if we could.

Virginia Weeks: I would just like to make one clarification. I certainly, and I'm asking the attorney for some advice on this, I no longer want to use the word minor or major changes; I think we should stick with the vocabulary of the Ordinance is, which is substantial or significantly altered. I would prefer to do away with the vocabulary of minor and major; because it is not in the Ordinance and it's a nebulous thing that's out there that we have absolutely no guidelines for; not that we have any for this.

Debbie Pfiel: The reason I brought it up is because it has been in your minutes, just as late as last December, with the Commissioners; half of them were still here. So I did use the word; maybe that's not what you want to use.

Mary Schreider-Fox: I think for the record, it would be appropriate for me to say right now, it is my understanding that the word "minor" was used synonymously with "not significant change". I say that for the benefit of the public here and Mr. Dyer who in the event that they use that terminology, it is synonymous to some extent with what is in the zoning code; but if you prefer, we can speak in terms of significant or is it insignificant change; that would be fine.

Virginia Weeks: When we make our motions, I would prefer to have that verbiage used.

Mary Schreider-Fox: Being in your image of the zoning code, that is absolutely fine with me.

Ted Kanakos: If we approve this as a minor change or a significant change; the next process would be to present us with some plans. Do we in fact at that time have a chance to review them or is that just a formality?

Debbie Pfiel: No. They start that site plan process through the public hearing.

Ted Kanakos: Then the public hearing and then it will come back to us after the public hearing? Or is that the end?

Debbie Pfiel: They're going to go through preliminary final site plan. Like a regular site plan.

Virginia Weeks: As if it weren't a division.

Robin Davis: Right. This is a separate step from what was done in the past. There's December 11, 2007...

Ted Kanakos: This is a conceptual thing.

Virginia Weeks: It's not a _____ but at any time when we had something like this, we had plans in front of us. I remember Heritage Creek.

Robin Davis: When Bob Kerr first stated in his comments, he said the first thing that the Commissioners must decide is whether this is major or minor, that was his comment. What determines that is whether there is going to be a public hearing? If you determine this to be significant; if the applicants had submitted plans the process stops, because there is no public hearing. You didn't advertise a public hearing tonight. You didn't have the plans. So you couldn't have gone through with this process. So that's why Mr. Brady said let's do this step one time.

Virginia Weeks: But there will be a public hearing no matter what. Tonight the only thing we're looking at is the reallocation of numbers from Phase II and Phase III, not what happens to that land; not what happens to those streets; the only thing we're looking at is allowing him to move 70 units from Phases II and III into Phase IV. Anything else we don't need to consider, because it will have to come before us anyway.

Ted Kanakos: I don't agree. There's something else that bothers me. If we allow the movement of the units to Phase IV; then we get a bunch of drawings in and we don't like what we see; can we move them back; tell him no; you have to go back to what was. By approving this, haven't we just said okay, now we just don't argue about what the future holds; we can't prevent you from doing the future; because we gave up what we already had.

Debbie Pfiel: This process is very unique, because we will have two developers; when this proceeds to the next level, or if it does not; we actually have developer A, which is the property that is going to be reallocate so many units; they'll come in with their site plan. Then second developer is going to come in with their site plan. When we had that consulting meeting we asked about minor or major, is because why would the second developer start the site plan process if it had to be major and it had to be lumped in as one submittal to you. So they're asking for the minor or major, so they can now take their engineers; because we'll be dealing with two different engineers; two different developers at that time; when they come in for the next submittal.

Ted Kanakos: At this point, by approving something that I have no idea about what we are actually approving, to me that's major. You're asking me to approve _____, go ahead and do this, we'll let you do this; but I have no idea of what I'm letting them do. I have no idea what you just said about what they are going to move; what they are talking about putting in place; anything.

Debbie Pfiel: Probably I should apologize to you because we want the precedent of what's been set before as far as reallocation of units; where they haven't had to do this and we have 1 or 2 in Cannery Village and Heritage Creek and that's what the decision to

have this new Board make. I agree with you on the theory, but it's not in our Code to detail what is significant and what is insignificant and I think that's something we should look at.

Virginia Weeks: Unfortunately, no definition of significant and not significant is in the Code.

Debbie Pfiel: And that's hard to determine.

Pret Dyer: If I may add for the record; our LPD approval if you will pull that out; it is specifically in there that we had the ability to change allocation of types of units; we just don't have the ability to exceed the number of units. So our LPD approval specifically justifies and warrants what we are asking for.

Virginia Weeks: Then why are you before us?

Pret Dyer: Because we have to go through the process. It specifically states in the LPD that we have the absolute right to reallocate within the types of units and for the LPD approval for the master plan; it's very clear from our perspective that we have the absolute right to do this.

Robin Davis: As stated in one of those conditions of the approval, originally done on December 11, 2007.

Virginia Weeks: Does not that approval state how many of each kind of unit?

Robin Davis: It says that the allocation can be reasonably adjusted.

Ted Kanakos: So, in other words, I see here 102 new single family homes; duplex 70; etc.; these can be changed around reasonably; so instead of 102 single families; you can go down to 90 and add 12? I just have a question for Mr. Dyer. The fact of the matter is this is being assigned; you're requesting to change the units; there is another developer coming in; in other words, are you shedding this off to a new developer?

Pret Dyer: There will be a developer for Phase IV.

Ted Kanakos: This will be separate and newly introduced to us; who has not been involved in this before?

Pret Dyer: In order to make this the correct process; and, again, as a developer I have been involved with many mixed-use projects and the LPD allows, it's analogous to the RPC in Sussex County (the Residential Planning Community); the purpose of that is to be able to provide flexibility for planning to achieve superiorly designed projects. We made a change to Cannery Village previously, as a minor, where the number of single-family homes, and you gentlemen know that, were increased substantially, in terms of the total number and that was done as a minor or an insubstantial change. Our perspective and I think it's a very good question that the Chairperson asked, why are we here? We think we have the right to do that and we presented to the planners and to the previous attorney, with the understanding that, and also the agreement at that meeting, that this was the orderly process whereby we would go forward. Admittedly, there has been a lot of confusion with the LPD.

Virginia Weeks: May I say something at this point? If we were to grant this, that would mean that on the old master plan, as it exists, not a lot line could be changed; not a driveway could be changed; nothing could be changed unless it came back to us. If you wanted to take multi-family from here and put it into Phase IV, that lot had to remain as large as it is; there could be no re-subdivision of those lots; without coming back to us.

Debbie Pfiel: Remember all the confusion; we've been infamous on this project for Phase line changes?

Virginia Weeks: Yes, and they were settled with the Council, but we've never seen them.
Debbie Pfiel: So the Phase line changes on their master plan have gone to Council and back.

Robin Davis: Any changes to the master plan we just went through the...; when we did the 2B.

Virginia Weeks: I believe when the clubhouse was done, Mr. Dyer, that you went before Council and yourself and Council settled down with Mr. Brady's help what the Phases were because there was some confusion between 2B, 2C, this that and the other thing. And that has all been settled to the satisfaction of the Council. Correct?

Pret Dyer: That's all been taken care of.

Robin Davis: And that's what's going to have to happen here. Right now it's just to determine the factor is whether it's significant for the public hearing, or not.

Ed Kost: I would like some clarification of something I think Ted said. I thought Ted said, there will be 102 single family detached units; and there's going to be 96 apartments. Under this change, will the number of single families be reduced and the numbers of apartments increased and still keep the total of 538. That can be done.

Virginia Weeks: It can, if it can be deemed reasonable. Read the next line.

Ed Kost: I know that. But to me that would not be reasonable. All the people who bought homes in there bought them figuring this is what we're going to get and now we're going to get something different.

Debbie Pfiel: This is incorrect and I agree with the theory of the RPC and the theory of the LPD here; these numbers are incorrect today; we've already had some adjustments that have been approved by the Planning & Zoning Commission and the Council. These numbers today have been changed.

Ted Kanakos: Is there a standard for what the number of units that maybe are significant or insignificant; 70, you could take out 60 apartments; or 60 live/work homes.

Virginia Weeks: Have you identified what kind of housing you are going to remove?

Pret Dyer: Those numbers have already been changed. Those numbers are not part of the current approved plans of Cannery Village.

Ted Kanakos: In other words, these numbers here are wrong.

Pret Dyer: They're not wrong; when they were approved they were right; what we just got done saying is; we've already gone through minor revisions to this LPD.

Ted Kanakos: I'm just saying that the numbers I'm seeing here on incorrect, then.

Pret Dyer: They're not incorrect; they've been changed.

Virginia Weeks: The total is correct; how they're allocated is incorrect.

Robin Davis: This document was approved December 12, 2003.

Virginia Weeks: There are 582 units; but they may no longer reflect 102 single family, etc. What Mr. Kost is saying is correct; that the total is correct; but how they are allocated is not reflected currently.

Pret Dyer: That is correct. It is not reflected on the original approval.

Ted Kanakos: Some of the units that you are seeking; have they been specifically identified as to the type of housing?

Pret Dyer: Again, you will have the plans of the revision. Those plans are not before you and the allocation of those; and it says right on that line; that we have the right to allocate among those units. There are not 96 apartments; currently there are no apartments in Cannery Village.

Ted Kanakos: So your initial application in 2003 was simply for a total number and could be changed over and over again, minor-wise, many times, if you have any new partners when you develop the land and it would look like you're using the land up.

Virginia Weeks: I would just like to correct something, Mr. Dyer. It is true, you have the right to reallocate; but the allocation may be reasonably adjusted, so there are some limitations.

Pret Dyer: My point is reasonable has already been interpreted in this case as 96 approved; 96 doesn't exist today. So reasonable has always been done as a minor in the previous allocation adjustment to Cannery Village.

Ted Kanakos: So the precedent is that you can't approve anything more than 96 because it could be major at 97; because you've already gone to the limit a number of times in making minor revisions.

Pret Dyer: No. It's a demonstration of what is reasonable.

Ed Kost: I was just stating; the word "reasonable" means what reasonable people would agree to be reasonable.

Mary Schreider-Fox: Reasonable is a fairly broad term in the legal sense; it could mean a lot of things; but under the law there is general reasonable land standard, which is what your typical person would understand to be reasonable under the circumstances.

Ted Kanakos: If we at the next hearing; when the plans are presented and as a public hearing; and people say this is not right; then it becomes unreasonable? The average man speaks. How does this work?

Ed Kost: Can we undo what we thought was reasonable but now we think is unreasonable?

Mary Schreider-Fox: You know the history better than I do, simply because I was not the attorney working with you previously when these other allocations were made. Was there one reallocation or has there been more than that at Cannery Village?

Robin Davis: Two.

Mary Schreider-Fox: So in Cannery Village we've had two reallocations from these original numbers. Mr. Dyer, if you would, what were those reallocations before? If you could just tell us in terms of the type of changes that were made and deemed to be reasonable allocations?

Pret Dyer: I don't have the numbers; do you have an old plan with us? I didn't think it would be necessary. How many singles were there 102; 102 I believe went to single family detached; it went to 348.

Robin Davis: I have a Phase IV site plan.

Virginia Weeks: Does anybody know where Phase IV is?

Robin Davis: This is from 2004. The single family homes in 2004, I have a total of 278; so it's already gone up 176 units.

Virginia Weeks: If I may, the people on this board don't know where Phase IV is.

Robin Davis: I'm just telling you where I'm getting this information from. I was just telling you the totals.

Virginia Weeks: Would you tell us where Phase IV is located?

Robin Davis: Phase IV is actually where the intersection from Front Street and Cave Neck Road and Route 88 meet. It's across the street from the dirt pile is. Actually there is a little trailer parked there.

Virginia Weeks: So once you turn on Cave Neck, it's on your left.

Ed Kost: Could you bring the drawing over? I've only lived in Milton for a year. I know where Cave Neck Road is, but that's about it.

Robin Davis: This portion is where you live right now and this is where the highlighted area is Phase III. This is Atlantic Street; this is Front Street; this is 3A and 3B. I pulled this map 4A out and from 2001 to 2004 these have changed that much. And all this change has been done as a minor.

Virginia Weeks: Also, we have to know that at present Phase IV is allocated 68 units and you want to add 70; you want to take those 70 from II and III; and give them to Phase IV; so the new developer has 138 units. We don't know what kind of housing you are looking to take away from Phases II and III.

Pret Dyer: And you won't know until you get the plan. That is correct?

Virginia Weeks: And at that time, we do not have to approve that plan? And at that time there will be a public hearing on the site plan.

Debbie Pfiel: On the two site plans; the removal and the addition.

Virginia Weeks: So, if what comes before us is not what we feel is good planning; we need at that time to send the applicant back to rework it and come back to us. We are not forced to approve it in any way, shape or form. Other than the fact that he's allowed to remove 70 units from that area.

Mary Schreider-Fox: Tonight you were talking about whether or not you believe the proposed reallocation of removing the 70 homes from one area and including them in another area, if that one little piece, is significant or insignificant. If you determine that it is insignificant; he has the ability to do a reallocation but he will need to have another plan approved. That plan is still going to have to meet all the various requirements and provisions of your zoning ordinance and be approved and go through the process like any other site plan.

Virginia Weeks: If he changes one lot line; one street; it has to come back to us with a public hearing; because it would now be a preliminary site plan, again. Right?

Debbie Pfiel: A change from that approved plan or what they're doing now?

Virginia Weeks: A change from the plan that is on record now.

Debbie Pfiel: Correct. The plan that is on record now, if this were determined as minor, will be coming as a whole new plan which will state this is what was and this is what we are proposing.

Virginia Weeks: Right and we're not obligated to approve those plans, unless we feel they are good planning practices.

Debbie Pfiel: And within the right of your code.

Virginia Weeks: And within the right of our code. So the only thing we are doing now is saying can he decrease density in II and III and increase it in IV.

Debbie Pfiel: What this would do is this would allow your engineers and planners to move the developer and the applicant and try to get the best plan like we do with your next step. We haven't had a chance to review the plan yet.

Ed Kost: Mr. Dyer, you're taking from II and III and putting into IV. What's going to go back into II and III?

Pret Dyer: There will be modifications in II and III that would reflect changes in unit types; currently there are a number of attached products that would be converted into detached single family housing to accommodate this modification.

Ed Kost: Where are II and III; closer to the Dog Fish Head Brewery.

Debbie Pfiel: Do you reside in Phase II or III?

Ed Kost: I have no idea.

Robin Davis: You do reside in Phase IIB.

Virginia Weeks: There's also a problem because there has been Phase IIA, B, C and we don't where they are.

Gene Steele: Mr. Dyer, originally you got Phase IV approved for 68 units and now you want to make it 138 units. Were the 68 units taking up the whole area? In other words, this is all going to be multi-family dwellings.

Pret Dyer: Not all multi-family dwellings, as I understand it now.

Virginia Weeks: Mr. Dyer, from what I understand about what's been said here about different developments; I get the sense that you may be selling Phase IV to another developer; who will come in with their own plans and that part of the Master Plan will have to be totally reapproved.

Pret Dyer: From my perspective, the Planning & Zoning Commission still has all the approval rights and governance rights over the plans; but we have to get to a point of being able to submit them; and, that's what we're trying to do.

Virginia Weeks: Actually, I find this whole process just for the attorney, very cumbersome, because the only difference between a major and a minor change, is a public hearing tonight; when in the end we're going to have to have two public hearings anyway. I have no idea what we're doing. Do you see where I'm coming from?

Mary Schreider-Fox: I think some of the others here would agree with me that the process that you have in your zoning ordinance, is not typical, in that it's not what we see in some of the other communities, or some of the other municipalities, or at the County level. It's a little unusual and I know that Mr. Dyer has a lot of experience with some of these developments in other towns or at the County level. You're correct; it's somewhat cumbersome; and this is an extra piece that makes it a little bit more cumbersome; of having to make the determination of whether or not this desire to reallocate units, which a reasonable reallocation is permitted according to his approval for the community. Whether or not this reallocation is going to be major or minor; if it seems to be major or significant you have a public hearing on just the issue of whether or not it is significant or insignificant. It still then gets pushed into the other pieces of going through _____ and review and approvals of the new site plans. I think it is important to emphasize for the record and from a legal perspective, that the approval does allow for reasonable reallocations of the types of units; and that the overall number of units is not going to be increased.

Virginia Weeks: We can insist on that reasonability at the site plan time; because if he brings us a plan where we feel multi-family doesn't fit here and shouldn't be there because of traffic and this, that or the other thing; at that time he can be asked to change that, correct?

Mary Schreider-Fox: You will need to review the site plan as you would any other in suing the various provisions of the zoning code as your guidelines.

Virginia Weeks: I'm going to tell you why I'm a little uncomfortable. I have absolutely intellectually no problem allowing this change. However, if we allow this change and the site plan comes in and a bunch of people that have bought houses that are single-family and they presume that this is what their neighborhood is going to look like; 70 units is a

lot of units to move. All of a sudden they've got a commercial piece in their backyard. What do we do, because he's allowed to put commercial in?

Mary Schreider-Fox: I'm going to play devil's advocate here a little bit in this and this would be the letter of the law; and that is when a person purchases a piece of property in a planned sub-division like this one; whether they have actual notice of what is there; what could be there; in Delaware, as a matter of law, it doesn't matter. If you have these various approvals, conditions, plans of record, you are placed on constructive notice. One of those things that you are placed on constructive notice of, is the fact that sub-division or the layout of it; some of the various conditions might change. On a personal level, I agree. I would be sympathetic to somebody who's expectations may be not met, but from a legal perspective, the public is placed on notice that there could be changes; beyond their control; because some of those changes are allowed for according to the approval that was given and according to your ordinances. Because your ordinances allow for these types of things, Mr. Dyer, made a very good point earlier in saying that this type of a tool, an LPD or an RPC at the County level, they are specifically designed to try to encourage a little bit of flexibility; with the understanding that as these large communities that do have mixed uses; as they get built sometimes the developer gets better ideas or see that this looks a little bit better and the idea behind it is to try to make it flexible so that you can accommodate those changes. Now, I'm not trying to say whether or not you should or should not accommodate these changes; I'm just simply letting you know what the general purpose typically is behind these types of ordinances.

Virginia Weeks: Now I have another question and I would like this clarified. Now that we have found out that these two gentlemen live in phases from which these houses are going to be removed, what about recusal?

Mary Schreider-Fox: I think it would be appropriate. Typically the analysis for recusal would be do you feel that because of your own personal situation it would unduly prejudice yourself either for or against the request being made; since it is your particular part of the community, it would probably be appropriate.

Ed Kost: I would just like to make a point and following up with something you said, Al and I are neighbors. We live right across the sidewalk from each other and we're in either Phase II or III and there are single-family units around us now. It sounds like the density is going to be reduced in our area and the density somewhere else is going to be increased; and the people who are going to get the increase don't know it yet.

Pret Dyer: It's not developed or built yet.

Ed Kost: But it's going to be.

Virginia Weeks: And it's not sold yet.

Ed Kost: It seems unfair to me for the people that we don't know.

Mary Schreider-Fox: It sounds a little rough when I lay it out the way I do, but there isn't another way to say it.

Louise Frey: Is there a covenant in this development that reflects how many units were going to be built or how large?

Pret Dyer: It allows the modification.

Louise Frey: It doesn't say how many; what type of units; or how large?

Pret Dyer: It just says the total.

Louise Frey: It just says the total, just what you're requesting. What are we going to do tonight? Does this have to go to Council?

Virginia Weeks: All we have to do tonight is saying is this number reasonable?

Louise Frey: I understand what we're doing. Whatever we decide tonight, does it go to Council to back us up?

Virginia Weeks: No. At this point, all it does is allow him to go home; do his subdivision plans and bring them back to us for preliminary approval for his Master Plan. If we decide that it is a substantial change, what happens is then we have to cut this off; come back next month and have a public hearing on it and we're back right where we were. We can not not approve the numbers.

Louise Frey: I'm not saying that. I want to hear from our Counsel, if this has to go to the Mayor and Counsel for approval of what we're doing tonight.

Mary Schreider-Fox: No.

Louise Frey: Okay, thank you.

Debbie Pfiel: I just want to explain a couple of things as being a planner and serving other communities; your LPD - your mixed use development, whatever you call it; remember that sometimes it takes 3, 5, 7, or 10 years for these to be built in phases; and that's why you see a lot of phases have specific Homeowner's Associations for just that phase; specifically because who knows what will come in the future. The economy has driven a lot of LPD's; I'm not saying it will in this phase; to see some major changes within a lot of the clients we serve. For example, maybe single-family homes were going hot and heavy 5 years ago; and everyone was on a building boom. Now, maybe we're getting some active retirees that want the town house or duplex. The economy drives a lot too, as far as the price and the same thing with costs; and affected by DeIDOT. I just wanted to throw that out there, as a planner; that when you see a concept plan, and while I agree with you; and I can probably count about 5 members of the Board that I have worked with and the issues and the drama we have had with the LPD zoning code; and some other things that we'd like to see changed; yet they still aren't. What I do want to let you know is that the concept plan is a concept plan; there's so much room for change; and as far as public input; I will give extreme kudos to Milton; because this is my only client that allows the public to make a public comment during the site plan process. So, you do have a heavy public involvement; there is a public hearing for every site plan that comes through in Milton; and, that's not the case in a lot of jurisdictions. I just wanted to let you know that your public has a lot of good input.

Ed Kost: Two questions; when people purchase houses in Cannery Village, were you made aware that there would be changes? In other words, is it part of the presentation; you look at the map and you look at the houses and the layout; but is there anything in writing that says these things could change but you just didn't know about it?

Debbie Pfiel: The covenant shows that. She asked a covenant question.

Ed Kost: So, basically, initially you can show anything and then change it. Second question: if this all gets approved and Phase IV goes from 68 to 138 and there's a new developer; can he come back and ask for a minor insignificant adjustment to change things around within his parcel, again?

Debbie Pfiel: Within the LPD conditions, you can reallocate, but it would have to be at the same bottom line number. It's the same thing we're at today. Maybe this deal will fall through; maybe after tonight, you never know; but this deal could fall through; they can always come back and ask for reallocation. It is going to be up to the Board. The recommendation that I would have is Ginny's been an advocate several times for looking

at your LPD ordinances and to rewrite them. They can come back now; maybe this deal will fall through; maybe it will come through.

Ed Kost: That's not true, you have 138. They can reallocate that if they like.

Debbie Pfiel: They come back here again.

Ed Kost: They come back here again. It might not even be Mr. Dyer.

Pret Dyer: It's still subject to approval.

Ed Kost: In other words, this process can go on and on.

Virginia Weeks: Have we had enough discussion on this? Do we have any more questions?

Gene Steele: I have one more question. But if this new developer comes in, he still has to stay within the parameters of 538, or whatever the total number was?

Pret Dyer: That is absolutely the case.

Debbie Pfiel: For the record, for our company's sake, I do recommend that the 2 commissioners, as well, recuse themselves from the vote, as a recommendation.

Virginia Weeks: Can we have a motion, please.

Ted Kanakos: I make a motion that we approve this request as a minor, insignificant change.

Virginia Weeks: Now, that's just the numbers; no changes in lot lines; no changes in streets; only the amount of units.

Gene Steele: I second the motion.

Virginia Weeks: Would you care to discuss it? Is there any discussion of the motion? Now is the time to justify your vote, folks. I would like a roll call vote.

Mary Schreider-Fox: When you give your vote, if you want to give even the barest of reasons as to why you're voting the way you're voting, that would be appropriate, in order to establish a record.

Virginia Weeks: I don't know that it matters. Mr. Kost has a question and we have a motion.

Ed Kost: If we recuse ourselves; are we going to be recused through this entire process? Is that what's happening?

Debbie Pfiel: You have the choice to recuse yourself; and the reason I said it for the record, is there is a potential liability and I said that was a recommendation as a consultant to the City. You could have a direct or indirect conflict or benefit or non-benefit from this result. Therefore, it is my recommendation that through this entire process, you recuse yourselves.

Virginia Weeks: Tonight, after we're done we're going to have a small talk, very informal back and forth, with the consultants; and one of the things that I gave a heads up to the Counsel regarding recusal and we needed to have a good understanding of that and I think we can go into that after we finish most of the agenda.

Debbie Pfiel: That is your decision.

Ed Kost: You just said there is possible liability, to me personally?

Debbie Pfiel: I said that as far as our company wanting on the record, that there is a potential liability for you to have a director in direct conflict.

Ed Kost: So when we vote we go on the record and say we are recusing ourselves.

Mary Schreider-Fox: Yes. When we go down the line, just simply say that you abstain or recuse yourself.

Ted Kanakos	I think that based on what's been presented tonight and the fact that we basically can not deny this; we have to approve it; but I also think that we have to think about the larger picture, as far as the economy is concerned and the Town, I vote for it.
Michael Filicko	Yes, I approve. I feel that moving the 70 units from Phase II to Phase IV is insignificant.
Gene Steele	Yes, I approve. I make my decision based on the history of the Town in the past. I see no reason to disapprove it, so I do approve it.
Louise Frey	Yes, because the approved numbers have not been changed, there are still the same number of units.
Virginia Weeks	Yes, I vote in the affirmative because this is only the allocation of numbers and he is entitled under the LPD to this reallocation of numbers from one phase to another; it not being enlarged; and because the public will have a chance to review what plans he brings in and to speak to us about what the changes they see in the new sub-division plans for the new Master Plan; and, at that time we are not forced to accept or refuse those. At that time we can decide that the number of units being moved seems reasonable.
Ed Kost	I abstain and recuse myself.
Al Perkins	I abstain and recuse myself.

That being the case, it carries unanimously amongst those that were able to vote 5 to 0.

2. Review of Conditional Use Approval

Review of Conditional Use Approval for the retail sales of gourmet treats and accessories for pets located at 309 Union Street further identified by Sussex County Tax Map and Parcel # 2-35-14.19-168.00.

Virginia Weeks: There is nobody in the room for review of the conditional use approval for retail sales of gourmet treats and accessories for a review of it; therefore, what does the Town Solicitor suggest?

Robin Davis: On July 25, 2008 the town sent Denise and Joanne a letter about their conditional use and their business license. Basically, on July 9th, the Code Enforcement Officer notified the two owners of the business at 309 Union Street, that they were

operating a pet grooming business that had not been approved, as part of their conditional use. Their conditional use approval was only for the retail sales of cat accessories. At that time, they were told in the same letter from the Town Manager, George Dickerson, that a condition was placed on the approval; that they had a one year review. The time had passed, but, in speaking to the Town Solicitor, she determined that we could still do the review. In the same letter it was said that this item would be placed on the August 19, 2008 Planning & Zoning Commission Agenda, and that their attendance was requested at that meeting. I have spoken with Joanne about this, one of the owners, to let her know it would be heard at this meeting, and evidently they didn't feel like they needed to show up or had some other business tonight. I don't know how we need to proceed tonight.

Mary Schreider-Fox: My understanding is in reading the approval that was given to these folks for their conditional use; one of the conditions was this review. The purpose behind the review of conditional use would typically be to determine whether or not the conditions were met, that were supposed to be met. Tonight is not the time or place for the Planning & Zoning Commission to say, you have to stop your conditional use. Because according to your zoning ordinance, and let me find the site for you; the group who gets to do that, if they find that there is something wrong, would be the Town Council. They can revoke a conditional use permit if they find the business is not in compliance with the conditions. Therefore, tonight they were given the opportunity to come for a review. We've heard a report from Robin as to what's going on at the property, as far as he knows; they didn't appear for their review; you can then submit a report to the Town Council, and the Town Council can make a determination as to whether or not it wants to do something about this conditional use, I mean something further.

Gene Steele: The only question I have is that you "requested" their attendance. They're going to say that you didn't say they had to be here. So I feel you should send them a letter that says you "must" be at the next meeting.

Mary Schreider-Fox: That's certainly an option, as well. Because you're right, that letter did say your attendance is requested; in theory, you can say that the review is going to happen, whether they were here or not; and that's what we're doing; they chose not to participate and you can take that into consideration in any report that you make to the Town Council about this use; but you make a very good point and maybe they did not understand the important nature of this; and they should get a second bit at the apple. That is certainly an option.

Gene Steele: They did not have a chance to defend themselves; but I don't think they need to, because the Counsel approved it as it was the last time and would approve it this time.

Virginia Weeks: We are only going to look at the 275 sq. ft.; we are not involved in the grooming part. That is between the Town and those people, because the Town is the one who says you are not in compliance with what you were given.

Mary Schreider-Fox: They haven't applied to modify the conditional use and to conduct this additional business activity on their property.

Virginia Weeks: So would we be in our rights to have a letter sent to the Town Council on our behalf to say that we held this review; they did not appear; we could not speak to them; as far as I know the business has not been a problem. I think the only thing that

has been a problem has been the chalkboard sign that they put in the street. We could tell them that they can not do that anymore; although the Town has done that.

Robin Davis: Yes, that was part of that letter.

Virginia Weeks: I mean there really is no reason not to let them go on with what they're doing.

Mary Schreider-Fox: I would like to make the point again; that it isn't really this group's decision on whether or not they should continue. Having this review is just simply one of their requirements and the Town Council made that ultimate decision.

Virginia Weeks: Should our letter say that we find no problems with the business, as approved.

Gene Steele: One of the requirements we have, is that they meet all approvals. We don't know if they met all those approvals yet. So we don't know if they are in good standing, or not; we don't know if they've met all their requirements. That could also be in the letter, if we're sending a letter to Council.

Louise Frey: We gave approval for 275 sq. ft. for selling of doggie biscuits and things; not for anything else they may be doing. So if they are doing something else; our approvals were only based on the selling of dog supplies.

Gene Steele: Then again, that would come down to the Code Enforcer. He has to go in there to find if they are.

Louise Frey: They were sent a letter saying they were.

Virginia Weeks: Yes, but that's not in our purview; that's between the Code Enforcer and them. Two years ago they were given a permit to have 275 sq. ft. to sell dog biscuits and accessories, a gourmet shop. They're house is the next house up from the Town Center. So they needed a conditional use. That conditional use was given to them with certain requirements, which you have in front of you. We have no idea if those requirements have been met or needed to be met; we have no idea what happened after it left the Council. They have, according to the Town, and the letter that the Town has sent us increased the area that they are using for business and that additional space, above the 275 sq. ft., is being used for the grooming of dogs. As a matter of fact, Mr. Steele asked if they would be grooming dogs; and they said no. Not at this time. So the ordinance says any modification to a conditional use, has to come back to us; that's a modification; they have not come back to us. We're now here to review what we gave permission for. As far as I can see, and please let me know if I'm wrong, we're not here to discuss the grooming aspect. That's between the Town Code Enforcer and them and making them comply. We're not a judicial group; we're not a law enforcement group; but we are here to review have they lived up to all the requirements. They are not here to answer these questions; so at this point, what do you suggest that we do?

Mary Schreider-Fox: Based on a comment made earlier, I am getting a sense that you may feel that it's appropriate to give these people an additional opportunity to come for a review; and actually give their side of the story; and let us know what is going on at the property. Right now there is very little information to go on; you can put in some sort of a report to the Town Council.

Ted Kanakos: Number 4, meets approval from all state agencies, not limited to but including DelDOT, Fire Marshall, Stormwater Management. Now, it's my understanding that they were supposed to get these. I don't believe they got any of them. The Council just waved their hand and said that's fine.

Robin Davis: They did have the Fire Marshall, I looked in the file.

Ted Kanakos: DeIDOT?

Robin Davis: DeIDOT – they came before Council, again, after they got approval from the Council, to remove that requirement.

Ted Kanakos: Does the Council have the right to remove an issue from a State Highway?

Robin Davis: Evidently they thought they did, because they did it.

Ted Kanakos: I don't think that they do. I spoke to Mr. Fiore and he said, nobody said anything and I'm not blowing the whistle on anybody, but how can the Council supersede state law and state highway? Now, these people were not here deliberately, because they couldn't answer these questions; it behooves them not to be here; and actually no matter what we agree on or what we don't agree on; the Council will just again wave their hand and approve it; even if they don't have a right to approve it. Nobody pushes these issues.

Debbie Pfiel: That's a really good point. There are four conditions and these four conditions should have been met; prior to the business license being issued; prior to the business being opened; and if they have not been met, the staff, like Robin has done; gone through the file and get some more information; and if it has not been met I think I agree with the lawyer, that can be put in your report; but not one Councilperson and not one Mayor can waive Federal or State requirements. If it's in your condition, on top of Federal or State, it would have to be met; so it would have to go back to the Council to determine, in your report, to say what they're lacking and what they're not lacking. I think that's what we're looking for.

Virginia Weeks: I believe when the Council removed that, that we are only a recommending board and the Council does not have to do what we say.

Debbie Pfiel: You're always a recommending board.

Ted Kanakos: But they still can't break a state law.

Virginia Weeks: But that's something between the attorney and the Council, not us.

Gene Steele: Maybe the Council got bad advice from the previous Counsel.

Mary Schreider-Fox: I don't know and there are plenty of times when we might sit here in any given situation; well we want to get all State agency approvals; and you rattle off the whole list; then, later, you find out well, actually for that property and what they were doing; so they did inquire of DeIDOT; and DeIDOT said you don't need our approval. So then you go back and say, you guys are waiting for DeIDOT approval, but they don't want to pay attention to us; they don't want to do anything with us. I don't know that that's the case, I'm just giving you a for example.

Ted Kanakos: They deliberately did not submit the letter, because there was something like a \$550 fee associated with it; and either they did not have the money or chose not to pay it. That was the hardship, I think, that they presented to the Council and the Council said well okay. They have the right to say okay, one way or the other. In other words, they come up with a hardship and they said fine. I don't think they're doing anything particularly at risk, in this type of thing; but now they want to increase it; and after this will be pet boarding. I remember the original application; they wanted 20 parking spaces behind their house. This was something which the Council, in its wisdom years ago, you have to have extra parking off the street and they took up to 20 spots. It was mandatory I think for 5 or 10, or something.

Virginia Weeks: We limited them to two.

Ted Kanakos: We limited them to two; but then again the Council can say well you can have your 20. I'm really concerned about the people that live around there; you wake up one morning and you find 20 cars with air conditioners going; dogs barking; people going up and down and that driveway is not sufficient.

Virginia Weeks: The fact that the expansion of that business is not before us.

Ed Kost: You said there were four items. I take it no more than 2 parking spaces; no more than 275 sq. ft.; the approvals business, who knows what that really means; and, signage shall comply. Those are the four items to review.

Debbie Pfiel: I'm looking at the Motion and you got three of them right; the one was one year review from final approval.

Ed Kost: I'm looking under the approval on the next page and it says, C Harris, second; C Somebody, said condition a) signage shall comply with signage regulations.

Robin Davis: The signage always needs to be within the zoning ordinance.

Ed Kost: My question is this, it says 275 sq. ft.; they're already exceeding 275; from what I understand the dog grooming thing is already there.

Ted Kanakos: That started, but now that's been discontinued.

Debbie Pfiel: You bring up a good point and Ginny Weeks brought it up earlier. If these four conditions are in violation at any time; it's not the purview of the Planning & Zoning Commission; it's the Code Enforcement and the Council to rescind the conditional use. I know we're going to beat this to death; my recommendation is that you table the review and that you write the letter stating that they must appear and that this will also be forwarded to the next Council Agenda; so they know that there is a two-step process; there's to come here for the review and then they will be forwarded to the Council Agenda for action to be taken as a recommendation.

Mary Schreider-Fox: To add on to that, in the letter it should say, you "must" appear; a report will follow the next meeting as to whether or not you are complying with the various conditions attached to your conditional use. Let them know that there may be consequences and that it's going to go to Town Council.

Debbie Pfiel: I further recommend that your Code Enforcement Officer prepare a report to see if these four have been met. That would just be going out there and talking to the property owner.

Virginia Weeks: Is there anything on the Agenda for September?

Robin Davis: No new applications, but I was looking back at some of the approvals; the Iguana Grill for their special use permit for the restaurant was approved in September of last year; and there was a one year review on that. So in September you'll have to do that review.

Virginia Weeks: I got it.

Robin Davis: Is everybody getting the same treatment? She felt some of the conditional uses that were approved 3 years ago, did not go back for the one year review. I did go back and look at one that I know of, Mr. Pataki (Salon Milton) was scheduled for a one year review; that was not done. That was approved way before all of you, except for maybe Mr. Filicko, was on this committee. So as what we're doing here, we're probably going to have to ask Mr. Pataki to come back.

Ted Kanakos: Does that set a precedent when we don't ask one? Can we ever ask anyone after that?

Mary Schreider-Fox: Well, it could. It actually takes more than one isolate incident to set a precedent that will ultimately be actionable and I know that sounds extremely lawyer-like, but I think in terms of if somebody challenges us in court, well you made me come in and you didn't make that other guy; the Courts going to look at it and say, well, first of all, with the other guy; what were the circumstances; what was the situation; is there a reason why maybe the person wasn't called in; is it because the previous commission just forgot; was it an isolated incident; there could be a lot of distinguishing factors. I do agree that if we can identify people who have a one year review as a part of their conditions, that they were supposed to have their one year review; did not; and we can try to get all of these reviews done; we can still satisfy the purpose of the review. Basically, they just skated by for a couple of extra years and they should count themselves lucky.

Ted Kanakos: They still owe their taxes.

Mary Schreider-Fox: That's right. The purpose behind conducting the one year review is to see if these guys are minding their p's and q's; and doing what they were supposed to do; or not doing what they were not supposed to be doing.

Ted Kanakos: Who keeps track of this?

Virginia Weeks: At the time these conditions, except for this one, I believe, were put on previously, there was nobody at Town Hall to staff this; the staff was very tiny and Robin's position did not exist; and those things sort of slipped by. I don't know if there is a tickler file now for this sort of thing at the Town Hall.

Robin Davis: That's what I do. There have not been that many conditional uses that have been approved. Actually, it's amazing because even with a special use for the restaurant; normally I don't think I see too many special uses getting a one year review.

Ted Kanakos: How about Dr. Howard's office now, that must be coming up very soon for a review?

Robin Davis: Dr. Howard's still has not got DelDOT to rule yet; he's not submitted for final approval yet for his site plan.

Ted Kanakos: So he has no review?

Robin Davis: Once he gets final site plan, then that one year review starts.

Ted Kanakos: So it starts then.

Robin Davis: Yes.

Ted Kanakos: Doesn't he have a certain amount of time to get started?

Robin Davis: He can go for extensions; he can request extensions.

Ted Kanakos: So the one year review doesn't interfere with his extensions.

Robin Davis: He's got preliminary; now he's working on DelDOT; there is a 3 or 4 page list.

Virginia Weeks: That gets away from this. Let's settle this. So your suggestion is that we make a Motion to have the Town send them another letter; saying that they "shall" attend our meeting in September; when we will review this and at that point our recommendations will be sent to the Council, for review.

Debbie Pfiel: I want to clarify that I would like the lawyer will look at the draft letter, just because we need to put the second step in there; if not, it could just be another messy thing; we need to put the second step in there, to give them the information; as well as the Code Enforcement.

Mary Schreider-Fox: I think that would be a good idea, because then we can make sure that the language is very clear in there and get a good format.

Virginia Weeks: That the Town Solicitor reviews the letter; and that the letter contains a copy of the conditions that were put upon them, so they know what we will be looking at.

Debbie Pfiel: As well as the report from Robin or the Code Enforcement Officer on the site.

Ted Kanakos: Would the Applicant get a copy of the site report or is that just for us?

Debbie Pfiel: It's for everybody. Anything you can give to an Applicant is better than having them come to the meeting and be surprised.

Ed Kost: You're going to write the letter; and, Ginny is going to sign it?

Debbie Pfiel: Robin is going to write the letter and sign the letter; she's going to draft it; that's his role.

Virginia Weeks: And we'll receive a copy when it's mailed, right?

Mary Schreider-Fox: Sure.

Virginia Weeks: Anymore questions? Would somebody like to make a motion, please?

Gene Steele: I make a motion that we table the review of conditional use approval for 309 Union Street; to be followed up by a letter from Robin Davis requiring the presence of the Applicant at our next scheduled meeting; that the letter be reviewed by our Town Solicitor; that the conditions that have to be met are included in that letter; and, a request that the Code Enforcement Officer visit the site and give us a written statement of his findings; also to be given to Robin Davis and to be forwarded to the Applicant.

Ted Kanakos: Second.

Virginia

Weeks: I call for a roll call vote. Does anyone want to discuss it; at that time if you feel the need to discuss your vote:

Ted Kanakos	Yes
Al Perkins	Yes
Ed Kost	Yes

Michael Filicko: The mandatory, we can not do that, can we?

Mary Schreider-Fox: You can make it mandatory in the sense that we say if you don't show up, your conditional use is gone. That they no longer have their conditional use; but, I think we can use firm language to try to compel their attendance; let them know that there will be consequences. Something stronger than request, but I agree in terms of your history, if you don't show up; we can't say something like that in that strong a language.

Virginia Weeks: This is why you will review it.

Mary Schreider-Fox: Yes, that's why I'll review it.

Michael Filicko	Yes, I agree.
Gene Steele	Yes
Louise Frey	Yes
Virginia Weeks	Yes, I vote in the affirmative.

The Motion passing unanimously, is carried.

3. Discussion on Procedures and Processes

Virginia Weeks: Now, we're going to go into a slightly more informal format to discuss procedures and processes. I did email you and ask you if you have any questions for the attorney; I know that we have difficult times about what the main questions are. Obviously, recusal is a big one. I'm sure C Steele, C Frey and C Filicko all have some points that we find confusing; as we go on; and we would just like to get that out on the table to see what we can do to fix that.

Mary Schreider-Fox: I just want to make one comment; without having had the questions in advance, and not knowing all of the history of this Town and of this particular Commission; because that does come into play sometimes in how we give an answer, or something; tonight may be more of a question gathering session; from my perspective and anything that I can answer, I will try to and these guys will be a help, because they've been around a lot longer than I have. I understand that there was some training before.

Debbie Pfiel: We were asked by the Council and the Council invested money to train the Planning & Zoning Commission. I believe there are two members that need to go through that training; that is the Ethics & Integrity Training; and we probably need to get that scheduled. Everybody else, I think, is familiar with that training. The PowerPoint asks several questions so if it's something pertaining to that; I would ask the Commission to allow us to get that PowerPoint ____; it's pretty self explanatory; and the minutes of the meeting you can get really good questions. If anybody else wants copies of that, I think that would be good. We will not be changing those interpretations, because we have a new lawyer and they were all state laws; so if we can stay away from those questions and I will get that document to you in PowerPoint, with the minutes, and I think it will help a lot about a lot of those questions; but I feel the majority of the members have been through that.

Virginia Weeks: Can we also get a copy of that to refresh our memories?

Debbie Pfiel: Yes, I can give that out in the next week and give it to everybody; we'll get that delivered to you; that's the Minutes, because there was a lot of good Q&A; and then the actual PowerPoint; and that covered a lot of things that I think you're going to have questions on abstaining and everything. But in light of what she said, in order for us to be effective, and this is something that Council has done; and, George Dickerson is very big on, especially with the budget as everybody has heard about; is to get us information in advance for questions, so we could have been prepared for tonight. That would definitely help. And maybe we could go over tonight's meeting; as you had a short Agenda.

Virginia Weeks: Maybe we can just let you know what our concerns are, this evening.

Ted, do you have any?

Ted Kanakos: Every time I come to this meeting(s), I learn an awful lot. I mean so much questions and answers seem like there is a dryer in the air. I don't know what to ask until we're in motion; there are many surprises. I am truly disappointed at the laxity of a lot of the Town Codes/Ordinances; the way they are written; the way they are enforced; they're lax; there are loopholes; the sad thing is that the folks that come before us are well versed in this. You know we're just a rotating bunch; circuit-wise. This is Phase II, Phase III, Phase I, Phase IIA, B, C, 70216; you know what's going on; and they know we don't know that much. Which is fine and that's why we rely immensely on both of you to do this. I would love to have maybe a little heads up before they even get here about what's going on. We some times look very foolish asking questions that everybody seems to know the answer or at least he does. You're required to do this. Oh, thank you sir. I feel

a little embarrassed because a few meetings ago, we found out that we weren't even sworn in; we had to be sworn in in unison after a year on the Board; I feel like a jerk and it's not quite right and it leaves a lot to be desired, as far as some people to have some regard as to what we do; we're volunteers. That concerns me that we don't really know a lot about what's going on and we should have more workshops, to be honest, and go back. Start on the first day this fellow made his application in 2001 and do something that will allow him to not constantly use smoke and mirrors; I was really disturbed by the fact that he could show anything to anybody and sell it; and the next day put up an apartment house because he's putting 172 in a line; rather than spread out.

Virginia Weeks: I agree with Ted in the fact that nobody knows where Phase IV is; nobody knows where Phase III is; nobody knows where Phase II is; those the Council recently, I believe, realigned or settled or came to an agreement with the developers. You say you got your package a week ago and you could have gone down to ask. We don't always know what we're supposed to ask for. I expect that sort of thing to be in our packets; I expect some sort of a history.

Ted Kanakos: That's your responsibility.

Debbie Pfiel: I can address that. Because, Ginny, you call Town Hall a lot; but you're involved; so you stand well with the questions; and, Robin is available; here is the thing about packets; some people want this much information. Now, tonight if we were to give you everything you wanted; first of all you have to look at Town staff; I think they should do it; but the second part is who here will do a packet that big and go through it. Like tonight, if it was me doing a packet for Pret Dyer, you would have been very overwhelmed. I would have done Heritage Creek, their plan, which you approved. I would have shown you the precedents that have been set, but it can go this big or this little. The reason I say that is because if you do have your information a week ahead of time, and in our Planning Commission Training, it is recommended stand on the right of way; look at the site; go visit; go look at the thing; if you do have questions, especially email-wise, Robin's the person who will let you come in and look at the plans.

Gene Steele: But you couldn't look at the site, because nobody knew where the site was.

Debbie Pfiel: Right, but I'm saying as far as you were concerned we could do a printout, but we don't even have (meaning the Town) the latest version of the entire master plan.

Gene Steele: But the Town did have the change of allocations and the numbers. That we should have had.

Virginia Weeks: Our numbers that we got were incorrect.

Gene Steele: If you look at the numbers we have, we bring that to the Applicant...

Ted Kanakos: You just said something incredible; the Town doesn't know what's actually out there.

Debbie Pfiel: Please do not put words like that in my mouth. The Town does not have a master plan; meaning we do not have a plan of all the Phases with the new lines because they were just done over the spring months. We have this is Phase IIA; this is Phase IIB; and the Commissioners that have been here a while, understand what I'm talking about. We get this plan IIA; IIB this is the changes; if there are two of them, we get the two showing the lot line; but we do not have a brand new master plan of all the lots on one map.

Ted Kanakos: Didn't we require them to do something like that?

Debbie Pfiel: They have to design it; we haven't gotten it back yet.

Virginia Weeks: So then it's not approved, right; because you can't approve it if you don't have a map?

Debbie Pfiel: Council did it contingent upon the redesign of the master plan; and we haven't received that yet.

Virginia Weeks: So it's not approved, because it's contingent.

Debbie Pfiel: It's approved, contingent upon them providing the map.

Virginia Weeks: When are they supposed to provide the map?

Debbie Pfiel: There's no reserved due date on it.

Robin Davis: They supplied a copy of the record plan, a new record plan; for the Phase II.

Virginia Weeks: Do you understand the disadvantage we're at when we come and we think they are still 102 semi-detached houses and none of that is updated to us?

Gene Steele: Ginny, do you have all the bits and pieces that they sent you; and can you glue them together and drag it in here and say this is what we think they've got? Does anybody in this town have a clue what is actually supposed to be here?

Debbie Pfiel: Yes, every file has been submitted. Robin has them and they've been recorded. I'm talking about a master plan that would make it easy to see all the phases.

Gene Steele: If you have all the pieces, I could glue the parts into a master plan; I used to do that for a living; because I used to sit out there where _____ was and...

Debbie Pfiel: I guess we're all new to this; we'll do a better job on the packets; we'll present everything that we think you need; but if you feel, before you make a decision, since we give it to you a week ahead of time, that there's something missing, please let us know so we can get it to you. I do know that there was a surprise on the number of units tonight, as far as what was in that agreement, but, for the people that have been on the commission, members, some of you voted for that; so you do know about it.

Virginia Weeks: The last thing and the only thing I have voted on, and consequently everybody except Mr. Filicko has voted on, was when they brought the Clubhouse in. That was smoke and mirrors because they were saying it was in IIB, it was in IIC, it was here, it was there; and there was some sort of a huge problem that we were never informed of; that the Town settled with the developer on where that clubhouse was going to be and allocated; I have no idea where the clubhouse is going.

Debbie Pfiel: And that's at the Council's discretion, which is unfortunate.

Gene Steele: All our recommendations are at the Council's discretion; and the other thing that bugs the h**l out of me is this Town's based on history. The town's history here is ridiculous. Things have been done with smoke and mirrors so much in this town, its ridiculous; and they come back to you like he did a few times, but history, history is not always correct.

Virginia Weeks: We have no written history by which to verify what is being told to us. And, that puts us in a very bad position.

Mary Schreider-Fox: It sounds to me like definitely the communication with Town Hall is poor; needs to be better with us. There is no question. I would have liked to see more information too; and I don't know the history of all of these communities and didn't get the files from the previous attorney. I understand the way you guys are feeling. I do want to qualify one of your earlier statements that you'll get better packets; subject to having the funds to do that. That is a big issue right now; and a very real one; and I have limits also; you know how much time you get to have with each other.

Virginia Weeks: I will tell you that there are people on this Board that will volunteer to help Robin do those things.

Robin Davis: The problem is that Robin is over here working on something else; then I've got some volunteers that are trying to help me. They're running, what do I do about this; Robin what do I need for this? I feel like I have to do a little something to defend myself; because I feel like I was just thrown underneath the bus by all of you; I really do. I heard at a meeting, probably several months ago, that I was overwhelmed by all this material you gave me; and now, I'm being told that I'm not giving you enough stuff. Let me finish, please. I feel like I'm getting run over badly; I'm getting slammed at meetings; when you get your packets in advance, do you wait until Tuesday night to look at the packets; why can't you say last Wednesday or Thursday; I haven't gotten the packet; or I have a question on the packet?

Virginia Weeks: We got our packets on Thursday.

Robin Davis: Well, why didn't you call me, Mr. Kost?

Ed Kost: I came to the meeting to find out. I thought I was going to be informed here.

Robin Davis: I get slammed at the meeting in advance; I don't get a chance to even say, Robin you didn't give me enough.

Ed Kost: Robin, when I get a packet like this; this is the thinnest packet we've ever gotten.

Robin Davis: The reason you got that small a packet is because I was told by our past attorney, don't give them too much information; they're only here to look at the ____.

Ted Kanakos: When did we find out that the attorney said this? When did he say this? And how did I know that I had to go down to the Town Hall and get a package. It was always supplied; everything was always supplied. Now every time I get this, I have to see what the additions are; what the attachments are.

Robin Davis: No, not the attachments. That has nothing...

Ted Kanakos: What are we asking for? What are they saying that we're not getting?

Debbie Pfiel: No, like tonight, tonight if I could take... I might go a little bit... No, just a minute. We're talking about city staff now and I think you need to understand...

Virginia Weeks: I want to honor Robin. No, this is because the staff is light. It's because you have way too much to do, Robin.

Debbie Pfiel: Here's what I'm saying. Budget-wise, George has hired a temp to do minutes. We get minutes to you. There was a time before Robin that the Planning & Zoning Commission did not get minutes for a year. When I got hired to come in and help Robin, try to set up and get things organized; get things the way we do plans in our department, the first thing we ran into is nightmare projects. By nightmare projects, I mean lack of good files; lack of good recordkeeping; projects and map plans that weren't signed and were approved; plans that were signed, but shouldn't have been signed. We inherited this whole entire thing and it seemed like for the people that ____; we came on board this was probably one of the worst clients paperwork-wise to get a grasp on. So what we tried to do is get packets together. The problem is that even though you think it's just easy to get minutes; there are some minutes that are still not done. Not during this regime. Some of the stuff to get is boxed in the attic; it's not legal; but when they moved Town Hall; and maybe even missing files; so it was under the advice of the previous attorney. Now we know we have a new attorney and things I am anticipating will be better.

Gene Steele: She's done her homework

Debbie Pfiel: She's done her homework and we've had some meeting prep ahead of time; and we were watching that. The other thing is in Robin's defense; he gets the application; he sits there; Robin went to this meeting with Dyer; I was asked to be there; Bob Kerr was asked to be there; we were told by the lawyer that he would write a letter to the Planning & Zoning Commission stating that this would be a minor insignificant change. We go by that information from a lawyer; who gets paid more than any of us in the room, except Mr. Dyer, maybe; that was the determination that was made by John Brady. It was a taped meeting. So, tonight, the reason I was here was to make sure that information was forwarded, because I didn't do a review on it. The attorney told this gentleman to write a letter. It was recommended to NOT do a site plan; because all the other applications had not submitted a site plan. I do agree with the theory, but I also agree that your codes are written improperly; hard to determine; hard to follow; and I've been a planner for a long time; the attorney's can't even do it half the time. Without the proper tools, it's frustrating you. But let me tell you about this position and the staff; it's frustrating the heck out of this guy trying to get you the right stuff.

Virginia Weeks: Absolutely, and you're right we get our minutes; but what we don't get, and this is not you, Robin; this is the fact that there is not staff down there. After it goes to the Council, we never get a report back of what the Council approves.

Mary Schreider-Fox: I was saying earlier that when I say Town Hall, I mean everybody out there and not just Robin, or George Dickerson, or Town Council specifically; but, there needs to be better communication, that some of these things come back to you; so for our wish list one of the topics, maybe the top thing; is better communication and that you are kept apprised of developments as they occur, in these communities; when things come back to you. Now back on the issue of packets; one of the things that it's a very big, practical concern; we've already talked about funds; but for tonight there was no site plan review; and that is apparently pursuant to the previous attorney, at least in part. So, we have to be careful and hopefully this won't be an issue going forward; because you have one attorney and it's not a past attorney anymore. So we know what was going on, or at least, what I might have told an Applicant if I communicated with that person; but we're talking about all these plans and other things too. I would recommend that you get only the minimum number of plans; or copies of plans; that you absolutely need and the reason why is because they are unbelievably expensive to reproduce.

Virginia Weeks: Absolutely, sometimes we get plans this thick and we're required to look at only 3 pages.

Debbie Pfiel: But it is required by Code. If it is required by Code, that's what you have to have.

Mary Schreider-Fox: But we're talking about something that may be on file, so that we can refer back to what Cannery Village looks like and we have 32 sets of these things.

Ted Kanakos: Could you make it something that we could just flash up on the wall?

Debbie Pfiel: The good news is what you should do in your requirements; and this is a code rewrite. For those that don't know, we've talked to the Council about rewriting your code; and funding is a big issue this year; you have a comp line update that you have to do by State law; that is coming up for this fiscal year. So funding-wise we have couple of minor changes in the procedures; hopefully the LPD we've talked about; Historic Preservation will be doing some stuff; and to update your comp line. That is what is in

the budget for funding; so we're going to have to work with some of the tools and to prioritize the LPD, is the big one. When you're talking about Council communication; none of your consultants get minutes from Town Council, none of them; I am in charge of a plan when it comes through; to walk it all the way through; to make sure that Robin and I stay on the same schedule; the public hearings; to make sure all the i's are dotted and the t's are crossed; and it gets to the Council and I don't get the minutes and the next day the developers call and say we have to change our agreement. And, Robin says, I didn't know that; Robin doesn't go to Council Meetings. I think that minutes can be distributed or made available on line for all of us just to get to download and preview; and that's something the town should work towards; and, I think we're all in the same boat there; and I don't know what happens after the meetings.

Virginia Weeks: And a heads up from somebody that just says you need to review these minutes; a quick email, not so detailed, but that you need to review these minutes; just so we know they're there; then it's our fault if we don't know it.

Ed Kost: I sent a letter to the Town Council saying what we did tonight. Does anybody use the minutes to send a letter to the Town Council, saying what happened that these minutes showed up 3 months after I sent my letter; and then does somebody finally send the Applicant the letter saying this is what was approved; this is what you're supposed to do.

Debbie Pfiel: The first thing is that the minutes are done by a temp; because of the staff; or by an administrative assistant. Milton does verbatim minutes; that's not done in a lot of the jurisdictions; they do verbatim, some are 20-25 pages; like tonight is going to be long; especially Council; you have 2 council meetings a month; now we're averaging 4 or 5; we have the Planning & Zoning Commission; the Board of Adjustment; Historic Preservation; Processing. All of these minutes are being done and whoever is in Town Hall determines the priority of them. Usually, and I'm just going to give you the history; they are determined that Town Council will trump Planning & Zoning because they meet every 2 weeks.

Gene Steele: Wait a minute. We really don't need all the stuff. It just needs to list what was approved. We need an action sheet. It could be just one page.

Debbie Pfiel: They have to do the minutes anyway; the verbatim minutes, are something that I would love to see Milton not do; but because of the legal situation and because of the litigations that have happened or will happen; that's the reason they have been recommended to do that. I don't know if Milton will get away from that, but that takes a lot of time. As far as yours, that's another report on top of the minutes; so if we're getting...

Gene Steele: I got my report before I ever got the minutes; I got my report 3 months ago.

Debbie Pfiel: Correct. The minutes may not be done in time. If we're being trumped by Council; right now budget is the only thing Town Hall is working on. Robin and I still have to work on this.

Robin Davis: But you won't approve minutes from the previous meeting until the next meeting. If you don't have a meeting for 6 months; those minutes will not be approved. That's why you're always going to be behind.

Ed Kost: The whole thing is crazy.

Robin Davis: Yes, but that's how it works.

Gene Steele: But from a legal point of view, they're not crazy.

Virginia Weeks: That's why you do your action sheet to the Council.

Ed Kost: May I make a suggestion? When the folks from Cannery Village come in next; please tell them they should bring in a before and after drawing? This is what it looks like; this is what we're going to do; and the whole place. Just like a schematic.

Debbie Pfiel: They are going to bring an extension of what they have approved and what they have changed.

Ed Kost: Yes, but if they show up with IIA and IIB and IV is out on the other side of town.

Ted Kanakos: That's not the issue; they're just going to show... That's the old development vs. the new section. That's all he has to be required to bring in.

Debbie Pfiel: If you want a new requirement in the code; because our job before it gets to you as the Planning & Zoning Commission really put their foot down; they used to give plans that never met the code; and they used to go through and be approved.

Virginia Weeks: We still get plans that don't meet the code.

Debbie Pfiel: In the interpretation of the subject of the holder; there are some areas in there where the Town Manager makes the determination of whether they have been met or not.

Ed Kost: It would just be nice to be able to say look at the whole thing. That's what completely confused me. When he said IIA, IIB; I live there, I don't know.

Al Perkins: Well, it's been seven years and it's changed a lot.

Virginia Weeks: And who knows what phase they live in because the boundaries were redesigned and changed.

Ed Kost: When you went to the sales office, they had a nice colored drawing of the part where we would be living. There were no lines that said A, B, C, or anything.

Debbie Pfiel: You won't; because it is not a sub-division plot; a sub-division plot will give you the lines of each home.

Virginia Weeks: How about anybody at this end of the table; Mrs. Frey.

Louise Frey: First of all, Mr. Brady said that he would do resolutions for anything that was approved or disapproved. I would like to know how our counselor feels about doing a resolution for an application at the same time we are voting on the final approval.

Debbie Pfiel: Is that a Planning Commission resolution?

Mary Schreider-Fox: A resolution by counsel?

Louise Frey: No, a resolution from this board saying everything that was approved on the application. It would make it a lot easier for us to go back 5 or 10 years from now to see exactly what was approved, on one piece of paper; rather than looking for plans; if there was a file attached to it; that Robin or whoever could just give the Planning & Zoning Commissioners a copy of this resolution and saying this is what was approved.

Mary Schreider-Fox: So, you're saying for any decision that this board made, Mr. Brady had said he would draft an appropriate form of resolution to match that situation that could be signed and put in the file.

Louise Frey: He didn't say for every application; but for the big applications; there probably should be a resolution.

Ted Kanakos: Can we follow up on your point?

Louise Frey: With all the therefore and the there as's.

Mary Schreider-Fox: Do you have any of the history of this particular commission?

Louise Frey: They've never done it.

Debbie Pfiel: We're looking at your empowerment; because resolutions and ordinances are usually empowered in your charter for Council; but the last two plans you have, for the conditions that you have, you are required that you be put on the site plan; that was a really good move. Bob Kerr told me that your first recommendation those are actually put on the plan. The best legal document you have, even though they are 50 pages, is the motion in the minutes that lists out everything as a contingency.

Ed Kost: Here are the minutes from the Catholic Diocese; there was part of the motion was by the Attorney Kerr, I think his name was; Brady made part of this motion in here; and then whoever made the motion; I think you made the motion; there were three different parts of the motion. I went through this outline of various things; it's like 4 different people made up that motion.

Debbie Pfiel: You will have that because, for an example, there have been a lot of motions made by the Planning Commission; that have not been contingent upon the engineer's or the planner's comments; so that means that when we meet with the developer again, none of our comments have been included. So you always say discussion; and usually most clients will have a discussion before the vote; planners do you have anything that you would like included in the motion or recommendation before we make the motion; engineer the same.

Virginia Weeks: Wait a minute. Let's get back to this end of the table.

Debbie Pfiel: That's before the vote. It's on the same topic. When you are saying about your conditions, the best form is the minutes; because that is a legal documents and that's the one document, according to your archives, that has to be held in the City Hall; and can never be disposed of.

Ted Kanakos: When we make a motion, and I've done this; we're talking about a number of things, and Ginny made a motion tonight; she'll start; somebody will interject two more words; somebody will stop and start a discussion. The thing is it's sloppy; what I would ask and it may or may not be able to; can our attorney actually come up with the motion? In other words, that somebody on the board; you make a motion; somebody keeps adding words to it.

Virginia Weeks: That's what we tried to do with Mr. Brady.

Ted Kanakos: So at least it can go into the minutes as a correct motion; something that is logical and flows directly. I don't know half the time with everyone adding things.

Virginia Weeks: Maybe we need training on how to make a motion?

Debbie Pfiel: We can help you. My lawyer, at the bottom of the letters, I could give you a five page letter and people only read it because they have to make decisions; so at the bottom we should say: In conclusion, I would like to see these items to be considered in the motion. These are truly coming from us as recommendations. Bob Kerr should do the same thing at our end. This way when you're making your motion, you could refer to the Planner line; the engineer line, and ask if there are any other recommendations; and you would be incorporating our recommendations in your motion.

Virginia Weeks: I think that one of the problems was that the previous attorney liked to read the code into the motions. It became very verbose and people got lost.

Mary Schreider-Fox: I see the advantages of having the attorney, which would be me in this case, prepare or say the motion on the record; but my personal feeling and I think in terms of preparing an appropriate record, that is better insulated from challenge later on; is inappropriate for me to do it, because I am not one of the Commissioners. I am simply

here to try to advise you. I think that the reasons some of the motions get muddy some of the time; and don't think you're unique in that; that happens everywhere; at the town council level and in other jurisdictions; you're trying to get everything into one motion so you don't have to rescind the motion or remake the motion; people do interject and add things to motions; it does get sloppy and you could probably exercise better control over that and I include myself in this; that I find myself having to exercise control and not to interject my own opinions.

Virginia Weeks: No, I lost control tonight and I was uncomfortable with it.

Mary Schreider-Fox: There's a lot of interrupting and we just did it to each other. But we probably all need to get a little better about that and sometimes it's easy to lose sight of it because we do feel somewhat informal and that's good; I love that; because people will feel comfortable coming and speaking here. It's always about creating the appropriate record; and yes, I see my job as being the prompt sometimes that if I'm sitting here and you need to have Section 6.1.8; for whatever reason I want you to say it; that maybe I'll interject and say that.

Debbie Pfiel: The other thing is too; you might want to like we did in our training, follow Robert's Rules of Order; when you have a motion, the legal situation of this could be, and this could be a good example for the Chairperson; usually the Chair people are less vocal in a meeting and more vocal in the running of the meeting; as their role as the Chairperson. I say this because when somebody reads a motion, you can not read it in a different format; or say did you mean to say this; would you add this; as a Chairperson; that role is usually more of the meeting runner, the person who is conducting the meeting and I'm just saying this because Michael will say motion and he'll say one line; and all of a sudden by the time we've gotten done with his motion, we've done a page and he'll say what did I just say in my motion? That could be constructive by bending somebody's vote or opinion and it could really help out somebody if they take you to court. If the first motion as said, does not go through because it wasn't good enough for everybody; it didn't contain everything; it dies and you can set another motion adding stuff.

Ed Kost: If you make a motion, can you then ask for discussion of the motion?

Debbie Pfiel: Yes, you can.

Ed Kost: Then you could have all the discussion and then revise the motion; amend the motion; revise the motion. It's more a matter of using the right terminology when we start bending.

Mary Schreider-Fox: Robert's Rules is a good idea; I do have to caution you not to get bogged down with them. There are very few expert parliamentarians in this world; and I do not consider myself to be in the category of an expert, because Robert's Rules can make your brain hurt. However, there is a web-site that you could go to www.robertsrules.com and there's a nice FAQ section, and I'm on there all the time; simply because if I'm on the phone if a client has a question, I can pop it up and you can print it right out and email it over to them. Be mindful, too, that if you do go out a get a copy of Robert's Rules, you need to get the 10th Edition, which is the most recent one. The standard for pretty much any kind of body, such as this one, or board you need to follow the most current edition. There are a lot of outdated ones and they are misused a lot in meetings; the older ones are even harder to use; but there's also a "cheat" book which I carry around with me all the time. Robert's Rule is about this fat and the "cheat" book is like this, where it is might as well say Robert's Rules for Dummies on the front

that would be perfect. It might be a good idea to check those things out, just for the basic motions and that. Ignore a lot of what you see in there.

Virginia Weeks: Can we get back to the other side of the table? Mrs. Frey do you have anything?

Louise Frey: Yes. I've noticed since I've been on the board that witnesses are never sworn in; and I don't mean the attorneys or the architects or engineers; I'm talking about regular applicants that come in. Delaware doesn't do that?

Mary Schreider-Fox: They don't need to be sworn in for an administrative proceeding, such as this. Most of the time when you see that as far as a Board or a Commission in a Town or in a County, would be at the Board of Adjustment level; sometimes when those types of applications are coming through; but even then it is within the discretion of the governing body.

Louise Frey: I'm from another state and they Planning Board did swear them in; and I'm just wondering why Delaware doesn't do that.

Mary Schreider-Fox: Did they have final say in a lot of things too, the Planning Commission?

Louise Frey: Yes, they had final say; the Council never got involved; but the Mayor and a Council Person was on the Board.

Mary Schreider-Fox: That set-up was very different from what we have here.

Gene Steele: In reference to the packets; Robin has always given me adequate information and if I have questions, I call him up. The only thing I didn't appreciate today was that I hate to give any developer ammunition, on anything. When we looked at the numbers and we say you have 102 single family homes; and he says no I have 238; I feel like a dummy. You can only give me information that you have; it's hard to go back; this goes back to 2001; but that's why I get tired of this Town's history; it's crap, to me.

Robin Davis: The reason you got the proposed conditions in that packet; was to show not the total number of how 102 single family homes; it was to show that he could reasonably adjust it. That's the only reason you got that; because that's the conditions that were put on there that we won't allow...

Gene Steele: The only thing I would say on that was that those weren't the actual numbers to date. It doesn't reflect the accurate numbers; these have been changed in the past. Then you know when you're going in there; that these are not the accurate numbers.

Debbie Pfiel: I think that's a good point. The hardest part that we had tonight, Robin & I; we were at a meeting where there was legal information given to this developer; and that put us in a situation like you tonight; I was not coming tonight until George Dickerson said you will be there to explain what happened at that meeting with John Brady; and to explain to the lawyer what happened with your previous attorney; not saying whether it was a good recommendation or not; but during that discussion, and I'm glad we taped it, but during that discussion it was like the lawyer was writing that letter to you to say his legal interpretation was that this was minor; which is pretty heavy; because 9 times out of 10 people follow the lawyer. Had he written that letter, which we are still waiting until today to receive the letter from the previous attorney; that could have changed the entire process tonight; it could have changed the entire thing. We didn't have that and we were like mush in the middle; I understand what you were saying because, it's like Robert says, we could have gotten to the true numbers and when they come back, we need to

have a little more on the Cannery Village buildings; I think we can give you some minimal stuff that would give you the bigger picture.

Mary Schreider-Fox: I just want to make this one quick comment in response to what you just said that you hate making them look better than you. My perspective is a little bit different. I think you gave him a run for his money tonight. Mr. Dyer is pretty savvy and he's been around; he's an attorney; so he does know the rules; he knows how to make a good presentation when he needs to; having said all of that, he was very much led to believe that he would come in here and you guys were going to rubber stamp it and he would be done. I think you asked a lot of really good questions; and he had to answer some of them; and we had to answer some of them; and, so I don't think you really look as bad as you think you looked. You might have felt confused and frustrated; you tried to question him very well; and, I thought it was an appropriate thing to do.

Gene Steele: Well, he knows what we want next time he comes in front of us. He knows what we want him to see.

Debbie Pfiel: The other thing you didn't know was that the new potential owners, the new potential buyers were in the audience tonight; they are seeing; they are hearing what you are seeing; they are hearing the reception; and I can tell you that in our meeting, because we haven't seen the plan yet, they first came in and started talking about things and I'm like you better get on the side; you'll be working with us, before they even get to you guys. A lot of people still have a little a sour taste from Cannery Village, whether it's the people that live there; the people in the community; the people developing it; it's still a hard topic as the first livable Delaware community that was going to be this; and is now this; or however you can attribute it. So we will be massaging the new plan with what the allocation was; and the plan where they are taking it away; we will be massaging that to the best of our ability to get you something here. I can tell you that in dealing with all developers they usually try to work with us on our level, meaning Robin, me and Bob; because we have some ammunition to give you a letter and usually there is a lot of endorsement on that so, you will be seeing the first plan they have, we'll be tweaking it as much as possible to get it into you; if not, it just makes their letter longer from us and it makes them risk it being tabled. I can tell you that we've met at several meetings with the new developers, the current developer and their engineer and we've worked with them at other jurisdictions; and, I haven't had a problem where they're not willing to work, it might not be what you're going to get, but they are willing to work. We'll just start there.

Virginia Weeks: I think one of the problems that we had tonight was with this other developer, not there's anything wrong with them; but, there are rumors flying all over town and it would have been a lot nicer if we simply had it on the table.

Debbie Pfiel: You will have rumors with every project. You know before it comes here, some people make a decision.

Mary Schreider-Fox: That is one of the practical difficulties with your position, is that you have to filter the rumors; you have to hear them and put them out of your mind; you have to separate what's said at the meetings; and then what's in your ordinance.

Virginia Weeks: Gene, do you have any other questions?

Gene Steele: No, I'm fine.

Louise Frey: I just want to say that since Debbie and Robin have been working together, plans have been signed and sealed. Thank you.

Virginia Weeks: I would like to say that the last time we reviewed Cannery Village and there was all that mish mash; we did not have a Robin and we did not have a Debbie; and I will give credit to Louise; because at that meeting we told the then commissioner that we did not want these plans to come back to us until a Town Planner had reviewed them. Because we were just getting all these plans thrown at us and everybody assumes that we're experts at this, and we're not. We're very thankful for what you do; because some of us had a very short time without having you.

Debbie Pfiel: But you don't have to be an expert; I can tell you that by going around the table, everybody brings something unique that a planner, engineer or a lawyer, may not think of. So the technical side of things, I have liability for my company to give you the service; the engineer does; the lawyer does; Robin has job security. On our end what you bring to the table, is outside of our boxes; outside of the black and white; you're the person that walks the street; we don't even live in the community; so that stuff, the livable, the community, when I hear you say certain things; of course, I'll shrug my shoulders at certain things and say legally, I don't know that we can do that. But the thought process; and I think the biggest thing is perception. The Board has come a long way; and I would still always recommend a less negative approach and a more positive approach; because when I meet the developer and it's the same one in five different towns; it's very hard to say well you just did this to Milton; you're not coming to Harrington to do this. You just have to come with a positive approach; it's the give and take; and you want to welcome growth, but the growth that you want. It's perception a lot too. The other perception is we're on your team. Remember that, sometimes when I leave a Council meeting or a Planning Meeting, they're like you really have your work cut out for you; those people were not in favor of the engineers.

Gene Steele: Well, I've seen you get your legs cut out from under you by Council. I've said it to the Mayor; well why do are we paying them and he said I can take their advise.

Virginia Weeks: Mike do you have any comments or questions?

Michael Filicko: I have no questions, just a comment; Robin and Debbie, I'm very happy that you are here and I am looking forward to working with you.

Mary Schreider-Fox: I'm still looking to the Resolutions; I'm not certain that we can't do Resolutions; as long as they're written correctly. We do make certain decisions and it would be nice to have something memorialized in writing, other than the minutes. I'm going to look at that.

Louise Frey: Did I hear you say that the Board of Adjustment does resolutions?

Debbie Pfiel: They're supposed to do facts and findings.

Mary Schreider-Fox: The Board of Adjustment, that's a different ballgame.

Louise Frey: It would make it easier for the Board 5 or 10 years from now.

Virginia Weeks: I would like us to develop a policy on recusal. Can we do that? I can tell you that in the past, we have had Commissioner's, who are no longer here, who owned adjacent property and made the motions; and that really tore at my heart and nobody said, we have a policy that says so and so.

Ted Kanakos: I think when John Brady said you have made a personal decision; do you really think that it will not affect you? He always said it's better to err on the side of right. Just recuse yourself. I walked out with this Casa, because I live on the block. I wasn't allowed to talk to my neighbors because I'm on the commission; and I wasn't able to vote on the commission because I live on the block. It's a catch 22; so I didn't take a chance.

Debbie Pfiel: Your integrity will never be questioned; and the legal side of things, you took the high road.

Virginia Weeks: But if he recuses himself, can he speak with his neighbors?

Mary Schreider-Fox: He can speak with his neighbors; but he can't come and speak here.

Ted Kanakos: I was told I could not speak to anyone.

Mary Schreider-Fox: That's a very cautious approach.

Ted Kanakos: I couldn't even tell them when the meeting was.

Mary Schreider-Fox: I understand that practical life doesn't always allow you to take the most cautious approaches; if your neighbor comes up and says what about those two over there and you chuckle.

Ted Kanakos: I tell them to talk to the rose bush.

Debbie Pfiel: Except that in their eyes you're always a Planning Commissioner; you're always a Mayor; you're always a Council member.

Ed Kost: Are you saying in the case of Al [Perkins] and I, that with regard to this thing that is coming up with Cannery Village, we've recused; we're going to be recused; we shouldn't talk to our neighbors; I shouldn't even sit out here in the audience and ask questions? Is that what you just said? Why would I want to be on this planning commission if this is the reaction?

Ted Kanakos: It is the subdivision where you live.

Virginia Weeks: I would say that where I came from and where Ed came from, when we recused ourselves from the Board, we were allowed to be in the audience and if there was a public hearing, we were allowed to address the Board, because the guy across the street from us wanted to open a pizza shop.

Debbie Pfiel: You can do that, but the reason you are being told it's recommended not to, is because you are a Planning Commissioner and it's not just this night of the week; people know that you are a Planning Commissioner 24/7. Recusing yourself is taking the potential for litigation; or the potential of your integrity and ethics of your Commission as a whole and you; when you recuse yourself, in a lot of jurisdictions, the lawyers will say we would like you to leave the room before the Applicant is even heard and we'll call you back when we're done. So you're not even there to moan or groan or raise your eyebrows.

Ed Kost: Al is also on our Homeowner's Association.

Debbie Pfiel: And that's why it is a good reason to recuse yourself on Cannery Village. You're still going to go over the Application????

Ed Kost: I'm talking about that specific line. My neighbor is also on the Homeowner's Association and I can't talk to Al and I can't talk to my neighbor; and say hey there is something coming up that you guys should be aware of?

Mary Schreider-Fox: Yes, that you can do.

Debbie Pfiel: We are talking about the voter; telling them that there are certain things; I'm probably just over-speaking the lawyer, but we did the training on this; and the reason I'm saying this is because if you feel there is a potential; you could be a liability for the Town being sued. Sometimes, it's better to take the high road; I will never be accused of that; I will never be interpreted with that; I will never have a discussion like that; it is your personal opinion; if you want to come to a meeting it could be challenged; the whole process; the whole Planning Commission. It is your personal opinion.

Mary Schreider-Fox: I think it's absolutely fine if you want to stay here at the meeting. It's just that I would discourage active participation and to go in line with what Debbie was saying; the appearance of impropriety is one the concerns, as well; not whether or not there is any actual impropriety; I don't think, just because you are sitting out there and asking questions that you're arm wrestling these guys secretly behind the scenes and forcing them to vote a certain way. I don't personally believe that is probably happening; but from the cautious legal perspective, the way you have to think about it is the one person who's going to complain and say that you voted in favor of what he wanted tonight; oh, because that's because they were moving the units away from close to his house; and putting them over there; that was an advantage to the developer. Or, if you deny it and the developer then says that's because he lives there and he wants everything exactly the way he wants it. Just because you live there, somebody is going to complain, or could complain; and you would never want that to be that thing that caused the Town \$15,000, because I had to write a brief about it. That's the way I look at it; because that is all of the stuff that comes out whenever a decision gets challenged; particularly one that concerns either a large community where there are a lot of people involved; and they are always controversial to some extent; or some kind of a use that big or small just gets every body up in arms. We're going to take a much more cautious approach with this.

Ted Kanakos: Can he talk to his Homeowner's Association though?

Ed Kost: We're having a party this coming Saturday.

Ted Kanakos: Well, he can go. You can say whatever you want; tell everybody about this meeting.

Mary Schreider-Fox: There is absolutely nothing wrong with you participating in your Homeowner's Association meetings and activities.

Debbie Pfiel: If you help me to carry this forward that's where you want to look at the line. Because, if he goes there and he advocates that they come to this meeting; because they're going to change it; and they're going to bring in multi-family units.

Ted Kanakos: You're not going to be objective there to.

Debbie Pfiel: Exactly.

Ed Kost: They said come to the meeting because they're going to make a change and I have no idea what the change is and they wouldn't tell us.

Ted Kanakos: That's fair.

Mary Schreider-Fox: Since you're not participating from this point forward; you're not participating in any discussion; you're not participating in any vote; I don't see anything wrong with that level of communication.

Virginia Weeks: May I make a suggestion that might help out on this. Where I came from, and that's one of the problems that we have here; we're all from some place else; one of the things we did was our packets was always on file at the Library and at the Town Hall. So if Joe Q wanted to go and know; we could say to them we can't talk about it; but if you go down, the receptionist will hand you a packet and you can sit there and review it. They are there now and you can have all the information you need.

Debbie Pfiel: You're only saying you can go to Town Hall and you can find this information; you're not saying they're doing multi-family; or they're doing this; or that.

Virginia Weeks: In the past when I called Robin, there wasn't a packet there and I would have to ask you for a packet. I had no idea that they were putting packets there for the people to use. I don't even know if the citizens know that.

Debbie Pfiel: Yes, they do. When packets are done the packet is placed downstairs.

Virginia Weeks: The other thing I wanted to ask you is that I may not be here for the September meeting; can we do something about establishing a Vice Chair, which would be to appoint someone to take my place if I'm not here?

Debbie Pfiel: It's not in your Code.

Mary Schreider-Fox: It's not in your Code, but I don't think it is precluded.

Debbie Pfiel: Usually, in most municipalities, your longest standing member just steps up and takes care of it. That's the usual in most municipalities. This is for meetings; let's say Michael [Filicko] is at the dentist; then they go to the next person; and the next person.

Mary Schreider-Fox: Because the ordinance doesn't speak to the positions that we actually have; and I don't think there is a state statute.

Virginia Weeks: The State statute takes care of the Chairman and Secretary.

Mary Schreider-Fox: My feeling is that it is probably stretching it. As you don't have any guidelines here; and in most places there would be guidelines as to what you're supposed to do. This is certainly something to consider whether or not we want to appoint someone as the Vice Chair.

Gene Steele: Can we just have it done as the next senior member. In the absence of the Chair...

Debbie Pfiel: It would have to be an ordinance change. It would cost them money; it depends on who is at the meeting; as long as you have a Quorum; without rewriting the ordinance; and I've been literally watching the town budget, because we've been told to do that; without putting in that you are empowered to have it as a title or not; if Michael chooses as the senior member that he doesn't feel comfortable and he just does not want to do it; then you can go to the next person. But it's at the next meeting, if you're not there; it's not voted on for each meeting.

Virginia Weeks: I didn't know that we had to make this part of an ordinance; I just thought it was administrative procedures.

Mary Schreider-Fox: I don't think we need to make it part of an ordinance.

Virginia Weeks: I just wanted a consensus from the board on how we should handle it. There is a good chance that I might get to South Dakota finally this coming month and I just want to know how you all feel.

Mary Schreider-Fox: I think as a Commission, you can make reasonable, procedural rules for yourself; but they should be written down someplace as a set of procedural rules and policies and they need to be published and then made available to the public. I think that's where the possible expense is going to come in. I don't think we necessarily have to have an ordinance change. I was just reviewing your ordinances tonight.

Gene Steele: Can we make a motion right now? We're still in session right now. Can't we just make a motion right now and establish a procedure for ourselves?

Mary Schreider-Fox: It was not advertised that you were going to make any decisions; you were only going to discuss procedures and processes. The agenda is a very big thing; it's a very big deal. Sometimes you might have an executive session, as well; those will have to be on the agenda, if we ever want to have an executive session. If you think something controversial is coming up where we might need to have some legal advice or discuss potential litigation or something like that; it would specifically have to be on the agenda. We don't have anything like that coming up right now, as far as I know.

Ted Kanakos: What would you have recommended for this evening, if our Chairwoman did not show up? We're all here tonight. How would we run the meeting now? Who would open it?

Debbie Pfiel: Michael has done that in the past. He's done a meeting before.

Mary Schreider-Fox: Is he your most senior member? Has he run a meeting before?

Debbie Pfiel: Yes.

Virginia Weeks: In April we had one time when Linda Rogers had resigned, before I was elected, that John Brady said that Michael should run it because he was the senior member. I have no idea if that was just for then or if we were allowed to adopt procedures; where we say, yes, the senior member will; or if we elect a Vice Chair; I just want to get the thing answered so we can get it on the next agenda and have a procedure.

Michael Filicko: It's not like when I was running that meeting that I was fumbling over my words; I'm just not comfortable doing it.

Debbie Pfiel: If you're not, then tell the commission; who's next in line? Robin is the man for tonight.

Mary Schreider-Fox: In Section 2-9, Administrative Section of our Code: Commission shall make its own rules and procedure and determine the time for its meeting. You can have your own procedural rules; election of Chairmen; Commission shall elect Chairman and Secretary, from among its members; and may call on expert persons for other assistance, as its fiscal appropriations shall permit. There it says shall elect annually; those two positions are absolutely mandatory; but I don't see any reason why you may not have other positions or something you feel is appropriate. You can probably use a Treasurer; because you have your own budget to deal with. If that's not the case, then thank goodness. I'm just making something up. If you want to pursue procedural rules; there is an actual set of procedural rules; about how people speak; and who does what; and who does what and when; you can, but that may or may not be a budget item that is approved.

Virginia Weeks: I just want a sense of the Commission.

Gene Steele: If Michael feels that he is uncomfortable...

Virginia Weeks: Then it would be you or Louise.

Louise Frey: It wouldn't be me; he was first.

Gene Steele: It wouldn't be me. Nobody wants this job.

Virginia Weeks: Mrs. Frey, would you run a meeting?

Louise Frey: No.

Virginia Weeks: Mr. Kost, would you run a meeting?

Ed Kost: No, I'm Secretary. If you have enough recusals, you won't even have a meeting. I would volunteer if nobody else would do it.

Virginia Weeks: Okay, then we are set. If we get a set of plans in preliminary site plan and this setback is wrong and this driveway is too close to the intersection; those are all zoning code violations that we can't give waivers to. I want to know how we can avoid those plans coming to us; with those violations on them; because that should be taken off before it even comes to us. I would go to the Board of Adjustment or something; because we can't do anything with it; other than to say take it back and bring it back for final approval.

Mary Schreider-Fox: It is my understanding that that's what you do.

Virginia Weeks: Okay.

Ed Kost: That's what we should have done. That's what we should have done; that thing should not have been approved. We should have sent it back and said this plan has major changes; redo it; bring it back and we'll approve the changes.

Debbie Pfiel: Wait a second. That plan was compliant. The interpretation of what the front yard was was the _____ by the Planning Commission, because that would determine if the setbacks had been met or not. So, the question to the planning commission was; what did you determine is the front; and then we could be able to go forward; but it's not up to the engineer or the planner; because your code was not clear. So on that particular piece; if that's what we're talking about; that had to be in our letter; you will see if the front door set on this street; the rear door does meet compliance; if the front door set on this street, the rear door does not meet compliance.

Virginia Weeks: I believe the side needs to be redefined.

Gene Steele: To me, if a plan requires major changes; and you're getting into what's major and what's minor; if it's a major change, then we shouldn't approve it; if it's a minor change; for instance, in that plan there was a note about foot candles that should be added to the plan; how many foot candles of light will you need in the parking lot; to me, that is a minor change. An engineer checks on it and here it is. But when you start saying we're going to change this setback; we're going to change the driveways; to me, that changes the entire plan. To me, the whole plan may change in its entirety; that's a major change and that plan should we shouldn't have approved. That's a judgment call.

Debbie Pfiel: That's your opinion and the majority vote is the way the Commission went. It's everybody's individual opinion and I respect everybody's individual opinion; but that plan, as far as water under the bridge, you guys approved it with all the changes going forward.

Virginia Weeks: The way I'm looking at it is not whether it should have been approved or not approved. We spent a lot of time fixing things and addressing things that were zoning violations that had to be fixed anyway.

Debbie Pfiel: [garbled] not required in code. That's something the Planning Commission has and can add additional things, above and beyond.

Virginia Weeks: I'm talking about like where the driveway was located in reference to an intersection.

Debbie Pfiel: That's an interpretation. My letter didn't match Bob's on that. Remember. I didn't agree with Bob's interpretation on that; as far as where you do the measurement from, because it wasn't exactly clear in the code. So Bob brought his tape and I brought mine; the lawyer did an interpretation and we deemed it to be necessary that it didn't meet code. There are a lot of gray areas in this codebook; but in our letters you will watch us cover our butt very well.

Virginia Weeks: I'm not saying you didn't cover your butt and that you didn't do a good job; you did; you pointed it out to us. Somebody might have a driveway like that and we say the intersection is at the corner where the sidewalk meets the street.

Debbie Pfiel: To you. I have some other people that have another opinion.

Virginia Weeks: So to somebody else, it's in the middle of the street?

Mary Schreider-Fox: Well, I think what I'm sensing that there is some general frustration with some of the tasks with which this commission is charged. You don't have an easy job in your code, that doesn't make the job any easier. I'm not as familiar with it, but I'm hearing from this direction, there's a lot of gray area in the codes; and what happens is that you get these professional interpretations as to what meets and what doesn't meet. And they're saying it could go either way; it's a judgment call. You're dealing with some ordinances that aren't ideal and that's going to increase your frustration. Also, you're thinking a lot of these plans come to us and these things are not resolved. The Applicants are not mind readers; they don't know what these guys are going to say in terms of recommendations, if they haven't a meeting with you or something; they don't know which opinion you're going to choose and who you will agree with; whether it's yours or Bob's. Some of this is just the nature of the beast.

Virginia Weeks: Yes, I thought that they met with the consultants before.

Debbie Pfiel: We did. We got the design.

Mary Schreider-Fox: You're really talking about a specific project.

Gene Steele: May I ask a question, please? You just said something that I find amazing. The ordinance is a law, right? Where is this law? You're saying we're going to interpret this law. I thought if we didn't know it goes to the Board of Adjustment or somebody, who makes an official interpretation of that ordinance, not us.

Virginia Weeks: That's my point, too.

Gene Steele: One more thing, at the last Council meeting when we make a recommendation for requirements from an applicant as far as streets and sidewalks; according to the ordinance its sidewalks and curbs, that's what it says. At the last Council meeting, they told one applicant that they didn't have to put the sidewalks in; and when I asked the Mayor why he did that; he said that he didn't know that we made that a requirement. How can he not know that? How can the engineer sit there and not inform the Mayor? No, it is required.

Ted Kanakos: He doesn't read our minutes.

Robin Davis: It was in there, they knew, because on that application that they received a set of the plans that were approved with the sidewalk where it was; and the new plans how he wanted it. So those plans did show that that sidewalk was there.

Gene Steele: But he also used that as an excuse when we did Food Lion, on their new application, that's a lie. He out and out lied; because on the new application from Food Lion they have to put in curbs and sidewalks.

Robin Davis: On Morris Avenue, that he's supposed to do it; it's not required. But in our ordinance, Council does have the right to waive curbing and sidewalks. It says it right in the ordinance; they have a right to do it.

Debbie Pfiel: On the Council side; they do get everything; they get our letters; they get the minutes; they get everything; how they choose to vote, I'll say this politically correct as I can; is 100% up to them. I'm not saying I agree with their decisions. How they choose to vote we have to live with. We have to live with it just as much as the Town.

Gene Steele: That's what creates a situation with the Town, though.

Virginia Weeks: Are they empowered to do that, or does the State say the Board of Adjustment? The Council is not a quasi-judicial body.

Debbie Pfiel: It depends on what it is.

Mary Schreider-Fox: We're getting into the area of whether you are the ultimate judges in interpreting the law. Anytime you have a commission, or a board or a Town Council and you are charged with making certain decisions; that either they fit within your ordinances or they don't. The simple fact of the matter is you are charged with certain tasks, making certain kinds of decisions or recommendations; we're dealing with human beings; all of you are human beings; there is a human element involved with absolutely every decision you make; and I mention that because it always means there is an interpretive element that can feel judicial or quasi-judicial. Rather than worrying about whether or not you are acting in a judicial or a quasi-judicial fashion, you need to focus on what does the ordinance say you need to consider; and if there is a gray area that you're saying I'm not sure; does it fit in category c or not; you rely on most of the time somebody like this or this to tell you. I've trained in this area and you can rely on me when I say it does fit in c and it's still your decision; but I'm giving you my special opinion that it does. There's always going to be that interpretive element involved; but it's the best way that I can say it. I don't want you to focus on saying we're not supposed to be judges or quasi-judicial and don't worry about what the Board of Adjustment does and to a certain extent you can't worry about what the Town Council is doing; after you're done making your recommendations. You focus on your mission; and then if somebody doesn't accept it or don't appreciate it later; that's a shame, but in the end it won't have been you or your decision that wasn't made with as much thoughtfulness and attention as possible.

Debbie Pfiel: It's the same with your vote. You don't have to jump on the boat; if you don't feel comfortable; if you don't feel right; and it's justified in your book and your tools that you have and by your gut, which is what a lot of people go by; then you agree on that. We also learn; I learned that the Planning & Zoning Commission wants the corner where the driveway is, measured just like Bob Kerr; and the next guy that comes in, I will be steering them that way. Every time you do make some interpretation or great decision, we start applying it. So we don't have to run to that. You've had some very difficult, unique plans; because we've had to have several meetings to get what you've got; the lawyer, engineer and planner, we meet once a month and we go over it and we're all hashing out the code and I understand if you feel frustrated; try on our level, on all three different angles; and we're trying to get it as close as we can. You will have areas like that and they're going to come up again.

Virginia Weeks: I guess the point is that there are certain things in the code where it says the Planning Board may waive this. That, to me, is what we're allowed to do. To change

anything else in the code, we're not allowed to do that, because it's not saying we can. There are specific items that it says we can do; but it doesn't say we can interpret and decide where the intersection is; and where that is; and are we allowed to do that?

Mary Schreider-Fox: I'm just going to use this as an example. What comes up all the time at the Municipal level, as well as in Homeowner's Associations; in my day life I'm an association attorney; the same kinds of issues do come up where you have your own private restrictions about how to measure a building, blah, blah, blah and all that kind of stuff. The height is one of our favorites, because do you measure from grade; do you measure from ____; do you measure from the side of the lot; do you measure from the road; or the side street. There are a million ways you can do it and as a Planning Commission, if you have that before you and you don't have a defined point from which to measure; that's where the interpretive element comes into play. It's not that you're not doing your job; or that you are making decisions that you're not supposed to make; you are going to make some decisions because you will have to decide whether or not the height of that building falls under the restrictions of your ordinance. Sometimes you have to make those judgment calls and you have to cross your fingers. If we don't have the right equipment to work with; meaning the language in your ordinances that gives you really, really specific guidance.

Virginia Weeks: I have one short yes or no answer. A developer comes in; he gets up and makes a presentation; what he says isn't that fact; or where I came from we always finished everything with this motion is passed as advertised and presented. In other words, anything he said or agreed to in there, if it didn't get into the motion; he had to do it.

Mary Schreider-Fox: You're saying that if a developer is standing in the audience making his presentation and says, yes, I will agree to do such and such; and it's not in the motion. Does it hold weight?

Virginia Weeks: To cover us in New Hampshire, we used to say as advertised and presented.

Debbie Pfiel: It's preferred to put it in the motion; but it is on the record.

Virginia Weeks: So we don't need to do that?

Debbie Pfiel: I've never heard of that before in Delaware.

Virginia Weeks: We are trying to find out what the standard is in Delaware. That's what we're trying to do.

Robin Davis: The only thing that bothers me about that is, as you look at the minutes; it is 30 some odd pages; somebody might have talked about I'm going to put up a picket fence behind lot number 25; right at the beginning; if it didn't get put in the motion; if I don't go through and read every single word of that and put it in there, then where does that fall?

Gene Steele: Let me ask you a question that might help both of us here. What we should be doing when we finally say we approved something; before we actually approve it; is repeat the motion slowly; make sure we get everything in the motion; so it gets into the minutes in one place; because I have sat here and sometimes there are four different people saying the motion.

Debbie Pfiel: Yes. And then we can just cut that section out for you to put in your packets.

Mary Schreider-Fox: Don't be afraid also to sit there and work on it.

[garbled – everyone talking over each other]

Virginia Weeks: Ed, you can, as secretary, you can put in the things that people have said.

Mary Schreider-Fox: One of the things, if you go to the Town Council meetings, one of the people that I would like you to watch is Deanna Duby when she's up there. Deanna, and I've only been to a couple of meetings, so far, and you will see her sitting there with her notepad and she's writing as everybody's discussing; and she's looking at it; and she's crossing stuff out; and this and that; and at one of the last meetings, she made a motion and she started to go through; and then she said no, wait a minute; I would like to change that word; and she did.

Ted Kanakos: When we make a motion, could we ask Robin to write down the motion and then have him read it back to us; and then we can say, yes, and vote on it? That way we would have someone that is not sitting up here.

Debbie Pfiel: Well, Robin is doing the tape. The reason I say that is because as you're hearing; obviously I would like to see everybody writing down the key words; one of the other gentlemen that was here before would write down the things that were important to them when the motion came around; so if everybody has a notebook and you're writing down what you feel you want to add to the hodgepodge of what we're going to get from the motion; what's important to you; when you go for discussion after the motion; you're all getting that; but you're the Secretary of the Planning Commission and Ginny is the Chair; so she always does a repeated vote; you do repeat your motion because it is clarified for everyone before they get to the vote.

Virginia Weeks: Will you remind me if I don't?

Robin Davis: By saying that, I think Linda would do that; after all the discussion she would say we have a motion and a second and the motion is.

Virginia Weeks: She was very good about that. For example, when Gene made the motion and used requested, we had specifically spoken that requested wasn't the proper word to use in that letter. We wanted a stronger word. Which is why I chimed in at that point; but I thought we should wait until we finished and asked if there are any amendments. We're about to ask for a motion to adjourn, but I just want to say something. If we have made you feel unloved; I am very sorry for that; we just want to open up a really clear line of communication; where we can talk frankly with each other and its not personal; its not anything else; its what we feel our needs are; perhaps its what you feel your needs are; and so we can all get on a certain line of familiarity as far as how this runs and goes. We have a lot of people here from a lot of different places and all different perspectives; and I think until we have maybe once or twice a year; a free fall like this; we really don't get to know each other and I think it's important we do. Please don't ever feel that we are criticizing you; because we're not; what we're trying to do is to say that it would have helped us if we had this; and we should let you know that we would like to have this in the future.

Robin Davis: That was my thing. My thing was if you feel like you're missing something; that is fine; because I'll probably be the one that missed something; I'll be the first one to admit that I've missed something. I would rather know about it at there Town Hall, then I would right here. That's the same thing you said. You feel embarrassed.

Gene Steele: Yes, but I didn't know to ask you that. From the information I had, I didn't know to ask you that question.

Mary Schreider-Fox: That's one of the classic things is in a learning process.

Virginia Weeks: One time we had a thing where there was a lawsuit involved; and there still is; and there was an agreement signed; none of us had ever seen that agreement; we didn't even know it existed. May I have a motion to adjourn, please?

Louise Frey: So moved.

Virginia Weeks: Second?

Gene Steele: Second.

Virginia Weeks: Voice vote. Everyone say aye. Approved.