

**Milton Town Council Meeting**  
**Milton Theatre, 110 Union Street**  
**Monday, July 6, 2009**  
**7:00 p.m.**

1. **PUBLIC PARTICIPATION** portion was called to order by Mayor Post at 7:00 pm

- a. Katherine Grieg: 326 Union Street. Good evening. Once again I'm back to haunt you to talk about the Garden Club. In the absence of the President, Jennifer, the Garden Tour and Home Tour are this Saturday, July 11<sup>th</sup> from 9 to 3. We have 12 gardens; we have 2 houses, plus Abraxus Art Studio and if you have never been into Abraxus Studio, that is a very old, historic house and is interesting to see, in addition to the artwork; and Frankie Dittman's again orchid house. Frankie called me and left me a message this week, saying please come out and look, because in his kitchen, he's not cooking this week, he's set up this waterfall with rocks and everything, with his orchid plants around it. Tickets are \$12, ahead of time; they're available across the street at Antiques in Milton at Hillside Flowers and if you want to go out of town and buy them at Lewes Spring. We have lots of special events and this is the biggest fundraiser of the year, if you want to continue to see all the flowers and the planters, then please buy a ticket. Thanks.
- b. Jeff Daly: 211 Grist Mill in the Cannery Village Neighborhood. Recently we had some family owned property, a long standing family in the Milton area, had their property re-zoned from agricultural to heavy industrial use. I'm not going to go into that issue; it's been covered in the press quite extensively; I truly hope that the family finds the right business to occupy the parcel and that we have great jobs coming out of it and that it doesn't threaten, in any way, the quality of life in Milton. One thing I do want to share, I was at Planning & Zoning before they sent the work off to the County Council; I was at the County Council Meeting and not once was Milton mentioned by anyone on Planning & Zoning, or on the County Council; in terms of how that property would affect the Town of Milton; it was as though we did not exist. I know that in many, many states across our country, counties and municipalities area at odds with each one another; but I want us all to stop and think a minute. As you drive into Milton today, you drive through very bucolic areas; mostly farmland, in as few years as ten, maybe twenty; we are going to look like the towns that ride along 113. We're going to have sprawl crawl all around us, unless we come up with a plan; something to the affect "Don't 113 Milton". If you think of Georgetown and their downtown and you think of Milford and, of course, Millsboro and towns further south, along 113; their downtowns are devastated and their big stores and 113 looks like it fell off the back of a truck. Unfortunately, that could be our future; unless we take a stand. I've addressed all of the council members on my concerns and my sentiments and I hope that we can put something together; those who are involved in city planning, etc.

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and our future. The other thing to think about is density of housing. We could just as well be ringed by sub-divisions with houses on half-acre lots; or we could ringed, perhaps, by smaller developments like Cannery Village or Heritage Creek, which are going to enjoy lots of free, open space. The other thing to note is that when the family here in Milton re-zoned, there are programs in other states, where the monies that this family will make from the re-zoning is apportioned to other landowners surrounding municipalities like Milton, that will not change their zoning. In other words they benefit from one party getting a heavy industrial re-zoning and making money on either the sale or the use of that land in such a fashion. Unfortunately, Sussex County is still doing business the way it was done 50, 75, 100 years ago. But if there are people in Milton, who want to challenge the thinking of Sussex County Council or put new members on the Council, and that would mean that we would have to go outside our jurisdiction and really fight hard to get people, especially to the western districts, over the coming years, to change. I'm going to be involved in this in some way, shape or form and if anybody wants to contact me, I'm pretty easy to find and I'm record 211 Grist Mill and my phone number is available, but if you think about it; 10 or 20 years and we could look like all those towns up and down 113 and we all thought that the sprawl crawl was going to come in from Rehoboth and it's coming from the west, actually, is one way to look at it. The other thing is, Milton is perfectly positioned to be a warehouse community to the resort folks and to the municipalities up and down 113 and just like Lakeland, Florida is right between Orlando and Tampa-St. Pete and if anybody knows Lakeland, it too, looks like it fell off the back of a truck. So we've got bucolic, lovely downtown; we've got a Main Street program going; and, boy it could all be for naught. Just that quickly. Thanks for hearing me out on this.

Mayor Post: I will now close the public participation portion of this meeting at 7:07 pm.

2. The Milton Town Council Meeting was called to order by Mayor Post at 7:07 pm.
3. A Moment of Silence was led by Vice Mayor Betts.
4. The Pledge of Allegiance to the Flag was said by all in attendance.
5. Roll Call was called by Mayor Post

C Martin-Brown	Present
C DUBY	Present
C Hudson	Present
C Abraham	Present
C Betts	Present
Mayor Post	Present

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C Prettyman

Present

6. Additions or Corrections to the Agenda

Mayor Post: Are there any additions or corrections to the agenda?

C Duby: Yes, Mr. Mayor. Item 13 b, I placed that on the Agenda and the Process Review Committee has referred those proposed changes to our Legal Counsel for review and I would like to ask that that be removed tonight and that it be placed on the agenda for the August Town Council meeting.

Mayor Post: Can we have the approval of the agenda with the proposed changes?

C Hudson: I make a motion to approve the agenda with the changes proposed.

C Betts: Second.

Mayor Post: We have a motion and a second. Any further discussion? All in favor say "aye". Opposed. Motion carried.

7. Presentation and Approval of Minutes for May 4, 2009, May 21, 2009 and June 1, 2009.

C Prettyman: I make a motion that we accept the minutes of May 4, 2009, May 21, 2009 and June 1, 2009, as written.

C Duby: Second.

Mayor Post: We have a motion and a second, is there any discussion? All in favor say "aye". Opposed. Motion carried.

8. Approval of Written Committee Reports

C Prettyman: I make a motion to accept and approve the committee reports that have been submitted to us, as presented.

C Abraham: Second

Mayor Post: We have a motion and a second. Is there any discussion? All in favor say "aye". Opposed. Motion carried.

a. Town Manager's Report

George Dickerson: Good evening Mayor and Council. The first thing I would like for you to know is about the Milton Rails to Trails Phase I project. All the benches and the trash cans have been installed; if anyone's been down there; the paving and the seeding of the trail has been completed; the bases for the light poles have been installed and we are waiting for DP&L to hook up the electric so that can be completed. Anyone that has had an opportunity to go down there, I think that the project speaks for itself, when you see it; it is quite a beautiful project. Second item tonight is that PTA reassessment. Property Tax Associates are the ones conducting our reassessment and all of the exteriors of properties have been assessed. Phase II is in the process of being completed to obtain the property values, which involves putting numbers with the dimensions obtained. Once Phase II is complete, letters will go out to all property owners explaining their assessment and giving them an updated value of their property. If the property owner wishes to discuss their assessment value, PTA will schedule a hearing with the said property owner

who may have questions. The estimated timeframe for these hearings is some time in August. The next item coming up sooner than some of us would like to think is that our new budget year will be upon us 1 October. The town staff has met with all the department heads; there have been individual meetings with each of them and they have made suggestions or recommendations, as well as staff for the overall town. We are, in fact, meeting tomorrow and this is going to give us a first look at some of the numbers as to where we stand with an updated budget. I hope to have those to you as soon as possible for your review; but that's something we're working on and have been working on this year more intently, than any year in the past, as we have implemented the weekly budget meetings that we have with staff. The Code Enforcement Officers position was offered to an individual that has past code enforcement experience with the City of Dover, as well as law enforcement background. He comes highly recommended by his former employer. He will be starting on July 27<sup>th</sup>. His name is Joseph Huff. That's actually all I have, unless there are any questions.

C Hudson: You mentioned Rails to Trails. There was a Brownfield action taken, rather than just Cap and Cover; so that contamination could be removed. I was under the impression that the Brownfield action was going to continue right on down to Lavinia to take out the curb and the railroad tracks.

George Dickerson: You are absolutely correct. Phase I was what I was speaking to and that is only from Chestnut to Federal. The other, we have made a request to DNREC, the gentleman that spoke that night, I can't remember his name offhand; but we have made that request that the Brownfield go ahead and continue and remove the trails and clean-up any Brownfield materials that is all the way to Lavinia Street.

C Hudson: Would you report back to us at the next council meeting of your progress?

George Dickerson: If I have anything with regard to that, yes. He's very well aware but he's not given us any time line for that. We were approved up to \$1 million.

C Hudson: I'm sure the people of Wagamon's would rather have Rails to Trails behind their homes than a Brownfield.

George Dickerson: When you say would rather have Rails to Trails than a Brownfield, there's been no monies appropriated for Phase II, which would take it from Federal to the trestle bridge; Phase III is trestle bridge to Lavinia. There are no money appropriations, and as I think you heard that night, there may be none in the next fiscal year or any beyond that, with this economy. With the Brownfield, there is money that we were approved up to \$1 million for the clean-up; but not continuation of Phase II or III.

C Hudson: I understand that, but potentially or possibly in the future there could be Rails to Trails there; so what I'm hoping is that if you could get a response from DNREC for the removal of the rest of the contaminants.

George Dickerson: If it's available, yes.

C Hudson: The other question is about all the way through Lavinia. Shipbuilders, while I'm riding my bike out there, that pump is still there, the streets haven't been fixed, is there some timeframe.

George Dickerson: Yes, in fact that was supposed to be completed by June 30<sup>th</sup> and it has not been completed. The reason for that is there was a piece of the easement connecting from where the pond comes up to crossover, a piece that was forgotten; we are working with Mr. Turner, who owns Holly Lake and his attorney in Wilmington, Mr. Rago; in fact, I had a conversation with Mr. Turner today to expedite that.

C Hudson: The last question is about the sidewalks. We were supposed to send out a letter. Has that gone out to notify people that we were going to go ahead and pursue that?

George Dickerson: I would let Vice Mayor Betts, Chair of the Streets and Sidewalks Committee speak to that, but yes there is one; Vice Mayor Betts has had several meetings and we have a timeframe of executing a letter.

Vice Mayor Betts: That's right. Our Town Manager, George Dickerson has been very busy this week, and obviously Mayor Post has today and we hope to get that letter out next week. It's on schedule.

b. Written Reports  
Maintenance

C Prettyman: I make a motion we accept the June, 2009 written report from the Maintenance Department, as written.

C Duby: Second

Mayor Post: We have a motion and second; any discussion? All in favor say "aye". Opposed. Motion carried.

Project Coordinator/Code Enforcer

C Prettyman: I make a motion to accept the June, 2009 Project Coordinator/Code Enforcer report, as prepared.

Vice Mayor Betts: Second.

Mayor Post: We have a motion and second, is there any discussion? All in favor say "aye". Opposed. Motion carried.

Police Report

C Prettyman: I make a motion to accept the May 21<sup>st</sup> through June 20<sup>th</sup>, 2009, as submitted by the officer in charge.

C Abraham: Second.

Mayor Post: We have a motion and second; any discussion? All in favor say "aye". Opposed. Motion carried.

9. Old Business

a. Review and Possible Vote on the Conditions for the Key Ventures R-3 LPD Master Plan

Bob Kerr: With Cave Associates. Good evening, Mayor and Council. At a previous meeting in 2007, you approved the conditions for the LPD of Key Ventures. There were some blanks in it that Council directed that we complete with the town staff and the developer. We have done that, although we weren't directed to bring it back to you; we felt that it was appropriate because there were changes to a document you had approved; to bring it back to you so in the future everybody is on the same page with those changes. I asked Robin to give you a copy with some red printing on it that shows the changes and another document that just is without the corrections. It incorporates the corrections. They were relatively minor. If you like, I could go through them or you have them before you.

C Prettyman: I do have a question before I make a motion. With number 12 and number 16; they are both talking about open space walkways shall be adequately illuminated with \_\_\_\_ style light, but isn't 16 a repeat of 12?

Mayor Post: I think 16, and I might be wrong, Bob is open space walkways that could be in a park setting vs. on a street setting.

Bob Kerr: In going through it we noted that there was quite a bit of similarity, between the two, but rather than start making a lot of wholesale changes, we more or less left it the way it was. Yes, it's a little bit of department of redundancy department, but, we think it does cover it.

C Duby: In looking at number 12, when C Prettyman drew my attention to it, I noticed it says Connective Power Company; is there still a Connective Power Company, or isn't that Delmarva Power now?

Bob Kerr: Probably in 2007 there was, but it's now changed their name to Delmarva.

C Duby: Shouldn't we update that?

Bob Kerr: It probably would be appropriate to do that and whoever makes a motion to approve this would incorporate that, I will make the change to the document.

C Prettyman: I would like to make a motion to approve the Key Venture R-3 LPD master plan with the corrections in it and a notation made that Connective be changed to Delmarva Power.

C Duby: Second.

Mayor Post: We have a motion and a second. Any discussion to the motion? All in favor say "aye". Opposed. Motion carried.

b. Discussion and Possible Vote to Extend or Eliminate the Current Moratorium on the Demolitions with the Town of Milton. This Moratorium is Scheduled to Expire on July 31, 2009

Mayor Post: We have not had any comments come back from the Historic Preservation Committee. We did from Planning & Zoning.

Mary Schreider-Fox: I was just going to add my memory is that we had Planning & Zoning comments and nothing from Historic Preservation but that we had kept it opened for a little while to see if they would in fact submit some comments. I haven't conducted my review yet; so I would only have to do it once, after Historic Preservation sent their comments. To my

knowledge, I haven't seen anything from that committee yet. So I think where we are now is that a decision has to be made. If we continue to wait for the comments from the Historic Preservation before this body and I can conduct our review of what has been submitted so far.

C Prettyman: Is it possible, Mr. Dickerson, that you could contact the Chairperson of the Historic Preservation Committee, because you can't go forward.

C Martin-Brown: Mr. Mayor, I would like to make a motion that we table this until we do hear back from the Historic Preservation Committee. Demolition is a critical.

Robin Davis: Mr. Mayor and Council, when the Council first heard this they sent it Planning & Zoning and the Historic Preservation Commission for their review. It was on a Historic Preservation Commission agenda; that evening only 3 members showed up; so we did not have a quorum, so they could not vote or review this. Planning & Zoning went ahead and reviewed it. In your packets, last month, I think it was, you got a memo stating there was no quorum and there was not going to be any comments from Historic Preservation Commission. C Prettyman made a motion to table the decision until the Historic Preservation Commission could review it. I was not made aware of that, so I did not put it on the June agenda. We did not find out until just recently that the motion was made to table it. That's why the Historic Preservation Commission has not reviewed this yet. They were under the impression at the meeting when they had the quorum that they weren't going to get it back, because it was kind of brought to them, if you do have any comments, then come to the Town Council meeting and make comments. Their next meeting is July 14<sup>th</sup>. It can be put on next week's agenda.

C Martin-Brown: I would table it to the next meeting.

Robin Davis: As the Town Solicitor said, she has to take the comments too.

Mayor Post: The most we'll need is 60 days, but we should be able to get it finalized and back here to vote on in 60 days; because it's going to have to go from that meeting, then over to you for review.

Mary Schreider-Fox: Then back to you for review.

Robin Davis: It's according to how fast the Town Solicitor can do it.

Mayor Post: It will require public hearing too, because it will be changing to the zoning ordinances. Then we should table it for 60 days. We should extend the moratorium for 60 days.

Mary Schreider-Fox: I think the agenda item is whether or not the moratorium is scheduled to expire July 31<sup>st</sup>, so if you want to extend the moratorium while we're still conducting this review, that would be the action to take tonight.

Mayor Post: Right, but I don't want it to be another 6 months.

C Prettyman: Then we can make a motion to extend it 60 days.

C Martin-Brown: I've made a motion C Prettyman; it's hanging out there somewhere.

C Duby: The motion you made is to table the discussion.

C Martin-Brown: I would like to amend the motion that we extend the moratorium for 60 days effective from the meeting date tonight.

C Prettyman: Second.

Mayor Post: We have a motion and a second; any discussion. All in favor say “aye”. Opposed.

C Duby: No. I’ve said twice on the record that if we went to extend it one more time I would vote against it.

## 10. New Business

### a. Resolution in the Memory of the Late Senator Thurman Adams

Mayor Post: We have this resolution that I would like to read in honor of Senator Adams. As many of you know, we lost our Senator, who represented Milton and I would like to read this into the record as a Resolution on the death of Senator Thurman G. Adams, Jr. “The Mayor and Council of Town of Milton, Delaware, invite our citizens to join us in the remembrance of our long time supporter and friend, Senator Thurman G. Adams, Jr., President Pro Tempe who was claimed by pancreatic cancer on Tuesday, June 23, 2009. This was a death that truly surprised and saddened us all. Senator Adams represented our Town in the 19<sup>th</sup> Senatorial District since first elected in 1972. As a Mayor and a Miltonian, I am proud to be part of his representing district along with the towns of Bridgeville, Greenwood and Georgetown, as well as other areas. As Senator, he dedicated his life in serving those people represented in his district, as well as all Delawareans state-wide. His dedication greatly contributed to both the financial and spiritual support of our Town, County and State. Officials and others of the Town could always rely on him as a true man of his word and honor during his extensive number of years and public service. His strength was his belief and his belief was in the people of Delaware. As a Sussex Countian working on his family farm and grain business, T. G. Adams and Sons, Inc. and growing up in his hometown of Bridgeville, Delaware, Senator Adams was well aware of the struggles and needs of the small rural American town. His dedication and keen ability to guide should inspire those in leadership to recognize the importance in making decisions that improve our land, culture and society. As Mayor, Council and citizens of the Town of Milton we will miss him greatly and always remember his contributions towards building our town to what it is today. Senator Adams devotion and commitment can be seen throughout our town in many forms, within our sidewalks, streets, vintage lighting, Governor’s Walk, non-profit streetscapes and parks. His memory will always be part of Milton’s Sussex County and the State of Delaware. Senator Adams’ legacy will always remain with us as a part of our town. During this time I want our inner strengths, thoughts and prayers to be extended to the family.” As Mayor, I ask that this Resolution be included in the Minutes of the Town of Milton, at this Town Meeting held on July 6, 2009 and a copy provided to Senator Adams’ family.

Vice Mayor Betts: I make a motion to accept that Resolution to be sent to the family of Senator Adams.

C Prettyman: Second.

Mayor Post: We have a motion and a second. Any discussion? All in favor say "aye". Opposed. Motion carried.

b. Appointment of a Hearing Officer for the Public Hearing on July 10, 2009

Mary Schreider-Fox: As we all know, we're having a public hearing on this Friday; the Chief of Police Due Process that's required by Title XI, Section 9301. The Town Council will be the sitting body that is hearing the presentation, both by Tasha Stevens, who will be presenting the case for termination, as well as the Chief's Attorneys, Tom Neuberger and John LaRosa, presenting the Chief's Defense. What we need to have is a Hearing Officer in place; that person is not going to be a judge, necessarily; it's just going to be the person identified, who will keep control over the proceedings, and respond to the attorneys when they have questions. I will be sitting with the Town Council and with the Hearing Officer. The Employee Handbook for the Town, although we are not following that exactly, because we are going under this Title XI, Section 9031 for the Public Hearing; but the Town also can have hearings in an employment situation and contemplates that one of the members of the Personnel Committee will act as Hearing Officer for the Town Council Members hearing the employment matter. Therefore, it is my suggestion that from among the Town Council members who will be attending the hearing, we choose a Hearing Officer. I'll go ahead and say the person who came to mind for me, is C DUBY, because of her legal experience and previous career as an attorney, that that might be a natural fit for her in terms of helping to conduct the proceedings. That's what this agenda is for and those are my comments.

C Martin-Brown: Mr. Mayor, I would like to make a motion that C DUBY serve as the Hearing Officer because she is an attorney.

Mary Schreider-Fox: Vice Mayor Betts just asked if she can vote, then. Yes, she can vote; she'll still be a member of the body who deliberates and votes on the issues presented. She's just going to be the identified person who helps run the show a little bit and keeps control over the proceedings. At this point in time this public hearing was scheduled and is being put together fairly quickly, I don't know if we would be able to find an outside third party who would be available to do that on such short notice.

C Martin-Brown: Mr. Mayor, one of the motivations is to have somebody from the Personnel Committee and I am not correct that C DUBY is on the Personnel Committee?

Mayor Post: She is.

Mary Schreider-Fox: Again, I'll just say, I'm making that suggestion because keep some consistency with the standard employment procedures that the town has in place, anyway. If we can remain consistent with those, if and when possible, even though this is a somewhat unique situation, I thought that would be a good idea.

C DUBY: Let me just say that I am willing to do it, but to that point of fairness, I've already said to our Council, that the only circumstance under which I would be willing to do it, is if I can make it clear at the very beginning of the hearing what rules apply to this and what my role is; that I'm not sitting as a judge or an objective third party; that I'm presiding, that I'm doing so as a member of the Town Council and in that respect, I'm no different then any other member in terms of having a vote or viewing the evidence and reviewing the evidence. This is not like a trial in which you have a judge that is objective and sits apart.

C HUDSON: Is there any objection from Chief Phillips' attorney to having one of our people be the hearing officer?

MARY SCHREIDER-FOX: I have not consulted with him about this matter.

VICE MAYOR BETTS: I don't have a problem with C DUBY, but I would not want anyone to think it was being partial in any way by a Council person; I have no problem with her doing it; but I just want the public to know and to feel comfortable.

MARY SCHREIDER-FOX: Well, along those lines, I think it is important to remember that this public hearing, I don't want to diminish the importance of it, but it is like other public hearings that the Town Council may conduct from time to time; and the Town Council is allowed to conduct its own hearing; just like the role that the Mayor would play in a regular meeting; or the Chairperson of Planning & Zoning plays when they have a public hearing. Those persons still vote, still participate; but they are just simply the identified person to help manage and keep control over the proceedings and its in that same role; its just simply because we have a different kind of public hearing that we have to reidentify who's doing what and under the circumstances, since there are going to be attorneys presenting cases and it will have a little bit more of a formal feel, I thought that it might be a good idea to have the Town Council person assume that role, who has some legal background and can probably better handle some of the questions or comments that may arise from the attorneys that are participating in the proceeding.

C DUBY: Mary, can I ask one question. I have been assuming and I hope this is true, because it puts a different light on it for me, if it isn't; that there is no ruling on objections or anything like that by the hearing officer.

MARY SCHREIDER-FOX: There have been very few of these kinds of public hearings under the Chief's Due Process Statute, to my knowledge in the State of Delaware; so I can only anticipate what I think might happen. I anticipate that the attorneys may raise objections from time to time, in which case, the only kinds of objection I anticipate being raised very often would be evidentiary ones and since this is an administrative proceeding, hearsay is admissible and I know one of my partners previously participated in a public hearing of this type, many years ago, or several years ago, I should say, and the hearing officer in that situation, simply responded to any of those objections by saying, this is an administrative proceeding; hearsay is admissible; that will go to wait; please move on. Again, it was just more of a

role of controlling the situation and keeping the proceedings moving forward; as opposed to really making evidentiary rulings.

C Hudson: Second.

Mayor Post: We have a motion and a second. Any further discussion? All in favor say "aye". Opposed.

C Duby: Abstain.

Mayor Post: Motion carried.

c. Consideration and Possible Acceptance of Proposed Rules of Procedures for Public Hearing on July 10, 2009

Mary Schreider-Fox: All of you should have a copy of some proposed public hearing rules for the hearing this Friday and because this doesn't happen very often, we had to be creative and create our own. I modeled these after other times of other administrative tribunals that will have public hearings; such as a Board of Adjustment or a Planning & Zoning, so it really just sets forth that there is a Hearing Officer; that the witnesses will be under oath; how the order of the day will go; such as opening remarks from each side; they can present witnesses; a record of the proceedings, that there will be a record of the proceedings and I have made arrangements for a court reporter to be present on Friday, so it is an official court reporter and she will transcribe everything that occurs and it is my understanding that the Town's regular recording equipment will also be operating and set-up that day so we will have a double duty in terms of making the record. I have already mentioned this briefly; in administrative proceeding, because this isn't in front of a judge; this isn't in front of a jury; it's not in court; what that means is that the rules for the public hearing; again, that I have borrowed from other situations and just rewritten a little bit to fit our particular public hearing; you don't have to strictly follow the rules of evidence. Part of that is an acknowledgement that a typical Town Council or a Board of Adjustment or something like that isn't comprised of judges, and that is one of the rules in these proposed rules; talking about the hearsay that's number 6 – it shall not be prohibited – and that is very standard in this kind of a setting. This just gives everybody a little bit of a blueprint to follow, including the Chief's attorneys, as well as Tasha Stevens, who will be presenting the case for termination so that everybody knows what to expect and it just goes to helping to keep some order and control over the proceeding.

C Hudson: Can you tell me what firm Tasha Marie Stevens works for?

Mary Schreider-Fox: Ms. Stevens works with Fuque and Yurie and she has a good background in litigation, civil and criminal defense work; she came highly recommended by some colleagues of mine and I've worked with Ms. Stevens before; so she's in the process of preparing for the case and will be ready to present on Friday.

C Hudson: I was just curious as to why someone from your firm was not representing us.

Mary Schreider-Fox: The reason why is, number one, my two partners were unavailable because of their workload; and then this way I can sit with the

Town Council and keep those two roles separate. Do you need me to go over each one?

Mayor Post: I would quickly, if you would.

Mary Schreider-Fox: Okay. In number "4", we talked about this; it sets for the order of proceeding; some introduction or opening remarks by the Hearing Officer and it is at that time that C Duby that you can make your comments about what your role will be and make that clear for all involved; opening statements, that is when Ms. Stevens and Mr. Neuberger or Mr. LaRosa, whichever one it will be, can make a brief opening statement, setting forth the nature of the case they intend to present. Then to follow that and "C" will be the presentation of case for termination and that will be made by Ms. Stevens; flying through witnesses and other exhibits that she will offer to the Town Council on the day of the hearing. So as you can see, it has a little bit of a feel like a trial setting, but it's not exactly, because of the way that it is set out. They can make opening remarks, present the case; the Chief's attorneys will have an opportunity to cross-examine any witnesses that Ms. Stevens calls; and that leads us to "D"; then Chief Phillips, by and through his attorneys, will be able to present their case and defense as to why termination is not warranted. They will call witnesses, present exhibits and Ms. Stevens will have an opportunity to cross-examine any of his witnesses. Sub-paragraph "E" talks about rebuttal testimony that in the event something comes up in the presentation the Chief's Defense, that Ms. Stevens finding through any witnesses who would like to try to address an issue, she'll have the opportunity; and the Chief will have the same opportunity; after any rebuttal witnesses she might call. That's designed to give everybody one last shot to make any comments through witnesses or to get any additional information or evidence before you; depending on how the proceedings go and what kinds of issues come up. That way you have as comprehensive a record as possible. In sub-paragraph "F" it calls for closing arguments and that's when each of the attorneys can summarize their case and put together all the evidence that they have presented and how they think it should be interpreted. Sub-paragraph "G" simply specifies that no statements or testimony from the general public will be permitted. I thought it would be good to include that, because unlike other kinds of public hearing settings, it's not going to be an open forum where people can just come forward and make comments. Paragraph 5 just sets forth that all exhibits presented to the Town Council should be appropriately marked Town Exhibit "1" or Chief Exhibit "1". I put in there that the Hearing Officer shall date and initial each document or exhibit to authenticate it; sometimes in these kinds of hearings, documents start floating around and nobody knows if that document got in or not; this way all exhibits, as long as they're initialed by the Hearing Officer we know that is an official part of the record. Paragraph "6" talks about hearsay and I've already covered that. Paragraph "7" simply says that the Hearing Officer has the ability and the authority to take control over the proceedings and limit any testimony and questioning that is irrelevant, unduly repetitive or

provocative. Basically, if there becomes a heated discussion or the same question is asked six times in a row, that this gives a Hearing Officer the ability to simply say, okay can we move on, that same question has been asked and answered; something like that. It's just a mechanism to try to keep the proceedings moving forward. Number "8" – Deliberation and Decision – it just simply confirms that following the presentation from both sides, that the Town Council will deliberate in public about what it has heard that day and that it is anticipated that a decision will be made, unless there is some need to continue to the proceedings; and that just simply confirms that that is what is going to happen at the end. Then number "9" – Rules to be Liberally Construed to Promote Substantial Justice – I included this to just simply to say the exact order of the proceeding or some of the rules that in the event we're going through and we feel that something needs to be changed, or permitted, in order to make sure that substantial justice is done and that it results in as fair of a proceeding as possible; that that is within the Town Council's control. That's all.

C Hudson: Let's start with opening statements and I'll keep this very brief; the Town speaks first and then the Chief's attorney; then you get to closing statements and it goes Town's attorney and Chief's attorney and then Town again. We're talking about justice and fairness; I think in all fairness, that last sentence that Ms. Stevens should be permitted to make a rebuttal closing argument, should she so desire, should be deleted; because it doesn't follow the pattern; the pattern is Town, Chief, Town, Chief and then the Town gets a final shot. To be fair it should be Town, Chief, Town, and Chief.

Mary Schreider-Fox: Unless you're familiar with court proceedings and the order is fashioned on how it might be presented in court, even though you're not a court; borrowing from what other administrative proceedings have done; or other bodies have done in administrative proceedings; borrowing a little bit of the format from a trial-like proceeding that often-times the presenting party is given one last opportunity to make some comments to the body or to the judge; if you have anything to say in response to the closing remarks. That was simply borrowed from other places and the procedure that was used elsewhere, for us to consider.

C Hudson: I think it should be deleted. To keep it even and fair; everybody has equal opportunity and the way this is, it's not equal, when we are given more chances to speak, then the Chief's side.

C Prettyman: Excuse me, C Hudson, isn't that what the Hearing Officer would do if the other attorney wanted to say something, then wouldn't she give them that opportunity?

C Hudson: According to this, it says if Ms. Stevens so desired. So, it's not up to the Hearing Officer; you've right away given the Town's Attorney the opportunity to have one more opportunity to present than the other. I don't think it's fair.

Mary Schreider-Fox: May I make a suggestion? Either remove it altogether or provide for rebuttal to closing and make that available to both.

C Hudson: Make it available to both or remove it. Everyone should have an equal time. If one has two, the other should have two.

Vice Mayor Betts: I agree with C Hudson.

Mary Schreider-Fox: The Mayor just asked me is that how it's done in the Court system. I will tell you in Civil Cases and those are the case I'm involved in, 99% of the time, each side just makes a closing and that's it. I've had occasion and if you are the Plaintiff in the case, like in this case the presenting party; the Judge will give you one last opportunity as the Plaintiff's attorney to rebut to the closing; there was one situation that I observed where the Judge asked the Plaintiff's attorney if he wanted to make a rebuttal closing and then that attorney said something and the other attorney was given an opportunity. In criminal cases, I've been told that it's more common for the Judges to allow a rebuttal closing. I think it's all over the board. It's been done differently in trial settings, sometimes depending on the Judge that you get and how they like to run their courtroom. I don't think these comments that you're making are inappropriate and I will confess I thought about it when I was writing and I will go with what I thought was the majority, standard practice and see what everybody thinks. That's why it is on the agenda tonight so that you can actually look at it and decide what you want to do and make changes as necessary.

Mayor Post: I think Ms. Stevens should go last.

C Hudson: I think it should either be deleted or give the Chief's attorney a second shot, as well. It should be fair; they should each have an equal opportunity to speak. I would like to make a motion that this sentence "Ms. Stevens shall be permitted to make a rebuttal to closing arguments, should she so desire", be deleted from this document.

C Duby: Second.

Mayor Post: We have a motion and a second. All those in favor, say "aye". Opposed. Motion carried.

C Hudson: I make a motion that we accept this document, as written, with that deletion made.

C Duby: Second.

Mayor Post: We have a motion and a second. Any further discussion? All those in favor, say "aye". Opposed. Motion carried.

## 11. Adjournment

C Prettyman: I make a motion to adjourn.

C Duby: Second.

Mayor Post: We have a motion and a second. Is there any discussion? All in favor say "aye". Opposed. Motion to close at 7:57 pm.

**Milton Town Council Meeting**  
**Milton Theatre, 110 Union Street**  
**Monday, July 6, 2009**  
**7:00 p.m.**

1. **PUBLIC PARTICIPATION** portion was called to order by Mayor Post at 7:00 pm

- a. Katherine Grieg: 326 Union Street. Good evening. Once again I'm back to haunt you to talk about the Garden Club. In the absence of the President, Jennifer, the Garden Tour and Home Tour are this Saturday, July 11<sup>th</sup> from 9 to 3. We have 12 gardens; we have 2 houses, plus Abraxus Art Studio and if you have never been into Abraxus Studio, that is a very old, historic house and is interesting to see, in addition to the artwork; and Frankie Dittman's again orchid house. Frankie called me and left me a message this week, saying please come out and look, because in his kitchen, he's not cooking this week, he's set up this waterfall with rocks and everything, with his orchid plants around it. Tickets are \$12, ahead of time; they're available across the street at Antiques in Milton at Hillside Flowers and if you want to go out of town and buy them at Lewes Spring. We have lots of special events and this is the biggest fundraiser of the year, if you want to continue to see all the flowers and the planters, then please buy a ticket. Thanks.
- b. Jeff Daly: 211 Grist Mill in the Cannery Village Neighborhood. Recently we had some family owned property, a long standing family in the Milton area, had their property re-zoned from agricultural to heavy industrial use. I'm not going to go into that issue; it's been covered in the press quite extensively; I truly hope that the family finds the right business to occupy the parcel and that we have great jobs coming out of it and that it doesn't threaten, in any way, the quality of life in Milton. One thing I do want to share, I was at Planning & Zoning before they sent the work off to the County Council; I was at the County Council Meeting and not once was Milton mentioned by anyone on Planning & Zoning, or on the County Council; in terms of how that property would affect the Town of Milton; it was as though we did not exist. I know that in many, many states across our country, counties and municipalities area at odds with each one another; but I want us all to stop and think a minute. As you drive into Milton today, you drive through very bucolic areas; mostly farmland, in as few years as ten, maybe twenty; we are going to look like the towns that ride along 113. We're going to have sprawl crawl all around us, unless we come up with a plan; something to the affect "Don't 113 Milton". If you think of Georgetown and their downtown and you think of Milford and, of course, Millsboro and towns further south, along 113; their downtowns are devastated and their big stores and 113 looks like it fell off the back of a truck. Unfortunately, that could be our future; unless we take a stand. I've addressed all of the council members on my concerns and my sentiments and I hope that we can put something together; those who are involved in city planning, etc.

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and our future. The other thing to think about is density of housing. We could just as well be ringed by sub-divisions with houses on half-acre lots; or we could ringed, perhaps, by smaller developments like Cannery Village or Heritage Creek, which are going to enjoy lots of free, open space. The other thing to note is that when the family here in Milton re-zoned, there are programs in other states, where the monies that this family will make from the re-zoning is apportioned to other landowners surrounding municipalities like Milton, that will not change their zoning. In other words they benefit from one party getting a heavy industrial re-zoning and making money on either the sale or the use of that land in such a fashion. Unfortunately, Sussex County is still doing business the way it was done 50, 75, 100 years ago. But if there are people in Milton, who want to challenge the thinking of Sussex County Council or put new members on the Council, and that would mean that we would have to go outside our jurisdiction and really fight hard to get people, especially to the western districts, over the coming years, to change. I'm going to be involved in this in some way, shape or form and if anybody wants to contact me, I'm pretty easy to find and I'm record 211 Grist Mill and my phone number is available, but if you think about it; 10 or 20 years and we could look like all those towns up and down 113 and we all thought that the sprawl crawl was going to come in from Rehoboth and it's coming from the west, actually, is one way to look at it. The other thing is, Milton is perfectly positioned to be a warehouse community to the resort folks and to the municipalities up and down 113 and just like Lakeland, Florida is right between Orlando and Tampa-St. Pete and if anybody knows Lakeland, it too, looks like it fell off the back of a truck. So we've got bucolic, lovely downtown; we've got a Main Street program going; and, boy it could all be for naught. Just that quickly. Thanks for hearing me out on this.

Mayor Post: I will now close the public participation portion of this meeting at 7:07 pm.

2. The Milton Town Council Meeting was called to order by Mayor Post at 7:07 pm.
3. A Moment of Silence was led by Vice Mayor Betts.
4. The Pledge of Allegiance to the Flag was said by all in attendance.
5. Roll Call was called by Mayor Post

C Martin-Brown	Present
C Duby	Present
C Hudson	Present
C Abraham	Present
C Betts	Present
Mayor Post	Present

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C Prettyman

Present

6. Additions or Corrections to the Agenda

Mayor Post: Are there any additions or corrections to the agenda?

C Duby: Yes, Mr. Mayor. Item 13 b, I placed that on the Agenda and the Process Review Committee has referred those proposed changes to our Legal Counsel for review and I would like to ask that that be removed tonight and that it be placed on the agenda for the August Town Council meeting.

Mayor Post: Can we have the approval of the agenda with the proposed changes?

C Hudson: I make a motion to approve the agenda with the changes proposed.

C Betts: Second.

Mayor Post: We have a motion and a second. Any further discussion? All in favor say "aye". Opposed. Motion carried.

7. Presentation and Approval of Minutes for May 4, 2009, May 21, 2009 and June 1, 2009.

C Prettyman: I make a motion that we accept the minutes of May 4, 2009, May 21, 2009 and June 1, 2009, as written.

C Duby: Second.

Mayor Post: We have a motion and a second, is there any discussion? All in favor say "aye". Opposed. Motion carried.

8. Approval of Written Committee Reports

C Prettyman: I make a motion to accept and approve the committee reports that have been submitted to us, as presented.

C Abraham: Second

Mayor Post: We have a motion and a second. Is there any discussion? All in favor say "aye". Opposed. Motion carried.

a. Town Manager's Report

George Dickerson: Good evening Mayor and Council. The first thing I would like for you to know is about the Milton Rails to Trails Phase I project. All the benches and the trash cans have been installed; if anyone's been down there; the paving and the seeding of the trail has been completed; the bases for the light poles have been installed and we are waiting for DP&L to hook up the electric so that can be completed. Anyone that has had an opportunity to go down there, I think that the project speaks for itself, when you see it; it is quite a beautiful project. Second item tonight is that PTA reassessment. Property Tax Associates are the ones conducting our reassessment and all of the exteriors of properties have been assessed. Phase II is in the process of being completed to obtain the property values, which involves putting numbers with the dimensions obtained. Once Phase II is complete, letters will go out to all property owners explaining their assessment and giving them an updated value of their property. If the property owner wishes to discuss their assessment value, PTA will schedule a hearing with the said property owner

who may have questions. The estimated timeframe for these hearings is some time in August. The next item coming up sooner than some of us would like to think is that our new budget year will be upon us 1 October. The town staff has met with all the department heads; there have been individual meetings with each of them and they have made suggestions or recommendations, as well as staff for the overall town. We are, in fact, meeting tomorrow and this is going to give us a first look at some of the numbers as to where we stand with an updated budget. I hope to have those to you as soon as possible for your review; but that's something we're working on and have been working on this year more intently, then any year in the past, as we have implemented the weekly budget meetings that we have with staff. The Code Enforcement Officers position was offered to an individual that has past code enforcement experience with the City of Dover, as well as law enforcement background. He comes highly recommended by his former employer. He will be starting on July 27<sup>th</sup>. His name is Joseph Huff. That's actually all I have, unless there are any questions.

C Hudson: You mentioned Rails to Trails. There was a Brownfield action taken, rather than just Cap and Cover; so that contamination could be removed. I was under the impression that the Brownfield action was going to continue right on down to Lavinia to take out the curb and the railroad tracks.

George Dickerson: You are absolutely correct. Phase I was what I was speaking to and that is only from Chestnut to Federal. The other, we have made a request to DNREC, the gentleman that spoke that night, I can't remember his name offhand; but we have made that request that the Brownfield go ahead and continue and remove the trails and clean-up any Brownfield materials that is all the way to Lavinia Street.

C Hudson: Would you report back to us at the next council meeting of your progress?

George Dickerson: If I have anything with regard to that, yes. He's very well aware but he's not given us any time line for that. We were approved up to \$1 million.

C Hudson: I'm sure the people of Wagamon's would rather have Rails to Trails behind their homes than a Brownfield.

George Dickerson: When you say would rather have Rails to Trails than a Brownfield, there's been no monies appropriated for Phase II, which would take it from Federal to the trestle bridge; Phase III is trestle bridge to Lavinia. There are no money appropriations, and as I think you heard that night, there may be none in the next fiscal year or any beyond that, with this economy. With the Brownfield, there is money that we were approved up to \$1 million for the clean-up; but not continuation of Phase II or III.

C Hudson: I understand that, but potentially or possibly in the future there could be Rails to Trails there; so what I'm hoping is that if you could get a response from DNREC for the removal of the rest of the contaminants.

George Dickerson: If it's available, yes.

C Hudson: The other question is about all the way through Lavinia. Shipbuilders, while I'm riding my bike out there, that pump is still there, the streets haven't been fixed, is there some timeframe.

George Dickerson: Yes, in fact that was supposed to be completed by June 30<sup>th</sup> and it has not been completed. The reason for that is there was a piece of the easement connecting from where the pond comes up to crossover, a piece that was forgotten; we are working with Mr. Turner, who owns Holly Lake and his attorney in Wilmington, Mr. Rago; in fact, I had a conversation with Mr. Turner today to expedite that.

C Hudson: The last question is about the sidewalks. We were supposed to send out a letter. Has that gone out to notify people that we were going to go ahead and pursue that?

George Dickerson: I would let Vice Mayor Betts, Chair of the Streets and Sidewalks Committee speak to that, but yes there is one; Vice Mayor Betts has had several meetings and we have a timeframe of executing a letter.

Vice Mayor Betts: That's right. Our Town Manager, George Dickerson has been very busy this week, and obviously Mayor Post has today and we hope to get that letter out next week. It's on schedule.

b. Written Reports  
Maintenance

C Prettyman: I make a motion we accept the June, 2009 written report from the Maintenance Department, as written.

C Duby: Second

Mayor Post: We have a motion and second; any discussion? All in favor say "aye". Opposed. Motion carried.

Project Coordinator/Code Enforcer

C Prettyman: I make a motion to accept the June, 2009 Project Coordinator/Code Enforcer report, as prepared.

Vice Mayor Betts: Second.

Mayor Post: We have a motion and second, is there any discussion? All in favor say "aye". Opposed. Motion carried.

Police Report

C Prettyman: I make a motion to accept the May 21<sup>st</sup> through June 20<sup>th</sup>, 2009, as submitted by the officer in charge.

C Abraham: Second.

Mayor Post: We have a motion and second; any discussion? All in favor say "aye". Opposed. Motion carried.

9. Old Business

a. Review and Possible Vote on the Conditions for the Key Ventures R-3 LPD Master Plan

Bob Kerr: With Cave Associates. Good evening, Mayor and Council. At a previous meeting in 2007, you approved the conditions for the LPD of Key Ventures. There were some blanks in it that Council directed that we complete with the town staff and the developer. We have done that, although we weren't directed to bring it back to you; we felt that it was appropriate because there were changes to a document you had approved; to bring it back to you so in the future everybody is on the same page with those changes. I asked Robin to give you a copy with some red printing on it that shows the changes and another document that just is without the corrections. It incorporates the corrections. They were relatively minor. If you like, I could go through them or you have them before you.

C Prettyman: I do have a question before I make a motion. With number 12 and number 16; they are both talking about open space walkways shall be adequately illuminated with \_\_\_\_ style light, but isn't 16 a repeat of 12?

Mayor Post: I think 16, and I might be wrong, Bob is open space walkways that could be in a park setting vs. on a street setting.

Bob Kerr: In going through it we noted that there was quite a bit of similarity, between the two, but rather than start making a lot of wholesale changes, we more or less left it the way it was. Yes, it's a little bit of department of redundancy department, but, we think it does cover it.

C Duby: In looking at number 12, when C Prettyman drew my attention to it, I noticed it says Connective Power Company; is there still a Connective Power Company, or isn't that Delmarva Power now?

Bob Kerr: Probably in 2007 there was, but it's now changed their name to Delmarva.

C Duby: Shouldn't we update that?

Bob Kerr: It probably would be appropriate to do that and whoever makes a motion to approve this would incorporate that, I will make the change to the document.

C Prettyman: I would like to make a motion to approve the Key Venture R-3 LPD master plan with the corrections in it and a notation made that Connective be changed to Delmarva Power.

C Duby: Second.

Mayor Post: We have a motion and a second. Any discussion to the motion? All in favor say "aye". Opposed. Motion carried.

b. Discussion and Possible Vote to Extend or Eliminate the Current Moratorium on the Demolitions with the Town of Milton. This Moratorium is Scheduled to Expire on July 31, 2009

Mayor Post: We have not had any comments come back from the Historic Preservation Committee. We did from Planning & Zoning.

Mary Schreider-Fox: I was just going to add my memory is that we had Planning & Zoning comments and nothing from Historic Preservation but that we had kept it opened for a little while to see if they would in fact submit some comments. I haven't conducted my review yet; so I would only have to do it once, after Historic Preservation sent their comments. To my

knowledge, I haven't seen anything from that committee yet. So I think where we are now is that a decision has to be made. If we continue to wait for the comments from the Historic Preservation before this body and I can conduct our review of what has been submitted so far.

C Prettyman: Is it possible, Mr. Dickerson, that you could contact the Chairperson of the Historic Preservation Committee, because you can't go forward.

C Martin-Brown: Mr. Mayor, I would like to make a motion that we table this until we do hear back from the Historic Preservation Committee. Demolition is a critical.

Robin Davis: Mr. Mayor and Council, when the Council first heard this they sent it Planning & Zoning and the Historic Preservation Commission for their review. It was on a Historic Preservation Commission agenda; that evening only 3 members showed up; so we did not have a quorum, so they could not vote or review this. Planning & Zoning went ahead and reviewed it. In your packets, last month, I think it was, you got a memo stating there was no quorum and there was not going to be any comments from Historic Preservation Commission. C Prettyman made a motion to table the decision until the Historic Preservation Commission could review it. I was not made aware of that, so I did not put it on the June agenda. We did not find out until just recently that the motion was made to table it. That's why the Historic Preservation Commission has not reviewed this yet. They were under the impression at the meeting when they had the quorum that they weren't going to get it back, because it was kind of brought to them, if you do have any comments, then come to the Town Council meeting and make comments. Their next meeting is July 14<sup>th</sup>. It can be put on next week's agenda.

C Martin-Brown: I would table it to the next meeting.

Robin Davis: As the Town Solicitor said, she has to take the comments too.

Mayor Post: The most we'll need is 60 days, but we should be able to get it finalized and back here to vote on in 60 days; because it's going to have to go from that meeting, then over to you for review.

Mary Schreider-Fox: Then back to you for review.

Robin Davis: It's according to how fast the Town Solicitor can do it.

Mayor Post: It will require public hearing too, because it will be changing to the zoning ordinances. Then we should table it for 60 days. We should extend the moratorium for 60 days.

Mary Schreider-Fox: I think the agenda item is whether or not the moratorium is scheduled to expire July 31<sup>st</sup>, so if you want to extend the moratorium while we're still conducting this review, that would be the action to take tonight.

Mayor Post: Right, but I don't want it to be another 6 months.

C Prettyman: Then we can make a motion to extend it 60 days.

C Martin-Brown: I've made a motion C Prettyman; it's hanging out there somewhere.

C Duby: The motion you made is to table the discussion.

C Martin-Brown: I would like to amend the motion that we extend the moratorium for 60 days effective from the meeting date tonight.

C Prettyman: Second.

Mayor Post: We have a motion and a second; any discussion. All in favor say “aye”. Opposed.

C Duby: No. I’ve said twice on the record that if we went to extend it one more time I would vote against it.

## 10. New Business

### a. Resolution in the Memory of the Late Senator Thurman Adams

Mayor Post: We have this resolution that I would like to read in honor of Senator Adams. As many of you know, we lost our Senator, who represented Milton and I would like to read this into the record as a Resolution on the death of Senator Thurman G. Adams, Jr. “The Mayor and Council of Town of Milton, Delaware, invite our citizens to join us in the remembrance of our long time supporter and friend, Senator Thurman G. Adams, Jr., President Pro Tempe who was claimed by pancreatic cancer on Tuesday, June 23, 2009. This was a death that truly surprised and saddened us all. Senator Adams represented our Town in the 19<sup>th</sup> Senatorial District since first elected in 1972. As a Mayor and a Miltonian, I am proud to be part of his representing district along with the towns of Bridgeville, Greenwood and Georgetown, as well as other areas. As Senator, he dedicated his life in serving those people represented in his district, as well as all Delawareans state-wide. His dedication greatly contributed to both the financial and spiritual support of our Town, County and State. Officials and others of the Town could always rely on him as a true man of his word and honor during his extensive number of years and public service. His strength was his belief and his belief was in the people of Delaware. As a Sussex Countian working on his family farm and grain business, T. G. Adams and Sons, Inc. and growing up in his hometown of Bridgeville, Delaware, Senator Adams was well aware of the struggles and needs of the small rural American town. His dedication and keen ability to guide should inspire those in leadership to recognize the importance in making decisions that improve our land, culture and society. As Mayor, Council and citizens of the Town of Milton we will miss him greatly and always remember his contributions towards building our town to what it is today. Senator Adams devotion and commitment can be seen throughout our town in many forms, within our sidewalks, streets, vintage lighting, Governor’s Walk, non-profit streetscapes and parks. His memory will always be part of Milton’s Sussex County and the State of Delaware. Senator Adams’ legacy will always remain with us as a part of our town. During this time I want our inner strengths, thoughts and prayers to be extended to the family.” As Mayor, I ask that this Resolution be included in the Minutes of the Town of Milton, at this Town Meeting held on July 6, 2009 and a copy provided to Senator Adams’ family.

Vice Mayor Betts: I make a motion to accept that Resolution to be sent to the family of Senator Adams.

C Prettyman: Second.

Mayor Post: We have a motion and a second. Any discussion? All in favor say "aye". Opposed. Motion carried.

b. Appointment of a Hearing Officer for the Public Hearing on July 10, 2009

Mary Schreider-Fox: As we all know, we're having a public hearing on this Friday; the Chief of Police Due Process that's required by Title XI, Section 9301. The Town Council will be the sitting body that is hearing the presentation, both by Tasha Stevens, who will be presenting the case for termination, as well as the Chief's Attorneys, Tom Neuberger and John LaRosa, presenting the Chief's Defense. What we need to have is a Hearing Officer in place; that person is not going to be a judge, necessarily; it's just going to be the person identified, who will keep control over the proceedings, and respond to the attorneys when they have questions. I will be sitting with the Town Council and with the Hearing Officer. The Employee Handbook for the Town, although we are not following that exactly, because we are going under this Title XI, Section 9031 for the Public Hearing; but the Town also can have hearings in an employment situation and contemplates that one of the members of the Personnel Committee will act as Hearing Officer for the Town Council Members hearing the employment matter. Therefore, it is my suggestion that from among the Town Council members who will be attending the hearing, we choose a Hearing Officer. I'll go ahead and say the person who came to mind for me, is C DUBY, because of her legal experience and previous career as an attorney, that that might be a natural fit for her in terms of helping to conduct the proceedings. That's what this agenda is for and those are my comments.

C Martin-Brown: Mr. Mayor, I would like to make a motion that C DUBY serve as the Hearing Officer because she is an attorney.

Mary Schreider-Fox: Vice Mayor Betts just asked if she can vote, then. Yes, she can vote; she'll still be a member of the body who deliberates and votes on the issues presented. She's just going to be the identified person who helps run the show a little bit and keeps control over the proceedings. At this point in time this public hearing was scheduled and is being put together fairly quickly, I don't know if we would be able to find an outside third party who would be available to do that on such short notice.

C Martin-Brown: Mr. Mayor, one of the motivations is to have somebody from the Personnel Committee and I am not correct that C DUBY is on the Personnel Committee?

Mayor Post: She is.

Mary Schreider-Fox: Again, I'll just say, I'm making that suggestion because keep some consistency with the standard employment procedures that the town has in place, anyway. If we can remain consistent with those, if and when possible, even though this is a somewhat unique situation, I thought that would be a good idea.

C DUBY: Let me just say that I am willing to do it, but to that point of fairness, I've already said to our Council, that the only circumstance under which I would be willing to do it, is if I can make it clear at the very beginning of the hearing what rules apply to this and what my role is; that I'm not sitting as a judge or an objective third party; that I'm presiding, that I'm doing so as a member of the Town Council and in that respect, I'm no different then any other member in terms of having a vote or viewing the evidence and reviewing the evidence. This is not like a trial in which you have a judge that is objective and sits apart.

C HUDSON: Is there any objection from Chief Phillips' attorney to having one of our people be the hearing officer?

MARY SCHREIDER-FOX: I have not consulted with him about this matter.

VICE MAYOR BETTS: I don't have a problem with C DUBY, but I would not want anyone to think it was being partial in any way by a Council person; I have no problem with her doing it; but I just want the public to know and to feel comfortable.

MARY SCHREIDER-FOX: Well, along those lines, I think it is important to remember that this public hearing, I don't want to diminish the importance of it, but it is like other public hearings that the Town Council may conduct from time to time; and the Town Council is allowed to conduct its own hearing; just like the role that the Mayor would play in a regular meeting; or the Chairperson of Planning & Zoning plays when they have a public hearing. Those persons still vote, still participate; but they are just simply the identified person to help manage and keep control over the proceedings and its in that same role; its just simply because we have a different kind of public hearing that we have to reidentify who's doing what and under the circumstances, since there are going to be attorneys presenting cases and it will have a little bit more of a formal feel, I thought that it might be a good idea to have the Town Council person assume that role, who has some legal background and can probably better handle some of the questions or comments that may arise from the attorneys that are participating in the proceeding.

C DUBY: Mary, can I ask one question. I have been assuming and I hope this is true, because it puts a different light on it for me, if it isn't; that there is no ruling on objections or anything like that by the hearing officer.

MARY SCHREIDER-FOX: There have been very few of these kinds of public hearings under the Chief's Due Process Statute, to my knowledge in the State of Delaware; so I can only anticipate what I think might happen. I anticipate that the attorneys may raise objections from time to time, in which case, the only kinds of objection I anticipate being raised very often would be evidentiary ones and since this is an administrative proceeding, hearsay is admissible and I know one of my partners previously participated in a public hearing of this type, many years ago, or several years ago, I should say, and the hearing officer in that situation, simply responded to any of those objections by saying, this is an administrative proceeding; hearsay is admissible; that will go to wait; please move on. Again, it was just more of a

role of controlling the situation and keeping the proceedings moving forward; as opposed to really making evidentiary rulings.

C Hudson: Second.

Mayor Post: We have a motion and a second. Any further discussion? All in favor say "aye". Opposed.

C Duby: Abstain.

Mayor Post: Motion carried.

c. Consideration and Possible Acceptance of Proposed Rules of Procedures for Public Hearing on July 10, 2009

Mary Schreider-Fox: All of you should have a copy of some proposed public hearing rules for the hearing this Friday and because this doesn't happen very often, we had to be creative and create our own. I modeled these after other times of other administrative tribunals that will have public hearings; such as a Board of Adjustment or a Planning & Zoning, so it really just sets forth that there is a Hearing Officer; that the witnesses will be under oath; how the order of the day will go; such as opening remarks from each side; they can present witnesses; a record of the proceedings, that there will be a record of the proceedings and I have made arrangements for a court reporter to be present on Friday, so it is an official court reporter and she will transcribe everything that occurs and it is my understanding that the Town's regular recording equipment will also be operating and set-up that day so we will have a double duty in terms of making the record. I have already mentioned this briefly; in administrative proceeding, because this isn't in front of a judge; this isn't in front of a jury; it's not in court; what that means is that the rules for the public hearing; again, that I have borrowed from other situations and just rewritten a little bit to fit our particular public hearing; you don't have to strictly follow the rules of evidence. Part of that is an acknowledgement that a typical Town Council or a Board of Adjustment or something like that isn't comprised of judges, and that is one of the rules in these proposed rules; talking about the hearsay that's number 6 – it shall not be prohibited – and that is very standard in this kind of a setting. This just gives everybody a little bit of a blueprint to follow, including the Chief's attorneys, as well as Tasha Stevens, who will be presenting the case for termination so that everybody knows what to expect and it just goes to helping to keep some order and control over the proceeding.

C Hudson: Can you tell me what firm Tasha Marie Stevens works for?

Mary Schreider-Fox: Ms. Stevens works with Fuque and Yurie and she has a good background in litigation, civil and criminal defense work; she came highly recommended by some colleagues of mine and I've worked with Ms. Stevens before; so she's in the process of preparing for the case and will be ready to present on Friday.

C Hudson: I was just curious as to why someone from your firm was not representing us.

Mary Schreider-Fox: The reason why is, number one, my two partners were unavailable because of their workload; and then this way I can sit with the

Town Council and keep those two roles separate. Do you need me to go over each one?

Mayor Post: I would quickly, if you would.

Mary Schreider-Fox: Okay. In number "4", we talked about this; it sets for the order of proceeding; some introduction or opening remarks by the Hearing Officer and it is at that time that C Duby that you can make your comments about what your role will be and make that clear for all involved; opening statements, that is when Ms. Stevens and Mr. Neuberger or Mr. LaRosa, whichever one it will be, can make a brief opening statement, setting forth the nature of the case they intend to present. Then to follow that and "C" will be the presentation of case for termination and that will be made by Ms. Stevens; flying through witnesses and other exhibits that she will offer to the Town Council on the day of the hearing. So as you can see, it has a little bit of a feel like a trial setting, but it's not exactly, because of the way that it is set out. They can make opening remarks, present the case; the Chief's attorneys will have an opportunity to cross-examine any witnesses that Ms. Stevens calls; and that leads us to "D"; then Chief Phillips, by and through his attorneys, will be able to present their case and defense as to why termination is not warranted. They will call witnesses, present exhibits and Ms. Stevens will have an opportunity to cross-examine any of his witnesses. Sub-paragraph "E" talks about rebuttal testimony that in the event something comes up in the presentation the Chief's Defense, that Ms. Stevens finding through any witnesses who would like to try to address an issue, she'll have the opportunity; and the Chief will have the same opportunity; after any rebuttal witnesses she might call. That's designed to give everybody one last shot to make any comments through witnesses or to get any additional information or evidence before you; depending on how the proceedings go and what kinds of issues come up. That way you have as comprehensive a record as possible. In sub-paragraph "F" it calls for closing arguments and that's when each of the attorneys can summarize their case and put together all the evidence that they have presented and how they think it should be interpreted. Sub-paragraph "G" simply specifies that no statements or testimony from the general public will be permitted. I thought it would be good to include that, because unlike other kinds of public hearing settings, it's not going to be an open forum where people can just come forward and make comments. Paragraph 5 just sets forth that all exhibits presented to the Town Council should be appropriately marked Town Exhibit "1" or Chief Exhibit "1". I put in there that the Hearing Officer shall date and initial each document or exhibit to authenticate it; sometimes in these kinds of hearings, documents start floating around and nobody knows if that document got in or not; this way all exhibits, as long as they're initialed by the Hearing Officer we know that is an official part of the record. Paragraph "6" talks about hearsay and I've already covered that. Paragraph "7" simply says that the Hearing Officer has the ability and the authority to take control over the proceedings and limit any testimony and questioning that is irrelevant, unduly repetitive or

provocative. Basically, if there becomes a heated discussion or the same question is asked six times in a row, that this gives a Hearing Officer the ability to simply say, okay can we move on, that same question has been asked and answered; something like that. It's just a mechanism to try to keep the proceedings moving forward. Number "8" – Deliberation and Decision – it just simply confirms that following the presentation from both sides, that the Town Council will deliberate in public about what it has heard that day and that it is anticipated that a decision will be made, unless there is some need to continue to the proceedings; and that just simply confirms that that is what is going to happen at the end. Then number "9" – Rules to be Liberally Construed to Promote Substantial Justice – I included this to just simply to say the exact order of the proceeding or some of the rules that in the event we're going through and we feel that something needs to be changed, or permitted, in order to make sure that substantial justice is done and that it results in as fair of a proceeding as possible; that that is within the Town Council's control. That's all.

C Hudson: Let's start with opening statements and I'll keep this very brief; the Town speaks first and then the Chief's attorney; then you get to closing statements and it goes Town's attorney and Chief's attorney and then Town again. We're talking about justice and fairness; I think in all fairness, that last sentence that Ms. Stevens should be permitted to make a rebuttal closing argument, should she so desire, should be deleted; because it doesn't follow the pattern; the pattern is Town, Chief, Town, Chief and then the Town gets a final shot. To be fair it should be Town, Chief, Town, and Chief.

Mary Schreider-Fox: Unless you're familiar with court proceedings and the order is fashioned on how it might be presented in court, even though you're not a court; borrowing from what other administrative proceedings have done; or other bodies have done in administrative proceedings; borrowing a little bit of the format from a trial-like proceeding that often-times the presenting party is given one last opportunity to make some comments to the body or to the judge; if you have anything to say in response to the closing remarks. That was simply borrowed from other places and the procedure that was used elsewhere, for us to consider.

C Hudson: I think it should be deleted. To keep it even and fair; everybody has equal opportunity and the way this is, it's not equal, when we are given more chances to speak, then the Chief's side.

C Prettyman: Excuse me, C Hudson, isn't that what the Hearing Officer would do if the other attorney wanted to say something, then wouldn't she give them that opportunity?

C Hudson: According to this, it says if Ms. Stevens so desired. So, it's not up to the Hearing Officer; you've right away given the Town's Attorney the opportunity to have one more opportunity to present than the other. I don't think it's fair.

Mary Schreider-Fox: May I make a suggestion? Either remove it altogether or provide for rebuttal to closing and make that available to both.

C Hudson: Make it available to both or remove it. Everyone should have an equal time. If one has two, the other should have two.

Vice Mayor Betts: I agree with C Hudson.

Mary Schreider-Fox: The Mayor just asked me is that how it's done in the Court system. I will tell you in Civil Cases and those are the case I'm involved in, 99% of the time, each side just makes a closing and that's it. I've had occasion and if you are the Plaintiff in the case, like in this case the presenting party; the Judge will give you one last opportunity as the Plaintiff's attorney to rebut to the closing; there was one situation that I observed where the Judge asked the Plaintiff's attorney if he wanted to make a rebuttal closing and then that attorney said something and the other attorney was given an opportunity. In criminal cases, I've been told that it's more common for the Judges to allow a rebuttal closing. I think it's all over the board. It's been done differently in trial settings, sometimes depending on the Judge that you get and how they like to run their courtroom. I don't think these comments that you're making are inappropriate and I will confess I thought about it when I was writing and I will go with what I thought was the majority, standard practice and see what everybody thinks. That's why it is on the agenda tonight so that you can actually look at it and decide what you want to do and make changes as necessary.

Mayor Post: I think Ms. Stevens should go last.

C Hudson: I think it should either be deleted or give the Chief's attorney a second shot, as well. It should be fair; they should each have an equal opportunity to speak. I would like to make a motion that this sentence "Ms. Stevens shall be permitted to make a rebuttal to closing arguments, should she so desire", be deleted from this document.

C Duby: Second.

Mayor Post: We have a motion and a second. All those in favor, say "aye". Opposed. Motion carried.

C Hudson: I make a motion that we accept this document, as written, with that deletion made.

C Duby: Second.

Mayor Post: We have a motion and a second. Any further discussion? All those in favor, say "aye". Opposed. Motion carried.

## 11. Adjournment

C Prettyman: I make a motion to adjourn.

C Duby: Second.

Mayor Post: We have a motion and a second. Is there any discussion? All in favor say "aye". Opposed. Motion to close at 7:57 pm.

**Milton Town Council Meeting**  
**Milton Theatre, 110 Union Street**  
**Monday, July 6, 2009**  
**7:00 p.m.**

1. **PUBLIC PARTICIPATION** portion was called to order by Mayor Post at 7:00 pm

- a. Katherine Grieg: 326 Union Street. Good evening. Once again I'm back to haunt you to talk about the Garden Club. In the absence of the President, Jennifer, the Garden Tour and Home Tour are this Saturday, July 11<sup>th</sup> from 9 to 3. We have 12 gardens; we have 2 houses, plus Abraxus Art Studio and if you have never been into Abraxus Studio, that is a very old, historic house and is interesting to see, in addition to the artwork; and Frankie Dittman's again orchid house. Frankie called me and left me a message this week, saying please come out and look, because in his kitchen, he's not cooking this week, he's set up this waterfall with rocks and everything, with his orchid plants around it. Tickets are \$12, ahead of time; they're available across the street at Antiques in Milton at Hillside Flowers and if you want to go out of town and buy them at Lewes Spring. We have lots of special events and this is the biggest fundraiser of the year, if you want to continue to see all the flowers and the planters, then please buy a ticket. Thanks.
- b. Jeff Daly: 211 Grist Mill in the Cannery Village Neighborhood. Recently we had some family owned property, a long standing family in the Milton area, had their property re-zoned from agricultural to heavy industrial use. I'm not going to go into that issue; it's been covered in the press quite extensively; I truly hope that the family finds the right business to occupy the parcel and that we have great jobs coming out of it and that it doesn't threaten, in any way, the quality of life in Milton. One thing I do want to share, I was at Planning & Zoning before they sent the work off to the County Council; I was at the County Council Meeting and not once was Milton mentioned by anyone on Planning & Zoning, or on the County Council; in terms of how that property would affect the Town of Milton; it was as though we did not exist. I know that in many, many states across our country, counties and municipalities area at odds with each one another; but I want us all to stop and think a minute. As you drive into Milton today, you drive through very bucolic areas; mostly farmland, in as few years as ten, maybe twenty; we are going to look like the towns that ride along 113. We're going to have sprawl crawl all around us, unless we come up with a plan; something to the affect "Don't 113 Milton". If you think of Georgetown and their downtown and you think of Milford and, of course, Millsboro and towns further south, along 113; their downtowns are devastated and their big stores and 113 looks like it fell off the back of a truck. Unfortunately, that could be our future; unless we take a stand. I've addressed all of the council members on my concerns and my sentiments and I hope that we can put something together; those who are involved in city planning, etc.

\*The Council minutes provided are a summation of the meeting to be used for informational purposes only. An official copy of the meeting can be obtained through Town Hall located at 115 Federal Street by filling out a FOIA Request and paying any cost associated with the request.

and our future. The other thing to think about is density of housing. We could just as well be ringed by sub-divisions with houses on half-acre lots; or we could ringed, perhaps, by smaller developments like Cannery Village or Heritage Creek, which are going to enjoy lots of free, open space. The other thing to note is that when the family here in Milton re-zoned, there are programs in other states, where the monies that this family will make from the re-zoning is apportioned to other landowners surrounding municipalities like Milton, that will not change their zoning. In other words they benefit from one party getting a heavy industrial re-zoning and making money on either the sale or the use of that land in such a fashion. Unfortunately, Sussex County is still doing business the way it was done 50, 75, 100 years ago. But if there are people in Milton, who want to challenge the thinking of Sussex County Council or put new members on the Council, and that would mean that we would have to go outside our jurisdiction and really fight hard to get people, especially to the western districts, over the coming years, to change. I'm going to be involved in this in some way, shape or form and if anybody wants to contact me, I'm pretty easy to find and I'm record 211 Grist Mill and my phone number is available, but if you think about it; 10 or 20 years and we could look like all those towns up and down 113 and we all thought that the sprawl crawl was going to come in from Rehoboth and it's coming from the west, actually, is one way to look at it. The other thing is, Milton is perfectly positioned to be a warehouse community to the resort folks and to the municipalities up and down 113 and just like Lakeland, Florida is right between Orlando and Tampa-St. Pete and if anybody knows Lakeland, it too, looks like it fell off the back of a truck. So we've got bucolic, lovely downtown; we've got a Main Street program going; and, boy it could all be for naught. Just that quickly. Thanks for hearing me out on this.

Mayor Post: I will now close the public participation portion of this meeting at 7:07 pm.

2. The Milton Town Council Meeting was called to order by Mayor Post at 7:07 pm.
3. A Moment of Silence was led by Vice Mayor Betts.
4. The Pledge of Allegiance to the Flag was said by all in attendance.
5. Roll Call was called by Mayor Post

C Martin-Brown	Present
C Duby	Present
C Hudson	Present
C Abraham	Present
C Betts	Present
Mayor Post	Present

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C Prettyman

Present

6. Additions or Corrections to the Agenda

Mayor Post: Are there any additions or corrections to the agenda?

C Duby: Yes, Mr. Mayor. Item 13 b, I placed that on the Agenda and the Process Review Committee has referred those proposed changes to our Legal Counsel for review and I would like to ask that that be removed tonight and that it be placed on the agenda for the August Town Council meeting.

Mayor Post: Can we have the approval of the agenda with the proposed changes?

C Hudson: I make a motion to approve the agenda with the changes proposed.

C Betts: Second.

Mayor Post: We have a motion and a second. Any further discussion? All in favor say "aye". Opposed. Motion carried.

7. Presentation and Approval of Minutes for May 4, 2009, May 21, 2009 and June 1, 2009.

C Prettyman: I make a motion that we accept the minutes of May 4, 2009, May 21, 2009 and June 1, 2009, as written.

C Duby: Second.

Mayor Post: We have a motion and a second, is there any discussion? All in favor say "aye". Opposed. Motion carried.

8. Approval of Written Committee Reports

C Prettyman: I make a motion to accept and approve the committee reports that have been submitted to us, as presented.

C Abraham: Second

Mayor Post: We have a motion and a second. Is there any discussion? All in favor say "aye". Opposed. Motion carried.

a. Town Manager's Report

George Dickerson: Good evening Mayor and Council. The first thing I would like for you to know is about the Milton Rails to Trails Phase I project. All the benches and the trash cans have been installed; if anyone's been down there; the paving and the seeding of the trail has been completed; the bases for the light poles have been installed and we are waiting for DP&L to hook up the electric so that can be completed. Anyone that has had an opportunity to go down there, I think that the project speaks for itself, when you see it; it is quite a beautiful project. Second item tonight is that PTA reassessment. Property Tax Associates are the ones conducting our reassessment and all of the exteriors of properties have been assessed. Phase II is in the process of being completed to obtain the property values, which involves putting numbers with the dimensions obtained. Once Phase II is complete, letters will go out to all property owners explaining their assessment and giving them an updated value of their property. If the property owner wishes to discuss their assessment value, PTA will schedule a hearing with the said property owner

who may have questions. The estimated timeframe for these hearings is some time in August. The next item coming up sooner than some of us would like to think is that our new budget year will be upon us 1 October. The town staff has met with all the department heads; there have been individual meetings with each of them and they have made suggestions or recommendations, as well as staff for the overall town. We are, in fact, meeting tomorrow and this is going to give us a first look at some of the numbers as to where we stand with an updated budget. I hope to have those to you as soon as possible for your review; but that's something we're working on and have been working on this year more intently, then any year in the past, as we have implemented the weekly budget meetings that we have with staff. The Code Enforcement Officers position was offered to an individual that has past code enforcement experience with the City of Dover, as well as law enforcement background. He comes highly recommended by his former employer. He will be starting on July 27<sup>th</sup>. His name is Joseph Huff. That's actually all I have, unless there are any questions.

C Hudson: You mentioned Rails to Trails. There was a Brownfield action taken, rather than just Cap and Cover; so that contamination could be removed. I was under the impression that the Brownfield action was going to continue right on down to Lavinia to take out the curb and the railroad tracks.

George Dickerson: You are absolutely correct. Phase I was what I was speaking to and that is only from Chestnut to Federal. The other, we have made a request to DNREC, the gentleman that spoke that night, I can't remember his name offhand; but we have made that request that the Brownfield go ahead and continue and remove the trails and clean-up any Brownfield materials that is all the way to Lavinia Street.

C Hudson: Would you report back to us at the next council meeting of your progress?

George Dickerson: If I have anything with regard to that, yes. He's very well aware but he's not given us any time line for that. We were approved up to \$1 million.

C Hudson: I'm sure the people of Wagamon's would rather have Rails to Trails behind their homes than a Brownfield.

George Dickerson: When you say would rather have Rails to Trails than a Brownfield, there's been no monies appropriated for Phase II, which would take it from Federal to the trestle bridge; Phase III is trestle bridge to Lavinia. There are no money appropriations, and as I think you heard that night, there may be none in the next fiscal year or any beyond that, with this economy. With the Brownfield, there is money that we were approved up to \$1 million for the clean-up; but not continuation of Phase II or III.

C Hudson: I understand that, but potentially or possibly in the future there could be Rails to Trails there; so what I'm hoping is that if you could get a response from DNREC for the removal of the rest of the contaminants.

George Dickerson: If it's available, yes.

C Hudson: The other question is about all the way through Lavinia. Shipbuilders, while I'm riding my bike out there, that pump is still there, the streets haven't been fixed, is there some timeframe.

George Dickerson: Yes, in fact that was supposed to be completed by June 30<sup>th</sup> and it has not been completed. The reason for that is there was a piece of the easement connecting from where the pond comes up to crossover, a piece that was forgotten; we are working with Mr. Turner, who owns Holly Lake and his attorney in Wilmington, Mr. Rago; in fact, I had a conversation with Mr. Turner today to expedite that.

C Hudson: The last question is about the sidewalks. We were supposed to send out a letter. Has that gone out to notify people that we were going to go ahead and pursue that?

George Dickerson: I would let Vice Mayor Betts, Chair of the Streets and Sidewalks Committee speak to that, but yes there is one; Vice Mayor Betts has had several meetings and we have a timeframe of executing a letter.

Vice Mayor Betts: That's right. Our Town Manager, George Dickerson has been very busy this week, and obviously Mayor Post has today and we hope to get that letter out next week. It's on schedule.

b. Written Reports  
Maintenance

C Prettyman: I make a motion we accept the June, 2009 written report from the Maintenance Department, as written.

C Duby: Second

Mayor Post: We have a motion and second; any discussion? All in favor say "aye". Opposed. Motion carried.

Project Coordinator/Code Enforcer

C Prettyman: I make a motion to accept the June, 2009 Project Coordinator/Code Enforcer report, as prepared.

Vice Mayor Betts: Second.

Mayor Post: We have a motion and second, is there any discussion? All in favor say "aye". Opposed. Motion carried.

Police Report

C Prettyman: I make a motion to accept the May 21<sup>st</sup> through June 20<sup>th</sup>, 2009, as submitted by the officer in charge.

C Abraham: Second.

Mayor Post: We have a motion and second; any discussion? All in favor say "aye". Opposed. Motion carried.

9. Old Business

a. Review and Possible Vote on the Conditions for the Key Ventures R-3 LPD Master Plan

Bob Kerr: With Cave Associates. Good evening, Mayor and Council. At a previous meeting in 2007, you approved the conditions for the LPD of Key Ventures. There were some blanks in it that Council directed that we complete with the town staff and the developer. We have done that, although we weren't directed to bring it back to you; we felt that it was appropriate because there were changes to a document you had approved; to bring it back to you so in the future everybody is on the same page with those changes. I asked Robin to give you a copy with some red printing on it that shows the changes and another document that just is without the corrections. It incorporates the corrections. They were relatively minor. If you like, I could go through them or you have them before you.

C Prettyman: I do have a question before I make a motion. With number 12 and number 16; they are both talking about open space walkways shall be adequately illuminated with \_\_\_\_ style light, but isn't 16 a repeat of 12?

Mayor Post: I think 16, and I might be wrong, Bob is open space walkways that could be in a park setting vs. on a street setting.

Bob Kerr: In going through it we noted that there was quite a bit of similarity, between the two, but rather than start making a lot of wholesale changes, we more or less left it the way it was. Yes, it's a little bit of department of redundancy department, but, we think it does cover it.

C Duby: In looking at number 12, when C Prettyman drew my attention to it, I noticed it says Connective Power Company; is there still a Connective Power Company, or isn't that Delmarva Power now?

Bob Kerr: Probably in 2007 there was, but it's now changed their name to Delmarva.

C Duby: Shouldn't we update that?

Bob Kerr: It probably would be appropriate to do that and whoever makes a motion to approve this would incorporate that, I will make the change to the document.

C Prettyman: I would like to make a motion to approve the Key Venture R-3 LPD master plan with the corrections in it and a notation made that Connective be changed to Delmarva Power.

C Duby: Second.

Mayor Post: We have a motion and a second. Any discussion to the motion? All in favor say "aye". Opposed. Motion carried.

b. Discussion and Possible Vote to Extend or Eliminate the Current Moratorium on the Demolitions with the Town of Milton. This Moratorium is Scheduled to Expire on July 31, 2009

Mayor Post: We have not had any comments come back from the Historic Preservation Committee. We did from Planning & Zoning.

Mary Schreider-Fox: I was just going to add my memory is that we had Planning & Zoning comments and nothing from Historic Preservation but that we had kept it opened for a little while to see if they would in fact submit some comments. I haven't conducted my review yet; so I would only have to do it once, after Historic Preservation sent their comments. To my

knowledge, I haven't seen anything from that committee yet. So I think where we are now is that a decision has to be made. If we continue to wait for the comments from the Historic Preservation before this body and I can conduct our review of what has been submitted so far.

C Prettyman: Is it possible, Mr. Dickerson, that you could contact the Chairperson of the Historic Preservation Committee, because you can't go forward.

C Martin-Brown: Mr. Mayor, I would like to make a motion that we table this until we do hear back from the Historic Preservation Committee. Demolition is a critical.

Robin Davis: Mr. Mayor and Council, when the Council first heard this they sent it Planning & Zoning and the Historic Preservation Commission for their review. It was on a Historic Preservation Commission agenda; that evening only 3 members showed up; so we did not have a quorum, so they could not vote or review this. Planning & Zoning went ahead and reviewed it. In your packets, last month, I think it was, you got a memo stating there was no quorum and there was not going to be any comments from Historic Preservation Commission. C Prettyman made a motion to table the decision until the Historic Preservation Commission could review it. I was not made aware of that, so I did not put it on the June agenda. We did not find out until just recently that the motion was made to table it. That's why the Historic Preservation Commission has not reviewed this yet. They were under the impression at the meeting when they had the quorum that they weren't going to get it back, because it was kind of brought to them, if you do have any comments, then come to the Town Council meeting and make comments. Their next meeting is July 14<sup>th</sup>. It can be put on next week's agenda.

C Martin-Brown: I would table it to the next meeting.

Robin Davis: As the Town Solicitor said, she has to take the comments too.

Mayor Post: The most we'll need is 60 days, but we should be able to get it finalized and back here to vote on in 60 days; because it's going to have to go from that meeting, then over to you for review.

Mary Schreider-Fox: Then back to you for review.

Robin Davis: It's according to how fast the Town Solicitor can do it.

Mayor Post: It will require public hearing too, because it will be changing to the zoning ordinances. Then we should table it for 60 days. We should extend the moratorium for 60 days.

Mary Schreider-Fox: I think the agenda item is whether or not the moratorium is scheduled to expire July 31<sup>st</sup>, so if you want to extend the moratorium while we're still conducting this review, that would be the action to take tonight.

Mayor Post: Right, but I don't want it to be another 6 months.

C Prettyman: Then we can make a motion to extend it 60 days.

C Martin-Brown: I've made a motion C Prettyman; it's hanging out there somewhere.

C Duby: The motion you made is to table the discussion.

C Martin-Brown: I would like to amend the motion that we extend the moratorium for 60 days effective from the meeting date tonight.

C Prettyman: Second.

Mayor Post: We have a motion and a second; any discussion. All in favor say “aye”. Opposed.

C Duby: No. I’ve said twice on the record that if we went to extend it one more time I would vote against it.

## 10. New Business

### a. Resolution in the Memory of the Late Senator Thurman Adams

Mayor Post: We have this resolution that I would like to read in honor of Senator Adams. As many of you know, we lost our Senator, who represented Milton and I would like to read this into the record as a Resolution on the death of Senator Thurman G. Adams, Jr. “The Mayor and Council of Town of Milton, Delaware, invite our citizens to join us in the remembrance of our long time supporter and friend, Senator Thurman G. Adams, Jr., President Pro Tempe who was claimed by pancreatic cancer on Tuesday, June 23, 2009. This was a death that truly surprised and saddened us all. Senator Adams represented our Town in the 19<sup>th</sup> Senatorial District since first elected in 1972. As a Mayor and a Miltonian, I am proud to be part of his representing district along with the towns of Bridgeville, Greenwood and Georgetown, as well as other areas. As Senator, he dedicated his life in serving those people represented in his district, as well as all Delawareans state-wide. His dedication greatly contributed to both the financial and spiritual support of our Town, County and State. Officials and others of the Town could always rely on him as a true man of his word and honor during his extensive number of years and public service. His strength was his belief and his belief was in the people of Delaware. As a Sussex Countian working on his family farm and grain business, T. G. Adams and Sons, Inc. and growing up in his hometown of Bridgeville, Delaware, Senator Adams was well aware of the struggles and needs of the small rural American town. His dedication and keen ability to guide should inspire those in leadership to recognize the importance in making decisions that improve our land, culture and society. As Mayor, Council and citizens of the Town of Milton we will miss him greatly and always remember his contributions towards building our town to what it is today. Senator Adams devotion and commitment can be seen throughout our town in many forms, within our sidewalks, streets, vintage lighting, Governor’s Walk, non-profit streetscapes and parks. His memory will always be part of Milton’s Sussex County and the State of Delaware. Senator Adams’ legacy will always remain with us as a part of our town. During this time I want our inner strengths, thoughts and prayers to be extended to the family.” As Mayor, I ask that this Resolution be included in the Minutes of the Town of Milton, at this Town Meeting held on July 6, 2009 and a copy provided to Senator Adams’ family.

Vice Mayor Betts: I make a motion to accept that Resolution to be sent to the family of Senator Adams.

C Prettyman: Second.

Mayor Post: We have a motion and a second. Any discussion? All in favor say "aye". Opposed. Motion carried.

b. Appointment of a Hearing Officer for the Public Hearing on July 10, 2009

Mary Schreider-Fox: As we all know, we're having a public hearing on this Friday; the Chief of Police Due Process that's required by Title XI, Section 9301. The Town Council will be the sitting body that is hearing the presentation, both by Tasha Stevens, who will be presenting the case for termination, as well as the Chief's Attorneys, Tom Neuberger and John LaRosa, presenting the Chief's Defense. What we need to have is a Hearing Officer in place; that person is not going to be a judge, necessarily; it's just going to be the person identified, who will keep control over the proceedings, and respond to the attorneys when they have questions. I will be sitting with the Town Council and with the Hearing Officer. The Employee Handbook for the Town, although we are not following that exactly, because we are going under this Title XI, Section 9031 for the Public Hearing; but the Town also can have hearings in an employment situation and contemplates that one of the members of the Personnel Committee will act as Hearing Officer for the Town Council Members hearing the employment matter. Therefore, it is my suggestion that from among the Town Council members who will be attending the hearing, we choose a Hearing Officer. I'll go ahead and say the person who came to mind for me, is C DUBY, because of her legal experience and previous career as an attorney, that that might be a natural fit for her in terms of helping to conduct the proceedings. That's what this agenda is for and those are my comments.

C Martin-Brown: Mr. Mayor, I would like to make a motion that C DUBY serve as the Hearing Officer because she is an attorney.

Mary Schreider-Fox: Vice Mayor Betts just asked if she can vote, then. Yes, she can vote; she'll still be a member of the body who deliberates and votes on the issues presented. She's just going to be the identified person who helps run the show a little bit and keeps control over the proceedings. At this point in time this public hearing was scheduled and is being put together fairly quickly, I don't know if we would be able to find an outside third party who would be available to do that on such short notice.

C Martin-Brown: Mr. Mayor, one of the motivations is to have somebody from the Personnel Committee and I am not correct that C DUBY is on the Personnel Committee?

Mayor Post: She is.

Mary Schreider-Fox: Again, I'll just say, I'm making that suggestion because keep some consistency with the standard employment procedures that the town has in place, anyway. If we can remain consistent with those, if and when possible, even though this is a somewhat unique situation, I thought that would be a good idea.

C DUBY: Let me just say that I am willing to do it, but to that point of fairness, I've already said to our Council, that the only circumstance under which I would be willing to do it, is if I can make it clear at the very beginning of the hearing what rules apply to this and what my role is; that I'm not sitting as a judge or an objective third party; that I'm presiding, that I'm doing so as a member of the Town Council and in that respect, I'm no different then any other member in terms of having a vote or viewing the evidence and reviewing the evidence. This is not like a trial in which you have a judge that is objective and sits apart.

C HUDSON: Is there any objection from Chief Phillips' attorney to having one of our people be the hearing officer?

MARY SCHREIDER-FOX: I have not consulted with him about this matter.

VICE MAYOR BETTS: I don't have a problem with C DUBY, but I would not want anyone to think it was being partial in any way by a Council person; I have no problem with her doing it; but I just want the public to know and to feel comfortable.

MARY SCHREIDER-FOX: Well, along those lines, I think it is important to remember that this public hearing, I don't want to diminish the importance of it, but it is like other public hearings that the Town Council may conduct from time to time; and the Town Council is allowed to conduct its own hearing; just like the role that the Mayor would play in a regular meeting; or the Chairperson of Planning & Zoning plays when they have a public hearing. Those persons still vote, still participate; but they are just simply the identified person to help manage and keep control over the proceedings and its in that same role; its just simply because we have a different kind of public hearing that we have to reidentify who's doing what and under the circumstances, since there are going to be attorneys presenting cases and it will have a little bit more of a formal feel, I thought that it might be a good idea to have the Town Council person assume that role, who has some legal background and can probably better handle some of the questions or comments that may arise from the attorneys that are participating in the proceeding.

C DUBY: Mary, can I ask one question. I have been assuming and I hope this is true, because it puts a different light on it for me, if it isn't; that there is no ruling on objections or anything like that by the hearing officer.

MARY SCHREIDER-FOX: There have been very few of these kinds of public hearings under the Chief's Due Process Statute, to my knowledge in the State of Delaware; so I can only anticipate what I think might happen. I anticipate that the attorneys may raise objections from time to time, in which case, the only kinds of objection I anticipate being raised very often would be evidentiary ones and since this is an administrative proceeding, hearsay is admissible and I know one of my partners previously participated in a public hearing of this type, many years ago, or several years ago, I should say, and the hearing officer in that situation, simply responded to any of those objections by saying, this is an administrative proceeding; hearsay is admissible; that will go to wait; please move on. Again, it was just more of a

role of controlling the situation and keeping the proceedings moving forward; as opposed to really making evidentiary rulings.

C Hudson: Second.

Mayor Post: We have a motion and a second. Any further discussion? All in favor say "aye". Opposed.

C Duby: Abstain.

Mayor Post: Motion carried.

c. Consideration and Possible Acceptance of Proposed Rules of Procedures for Public Hearing on July 10, 2009

Mary Schreider-Fox: All of you should have a copy of some proposed public hearing rules for the hearing this Friday and because this doesn't happen very often, we had to be creative and create our own. I modeled these after other times of other administrative tribunals that will have public hearings; such as a Board of Adjustment or a Planning & Zoning, so it really just sets forth that there is a Hearing Officer; that the witnesses will be under oath; how the order of the day will go; such as opening remarks from each side; they can present witnesses; a record of the proceedings, that there will be a record of the proceedings and I have made arrangements for a court reporter to be present on Friday, so it is an official court reporter and she will transcribe everything that occurs and it is my understanding that the Town's regular recording equipment will also be operating and set-up that day so we will have a double duty in terms of making the record. I have already mentioned this briefly; in administrative proceeding, because this isn't in front of a judge; this isn't in front of a jury; it's not in court; what that means is that the rules for the public hearing; again, that I have borrowed from other situations and just rewritten a little bit to fit our particular public hearing; you don't have to strictly follow the rules of evidence. Part of that is an acknowledgement that a typical Town Council or a Board of Adjustment or something like that isn't comprised of judges, and that is one of the rules in these proposed rules; talking about the hearsay that's number 6 – it shall not be prohibited – and that is very standard in this kind of a setting. This just gives everybody a little bit of a blueprint to follow, including the Chief's attorneys, as well as Tasha Stevens, who will be presenting the case for termination so that everybody knows what to expect and it just goes to helping to keep some order and control over the proceeding.

C Hudson: Can you tell me what firm Tasha Marie Stevens works for?

Mary Schreider-Fox: Ms. Stevens works with Fuque and Yurie and she has a good background in litigation, civil and criminal defense work; she came highly recommended by some colleagues of mine and I've worked with Ms. Stevens before; so she's in the process of preparing for the case and will be ready to present on Friday.

C Hudson: I was just curious as to why someone from your firm was not representing us.

Mary Schreider-Fox: The reason why is, number one, my two partners were unavailable because of their workload; and then this way I can sit with the

Town Council and keep those two roles separate. Do you need me to go over each one?

Mayor Post: I would quickly, if you would.

Mary Schreider-Fox: Okay. In number "4", we talked about this; it sets for the order of proceeding; some introduction or opening remarks by the Hearing Officer and it is at that time that C Duby that you can make your comments about what your role will be and make that clear for all involved; opening statements, that is when Ms. Stevens and Mr. Neuberger or Mr. LaRosa, whichever one it will be, can make a brief opening statement, setting forth the nature of the case they intend to present. Then to follow that and "C" will be the presentation of case for termination and that will be made by Ms. Stevens; flying through witnesses and other exhibits that she will offer to the Town Council on the day of the hearing. So as you can see, it has a little bit of a feel like a trial setting, but it's not exactly, because of the way that it is set out. They can make opening remarks, present the case; the Chief's attorneys will have an opportunity to cross-examine any witnesses that Ms. Stevens calls; and that leads us to "D"; then Chief Phillips, by and through his attorneys, will be able to present their case and defense as to why termination is not warranted. They will call witnesses, present exhibits and Ms. Stevens will have an opportunity to cross-examine any of his witnesses. Sub-paragraph "E" talks about rebuttal testimony that in the event something comes up in the presentation the Chief's Defense, that Ms. Stevens finding through any witnesses who would like to try to address an issue, she'll have the opportunity; and the Chief will have the same opportunity; after any rebuttal witnesses she might call. That's designed to give everybody one last shot to make any comments through witnesses or to get any additional information or evidence before you; depending on how the proceedings go and what kinds of issues come up. That way you have as comprehensive a record as possible. In sub-paragraph "F" it calls for closing arguments and that's when each of the attorneys can summarize their case and put together all the evidence that they have presented and how they think it should be interpreted. Sub-paragraph "G" simply specifies that no statements or testimony from the general public will be permitted. I thought it would be good to include that, because unlike other kinds of public hearing settings, it's not going to be an open forum where people can just come forward and make comments. Paragraph 5 just sets forth that all exhibits presented to the Town Council should be appropriately marked Town Exhibit "1" or Chief Exhibit "1". I put in there that the Hearing Officer shall date and initial each document or exhibit to authenticate it; sometimes in these kinds of hearings, documents start floating around and nobody knows if that document got in or not; this way all exhibits, as long as they're initialed by the Hearing Officer we know that is an official part of the record. Paragraph "6" talks about hearsay and I've already covered that. Paragraph "7" simply says that the Hearing Officer has the ability and the authority to take control over the proceedings and limit any testimony and questioning that is irrelevant, unduly repetitive or

provocative. Basically, if there becomes a heated discussion or the same question is asked six times in a row, that this gives a Hearing Officer the ability to simply say, okay can we move on, that same question has been asked and answered; something like that. It's just a mechanism to try to keep the proceedings moving forward. Number "8" – Deliberation and Decision – it just simply confirms that following the presentation from both sides, that the Town Council will deliberate in public about what it has heard that day and that it is anticipated that a decision will be made, unless there is some need to continue to the proceedings; and that just simply confirms that that is what is going to happen at the end. Then number "9" – Rules to be Liberally Construed to Promote Substantial Justice – I included this to just simply to say the exact order of the proceeding or some of the rules that in the event we're going through and we feel that something needs to be changed, or permitted, in order to make sure that substantial justice is done and that it results in as fair of a proceeding as possible; that that is within the Town Council's control. That's all.

C Hudson: Let's start with opening statements and I'll keep this very brief; the Town speaks first and then the Chief's attorney; then you get to closing statements and it goes Town's attorney and Chief's attorney and then Town again. We're talking about justice and fairness; I think in all fairness, that last sentence that Ms. Stevens should be permitted to make a rebuttal closing argument, should she so desire, should be deleted; because it doesn't follow the pattern; the pattern is Town, Chief, Town, Chief and then the Town gets a final shot. To be fair it should be Town, Chief, Town, and Chief.

Mary Schreider-Fox: Unless you're familiar with court proceedings and the order is fashioned on how it might be presented in court, even though you're not a court; borrowing from what other administrative proceedings have done; or other bodies have done in administrative proceedings; borrowing a little bit of the format from a trial-like proceeding that often-times the presenting party is given one last opportunity to make some comments to the body or to the judge; if you have anything to say in response to the closing remarks. That was simply borrowed from other places and the procedure that was used elsewhere, for us to consider.

C Hudson: I think it should be deleted. To keep it even and fair; everybody has equal opportunity and the way this is, it's not equal, when we are given more chances to speak, then the Chief's side.

C Prettyman: Excuse me, C Hudson, isn't that what the Hearing Officer would do if the other attorney wanted to say something, then wouldn't she give them that opportunity?

C Hudson: According to this, it says if Ms. Stevens so desired. So, it's not up to the Hearing Officer; you've right away given the Town's Attorney the opportunity to have one more opportunity to present than the other. I don't think it's fair.

Mary Schreider-Fox: May I make a suggestion? Either remove it altogether or provide for rebuttal to closing and make that available to both.

C Hudson: Make it available to both or remove it. Everyone should have an equal time. If one has two, the other should have two.

Vice Mayor Betts: I agree with C Hudson.

Mary Schreider-Fox: The Mayor just asked me is that how it's done in the Court system. I will tell you in Civil Cases and those are the case I'm involved in, 99% of the time, each side just makes a closing and that's it. I've had occasion and if you are the Plaintiff in the case, like in this case the presenting party; the Judge will give you one last opportunity as the Plaintiff's attorney to rebut to the closing; there was one situation that I observed where the Judge asked the Plaintiff's attorney if he wanted to make a rebuttal closing and then that attorney said something and the other attorney was given an opportunity. In criminal cases, I've been told that it's more common for the Judges to allow a rebuttal closing. I think it's all over the board. It's been done differently in trial settings, sometimes depending on the Judge that you get and how they like to run their courtroom. I don't think these comments that you're making are inappropriate and I will confess I thought about it when I was writing and I will go with what I thought was the majority, standard practice and see what everybody thinks. That's why it is on the agenda tonight so that you can actually look at it and decide what you want to do and make changes as necessary.

Mayor Post: I think Ms. Stevens should go last.

C Hudson: I think it should either be deleted or give the Chief's attorney a second shot, as well. It should be fair; they should each have an equal opportunity to speak. I would like to make a motion that this sentence "Ms. Stevens shall be permitted to make a rebuttal to closing arguments, should she so desire", be deleted from this document.

C Duby: Second.

Mayor Post: We have a motion and a second. All those in favor, say "aye". Opposed. Motion carried.

C Hudson: I make a motion that we accept this document, as written, with that deletion made.

C Duby: Second.

Mayor Post: We have a motion and a second. Any further discussion? All those in favor, say "aye". Opposed. Motion carried.

## 11. Adjournment

C Prettyman: I make a motion to adjourn.

C Duby: Second.

Mayor Post: We have a motion and a second. Is there any discussion? All in favor say "aye". Opposed. Motion to close at 7:57 pm.

**Milton Town Council Meeting**  
**Milton Theatre, 110 Union Street**  
**Monday, July 6, 2009**  
**7:00 p.m.**

1. **PUBLIC PARTICIPATION** portion was called to order by Mayor Post at 7:00 pm

- a. Katherine Grieg: 326 Union Street. Good evening. Once again I'm back to haunt you to talk about the Garden Club. In the absence of the President, Jennifer, the Garden Tour and Home Tour are this Saturday, July 11<sup>th</sup> from 9 to 3. We have 12 gardens; we have 2 houses, plus Abraxus Art Studio and if you have never been into Abraxus Studio, that is a very old, historic house and is interesting to see, in addition to the artwork; and Frankie Dittman's again orchid house. Frankie called me and left me a message this week, saying please come out and look, because in his kitchen, he's not cooking this week, he's set up this waterfall with rocks and everything, with his orchid plants around it. Tickets are \$12, ahead of time; they're available across the street at Antiques in Milton at Hillside Flowers and if you want to go out of town and buy them at Lewes Spring. We have lots of special events and this is the biggest fundraiser of the year, if you want to continue to see all the flowers and the planters, then please buy a ticket. Thanks.
- b. Jeff Daly: 211 Grist Mill in the Cannery Village Neighborhood. Recently we had some family owned property, a long standing family in the Milton area, had their property re-zoned from agricultural to heavy industrial use. I'm not going to go into that issue; it's been covered in the press quite extensively; I truly hope that the family finds the right business to occupy the parcel and that we have great jobs coming out of it and that it doesn't threaten, in any way, the quality of life in Milton. One thing I do want to share, I was at Planning & Zoning before they sent the work off to the County Council; I was at the County Council Meeting and not once was Milton mentioned by anyone on Planning & Zoning, or on the County Council; in terms of how that property would affect the Town of Milton; it was as though we did not exist. I know that in many, many states across our country, counties and municipalities area at odds with each one another; but I want us all to stop and think a minute. As you drive into Milton today, you drive through very bucolic areas; mostly farmland, in as few years as ten, maybe twenty; we are going to look like the towns that ride along 113. We're going to have sprawl crawl all around us, unless we come up with a plan; something to the affect "Don't 113 Milton". If you think of Georgetown and their downtown and you think of Milford and, of course, Millsboro and towns further south, along 113; their downtowns are devastated and their big stores and 113 looks like it fell off the back of a truck. Unfortunately, that could be our future; unless we take a stand. I've addressed all of the council members on my concerns and my sentiments and I hope that we can put something together; those who are involved in city planning, etc.

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and our future. The other thing to think about is density of housing. We could just as well be ringed by sub-divisions with houses on half-acre lots; or we could ringed, perhaps, by smaller developments like Cannery Village or Heritage Creek, which are going to enjoy lots of free, open space. The other thing to note is that when the family here in Milton re-zoned, there are programs in other states, where the monies that this family will make from the re-zoning is apportioned to other landowners surrounding municipalities like Milton, that will not change their zoning. In other words they benefit from one party getting a heavy industrial re-zoning and making money on either the sale or the use of that land in such a fashion. Unfortunately, Sussex County is still doing business the way it was done 50, 75, 100 years ago. But if there are people in Milton, who want to challenge the thinking of Sussex County Council or put new members on the Council, and that would mean that we would have to go outside our jurisdiction and really fight hard to get people, especially to the western districts, over the coming years, to change. I'm going to be involved in this in some way, shape or form and if anybody wants to contact me, I'm pretty easy to find and I'm record 211 Grist Mill and my phone number is available, but if you think about it; 10 or 20 years and we could look like all those towns up and down 113 and we all thought that the sprawl crawl was going to come in from Rehoboth and it's coming from the west, actually, is one way to look at it. The other thing is, Milton is perfectly positioned to be a warehouse community to the resort folks and to the municipalities up and down 113 and just like Lakeland, Florida is right between Orlando and Tampa-St. Pete and if anybody knows Lakeland, it too, looks like it fell off the back of a truck. So we've got bucolic, lovely downtown; we've got a Main Street program going; and, boy it could all be for naught. Just that quickly. Thanks for hearing me out on this.

Mayor Post: I will now close the public participation portion of this meeting at 7:07 pm.

2. The Milton Town Council Meeting was called to order by Mayor Post at 7:07 pm.
3. A Moment of Silence was led by Vice Mayor Betts.
4. The Pledge of Allegiance to the Flag was said by all in attendance.
5. Roll Call was called by Mayor Post

C Martin-Brown	Present
C Duby	Present
C Hudson	Present
C Abraham	Present
C Betts	Present
Mayor Post	Present

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C Prettyman

Present

6. Additions or Corrections to the Agenda

Mayor Post: Are there any additions or corrections to the agenda?

C Duby: Yes, Mr. Mayor. Item 13 b, I placed that on the Agenda and the Process Review Committee has referred those proposed changes to our Legal Counsel for review and I would like to ask that that be removed tonight and that it be placed on the agenda for the August Town Council meeting.

Mayor Post: Can we have the approval of the agenda with the proposed changes?

C Hudson: I make a motion to approve the agenda with the changes proposed.

C Betts: Second.

Mayor Post: We have a motion and a second. Any further discussion? All in favor say "aye". Opposed. Motion carried.

7. Presentation and Approval of Minutes for May 4, 2009, May 21, 2009 and June 1, 2009.

C Prettyman: I make a motion that we accept the minutes of May 4, 2009, May 21, 2009 and June 1, 2009, as written.

C Duby: Second.

Mayor Post: We have a motion and a second, is there any discussion? All in favor say "aye". Opposed. Motion carried.

8. Approval of Written Committee Reports

C Prettyman: I make a motion to accept and approve the committee reports that have been submitted to us, as presented.

C Abraham: Second

Mayor Post: We have a motion and a second. Is there any discussion? All in favor say "aye". Opposed. Motion carried.

a. Town Manager's Report

George Dickerson: Good evening Mayor and Council. The first thing I would like for you to know is about the Milton Rails to Trails Phase I project. All the benches and the trash cans have been installed; if anyone's been down there; the paving and the seeding of the trail has been completed; the bases for the light poles have been installed and we are waiting for DP&L to hook up the electric so that can be completed. Anyone that has had an opportunity to go down there, I think that the project speaks for itself, when you see it; it is quite a beautiful project. Second item tonight is that PTA reassessment. Property Tax Associates are the ones conducting our reassessment and all of the exteriors of properties have been assessed. Phase II is in the process of being completed to obtain the property values, which involves putting numbers with the dimensions obtained. Once Phase II is complete, letters will go out to all property owners explaining their assessment and giving them an updated value of their property. If the property owner wishes to discuss their assessment value, PTA will schedule a hearing with the said property owner

who may have questions. The estimated timeframe for these hearings is some time in August. The next item coming up sooner than some of us would like to think is that our new budget year will be upon us 1 October. The town staff has met with all the department heads; there have been individual meetings with each of them and they have made suggestions or recommendations, as well as staff for the overall town. We are, in fact, meeting tomorrow and this is going to give us a first look at some of the numbers as to where we stand with an updated budget. I hope to have those to you as soon as possible for your review; but that's something we're working on and have been working on this year more intently, then any year in the past, as we have implemented the weekly budget meetings that we have with staff. The Code Enforcement Officers position was offered to an individual that has past code enforcement experience with the City of Dover, as well as law enforcement background. He comes highly recommended by his former employer. He will be starting on July 27<sup>th</sup>. His name is Joseph Huff. That's actually all I have, unless there are any questions.

C Hudson: You mentioned Rails to Trails. There was a Brownfield action taken, rather than just Cap and Cover; so that contamination could be removed. I was under the impression that the Brownfield action was going to continue right on down to Lavinia to take out the curb and the railroad tracks.

George Dickerson: You are absolutely correct. Phase I was what I was speaking to and that is only from Chestnut to Federal. The other, we have made a request to DNREC, the gentleman that spoke that night, I can't remember his name offhand; but we have made that request that the Brownfield go ahead and continue and remove the trails and clean-up any Brownfield materials that is all the way to Lavinia Street.

C Hudson: Would you report back to us at the next council meeting of your progress?

George Dickerson: If I have anything with regard to that, yes. He's very well aware but he's not given us any time line for that. We were approved up to \$1 million.

C Hudson: I'm sure the people of Wagamon's would rather have Rails to Trails behind their homes than a Brownfield.

George Dickerson: When you say would rather have Rails to Trails than a Brownfield, there's been no monies appropriated for Phase II, which would take it from Federal to the trestle bridge; Phase III is trestle bridge to Lavinia. There are no money appropriations, and as I think you heard that night, there may be none in the next fiscal year or any beyond that, with this economy. With the Brownfield, there is money that we were approved up to \$1 million for the clean-up; but not continuation of Phase II or III.

C Hudson: I understand that, but potentially or possibly in the future there could be Rails to Trails there; so what I'm hoping is that if you could get a response from DNREC for the removal of the rest of the contaminants.

George Dickerson: If it's available, yes.

C Hudson: The other question is about all the way through Lavinia. Shipbuilders, while I'm riding my bike out there, that pump is still there, the streets haven't been fixed, is there some timeframe.

George Dickerson: Yes, in fact that was supposed to be completed by June 30<sup>th</sup> and it has not been completed. The reason for that is there was a piece of the easement connecting from where the pond comes up to crossover, a piece that was forgotten; we are working with Mr. Turner, who owns Holly Lake and his attorney in Wilmington, Mr. Rago; in fact, I had a conversation with Mr. Turner today to expedite that.

C Hudson: The last question is about the sidewalks. We were supposed to send out a letter. Has that gone out to notify people that we were going to go ahead and pursue that?

George Dickerson: I would let Vice Mayor Betts, Chair of the Streets and Sidewalks Committee speak to that, but yes there is one; Vice Mayor Betts has had several meetings and we have a timeframe of executing a letter.

Vice Mayor Betts: That's right. Our Town Manager, George Dickerson has been very busy this week, and obviously Mayor Post has today and we hope to get that letter out next week. It's on schedule.

b. Written Reports  
Maintenance

C Prettyman: I make a motion we accept the June, 2009 written report from the Maintenance Department, as written.

C Duby: Second

Mayor Post: We have a motion and second; any discussion? All in favor say "aye". Opposed. Motion carried.

Project Coordinator/Code Enforcer

C Prettyman: I make a motion to accept the June, 2009 Project Coordinator/Code Enforcer report, as prepared.

Vice Mayor Betts: Second.

Mayor Post: We have a motion and second, is there any discussion? All in favor say "aye". Opposed. Motion carried.

Police Report

C Prettyman: I make a motion to accept the May 21<sup>st</sup> through June 20<sup>th</sup>, 2009, as submitted by the officer in charge.

C Abraham: Second.

Mayor Post: We have a motion and second; any discussion? All in favor say "aye". Opposed. Motion carried.

9. Old Business

a. Review and Possible Vote on the Conditions for the Key Ventures R-3 LPD Master Plan

Bob Kerr: With Cave Associates. Good evening, Mayor and Council. At a previous meeting in 2007, you approved the conditions for the LPD of Key Ventures. There were some blanks in it that Council directed that we complete with the town staff and the developer. We have done that, although we weren't directed to bring it back to you; we felt that it was appropriate because there were changes to a document you had approved; to bring it back to you so in the future everybody is on the same page with those changes. I asked Robin to give you a copy with some red printing on it that shows the changes and another document that just is without the corrections. It incorporates the corrections. They were relatively minor. If you like, I could go through them or you have them before you.

C Prettyman: I do have a question before I make a motion. With number 12 and number 16; they are both talking about open space walkways shall be adequately illuminated with \_\_\_\_ style light, but isn't 16 a repeat of 12?

Mayor Post: I think 16, and I might be wrong, Bob is open space walkways that could be in a park setting vs. on a street setting.

Bob Kerr: In going through it we noted that there was quite a bit of similarity, between the two, but rather than start making a lot of wholesale changes, we more or less left it the way it was. Yes, it's a little bit of department of redundancy department, but, we think it does cover it.

C Duby: In looking at number 12, when C Prettyman drew my attention to it, I noticed it says Connective Power Company; is there still a Connective Power Company, or isn't that Delmarva Power now?

Bob Kerr: Probably in 2007 there was, but it's now changed their name to Delmarva.

C Duby: Shouldn't we update that?

Bob Kerr: It probably would be appropriate to do that and whoever makes a motion to approve this would incorporate that, I will make the change to the document.

C Prettyman: I would like to make a motion to approve the Key Venture R-3 LPD master plan with the corrections in it and a notation made that Connective be changed to Delmarva Power.

C Duby: Second.

Mayor Post: We have a motion and a second. Any discussion to the motion? All in favor say "aye". Opposed. Motion carried.

b. Discussion and Possible Vote to Extend or Eliminate the Current Moratorium on the Demolitions with the Town of Milton. This Moratorium is Scheduled to Expire on July 31, 2009

Mayor Post: We have not had any comments come back from the Historic Preservation Committee. We did from Planning & Zoning.

Mary Schreider-Fox: I was just going to add my memory is that we had Planning & Zoning comments and nothing from Historic Preservation but that we had kept it opened for a little while to see if they would in fact submit some comments. I haven't conducted my review yet; so I would only have to do it once, after Historic Preservation sent their comments. To my

knowledge, I haven't seen anything from that committee yet. So I think where we are now is that a decision has to be made. If we continue to wait for the comments from the Historic Preservation before this body and I can conduct our review of what has been submitted so far.

C Prettyman: Is it possible, Mr. Dickerson, that you could contact the Chairperson of the Historic Preservation Committee, because you can't go forward.

C Martin-Brown: Mr. Mayor, I would like to make a motion that we table this until we do hear back from the Historic Preservation Committee. Demolition is a critical.

Robin Davis: Mr. Mayor and Council, when the Council first heard this they sent it Planning & Zoning and the Historic Preservation Commission for their review. It was on a Historic Preservation Commission agenda; that evening only 3 members showed up; so we did not have a quorum, so they could not vote or review this. Planning & Zoning went ahead and reviewed it. In your packets, last month, I think it was, you got a memo stating there was no quorum and there was not going to be any comments from Historic Preservation Commission. C Prettyman made a motion to table the decision until the Historic Preservation Commission could review it. I was not made aware of that, so I did not put it on the June agenda. We did not find out until just recently that the motion was made to table it. That's why the Historic Preservation Commission has not reviewed this yet. They were under the impression at the meeting when they had the quorum that they weren't going to get it back, because it was kind of brought to them, if you do have any comments, then come to the Town Council meeting and make comments. Their next meeting is July 14<sup>th</sup>. It can be put on next week's agenda.

C Martin-Brown: I would table it to the next meeting.

Robin Davis: As the Town Solicitor said, she has to take the comments too.

Mayor Post: The most we'll need is 60 days, but we should be able to get it finalized and back here to vote on in 60 days; because it's going to have to go from that meeting, then over to you for review.

Mary Schreider-Fox: Then back to you for review.

Robin Davis: It's according to how fast the Town Solicitor can do it.

Mayor Post: It will require public hearing too, because it will be changing to the zoning ordinances. Then we should table it for 60 days. We should extend the moratorium for 60 days.

Mary Schreider-Fox: I think the agenda item is whether or not the moratorium is scheduled to expire July 31<sup>st</sup>, so if you want to extend the moratorium while we're still conducting this review, that would be the action to take tonight.

Mayor Post: Right, but I don't want it to be another 6 months.

C Prettyman: Then we can make a motion to extend it 60 days.

C Martin-Brown: I've made a motion C Prettyman; it's hanging out there somewhere.

C Duby: The motion you made is to table the discussion.

C Martin-Brown: I would like to amend the motion that we extend the moratorium for 60 days effective from the meeting date tonight.

C Prettyman: Second.

Mayor Post: We have a motion and a second; any discussion. All in favor say “aye”. Opposed.

C Duby: No. I’ve said twice on the record that if we went to extend it one more time I would vote against it.

## 10. New Business

### a. Resolution in the Memory of the Late Senator Thurman Adams

Mayor Post: We have this resolution that I would like to read in honor of Senator Adams. As many of you know, we lost our Senator, who represented Milton and I would like to read this into the record as a Resolution on the death of Senator Thurman G. Adams, Jr. “The Mayor and Council of Town of Milton, Delaware, invite our citizens to join us in the remembrance of our long time supporter and friend, Senator Thurman G. Adams, Jr., President Pro Tempe who was claimed by pancreatic cancer on Tuesday, June 23, 2009. This was a death that truly surprised and saddened us all. Senator Adams represented our Town in the 19<sup>th</sup> Senatorial District since first elected in 1972. As a Mayor and a Miltonian, I am proud to be part of his representing district along with the towns of Bridgeville, Greenwood and Georgetown, as well as other areas. As Senator, he dedicated his life in serving those people represented in his district, as well as all Delawareans state-wide. His dedication greatly contributed to both the financial and spiritual support of our Town, County and State. Officials and others of the Town could always rely on him as a true man of his word and honor during his extensive number of years and public service. His strength was his belief and his belief was in the people of Delaware. As a Sussex Countian working on his family farm and grain business, T. G. Adams and Sons, Inc. and growing up in his hometown of Bridgeville, Delaware, Senator Adams was well aware of the struggles and needs of the small rural American town. His dedication and keen ability to guide should inspire those in leadership to recognize the importance in making decisions that improve our land, culture and society. As Mayor, Council and citizens of the Town of Milton we will miss him greatly and always remember his contributions towards building our town to what it is today. Senator Adams devotion and commitment can be seen throughout our town in many forms, within our sidewalks, streets, vintage lighting, Governor’s Walk, non-profit streetscapes and parks. His memory will always be part of Milton’s Sussex County and the State of Delaware. Senator Adams’ legacy will always remain with us as a part of our town. During this time I want our inner strengths, thoughts and prayers to be extended to the family.” As Mayor, I ask that this Resolution be included in the Minutes of the Town of Milton, at this Town Meeting held on July 6, 2009 and a copy provided to Senator Adams’ family.

Vice Mayor Betts: I make a motion to accept that Resolution to be sent to the family of Senator Adams.

C Prettyman: Second.

Mayor Post: We have a motion and a second. Any discussion? All in favor say "aye". Opposed. Motion carried.

b. Appointment of a Hearing Officer for the Public Hearing on July 10, 2009

Mary Schreider-Fox: As we all know, we're having a public hearing on this Friday; the Chief of Police Due Process that's required by Title XI, Section 9301. The Town Council will be the sitting body that is hearing the presentation, both by Tasha Stevens, who will be presenting the case for termination, as well as the Chief's Attorneys, Tom Neuberger and John LaRosa, presenting the Chief's Defense. What we need to have is a Hearing Officer in place; that person is not going to be a judge, necessarily; it's just going to be the person identified, who will keep control over the proceedings, and respond to the attorneys when they have questions. I will be sitting with the Town Council and with the Hearing Officer. The Employee Handbook for the Town, although we are not following that exactly, because we are going under this Title XI, Section 9031 for the Public Hearing; but the Town also can have hearings in an employment situation and contemplates that one of the members of the Personnel Committee will act as Hearing Officer for the Town Council Members hearing the employment matter. Therefore, it is my suggestion that from among the Town Council members who will be attending the hearing, we choose a Hearing Officer. I'll go ahead and say the person who came to mind for me, is C DUBY, because of her legal experience and previous career as an attorney, that that might be a natural fit for her in terms of helping to conduct the proceedings. That's what this agenda is for and those are my comments.

C Martin-Brown: Mr. Mayor, I would like to make a motion that C DUBY serve as the Hearing Officer because she is an attorney.

Mary Schreider-Fox: Vice Mayor Betts just asked if she can vote, then. Yes, she can vote; she'll still be a member of the body who deliberates and votes on the issues presented. She's just going to be the identified person who helps run the show a little bit and keeps control over the proceedings. At this point in time this public hearing was scheduled and is being put together fairly quickly, I don't know if we would be able to find an outside third party who would be available to do that on such short notice.

C Martin-Brown: Mr. Mayor, one of the motivations is to have somebody from the Personnel Committee and I am not correct that C DUBY is on the Personnel Committee?

Mayor Post: She is.

Mary Schreider-Fox: Again, I'll just say, I'm making that suggestion because keep some consistency with the standard employment procedures that the town has in place, anyway. If we can remain consistent with those, if and when possible, even though this is a somewhat unique situation, I thought that would be a good idea.

C DUBY: Let me just say that I am willing to do it, but to that point of fairness, I've already said to our Council, that the only circumstance under which I would be willing to do it, is if I can make it clear at the very beginning of the hearing what rules apply to this and what my role is; that I'm not sitting as a judge or an objective third party; that I'm presiding, that I'm doing so as a member of the Town Council and in that respect, I'm no different then any other member in terms of having a vote or viewing the evidence and reviewing the evidence. This is not like a trial in which you have a judge that is objective and sits apart.

C HUDSON: Is there any objection from Chief Phillips' attorney to having one of our people be the hearing officer?

MARY SCHREIDER-FOX: I have not consulted with him about this matter.

VICE MAYOR BETTS: I don't have a problem with C DUBY, but I would not want anyone to think it was being partial in any way by a Council person; I have no problem with her doing it; but I just want the public to know and to feel comfortable.

MARY SCHREIDER-FOX: Well, along those lines, I think it is important to remember that this public hearing, I don't want to diminish the importance of it, but it is like other public hearings that the Town Council may conduct from time to time; and the Town Council is allowed to conduct its own hearing; just like the role that the Mayor would play in a regular meeting; or the Chairperson of Planning & Zoning plays when they have a public hearing. Those persons still vote, still participate; but they are just simply the identified person to help manage and keep control over the proceedings and its in that same role; its just simply because we have a different kind of public hearing that we have to reidentify who's doing what and under the circumstances, since there are going to be attorneys presenting cases and it will have a little bit more of a formal feel, I thought that it might be a good idea to have the Town Council person assume that role, who has some legal background and can probably better handle some of the questions or comments that may arise from the attorneys that are participating in the proceeding.

C DUBY: Mary, can I ask one question. I have been assuming and I hope this is true, because it puts a different light on it for me, if it isn't; that there is no ruling on objections or anything like that by the hearing officer.

MARY SCHREIDER-FOX: There have been very few of these kinds of public hearings under the Chief's Due Process Statute, to my knowledge in the State of Delaware; so I can only anticipate what I think might happen. I anticipate that the attorneys may raise objections from time to time, in which case, the only kinds of objection I anticipate being raised very often would be evidentiary ones and since this is an administrative proceeding, hearsay is admissible and I know one of my partners previously participated in a public hearing of this type, many years ago, or several years ago, I should say, and the hearing officer in that situation, simply responded to any of those objections by saying, this is an administrative proceeding; hearsay is admissible; that will go to wait; please move on. Again, it was just more of a

role of controlling the situation and keeping the proceedings moving forward; as opposed to really making evidentiary rulings.

C Hudson: Second.

Mayor Post: We have a motion and a second. Any further discussion? All in favor say "aye". Opposed.

C Duby: Abstain.

Mayor Post: Motion carried.

c. Consideration and Possible Acceptance of Proposed Rules of Procedures for Public Hearing on July 10, 2009

Mary Schreider-Fox: All of you should have a copy of some proposed public hearing rules for the hearing this Friday and because this doesn't happen very often, we had to be creative and create our own. I modeled these after other times of other administrative tribunals that will have public hearings; such as a Board of Adjustment or a Planning & Zoning, so it really just sets forth that there is a Hearing Officer; that the witnesses will be under oath; how the order of the day will go; such as opening remarks from each side; they can present witnesses; a record of the proceedings, that there will be a record of the proceedings and I have made arrangements for a court reporter to be present on Friday, so it is an official court reporter and she will transcribe everything that occurs and it is my understanding that the Town's regular recording equipment will also be operating and set-up that day so we will have a double duty in terms of making the record. I have already mentioned this briefly; in administrative proceeding, because this isn't in front of a judge; this isn't in front of a jury; it's not in court; what that means is that the rules for the public hearing; again, that I have borrowed from other situations and just rewritten a little bit to fit our particular public hearing; you don't have to strictly follow the rules of evidence. Part of that is an acknowledgement that a typical Town Council or a Board of Adjustment or something like that isn't comprised of judges, and that is one of the rules in these proposed rules; talking about the hearsay that's number 6 – it shall not be prohibited – and that is very standard in this kind of a setting. This just gives everybody a little bit of a blueprint to follow, including the Chief's attorneys, as well as Tasha Stevens, who will be presenting the case for termination so that everybody knows what to expect and it just goes to helping to keep some order and control over the proceeding.

C Hudson: Can you tell me what firm Tasha Marie Stevens works for?

Mary Schreider-Fox: Ms. Stevens works with Fuque and Yurie and she has a good background in litigation, civil and criminal defense work; she came highly recommended by some colleagues of mine and I've worked with Ms. Stevens before; so she's in the process of preparing for the case and will be ready to present on Friday.

C Hudson: I was just curious as to why someone from your firm was not representing us.

Mary Schreider-Fox: The reason why is, number one, my two partners were unavailable because of their workload; and then this way I can sit with the

Town Council and keep those two roles separate. Do you need me to go over each one?

Mayor Post: I would quickly, if you would.

Mary Schreider-Fox: Okay. In number "4", we talked about this; it sets for the order of proceeding; some introduction or opening remarks by the Hearing Officer and it is at that time that C Duby that you can make your comments about what your role will be and make that clear for all involved; opening statements, that is when Ms. Stevens and Mr. Neuberger or Mr. LaRosa, whichever one it will be, can make a brief opening statement, setting forth the nature of the case they intend to present. Then to follow that and "C" will be the presentation of case for termination and that will be made by Ms. Stevens; flying through witnesses and other exhibits that she will offer to the Town Council on the day of the hearing. So as you can see, it has a little bit of a feel like a trial setting, but it's not exactly, because of the way that it is set out. They can make opening remarks, present the case; the Chief's attorneys will have an opportunity to cross-examine any witnesses that Ms. Stevens calls; and that leads us to "D"; then Chief Phillips, by and through his attorneys, will be able to present their case and defense as to why termination is not warranted. They will call witnesses, present exhibits and Ms. Stevens will have an opportunity to cross-examine any of his witnesses. Sub-paragraph "E" talks about rebuttal testimony that in the event something comes up in the presentation the Chief's Defense, that Ms. Stevens finding through any witnesses who would like to try to address an issue, she'll have the opportunity; and the Chief will have the same opportunity; after any rebuttal witnesses she might call. That's designed to give everybody one last shot to make any comments through witnesses or to get any additional information or evidence before you; depending on how the proceedings go and what kinds of issues come up. That way you have as comprehensive a record as possible. In sub-paragraph "F" it calls for closing arguments and that's when each of the attorneys can summarize their case and put together all the evidence that they have presented and how they think it should be interpreted. Sub-paragraph "G" simply specifies that no statements or testimony from the general public will be permitted. I thought it would be good to include that, because unlike other kinds of public hearing settings, it's not going to be an open forum where people can just come forward and make comments. Paragraph 5 just sets forth that all exhibits presented to the Town Council should be appropriately marked Town Exhibit "1" or Chief Exhibit "1". I put in there that the Hearing Officer shall date and initial each document or exhibit to authenticate it; sometimes in these kinds of hearings, documents start floating around and nobody knows if that document got in or not; this way all exhibits, as long as they're initialed by the Hearing Officer we know that is an official part of the record. Paragraph "6" talks about hearsay and I've already covered that. Paragraph "7" simply says that the Hearing Officer has the ability and the authority to take control over the proceedings and limit any testimony and questioning that is irrelevant, unduly repetitive or

provocative. Basically, if there becomes a heated discussion or the same question is asked six times in a row, that this gives a Hearing Officer the ability to simply say, okay can we move on, that same question has been asked and answered; something like that. It's just a mechanism to try to keep the proceedings moving forward. Number "8" – Deliberation and Decision – it just simply confirms that following the presentation from both sides, that the Town Council will deliberate in public about what it has heard that day and that it is anticipated that a decision will be made, unless there is some need to continue to the proceedings; and that just simply confirms that that is what is going to happen at the end. Then number "9" – Rules to be Liberally Construed to Promote Substantial Justice – I included this to just simply to say the exact order of the proceeding or some of the rules that in the event we're going through and we feel that something needs to be changed, or permitted, in order to make sure that substantial justice is done and that it results in as fair of a proceeding as possible; that that is within the Town Council's control. That's all.

C Hudson: Let's start with opening statements and I'll keep this very brief; the Town speaks first and then the Chief's attorney; then you get to closing statements and it goes Town's attorney and Chief's attorney and then Town again. We're talking about justice and fairness; I think in all fairness, that last sentence that Ms. Stevens should be permitted to make a rebuttal closing argument, should she so desire, should be deleted; because it doesn't follow the pattern; the pattern is Town, Chief, Town, Chief and then the Town gets a final shot. To be fair it should be Town, Chief, Town, and Chief.

Mary Schreider-Fox: Unless you're familiar with court proceedings and the order is fashioned on how it might be presented in court, even though you're not a court; borrowing from what other administrative proceedings have done; or other bodies have done in administrative proceedings; borrowing a little bit of the format from a trial-like proceeding that often-times the presenting party is given one last opportunity to make some comments to the body or to the judge; if you have anything to say in response to the closing remarks. That was simply borrowed from other places and the procedure that was used elsewhere, for us to consider.

C Hudson: I think it should be deleted. To keep it even and fair; everybody has equal opportunity and the way this is, it's not equal, when we are given more chances to speak, then the Chief's side.

C Prettyman: Excuse me, C Hudson, isn't that what the Hearing Officer would do if the other attorney wanted to say something, then wouldn't she give them that opportunity?

C Hudson: According to this, it says if Ms. Stevens so desired. So, it's not up to the Hearing Officer; you've right away given the Town's Attorney the opportunity to have one more opportunity to present than the other. I don't think it's fair.

Mary Schreider-Fox: May I make a suggestion? Either remove it altogether or provide for rebuttal to closing and make that available to both.

C Hudson: Make it available to both or remove it. Everyone should have an equal time. If one has two, the other should have two.

Vice Mayor Betts: I agree with C Hudson.

Mary Schreider-Fox: The Mayor just asked me is that how it's done in the Court system. I will tell you in Civil Cases and those are the case I'm involved in, 99% of the time, each side just makes a closing and that's it. I've had occasion and if you are the Plaintiff in the case, like in this case the presenting party; the Judge will give you one last opportunity as the Plaintiff's attorney to rebut to the closing; there was one situation that I observed where the Judge asked the Plaintiff's attorney if he wanted to make a rebuttal closing and then that attorney said something and the other attorney was given an opportunity. In criminal cases, I've been told that it's more common for the Judges to allow a rebuttal closing. I think it's all over the board. It's been done differently in trial settings, sometimes depending on the Judge that you get and how they like to run their courtroom. I don't think these comments that you're making are inappropriate and I will confess I thought about it when I was writing and I will go with what I thought was the majority, standard practice and see what everybody thinks. That's why it is on the agenda tonight so that you can actually look at it and decide what you want to do and make changes as necessary.

Mayor Post: I think Ms. Stevens should go last.

C Hudson: I think it should either be deleted or give the Chief's attorney a second shot, as well. It should be fair; they should each have an equal opportunity to speak. I would like to make a motion that this sentence "Ms. Stevens shall be permitted to make a rebuttal to closing arguments, should she so desire", be deleted from this document.

C Duby: Second.

Mayor Post: We have a motion and a second. All those in favor, say "aye". Opposed. Motion carried.

C Hudson: I make a motion that we accept this document, as written, with that deletion made.

C Duby: Second.

Mayor Post: We have a motion and a second. Any further discussion? All those in favor, say "aye". Opposed. Motion carried.

## 11. Adjournment

C Prettyman: I make a motion to adjourn.

C Duby: Second.

Mayor Post: We have a motion and a second. Is there any discussion? All in favor say "aye". Opposed. Motion to close at 7:57 pm.

**Milton Town Council Meeting**  
**Milton Theatre, 110 Union Street**  
**Monday, July 6, 2009**  
**7:00 p.m.**

1. **PUBLIC PARTICIPATION** portion was called to order by Mayor Post at 7:00 pm

- a. Katherine Grieg: 326 Union Street. Good evening. Once again I'm back to haunt you to talk about the Garden Club. In the absence of the President, Jennifer, the Garden Tour and Home Tour are this Saturday, July 11<sup>th</sup> from 9 to 3. We have 12 gardens; we have 2 houses, plus Abraxus Art Studio and if you have never been into Abraxus Studio, that is a very old, historic house and is interesting to see, in addition to the artwork; and Frankie Dittman's again orchid house. Frankie called me and left me a message this week, saying please come out and look, because in his kitchen, he's not cooking this week, he's set up this waterfall with rocks and everything, with his orchid plants around it. Tickets are \$12, ahead of time; they're available across the street at Antiques in Milton at Hillside Flowers and if you want to go out of town and buy them at Lewes Spring. We have lots of special events and this is the biggest fundraiser of the year, if you want to continue to see all the flowers and the planters, then please buy a ticket. Thanks.
- b. Jeff Daly: 211 Grist Mill in the Cannery Village Neighborhood. Recently we had some family owned property, a long standing family in the Milton area, had their property re-zoned from agricultural to heavy industrial use. I'm not going to go into that issue; it's been covered in the press quite extensively; I truly hope that the family finds the right business to occupy the parcel and that we have great jobs coming out of it and that it doesn't threaten, in any way, the quality of life in Milton. One thing I do want to share, I was at Planning & Zoning before they sent the work off to the County Council; I was at the County Council Meeting and not once was Milton mentioned by anyone on Planning & Zoning, or on the County Council; in terms of how that property would affect the Town of Milton; it was as though we did not exist. I know that in many, many states across our country, counties and municipalities area at odds with each one another; but I want us all to stop and think a minute. As you drive into Milton today, you drive through very bucolic areas; mostly farmland, in as few years as ten, maybe twenty; we are going to look like the towns that ride along 113. We're going to have sprawl crawl all around us, unless we come up with a plan; something to the affect "Don't 113 Milton". If you think of Georgetown and their downtown and you think of Milford and, of course, Millsboro and towns further south, along 113; their downtowns are devastated and their big stores and 113 looks like it fell off the back of a truck. Unfortunately, that could be our future; unless we take a stand. I've addressed all of the council members on my concerns and my sentiments and I hope that we can put something together; those who are involved in city planning, etc.

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and our future. The other thing to think about is density of housing. We could just as well be ringed by sub-divisions with houses on half-acre lots; or we could ringed, perhaps, by smaller developments like Cannery Village or Heritage Creek, which are going to enjoy lots of free, open space. The other thing to note is that when the family here in Milton re-zoned, there are programs in other states, where the monies that this family will make from the re-zoning is apportioned to other landowners surrounding municipalities like Milton, that will not change their zoning. In other words they benefit from one party getting a heavy industrial re-zoning and making money on either the sale or the use of that land in such a fashion. Unfortunately, Sussex County is still doing business the way it was done 50, 75, 100 years ago. But if there are people in Milton, who want to challenge the thinking of Sussex County Council or put new members on the Council, and that would mean that we would have to go outside our jurisdiction and really fight hard to get people, especially to the western districts, over the coming years, to change. I'm going to be involved in this in some way, shape or form and if anybody wants to contact me, I'm pretty easy to find and I'm record 211 Grist Mill and my phone number is available, but if you think about it; 10 or 20 years and we could look like all those towns up and down 113 and we all thought that the sprawl crawl was going to come in from Rehoboth and it's coming from the west, actually, is one way to look at it. The other thing is, Milton is perfectly positioned to be a warehouse community to the resort folks and to the municipalities up and down 113 and just like Lakeland, Florida is right between Orlando and Tampa-St. Pete and if anybody knows Lakeland, it too, looks like it fell off the back of a truck. So we've got bucolic, lovely downtown; we've got a Main Street program going; and, boy it could all be for naught. Just that quickly. Thanks for hearing me out on this.

Mayor Post: I will now close the public participation portion of this meeting at 7:07 pm.

2. The Milton Town Council Meeting was called to order by Mayor Post at 7:07 pm.
3. A Moment of Silence was led by Vice Mayor Betts.
4. The Pledge of Allegiance to the Flag was said by all in attendance.
5. Roll Call was called by Mayor Post

C Martin-Brown	Present
C DUBY	Present
C Hudson	Present
C Abraham	Present
C Betts	Present
Mayor Post	Present

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C Prettyman

Present

6. Additions or Corrections to the Agenda

Mayor Post: Are there any additions or corrections to the agenda?

C Duby: Yes, Mr. Mayor. Item 13 b, I placed that on the Agenda and the Process Review Committee has referred those proposed changes to our Legal Counsel for review and I would like to ask that that be removed tonight and that it be placed on the agenda for the August Town Council meeting.

Mayor Post: Can we have the approval of the agenda with the proposed changes?

C Hudson: I make a motion to approve the agenda with the changes proposed.

C Betts: Second.

Mayor Post: We have a motion and a second. Any further discussion? All in favor say "aye". Opposed. Motion carried.

7. Presentation and Approval of Minutes for May 4, 2009, May 21, 2009 and June 1, 2009.

C Prettyman: I make a motion that we accept the minutes of May 4, 2009, May 21, 2009 and June 1, 2009, as written.

C Duby: Second.

Mayor Post: We have a motion and a second, is there any discussion? All in favor say "aye". Opposed. Motion carried.

8. Approval of Written Committee Reports

C Prettyman: I make a motion to accept and approve the committee reports that have been submitted to us, as presented.

C Abraham: Second

Mayor Post: We have a motion and a second. Is there any discussion? All in favor say "aye". Opposed. Motion carried.

a. Town Manager's Report

George Dickerson: Good evening Mayor and Council. The first thing I would like for you to know is about the Milton Rails to Trails Phase I project. All the benches and the trash cans have been installed; if anyone's been down there; the paving and the seeding of the trail has been completed; the bases for the light poles have been installed and we are waiting for DP&L to hook up the electric so that can be completed. Anyone that has had an opportunity to go down there, I think that the project speaks for itself, when you see it; it is quite a beautiful project. Second item tonight is that PTA reassessment. Property Tax Associates are the ones conducting our reassessment and all of the exteriors of properties have been assessed. Phase II is in the process of being completed to obtain the property values, which involves putting numbers with the dimensions obtained. Once Phase II is complete, letters will go out to all property owners explaining their assessment and giving them an updated value of their property. If the property owner wishes to discuss their assessment value, PTA will schedule a hearing with the said property owner

who may have questions. The estimated timeframe for these hearings is some time in August. The next item coming up sooner than some of us would like to think is that our new budget year will be upon us 1 October. The town staff has met with all the department heads; there have been individual meetings with each of them and they have made suggestions or recommendations, as well as staff for the overall town. We are, in fact, meeting tomorrow and this is going to give us a first look at some of the numbers as to where we stand with an updated budget. I hope to have those to you as soon as possible for your review; but that's something we're working on and have been working on this year more intently, then any year in the past, as we have implemented the weekly budget meetings that we have with staff. The Code Enforcement Officers position was offered to an individual that has past code enforcement experience with the City of Dover, as well as law enforcement background. He comes highly recommended by his former employer. He will be starting on July 27<sup>th</sup>. His name is Joseph Huff. That's actually all I have, unless there are any questions.

C Hudson: You mentioned Rails to Trails. There was a Brownfield action taken, rather than just Cap and Cover; so that contamination could be removed. I was under the impression that the Brownfield action was going to continue right on down to Lavinia to take out the curb and the railroad tracks.

George Dickerson: You are absolutely correct. Phase I was what I was speaking to and that is only from Chestnut to Federal. The other, we have made a request to DNREC, the gentleman that spoke that night, I can't remember his name offhand; but we have made that request that the Brownfield go ahead and continue and remove the trails and clean-up any Brownfield materials that is all the way to Lavinia Street.

C Hudson: Would you report back to us at the next council meeting of your progress?

George Dickerson: If I have anything with regard to that, yes. He's very well aware but he's not given us any time line for that. We were approved up to \$1 million.

C Hudson: I'm sure the people of Wagamon's would rather have Rails to Trails behind their homes than a Brownfield.

George Dickerson: When you say would rather have Rails to Trails than a Brownfield, there's been no monies appropriated for Phase II, which would take it from Federal to the trestle bridge; Phase III is trestle bridge to Lavinia. There are no money appropriations, and as I think you heard that night, there may be none in the next fiscal year or any beyond that, with this economy. With the Brownfield, there is money that we were approved up to \$1 million for the clean-up; but not continuation of Phase II or III.

C Hudson: I understand that, but potentially or possibly in the future there could be Rails to Trails there; so what I'm hoping is that if you could get a response from DNREC for the removal of the rest of the contaminants.

George Dickerson: If it's available, yes.

C Hudson: The other question is about all the way through Lavinia. Shipbuilders, while I'm riding my bike out there, that pump is still there, the streets haven't been fixed, is there some timeframe.

George Dickerson: Yes, in fact that was supposed to be completed by June 30<sup>th</sup> and it has not been completed. The reason for that is there was a piece of the easement connecting from where the pond comes up to crossover, a piece that was forgotten; we are working with Mr. Turner, who owns Holly Lake and his attorney in Wilmington, Mr. Rago; in fact, I had a conversation with Mr. Turner today to expedite that.

C Hudson: The last question is about the sidewalks. We were supposed to send out a letter. Has that gone out to notify people that we were going to go ahead and pursue that?

George Dickerson: I would let Vice Mayor Betts, Chair of the Streets and Sidewalks Committee speak to that, but yes there is one; Vice Mayor Betts has had several meetings and we have a timeframe of executing a letter.

Vice Mayor Betts: That's right. Our Town Manager, George Dickerson has been very busy this week, and obviously Mayor Post has today and we hope to get that letter out next week. It's on schedule.

b. Written Reports  
Maintenance

C Prettyman: I make a motion we accept the June, 2009 written report from the Maintenance Department, as written.

C Duby: Second

Mayor Post: We have a motion and second; any discussion? All in favor say "aye". Opposed. Motion carried.

Project Coordinator/Code Enforcer

C Prettyman: I make a motion to accept the June, 2009 Project Coordinator/Code Enforcer report, as prepared.

Vice Mayor Betts: Second.

Mayor Post: We have a motion and second, is there any discussion? All in favor say "aye". Opposed. Motion carried.

Police Report

C Prettyman: I make a motion to accept the May 21<sup>st</sup> through June 20<sup>th</sup>, 2009, as submitted by the officer in charge.

C Abraham: Second.

Mayor Post: We have a motion and second; any discussion? All in favor say "aye". Opposed. Motion carried.

9. Old Business

a. Review and Possible Vote on the Conditions for the Key Ventures R-3 LPD Master Plan

Bob Kerr: With Cave Associates. Good evening, Mayor and Council. At a previous meeting in 2007, you approved the conditions for the LPD of Key Ventures. There were some blanks in it that Council directed that we complete with the town staff and the developer. We have done that, although we weren't directed to bring it back to you; we felt that it was appropriate because there were changes to a document you had approved; to bring it back to you so in the future everybody is on the same page with those changes. I asked Robin to give you a copy with some red printing on it that shows the changes and another document that just is without the corrections. It incorporates the corrections. They were relatively minor. If you like, I could go through them or you have them before you.

C Prettyman: I do have a question before I make a motion. With number 12 and number 16; they are both talking about open space walkways shall be adequately illuminated with \_\_\_\_ style light, but isn't 16 a repeat of 12?

Mayor Post: I think 16, and I might be wrong, Bob is open space walkways that could be in a park setting vs. on a street setting.

Bob Kerr: In going through it we noted that there was quite a bit of similarity, between the two, but rather than start making a lot of wholesale changes, we more or less left it the way it was. Yes, it's a little bit of department of redundancy department, but, we think it does cover it.

C Duby: In looking at number 12, when C Prettyman drew my attention to it, I noticed it says Connective Power Company; is there still a Connective Power Company, or isn't that Delmarva Power now?

Bob Kerr: Probably in 2007 there was, but it's now changed their name to Delmarva.

C Duby: Shouldn't we update that?

Bob Kerr: It probably would be appropriate to do that and whoever makes a motion to approve this would incorporate that, I will make the change to the document.

C Prettyman: I would like to make a motion to approve the Key Venture R-3 LPD master plan with the corrections in it and a notation made that Connective be changed to Delmarva Power.

C Duby: Second.

Mayor Post: We have a motion and a second. Any discussion to the motion? All in favor say "aye". Opposed. Motion carried.

b. Discussion and Possible Vote to Extend or Eliminate the Current Moratorium on the Demolitions with the Town of Milton. This Moratorium is Scheduled to Expire on July 31, 2009

Mayor Post: We have not had any comments come back from the Historic Preservation Committee. We did from Planning & Zoning.

Mary Schreider-Fox: I was just going to add my memory is that we had Planning & Zoning comments and nothing from Historic Preservation but that we had kept it opened for a little while to see if they would in fact submit some comments. I haven't conducted my review yet; so I would only have to do it once, after Historic Preservation sent their comments. To my

knowledge, I haven't seen anything from that committee yet. So I think where we are now is that a decision has to be made. If we continue to wait for the comments from the Historic Preservation before this body and I can conduct our review of what has been submitted so far.

C Prettyman: Is it possible, Mr. Dickerson, that you could contact the Chairperson of the Historic Preservation Committee, because you can't go forward.

C Martin-Brown: Mr. Mayor, I would like to make a motion that we table this until we do hear back from the Historic Preservation Committee. Demolition is a critical.

Robin Davis: Mr. Mayor and Council, when the Council first heard this they sent it Planning & Zoning and the Historic Preservation Commission for their review. It was on a Historic Preservation Commission agenda; that evening only 3 members showed up; so we did not have a quorum, so they could not vote or review this. Planning & Zoning went ahead and reviewed it. In your packets, last month, I think it was, you got a memo stating there was no quorum and there was not going to be any comments from Historic Preservation Commission. C Prettyman made a motion to table the decision until the Historic Preservation Commission could review it. I was not made aware of that, so I did not put it on the June agenda. We did not find out until just recently that the motion was made to table it. That's why the Historic Preservation Commission has not reviewed this yet. They were under the impression at the meeting when they had the quorum that they weren't going to get it back, because it was kind of brought to them, if you do have any comments, then come to the Town Council meeting and make comments. Their next meeting is July 14<sup>th</sup>. It can be put on next week's agenda.

C Martin-Brown: I would table it to the next meeting.

Robin Davis: As the Town Solicitor said, she has to take the comments too.

Mayor Post: The most we'll need is 60 days, but we should be able to get it finalized and back here to vote on in 60 days; because it's going to have to go from that meeting, then over to you for review.

Mary Schreider-Fox: Then back to you for review.

Robin Davis: It's according to how fast the Town Solicitor can do it.

Mayor Post: It will require public hearing too, because it will be changing to the zoning ordinances. Then we should table it for 60 days. We should extend the moratorium for 60 days.

Mary Schreider-Fox: I think the agenda item is whether or not the moratorium is scheduled to expire July 31<sup>st</sup>, so if you want to extend the moratorium while we're still conducting this review, that would be the action to take tonight.

Mayor Post: Right, but I don't want it to be another 6 months.

C Prettyman: Then we can make a motion to extend it 60 days.

C Martin-Brown: I've made a motion C Prettyman; it's hanging out there somewhere.

C Duby: The motion you made is to table the discussion.

C Martin-Brown: I would like to amend the motion that we extend the moratorium for 60 days effective from the meeting date tonight.

C Prettyman: Second.

Mayor Post: We have a motion and a second; any discussion. All in favor say "aye". Opposed.

C Duby: No. I've said twice on the record that if we went to extend it one more time I would vote against it.

## 10. New Business

### a. Resolution in the Memory of the Late Senator Thurman Adams

Mayor Post: We have this resolution that I would like to read in honor of Senator Adams. As many of you know, we lost our Senator, who represented Milton and I would like to read this into the record as a Resolution on the death of Senator Thurman G. Adams, Jr. "The Mayor and Council of Town of Milton, Delaware, invite our citizens to join us in the remembrance of our long time supporter and friend, Senator Thurman G. Adams, Jr., President Pro Tempe who was claimed by pancreatic cancer on Tuesday, June 23, 2009. This was a death that truly surprised and saddened us all. Senator Adams represented our Town in the 19<sup>th</sup> Senatorial District since first elected in 1972. As a Mayor and a Miltonian, I am proud to be part of his representing district along with the towns of Bridgeville, Greenwood and Georgetown, as well as other areas. As Senator, he dedicated his life in serving those people represented in his district, as well as all Delawareans state-wide. His dedication greatly contributed to both the financial and spiritual support of our Town, County and State. Officials and others of the Town could always rely on him as a true man of his word and honor during his extensive number of years and public service. His strength was his belief and his belief was in the people of Delaware. As a Sussex Countian working on his family farm and grain business, T. G. Adams and Sons, Inc. and growing up in his hometown of Bridgeville, Delaware, Senator Adams was well aware of the struggles and needs of the small rural American town. His dedication and keen ability to guide should inspire those in leadership to recognize the importance in making decisions that improve our land, culture and society. As Mayor, Council and citizens of the Town of Milton we will miss him greatly and always remember his contributions towards building our town to what it is today. Senator Adams devotion and commitment can be seen throughout our town in many forms, within our sidewalks, streets, vintage lighting, Governor's Walk, non-profit streetscapes and parks. His memory will always be part of Milton's Sussex County and the State of Delaware. Senator Adams' legacy will always remain with us as a part of our town. During this time I want our inner strengths, thoughts and prayers to be extended to the family." As Mayor, I ask that this Resolution be included in the Minutes of the Town of Milton, at this Town Meeting held on July 6, 2009 and a copy provided to Senator Adams' family.

Vice Mayor Betts: I make a motion to accept that Resolution to be sent to the family of Senator Adams.

C Prettyman: Second.

Mayor Post: We have a motion and a second. Any discussion? All in favor say "aye". Opposed. Motion carried.

b. Appointment of a Hearing Officer for the Public Hearing on July 10, 2009

Mary Schreider-Fox: As we all know, we're having a public hearing on this Friday; the Chief of Police Due Process that's required by Title XI, Section 9301. The Town Council will be the sitting body that is hearing the presentation, both by Tasha Stevens, who will be presenting the case for termination, as well as the Chief's Attorneys, Tom Neuberger and John LaRosa, presenting the Chief's Defense. What we need to have is a Hearing Officer in place; that person is not going to be a judge, necessarily; it's just going to be the person identified, who will keep control over the proceedings, and respond to the attorneys when they have questions. I will be sitting with the Town Council and with the Hearing Officer. The Employee Handbook for the Town, although we are not following that exactly, because we are going under this Title XI, Section 9031 for the Public Hearing; but the Town also can have hearings in an employment situation and contemplates that one of the members of the Personnel Committee will act as Hearing Officer for the Town Council Members hearing the employment matter. Therefore, it is my suggestion that from among the Town Council members who will be attending the hearing, we choose a Hearing Officer. I'll go ahead and say the person who came to mind for me, is C DUBY, because of her legal experience and previous career as an attorney, that that might be a natural fit for her in terms of helping to conduct the proceedings. That's what this agenda is for and those are my comments.

C Martin-Brown: Mr. Mayor, I would like to make a motion that C DUBY serve as the Hearing Officer because she is an attorney.

Mary Schreider-Fox: Vice Mayor Betts just asked if she can vote, then. Yes, she can vote; she'll still be a member of the body who deliberates and votes on the issues presented. She's just going to be the identified person who helps run the show a little bit and keeps control over the proceedings. At this point in time this public hearing was scheduled and is being put together fairly quickly, I don't know if we would be able to find an outside third party who would be available to do that on such short notice.

C Martin-Brown: Mr. Mayor, one of the motivations is to have somebody from the Personnel Committee and I am not correct that C DUBY is on the Personnel Committee?

Mayor Post: She is.

Mary Schreider-Fox: Again, I'll just say, I'm making that suggestion because keep some consistency with the standard employment procedures that the town has in place, anyway. If we can remain consistent with those, if and when possible, even though this is a somewhat unique situation, I thought that would be a good idea.

C DUBY: Let me just say that I am willing to do it, but to that point of fairness, I've already said to our Council, that the only circumstance under which I would be willing to do it, is if I can make it clear at the very beginning of the hearing what rules apply to this and what my role is; that I'm not sitting as a judge or an objective third party; that I'm presiding, that I'm doing so as a member of the Town Council and in that respect, I'm no different then any other member in terms of having a vote or viewing the evidence and reviewing the evidence. This is not like a trial in which you have a judge that is objective and sits apart.

C HUDSON: Is there any objection from Chief Phillips' attorney to having one of our people be the hearing officer?

MARY SCHREIDER-FOX: I have not consulted with him about this matter.

VICE MAYOR BETTS: I don't have a problem with C DUBY, but I would not want anyone to think it was being partial in any way by a Council person; I have no problem with her doing it; but I just want the public to know and to feel comfortable.

MARY SCHREIDER-FOX: Well, along those lines, I think it is important to remember that this public hearing, I don't want to diminish the importance of it, but it is like other public hearings that the Town Council may conduct from time to time; and the Town Council is allowed to conduct its own hearing; just like the role that the Mayor would play in a regular meeting; or the Chairperson of Planning & Zoning plays when they have a public hearing. Those persons still vote, still participate; but they are just simply the identified person to help manage and keep control over the proceedings and its in that same role; its just simply because we have a different kind of public hearing that we have to reidentify who's doing what and under the circumstances, since there are going to be attorneys presenting cases and it will have a little bit more of a formal feel, I thought that it might be a good idea to have the Town Council person assume that role, who has some legal background and can probably better handle some of the questions or comments that may arise from the attorneys that are participating in the proceeding.

C DUBY: Mary, can I ask one question. I have been assuming and I hope this is true, because it puts a different light on it for me, if it isn't; that there is no ruling on objections or anything like that by the hearing officer.

MARY SCHREIDER-FOX: There have been very few of these kinds of public hearings under the Chief's Due Process Statute, to my knowledge in the State of Delaware; so I can only anticipate what I think might happen. I anticipate that the attorneys may raise objections from time to time, in which case, the only kinds of objection I anticipate being raised very often would be evidentiary ones and since this is an administrative proceeding, hearsay is admissible and I know one of my partners previously participated in a public hearing of this type, many years ago, or several years ago, I should say, and the hearing officer in that situation, simply responded to any of those objections by saying, this is an administrative proceeding; hearsay is admissible; that will go to wait; please move on. Again, it was just more of a

role of controlling the situation and keeping the proceedings moving forward; as opposed to really making evidentiary rulings.

C Hudson: Second.

Mayor Post: We have a motion and a second. Any further discussion? All in favor say "aye". Opposed.

C Duby: Abstain.

Mayor Post: Motion carried.

c. Consideration and Possible Acceptance of Proposed Rules of Procedures for Public Hearing on July 10, 2009

Mary Schreider-Fox: All of you should have a copy of some proposed public hearing rules for the hearing this Friday and because this doesn't happen very often, we had to be creative and create our own. I modeled these after other times of other administrative tribunals that will have public hearings; such as a Board of Adjustment or a Planning & Zoning, so it really just sets forth that there is a Hearing Officer; that the witnesses will be under oath; how the order of the day will go; such as opening remarks from each side; they can present witnesses; a record of the proceedings, that there will be a record of the proceedings and I have made arrangements for a court reporter to be present on Friday, so it is an official court reporter and she will transcribe everything that occurs and it is my understanding that the Town's regular recording equipment will also be operating and set-up that day so we will have a double duty in terms of making the record. I have already mentioned this briefly; in administrative proceeding, because this isn't in front of a judge; this isn't in front of a jury; it's not in court; what that means is that the rules for the public hearing; again, that I have borrowed from other situations and just rewritten a little bit to fit our particular public hearing; you don't have to strictly follow the rules of evidence. Part of that is an acknowledgement that a typical Town Council or a Board of Adjustment or something like that isn't comprised of judges, and that is one of the rules in these proposed rules; talking about the hearsay that's number 6 – it shall not be prohibited – and that is very standard in this kind of a setting. This just gives everybody a little bit of a blueprint to follow, including the Chief's attorneys, as well as Tasha Stevens, who will be presenting the case for termination so that everybody knows what to expect and it just goes to helping to keep some order and control over the proceeding.

C Hudson: Can you tell me what firm Tasha Marie Stevens works for?

Mary Schreider-Fox: Ms. Stevens works with Fuque and Yurie and she has a good background in litigation, civil and criminal defense work; she came highly recommended by some colleagues of mine and I've worked with Ms. Stevens before; so she's in the process of preparing for the case and will be ready to present on Friday.

C Hudson: I was just curious as to why someone from your firm was not representing us.

Mary Schreider-Fox: The reason why is, number one, my two partners were unavailable because of their workload; and then this way I can sit with the

Town Council and keep those two roles separate. Do you need me to go over each one?

Mayor Post: I would quickly, if you would.

Mary Schreider-Fox: Okay. In number "4", we talked about this; it sets for the order of proceeding; some introduction or opening remarks by the Hearing Officer and it is at that time that C Duby that you can make your comments about what your role will be and make that clear for all involved; opening statements, that is when Ms. Stevens and Mr. Neuberger or Mr. LaRosa, whichever one it will be, can make a brief opening statement, setting forth the nature of the case they intend to present. Then to follow that and "C" will be the presentation of case for termination and that will be made by Ms. Stevens; flying through witnesses and other exhibits that she will offer to the Town Council on the day of the hearing. So as you can see, it has a little bit of a feel like a trial setting, but it's not exactly, because of the way that it is set out. They can make opening remarks, present the case; the Chief's attorneys will have an opportunity to cross-examine any witnesses that Ms. Stevens calls; and that leads us to "D"; then Chief Phillips, by and through his attorneys, will be able to present their case and defense as to why termination is not warranted. They will call witnesses, present exhibits and Ms. Stevens will have an opportunity to cross-examine any of his witnesses. Sub-paragraph "E" talks about rebuttal testimony that in the event something comes up in the presentation the Chief's Defense, that Ms. Stevens finding through any witnesses who would like to try to address an issue, she'll have the opportunity; and the Chief will have the same opportunity; after any rebuttal witnesses she might call. That's designed to give everybody one last shot to make any comments through witnesses or to get any additional information or evidence before you; depending on how the proceedings go and what kinds of issues come up. That way you have as comprehensive a record as possible. In sub-paragraph "F" it calls for closing arguments and that's when each of the attorneys can summarize their case and put together all the evidence that they have presented and how they think it should be interpreted. Sub-paragraph "G" simply specifies that no statements or testimony from the general public will be permitted. I thought it would be good to include that, because unlike other kinds of public hearing settings, it's not going to be an open forum where people can just come forward and make comments. Paragraph 5 just sets forth that all exhibits presented to the Town Council should be appropriately marked Town Exhibit "1" or Chief Exhibit "1". I put in there that the Hearing Officer shall date and initial each document or exhibit to authenticate it; sometimes in these kinds of hearings, documents start floating around and nobody knows if that document got in or not; this way all exhibits, as long as they're initialed by the Hearing Officer we know that is an official part of the record. Paragraph "6" talks about hearsay and I've already covered that. Paragraph "7" simply says that the Hearing Officer has the ability and the authority to take control over the proceedings and limit any testimony and questioning that is irrelevant, unduly repetitive or

provocative. Basically, if there becomes a heated discussion or the same question is asked six times in a row, that this gives a Hearing Officer the ability to simply say, okay can we move on, that same question has been asked and answered; something like that. It's just a mechanism to try to keep the proceedings moving forward. Number "8" – Deliberation and Decision – it just simply confirms that following the presentation from both sides, that the Town Council will deliberate in public about what it has heard that day and that it is anticipated that a decision will be made, unless there is some need to continue to the proceedings; and that just simply confirms that that is what is going to happen at the end. Then number "9" – Rules to be Liberally Construed to Promote Substantial Justice – I included this to just simply to say the exact order of the proceeding or some of the rules that in the event we're going through and we feel that something needs to be changed, or permitted, in order to make sure that substantial justice is done and that it results in as fair of a proceeding as possible; that that is within the Town Council's control. That's all.

C Hudson: Let's start with opening statements and I'll keep this very brief; the Town speaks first and then the Chief's attorney; then you get to closing statements and it goes Town's attorney and Chief's attorney and then Town again. We're talking about justice and fairness; I think in all fairness, that last sentence that Ms. Stevens should be permitted to make a rebuttal closing argument, should she so desire, should be deleted; because it doesn't follow the pattern; the pattern is Town, Chief, Town, Chief and then the Town gets a final shot. To be fair it should be Town, Chief, Town, and Chief.

Mary Schreider-Fox: Unless you're familiar with court proceedings and the order is fashioned on how it might be presented in court, even though you're not a court; borrowing from what other administrative proceedings have done; or other bodies have done in administrative proceedings; borrowing a little bit of the format from a trial-like proceeding that often-times the presenting party is given one last opportunity to make some comments to the body or to the judge; if you have anything to say in response to the closing remarks. That was simply borrowed from other places and the procedure that was used elsewhere, for us to consider.

C Hudson: I think it should be deleted. To keep it even and fair; everybody has equal opportunity and the way this is, it's not equal, when we are given more chances to speak, then the Chief's side.

C Prettyman: Excuse me, C Hudson, isn't that what the Hearing Officer would do if the other attorney wanted to say something, then wouldn't she give them that opportunity?

C Hudson: According to this, it says if Ms. Stevens so desired. So, it's not up to the Hearing Officer; you've right away given the Town's Attorney the opportunity to have one more opportunity to present than the other. I don't think it's fair.

Mary Schreider-Fox: May I make a suggestion? Either remove it altogether or provide for rebuttal to closing and make that available to both.

C Hudson: Make it available to both or remove it. Everyone should have an equal time. If one has two, the other should have two.

Vice Mayor Betts: I agree with C Hudson.

Mary Schreider-Fox: The Mayor just asked me is that how it's done in the Court system. I will tell you in Civil Cases and those are the case I'm involved in, 99% of the time, each side just makes a closing and that's it. I've had occasion and if you are the Plaintiff in the case, like in this case the presenting party; the Judge will give you one last opportunity as the Plaintiff's attorney to rebut to the closing; there was one situation that I observed where the Judge asked the Plaintiff's attorney if he wanted to make a rebuttal closing and then that attorney said something and the other attorney was given an opportunity. In criminal cases, I've been told that it's more common for the Judges to allow a rebuttal closing. I think it's all over the board. It's been done differently in trial settings, sometimes depending on the Judge that you get and how they like to run their courtroom. I don't think these comments that you're making are inappropriate and I will confess I thought about it when I was writing and I will go with what I thought was the majority, standard practice and see what everybody thinks. That's why it is on the agenda tonight so that you can actually look at it and decide what you want to do and make changes as necessary.

Mayor Post: I think Ms. Stevens should go last.

C Hudson: I think it should either be deleted or give the Chief's attorney a second shot, as well. It should be fair; they should each have an equal opportunity to speak. I would like to make a motion that this sentence "Ms. Stevens shall be permitted to make a rebuttal to closing arguments, should she so desire", be deleted from this document.

C Duby: Second.

Mayor Post: We have a motion and a second. All those in favor, say "aye". Opposed. Motion carried.

C Hudson: I make a motion that we accept this document, as written, with that deletion made.

C Duby: Second.

Mayor Post: We have a motion and a second. Any further discussion? All those in favor, say "aye". Opposed. Motion carried.

## 11. Adjournment

C Prettyman: I make a motion to adjourn.

C Duby: Second.

Mayor Post: We have a motion and a second. Is there any discussion? All in favor say "aye". Opposed. Motion to close at 7:57 pm.

**Milton Town Council Meeting**  
**Milton Theatre, 110 Union Street**  
**Monday, July 6, 2009**  
**7:00 p.m.**

1. **PUBLIC PARTICIPATION** portion was called to order by Mayor Post at 7:00 pm

- a. Katherine Grieg: 326 Union Street. Good evening. Once again I'm back to haunt you to talk about the Garden Club. In the absence of the President, Jennifer, the Garden Tour and Home Tour are this Saturday, July 11<sup>th</sup> from 9 to 3. We have 12 gardens; we have 2 houses, plus Abraxus Art Studio and if you have never been into Abraxus Studio, that is a very old, historic house and is interesting to see, in addition to the artwork; and Frankie Dittman's again orchid house. Frankie called me and left me a message this week, saying please come out and look, because in his kitchen, he's not cooking this week, he's set up this waterfall with rocks and everything, with his orchid plants around it. Tickets are \$12, ahead of time; they're available across the street at Antiques in Milton at Hillside Flowers and if you want to go out of town and buy them at Lewes Spring. We have lots of special events and this is the biggest fundraiser of the year, if you want to continue to see all the flowers and the planters, then please buy a ticket. Thanks.
- b. Jeff Daly: 211 Grist Mill in the Cannery Village Neighborhood. Recently we had some family owned property, a long standing family in the Milton area, had their property re-zoned from agricultural to heavy industrial use. I'm not going to go into that issue; it's been covered in the press quite extensively; I truly hope that the family finds the right business to occupy the parcel and that we have great jobs coming out of it and that it doesn't threaten, in any way, the quality of life in Milton. One thing I do want to share, I was at Planning & Zoning before they sent the work off to the County Council; I was at the County Council Meeting and not once was Milton mentioned by anyone on Planning & Zoning, or on the County Council; in terms of how that property would affect the Town of Milton; it was as though we did not exist. I know that in many, many states across our country, counties and municipalities area at odds with each one another; but I want us all to stop and think a minute. As you drive into Milton today, you drive through very bucolic areas; mostly farmland, in as few years as ten, maybe twenty; we are going to look like the towns that ride along 113. We're going to have sprawl crawl all around us, unless we come up with a plan; something to the affect "Don't 113 Milton". If you think of Georgetown and their downtown and you think of Milford and, of course, Millsboro and towns further south, along 113; their downtowns are devastated and their big stores and 113 looks like it fell off the back of a truck. Unfortunately, that could be our future; unless we take a stand. I've addressed all of the council members on my concerns and my sentiments and I hope that we can put something together; those who are involved in city planning, etc.

\*The Council minutes provided are a summation of the meeting to be used for informational purposes only. An official copy of the meeting can be obtained through Town Hall located at 115 Federal Street by filling out a FOIA Request and paying any cost associated with the request.

and our future. The other thing to think about is density of housing. We could just as well be ringed by sub-divisions with houses on half-acre lots; or we could ringed, perhaps, by smaller developments like Cannery Village or Heritage Creek, which are going to enjoy lots of free, open space. The other thing to note is that when the family here in Milton re-zoned, there are programs in other states, where the monies that this family will make from the re-zoning is apportioned to other landowners surrounding municipalities like Milton, that will not change their zoning. In other words they benefit from one party getting a heavy industrial re-zoning and making money on either the sale or the use of that land in such a fashion. Unfortunately, Sussex County is still doing business the way it was done 50, 75, 100 years ago. But if there are people in Milton, who want to challenge the thinking of Sussex County Council or put new members on the Council, and that would mean that we would have to go outside our jurisdiction and really fight hard to get people, especially to the western districts, over the coming years, to change. I'm going to be involved in this in some way, shape or form and if anybody wants to contact me, I'm pretty easy to find and I'm record 211 Grist Mill and my phone number is available, but if you think about it; 10 or 20 years and we could look like all those towns up and down 113 and we all thought that the sprawl crawl was going to come in from Rehoboth and it's coming from the west, actually, is one way to look at it. The other thing is, Milton is perfectly positioned to be a warehouse community to the resort folks and to the municipalities up and down 113 and just like Lakeland, Florida is right between Orlando and Tampa-St. Pete and if anybody knows Lakeland, it too, looks like it fell off the back of a truck. So we've got bucolic, lovely downtown; we've got a Main Street program going; and, boy it could all be for naught. Just that quickly. Thanks for hearing me out on this.

Mayor Post: I will now close the public participation portion of this meeting at 7:07 pm.

2. The Milton Town Council Meeting was called to order by Mayor Post at 7:07 pm.
3. A Moment of Silence was led by Vice Mayor Betts.
4. The Pledge of Allegiance to the Flag was said by all in attendance.
5. Roll Call was called by Mayor Post

C Martin-Brown	Present
C Duby	Present
C Hudson	Present
C Abraham	Present
C Betts	Present
Mayor Post	Present

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C Prettyman

Present

6. Additions or Corrections to the Agenda

Mayor Post: Are there any additions or corrections to the agenda?

C Duby: Yes, Mr. Mayor. Item 13 b, I placed that on the Agenda and the Process Review Committee has referred those proposed changes to our Legal Counsel for review and I would like to ask that that be removed tonight and that it be placed on the agenda for the August Town Council meeting.

Mayor Post: Can we have the approval of the agenda with the proposed changes?

C Hudson: I make a motion to approve the agenda with the changes proposed.

C Betts: Second.

Mayor Post: We have a motion and a second. Any further discussion? All in favor say "aye". Opposed. Motion carried.

7. Presentation and Approval of Minutes for May 4, 2009, May 21, 2009 and June 1, 2009.

C Prettyman: I make a motion that we accept the minutes of May 4, 2009, May 21, 2009 and June 1, 2009, as written.

C Duby: Second.

Mayor Post: We have a motion and a second, is there any discussion? All in favor say "aye". Opposed. Motion carried.

8. Approval of Written Committee Reports

C Prettyman: I make a motion to accept and approve the committee reports that have been submitted to us, as presented.

C Abraham: Second

Mayor Post: We have a motion and a second. Is there any discussion? All in favor say "aye". Opposed. Motion carried.

a. Town Manager's Report

George Dickerson: Good evening Mayor and Council. The first thing I would like for you to know is about the Milton Rails to Trails Phase I project. All the benches and the trash cans have been installed; if anyone's been down there; the paving and the seeding of the trail has been completed; the bases for the light poles have been installed and we are waiting for DP&L to hook up the electric so that can be completed. Anyone that has had an opportunity to go down there, I think that the project speaks for itself, when you see it; it is quite a beautiful project. Second item tonight is that PTA reassessment. Property Tax Associates are the ones conducting our reassessment and all of the exteriors of properties have been assessed. Phase II is in the process of being completed to obtain the property values, which involves putting numbers with the dimensions obtained. Once Phase II is complete, letters will go out to all property owners explaining their assessment and giving them an updated value of their property. If the property owner wishes to discuss their assessment value, PTA will schedule a hearing with the said property owner

who may have questions. The estimated timeframe for these hearings is some time in August. The next item coming up sooner than some of us would like to think is that our new budget year will be upon us 1 October. The town staff has met with all the department heads; there have been individual meetings with each of them and they have made suggestions or recommendations, as well as staff for the overall town. We are, in fact, meeting tomorrow and this is going to give us a first look at some of the numbers as to where we stand with an updated budget. I hope to have those to you as soon as possible for your review; but that's something we're working on and have been working on this year more intently, then any year in the past, as we have implemented the weekly budget meetings that we have with staff. The Code Enforcement Officers position was offered to an individual that has past code enforcement experience with the City of Dover, as well as law enforcement background. He comes highly recommended by his former employer. He will be starting on July 27<sup>th</sup>. His name is Joseph Huff. That's actually all I have, unless there are any questions.

C Hudson: You mentioned Rails to Trails. There was a Brownfield action taken, rather than just Cap and Cover; so that contamination could be removed. I was under the impression that the Brownfield action was going to continue right on down to Lavinia to take out the curb and the railroad tracks.

George Dickerson: You are absolutely correct. Phase I was what I was speaking to and that is only from Chestnut to Federal. The other, we have made a request to DNREC, the gentleman that spoke that night, I can't remember his name offhand; but we have made that request that the Brownfield go ahead and continue and remove the trails and clean-up any Brownfield materials that is all the way to Lavinia Street.

C Hudson: Would you report back to us at the next council meeting of your progress?

George Dickerson: If I have anything with regard to that, yes. He's very well aware but he's not given us any time line for that. We were approved up to \$1 million.

C Hudson: I'm sure the people of Wagamon's would rather have Rails to Trails behind their homes than a Brownfield.

George Dickerson: When you say would rather have Rails to Trails than a Brownfield, there's been no monies appropriated for Phase II, which would take it from Federal to the trestle bridge; Phase III is trestle bridge to Lavinia. There are no money appropriations, and as I think you heard that night, there may be none in the next fiscal year or any beyond that, with this economy. With the Brownfield, there is money that we were approved up to \$1 million for the clean-up; but not continuation of Phase II or III.

C Hudson: I understand that, but potentially or possibly in the future there could be Rails to Trails there; so what I'm hoping is that if you could get a response from DNREC for the removal of the rest of the contaminants.

George Dickerson: If it's available, yes.

C Hudson: The other question is about all the way through Lavinia. Shipbuilders, while I'm riding my bike out there, that pump is still there, the streets haven't been fixed, is there some timeframe.

George Dickerson: Yes, in fact that was supposed to be completed by June 30<sup>th</sup> and it has not been completed. The reason for that is there was a piece of the easement connecting from where the pond comes up to crossover, a piece that was forgotten; we are working with Mr. Turner, who owns Holly Lake and his attorney in Wilmington, Mr. Rago; in fact, I had a conversation with Mr. Turner today to expedite that.

C Hudson: The last question is about the sidewalks. We were supposed to send out a letter. Has that gone out to notify people that we were going to go ahead and pursue that?

George Dickerson: I would let Vice Mayor Betts, Chair of the Streets and Sidewalks Committee speak to that, but yes there is one; Vice Mayor Betts has had several meetings and we have a timeframe of executing a letter.

Vice Mayor Betts: That's right. Our Town Manager, George Dickerson has been very busy this week, and obviously Mayor Post has today and we hope to get that letter out next week. It's on schedule.

b. Written Reports  
Maintenance

C Prettyman: I make a motion we accept the June, 2009 written report from the Maintenance Department, as written.

C Duby: Second

Mayor Post: We have a motion and second; any discussion? All in favor say "aye". Opposed. Motion carried.

Project Coordinator/Code Enforcer

C Prettyman: I make a motion to accept the June, 2009 Project Coordinator/Code Enforcer report, as prepared.

Vice Mayor Betts: Second.

Mayor Post: We have a motion and second, is there any discussion? All in favor say "aye". Opposed. Motion carried.

Police Report

C Prettyman: I make a motion to accept the May 21<sup>st</sup> through June 20<sup>th</sup>, 2009, as submitted by the officer in charge.

C Abraham: Second.

Mayor Post: We have a motion and second; any discussion? All in favor say "aye". Opposed. Motion carried.

9. Old Business

a. Review and Possible Vote on the Conditions for the Key Ventures R-3 LPD Master Plan

Bob Kerr: With Cave Associates. Good evening, Mayor and Council. At a previous meeting in 2007, you approved the conditions for the LPD of Key Ventures. There were some blanks in it that Council directed that we complete with the town staff and the developer. We have done that, although we weren't directed to bring it back to you; we felt that it was appropriate because there were changes to a document you had approved; to bring it back to you so in the future everybody is on the same page with those changes. I asked Robin to give you a copy with some red printing on it that shows the changes and another document that just is without the corrections. It incorporates the corrections. They were relatively minor. If you like, I could go through them or you have them before you.

C Prettyman: I do have a question before I make a motion. With number 12 and number 16; they are both talking about open space walkways shall be adequately illuminated with \_\_\_\_ style light, but isn't 16 a repeat of 12?

Mayor Post: I think 16, and I might be wrong, Bob is open space walkways that could be in a park setting vs. on a street setting.

Bob Kerr: In going through it we noted that there was quite a bit of similarity, between the two, but rather than start making a lot of wholesale changes, we more or less left it the way it was. Yes, it's a little bit of department of redundancy department, but, we think it does cover it.

C Duby: In looking at number 12, when C Prettyman drew my attention to it, I noticed it says Connective Power Company; is there still a Connective Power Company, or isn't that Delmarva Power now?

Bob Kerr: Probably in 2007 there was, but it's now changed their name to Delmarva.

C Duby: Shouldn't we update that?

Bob Kerr: It probably would be appropriate to do that and whoever makes a motion to approve this would incorporate that, I will make the change to the document.

C Prettyman: I would like to make a motion to approve the Key Venture R-3 LPD master plan with the corrections in it and a notation made that Connective be changed to Delmarva Power.

C Duby: Second.

Mayor Post: We have a motion and a second. Any discussion to the motion? All in favor say "aye". Opposed. Motion carried.

b. Discussion and Possible Vote to Extend or Eliminate the Current Moratorium on the Demolitions with the Town of Milton. This Moratorium is Scheduled to Expire on July 31, 2009

Mayor Post: We have not had any comments come back from the Historic Preservation Committee. We did from Planning & Zoning.

Mary Schreider-Fox: I was just going to add my memory is that we had Planning & Zoning comments and nothing from Historic Preservation but that we had kept it opened for a little while to see if they would in fact submit some comments. I haven't conducted my review yet; so I would only have to do it once, after Historic Preservation sent their comments. To my

knowledge, I haven't seen anything from that committee yet. So I think where we are now is that a decision has to be made. If we continue to wait for the comments from the Historic Preservation before this body and I can conduct our review of what has been submitted so far.

C Prettyman: Is it possible, Mr. Dickerson, that you could contact the Chairperson of the Historic Preservation Committee, because you can't go forward.

C Martin-Brown: Mr. Mayor, I would like to make a motion that we table this until we do hear back from the Historic Preservation Committee. Demolition is a critical.

Robin Davis: Mr. Mayor and Council, when the Council first heard this they sent it Planning & Zoning and the Historic Preservation Commission for their review. It was on a Historic Preservation Commission agenda; that evening only 3 members showed up; so we did not have a quorum, so they could not vote or review this. Planning & Zoning went ahead and reviewed it. In your packets, last month, I think it was, you got a memo stating there was no quorum and there was not going to be any comments from Historic Preservation Commission. C Prettyman made a motion to table the decision until the Historic Preservation Commission could review it. I was not made aware of that, so I did not put it on the June agenda. We did not find out until just recently that the motion was made to table it. That's why the Historic Preservation Commission has not reviewed this yet. They were under the impression at the meeting when they had the quorum that they weren't going to get it back, because it was kind of brought to them, if you do have any comments, then come to the Town Council meeting and make comments. Their next meeting is July 14<sup>th</sup>. It can be put on next week's agenda.

C Martin-Brown: I would table it to the next meeting.

Robin Davis: As the Town Solicitor said, she has to take the comments too.

Mayor Post: The most we'll need is 60 days, but we should be able to get it finalized and back here to vote on in 60 days; because it's going to have to go from that meeting, then over to you for review.

Mary Schreider-Fox: Then back to you for review.

Robin Davis: It's according to how fast the Town Solicitor can do it.

Mayor Post: It will require public hearing too, because it will be changing to the zoning ordinances. Then we should table it for 60 days. We should extend the moratorium for 60 days.

Mary Schreider-Fox: I think the agenda item is whether or not the moratorium is scheduled to expire July 31<sup>st</sup>, so if you want to extend the moratorium while we're still conducting this review, that would be the action to take tonight.

Mayor Post: Right, but I don't want it to be another 6 months.

C Prettyman: Then we can make a motion to extend it 60 days.

C Martin-Brown: I've made a motion C Prettyman; it's hanging out there somewhere.

C Duby: The motion you made is to table the discussion.

C Martin-Brown: I would like to amend the motion that we extend the moratorium for 60 days effective from the meeting date tonight.

C Prettyman: Second.

Mayor Post: We have a motion and a second; any discussion. All in favor say “aye”. Opposed.

C Duby: No. I’ve said twice on the record that if we went to extend it one more time I would vote against it.

## 10. New Business

### a. Resolution in the Memory of the Late Senator Thurman Adams

Mayor Post: We have this resolution that I would like to read in honor of Senator Adams. As many of you know, we lost our Senator, who represented Milton and I would like to read this into the record as a Resolution on the death of Senator Thurman G. Adams, Jr. “The Mayor and Council of Town of Milton, Delaware, invite our citizens to join us in the remembrance of our long time supporter and friend, Senator Thurman G. Adams, Jr., President Pro Tempe who was claimed by pancreatic cancer on Tuesday, June 23, 2009. This was a death that truly surprised and saddened us all. Senator Adams represented our Town in the 19<sup>th</sup> Senatorial District since first elected in 1972. As a Mayor and a Miltonian, I am proud to be part of his representing district along with the towns of Bridgeville, Greenwood and Georgetown, as well as other areas. As Senator, he dedicated his life in serving those people represented in his district, as well as all Delawareans state-wide. His dedication greatly contributed to both the financial and spiritual support of our Town, County and State. Officials and others of the Town could always rely on him as a true man of his word and honor during his extensive number of years and public service. His strength was his belief and his belief was in the people of Delaware. As a Sussex Countian working on his family farm and grain business, T. G. Adams and Sons, Inc. and growing up in his hometown of Bridgeville, Delaware, Senator Adams was well aware of the struggles and needs of the small rural American town. His dedication and keen ability to guide should inspire those in leadership to recognize the importance in making decisions that improve our land, culture and society. As Mayor, Council and citizens of the Town of Milton we will miss him greatly and always remember his contributions towards building our town to what it is today. Senator Adams devotion and commitment can be seen throughout our town in many forms, within our sidewalks, streets, vintage lighting, Governor’s Walk, non-profit streetscapes and parks. His memory will always be part of Milton’s Sussex County and the State of Delaware. Senator Adams’ legacy will always remain with us as a part of our town. During this time I want our inner strengths, thoughts and prayers to be extended to the family.” As Mayor, I ask that this Resolution be included in the Minutes of the Town of Milton, at this Town Meeting held on July 6, 2009 and a copy provided to Senator Adams’ family.

Vice Mayor Betts: I make a motion to accept that Resolution to be sent to the family of Senator Adams.

C Prettyman: Second.

Mayor Post: We have a motion and a second. Any discussion? All in favor say "aye". Opposed. Motion carried.

b. Appointment of a Hearing Officer for the Public Hearing on July 10, 2009

Mary Schreider-Fox: As we all know, we're having a public hearing on this Friday; the Chief of Police Due Process that's required by Title XI, Section 9301. The Town Council will be the sitting body that is hearing the presentation, both by Tasha Stevens, who will be presenting the case for termination, as well as the Chief's Attorneys, Tom Neuberger and John LaRosa, presenting the Chief's Defense. What we need to have is a Hearing Officer in place; that person is not going to be a judge, necessarily; it's just going to be the person identified, who will keep control over the proceedings, and respond to the attorneys when they have questions. I will be sitting with the Town Council and with the Hearing Officer. The Employee Handbook for the Town, although we are not following that exactly, because we are going under this Title XI, Section 9031 for the Public Hearing; but the Town also can have hearings in an employment situation and contemplates that one of the members of the Personnel Committee will act as Hearing Officer for the Town Council Members hearing the employment matter. Therefore, it is my suggestion that from among the Town Council members who will be attending the hearing, we choose a Hearing Officer. I'll go ahead and say the person who came to mind for me, is C DUBY, because of her legal experience and previous career as an attorney, that that might be a natural fit for her in terms of helping to conduct the proceedings. That's what this agenda is for and those are my comments.

C Martin-Brown: Mr. Mayor, I would like to make a motion that C DUBY serve as the Hearing Officer because she is an attorney.

Mary Schreider-Fox: Vice Mayor Betts just asked if she can vote, then. Yes, she can vote; she'll still be a member of the body who deliberates and votes on the issues presented. She's just going to be the identified person who helps run the show a little bit and keeps control over the proceedings. At this point in time this public hearing was scheduled and is being put together fairly quickly, I don't know if we would be able to find an outside third party who would be available to do that on such short notice.

C Martin-Brown: Mr. Mayor, one of the motivations is to have somebody from the Personnel Committee and I am not correct that C DUBY is on the Personnel Committee?

Mayor Post: She is.

Mary Schreider-Fox: Again, I'll just say, I'm making that suggestion because keep some consistency with the standard employment procedures that the town has in place, anyway. If we can remain consistent with those, if and when possible, even though this is a somewhat unique situation, I thought that would be a good idea.

C DUBY: Let me just say that I am willing to do it, but to that point of fairness, I've already said to our Council, that the only circumstance under which I would be willing to do it, is if I can make it clear at the very beginning of the hearing what rules apply to this and what my role is; that I'm not sitting as a judge or an objective third party; that I'm presiding, that I'm doing so as a member of the Town Council and in that respect, I'm no different then any other member in terms of having a vote or viewing the evidence and reviewing the evidence. This is not like a trial in which you have a judge that is objective and sits apart.

C HUDSON: Is there any objection from Chief Phillips' attorney to having one of our people be the hearing officer?

MARY SCHREIDER-FOX: I have not consulted with him about this matter.

VICE MAYOR BETTS: I don't have a problem with C DUBY, but I would not want anyone to think it was being partial in any way by a Council person; I have no problem with her doing it; but I just want the public to know and to feel comfortable.

MARY SCHREIDER-FOX: Well, along those lines, I think it is important to remember that this public hearing, I don't want to diminish the importance of it, but it is like other public hearings that the Town Council may conduct from time to time; and the Town Council is allowed to conduct its own hearing; just like the role that the Mayor would play in a regular meeting; or the Chairperson of Planning & Zoning plays when they have a public hearing. Those persons still vote, still participate; but they are just simply the identified person to help manage and keep control over the proceedings and its in that same role; its just simply because we have a different kind of public hearing that we have to reidentify who's doing what and under the circumstances, since there are going to be attorneys presenting cases and it will have a little bit more of a formal feel, I thought that it might be a good idea to have the Town Council person assume that role, who has some legal background and can probably better handle some of the questions or comments that may arise from the attorneys that are participating in the proceeding.

C DUBY: Mary, can I ask one question. I have been assuming and I hope this is true, because it puts a different light on it for me, if it isn't; that there is no ruling on objections or anything like that by the hearing officer.

MARY SCHREIDER-FOX: There have been very few of these kinds of public hearings under the Chief's Due Process Statute, to my knowledge in the State of Delaware; so I can only anticipate what I think might happen. I anticipate that the attorneys may raise objections from time to time, in which case, the only kinds of objection I anticipate being raised very often would be evidentiary ones and since this is an administrative proceeding, hearsay is admissible and I know one of my partners previously participated in a public hearing of this type, many years ago, or several years ago, I should say, and the hearing officer in that situation, simply responded to any of those objections by saying, this is an administrative proceeding; hearsay is admissible; that will go to wait; please move on. Again, it was just more of a

role of controlling the situation and keeping the proceedings moving forward; as opposed to really making evidentiary rulings.

C Hudson: Second.

Mayor Post: We have a motion and a second. Any further discussion? All in favor say "aye". Opposed.

C Duby: Abstain.

Mayor Post: Motion carried.

c. Consideration and Possible Acceptance of Proposed Rules of Procedures for Public Hearing on July 10, 2009

Mary Schreider-Fox: All of you should have a copy of some proposed public hearing rules for the hearing this Friday and because this doesn't happen very often, we had to be creative and create our own. I modeled these after other times of other administrative tribunals that will have public hearings; such as a Board of Adjustment or a Planning & Zoning, so it really just sets forth that there is a Hearing Officer; that the witnesses will be under oath; how the order of the day will go; such as opening remarks from each side; they can present witnesses; a record of the proceedings, that there will be a record of the proceedings and I have made arrangements for a court reporter to be present on Friday, so it is an official court reporter and she will transcribe everything that occurs and it is my understanding that the Town's regular recording equipment will also be operating and set-up that day so we will have a double duty in terms of making the record. I have already mentioned this briefly; in administrative proceeding, because this isn't in front of a judge; this isn't in front of a jury; it's not in court; what that means is that the rules for the public hearing; again, that I have borrowed from other situations and just rewritten a little bit to fit our particular public hearing; you don't have to strictly follow the rules of evidence. Part of that is an acknowledgement that a typical Town Council or a Board of Adjustment or something like that isn't comprised of judges, and that is one of the rules in these proposed rules; talking about the hearsay that's number 6 – it shall not be prohibited – and that is very standard in this kind of a setting. This just gives everybody a little bit of a blueprint to follow, including the Chief's attorneys, as well as Tasha Stevens, who will be presenting the case for termination so that everybody knows what to expect and it just goes to helping to keep some order and control over the proceeding.

C Hudson: Can you tell me what firm Tasha Marie Stevens works for?

Mary Schreider-Fox: Ms. Stevens works with Fuque and Yurie and she has a good background in litigation, civil and criminal defense work; she came highly recommended by some colleagues of mine and I've worked with Ms. Stevens before; so she's in the process of preparing for the case and will be ready to present on Friday.

C Hudson: I was just curious as to why someone from your firm was not representing us.

Mary Schreider-Fox: The reason why is, number one, my two partners were unavailable because of their workload; and then this way I can sit with the

Town Council and keep those two roles separate. Do you need me to go over each one?

Mayor Post: I would quickly, if you would.

Mary Schreider-Fox: Okay. In number "4", we talked about this; it sets for the order of proceeding; some introduction or opening remarks by the Hearing Officer and it is at that time that C Duby that you can make your comments about what your role will be and make that clear for all involved; opening statements, that is when Ms. Stevens and Mr. Neuberger or Mr. LaRosa, whichever one it will be, can make a brief opening statement, setting forth the nature of the case they intend to present. Then to follow that and "C" will be the presentation of case for termination and that will be made by Ms. Stevens; flying through witnesses and other exhibits that she will offer to the Town Council on the day of the hearing. So as you can see, it has a little bit of a feel like a trial setting, but it's not exactly, because of the way that it is set out. They can make opening remarks, present the case; the Chief's attorneys will have an opportunity to cross-examine any witnesses that Ms. Stevens calls; and that leads us to "D"; then Chief Phillips, by and through his attorneys, will be able to present their case and defense as to why termination is not warranted. They will call witnesses, present exhibits and Ms. Stevens will have an opportunity to cross-examine any of his witnesses. Sub-paragraph "E" talks about rebuttal testimony that in the event something comes up in the presentation the Chief's Defense, that Ms. Stevens finding through any witnesses who would like to try to address an issue, she'll have the opportunity; and the Chief will have the same opportunity; after any rebuttal witnesses she might call. That's designed to give everybody one last shot to make any comments through witnesses or to get any additional information or evidence before you; depending on how the proceedings go and what kinds of issues come up. That way you have as comprehensive a record as possible. In sub-paragraph "F" it calls for closing arguments and that's when each of the attorneys can summarize their case and put together all the evidence that they have presented and how they think it should be interpreted. Sub-paragraph "G" simply specifies that no statements or testimony from the general public will be permitted. I thought it would be good to include that, because unlike other kinds of public hearing settings, it's not going to be an open forum where people can just come forward and make comments. Paragraph 5 just sets forth that all exhibits presented to the Town Council should be appropriately marked Town Exhibit "1" or Chief Exhibit "1". I put in there that the Hearing Officer shall date and initial each document or exhibit to authenticate it; sometimes in these kinds of hearings, documents start floating around and nobody knows if that document got in or not; this way all exhibits, as long as they're initialed by the Hearing Officer we know that is an official part of the record. Paragraph "6" talks about hearsay and I've already covered that. Paragraph "7" simply says that the Hearing Officer has the ability and the authority to take control over the proceedings and limit any testimony and questioning that is irrelevant, unduly repetitive or

provocative. Basically, if there becomes a heated discussion or the same question is asked six times in a row, that this gives a Hearing Officer the ability to simply say, okay can we move on, that same question has been asked and answered; something like that. It's just a mechanism to try to keep the proceedings moving forward. Number "8" – Deliberation and Decision – it just simply confirms that following the presentation from both sides, that the Town Council will deliberate in public about what it has heard that day and that it is anticipated that a decision will be made, unless there is some need to continue to the proceedings; and that just simply confirms that that is what is going to happen at the end. Then number "9" – Rules to be Liberally Construed to Promote Substantial Justice – I included this to just simply to say the exact order of the proceeding or some of the rules that in the event we're going through and we feel that something needs to be changed, or permitted, in order to make sure that substantial justice is done and that it results in as fair of a proceeding as possible; that that is within the Town Council's control. That's all.

C Hudson: Let's start with opening statements and I'll keep this very brief; the Town speaks first and then the Chief's attorney; then you get to closing statements and it goes Town's attorney and Chief's attorney and then Town again. We're talking about justice and fairness; I think in all fairness, that last sentence that Ms. Stevens should be permitted to make a rebuttal closing argument, should she so desire, should be deleted; because it doesn't follow the pattern; the pattern is Town, Chief, Town, Chief and then the Town gets a final shot. To be fair it should be Town, Chief, Town, and Chief.

Mary Schreider-Fox: Unless you're familiar with court proceedings and the order is fashioned on how it might be presented in court, even though you're not a court; borrowing from what other administrative proceedings have done; or other bodies have done in administrative proceedings; borrowing a little bit of the format from a trial-like proceeding that often-times the presenting party is given one last opportunity to make some comments to the body or to the judge; if you have anything to say in response to the closing remarks. That was simply borrowed from other places and the procedure that was used elsewhere, for us to consider.

C Hudson: I think it should be deleted. To keep it even and fair; everybody has equal opportunity and the way this is, it's not equal, when we are given more chances to speak, then the Chief's side.

C Prettyman: Excuse me, C Hudson, isn't that what the Hearing Officer would do if the other attorney wanted to say something, then wouldn't she give them that opportunity?

C Hudson: According to this, it says if Ms. Stevens so desired. So, it's not up to the Hearing Officer; you've right away given the Town's Attorney the opportunity to have one more opportunity to present than the other. I don't think it's fair.

Mary Schreider-Fox: May I make a suggestion? Either remove it altogether or provide for rebuttal to closing and make that available to both.

C Hudson: Make it available to both or remove it. Everyone should have an equal time. If one has two, the other should have two.

Vice Mayor Betts: I agree with C Hudson.

Mary Schreider-Fox: The Mayor just asked me is that how it's done in the Court system. I will tell you in Civil Cases and those are the case I'm involved in, 99% of the time, each side just makes a closing and that's it. I've had occasion and if you are the Plaintiff in the case, like in this case the presenting party; the Judge will give you one last opportunity as the Plaintiff's attorney to rebut to the closing; there was one situation that I observed where the Judge asked the Plaintiff's attorney if he wanted to make a rebuttal closing and then that attorney said something and the other attorney was given an opportunity. In criminal cases, I've been told that it's more common for the Judges to allow a rebuttal closing. I think it's all over the board. It's been done differently in trial settings, sometimes depending on the Judge that you get and how they like to run their courtroom. I don't think these comments that you're making are inappropriate and I will confess I thought about it when I was writing and I will go with what I thought was the majority, standard practice and see what everybody thinks. That's why it is on the agenda tonight so that you can actually look at it and decide what you want to do and make changes as necessary.

Mayor Post: I think Ms. Stevens should go last.

C Hudson: I think it should either be deleted or give the Chief's attorney a second shot, as well. It should be fair; they should each have an equal opportunity to speak. I would like to make a motion that this sentence "Ms. Stevens shall be permitted to make a rebuttal to closing arguments, should she so desire", be deleted from this document.

C Duby: Second.

Mayor Post: We have a motion and a second. All those in favor, say "aye". Opposed. Motion carried.

C Hudson: I make a motion that we accept this document, as written, with that deletion made.

C Duby: Second.

Mayor Post: We have a motion and a second. Any further discussion? All those in favor, say "aye". Opposed. Motion carried.

## 11. Adjournment

C Prettyman: I make a motion to adjourn.

C Duby: Second.

Mayor Post: We have a motion and a second. Is there any discussion? All in favor say "aye". Opposed. Motion to close at 7:57 pm.

**Milton Town Council Meeting**  
**Milton Theatre, 110 Union Street**  
**Monday, July 6, 2009**  
**7:00 p.m.**

1. **PUBLIC PARTICIPATION** portion was called to order by Mayor Post at 7:00 pm

- a. Katherine Grieg: 326 Union Street. Good evening. Once again I'm back to haunt you to talk about the Garden Club. In the absence of the President, Jennifer, the Garden Tour and Home Tour are this Saturday, July 11<sup>th</sup> from 9 to 3. We have 12 gardens; we have 2 houses, plus Abraxus Art Studio and if you have never been into Abraxus Studio, that is a very old, historic house and is interesting to see, in addition to the artwork; and Frankie Dittman's again orchid house. Frankie called me and left me a message this week, saying please come out and look, because in his kitchen, he's not cooking this week, he's set up this waterfall with rocks and everything, with his orchid plants around it. Tickets are \$12, ahead of time; they're available across the street at Antiques in Milton at Hillside Flowers and if you want to go out of town and buy them at Lewes Spring. We have lots of special events and this is the biggest fundraiser of the year, if you want to continue to see all the flowers and the planters, then please buy a ticket. Thanks.
- b. Jeff Daly: 211 Grist Mill in the Cannery Village Neighborhood. Recently we had some family owned property, a long standing family in the Milton area, had their property re-zoned from agricultural to heavy industrial use. I'm not going to go into that issue; it's been covered in the press quite extensively; I truly hope that the family finds the right business to occupy the parcel and that we have great jobs coming out of it and that it doesn't threaten, in any way, the quality of life in Milton. One thing I do want to share, I was at Planning & Zoning before they sent the work off to the County Council; I was at the County Council Meeting and not once was Milton mentioned by anyone on Planning & Zoning, or on the County Council; in terms of how that property would affect the Town of Milton; it was as though we did not exist. I know that in many, many states across our country, counties and municipalities area at odds with each one another; but I want us all to stop and think a minute. As you drive into Milton today, you drive through very bucolic areas; mostly farmland, in as few years as ten, maybe twenty; we are going to look like the towns that ride along 113. We're going to have sprawl crawl all around us, unless we come up with a plan; something to the affect "Don't 113 Milton". If you think of Georgetown and their downtown and you think of Milford and, of course, Millsboro and towns further south, along 113; their downtowns are devastated and their big stores and 113 looks like it fell off the back of a truck. Unfortunately, that could be our future; unless we take a stand. I've addressed all of the council members on my concerns and my sentiments and I hope that we can put something together; those who are involved in city planning, etc.

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and our future. The other thing to think about is density of housing. We could just as well be ringed by sub-divisions with houses on half-acre lots; or we could ringed, perhaps, by smaller developments like Cannery Village or Heritage Creek, which are going to enjoy lots of free, open space. The other thing to note is that when the family here in Milton re-zoned, there are programs in other states, where the monies that this family will make from the re-zoning is apportioned to other landowners surrounding municipalities like Milton, that will not change their zoning. In other words they benefit from one party getting a heavy industrial re-zoning and making money on either the sale or the use of that land in such a fashion. Unfortunately, Sussex County is still doing business the way it was done 50, 75, 100 years ago. But if there are people in Milton, who want to challenge the thinking of Sussex County Council or put new members on the Council, and that would mean that we would have to go outside our jurisdiction and really fight hard to get people, especially to the western districts, over the coming years, to change. I'm going to be involved in this in some way, shape or form and if anybody wants to contact me, I'm pretty easy to find and I'm record 211 Grist Mill and my phone number is available, but if you think about it; 10 or 20 years and we could look like all those towns up and down 113 and we all thought that the sprawl crawl was going to come in from Rehoboth and it's coming from the west, actually, is one way to look at it. The other thing is, Milton is perfectly positioned to be a warehouse community to the resort folks and to the municipalities up and down 113 and just like Lakeland, Florida is right between Orlando and Tampa-St. Pete and if anybody knows Lakeland, it too, looks like it fell off the back of a truck. So we've got bucolic, lovely downtown; we've got a Main Street program going; and, boy it could all be for naught. Just that quickly. Thanks for hearing me out on this.

Mayor Post: I will now close the public participation portion of this meeting at 7:07 pm.

2. The Milton Town Council Meeting was called to order by Mayor Post at 7:07 pm.
3. A Moment of Silence was led by Vice Mayor Betts.
4. The Pledge of Allegiance to the Flag was said by all in attendance.
5. Roll Call was called by Mayor Post

C Martin-Brown	Present
C DUBY	Present
C Hudson	Present
C Abraham	Present
C Betts	Present
Mayor Post	Present

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C Prettyman

Present

6. Additions or Corrections to the Agenda

Mayor Post: Are there any additions or corrections to the agenda?

C Duby: Yes, Mr. Mayor. Item 13 b, I placed that on the Agenda and the Process Review Committee has referred those proposed changes to our Legal Counsel for review and I would like to ask that that be removed tonight and that it be placed on the agenda for the August Town Council meeting.

Mayor Post: Can we have the approval of the agenda with the proposed changes?

C Hudson: I make a motion to approve the agenda with the changes proposed.

C Betts: Second.

Mayor Post: We have a motion and a second. Any further discussion? All in favor say "aye". Opposed. Motion carried.

7. Presentation and Approval of Minutes for May 4, 2009, May 21, 2009 and June 1, 2009.

C Prettyman: I make a motion that we accept the minutes of May 4, 2009, May 21, 2009 and June 1, 2009, as written.

C Duby: Second.

Mayor Post: We have a motion and a second, is there any discussion? All in favor say "aye". Opposed. Motion carried.

8. Approval of Written Committee Reports

C Prettyman: I make a motion to accept and approve the committee reports that have been submitted to us, as presented.

C Abraham: Second

Mayor Post: We have a motion and a second. Is there any discussion? All in favor say "aye". Opposed. Motion carried.

a. Town Manager's Report

George Dickerson: Good evening Mayor and Council. The first thing I would like for you to know is about the Milton Rails to Trails Phase I project. All the benches and the trash cans have been installed; if anyone's been down there; the paving and the seeding of the trail has been completed; the bases for the light poles have been installed and we are waiting for DP&L to hook up the electric so that can be completed. Anyone that has had an opportunity to go down there, I think that the project speaks for itself, when you see it; it is quite a beautiful project. Second item tonight is that PTA reassessment. Property Tax Associates are the ones conducting our reassessment and all of the exteriors of properties have been assessed. Phase II is in the process of being completed to obtain the property values, which involves putting numbers with the dimensions obtained. Once Phase II is complete, letters will go out to all property owners explaining their assessment and giving them an updated value of their property. If the property owner wishes to discuss their assessment value, PTA will schedule a hearing with the said property owner

who may have questions. The estimated timeframe for these hearings is some time in August. The next item coming up sooner than some of us would like to think is that our new budget year will be upon us 1 October. The town staff has met with all the department heads; there have been individual meetings with each of them and they have made suggestions or recommendations, as well as staff for the overall town. We are, in fact, meeting tomorrow and this is going to give us a first look at some of the numbers as to where we stand with an updated budget. I hope to have those to you as soon as possible for your review; but that's something we're working on and have been working on this year more intently, then any year in the past, as we have implemented the weekly budget meetings that we have with staff. The Code Enforcement Officers position was offered to an individual that has past code enforcement experience with the City of Dover, as well as law enforcement background. He comes highly recommended by his former employer. He will be starting on July 27<sup>th</sup>. His name is Joseph Huff. That's actually all I have, unless there are any questions.

C Hudson: You mentioned Rails to Trails. There was a Brownfield action taken, rather than just Cap and Cover; so that contamination could be removed. I was under the impression that the Brownfield action was going to continue right on down to Lavinia to take out the curb and the railroad tracks.

George Dickerson: You are absolutely correct. Phase I was what I was speaking to and that is only from Chestnut to Federal. The other, we have made a request to DNREC, the gentleman that spoke that night, I can't remember his name offhand; but we have made that request that the Brownfield go ahead and continue and remove the trails and clean-up any Brownfield materials that is all the way to Lavinia Street.

C Hudson: Would you report back to us at the next council meeting of your progress?

George Dickerson: If I have anything with regard to that, yes. He's very well aware but he's not given us any time line for that. We were approved up to \$1 million.

C Hudson: I'm sure the people of Wagamon's would rather have Rails to Trails behind their homes than a Brownfield.

George Dickerson: When you say would rather have Rails to Trails than a Brownfield, there's been no monies appropriated for Phase II, which would take it from Federal to the trestle bridge; Phase III is trestle bridge to Lavinia. There are no money appropriations, and as I think you heard that night, there may be none in the next fiscal year or any beyond that, with this economy. With the Brownfield, there is money that we were approved up to \$1 million for the clean-up; but not continuation of Phase II or III.

C Hudson: I understand that, but potentially or possibly in the future there could be Rails to Trails there; so what I'm hoping is that if you could get a response from DNREC for the removal of the rest of the contaminants.

George Dickerson: If it's available, yes.

C Hudson: The other question is about all the way through Lavinia. Shipbuilders, while I'm riding my bike out there, that pump is still there, the streets haven't been fixed, is there some timeframe.

George Dickerson: Yes, in fact that was supposed to be completed by June 30<sup>th</sup> and it has not been completed. The reason for that is there was a piece of the easement connecting from where the pond comes up to crossover, a piece that was forgotten; we are working with Mr. Turner, who owns Holly Lake and his attorney in Wilmington, Mr. Rago; in fact, I had a conversation with Mr. Turner today to expedite that.

C Hudson: The last question is about the sidewalks. We were supposed to send out a letter. Has that gone out to notify people that we were going to go ahead and pursue that?

George Dickerson: I would let Vice Mayor Betts, Chair of the Streets and Sidewalks Committee speak to that, but yes there is one; Vice Mayor Betts has had several meetings and we have a timeframe of executing a letter.

Vice Mayor Betts: That's right. Our Town Manager, George Dickerson has been very busy this week, and obviously Mayor Post has today and we hope to get that letter out next week. It's on schedule.

b. Written Reports  
Maintenance

C Prettyman: I make a motion we accept the June, 2009 written report from the Maintenance Department, as written.

C Duby: Second

Mayor Post: We have a motion and second; any discussion? All in favor say "aye". Opposed. Motion carried.

Project Coordinator/Code Enforcer

C Prettyman: I make a motion to accept the June, 2009 Project Coordinator/Code Enforcer report, as prepared.

Vice Mayor Betts: Second.

Mayor Post: We have a motion and second, is there any discussion? All in favor say "aye". Opposed. Motion carried.

Police Report

C Prettyman: I make a motion to accept the May 21<sup>st</sup> through June 20<sup>th</sup>, 2009, as submitted by the officer in charge.

C Abraham: Second.

Mayor Post: We have a motion and second; any discussion? All in favor say "aye". Opposed. Motion carried.

9. Old Business

a. Review and Possible Vote on the Conditions for the Key Ventures R-3 LPD Master Plan

Bob Kerr: With Cave Associates. Good evening, Mayor and Council. At a previous meeting in 2007, you approved the conditions for the LPD of Key Ventures. There were some blanks in it that Council directed that we complete with the town staff and the developer. We have done that, although we weren't directed to bring it back to you; we felt that it was appropriate because there were changes to a document you had approved; to bring it back to you so in the future everybody is on the same page with those changes. I asked Robin to give you a copy with some red printing on it that shows the changes and another document that just is without the corrections. It incorporates the corrections. They were relatively minor. If you like, I could go through them or you have them before you.

C Prettyman: I do have a question before I make a motion. With number 12 and number 16; they are both talking about open space walkways shall be adequately illuminated with \_\_\_\_ style light, but isn't 16 a repeat of 12?

Mayor Post: I think 16, and I might be wrong, Bob is open space walkways that could be in a park setting vs. on a street setting.

Bob Kerr: In going through it we noted that there was quite a bit of similarity, between the two, but rather than start making a lot of wholesale changes, we more or less left it the way it was. Yes, it's a little bit of department of redundancy department, but, we think it does cover it.

C Duby: In looking at number 12, when C Prettyman drew my attention to it, I noticed it says Connective Power Company; is there still a Connective Power Company, or isn't that Delmarva Power now?

Bob Kerr: Probably in 2007 there was, but it's now changed their name to Delmarva.

C Duby: Shouldn't we update that?

Bob Kerr: It probably would be appropriate to do that and whoever makes a motion to approve this would incorporate that, I will make the change to the document.

C Prettyman: I would like to make a motion to approve the Key Venture R-3 LPD master plan with the corrections in it and a notation made that Connective be changed to Delmarva Power.

C Duby: Second.

Mayor Post: We have a motion and a second. Any discussion to the motion? All in favor say "aye". Opposed. Motion carried.

b. Discussion and Possible Vote to Extend or Eliminate the Current Moratorium on the Demolitions with the Town of Milton. This Moratorium is Scheduled to Expire on July 31, 2009

Mayor Post: We have not had any comments come back from the Historic Preservation Committee. We did from Planning & Zoning.

Mary Schreider-Fox: I was just going to add my memory is that we had Planning & Zoning comments and nothing from Historic Preservation but that we had kept it opened for a little while to see if they would in fact submit some comments. I haven't conducted my review yet; so I would only have to do it once, after Historic Preservation sent their comments. To my

knowledge, I haven't seen anything from that committee yet. So I think where we are now is that a decision has to be made. If we continue to wait for the comments from the Historic Preservation before this body and I can conduct our review of what has been submitted so far.

C Prettyman: Is it possible, Mr. Dickerson, that you could contact the Chairperson of the Historic Preservation Committee, because you can't go forward.

C Martin-Brown: Mr. Mayor, I would like to make a motion that we table this until we do hear back from the Historic Preservation Committee. Demolition is a critical.

Robin Davis: Mr. Mayor and Council, when the Council first heard this they sent it Planning & Zoning and the Historic Preservation Commission for their review. It was on a Historic Preservation Commission agenda; that evening only 3 members showed up; so we did not have a quorum, so they could not vote or review this. Planning & Zoning went ahead and reviewed it. In your packets, last month, I think it was, you got a memo stating there was no quorum and there was not going to be any comments from Historic Preservation Commission. C Prettyman made a motion to table the decision until the Historic Preservation Commission could review it. I was not made aware of that, so I did not put it on the June agenda. We did not find out until just recently that the motion was made to table it. That's why the Historic Preservation Commission has not reviewed this yet. They were under the impression at the meeting when they had the quorum that they weren't going to get it back, because it was kind of brought to them, if you do have any comments, then come to the Town Council meeting and make comments. Their next meeting is July 14<sup>th</sup>. It can be put on next week's agenda.

C Martin-Brown: I would table it to the next meeting.

Robin Davis: As the Town Solicitor said, she has to take the comments too.

Mayor Post: The most we'll need is 60 days, but we should be able to get it finalized and back here to vote on in 60 days; because it's going to have to go from that meeting, then over to you for review.

Mary Schreider-Fox: Then back to you for review.

Robin Davis: It's according to how fast the Town Solicitor can do it.

Mayor Post: It will require public hearing too, because it will be changing to the zoning ordinances. Then we should table it for 60 days. We should extend the moratorium for 60 days.

Mary Schreider-Fox: I think the agenda item is whether or not the moratorium is scheduled to expire July 31<sup>st</sup>, so if you want to extend the moratorium while we're still conducting this review, that would be the action to take tonight.

Mayor Post: Right, but I don't want it to be another 6 months.

C Prettyman: Then we can make a motion to extend it 60 days.

C Martin-Brown: I've made a motion C Prettyman; it's hanging out there somewhere.

C Duby: The motion you made is to table the discussion.

C Martin-Brown: I would like to amend the motion that we extend the moratorium for 60 days effective from the meeting date tonight.

C Prettyman: Second.

Mayor Post: We have a motion and a second; any discussion. All in favor say “aye”. Opposed.

C Duby: No. I’ve said twice on the record that if we went to extend it one more time I would vote against it.

## 10. New Business

### a. Resolution in the Memory of the Late Senator Thurman Adams

Mayor Post: We have this resolution that I would like to read in honor of Senator Adams. As many of you know, we lost our Senator, who represented Milton and I would like to read this into the record as a Resolution on the death of Senator Thurman G. Adams, Jr. “The Mayor and Council of Town of Milton, Delaware, invite our citizens to join us in the remembrance of our long time supporter and friend, Senator Thurman G. Adams, Jr., President Pro Tempe who was claimed by pancreatic cancer on Tuesday, June 23, 2009. This was a death that truly surprised and saddened us all. Senator Adams represented our Town in the 19<sup>th</sup> Senatorial District since first elected in 1972. As a Mayor and a Miltonian, I am proud to be part of his representing district along with the towns of Bridgeville, Greenwood and Georgetown, as well as other areas. As Senator, he dedicated his life in serving those people represented in his district, as well as all Delawareans state-wide. His dedication greatly contributed to both the financial and spiritual support of our Town, County and State. Officials and others of the Town could always rely on him as a true man of his word and honor during his extensive number of years and public service. His strength was his belief and his belief was in the people of Delaware. As a Sussex Countian working on his family farm and grain business, T. G. Adams and Sons, Inc. and growing up in his hometown of Bridgeville, Delaware, Senator Adams was well aware of the struggles and needs of the small rural American town. His dedication and keen ability to guide should inspire those in leadership to recognize the importance in making decisions that improve our land, culture and society. As Mayor, Council and citizens of the Town of Milton we will miss him greatly and always remember his contributions towards building our town to what it is today. Senator Adams devotion and commitment can be seen throughout our town in many forms, within our sidewalks, streets, vintage lighting, Governor’s Walk, non-profit streetscapes and parks. His memory will always be part of Milton’s Sussex County and the State of Delaware. Senator Adams’ legacy will always remain with us as a part of our town. During this time I want our inner strengths, thoughts and prayers to be extended to the family.” As Mayor, I ask that this Resolution be included in the Minutes of the Town of Milton, at this Town Meeting held on July 6, 2009 and a copy provided to Senator Adams’ family.

Vice Mayor Betts: I make a motion to accept that Resolution to be sent to the family of Senator Adams.

C Prettyman: Second.

Mayor Post: We have a motion and a second. Any discussion? All in favor say "aye". Opposed. Motion carried.

b. Appointment of a Hearing Officer for the Public Hearing on July 10, 2009

Mary Schreider-Fox: As we all know, we're having a public hearing on this Friday; the Chief of Police Due Process that's required by Title XI, Section 9301. The Town Council will be the sitting body that is hearing the presentation, both by Tasha Stevens, who will be presenting the case for termination, as well as the Chief's Attorneys, Tom Neuberger and John LaRosa, presenting the Chief's Defense. What we need to have is a Hearing Officer in place; that person is not going to be a judge, necessarily; it's just going to be the person identified, who will keep control over the proceedings, and respond to the attorneys when they have questions. I will be sitting with the Town Council and with the Hearing Officer. The Employee Handbook for the Town, although we are not following that exactly, because we are going under this Title XI, Section 9031 for the Public Hearing; but the Town also can have hearings in an employment situation and contemplates that one of the members of the Personnel Committee will act as Hearing Officer for the Town Council Members hearing the employment matter. Therefore, it is my suggestion that from among the Town Council members who will be attending the hearing, we choose a Hearing Officer. I'll go ahead and say the person who came to mind for me, is C DUBY, because of her legal experience and previous career as an attorney, that that might be a natural fit for her in terms of helping to conduct the proceedings. That's what this agenda is for and those are my comments.

C Martin-Brown: Mr. Mayor, I would like to make a motion that C DUBY serve as the Hearing Officer because she is an attorney.

Mary Schreider-Fox: Vice Mayor Betts just asked if she can vote, then. Yes, she can vote; she'll still be a member of the body who deliberates and votes on the issues presented. She's just going to be the identified person who helps run the show a little bit and keeps control over the proceedings. At this point in time this public hearing was scheduled and is being put together fairly quickly, I don't know if we would be able to find an outside third party who would be available to do that on such short notice.

C Martin-Brown: Mr. Mayor, one of the motivations is to have somebody from the Personnel Committee and I am not correct that C DUBY is on the Personnel Committee?

Mayor Post: She is.

Mary Schreider-Fox: Again, I'll just say, I'm making that suggestion because keep some consistency with the standard employment procedures that the town has in place, anyway. If we can remain consistent with those, if and when possible, even though this is a somewhat unique situation, I thought that would be a good idea.

C DUBY: Let me just say that I am willing to do it, but to that point of fairness, I've already said to our Council, that the only circumstance under which I would be willing to do it, is if I can make it clear at the very beginning of the hearing what rules apply to this and what my role is; that I'm not sitting as a judge or an objective third party; that I'm presiding, that I'm doing so as a member of the Town Council and in that respect, I'm no different then any other member in terms of having a vote or viewing the evidence and reviewing the evidence. This is not like a trial in which you have a judge that is objective and sits apart.

C HUDSON: Is there any objection from Chief Phillips' attorney to having one of our people be the hearing officer?

MARY SCHREIDER-FOX: I have not consulted with him about this matter.

VICE MAYOR BETTS: I don't have a problem with C DUBY, but I would not want anyone to think it was being partial in any way by a Council person; I have no problem with her doing it; but I just want the public to know and to feel comfortable.

MARY SCHREIDER-FOX: Well, along those lines, I think it is important to remember that this public hearing, I don't want to diminish the importance of it, but it is like other public hearings that the Town Council may conduct from time to time; and the Town Council is allowed to conduct its own hearing; just like the role that the Mayor would play in a regular meeting; or the Chairperson of Planning & Zoning plays when they have a public hearing. Those persons still vote, still participate; but they are just simply the identified person to help manage and keep control over the proceedings and its in that same role; its just simply because we have a different kind of public hearing that we have to reidentify who's doing what and under the circumstances, since there are going to be attorneys presenting cases and it will have a little bit more of a formal feel, I thought that it might be a good idea to have the Town Council person assume that role, who has some legal background and can probably better handle some of the questions or comments that may arise from the attorneys that are participating in the proceeding.

C DUBY: Mary, can I ask one question. I have been assuming and I hope this is true, because it puts a different light on it for me, if it isn't; that there is no ruling on objections or anything like that by the hearing officer.

MARY SCHREIDER-FOX: There have been very few of these kinds of public hearings under the Chief's Due Process Statute, to my knowledge in the State of Delaware; so I can only anticipate what I think might happen. I anticipate that the attorneys may raise objections from time to time, in which case, the only kinds of objection I anticipate being raised very often would be evidentiary ones and since this is an administrative proceeding, hearsay is admissible and I know one of my partners previously participated in a public hearing of this type, many years ago, or several years ago, I should say, and the hearing officer in that situation, simply responded to any of those objections by saying, this is an administrative proceeding; hearsay is admissible; that will go to wait; please move on. Again, it was just more of a

role of controlling the situation and keeping the proceedings moving forward; as opposed to really making evidentiary rulings.

C Hudson: Second.

Mayor Post: We have a motion and a second. Any further discussion? All in favor say "aye". Opposed.

C Duby: Abstain.

Mayor Post: Motion carried.

c. Consideration and Possible Acceptance of Proposed Rules of Procedures for Public Hearing on July 10, 2009

Mary Schreider-Fox: All of you should have a copy of some proposed public hearing rules for the hearing this Friday and because this doesn't happen very often, we had to be creative and create our own. I modeled these after other times of other administrative tribunals that will have public hearings; such as a Board of Adjustment or a Planning & Zoning, so it really just sets forth that there is a Hearing Officer; that the witnesses will be under oath; how the order of the day will go; such as opening remarks from each side; they can present witnesses; a record of the proceedings, that there will be a record of the proceedings and I have made arrangements for a court reporter to be present on Friday, so it is an official court reporter and she will transcribe everything that occurs and it is my understanding that the Town's regular recording equipment will also be operating and set-up that day so we will have a double duty in terms of making the record. I have already mentioned this briefly; in administrative proceeding, because this isn't in front of a judge; this isn't in front of a jury; it's not in court; what that means is that the rules for the public hearing; again, that I have borrowed from other situations and just rewritten a little bit to fit our particular public hearing; you don't have to strictly follow the rules of evidence. Part of that is an acknowledgement that a typical Town Council or a Board of Adjustment or something like that isn't comprised of judges, and that is one of the rules in these proposed rules; talking about the hearsay that's number 6 – it shall not be prohibited – and that is very standard in this kind of a setting. This just gives everybody a little bit of a blueprint to follow, including the Chief's attorneys, as well as Tasha Stevens, who will be presenting the case for termination so that everybody knows what to expect and it just goes to helping to keep some order and control over the proceeding.

C Hudson: Can you tell me what firm Tasha Marie Stevens works for?

Mary Schreider-Fox: Ms. Stevens works with Fuque and Yurie and she has a good background in litigation, civil and criminal defense work; she came highly recommended by some colleagues of mine and I've worked with Ms. Stevens before; so she's in the process of preparing for the case and will be ready to present on Friday.

C Hudson: I was just curious as to why someone from your firm was not representing us.

Mary Schreider-Fox: The reason why is, number one, my two partners were unavailable because of their workload; and then this way I can sit with the

Town Council and keep those two roles separate. Do you need me to go over each one?

Mayor Post: I would quickly, if you would.

Mary Schreider-Fox: Okay. In number "4", we talked about this; it sets for the order of proceeding; some introduction or opening remarks by the Hearing Officer and it is at that time that C Duby that you can make your comments about what your role will be and make that clear for all involved; opening statements, that is when Ms. Stevens and Mr. Neuberger or Mr. LaRosa, whichever one it will be, can make a brief opening statement, setting forth the nature of the case they intend to present. Then to follow that and "C" will be the presentation of case for termination and that will be made by Ms. Stevens; flying through witnesses and other exhibits that she will offer to the Town Council on the day of the hearing. So as you can see, it has a little bit of a feel like a trial setting, but it's not exactly, because of the way that it is set out. They can make opening remarks, present the case; the Chief's attorneys will have an opportunity to cross-examine any witnesses that Ms. Stevens calls; and that leads us to "D"; then Chief Phillips, by and through his attorneys, will be able to present their case and defense as to why termination is not warranted. They will call witnesses, present exhibits and Ms. Stevens will have an opportunity to cross-examine any of his witnesses. Sub-paragraph "E" talks about rebuttal testimony that in the event something comes up in the presentation the Chief's Defense, that Ms. Stevens finding through any witnesses who would like to try to address an issue, she'll have the opportunity; and the Chief will have the same opportunity; after any rebuttal witnesses she might call. That's designed to give everybody one last shot to make any comments through witnesses or to get any additional information or evidence before you; depending on how the proceedings go and what kinds of issues come up. That way you have as comprehensive a record as possible. In sub-paragraph "F" it calls for closing arguments and that's when each of the attorneys can summarize their case and put together all the evidence that they have presented and how they think it should be interpreted. Sub-paragraph "G" simply specifies that no statements or testimony from the general public will be permitted. I thought it would be good to include that, because unlike other kinds of public hearing settings, it's not going to be an open forum where people can just come forward and make comments. Paragraph 5 just sets forth that all exhibits presented to the Town Council should be appropriately marked Town Exhibit "1" or Chief Exhibit "1". I put in there that the Hearing Officer shall date and initial each document or exhibit to authenticate it; sometimes in these kinds of hearings, documents start floating around and nobody knows if that document got in or not; this way all exhibits, as long as they're initialed by the Hearing Officer we know that is an official part of the record. Paragraph "6" talks about hearsay and I've already covered that. Paragraph "7" simply says that the Hearing Officer has the ability and the authority to take control over the proceedings and limit any testimony and questioning that is irrelevant, unduly repetitive or

provocative. Basically, if there becomes a heated discussion or the same question is asked six times in a row, that this gives a Hearing Officer the ability to simply say, okay can we move on, that same question has been asked and answered; something like that. It's just a mechanism to try to keep the proceedings moving forward. Number "8" – Deliberation and Decision – it just simply confirms that following the presentation from both sides, that the Town Council will deliberate in public about what it has heard that day and that it is anticipated that a decision will be made, unless there is some need to continue to the proceedings; and that just simply confirms that that is what is going to happen at the end. Then number "9" – Rules to be Liberally Construed to Promote Substantial Justice – I included this to just simply to say the exact order of the proceeding or some of the rules that in the event we're going through and we feel that something needs to be changed, or permitted, in order to make sure that substantial justice is done and that it results in as fair of a proceeding as possible; that that is within the Town Council's control. That's all.

C Hudson: Let's start with opening statements and I'll keep this very brief; the Town speaks first and then the Chief's attorney; then you get to closing statements and it goes Town's attorney and Chief's attorney and then Town again. We're talking about justice and fairness; I think in all fairness, that last sentence that Ms. Stevens should be permitted to make a rebuttal closing argument, should she so desire, should be deleted; because it doesn't follow the pattern; the pattern is Town, Chief, Town, Chief and then the Town gets a final shot. To be fair it should be Town, Chief, Town, and Chief.

Mary Schreider-Fox: Unless you're familiar with court proceedings and the order is fashioned on how it might be presented in court, even though you're not a court; borrowing from what other administrative proceedings have done; or other bodies have done in administrative proceedings; borrowing a little bit of the format from a trial-like proceeding that often-times the presenting party is given one last opportunity to make some comments to the body or to the judge; if you have anything to say in response to the closing remarks. That was simply borrowed from other places and the procedure that was used elsewhere, for us to consider.

C Hudson: I think it should be deleted. To keep it even and fair; everybody has equal opportunity and the way this is, it's not equal, when we are given more chances to speak, then the Chief's side.

C Prettyman: Excuse me, C Hudson, isn't that what the Hearing Officer would do if the other attorney wanted to say something, then wouldn't she give them that opportunity?

C Hudson: According to this, it says if Ms. Stevens so desired. So, it's not up to the Hearing Officer; you've right away given the Town's Attorney the opportunity to have one more opportunity to present than the other. I don't think it's fair.

Mary Schreider-Fox: May I make a suggestion? Either remove it altogether or provide for rebuttal to closing and make that available to both.

C Hudson: Make it available to both or remove it. Everyone should have an equal time. If one has two, the other should have two.

Vice Mayor Betts: I agree with C Hudson.

Mary Schreider-Fox: The Mayor just asked me is that how it's done in the Court system. I will tell you in Civil Cases and those are the case I'm involved in, 99% of the time, each side just makes a closing and that's it. I've had occasion and if you are the Plaintiff in the case, like in this case the presenting party; the Judge will give you one last opportunity as the Plaintiff's attorney to rebut to the closing; there was one situation that I observed where the Judge asked the Plaintiff's attorney if he wanted to make a rebuttal closing and then that attorney said something and the other attorney was given an opportunity. In criminal cases, I've been told that it's more common for the Judges to allow a rebuttal closing. I think it's all over the board. It's been done differently in trial settings, sometimes depending on the Judge that you get and how they like to run their courtroom. I don't think these comments that you're making are inappropriate and I will confess I thought about it when I was writing and I will go with what I thought was the majority, standard practice and see what everybody thinks. That's why it is on the agenda tonight so that you can actually look at it and decide what you want to do and make changes as necessary.

Mayor Post: I think Ms. Stevens should go last.

C Hudson: I think it should either be deleted or give the Chief's attorney a second shot, as well. It should be fair; they should each have an equal opportunity to speak. I would like to make a motion that this sentence "Ms. Stevens shall be permitted to make a rebuttal to closing arguments, should she so desire", be deleted from this document.

C Duby: Second.

Mayor Post: We have a motion and a second. All those in favor, say "aye". Opposed. Motion carried.

C Hudson: I make a motion that we accept this document, as written, with that deletion made.

C Duby: Second.

Mayor Post: We have a motion and a second. Any further discussion? All those in favor, say "aye". Opposed. Motion carried.

## 11. Adjournment

C Prettyman: I make a motion to adjourn.

C Duby: Second.

Mayor Post: We have a motion and a second. Is there any discussion? All in favor say "aye". Opposed. Motion to close at 7:57 pm.

**Milton Town Council Meeting**  
**Milton Theatre, 110 Union Street**  
**Monday, July 6, 2009**  
**7:00 p.m.**

1. **PUBLIC PARTICIPATION** portion was called to order by Mayor Post at 7:00 pm

- a. Katherine Grieg: 326 Union Street. Good evening. Once again I'm back to haunt you to talk about the Garden Club. In the absence of the President, Jennifer, the Garden Tour and Home Tour are this Saturday, July 11<sup>th</sup> from 9 to 3. We have 12 gardens; we have 2 houses, plus Abraxus Art Studio and if you have never been into Abraxus Studio, that is a very old, historic house and is interesting to see, in addition to the artwork; and Frankie Dittman's again orchid house. Frankie called me and left me a message this week, saying please come out and look, because in his kitchen, he's not cooking this week, he's set up this waterfall with rocks and everything, with his orchid plants around it. Tickets are \$12, ahead of time; they're available across the street at Antiques in Milton at Hillside Flowers and if you want to go out of town and buy them at Lewes Spring. We have lots of special events and this is the biggest fundraiser of the year, if you want to continue to see all the flowers and the planters, then please buy a ticket. Thanks.
- b. Jeff Daly: 211 Grist Mill in the Cannery Village Neighborhood. Recently we had some family owned property, a long standing family in the Milton area, had their property re-zoned from agricultural to heavy industrial use. I'm not going to go into that issue; it's been covered in the press quite extensively; I truly hope that the family finds the right business to occupy the parcel and that we have great jobs coming out of it and that it doesn't threaten, in any way, the quality of life in Milton. One thing I do want to share, I was at Planning & Zoning before they sent the work off to the County Council; I was at the County Council Meeting and not once was Milton mentioned by anyone on Planning & Zoning, or on the County Council; in terms of how that property would affect the Town of Milton; it was as though we did not exist. I know that in many, many states across our country, counties and municipalities area at odds with each one another; but I want us all to stop and think a minute. As you drive into Milton today, you drive through very bucolic areas; mostly farmland, in as few years as ten, maybe twenty; we are going to look like the towns that ride along 113. We're going to have sprawl crawl all around us, unless we come up with a plan; something to the affect "Don't 113 Milton". If you think of Georgetown and their downtown and you think of Milford and, of course, Millsboro and towns further south, along 113; their downtowns are devastated and their big stores and 113 looks like it fell off the back of a truck. Unfortunately, that could be our future; unless we take a stand. I've addressed all of the council members on my concerns and my sentiments and I hope that we can put something together; those who are involved in city planning, etc.

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and our future. The other thing to think about is density of housing. We could just as well be ringed by sub-divisions with houses on half-acre lots; or we could ringed, perhaps, by smaller developments like Cannery Village or Heritage Creek, which are going to enjoy lots of free, open space. The other thing to note is that when the family here in Milton re-zoned, there are programs in other states, where the monies that this family will make from the re-zoning is apportioned to other landowners surrounding municipalities like Milton, that will not change their zoning. In other words they benefit from one party getting a heavy industrial re-zoning and making money on either the sale or the use of that land in such a fashion. Unfortunately, Sussex County is still doing business the way it was done 50, 75, 100 years ago. But if there are people in Milton, who want to challenge the thinking of Sussex County Council or put new members on the Council, and that would mean that we would have to go outside our jurisdiction and really fight hard to get people, especially to the western districts, over the coming years, to change. I'm going to be involved in this in some way, shape or form and if anybody wants to contact me, I'm pretty easy to find and I'm record 211 Grist Mill and my phone number is available, but if you think about it; 10 or 20 years and we could look like all those towns up and down 113 and we all thought that the sprawl crawl was going to come in from Rehoboth and it's coming from the west, actually, is one way to look at it. The other thing is, Milton is perfectly positioned to be a warehouse community to the resort folks and to the municipalities up and down 113 and just like Lakeland, Florida is right between Orlando and Tampa-St. Pete and if anybody knows Lakeland, it too, looks like it fell off the back of a truck. So we've got bucolic, lovely downtown; we've got a Main Street program going; and, boy it could all be for naught. Just that quickly. Thanks for hearing me out on this.

Mayor Post: I will now close the public participation portion of this meeting at 7:07 pm.

2. The Milton Town Council Meeting was called to order by Mayor Post at 7:07 pm.
3. A Moment of Silence was led by Vice Mayor Betts.
4. The Pledge of Allegiance to the Flag was said by all in attendance.
5. Roll Call was called by Mayor Post

C Martin-Brown	Present
C DUBY	Present
C Hudson	Present
C Abraham	Present
C Betts	Present
Mayor Post	Present

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C Prettyman

Present

6. Additions or Corrections to the Agenda

Mayor Post: Are there any additions or corrections to the agenda?

C Duby: Yes, Mr. Mayor. Item 13 b, I placed that on the Agenda and the Process Review Committee has referred those proposed changes to our Legal Counsel for review and I would like to ask that that be removed tonight and that it be placed on the agenda for the August Town Council meeting.

Mayor Post: Can we have the approval of the agenda with the proposed changes?

C Hudson: I make a motion to approve the agenda with the changes proposed.

C Betts: Second.

Mayor Post: We have a motion and a second. Any further discussion? All in favor say "aye". Opposed. Motion carried.

7. Presentation and Approval of Minutes for May 4, 2009, May 21, 2009 and June 1, 2009.

C Prettyman: I make a motion that we accept the minutes of May 4, 2009, May 21, 2009 and June 1, 2009, as written.

C Duby: Second.

Mayor Post: We have a motion and a second, is there any discussion? All in favor say "aye". Opposed. Motion carried.

8. Approval of Written Committee Reports

C Prettyman: I make a motion to accept and approve the committee reports that have been submitted to us, as presented.

C Abraham: Second

Mayor Post: We have a motion and a second. Is there any discussion? All in favor say "aye". Opposed. Motion carried.

a. Town Manager's Report

George Dickerson: Good evening Mayor and Council. The first thing I would like for you to know is about the Milton Rails to Trails Phase I project. All the benches and the trash cans have been installed; if anyone's been down there; the paving and the seeding of the trail has been completed; the bases for the light poles have been installed and we are waiting for DP&L to hook up the electric so that can be completed. Anyone that has had an opportunity to go down there, I think that the project speaks for itself, when you see it; it is quite a beautiful project. Second item tonight is that PTA reassessment. Property Tax Associates are the ones conducting our reassessment and all of the exteriors of properties have been assessed. Phase II is in the process of being completed to obtain the property values, which involves putting numbers with the dimensions obtained. Once Phase II is complete, letters will go out to all property owners explaining their assessment and giving them an updated value of their property. If the property owner wishes to discuss their assessment value, PTA will schedule a hearing with the said property owner

who may have questions. The estimated timeframe for these hearings is some time in August. The next item coming up sooner than some of us would like to think is that our new budget year will be upon us 1 October. The town staff has met with all the department heads; there have been individual meetings with each of them and they have made suggestions or recommendations, as well as staff for the overall town. We are, in fact, meeting tomorrow and this is going to give us a first look at some of the numbers as to where we stand with an updated budget. I hope to have those to you as soon as possible for your review; but that's something we're working on and have been working on this year more intently, then any year in the past, as we have implemented the weekly budget meetings that we have with staff. The Code Enforcement Officers position was offered to an individual that has past code enforcement experience with the City of Dover, as well as law enforcement background. He comes highly recommended by his former employer. He will be starting on July 27<sup>th</sup>. His name is Joseph Huff. That's actually all I have, unless there are any questions.

C Hudson: You mentioned Rails to Trails. There was a Brownfield action taken, rather than just Cap and Cover; so that contamination could be removed. I was under the impression that the Brownfield action was going to continue right on down to Lavinia to take out the curb and the railroad tracks.

George Dickerson: You are absolutely correct. Phase I was what I was speaking to and that is only from Chestnut to Federal. The other, we have made a request to DNREC, the gentleman that spoke that night, I can't remember his name offhand; but we have made that request that the Brownfield go ahead and continue and remove the trails and clean-up any Brownfield materials that is all the way to Lavinia Street.

C Hudson: Would you report back to us at the next council meeting of your progress?

George Dickerson: If I have anything with regard to that, yes. He's very well aware but he's not given us any time line for that. We were approved up to \$1 million.

C Hudson: I'm sure the people of Wagamon's would rather have Rails to Trails behind their homes than a Brownfield.

George Dickerson: When you say would rather have Rails to Trails than a Brownfield, there's been no monies appropriated for Phase II, which would take it from Federal to the trestle bridge; Phase III is trestle bridge to Lavinia. There are no money appropriations, and as I think you heard that night, there may be none in the next fiscal year or any beyond that, with this economy. With the Brownfield, there is money that we were approved up to \$1 million for the clean-up; but not continuation of Phase II or III.

C Hudson: I understand that, but potentially or possibly in the future there could be Rails to Trails there; so what I'm hoping is that if you could get a response from DNREC for the removal of the rest of the contaminants.

George Dickerson: If it's available, yes.

C Hudson: The other question is about all the way through Lavinia. Shipbuilders, while I'm riding my bike out there, that pump is still there, the streets haven't been fixed, is there some timeframe.

George Dickerson: Yes, in fact that was supposed to be completed by June 30<sup>th</sup> and it has not been completed. The reason for that is there was a piece of the easement connecting from where the pond comes up to crossover, a piece that was forgotten; we are working with Mr. Turner, who owns Holly Lake and his attorney in Wilmington, Mr. Rago; in fact, I had a conversation with Mr. Turner today to expedite that.

C Hudson: The last question is about the sidewalks. We were supposed to send out a letter. Has that gone out to notify people that we were going to go ahead and pursue that?

George Dickerson: I would let Vice Mayor Betts, Chair of the Streets and Sidewalks Committee speak to that, but yes there is one; Vice Mayor Betts has had several meetings and we have a timeframe of executing a letter.

Vice Mayor Betts: That's right. Our Town Manager, George Dickerson has been very busy this week, and obviously Mayor Post has today and we hope to get that letter out next week. It's on schedule.

b. Written Reports  
Maintenance

C Prettyman: I make a motion we accept the June, 2009 written report from the Maintenance Department, as written.

C Duby: Second

Mayor Post: We have a motion and second; any discussion? All in favor say "aye". Opposed. Motion carried.

Project Coordinator/Code Enforcer

C Prettyman: I make a motion to accept the June, 2009 Project Coordinator/Code Enforcer report, as prepared.

Vice Mayor Betts: Second.

Mayor Post: We have a motion and second, is there any discussion? All in favor say "aye". Opposed. Motion carried.

Police Report

C Prettyman: I make a motion to accept the May 21<sup>st</sup> through June 20<sup>th</sup>, 2009, as submitted by the officer in charge.

C Abraham: Second.

Mayor Post: We have a motion and second; any discussion? All in favor say "aye". Opposed. Motion carried.

9. Old Business

a. Review and Possible Vote on the Conditions for the Key Ventures R-3 LPD Master Plan

Bob Kerr: With Cave Associates. Good evening, Mayor and Council. At a previous meeting in 2007, you approved the conditions for the LPD of Key Ventures. There were some blanks in it that Council directed that we complete with the town staff and the developer. We have done that, although we weren't directed to bring it back to you; we felt that it was appropriate because there were changes to a document you had approved; to bring it back to you so in the future everybody is on the same page with those changes. I asked Robin to give you a copy with some red printing on it that shows the changes and another document that just is without the corrections. It incorporates the corrections. They were relatively minor. If you like, I could go through them or you have them before you.

C Prettyman: I do have a question before I make a motion. With number 12 and number 16; they are both talking about open space walkways shall be adequately illuminated with \_\_\_\_ style light, but isn't 16 a repeat of 12?

Mayor Post: I think 16, and I might be wrong, Bob is open space walkways that could be in a park setting vs. on a street setting.

Bob Kerr: In going through it we noted that there was quite a bit of similarity, between the two, but rather than start making a lot of wholesale changes, we more or less left it the way it was. Yes, it's a little bit of department of redundancy department, but, we think it does cover it.

C Duby: In looking at number 12, when C Prettyman drew my attention to it, I noticed it says Connective Power Company; is there still a Connective Power Company, or isn't that Delmarva Power now?

Bob Kerr: Probably in 2007 there was, but it's now changed their name to Delmarva.

C Duby: Shouldn't we update that?

Bob Kerr: It probably would be appropriate to do that and whoever makes a motion to approve this would incorporate that, I will make the change to the document.

C Prettyman: I would like to make a motion to approve the Key Venture R-3 LPD master plan with the corrections in it and a notation made that Connective be changed to Delmarva Power.

C Duby: Second.

Mayor Post: We have a motion and a second. Any discussion to the motion? All in favor say "aye". Opposed. Motion carried.

b. Discussion and Possible Vote to Extend or Eliminate the Current Moratorium on the Demolitions with the Town of Milton. This Moratorium is Scheduled to Expire on July 31, 2009

Mayor Post: We have not had any comments come back from the Historic Preservation Committee. We did from Planning & Zoning.

Mary Schreider-Fox: I was just going to add my memory is that we had Planning & Zoning comments and nothing from Historic Preservation but that we had kept it opened for a little while to see if they would in fact submit some comments. I haven't conducted my review yet; so I would only have to do it once, after Historic Preservation sent their comments. To my

knowledge, I haven't seen anything from that committee yet. So I think where we are now is that a decision has to be made. If we continue to wait for the comments from the Historic Preservation before this body and I can conduct our review of what has been submitted so far.

C Prettyman: Is it possible, Mr. Dickerson, that you could contact the Chairperson of the Historic Preservation Committee, because you can't go forward.

C Martin-Brown: Mr. Mayor, I would like to make a motion that we table this until we do hear back from the Historic Preservation Committee. Demolition is a critical.

Robin Davis: Mr. Mayor and Council, when the Council first heard this they sent it Planning & Zoning and the Historic Preservation Commission for their review. It was on a Historic Preservation Commission agenda; that evening only 3 members showed up; so we did not have a quorum, so they could not vote or review this. Planning & Zoning went ahead and reviewed it. In your packets, last month, I think it was, you got a memo stating there was no quorum and there was not going to be any comments from Historic Preservation Commission. C Prettyman made a motion to table the decision until the Historic Preservation Commission could review it. I was not made aware of that, so I did not put it on the June agenda. We did not find out until just recently that the motion was made to table it. That's why the Historic Preservation Commission has not reviewed this yet. They were under the impression at the meeting when they had the quorum that they weren't going to get it back, because it was kind of brought to them, if you do have any comments, then come to the Town Council meeting and make comments. Their next meeting is July 14<sup>th</sup>. It can be put on next week's agenda.

C Martin-Brown: I would table it to the next meeting.

Robin Davis: As the Town Solicitor said, she has to take the comments too.

Mayor Post: The most we'll need is 60 days, but we should be able to get it finalized and back here to vote on in 60 days; because it's going to have to go from that meeting, then over to you for review.

Mary Schreider-Fox: Then back to you for review.

Robin Davis: It's according to how fast the Town Solicitor can do it.

Mayor Post: It will require public hearing too, because it will be changing to the zoning ordinances. Then we should table it for 60 days. We should extend the moratorium for 60 days.

Mary Schreider-Fox: I think the agenda item is whether or not the moratorium is scheduled to expire July 31<sup>st</sup>, so if you want to extend the moratorium while we're still conducting this review, that would be the action to take tonight.

Mayor Post: Right, but I don't want it to be another 6 months.

C Prettyman: Then we can make a motion to extend it 60 days.

C Martin-Brown: I've made a motion C Prettyman; it's hanging out there somewhere.

C Duby: The motion you made is to table the discussion.

C Martin-Brown: I would like to amend the motion that we extend the moratorium for 60 days effective from the meeting date tonight.

C Prettyman: Second.

Mayor Post: We have a motion and a second; any discussion. All in favor say “aye”. Opposed.

C Duby: No. I’ve said twice on the record that if we went to extend it one more time I would vote against it.

## 10. New Business

### a. Resolution in the Memory of the Late Senator Thurman Adams

Mayor Post: We have this resolution that I would like to read in honor of Senator Adams. As many of you know, we lost our Senator, who represented Milton and I would like to read this into the record as a Resolution on the death of Senator Thurman G. Adams, Jr. “The Mayor and Council of Town of Milton, Delaware, invite our citizens to join us in the remembrance of our long time supporter and friend, Senator Thurman G. Adams, Jr., President Pro Tempe who was claimed by pancreatic cancer on Tuesday, June 23, 2009. This was a death that truly surprised and saddened us all. Senator Adams represented our Town in the 19<sup>th</sup> Senatorial District since first elected in 1972. As a Mayor and a Miltonian, I am proud to be part of his representing district along with the towns of Bridgeville, Greenwood and Georgetown, as well as other areas. As Senator, he dedicated his life in serving those people represented in his district, as well as all Delawareans state-wide. His dedication greatly contributed to both the financial and spiritual support of our Town, County and State. Officials and others of the Town could always rely on him as a true man of his word and honor during his extensive number of years and public service. His strength was his belief and his belief was in the people of Delaware. As a Sussex Countian working on his family farm and grain business, T. G. Adams and Sons, Inc. and growing up in his hometown of Bridgeville, Delaware, Senator Adams was well aware of the struggles and needs of the small rural American town. His dedication and keen ability to guide should inspire those in leadership to recognize the importance in making decisions that improve our land, culture and society. As Mayor, Council and citizens of the Town of Milton we will miss him greatly and always remember his contributions towards building our town to what it is today. Senator Adams devotion and commitment can be seen throughout our town in many forms, within our sidewalks, streets, vintage lighting, Governor’s Walk, non-profit streetscapes and parks. His memory will always be part of Milton’s Sussex County and the State of Delaware. Senator Adams’ legacy will always remain with us as a part of our town. During this time I want our inner strengths, thoughts and prayers to be extended to the family.” As Mayor, I ask that this Resolution be included in the Minutes of the Town of Milton, at this Town Meeting held on July 6, 2009 and a copy provided to Senator Adams’ family.

Vice Mayor Betts: I make a motion to accept that Resolution to be sent to the family of Senator Adams.

C Prettyman: Second.

Mayor Post: We have a motion and a second. Any discussion? All in favor say "aye". Opposed. Motion carried.

b. Appointment of a Hearing Officer for the Public Hearing on July 10, 2009

Mary Schreider-Fox: As we all know, we're having a public hearing on this Friday; the Chief of Police Due Process that's required by Title XI, Section 9301. The Town Council will be the sitting body that is hearing the presentation, both by Tasha Stevens, who will be presenting the case for termination, as well as the Chief's Attorneys, Tom Neuberger and John LaRosa, presenting the Chief's Defense. What we need to have is a Hearing Officer in place; that person is not going to be a judge, necessarily; it's just going to be the person identified, who will keep control over the proceedings, and respond to the attorneys when they have questions. I will be sitting with the Town Council and with the Hearing Officer. The Employee Handbook for the Town, although we are not following that exactly, because we are going under this Title XI, Section 9031 for the Public Hearing; but the Town also can have hearings in an employment situation and contemplates that one of the members of the Personnel Committee will act as Hearing Officer for the Town Council Members hearing the employment matter. Therefore, it is my suggestion that from among the Town Council members who will be attending the hearing, we choose a Hearing Officer. I'll go ahead and say the person who came to mind for me, is C DUBY, because of her legal experience and previous career as an attorney, that that might be a natural fit for her in terms of helping to conduct the proceedings. That's what this agenda is for and those are my comments.

C Martin-Brown: Mr. Mayor, I would like to make a motion that C DUBY serve as the Hearing Officer because she is an attorney.

Mary Schreider-Fox: Vice Mayor Betts just asked if she can vote, then. Yes, she can vote; she'll still be a member of the body who deliberates and votes on the issues presented. She's just going to be the identified person who helps run the show a little bit and keeps control over the proceedings. At this point in time this public hearing was scheduled and is being put together fairly quickly, I don't know if we would be able to find an outside third party who would be available to do that on such short notice.

C Martin-Brown: Mr. Mayor, one of the motivations is to have somebody from the Personnel Committee and I am not correct that C DUBY is on the Personnel Committee?

Mayor Post: She is.

Mary Schreider-Fox: Again, I'll just say, I'm making that suggestion because keep some consistency with the standard employment procedures that the town has in place, anyway. If we can remain consistent with those, if and when possible, even though this is a somewhat unique situation, I thought that would be a good idea.

C DUBY: Let me just say that I am willing to do it, but to that point of fairness, I've already said to our Council, that the only circumstance under which I would be willing to do it, is if I can make it clear at the very beginning of the hearing what rules apply to this and what my role is; that I'm not sitting as a judge or an objective third party; that I'm presiding, that I'm doing so as a member of the Town Council and in that respect, I'm no different then any other member in terms of having a vote or viewing the evidence and reviewing the evidence. This is not like a trial in which you have a judge that is objective and sits apart.

C HUDSON: Is there any objection from Chief Phillips' attorney to having one of our people be the hearing officer?

MARY SCHREIDER-FOX: I have not consulted with him about this matter.

VICE MAYOR BETTS: I don't have a problem with C DUBY, but I would not want anyone to think it was being partial in any way by a Council person; I have no problem with her doing it; but I just want the public to know and to feel comfortable.

MARY SCHREIDER-FOX: Well, along those lines, I think it is important to remember that this public hearing, I don't want to diminish the importance of it, but it is like other public hearings that the Town Council may conduct from time to time; and the Town Council is allowed to conduct its own hearing; just like the role that the Mayor would play in a regular meeting; or the Chairperson of Planning & Zoning plays when they have a public hearing. Those persons still vote, still participate; but they are just simply the identified person to help manage and keep control over the proceedings and its in that same role; its just simply because we have a different kind of public hearing that we have to reidentify who's doing what and under the circumstances, since there are going to be attorneys presenting cases and it will have a little bit more of a formal feel, I thought that it might be a good idea to have the Town Council person assume that role, who has some legal background and can probably better handle some of the questions or comments that may arise from the attorneys that are participating in the proceeding.

C DUBY: Mary, can I ask one question. I have been assuming and I hope this is true, because it puts a different light on it for me, if it isn't; that there is no ruling on objections or anything like that by the hearing officer.

MARY SCHREIDER-FOX: There have been very few of these kinds of public hearings under the Chief's Due Process Statute, to my knowledge in the State of Delaware; so I can only anticipate what I think might happen. I anticipate that the attorneys may raise objections from time to time, in which case, the only kinds of objection I anticipate being raised very often would be evidentiary ones and since this is an administrative proceeding, hearsay is admissible and I know one of my partners previously participated in a public hearing of this type, many years ago, or several years ago, I should say, and the hearing officer in that situation, simply responded to any of those objections by saying, this is an administrative proceeding; hearsay is admissible; that will go to wait; please move on. Again, it was just more of a

role of controlling the situation and keeping the proceedings moving forward; as opposed to really making evidentiary rulings.

C Hudson: Second.

Mayor Post: We have a motion and a second. Any further discussion? All in favor say "aye". Opposed.

C Duby: Abstain.

Mayor Post: Motion carried.

c. Consideration and Possible Acceptance of Proposed Rules of Procedures for Public Hearing on July 10, 2009

Mary Schreider-Fox: All of you should have a copy of some proposed public hearing rules for the hearing this Friday and because this doesn't happen very often, we had to be creative and create our own. I modeled these after other times of other administrative tribunals that will have public hearings; such as a Board of Adjustment or a Planning & Zoning, so it really just sets forth that there is a Hearing Officer; that the witnesses will be under oath; how the order of the day will go; such as opening remarks from each side; they can present witnesses; a record of the proceedings, that there will be a record of the proceedings and I have made arrangements for a court reporter to be present on Friday, so it is an official court reporter and she will transcribe everything that occurs and it is my understanding that the Town's regular recording equipment will also be operating and set-up that day so we will have a double duty in terms of making the record. I have already mentioned this briefly; in administrative proceeding, because this isn't in front of a judge; this isn't in front of a jury; it's not in court; what that means is that the rules for the public hearing; again, that I have borrowed from other situations and just rewritten a little bit to fit our particular public hearing; you don't have to strictly follow the rules of evidence. Part of that is an acknowledgement that a typical Town Council or a Board of Adjustment or something like that isn't comprised of judges, and that is one of the rules in these proposed rules; talking about the hearsay that's number 6 – it shall not be prohibited – and that is very standard in this kind of a setting. This just gives everybody a little bit of a blueprint to follow, including the Chief's attorneys, as well as Tasha Stevens, who will be presenting the case for termination so that everybody knows what to expect and it just goes to helping to keep some order and control over the proceeding.

C Hudson: Can you tell me what firm Tasha Marie Stevens works for?

Mary Schreider-Fox: Ms. Stevens works with Fuque and Yurie and she has a good background in litigation, civil and criminal defense work; she came highly recommended by some colleagues of mine and I've worked with Ms. Stevens before; so she's in the process of preparing for the case and will be ready to present on Friday.

C Hudson: I was just curious as to why someone from your firm was not representing us.

Mary Schreider-Fox: The reason why is, number one, my two partners were unavailable because of their workload; and then this way I can sit with the

Town Council and keep those two roles separate. Do you need me to go over each one?

Mayor Post: I would quickly, if you would.

Mary Schreider-Fox: Okay. In number "4", we talked about this; it sets for the order of proceeding; some introduction or opening remarks by the Hearing Officer and it is at that time that C Duby that you can make your comments about what your role will be and make that clear for all involved; opening statements, that is when Ms. Stevens and Mr. Neuberger or Mr. LaRosa, whichever one it will be, can make a brief opening statement, setting forth the nature of the case they intend to present. Then to follow that and "C" will be the presentation of case for termination and that will be made by Ms. Stevens; flying through witnesses and other exhibits that she will offer to the Town Council on the day of the hearing. So as you can see, it has a little bit of a feel like a trial setting, but it's not exactly, because of the way that it is set out. They can make opening remarks, present the case; the Chief's attorneys will have an opportunity to cross-examine any witnesses that Ms. Stevens calls; and that leads us to "D"; then Chief Phillips, by and through his attorneys, will be able to present their case and defense as to why termination is not warranted. They will call witnesses, present exhibits and Ms. Stevens will have an opportunity to cross-examine any of his witnesses. Sub-paragraph "E" talks about rebuttal testimony that in the event something comes up in the presentation the Chief's Defense, that Ms. Stevens finding through any witnesses who would like to try to address an issue, she'll have the opportunity; and the Chief will have the same opportunity; after any rebuttal witnesses she might call. That's designed to give everybody one last shot to make any comments through witnesses or to get any additional information or evidence before you; depending on how the proceedings go and what kinds of issues come up. That way you have as comprehensive a record as possible. In sub-paragraph "F" it calls for closing arguments and that's when each of the attorneys can summarize their case and put together all the evidence that they have presented and how they think it should be interpreted. Sub-paragraph "G" simply specifies that no statements or testimony from the general public will be permitted. I thought it would be good to include that, because unlike other kinds of public hearing settings, it's not going to be an open forum where people can just come forward and make comments. Paragraph 5 just sets forth that all exhibits presented to the Town Council should be appropriately marked Town Exhibit "1" or Chief Exhibit "1". I put in there that the Hearing Officer shall date and initial each document or exhibit to authenticate it; sometimes in these kinds of hearings, documents start floating around and nobody knows if that document got in or not; this way all exhibits, as long as they're initialed by the Hearing Officer we know that is an official part of the record. Paragraph "6" talks about hearsay and I've already covered that. Paragraph "7" simply says that the Hearing Officer has the ability and the authority to take control over the proceedings and limit any testimony and questioning that is irrelevant, unduly repetitive or

provocative. Basically, if there becomes a heated discussion or the same question is asked six times in a row, that this gives a Hearing Officer the ability to simply say, okay can we move on, that same question has been asked and answered; something like that. It's just a mechanism to try to keep the proceedings moving forward. Number "8" – Deliberation and Decision – it just simply confirms that following the presentation from both sides, that the Town Council will deliberate in public about what it has heard that day and that it is anticipated that a decision will be made, unless there is some need to continue to the proceedings; and that just simply confirms that that is what is going to happen at the end. Then number "9" – Rules to be Liberally Construed to Promote Substantial Justice – I included this to just simply to say the exact order of the proceeding or some of the rules that in the event we're going through and we feel that something needs to be changed, or permitted, in order to make sure that substantial justice is done and that it results in as fair of a proceeding as possible; that that is within the Town Council's control. That's all.

C Hudson: Let's start with opening statements and I'll keep this very brief; the Town speaks first and then the Chief's attorney; then you get to closing statements and it goes Town's attorney and Chief's attorney and then Town again. We're talking about justice and fairness; I think in all fairness, that last sentence that Ms. Stevens should be permitted to make a rebuttal closing argument, should she so desire, should be deleted; because it doesn't follow the pattern; the pattern is Town, Chief, Town, Chief and then the Town gets a final shot. To be fair it should be Town, Chief, Town, and Chief.

Mary Schreider-Fox: Unless you're familiar with court proceedings and the order is fashioned on how it might be presented in court, even though you're not a court; borrowing from what other administrative proceedings have done; or other bodies have done in administrative proceedings; borrowing a little bit of the format from a trial-like proceeding that often-times the presenting party is given one last opportunity to make some comments to the body or to the judge; if you have anything to say in response to the closing remarks. That was simply borrowed from other places and the procedure that was used elsewhere, for us to consider.

C Hudson: I think it should be deleted. To keep it even and fair; everybody has equal opportunity and the way this is, it's not equal, when we are given more chances to speak, then the Chief's side.

C Prettyman: Excuse me, C Hudson, isn't that what the Hearing Officer would do if the other attorney wanted to say something, then wouldn't she give them that opportunity?

C Hudson: According to this, it says if Ms. Stevens so desired. So, it's not up to the Hearing Officer; you've right away given the Town's Attorney the opportunity to have one more opportunity to present than the other. I don't think it's fair.

Mary Schreider-Fox: May I make a suggestion? Either remove it altogether or provide for rebuttal to closing and make that available to both.

C Hudson: Make it available to both or remove it. Everyone should have an equal time. If one has two, the other should have two.

Vice Mayor Betts: I agree with C Hudson.

Mary Schreider-Fox: The Mayor just asked me is that how it's done in the Court system. I will tell you in Civil Cases and those are the case I'm involved in, 99% of the time, each side just makes a closing and that's it. I've had occasion and if you are the Plaintiff in the case, like in this case the presenting party; the Judge will give you one last opportunity as the Plaintiff's attorney to rebut to the closing; there was one situation that I observed where the Judge asked the Plaintiff's attorney if he wanted to make a rebuttal closing and then that attorney said something and the other attorney was given an opportunity. In criminal cases, I've been told that it's more common for the Judges to allow a rebuttal closing. I think it's all over the board. It's been done differently in trial settings, sometimes depending on the Judge that you get and how they like to run their courtroom. I don't think these comments that you're making are inappropriate and I will confess I thought about it when I was writing and I will go with what I thought was the majority, standard practice and see what everybody thinks. That's why it is on the agenda tonight so that you can actually look at it and decide what you want to do and make changes as necessary.

Mayor Post: I think Ms. Stevens should go last.

C Hudson: I think it should either be deleted or give the Chief's attorney a second shot, as well. It should be fair; they should each have an equal opportunity to speak. I would like to make a motion that this sentence "Ms. Stevens shall be permitted to make a rebuttal to closing arguments, should she so desire", be deleted from this document.

C Duby: Second.

Mayor Post: We have a motion and a second. All those in favor, say "aye". Opposed. Motion carried.

C Hudson: I make a motion that we accept this document, as written, with that deletion made.

C Duby: Second.

Mayor Post: We have a motion and a second. Any further discussion? All those in favor, say "aye". Opposed. Motion carried.

## 11. Adjournment

C Prettyman: I make a motion to adjourn.

C Duby: Second.

Mayor Post: We have a motion and a second. Is there any discussion? All in favor say "aye". Opposed. Motion to close at 7:57 pm.

**Milton Town Council Meeting**  
**Milton Theatre, 110 Union Street**  
**Monday, July 6, 2009**  
**7:00 p.m.**

1. **PUBLIC PARTICIPATION** portion was called to order by Mayor Post at 7:00 pm

- a. Katherine Grieg: 326 Union Street. Good evening. Once again I'm back to haunt you to talk about the Garden Club. In the absence of the President, Jennifer, the Garden Tour and Home Tour are this Saturday, July 11<sup>th</sup> from 9 to 3. We have 12 gardens; we have 2 houses, plus Abraxus Art Studio and if you have never been into Abraxus Studio, that is a very old, historic house and is interesting to see, in addition to the artwork; and Frankie Dittman's again orchid house. Frankie called me and left me a message this week, saying please come out and look, because in his kitchen, he's not cooking this week, he's set up this waterfall with rocks and everything, with his orchid plants around it. Tickets are \$12, ahead of time; they're available across the street at Antiques in Milton at Hillside Flowers and if you want to go out of town and buy them at Lewes Spring. We have lots of special events and this is the biggest fundraiser of the year, if you want to continue to see all the flowers and the planters, then please buy a ticket. Thanks.
- b. Jeff Daly: 211 Grist Mill in the Cannery Village Neighborhood. Recently we had some family owned property, a long standing family in the Milton area, had their property re-zoned from agricultural to heavy industrial use. I'm not going to go into that issue; it's been covered in the press quite extensively; I truly hope that the family finds the right business to occupy the parcel and that we have great jobs coming out of it and that it doesn't threaten, in any way, the quality of life in Milton. One thing I do want to share, I was at Planning & Zoning before they sent the work off to the County Council; I was at the County Council Meeting and not once was Milton mentioned by anyone on Planning & Zoning, or on the County Council; in terms of how that property would affect the Town of Milton; it was as though we did not exist. I know that in many, many states across our country, counties and municipalities area at odds with each one another; but I want us all to stop and think a minute. As you drive into Milton today, you drive through very bucolic areas; mostly farmland, in as few years as ten, maybe twenty; we are going to look like the towns that ride along 113. We're going to have sprawl crawl all around us, unless we come up with a plan; something to the affect "Don't 113 Milton". If you think of Georgetown and their downtown and you think of Milford and, of course, Millsboro and towns further south, along 113; their downtowns are devastated and their big stores and 113 looks like it fell off the back of a truck. Unfortunately, that could be our future; unless we take a stand. I've addressed all of the council members on my concerns and my sentiments and I hope that we can put something together; those who are involved in city planning, etc.

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and our future. The other thing to think about is density of housing. We could just as well be ringed by sub-divisions with houses on half-acre lots; or we could ringed, perhaps, by smaller developments like Cannery Village or Heritage Creek, which are going to enjoy lots of free, open space. The other thing to note is that when the family here in Milton re-zoned, there are programs in other states, where the monies that this family will make from the re-zoning is apportioned to other landowners surrounding municipalities like Milton, that will not change their zoning. In other words they benefit from one party getting a heavy industrial re-zoning and making money on either the sale or the use of that land in such a fashion. Unfortunately, Sussex County is still doing business the way it was done 50, 75, 100 years ago. But if there are people in Milton, who want to challenge the thinking of Sussex County Council or put new members on the Council, and that would mean that we would have to go outside our jurisdiction and really fight hard to get people, especially to the western districts, over the coming years, to change. I'm going to be involved in this in some way, shape or form and if anybody wants to contact me, I'm pretty easy to find and I'm record 211 Grist Mill and my phone number is available, but if you think about it; 10 or 20 years and we could look like all those towns up and down 113 and we all thought that the sprawl crawl was going to come in from Rehoboth and it's coming from the west, actually, is one way to look at it. The other thing is, Milton is perfectly positioned to be a warehouse community to the resort folks and to the municipalities up and down 113 and just like Lakeland, Florida is right between Orlando and Tampa-St. Pete and if anybody knows Lakeland, it too, looks like it fell off the back of a truck. So we've got bucolic, lovely downtown; we've got a Main Street program going; and, boy it could all be for naught. Just that quickly. Thanks for hearing me out on this.

Mayor Post: I will now close the public participation portion of this meeting at 7:07 pm.

2. The Milton Town Council Meeting was called to order by Mayor Post at 7:07 pm.
3. A Moment of Silence was led by Vice Mayor Betts.
4. The Pledge of Allegiance to the Flag was said by all in attendance.
5. Roll Call was called by Mayor Post

C Martin-Brown	Present
C Duby	Present
C Hudson	Present
C Abraham	Present
C Betts	Present
Mayor Post	Present

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C Prettyman

Present

6. Additions or Corrections to the Agenda

Mayor Post: Are there any additions or corrections to the agenda?

C Duby: Yes, Mr. Mayor. Item 13 b, I placed that on the Agenda and the Process Review Committee has referred those proposed changes to our Legal Counsel for review and I would like to ask that that be removed tonight and that it be placed on the agenda for the August Town Council meeting.

Mayor Post: Can we have the approval of the agenda with the proposed changes?

C Hudson: I make a motion to approve the agenda with the changes proposed.

C Betts: Second.

Mayor Post: We have a motion and a second. Any further discussion? All in favor say "aye". Opposed. Motion carried.

7. Presentation and Approval of Minutes for May 4, 2009, May 21, 2009 and June 1, 2009.

C Prettyman: I make a motion that we accept the minutes of May 4, 2009, May 21, 2009 and June 1, 2009, as written.

C Duby: Second.

Mayor Post: We have a motion and a second, is there any discussion? All in favor say "aye". Opposed. Motion carried.

8. Approval of Written Committee Reports

C Prettyman: I make a motion to accept and approve the committee reports that have been submitted to us, as presented.

C Abraham: Second

Mayor Post: We have a motion and a second. Is there any discussion? All in favor say "aye". Opposed. Motion carried.

a. Town Manager's Report

George Dickerson: Good evening Mayor and Council. The first thing I would like for you to know is about the Milton Rails to Trails Phase I project. All the benches and the trash cans have been installed; if anyone's been down there; the paving and the seeding of the trail has been completed; the bases for the light poles have been installed and we are waiting for DP&L to hook up the electric so that can be completed. Anyone that has had an opportunity to go down there, I think that the project speaks for itself, when you see it; it is quite a beautiful project. Second item tonight is that PTA reassessment. Property Tax Associates are the ones conducting our reassessment and all of the exteriors of properties have been assessed. Phase II is in the process of being completed to obtain the property values, which involves putting numbers with the dimensions obtained. Once Phase II is complete, letters will go out to all property owners explaining their assessment and giving them an updated value of their property. If the property owner wishes to discuss their assessment value, PTA will schedule a hearing with the said property owner

who may have questions. The estimated timeframe for these hearings is some time in August. The next item coming up sooner than some of us would like to think is that our new budget year will be upon us 1 October. The town staff has met with all the department heads; there have been individual meetings with each of them and they have made suggestions or recommendations, as well as staff for the overall town. We are, in fact, meeting tomorrow and this is going to give us a first look at some of the numbers as to where we stand with an updated budget. I hope to have those to you as soon as possible for your review; but that's something we're working on and have been working on this year more intently, than any year in the past, as we have implemented the weekly budget meetings that we have with staff. The Code Enforcement Officers position was offered to an individual that has past code enforcement experience with the City of Dover, as well as law enforcement background. He comes highly recommended by his former employer. He will be starting on July 27<sup>th</sup>. His name is Joseph Huff. That's actually all I have, unless there are any questions.

C Hudson: You mentioned Rails to Trails. There was a Brownfield action taken, rather than just Cap and Cover; so that contamination could be removed. I was under the impression that the Brownfield action was going to continue right on down to Lavinia to take out the curb and the railroad tracks.

George Dickerson: You are absolutely correct. Phase I was what I was speaking to and that is only from Chestnut to Federal. The other, we have made a request to DNREC, the gentleman that spoke that night, I can't remember his name offhand; but we have made that request that the Brownfield go ahead and continue and remove the trails and clean-up any Brownfield materials that is all the way to Lavinia Street.

C Hudson: Would you report back to us at the next council meeting of your progress?

George Dickerson: If I have anything with regard to that, yes. He's very well aware but he's not given us any time line for that. We were approved up to \$1 million.

C Hudson: I'm sure the people of Wagamon's would rather have Rails to Trails behind their homes than a Brownfield.

George Dickerson: When you say would rather have Rails to Trails than a Brownfield, there's been no monies appropriated for Phase II, which would take it from Federal to the trestle bridge; Phase III is trestle bridge to Lavinia. There are no money appropriations, and as I think you heard that night, there may be none in the next fiscal year or any beyond that, with this economy. With the Brownfield, there is money that we were approved up to \$1 million for the clean-up; but not continuation of Phase II or III.

C Hudson: I understand that, but potentially or possibly in the future there could be Rails to Trails there; so what I'm hoping is that if you could get a response from DNREC for the removal of the rest of the contaminants.

George Dickerson: If it's available, yes.

C Hudson: The other question is about all the way through Lavinia. Shipbuilders, while I'm riding my bike out there, that pump is still there, the streets haven't been fixed, is there some timeframe.

George Dickerson: Yes, in fact that was supposed to be completed by June 30<sup>th</sup> and it has not been completed. The reason for that is there was a piece of the easement connecting from where the pond comes up to crossover, a piece that was forgotten; we are working with Mr. Turner, who owns Holly Lake and his attorney in Wilmington, Mr. Rago; in fact, I had a conversation with Mr. Turner today to expedite that.

C Hudson: The last question is about the sidewalks. We were supposed to send out a letter. Has that gone out to notify people that we were going to go ahead and pursue that?

George Dickerson: I would let Vice Mayor Betts, Chair of the Streets and Sidewalks Committee speak to that, but yes there is one; Vice Mayor Betts has had several meetings and we have a timeframe of executing a letter.

Vice Mayor Betts: That's right. Our Town Manager, George Dickerson has been very busy this week, and obviously Mayor Post has today and we hope to get that letter out next week. It's on schedule.

b. Written Reports  
Maintenance

C Prettyman: I make a motion we accept the June, 2009 written report from the Maintenance Department, as written.

C Duby: Second

Mayor Post: We have a motion and second; any discussion? All in favor say "aye". Opposed. Motion carried.

Project Coordinator/Code Enforcer

C Prettyman: I make a motion to accept the June, 2009 Project Coordinator/Code Enforcer report, as prepared.

Vice Mayor Betts: Second.

Mayor Post: We have a motion and second, is there any discussion? All in favor say "aye". Opposed. Motion carried.

Police Report

C Prettyman: I make a motion to accept the May 21<sup>st</sup> through June 20<sup>th</sup>, 2009, as submitted by the officer in charge.

C Abraham: Second.

Mayor Post: We have a motion and second; any discussion? All in favor say "aye". Opposed. Motion carried.

9. Old Business

a. Review and Possible Vote on the Conditions for the Key Ventures R-3 LPD Master Plan

Bob Kerr: With Cave Associates. Good evening, Mayor and Council. At a previous meeting in 2007, you approved the conditions for the LPD of Key Ventures. There were some blanks in it that Council directed that we complete with the town staff and the developer. We have done that, although we weren't directed to bring it back to you; we felt that it was appropriate because there were changes to a document you had approved; to bring it back to you so in the future everybody is on the same page with those changes. I asked Robin to give you a copy with some red printing on it that shows the changes and another document that just is without the corrections. It incorporates the corrections. They were relatively minor. If you like, I could go through them or you have them before you.

C Prettyman: I do have a question before I make a motion. With number 12 and number 16; they are both talking about open space walkways shall be adequately illuminated with \_\_\_\_ style light, but isn't 16 a repeat of 12?

Mayor Post: I think 16, and I might be wrong, Bob is open space walkways that could be in a park setting vs. on a street setting.

Bob Kerr: In going through it we noted that there was quite a bit of similarity, between the two, but rather than start making a lot of wholesale changes, we more or less left it the way it was. Yes, it's a little bit of department of redundancy department, but, we think it does cover it.

C Duby: In looking at number 12, when C Prettyman drew my attention to it, I noticed it says Connective Power Company; is there still a Connective Power Company, or isn't that Delmarva Power now?

Bob Kerr: Probably in 2007 there was, but it's now changed their name to Delmarva.

C Duby: Shouldn't we update that?

Bob Kerr: It probably would be appropriate to do that and whoever makes a motion to approve this would incorporate that, I will make the change to the document.

C Prettyman: I would like to make a motion to approve the Key Venture R-3 LPD master plan with the corrections in it and a notation made that Connective be changed to Delmarva Power.

C Duby: Second.

Mayor Post: We have a motion and a second. Any discussion to the motion? All in favor say "aye". Opposed. Motion carried.

b. Discussion and Possible Vote to Extend or Eliminate the Current Moratorium on the Demolitions with the Town of Milton. This Moratorium is Scheduled to Expire on July 31, 2009

Mayor Post: We have not had any comments come back from the Historic Preservation Committee. We did from Planning & Zoning.

Mary Schreider-Fox: I was just going to add my memory is that we had Planning & Zoning comments and nothing from Historic Preservation but that we had kept it opened for a little while to see if they would in fact submit some comments. I haven't conducted my review yet; so I would only have to do it once, after Historic Preservation sent their comments. To my

knowledge, I haven't seen anything from that committee yet. So I think where we are now is that a decision has to be made. If we continue to wait for the comments from the Historic Preservation before this body and I can conduct our review of what has been submitted so far.

C Prettyman: Is it possible, Mr. Dickerson, that you could contact the Chairperson of the Historic Preservation Committee, because you can't go forward.

C Martin-Brown: Mr. Mayor, I would like to make a motion that we table this until we do hear back from the Historic Preservation Committee. Demolition is a critical.

Robin Davis: Mr. Mayor and Council, when the Council first heard this they sent it Planning & Zoning and the Historic Preservation Commission for their review. It was on a Historic Preservation Commission agenda; that evening only 3 members showed up; so we did not have a quorum, so they could not vote or review this. Planning & Zoning went ahead and reviewed it. In your packets, last month, I think it was, you got a memo stating there was no quorum and there was not going to be any comments from Historic Preservation Commission. C Prettyman made a motion to table the decision until the Historic Preservation Commission could review it. I was not made aware of that, so I did not put it on the June agenda. We did not find out until just recently that the motion was made to table it. That's why the Historic Preservation Commission has not reviewed this yet. They were under the impression at the meeting when they had the quorum that they weren't going to get it back, because it was kind of brought to them, if you do have any comments, then come to the Town Council meeting and make comments. Their next meeting is July 14<sup>th</sup>. It can be put on next week's agenda.

C Martin-Brown: I would table it to the next meeting.

Robin Davis: As the Town Solicitor said, she has to take the comments too.

Mayor Post: The most we'll need is 60 days, but we should be able to get it finalized and back here to vote on in 60 days; because it's going to have to go from that meeting, then over to you for review.

Mary Schreider-Fox: Then back to you for review.

Robin Davis: It's according to how fast the Town Solicitor can do it.

Mayor Post: It will require public hearing too, because it will be changing to the zoning ordinances. Then we should table it for 60 days. We should extend the moratorium for 60 days.

Mary Schreider-Fox: I think the agenda item is whether or not the moratorium is scheduled to expire July 31<sup>st</sup>, so if you want to extend the moratorium while we're still conducting this review, that would be the action to take tonight.

Mayor Post: Right, but I don't want it to be another 6 months.

C Prettyman: Then we can make a motion to extend it 60 days.

C Martin-Brown: I've made a motion C Prettyman; it's hanging out there somewhere.

C Duby: The motion you made is to table the discussion.

C Martin-Brown: I would like to amend the motion that we extend the moratorium for 60 days effective from the meeting date tonight.

C Prettyman: Second.

Mayor Post: We have a motion and a second; any discussion. All in favor say “aye”. Opposed.

C Duby: No. I’ve said twice on the record that if we went to extend it one more time I would vote against it.

## 10. New Business

### a. Resolution in the Memory of the Late Senator Thurman Adams

Mayor Post: We have this resolution that I would like to read in honor of Senator Adams. As many of you know, we lost our Senator, who represented Milton and I would like to read this into the record as a Resolution on the death of Senator Thurman G. Adams, Jr. “The Mayor and Council of Town of Milton, Delaware, invite our citizens to join us in the remembrance of our long time supporter and friend, Senator Thurman G. Adams, Jr., President Pro Tempe who was claimed by pancreatic cancer on Tuesday, June 23, 2009. This was a death that truly surprised and saddened us all. Senator Adams represented our Town in the 19<sup>th</sup> Senatorial District since first elected in 1972. As a Mayor and a Miltonian, I am proud to be part of his representing district along with the towns of Bridgeville, Greenwood and Georgetown, as well as other areas. As Senator, he dedicated his life in serving those people represented in his district, as well as all Delawareans state-wide. His dedication greatly contributed to both the financial and spiritual support of our Town, County and State. Officials and others of the Town could always rely on him as a true man of his word and honor during his extensive number of years and public service. His strength was his belief and his belief was in the people of Delaware. As a Sussex Countian working on his family farm and grain business, T. G. Adams and Sons, Inc. and growing up in his hometown of Bridgeville, Delaware, Senator Adams was well aware of the struggles and needs of the small rural American town. His dedication and keen ability to guide should inspire those in leadership to recognize the importance in making decisions that improve our land, culture and society. As Mayor, Council and citizens of the Town of Milton we will miss him greatly and always remember his contributions towards building our town to what it is today. Senator Adams devotion and commitment can be seen throughout our town in many forms, within our sidewalks, streets, vintage lighting, Governor’s Walk, non-profit streetscapes and parks. His memory will always be part of Milton’s Sussex County and the State of Delaware. Senator Adams’ legacy will always remain with us as a part of our town. During this time I want our inner strengths, thoughts and prayers to be extended to the family.” As Mayor, I ask that this Resolution be included in the Minutes of the Town of Milton, at this Town Meeting held on July 6, 2009 and a copy provided to Senator Adams’ family.

Vice Mayor Betts: I make a motion to accept that Resolution to be sent to the family of Senator Adams.

C Prettyman: Second.

Mayor Post: We have a motion and a second. Any discussion? All in favor say "aye". Opposed. Motion carried.

b. Appointment of a Hearing Officer for the Public Hearing on July 10, 2009

Mary Schreider-Fox: As we all know, we're having a public hearing on this Friday; the Chief of Police Due Process that's required by Title XI, Section 9301. The Town Council will be the sitting body that is hearing the presentation, both by Tasha Stevens, who will be presenting the case for termination, as well as the Chief's Attorneys, Tom Neuberger and John LaRosa, presenting the Chief's Defense. What we need to have is a Hearing Officer in place; that person is not going to be a judge, necessarily; it's just going to be the person identified, who will keep control over the proceedings, and respond to the attorneys when they have questions. I will be sitting with the Town Council and with the Hearing Officer. The Employee Handbook for the Town, although we are not following that exactly, because we are going under this Title XI, Section 9031 for the Public Hearing; but the Town also can have hearings in an employment situation and contemplates that one of the members of the Personnel Committee will act as Hearing Officer for the Town Council Members hearing the employment matter. Therefore, it is my suggestion that from among the Town Council members who will be attending the hearing, we choose a Hearing Officer. I'll go ahead and say the person who came to mind for me, is C DUBY, because of her legal experience and previous career as an attorney, that that might be a natural fit for her in terms of helping to conduct the proceedings. That's what this agenda is for and those are my comments.

C Martin-Brown: Mr. Mayor, I would like to make a motion that C DUBY serve as the Hearing Officer because she is an attorney.

Mary Schreider-Fox: Vice Mayor Betts just asked if she can vote, then. Yes, she can vote; she'll still be a member of the body who deliberates and votes on the issues presented. She's just going to be the identified person who helps run the show a little bit and keeps control over the proceedings. At this point in time this public hearing was scheduled and is being put together fairly quickly, I don't know if we would be able to find an outside third party who would be available to do that on such short notice.

C Martin-Brown: Mr. Mayor, one of the motivations is to have somebody from the Personnel Committee and I am not correct that C DUBY is on the Personnel Committee?

Mayor Post: She is.

Mary Schreider-Fox: Again, I'll just say, I'm making that suggestion because keep some consistency with the standard employment procedures that the town has in place, anyway. If we can remain consistent with those, if and when possible, even though this is a somewhat unique situation, I thought that would be a good idea.

C DUBY: Let me just say that I am willing to do it, but to that point of fairness, I've already said to our Council, that the only circumstance under which I would be willing to do it, is if I can make it clear at the very beginning of the hearing what rules apply to this and what my role is; that I'm not sitting as a judge or an objective third party; that I'm presiding, that I'm doing so as a member of the Town Council and in that respect, I'm no different then any other member in terms of having a vote or viewing the evidence and reviewing the evidence. This is not like a trial in which you have a judge that is objective and sits apart.

C HUDSON: Is there any objection from Chief Phillips' attorney to having one of our people be the hearing officer?

MARY SCHREIDER-FOX: I have not consulted with him about this matter.

VICE MAYOR BETTS: I don't have a problem with C DUBY, but I would not want anyone to think it was being partial in any way by a Council person; I have no problem with her doing it; but I just want the public to know and to feel comfortable.

MARY SCHREIDER-FOX: Well, along those lines, I think it is important to remember that this public hearing, I don't want to diminish the importance of it, but it is like other public hearings that the Town Council may conduct from time to time; and the Town Council is allowed to conduct its own hearing; just like the role that the Mayor would play in a regular meeting; or the Chairperson of Planning & Zoning plays when they have a public hearing. Those persons still vote, still participate; but they are just simply the identified person to help manage and keep control over the proceedings and its in that same role; its just simply because we have a different kind of public hearing that we have to reidentify who's doing what and under the circumstances, since there are going to be attorneys presenting cases and it will have a little bit more of a formal feel, I thought that it might be a good idea to have the Town Council person assume that role, who has some legal background and can probably better handle some of the questions or comments that may arise from the attorneys that are participating in the proceeding.

C DUBY: Mary, can I ask one question. I have been assuming and I hope this is true, because it puts a different light on it for me, if it isn't; that there is no ruling on objections or anything like that by the hearing officer.

MARY SCHREIDER-FOX: There have been very few of these kinds of public hearings under the Chief's Due Process Statute, to my knowledge in the State of Delaware; so I can only anticipate what I think might happen. I anticipate that the attorneys may raise objections from time to time, in which case, the only kinds of objection I anticipate being raised very often would be evidentiary ones and since this is an administrative proceeding, hearsay is admissible and I know one of my partners previously participated in a public hearing of this type, many years ago, or several years ago, I should say, and the hearing officer in that situation, simply responded to any of those objections by saying, this is an administrative proceeding; hearsay is admissible; that will go to wait; please move on. Again, it was just more of a

role of controlling the situation and keeping the proceedings moving forward; as opposed to really making evidentiary rulings.

C Hudson: Second.

Mayor Post: We have a motion and a second. Any further discussion? All in favor say "aye". Opposed.

C Duby: Abstain.

Mayor Post: Motion carried.

c. Consideration and Possible Acceptance of Proposed Rules of Procedures for Public Hearing on July 10, 2009

Mary Schreider-Fox: All of you should have a copy of some proposed public hearing rules for the hearing this Friday and because this doesn't happen very often, we had to be creative and create our own. I modeled these after other times of other administrative tribunals that will have public hearings; such as a Board of Adjustment or a Planning & Zoning, so it really just sets forth that there is a Hearing Officer; that the witnesses will be under oath; how the order of the day will go; such as opening remarks from each side; they can present witnesses; a record of the proceedings, that there will be a record of the proceedings and I have made arrangements for a court reporter to be present on Friday, so it is an official court reporter and she will transcribe everything that occurs and it is my understanding that the Town's regular recording equipment will also be operating and set-up that day so we will have a double duty in terms of making the record. I have already mentioned this briefly; in administrative proceeding, because this isn't in front of a judge; this isn't in front of a jury; it's not in court; what that means is that the rules for the public hearing; again, that I have borrowed from other situations and just rewritten a little bit to fit our particular public hearing; you don't have to strictly follow the rules of evidence. Part of that is an acknowledgement that a typical Town Council or a Board of Adjustment or something like that isn't comprised of judges, and that is one of the rules in these proposed rules; talking about the hearsay that's number 6 – it shall not be prohibited – and that is very standard in this kind of a setting. This just gives everybody a little bit of a blueprint to follow, including the Chief's attorneys, as well as Tasha Stevens, who will be presenting the case for termination so that everybody knows what to expect and it just goes to helping to keep some order and control over the proceeding.

C Hudson: Can you tell me what firm Tasha Marie Stevens works for?

Mary Schreider-Fox: Ms. Stevens works with Fuque and Yurie and she has a good background in litigation, civil and criminal defense work; she came highly recommended by some colleagues of mine and I've worked with Ms. Stevens before; so she's in the process of preparing for the case and will be ready to present on Friday.

C Hudson: I was just curious as to why someone from your firm was not representing us.

Mary Schreider-Fox: The reason why is, number one, my two partners were unavailable because of their workload; and then this way I can sit with the

Town Council and keep those two roles separate. Do you need me to go over each one?

Mayor Post: I would quickly, if you would.

Mary Schreider-Fox: Okay. In number "4", we talked about this; it sets for the order of proceeding; some introduction or opening remarks by the Hearing Officer and it is at that time that C Duby that you can make your comments about what your role will be and make that clear for all involved; opening statements, that is when Ms. Stevens and Mr. Neuberger or Mr. LaRosa, whichever one it will be, can make a brief opening statement, setting forth the nature of the case they intend to present. Then to follow that and "C" will be the presentation of case for termination and that will be made by Ms. Stevens; flying through witnesses and other exhibits that she will offer to the Town Council on the day of the hearing. So as you can see, it has a little bit of a feel like a trial setting, but it's not exactly, because of the way that it is set out. They can make opening remarks, present the case; the Chief's attorneys will have an opportunity to cross-examine any witnesses that Ms. Stevens calls; and that leads us to "D"; then Chief Phillips, by and through his attorneys, will be able to present their case and defense as to why termination is not warranted. They will call witnesses, present exhibits and Ms. Stevens will have an opportunity to cross-examine any of his witnesses. Sub-paragraph "E" talks about rebuttal testimony that in the event something comes up in the presentation the Chief's Defense, that Ms. Stevens finding through any witnesses who would like to try to address an issue, she'll have the opportunity; and the Chief will have the same opportunity; after any rebuttal witnesses she might call. That's designed to give everybody one last shot to make any comments through witnesses or to get any additional information or evidence before you; depending on how the proceedings go and what kinds of issues come up. That way you have as comprehensive a record as possible. In sub-paragraph "F" it calls for closing arguments and that's when each of the attorneys can summarize their case and put together all the evidence that they have presented and how they think it should be interpreted. Sub-paragraph "G" simply specifies that no statements or testimony from the general public will be permitted. I thought it would be good to include that, because unlike other kinds of public hearing settings, it's not going to be an open forum where people can just come forward and make comments. Paragraph 5 just sets forth that all exhibits presented to the Town Council should be appropriately marked Town Exhibit "1" or Chief Exhibit "1". I put in there that the Hearing Officer shall date and initial each document or exhibit to authenticate it; sometimes in these kinds of hearings, documents start floating around and nobody knows if that document got in or not; this way all exhibits, as long as they're initialed by the Hearing Officer we know that is an official part of the record. Paragraph "6" talks about hearsay and I've already covered that. Paragraph "7" simply says that the Hearing Officer has the ability and the authority to take control over the proceedings and limit any testimony and questioning that is irrelevant, unduly repetitive or

provocative. Basically, if there becomes a heated discussion or the same question is asked six times in a row, that this gives a Hearing Officer the ability to simply say, okay can we move on, that same question has been asked and answered; something like that. It's just a mechanism to try to keep the proceedings moving forward. Number "8" – Deliberation and Decision – it just simply confirms that following the presentation from both sides, that the Town Council will deliberate in public about what it has heard that day and that it is anticipated that a decision will be made, unless there is some need to continue to the proceedings; and that just simply confirms that that is what is going to happen at the end. Then number "9" – Rules to be Liberally Construed to Promote Substantial Justice – I included this to just simply to say the exact order of the proceeding or some of the rules that in the event we're going through and we feel that something needs to be changed, or permitted, in order to make sure that substantial justice is done and that it results in as fair of a proceeding as possible; that that is within the Town Council's control. That's all.

C Hudson: Let's start with opening statements and I'll keep this very brief; the Town speaks first and then the Chief's attorney; then you get to closing statements and it goes Town's attorney and Chief's attorney and then Town again. We're talking about justice and fairness; I think in all fairness, that last sentence that Ms. Stevens should be permitted to make a rebuttal closing argument, should she so desire, should be deleted; because it doesn't follow the pattern; the pattern is Town, Chief, Town, Chief and then the Town gets a final shot. To be fair it should be Town, Chief, Town, and Chief.

Mary Schreider-Fox: Unless you're familiar with court proceedings and the order is fashioned on how it might be presented in court, even though you're not a court; borrowing from what other administrative proceedings have done; or other bodies have done in administrative proceedings; borrowing a little bit of the format from a trial-like proceeding that often-times the presenting party is given one last opportunity to make some comments to the body or to the judge; if you have anything to say in response to the closing remarks. That was simply borrowed from other places and the procedure that was used elsewhere, for us to consider.

C Hudson: I think it should be deleted. To keep it even and fair; everybody has equal opportunity and the way this is, it's not equal, when we are given more chances to speak, then the Chief's side.

C Prettyman: Excuse me, C Hudson, isn't that what the Hearing Officer would do if the other attorney wanted to say something, then wouldn't she give them that opportunity?

C Hudson: According to this, it says if Ms. Stevens so desired. So, it's not up to the Hearing Officer; you've right away given the Town's Attorney the opportunity to have one more opportunity to present than the other. I don't think it's fair.

Mary Schreider-Fox: May I make a suggestion? Either remove it altogether or provide for rebuttal to closing and make that available to both.

C Hudson: Make it available to both or remove it. Everyone should have an equal time. If one has two, the other should have two.

Vice Mayor Betts: I agree with C Hudson.

Mary Schreider-Fox: The Mayor just asked me is that how it's done in the Court system. I will tell you in Civil Cases and those are the case I'm involved in, 99% of the time, each side just makes a closing and that's it. I've had occasion and if you are the Plaintiff in the case, like in this case the presenting party; the Judge will give you one last opportunity as the Plaintiff's attorney to rebut to the closing; there was one situation that I observed where the Judge asked the Plaintiff's attorney if he wanted to make a rebuttal closing and then that attorney said something and the other attorney was given an opportunity. In criminal cases, I've been told that it's more common for the Judges to allow a rebuttal closing. I think it's all over the board. It's been done differently in trial settings, sometimes depending on the Judge that you get and how they like to run their courtroom. I don't think these comments that you're making are inappropriate and I will confess I thought about it when I was writing and I will go with what I thought was the majority, standard practice and see what everybody thinks. That's why it is on the agenda tonight so that you can actually look at it and decide what you want to do and make changes as necessary.

Mayor Post: I think Ms. Stevens should go last.

C Hudson: I think it should either be deleted or give the Chief's attorney a second shot, as well. It should be fair; they should each have an equal opportunity to speak. I would like to make a motion that this sentence "Ms. Stevens shall be permitted to make a rebuttal to closing arguments, should she so desire", be deleted from this document.

C Duby: Second.

Mayor Post: We have a motion and a second. All those in favor, say "aye". Opposed. Motion carried.

C Hudson: I make a motion that we accept this document, as written, with that deletion made.

C Duby: Second.

Mayor Post: We have a motion and a second. Any further discussion? All those in favor, say "aye". Opposed. Motion carried.

## 11. Adjournment

C Prettyman: I make a motion to adjourn.

C Duby: Second.

Mayor Post: We have a motion and a second. Is there any discussion? All in favor say "aye". Opposed. Motion to close at 7:57 pm.

**Milton Town Council Meeting**  
**Milton Theatre, 110 Union Street**  
**Monday, July 6, 2009**  
**7:00 p.m.**

1. **PUBLIC PARTICIPATION** portion was called to order by Mayor Post at 7:00 pm

- a. Katherine Grieg: 326 Union Street. Good evening. Once again I'm back to haunt you to talk about the Garden Club. In the absence of the President, Jennifer, the Garden Tour and Home Tour are this Saturday, July 11<sup>th</sup> from 9 to 3. We have 12 gardens; we have 2 houses, plus Abraxus Art Studio and if you have never been into Abraxus Studio, that is a very old, historic house and is interesting to see, in addition to the artwork; and Frankie Dittman's again orchid house. Frankie called me and left me a message this week, saying please come out and look, because in his kitchen, he's not cooking this week, he's set up this waterfall with rocks and everything, with his orchid plants around it. Tickets are \$12, ahead of time; they're available across the street at Antiques in Milton at Hillside Flowers and if you want to go out of town and buy them at Lewes Spring. We have lots of special events and this is the biggest fundraiser of the year, if you want to continue to see all the flowers and the planters, then please buy a ticket. Thanks.
- b. Jeff Daly: 211 Grist Mill in the Cannery Village Neighborhood. Recently we had some family owned property, a long standing family in the Milton area, had their property re-zoned from agricultural to heavy industrial use. I'm not going to go into that issue; it's been covered in the press quite extensively; I truly hope that the family finds the right business to occupy the parcel and that we have great jobs coming out of it and that it doesn't threaten, in any way, the quality of life in Milton. One thing I do want to share, I was at Planning & Zoning before they sent the work off to the County Council; I was at the County Council Meeting and not once was Milton mentioned by anyone on Planning & Zoning, or on the County Council; in terms of how that property would affect the Town of Milton; it was as though we did not exist. I know that in many, many states across our country, counties and municipalities area at odds with each one another; but I want us all to stop and think a minute. As you drive into Milton today, you drive through very bucolic areas; mostly farmland, in as few years as ten, maybe twenty; we are going to look like the towns that ride along 113. We're going to have sprawl crawl all around us, unless we come up with a plan; something to the affect "Don't 113 Milton". If you think of Georgetown and their downtown and you think of Milford and, of course, Millsboro and towns further south, along 113; their downtowns are devastated and their big stores and 113 looks like it fell off the back of a truck. Unfortunately, that could be our future; unless we take a stand. I've addressed all of the council members on my concerns and my sentiments and I hope that we can put something together; those who are involved in city planning, etc.

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and our future. The other thing to think about is density of housing. We could just as well be ringed by sub-divisions with houses on half-acre lots; or we could ringed, perhaps, by smaller developments like Cannery Village or Heritage Creek, which are going to enjoy lots of free, open space. The other thing to note is that when the family here in Milton re-zoned, there are programs in other states, where the monies that this family will make from the re-zoning is apportioned to other landowners surrounding municipalities like Milton, that will not change their zoning. In other words they benefit from one party getting a heavy industrial re-zoning and making money on either the sale or the use of that land in such a fashion. Unfortunately, Sussex County is still doing business the way it was done 50, 75, 100 years ago. But if there are people in Milton, who want to challenge the thinking of Sussex County Council or put new members on the Council, and that would mean that we would have to go outside our jurisdiction and really fight hard to get people, especially to the western districts, over the coming years, to change. I'm going to be involved in this in some way, shape or form and if anybody wants to contact me, I'm pretty easy to find and I'm record 211 Grist Mill and my phone number is available, but if you think about it; 10 or 20 years and we could look like all those towns up and down 113 and we all thought that the sprawl crawl was going to come in from Rehoboth and it's coming from the west, actually, is one way to look at it. The other thing is, Milton is perfectly positioned to be a warehouse community to the resort folks and to the municipalities up and down 113 and just like Lakeland, Florida is right between Orlando and Tampa-St. Pete and if anybody knows Lakeland, it too, looks like it fell off the back of a truck. So we've got bucolic, lovely downtown; we've got a Main Street program going; and, boy it could all be for naught. Just that quickly. Thanks for hearing me out on this.

Mayor Post: I will now close the public participation portion of this meeting at 7:07 pm.

2. The Milton Town Council Meeting was called to order by Mayor Post at 7:07 pm.
3. A Moment of Silence was led by Vice Mayor Betts.
4. The Pledge of Allegiance to the Flag was said by all in attendance.
5. Roll Call was called by Mayor Post

C Martin-Brown	Present
C Duby	Present
C Hudson	Present
C Abraham	Present
C Betts	Present
Mayor Post	Present

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C Prettyman

Present

6. Additions or Corrections to the Agenda

Mayor Post: Are there any additions or corrections to the agenda?

C Duby: Yes, Mr. Mayor. Item 13 b, I placed that on the Agenda and the Process Review Committee has referred those proposed changes to our Legal Counsel for review and I would like to ask that that be removed tonight and that it be placed on the agenda for the August Town Council meeting.

Mayor Post: Can we have the approval of the agenda with the proposed changes?

C Hudson: I make a motion to approve the agenda with the changes proposed.

C Betts: Second.

Mayor Post: We have a motion and a second. Any further discussion? All in favor say "aye". Opposed. Motion carried.

7. Presentation and Approval of Minutes for May 4, 2009, May 21, 2009 and June 1, 2009.

C Prettyman: I make a motion that we accept the minutes of May 4, 2009, May 21, 2009 and June 1, 2009, as written.

C Duby: Second.

Mayor Post: We have a motion and a second, is there any discussion? All in favor say "aye". Opposed. Motion carried.

8. Approval of Written Committee Reports

C Prettyman: I make a motion to accept and approve the committee reports that have been submitted to us, as presented.

C Abraham: Second

Mayor Post: We have a motion and a second. Is there any discussion? All in favor say "aye". Opposed. Motion carried.

a. Town Manager's Report

George Dickerson: Good evening Mayor and Council. The first thing I would like for you to know is about the Milton Rails to Trails Phase I project. All the benches and the trash cans have been installed; if anyone's been down there; the paving and the seeding of the trail has been completed; the bases for the light poles have been installed and we are waiting for DP&L to hook up the electric so that can be completed. Anyone that has had an opportunity to go down there, I think that the project speaks for itself, when you see it; it is quite a beautiful project. Second item tonight is that PTA reassessment. Property Tax Associates are the ones conducting our reassessment and all of the exteriors of properties have been assessed. Phase II is in the process of being completed to obtain the property values, which involves putting numbers with the dimensions obtained. Once Phase II is complete, letters will go out to all property owners explaining their assessment and giving them an updated value of their property. If the property owner wishes to discuss their assessment value, PTA will schedule a hearing with the said property owner

who may have questions. The estimated timeframe for these hearings is some time in August. The next item coming up sooner than some of us would like to think is that our new budget year will be upon us 1 October. The town staff has met with all the department heads; there have been individual meetings with each of them and they have made suggestions or recommendations, as well as staff for the overall town. We are, in fact, meeting tomorrow and this is going to give us a first look at some of the numbers as to where we stand with an updated budget. I hope to have those to you as soon as possible for your review; but that's something we're working on and have been working on this year more intently, then any year in the past, as we have implemented the weekly budget meetings that we have with staff. The Code Enforcement Officers position was offered to an individual that has past code enforcement experience with the City of Dover, as well as law enforcement background. He comes highly recommended by his former employer. He will be starting on July 27<sup>th</sup>. His name is Joseph Huff. That's actually all I have, unless there are any questions.

C Hudson: You mentioned Rails to Trails. There was a Brownfield action taken, rather than just Cap and Cover; so that contamination could be removed. I was under the impression that the Brownfield action was going to continue right on down to Lavinia to take out the curb and the railroad tracks.

George Dickerson: You are absolutely correct. Phase I was what I was speaking to and that is only from Chestnut to Federal. The other, we have made a request to DNREC, the gentleman that spoke that night, I can't remember his name offhand; but we have made that request that the Brownfield go ahead and continue and remove the trails and clean-up any Brownfield materials that is all the way to Lavinia Street.

C Hudson: Would you report back to us at the next council meeting of your progress?

George Dickerson: If I have anything with regard to that, yes. He's very well aware but he's not given us any time line for that. We were approved up to \$1 million.

C Hudson: I'm sure the people of Wagamon's would rather have Rails to Trails behind their homes than a Brownfield.

George Dickerson: When you say would rather have Rails to Trails than a Brownfield, there's been no monies appropriated for Phase II, which would take it from Federal to the trestle bridge; Phase III is trestle bridge to Lavinia. There are no money appropriations, and as I think you heard that night, there may be none in the next fiscal year or any beyond that, with this economy. With the Brownfield, there is money that we were approved up to \$1 million for the clean-up; but not continuation of Phase II or III.

C Hudson: I understand that, but potentially or possibly in the future there could be Rails to Trails there; so what I'm hoping is that if you could get a response from DNREC for the removal of the rest of the contaminants.

George Dickerson: If it's available, yes.

C Hudson: The other question is about all the way through Lavinia. Shipbuilders, while I'm riding my bike out there, that pump is still there, the streets haven't been fixed, is there some timeframe.

George Dickerson: Yes, in fact that was supposed to be completed by June 30<sup>th</sup> and it has not been completed. The reason for that is there was a piece of the easement connecting from where the pond comes up to crossover, a piece that was forgotten; we are working with Mr. Turner, who owns Holly Lake and his attorney in Wilmington, Mr. Rago; in fact, I had a conversation with Mr. Turner today to expedite that.

C Hudson: The last question is about the sidewalks. We were supposed to send out a letter. Has that gone out to notify people that we were going to go ahead and pursue that?

George Dickerson: I would let Vice Mayor Betts, Chair of the Streets and Sidewalks Committee speak to that, but yes there is one; Vice Mayor Betts has had several meetings and we have a timeframe of executing a letter.

Vice Mayor Betts: That's right. Our Town Manager, George Dickerson has been very busy this week, and obviously Mayor Post has today and we hope to get that letter out next week. It's on schedule.

b. Written Reports  
Maintenance

C Prettyman: I make a motion we accept the June, 2009 written report from the Maintenance Department, as written.

C Duby: Second

Mayor Post: We have a motion and second; any discussion? All in favor say "aye". Opposed. Motion carried.

Project Coordinator/Code Enforcer

C Prettyman: I make a motion to accept the June, 2009 Project Coordinator/Code Enforcer report, as prepared.

Vice Mayor Betts: Second.

Mayor Post: We have a motion and second, is there any discussion? All in favor say "aye". Opposed. Motion carried.

Police Report

C Prettyman: I make a motion to accept the May 21<sup>st</sup> through June 20<sup>th</sup>, 2009, as submitted by the officer in charge.

C Abraham: Second.

Mayor Post: We have a motion and second; any discussion? All in favor say "aye". Opposed. Motion carried.

9. Old Business

a. Review and Possible Vote on the Conditions for the Key Ventures R-3 LPD Master Plan

Bob Kerr: With Cave Associates. Good evening, Mayor and Council. At a previous meeting in 2007, you approved the conditions for the LPD of Key Ventures. There were some blanks in it that Council directed that we complete with the town staff and the developer. We have done that, although we weren't directed to bring it back to you; we felt that it was appropriate because there were changes to a document you had approved; to bring it back to you so in the future everybody is on the same page with those changes. I asked Robin to give you a copy with some red printing on it that shows the changes and another document that just is without the corrections. It incorporates the corrections. They were relatively minor. If you like, I could go through them or you have them before you.

C Prettyman: I do have a question before I make a motion. With number 12 and number 16; they are both talking about open space walkways shall be adequately illuminated with \_\_\_\_ style light, but isn't 16 a repeat of 12?

Mayor Post: I think 16, and I might be wrong, Bob is open space walkways that could be in a park setting vs. on a street setting.

Bob Kerr: In going through it we noted that there was quite a bit of similarity, between the two, but rather than start making a lot of wholesale changes, we more or less left it the way it was. Yes, it's a little bit of department of redundancy department, but, we think it does cover it.

C Duby: In looking at number 12, when C Prettyman drew my attention to it, I noticed it says Connective Power Company; is there still a Connective Power Company, or isn't that Delmarva Power now?

Bob Kerr: Probably in 2007 there was, but it's now changed their name to Delmarva.

C Duby: Shouldn't we update that?

Bob Kerr: It probably would be appropriate to do that and whoever makes a motion to approve this would incorporate that, I will make the change to the document.

C Prettyman: I would like to make a motion to approve the Key Venture R-3 LPD master plan with the corrections in it and a notation made that Connective be changed to Delmarva Power.

C Duby: Second.

Mayor Post: We have a motion and a second. Any discussion to the motion? All in favor say "aye". Opposed. Motion carried.

b. Discussion and Possible Vote to Extend or Eliminate the Current Moratorium on the Demolitions with the Town of Milton. This Moratorium is Scheduled to Expire on July 31, 2009

Mayor Post: We have not had any comments come back from the Historic Preservation Committee. We did from Planning & Zoning.

Mary Schreider-Fox: I was just going to add my memory is that we had Planning & Zoning comments and nothing from Historic Preservation but that we had kept it opened for a little while to see if they would in fact submit some comments. I haven't conducted my review yet; so I would only have to do it once, after Historic Preservation sent their comments. To my

knowledge, I haven't seen anything from that committee yet. So I think where we are now is that a decision has to be made. If we continue to wait for the comments from the Historic Preservation before this body and I can conduct our review of what has been submitted so far.

C Prettyman: Is it possible, Mr. Dickerson, that you could contact the Chairperson of the Historic Preservation Committee, because you can't go forward.

C Martin-Brown: Mr. Mayor, I would like to make a motion that we table this until we do hear back from the Historic Preservation Committee. Demolition is a critical.

Robin Davis: Mr. Mayor and Council, when the Council first heard this they sent it Planning & Zoning and the Historic Preservation Commission for their review. It was on a Historic Preservation Commission agenda; that evening only 3 members showed up; so we did not have a quorum, so they could not vote or review this. Planning & Zoning went ahead and reviewed it. In your packets, last month, I think it was, you got a memo stating there was no quorum and there was not going to be any comments from Historic Preservation Commission. C Prettyman made a motion to table the decision until the Historic Preservation Commission could review it. I was not made aware of that, so I did not put it on the June agenda. We did not find out until just recently that the motion was made to table it. That's why the Historic Preservation Commission has not reviewed this yet. They were under the impression at the meeting when they had the quorum that they weren't going to get it back, because it was kind of brought to them, if you do have any comments, then come to the Town Council meeting and make comments. Their next meeting is July 14<sup>th</sup>. It can be put on next week's agenda.

C Martin-Brown: I would table it to the next meeting.

Robin Davis: As the Town Solicitor said, she has to take the comments too.

Mayor Post: The most we'll need is 60 days, but we should be able to get it finalized and back here to vote on in 60 days; because it's going to have to go from that meeting, then over to you for review.

Mary Schreider-Fox: Then back to you for review.

Robin Davis: It's according to how fast the Town Solicitor can do it.

Mayor Post: It will require public hearing too, because it will be changing to the zoning ordinances. Then we should table it for 60 days. We should extend the moratorium for 60 days.

Mary Schreider-Fox: I think the agenda item is whether or not the moratorium is scheduled to expire July 31<sup>st</sup>, so if you want to extend the moratorium while we're still conducting this review, that would be the action to take tonight.

Mayor Post: Right, but I don't want it to be another 6 months.

C Prettyman: Then we can make a motion to extend it 60 days.

C Martin-Brown: I've made a motion C Prettyman; it's hanging out there somewhere.

C Duby: The motion you made is to table the discussion.

C Martin-Brown: I would like to amend the motion that we extend the moratorium for 60 days effective from the meeting date tonight.

C Prettyman: Second.

Mayor Post: We have a motion and a second; any discussion. All in favor say “aye”. Opposed.

C Duby: No. I’ve said twice on the record that if we went to extend it one more time I would vote against it.

## 10. New Business

### a. Resolution in the Memory of the Late Senator Thurman Adams

Mayor Post: We have this resolution that I would like to read in honor of Senator Adams. As many of you know, we lost our Senator, who represented Milton and I would like to read this into the record as a Resolution on the death of Senator Thurman G. Adams, Jr. “The Mayor and Council of Town of Milton, Delaware, invite our citizens to join us in the remembrance of our long time supporter and friend, Senator Thurman G. Adams, Jr., President Pro Tempe who was claimed by pancreatic cancer on Tuesday, June 23, 2009. This was a death that truly surprised and saddened us all. Senator Adams represented our Town in the 19<sup>th</sup> Senatorial District since first elected in 1972. As a Mayor and a Miltonian, I am proud to be part of his representing district along with the towns of Bridgeville, Greenwood and Georgetown, as well as other areas. As Senator, he dedicated his life in serving those people represented in his district, as well as all Delawareans state-wide. His dedication greatly contributed to both the financial and spiritual support of our Town, County and State. Officials and others of the Town could always rely on him as a true man of his word and honor during his extensive number of years and public service. His strength was his belief and his belief was in the people of Delaware. As a Sussex Countian working on his family farm and grain business, T. G. Adams and Sons, Inc. and growing up in his hometown of Bridgeville, Delaware, Senator Adams was well aware of the struggles and needs of the small rural American town. His dedication and keen ability to guide should inspire those in leadership to recognize the importance in making decisions that improve our land, culture and society. As Mayor, Council and citizens of the Town of Milton we will miss him greatly and always remember his contributions towards building our town to what it is today. Senator Adams devotion and commitment can be seen throughout our town in many forms, within our sidewalks, streets, vintage lighting, Governor’s Walk, non-profit streetscapes and parks. His memory will always be part of Milton’s Sussex County and the State of Delaware. Senator Adams’ legacy will always remain with us as a part of our town. During this time I want our inner strengths, thoughts and prayers to be extended to the family.” As Mayor, I ask that this Resolution be included in the Minutes of the Town of Milton, at this Town Meeting held on July 6, 2009 and a copy provided to Senator Adams’ family.

Vice Mayor Betts: I make a motion to accept that Resolution to be sent to the family of Senator Adams.

C Prettyman: Second.

Mayor Post: We have a motion and a second. Any discussion? All in favor say "aye". Opposed. Motion carried.

b. Appointment of a Hearing Officer for the Public Hearing on July 10, 2009

Mary Schreider-Fox: As we all know, we're having a public hearing on this Friday; the Chief of Police Due Process that's required by Title XI, Section 9301. The Town Council will be the sitting body that is hearing the presentation, both by Tasha Stevens, who will be presenting the case for termination, as well as the Chief's Attorneys, Tom Neuberger and John LaRosa, presenting the Chief's Defense. What we need to have is a Hearing Officer in place; that person is not going to be a judge, necessarily; it's just going to be the person identified, who will keep control over the proceedings, and respond to the attorneys when they have questions. I will be sitting with the Town Council and with the Hearing Officer. The Employee Handbook for the Town, although we are not following that exactly, because we are going under this Title XI, Section 9031 for the Public Hearing; but the Town also can have hearings in an employment situation and contemplates that one of the members of the Personnel Committee will act as Hearing Officer for the Town Council Members hearing the employment matter. Therefore, it is my suggestion that from among the Town Council members who will be attending the hearing, we choose a Hearing Officer. I'll go ahead and say the person who came to mind for me, is C DUBY, because of her legal experience and previous career as an attorney, that that might be a natural fit for her in terms of helping to conduct the proceedings. That's what this agenda is for and those are my comments.

C Martin-Brown: Mr. Mayor, I would like to make a motion that C DUBY serve as the Hearing Officer because she is an attorney.

Mary Schreider-Fox: Vice Mayor Betts just asked if she can vote, then. Yes, she can vote; she'll still be a member of the body who deliberates and votes on the issues presented. She's just going to be the identified person who helps run the show a little bit and keeps control over the proceedings. At this point in time this public hearing was scheduled and is being put together fairly quickly, I don't know if we would be able to find an outside third party who would be available to do that on such short notice.

C Martin-Brown: Mr. Mayor, one of the motivations is to have somebody from the Personnel Committee and I am not correct that C DUBY is on the Personnel Committee?

Mayor Post: She is.

Mary Schreider-Fox: Again, I'll just say, I'm making that suggestion because keep some consistency with the standard employment procedures that the town has in place, anyway. If we can remain consistent with those, if and when possible, even though this is a somewhat unique situation, I thought that would be a good idea.

C DUBY: Let me just say that I am willing to do it, but to that point of fairness, I've already said to our Council, that the only circumstance under which I would be willing to do it, is if I can make it clear at the very beginning of the hearing what rules apply to this and what my role is; that I'm not sitting as a judge or an objective third party; that I'm presiding, that I'm doing so as a member of the Town Council and in that respect, I'm no different then any other member in terms of having a vote or viewing the evidence and reviewing the evidence. This is not like a trial in which you have a judge that is objective and sits apart.

C HUDSON: Is there any objection from Chief Phillips' attorney to having one of our people be the hearing officer?

MARY SCHREIDER-FOX: I have not consulted with him about this matter.

VICE MAYOR BETTS: I don't have a problem with C DUBY, but I would not want anyone to think it was being partial in any way by a Council person; I have no problem with her doing it; but I just want the public to know and to feel comfortable.

MARY SCHREIDER-FOX: Well, along those lines, I think it is important to remember that this public hearing, I don't want to diminish the importance of it, but it is like other public hearings that the Town Council may conduct from time to time; and the Town Council is allowed to conduct its own hearing; just like the role that the Mayor would play in a regular meeting; or the Chairperson of Planning & Zoning plays when they have a public hearing. Those persons still vote, still participate; but they are just simply the identified person to help manage and keep control over the proceedings and its in that same role; its just simply because we have a different kind of public hearing that we have to reidentify who's doing what and under the circumstances, since there are going to be attorneys presenting cases and it will have a little bit more of a formal feel, I thought that it might be a good idea to have the Town Council person assume that role, who has some legal background and can probably better handle some of the questions or comments that may arise from the attorneys that are participating in the proceeding.

C DUBY: Mary, can I ask one question. I have been assuming and I hope this is true, because it puts a different light on it for me, if it isn't; that there is no ruling on objections or anything like that by the hearing officer.

MARY SCHREIDER-FOX: There have been very few of these kinds of public hearings under the Chief's Due Process Statute, to my knowledge in the State of Delaware; so I can only anticipate what I think might happen. I anticipate that the attorneys may raise objections from time to time, in which case, the only kinds of objection I anticipate being raised very often would be evidentiary ones and since this is an administrative proceeding, hearsay is admissible and I know one of my partners previously participated in a public hearing of this type, many years ago, or several years ago, I should say, and the hearing officer in that situation, simply responded to any of those objections by saying, this is an administrative proceeding; hearsay is admissible; that will go to wait; please move on. Again, it was just more of a

role of controlling the situation and keeping the proceedings moving forward; as opposed to really making evidentiary rulings.

C Hudson: Second.

Mayor Post: We have a motion and a second. Any further discussion? All in favor say "aye". Opposed.

C Duby: Abstain.

Mayor Post: Motion carried.

c. Consideration and Possible Acceptance of Proposed Rules of Procedures for Public Hearing on July 10, 2009

Mary Schreider-Fox: All of you should have a copy of some proposed public hearing rules for the hearing this Friday and because this doesn't happen very often, we had to be creative and create our own. I modeled these after other times of other administrative tribunals that will have public hearings; such as a Board of Adjustment or a Planning & Zoning, so it really just sets forth that there is a Hearing Officer; that the witnesses will be under oath; how the order of the day will go; such as opening remarks from each side; they can present witnesses; a record of the proceedings, that there will be a record of the proceedings and I have made arrangements for a court reporter to be present on Friday, so it is an official court reporter and she will transcribe everything that occurs and it is my understanding that the Town's regular recording equipment will also be operating and set-up that day so we will have a double duty in terms of making the record. I have already mentioned this briefly; in administrative proceeding, because this isn't in front of a judge; this isn't in front of a jury; it's not in court; what that means is that the rules for the public hearing; again, that I have borrowed from other situations and just rewritten a little bit to fit our particular public hearing; you don't have to strictly follow the rules of evidence. Part of that is an acknowledgement that a typical Town Council or a Board of Adjustment or something like that isn't comprised of judges, and that is one of the rules in these proposed rules; talking about the hearsay that's number 6 – it shall not be prohibited – and that is very standard in this kind of a setting. This just gives everybody a little bit of a blueprint to follow, including the Chief's attorneys, as well as Tasha Stevens, who will be presenting the case for termination so that everybody knows what to expect and it just goes to helping to keep some order and control over the proceeding.

C Hudson: Can you tell me what firm Tasha Marie Stevens works for?

Mary Schreider-Fox: Ms. Stevens works with Fuque and Yurie and she has a good background in litigation, civil and criminal defense work; she came highly recommended by some colleagues of mine and I've worked with Ms. Stevens before; so she's in the process of preparing for the case and will be ready to present on Friday.

C Hudson: I was just curious as to why someone from your firm was not representing us.

Mary Schreider-Fox: The reason why is, number one, my two partners were unavailable because of their workload; and then this way I can sit with the

Town Council and keep those two roles separate. Do you need me to go over each one?

Mayor Post: I would quickly, if you would.

Mary Schreider-Fox: Okay. In number "4", we talked about this; it sets for the order of proceeding; some introduction or opening remarks by the Hearing Officer and it is at that time that C Duby that you can make your comments about what your role will be and make that clear for all involved; opening statements, that is when Ms. Stevens and Mr. Neuberger or Mr. LaRosa, whichever one it will be, can make a brief opening statement, setting forth the nature of the case they intend to present. Then to follow that and "C" will be the presentation of case for termination and that will be made by Ms. Stevens; flying through witnesses and other exhibits that she will offer to the Town Council on the day of the hearing. So as you can see, it has a little bit of a feel like a trial setting, but it's not exactly, because of the way that it is set out. They can make opening remarks, present the case; the Chief's attorneys will have an opportunity to cross-examine any witnesses that Ms. Stevens calls; and that leads us to "D"; then Chief Phillips, by and through his attorneys, will be able to present their case and defense as to why termination is not warranted. They will call witnesses, present exhibits and Ms. Stevens will have an opportunity to cross-examine any of his witnesses. Sub-paragraph "E" talks about rebuttal testimony that in the event something comes up in the presentation the Chief's Defense, that Ms. Stevens finding through any witnesses who would like to try to address an issue, she'll have the opportunity; and the Chief will have the same opportunity; after any rebuttal witnesses she might call. That's designed to give everybody one last shot to make any comments through witnesses or to get any additional information or evidence before you; depending on how the proceedings go and what kinds of issues come up. That way you have as comprehensive a record as possible. In sub-paragraph "F" it calls for closing arguments and that's when each of the attorneys can summarize their case and put together all the evidence that they have presented and how they think it should be interpreted. Sub-paragraph "G" simply specifies that no statements or testimony from the general public will be permitted. I thought it would be good to include that, because unlike other kinds of public hearing settings, it's not going to be an open forum where people can just come forward and make comments. Paragraph 5 just sets forth that all exhibits presented to the Town Council should be appropriately marked Town Exhibit "1" or Chief Exhibit "1". I put in there that the Hearing Officer shall date and initial each document or exhibit to authenticate it; sometimes in these kinds of hearings, documents start floating around and nobody knows if that document got in or not; this way all exhibits, as long as they're initialed by the Hearing Officer we know that is an official part of the record. Paragraph "6" talks about hearsay and I've already covered that. Paragraph "7" simply says that the Hearing Officer has the ability and the authority to take control over the proceedings and limit any testimony and questioning that is irrelevant, unduly repetitive or

provocative. Basically, if there becomes a heated discussion or the same question is asked six times in a row, that this gives a Hearing Officer the ability to simply say, okay can we move on, that same question has been asked and answered; something like that. It's just a mechanism to try to keep the proceedings moving forward. Number "8" – Deliberation and Decision – it just simply confirms that following the presentation from both sides, that the Town Council will deliberate in public about what it has heard that day and that it is anticipated that a decision will be made, unless there is some need to continue to the proceedings; and that just simply confirms that that is what is going to happen at the end. Then number "9" – Rules to be Liberally Construed to Promote Substantial Justice – I included this to just simply to say the exact order of the proceeding or some of the rules that in the event we're going through and we feel that something needs to be changed, or permitted, in order to make sure that substantial justice is done and that it results in as fair of a proceeding as possible; that that is within the Town Council's control. That's all.

C Hudson: Let's start with opening statements and I'll keep this very brief; the Town speaks first and then the Chief's attorney; then you get to closing statements and it goes Town's attorney and Chief's attorney and then Town again. We're talking about justice and fairness; I think in all fairness, that last sentence that Ms. Stevens should be permitted to make a rebuttal closing argument, should she so desire, should be deleted; because it doesn't follow the pattern; the pattern is Town, Chief, Town, Chief and then the Town gets a final shot. To be fair it should be Town, Chief, Town, and Chief.

Mary Schreider-Fox: Unless you're familiar with court proceedings and the order is fashioned on how it might be presented in court, even though you're not a court; borrowing from what other administrative proceedings have done; or other bodies have done in administrative proceedings; borrowing a little bit of the format from a trial-like proceeding that often-times the presenting party is given one last opportunity to make some comments to the body or to the judge; if you have anything to say in response to the closing remarks. That was simply borrowed from other places and the procedure that was used elsewhere, for us to consider.

C Hudson: I think it should be deleted. To keep it even and fair; everybody has equal opportunity and the way this is, it's not equal, when we are given more chances to speak, then the Chief's side.

C Prettyman: Excuse me, C Hudson, isn't that what the Hearing Officer would do if the other attorney wanted to say something, then wouldn't she give them that opportunity?

C Hudson: According to this, it says if Ms. Stevens so desired. So, it's not up to the Hearing Officer; you've right away given the Town's Attorney the opportunity to have one more opportunity to present than the other. I don't think it's fair.

Mary Schreider-Fox: May I make a suggestion? Either remove it altogether or provide for rebuttal to closing and make that available to both.

C Hudson: Make it available to both or remove it. Everyone should have an equal time. If one has two, the other should have two.

Vice Mayor Betts: I agree with C Hudson.

Mary Schreider-Fox: The Mayor just asked me is that how it's done in the Court system. I will tell you in Civil Cases and those are the case I'm involved in, 99% of the time, each side just makes a closing and that's it. I've had occasion and if you are the Plaintiff in the case, like in this case the presenting party; the Judge will give you one last opportunity as the Plaintiff's attorney to rebut to the closing; there was one situation that I observed where the Judge asked the Plaintiff's attorney if he wanted to make a rebuttal closing and then that attorney said something and the other attorney was given an opportunity. In criminal cases, I've been told that it's more common for the Judges to allow a rebuttal closing. I think it's all over the board. It's been done differently in trial settings, sometimes depending on the Judge that you get and how they like to run their courtroom. I don't think these comments that you're making are inappropriate and I will confess I thought about it when I was writing and I will go with what I thought was the majority, standard practice and see what everybody thinks. That's why it is on the agenda tonight so that you can actually look at it and decide what you want to do and make changes as necessary.

Mayor Post: I think Ms. Stevens should go last.

C Hudson: I think it should either be deleted or give the Chief's attorney a second shot, as well. It should be fair; they should each have an equal opportunity to speak. I would like to make a motion that this sentence "Ms. Stevens shall be permitted to make a rebuttal to closing arguments, should she so desire", be deleted from this document.

C Duby: Second.

Mayor Post: We have a motion and a second. All those in favor, say "aye". Opposed. Motion carried.

C Hudson: I make a motion that we accept this document, as written, with that deletion made.

C Duby: Second.

Mayor Post: We have a motion and a second. Any further discussion? All those in favor, say "aye". Opposed. Motion carried.

## 11. Adjournment

C Prettyman: I make a motion to adjourn.

C Duby: Second.

Mayor Post: We have a motion and a second. Is there any discussion? All in favor say "aye". Opposed. Motion to close at 7:57 pm.