

**Milton Town Council Meeting  
Milton Theatre, 110 Union Street  
Monday, January 4, 2010  
7:02 pm**

1. **PUBLIC PARTICIPATION** portion was called to order by Mayor Post at 7:02 pm
  - c. James Fraley: Ladies and Gentlemen of the Town Council, I've never had the privilege of addressing a Town Council, so if my protocol is off, I apologize. My name is Lt. James Fraley; I work with the Delaware State Police at Troop 3 which is the only troop in Kent County. What I would like to do tonight is give you a quick overview of an incident we had in Kent County on November 23, 2009, where a member of the Milton Police Department assisted the Delaware State Police in more than likely preventing a homicide. What happened, briefly, on that evening in the Town of Houston, 4 males approached a residence; kicked in the door; they were armed with a baseball bat, several knives and a crowbar. They took a male hostage, tied his hands behind his back, assaulted him and told him, basically, he was going to meet the man, which they were going to take him out and kill him. One of the roommates was able to get out of the house and went to a neighbors house who they was a police officer and that police officer, once he found out what was going on, armed himself, went literally almost across the street and intervened in this assault and basically was able to capture three of the four males who did this crime. It's one of these things; I've been on the force for 25 years and when you get the call you don't really believe that something like this happened; but it certainly happened. That officer was Lt. John Cornwell. I've known John Cornwell personally and professional for over 20 years and this type of work, it doesn't surprise me. So with the Council's indulgence, if I could, I would like to have Lt. Cornwell come forward. I would like to present him with a Certificate of Appreciation from the Delaware State Police, which means he has been written up by the Detective who handled the case for a Delaware State Police Exceptional Performance Award; also with the Council's indulgence, I would like to read a letter of thanks. "Certificate of Appreciation presented to Lt. John Cornwell of the Milton Police Department for his assistance rendered to the Delaware State Police on November 23, 2009. It's signed by Captain Gaylon Purcell, who is the Troop Commander and me, Deputy Troop Commander, Pete Fraley." John, thank you very much. [Loud applause and cheering.] Also, if I could read this letter and it's to Lt. Cornwell from me: "Lt. Cornwell, I would like to thank you for your valuable assistance on November 23, 2009. This incident could have been tragic if not for your professionalism and training. As you know, four males entered a residence at 99 Sunset Avenue in Houston armed with a baseball bat, knives and a crowbar. The victim had his hands tied behind his back and the defendants told him he was going to meet the man. Once you learned of the incident, your quick actions probably saved the

\*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.

victim's life. You were able to capture three of the four defendants at the scene, which also lead to the preservation of evidence. Due to your quick actions, several of the defendants confessed to the crime. They had no choice but to confess; they were caught there and again, not only are confessions good, but in criminal cases evidence is key and almost every piece of evidence was recovered. All of the defendants were charged with kidnapping, conspiracy second, possession of a deadly weapon during the commission of a felony and criminal trespass first. On behalf of members of the Delaware State Police Troop 3 Criminal Investigations Unit and me, please accept our sincere thanks for a job well done." [Loud applause and cheers.] Thank you Ladies and Gentlemen.

Town Council: Thank you

- b. Norman Lester, 111 Morgan Way: Good evening. My question tonight is we're three months into the new fiscal year and I haven't heard a word about the year-end financial statements. The year-end is September 30<sup>th</sup>. I think in any reasonable timeframe they should be ready and I do believe the Mayor said that the bookkeeper would prepare a year-end statement. Is anything happening on that end? Do you know when the audit will be finished?

Mayor Post: The audit has been completed just a few weeks ago.

George Dickerson: That is correct, Mayor. The audit has been completed and as Mr. Lester will remember from last year, until the auditor gives us final figures, the year-end report would not be accurate without those correction figures that the audit sometimes produces; almost always produces; so that will be forthcoming, hopefully by March we should have Mr. Sombar here to deliver his report to Council. Thank you.

Norman Lester: No, I think that is a disingenuous statement. But I must say that waiting until March is an awful long time for the people of this town to hear what's happened in the last fiscal year.

Mayor Post: But you know, Mr. Lester that has been the procedure for years; we rely on the auditor and it's been the same auditor that has performed those procedures I don't know how many years in the Town of Milton, maybe 20 years, maybe longer. I forget what he says; some towns he's done for 30 some years; and I've had long conversations over the last three weeks with the auditor. I know with a couple of your other questions that you've had, I would like him to prepare that response to you in a public meeting. So possibly if we can get him to come next month and answer when he will have the audit prepared, I will be glad to have him come next month.

Norman Lester: Okay, if he would do that, because I have a lot of questions to ask him, both tax related and audit related and I think a lot of people in town.

Mayor Post: Then that would be the best way to do it.

Norman Lester: If we could have a reasonable, not a free for all, but ability to ask questions and get hopefully straight answers, that would be; I think most people in town would welcome that.

Mayor Post: We will have him at the next meeting; we won't wait for the March meeting; we will have him at the next meeting.

Norman Lester: That would be a nice change. Thank you.

George Dickerson: Mayor, I think that sometimes the perception that is given is that somehow that the reports that are not given, that are signed off by our treasurer and that our put in by our financial coordinator; that somehow those reports are skewed somehow. The best way for Council to recognize expenditures of monies that are on-hand, as well as those that are spent; and revenues, as well as expenditures, are given to you monthly; that report is always done on the 20<sup>th</sup> so that Council has plenty of time to review it here. Some people in the audience may not know that that is our process. It's been that way for a number of years. It was that way when Mr. Lester was, in fact, on the finance committee; was one of the ones that approved that procedure. We now each month have that sign off and when those reports come in, the auditor has been in Town Hall for probably six weeks, left the latter part of last week and had gone through and made his inspections in all areas. In fact, he had a meeting with me and the preemptive meeting that he had with me, prior to the report, that was very favorable for the Town in the way we conduct our business. Thank you.

Mayor Post: As I have said, I have had a conversation with the auditor. He doesn't even know if he has anything for the correction letter this year, because he found that everything has been met. I think the best is to do everything in the public forum and have the public here and let the questions be asked and clear this issue up. I have talked to him about monthly balance sheets that towns do not do; he said if any town does it; possibly the City of Wilmington or maybe the City of Dover. He represents 6 or 8 towns; he does the accounting work for them, the audits and it is not done in any of those towns. You need a lot more staff than any one individual in the finance department. I think the best thing is to clear up these issues; I would like to have the auditor here and then we can have some direct Q&A period.

- c. Cliff Newlands, Oysterman Drive: I just want to ask a question about the solicitation of candidates, the notification that went out to the public; not that I'm looking for any competition or anything. Was that published as a notice in the newspapers or a press release in the newspapers, because I only found it in one paper? According to the Town Bulletin Board it was listed as going to about five newspapers and I only saw it in Delaware Coast Press.

Stephanie Coulbourne: That's correct; it went to five different newspapers. It was published as a legal ad. I already have the bills from the News Journal, the Cape Gazette, and the Sussex Countian and that's already been approved for payment.

Cliff Newlands: Did anybody get copies of them, because the...

Stephanie Coulbourne: A copy of the ad is with the bill that came to Town Hall.

Cliff Newlands: The copy that was actually published.

Stephanie Coulbourne: The copy of the ad that was published in the paper is attached to the back of the invoice.

Cliff Newlands: To their invoices.

Stephanie Coulbourne: Yes.

Cliff Newlands: Okay, because I didn't see them. Also, it was supposed to be published on the Town's website and it wasn't.

Stephanie Coulbourne: It is on the town's website under news. Yes it is, I put it there myself. It's under news, on the side.

Cliff Newlands: I've been looking for days and it is not under news; unless it's buried under the previous news articles.

Stephanie Coulbourne: No, well what I can do, is go on the Intranet tomorrow and I can print up when it was posted there and I can tell you how many hits it has had on it.

Cliff Newlands: That would be fine. I would appreciate that. Thank you.

- d. Ellen Passman, 305 Federal Street and most frequently 110 Union Street, the Milton Theater: As you know a letter went out to the Delmarva Peninsula to let everyone know that the Theater is alive and well, but facing financial difficulties. I am here to speak on behalf of the Theater, very briefly. We are planning a great 2010; no we are not closing our doors. My favorite rumor is that the Town is going to bail the theater out. Not true. We do, however, want to extend our appreciation that the Town of Milton has always supported the theater in a very generous and gracious way; as they have supported every other important civic institution in Milton. We are working in synergy with the Library; with the Historical Society; we're planning great programs; we're starting our capital campaign; but most important we are asking the community through ticket sales and we are asking the community to support us financially. Every dollar we spend we keep these doors open. We have architectural challenges; it costs us close to \$500 a day just to keep the doors opened and I would also like to acknowledge our Theater Board. We no longer have an Executive Director and our Board of Directors has done a fabulous job of taking on all the jobs that it takes to run this theater and I would also like to acknowledge that the media, throughout the area, has been extremely responsive, very positive and just if you hear of anybody saying the Theater is closing, not true and if they have a question about that, they can call Ellen Passman directly and I will give them the good news that there's a lot of things to come to at the Milton Theater and we hope each of you will consider your home. Thank you.
- e. Vice Mayor Betts: I would like to recognize our new State Senator Joe Booth in our audience.  
Sen. Joe Booth: Thank you Mayor and Council. I'm just here checking things out.

Mayor Post: We will now close the public participation portion of this meeting at 7:18 pm.

## 2. Call to Order the Milton Town Council Meeting by Mayor Post at 7:18 pm.

\*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.

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
C Prettyman	Absent

6. Additions or Corrections to the Agenda

Vice Mayor Betts: The presentations of the minutes of December 14, 2009 were admitted and the location was changed to the Mariner Middle School. On the written reports, d) should be the Finance Report. Under New Business, d) should be the Heating System from the Milton Police Department.

7. Approval of Agenda

Mayor Post: She amended the agenda to include a December 14, 2009 public hearing minutes, which were included in your packet, originally at the same time that you had the others. Under 12, under written reports, d) would become the Finance Directors Report, which you had submitted and as well, that was just handed to me this evening, but it has been really under Old Business, but she said to put it under New Business, which is fine, which is the Heating System for the Milton Police Department. Those three items would be amended to the agenda as Vice Mayor Betts presented.

C Martin-Brown: Mr. Mayor, I have an amendment to propose to the agenda.

Under Old Business that Consideration and Possible Vote regarding a vacancy of the Town Solicitor as it is a personnel matter, be referred to the Executive Session.

Mayor Post: I don't think you need that on the agenda. The thing is when we get to the Town Solicitor, you could request that it be conducted in the Executive Session and then we can deal with it.

C Martin-Brown: Thank you; Mr. Mayor.

Mayor Post: But we still need a second to amend the agenda.

C Abraham: Second.

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

8. Presentation of Minutes for December 7, 2009 and as amended December 14, 2009 (the tax appeal minutes).

Mayor Post: My understanding is that there is one correction on the December 14<sup>th</sup> minutes, which is the location of the meeting, which should be Mariner Middle School.

\*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.

9. Approval of Minutes by Council

C Abraham: I make a motion to accept the minutes as presented with the correction to the December 14 minutes for the location being Mariner Middle School.

Vice Mayor Betts: Second.

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

10. Approval of Written Committee Reports

C Hudson: I make a motion we approve the written committee reports as presented.

Vice Mayor Betts: Second

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

11. Town Manager's Report

George Dickerson: Good evening Mayor and Council. The first thing that I want everyone to know is the tax appeal hearing that Council will sit on, that will be held at the Milton Theater and that meeting will be held on Thursday, January 21<sup>st</sup> at 6:30 p.m. The next thing I have is the Milton Rails to Trails update and Phase I. Phase I goes from Chestnut Street to Federal Street and is for all intense of purposes is now complete; the deed has been received from the State of Delaware, turning the property over to the Town; the only thing it needs now is to go to the Recorder of Deeds to be recorded and we are in the process of cutting the check and we will be taking that over to the Recorder of Deeds and filing that deed and that property will then become ours. I will let you know probably by next month that deed is actually in-hand at Town Hall after the recordation. Phases II and III, the report; we talked to Ten Bears today; and he is in process of generating that report to submit to the State of Delaware and that will be approximately six weeks in getting that to them for the Brownfield portions of both Phases II and III. I received a letter today of an inspection report that was done by our engineers, Cabe Associates, in Wagamon's West Shore. The updated report from Cabe was dated the 31<sup>st</sup> and I received it today. The most recent walk-through inspection was completed there December the 18<sup>th</sup>. The items that were gone over; the remaining work provides a detailed list of items which the contractor is performing in order to comply with the requirements of the punch list, that have previously been identified. Additionally, there are items that have to be completed before the sub-division is acceptable. All punch list items shall be completed in accordance with the approved construction documents. All sidewalks shall be completely installed; all curb and sidewalks be ADA compliant; a deed for each street to be accepted shall be obtained and presented to the town; stormwater ponds shall be accepted by Sussex Conservation District, with written approval from them to the town; Delaware Department of Transportation, where required, also permits; as built plans in accordance with town sub-division ordinances shall also be prepared and submitted to the town. So that project, after some discussion with regard to that, is now in line and Cabe is out there actually every month, about the same time; about the middle of each

\*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.

month. As you heard Mr. Kerr speak to that issue here and that his company was a little remiss in doing that. The utility or water billings will be going out this month; they will be going out January 6<sup>th</sup>. Tax billings for your tax assessments for the year will be mailed out on January 15<sup>th</sup>. I have an announcement with regard to the election for everyone. Milton Municipal Election for 2010 Announcement will be Saturday, March 6, 2010. Polls open from 8:00 a.m. to 6:00 p.m. Election deadlines: all deadlines are at 4:30 p.m., unless noted. File to run for office: Tuesday, January 5, 2010. Register to Vote: Friday, February 5, 2010. File an Affidavit: Friday, March 5, 2010 at noon. Obtain Absentee Ballot: By mail: February 1, 2010 to March 1, 2010. Obtain Absentee Ballot: After March 1, 2010: Registered voters must come to Town Hall to pick them up. Town Hall will be opened from 9:00 a.m. until noon on Saturday, January 23, 2010 and Saturday, January 30, 2010 for residents who wish to register to vote and meet the requirements. That's all I have.

C Hudson: Mr. Dickerson, could you please give us some type of a progress report on the drainage problem in Shipbuilders?

Vice Mayor Betts: That's what I had to ask.

George Dickerson: The drainage problem in Shipbuilder's is still waiting for Mr. Charles Turners' attorney. All the necessary paperwork has been drawn up and we are waiting for a final signature which has not occurred as of yet.

Vice Mayor Betts: The easements have been obtained?

Mayor Post: The easement is waiting for signature.

Vice Mayor Betts: That's what is waiting for signature?

Mayor Post: We have done everything we can do at this point on our end. We are now waiting for his signature on the agreement that we have discussed prior and agreed upon.

Vice Mayor Betts: I rode out there and that road is really, really bad out there.

Mayor Post: I know.

## 12. Written Reports

### a. Maintenance

C Abraham: I make a motion we accept the written report, dated December 2009.

Vice Mayor Betts: Second

Mayor Post: We have a motion and second. Are there any questions to the motion? All in favor say "aye". Opposed. Motion carried.

### b. Project Coordinator/Code Enforcer

C Abraham: I make a motion to accept the Project Coordinator/Code Enforcer report for December, 2009.

C Hudson: Second

Mayor Post: We have a motion and second. Are there any questions to the motion? All in favor say "aye". Opposed. Motion carried.

### c. Police Report:

Vice Mayor Betts: I make a motion to accept the Police Report dated November 21 through December 20, 2009, as written. Also, at this time, I would personally like to thank Lt. Cornwell for his heroism that he showed. Thank you.

C Abraham: Second.

Mayor Post: We have a motion and second. Are there any questions to the motion? All in favor say "aye". Opposed. Motion carried.

d. Finance Directors Report

C Abraham: I make a motion to accept the Finance Directors Report dated December 2009 covering through December 20, 2009.

C Martin-Brown: Second.

Mayor Post: We have a motion and second. Are there any questions to the motion? All in favor say "aye". Opposed. Motion carried.

13. Old Business

a. Consideration of recommendation from Planning and Zoning of Comprehensive Plan update for possible action and vote

Mayor Post: Robin, is there anything in this you want to address?

Robin Davis: Well, as you can see I did a memo with all the information that was submitted. Planning and Zoning has held several meetings, along with the workshop. These are the final recommended changes that they would like to see put into the Comprehensive Plan. The first thing you have is the written document itself. All the changes have been incorporated in the document. Most of them were just wordsmithing. Some of the items, the water facilities report was put in; that was part of Cabe Associates. They put some soil sample plans in there and things like that, so the document itself is a final draft for your review. The second item that you have pertains to the Exhibit "G" of the document which is the Future Land Use Potential Expansion Area. There was a Comprehensive Planning Committee that reviewed the exhibit. They had several meetings and came up with 24 parcels that they wanted to see added to our potential growth area. They are identified on that spreadsheet number one, as items 5 through 28. They are also identified on the 8-12 X 11 map in the dark blue area of the map. There's also Lot 1, 2, and 3, identified on the spreadsheet and on the map; that was a request by a property owner to change the land use from residential to commercial. That item, the Planning and Zoning recommended not to change that. Lot number 4, identified on the spreadsheet and on the map was a request by the property owner to change his property from commercial to residential; the commission recommended changing that land use. If it is approved and the Council would recommend a move forward with that, the landowner would then have to go through the rezoning process, which would be another step. That's after the Comprehensive Plan gets done; but the land use has to be changed first, before he can rezone. That's basically Item No. 2.



Mayor Post: That was a down-zoned parcel, right? It was going from commercial to residential and my understanding he wants residential because he cannot get a 30-year bank loan being commercial.

Robin Davis: Yes, on a commercial lot, supposedly they only will give him a variable, short term loan. He's having a hard time. So that's why he requested that.

Mayor Post: It will always be residential and it is in a residential community, I believe. I think there is one commercial property across the street.

Robin Davis: Item No. 3, on the memo is the historic resources. The Planning and Zoning at the last meeting started reviewing the Town Center Map. That's Exhibit "I", with maybe some questions about maybe adding to the Town Center. That was denied, they decided they wanted to leave it like it was; but something was brought up; we have basically half the lots are parcels in the Town Center are in the historic district. A motion was made to add all of the parcels that are in the Town Center and put them in the historic district. That was the motion and the recommendation coming from Planning and Zoning. That would potentially add another 33 parcels to the historic district. We had talked about this before. The Historic District Ad Hoc Committee had done a report, along with the University of Delaware with the potential of adding 200 homes. I have a nice book that they did; a disc, CD and all that. We don't know if any of those 33 lots, that Planning and Zoning would like to put in are incorporated into those 200 parcels that the Ad Hoc Committee has done. The Council has not seen that report yet. Adding these lots at this time would another process to the step; because adding the historic designation to these Town Center parcels would cost a rezoning process; so also we would have to do the Comprehensive Plan Public Hearing and all that; plus they would have to do a rezoning; all the property owners would have to be notified; they would have an opportunity to come in and they could say yea or nay; whether they would want to be in the Historic District or not. It would just add a lot of time and mailings and things to the process at this time.

C Martin-Brown: May I ask a question for clarification? Does the addition of these 33 parcels as historic property sites been addressed in this Comprehensive Development Plan, or can be autonomous from the Comprehensive Development Plan process?

Robin Davis: It can be done anytime by itself.

C Martin-Brown: So it is not dependent on this process?

Robin Davis: No.

C Martin-Brown: Thank you, Sir.

Robin Davis: My thought behind it was, let's take the report that the Expansion Committee; look and see if any of those 33 are in this report and do it all together.

Mayor Post: I don't think they are; but I think I understand where C Martin-Brown's coming from; but I don't believe they are. I think they are lots that were within the original historic district that were never placed on the register; so they were probably under-developed lots; they probably don't have homes on them; they probably are just parcels. At the time that the historic district

was done, historical and cultural affairs were only looking at property; whether it was commercial or residential; but existing dwellings.

Robin Davis: Yes, some of these lots that are in the Town Center that could potentially be historic are the Fire Department, the old poultry plant, the wastewater plant, the maintenance building along Front Street, I don't know how much historic value the Fire Department has.

Mayor Post: I think what they are looking at it and I'm going to say that it is probably something that can be approached down the road, is to protect unity within the historic district when you do have new growth; instead of somebody coming in with a McDonald's or whatever is permitted; they would have to build it according; not that they could not build whatever it permitted, but it would be within the architectural boundaries of that district; so I think there is good and bad in this situation; but I think you're absolutely right, it could be done independently.

Robin Davis: The last issue on the memo was Exhibit "E", Existing Land Use in the Town. What they recommended that myself and the consultants work together to clarify the accuracy of some of the land use properties and what it would take is we would just basically go around town, look, make sure if the existing land use on the map showed commercial, that it is commercial; there are some changes that need to be done to this map. One that comes to mind is Dr. Howard's. Dr. Howard's is now commercial property, even though it is zoned residential; the land use now is a commercial land use. That would have to be changed. There are some properties on Route 16.

Mayor Post: But is there some way when we do that coloring on the map, I know just what we need is one more color, I think that things that are conditional use, is not commercial. I mean they are maybe temporary, but once that business is gone, they lose that, so...

Robin Davis: Then we would just change it back.

Mayor Post: I would like to see maybe a conditional use color added.

C Martin-Brown: There should be a conditional use color added.

Mayor Post: Something so that we could designate true commercial from longevity.

C Duby: This is not a zoning map he's talking about. He's talking about use and the use right now, using that one as an example is commercial; whether it's conditional or whatever, the use. If it were a zoning map, then yes, you should have a separate color, for conditional use; but not on a use map.

Robin Davis: Correct.

C Duby: You just change it whatever the current use is.

Robin Davis: Again, that's a relatively minor change; it's just going through and.

C Duby: There are some \_\_\_\_.

Robin Davis: Yes, there are. That wasn't identified in the original scope of work because of the timeframe and the money; that will probably be added to the next big update; but it really won't take much to do some changes to that. But overall that's the major changes; what I'm requesting now is at the pleasure of the Council; what they would like to do as far as moving forward;

do you want to review the document first, make your changes, or do some public workshops, public hearings, how do you want to move forward with this document now; because of the timeframe that we are working with?

Mayor Post: Well we can't approve the document. We can approve the changes, but we have to have a public hearing anyways once these changes have been made.

Robin Davis: If the Council would want to say, yes go ahead with Number Four Item, work on the land use; don't do the union of the historic district right now.

Mayor Post: Where does it follow on the issues and that was probably one of the most in the public hearing, the more commented the issue of land use was two parcels that over by Wagamon's West Shores; did they fall under the land use map?

Robin Davis: That falls under "G", the "G" map, which is the expansion area.

C Abraham: Number Two.

Robin Davis: Because that is not currently in our town growth area.

Mayor Post: What are they requesting? They are recommending all that acreage to remain Light Industrial?

Vice Mayor Betts: That's what the people want.

Mayor Post: That's what the people want; I'm just trying to figure out what Planning and Zoning is recommending.

Robin Davis: If you look at spreadsheet two, they are recommending all of the Light Industrial out on Route 30/319 area to be changed from Light Industrial to residential.

C Abraham: Would we vote on those singly or a blanket voting; item by item?

Robin Davis: Planning and Zoning did it three lots together; four lots together; that's your pleasure. If they are separate parcels, then they should probably be done separately.

C Hudson: Robin, I have a question. Assuming you vote to change those lots behind Wagamon's West Shores from Light Industrial to residential; what is to stop the owners of the land from going to the County and just ignoring us?

Robin Davis: Nothing.

C DUBY: I have a procedural question. As you mention, we are not going to vote on the entire document tonight. Can we have a public hearing on the document and the recommendations of Planning and Zoning and then vote on both the changes and the total document, is that something we can do all in one evening?

Mayor Post: I would assume we could do it all in one evening. Obviously, once we have what we're saying is the final product; we are going to have another public hearing. Now if you want to have...

C DUBY: Now, that's my question. You're saying that if we had a public hearing and then...

Mayor Post: Once any change is made to that document...

C DUBY: Are you saying that we need to have two more public hearings?

Mayor Post: No.

C DUBY: Only one.

\*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.

Mayor Post: We have to have another one. Now if we take any of that advice from the public, if there are certain things that come out of that and we make any changes, I believe you have to have another public hearing. We have to have the final product of what we're voting on and saying that this is what we're going to be voting on, without changes.

C Duby: So we can't make those changes that night and then vote.

Mayor Post: That's a legal question.

C Duby: I know and we don't have a solicitor and I'm hesitant to go forward with any of this without getting the advice of Counsel as to exactly what we have to do. I think there are a lot, not a lot, there are several fairly complex issues here that I would like to have some advice from legal counsel on. I would like us to discuss them in the context of what ordinances apply and what we have the authority to do, or not do; and I don't think we are in a position to do that tonight; and, as you point out we need to have a public hearing. The question I have is can we do that in one night; have the public hearing; discuss their recommendations; make changes, if we choose to do so to the document...

Mayor Post: We'll need to get an answer to that. I would say we are, but I would get an answer on that. We could...

C Duby: And is it true; I noticed, because I've heard various things about what our deadline is on this; but I noticed as I was reviewing again today some of the minutes from the Planning and Zoning meetings that we have to approve this no later than the April Council Meeting. Is that right?

Mayor Post: It has to be there in April, I thought.

C Duby: I thought it had to be there in June, but we have to approve it in April because of the bills from the consultants or something.

Robin Davis: Yes, the money for the grant runs out in July, to get in all the bills; if we're dealing with consultants in the end, which we probably should have them involved some way, to make sure what we're doing here is correct, the billing has to be turned into the State. There's no final date, but April was the word that everyone was saying; by the end of April that way the bills can get for May, they can get turned into the State so we can get our matching money.

C Duby: Yes, it sounded to me like we have to approve the final document no later than the April Council Meeting.

Robin Davis: Yes.

C Duby: Which means that we've certainly got time to consult our solicitors, supposedly that we will hire soon, and secondly to have a meeting or even two meetings where we could...

Robin Davis: We're running close on time because it also has to go to the State for the plus and that's usually 30 days.

Mayor Post: I think the most important date that we have to know is when it has to be at the State Planning Office.

C Martin-Brown: Mr. Mayor, I share C Duby's concerns about acting on this tonight. For instance, that area zoned for Light Industrial that my colleague Ms. Hudson brought up, yes, Mr. Carey and those property-owners can go to

\*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.

the County and they can do that now anyways, because the County already has the jurisdiction it can assert even though it is in our Comprehensive Plan Expansion Area. What I'm concerned about, is I would like in reading Mr. Carey's attorneys' letter, written to us December 28<sup>th</sup>, I was concerned about several assertions: 1) that we didn't have a solicitor present at the Planning and Zoning meeting, which could again be visited back upon us; although that's a questionable assertion. 2) The one that bothered me even more was a lack of presence by our Planning Consultant; because ultimately the jurisdiction for what the Planning Consultant might advise resides with the Planning and Zoning Commission, as well as with the Council; so whether or not we have a Planning Consultant present or not, is not an assertion that has any legal standing from what I would be comfortable with. 3) If the property owners want Light Industrial activity on that land and they want us to cooperate with them on that goal, why are they not more forthcoming; because I asked the question in the Planning and Zoning meeting; why are they not more forthcoming as to whether or not their intention is to request to have the land annexed to the town and why are they not more forthcoming if they know what they want to put on that property under the category of Light Industrial? These are all questions that I think beg us not to try to act on this item tonight under New Business.

Mayor Post: I think the issue of whether tonight or not, we act, which I would assume tonight we would not be able to act; but I think we might have to have another meeting this month regarding this issue; but I do believe that this is an important; but I think at the same time, that the public hearing was represented by at least one of those developers and there was no clear presentation made. They had an opportunity to speak; they had their opportunity in a public hearing; you know what the stand is; there's a time as elected officials you have to take the stand; they don't want it; residents living there, they don't want it removed, the two developers, or landowners, and those living out there don't want Light Industrial in a residential community. This is a proposed land use, if that's how you want to state it; land use. This is not the zoning, as far as whatever they get... They could come in with other possible ideas, if that's what they want. I haven't seen a large parcel yet come into this town that once a developer wrote an annexation agreement, didn't put in the annexation agreement they wanted an LPD. So the bottom line is, is that that's under negotiation. The thing is that we have to do is to decide what is right for that community and that's something we have to make a decision on. Because there are two sides here and I don't think either side is going to make... There's not easy way with this.

C Duby: Can I request, since we're not going to act on this tonight. One of the things that I think would be extremely helpful to Council, because I think there is a point at which there are a couple of issues getting blurred here; first of all I think it is very, very important as you just pointed out, Mr. Mayor, this is not a zoning decision; this is not an annexation decision; that's the reason why, for example, in response to C Martin-Brown's point about what are they going to do, my guess is it is entirely possible they don't know at this point;

\*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.

because it could be years from now before that's ever annexed in; if it ever is. This is a looking to the future kind of thing. I think we need to distinguish between those two and the thing that would be helpful to me and perhaps, if we make the decision about a solicitor, this could be one of the first requests that we make of a new solicitor; I think it would be very important for us to have a legal analysis of exactly what our authority is and exactly what would have to happen in a couple of different scenarios. Let's say that we left it Light Industrial and the owners, at some point a few years down the road or a few months down the road or whatever it's going to be, come to the town and say I want that property annexed in; it is designated as Light Industrial, I am proposing a Light Industrial use; what authority do we have at that point to say what restrictions or anything else we could put on it at that point?

Mayor Post: I believe, but you want a legal opinion, and I understand that, my believe is that fact of what it is zoned and what we state in our zoning ordinance is what they are entitled to. We can't negotiate it down. We can negotiate the annexation.

C Duby: We can negotiate the zoning down. We can exercise some restrictions on what will or won't go in there.

Mayor Post: I don't think we can if it states Light Industrial.

C Duby: No, I'm not talking about a different zoning, Don. I'm talking about the uses within the zoning. Just as for example, we all know from the Baker property Heavy Industrial thing that went on months ago, that while given that Heavy Industrial zoning, they also if they were to come in with some hazardous use or whatever, there would be some restrictions on it. I would just like to see the legal analysis of that. The other piece I would like to see and make it very clear to all of us and the public as well, is exactly what changing the zoning of that would mean; not the zoning, excuse me, I mean changing the land use designation in the Comprehensive Plan would mean. If we were to change that to residential; what that would mean, if down the road the owners of that land wanted it annexed in as commercial or Light Industrial or something else. I want us to see what the possibilities are, what the consequences are of our action, because this is a different decision. We are not sitting here saying, okay we are going to zone you as X rather than Y. We are not at that point. This is further back on the road and I would like a clear analysis of that from our solicitor, whoever he or she may be, on exactly what our options are and what this decision means and does not mean, for us and for the landowner.

C Abraham: I also think from the meeting that we did have with Planning and Zoning if I'm incorrect, please correct me Mr. Carey, I don't think Mr. Carey had any intention of doing anything, he was just the sleeping giant, happy with the property being labeled the way it was and our Planning and Zoning is kind of what woke that up.

Mayor Post: No, I don't know about that. I don't if our Planning and Zoning, I think when the public, this is when it gets to the point of public participation and when people need to be aware. I think when they see an opportunity and that's the purpose of a changing document all the time, like a Comprehensive

Plan, if an area has been built out and you already have 100 or 150 homes now built in a property where sometime just by chance, sitting next to it was placed next to it Light Industrial, then next to that 100 acres or whatever into Light Industrial; I don't get it; I think the right of anybody now in the changing of the Comprehensive Plan in a community has a right to come forward. So I don't think it's the fact that Planning and Zoning; I think the fact is that there were other people in this town that saw an opportunity of maybe they didn't like what they saw as a potential of living next to it.

C Abraham: Unfortunately, though, the point to be made, I believe, is Mr. Carey and his property was there first, like they were. So I would technically be more inclined to try and work with Mr. Carey since his property was marked Light Industrial, prior to Wagamon's coming there.

Mayor Post: No, that's not true. Wagamon's West Shores was a residential community. I sat in the audience 20 years ago when Wagamon's West Shores; I don't care what it was called prior; was there and it sat undeveloped as a residential, single family property for many years in the Town of Milton.

C Abraham: What was it called then?

Mayor Post: Who owned it before? It was somebody from Wilmington owned it for years and they were always going to develop it; the streets were put in; they were dirt streets; then the pine trees grew up in there; then it was just a bunch of undergrowth there for year; then Wagamon's West Shores; then all of a sudden this concept of Light Industrial was brought to go into a non-developed area where residential was already designated. I want to put that into a little bit into perspective.

Robin Davis: I wasn't here doing this Comprehensive Plan in 2003. If I'm not mistaken, I think the town or a representative from town went to Mr. Carey and asked if that parcel, if he would be willing to change that to Light Industrial during the 2003 Comprehensive Plan.

Mayor Post: And I think you are absolutely right. But the purpose of a Comprehensive Plan is to be molded into how the town grows, as well, and we have a proven fact of what we see now in that vicinity of what kind of other... I don't know of anything industrial in that area, except residential. I don't think we need to debate that here tonight. I think everybody's going to bring it into the total final picture; but to debate it tonight it's not worth it, because as C Duby states, we certainly do need the legal representation; but at the same time, we need to remember that a plan is just that, and changes to a plan be made, they're made every day and they're especially made when the Comprehensive Plan is being updated.

C Duby: I was just going to say from the standpoint of I agree about not debating it tonight; but from the standpoint of scheduling it; you mentioned a second meeting this month, I think it might be more realistic if we're going to ask for this information to be provided to us, that we schedule either as part of the February meeting or as a second meeting in February.

Mayor Post: I think maybe a second meeting in February, that would be good and that would give plenty of time. Then maybe we'll consider it; because I know we have the tax appeal.

Vice Mayor Betts: Because I do want to make some statements also in regards to having it changed and if you would rather not do it tonight, I'll wait.

Mayor Post: Go ahead you can make it tonight.

Vice Mayor Betts: I just want everyone to know and I believe Mr. Carey told us that he was not planning on going to the County to have anything; but I want to everyone to know that he could do that and then he would not asked to be annexed in, I'm sure. But if we left it Light Industrial we have more control over what is put there and I feel that we would get a benefit from it if he did ask us to have it annexed in and we would still have more control then we do with the County.

Mayor Post: But we wouldn't have control if it was residential?

Vice Mayor Betts: Yes, but I'm saying, if he's not asking to have it changed and he would like to have it stay Light Industrial, it could benefit the town far more, then if he went to the County and had it done.

Mayor Post: But isn't that true with any annexation?

Vice Mayor Betts: Well, we just have to wait and see, I guess.

C Hudson: The way I see it we could sit here and debate whether it should Light Industrial or whether it should be residential; the whole thing becomes a moot point if Dave Carey goes to the County. Rather than say he should come to us and request to be annexed in, then we negotiate; I think we should reverse that and do everything we can to encourage and induce and bend over backwards to try to get this man to come to us to annex in; because if he doesn't it's just a moot point and then it's just colors on a map and then you can put that map up on your window to cover up the Light Industrial that will be there after the goes to the County; so you don't have to look at it. So rather than say he needs to make the first step, what I'm saying is, maybe the town should make the first step and say what can we do to get you to annex in; if the County has 80 uses and Milton only has 14 and Dave Carey stood right there and said that he would be glad to delete some of the most egregious of the 14 and work with us so that he could still have some options; some commercial as well as some residential; I don't think we should draw a line in the sand; it's residential; that's it; you don't like it; too bad. Well then it would be too bad for us; because he'll be gone and there's not one thing that we have that he needs; because just like Debbie Pfiel sat there and said and went on record he can go to Artesian, he can go to Tidewater, he doesn't need us for sewer and water; he doesn't need to come here and pay \$8,000 an acre; or property taxes; or whatever else we would charge; he could just go right to the County; Debbie Pfiel said that.

Mayor Post: And he will pay a lot more at the County, because the \$8,000 per acre is higher at the County.

C Hudson: What I'm saying is that we should do whatever we can to encourage people in our Growth Expansion Area to come to us, rather than go to the County. Thank you.

Vice Mayor Betts: I agree with C Hudson.



Mayor Post: I believe that you don't sell it out to the highest dollar. I think you look at whatever is best for the town. But we're not going to debate that. I'm just not a person to.

C Hudson: That's a bad way of looking at that.

Mayor Post: Well, I think selling out...

C Hudson: I'm talking about compromise, discussion and encouragement...

Mayor Post: To just say that every time you're going to worry because somebody is going to come here...

C Hudson: You're talking about selling out to the highest dollar. I think that's a bad way of looking at it.

Mayor Post: So you're saying that... C Hudson are you saying that if we wanted Heavy Industrial that we should give it to him because he could say he could go get it at the County?

C Hudson: I'm saying don't draw a line in the sand and just say this is it, it stops here because then he'll do whatever he wants with the County; just like Elizabethtown did; they came to us and said we want 2,400 units and we said no and they withdrew two weeks after and \$8,000 per acre ordinance was passed here and they went to the County and got approval for 4,000.

C Duby: We never had a chance to say no.

Mayor Post: Is it in the County? Has he built?

C Hudson: And then you have Pemberton that's already in our Growth Expansion Area.

Mayor Post: Our \$8,000 per acre, it would cost about the same in the County; I believe about \$18,000 because you have to pay for higher density.

C Duby: Could I make a plea, once more, before we start debating these issues, based upon what people think, could we get some real information from our attorney analyzing the authority that we have in all of these instances and from what I understand, I don't think Mr. Carey is knocking on the door of either us or the County to say annex me in; so I think we've got some time. This is future stuff.

Mayor Post: Can we have a motion to table this and set it up for a February 2<sup>nd</sup> meeting?

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

C Hudson: I second.

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

b. Consideration and possible vote regarding the vacancy of the Town Solicitor

C Martin-Brown: Mr. Mayor, I would like to make a motion that we have this discussed in Executive Session.

Vice Mayor Betts: Second.

Mayor Post: We have a motion and a second. Any discussion? All in favor say "aye". Opposed. Motion carried. Okay so we're going into Executive Session at 8:07 p.m.

C Martin-Brown: No, Mr. Mayor, not now, at the end, so people would not have to go outside.

Mayor Post: So you should have moved that on the agenda. Okay.

C Martin-Brown: This is your meeting, I apologize. But it wonderful to suggest that we complete our other business prior to the Executive Session, Sir. So can we proceed to New Business, Mr. Mayor?

Mayor Post: Yes.

14. New Business

- a. Accept resignation of a member and vote on replacement to the 2010 Municipal Board of Elections as well as announcement of all Board members as required by Delaware State Law.

Mayor Post: We did have a resignation of Thomas Arkinson and the proposed Committee would now be Neva Baker, James Jefferson, Robert Howard, James Crellin, Marvin Cummings, Michaela Kaffaro and Michael Filicko.

Vice Mayor Betts: I make a motion to accept the replacement of the Municipal Board of Elections.

C Martin-Brown: Second.

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

- b. Request from Milford Housing Development Corporation to be exempt from town property tax.

C Hudson: I make a motion to deny the request from the Milford Housing Development Corporation to be exempt from the town property tax.

C Martin-Brown: I second it.

Mayor Post: Is there any discussion? All in favor say “aye”. Opposed. Motion carried.

- c. Acceptance of a minor subdivision application – changing two lots into three lots located at 301 & 303 Walnut Street – Parcel #'s 2-35-20.08-57.00 & 58.02

C Martin-Brown: I make that we accept the proposal of a minor subdivision application – changing two lots into three lots located at 301 & 303 Walnut Street – Parcel #'s 2-35-20.08-57.00 & 58.02.

C Hudson: Second.

Mayor Post: We have a motion and a second and they do meet minimum lot requirements, as well. Is there any discussion to the motion? All in favor say “aye”. Opposed. Motion carried.

- d. Heating system at the Milton Police Department

Mayor Post: As you know there were three bids received to regarding the heating system for the Milton Police Department. The bid prices will be read into the record by the Chief of Police.

Chief Phillips: Since I came back from leave, I recontacted and got bids on the heating system and these same companies have given me these bids.

Mayor Post: The bid process and we have discussed this, Chief, if it has not been placed in the newspaper, and I sent you that information when I was in

Arizona and I recall that, that it had to be placed in the newspaper. Anything over \$5,000 must be placed, according to our charter, so what I'm asking you is has that been done?

Chief Phillips: All I can say is when I came back from leave; those are the three quote that you guys had already gotten. All I did was follow up and have them refresh their quotes. They actually thought when they gave those quotes, back in May, June and July, that this system was going to be installed, that's what they were told. When I called them back, they told me they thought someone else had already gotten the job. So I asked them to come back and give me updated prices and the same companies that were already picked by someone else, not me; and that's what I did. I thought you guys had already approved these companies.

Mayor Post: But Chief, what I did email you though, I did email you, because I remember this clearly now, in Arizona, about we did need to get it in bid and I said those people could be notified to bid on it. If it has not been placed in a newspaper...

Chief Phillips: Sir, no disrespect to you, but you did not say anything about a newspaper; what I'm saying is in my budget packet that was already made up before I came back from leave, those estimates, those bids, those quotes, whatever you call it, were already in the budget things and you guys had already looked at them and you guys approved a certain price and that had nothing to do with me at all.

Mayor Post: All right, we approved many things in the budget, but at the same time if it is over \$5,000, we must put it out to bid, according to charter. Not anybody else's decision. It's according to charter. So if these have not been placed in a newspaper for advertisement that must be done first. It only has to be listed for a week or whatever; but it has to have a time span on it and I think the minimum is a week, I believe. But it does...

Chief Phillips: As far as I knew, that had already been done. I didn't know one way or the other, because those proposals had already been turned in and that's what I had in my packet when I received it; I believed that the Council had already picked because that was what was in the budget book that I received with those three estimates. They all believed that someone else had been selected.

C Abraham: Are you also under a time constraint?

Chief Phillips: Yes, that \$18,190, we may have to return if we don't use it here.

Mayor Post: I'm not going to get into a debate here tonight. I clearly stated that it needed to be advertised in a newspaper. I probably even have that email that was sent, because I save my emails and it was when I was in Arizona and I stated because it was a lot of implications about getting it right then and there and my understanding is it had not been put out to bid and I stated that the charter and I even said; it's not my decision; it's the charter's decision; that we must put it out to bid if it is \$5,000 or above. Therefore, if it is not we have to do it.

C Abraham: How long?

Mayor Post: It can be posted, if you want to say, I think it's a week. I don't know. You have to put a time span. Do you know?

C Martin-Brown: Chief Phillips, when the charter committee worked on that section, Mr. Lester had the lead on that and he was very, very firm that we get explicit language in the charter about correct procedures in going out for bids over \$5,000; and that draft went before and was approved by the Council; so if you could get a copy of that section of the charter, it tells you that those ads have to go out and I think they have to run 30 days. It's something that's prescriptive by the town charter.

Chief Phillips: I wasn't aware of that and I could tell you that the last two things that we did do was the roofs. One of them was a flat roof and the other was a regular roof. One roof was \$6,000 and the other was \$14,000 and at that time I was told by Council to get three bids and I did and then we picked it from then, but I will be glad to do advertising. I wasn't aware of that and I believed that they had already been taken care of because those bids were in my packet for the budget which had already been prepared and looked at and I wasn't sure if someone sent a letter out and I wasn't here at the time.

C Martin-Brown: Right, understandably; that's all understandable. The bottom line is that we can't be culpable for violating the terms of the requirements of the charter.

Mayor Post: And often for developing a budget, estimates are sought so that you have a baseline to go by in that budget of what you are going to need to request for the budget.

Chief Phillips: I did talk to the three companies and they believed the work was going to be done in June and July; that's what they told me. I will get back to them now.

Mayor Post: They were wrong. What we will need to do is we will need to have to get it into the newspapers as quickly as possible.

Chief Phillips: I'll take care of that tomorrow morning.

Mayor Post: We certainly, because we do it at the State, you can certainly notify people if you have ideas of people who might want to bid on it; so if these people want to bid on it, you could certainly notify them that the ad is coming out and for them to respond accordingly to where the bid is to be sent to and the deadline.

Chief Phillips: The only thing I'm saying is that I wasn't aware that the three bids they had, I didn't know how they were picked. I would be glad to take care of the news ads tomorrow and how many days do I need to give them?

Mayor Post: I would check the charter because I'm not sure of the town's requirement. It states specifically in the charter how many days.

C Martin-Brown: Check the charter.

C Abraham: Should we make a motion to have this placed on next month's agenda if it meets the time line?

Mayor Post: Yes, we just need to make sure it gets on there. If you want to make a motion to secure it on there. If it's in the budget and it's in the bid process, and it's within that bid limit, it doesn't even have to come back to us.

Chief Phillips: So if it's in the newspaper ad, we're good to go?

Mayor Post: Right, within the number of days it states in the charter. He will need to contact Town Hall for the bid process. Okay.

Chief Phillips: Sounds fair.

Mayor Post: Thank you, Chief.

15. Executive Session

Vice Mayor Betts: I move we go into Executive Session at 8:19 p.m. to discuss replacement of the Town Solicitor.

C Duby: Second.

Mayor Post: We have a motion and a second.

C Duby: I move that we come out of Executive Session at 8:37 p.m. and into public session.

C Martin-Brown: Second.

C Duby: I move that we take the action as to Town Solicitor candidates as discussed in Executive Session.

C Martin-Brown: Second.

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

16. Adjournment

C Hudson: I make a motion we adjourn.

C Duby: Second.

Mayor Post: We have a motion and a second. Any discussion? All in favor say "aye". Opposed. Motion carried. Adjourning at 8:37 p.m.