

**Town of Milton  
Town Council Meeting  
Milton Library, 121 Union Street  
Monday, December 3, 2012  
6:30 p.m.**

**Transcriptionist: Helene Rodgville  
[Minutes are Not Verbatim]**

**1. PUBLIC HEARING: Proposal to allow down zoning of properties from Light Industrial or Commercial to Residential to reflect the actual use of the area.**

Mayor Newlands: First off we're going to start with the Public Hearing. This is an issue that was brought up to us a couple of months ago by one of the residents on Chestnut Street where the properties they were in were never converted from Light Industrial over to Residential and we allowed quite a number of people in that neighborhood, plus the rest of town to change their properties from Commercial or Light Industrial to Residential without a fee and do it as a one-time shot, so Robin Davis will give us an update as to where we're at with that and then if there's any questions from the public.

Robin Davis: Where we're at is, basically the final phase of this application, the rezoning process through the town, which requires a Public Hearing held by Town Council. At last month's meeting the Council set December 3<sup>rd</sup> for the Public Hearing. There were 35 properties in all that were identified and fit the category of the rezoning application. All in all three informational letters were sent out to the affected property owners, giving them the opportunity to rezone their property, if need be. Certified letters were sent out, after the Planning and Zoning Meeting, to the owners and to the properties within 200' of the affected area. We have received letters back from some of the owners and some just verbal confirmations from the owners. As of this date, from the 35, I've received 14 letters from the affected property owners; 9 saying yes; 5 saying no. I think there are an additional 3 or 4 that have called and talked to me on the phone and have said yes to the proposal. So, at this time the public has a chance to speak on the application for the rezoning and then further along, in the business portion, the Council will vote on the recommendation which was passed and forwarded from Planning and Zoning.

Seth Thompson: And if you could come forward and identify yourself and give your address, that would be great. It might help the public, as well as the Council, to know what the legal standard is in terms of a rezoning application. Based on Title XXII, the rezoning would need to be in accordance with the Town's Comprehensive Plan; it would need to do one or some of the following: lessen congestion in the streets; secure safety from fire, panic and other dangers; promote health and the general welfare; provide adequate light and air; prevent the overcrowding of land; avoid undue concentration of population; facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements; and, the factors that you could also look to are the character of the District and it's particular suitability for purposes for these particular uses, with a view to conserving the value of buildings and encouraging the most appropriate use of land. So if you could direct your comments; hopefully that helps direct your comments.

Mayor Newlands: This is a Public Hearing, so if anybody in the public has any public comments they want to make, they can come to the microphone and state their name and address. I'll take them, that there are no comments.

Councilwoman Jones: I have a question. You state that you've received some in agreement that they would like the properties changed, some no. What is the plan for those people not

responding? No change?

Mayor Newlands: It depends where you are. If you are in Canning House Row and Village Center Boulevard, those are going to be converted to Residential.

Councilwoman Jones: Regardless of your feelings.

Mayor Newlands: Regardless, yes. They were given a negative letter saying that if you don't respond, we're converting you. The rest of the properties within town, and correct me if I'm wrong, they have to give a positive response if they want to be converted.

Councilwoman Jones: Okay.

Robin Davis: The five no's that we did receive are all individual lots that are throughout town, so there's nothing as far as what we were talking about the four plex units, or anything like that.

Councilwoman Jones: Okay.

Seth Thompson: To be clear, in terms of the legal element, you wouldn't need someone's permission to pass this ordinance, if there were enough people that protested it, then it would trigger a super-majority requirement, but I understand the purpose of this was more in line with matching people's uses with the zoning, so that they don't have issues when it comes to refinancing; but I just want to make that clear that again, you don't need somebody's permission necessarily to pass an ordinance that affects their property.

Mayor Newlands: With that, are there any other comments? Okay, then, I guess we're going to close the Public Hearing.

2. 2011 Fiscal Year Audit Presentation – Ginger Heatwhole, Pigg, Krahl & Stern, CPA

Leslie Mikelik: Good evening and thank you for inviting us here today. Let me introduce ourselves. This is Ginger Heatwhole, who's the Audit Supervisor for this job. My name is Leslie Mikelik. I'm an Audit Manager for Pigg, Krahl & Stern, CPA and back in the back row, we have Mr. Mike Kleger, who is a partner with the firm. You should have copies in your packet of the audit report and also an audit communications packet. The audit report's about 40 pages long and I don't intend to go through the whole thing, but my purpose here tonight is to make a formal presentation and to cover some of the highlight of the report. Previously we reviewed the statement with the Mayor, the Council Treasurer and the Town Manager. Our audit report is on page one of the bound Financial Statements and there are four possible types of audit reports that we can issue. The first is an unqualified or a clean opinion, which is the highest level of assurance that we can give on the Financial Statements and this opinion states that the Financial Statements present fairly in all material respects, the financial position of the town in accordance with General Accepted Accounting Principles. One of the other types of reports that we can give is a qualified opinion, or sometimes called an except for opinion; in that the Financial Statements present fairly, with one or more exceptions to it. We could also issue an adverse opinion, which is the one that you never want to see, which basically says that your Financial Statements do not present fairly, are misstated, they're not in accordance with General Accepted Accounting Principles. The fourth type is called a disclaimer, which is really no opinion and that's where we don't have enough information or we weren't able to complete our testing, so we were unable to express an opinion on the Financial Statements. Our audit report for the year ended September 30, 2011 is kind of a combination of two types of reports. For 2010, the previous auditor's report was a disclaimer, so therefore they did not express an opinion on the Financial Statements. Now because of that, we were unable to satisfy ourselves as to the beginning balances for the fiscal year 2011 and we weren't able to determine that whether or not the Financial Statements were used consistently between the two years; so therefore in our opinion we issued a disclaimer of opinion on the Revenues and Expenses for the fiscal year ended 2011, because we're unable to determine what effect those beginning

balances, what effect, if any, those beginning balances had on the fiscal year 2011. However, we were able to perform sufficient auditing procedures on the assets and liabilities as of September 30, 2011 and as such, our opinion on the balance sheets and the statement of net assets is a clean opinion, or an unqualified opinion. Looking forward to fiscal year 2012, whose audit we're in the process of completing, we anticipate that that report will most likely be a clean or unqualified opinion. As part of our audit, we also are required to look at the town's internal accounting procedures and we did identify weaknesses in the town's controls, related to lack of segregation of duties of the accounting functions, due to the small size of your organization and also a lack of proper reconciliation of subsidiary ledgers to the general ledger. Please note that our report is on the procedures that were in place during the fiscal year September 30, 2011; which is over a year ago, so since then, management has made substantial changes in personnel and procedures and as improved the controls of the town and the management oversight of the accounting records, so our report for 2012 is going to look at that and reflect any changes that you have made in the procedures. I would like to turn it over to Ginger Heatwhole who is going to go through some of the financial results.

Ginger Heatwhole: You should have received a small four page packet that has some financial highlights and I'm going to go through these highlights. On the first page, what we have is financial highlights for the general fund for the year ended September 30, 2011. This is a summarization of your revenue and expenses for the general fund. For the year ended September 30, 2011, your total revenues for 2011 were \$1.3 million vs. a budgeted amount of \$1.2 million and the prior year your revenues were \$1.4 million. Your expenditures, your total expenditures were \$1.6 million, whereas the previous year they were \$1.9 million. This meant that for the year ended, your expenditures exceeded your revenue by \$300,000 vs. \$500,000 of the prior year. If you look at the bottom of this report, you will see fund balance. For the year ended September 30<sup>th</sup>, your fund balances were about \$800,000. Of that, a small portion if what we call non-spendable, which is basically your prepaid expenses of about \$2,000. Another \$118,000 is restricted transfer taxes, leaving you with an unassigned balance of money of \$676,000. If you flip to page two, what we've done is we've created a graph of your revenue by source, kind of to break it out to see where the money comes from. Most of your money comes from taxes and assessments, \$900,000, or about 66%. The next item is intergovernmental revenues, most of this is grant money. That is about \$164,000, or 12% and then the third item is licenses and permits of \$140,000, or about 10% of your revenue and then a variety of other smaller items, such as charges for services, fines and forfeitures, earnings on investments make up the remaining \$1.3 million. But it's just a summarization of where that money is coming from. If you flip to page three, we have a pie chart that looks at where your expenditures are being spent. Not surprisingly most of this money is public safety. \$150,000, or about 50%, followed then by general government expenditures of \$527,000 or 31%. Then the third item would be Code Enforcement of \$134,000, or 8% and then Public Works, Parks and Recreation and then various capital outlay projects make up the remaining \$1.6 million. So if we flip to page four, what we're looking at is your utility fund; kind of changing gears out of that general fund, into the utility fund. Looking at the Revenue and Expenditures for the year, your total revenue for the utility fund was \$710,000 vs. \$692,000 of the previous year. Your various operating expenditures were \$583,000 for 2011 vs. \$626,000 for the previous year; giving you operating income of \$126,000. There are various non-operating Revenue and Expenditures, such as interest income and interest expense, netting to a negative \$2,000, leaving you with a total net worth increase of \$123,000. If you take a look at your net assets at the end of the year, you have \$1.9 million in net assets. Of this \$1 million is what you have invested in your capital assets; \$242,000 is restricted money from impact fees; leaving you unrestricted assets of

\$685,000. So that's just a brief summary of your financial highlights for September 30, 2011. Once again this is over a year old. When we come back with 2012, it will be a little bit more relevant, but we'd like to thank you all for your help and the Mayor, the Town Manager and Councilman Lester for their help with our audit. We're happy to present this tonight.

Mayor Newlands: Thank you. Does anybody on Council have questions? Comments?

Councilman Lester: Well I would like to comment. I would like to thank Ginger and Leslie. They've worked pretty hard and they've worked hard to get us caught up to this current year. I, for one, certainly do appreciate all their efforts. Thank you. I do have one question, because there's something in that package from a prior audit. The change in Yellow Book in the report, to include the statement that the Financial Statements were not prepared by the client, by the Town; when was that change made? You may not know off the top of your head.

Leslie Mikelik: You're talking about the preparation of the Financial Statements?

Councilman Lester: Right.

Leslie Mikelik: Yeah, it's probably been five to six years ago.

Councilman Lester: Isn't there a comment that said...Oh it was that long ago? Okay. Good. Thank you. I meant to look that up today and I thought, well, I'll go to the source.

Mayor Newlands: Are there any other questions or comments from any council people. Very good. Thank you very much.

Councilman Lester: Thank you.

### 3. Public Participation

- a) Georgia Dalzell, Chamber of Commerce: Hello. I just wanted to mention a few events that are taking place this month. This is a busy month for all of us in Milton and there are some very nice things that are happening. First of all, this week is the Christmas Parade. Everyone should be aware of that, but that's sponsored by our Fire Department. Please attend. It's a great event for our town. It's Wednesday evening at 7:30, followed by this week the Holly Festival, which is Saturday and this is sponsored by the Chamber and the House Tour, the Milton Historical House Tour is included and that's sponsored by the Century Club and we have things going on in the Museum and in the Library and it just is a day where a lot of people here in town participate and join forces together and I have some flyers if you have an office or a place where you can put some flyers in the window. Please feel free to take one. I'll leave them on the back table. This is also our membership drive month. We're starting a Membership Drive for 2013 and if any businesspeople here are non members of the Chamber of Commerce, I'm going to leave membership envelope on the back table too. Please pick one up and take a look. We're continuing to grow and we're doing some new things this year. One of which is our brochure that we publish and this brochure has been up on I-95 at all of the Welcome Centers everywhere in this state, that publicizes our town, so we're happy to do that for the town and we're starting our new brochure. So we have these. We also have a membership lunch this month and we'd like to invite people who are interested. We have our new representatives that are going to come and speak to the Chamber members. We have a new Senator and a new Representative in our legislature; we have new districts in Milton. It's right in the center of these districts and these gentlemen have agreed to come and talk with our business people, so if anyone is interested in coming also, please call the Chamber office. We're more than happy to have you, but we need a reservation. So there are lots of things going on in December. Watch your papers and please participate. Thanks.

Mayor Newlands: Thank you.

- b) Richard Miller: Thank you Mr. Mayor, on behalf of the Cannery Village Civic Association, I would like to announce the start-up of Operation Cookie Drop. It's a Sussex County Program that delivers either prepackaged or home baked cookies to Delaware Troops that are serving overseas. Cannery Village Civic Association is joining with other organizations and serving as a collection drop, so on Friday, December the 7<sup>th</sup>, between 3:00 p.m. and 8:00 p.m., if you would like to drop off cookies, we'll make sure that they get delivered to the Long Neck area to the American Legion Post 28 and from there, they will be mailed to our troops serving overseas. So I just wanted to offer our best wishes to the Council and the folks of Milton for a blessed Christmas and a prosperous New Year. Thank you.

Mayor Newlands: Two questions.

Richard Miller: Yes, Sir.

Mayor Newlands: One, give me the date and time again.

Richard Miller: December the 7<sup>th</sup>, that's Friday, from 3:00 p.m. to 8:00 p.m.

Mayor Newlands: What's the location.

Richard Miller: I'm sorry. Thank you. It's the Cannery Village Civic Association, the Recreation Center. We're right across from Dogfish Head Brewery and we welcome any contributions. We'll make sure that they get to the main collection point the next morning.

Mayor Newlands: Great. Thank you.

Richard Miller: Thank you.

- c) John Collier, 301 Coulter Street: I would like to speak to the sub-division ordinance that's going to be getting it's first reading this evening. What concerns me about this thing is... And first let me commend the town. I understand the effort behind this. What concerns me is that you, in the section that you have underlined, you use the word "phase" and I guess to explain my concern would be that if you enforce this is in terms of phase, having worked around developers for a good part of my life and this type of work and having a pretty good understanding of it, if you have for example, you have a development that has one mile road and each phase encompasses two-tenths of a mile of roadway and they build out to the 85% you state; and they put the final top, the first thing the developer's going to want to do is dedicate that road to the Town. So now it's the Town's responsibility. But then you're left with the remainder of that road that they're going to have to cross in order to continue with their development; so now if they beat it up, it seems to me it becomes the responsibility of the town. And I don't see how that's addressed in this particular thing. It's a valid point. It's a loop hole, so to speak, but it exists and I think that you might find yourself challenged in that fashion if you don't address it in this ordinance.

Mayor Newlands: We'll take a look at it. I'm not sure how we can address it, depending on... It depends on the design of the development. Like Heritage Creek, the current phase they're working on right now, once they finish that they're going to put a construction road around that, which is good. Where I live there's no construction entrance and it's completely top \_\_\_\_\_, so...

John Collier: I understand that and it will vary from circumstance to circumstance, but you have to close the holes for all of them.

Mayor Newlands: That's a good point. We'll take a look at that. Thank you.

John Collier: Alright, thank you.

- d) Jim Welu, 30263 East Mill Run: Unless I missed something, I don't know that anybody has welcomed Ms. Betts back to the Council tonight. So thank you. Thank you for coming.

Vice Mayor Betts: Thank you. Glad to be here.

Jim Welu: Now I lost my agenda. I wanted to speak to the specific designation of a specific property into the Historic District. I don't know what all the procedures are for doing this, but I highly recommend the particular property that is being nominated to the Historic District. I think it's important, even if it's not contiguous to a lot of other properties, that it be recognized and be preserved for its historic significance. What I really wanted to talk about was the Dry Zone issue from last month. I think it was a perfect example of an issue that I've been raising before this Council and by that I mean, the Council of the Town of Milton, for eons, it seems. That when there's an agenda item, the public ought to be allowed to speak to that agenda item for some period of time; because, for example, the Dry Zone issue was kind of new on the agenda as far as I'm concerned, in terms of being discussed and I think that some public input on an issue like that should be heard by the Council and it's my understanding that the Code Enforcement Officer, our Project Coordinator and our Council were going to meet with the Dry Zone people to determine whether how they were operating now was how they've been operating in the past, under the special exception or whatever it was that the Planning and Zoning of the County gave them back in, I think it was 1986 and although I was not allowed to speak during the Council Meeting, I did; much to the consternation of our Mayor, I guess, but it's very clear that they are operating differently today than they were in 1986 and I think the most clear difference and I'm not disputing the difference between Dry Zone and when they were a company doing plastic piping for sewer lines and drainage and that type of thing; but in 1986 they were not using the western half of their parcel. The parcel facing Hazzard Street. They were not able to use it, although I think they owned it, because there was a frame garment factory still standing on that property and that garment factory building was on that property as late as, I'm going to say 2002; I think they may have demolished it sometime between 2002, 2003, 2003, 2004, 2005; some where's in there. So any use of that land is not in accordance with what they were operating on when they got their permit from the County. The County gave them no right to do anything on that piece of land with their special exception. So the storage of piping on that property, once they removed the garment factory, was in violation of the 1986 approval. When they stopped doing the pipe business and then they moved all the trash and the concrete and the parking and all that type of stuff; that's an additional violation of the permits, or the approvals, that they were given in 1986. They have no approval to use that land for anything, as far as I can tell from what I understand of the County approval and, you know, I don't know whether Robin was aware of what that property looked like in 1986 or in 1996 or in 2002, but some of us citizens do know what it looked like and we would have had an opportunity to give that advice clearly and distinctly before we sent our Council off, at Council hourly rates, to have this discussion with them. Thank you.

Mayor Newlands: Thank you.

- e) Lynn Ekelund, 406 Union Street: Actually I have two questions and they stem from what happened last month and both relate to the police. First question is are we still

advertising for an 11<sup>th</sup> officer? Have we contacted COPS? Could you just give me an update on that entire situation?

Mayor Newlands: You don't have to go over the letter, you can just say yes we've...

Chief Phillips: I'm sorry. Yes, I received a letter back from Brian Horsey, who works for Senator Coons' office, in reference to the COPS Grant.

Mayor Newlands: So we'll be going over that when we talk about the police reports. We did make an inquiry with the COPS Grant people and we're going to go over that when we go over the police reports.

Lynn Ekelund: Okay, it wasn't on the agenda, so...

Mayor Newlands: No, it's not. It was not on there. We just got the letter in this week.

Lynn Ekelund: Second, on the agenda last month was police salary equalization. At the time, I believe I left after public participation, but I believe it was removed from the agenda and I don't see it on the agenda this month. Are we going to be discussing that, and if so, are we going to also discuss other aspects of the Police Department?

Mayor Newlands: No.

Lynn Ekelund: No to Part A?

Mayor Newlands: No, we're not going to discuss salary equalization for the police.

Lynn Ekelund: Tonight, or ever?

Mayor Newlands: Tonight.

Lynn Ekelund: Okay.

Mayor Newlands: It's not on the agenda.

Lynn Ekelund: Okay and also a workshop is not on the agenda. I understand your answer is probably going to be no, we're not going to do that tonight, either, but are we ever going to have a workshop to discuss the Police Department as a whole, rather than just salary equalization?

Mayor Newlands: I don't know if Mr. Abbott wants to address this. He's been talking to... Let him address this for a second.

Win Abbott: I contacted the International Association of Chiefs of Police, who provide a management consulting service for hire. They recently did a study of the operations of the Ocean View, Delaware Police Department. I've received information about what they could do; who the people who be assigned for the task; and approximate value of that. Information about that came about too late for us to put on the agenda. Council people have packets of information and it will be discussed at the January Council Meeting.

Lynn Ekelund: Great. Thank you very much.

Win Abbott: Yes Ma'am.

Mayor Newlands: Thank you.

- f) Damalier Molina, 330 Behringer Avenue: Good evening, Town Council and residents of Milton and Ms. Betts, the young man beat me to the punchline. I was going to welcome you back too.

Vice Mayor Betts: Thank you, I appreciate that.

Damalier Molina: I'm here to talk about... I own the property at 336 Behringer Avenue. It abuts the lot that is being used by Dry Zone and I understand from the last Council Meeting, Mr. Thompson, Mr. Davis and the new Code Enforcement Officer, Mike Trotta, I believe they were going to go to the site. My concern with that is, and excuse me for using these words, I think you're sending three blind mice into that location. With all due respect Mr. Thompson, you're an historian and a lawyer...

Mayor Newlands: And he's expensive.

Damalier Molina: I don't know in terms of the training that Mr. Davis and Mr. Trotta have, but I spend undergraduate, graduate school, post-graduate school and I have almost 40 years of experience in doing this type of enforcement; that the people who do things, try to masquerade things in a different fashion to present them to the Code Officials and it takes time and experience to learn what's going on. For example, there should be only one principle use and that principle use, which expired in 2011, was National Screen. The County gave the approval for National Screen to operate. It did not give a certificate or a Conditional Use for Dry Zone. So now, after operating as Dry Zone and National Screen, you have two principle uses. One of them is in violation, or both may be in violation, because they're operating without a Certificate of Occupancy; and the other thing is if they're operating them as National Screen, that may be an incidental, which is incidental to... and I apologize for using the words, loosely. Incidental means it's subordinate to the main use to Dry Zone, meaning they're not approved for that, as well. So they still have to go through the review process and I think you need to start looking at your non-conforming use article, in terms of what it specifically says. It has mandatory language, what shall and not be used. So I think in that process, I leave you with further consideration and I just want to wish everybody a Merry Christmas. I still say Merry Christmas, but if you want to have a Happy Holiday, have that too. Good night.

Mayor Newlands: Thank you.

- g) Ed Kost, 230 Sundance Lane: I've got two questions. First part concerns the amendment to the sub-division regulations and the way I read the amendment, because of it's language it would not apply to Cannery Village, because we do not meet the five-year criteria. I'm assuming that it's based – I'm asking Mr. Thompson here – that it's based on you can't change the zoning for something that's previously been approved. So we could never quite get in under this new regulation.

Seth Thompson: Well there's zoning and then there's sub-division and what we're dealing with here is the sub-division ordinance. I certainly understand your point, in terms of zoning. You're right that people have vested rights when it comes to zoning, which is actually somewhat related to the issue Mr. Molina was discussing, but here we're dealing with a sub-division ordinance, which is slightly different. I don't want to agree with your statement wholly, because again, I think you can make amendments to a sub-division ordinance...

Ed Kost: And make them retroactive?

Seth Thompson: Potentially. It's going to be on a case by case basis, but the reason I included that language in there, obviously, I view it as more of a place holder, frankly. Nobody elected me. Basically I try and draft an ordinance based on what I've heard and then the reason we have a first reading and a second reading, is so that the first reading the Council Members who are responsible to their constituents can weight those public policy issues, in terms of being fair to all the stakeholders involved, whether it's the developer, the people living in the...

Ed Kost: Then I would ask the Council to consider the situation in Cannery Village with regards to this proposed amendment. Our sub-division is eight year's old and I think we have 78% completion of the homes. That's where we stand right now; how this would affect us, I don't know. My second question is to the Mayor. We had previously submitted requests for... in a petition and I understand the Mayor and Town Council has contacted Chestnut Properties and made certain requests to them. I'm just asking for an



update on what's taking place?

Mayor Newlands: The five items that you highlighted, the critical ones that you thought needed to be addressed immediately, that was sent to Chestnut Properties twice. I've gotten no response. After that was sent to them, we actually sent them a letter from Seth's office here, for a bond and he has had subsequent discussions with them about the bond.

Seth Thompson: I received a response where they basically said that the Council approved this year's ago and I'm paraphrasing here, that essentially it was waived. That the requirement was waived for a bond. Now I pulled your old sub-division ordinance and it's certainly in there that a performance guarantee would be required.

Ed Kost: In which case, is the town going to be able to do anything more?

Seth Thompson: I think the Town potentially has avenues that it can explore, because, again, this isn't something new. This was a requirement that was in place.

Ed Kost: Now I'm speaking to the Mayor. Now I'm speaking to the Mayor. We're getting down to, Mr. Mayor, is the town going to do something more?

Mayor Newlands: Yes. We need to huddle back with the Project Coordinator and the Town Solicitor to see what we can do and what kind of meat we have behind all of these ordinances.

Ed Kost: I will be back in 30 days.

Mayor Newlands: That's fine. I have no problem with that.

Ed Kost: Thank you very much.

Mayor Newlands: That's fine.

4. Call to Order – Mayor Newlands called the meeting to order at 7:07 p.m. and closed the Public Participation. And before we call the meeting to order, I would like to welcome Leah Betts back. I would like to also wish her a Happy 80<sup>th</sup> Birthday, which we passed a couple of weeks ago.

Vice Mayor Betts: Oh, thank you.

5. Moment of Silence – Vice Mayor Betts

6. Pledge of Allegiance to the Flag

7. Roll Call – Mayor Newlands

Councilman Booros	Present
Vice Mayor Betts	Present
Councilman Lester	Present
Councilwoman Jones	Present
Councilwoman Patterson	Present
Mayor Newlands	Present
Councilman West	Absent

8. Additions or Corrections to the Agenda

Mayor Newlands: Do we have any additions or corrections to the Agenda? Can we get approval of the agenda?

9. Agenda Approval

Vice Mayor Betts: I'll make a motion to approve the Agenda.

Councilman Lester: Second.

Mayor Newlands: We have a motion and a second to approve the agenda. All in favor say aye. Opposed. Motion carried.

10. 5<sup>th</sup>, Presentation and Approval of Minutes: August 28<sup>th</sup> & 30<sup>th</sup>, September 17<sup>th</sup> & 26<sup>th</sup>, November all 2012

Mayor Newlands: I'll go one at a time. On the August 28<sup>th</sup>, does anybody have any issues? August 30<sup>th</sup>, anybody have any issues? September 17<sup>th</sup> any issues? September 26<sup>th</sup> any issues? And November 5<sup>th</sup> any issues? Can we get a motion to approve the minutes of these five meetings?

Councilman Booros: Mayor, I make a motion that we approve the minutes for August 28<sup>th</sup> & 30<sup>th</sup>, September 17<sup>th</sup> & 26<sup>th</sup>, November 5<sup>th</sup>, 2012.

Councilwoman Patterson: Second.

Mayor Newlands: We have a motion and a second to approve the minutes of August 28<sup>th</sup> & 30<sup>th</sup>, September 17<sup>th</sup> & 26<sup>th</sup>, November 5<sup>th</sup>, 2012. All in favor say aye. Opposed. Motion is carried.

11. Discussion on Written Committee Reports

Mayor Newlands: We have no Committee Reports at this time.

12. Town Manager's Report

Win Abbott: Mr. Mayor & Council and the public, you have a Town Manager's Report for December 3, 2012 that is not like reports that you have received over the course of the past year. This is with respect to requests of Councilwoman Patterson and the Council, in general, that we address the subject of a Capital Improvement Plan and the time it took to put this together, diminished the time available for a report of the happenings. I hope that you'll read it and that it serves to help discussion of this topic in the future. I'll give you a verbal report of a few relevant items that have happened in the town over the course of the past month; most significantly that would be the outcome of the Hurricane Sandy experience. We reported on this briefly at the last meeting. There are still some questions from business people and the public about the outcome and it comes down to this. The State of Delaware and each one of the three counties received a disaster declaration; however, the disaster declaration provided funds only for recovery for the municipalities, the towns and the local governments, and not for individuals or businesses. The Small Business Administration is making loans available. We did have one building that was substantially damaged and the building permit for that was refunded and I've been in touch with that person. Tomorrow afternoon we'll be having a meeting with people from Federal Emergency Management Agency to tally up the expenses that the Town is eligible for reimbursement and over the course of the next two weeks, there will be a couple of meetings regarding Hazard Mitigation Grants. Hazard Mitigation are measures that you can take to diminish the likelihood of damages at a future event. This is similar to the post-hurricane Irene grants that I made available back in the spring time.

Mayor Newlands: You had mentioned to me Mr. Abbott, right after the hurricane, you had mentioned that there was grant money available for some of the stores/businesses downtown for those special doors?

Win Abbott: Yes, Sir. That would be under Hazard Mitigation.

Mayor Newlands: Okay. Has anybody approached you to take advantage of that?

Win Abbott: Mr. Reed is interested and like I said, the Hazard Mitigation Grant dollars are sort of like... what can I say. You have one opportunity to use them when they're available. The

Hurricane Irene Mitigation Money wasn't taken advantage of. There may be more interest in doing that, going forward. The program may be the very same, as it was in Irene, but I won't know until we go to that meeting next week. But it was... the Town is the sub-grantee and we can provide monies from the Federal Government through the State to these individual business owners for 75% of the cost of installing these doors and I have contacts for people who have actually installed them in Delaware.

Councilman Booros: So this is Federal money or State grant money?

Win Abbott: It ultimately comes from the Federal Government. The State of Delaware is the grantee and the Town of Milton would be the sub-grantee, with the business owner, actually being the one who gets it in the end, but they can't grant it directly to the business owner.

Councilman Booros: I understand. The reason I'm asking is when the President declared that we were a disaster, that Delaware was a disaster area, they talked about a cost-sharing arrangement for mitigation of future flooding or damage kind of thing.

Win Abbott: That's exactly what it is.

Councilman Booros: So it is a cost-sharing... what they give you 75% and you pay the rest?

Win Abbott: Correct.

Councilman Booros: Okay.

Mayor Newlands: Yes, the business pays the rest, not us. We're just administrating this process.

Win Abbott: Correct.

Councilman Booros: I just didn't know if the town could take advantage of that cost-sharing opportunity to come up with maybe some sort of a flood gate or something along the river, or if that's a DelDOT or whoever owns the river, DNREC, if we've approached them to come up with some sort of something to stop the flooding. If the Federal money is there and it's a 75/25% split and the river's owned by and occupied by DNREC, I would think that over on the other side of Route 1, where there's already a wetland they could put in some sort of something to stop the tide from coming in during these astronomical floods, or something, but I think we would have to go to DNREC, since they own the river. I just don't want to pass up the opportunity, like you said. 75/25% and DNREC owns the river.

Win Abbott: I will be happy to explore that avenue for you.

Councilman Booros: I just don't want it to go by without us trying to tap into it, because enough's, enough's, enough and if the money is there, why shouldn't we get it?

Win Abbott: Understood.

Councilman Booros: Poor Leah's been flooded too many times.

Vice Mayor Betts: That's for sure.

Win Abbott: There will be forthcoming a complete report on this and a number of things that were related to that; after I have all the information available. I'll give you an example of an accessory item that we followed through it. With the help of one of our citizens, who I don't think is in the room, oh there he is, we were able to identify the particular height at which the floodwater's rose. That will enable us to take precautionary measures because there are predictive tables available that all relate to the Lewes Breakwater Harbor Tide Gauge and we can also improve our flood insurance maps for the National Flood Insurance Program, as well, to enable people to become eligible for this insurance. So there are a number of things that we're doing related to the storm, it's just that we're not quite ready to issue a complete report on it, at this time.

Mayor Newlands: Great, thank you. Do you want to go over the annual report?

Win Abbott: Mr. Mayor and Council and members of the public, there is within the Charter a requirement for the Town Manager to submit an annual report. The 2012 fiscal year Annual Report that you see here indicates a number of things, mostly relating to our financial activities,

but I can say this much. If you look at the trend from 2009 to 2010, just the front page; 2010 to 2011 and 2011 to 2012, you can see a dramatic improvement in the way that the town manages it's operations relative to Revenue and Expenses. Now there were a number of one time things that happened during the 2012 fiscal year that may not repeat themselves; of course, each year there are special things that happen, as well, but it was just a cautionary note for us all to consider. The annual report is by all means not totally inclusive. It does hit some highlights, some things that we work very hard on and it is my hope that we will be able to come up with a program by which we can measure our successes in the next year, but this is just a start. If you have any questions, please don't hesitate to ask me.

Councilman Booros: I have one. The \$6,000 for the sale of the stock. Is that the profit that we made from the sale of the stock, or was that the value of the entire stock when we sold it.

Win Abbott: That was the value.

Mayor Newlands: It was the value, but we got the stock for free. It was Prudential stock for when we had life insurance, or something. It was one of those distributions they did years ago.

Councilman Booros: Okay. So we were never claiming a portion of that as an asset to begin with?

Councilman Lester: I can answer that. That was never recorded on the books. We just were fortunate to get a notice from the insurance company that we owned the stock.

Mayor Newlands: Yes, nobody knew about it, so the notice came in one day and they went whoops.

Councilman Booros: Cool.

Mayor Newlands: Here's \$6,000. Okay, good, thank you.

13. Department Reports: Public Works, Project Coordinator, Code and Police

Mayor Newlands: Let's go over the Project Coordinator's and the Code Enforcer's Reports. We had no permits for single family homes last month? Does anybody have any questions or comments for the Project Coordinator?

Councilman Booros: I do.

Mayor Newlands: Sure, go ahead.

Councilman Booros: The illegal sign from November 5<sup>th</sup>, that's, I assume the big red banner that says Cigarette Outlet across the street at Bodies, I see that we talked with the owner. Do we know what's going on with the big red sign? It came down for a day or two and went right back up.

Mayor Newlands: You're not going to like the answer.

Councilman Booros: Because I can see it from my house and I know Leah can see it from hers.

Mayor Newlands: I said, you're not going to like the answer.

Robin Davis: It's an allowable sign. It meets the requirements of our sign ordinance. He had to move it off the pole that it was on, and that's why it did come down and move. It backed up a little bit.

Mayor Newlands: He just moved it from the pole and put up another 4X4". That's all.

Councilwoman Jones: This is another follow up question for Robin. Can you tell me what's the disposition on the Copan property on Federal? I can see no change or advancement of that being completed. The house exterior still has rotting pieces that are falling off and whatever that is he's building in the backyard, doesn't appear to be making any progress.

Robin Davis: I'm not sure off the top of my head; what I'll have to do is get with the Code Enforcement Officer and have him look into the progress and then report back to Council.

Councilwoman Jones: When he pulls the permit, he has how long to finish under that permit.

Robin Davis: The Code gives the owner one-year and then they can request a one-year

extension.

Councilwoman Jones: Okay. I'd appreciate that, thank you.

Mayor Newlands: Okay, anything else for Code? Or maintenance, parks, sanitation, streets? Allen, when we put up the wreaths and the snowflakes, did we get Satterfield to come in and help out with that? We did this year, okay. Did they hang them or did they just... I know some of the prisoners hung the wreaths and...

Allen Atkins: Satterfield and our guys hung them.

Mayor Newlands: Okay.

Councilman Booros: Can I ask a question about the parks? The storm washed away a good portion of the mulch around a lot of that. There's some of the black paper from underneath around the playground equipment where the big ship thing is, there's this black under mulch paper; are we going to fill in that mulch?

Allen Atkins: We're going to buy mulch and replace what was washed out.

Councilman Booros: Yes.

Mayor Newlands: They budget every year for mulch and every two years for safety mulch, I think it is. We'll probably need more than we did on a normal basis, after this.

Councilman Booros: I mean you can see where the water washed it away.

Mayor Newlands: Yes. Any questions on maintenance? Okay, police. I'm assuming everybody heard about the incident last night? There was another one on Saturday night, as well. It started outside of town, wound up ending in town and it was helicopter up and foot chase, car chase, the whole nine yards. Do you want to explain that one?

Chief Phillips: Basically Saturday night there was some sort of alleged accident at 16 and 30. After two cars ran into each other, they apparently got out and started shooting each other for some reason; from there they fled to town and we caught one there and we caught the others on the other side. They were arrested and I'm not sure of the outcome, it was a State Police complaint, and they handled it and we assisted them. We were the first ones on the scene. We took everybody we could catch. There were probably eight of them, possibly eight of them. They're not sure. We caught three out of the eight.

Mayor Newlands: Okay and we processed the three Saturday night in our station with the Troopers?

Chief Phillips: Yes, they came to the door and video arraigned them and everything there.

Mayor Newlands: Any update on last night's incident?

Chief Phillips: At this time no, other than there's possibly some information on suspects that we have, that we received at the station today and we turned it over to the State Police. Other than that, they're looking for three black males in reference to attempted murder of a subject out there.

Mayor Newlands: Okay. The man that was injured, he's out of the hospital?

Chief Phillips: I believe so, yes.

Mayor Newlands: Okay, good. Do you want to go over the letter from the COPS Grant people?

Chief Phillips: I would like to upgrade the thing about the radar, first, the speed signs.

Mayor Newlands: Oh yes.

Chief Phillips: I've been in contact with some other Chiefs of Police that have purchased them and also the companies and we're getting prices now and just have to look for a grant and see what we can find and go from there on the speed signs.

Mayor Newlands: Are you looking at a permanent one or a mobile one?

Chief Phillips: I'm not sure right now, we're just trying to get a good price on what we can get.

Mayor Newlands: Okay. Do you know if Georgetown or the other towns have a mobile one?

Chief Phillips: Some of them do. Rehoboth has a mobile one, Seaford has a mobile one and

Milford has a couple of them.

Mayor Newlands: I was just wondering if we could share the cost with one other town, maybe Lewes... I know Lewes on Savannah Road has that fixed one there.

Chief Phillips: Well, Lewes, theirs is not run by the Police Department; there's is run by the Maintenance Department; they set it up. The Police Department has nothing to do with it.

Mayor Newlands: Who paid for it?

Chief Phillips: I think the Town of Lewes bought it for them.

Mayor Newlands: Okay. I was just wondering if we could share a mobile one with another town; share the cost; maybe we could look at that.

Chief Phillips: We could check and see, but most of them are fairly old or they're using them every day there, but I can check and see.

Mayor Newlands: Okay, that's fine. I'm going to read over your shoulder.

Chief Phillips: I gave everybody an email that I got back from the Brian Horsey. He works for Senator Coons' office. That's the best response I got back, if it means anything.

Councilwoman Jones: My response is, question, did the Town Manager have anything to do with this contact?

Mayor Newlands: Initially no, because the Chief was a meeting with these people, so...

Councilwoman Jones: And it was stated very clearly here, at least by myself, that I felt this was a Town Manager issue and it was ended that you thought they could do it together. I see that that's not the direction this is going.

Mayor Newlands: This is the first... This is just the first inquiry that was made. Relax.

Councilwoman Jones: This is actually... These inquiries were dated back in October.

Chief Phillips: No actually I've been in contact with him way back, a few months ago, yes; trying to get an answer, but it's taken me this long to find out something.

Councilman Booros: And these aren't the COPS Grant people, this is Senator Coons' office, not the COPS Grant?

Chief Phillips: They have something to do with the COPS Grant. Yes. But it's more like a politician's statement there, basically, I guess.

Councilman Booros: There's also a statement from you that says I just want to save the 11<sup>th</sup> Police Officer's position because it's working to make the town a safer place; when this Council has voted to get rid of two Police Officers by attrition. We know what you want, but this Council has voted to get rid of two by attrition and your statement to him was look forward to hearing back from you, because I want to save the 11<sup>th</sup> Police Officer.

Chief Phillips: I'm not entitled to my opinion, I guess, but that's my opinion, yes.

Councilman Booros: Well not when you're representing this Council, when we've asked you to, or we've asked the two of you according to Mr. Mayor, to work together on getting us an answer; can we get the COPS Grant to pay for the 9<sup>th</sup> officer?

Mayor Newlands: We are going to send another letter out, after this time.

Councilman Booros: Mr. Mayor, I did go back to last year's minutes and the motion that was made and the vote that was taken in last year's minutes, was that you, Mr. Mayor, would contact them about attrition and paying for the 9<sup>th</sup> officer and it was voted Councilman... Actually I looked at that one on line. All the women voted yes, the two men voted no, and Emory West wasn't here for the vote. So even though Councilman West said last month that he made the motion, and voted; he was not in the room when that motion was made and he did not vote.

Mayor Newlands: Right. I'm aware of that.

Councilman Booros: Okay. It was clear in the minutes, the motion was made, the motion was acted on, the motion was approved...

Mayor Newlands: And Mr. Abbott sent a letter off to them.

Councilman Booros: But it didn't ask what the motion said and the motion said it would ask if we could use the money to rehire the 9<sup>th</sup> Police Officer and pay for the 9<sup>th</sup> Police Officer. The letter did not ask that. So what was voted on last year, before I was on Council, did not happen. So we need to go back one year, with what was asked to be done a year ago. It's in the minutes. It's really clear. God knows you all debated it ad nauseum and it just went on and on and on; but there was a vote and I think we need to go right back to that and ask the question that they voted on last year.

Mayor Newlands: Right and Mr. Thompson had sent a draft letter to us; that got changed around a little bit; that wasn't the letter that went out; so we will get that done this month. Now that we got this response back, we will do that this month.

Councilwoman Jones: But in the last thirty days, we didn't contact the COPS Grant folks. Is that...

Mayor Newlands: We just got this.

Councilwoman Jones: This is not the COPS Grant folks.

Mayor Newlands: I understand that. I understand that. No, in the last...

Councilwoman Jones: I'm looking for a confirmation that in thirty days a letter was not sent to COPS Grant stating first of all, what was stated in 2011 and was never stated through the correspondence of Mr. Abbott to COPS Grant, which is, the conversion of the grant money being used for the 9<sup>th</sup> officer. We've never asked the COPS Grant this question.

Mayor Newlands: No, we are going to. We were waiting for this information to come back. That's all.

Councilwoman Patterson: I have a question. This is Mr. Horsey from Senator Coons' office and he's responding from the COPS Office, so why didn't we just contact the COPS Office directly?

Councilman Booros: He's not responding from the COPS Office. He's responding from Senator Coons' office.

Mayor Newlands: No, he's responding from the COPS Office. He actually talked to them.

Councilwoman Patterson: No it says response from the COPS Office, but why are we going through an intermediary; we're just trying to get the information.

Councilman Booros: I called them. I personally him. I personally talked to him. They said send a letter. Tell us you want to opt out. That's all you have to do. I called...

Councilwoman Patterson: And that's the information...

Councilman Booros: I called them. I picked up the phone and made the call. It's not rocket science.

Councilwoman Patterson: And I understand from talking to another Police Department... Yeah and I talked to another person that worked in a Police Department from another city and they said the same thing. It's very simple, very easy and I don't know why we're still sitting up here rehashing over this. It just doesn't seem like much is getting done every month. We come back and we say the same things. I would like Mr. Abbott to just send the letter and get the information back.

Mayor Newlands: Okay, we will do that within the next month.

Councilwoman Patterson: It's as simple as that.

Councilman Booros: And that is not an offense which would preclude us from being disbarred or suspended; it is not an offense. A criminal offense would cause you to be disbarred or suspended from future government grants by asking to opt out of this and I read your letter, Mr. Thompson, that specifically a year ago, said, we've got to watch out, because we could get disbarred or suspended. No you can't. You really have to do something criminal in this country for the government not to do business with you, let me clue you. All the big guys have all done criminal things; they get suspended for six months; and then you're right back to giving TRW

and the rest of them all the money in the world.

Seth Thompson: I was answering the question in terms of what a possible ramification would be.

Councilman Booros: No, it's not a ramification. Call them. Send them a letter. Tell them we want out. It's real simple.

Councilwoman Jones: My problem with this email is I have no idea what was questioned of the COPS Grant people by Mr. Horsey. This "response from the COPS Office" is any of the information you'll read on their website about the what the COPS Office provides.

Councilman Booros: Verbatim.

Councilwoman Jones: Verbatim. So I don't see a question in here about what we're asking. I fail to see the question. I don't know what the response is in response to. This is not okay. This does not get us to where we need to be after 18 months, which is an answer.

Mayor Newlands: We will send a letter off to them in the next week or so and get an answer.

Councilwoman Jones: And will you send those letters to Council, please?

Mayor Newlands: Yes, we will.

Vice Mayor Betts: Mr. Mayor. Do you have a Personnel Committee? I thought we did.

Mayor Newlands: Yes.

Vice Mayor Betts: I think when there's a complaint against an officer or an employee, it should go to personnel first and see if it can be ironed out and then come to the Council, if it cannot. But I don't see a reason for everyone in here, every month, to talk about something that the police have done. They should go to the Personnel Committee.

Mayor Newlands: No, this has nothing to do with an individual officer. They just want to reduce the size of the staff.

Vice Mayor Betts: So it has nothing to do with them not doing something?

Councilman Booros: No. No.

Mayor Newlands: No. No it does not.

Councilman Booros: Not at all.

Vice Mayor Betts: But I know we come back to this every month.

Mayor Newlands: I know we do.

Vice Mayor Betts: And it takes up time.

Mayor Newlands: I know we do. I agree with you. Alright, anything else on the police? The Town Manager monthly financial report.

Win Abbott: Mayor and Council, members of the public, you have the monthly financial report for the period ending 09/30/2012 before you. You'll note that... There is a typo. This is for the period ending 10/30/2012, please pardon me and this is the first month of the new fiscal year. Please note that there are some things in the prior year that are not the same, as this year. In particular, the fact is for revenue, we're recording revenue from certain grants that were left off of the General Fund budget last year. This is explained in the revenue highlights. Other than that, you'll see negative net change, which is very common amongst municipalities, where we collect most of our revenues in terms of property taxes and assessments. As our auditor had mentioned, there will always be that negative months during the non tax collection months.

Mayor Newlands: Thank you.

#### 14. Finance Report and Revenue/Expenditures Report

Mayor Newlands: Councilman Lester.

Councilman Lester: Mrs. Rogers and I went through the statements. We did take a look at preparing these statements on a cash basis, which would only show the monies we receive, but it was so... It gave you a statement, but it just wasn't comparable to the budget or to



expenditures or meeting the budget in terms of percentages. I was looking for a way to give the Council something that was possibly clearer than we had in the past, and the point being that Mr. Abbott just mentioned a property tax revenue... In January when we send out the bills and February we start collecting money, that number's going to be a huge number. And that's somewhat deceiving because it's going to say if we bill out \$810,000, it's going to say we've collected... it would appear that we've collected, but we haven't.

Mayor Newlands: Right. See that's why in the last two years we've changed these from accrued to cash, so they would reflect the cash coming in.

Councilman Lester: Right.

Mayor Newlands: But now Edmunds' has a new cash report; the only problem is it looks similar to this, but not exactly the same.

Councilman Lester: Similar to this... Yes. No.

Mayor Newlands: Nor does it give you the last page with the totals on it. I'm going to talk to them.

Councilman Lester: And it's confusing. Yes.

Mayor Newlands: I'm going to see if they can do this report and just take year-to-date revenue and change it to cash and redo this report, to see if they could do that, because that would answer all of our questions; leave us in accrued mode and let us have a cash look at this.

Councilman Lester: Right. For people to know we don't really understand the concept between cash and accrual. It does get confusing, because in a couple of months it can look like we're taken a lot of money in and you look at the bank accounts and it's simply not going to be there; because we accrued it, we send out the bills, so other than that, the statements for the one month look like they're on track for one month. I would like to comment that the accounting firm, Pigg, Krahl & Stern, really have done a professional job. They had a lot of work to do. They've battled, they've completed the year 2011 and they're almost finished with 2012. And it's really good to hear... My conversation with them is that they'll probably give us what we call a clean opinion for 2012. The problem has been that the state, in terms of the State Revolving Fund money, if we should ever go back to look for water tower funding, etc., they would not give us any money based on the Financial Statements that we had. It has really taken a long time. I know I hear people, especially these comments about transparency, but it's been really difficult to bring a set of almost useless Financial Statements and bring them into bearing and it's taking a long time and I know some people don't understand that, and maybe don't want to understand that, but the Mayor and I have worked really hard to bring these financials into status and I think we're almost there. The only problem I think the auditor's had was with the division of duties, but we could fix that by going out and maybe spending \$100,000 in hiring 2 or 3 more people to work in the office and then you have people to divide their duties, but we have to do what we have to do among the people that we have. You can... Division of duties is really great, if you have a big staff. You can have one person do X, another person do Y, and another person do Z, but if you only have two people, you have to divide those as carefully as you can. So I for one was pleased with that statement; we're almost there. We're halfway there because they gave us a halfway opinion. I think that's all I have to say, unless somebody else has...

Mayor Newlands: I just want to highlight on the bank balances, if anybody looks at it, that the general fund has \$286,000 in there. That's as of the end of September. As of today, it's about \$40,000. We've been front end paying a lot of bills so we haven't had any revenue to come in in the general account, so when you get to see this next time, it's going to be drastically lower. So don't get all smiley that we've got \$286,000 in the general fund, because it's not there right now. Actually we had to move money on Friday afternoon to get it to stay above zero and that will be fine. We'll move money again from the Money Market account into the general fund until tax

time comes and then in a couple of months, we'll reverse it back. At least this year, we're a month later than we were doing it last year. That is a good thing.

Councilwoman Jones: I have a question about revenue. Councilman Lester, on page one of our Revenue and Expenditure Sheet, under 300-4930, Miscellaneous Revenue Police, invoices only and then National Nite Out...

Mayor Newlands: Slowly. Can you say that number again.

Councilwoman Jones: 4930, it's about more than three-quarters of the way down and the one right under it.

Mayor Newlands: Wait. What's the category?

Councilwoman Jones: One is Revenue Police...

Mayor Newlands: No, no, the 300 number, 250... give me the numbers before...

Councilwoman Jones: 4930 and 4935.

Mayor Newlands: Before that. That number repeats every department.

Councilwoman Jones: 300.

Mayor Newlands: Thank you.

Councilwoman Jones: First page.

Mayor Newlands: The 300 is the department number, that's why I asked. Okay. Go ahead.

Councilwoman Jones: And then drop down to 350-4950, Economic Development. First question, with the zero in that column, I'm going to assume we did not allow the carry over of monies from last year. Is that correct?

Councilman Lester: Well monies carried from a prior year, wouldn't show in the budget.

Councilwoman Jones: It was...

Councilman Lester: If it was last year's budget, it's... are you talking about the \$161, I think it is?

Councilwoman Jones: Right.

Councilman Lester: Yes, the \$161 is in the bank, but it's not going to show up as a budget item.

Councilwoman Jones: Why wouldn't it show up as Economic Development's operating money? I mean, it was earned.

Councilman Lester: But it was a prior year. It has nothing to do with this year. It's the prior fiscal year.

Councilwoman Jones: And so we keep, what we anticipate for those other two accounts, we keep those just in anticipation, so if we had an anticipation number, we could put that there?

Mayor Newlands: Which other two accounts?

Councilwoman Jones: Well I'm talking about the National Nite Out, that appears to roll with it's money.

Mayor Newlands: National Nite Out is in a separate bank account.

Councilwoman Jones: I understand.

Mayor Newlands: This only reflects what's there for this year. The \$1,500 is only reflected as what's there now.

Councilwoman Jones: I have yet to be able to explain to members of the Economic Development Committee why earned money was not retained in their account and I think I had even asked once if perhaps Councilman Lester could write a note of some sort that could better explain that as earned income; but we can't keep it at the end of a year.

Councilman Lester: You do keep it at the end of the year.

Councilwoman Jones: Okay.

Councilman Lester: It's not going away. It's in a bank account, but it can't reflect in here, because it has nothing whatsoever to do with the current year's budget. It was money that was collected and left over from the last year.

Councilwoman Jones: Right, and...

Councilman Lester: Actually if you take a look at all the money in the bank, overall, the \$200,000 some thousand dollars that shows up as cash in the bank, using that theory, that should show up here somewhere, but it doesn't. It was last year's budget. It was a residue of last year's budget money. It's in the bank and we can spend it as we need to this year. You can spend that \$161 if you want to spend it.

Councilwoman Jones: Economic Development... Okay. Where do we get that accounting of that number? Is it something we just would contact Mr. Abbott?

Councilman Lester: Yes, there's a separate bank account...

Councilwoman Jones: Okay, right, I understand that.

Win Abbott: Right. That was reflected in the audit where it shows an increase in net assets; that's one of our assets from the prior year.

Councilwoman Jones: Okay.

Win Abbott: The budget is a management tool. It's not like a passbook savings account that you can refer to that rolls over from year to year.

Councilwoman Jones: Right now we're showing...

Win Abbott: I'm just trying to help out Councilman Lester here.

Councilwoman Jones: Right now we're showing a budgeted amount of \$6,500 available for Economic Development spending, of which I think we've presented an invoice or it's not here yet. But there's nothing that shows that we have that other money available to us.

Win Abbott: That's correct.

Councilman Lester: It won't show up anywhere.

Councilwoman Jones: So we just make a note of that money in our own books and can spend against it?

Win Abbott: Not necessarily. I mean, the budget is a management tool. So first of all, that column in the Revenue and Expenditure Report called anticipated, that is our budget revenue, although it has a different term at the top of that column; that's what we expect to receive as revenue; that's our budget for revenue and for the Economic Development Committee we do not expect to receive money, as revenue; at least that's how the budget is set up. Monies that were earned last year went into the General Fund as a positive change in net assets; it's just assets; they belong to the town, as a whole; not to the Economic Development Committee. Now on the positive side, the budget for expenditures for Economic Development was greatly increased from one year to the next, so that money that was earned last year, it's not part of the expenditure allowance, per se. What you have there for expenditure is what the budget will allow for you to spend this year out of the general fund.

Councilwoman Jones: It puts the committee in a quandary, because that was earned money; the balance; what I call the balance at the end of the year, over and above what was given to them, the \$1,000 that was spent; that's the money that is always questioned if it's there for our use. If it is continued there for our use. If the answer is yes, then I can tell them that.

Win Abbott: The short answer is no.

Councilwoman Jones: But I don't know if the money that was earned during those bake sales was meant to pay a part of an electric light bill at Town Hall. It was meant to perpetuate Economic Development use.

Win Abbott: I understand that.

Councilwoman Jones: So what is the recommendation when the Economic Development Committee makes more funds?

Councilman Lester: Don't do it.

Councilman Booros: Put it in a mason jar and bury it somewhere.

Mayor Newlands: I was just going to say that. Keep it to yourselves.

Councilman Lester: Basically that's it.

Win Abbott: Really, if you want to go in that direction, certainly establishing the Economic Development Committee as a separate entity, with your own Employer Identification Number, your own bank account, that's the only way to do it.

Councilwoman Jones: Okay. Thank you.

Mayor Newlands: Anything else on the Financial Reports.

Councilman Booros: Before we go any further, I forgot to ask something to the Police Department in his report. Can I ask a dumb one?

Mayor Newlands: Sure.

Councilman Booros: Have we done anything, other than announce the announcement for additional officers?

Chief Phillips: I'm not sure I follow you, Sir.

Councilman Booros: I know we had an announcement on the street for officers and Mayor Newlands said last month that it was just to create a list. Is that all we've done is created a list, or have we done background investigations on the people that have applied? Have we... Are they getting tested? What have we done besides just create a list.

Chief Phillips: Nobody's been tested. We've just been collecting paperwork at this time.

Councilman Booros: So we've just created a list. We haven't done background investigations of anyone on the list?

Chief Phillips: No.

Councilman Booros: We haven't ordered testing materials to test these guys?

Chief Phillips: We have testing paperwork now and I'm not sure if we have to order anything yet or not.

Councilman Booros: That was it.

Mayor Newlands: Okay.

15. Old Business – Discussion and possible vote on the following items:

a. Water System Improvements monthly update

Win Abbott: Mayor and Council and members of the public, a better accounting of water use, the December version, is before you. A number of these issues, we're covering in a progression, month after month after month. You'll notice that the check valves are the first item that was approved last month. They were ordered. We expect that the check valves will be received in the next four weeks. Hopefully they'll be installed in December. The meters, however, are going to take a little bit longer to come in. We'll be having a quarterly reading in the first week of January; that will enable us to better discern what the difference is between that which was pumped and the water that's metered at the point of use. In last month's report, I quickly mentioned a meeting with a consultant regarding cross-connection. This has the possibility of finding water that is being used and not metered, but given the demographic of our users in this town, it's unlikely. More often than not, these are going to reveal places that might pose a hazard to the public water drinking system because of back flow, so this is going to be a program that we'll undertake in the next year, but it's not the number one priority for what we're going to do. I go through an explanation of rate setting and cost recovery; the updated audit report was very helpful in that respect, however, our Technical Assistance Grant for that purpose won't be happening until the end of summer, so it will be until that time that we'll better handle on whether or not our rates are really suitable for continuing to build our savings so that we always have reserves enough to cover the cost

of replacing our infrastructure. And last but not least, there is the water system improvements update and that has to do with the Office of Drinking Water State Revolving Fund and the possibility of having a referendum in the near future. You will see that detail on the last page of this report.

Mayor Newlands: Two questions. The check valves that can be done easily and separately from the meters, will we have to wait for the meters?

Win Abbott: They can be done separately.

Mayor Newlands: Okay. The other thing is, I asked for last month, can we get a tally as to where we are at as far as what we know, number wise, of the gallons missing? I think the public is going to want to start seeing that number, us tick away at that number.

Win Abbott: That can be done with the quarterly reading which will happen the first week of January. We haven't resolved the technical challenge to going around and doing a radio reading for all houses and not creating a bill. But we will resolve that. As it is right now, the first of January, we are going to do a quarterly reading and that for sure will give us a number we can work with.

Mayor Newlands: Yes, I know the month that we, last quarter it was up quite a bit over the previous quarter, as far as billing numbers, which is a good thing. I'm talking about the other uses that we have like fire hydrant flushes, we emptied out the big tank three times during the summer time.

Win Abbott: All that was accounted for, month by month. There hasn't been anything that has happened in the last couple of months.

Mayor Newlands: Do we have a tally to give out to the public, can we do that?

Win Abbott: I can just reprint the reports that I've given out for the last few months because nothing has happened since then.

Mayor Newlands: Okay. Just on monthly basis, I would like to see a little spreadsheet with the five or six items on it to show how much we're chipping away at the nine million gallons because that figure is visible for the public to see that before we go to referendum, that is all.

Win Abbott: When we get our reports for the first week of next month, we can do that

Mayor Newlands: Okay.

Councilwoman Jones: I have a question for you, Mr. Abbott. In the third paragraph from the bottom on the back of the first page, it talks about the Water Committee will review details in mid-January and make recommendation to Council. It is very likely that the Town Council will consider a resolution to hold a referendum in February.

That's not worded correctly is it? Hold a referendum in February?

Win Abbott: Pass a resolution to hold a referendum. The next sentence...

Councilwoman Jones: In February?

Win Abbott: The resolution would be passed in February. According to the Charter, you have to first pass a resolution and then you have to pass a second resolution and then you have a public hearing and then you have a referendum.

Mayor Newlands: It's the way he styles the sentence.

Win Abbott: The earliest date, the Office of Drinking Water is really pushing for us to do this. I told them the earliest it could possibly be done is the last week of March.

Councilwoman Jones: Would that be for the consideration as ranking number seven for the water system improvements. Is that which this referendum would be for?

Win Abbott: Ultimately that is up to the Council. However, we did sign a contract that says we will apply for a water systems loan to do that, it didn't hold us to which one. There were two different pre-applications. We have been encouraged to precede with

both of them. Conceivably, the Council could make the determination to have a referendum with two questions on it, borrowing separately for each one of the specified projects.

Councilwoman Jones: Are they prepared to loan us money?

Win Abbott: Absolutely. Your question is quite relevant. When Dustan and I went to the meeting, they gave a total amount to the Environmental Protection Agency was giving the Office of Drinking Water and then they took away from that for set aside uses. Things like the technical assistance grant for us to update our financial system. The money to pay that person to do this for us comes out of the EPA grant that goes to the State of Delaware. I questioned whether our place on the list would take us out of this years funding because there are larger projects at the front end and they said no, we have reserves which were funds that were being paid back from loans over the past and didn't give me a specific number saying this is the maximum amount that we can loan out. They simply said, please proceed with your activities because different things change with different people who may be at the top of the list and they end up at the bottom of the list, just keep moving forward. We don't know for sure but we are strongly encouraged to continue forward at the pace that would put us at a referendum time at the end of March through the middle of April.

**[At this point, the tape stopped recording for approximately 5 minutes and I was unable to bring those words to the printed page.]**

b. Water Tower Repair update (Shipbuilder tower)

Win Abbott: Mr. Mayor, we are on agenda Item 15b. For the benefit of Council and the public, I copied the same section from the prior meeting where I mentioned what our steps would be towards making those repairs. The first item being there are no detailed drawings of what the foundation looks like and that would be something that had to be done first in order for a scope of work to be developed. Identify qualified contractors and have an engineer supervise who over this. The work that Baker, Ingram & Associates has done to date is excellent and they were very responsive in getting back a quote. The cost, not including the actual work to be done on the foundation, was \$19,000.00. Considering this and the fact the report said it was not a terribly urgent matter, I thought it would be appropriate to consider competitive bidding, wrapping this into the water system improvements or whatever. There are several other firms in the State of Delaware which specialize in structural engineering so I'll be gathering a little more information and presenting it to the Water Committee so we might take a holistic view along with other proposed water system improvements.

Mayor Newlands: Thank you. Moving on to Shipbuilders.

c. Shipbuilder's Village general update (Maintenance, paving, land ownership, HOA)

Win Abbott: Mr. Mayor, engineering firm Pennoni Associates, has out together a design for the streets to be repaved in Shipbuilders Village. There has been advertising and a pre-bid meeting. Bids will be opened on December 14<sup>th</sup>, then after a review, the bid award should occur on December 18<sup>th</sup>. It may take a week for the contract to be executed between the town and the winning bidder and the project window is 28 days. The work will probably only take about a week and a half but there are weather considerations, ambient temperature must be 40 degrees and raising, but we expect to have this done by the end of January.

Mayor Newlands: Thank you.

d. Cannery Village signage issue monthly update

Mayor Newlands: There is no update on this item. We are still waiting for Megan from the County.

e. Proposal to allow down zoning of properties from Light Industrial or Commercial to Residential to reflect the actual use of the area. Some residents are having issues refinancing mortgages because of their current zoning

Mayor Newlands: We've had our public hearing and reviewed the documents with the individual home owners.

Seth Thompson: Robin, if you could note for the record that the newspaper notice was published 15 days prior and the certified mailing had gone out.

Robin Davis: Yes. The public notice was put in the State News, I do not have the exact date, but it was before the, I think it was in the paper on the 19<sup>th</sup>. The certified letters were sent out to the property owners prior to the ten day requirement as per the code. They were sent out on the 21<sup>st</sup> of November.

Seth Thompson: Were they sent to the neighbors as well?

Robin Davis: Yes, correct. They were sent to the neighbors within 200 feet of the affected properties. Along with what you have in your packet, Mr. Abbott has handed out to the Council an ordinance and I also have a list of the properties

Seth Thompson: Just to reiterate for the Council, the Plus Process has gone through. The Council needs to determine if this change would lessen congestion on the streets; if it's in the general welfare; if it would prevent overcrowding or undue concentration and facilitate adequate provision of transportation, water, sewerage, schools, parks and other public requirements. From a legal standpoint, with these properties currently zoned, there are certain permitted uses that are automatically within your Code, so it's important to understand the difference between the zoning vs. the use, but for instance, Light Industrial allows for a number of uses that might not necessarily be appropriate in the middle of a neighborhood. That's the legal framework. If anyone on Council has any questions for me, I'm certainly happy to answer them.

Councilwoman Jones: It may actually be for Robin. Tell me again, is Attachment... this is actually what's going to come with this ordinance, right? This sheet? Okay.

Robin Davis: Yes, what I handed out was two lists. In your packet, under number six you had a list of all the affected properties, the owner's position on the proposal and the type of response that I received at that time. That original spreadsheet was dated 11/26/2012. I updated that list as of today, to take in all the extra properties that I have received, and that's today's date on the one that has the yes or no responses. The second list that you have, I removed the five properties from the 35 properties; the five properties that said no and that is the list of the ones that we have received no response for; they have said yes they want the rezoning and that's, I think 30 properties.

Mayor Newlands: So the list with the yeses and the nos were the original master list and the ones without the yeses and the nos are the ones we're going to rezone?

Robin Davis: Right.

Mayor Newlands: Great, thank you.

Seth Thompson: It would be helpful if Council noted, for the record, their reasons for their voting, in the event that somebody were to appeal the matter to Superior Court; you can adopt the language that's simply in the draft ordinance in terms of lessening

congestion and serving the general welfare, if that's helpful to you at all; but it's important that if a Court were to review why you voted on the ordinance, that that would be present so they could understand the reasoning.

Councilwoman Jones: Mr. Thompson, how about the reason that the homeowner's didn't object to the changeover.

Seth Thompson: I think that's fine. It's not exactly the standard. Again, there are instances where the town might enact an amendment to the zoning ordinance, over someone's objection, but certainly I think that's helpful that these people want this to occur, at least a majority. I don't know if it was a majority, I'm sorry; nine people said yes, so I guess not a majority...

Councilwoman Jones: It was.

Seth Thompson: But a certain number said yes and everyone else didn't voice opposition.

Mayor Newlands: So do you want to read that and then we'll vote on it?

Seth Thompson: Sure. So again, the way the draft ordinance is read, I'll skip the whereas clauses, but it would be: "Now therefore, be it hereby enacted and ordained by Town Council of the Town of Milton, a majority thereof concurring therein, that the list of affected non-objecting properties attached hereto are rezoned from either their current zoning of Light Industrial Use District/Large Parcel Development District to Single Family Use District R-1/Large Parcel Development District or their current zoning of Commercial and Business Use District to Single Family Use District R-1, in accordance with the town's Comprehensive Plan in order to lessen congestion in the streets; secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements with reasonable consideration among other things, as to the character of the District and it's peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the municipality and an entry on the official zoning map shall be made in accordance with Town Code Section 220-10(d), with this amendment becoming effective on the date of said entry."

Mayor Newlands: Okay, so we need a motion and a second to approve this Ordinance and then we'll take a roll call vote, along with your reason for your vote.

Councilman Booros: I make a motion to approve the Ordinance.

Vice Mayor Betts: I'll second.

Mayor Newlands: We have a motion and a second to approve the Ordinance rezoning the properties from Commercial or Light Industrial to Residential and we'll take a roll call:

Councilman Booros	Yes, because I think we've got some people that are trying to refinance their homes that are having difficulty and we need to fix it.
Vice Mayor Betts	Yes, because I feel that they're the ones that are in the District and if they had no intention of any commercial businesses, that they should be paying the residential fee.
Councilman Lester	Yes and I would incorporate paragraph seven in my reasoning. I can't say it all, but I'll incorporate it by



Councilwoman Jones	reference. Yes and I have to agree with Councilman Lester, particularly the suitability of particular uses on these parcels; also with a view to conserving the value of the buildings and encouraging the most appropriate use of land throughout the municipality. This apparently has hindered some folks from getting refinancing and I think this will be a great help to them.
Councilwoman Patterson	Yes because it serves the general welfare of residents and they will be able to get their refinancing.
Mayor Newlands	Yes. I think it's good for the general welfare of the people out there. It's mainly just a residential area. It probably should have been converted to residential when the area was created back in 2004 and I think it was just an oversight, but we had it listed as Light Industrial, so we needed to follow the formalities and get it changed, so I vote yes.

Mayor Newlands: Motion is passed. Thank you.

- e. An ordinance to create a new Chapter 132 regarding fees and costs related to the Freedom of Information Act

Seth Thompson: This is the second reading of this and I think, it might even be the third, or at least the third discussion of it, but I hope...

Councilman Booros: I think there needs to be a fourth, I can tell you that already.

Seth Thompson: I hope I incorporated the suggestions and comments that I heard last time, but I'm certainly opened to additional...

Councilman Booros: Good, I'll make a couple of comments now, and I apologize, I did not bring a copy of the comparison chart between the State and us; but if I'm not mistaken the first 20 pages of the State is free. Okay? And you don't have in here anywhere where you're going to give... You cannot charge for the first 20 pages, if the State doesn't charge. You can give us 40 pages for free, if you want to, but you can't tighten it.

Seth Thompson: Well, the way that the State Code reads, unless a Town has it's own ordinance, then the State Code would...

Councilman Booros: Why aren't we just taking the State Ordinance?

Seth Thompson: And you certainly can.

Councilman Booros: I'm reading through this and I'm seeing that the Town Manager, as our Freedom of Information Act person, has the right to waive the fee if it's \$1 or less. Why did you even bother putting it in there? I mean, come on. It wasn't worth your salary, or what we pay you, to add that line, that he has the right to waive... He either has the right to waive the fee, or he doesn't have the right to waive the fee; \$1 or less? That's just...

Seth Thompson: And that was a vestige from the prior policy.

Councilman Booros: I've got a problem with that. Okay? And if the Town doesn't have the resources to duplicate the requested records, the town, at it's discretion may have an

outside contractor duplicate them, so that's so vague to say we're really busy in Town Hall this week, so we're going to have this outside contractor make the copies. Seth, your secretary, and they're going to charge us how much? I think this is too loopy goopy.

Mayor Newlands: I think that relates to special forms and things.

Councilman Booros: But it doesn't say it Cliff and it's got to spell it out.

Mayor Newlands: Okay.

Councilman Booros: I understand if it's a huge thing that we've got to send to Staples to have done, different story, but that's not what this says. And then, last, but not least, the town reserves the right to refuse to make copies for requesters who have outstanding balances. I said it last time. I said it the time before and I'll say it again. If somebody hasn't paid their water bill, that should not preclude them from asking for something under the Freedom of Information Act. I got a problem with that, especially when you're asking for them to pay for that information to begin with.

Seth Thompson: Sorry, on the last point, where...

Councilman Booros: That's on the last page, a, payment of copies and miscellaneous charges.

Councilwoman Jones: 5a.

Councilman Booros: The Town reserves the right to refuse to make copies for requesters who have outstanding balances.

Seth Thompson: It could be amended to outstanding balances under this chapter, to make it clear that it relates...

Councilman Booros: Outstanding Freedom of Information Act balances, I don't have a problem with, absolutely, I don't have a problem with that at all.

Councilwoman Jones: How would you have an outstanding Freedom of Information Act balance, if you're collecting it at the time?

Councilman Booros: They haven't picked up the second half of the information we sent out to be copied. They put half down, we send it out to be copied, we get it back, we've got to pay for those copies. I can go for that.

Councilwoman Jones: Mr. Thompson I thought we had discussed in keeping very much with the State Fee Schedule, except for what had been missing from the State Fee Schedule were these larger documents.

Seth Thompson: Right. Well, I believe at the last meeting it was that the Town can't make anything larger than 11X17".

Mayor Newlands: Right.

Councilwoman Jones: And so we talked about assigning a specific value to those documents, but I was under the impression we were pretty much going to ride right along side with the State's Fee Schedule, except for adding something for large documents.

Seth Thompson: Well and I think the larger documents, since the town doesn't have the current capacity to make that, was whatever the town was charged by the outside contractor.

Mayor Newlands: Yes, it was costs; it has to be costs, at least.

Councilman Booros: That makes sense.

Seth Thompson: So and just on that note, I suppose it could be clearer... There was a reference to or equipment; we could potentially change it to...

Councilman Booros: Yes, resources or equipment; I can understand if we don't have the equipment, we have to send it out, but the word resources had me there, because that's real subjective.

Seth Thompson: So potentially it could be if the Town does not have the equipment to duplicate, or we could say resources and equipment...

Councilman Booros: It could be expertise; maybe it would require somebody to go into a hard drive of a computer and we have to have a computer person do it.

Mayor Newlands: Yes, resources or expertise, should be fine.

Seth Thompson: Or expertise, or equipment?

Mayor Newlands: All three.

Councilman Booros: Resources, I'm sorry. I've got a problem with that word.

Mayor Newlands: Why?

Councilman Booros: Because I don't want it sent out to a contractor when we're just too busy in Town Hall for one of the ladies at the front desk to go make the copies.

Mayor Newlands: We're never too busy to do that, I guarantee it.

Seth Thompson: I guess I was envisioning a very large request.

Mayor Newlands: Yes.

Councilman Booros: So we don't have the expertise, we don't have the equipment to do it.

Seth Thompson: Well I was thinking more in terms of maybe it's the regular size paper, the 8-1/2X11", but the request is so large that there isn't enough time for... That's really what I was thinking of, as opposed to the request being for something that is physically too large.

Councilman Booros: I understand what you're saying.

Mayor Newlands: But if you don't have the word resource in there, you're going to be stuck doing it in house. It doesn't hurt to have the word in there. It just gives you an out, in case you need one, for whatever reason; if something's too voluminous and we did discuss having all these charges at 10¢ and \$2.00. Are we saying that you want to go back to what the State has and do 20 pages for free? We discussed that we didn't have to stay in line with the State, last time. Right now Mr. Abbott, it's 50¢ a page?

Seth Thompson: The Town Police looks like it's 35¢.

Mayor Newlands: Is it 35¢ now?

Seth Thompson: Again, the town policy isn't in effect now, because the State Code overrode it, since it was a policy, as opposed to a codified ordinance.

Mayor Newlands: I think the Fee Schedule has it at 50¢.

Seth Thompson: Ah, okay.

Councilwoman Patterson: If the first 20 pages are free, that would just be a standard if it was black and white, 8-1/2X11"...

Councilman Booros: Right.

Councilwoman Patterson: Because I think if we got into color pages and 11X17" that would eat up a little bit of money.

Mayor Newlands: Yes, you don't want to get into color, because black and white we get free under our base 7,000 copies a month.

Councilwoman Patterson: Okay, so if we were going to do 20 pages...

Mayor Newlands: The color, though, we get charged I think color... I don't think there's any base for color.

Councilwoman Patterson: Yes, even if you went to Staples it's 50¢ for a color page, so if we do the first 20 pages, it should just be standard black & white, 8-1/2X11".

Mayor Newlands: Right. Alright so we're going to take the 10¢ and make it the first 20 pages, and then 10¢ for every page thereafter?

Councilman Booros: Works for me.

Councilwoman Patterson: That's fine. Yes.

Seth Thompson: So, again, that's just on the 8-1/2X11?

Mayor Newlands: Yes.

Seth Thompson: Okay.

Councilwoman Jones: However it does say plus any administrative fee applicable herein.

Seth Thompson: Right, which is basically that is the time. Remember, it's the first quarter hour that's free, of the employee's time.

Councilwoman Jones: Right.

Seth Thompson: But then beyond that, they bill at the quarter hour for the lowest...

Mayor Newlands: Lowest person eligible to do the... something like that.

Seth Thompson: The wage of the lowest paid town employee capable of retrieving the information.

Councilwoman Jones: Mr. Thompson, under 5c and d, the one talks about a deposit must be provided in advance for requests that are estimated over \$50 and the deposit will be one half the total. Under d, should it read, if a deposit is required, the fee must be received before copies are delivered, or before searching and review commences.

Seth Thompson: I had envisioned where c would again be something above \$50, so if somebody files a request and then the Freedom of Information Act Coordinator or the other designee says, this is going to be more than \$50, it looks like it will be about \$60, therefore you have to put a \$30 deposit, so that would be before any copying occurred, and then section d really related to when the copying was done, they then had to pay their bill before it was either mailed or picked up.

Councilman Booros: So the words before searching and reviewing, need to go up on c.

Councilwoman Jones: It says... Well if you break that apart at the or, it says fee must be received before copies are delivered. Fee must be received before searching and reviewing commences. It's a...

Seth Thompson: I see your point, so it could be before copies are delivered...

Mayor Newlands: You may want to combine the two.

Councilman Booros: Yes.

Councilwoman Jones: Because if you are talking about a deposit, before anything, before anybody makes a single copy and the coordinator has indicated this is going to be an expensive job, you not only are going to get that deposit, before it commences, actually you're looking for the whole fee to be paid. Are you not?

Councilman Booros: Not before it commences; before you deliver.

Mayor Newlands: Right.

Seth Thompson: Right, so it sounds like what I can do is change it to... I'll combine d into c and it will say the deposit must be received before searching and reviewing commences and then the entire fee must be...

Councilwoman Jones: The balance. The balance.

Councilman Booros: The balance.

Seth Thompson: The balance must be paid prior to...

Mayor Newlands: And in some cases, you're not going to know it's going to be a lot of money until you do some research and figure out what you're looking for.

Councilwoman Jones: Well and that also speaks to b, if I may. It says, notwithstanding, the town may require prepayment. I mean to take that out of a subjective, depending on who it is, standing there making the request; should it be the town will require?

Seth Thompson: That's fine with me.

Councilwoman Jones: That makes it very flexible and I'm not against being flexible, but I would be for applying the same rule to everyone.

Mayor Newlands: I think b may require payment, based on c.

Seth Thompson: But Councilwoman, your concern is that it might be unevenly applied, because it's may?

Councilwoman Jones: Right, can it be evenly applied, if it says may require prepayment?

Seth Thompson: Right. Right. I mean you can change it to shall, so that it's...

Councilwoman Jones: I'm only one vote.

Mayor Newlands: Well we don't ask anybody to prepay right now.

Councilman Booros: Well prior to mailing the copies, no you do, prior to mailing them; that doesn't say prior to searching for them. It says prior to me handing them to you.

Seth Thompson: Right.

Vice Mayor Betts: If you've already done the work...

Councilman Booros: If you've already done the work, they need to pay up before you mail them.

Councilwoman Jones: To mailing copies, right.

Vice Mayor Betts: I think so.

Mayor Newlands: I think we need to just clarify some of this wording, that's all.

Councilwoman Jones: Because otherwise, then, are you're simply billed?

Mayor Newlands: No, everything is cash over the counter.

Councilwoman Jones: Okay, so the town will require payment when those records are delivered, right?

Seth Thompson: I'm going to change it to prior to mailing or delivering copies.

Mayor Newlands: Yes, yes, that's good.

Councilwoman Jones: Will require, or may?

Seth Thompson: Shall.

Councilwoman Jones: Shall.

Seth Thompson: So just above that I'll put...

Mayor Newlands: Don't use the word delivering, because we're not going to drive out and give somebody copies, so it's turnover, or whatever use of a different wording, that's mailing or turning over. Use some other word that doesn't mean we're going to get in a car and bring it to somebody.

Seth Thompson: Mailing.

Vice Mayor Betts: You have to mail it.

Seth Thompson: I just wouldn't want somebody to think they don't have to pay, since they're coming to town to pick it up, right?

Mayor Newlands: Right. I know.

Seth Thompson: And just above that I'll add in, under this chapter, to make it clear that the balance relates to the Freedom of Information Act Policy.

Mayor Newlands: Alright. Any other changes?

Councilwoman Jones: Just on a quick view, does this include regarding fees and costs – does this also include this Ordinance will include the number of days that the town has to process that request.

Seth Thompson: Well that's in Freedom of Information Act itself. This just deals with the fees that can be charged for the request.

Councilwoman Jones: Okay.

Mayor Newlands: Once we do this as an ordinance, we can just move it into the Fee

Schedule?

Seth Thompson: You would just note it on the Fee Schedule.

Mayor Newlands: Yes, we need to note this on the Fee Schedule.

Seth Thompson: But you do have to have this in your Town Code, the way the State Code is written, but there isn't really a rush on this, in the sense that the State Code is currently in place, as far as your fees.

Mayor Newlands: Yes, I just don't want to have to change this again, if we change the fees, I don't want to have to change the Ordinance again. I would rather just change the Fee Schedule. Can we just say that whatever is in here shall be reflected in the Fee Schedule? That way we have the Ordinance, we enacted the Ordinance and then we'll put it into the Fee Schedule so we never have to come back to this particular Ordinance again? Can we do that?

Councilwoman Jones: That's a good idea.

Seth Thompson: We can do that, so you want to pull the costs out of, for instance, section 2a?

Mayor Newlands: No, I would just like to have the Ordinance, but just say whatever we agree upon in this ordinance, the fees will get reflected in the Fee Schedule.

Seth Thompson: Yeah.

Mayor Newlands: That way we can change the Fee Schedule later on without enacting an Ordinance, that's number one.

Seth Thompson: My one concern, I'll have to go back and look at the exact wording in the new Freedom of Information Act section, because it says it has to be codified. And I know it sounds silly, but the Fee Schedule doesn't get codified, but you're kind of incorporating it by reference in your Code. I wonder if that satisfies it.

Mayor Newlands: Because we just finished, I think, moving everything out of the Town Code into the Fee Schedule, so I don't want to put more things back in the Town Code.

Seth Thompson: Yeah, this is just a different scenario based on the wording of the State Code.

Mayor Newlands: Okay, any other changes?

16. New Business – Discussion and possible vote on the following items:

a. Retroactive wage increase

Win Abbott: Mr. Mayor and Council, it was unclear to me when the authorization for the base wage increase was passed by Council, whether or not that was applicable for all wages earned as of the first day of the new fiscal year. When all of the reviews were done, and everything was in order, the employees began receiving their 3% pay increase, however, that was after one pay period had passed. You have before you spreadsheet which details each eligible person and the 3% difference on one pay period. They range from a low of \$33.67 to a high of \$73.27; most of them being less than \$50, for a total of \$827.47. I ask your consideration for this retroactive pay increase that will be made as a one time payment to all employees for that one pay period in which the 3% pay increase was not active.

Councilman Booros: May I say something? I have before me the minutes from the September 26<sup>th</sup> meeting, where I made a motion that we take a pot of money that was decided on the week before, at 3% across the board, put it in a pot and not touch that pot until this Council has an opportunity to change the Code to involve the Personnel Committee in the distribution of that pot of money. It was seconded by Councilwoman Jones. I amended it to call it a merit pot. That was seconded by Councilwoman Jones.

And it got five affirmative votes.

Win Abbott: Well I guess that would make this moot then.

Councilman Booros: This would make this a moot point until this Code is changed, that the Personnel Committee gets to look at those performance appraisals and determine how to split up that pot of money.

Win Abbott: Fair enough.

Councilman Booros: Okay.

Councilwoman Jones: So that we are still jumping off point from here, we had three identified employees at the time of the budget that had their evaluations finished and they were, if I'm not mistaken, the three employees that we considered retroactive pay increases; however, the rest of the evaluations, from my understanding were to be brought back and looked at for a recommendation to Council, not on the 3% across the board, but on a case by case basis and we were supposed to review those evaluations in December, or look at them, or the Personnel Committee convene to talk about this, but we haven't done that yet. So 1) how do we get the three eligible employees their money and 2) how much further out are we that we are still not extending any raises to the rest, because we haven't done the review? That was supposed to be in December.

Mayor Newlands: To be honest with you, I don't recall that. I thought once they were done, we were going to give them their raises. All the reviews are done.

Councilman Booros: Nope. And we were supposed to change the Code, before we did this, before the Personnel Committee met.

Mayor Newlands: Okay, so we need to review that.

Councilwoman Jones: Yeah.

Win Abbott: I'm sorry. None of that was communicated to me and I know we have the minutes before us now, but that occurred after this. I did make a request, in writing, for the Personnel Committee to be convened, but I got no reply, so I don't know where you want to take it from here.

Mayor Newlands: I didn't see that. You sent that by email?

Win Abbott: No, the request for the Personnel Committee, no that was in the very same memo which contained information about Mr. Atkins' retiring, about the Police Department job being advertised, about policy regarding injury reporting at work, it covered a lot of bases there. Within that there was a request for the Personnel Committee to be convened and I never got a reply.

Mayor Newlands: Okay.

Councilwoman Jones: The three eligible employees, we talked about at the end of September, are still without raises. Is that correct? All employees are without raises. Correct?

Win Abbott: All employees have raises.

Councilman Booros: They have raises?

Win Abbott: Yes.

Councilwoman Jones: Who authorized that?

Win Abbott: The Council budget provided for that and I programmed 3% in for all persons. I was not advised anything otherwise.

Councilwoman Jones: That's a huge mistake. That is not what was decided by this Council. It was not decided by this Council.

Councilwoman Patterson: It was not decided. I am a member of the Personnel Committee and so is Councilwoman Jones and we were waiting for December for us to convene to discuss, because there are other issues on the Personnel Committee in terms

of us getting a more structured review for the employees and we were looking forward to that meeting in December.

Win Abbott: I would be happy to meet. Really. I've asked for a Personnel Committee meeting before and we've not had one. I need some communication...

Councilwoman Patterson: I'm not sure how Council seems to keep getting overstepped.

Councilwoman Jones: I don't understand how these raises could have just been released with a conversation that Council had. I just don't understand how everybody's received their raise and now we're looking for retroactive pay. These evaluations were not complete, when we voted on the budget, except for three. Those were my primary concern tonight when we were looking at retroactive pay and I would have been willing to make a motion that we grant those three retroactive pay; but I was not aware that the rest of the employees have already received their increases, at 3%, across the board.

Councilman Booros: Across the board, whether they were deserving or not, they got it across the board.

Win Abbott: When would you like to have a Personnel Committee meeting?

Councilman Booros: I would like the Code changed first, to read that the Personnel Committee has the right to do this. It's been two months.

Mayor Newlands: That's not going to be able to take effect until January, January's meeting.

Councilwoman Jones: What are we going to do about the raises having already been distributed? That was not the vote...

Mayor Newlands: I don't know if you can take those back or not. I don't know what you've...

Councilwoman Jones: It was not the vote of Council.

Mayor Newlands: I understand that, but I don't know if you can take those back or not. You can readjust them later on.

Councilwoman Patterson: How do these things go... I'm new to Council, so I'm very confused with how these things get followed up. It seems from month to month there's so much getting \_\_\_\_\_ and I don't know from my own personal business, we have to dot the I's and cross the T's and I just... I don't know, so I don't know why these things...

Mayor Newlands: I didn't know these raises were given out either, so it's news to me, as well.

Councilwoman Patterson: We need a meeting of the Personnel Committee. We need to start getting some checks and balances and trying to get some things in order.

Mayor Newlands: We'll have to have follow-up meetings afterwards, after the Council meetings, just to go over everything that's done.

Councilwoman Jones: In open discussion I would like to know the remedy for what we're going to do here? This is, again, what Council voted on and I am amazed by this. Some lack of communication and I don't what level it would have been at. I know that you were away during the budget process, but do you need us to call? Mayor Newlands this isn't okay.

Mayor Newlands: I wasn't aware of this myself, so this is the first I'm hearing of it too. I thought this was going to be a pay period and we would multiply it by the number of pay periods, just to get the retroactive pay. I didn't realize that this was one pay myself.

Councilwoman Jones: So right now, 3% across the board has gone into effect for all employees? Is there a remedy?

Mayor Newlands: I don't know.

Councilwoman Jones: Mr. Thompson?



Seth Thompson: I'll have to research that.

Vice Mayor Betts: What did she say?

Seth Thompson: She asked if I knew of a remedy. I'll have to look into that.

Vice Mayor Betts: Oh, okay, I didn't hear what she said.

Mayor Newlands: And as far as giving the Personnel Committee authorization, that's going to have to go on next month's meeting, that will go on January's meeting.

Councilwoman Patterson: I think it's tough. We want to thank everybody for their hard work and we want to move forward with this, but again, I don't understand how some of these procedures are not being followed.

Councilwoman Jones: And I'm going to go on record and say I wouldn't have recommended 3% for all employees for numerous reasons, but particularly for employees who gave themselves raises two years ago and none of the other employees got them. I would not have said okay let's give them 3% and I am on that Personnel Committee, so I'll make it very clear as to what I was planning.

Mayor Newlands: Okay. The next item is a petition...

Councilman Lester: Can I just ask a quick question?

Mayor Newlands: Sure.

Councilman Lester: Do we know what the increase in health insurance premium will be for this coming year? Our overall premium's gone up, right?

Win Abbott: Yes, it has. I'll be glad to get you that information. I don't have that in front of me.

Councilman Lester: Oh, it's just when people talk about not giving people COLA raises or whatever, the staff is going to get a decrease pretty soon.

Win Abbott: Yes, that would be correct.

Mayor Newlands: I think the health insurance went from 11% to 14%, somewhere in that neighborhood.

Councilman Lester: Right. Okay.

Councilwoman Jones: Mr. Thompson, under the New Business Retroactive Wage Increases, which we are discussing at this time, I'd be willing to put a motion on the table to stop this until further research is done, but I'm looking to you to ask you whether or not we can do that.

Seth Thompson: In terms of...

Councilwoman Jones: Labor Law.

Seth Thompson: I'm going to have to research that. That's not something that is immediately... It's not an issue that comes up very often.

Councilwoman Jones: So we make a judgment that goes against Council's wishes and Council is bound, right now.

Mayor Newlands: Until we do the research.

Seth Thompson: I mean, the argument is that it's already started, so the question then becomes can you stop it?

Councilwoman Jones: What is the authority of Council's vote?

Councilman Booros: We have no authority Councilwoman. It's the way it's looking.

Seth Thompson: The concern is that there's the budgetary process vs. the pay plan that the Personnel Officer puts into effect; so I recognize those things are tied together and Council certainly passes the budget. The issue is whether the Personnel Officer might tacitly approve a pay plan...

Councilman Booros: Not based on the motion I made and the approval that was made back on the 26<sup>th</sup> of September. It doesn't give the Town Manager, the Personnel Officer,

any approval. It's real specific.

Seth Thompson: And I understand that from Council's viewpoint. The concern is how do we look at it from the employee's viewpoint, how does the law look at it from the employee's viewpoint? That's my concern.

Councilman Booros: So if we'd have said no raise, zero, zip, zip, how would the employee's have looked at it.

Mayor Newlands: That would have been your determination at the time. They would...

Councilman Booros: We determined to make a pot of merit money and distribute that pot appropriately based on their performance appraisals.

Vice Mayor Betts: We didn't have it.

Councilman Booros: That's all we asked for, so how that can somehow be wrong in the eyes of the employee's, that the employee's somehow can question that, I don't understand. We can sit here and make excuses for it, all night long. We need a remedy for it and it can't take 18 months, like the COPS Grant stated, because if we can't stop it, we need to find out tomorrow, can we stop it and if the answer is that we can stop it, it needs to stop right now, until the Personnel Committee meets.

Seth Thompson: My concern is it's kind of the equivalent if you incorrectly issued a building permit; and the person then relied on that building permit, take it out of the employment context, and they're detrimentally relying on something that they've received. Now again, it's a slightly different context here, but that's my concern. Again, I certainly understand Council's view, that this wasn't authorized. The question is how it should be viewed from the employee's standpoint.

Councilwoman Jones: And what research do you plan to do that will give us that perspective.

Seth Thompson: I think I'm going to have to go to the Fair Labor Standards Act. Again, that's not something we deal with on a monthly basis.

Vice Mayor Betts: Mr. Abbott, did you receive the minutes from the meeting?

Councilman Booros: Just now.

Vice Mayor Betts: Just now?

Win Abbott: No, I did not receive the minutes from the meeting where this discussion occurred until about a week ago and I never received any communication from the Mayor that would indicate anything outside of the discussions that we had before I went on my authorized break. Now those discussions were about the pay increases, the fact that there were still some reviews to be done and a budgeted value that would have been inclusive of the pay increases and that's where it ended.

Vice Mayor Betts: And why did you give them an increase?

Win Abbott: Because it was budgeted and that all the reviews were done.

Vice Mayor Betts: Were they done?

Win Abbott: Yes, Ma'am.

Mayor Newlands: Yes, they're all done.

Win Abbott: So the last conversation that I was involved with, included a reduction from a proposed, I think it was 8% down to 3% and the fact that all the reviews had to be done and then when the budget came out, that provided for the 3%, and the reviews were done, it was put into effect.

Vice Mayor Betts: So that's when you went...

Win Abbott: Because I did not receive any information to the contrary.

Councilwoman Jones: Let me also say, as of the budget time, only three employees were shown to have had evaluations, according to the rules and regs that they receive once a

year, a performance evaluation; only one department head did that. When you received the rest of the approved performance evaluations had to have been after the budget and that's why the Council said, well in December we'll look at those again. So except for this one week, the two week period, following October 1<sup>st</sup>, the start of the new budget, the employees received raises. Who signs the checks in town for payroll?

Win Abbott: Mayor and Treasurer.

Councilwoman Jones: Did you not notice any increase in any paychecks, not operating checks.

Mayor Newlands: I don't sign individual paychecks. We don't sign individual paychecks, it's all processed and I don't even get to see the report at the end of the process. I don't particularly per se sign off on the payroll.

Win Abbott: He is correct in that.

Councilwoman Jones: Oh, I don't doubt that, but I just can't help but feel someone, somewhere, saw a change take place and I just can't... I guess for me, I'm still in disbelief that this wasn't conveyed to you, the Council's not wishes, the Council's vote.

Vice Mayor Betts: When do you get the copies of the minutes? Do you get copies of the minutes, after the meeting?

Win Abbott: No, Ma'am, not until they're prepared. Oftentimes that isn't until one week before the next meeting.

Vice Mayor Betts: I noticed.

Mayor Newlands: It depends when they get typed up.

Vice Mayor Betts: I noticed before.

Mayor Newlands: That's part of the problem, is that they got typed a little late probably.

Vice Mayor Betts: But I do think, he should have been told, if he was not in the office.

Mayor Newlands: Uh-huh. So right now we need to wait for Mr. Thompson to do his research with the Fair Labor Standards Act.

b. Petition for historic site designation

Mayor Newlands: This is new. It's different then this.

Mike Filicko: Good evening Honorable Mayor Newlands, esteemed members of Council, Solicitor Thompson, Mr. Davis, Mr. Biever is here to help my lovely wife and I petition our home as a historic site. Mr. Davis is passing around photographs of our property. Excuse me, I said our home, I meant to say our property, not just our home.

Mayor Newlands: Mr. Filicko, go ahead. You can proceed and explain the situation.

James Biever, Consultant to the Filicko family: I have a firm that assists people in obtaining the historic tax credit here in Delaware, which is a federal funded, but state applied availability. There's \$5,000,000 a year made available for people to recover some of the costs of meeting Historic Preservation guidelines. The home that the Filicko's live in is one that would historically apply to these guidelines, but one of the primary considerations to make this decision to apply, the application at the State level, to grant the credit, is that it must be in either a federal or town Historic District. The district line, according to the material that Robin shared with me, would put this house approximately a block away from the border that you designed as the Historic Credit Area. What we're asking you all to consider, is allowing this house to stand inside that designated Historic Area, so that he can, in fact, qualify to make an application for this credit.

Seth Thompson: The one element that I want to clarify for Council. The way your Code is set up, you do have your Historic District, but there's also a separate designation for a

Historic Site, that the person can petition for. So again, the application is not to modify the boundaries for the Historic District, it's to designate this particular property as a Historic Site. It might help the applicant, as well...

Councilman Booros: Will he be bound by the Historic Preservation Committee, any time he wants to do anything?

Seth Thompson: That's correct.

Councilman Booros: From someone who lives in the Historic District, are you sure you want to do this?

James Biever: So much of the work has already been done, it's a question of accumulating the material that's necessary to make the application.

Councilman Booros: But you could do it retroactively?

James Biever: Yes, he's well aware of the boundaries that are restricted, not only with the Town's activities, but once he goes to Dover for this application, he's regulated by the State's material, as well.

Seth Thompson: It may help the applicant too, the way our Code defines Historic Value, or Significance, and hopefully this helps the Council, those terms are defined as it exists when a property has character interest or value as part of the development, heritage or cultural characteristics of the town and/or when a property exemplifies the cultural, economic, social, political, or historic heritage of the town. If that helps, perhaps guides your comments in terms of why you think it would be appropriate, that might help the Council.

James Biever: The house was built almost 100 years ago, in January it will be 100 years old and it takes into consideration, as you can see from the photos, because you've seen other historic town houses that have been either redone or just have maintained themselves; we feel that it qualifies both on the foresight of the people who own the house over the years to maintain it that way, and the efforts that the Filicko family has made to not only maintain that, but to restore things that needed it to defeat those features.

Mike Filicko: If I may add, this goes above and beyond the tax credits that we may receive. Our goal is to protect and preserve our property and we would like to give you that opportunity to do that, as well, for the future.

Mayor Newlands: So to be clear, we're not expanding the Historic District, we're just being asked to designate this one property as a Historic Site? Is that correct?

Seth Thompson: That's correct.

Mayor Newlands: Okay.

Councilwoman Jones: Which also does not put you on the National Registry and you understand that, as well. Mr. Thompson, I have a question actually about the Code and it's in that last sentence. Designation of a... we're in the second paragraph from the bottom... Designation of a property as an Historic Site is an irrevocable action and such designation shall remain with the property in perpetuity. Heaven forbid, something happens to that house; you are assigning a Historic Site to a piece of land?

Seth Thompson: It says structures, sites and unimproved land.

Councilman Booros: There's one on Mill Street that the house must have burned down and he put a double-wide in there and he's being held to the scrutiny of the Historic Preservation Commission...

Councilwoman Jones: Because his land was...

Councilman Booros: Because it's within the District, even though it's a double-wide, or a modular.

Councilwoman Jones: That's right.

Seth Thompson: You're absolutely right that it's irrevocable, so when the Filicko's go to sell their property, it will be need to be notated somehow on the...

Councilwoman Jones: And it says that here.

Mayor Newlands: Uh-huh.

Councilwoman Jones: Disclosure.

Seth Thompson: But on the records, they come from the Town, when it comes time for settlement...

Councilman Booros: I don't know that that necessarily happens, because I was never given notice that I bought a house in the Historic District; and I think it should, I just don't know that...

Seth Thompson: Typically with a real estate settlement, if you're in the District, this is a little bit different, because this somebody that's not in the District, so you couldn't go to the Town zoning map and see yes, indeed, the property is in the District; so that's my only concern. This is slightly different in that again, you couldn't do that...

Councilman Booros: But the Code allows for it?

Seth Thompson: It certainly does. It's more a practice...

James Biever: A real estate agent that would be listing this property for sale, would also have the responsibility of making sure that the listing agreement, identified the home as being a Historic Property. If you've ever looked at one that's for sale, you will see that clinically is identified in the paperwork, because there are some people who look for homes that are in a Historic District and are Historic. There's a whole section of downtown Lewes that's marketed that way, because they are in the Historic District and they have a guideline within the City that restricts people from either advertising or offering these homes for sale, unless they clearly identify them as being part of the Historic District; both commercial and residential. Some of the commercial properties bear the same restriction, so they can only be restored with a facade, or at least the image that they currently have, if they're going to be reused for something else.

Seth Thompson: My only concern was basically creating... putting people on record notice, basically. I think that would be a good practice. Again, whether it's something that gets Coded in the Town software, whether it's something that gets recorded at the Recorder of Deeds... Occasionally people forget, they forget that their basement flooded and that doesn't go in the Seller's Disclosure; that does happen, so that's why we like record notice to remove that kind of concern. That's a practical issue. It's not in your Code. That's not a requirement.

Mayor Newlands: So once we designate this as a Historic Site, it's strictly his responsibility to make sure that that's known to somebody else in the future.

Seth Thompson: It is. I just worry that occasionally things get forgotten or misconstrued and then owners, years later say, wait a second, I have to go to the Historic Preservation Commission for approval here?

Councilwoman Jones: And is that information, Mr. Davis, then recorded on his record as being designated a Historic place, as of a certain date? Because it would need to follow his records in Town, would it not?

Robin Davis: I do not think there is a spot anywhere on the property card that is done by our assessor that has it as a designated Historic Site or in the Historic District. In our Edmund's Software System, there is a box that can be checked for those homes that are in the Historic District.

Councilwoman Jones: Well in the case of Mr. Filicko, if he comes back in a year's time

and would like to change something on his exterior, how would anyone know, except for Mr. Filicko himself, that he has to come before Historic Preservation?

Robin Davis: Very good question.

Councilwoman Jones: Well.

Robin Davis: There's notes that can be put on the accounts.

Councilwoman Jones: Because otherwise, it's going to fall into the cracks.

Mayor Newlands: We can check it off as being in the Historic District, but in the notes area of the account, say that this is an exception and it's just a Historic Site.

Councilwoman Jones: Oh, I wouldn't put a confusing note that says it's in the Historic District, but it's really not. It's actually just a historic property, according to 22-21g7, right?

Seth Thompson: An Historic Site. That's correct.

Councilwoman Jones: A Historic Site.

Seth Thompson: Which is a separate designation from within the Historic District. Your Code does reference the fact that there would be an Appendix and then the Editor's Note at the bottom says it's on file in the Town Offices. I gather we don't have any of these. I don't know.

Mayor Newlands: Well we have the house cards, the cards for the houses and we have it in the Edmund's System.

Seth Thompson: But there isn't a list on file of Historic Sites.

Robin Davis: There's a list that I have in my office that's dated July 21, 2005 that has the roughly 130 or so properties that are in the Historic District.

Mayor Newlands: Not Historic Sites, though. Do we have any?

Robin Davis: As far as I know, this will be the first one that we have as an Historic Site.

Councilman Booros: No time like the present. Add it to your list.

Vice Mayor Betts: It could be added, and it should be added.

Councilwoman Jones: And we have Codes which allow it to be added. Right?

Seth Thompson: You do. That's right. That's part of your Code.

Vice Mayor Betts: But it should be added.

Mayor Newlands: Is the management of how we do this needed to be discussed here, or do we just want to...

Councilwoman Jones: But the follow-up is an issue and I would like to know that whether it's for this property or any property, that that information is transferred over onto an information document that states that tonight this happened and this house went into, with approval, went into a Historic Property Status.

Mayor Newlands: Right, but all I'm getting to is that I think time is of the essence with you to get this done now, right?

Mike Filicko: Yes, Sir.

Mayor Newlands: For this calendar year, correct? I just don't want to have this postponed at all because we don't know where we're going to make the check box in the records.

Councilwoman Jones: I don't want to have it postponed either.

Mayor Newlands: So I think the problem of doing that becomes the office, Robin and Win's problem, as to how to do that and they could report back next month, what they did, but I think us discussing it and figuring out where the check boxes are just a long waste of time. That's all.

Councilwoman Jones: Okay.

James Biever: Mr. Mayor, just a comment. I may be able to work with Robin through

the State, to find out how in other circumstances this has been accomplished. It's the first time I've experienced it, but I'm sure it's not the first time the State has dealt with a single Historic Site in a Town that's got a Historic District.

Mayor Newlands: Yes, it's just really a recordkeeping issue with us and we're not going to resolve it at the Council Meeting.

Councilman Booros: I make a motion that we approve the designation of a Historic Site to 111 Bay Avenue for the Filicko's property, in accordance with the Code.

Vice Mayor Betts: I'll second that.

Mayor Newlands: There you go. Okay, we've got a motion and a second to recognize the Filicko's property at 111 Bay Avenue as a Historic Site. We'll do this by roll call:

Councilman Booros	Yes
Vice Mayor Betts	Yes
Councilman Lester	Yes
Councilwoman Jones	Yes
Councilwoman Patterson	Yes
Mayor Newlands	Yes

Mayor Newlands: Motion is approved.

Mike Filicko: Thank you very much.

Mayor Newlands: You're welcome. Congratulations.

c. Draft Ordinance re: Subdivision Streets

Seth Thompson: I've been requested to draft an Ordinance dealing with when street completion would occur and obviously this is your first reading, so any input is by all means welcome. Again, this is part of your sub-division Ordinance. It's up to the Council. I put 85% in there, in terms of the lots being either sold or built upon. That's not some magical number. I looked in other Codes around the country to try and get a feel for what other people have done. Some have 75%. Some have as low as 30%, although the problem with that is just as we heard in the public comment section, the roads get driven on and that's a problem for the Town if they're going to be dedicated to Town, obviously. So we need to strike a balance in terms of when it's appropriate for the people that have bought homes and are living there to get their top coat done, but then also not having a situation where the road gets some additional wear and tear, based on the fact that heavy equipment is driving over it. I used the term sub-division or the phase, because your sub-division Code does allow for a developer to develop in phases, so it's really up to the Council in terms of whether you want to do it as the development as a whole, if that's your measurement, or if you want to do it by the phase, or I could work on some language that tries to kind of make an Ad Hoc determination as the sub-division gets approved, in terms of whether it's done by the phase or done by the development in it's entirety. That's another possibility.

Mayor Newlands: I think doing it as it gets approved, may be a better way to look at it, because given what Mr. Collier said, Cannery Village, Phases 1 and 2, as you go through 1 into 2, there's really no way to get to 2 in some cases, without going through 1; so you may want to do two phases at one time, as opposed to the first one. With Heritage Creek they could probably get away with doing, what I think is Phase 2A right now, without going to the next phase, because they're going to build that construction road off to the side, so it may be development driven.

Seth Thompson: So we could say something to the effect of 85% of the lots in the sub-division or the phase, as approved, with the final sub-division application; something to that effect?

Mayor Newlands: Yes, it needs to be given to the developer up front, when that phase is approved, so he knows what he's doing.

Seth Thompson: That dovetails with my next comment. Again, it's up to Council to strike a balance in terms of how they want this applied. You have developments that have already gone through the pipeline and there was seemingly one set of rules when they were doing that. The five years, it's not some magical number. I looked at the State Code, in terms of when a sub-division approval would sunset and that was kind of just my guide post, but that's up to Council, not up to me.

Councilwoman Jones: Allow me to ask you a question. Take any community, at all and you've started Phase 1 and you're operating very well on Phase 1, but it's not complete and that developer has come back now to get approval for Phase 2, which is only going to dilute Phase 1. When are you going to reach the capacity, as long as that developer, if he's in a parcel large enough, to continue that behavior down the road and keeps diluting the previous phase?

Mayor Newlands: It doesn't. It's phase by phase. If the phase gets 100 houses, when 85 are done, it's done by itself. It has nothing to do with the next phase. He could start the next three phases. You're not diluting anything. Phase 1 is Phase 1 and it's counted by itself.

Councilwoman Jones: But if Phase 1 isn't at 85%, when Phase 2 begins, and the buyer's are now going into Phase 2 because of certain... the land is better, it doesn't matter, Phase 1 is going to have some difficulty reaching their 85%, when the new lots have been opened up in Phase 2 with our blessing. That's all I'm talking about and I don't know how you calculate that, but if 85% of Phase 1 is not realized and Phase 2 is already at 50%, Phase 1 is still not getting their goods, they're not getting their roads done.

Mayor Newlands: His five year would take care of that.

Councilwoman Patterson: Five years.

Seth Thompson: That's right. That's why I added in the additional.

Mayor Newlands: And generally, these developers they like to do these projects in five years, that's how their loans run, a lot of the times. Like my development. At five years, he paved, he wanted out of there. Because he wanted his bond back and everything else.

Seth Thompson: And that is typically what drives... Number one they'd like to sell all their units the first day, but that doesn't typically happen, so as they're paying that cost of continuing that bond, that's another reason to have the process done, because they no longer get that cost every...

Councilwoman Jones: Okay. Not unlike the other issue we just discussed, as a matter of housekeeping, who hears the alarm when that five years has passed, since the final approval, and we don't have roads yet?

Mayor Newlands: What?

Councilwoman Jones: Did you get that?

Seth Thompson: I did. In other words, it's who's keeping track of the time?

Councilwoman Jones: Who's watching the time, that when five year's has passed, well we're going to put this into effect because five year's has passed? If there isn't an indicator, if somebody doesn't ring the bell, you don't know when five year's have gone by. It's a constant review of the approvals. It's a housekeeping issue.



Seth Thompson: It is. It could logistically come up whenever the bond is being reviewed, or renewed. Because typically your Letters of Credit and your bonds expire, so that might be when the Town knows to look.

Vice Mayor Betts: There should be a file in our office saying Phase 1 is up at a certain time.

Councilwoman Jones: I agree. That's what I'm saying.

Vice Mayor Betts: And it shouldn't be that hard to...

Councilwoman Jones: Right.

Seth Thompson: And that really should be in place, based on the approvals. Robin can correct me if I'm wrong, but I think our Code has a sunset provision that unless they get started, substantial construction or something to that effect, the approvals expire.

Mayor Newlands: I think, again, that's a management issue as far as in the office. Do you have a tickler file that goes up in five years.

Councilwoman Jones: Oh I agree. It's a housekeeping issue.

Mayor Newlands: That's an office... Yes.

Councilwoman Jones: But you're placing it in here as an Ordinance and how do you make it work, is the question that's being asked.

Seth Thompson: It should be something that's already being tracked by the Town. Again, just based on if there isn't any construction, then technically they're approval expires. So we have the issue in terms of again, five years pass and even though they're not to 85%, this draft would call for them to pave. The other item is how the Council wants to apply the Ordinance; whether it wants it – I just put in there a five year threshold, meaning, basically if a sub-division was approved more than five years ago, this wouldn't apply to it, but that was just my thinking based on when your sub-division Ordinance changed.

Councilwoman Jones: And what Mr. Kost said, which is it precludes his community.

Seth Thompson: I didn't draft this with any particular community in mind. That's really a policy decision for Council. You know the problem is, again, you have developers that maybe timed their progress under the old set of regulations, the old sub-division Ordinance and now we're saying you've got to do it a little bit earlier than you planned, because your five years are up.

Mayor Newlands: I'm hearing that Chestnut Properties are planned at 80%, so they're probably two houses away from that right now.

Seth Thompson: Okay.

Mayor Newlands: But I wouldn't want to exclude that. I wouldn't want to exclude Cannery Village from this. The five years I would exclude, only because he's probably going to hit the 80-85% real soon. I wouldn't exclude him on the five year basis, because that would make him have to pave tomorrow. I would like to give him a little leeway and say 80-85% and that's fine.

Seth Thompson: Okay.

Vice Mayor Betts: I think we have to make sure we have a bond, from now on, in all developments.

Mayor Newlands: Oh yes.

Seth Thompson: And technically, that's a separate issue, but you're right about that.

Vice Mayor Betts: It would help this.

Seth Thompson: It would. Because it would give them extra motivation to...

Vice Mayor Betts: Exactly.

Mayor Newlands: Heritage Creek is working on Phase 2 and they're working on their bond already. So I would...

Seth Thompson: Change the paragraph and the effective date, basically.

Mayor Newlands: I would make them be liable for the 85%, not the five years.

Seth Thompson: Okay, so it would say shall apply to all sub-divisions and phases that have not reached [and I can take out either] the 85% threshold by the time that the Ordinance is adopted.

Mayor Newlands: Actually, Phase 1 of Cannery Village is probably 95% completed.

Councilwoman Jones: I would have said.

Mayor Newlands: Yes. Yes.

Robin Davis: Phase 1 was the four-plex units; Phase 2A is closest to Route 5; then 2B is in between 2A and Dogfish.

Mayor Newlands: Ellis Drive, what is that Phase 2A?

Robin Davis: That's 2A, yes.

Mayor Newlands: 2A is probably 95%.

Robin Davis: I think there's probably only one, maybe two lots, available there. Yes.

Mayor Newlands: So the 2A they'll become required to do immediately. How many Ordinances did you look at and how many are at 75% and how many are at 85%?

Seth Thompson: I think I saw about six. The lowest was 30%.

Mayor Newlands: Discount that.

Seth Thompson: And I spoke to that town and they said their Code says 30%, but they don't make somebody do it until about 80%.

Mayor Newlands: So 80%, I think 80% is a better number.

Councilwoman Patterson: So you're saying, just based on percentages and not based on years.

Mayor Newlands: No, both.

Councilwoman Patterson: Okay, both. Okay, good.

Mayor Newlands: But I don't want...

Seth Thompson: The effective date to be...

Mayor Newlands: The effective date for Cannery Village to be just the five years, because that makes him do everything immediately.

Councilwoman Patterson: Gotcha.

Mayor Newlands: And he's close to doing 80% anyway and what I'm hearing is he wants to do it at 80%.

Win Abbott: Mr. Mayor, for your benefit, Mr. Kost saw me before he came here. By his calculation Cannery Village has completed 172 of 221 homes, which is 77.8%.

Mayor Newlands: 172 of what?

Win Abbott: 172 of 221, which calculates to 77.8%. Phase 2 was approved in 2004, which was eight years ago.

Mayor Newlands: Okay, thanks. Okay, so next month, more to come?

Seth Thompson: Yes.

Mayor Newlands: Okay, great. Any other questions on that?

17. Executive Session

Mayor Newlands: Let's make a motion to go into Executive Session.

Councilwoman Patterson: I make a motion to go into Executive Session.

Councilman Booros: I second that motion.

Mayor Newlands: We have a motion and a second to go into Executive Session. All in favor say aye. Opposed. Motion is carried.

Vice Mayor Betts: I make a motion to come out of Executive Session.

Councilman Booros: I second the motion.

Mayor Newlands: We have a motion and a second to come out of Executive Session. All in favor say aye. Opposed. Motion is carried.

1. Land Acquisition – Shipbuilders Village
2. Personnel matter in which the competency and abilities of an individual employee will be discussed

18. Adjournment

Mayor Newlands: Can we have a motion to adjourn?

Councilman Booros: I make a motion to adjourn at 10:06 p.m.

Councilwoman Patterson: Second.

Vice Mayor Betts: Do we have to do what we...

Mayor Newlands: No.

Vice Mayor Betts: We don't have to? We didn't decide anything.

Mayor Newlands: No, we don't need to do anything. We have a motion and a second to adjourn. All in favor say aye. Opposed. Motion carried. Thank you all.