

COMMISSIONERS OF POOLESVILLE  
MEETING OF AUGUST 17, 2009

**PRESENT:** LINK HOEWING, JIM BROWN, JERRY KLOBUKOWSKI, LORI GRUBER AND EDDIE KUHLMAN. ALSO PRESENT WAS TOWN MANAGER, WADE YOST, TOWN ENGINEER, JOHN STRONG, AND TOWN ATTORNEY, ALAN WRIGHT.

**Call to Order**

Mr. Kuhlman: Good evening ladies and gentlemen we will call the August 17, 2009 Commissioners Meeting to order. Let the record reflect that all Commissioners are present as well as Town Manager Mr. Yost, Town Attorney Mr. Wright, and Town Engineer, Mr. Strong. First order of business will be the Pledge of Allegiance Mr. Klobukowski please.

**Pledge of Allegiance**

All: I pledge allegiance to the flag of the United States of America and to the republic for which it stands one nation under God, indivisible with liberty and justice for all.

**Announcements**

Mr. Kuhlman: Thank you all, announcements, any announcements.

Mr. Hoewing: Just a commendation that I would like to make. I was reading in our fine local Monocle newspaper about the success of our summer program this year and it really was I think the best by far they have ever had and I would really like to commend the Staff for a great job and I am sure all the kids really enjoyed it, it was really a big success and I want to thank everybody for the effort they made.

Mr. Kuhlman: Any other announcements. All right hearing none the Commissioners did forward a letter to Council President Bill Andrews ccing all the Council Members with a request I guess you would say that there be some fairness applied to the income that the County realizes off the speed cameras here in Town. The State law requires that a percentage or that the net proceeds of that money be spent on public pedestrian safety and so far all the money the County plans on spending is down county Silver Spring, Bethesda, we think some of the money should be spent up here. I happened to be at the fair today for a lunch I was invited to for the Ag leaders lunch and I talked to Mike Knapp about it personally he agrees with us and I also talked to several of our Delegates that were there Al Carr especially and Herman Taylor and they both agreed if we can't get anything done with the County here pretty quick at the start of the session they are willing to introduce an amendment to the law that would stipulate if the cameras are in a municipality a certain amount of that revenue goes to the County so we will have to see what luck we have with the Council here in the next month or two, the session starts early January and I am on the Legislative Committee at MML so I will be down there quite a bit this year during the session so we may have to get some of our friends down there to introduce some legislation to amend the law. Any further announcements hearing none we will move, oh one other we received our statement from Montgomery County on our

investment account and for the 4<sup>th</sup> quarter fiscal year 2009 unfortunately the interest rate just isn't there .58% so that is all we are getting.

**Approval of Minutes**

Mr. Kuhlman: All right move on to approval of minutes from the August 3 meeting, you two weren't present so we need a motion and a second over here.

Mr. Klobukowski: So move we approve the minutes of August 3, 2009.

Mr. Brown: Second.

Mr. Kuhlman: All in favor?

Mr. Kuhlman, Mr. Klobukowski, Mr. Brown: Aye.

Mr. Hoewing, Ms. Gruber: Abstain.

Mr. Kuhlman: Two abstentions from Ms. Lori and Link all right.

**Open Forum and Citizen's Comments on Agenda Items**

Mr. Kuhlman: Open forum anything anybody in general for anything, Mr. Goldberg please. If this has to do with your well or Winchester hold up, this is just general comments.

Mr. Goldberg: Ok.

Mr. Kuhlman: All right. Comments on the agenda items we have 7 or 8 proposals before us tonight from the Planning Commission one is they are recommending different alternative energy uses; they are recommending removing the Planning Commission's review of the Covenants; they are recommending to allow Christmas tree sales for non-profits; and requirements for the Planning Commission Special Exception Variance Review; Shared Driveways Special Exception limitations; change minimum sideline setback of accessory structures from 10 feet to 5 feet; allow only one home per driveway, so no more shared driveways; and the road construction standard that has been discussed here before. Anybody have any comments on any of those items? All right seeing no hands we will also be discussing Skatepark contract award, what we have is a put out a request for bid for the Skatepark design and construction, we received 4 bids on those and we are probably going to award that to one of them tonight, any comments there? All right our illustrious staff is asking for a budget amendment to pay for the Hunters Run pump station repair, any comments there? And the Winchester waiver request, what they are looking for right now the way I understand it they signed an MOU Memorandum of Understanding with the Town that said that they were not allowed to transfer any of the homes built to the buyers until all the water obligations were met and they are asking to be allowed to sell 3 homes before all those obligations are met now so Mr. Goldberg.

Mr. Goldberg: First I am Steve Goldberg I live at 20330 Whites Ferry Road. One of my wells was affected by the Winchester well, I am also representing the estate of Don Peoples his address is 20300 Whites Ferry Road, his property was also affected and he and I also had an MOU a Memorandum of Understanding with the Town for a replacement well, replacement of all the parts dealing with the wells, wiring, full restoration services etc. A few things that I must say as the process dealing with Winchester has been long and laborious the quality of their sub-contractors has been sub par, the follow through has not been very good, the recently the Winchester fellow whose been helping Doug has brought it up a little bit, the work is still not complete for myself work was done without proper electrical permits and then the work prior to that wasn't even to code and was actually dangerous and it took a lot of pushing and pulling to say hey I need it done and I need it done to code. Presently I have 2 items that are left, they

ran a plumbing pipe through a crawl space which is only 2 feet deep and didn't bother to insulate the pipe, they also left about a 2 inch hole in my oak floor which the mice have crawled up and set up a nest in my pantry and that has not been resolved yet. And this I can't blame them for, we are having some settling which happens whenever you dig holes in the ground and they will need to come back in the next few months to finish restoration and I still have a gate that was damaged and still has not been repaired by them. For my neighbor Mr. Peoples I went and looked at it this afternoon, seems too that the well is working properly but as for the wiring they reused an old 14-2 wire instead of running a new 12-2 or a 12-10-2 wire that is grounded the old wire was not grounded so that does not meet present code and I need them to resolve that. Along with some other issues that we have been having with them like last Friday night they were working until midnight laying asphalt what are they hiding by doing asphalt work till midnight, let alone disturbing the police and violating the County noise ordinances, I did call the police, I did notify Doug at Winchester but these things keep happening. This morning they started running equipment before 7 in the morning so yeah it was maybe 6:30 its not a huge thing but its how they proceed with their regular business and how they treat their neighbors is really the big problem and that is why if you give them the waiver, they are not going to get us done in a timely fashion if you hold them until they get the work done they are more likely to get it done and that is really our big issue and Dan Manoff one of my neighbors who hopefully will be here any time now has some continued problems, Jack Poole is also here he wants to speak he has had continual problems with them and it just has been ongoing any competent well contractor should have been able to take care of us within 1 to 2 days not 2 months and multiple repeated trips. So it's a bigger issue besides just a piece of insulation on a pipe, thank you.

Mr. Kuhlman: Thank you any comments. All right that is all thank you Sir anybody else, Mr. Poole.

Mr. Poole: My name is Jack Poole I live at 20215 Whites Ferry Road and my complaints are they tell me I have a --- well that leaks, well they have been there 4 times it still leaks. Lets see since they put it in I still am not able to drink the water, I am still buying water, nobody has told me that I can drink the water. Working at nighttime yeah I would say midnight plus, mornings earlier than 6:30. When I make phone calls I get nowhere with them. These speed cams they tell me that they are going to put a curb in up next to where their model house is so they put them across the street in front of my house which I imagine the value of the house goes down, they said they can only put it, that they had to put it 250 feet from wetland but they are in wetland. I guess that is it.

Mr. Kuhlman: All right any questions for Mr. Poole?

Mr. Brown: No thank you.

Mr. Kuhlman: All right thank you Sir. Anybody else on this issue, yes Sir.

Mr. Lemon: My name is Mike Lemon with Winchester Homes and I am sorry for the problem that you are experiencing Mr. Goldberg and Mr. Poole. I came here tonight just to reiterate the letter that we had written a request for a waiver for the permits to get water to the homes that we hope to settle in September and I brought Mr. Detrick here tonight because when we received Wade's letter voicing some concerns with the well installation I wanted to make sure that Doug was here so he could address those questions directly because Doug is more to the point in the field and can address those concerns hopefully he can do that tonight I'm not even sure this is the right forum to do that but we

definitely want to make sure that we satisfy all our customers and do what the Memorandum of Understanding states. To bring you up to date we have completed the 6 wells that the MOU detailed 4 of which we've gotten potability taps at this time, the 2 that we don't have potability taps on, Mr. Manoff's well he wishes to keep his existing well hooked up so we are kind of at a standstill where we have a new well that is installed but Mr. Manoff would like to keep his existing well. The other residence is Mr. Pearce he got his well connected and on the first potability test it failed but he is out of town until the 21<sup>st</sup> we have had great difficulty getting a new date with him, we just went past his house tonight and he has someone watching his house, trying to set up a date when we can test his well so we can get a potable pass test on it. Friday of last week we realized there may be an MTBE issue at the Getty Gas Station and that might hold up the bringing online of the Schraf well so we are very concerned and we wanted to come to the meeting tonight and we really appreciate you giving us this forum to do so. Moving forward our contractor manufacturer --- is coming out to the site on Thursday to do the manufacturers certification on the well at which point in time I am assuming it would be up to Wade and the Town to chlorinate, test the well and begin MDE's approval on the well to bring it online, again I brought Doug here tonight so we can at least address some of the concerns that we heard and we would like to do so now if that is possible at least...

Mr. Kuhlman: Actually no its just comments right now when the agenda item comes up we are going to get into it in depth at that time.

Mr. Lemon: Ok well I thank you very much for the time you gave us on this matter.

Mr. Kuhlman: All right anybody else with just general comments on the Winchester water request Mr. Manoff please.

Mr. Manoff: My name is Dan Manoff I live at 20405 Whites Ferry Road. Comments would be that the experience that has been mine with this whole well project has been it's been like trying to push a noodle up a hill. First it was a problem I got a scheduled date and they didn't post, when they did post the fellows came in and started doing the work and assured me that we wouldn't have a problem with grading or grass or silt runoff all of which became a problem. Then they left the well not hooked up and I got a call from Andy Summer with Montgomery County who said hey I want to test your well and I said well the well doesn't work he said why not I said because it is not hooked up so Andy went ahead and made a phone call to Doug at Winchester Homes and said we got to get this straightened away and I got a call from Doug saying we need to get this thing hooked up so I can get my electrician to come do it, I don't know if that cost a few hundred dollars I don't know, he said once you get a bill let me know so it was \$300.00 to have an electrician come out and do it and I said I want to be paid for that, yeah you will be paid for that, I got an email I kid you not it was 2 pages when I printed it out, they want me to fill out a form I am supposed to register as a sub contractor so I can then get a check for \$300.00 it is kind of like are you kidding me for \$300.00, so where it sits right now is I've got a pretty poor grading job with deep ravines in the yard, I got a lot of silt from the runoff when they did the drill and I do have a working well ok, I am not inclined to have anyone come out and test the well and I told Mr. Summer this till I get paid, I don't see what the incentive is for them to pay me if the well gets tested and passes well that is your problem Sir you got hooked up. So that has been my experience thus far it almost feels like our time doesn't matter as citizens here we didn't create this issue, they come in

and they want to build homes but yet we are supposed to jump through hoops I already lost 2 days work around it and they are like sorry, that doesn't work for me.

Mr. Kuhlman: All right any questions for Mr. Manoff, all right thank you Sir. All right our last 2 items if anybody has any comments is on the band shell concept for out front and our last one is back to dealing with the parking prohibition language for RV's and large commercial trucks, any comments there?

### **New Business**

Mr. Kuhlman: All right seeing no hands we will go back to the agenda the Planning Commission recommendations and ordinance changes I guess the easiest thing to do Wade is just take them one at a time as they are listed in the chart.

Mr. Yost: Ok.

Mr. Kuhlman: And hear what the Commissioners comments and concerns are with them. All right so you got the first one the Alternative Energy Systems to Use Chart do you have anything you want to say Wade.

Mr. Yost: Well this particular subject here there is a timeframe that the Planning Commission is looking at getting back to the public, they had a 6 month waiting period and so we knew that we had to go through the process the Planning Commission sent it to you guys it goes to a public hearing so we can definitely hit on that one and possibly make sure that it goes for a public hearing we can do that on September 8 with the other public hearing we have scheduled currently. The other ones there is no pressing issues as far as getting through all of them if that is the case, some of them are very easy some are going to take some time.

Mr. Kuhlman: All right any questions or comments from the Commissioners on the proposal.

Mr. Klobukowski: I do. I am sort of the chart is easy to read and everything else I understand that but the section with the verbiage seems to be very light in detail and stuff and having passed out the small wind energy systems draft ordinance from Ocean City I as hoping to see something with the words that are in there and I think some of them are it would be incorporated and I'm just wondering as to why they were not.

Mr. Yost: The Planning Commission as they went through it we did use some of that language, some of it was cut out basically because it was only applicable to the RDT and so some of that language doesn't reflect that that is the only zone that the Planning Commission is recommending windmills be allowed in.

Mr. Klobukowski: Only in RDT.

Mr. Hoewing: Yes.

Mr. Yost: Yes.

Mr. Hoewing: See the P that is the only place it is allowed.

Mr. Yost: If it is blank it is not allowed on the top box at least.

Mr. Klobukowski: Yeah I see that but I am wondering about ok but you have got Special Exception in CBD and Com...

Mr. Yost: Those are for solar systems.

Mr. Klobukowski: Ok all right.

Mr. Kuhlman: Anything else Jerry?

Mr. Klobukowski: What about like an unsafe or abandoned systems regardless of if it's the RDT or not, ok there it is I'm sorry.

Mr. Yost: Yep out of service for 12 months. We did cover it fairly well and John and I both met with solar companies, we met with windmill companies, and we met with geothermal companies so we had a good understanding of the process itself and the technology where it stands now which helped us put a lot of this together, as well as using other model ordinances from other municipalities.

Mr. Klobukowski: Ok.

Mr. Kuhlman: Mr. Brown?

Mr. Brown: No I'm ready to go through them.

Mr. Kuhlman: Link, Lori?

Mr. Hoewing: I went through them the other night that is all I need.

Mr. Kuhlman: My only question right now is what was the rationale behind the solar systems for off site use being its not allowed anywhere but it is a special exception in the RDT, you look at the County zoning ordinance it is not allowed in the RDT at all and I had the luck today that the Chairman of the Park and Planning was at that luncheon Dr. Joyce Hanson and asked him why its not allowed in the County and he said he wasn't aware of the reason that it is not allowed but it is not allowed. So my question to the Planning Commission is why do they intend or want to allow it even as a special exception use if the County won't allow it when the RDT was set up for agriculture not a commercial business of this type.

Mr. Yost: Right and Joyce is not here to speak to this but really I think the thought process was the RDT is the only area that has large enough parcels that would allow this to happen and our RDT is not really for preservation of agriculture just because that is the way it is zoned and it is not zoned as far as 1/3 acre which would be the next zoning so its just a matter of we had different principals or policies as far as the County, they want to preserve agricultural land and outside of Town that is not really our goal is to preserve the agriculture its just larger lots so it allows it to be.

Mr. Hoewing: And the truth is Eddie if you look at the RDT uses there are a lot of uses that are not agriculture that are allowed in RDT, rifle ranges that is not agriculture so those guys can come in and apply for a rifle range if they want to, that was part of the rationale too that as long as they are far enough out and they are not going to be visible to the Town resident which they won't be it was felt and again with a special exception it is not automatic they have to come in and justify it.

Mr. Kuhlman: I understand that.

Mr. Hoewing: That was the reasoning.

Mr. Kuhlman: I'm just curious as to why the County will not allow it is there environmental reasons I mean I know the systems as you and I talked today don't have batteries anymore because this goes right to the grid but is there some kind of a cooling agent that cools these glass when they get too hot, what is there as to why the County won't allow it.

Mr. Hoewing: Nothing.

Mr. Strong: It's a --- case system so it --- glass treated (inaudible). There is nothing hazardous to it.

Mr. Hoewing: On the other hand to Eddie's point there are types of solar generating systems that do use mirrors and reflecting devices and heating towers so I guess we might want to define that that is the kind of thing we are talking about when you talk about solar

systems, not that anybody would do that necessarily but you could come up with that kind of system as opposed to...

Mr. Yost: Yeah all the ones you see the technology of the farms the solar farms that are around.

Mr. Kuhlman: My main point is I'd just like to hold this and find out why the County won't allow it, is there some sort of environmental concern, what is the reason the County won't even allow it.

Mr. Yost: I'm pretty sure it is preservation of land but we will check that out.

Mr. Wright: But if you want to go forward with the introduction you can eliminate that if you don't like the answer when it comes time to pass it you just amend it out.

Mr. Kuhlman: Well it just I mean maybe for Mr. Speelman's education they are saying that small wind energy systems on site would be not allowed anywhere in Town so I mean if you are going to take that position it is hard for me to understand why they would even want to set it up as a special exception for great big commercial systems.

Mr. Yost: Aesthetics is the primary.

Mr. Klobukowski: But if someone were to put it behind a barn where no one could see it.

Mr. Kuhlman: Jerry they are talking about for the production of off site...

Mr. Klobukowski: Yeah production of off site I think the correct terminology though is for they use the word grid in there, its not for produce off site it is for putting power into the grid specifically to generate power to go into the grid.

Mr. Yost: We redefined that --- three times going through this to try to get the right and I still don't think we are there but...

Mr. Klobukowski: That is the implication basically if it's the same thing like --- like John said is one is Harry Homeowner and the other is actually someone that puts out several of these to generate electricity to put into the power grid.

Mr. Kuhlman: Well I think that is pretty clear solar systems on-site use means used by the consumer right there it is permitted everywhere except it is a special exception in the commercial and the CBD but then a solar system where production is for off-site use going into the grid so in other words you could ultimately see...

Mr. Klobukowski: But off-site could mean you could power a next-door neighbors house.

Mr. Yost: Right and that is what it is supposed to mean exactly because they all feed back into the grid, you are home all day so it is going to credit you basically into the power grid and then when you come home your bill is much less at the end of the month, it is not like you are using the power to generate you do feed back into the grid all the time everybody does with solar.

Mr. Kuhlman: Well when I read this my first impression was you are going to see a solar farm, 100 acres covered in panels.

Mr. Yost: That is what the produce for off-site use is correct that was the best way we came up with to define it so it wasn't confusing, we called it commercial and which there is commercial zones so we didn't want confusion with that also.

Mr. Kuhlman: So I have a mental block I guess I can't understand why the Planning Commission would allow that to be a special exception use but just shut down windmills 100%.

Mr. Yost: Well they talked about having windmills in the RDT as like a windmill farm also and they thought that would really detract from...

Mr. Hoewing: They couldn't decide.

Mr. Kuhlman: I'm sorry I forgot you are on there Link.

Mr. Hoewing: Yeah essentially we had a 2-2 vote then George came and I think we just dropped it at that point so there was a lot of discussion on your point Eddie it is valid, I think it is worth thinking about if we are going to do one why not the other. I think it is more obviously more intrusive if you have seen a large wind energy systems generated these are not 60 foot tall these are much bigger than that.

Mr. Kuhlman: You see them up in Pennsylvania.

Mr. Hoewing: But you have a point it is for commercial use and that is what the solar system would be for too so that is why it is here at the Commission to consider that.

Mr. Klobukowski: If you put in the words to affect the same existing power grid sort of narrows it down to where people are feeding it into Allegheny Power as opposed to someone who decides to set up his own little company.

Mr. Yost: Right and I am not sure if they sell it that way or sell it back to the power company or how that would work.

Mr. Kuhlman: All right so I guess nobody else shares my...

Mr. Klobukowski: I have one other question on geothermal I'm sorry I thought I had it written down but I didn't, there is 2 things, 1) it says only horizontal closed loop system allowed, fine is there going to be a demarcation or something denoting on the plat where this is located.

Mr. Yost: Yes if you read the section on the permitting process, that is what they have to do they have to bring in a plat and show the location of where this is going to be on the property, where the location of the existing utilities are so we have a exact plan.

Mr. Klobukowski: It is going to be recorded.

Mr. Yost: Yes just like a regular permit like a shed.

Mr. Klobukowski: No, no be recorded on the plat.

Mr. Yost: Yes.

Mr. Klobukowski: Ok.

Mr. Yost: Well as it is with a shed or a fence or anything else, typically they are just basically drawn on exactly where they are on the plat.

Mr. Klobukowski: The other thing is I had a discussion after the last meeting with George you listen to the radio and the T.V. and somebody has always got a better product to make somebody do something better, you know pump your muscles up etc., etc., and I'm just wondering what is to prevent someone from coming in because we do say non-toxic food grade liquid chemicals if someone comes in and says hey look I can fix this up for you I can make it really super duper we will just switch this chemical out, what is in there we will just flush it out and put this in and your geothermal energy will go up by 30% or something like that and then you find out the chemical is toxic, is there something there that would prevent anyone from number 1 once they put the system in it is certified by someone and there is something put on it like a crimping seal or something that locks that so that they can only be opened by certified people who are authorized to change this so that we don't end up having someone deciding on their own to put in something that shouldn't be there, and then we end up with a possible contamination of the aquifer which hopefully will never happen.

Mr. Yost: What was the volume they talked about as far as the material John?

Mr. Strong: 1000 gallons.

Mr. Hoewing: Are you talking about putting a stairway to this thing is that what you are worried about.

Mr. Klobukowski: No I am talking about a chemical compound...

Mr. Strong: That was one of our concerns and a very similar concern and...

Mr. Yost: There is not a way to address it right now no, we went through this already you are right there is not a way, the technology is going out so everything is getting away from the toxic chemicals to the food grade so it is moving more in that direction than what it used to be. You go back and right now we have I am not for sure how you would even do it.

Mr. Hoewing: When we said a certified installer though Wade there is nobody that actually licenses these things or anything like that so they have to have some kind of training before they do this?

Mr. Yost: No there is they are certified installers that is exactly what they are.

Mr. Hoewing: Ok so hopefully they are trained to do that and when they say this is a certified system they haven't put something toxic in the system.

Mr. Yost: Right they are going to certify this is the way it is going to be when they go through the permitting process.

Mr. Kuhlman: So a geothermal system has a fluid that is pumped through to absorb the coolness and the heat out of the earth.

Mr. Klobukowski: Right there is 2 different ones there is one that actually sucks water out that is already super heated water and puts it through the heat exchanger and the other one is this type of closed loop system where you have piping within a pipe or piping that goes down and winds its way around the ground soaking up the heat.

Mr. Kuhlman: So is the fluid water that runs through the pipes or something else?

Mr. Yost: It is something else it's a coolant.

Mr. Kuhlman: A coolant.

Mr. Yost: A food grade.

Mr. Klobukowski: Yeah George says you could drink the stuff but I don't know if I would want to.

Mr. Yost: That is what the manufacturer said too.

Mr. Klobukowski: I can remember the commercial of Safer when they first came out with one of their products, the guy sprayed that stuff on an apple and took a bite out of it I think I saw that commercial for 2 weeks before you never saw it again so if it was so safe...

Mr. Hoewing: The guy died huh?

Mr. Klobukowski: I don't know they have all these assurances and what the first person puts in there yeah I know coolants I know a lot about coolants and hydraulic fluid and what the first person does is not necessarily the 2<sup>nd</sup> person might decide to do something else or again somebody comes in and they find out this guys got it, hey I got something super duper are we going to have some way of insuring that what goes in there stays in there, that its...

Mr. Hoewing: No.

Mr. Yost: You'd have to go into homes and inspect the systems I guess on an annual basis maybe or something of that nature, I don't know how else you could do it.

Mr. Strong: You could do that but if they already switched it out.

Mr. Yost: You are not going to know then either.

Mr. Strong: Unless you have a seal like you were talking about something along those lines.

Mr. Yost: And as soon as it does get a hole in it, a small pinhole it starts to lose fluid automatically the system loses pressure and it quits working. You would know immediately if there was a hole in the system itself.

Mr. Kuhlman: Ok is everybody happy with this or is there any recommended changes before we move on?

Mr. Klobukowski: Well I would like to see something more in there that restricts and if there is an inspection service something to guarantee I guess maybe I have been around too many guys that say watch what happens when I do this when I throw this switch.

Mr. Wright: Well again you can ask for some answers on these kinds of questions but by introducing it you get the process going and you have your hearing and you hear what people in the community think about it then you bring it back and make a decision either up or down or hey we need some more information lets table it until the next time.

Mr. Kuhlman: I don't disagree with you what you are saying Alan but if there are going to be some changes to it I would rather at this level right now I would rather get the changes made before it is introduced so that people are coming to hear I mean right now I am pretty committed that I am not comfortable with the solar system being a special exception right now I don't want to see a 100 acres worth of solar panel in Town. I am very concerned now about this geothermal with our aquifer I mean Link back in 1970 when I was turning wrenches it was acceptable to drain Freon into the air.

Mr. Hoewing: Yeah but what Alan is talking about is something different which is that somebody intentionally puts toxic liquids in the pipes this stuff is not toxic that is in these systems so he is talking about somebody intentionally lying...

Mr. Kuhlman: No, no I am talking about I need more information on it myself, I would like to hear from somebody that is licensed or something that can answer Jerry's questions, my questions before we go further.

Mr. Klobukowski: I'm not saying that it wouldn't be installed properly the first time but again human nature being what it is there is always someone who has got a better idea, better mousetrap that is what makes the world go round that is what happens.

Mr. Kuhlman: All right so what is the feeling to move forward with this or to hold it while we get some clarification.

Mr. Hoewing: When we have the hearing why don't you have somebody come in who is a professional installer and have them answer questions directly that is a lot easier way to do it than...

Mr. Kuhlman: I can't hear both of you at the same time.

Mr. Yost: We may we could probably get an expert to come in we might have to pay him to come in definitely though to testify.

Mr. Hoewing: You can look it up online I mean there is a lot of information online its not hard to find it so if you want to have the Town Staff do a report or the Town Engineer do a report based on research you can do that too. I don't know what you do about people lying if that happens it happens.

Mr. Brown: Yeah we can't guard against every criminal or possible criminal offense because that is what we are talking about so I think we should move forward with it and get the expert in if we can find one.

Mr. Kuhlman: All right is that everybody's feeling. All right then Wade if you would look into those 2 concerns please and have a report. All right the second issue is the Planning Commission is recommending the removal of the words "that each application shall include a copy of any and all covenants declarations or other documents enforceable by other land owners inside the proposed subdivision as well as adjacent thereto", they are going to remove all that to where the Planning Commission has a right to review those documents.

Mr. Klobukowski: Is that what we want the right for them to review it or are we saying we don't want any sort of covenant period.

Mr. Kuhlman: No we are removing the right for the Planning Commission to review.

Mr. Yost: They are not acknowledging that the covenants even exist, covenants are between 2 homeowners and they are just saying we don't want to have a review process, we don't acknowledge them, we have our own codes and ordinances.

Mr. Klobukowski: So what you are saying is that whatever you guys sign on to it is your business the Town will not get involved. Link that is what you meant.

Mr. Hoewing: That was the intent you guys can decide that you want the Commission to formally review it if you want to, we had decided that if we have any review at all that is even implied that just means that we are acknowledging that these have some bearings on the Town's laws and we don't think they do.

Mr. Klobukowski: Well wouldn't it be better to be straightforward and say no covenants shall abridge any laws existing or future laws that are...

Mr. Yost: We went through this here and...

Mr. Hoewing: Liability.

Mr. Yost: It is a private agreement between 2 homeowners, its like trying to tell 2 private homeowners what they can agree on, being a 3<sup>rd</sup> party to a contract, Alan can probably explain it better, we have been around this one several times too.

Mr. Klobukowski: I guess the debt to hang up there is when you say homeowner and I'm thinking covenants are usually started by the developer.

Mr. Kuhlman: Covenants are put in place by the developer when they record the lots or record the subdivision, they are enforceable only by the homeowners.

Mr. Klobukowski: Right ok yeah I know that.

Mr. Kuhlman: If you bring a cow into your backyard because I can guarantee you your covenants forbid farm animals, well the Town has a law but if we didn't we couldn't stop you, your neighbor would have to sue you in court privately to get rid of the cow.

Mr. Klobukowski: Ok.

Mr. Hoewing: I mean we did discuss the idea that we would actually review to make sure that they were in compliance and not in conflict with Town law but that puts you in a really bad spot we thought because then it acknowledges some responsibility for the review later on and we have always taken the position too I thought as a Commission that Homeowners Associations were not something that we officially recognized, if we decide to do that we are officially recognizing them.

Mr. Kuhlman: Homeowners Associations are not allowed by the Code Book except in a townhouse project.

Mr. Hoewing: Ok so we don't recognize them except in a townhouse but even there...

Mr. Kuhlman: You can't enforce them.

Mr. Hoewing: Right.

Mr. Kuhlman: My concern here is this has been this way on the books for quite a few decades, we have never had a problem until the Barnes-Drs case came up, is this a knee jerk reaction we don't need. I mean I don't see any harm in reviewing them to make sure there is nothing outlandish in the covenants, we are not committed to anything other than they have to furnish a copy of them for our review.

Mr. Wright: We had some alternatives I think it was somewhere in the middle but wiped out by this final proposal but I think the language was provided for review --- and comments and then a clarification that it had no binding effect on the Town Zoning Ordinance and in case there was any conflict or something to that effect then the Town Ordinances would in any case prevail.

Mr. Klobukowski: Well if we are going to say something if we are going to review then why don't we say something like no covenants shall --- any laws in effect or which may come into effect in the future, which then basically says you can put something in your thing but if we pass a law saying you can't have chickens spotted red chickens in your yard or something than that is what happens regardless of whether the covenants may say you can, so I mean wouldn't that in effect cover both things 1) we get to review the covenants whereas Eddie said anything something outlandish where all of a sudden people say you can't have wood wind chimes they all have to be metal or all the siding has to be purple.

Mr. Wright: That is what I say that was one of the options, have it reviewed and available for comment by the Planning Commission but make it clarify that it's not binding and has no effect on the Town Ordinances.

Mr. Klobukowski: Or the Town whatever if I saw words like that then I think I would agree with Eddie.

Mr. Kuhlman: Well I mean here is what the existing law says that written application by the owner or agent shall be filed with each preliminary plan and contain such information as the Planning Commission shall require each such application shall include a copy of any and all covenants, declarations, or other documents enforceable by other land owners inside the proposed subdivision as well as adjacent thereto, a Homeowners Association, Architectural Control Committee or other similar body that can impose restrictions on the development or use of the lots in the proposed subdivision, such covenants, declarations, or other documents shall be reviewed by the Planning Commission period. It has worked for 30 or 40 years until the Barnes.

Mr. Brown: Link what tilted it toward the harder interpretation do you remember?

Mr. Hoewing: It was the Barnes case I mean that is the first one maybe it will be the last one. Eddie is right we could just leave it like it is or we could go we had the stronger language we decided that if we I guess I'm not interpreting it quite the way Eddie is, I thought we basically said we don't acknowledge Homeowners Associations but they can form them but we don't acknowledge them, if we don't acknowledge them why are we reviewing there...

Mr. Kuhlman: No because they are allowed for a townhouse.

Mr. Hoewing: Sure they are but we are not acknowledging them as a Town we have always taken the position we are not acknowledging them, if we don't acknowledge them why are we viewing their by-laws it doesn't make any sense it's a conflict that is the primary reason we decided to do this, if we want to say that we acknowledge they exist

that is different. You are in affect acknowledging their existence and validity if you formally...

Mr. Kuhlman: Covenants are not part of a Homeowners Association, covenants are placed by the developer when they record the lot. If you form a Homeowner's Association...

Mr. Hoewing: Who enforces them?

Mr. Kuhlman: Then you come up with a set of rules and guidelines, we don't ever see those, we don't see those, and the Town has no authority to enforce those at all.

Mr. Hoewing: What is the distinction you are drawing here I am not quite clear?

Mr. Kuhlman: Huh?

Mr. Hoewing: What is the distinction you are drawing here, you mean Homeowners Associations have architectural review boards that is not, you are saying that is not something we care about.

Mr. Klobukowski: Aren't we just a term of art one says...

Mr. Kuhlman: They submit them to us and we review them, we don't have any right to change them, we don't have any right to enforce them, all we can do is make suggestions, if they submit something and say something ludicrous or something that just goes entirely against Town Ordinances then we can make them aware of that. If we don't see them we can't make them aware that it is contrary to our law. It has worked for 30 or 40 years the way it is, I don't know why we are proposing to change it just because of one instance.

Mr. Hoewing: That is going to take us to court and we may lose our power over it ok well maybe it doesn't mean anything you are right. Precedence wise it has been pretty significant it is not just one case it is a pretty important case.

Mr. Kuhlman: It is one instance.

Mr. Yost: So maybe we should speak to it during the Special Exception to say that Special Exceptions should consider what the judge said the covenants because that is what it is all about. So if we acknowledge them by reviewing it than we should possibly.

Mr. Wright: Well I would disagree.

Mr. Brown: Its either leave it as we have it or make it tougher, but I think leave it as we have it has served us very well over the years and just because we potentially had a judgment that went against our direction doesn't mean that we have to have a make an amendment to this.

Mr. Kuhlman: Well accordingly even if we lose the appeal this isn't going to change anything because the Judge's decision will stand that we should have honored the Covenants so doing this doesn't change the outcome of that it just gives up something we already has that has worked for numerous decades. I don't understand why we are doing this.

Mr. Hoewing: I thought --- asked for it but I might be wrong, I thought we were asked to do that but ok. Maybe I was misinterpreting but I think the Commission did ask us to do that, that is what I heard so we got a fine going in the other direction, staying where we are I don't really care I'm --- either way, it just seems to me we are acknowledging their legitimacy if we keep the existing process or if we adopt the one that the middle ground one.

Mr. Yost: We had quite a bit of language too before.

Mr. Hoewing: Right and that is all right if we just know that that is what is happening.

Mr. Wright: Yeah we acknowledge their existence, we don't endorse them in any way by the existing language otherwise I think the law as I interpret it does not require us to say anything different than is already here and I'm counting on that being upheld in the appeal but...

Mr. Hoewing: Just keep it that is fine with me.

Mr. Kuhlman: All right lets move on, all those that want this to stay and go to a public hearing.

Mr. Wright: Is somebody moving to introduce this?

Mr. Hoewing: No we are discussing it now but...

Mr. Wright: If no one is going to move to introduce it with a second then it is not introduced.

Mr. Hoewing: No it is not a formal motion these are recommendations to the Commission so somebody has to say they endorse them.

Mr. Kuhlman: I am looking for those that want this to move forward.

Mr. Hoewing: If you guys don't want to do it that is fine with me.

Mr. Brown: No.

Mr. Kuhlman: All right than this just goes in the trash.

Mr. Klobukowski: Well wait a second there is nothing in here or maybe I am not reading it correctly that says they will review it to assure anything I mean basically if we kept it the way it is and we added words to say do not --- the existing laws of the municipality of Poolesville or something like that it would be more specific and then would that give the Planning Commission some power then over them.

Mr. Kuhlman: We don't want power over them.

Mr. Klobukowski: Or at least prevent something of the nature we are going through.

Mr. Wright: The only thing that creates a slight implication that the Planning Commission should do something with it is that it says the covenants, declarations, or other documents shall be reviewed by the Planning Commission, it doesn't say what the purpose of that review is whether the Planning Commission should direct anything one way or the other so it leaves it with a little bit of (inaudible).

Mr. Kuhlman: Ok so that one goes away. Next order is the Christmas tree sales will be allowable for non-profits in the 1/3, 1/2, and 3/4 acre zones as long as they have paved parking for at least 20 cars and will be allowed from December 5 to December 25 any comments.

Mr. Klobukowski: Are you going to change the language (inaudible).

Mr. Kuhlman: No right now Jerry they are not allowed. It says they will be allowed to sell them from December 5 to December 25 if they have paved parking for 20 cars.

**Recorder Malfunction can only hear Mr. Kuhlman**

Mr. Kuhlman: Now my only comment here would be Montgomery County got into a little quandary last year with this December 5 because this law --- I think and they had a church that set up to start selling in Potomac I think it was on December 1 and somebody called to complain, Montgomery County had to go out and shut them down for 5 days so I would offer that we change that to December 1 to December 25.

Mr. Yost: Inaudible.

Mr. Kuhlman: Well your notes say that but it doesn't show the chart. All right so change that to December 1 and we will move that forward. All right the next one is adding the requirements to the Planning Commission during a Special Exception/Variance Review

that whenever there is a request for a special exception or variance the Planning Commission shall review the application at its next available meeting and forward any recommendations to the Board of Zoning Appeals including but limited to whether the application meets the requirements of Section 3 and 10. Any questions, comments or concerns here, all right so then this one moves forward. All right the next one is shared driveways special exception limitations and it says that there will be basically its any residentially zoned property having a shared driveway, any special exception use that materially increases the number of cars using the driveway shall not be permitted.

Questions, comments?

Mr. Klobukowski: My only question is (inaudible).

Mr. Kuhlman: Excuse me that was the Town Manager falling out of his chair.

Mr. Wright: Who added the word materially (inaudible). You don't want someone who criticizes special exception use because there might be (inaudible).

Mr. Hoewing: (inaudible) once or twice that would mean materially, that would not be materially, 10 cars would be, that was what we were thinking.

Mr. Kuhlman: That is what I am anticipating or interpreting.

Mr. Hoewing: We had discussed maybe to say no parking in pipestem driveways you have to do it on the curb just like everybody does. The special exception in our neighborhood for example they can park for 10 minutes and drop kids off that is it.

Mr. Yost: But that doesn't (inaudible).

Mr. Hoewing: But they walk into a mall now and it is 250 feet from the car to the mall.

Mr. Brown: If Alan likes the language this has right here I like it I mean I just think that covers it kind of neatly, it is not too heavy handed and it is not too light.

Mr. Kuhlman: All right so the feeling is this one moves forward, hearing no objections that one moves forward. Next one changes the side yard setback in the 1/3, 1/2 and 3/4 acre zones for an accessory building from 10 feet to 5 feet. Any questions or comments?

Mr. Klobukowski: (inaudible).

Mr. Yost: Residents are always --- swing sets, sheds, irregular shaped lots the shed ends up with --- of the yard taken away (inaudible).

Mr. Kuhlman: Ok hearing no comments it will move forward. All right the next one is eliminates shared driveways in any new subdivision. I have a great heartburn with this one.

Mr. Klobukowski: I have none.

Mr. Kuhlman: I know that Jerry, I anticipated it, but we will discuss it anyway.

Mr. Hoewing: Well first lets acknowledge the obvious that (inaudible).

Mr. Kuhlman: Well that is true.

Mr. Hoewing: (Inaudible).

Mr. Kuhlman: How many plans are approved right now, Kettler, Winchester.

Mr. Klobukowski: (Inaudible).

Mr. Kuhlman: The Planning Commission wouldn't allow it to happen.

Mr. Yost: It is a modified tertiary road still (inaudible).

Mr. Klobukowski: Well that was raised initially at the Parks Board.

Mr. Kuhlman: Well my question is how many pipestem lots do we have in town right now and we have had no problems with them until the Barnes issue and believe me there is people that want to buy those, they see that as an asset.

Mr. Wright: There is a difference between a pipestem and a shared driveway, this is talking about sharing driveways on pipestems you can still have a pipestem a lot that goes back to a lot the doesn't have frontage aside from the driveway itself on the street but you couldn't have one under this language that is shared by 2 houses.

Mr. Klobukowski: (Inaudible) Tama II where you have 6 or 8 houses around...

Mr. Kuhlman: And we never heard anything until the Barnes issue.

Mr. Klobukowski: (Inaudible).

Mr. Kuhlman: That is true but we have also been talking a lot about green issues and whatnot environmental issues and now you are talking about increasing the amount of impervious areas by outlawing these driveways.

Mr. Klobukowski: Ok but how much are we spending with Alan now having to pursue this whole thing I think that is justification itself.

Mr. Kuhlman: Yeah but you took care of that a few minutes ago by material change.

Mr. Klobukowski: Yeah but at the same token I think you avoid all --- if you have them yes we have them that covers the existing one, the future regardless of whether we have any more developments.

Mr. Brown: I 100% disagree. I think there is absolutely no harm beyond what happened with the Barnes right now which is not necessarily a pipestem or a shared driveway issue in my mind, it is another issue all together and yes it did come as a result of a shared driveway but that is a one time only thing we have plenty of people in this town that have shared driveways, pipestems, etc., and there is never a problem with them and I am not afraid to say it I don't think it is a dirty word to allow a development to maximize their house potential and I think I mean Eddie it is nice to see you speaking green but at the same time too I think we are making a big to do about nothing here, there are people who prefer pipestem and shared driveways, they are out there, they are also it may be priced less which may be a better price point for somebody that may not be able to live in a regular house so I think they have a role, we had one event that is causing us to consider this.

Mr. Kuhlman: And the driveway that is not the crux of the problem it is allowing the business to operate in the house that is the problem.

Mr. Hoewing: Actually we probably could have solved this if they parked on the street and that was a mistake. Just for the record I have no vested interest one way or the other.

Mr. Kuhlman: All right so that is 3 Lori?

Ms. Gruber: I do not think (inaudible).

Mr. Kuhlman: Ok so this one goes away. And the last is our road construction standards. Since this was last introduced Wade there have been some changes made.

Mr. Yost: The only changes (inaudible).

Mr. Kuhlman: Ok and John offered some language also he wanted incorporated that got in there.

Mr. Yost: Yep.

Mr. Kuhlman: Ok.

Mr. Klobukowski: (Inaudible).

Mr. Kuhlman: Come up to the microphone John please.

Mr. Strong: John Strong just a clarification to what was written before all --- pavement designs are based upon minimum California Bearing Ratio with a CBR value of 7 a sub grade surface elevation if the CBR is lower than 7 the developer's engineer shall submit

to the Town a revised pavement (inaudible). The revised pavement section shall (inaudible) of quality. This data will be reviewed by the Town and accepted or rejected as the proposed section, the developer has the right to submit to the Town an alternative paving section to be accepted or rejected by the Town. CBR samples shall be taken every 500 feet along the centerline of the road at sub grade or where there is a change in materials (inaudible). The town reserves the right to take comparison samples of sub grade material and then there was a typographical error (inaudible).

Mr. Kuhlman: Ok any other questions Jerry, anybody have a problem with that one. All right so we have 6 that have survived we need to set public hearings on, or we have 5 that survived and one that needs more information.

Mr. Yost: You want to hold off on this one.

Mr. Kuhlman: I would like to hear what you all have to say before it goes to public hearing and I don't really feel like scheduling 6 public hearings in one night.

Mr. Yost: (Inaudible).

Mr. Kuhlman: So you have basically 2 that deal with the special exception on shared driveways, you have a 2 --- ones about the 5 foot setback and the Christmas trees you could do those 4 in one night and the other 2 on another night is what I was thinking.

Mr. Yost: So which 4 again?

Mr. Kuhlman: The Christmas tree sales, the side yard setbacks and the 2 dealing with the special exception shared driveways. We could set those tonight for the last meeting in September or the first meeting in October.

Mr. Yost: (Inaudible).

Mr. Kuhlman: Which one is the 8<sup>th</sup>.

Mr. Yost: Anti Blight Ordinance.

Mr. Kuhlman: All right anybody have a problem with that. All right so set those for the 8<sup>th</sup> get the other answers on the alternative energy and we can set that one after does that meet everybody's approval.

Mr. Brown: Yes.

Mr. Kuhlman: All right very good. Moving on Skatepark contract award.

Mr. Hoewing: Can you verify what a hubba ledge is before...

Mr. Kuhlman: Mr. Hoewing I would like to think you are not dragging on (inaudible). Mr. Yost what have you got to say here.

Mr. Yost: All right we did go through it (inaudible). The Skatepark committee came up with some guidelines (inaudible) 4 proposals came in and had them submit concept plans and they submitted 2 options, everybody all 4 of them did we evaluated those Staff (inaudible) the same place Artisan Skateparks out of North Carolina be awarded the project (inaudible). I have also provided a breakdown sheet of cost, does everybody have that with them. For funding we actually have \$242,000.00 right now (inaudible) in the General Fund, award the contract (inaudible) about \$211,000.00. The Committee also wanted to do what they call Phase 1 (inaudible) parking, sidewalks, (inaudible). But if we were to do what they were (inaudible) that is about \$305,000.00 to do this whole thing but \$211,000.00 will get us (inaudible).

Mr. Hoewing: (Inaudible).

Mr. Yost: It is almost (inaudible).

**Static only coming thru recording.**

Mr. Kuhlman: All right so in other words what I am hearing you saying is we are \$62,000.00 short for the total project.

Mr. Yost: (Inaudible).

Mr. Kuhlman: So what do you need tonight a motion to approve the \$150 grand and then we can take up the rest at a later date.

Mr. Yost: (Inaudible).

Mr. Brown: Wade if I am not mistaken there is a certain amount of square footage in concrete that is part of the contract and there are certain features so even though we are entering into an agreement with them do we know it is changeable, the minimums are there you know those are really the reasons why of course construction building etc., is part of it but square footage concrete and features are what are the jest of the contract and we agreed upon that so even though it is a fluid situation in terms of final design we know we are going to get this amount of footage and this amount of features and that is more of a key ingredient if not the key ingredient for the Skatepark community (inaudible) substantial amount compared to the other.

Mr. Kuhlman: Comments Jerry?

Mr. Klobukowski: (Inaudible) I thought we were going to go with something that the community would be involved (inaudible). I was under the impression that we were going to start small and determine whether or not the population (inaudible) on Poolesville Day a Skatepark wasn't a number one --- I asked some questions there were a lot of people there who were scratching their heads (inaudible).

Mr. Kuhlman: Link?

Mr. Hoewing: I think it is a good plan the community does have a lot of skaters I know that this has been going on for 3 years so it is not like (inaudible) there is still going to be --- of getting the contract awarded that is going --- the design so this is a --- design I don't look at it as locked in stone. I mean it looks to me I don't know Artisan that well but --- the review and I am not trying to put myself in your place because you guys are actually the ones who --- the greatest amount so --- should be fine. We got the money from the State for a specific reason, to build a Skatepark, we did not get the money to build infrastructure or anything else, we knew what we were doing going into this so at this point we either do it or don't do it and I would like to go forward with it. The --- that would make any difference either Jerry whether you tell me but if we just had a concrete platform and had units on top of that with no bowl would that make a difference in whether you support this or not?

Mr. Klobukowski: It possibly would yes because I thought (inaudible) that is the bottom line. I was here the other day and (inaudible).

Mr. Kuhlman: Lori anything?

Ms. Gruber: I just look on the other side where I have heard from a lot of people that I know that feel it is a great idea and lets get moving on it, when is it going to happen, they have done a lot of research and I think we need to get this moving so that we can eventually get to the other part of it for a Community Center.

Mr. Klobukowski: I would agree about the Community Center (inaudible).

Mr. Kuhlman: This process has amazed me, if this were a baseball field, basketball court, tennis court this thing would have been built a year and half or two years ago, this thing has been scrutinized is my opinion, I semi agree with what Jerry is saying about walking before you run but having visited a couple other facilities this is like half price,

you just look at the contract for the Skatepark, look at the one town I went and visited over in PG County, Greenbelt, they already had the property they spent \$250,000.00 just to build the Skatepark facility. Sit there and talk about you hear from people that don't want it built, well I mean Jerry remember back when Whalen Commons was put forth this town was divided about half and half a lot of people vehemently didn't want to spend the money for that but the Commissioners moved forward. Town Hall we heard from a segment of people don't build it stay in the rental space, we decided it was good for the Town to move forward with it. I tend to support this for the contract award of \$150,000.00 I am still concerned I think the curbing, the gravel road, the sidewalks and stuff needs to go in and I think there is going to be another vote yet. I mean all we are doing is awarding this contract for the design and construction if we decide to move forward.

Mr. Klobukowski: No when you hear design and construction that --- it's not like all --- aside. You are going full (inaudible).

Mr. Kuhlman: Well then I think we need to resolve where the hell this other \$62,000.00 is coming from, you are saying we need to resolve that tonight.

Mr. Yost: If you want that to be part of the Skatepark then yes it does. It does not have to be to build the park.

Mr. Kuhlman: As I told you a year and a half ago when the Parks Board came forward you told me they were going to come forward with a recommendation to build this thing as Stevens Park and I told you there was no way I was going to vote to put this in an existing neighborhood it should go in a commercial site so we need to call those ladies and buy that property and we did that.

Mr. Klobukowski: (Inaudible).

Mr. Kuhlman: I am speaking for myself Jerry. I said I had a conversation with Wade. I have no problem moving forward with construction of the Skatepark. Went out to Stevens Park and saw kids down there skating and one was Link's relative on the tennis court.

Mr. Hoewing: Only one of them skates that I know of.

Mr. Kuhlman: I stopped and talked to him and we had never taken a poll to see how many kids go out and play basketball we build basketball courts, now I am ready to move forward but I want it needs to have parking, it needs to have a driveway the only question is which isn't reflected in here is there was some discussion awhile back about why Wootton Avenue, that is not reflected in here I know that those decisions have been made but I'm not saying that is a requirement in this but if we are going to put the curb and sidewalk do you put it at the edge of the road today or do you put the curb back where the road is going to be widened, so I think that decision needs to be made, are we going to widen the road or not.

Mr. Yost: Do you go all the way up to Parcel 845, there is a whole bunch of conditions, how far do we want to go, how much money to you want to spend.

Mr. Kuhlman: Yeah but at the very least gravel roadway and parking areas need to go in, asphalt entrance ways, there are part of this that definitely have to happen.

Mr. Hoewing: So if we just did those two parts now Wade that is \$21,000.00 and \$6,000.00 where do we come out then, do we still need, we don't need \$61,000.00 then or do we.

Mr. Yost: No that is why I put it together and broke it down this way.

Mr. Hoewing: Because I think Eddie's point too is right that if you put all this stuff in before we figure out how to do the rest of the parcel then you may have to take out the curb and all that stuff later on so why not just put the parking lot in and the asphalt paving up to the parking lot so you can get to the park.

Mr. Yost: Right but I don't think you want to make a budget amendment right now, just look at the minimum that needs to get done, decide on that, then you could actually --- a contractor and get some real prices, estimates and then we (inaudible).

Mr. Hoewing: So if we do --- to award it on that basis with just those 2 features as well as a Skatepark what are talking about \$70,000.00 something like that.

Mr. Yost: I mean it will go really close.

Mr. Kuhlman: Well that is what I mean if we award this contract tonight and we can't find the money to do that infrastructure work are we still obligated then to have the park built even though there is no way to access it.

Mr. Yost: Yes if you award a contract to design and construct a Skatepark then you have a Skatepark.

Mr. Hoewing: But again backing out the curbing, backing out the sidewalk, we don't need a sidewalk.

Mr. Yost: Right and actually some of the grading we could cut down because general contractors...

Mr. Kuhlman: You are going to have the gravel for the roadway to park right, going to have the asphalt entrance, do you need anything else out of those blocks. John come to the microphone please.

Mr. Hoewing: Would you need all \$21,000.00 though I wouldn't think so.

Mr. Strong: The way the site is set up for stormwater management the site is a --- site and there is an option of strictly going with seed skipping the fertilizer but then you are going to have to oversee it again and it depends on how fertile your topsoil that you are going to strip off the site but there is limited disturbance area and that is what the predication of the unseeding fertilizer is based on. It is not just a simple coming in and cutting a hole for the paving you actually have to balance the site and the site where the skating area is the 10,000 square foot area that increases in elevation by 4 feet so there is a balance that has to take place in order to make this work, in order to get the water to flow to the correct areas then the stormwater concept...

Mr. Kuhlman: And that is all up there included in the money, you have \$211,000.00 in expenses for your stormwater management sediment control so forth and so on, so if you start adding to any of this \$62,000.00 what of that you got to have the gravel for the roadway in the parking area, you got to have the asphalt entrance, what of those other 4 things do you have to have.

Mr. Strong: The mobilization is going to be up to the contractor that is his, that is what he charges for coming out on the site to bring all of his equipment and bringing his men out to the site that is what he would charge. So the process I mean these are conservative estimates that is the way we work is conservative amounts, once you go to bid you may find the prices are much lower and what I would suggest to do is if you were to assume the \$211,000.00 right off the bat but we go ahead and we put the curbing as an option, we put the gravel parking area in as an option, the sidewalk in as an option, the asphalt entrance you are going to need that even if you have a grass field that you have them park in just because you don't want to be tracking the mud out onto the street. The seeding

and fertilizing the Town may choose to do that themselves they may find as much with the Town Hall as what we did that is what we did here.

Mr. Kuhlman: Ok move on.

Mr. Strong: And the mobilization. You may find that right now people that are doing excavation work are hard pressed for work, they may come out and skip the mobilization key all together just to have their men working.

Mr. Kuhlman: Ok so you are anticipating the same contractor to do all the sediment control and storm drain would be bidding for that stuff in the bottom.

Mr. Strong: That is correct.

Mr. Kuhlman: Ok thank you. All right so if you do the gravel roadway and parking area and an asphalt entrance you are \$6316.00 short, where did that come from.

Mr. Hoewing: You say we are \$6300.00 short.

Mr. Kuhlman: \$6,316.00 short from what funds we have right now.

Mr. Yost: There is miscellaneous money left over in several different accounts, the CIP you have 1.1 million in reserves, but like John said you had --- numbers look at Skateparks and saw they had (inaudible) so there are really a lot of unknowns here to get into the design and who is going to do what.

Mr. Hoewing: So we should set a cap at the rate as Eddie was saying we could even knock off \$5300.00 so...

Mr. Klobukowski: How could we knock off \$15,000.00 from what was --- period.

Mr. Kuhlman: Well the point I am getting at is we have \$243,670.00 you can get all of it done except for the curbing the sidewalk the mobilization the seed and fertilizing take those 4 items out and you are \$6300.00 short. So I would be willing to entertain a motion to award this but not to exceed the \$243,670.00 right now. We might have to make some adjustments after we get some --- all right is there a motion?

Ms. Gruber: I motion to approve it.

Mr. Kuhlman: You got to say it all, award the contract.

Ms. Gruber: I motion to award the contract for bidding for the Skatepark and you'll have to help me here, at a level of \$243,670.00 not to exceed.

Mr. Kuhlman: Ok is there a second?

Mr. Hoewing: Second.

Mr. Kuhlman: Discussion.

Mr. Klobukowski: (Inaudible) they will spend it they will definitely spend it ok.

Mr. Kuhlman: Any other questions or comments? All in favor?

Mr. Hoewing, Mr. Brown, Ms. Gruber, Mr. Kuhlman: Aye.

Mr. Kuhlman: Opposed.

Mr. Klobukowski: No.

Mr. Kuhlman: Motion carries 4 to 1. All right budget amendment Mr. Yost you want some more money.

Mr. Yost: The pump station that we are talking about is the Hunters Run Pump Station what we have there...

Mr. Klobukowski: Are you going to show us where this is located?

Mr. Yost: Right next to the Middle School.

**Can only hear static from guest speaker microphone**

Mr. Strong: (Inaudible).

Mr. Yost: We have water that pumps the sewage all the way up to Tom Fox Avenue right by the horse farm there, we have all of that --- of pressure waiting (inaudible). All the other pump stations (inaudible).

Mr. Strong: (Inaudible).

Mr. Yost: So I suggest just for recommendation definitely have the valve inserted. In the 3150 account if you recall we had some funds left over from projects that were completed, we have over \$22,000.00 in leftover funds from that account we can just use those to do this project.

Mr. Hoewing: What do you think it is going to cost overall?

Mr. Yost: Just under \$19,000.00.

Mr. Klobukowski: (Inaudible).

Mr. Yost: Yes.

Mr. Brown: We have never done this before right or had it done by a contractor.

Mr. Yost: Typically we have --- try to design everything that we have the shut down have that option.

Mr. Brown: Right.

Mr. Strong: (Inaudible).

Mr. Kuhlman: But with our approval. All right is there a motion for the amendment?

Mr. Brown: Should we specify what account its got to come out of?

Mr. Hoewing: Do you think we ought to have a fixed amount put in or just say we use whatever funds are necessary out of account 3150 based on --- of the contract.

Mr. Yost: Right (inaudible).

Mr. Hoewing: I move we approve the use of \$19,000.00 from account 3150 to pay for the repair of the Koteen pump station.

Mr. Klobukowski: Second.

Mr. Kuhlman: Any discussion, all in favor?

All: Aye.

Mr. Kuhlman: Motion carries unanimously. Winchester Wavier Request, you gentlemen can come forward now.

Speaker: I would like to clear up any misunderstanding and or clarify a couple things first to Mr. Goldberg we apologize for people working after hours and you did the right thing to call the police (inaudible) midnight is not acceptable. We were sorry Mr. Manoff had left because we did have a check for \$300, he was sent an email because our accounting department wanted him to sign a W9 and after we convinced our accounting department that that was not going to happen we were able to get a check issued.

Mr. Benchard: My name is Doug Benchard Project Manager at Stoney Springs. The discussion or the initial problem with Mr. Manoff's property is he wanted to keep his initial well intact, with that we are allowed to actually make an underground connection to electrical, we put his well in, we put his pressure tank and switch in and basically he didn't want to disconnect the old well so we could inspect his new well which posed a problem.

Mr. Kuhlman: If some of my colleagues disagree with what I am saying I hope they speak up, they will speak up but the way I see it your dealings with those private property owners are your dealings, the Town has nothing to do with it, you apologies are great to hear tonight but as far as I am concerned Winchester is bound by an agreement to make those property owners whole, they live outside the Town limits, we have a responsibility

to oversee it and make sure they are made whole within the --- meeting the MOU, the PIA and everything that Winchester has executed. The State has got to be happy with whatever happens when the County and or the State whoever finally approves the work signs off on each one of the 6 that is what the Town wants to see is those signed off accepted by the property owners that everything is done according to what they want. Your discussion with the property owners should be with them not with us the way I see it. I think the fact that they have been here tonight and have complaints --- for Winchester or the contractor doing the work but we really don't have any dealings with that, that is a private agreement between you and those properties.

Mr. Klobukowski: (Inaudible).

Mr. Kuhlman: Now as far as their other complaint of starting before time and working until midnight, I have a real problem with that and if that is happening we will ask Staff to really keep an eye on that and that is going to be a charge to Winchester because I'm going to have to send an engineer out there to sit there and watch you all and call the County to have --- there are laws within the County and you can start work when it has to be done and he needs to inspect your pavements going down and if it is happening at midnight he is home in bed I know it, he is not out there watching what you all are doing and I for one intend to get Staff to look into this pretty hot and heavy because that upsets me greatly.

Mr. Benchard: (Inaudible) at the same time and they showed up at 7:00 at night with a truck full of asphalt (inaudible).

Mr. Kuhlman: Well Jerry and I have served this Town for 13 years the other 3 members are juniors compared to that, we have been through this subdivision and development stuff before sitting here and I got to be honest with you we haven't had these complaints that I remember when the other subdivisions went in so it is distressing to hear it and its not going to be tolerated in the future or somebody is going to be paying a price and it is going to be ---.

Mr. Hoewing: I agree with your comments Eddie but I have one question. If we grant the waiver what does that do to the homeowners.

Mr. Kuhlman: Well we are not even there yet. As long as we understand that we need to get into talking about this waiver and you guys are what requesting.

Speaker: Yes we have 3 homeowners who wish to settle in September and --- need a well and (inaudible) pulled out of our hands in terms of the Town --- the well and --- the well and we would like a waiver to settle the homeowners and get water for their homes and I can assure you we are going to honor the MOU to the fullest I have been --- for 22 years and it has not --- I can assure you. We had a project in the Town of Poolesville 10 years ago and (inaudible). Also wanted to make sure that --- potability test because Mr. Poole had mentioned that he didn't have drinking water and the potability test was --- on Friday so I think --- this Friday, we just got the potability and I guess we need some guidance from this Board but (inaudible) after we hook up the new well that we have to abandon the old well but the actual resident doesn't want us to abandon the old well, we need guidance how to (inaudible).

Mr. Kuhlman: That is up to the State. The State says the well you guys drilled impacted their wells and the State says you guys got to make it whole, you got to deal with the State on that one not the Town.

Speaker: We did make him whole with a new well (inaudible).

Mr. Kuhlman: If the State is not going to require him to abandon the old well that is between you and the State the way I see it.

Mr. Yost: Talking with the --- it is our responsibility to ensure that Winchester does make them whole and not --- if they sign a waiver.

Mr. Kuhlman: No but I don't feel it is our job to intercede and talk to the State about allowing this whole well to ---.

Mr. Yost: No and I don't think the State (inaudible).

Mr. Kuhlman: All right any questions from the Commissioners so far? All right so you are looking for a waiver from the PIA that says the well will be in our possession and operating before the ---.

Speaker: Yes.

Mr. Kuhlman: All right if Town Manager, how much of this subdivision (inaudible) John, Wade? And the 98 water and sewer allocations have been granted ok so has the transfer of the title and the well dedication happened to the Town yet?

Mr. Yost: Dedication to Town no.

Mr. Kuhlman: All right has the parcel identified on the preliminary plan as recreation areas A, B, C, and D been deeded to the Town yet?

Mr. Yost: No.

Mr. Kuhlman: Ok so according to the PIA and the MOU those would be deeded to the Town upon recordation of plats and the 98 taps ---.

Mr. Yost: (Inaudible).

Mr. Kuhlman: So knowing that these agreements were in place how did you all get into this predicament of selling 3 houses and promising delivery before you could meet the requirements of the agreements with the Town.

Speaker: It is like most things --- that you are dovetailing many critical items --- when you get to that point where the work is in place --- and satisfy the customer and sell the home. We were very surprised we sold as many homes as we did (inaudible) there are some things that are out of our control like turning the well over to chlorinating and testing --- that process so that is the best answer I can give you.

Mr. Kuhlman: Any questions or comments from the Commissioners?

Mr. Hoewing: That doesn't explain how the well, whether or not you can actually sell the house with water to it (inaudible), how did that happen.

Mr. Brown: (Inaudible) prohibits us from selling a house.

Mr. Hoewing: Yea they have to do all of that they have to satisfy that to sell a house, its not the infrastructure technically until the well is operational.

Speaker: (Inaudible).

Mr. Kuhlman: Jim to answer your question you guys have the PIA in --- go to page 7, page 4 paragraph 7 the first sentence "Developer shall construct a new Town well located off of West Willard Road between lots 11 and 12 subject to approval by the Maryland Department of the Environment prior to the transfer of property in any form". Normally we do not issue building permits to anybody until the infrastructure is in place but Mike Conley, Vice President of Winchester came to this Body and asked for permission to build a model and 2 or 3 spec homes prior to the well and said they would not transfer the properties until the well was completed and now they are back for something different.

Mr. Hoewing: So the waiver asks for an ability to essentially pass through those properties to those potential homeowners, what happens to the existing property owners

that have again I agree with Eddie we are not responsible on the other hand just because these citizens are outside of Town they were affected by things that happened with this development so what happens to them.

Mr. Yost: Ultimately we are responsible.

Mr. Kuhlman: We are responsible.

Mr. Hoewing: Well you keep saying the State is the one that has to deal with them.

Mr. Kuhlman: With the private property owner, the State has to agree that they have been satisfied but we are responsible we just asked that if Winchester accepted that responsibility in our ---.

Mr. Hoewing: Ok so what happens to that waiver then does that mean that those who --- have less leverage.

Mr. Kuhlman: I don't know to me its worth (inaudible) that we have never given before. I mean it was pretty clear by this paragraph I mean Mike Conley sat right there and talked to us and offered this, hey we want to build a model so we can start bargaining, we will not transfer any homes to anybody until the wells in the Towns possession and works. And the first 3 homes they are asking for an exemption from that.

Mr. Hoewing: What is holding up the well approval the homeowners not being satisfied is that what the basic hold up is?

Mr. Yost: Right.

Mr. Kuhlman: Yeah that was the other part we had to take the municipal well to satisfy the 6 properties prior to the (inaudible). I mean as a real estate broker myself I feel for the 3 property owners the 3 home buyers but they have probably sold their houses and waiting to settle on those or they need a house to go to or somebody would be paying for a hotel room.

Speaker: (Inaudible) we have 2 homeowners and 2 residents. One they won't let us switch the well out and the other was out of town and won't return until the 21<sup>st</sup>.

Mr. Klobukowski: (Inaudible).

Speaker: (Inaudible).

Mr. Kuhlman: Yeah but there are other ground rules that haven't been completed yet either.

Speaker: I clearly understand what you are saying I just want to be clear that (inaudible).

Mr. Hoewing: Well under the agreements they have with the homeowners if they don't have a home ready what happens to the homeowners, are they responsible for putting them up somewhere?

Mr. Kuhlman: If they can't live up to their contract I understand (inaudible). The buyer can either declare the contract null and void and get his money back and sue for any damages and move on, they can put them up in an extended stay place or rent them a house or do whatever they need to do to make that homebuyer happy.

Mr. Hoewing: I mean tough choice because you don't want to obviously --- on the other hand you have got the existing people in Town who have been affected who I think will lose something if we do this.

Mr. Klobukowski: It is not a great welcome packet for the homebuyers .

Mr. Hoewing: It's not our 3 future residents.

Mr. Kuhlman: And I feel real sorry for them but I am inclined to agree with you (inaudible).

Mr. Brown: But it is nice to ask.

Mr. Kuhlman: All right is somebody willing to make a motion or is there more discussion.

Mr. Hoewing: We'd only make a motion if we want to approve the wavier.

Mr. Wright: If there is no motion (inaudible).

Mr. Kuhlman: Is there a motion? All right lack of motion no waiver, all right gentlemen. But please bear in mind on getting this work started too early in the morning and going to late at night, John and Wade start watching them as close as you can.

### **Old Business**

Mr. Kuhlman: All right Band shell Concept Design Wade.

Mr. Yost: I have been working on this with the Parks Board for quite a bit of time. Everybody received in the package the architectural drawings as well as they added an extra --- to kind of give you an idea (inaudible) the character of the Town Hall and that will give you a better idea of what it would look like. --- matches the character of this building...

### **Only static through all microphones**

Mr. Strong: (Inaudible).

Mr. Brown: Just for a point of reference I have been at the last several meetings on this one and the goals were many but amongst the biggest goals were to obviously have something that would be really functional but also to have a lot of transparency through it and I give Town Staff a lot of credit for putting together and basically encapsulating a lot of those design elements that we thought were important which were a lower roofline, and the brick element that would carry through from both Town Hall as well as the shopping center next door. The lower roofline for the bathroom area so that we would also try to hopefully keep it skateboarder proof the roof and then also too with adding some curvature to it as for the stage and elevation as well. So I know it has been a long hard road but I really like what we have right now and it has been we have had a lot of feedback on it and I think it's a good design. Of course I am on the Committee that approved it so.

Mr. Klobukowski: (Inaudible).

Mr. Yost: Right at the arbor.

Mr. Hoewing: So it will be in the corner.

Mr. Kuhlman: It will be up on the front third of Fyffe Road.

Mr. Hoewing: Facing in this direction.

Mr. Klobukowski: (Inaudible).

Mr. Brown: If you erect the screen you also have projection towards it too right.

Mr. Yost: Lowering the roof was (inaudible).

### **Static only coming thru microphones**

Mr. Hoewing: It costs what \$600.00 per movie or something it would be nice to...

Mr. Yost: I mean we had talked about buying our own screen and our own projector (inaudible).

Mr. Hoewing: Are we satisfied that the toilets don't violate the --- for the park (inaudible).

Mr. Yost: No everything had to be (inaudible).

Mr. Hoewing: In the what?

Mr. Yost: It had to be an amenity of the park (inaudible).

Mr. Kuhlman: It had to be park related. We looked at that extensively.

Mr. Hoewing: So we could build a swing set if we wanted.

Mr. Kuhlman: Yeah we looked at it because there was discussion about locating Town Hall out there early on and anything park related stuff.

Mr. Klobukowski: Do you have this picture anywhere?

Mr. Yost: No I do not.

Mr. Kuhlman: Well you have it there in front of you on paper right. Is this stuff going to be white brick like this picture portrays.

Mr. Yost: No not at all, all we this was just to look at the shape of it that is all.

Mr. Kuhlman: Ok so can you go over real quick the ---.

Mr. Yost: Sure all of this is going to be the brick to match Town Hall and have the white concrete stone going around it so we have the accents like this building has. This will be the exact same white plastic trim we have here (inaudible).

Mr. Kuhlman: What is the material that is going to be up here.

Mr. Yost: I don't know yet.

Mr. Strong: (Inaudible).

Mr. Klobukowski: Are we going to have little things like over at Wolftrap?

Mr. Hoewing: Don't tell me Jerry was at Woodstock, I don't believe that.

Mr. Klobukowski: No Wolftrap like the (inaudible).

Mr. Strong: (Inaudible).

Mr. Kuhlman: All right so what are you looking for tonight there Manager.

Mr. Yost: Approval of the concept plan so we can put the specs together.

Mr. Kuhlman: All right is there a motion to approve the concept?

Mr. Klobukowski: Make a motion we approve the concept (inaudible).

Mr. Kuhlman: Is there a second.

Mr. Brown: Second.

Mr. Kuhlman: All in favor?

All: Aye.

Mr. Kuhlman: Agreed. Go move. All right amend our favorite parking stuff. Where are we at there Wade or Alan?

Mr. Wright: This looks like the same thing we had the last time except that changes in deletions and additions have been removed. This is just what the final product would be. Corresponding to what the County is enacting.

Mr. Kuhlman: Questions or comments from the Commissioners? Jerry, Link, all right the only question I had was on page 3 first paragraph, Wade's comment to me a couple months ago when we started talking about this was about big trucks parking over on Kohlhoss Road and when I road through there the only one I saw was a State truck and this exempts other governmental agencies and do we really want to do that.

Mr. Yost: Do what exempt them?

Mr. Kuhlman: Yeah.

Mr. Yost: If you don't who are you going to have enforce it.

Mr. Klobukowski: Except for maybe an emergency you might want to allow it.

Mr. Kuhlman: No this one guy works for the State Highway Department brings his dump truck home from work everyday and parks it on Kohlhoss Road. I only raised it because Wade said that that was one of the (inaudible).

Mr. Yost: You wouldn't think that truck should not be there I agree with that.

Mr. Kuhlman: Right but I am just saying if we leave this other government agency in there he can continue to park it there, if we take it out he can't. I'm just raising the question do we want to take it out or leave it in there.

Mr. Yost: I agree with you it is not safe that is true there are kids all over the place running across and you cannot see around it.

Mr. Kuhlman: All right so we are going to take that out, or other governmental agencies that comes out. Anybody else have anything. All right so this moves forward to a public hearing.

Mr. Brown: Ok so that public hearing is going to be set for...

Mr. Yost: Unless one of our guys hit one of our trucks and do...

Mr. Kuhlman: It exempts Town trucks. It does it exempts Town trucks.

Mr. Hoewing: But you have the authority to order (inaudible) you can't park it there sorry.

Mr. Kuhlman: All right what do you need a motion to set that for public hearing?

Mr. Yost: Yes.

Mr. Kuhlman: What date.

Mr. Yost: Do you want to set that whole bunch of public hearings the second batch of them or do that at the 2<sup>nd</sup> meeting.

Mr. Kuhlman: That is fine what is the date.

Mr. Yost: 21<sup>st</sup>.

Mr. Kuhlman: Is there a motion for setting that for public hearing on September 21<sup>st</sup>.

Mr. Hoewing: Move we have a public hearing on this amendment on the 21<sup>st</sup> of September.

Mr. Kuhlman: Is there a second.

Mr. Klobukowski: Second.

Mr. Kuhlman: All in favor?

All: Aye.

### **Committee Reports**

Mr. Kuhlman: Committee reports Planning Commission Mr. Hoewing.

Mr. Hoewing: You got all the work we did at the last Planning Commission meeting so I don't need to report any further.

Mr. Kuhlman: Thank you Sir. Parks Board Mr. Brown.

Mr. Brown: I'm going to stick to (inaudible).

Mr. Kuhlman: All right while you are looking CEDC Lori.

Ms. Gruber: CEDC meets this Wednesday, we have some surveys coming in very slowly that was from the meeting last month, the Town Map again was scratched which we had already reported on and I believe that is it.

Mr. Hoewing: Compliments by the way for the, I don't know if you guys have noticed but that is really nice the map they did is now on signs it is great.

Mr. Brown: Parks Board we approved the band shell design, which we approved tonight. We moved the Skatepark award we did tonight. We tabled Park Rules and Regulations until next meeting and that is it.

### **Town Manager's Report**

Mr. Kuhlman: All right very good. Town Manager's Report.

Mr. Yost: We did meet with the State and (inaudible) Winchester Well. We talked about holding off on the start up of the Schraf well (inaudible) they were both pumping at the same time so that may (inaudible). **Too much static coming thru microphone.**

**Citizen Forum**

Mr. Kuhlman: Citizen forum anybody? Seeing no hands I entertain a motion for adjournment.

**Adjournment**

Mr. Hoewing: So moved.

Mr. Kuhlman: Is there a second.

Mr. Klobukowski: Second.

Mr. Kuhlman: All in favor?

All: Aye.

Mr. Kuhlman: Thank you gentlemen and lady.