

APPROVED 12/5/11

**COMMISSIONERS OF POOLESVILLE
MEETING OF NOVEMBER 21, 2011**

PRESENT: JIM BROWN, EDDIE KUHLMAN, AND JERRY KLOBUKOWSKI. ALSO PRESENT WAS TOWN MANAGER, WADE YOST, AND TOWN ATTORNEY, JAY GULLO.

Call to Order

Mr. Kuhlman: Good evening ladies and gentlemen, we call the November 21, 2011 Commissioners Meeting to order. For the record Commissioners Klobukowski, Brown and Kuhlman are present and Mr. Stump is out of town on business. As well as Mr. Yost and Mr. Gullo are here. First order of business will be the Pledge of Allegiance if you rise please, Jerry.

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.

Public Hearing

Mr. Kuhlman: All right thank you very much. All right tonight we have a public hearing on the October 12, 2011 revised Poolesville Master Plan. Tonight's public hearing file contains the following exhibits: Copy of the revised Poolesville Master Plan dated October 12, 2011; Resolution 004-11 approved October 12, 2011; Planning Commission approval and recommendation to the Commissioners of Poolesville for adoption of the revised Master Plan; and a copy of the notice of public hearing published in the Monocacy Monocle on November 18, 2011; Any person wishing to do so may now testify after giving their name and address, testimony of all speakers will be restricted to 5 minutes per speaker, written testimony will be accepted at Town Hall, at this hearing, or before the record closes and Mr. Hartz is signed up to speak first.

Mr. Hartz: Good evening gentleman, Gary Hartz. Maybe I won't last 5 minutes but I thought I better just get my papers in order before I started. 19101 Fisher Avenue, Poolesville, Maryland, representing Janet and myself. I went back and took a look at some of the prior Resolutions that came to this Body, not necessarily you 5, 4, 3 gentlemen. But looked at some prior resolutions dating back all the way to 1998, one that was Resolution 001-98 introduced on the 8 of September, adopted on the 24 of September, 1998. That particular one was not effective, primarily because this Body decided to do some substantially different things than the Planning Commission. I am not here to recommend that you do the kinds of things that that Body did at that time because I still think they were somewhat inappropriate in how 66B seemed to be violated and there was spot zoning. But I am not here to testify to the 98 plan, I have already testified to that numerous times in the past. I'm really here to talk about the plan that you have before you and subsequent plans that have come in since 98. The Town since 1989 has had a boundary that exists the same today as it did in 1989, 1990, within that according to the new Master Plan there are 819 acres that are in RDT and I recognize that that looking at some of the footnotes on the current plan it appeared to me like that might include some town property that is parkland and or treatment plant, I couldn't quite tell, but I went to the official

map behind the door in the Town Clerk's office and got some numbers off of that and it appears to me like the RDT totals about 776 acres, we are not off by more than 24 and 19, 43 acres so give or take 43 acres I guess. I don't think it is on any one of the 13 parcels that are made up of private property, I don't believe it is of those 13 parcels that represent what I have come up with as 776 versus 819 but I do know that there are currently 13 parcels, and I am going to touch on that in a moment. I am here representing one parcel, my wife and I, but we are not the parcel we are a union, I am representing the union of my wife and I regarding a parcel, 18 ½ acres across from 19101, however I don't want that parcel treated, absolutely any differently than everyone should be treated, that is just not right to treat any one parcel different than anyone else, as was done a number of years ago. Totally inappropriate how it was done in 98. You can see that just my looking at the red dots on the map and what happened by changes in commercial zoning, changes all over the place that happened after things were done. What I am proposing is a way that you could equitably treat all property within the confines and the perimeter of Town and for a change break from the mold of the Planning Commissions to never finish their job and actually zone out the entire town, everybody talks about doing it on the Planning Commission and even on this Body, but it's the job of Planning has never been done, I think the current plan is extremely articulate about what we have, what exists, and what might be done in the commercial districts, but it doesn't address the full responsibility under 66B as I see it in addressing the entire perimeter of the town, there is lip service given on one line under the Growth Effect Statement or Growth Element or something like that, that we should change the name of the Rural Density Transfer Zone to the Rural Density Zone, that is about as substantial as it really gets in addressing the whole perimeter of the Town and according to the plan, 819 acres. Lets assume for a moment that I am correct on the number of properties in that total, there are 13 properties, 267 acres of that will forever be RDT, I mean it doesn't matter what you change it to, it is going to be RDT, the former Leeks and now the Willard property on the corner over there. Then you drop down to the remaining 12 parcels, if you were equitable in your treatment of all properties, everybody would qualify for 4 and under, if you were equitable across the board, treat everybody the same, and just give them 4 or under. So if you are a 152 acre parcel you could get 4, you got to decide what comes first, the chicken or the egg, is it the zoning or the water, I mean I have been treated well when it is supposed to be the egg I'm the chicken, when it is supposed to be the chicken I'm the egg, I don't have one or the other and for that reason supposedly we can't move forward. But if you had 152 acres and everybody that had acreage on here, and there is 12, there would be 48 additional taps, if everybody got 4. But if you decided that that RDT as it exists today was 2 acre, 4 acre, or 5 acre, I will just give you summary numbers rather than go through the details, and I will give you a gross and a net number, gross is total acreage divided by lot size and then the net number is the viable, the yield that you could actually get, because you got to have public space, you have to have roads etc., and some of us own both sides of the road so we might even own up to the centerline of the highway, but anyway you take a zero from the 267 the big parcel out here, the next 12 parcels if you had a 2 acre zone you would have 47 gross lots, and I am talking lots now, I am not talking and that is if

you allow no more than 4 taps per parcel, you would have 47, the net would be 45, that would equal 14,625 gallons. If you went to a 4 acre parcel, and the optimum from those folks that do development is probably in the 2, 3, range, maybe stretches to 4 but I'm just giving options here and laying it out, I have a bias but I am not going to emulate personally what I think it should be, but I do, go back and read my multitude of testimony, I am on the higher end of what I would propose. If you go to 4 acre that would yield a gross of 37 taps, lots, net 35, 11,375 and then if you jumped it all the way up to 5 acres, you drop it down to a gross of 34, a net of 30, you might wonder how is --- a big change, well when you have a number of 6, 8, 8, 18 ½ and you jump it up you are going to start getting a lot less yield because you got to have the full acreage, whatever the zone would come up with, and that yields less than 10,000 gallons, 9,715. Gentlemen I hope you take a look at how a planning document should look at all land within the confines of the town, should treat all properties equitably across that, don't replicate what unfortunately was done in a very short period of time after lots and lots of work by Planning Commissions 12 or 13 years ago and just toss that out, when a lot of work was done to try and start working toward a development, well possibly a development but at the least an outline of what the future would bring for the property that was RDT, right now it is still sitting out there and I hope you take the time to give it consideration and I hope you take the time to look at what can be done to start that process by this Body. I understand 66B but I also understand the role of the Commissioners and laying out that we want the whole town planned, lets not applaud ourselves for what we've already done and what we are doing today, but prospectively what are we going to do, and I think the Planning Commission for the whole town, all of the property, to treat all properties equitably, I believe they missed the target again. Any questions?

Mr. Brown: I'll ask it for whoever is qualified to answer, but why wasn't it completed, why was it just designated RDT and not further zoned down?

Mr. Hartz: In 1989?

Mr. Brown: Yes.

Mr. Kuhlman: You would have to ask the gentlemen that were serving at the time.

Mr. Brown: Right I understand that. Just a sense of history, what happened?

Mr. Kuhlman: They came forward with a recommended Master Plan and the Commissioners decided to, well they had done a comprehensive rezoning of the town and evidently the Planning Commission work was not satisfactory to the Commissioners, they changed a portion of what they had done and took away the recommended zoning from some properties and gave it to others that were against what the Planning Commission was recommending. There was several lawsuits filed and nothing ever happened of it.

Mr. Hartz: Was your question 89 or 98?

Mr. Brown: I started with 89 and then I see where 98 broke off.

Mr. Hartz: In 89 the reason that it was RDT is because of what Mr. Kuhlman mentioned about the annexation in 1889. 1989 when it comes in, it had to come in to the same zone it was in the county for 5 years, it could not be changed for 5 years upon annexation, that is also written down as the rules in annexation, how the county or the State of Maryland. 98 was when I read from the Resolution that was passed and I'm sure the town has copies of it and I happen to keep lots of things

from the past and I was about to throw it out and then I thought, you know what I think I need to go looking for it, but anyway this is it, it is the entire Resolution of what is to be done on every parcel that was outlined, but that got changed in a Body just like this.

Mr. Brown: A 3 member body?

Mr. Hartz: No it was 5.

Mr. Klobukowski: Let me clarify too, 1) that is right it was changed, that was the prerogative of the Commissioners to do that; 2) as you said nothing came of it, that's not true, it cost the town a lot of money to uphold this decision and have them go to the court and having it defeated all the way to the Maryland, what is the highest court, Court of Appeals, so it went all the way up there and in each court successively said the Commissioners have the right to do what they did, and that was it. And unfortunately it went all the way up to the Court of Appeals and so bottom line yeah I understand what you are saying Mr. Hartz and I can understand the reasons why, but anyway I appreciate you coming forward with this and your testimony tonight, thank you very much.

Mr. Hartz: Thank you. The only thing that that stopped short of was the State Supreme Court and it probably cost the individuals a whole lot more than it cost the town. Thank you folks.

Mr. Kuhlman: Next speaker is Mr. Potemra.

Mr. Potemra: Conrad Potemra, Spurrier Avenue. Two major things bothered me about this Master Plan, number 1 is that this is an obvious opportunity to make up for some mistakes in the previous plan and my thing is that new developments should go some distance into the old development to connect trees, water and sewer, sidewalks, anything else. I say it is 1000 feet, it's a number that has got to be looked at. These are recommendations and you guys can cut it to whatever you guys want, but I really think it is an opportunity for these new developments especially these other developments surrounding the old developments to try to fix that. You have promised that all new developments will have underground wiring so I am not going to bring that one up. The big one, and when you talk about the wastewater and sewer map, they talk about I&I in here and how they are always working on I&I, well before I get into this I want to give you a little bit of history also on this I&I business that seems to be forgotten all the time, and I think the basic premise we should use that if you have a lagoon you have an I&I problem. It is fair. I remember and I think Eddie does too when Charlie Elgin would say "oh we are going to fix I&I, we don't need to do anything, we are going to fix I&I", well he probably went and spent some money, filled up a few basements and moved on. Then the next Commissioner Roy Johnson comes up "Oh Conrad we don't need your help, we are working on this, we are spending all this money on I&I, we are going to fix this" and he probably went and filled up the basements with sewage. Then we go to --- and Eddie Kuhlman stands up and says "oh we are spending all this money on I&I, I don't want to hear I&I anymore, we got to fix this, we are going to do this, don't worry about it" and he's got basements filled up with this and it is going to go on and on and you guys don't take it seriously. All you do is stand in a line that has been there for 25 years, the next Commissioner gets up and says I hate I&I, we got to fix that, we are going to do all this and this is going to fix I&I, and then it's oh shoot it

happened again. You got a lagoon, until you get rid of that lagoon you got an I&I problem and therefore before you start looking at some of this other stuff you should be looking at I&I with a game plan to turn that lagoon into a park, recreation area, or something that the kids can use or someone can use more so than the calls I get from the smell in the summer on a hot humid days, but still though occasionally, the last time I was down at the state about 4 or 5 years ago, they were getting complaints in there too, people were calling. But you got to admit this and get a plan and quit, yeah you are spending money but you ain't coming up with solutions, I mean every Commission stands up and says I'll fix it and we spend this money and this and that and kicks the can down the road to the next one, I mean we could call you guys a super committee of I&I here with the same results. It ain't just me, its there you can see it, everyone is saying the same thing, you guys got to get a plan, it has got to be a top priority, not only here but in your budget, that's it.

Mr. Brown: Conrad thanks for that. I just have a question for you and I was at the Planning Commission when you testified there to the same thing as well. I'm relatively new to this compared to some of the other Commissioners, it seems like that you say that and I hear you and I heard you talk about it in detail and it sounds like it definitely has merit, I know you are against lagoons and you are talking about spreading and dealing with the I&I in a substantially different way than what we are actually dealing with it now. If, you know I've talked to Wade about this and I talked to our Town Engineers about it.

Mr. Potemra: Can I give you a couple numbers to make it bad for you, you got a 4 acre lagoon, you have the rainfall in the area that is 46 inches a year, most of that comes during the colder time when it is not evaporating, that is the biggest problem we've got, that is 16 acre feet of water, rainwater, pure water, the purest water you can get that you treat to sewage standards. You take that rainwater that you treat and you don't have to do 16 acre feet of it, there were about 40 or 50 houses last time I made the calculation...

Mr. Klobukowski: I don't see how you draw that conclusion.

Mr. Potemra: I believe that.

Mr. Klobukowski: Well ok.

Mr. Brown: I appreciate that but it is contrary to what we here have been told by both our Town Engineer, Consultants and dealing with Wade, I mean what you are saying basically is in direct contrast to all the reports that we get and the...

Mr. Potemra: So you don't fill up people's basements with sewage is that what...

Mr. Brown: No I understand, I personally don't know, but I hear you.

Mr. Potemra: (Inaudible) the house filled up with sewage or your house...

Mr. Brown: My basement has filled up before, but it was only because the sump pump didn't run. But you make good testimony twice now, yet I think for whatever reason it gets discounted and then it gets our Town Engineer and people that get paid the money to advise us on these things, disagree.

Mr. Potemra: This is the same guy that cut up all the backs of mailboxes because he didn't design the sidewalk right?

Mr. Brown: I don't know, I couldn't testify to that.

Mr. Potemra: The sidewalks (inaudible) and brand new mailboxes you could see the backs of them getting ready to start losing all their...

Mr. Brown: Was that on your street?

Mr. Potemra: Yeah.

Mr. Brown: Ok I will check that out. But there is no other further commentary, we just dispute this?

Mr. Potemra: You don't see the I&I problem?

Mr. Brown: No I am not saying that but I just want to know, you say you have a solution and we say that that is not necessarily a solution that is appropriate or agreeable by engineering standards.

Mr. Potemra: Well you could get rid of it, the I&I problem is not the number one thing, you got other things in here you are doing, that in my opinion isn't high a priority as fixing the I&I and getting a handle on this so that you can get rid of the lagoon and put that into the, the original design as I recall on the constructed wetland was 100,000 gallons of sewage a day that that could process and you can still use that as a temporary for things but the big thing you got to look at is that have camera men go check the numbers, you get 46 inches of rain and roughly 4 feet across 4 acres is 16 acre feet of water, rainwater to send to the sewage plant, you didn't have to treat that.

Mr. Brown: I understand that. I absolutely have listened to you every single time all the way through, I understand your point, its just beyond me that we have paid engineering people that go to school and give us their opinions and go through this, and you I am sure you are very smart and I know you have training and everything etc. but it seems like that the people that we listen to and pay for opinions give us a different viewpoint.

Mr. Potemra: You are right they are going to give you the answer you want to hear. They make more money if that lagoon is there, now what you could do is say look, I want to come up with a solution to get rid of it, have you ever asked them that, how do we get rid of it, what do we have to do, what is a cost effective solution to do that, or to look at it from a developer if I am right and cameraman can figure this out, is that if he can get 40 houses out of not treating 16 acre feet of rainwater, because that is something the developer should look at and say hey you want 40 extra houses, here is what we have to do.

Mr. Klobukowski: Conrad maybe I am misunderstanding you Conrad but you are implying that the people that we hire or the engineers who study this are actually lying to us for their own financial benefit, that is what you are saying, you are saying that they are doing it for their own financial benefit so they can perpetuate their own business off the backs of the taxpayers of Poolesville. I don't believe that for a fact at all number one, number two, I understand a little bit about sewage and I understand about backups because I had people on shifts when our holding tanks backed up and flooded out apartments and those guys weren't too happy either, so I understand a little bit about it. But I also understand what you are saying is you are drawing a lot of conclusions and mass generalizations, you pick your own argument and I think number one, everyone here is concerned, every Commissioner has been concerned regardless of what side of the issue we've ever been on, or other issues we've been on, we have always been concerned about the citizens of this Town, about the I&I that we don't want sewage backing up in anyone's basement and that regardless unfortunately things aren't always perfect and things do change, the

ground changes, we have different things happen, the amount of rain we got and I just think that you are being a little...

Mr. Potemra: Have you ever asked the engineers what it would take to get rid of that lagoon in a cost effective way?

Mr. Klobukowski: The point is not...

Mr. Potemra: Answer the question.

Mr. Klobukowski: No I have not, but the point is not getting rid of the lagoon, the point is getting rid of the I&I, which we are trying to do and we are going to continue to do and that is something that is going to happen, so number one you never change your oil in a car, you never have a flat tire, you never have a radiator leak, you never have anything go wrong in your house, everything is always perfect, it doesn't work that way, so I would appreciate it when you come here that you maybe choose your words a little more judiciously about some of the people because I think you are borderline, you are borderline and maybe Mr. Gullo, of lending yourself open for a lawsuit, not by me but other people.

Mr. Potemra: No but the point that you made and I bet you everyone, if no one has asked how to cost effectively get rid of it and what we have to do to get there and find solutions and I also did say it goes back to Charlie Elgin everyone said exactly like you said Jerry "oh we're going to fix it" ...

Mr. Klobukowski: I said we are going to do our best job to fix it and we have always done that. We hire contractors that we hope are competent although we do find out sometimes that they do cut corners, we know that, but we are trying to avoid that.

Mr. Potemra: Did you hire --- to work on the sewer system?

Mr. Klobukowski: I never hired any ---.

Mr. Potemra: Elgin did.

Mr. Brown: So you see my point of view Conrad, so I'll ask the question, how do we effectively get rid of the lagoon and I'll probably be told that there is nothing wrong with the lagoon. The lagoon by all engineering standards today and even if we hired somebody else to look at it that was completely unrelated to our town engineers, what if they come back and say this lagoon is perfectly fine, perfectly normal and an accepted way of treating, you don't have any other avenues.

Mr. Potemra: Right now if we were starting the town new and putting in a sewer plant, you are not allowed to put in a lagoon.

Mr. Brown: But that is not the case.

Mr. Yost: This is a --- basin for --- that is what this is used for, it is not used for a lagoon treatment.

Mr. Brown: It is a holding tank as it would be.

Mr. Potemra: It also points that you have an I&I problem and as long as you have a lagoon you will have an I&I problem and you have got to put that I&I problem a little higher up and stop doing some of these other things or it is going to keep coming up in people's basements.

Mr. Brown: I'll ask those questions, I appreciate that, thank you.

Mr. Kuhlman: Very good thank you. Anybody else on the Master Plan? Seeing no hands that concludes tonight's public hearing, the record will be held open until Friday at close of business, which is 4:00 in Town Hall.

Announcements

Mr. Kuhlman: Announcements, anybody have any announcements?

Mr. Klobukowski: Yes I got a couple. One I testified before the Montgomery County Board of Education on the 14 of November. I changed my testimony slightly to emphasize that the town is looking for --- and we have to do something with respect to the high school and I mentioned that they have the land, they would need no holding school to shift our students to while the school is being built, that the Commissioners always would be willing to work with MCPS to make it happen, Lord knows that the Cluster parents and the parents of the out of Cluster students are ready and in support of having a new high school. The other thing is on last Friday night I attended the Monocacy Elementary School Casino Night up at Potomac Hunt Club and it was really a fun filled evening, it was good food, good camaraderie and the only time I've ever gambled and made money, of course it was all imaginary, but anyway it was a good time and Jim was there and I'll let him amplify if he would.

Mr. Brown: No it was a good time, we had a blast, very well organized, the Monocacy people are very, very well organized and did a great job. And the other thing I wanted to announce too in addition to following up with that was I was actually here last Monday night for the Dream Act discussion/debate, which I have to admit was a blast, a full house, great conversation and a very nice utilization of Town Hall as far as I am concerned, that's it.

Mr. Kuhlman: Good. Anything else? The only thing I have is Wade and I had a meeting this afternoon with the representative of the owner of the shopping center where Selby's is at, and discussed the future of Selby's and the future of that center, and suffice to say that Roy and his family and the owners of that property are in discussions right now and planning what to do, it doesn't look good, the store will more than likely be closed, the landlord is already been in contact with about a dozen or more grocery chains to try to get somebody here, they gave us their assurances today that their primary goal for right now is to attract a grocery store to the center, we are very fortunate because of the financial position of the owner, he is not hurting on the rent, he does have time economically to sit and wait and try to get a grocery store, they have promised to keep Wade abreast of the news and if they have any success and the progress so that is all I can say right now about that.

Mr. Klobukowski: Did the owner say anything about if he is going to do anything to the façade of the building, possibly the roof, because there is a lot of shingles that...

Mr. Kuhlman: Their statement today Jerry was that once they secure a grocery chain for that space, they want to sit down with that entity, whoever it is, they have full intentions of doing a façade upgrade and overhaul but they want to wait and find out who the tenant is going to be to see what they want, since they are the major tenant.

Approval of Minutes

Mr. Kuhlman: All right need a motion for approval of the minutes of November 7.

Mr. Brown: So moved.

Mr. Klobukowski: Second.

Mr. Kuhlman: All in favor?

All: Aye.

Mr. Kuhlman: Approved.

Open Forum & Citizen's Comments on Agenda Items

Mr. Kuhlman: Open forum & citizens comments on agenda items, we will be discussing Charter changes, housekeeping/grammatical things, anybody want to make a comment on that? All right we will be having a discussion and anticipating a vote on the Charter Amendment 001-11 dealing with the adoption of the budget timeline, any comments there? Any comments in general?

New Business

Mr. Kuhlman: All right on to Charter changes, housekeeping/grammatical, counselor.

Mr. Gullo: What you have in front of you tonight is a memorandum from the Town Manager, it basically takes off of these spreadsheets that we have been working off of from the beginning of this endeavor and as you recall I classified the changes, not only the ones that you made or tried to make before, but the ones you suggested, into low, medium, high or needs more discussion, and the high one, the one that you just dealt with, is the one that is pending before you already 001-11, so the rest are the ones that are low or medium priority and require very little discussion as to the merits, I mean you either want to do them or you don't want to do them, they don't require a lot of discussion about how to do them. What you have in front of you is 12 of them and these 12 from the top down are ones we talked about before, they are all either grammatical, or in some form or another, adding to what you already have on the books, and the example I can give you is, like the Town Manager, he is right here, he is the Town Manager but there is no section in the Charter that deals with the Town Manager, so it would codify what you already do. These are basically non-controversial. When you get to the bottom of the list, starting with 82.28, 29, 30, and 31, those are the suggestions, some of the suggestions I gave you about your Boards and Commissions, right now you have your Planning Commission in your Charter, you have your Board of Zoning Appeals in there, you have your Parks Committee in there, and you have your Sign Advisory Board in there, and I gave you the opinion that I don't think that is the place to include those. The Planning Commission and Board of Zoning Appeals are creatures of state law, you have them by virtue of state law giving them to you, you don't get to change too many of the parameters that involve the Planning Commission or Board of Zoning Appeals, and they are not really appropriate for a Charter because when you change them you don't want to change them by Charter Resolution and going through the whole referendum process, you want to be able to change them by Ordinance. So by taking them out of the charter you would add an ordinance in your code book that would add those in there. The same principal applies with your Sign Advisory Board and your Parks and Rec. Board, those are creations by corporate entities of the Town of the way to do business, so they are not on the same level as the Board of Commissions, which you all are, you created them, therefore they are created by ordinance, they should be done in your code book and not in your Charter. The reason for that is that you will have an easier time amending them in the future, you can add to them, take them away, you can adjust them, it is not a core type of thing. And that goes along the lines of what you are trying to do with the CEDC, if you recall the last round of charter amendments you wanted to add that to the Charter, I gave you the opinion that that is not where it should go, it should go in your Code Book because that too is something that you are creating with the power that you

have. I did a little background search because I know you always hit me with this and say “what does everybody else do”, so I did it in advance and I didn’t spend hours, I just did it as quick as I could and I searched 12 municipalities and my scientific basis was I started with your neighbors like Rockville and Gaithersburg and they have the same code company so the link on the website I could go to all the other ones that use that, out of 12, 10 don’t have any mention of Planning Commission or BZA in their Charter, 2 of them do, that is Ocean City and Cumberland, and their language is enabling, something to the effect of “you will have a Board of Zoning Appeals” that they talk about in there. That is my spiel on it, I know there is other points of view but that is my opinion of it.

Mr. Kuhlman: All right questions or comments?

Mr. Brown: I’d like to hear yours first.

Mr. Kuhlman: Why?

Mr. Brown: Just because.

Mr. Kuhlman: All right 82.4 makes a lot of sense to me, it is cleaning up of the language that is there now, we haven’t operated that way in a long time, since the hiring of the first Town Manager. 82.5, I don’t know if it is a typographical error, I know what you are trying to get at but the statement Wade doesn’t make sense to me, what are we trying to correct here?

Mr. Yost: They comes out and the Commissioners goes in place of it.

Mr. Kuhlman: Oh ok so the Commissioners shall meet in a convenient place.

Mr. Yost: Right.

Mr. Kuhlman: Ok I see. That wasn’t clear to me, I am sorry. All right and then 82.6 we are back with, I agree, it should be the Board of Elections instead of the Supervisor of Elections, so that is just like we did years ago when we changed Town Administrator to Town Manager because the previous gentleman did not like to be called Town Administrator. 82.7, that’s updates since we now have a Town Manager, the Code should have changed years ago to go that way. 82.8, Town Clerk is the Town Clerk, not the Chief Clerk. They all make sense to me, Jim, Jerry?

Mr. Klobukowski: On 82.11 it says make changes, is that a typo?

Mr. Gullo: Right now you have it set up that if there is an election dispute, like something innocuous, like somebody says “hey I am registered to vote and you didn’t let me vote”, when they appeal it, the appeal eventually comes to you all, you are usually the people that are running for election, so the appeal should really go to the Board of Elections, your local Board, but they should be the ones to hear the appeal on that, not you all.

Mr. Klobukowski: Ok.

Mr. Kuhlman: The Board of Elections not the Board of Commissioners.

Mr. Klobukowski: Go ahead Jim.

Mr. Brown: I don’t have any, I’m done, I like it, I agree with it from the beginning.

Mr. Klobukowski: With respect to the Planning Commission and the Board of Zoning Appeals, you say other places have something that is enabling in their charter, would we retain that wordage in the charter to be enabling?

Mr. Gullo: It depends, you don’t have to, the way it works right now is the State, under 23A lets you have a Charter, these are the powers you have, all towns have 23A powers ok everyone has that, the State under 66B, which is the Planning and

Zoning Article, gives those powers to towns. Not all towns have those powers, most of your neighbors here in Montgomery County and Prince George's County, do not have 66B implored. So it wouldn't matter if they put that in their Charter to enable them to have it, the State never let them have it under the Code. So said a different way, it doesn't matter if it is in your Code, 66B controls.

Mr. Klobukowski: But that is because we are an incorporated town and the others are not.

Mr. Gullo: No you are an incorporated town that the General Assembly has allowed to have Planning and Zoning authority. So if you go to, anyone that is in the National Capital Park and Planning --- they do not have 66B authority, the National Capital Park and Planning Authority has it for them.

Mr. Kuhlman: Kensington is a prime example, they do not have planning and zoning authority.

Mr. Gullo: The law has it in Prince George's County and Gaithersburg and Rockville, you all have it here, you all own authority. So having it in your Charter if it makes you feel like it is important to be there that you read a word, that you read it in there, but it doesn't make any legal sense. And what you have in there right now conflicts with 66B, which is the problem I have been saying all along, is that which do you follow, I mean I can tell you, you follow 66B but then someone reads your Charter and they say well why is it in there.

Mr. Klobukowski: You wouldn't even have anything saying "in accordance with 66B".

Mr. Yost: And I like where you are going with that Jerry because we have like the government classes when people come in they say what is the difference between the Code and the Charter, so we go through the whole deal, give them the spiel about the powers and what is in the Charter, and to have that in there with the Planning Commission and the BZA because they can make decisions independent and beyond the Commissioners themselves. It is helpful in explaining the whole process and how the Town operates, and I've had people come in and go through the Charter just to understand the whole thing.

Mr. Klobukowski: I like to be able to point back to a root and that being in there number one, number two I believe it is a check against future Commissions saying we don't need a Planning Commission or a Parks Board or a Board of Zoning Appeals or Parks and Recreation Board or Sign Advisory Board, I think you could change it by ordinance to not have it at all and then you are having a real problem, and I sort of like that in there as a check against whatever Body or group of Commissioners are sitting here.

Mr. Gullo: Let me just --- that out a little bit more, so we'll deal with the Planning Commission and BZA as one group because they're already in law, so you are thinking of a line, we will change this section .28 and .30 to be something that is simple and authorize and then there is going to be an ordinance in another section of the Code added for the Planning Commission that is going to talk about how many members there are and things like that, that you are going to pass, and then there is going to be an addition to your Zoning Code that deals with the Board of Zoning Appeals and things like that, that is how that would play out. What would you see happening for the Parks and the Signs?

Mr. Klobukowski: Well the Parks, Recreation and Streets Board I think I'd like to see something there as well, to have something, I don't know what. I don't always agree with whatever the Parks, Recreation & Streets Board does but again I just see it as something where you have citizen involvement, I remember sitting on it, and listening to parents come, discussing what they would like to see in the parks, when we did Bodmer, and when we were planning for other parks and the ADA stuff, it's a good thing, puts a little strain on the Town Manager or the department head of the parks, recreation and streets but still I think it is something that is good and I really don't care about necessarily what other towns in Montgomery County don't have, but I would like to see also you said 12 and there are 157 municipalities within the town, so 12 is not a large percentage of the total, and I would like to see what people do in other parts of the state as well.

Mr. Gullo: I'd be happy to do that but you all like being different too every time so I can't get sometimes you like it, sometimes you don't.

Mr. Klobukowski: Again I don't like, precedence is nice but I don't think you always stand on it and I don't think just because somebody else does it you do the same.

Mr. Gullo: I'm going to stick with the signs and the parks, so if I had language in there that said something like "the town may have a parks advisory board that has the following duties" or do you want me to have like a general thing that is kind of already in there, but "the Commissioners may appoint committees for certain purposes" and then I can list the committees that you could appoint underneath of that.

Mr. Kuhlman: Personally I like your recommendation because 66B supersedes us, 66B is the state law that supersedes our law and it says "you will have a Planning Commission and you will have a Board of Zoning Appeals", the other two boards are granted by the Commissioners to be in existence, they are not required by any other law. So they don't need to be in the Charter number one, neither one of those two, it is a flip of the coin in my opinion as to whether the other two need a defining statement of yes we do have a Planning Commission and yes we do have a Board of Zoning Appeals and you can see the codes to see what their duties are. I do hear Wade's concern about dealing with some people at the desk, it does make it easier, and those are mandated by state law that exists in this Town, the other two are not, so they probably should be in the Code only but not in the Charter.

Mr. Gullo: The spoiler question that I will ask you then, which I can narrow it down to what you guys want to do, is all right what are you going to do with the CEDC, even though that is not on here, remember you were going to add that to the Charter and I told you that you really don't want to do that --- because you have a representative that goes to their meetings, so how do you want to deal with that?

Mr. Kuhlman: In hindsight I personally don't want it in the Charter. I mean the Sign Review Board is a good example, now Rande Davis as Chairman as the existing Sign Review Board, he and I have had conversations and even he has said he doesn't understand why that is not put up to staff to take care of the permitting and just have the Board in case there is a controversial issue or something that staff wants to pass on to somebody else. The CEDC again is an entity that we have created by our own actions, it is not required by a higher law, so I don't see a need for it to be in the Charter.

Mr. Kuhlman: I'll agree with the Sign Review Board but I will disagree with the Parks, Recreation Board, I agree with the Eddie's comments about the CEDC, but again I think the Planning Commission and the Board of Zoning Appeals is something I think that is crucial to this town and where it is located and the implications of all of a sudden somebody deciding at some point in time being arbitrary, capricious and say we don't need a Planning Commission anymore.

Mr. Kuhlman: You can't do it Jerry.

Mr. Klobukowski: Or we can marginalize it lets put it that way.

Mr. Kuhlman: Well 66B if you read that and you probably have in your years I know that, but it's very specific that you will have 5 members, 1 of the members will be a Commissioner sitting there ex officio, the terms, and their powers of duty and maybe someday the state government will come up and try to change that but we cannot change it. Maybe you didn't hear me, I am all for having a statement in there that, in the Charter, that the Town does have a Planning Commission and maybe even a blurb or two about it and a Board of Zoning Appeals and a blurb or two about that, but number one it's an existing Body for 40 years or better, we don't need in there that out of the first 5 elected, this one will serve 1 year, that one will serve 2 years, that one will serve 3 years, and it is kind of mundane now, because it has been in existence for decades.

Mr. Klobukowski: Just because something is that inclusive we take some stuff for granted and then it is gone and all of a sudden people are running around wondering why. I just think it is sort of important to have and I would be interested to see the language that Mr. Gullo comes up with.

Mr. Kuhlman: Jim where are you at?

Mr. Brown: I'm not trying to pass the football here but I would actually like to see it fleshed out a little bit more because this does have implications, I mean to me, I have no argument with any of the language, I do want to spend some time thinking about what this means in terms of the Parks, Recreation, Streets Board as well as the Sign Advisory Board, I mean really those are the ones that are in place and 66B protects in my mind the other commissions, the Planning Commission and the Board of Zoning Appeals, that is really what it just comes down to for me is does the Parks, Recreation, Streets, as well as the Sign Advisory Board, which Sign Advisory Board can be I think is really not in play, it really just comes down to the Parks Board to decide whether or not it needs Charter protection or not, and I am not there yet tonight.

Mr. Klobukowski: The other thing is, let me mention one last thing, I apologize, is when we go to these conferences and we mention other people that we have our own Planning and Zoning authority, I know that the other places that are covered by Maryland National Capital Park and Planning or some places where it is completely just the county, they are very envious of what we have.

Mr. Kuhlman: All right you know what to do?

Mr. Gullo: No. But how bout I restate it, yes and say yes. We are all clear on everything we have talked about and we are going to move ahead on that, so there is really the Planning Commission and Board of Zoning Appeals, and I am going to come up with something to replace the language that is currently in the Charter with something, I will read your mind, to put in there ok. And then I will come up with

the ordinances that we will actually put somewhere else, and we might not do that all at the same time, ok you are really concerned about the Charter now and the ordinances can follow as we go. For the Parks and the Sign we are not going to do anything on that until you talk about it later right, because there really isn't anything to flesh out except you want it in and you want it out and you all can discuss that.

Mr. Brown: I want 5 Commissioners to be talked about that.

Mr. Kuhlman: That's not a bad idea.

Mr. Gullo: So I am going to prepare 10 Resolutions for you for your December 5 meeting and you will introduce them at that point in time and set them for public hearing and move them through the process, and realizing that the BZA stuff and the Planning Commission stuff, the ordinances for that won't come up until January.

Mr. Kuhlman: Very good. All right anything further on that.

Old Business

Mr. Kuhlman: All right moving on, discussion on Charter Amendment 001-11, public hearing was held on this at our last meeting, we had one speaker who has left the room this evening and we didn't receive any written testimony at all. So any questions or comments gentlemen?

Mr. Klobukowski: I think this is something that, you were planning to vote on this tonight?

Mr. Kuhlman: Yes.

Mr. Klobukowski: I would rather have a full Body the Commission vote on it, in other words Chuck to be here.

Mr. Kuhlman: Chuck isn't going to be here for 2 more meetings.

Mr. Klobukowski: That's right I forgot about that.

Mr. Kuhlman: And even if we were, our intention is to appoint somebody at the December meeting, we have an interview this evening to conduct on somebody that wants to serve, that person hasn't been through all the discussion anyway Jerry.

Mr. Klobukowski: Ok.

Mr. Kuhlman: And if I remember correctly Mr. Stump was in support of this last year when we went through them.

Mr. Yost: I think everybody was and once you pass it we have to start advertising it, it is on the wall for 45 days.

Mr. Klobukowski: Ok.

Mr. Kuhlman: Mr. Brown?

Mr. Brown: My initial thought process was that potentially there was merit in bringing down the max increase just because history shows that we haven't used it and I think it is fiscally irresponsible move to bring that number down but I don't consider it to be that much importance at this time in order to alter the direction of the Board, the 7%, I mean if the Body was interested in discussing that, I would be interested in discussing it but I think it is more important that we keep it moving forward and the difference between 5 and 7% especially if you never go to it, there is no difference.

Mr. Kuhlman: Since this was adopted as a law in the town in 1992 the 7% threshold has never ever been reached to my knowledge. I'm happy with this and even the gentleman that was responsible for this becoming law had said in his testimony I believe and he also talked to Wade about it and he said it was never the intention of

his referendum to saddle us to having the budget adopted 120 days prior, if we were not going to raise the revenue over 7%, so we are just unfortunately something fell through the cracks if he's 100% correct, but it didn't get written that way and it is very specific that our hands are tied on the time.

Mr. Brown: I understand, ok. I have no further comment then.

Mr. Kuhlman: Ok is there a motion?

Mr. Brown: I would like to make a motion that we approve Charter Amendment 001-11, the budget adoption timeline.

Mr. Kuhlman: All right is there a second?

Mr. Klobukowski: Second.

Mr. Kuhlman: Any discussion? Hearing none call for question on the motion, all in favor?

All: Aye.

Mr. Kuhlman: It is unanimous.

Committee Reports

Mr. Kuhlman: Planning Commission Mr. Coakley?

Mr. Coakley: George Coakley, Chairman of the Planning Commission. Before we get started on our meeting, I would like to make one clarification and that is my understanding of 66B is that the Town does have the option that they can tell the state that we don't want to operate under 66B, in which case then it would be up to the state to determine who would do planning and zoning appeals.

Mr. Kuhlman: You get 5 people up here out of Chestnut Lodge they might want to decide that.

Mr. Coakley: But that is my understanding of reading 66B that if the Commissioners did decide, and I believe it takes a 4/5 vote, you can decide tomorrow to not have a Planning Commission and a Board of Zoning Appeals anymore, in which case then the state would decide who would do that for the town.

Mr. Kuhlman: And even if it is in the Charter and if the Commissioners so desire they could dump it out of the Charter and dump it.

Mr. Coakley: Ok we met last week, we approved 5 requests for extensions of site plans submittals, and I believe and Wade correct me if I am wrong, I believe that that takes care of all of the allocation requests or allocation allotments that people have either submitted site plans or they have put in requests for extensions based on the economy and connections to other infrastructures in order to perform what they need to do. We discussed preliminary requests for a special exception for a generator at the water tower for AT&T and we decided to have a field trip and go and look because there were some questions about noise levels and whether or not they could attain the 65 decibel requirement that the county currently has, that we would probably suggest to the Board of Zoning Appeals that they follow also. And we also had a number of residents who live nearby that were concerned with the way the site looks and that sort of thing so prior to our recommendation to the Board of Zoning Appeals we are going to have a field trip and make our determination after that. And we approved a site plan change for Winchester Homes that dealt with a fee in lieu for reforestation.

Mr. Kuhlman: All right any questions for George? Thank you very much Sir.

Mr. Coakley: Ok thanks.

Mr. Kuhlman: Parks Board, Mr. Brown.

Mr. Brown: At the Poolesville Parks Board Meeting on November 9 we reviewed for a short time period a Poolesville High School sidewalk request that was not tabled but put back to gain more information from the Town Manager on the request and what the parameters of that entire corner up by West Willard and Wootton Avenue, what that was all about. We got a review of a senior project global ecology project from Alex Pike about planting Chestnut trees over in the Brightwell Crossing development. We also had a pretty good discussion about PAA football and PAA lacrosse moving in tandem with each other to try and secure a place to play their games, they currently play at the high school and are subject to the whim of the high school, which the high school has put \$100,000.00 plus into their fields so several games were cancelled this past year so they were looking for a dedicated type facility where they can play their games, it was well received so there will be more discussion on that. The Relay for Life was awarded the use of Whalen Commons for the Relay for Life event this summer coming up. We received an extremely detailed Eagle Scout project from Robert Winning for building batting cages for Stevens all the way down to the nut and bolt. We had a little further discussion about Fisher Avenue Streetscape and the crosswalks. We also received discussion from a Parks Board Member, Butch Zachrel about the Stevens Park, potentially building a Stevens Park roller park out of one of the tennis courts for roller hockey, and then we had a brief discussion on the Dr. Dillingham Park lighting and security, and that was it.

Mr. Kuhlman: Questions?

Mr. Klobukowski: Yeah we are talking about the sidewalk at PHS that would go to the bus stop.

Mr. Brown: The bus stop, a crosswalk, a rehabilitation of the corner of the Poolesville High School entrance on Wootton Avenue, they have asked for a lot as you probably know. The request actually went through Tim Pike first and we have had discussions in the past.

Mr. Klobukowski: The only thing I recall was basically the sidewalk to the bus stop was one, the other one was I know one lady emailed us and I forwarded the email to Wade about crosswalks on Wootton I believe, were those discussed at all?

Mr. Brown: They were but the Parks Board really didn't, I mean we had the request in front of us along with some nice pictures, but the Parks Board did not have enough knowledge, full knowledge of the ownership of the area, what had been discussed in the past in terms of trying to take corrective action and whatever corrective action was available as a remedy from the town.

Mr. Yost: And the request was changed.

Mr. Brown: And the request was changed correct.

Mr. Yost: It was more of a partnership the first time and we were going to do the sidewalk and signage and they were going to do a sidewalk onto the school property, just do a crosswalk over it would go right into the mud, it needs to be a partnership between the two.

Mr. Klobukowski: Yeah I understand that.

Mr. Yost: And now it has kind of morphed, I am not sure where it is right now.

Mr. Brown: Right it is something that we've got to get together and probably have to have Wade there and form a strategy and I am not sure what we can do to help to be

honest with you, there is not much. I mean we can do it but we would be doing it on the County school property.

Mr. Klobukowski: I thought Winchester was supposed to put a sidewalk across or something there.

Mr. Yost: They will on the corner of Wootton and West Willard and that will adjoin the sidewalk near the auditorium.

Mr. Klobukowski: Right but that's not there right. Ok but that crosswalk would have to be approved by the county right because West Willard is owned by the county from 107 down to Hughes or River Road excuse me.

Mr. Kuhlman: They may not approve it.

Mr. Yost: Because it is not an exact corner, which we just found out by the pool area, they will put pedestrian crosswalk signs up but you can't have a crosswalk.

Mr. Klobukowski: We are talking West Willard, not talking 107.

Mr. Kuhlman: According to the rules and regulations it is not a heavily used crosswalk and their fear is if they put a crosswalk in, markings on the road, then drivers will get used to not seeing somebody in the crosswalk and not pay full attention and then pedestrians will feel the security of the crosswalk and there will be an accident. So they have agreed that they will post crosswalk signs on east and west side of Cobb on Whites Ferry but they will not paint the markings on the road.

Mr. Klobukowski: All right.

Mr. Kuhlman: All right and nobody here was at the CEDC meeting?

Mr. Yost: Mr. Brown was.

Mr. Brown: Actually I attended it.

Mr. Kuhlman: Oh good, give a report.

Mr. Brown: No they actually asked that I stop in and they wanted just some general discussion, they were working on their budget and so they have put together their budget and I cut out with that, they did a great job, its tripled get ready. No it has not tripled but they received a presentation from Sharon Bauer of the Historic Medley District, which I think just basically came down to that they are short handed and trying to do all they can. There was discussion on the budget, they are working on a presentation for the State of the Town meeting in January, they had a Fall Festival recap, talked about the Holiday Lighting Ceremony and they also talked about a Planning Proposal on the Economic Development. They named some dates for some things coming up, which basically we know that the Holiday Lighting Ceremony is on the 2nd, the Holiday Lighting judging of all the houses in the neighborhoods is on the 17 and 18 of December, and they wanted to make sure that the winners were properly posted on the web, Bruce is waiting for an announcement at the next Commissioners meeting, they also announced this year's annual SpringFest for May 19, they also talked about Passport Through Poolesville, shred, shop, and stroll, business fair on March 10 and then the Big Flea on April 21, so they have got a lot of great things planned and I have no idea how they pack so much into such a small budget but they do.

Mr. Kuhlman: Good all right.

Town Manager's Report

Mr. Kuhlman: Town Manager's report.

Mr. Yost: All right you will see the Parks and Streets crews putting all the lights up, they were going to start this week but we are going to be rained out the next couple of days, everything is staged and ready to go, all next week will be a big push to decorate the Commons as well as get the overhead lights up and in place for the ceremony.

Mr. Kuhlman: You going to be up there putting the Santa up.

Mr. Yost: I probably will be helping them and really that is it for me.

Mr. Klobukowski: I forgot to mention under announcements that Eddie and I attended the Montgomery County Chapter of Maryland Municipal Leagues Meetings this past Thursday night and they discussed the Comcast Franchise Agreement is up for re-adoption or whatever you want to call it and they were asking whether or not municipalities wanted to participate in sharing the cost of the lawyer to negotiate with Comcast.

Mr. Kuhlman: And I already told them no.

Mr. Klobukowski: Ok and I thought there was discussion there before the Maryland Senator Rankin came about speed camera money and I can't remember what the county was going to do or thinking of doing.

Mr. Kuhlman: I think it was Gaithersburg put up three more because they had a windfall last year off of theirs so they wanted some more. Did you have any luck finding out about the one...

Mr. Yost: I put a request in to make sure it was repaired, I have not tested it out yet.

Citizen's Forum

Mr. Kuhlman: All right Citizen's Forum anybody have anything?

Adjournment

Mr. Kuhlman: Seeing no hands we are going to entertain a motion to adjourn to Executive Session.

Mr. Brown: I make a motion we adjourn to Executive Session as provided for by the Annotated Code of Maryland, State Government Article Section 10-508(a)1(i) to interview and consider an appointment to the Commissioners.

Mr. Kuhlman: Is there a second?

Mr. Klobukowski: Second.

Mr. Kuhlman: All in favor?

All: Aye.

Mr. Kuhlman: We are adjourned to Executive Session.

Executive Session Minutes
11/21/11

Present: Commissioners Eddie Kuhlman, Jim Brown and Jerry Klobukowski, Town Manager Wade Yost and Town Attorney Jay Gullo.

The Commissioners adjourned to Executive Session as provided for by the Annotated Code of Maryland, State Government Article: Section 10-508(a)1(1) to interview and consider an appointment to the Commissioners.

The Commissioners interviewed Brice Halbrook for the vacancy on the Commissioners. After the interview, he was excused. The Commissioners had a discussion and will make a decision at the December 5, 2011 meeting.

The meeting was adjourned.