

**POOLESVILLE PLANNING COMMISSION
MEETING OF NOVEMBER 18, 2009**

PRESENT: BOB BACHMAN, CHUCK STUMP, LINK HOEWING AND GEORGE COAKLEY. ALSO PRESENT WAS TOWN MANAGER, WADE YOST, TOWN ATTORNEY, ALAN WRIGHT AND TOWN ENGINEER, JOHN STRONG.

Call to Order

Mr. Coakley: Ok Planning Commission of November 18, 2009 is called to order. Present are the Planning Commission Members with the exception of Cal Sneed who is out of Town. And Town Attorney and Town Engineer and Town Manager are also present.

Announcements

Mr. Coakley: Are there any announcements?

Citizen's Comments on Agenda Items

Mr. Coakley: Ok on the agenda tonight we have approval of the minutes of August 12th. We have bay window setback request, Williams Adventure preliminary plan, Forest Conservation Amendment, Underground Storage Ordinance and under old business we are going to discuss solar farms. Any citizen's comments on any of the agenda items.

Approval of Minutes

Mr. Coakley: Ok hearing none do I hear a motion to approve the minutes of August 12, 2009?

Mr. Hoewing: So moved.

Mr. Stump: Seconded.

Mr. Coakley: All in favor?

All: Aye.

Mr. Coakley: The minutes have been approved.

New Business

Mr. Coakley: Ok first item is bay window setbacks and yes I see Mr. Kettler now.

Mr. Kettler: Good timing.

Mr. Coakley: Did you want to catch your breath before?

Mr. Kettler: No I am ready.

Mr. Hoewing: Putting a roof on the new house?

Mr. Kettler: For the record Tom Kettler, President Kettler Forlines Homes and Brightwell Crossing and I don't know if you all know Dave Mowatt, Owner and Principal of Potomac Valley Surveys who is based here in Poolesville and is doing all of the survey work for Brightwell Crossing and so he has got a lot of experience and background obviously in the survey field. Background behind this is that when I went through the Development Standards I guess last spring realized there was one issue that popped up for us that affects Brightwell Crossing and we were looking for a clarification or a revision I guess is a better way of saying it although we kind of view it as a clarification on the Development Standards I don't know if you all have a copy of those and what I have taken the liberty of doing is requesting that you all consider and I started

all this I know when you all were doing some of the energy stuff so I sort of figured it was the time to introduce the same time and I know that went its own direction so we just got deferred a little bit and I talked to Wade the last couple of months and waited for the right time to get back before you. What we've got is a situation in some of the smaller lots, well what we are asking for is in the R 1/3 zone and R 1/2 zone consideration for a clarification on the side setback right now the Town of Poolesville has a fairly very simple policy which is basically the side setback is the side setback and there is no and I don't know if you all are, I am happy to go into the details of what side setbacks are, sometimes I get talking and get ahead of myself but when we build a house on a particular lot there are a front setback, side setback, rear setbacks, what we are dealing with here is the side setback and we realized as we started going through our product mix and looking at our sites and looking at the Town Code that we had a situation where we had some parts of our structures that would encroach into what the Town is currently using as their side setback which is 10 feet. Now this is something that caught me by surprise because it is a pretty common thing for us in other jurisdictions to be able to have a small encroachments in the side yard for things like fireplaces and bay windows and window wells and those such things and that's what is note #13 at the bottom of page 16 is typed in and added and we understand the need for separation between the units for fire safety and everything else but we don't think that this request will compromise that at all and I work at a bunch of jurisdictions, Dave does survey work with a bunch of different jurisdictions it is a fairly common and Dave certainly can speak to it, it is a fairly common thing in other counties and in other municipalities that this kind of setback issue comes across all the time and there is usually accommodations made for it, so I guess we are just kind of asking that Poolesville consider this in keeping with it being something that is kind of a customary practice in other jurisdictions. Now everybody does it slightly different George so there is no sort of one size fits all but we kind of felt that the way we had this defined might be a way to cover it.

Mr. Mowatt: Real quick as Tom said all the different jurisdictions around here are a little different but they all do allow some encroachments and on side lawn setbacks whether it is a chimney or stoops and covered walkways, things like that. But they all vary a little bit but they all pretty much without exception they all allow some encroachment in the side yards.

Mr. Coakley: Why is that?

Mr. Mowatt: Why is that?

Mr. Coakley: Yeah. It seems like if you had a 10-foot setback than you would expect everything to be within the 10 feet.

Mr. Mowatt: True maybe to break up the wall lines so you don't have 40 feet of house with nothing, no projections, no bays, no chimneys things like that.

Mr. Kettler: Where we pretty much draw the line where the other jurisdictions on line use the foundation, the concrete it used to be lot foundation or the concrete foundation now a days that does not and we are not proposing that that be able to encroach in the side yard. What we are talking about is projections up into the structure, whether it is a bay window or in some cases you have eaves, you know I have had jurisdictions where they look at gutter, it gets pretty absurd when you start looking at all the things that you have to kind of account for so, now again somebody could say well just build the house smaller and certainly that is a solution but typically we have product sizes and we are

basically working with lot widths of a certain dimension which we know about and then we have these structures that get added on to the side whether it is a fireplace, now again a fireplace used to be masonry, they used to be part of the foundation, now they are in our case they are prefabricated, it is basically a framed box that is built out on the end of the or the side of the house and that is the kind of thing that we are talking about, it goes out a couple feet beyond the edge of the house but again it is a projection.

Mr. Bachman: How wide are your bay windows?

Mr. Kettler: Bay windows are anywhere from, our setback Robert I was thinking about that, I think they are anywhere from by the time you start the wing and go out they are usually in the neighborhood of around I want to say 10 feet that may be plus or minus and what you've got is you've got usually 2 planking windows that come out at some angle, a standard bay window they come out at an angle and go across and then they go back but the distance from one side to the next is 8 to 10 maybe 8.

Mr. Bachman: Does the floor plan of the homes you are building, are there any in the dining rooms on the same side of the house that you might have 2 bay windows if somebody wanted to have one in their living room and one in their dining room, would you end up with 2 bays on one side of the house?

Mr. Kettler: You could I don't think our architecture sets up that way Bob I think one of our houses for instance has a bay window, well right now for instance although we are building a brand new house that you all have seen that house is a large enough lot there is enough setback there is no real issue there but that house for instance as an example will have a bay window on the one side and then will have a fireplace on the opposite side that is just the way the architecture is designed and that is a fairly common thing for us, sometimes the fireplaces are on the back but in this case it is a dining room bay window, which is an optional feature I mean it doesn't have to be on the house but again it is an option that we find that a lot of people want to expand space, gives them a little more seating area in the dining room.

Mr. Bachman: And are your bay windows going to extend 2.5 feet from the side of the home.

Mr. Kettler: Normally they are like 2, 2.5 I was just kind of, you know when you work with engineers when you start to get to .1 that is when they get a little nervous so I tend to try to have a little bit of flexibility and the 2.5 was just trying to give a little bit of elbow room and the houses are staked a certain way, they are put in a certain way and its kind of allowing for just a little bit of human error.

Mr. Bachman: Could you live with 2 feet?

Mr. Kettler: Could I live with 2?

Mr. Bachman: I mean I thought the standards were 2 feet.

Mr. Kettler: Well some have 3 depending on the jurisdictions.

Mr. Mowatt: It does vary Montgomery County is 2 feet generally for chimneys and overhangs.

Mr. Bachman: So Montgomery County's standard is 2 feet.

Mr. Kettler: Right.

Mr. Bachman: The standard in Chevy Chase is 2 feet. What is the standard side yard sideline for Montgomery County?

Mr. Mowatt: These size lots if they were R 60's you'd be looking, that was another kind of point, this was a Montgomery County lot about this size or some of these would be R

60's, you are looking at an 8 foot minimum, 18 foot total, so you have an 8 and a 10 where Poolesville is obviously 10 and 10, so we are a little more stringent and in Poolesville I think that was another reason maybe Tom was hoping to get...

Mr. Bachman: And others have 15-foot side yard setbacks.

Mr. Mowatt: Depending on the lot size that is correct.

Mr. Bachman: Rural neighborhood cluster in Montgomery County is 15 feet for a 25,000 square foot lot, that's about the size of your lot.

Mr. Kettler: That depends on the lot, that is larger, the third acre lot is 14,000 square foot I think it is 14 and something the third acre lot. 14, 520 square feet for an R 1/3 lot.

Mr. Bachman: Could two homes be built where they both have bay windows facing each other.

Mr. Kettler: Yes.

Mr. Bachman: So they would have a 7.5 (inaudible).

Mr. Coakley: Well my concern is you have 20 feet, you build 2 houses next to each other so that is 5 feet less and then you'd be 15 feet, people put in flower beds and everything else outside of the bumpouts and then you have a Kentlands, a Clarksburg where you have houses that look like they are right next to each other.

Mr. Kettler: I understand the point but I think it is hard to compare this zone and these zones, Clarksburg is a whole different animal, Kentlands a whole different animal they are basically zero lots line, they've got 5 foot side yard setbacks requirements and the other issue, I mean I understand the point George, that you don't want to...

Mr. Coakley: Well if you have zero lot lines and you don't encroach and you have 15 foot lines and you do encroach you can end up with almost the same visual aspect and maybe even the same safety issues with fire equipment and emergency equipment getting into rear yards.

Mr. Kettler: The other thing I think to remind folks about the fire and certainly fire and safety is always an issue and but the thing to remind everybody about is that starting within the last couple of years Montgomery County has mandated fire suppression systems so all these houses will have their own internal sprinkler system so the need for fire trucks to come in, number one would be able to get between the houses and get behind, it becomes more of an issue I think with townhouses but I don't think that and Dave correct me if I am wrong but given the net of the worst case scenario what we are talking about which would be 15 feet is going to create a situation where they can't negotiate between if they need to, equipment or hoses or whatever they need to do for a typical single family dwelling is what we are talking about here.

Mr. Coakley: And architects aren't good enough they can design a floor plan where if its that close on the sidelines that bumpouts and fireplaces can't be put either in the front or the rear where there is adequate space.

Mr. Kettler: They can do that and again if you all, I mean to be honest with you it is something that I personally missed when I was going through this because the last thing in the world I want to do is come up here and say oh we'd like to do a, although I think it is an important thing for the Town to have because I think other jurisdictions have it, but for instance I have a 59 foot home, I have several of them at 59 feet different models that we offer, we have a minimum on the smaller lots, the minimum setback if you use the entire product is 60 so than all of a sudden boom and then I just assumed because I have always been able to have fireplaces and bay windows work in that space because I've

done it in Prince William County, Loudon County, Fairfax County so frankly it was a mistake on my part and I should have started with that here tonight because but for me at this point to go back and design those back out its not going to be practical I'm either going to have to not offer those on those particular lots or say ok this particular house if you want this house on this lot you can't get the bay window because it doesn't work.

Mr. Hoewing: But the bay window the other direction into the house.

Mr. Bachman: How many homes would be affected by this, how many homes according to your layout your subdivision would be less than 10 feet from the property line if they had a bay window.

Mr. Kettler: The bay window would be less but the house itself would not be.

Mr. Coakley: How many lots would be affected if you put a home with bumpouts.

Mr. Bachman: Let me be clear about this, the bay window because it has a roof is considered a structure, I want to be real clear unless there is something that, a change and I am not understanding how this is defined, the bay window because it has a roof and it comes down that is the building line even though there may be an open space between so what I am trying to figure out is how many homes do you have that would be impacted that is less than 10 feet from the property line if you build a bay window in them.

Mr. Kettler: It is difficult to answer exactly Bob because we have 7 different product lines that we are offering depending on which houses sell on which lot, but I would say it could be maybe a dozen or it could be 20, I mean it may not be that many it depends, it is more than 1 and less than there are 177 all together.

Mr. Bachman: There are 177 homes in that first...

Mr. Kettler: Well in all of Brightwell from front to back.

Mr. Coakley: Well refresh my memory how many lots do you have in Phase 1.

Mr. Kettler: 79.

Mr. Coakley: And of that you are saying approximately a dozen or 15 or something would be...

Mr. Kettler: Maybe but again if a particular house sold, yeah 15 20 to be conservative George but probably not that many. I don't think more than that.

Mr. Coakley: Link do you have any comments.

Mr. Hoewing: No.

Mr. Coakley: Chuck?

Mr. Stump: No just thinking.

Mr. Kettler: Another background thing I put on here utility meters, again utility meters are attached to the side of the house, the house could be here you could have a utility meter that is sticking out beyond the physical plane, so those are the kind of crazy kind of things.

Mr. Yost: Those don't count.

Mr. Kettler: Those don't count ok, well then maybe we don't need to put that in but I was trying to be all-inclusive.

Mr. Yost: No the Code says a building line – a line beyond which the foundation wall or any enclosed or covered porch or vestibule or other enclosure covered portion of a building shall not project.

Mr. Coakley: Now would a chimney fall under that description?

Mr. Yost: Probably so because it is enclosed, I would think so.

Mr. Coakley: Ok I think the Town Engineer had a comment.

Mr. Strong: Yeah let me step up to the mic so Maggie can hear me. The only other thing that is an issue is depending on where they set the mechanical because we do have to certify the wall checks now for mechanical in Montgomery County and it can't encroach over the building restriction line.

Mr. Kettler: You mean for air conditioning.

Mr. Strong: Yeah.

Mr. Kettler: We'll just live air conditioning out.

Mr. Coakley: I guess my gut feeling is that you should design a product that fits within the allocated space. I think as a general rule we have been granting lesser setbacks in the front, I believe the Code says 60 feet and we've almost gotten into the habit of just going with 40 feet because of the way it looks and stuff and everything. I am getting a little hesitant and gun shy with shared driveways and cutting back on standards that we have in place and everything, you start sniggling here and sniggling there and then problems tend to crop up as a result of that. So I guess that is where I sort of stand and I am extremely hesitant to go along with this, I am not sure how you gentlemen feel.

Mr. Bachman: I have the same concerns that you do there already is in portions of Brightwell Crossing a very generous --- of lots compared to the other subdivisions in Town, it is a very generous arrangement, that is my evaluation of it so I would be concerned that that extra 5 feet taken away between homes could end up looking like a very tight product, in addition to safety issues and in addition to being asked to revise our subdivision regulations, I have a lot of reservations.

Mr. Hoewing: So these houses are Tom are exactly 10 feet on either side from the sideline.

Mr. Kettler: No for instance in the smaller in the R 1/3 you have an 80 foot minimum, 10 foot each side leaves you 60 and I have a 59 foot product and therein lies if I have any kind of protrusion on the side more than 12 inches.

Mr. Hoewing: Yeah you had 10 on each and you were exactly there I was thinking maybe you could just shift over the house I mean it might be a pain in the butt but at least you could shift it over a lot easier than...

Mr. Kettler: Yeah and I've looked at can we bring the fireplaces inside the houses maybe, we may have to do that and then all of a sudden you have a family room that has just gotten shrunk by 2 to 3 feet by the time you bring the fireplace in and the hearth in and its not something that is desirable, and again I understand the concern about the 15 and 50 I think the likelihood that you are going to get that scenario where things are lining up exactly you have 2 things right next to each other, you may have a fireplace here and a bay window in the back so it is not like you are going to see a net of 15 feet from point to point I mean it may happen in a rare, rare situation but that is like the alignment of all the stars happening to certain houses and every option taken, I just don't think that is going to happen.

Mr. Coakley: And how many models are you currently offering?

Mr. Kettler: We are offering 7. The smaller models would not be a problem because they are...

Mr. Coakley: Well how many of the 7 models...

Mr. Kettler: Will have this problem.

Mr. Coakley: Yes.

Mr. Kettler: 3 possibly 4.

Mr. Coakley: Well how would this differ from someone coming in and saying I want a 3 or 4 car garage and you telling them well we only have 5 lots in our development that can accommodate that. We've looked at property and we say well we would like a 3 car garage and they tell us well we only have 4 lots in our development that are large enough for a side load 3 car garage.

Mr. Kettler: That is a valid point and you are right a 2 car, 3 car garage is going to be something that is going to be conditional on where the lot is and either it will work or it doesn't work, I guess I don't treat a fireplace which is a, you know a 3 car garage is kind of an optional feature that somebody would want, we offer fireplaces on all of our homes, they are not an optional feature for people, I mean we include it because people like fireplaces, where the 3 car garage if you can get it you can pay for it fine and if it's a lot fine, I think there is a little bit of a difference there I think. But I understand what you are saying and I obviously would like, I mean back to John's point I am a little bit and maybe John you can jump back in here but the issue with the air conditioning compressors which typically in most cases are on the sides of houses and that particular regulation I think is brand new because I never heard of that until maybe a month ago.

Mr. Yost: It's all of Montgomery County well it has been a couple months.

Mr. Strong: Well since we started doing Stoney Springs.

Mr. Kettler: So there are situations now where we would have air conditioning compressors if we didn't change anything that would be encroaching the side yard. So than that is a whole other problem because if you think about your house and between the air condition compressors, think about the houses and you think you swing the air condition compressors back to back and maybe they are back there, but in the back of the houses typically we like to leave that area free for decks, patios, where people like to entertain. Compressors and things typically are on the side because it is not a very active use and that is typically where you see them in most houses, so can we force the air conditioning compressors on the back of the house yeah, do I want to do that absolutely not but I may be stuck doing that too I haven't really looked at the full ramifications of that but I guess that is another...

Mr. Coakley: Now is that a mandate by the County?

Mr. Yost: Yes.

Mr. Coakley: And that affects us also?

Mr. Yost: Yes well they won't issue the building permits.

Mr. Kettler: And unfortunately I think a lot of my personal opinion a lot of this is coming down because of Clarksburg, Clarksburg is a very different place, the zoning in Clarksburg is very, very tight, they have back loaded ---, so my guess is they got complaints about people, like you talk about George not being able to literally walk around your yard because you are running into the air conditioning, now again we are not talking about 10 foot side yards, we are talking about 5 or in some cases you got some I don't know if they are zero lots, there may be some zero lot situations where you literally have the house on the property line, its that crazy over there but that is a whole different animal. But in typical Montgomery County fashion they have a problem over here so we are going to just make the whole County go by this rule because we have this one problem over in this one sub community and everybody is going to have to live by the rules. Now I am starting to get on my soapbox so I will stop that.

Mr. Bachman: Is there an average square footage for the properties in Brightwell Crossing?

Mr. Kettler: Yes there is, can I give it to you. What in terms of the house size Bob or the lot size.

Mr. Bachman: Lot size.

Mr. Kettler: Lot size well density wise the entire community is 170 some acres, we have 177, on a density basis we have 1 house basically for every acre but of course the lots aren't acre size because you are taking out a lot of parkland and taking out the roads and taking out the rest of that so the lots are anywhere from the minimum 15,000 square feet up to there is some that are probably up to an acre which is 40,000 square feet so the simple answer is probably somewhere in the 20's I guess if I had to average, 20 some thousand. You know if you throw it all in a box and mix it up some are bigger some smaller. But I could live with 2 versus 2.5 if that would be helpful, if the Planning Commission would be willing to entertain versus nothing I guess but anyway.

Mr. Bachman: Well what is missing in the amendment you want to make to the Development Standards is whether you ask for 2 feet or 2.5 feet it has to be in the context of what the setback is for the lot line.

Mr. Kettler: I don't follow.

Mr. Bachman: Well I mean if you are asking for 2.5 feet and you had a lot line of 10 feet you really are reducing it to 7.5 feet, if you had a lot line of 15 it wouldn't be the same issue you would have more space between the homes. So the issue is you have the possibility of if you have 15 feet between 2 homes because they each have a bay window.

Mr. Kettler: Right and is that acceptable to you all as Planning Commissioners.

Mr. Bachman: Anybody want to know what 15 feet is, here.

Mr. Coakley: It is not that much.

Mr. Bachman: Ok here is 15 feet.

Mr. Coakley: Could you buy a less complicated tape?

Mr. Bachman: Here is 15 feet and I am a house and Link is a house.

Mr. Hoewing: You are a bay window.

Mr. Bachman: But structurally they consider the bay window to be the side of the house, it's not a lot.

Mr. Coakley: Ok do we need a motion on this?

Mr. Hoewing: Well it sounds like straw poll at least 2 votes against it right now it looks like to me.

Mr. Stump: Well I am not a fan of exceptions or special modifications, its like if you want to change the setbacks, change the setbacks don't throw additional tweaks and modifications to the setback standard so I am not good for that.

Mr. Hoewing: I don't think you need to vote I think you (inaudible) need to vote. Unless you want to put it on the record, it's up to you. I don't think it needs to frankly I think you did a straw poll.

Mr. Kettler: All right well thank you for your time.

Mr. Coakley: Thanks. Ok next item Williams Adventure Preliminary Plan.

Mr. Tillman: (Inaudible) Tillman, Benning & Associates I would like to thank you for taking the time out of your lives to be with us tonight. With me is Bob Jamison what we would like to propose is a 2 lot subdivision out on Budd Road that we are calling Williams Adventure. The property is located in the RDT zone property, which is 1 house

for 25 acres, we have clustered these houses down to the lot minimum, which is actually an acre. Keep continuity with the agricultural fields, we have separated the houses away from the 5 agricultural use areas and clustered it across from the existing subdivision to give it some continuity to a subdivision. That is pretty straightforward it is public water and sewer it will have to be a sewer extension in the public right of way there along Conlon Court, the water is right there on Hughes Road so it will just be water house connections from there. I submitted this plan and got a couple comments from the Town Engineer and in regard to those I have sent plans off directly to Todd Erickson who is with the Maryland Department of Natural Resources for him to review the plans. Mrs. Jamison provided me tonight with a letter as to any deed restrictions on the property. Montgomery County has been given the plans for the street and we have not received any comment back from them yet at this time. So I guess what we are asking for is for this project to be considered for the subdivision process and start down that road to get any comments from you gentlemen.

Mr. Coakley: And John or Wade you had some concerns.

Mr. Yost: Sure John you want to go ahead. He reviewed it initially and then I have some comments also.

Mr. Strong: Let me turn this so Maggie can hear me. We were able to look at the sanitary and the water, we actually received those plans initially some time ago and would tie into the manhole for the sanitary here on Conlon. As he stated it would pick up the water from here to here. This is one of the topics coming up later in our meeting the forest conservation rules changed as of October 1, the Town no longer has the ability to review the forest conservation until approval of the new standards and there are some changes there. Until that time the plans have to go to the State of Maryland for them to review, I was informed tonight by Josh that we may be able to do reviews, I've got to get something from Todd Erickson who is the sole area reviewer for Montgomery, Howard and Carroll County, he is with the Department of Natural Resources. If he grants that, the review under the standards that have been proposed then we just progress there. The road is a County road so that would have to have approval for (inaudible). The only thing that we were concerned about from our standpoint was this entrance here may have to be moved here due to this turning radius here on Conlon Court and the lot is lot 2 we are speaking of. There is no public open space depicted, there is no sidewalk on this side of the road nor curb, curbing would be part of Montgomery County standards, they would either recommend it or not, the Town could go ahead and request a couple other things, it doesn't address street trees or lighting for that area.

Mr. Coakley: Is Hughes Road considered rural rustic in that area?

Mr. Yost: Nothing within the corporate limits are rural rustic.

Mr. Strong: And that is our comments for the time (inaudible).

Mr. Yost: Some of my initial comments, the property adjacent to this is the Rabanales property which is also RDT 60 acres, he does have 4 build able lots on that property along with a well, so as John was talking about the sidewalks, curb and gutter that is a consideration are we going to have to ever extend it down through there knowing that the other piece is RDT above it with only 4 possible lots to be built there and some of his plans do show a clustering effect also, so it may not ever be, it may always be open space or all wooded area. Some of the other things I detailed were in the Master Plan there is a trail system that does go along the property lines there between Mr. Rabanales and Mr.

Jamison's property so there would definitely have to be an easement, slightly have to move off I'm not for sure how much room would be needed between the property lines to facilitate the plan. It would be a minimum of at least 6-foot yes. And then in the annexation agreement when the property was annexed into the Town there were some agreements for right of ways around the property, this will be the time to secure those and request them and they are a little bit different from what's on the plan now as far as the Tom Fox, Hughes Road was 40 foot from the centerline right of way, 40 foot from the centerline of Budd Road, and 30 from the centerline of Willis Road and we should probably request those at this time also and have those deeded to the Town while we are going through the process of re-recording. And then in the PIA John had mentioned there will be a parkland fee in lieu that will be due on each property and right now it is \$2500.00 per house. And the street trees also which you guys want those.

Mr. Coakley: The Slayzman property which is up further, did we require curb and guttering up there do you recall?

Mr. Yost: Yes we did. And there is curb and guttering around the Catholic Church rectory and on the opposite side of Hughes Road so that would be continuous with that.

Mr. Coakley: What about sidewalk?

Mr. Yost: Yes we did require sidewalks there also.

Mr. Coakley: Would that be required here even though we have an undeveloped piece in between.

Mr. Yost: It would be a waiver for the Code if we do not make them do it.

Mr. Tillman: That is one of the reasons I left that off our discussion tonight. I was concerned about an isolated piece like this that there is going to be a sidewalk to nowhere. That is why I left it off.

Mr. Coakley: But then if Rabanales gets developed...

Mr. Stump: Haven't we had this discussion before?

Mr. Coakley: We had that down on the other end of Budd Road.

Mr. Hoewing: Recently.

Mr. Coakley: And I guess the position is that if you don't build it now than if Rabanales were to develop then would you go back and put a sidewalk in.

Mr. Jamison: I don't see this farm or Rabanales farm getting developed in my or your lifetime and I wish us both longevity. It is not in the Master Plan, it is not in the Town plan and I really didn't want to spend the money to build a sidewalk because what is it going to service and who is going to benefit from it. Ultimately if the zone does change and that 90 acres is developed or Rabanales is developed then and at that time there will be extractions of generosity and then you will get your sidewalks and it will be a plan. And I just thought it was a waste of money to think about a sidewalk because if they need a sidewalk and if they are going to school all the infrastructure is on the other side of the street and that is why it is sort of a rural cut too, if in fact in 100 years if Hughes Road is developed and there is some kind of --- that is put on this site then they will widen Hughes Road and they will have curb and gutter and who knows what, we have all seen the changes but I think it is a waste of money now and I don't want to spend it, if I am forced to spend it I guess I will but I am asking the Commission to not request it and I am going to ask Montgomery County Department of Transportation to not request it because I just think it is a waste of money.

Mr. Stump: That subdivision to the north Wade where is there cluster on the (inaudible).

Mr. Yost: They have given a couple different plans and they are actually trying to go for a rezoning also so they had 3 different plans but the majority of them the one that I was talking about was along Tom Fox.

Mr. Hoewing: You said Wade that the trail system was supposed to be on that side of the road.

Mr. Yost: Trail system divides Mr. Rabanales property from Mr. Jamison's property.

Mr. Jamison: May I interject something Mr. Coakley. Additionally at some point in time the Town fathers had approached me about allowing a waterline to be placed along the north boundary of this subject site and I had agreed with Mr. Elgin and President Kuhlman that I would work with them and it may even be in Susan's Annexation Commission, Susan being Susan Jamison my wife, my counselor at law in that we would allow a waterline to make that loop over to Mr. Cahoon's site. So as some kind of flow that they wanted in the Town which would help from stagnation in the pipe and I didn't understand all that but I had agreed verbally to do that so we could do both if you want just as a good thing for the Town not that I want to be very philanthropic you all know that but all of this having been said it might be something that would help the Town and would maybe bring the plan along and spend money where it should be spent or give you something that you need and not do things that maybe don't in my opinion need to be done like a curb and a sidewalk. So I just want the Commission to take that under advisement for whatever it is worth.

Mr. Bachman: George could you provide some background to me I haven't seen the request to (inaudible) of the transfer zone (inaudible).

Mr. Hoewing: We encourage cluster zoning that is what this really is, cluster zoning is part of our zoning requirements we actually urge people to do that frankly. I would rather have that than actually have 2 big plots of land with a house in the middle.

Mr. Coakley: Yeah it leaves more land open for agricultural use and like they mentioned it fits in better with the homes that are across the street and stuff instead of having 2 estate type homes sitting out in the middle of a farm field.

Mr. Bachman: To the north of the two homes you want to build (inaudible).

Mr. Coakley: Well the Rabanales property has 4 taps.

Mr. Yost: 4 taps for the Rabanales property.

Mr. Bachman: When we look at those three homes is that Budd Road.

Mr. Coakley: Well the corner of Budd and Fisher.

Mr. Bachman: And it was the --- at that time to build sidewalks and curb for those three and as I recall --- initially went along with that and the Commission said wait a minute we are in the process of curbing the sidewalk in the portions of the town that want curb and sidewalk lets not create anymore uncurbed and unsidewalked areas of town, there is a policy in place to have to spend hard earned Town dollars revenue or grant revenue or state revenue to fill in that infrastructure that went in there so we have already had our hands sort of smacked once for going along with the idea of not putting curb and gutter.

Mr. Yost: We waived the curbs that was due to the nature of the roadway --- on the sidewalk and offsite installation of sidewalk.

Mr. Bachman: So I think that is the issue behind the idea of these sidewalks. (Inaudible) so we are throwing good money after bad everywhere.

Mr. Jamison: No I don't agree with that statement but there is a place for curb and gutter and sidewalk and I've built it here in Town and have given as George may recall right

down here at Cattail Road and 109 and I agree there is a place for it. And every site is unique, no two sites are the same and if this particular site I think enjoys a rural cut and like so many sites in the RDT zone and that is my opinion on it but you are the Commission.

Mr. Hoewing: Part of the reason that that other case was like it was is because they were actually contiguous to an existing sidewalk so it was actually coming around the corner so those houses were actually connected to a sidewalk system that already existed. What Bobby is saying is here there is really no sidewalk you are connecting to and probably not likely for anywhere in the near future you are going to be connected to so it is just a dead sidewalk its not going anywhere. That was going somewhere it's going to the rest of the Town frankly.

Mr. Bachman: Who owns the property to the north?

Mr. Hoewing: Rabanales. It won't be developed for a while I don't think, I may be wrong but I don't think so.

Mr. Bachman: If it would there be a sidewalk placed there do you know.

Mr. Hoewing: Rabanales goes up to the church so it probably would be.

Mr. Stump: There is currently a sidewalk on the other side of the street isn't there.

Mr. Coakley: Well there is some sidewalk up near the church. We included in the plan curb, guttering and sidewalk for Slayzman property that would go from the church up almost to Hughes Road at least with the Budd property on the corner there, so it would go up to there so then you would have that one section that didn't have it and if Rabanales ever develops their property we would certainly require it. So then we turn around and we say well who is going to put the sidewalk in front of these two houses and we look for a generous benefactor.

Mr. Jamison: It is your call. I'm here just as a landowner I understand the Commission wants to do what's right and I do too.

Mr. Coakley: I am curious also about the trail. When you cluster how does that affect how much of the trail will be required by the developer to put in.

Speaker: Wade I didn't see the trail in the Master Plan can you elaborate on it.

Mr. Yost: Sure.

Mr. Jamison: What is it a foot trail Wade, is it a foot trail.

Mr. Yost: It is an asphalt path.

Mr. Coakley: Like bike.

Mr. Jamison: Just to shed some light on Mr. Bachman's question about the Rural Density Transfer zone and Mr. Coakley's statement about if we cluster I don't want to misstate you, if we cluster in the RDT zone is there some trail or some I don't want to use the word proffer here in Maryland but is there some extraction of generosity from the landowner necessary to gain a cluster in the RDT and Counselor correct me if I am wrong but I am an expert value witness in Circuit Court and testify on the RDT zone all the time, not all the time, but when (inaudible). That zone was put in in 1981 and in that zone there was a cluster provision and anywhere in the rural density transfer zone the minimum net lot is one lot for 25 acres, so on the subject site we have 90 acres therefore 3 potential residential dwellings, there was a provision in that zone that allowed for clustering down to 40,000 square feet just shy of an acre which is 43,560, I don't know whether the Poolesville RDT zone calls for 43,560 exactly an acre but by right without any generosity or quote proffer a landowner can cluster down to that 40,000 square feet

in the RDT zone but in Poolesville it goes to 43,560 so a landowner by right has that, doesn't have to give a trail, doesn't have to give a easement, doesn't have to do any of that, that is the right under the zone just for clarity purposes. I am willing to work with you on a trail or sell you a trail but I am not going to offer you a trail tonight for free on my site, so I want that to be clear I have the right to cluster down but you do not have the right to put a trail on me without paying me or me agreeing to give it.

Mr. Bachman: Mr. Jamison you are eligible for three lots?

Mr. Jamison: Yes Sir.

Mr. Bachman: Why are you only (inaudible).

Mr. Jamison: Because the residence that currently exists there Mr. Bachman constitutes a residence. So I would be having 2 more and because I bought this site subsequent to 1981 when the zone was adopted I do not have the right for children's lots. Under the RDT zone if you are in fee simple absolute or if you have enough TDR's to build a house for each child you can have a child lot but the Town of Poolesville and I worked together and we annexed this site and all of the other sites that were annexed in the 2 annexations and Susan Jamison Pro Bono wrote all of that language for those annexation petitions and worked with Charles Elgin and the other Commissioners. But when we did that we gave up our transferable development rights and I don't have any child lots so this particular site is not for my future retirement, I am actually going to gift this site, not that you care or that it matters to my daughter and her husband who recently got married and hopefully will have a nice healthy boy in February, that is the impetus for this subdivision otherwise I wouldn't be touching this site Mr. Bachman, so that is kind of the story and I hope I am shedding some light here on the deal of what I am trying to do.

Mr. Hoewing: Congratulations.

Mr. Jamison: Thank you.

Mr. Coakley: And not to hope for a late delivery or anything but with the water sewer allocation how does this fall on this list.

Mr. Yost: Oh he has been granted allocation.

Mr. Coakley: Pardon?

Mr. Yost: Everyone has been allocated.

Mr. Coakley: Oh ok.

Mr. Jamison: We are ok that way. I'm not trying to pay Josh Mr. Coakley on a maybe. So where do we go from here Wade do we need to...

Mr. Yost: Well we have to wait for the attorney to opine on a couple different issues, we will definitely write up what we talked about tonight John and I both and give it back to you and be a work in progress until the next meeting.

Mr. Jamison: Ok thank you gentlemen.

Mr. Coakley: Thanks. Ok next on the agenda forest conservation amendment. John is the reduction from approximately an acre to approximately a half acre the part of the State mandate or is that...

Mr. Strong: Yes that is part of the State mandate. Let me just run over a couple, these are bullet points from the state (inaudible) to what Senate Bill 666 a wonderful number for a Bill incorporated. It changed the maximum area of disturbance before forest conservation can be enacted upon from 40,000 down to 20,000, it also limited the intra-family exemption for construction of dwelling houses to owners and their children eliminating authority for an owner's gift to grandchildren. Eliminated the exemption for

areas that were previously developed and covered by paved surfaces in other words if it has a road and you are going to re-subdivide it again that the total area plays a part. Authorizes the use of off site protective agreements that applies to forest that are temporarily protected as a mitigation practice for meeting Afforestation or reforestation requirements in other words you can go ahead and put an offsite reforestation in other words if you had one piece of property and you want to say I am going to save this land through a preservation easement agreement you can do that. Requires that property attention be given to specified trees, shrubs, plants unless a variance is granted. Forest Conservation Act requires that timber harvest plans be prepared by a Maryland Licensed Forester and reviewed by the local forest conservation district board before harvesting and can be done on forest retention areas. Annual reports the State there is a new spreadsheet that we have to fill out. Other urban and community forestry items that local jurisdictions would like to discuss with the addressed. We forwarded this the changes that took place in this plan to the State and basically there was a meeting that was held on August 1st addressing the new Code. The State was still in the process of deciding how to interpret what the State legislation meant. Basically if we come up with terms that are as aggressive or slightly more aggressive than that State requires then the Town can do their own forestry work, forest conservation improvement use the regulations otherwise if it was less than what the State required it was a no go which then working with the State over a few months very rapidly as rapidly as we could we came up with a series of changes that we thought would meet the requirement and did and then also working with the State they came back and wanted to toss a couple things back into the plan that we thought about taking out or modifying and what the document you have before you that Alan forwarded the draft ordinance is that that comes to. Basically the land change from 20 to 40 I mean from 40 to 20,000. The live trees in the to determine what a forest is it used to be 75% and now its down to 50% and that's a measurement device that takes place 4 feet off the 4.5 feet off the ground and those are measurements that are taken and the caliber is 2 inches. Lets see there is a change in the pay criteria for if you want to go with a reforestation fee in lieu that now is if I can find it here...

Mr. Coakley: Well it is under D2.

Mr. Strong: Yeah. Here we go page 16 7-27. Go to page 16.

Mr. Coakley: Our pages aren't numbered.

Mr. Strong: Oh. It is toward the very end.

Mr. Coakley: Section 7.4.

Mr. Strong: Section 7-27.

Mr. Yost: It's the last page.

Mr. Strong: It was 10 cents. 10 cents per square foot, its up to 40 cents per square foot with an inflation factor tied to the Federal Government CPI index – Consumer Price Index. Evaluations starting January 1, 2011, the State just said it would be tied to the inflation factor, we took something that everybody could find easily.

Mr. Yost: So this is really just an update to the Code to bring it in compliance with the State, it's more of a cursory procedure for us to adopt this and bring it before you gentlemen so you know what we are charging and things like that. It will have to go to the Commissioners and they will have to set a public hearing and adopt it.

Mr. Bachman: So what was Staff's opinion on his revision to this?

Mr. Yost: We don't really have a choice, we need to adopt it and until we rely on the State to uphold the forestation and try to help us out with things so we need to comply with the State regulations.

Mr. Bachman: What is the difference between Afforestation and reforestation?

Mr. Yost: Reforestation is the replanting of areas and I think Afforestation is planting where there is not a forest existing now.

Mr. Strong: Basically what the State has gone to and their intent is to have a no loss forest status in the State of Maryland starting this year, well become effective 2014 but the process starts this year. So they wish to plant a lot of trees.

Mr. Coakley: I have a question this might be for you Alan under Section 7.7 Penalties Enforcement, Section D1 it says a person who violates a provision of this Ordinance, does person take in the legalistic holistic corporation also?

Mr. Wright: I am sure it does with our Code. Generally even without a definition it would be interpreted to include a corporate person.

Mr. Coakley: Ok. And John under 7.24 – Afforestation and Retention – Section B or Subparagraph B I think that should be reasonably altered and not reasonable altered.

Mr. Strong: Ok.

Mr. Coakley: That is the only comments I had on it.

Mr. Strong: It's amazing I was able to type it all right. I did get one comment back on Section 7.5.

Mr. Coakley: From whom?

Mr. Strong: The State. They are it was a good comment and they stated that this is very innovative we are not aware of any other Town or County offering this service and in discussions with them it is something that they thought they would recommend to others to be incorporated. I was wondering if anybody knows the history if that actually came up through the ecological program your high school program that was a comment that derived from there.

Mr. Coakley: What to have a Conservation Plan?

Mr. Strong: Well not the conservation plan per se but the ability of making the town available to help with it, if local agencies persons using state funds made the application and so forth. We actually are a little proactive and not just letting it lay on somebody else.

Mr. Coakley: I have no idea. That was already in place when I came on.

Mr. Strong: Ok just curious.

Mr. Hoewing: So they didn't have a retention section in the old forestation program or is this just a revised version of the old retention plan?

Mr. Yost: This is the revised version.

Mr. Hoewing: So the underlined stuff is what they added basically, the blue isn't all new it's just the underlined.

Mr. Coakley: I think the blue is new also.

Mr. Hoewing: Oh is it.

Mr. Strong: Well the blue...

Mr. Wright: I talked to John about this the State had certain recommendations some of it we already had. I left that blue and even though we might have already had it but in the cases where it was replacing something that appears in brackets.

Mr. Hoewing: Oh in brackets.

Mr. Strong: There is some changes I mean if you go to look at Section 7.8 that is new also. They now require us on a yearly basis to submit a CAD drawing or a GIS, we are doing CAD by the way, so that we can submit it on a plan and update it easily and then they will change it over to GIS.

Mr. Coakley: Anyone else have any questions or comments?

Mr. Hoewing: Its curious that this new, well I guess it is not new but I never remember reading this when they talk about retention on number 3 they have...

Mr. Coakley: What section?

Mr. Hoewing: 7 the new section I guess it is, retention which is 7.24 B3 I guess at the end there. Any tree having a diameter measured at 4.5 feet above the ground of 30 inches or more that makes sense you know a big tree its an old tree but the next one is kind of strange, 75% or more of the diameter measured at 4.5 feet above the ground of the current state champion tree, do they have a list of that somewhere?

Mr. Strong: Yeah they do if you go to Maryland DNR and just look for State trees.

Mr. Yost: Or Champion trees or whatever species.

Mr. Hoewing: Interesting.

Mr. Strong: So for instance this 284 if a Champion is 284 inch diameter.

Mr. Hoewing: Yeah that is big ok.

Mr. Strong: The bad part is they give it to you in circumference and then you have to back calculate and figure out what the diameter is on each tree.

Mr. Coakley: You use a formula for that, I remember that from Algebra class. Diameter is what radius, circumference...

Mr. Hoewing: So what is in here is both Alan and you have looked at it and you think it is fine.

Mr. Strong: That is correct. The State has already commented on this but they haven't seen it in this format. I will send it all up to the State and make sure that they are good with it, they had a couple minor questions that were I guess they had to ask a couple of questions or they wouldn't have been doing their job.

Mr. Coakley: Do we need to do any more with this?

Mr. Yost: Just a motion to approve to recommend to the Commissioners.

Mr. Coakley: Ok do I hear a motion?

Mr. Stump: I move we recommend to the Commissioners the Forest Conservation Amendment as presented.

Mr. Hoewing: Second.

Mr. Coakley: All in favor?

All: Aye.

Mr. Coakley: Ok.

Mr. Hoewing: There are actually some pretty good changes in here.

Mr. Coakley: Do you want to go over the other now while we are here, Underground Storage Ordinance?

Mr. Yost: Right I will take that one. Alan and I have both and Kathy Mihm we met with the State and talked about different underground storage tanks, definitely came to light since we had the NTB issue with the Getty Station and the construction of those vaults. In talking with MDE they have underground storage specifications for construction and for existing tanks, they have them in 2 different categories, one is just for regular areas like Montgomery County where they have what is called a high groundwater risk area,

which Montgomery County is not included in, so what we have done is areas that you primarily groundwater for the source of water for all the residents, so we've worked with the State and we've come up with incorporating these high risk groundwater specifications into our Code to protect our groundwater and that is what we have in front of us today its to bolster our specifications for not only new construction of tanks coming into town or if tanks come in for a special exception they will have to comply with this but also for a gas station or a filling station that is in operation now such as the Chevron they will have 5 years to comply with some of these regulations. So we can just go through it and Alan can actually walk you through it, him and Kathy did the majority of putting it together.

Mr. Wright: Ok what we've got here was a little bit, I don't think we had a chance to really fine tune it or to consider some of the implications but these are the sections that are taken from COMAR that apply to certain areas within the State but not Poolesville, not Montgomery County and not Poolesville, so unless we take some action to incorporate those as Town Law they won't apply and it was Kathy Mihm's strong recommendation that we should have the strongest recommendations from COMAR apply to Poolesville as a...

Mr. Yost: And changes like you see on page 2 here, the State had other high risk groundwater area means all areas and we inserted our own language that is attached to our own wellhead protection, how the zones are laid out and we can see where actually contamination took place, how it would impact our wells.

Mr. Wright: As a high risk groundwater area, which we would generally qualify as, but the State only picked certain counties and they went county by county they didn't pick specific areas within counties, so Montgomery County didn't qualify and therefore Poolesville was left out. So what we did here we just took the COMAR regulations that apply in those other high risk areas, county areas, and included it within the Montgomery County Code sections and I've indicated in red the changes that we made to COMAR those COMAR sections as we went through so whenever it said Department for instance I inserted Town. And wellhead protection area on page 2 we've redefined and I didn't leave the State's definitions like I normally maybe would strictly if it was an amendment to Town law but I didn't show deleted materials in brackets but I wanted to highlight things that we were changing in this version to make it applicable to the Town. So wellhead protection area is defined as defined in the Poolesville Master Plan. And I left the date with an X to indicate that it would basically have to apply a date that the effective date of the Ordinance because we can't go back and make it retroactive.

Mr. Yost: The biggest difference is in the leak monitor and detection devices that are placed on the piping and in the tanks and then the monitoring wells that are required to be installed and the testing procedures or the testing protocol that they have to submit at least once or twice a year I forget where we talked about that, to ensure that gasoline or no fuel is leaking into the groundwater. So those are the major differences. Right now anybody who builds a new tank in Town has to comply with regular COMAR specs that say has to be a double walled tank made out of certain materials I mean regular regulations are there so that is the biggest difference is the monitoring of it and the monitoring of wells and the testing.

Mr. Hoewing: So on the front of this, normally in legislation it will say like this does here, underlined wording indicates matter adding to existing law, that is not true in this case.

Mr. Yost: No because in our Code what we did we just referenced a portion of COMAR.

Mr. Hoewing: So you just referenced it before, now we are actually including it.

Mr. Wright: Well all the underlined stuff is new in our Code because we did reference COMAR before but COMAR excludes as I indicated it excludes, well it only includes as high risk groundwater areas 4 counties and leaves Montgomery County out so if we want those sections of COMAR to apply we have to adopt them somehow as part of our Code and that is what this does, that is why all this language is new and that is why it is underlined.

Mr. Yost: You know our intent when we did it before was to have those regulations.

Mr. Hoewing: Right and in the 5 page 5 where you've got by, you are basically suggesting maybe it could be 5 years you don't know right that is what that question mark is.

Mr. Yost: I think that would be the date of adoption I think once we get there...

Mr. Hoewing: C is something else though, it says they have 5 years to install in accordance with COMAR.

Mr. Wright: 5 years was the COMAR when I was putting this together for our consideration and I had to get it ready for the Friday deadline and we didn't have a chance to discuss that and I ran across this 5 year period and so I put a question mark just to flag it because I'm not sure we want to wait 5 years.

Mr. Yost: I did price quotes on it so we would have kind of an idea of what impact this might have to a small business, its like 8 or 9000 to install the monitoring wells and have the monitoring equipment.

Mr. Wright: So it is intended to recognize that it is a substantial investment for people to do this replacement and so it gives them a period of time to comply but we don't have to stay with the 5 years that was stated in COMAR.

Mr. Stump: How many underground storage facilities exist in Town currently?

Mr. Yost: Two.

Mr. Stump: Just those two nothing else laying around.

Mr. Coakley: Are there farms within Town that have underground storage tanks?

Mr. Yost: Not that I am aware of.

Mr. Coakley: And in here we mention 2000 gallons, it seems to be if it falls below 2000 gallons it doesn't...

Mr. Yost: The problem is there is a lot of, not a lot, there are some homes in Town that probably have underground boiler tanks for the heating so that is going to be a whole different regulation.

Mr. Coakley: I thought under our Wellhead Protection we mentioned any tank either above or...

Mr. Yost: Had to be have a confinement (inaudible) double tanks and wells, we monitor wells and things of that nature so.

Mr. Coakley: No but as far as containment facilities.

Mr. Yost: Right we do with the Wellhead Protection yes.

Mr. Coakley: Ok. And why do we just mention 2000 gallons and above in here?

Mr. Wright: Is this the regulations considered adequate for individual tanks, that would be the reason I think.

Mr. Yost: Yeah it would be commercial operation yeah.

Mr. Wright: This would only apply to the larger scale underground tanks.

Mr. Coakley: Suppose somebody put in 10 1000-gallon tanks.

Mr. Yost: I don't think, well I guess you could, it wouldn't be economically feasible to do that.

Mr. Hoewing: So right now none of these tests are required of our existing stations.

Mr. Yost: As far as the monitoring and things no not at all.

Mr. Hoewing: Not even by the State, the State doesn't even do that.

Mr. Yost: Correct. And that is why the whole thing came up because of the MTVE issue and the potential cause --- if it did it would be catastrophic to several wells.

Mr. Hoewing: The 4 counties that have this are they located on the Chesapeake Bay is that why they are...

Mr. Yost: They actually weren't on the Eastern Shore. Mr. Rouse with MDE he did mention but I don't recall.

Mr. Hoewing: So aside from wording changes the only other thing is because these xxx will be filled in basically based on date of adoption. This one thing the 5 years though is one decision we have to make.

Mr. Yost: That is something to consider.

Mr. Wright: Yeah and that may not be a hard decision I just didn't have the chance to consult with Wade and Kathy Mihm to think about that.

Mr. Hoewing: Well 9000 that is real money, on the other hand 5 years sounds like a long time, 2 or 3 sounds more reasonable to me but...

Mr. Coakley: And the monitoring of the wells and the --- system and all that and everything that is done by the owner, just to come to us, does it go to the County, the State.

Mr. Yost: It comes to us. And Kathy Mihm would be the professional to review it.

Mr. Coakley: Do we have some kind of tab system or something to notify us that it is supposed to occur?

Mr. Yost: Well I forget what we ended up with, we ought to do it the same time each year and its during times when, actually it is twice a year, did you put that in here Alan.

Mr. Coakley: I didn't see any.

Mr. Wright: I'm not sure I do remember we discussed it and I may not have made any provision for that.

Mr. Yost: What we want to do we want to do it twice a year, we want to have it on specific times so that if we do have 2 or 3 stations in Town or whatever in the future that it is all done at the same time and its easier to track. And each year we know we do the, in January we do the water capacity plan, the management plan, that would be one time we want to submit it because the groundwater is the highest in December, January timeframe so we want to take samples at that point and then probably later in the year, 6 months from then.

Mr. Coakley: Well should that be in here, the requirements?

Mr. Wright: That needs to be I think added in.

Mr. Coakley: Ok anybody else have any other questions or comments? Is that pertinent to this Mr. Kuhlman or in general?

Mr. Kuhlman: Eddie Kuhlman as a resident. I think you need to rethink some of the parts of this, the exemption of 2000 or below I don't agree with. Having delivered fuel oil in a past life for 7 years most residential tanks are 275, 550, or 1000. And the problem with exempting this is the K-1 tank at the Getty Station, which is buried is a 550 tank. If you want to leave the 2000 in that is fine but hopefully make a distinction that if it's a commercial application there is no exemption for the size of the tank, if it's a residential application than go ahead and make an exemption, that is my only comment.

Mr. Coakley: Yeah I didn't have time when I saw this to go back under the Wellhead Protection Ordinance to see, lets take the Getty Station for instance, if we did require in that Ordinance to have something similar in the way of catch basins and monitoring.

Mr. Kuhlman: And I think the 5 years is too long.

Mr. Yost: Well this was just introduced to you guys tonight we don't have to make any decisions on it. We will make some corrections and work on it, we wanted to at least introduce it.

Mr. Hoewing: Most residential though Eddie almost none of them exempt maybe in the farm situation would bury right. I have a 550-gallon. I said most residential they wouldn't bury their tanks though would they, I mean I have got a 550...

Mr. Kuhlman: The overwhelming majority if they have fuel oil it is a 275 above ground tank. If it is buried it is a 550 in the majority of the cases, usually churches or something like that will have or a big home will have 1000 or more. So I think one way you could distinguish is say if it is a residential its exempt and if it is 2000 or 1000 or below but if it is commercial there is no exemption, I mean if we are really going after it with the gasoline that will travel faster than fuel oil will.

Mr. Hoewing: Yeah it's dangerous. Ok. Does this cover all tanks too, like propane tanks do they bury propane tanks or they don't.

Mr. Strong: Yeah they bury them.

Mr. Hoewing: Do they so it doesn't cover them though.

Speaker: (Inaudible).

Mr. Hoewing: Yeah right but it is still going to leak down and get it get into the aquifer somehow?

Mr. Yost: It's going to go up.

Mr. Hoewing: It always goes up. I know it is light but that doesn't mean it necessarily go up.

Mr. Coakley: It's light till you pay for it and you find out it is over \$5.00 a pound or whatever. Ok put that to rest.

Old Business

Mr. Coakley: Solar farms and I did give a quickie briefing to the Commissioners this past Monday night on what I was able to find out on solar farms because the Town Commissioners had asked us as one of their requests to us was what kind of footprint would a solar farm, a commercial solar farm that was producing on a commercial basis, what kind of footprint would that have in the agricultural area we have within the Town and I got some information from the Department of Energy and then they also put me on to the currently the largest photovoltaic solar generating plant center they call it, is in DeSoto County, Florida, it is operated by Florida Power and Light and I got some information off of their website and here is a picture aerially picture of what their facility

looks like. It is the largest in the nation, it produces 25 megawatts and its sited on 180 acres. Not all of which are taken up by the solar panels, the entire facility is 180 acres.

Mr. Hoewing: From that it looks pretty.

Mr. Coakley: Well according to their website the reflection from this is no different than what the sun reflecting off of crop lands would be. I think a lot would have to do with your exact angle you were looking at.

Mr. Bachman: George when you were looking into this did you discuss how much water the solar energy center uses.

Mr. Coakley: Basically none. There is no water required to produce electricity through photovoltaic cells, they are not producing them they are just using them to generate electricity they are not manufacturing them there.

Mr. Bachman: So it's not solar panels?

Mr. Coakley: They are solar panels.

Mr. Hoewing: They are not heating up water though in the panels they are using essentially the lights...

Mr. Coakley: The electricity hits the silicon the silicon...

Mr. Hoewing: Transforms it to electricity.

Mr. Coakley: Automatically transforms it to electricity, it goes to a transducer of some kind and then converts it form DC to AC and puts it into the grid.

Mr. Bachman: So there are other systems where they have to cool down.

Mr. Coakley: There is another type of solar system that uses parabolic mirrors to focus the suns rays onto a container of liquid whether it be water or some other better heat retainer that produces steam and then they use the steam to run a turbine to generate electricity. I asked the gentleman at the Department of Energy if he is aware of any outside of the desert southwest and he said he is not aware of any, he doesn't think it is that feasible in other parts of the country.

Mr. Bachman: If you don't want it here because we have a water conservation issue, so wouldn't you want to specify that you don't want to have that kind of a solar energy?

Mr. Coakley: Well that doesn't use too much water either, that is almost a closed loop system where you are heating what's in your storage tank to create the steam and then you are recapturing and it comes back and cools off and you reheat it and it goes back into the system.

Mr. Bachman: Well there is some controversy out west about the fact that there is some evaporation and you do have to bring in new water. People were very concerned about out west where there is a shortage and they don't want that system because it is a net loss of water. The statement that it is recycled has not proven out by a --- system.

Mr. Hoewing: I would be surprised if something like that would be economically feasible here though because you really need to have sun almost all the time to make it worthwhile. With the photovoltaic cell you can have a cloudy day and it still produces some electricity.

Mr. Yost: We would have to do a --- list which there isn't one.

Mr. Coakley: And the other thing is I haven't made copies yet but I'm one of the members of the National Energy Committee of the Izaak Walton League, national organization and one of the members of our committee he and his wife had a 2 kilowatt solar photovoltaic energy system on their house and that's comprised of 11 208 watt solar panels that they have on their roof, now he said they live on a partially wooded lot in

Michigan and with their system they generated from December 06 to December 07 they generated 18, let me get my timing right here, well whatever it is pretty close, in 06 07 they generated 1821 kilowatt hours of electricity which was 22.5% of their electricity usage and the following year it was within a couple of kilowatt hours of what they did the other year. But I will make out a copy of this but he's sort of a nerdy type and they kept pretty good records from year to year to see how productive their system is and stuff so I will share that around with everybody. And also the Department of Energy they sent me they have a booklet and it breaks down State electricity use by different sectors and stuff and everything but it is like a 60 page document so I will send that to you on email that the gentleman sent me. The person I spoke to is Charlie Himiline, he's the team leader of the solar energy technology program at the Department of Energy, so they told me he was like their leading guru on trying to institute solar power in the United States. The other thing is Mr. Speelman came in this evening before the meeting and he would like us to consider prior to sending our recommendations to the Commissioners that they currently have a wind generator that looks like and is bladed similarly to the old farm style windmill, its on a 45 foot four posted pole or tower I guess it would be a tower and that he would like us to consider whether that would be feasible and we would feel does that fit in with the amenities of the small town application in the Central Business District. So I told him, he didn't have a picture of it, I told him that we would go online and see if we can see what the structure actually looks like, give it some consideration, I think he plans to come in to our next meeting with a picture and...

Mr. Yost: No he is going to come to the Commissioners next meeting.

Mr. Coakley: I'm sorry it is going to come to the next Commissioners Meeting and I guess show them a picture if he can get hold of one. So with an open mind I think we should go ahead and look at that and decide whether or not we feel there is any change in our recommendation to the Town Commissioners.

Mr. Hoewing: He also said again that for whatever the Commissioners reasoning were at the end of the year period if they wanted him to take it down he would take it down. And I know we haven't been able to figure out how to write that down and make a contract out of it.

Mr. Yost: I do believe this will be on the next Commissioner's agenda on the 7th for consideration for adoption or change or whatever from the recommendations that went forth unless you want to change the recommendations that you sent there already. The only thing that really came back from the Commissioners was this solar farm issue, can anybody have a special exception in the RDT or not, you need to decide that tonight and then if you have anything else as far as the windmill but I do think it would be for consideration on the 7th.

Mr. Hoewing: Right.

Mr. Yost: Before we meet again.

Mr. Coakley: Ok well lets discuss the solar farm then. I guess my thoughts on that are that I think, what are the sizes of our RDT zoned areas right now?

Mr. Yost: You mean the lots that are available?

Mr. Hoewing: The biggest is Bobby's I guess 90 acres right.

Mr. Coakley: No I think the largest one is the one agricultural easement.

Mr. Yost: Oh the Leed property right but you are right. The Warther property which is...

Mr. Hoewing: 25 acres.

Mr. Yost: No a little bit larger it's on the other side of McKenzie's its all the wooded area all the way up to Jerusalem Road.

Mr. Hoewing: Oh is that 39 or something.

Mr. Yost: Something like that. I forget they have divided now a couple times. Across the street is the Jamison property I am not for sure how big that one is and then Gary Hartz has 18 acres right across the street from where he lives. Rabanales is 60 acres there and then Bob Jamison was here tonight and that is about it in Town RDT missing one.

Mr. Kuhlman: You got Willard and Bricken.

Mr. Yost: We said that already. Oh Bricken ok which is right on West Willard Road behind Bob Pearson's house.

Mr. Kuhlman: Then you got quite a few small ones Cahoon, Mihm.

Mr. Yost: But I think lot coverage and stuff would probably prohibit them. But they are like 8 acres a piece or something very small.

Mr. Coakley: So the largest PV facility in the nation right now comprises 180 acres and generates enough electricity for 3000 homes. So I would think that you could probably have a viable commercial operation to supply several 100 homes on 50 acres or less and I honestly think you could screen it enough they aren't high off the ground you could certainly provide enough screening and everything that it wouldn't be visible except from the air so I would certainly be in favor I think under special exception to allow it if someone wanted to construct one.

Mr. Stump: Concur.

Mr. Coakley: I don't know what kind of easement is on the property on the northwest border. I know they have what a grain facility there which is a semi-commercial operation in existence right now I don't know if they would allow any additional commercial use of the property under the easement that they have or not.

Mr. Yost: I'm not for sure either.

Mr. Coakley: I say that one piece of RDT property has a easement I'm not sure if it is an agricultural easement or...

Mr. Yost: Willard's property what type of easement is that, that is Community Legacy or something.

Mr. Kuhlman: (Inaudible) but it does not cover the part where the grain operation is and that is not inside the Town limits either.

Mr. Yost: Right, right. Could he do a solar farm on that property even with that easement?

Mr. Kuhlman: I'm not sure.

Mr. Yost: Yeah I'm not either. I know he can't develop it.

Mr. Kuhlman: No he can't because (inaudible) are not allowed in the RDT for commercial operations.

Mr. Coakley: That has nothing to do with the State Legacy Easement.

Mr. Kuhlman: No County Zoning will not allow it.

Mr. Coakley: But that is in the Town that is not in the County.

Mr. Yost: The County owns the easement.

Mr. Coakley: The County or the State?

Mr. Yost: Montgomery County on that one.

Mr. Kuhlman: Montgomery County Zoning will not allow a solar farm in Montgomery County in the RDT.

Mr. Bachman: So why are we considering it?

Mr. Kuhlman: It doesn't matter what the easement does.

Mr. Yost: Because their purpose of the RDT may be different than ours. Theirs is to preserve open space and agriculture, ours is more of a transition into the Ag zone so there is 2 different concepts of why we have these zones. Why do we really have an RDT that is a good question in itself.

Mr. Bachman: Now wait could we at least understand why Montgomery County does not want to have solar farms on their RDT.

Mr. Yost: I don't know if they don't want it for a fact. We called down to see if they had some discussions and their decisions had been made and no one could tell me why they won't allow it so they didn't know it was almost an impossible question to ask at the time.

Mr. Coakley: I'm confused now though because they are annexed into the Town.

Mr. Yost: Right so they have nothing to do with the County, except for the County has an easement on the property.

Mr. Coakley: But I'm saying is that a County or a State easement.

Mr. Kuhlman: What Willard's?

Mr. Yost: Yeah.

Mr. Wright: What is the easement for?

Mr. Kuhlman: The agricultural easement gives up the development rights.

Mr. Wright: It means it can only be used for agricultural purposes or...

Mr. Kuhlman: For agricultural perpetuity. He has one shot to take it out, he has to get a, I think it is on the 20th or 25th anniversary he can get an appraisal done of the property and pay back the value that he got then plus all the interest that was gained and everything, and nobody anticipates anybody ever doing that. There is one shot to get the property out.

Mr. Wright: That is interesting how did that come about that the County got an easement on property that was being annexed by the Town. Because they specifically did not want anything but agricultural to ever happen on that property.

Mr. Kuhlman: I don't know to me it doesn't matter whether it has or does not have an easement, the County zoning...

Mr. Wright: Well it is in the Town.

Mr. Kuhlman: The County Use Law does not allow a solar farm in the RDT.

Mr. Stump: On a special exemption or case by case basis.

Mr. Wright: It's in the Town did you not say.

Mr. Kuhlman: They asked me if the Town wanted (inaudible).

Mr. Wright: But to clarify if it's in the Town than the County zone...

Mr. Coakley: Its not applicable. The only applicable part would be if the easement money came from the County in which case they would put the stipulations on and you would have to look at that specific agreement to see what can and can't be done. The one at Izaak Walton League the State paid the money and in our agreement we can and can't do certain things out there some buildings you can construct there is other things that they won't let you construct.

Mr. Kuhlman: Ok but what I am saying George if you look at the County Zoning tabs and solar farms are not an allowable use in the RDT for Montgomery County. Whether your group down there at Izaak Walton had an easement or not you could not put a solar farm on that because the zoning will not allow it to be there.

Mr. Coakley: Well that is true because that is in the County. But like Alan said this piece of property is annexed into the Town so that doesn't apply.

Mr. Kuhlman: But the question started out what would the County allow. And I am saying the County won't allow a solar farm.

Mr. Coakley: Ok well I say for a special exception.

Mr. Stump: The recommendation we already sent up what did it say?

Mr. Yost: Special exception.

Mr. Stump: I haven't heard anything to change that, matter of fact if anything the paperwork you showed me kind of reinforces I think it would be quite acceptable but I like also treating it with special exemption on a case by case basis on the merits as opposed to a blanket yes or a blanket no.

Mr. Coakley: Well it would be both it would be special exception as well as since they would be constructing on the site they would have to go through the site review plan.

Mr. Yost: Ok so that stays the same?

Mr. Coakley: That stays the same. Do you want to discuss the windmill and have any recommendations or anything?

Mr. Kuhlman: Excuse me I didn't hear what you were recommending?

Mr. Coakley: We are keeping the recommendation as it was originally sent to the Town Commissioners, which is to allow commercial solar farm in RDT with a Special Exception.

Mr. Yost: Ok did we want to go ahead and talk about the windmill or anything with that or just let it go like it is?

Mr. Stump: Anybody's mind changed. I do remember at least somebody and I can't remember who said that if it did look like a traditional windmill they might be in favor of it. That was said at least once or twice.

Mr. Coakley: By whom?

Mr. Stump: I think it was down at that end of the table.

Mr. Hoewing: After I was listening to the discussion the other night I mean one of the concerns has been the aesthetics, does it look like it really fits in the Town, but another concern was that we agree to have one than all of a sudden you are going to have a landslide of other ones coming in right. I think to some degree the way we have got this set up with the sighting it is not likely to happen with most of those properties because they haven't got enough space to do it. But it is possible that some other businesses might be able to do it. What I was thinking as an idea is and I don't know how we could write this down so legally we can't figure out a way to do it, but he agreed and I think we would have to write this in a way that basically said the Commissioners would have to state their reasons having to do with the character of the Town and not fitting in the Town or something like that when they said no at the end of this but he would agree to a year period and basically we would have to write some language that said he would have to take it down for whatever reasoning we had to do that. But before the end of that year was over 2 months before then, anybody else who liked the idea, any business who liked the idea would have to come in and say I would like to do the same thing and what that

would do is flush out anybody else who thought this was a good idea so that if we were concerned about this leading to a landslide we could find that out ahead of the one year period. I suspect you are going to find, I think 2 things will happen, 1 is I bet you most people won't notice it at the end of 10 months and it will be fine, that is my guess, and 2nd that you are not going to have any businesses apply either so it will be 1. Now that doesn't mean in the future that somebody else couldn't come in later on down the road and say I kind of changed my mind but I kind of think that will be one (inaudible). So that is one idea.

Mr. Coakley: Well my original suggestion had been to allow him to do it for one year and it comes down at the end of one year unless he reapplies and the Planning Commission says yeah go ahead, otherwise but then the problem and Alan seemed to have some problems with that and the problem is when John says if people don't like it at the end of one year, what is the criteria and we've gone through this in the process leading up to it where 20 people come in and say they are in favor of it, 20 people way well we think there might be a problem the aesthetics etc., and...

Mr. Hoewing: I think we could write language that says the Commissioners would justify it based on the Master Plan's vision as to the character of the Town and so forth but I don't think that is really a consideration because we write contracts all the time that say you waived your right to sue, why can't John write a contract that says that, in other words I waive my right to challenge this, if whatever you tell me I will take it down.

Mr. Bachman: We've already told him something, we've already made a recommendation why are we going back, I don't understand this, I don't understand why we are backpedaling.

Mr. Hoewing: I'm not back pedaling I am just throwing another idea because to tell you the truth I think it would be worthwhile to try something like this, I have really been trying to figure out a way to do it.

Mr. Bachman: Why?

Mr. Hoewing: Because I think this is part of the movement to try to find new ways to use alternative energy that is why and I think he may be right and they actually work it may pay off.

Mr. Wright: Well if the major concern is that they are going to be too many others that are going to want to (inaudible) in addition to the setback constraints and so forth that might be pretty limiting in itself but if you make it a special exception than the proliferation of a particular use can be a limiting factor so if you have under our Code special exception the Board of Appeals has to find that there is not an excessive number and that there is a need for the use in the Town. That last provision I find kind of unusual but it is certainly permissible to, it's a normal kind of restriction to say that if there are too many of a particular special exception use they can be denied on that basis.

Mr. Coakley: I could see that being very pretentious, who determines when you go from a number that is enough to too many.

Mr. Bachman: It gets sticky when you start trying to accommodate.

Mr. Hoewing: Well that is the way it goes, that is why the mechanism I'm suggesting its not a special exception it is an experiment frankly, it is a contract, and like I said if we during the period, 2 months before or something like that and we actually say to people this is a contract, we haven't changed the regulations yet but at the end of this period for 2 months we are entertaining other ideas to see if other people want to try something

similar and see how many people come out of the woodwork I would almost bet that almost nobody will.

Mr. Bachman: But the question you are going to get if you write a contract (inaudible) windmill electricity generated, what's the purpose?

Mr. Hoewing: Partly to see if which I think is going to happen is that people don't really object to it, we don't know they object to it, we are saying they do because we all think that it looks like an airplane propeller.

Mr. Bachman: Well the aesthetic issue was one but the other thing is when you look at alternative energy systems they are not all equal.

Mr. Hoewing: That is not our judgment to make.

Mr. Bachman: Well that is your point of view.

Mr. Hoewing: No it is not a point of view it is actually the truth.

Mr. Bachman: It's a point of view. Let me be real clear about this...

Mr. Hoewing: I'll tell you why, let me tell you why though. I do believe now that the regulations now is illegal too because it says we can actually deny a business that is like a similar one that's in the Town. We can't do that I think that is illegal and it's the same thing here.

Mr. Bachman: If you are going to enter into a contract with a individual either a resident or a business to do something the purpose, what's the purpose to demonstrate that wind generators are effective and will reduce energy.

Mr. Hoewing: No.

Mr. Bachman: Well then why waste your time. There is no wind in Poolesville, we are a one, he could put that thing up and...

Mr. Hoewing: But we have four of them around the Town now, there is some reason we have four of them around Town.

Mr. Bachman: They are probably if you look you are going to find it in terms of terrain though, if they are on top of a hill that there is a natural common airlift respect coming up the blocks that gives them...

Mr. Hoewing: Well maybe could be and maybe this will be...

Mr. Bachman: There is no special terrain in the center of Poolesville. I don't understand why we are bending over backwards to do a demonstration of something that by the website for DOE there is no air there. John could seal his windows and accomplish more by than putting up...

Mr. Hoewing: Probably could.

Mr. Bachman: This windmill so I'd rather work encouraging our, our goal is to demonstrate something to the citizens, I would rather encourage that we seal the air leaks in our buildings and homes as a first step in energy conservation, costs less and means more.

Mr. Stump: Our goal is also not to impinge on somebody's right to use their property as they see fit.

Mr. Bachman: No that is not true.

Mr. Stump: Yes it is true.

Mr. Bachman: Our goal is to balance the property rights of individuals...

Mr. Stump: As you said to Link that is your opinion.

Mr. Bachman: No, no that is a definition of public service by a government agency.

Multiple Conversations Taking Place

Mr. Hoewing: Well that is the thing you are not listening to, I am trying to come up with another alternative that might do that. Before we weren't, we were just saying we could do a special exception, I agree with you there that's not the same because than basically anybody who wanted to could come in and say I want a windmill. Now we are saying lets not do that, number 1 it has to look like an old windmill that fits into the Town, if the character is the issue than ok if he can do that maybe that is different that is not what we heard when we started this process and 2nd it will truly end in a year and he will have no options if we don't like it, it comes down.

Mr. Bachman: I still say the discussion is both a matter of aesthetics relating to the Master Plan and it is also not a practicality. We are trying to be green and demonstrate green solutions, a wind turbine in the center of Poolesville is a non starter, so why are we embarrassing ourselves by making a special exception to one citizen to put up something that is a dud.

Mr. Hoewing: All the evidence you have cited Bob and I looked on the internet says you are probably right, on the other hand when I was in high school dinosaurs were cold blooded, none of them hunted together in packs and they were all killed by a meteorite, today that whole thing has been flipped on its head. So we are not always right.

Mr. Bachman: Wind turbines are not dead they are not extinct.

Mr. Hoewing: No but the point is we may be wrong, it may actually work I don't know. So I am not going to push this today because the Commissioners have decided now we actually already made a recommendation unless you want to vote and reverse it, I am not arguing that, I am just laying it on the table another way to look at it.

Mr. Stump: Test case is interesting not as a special exemption but a test case to lay outside the modification of the zoning.

Mr. Hoewing: I mean part of the reason they talked with us too and that John raises here tonight is that we are getting ourselves into a situation where and John I think he is wrong but he keeps saying that he has to...

Mr. Coakley: Return on investment.

Mr. Hoewing: He was driving me nuts, not my job as a Commissioner to decide whether his return on investment is good or bad, it isn't. People put their money out there and they should be able to invest it and try something as long as we found a balance that works, I agree with that, you have to do that but other than that they should be allowed to try it whether it is a dumb idea or not from a business standpoint.

Mr. Wright: Well to put a little legal perspective on it first of all there is a right to use property as you choose too unless there is a detriment. So first of all you have to determine what is the detriment that allows the Town to put restrictions on the use of the property and in looking at the detriment it is permissible to consider whether there is an off setting public benefit, so both of those things become relevant but the first thing you have to consider is whether there is justification for putting a restriction on in the first place and it is not a matter of whether or not the particular use makes a profit for the person who wants to do it.

Mr. Coakley: Well my understanding is the way the Town Code is currently written we can determine that something is a health or safety issue, that it doesn't comply with the small town characteristics of the Central Business District now from the health and safety standpoint I think we addressed that to a certain extent with a fall area, restrictions on

what type of tower, those sorts of things. From the aesthetics of whether or not it fits in with the character of the Town then I think we need to objectively look and decide if there is one that is shorter than was originally proposed and looks like a retro windmill that may have been here at the turn of the century or something like that does that then knock out what we feel was the detriment of not complying with the characteristics of the small town atmosphere.

Mr. Bachman: Well if you want to set up a windmill and make the Town look cute I am all for it but if you think you are generating any energy at 45 feet no way, there is no measurements of wind turbines at 45 feet, the calculation begins at 90 and goes to 180 no one is measuring at 45 feet because there is no wind at 45 even in a place with wind they don't do 45 feet because you have trees that are 45 feet up and buildings that are 40 feet tall and there is too many barriers to constant wind flow. He can put it up for 45 feet but it is now a nostalgic artifact.

Mr. Coakley: But I think that is a good comment particularly if the Town were building it and paying for it and we are talking taxpayer money, but if you are talking about a homeowner or a business owner that is using his or her own money to do it I don't see where it is up to us to say how they should spend their money. And I think from like the green aspect even if it is a dud it could possible spur people's interest and then it might say hey gee you know they went and put a windmill up and everything but the real savings are in caulking your windows and putting storm doors on and changing to light bulbs that use less electricity. So it could be a catalyst for people to get more involved in green thinking, even if it is a dud unto itself.

Mr. Bachman: I understand that idea but I guess I draw a parallel then to the fact that Tom Kettler came up here of his own free will and exposed himself from a decision making body because he wanted to be able to put bay windows on his home and it is a --- decision he is making as a builder and it is not going to harm anyone so in that case I think we ought to have a one year test of reducing the setback from 10 feet to 7.5 I have no problem with that I think Tom is a great guy. At least he came in he took his chances with the group we either liked his idea or we didn't he is probably not going to run an ad in the paper saying he has 5000 signatures, he is not going to put something in the Monocle trying to intimidate the Town and all the junk that we are dealing with with our other proposal so I just can't figure this out, I mean Tom I take back all my objections. Lets let everyone do what they want. I don't see anymore damage by what Tom is wanting to do on the property lines than John putting up a 45 foot whatever, you don't need this group to make these decisions then.

Mr. Hoewing: You are really over simplifying Bob. One thing it isn't just John there was a lot of citizens here the other night, it wasn't just John there were a lot of them.

Mr. Bachman: A lot of uninformed people about the reality of energy conservation that is the real issue and that windmill is the (inaudible) of informing the (inaudible) about what a good solution, it is a joke.

Mr. Hoewing: You may absolutely be right.

Mr. Bachman: Absolutely a joke. A joke for the purposes of protecting one person who wants to put it up.

Mr. Hoewing: I'm not sure I agree with that I think it is symbolic and I agree that symbolism sometimes maybe doesn't have an impact on people that don't think it is important but I think that is why people think this is important because it is symbolic so

anyway I am not pushing this I am just trying to tell you that there may be ways, a part of my concern is this we get so tied up in regulations and rules and we try to micromanage it so much it just worries me sometimes, these are new ideas that haven't been tried before and sometimes we seem to get ourselves caught up in the regulations too much and not enough thinking about isn't there a new way to look at this can we try something new here, that is all I am trying to get to, we are not doing enough of that, these are new technologies a lot of them not new in the sense that brand new but new in the sense of being implemented in this country in a major way and you are right Bob there are places in New England now and I mentioned this to the Commission the other night where there are suits now because they put too many windmills up so its gone too far in the other direction in some places they didn't think about it carefully enough, I agree that can happen.

Mr. Coakley: It would be interesting to see under the suit how much is too much.

Mr. Hoewing: Yeah well that one town had lots.

Mr. Coakley: But I think a lot you have to take with a grain of salt also because they had John Sparrow was in the other night also and he was saying what a great teaching tool this would be where the students in the Ecology Program could monitor it and find out what kind of generation it was doing but I didn't feel like being a smart you know what and ask him how long have they had solar panels on the roof of the school and how many projects have the kids done to see how much electricity the solar panels have generated and how much has gone to run operations within the school and stuff and everything and to my knowledge it is el zippo. So they already have a potential teaching mechanism at their disposal that they haven't taken advantage of.

Mr. Hoewing: So what we are doing is the solar farm and that is it.

Mr. Coakley: Well unless we want to vote again on the windmill.

Mr. Hoewing: Just discussing the issue I just want to make sure we get it all out that is all.

Mr. Coakley: I think Bob is still opposed and I would probably bet the farm that Cal is still opposed. Personally I could go with a one year, that it's got to come down at the end of one year.

Mr. Hoewing: Well the Commissioners will talk about it. It is interesting how much we debated the solar panels and now it looks like there is technology that is going to look like shingles pretty much so those will probably be real evident.

Mr. Coakley: Well for home use.

Mr. Hoewing: Yeah well even they have them now for the big steel panels, we have got them in our office now they look like roof panels so it is changing pretty fast.

Mr. Coakley: And actually some of the literature I got I read that the PV panels are going from I think I saw where currently if you get like 25% of the amount of energy striking it from the sun that is converted into actual electricity that is considered like a good efficient system and I don't know if it is Dow also that came out with the roof shingles or somebody else that they expect within the next year or so to have photovoltaic cells that are up above like 35% or close to 40% so its almost doubling 1 ½ times more efficient than they currently have, so it looks like we'll see leaps and bounds in the next few years they are going to come up with much more efficient types of solar systems. I have one other issue that I would like to discuss and that is I noticed in the draft proposal for the reforestation that there is a reporting requirement in there to the State of Maryland that

the Planning Commission is required to report annually to the State of Maryland on forest conservation issues. My suggestion is that in their spare time the Town Manager and Town Engineer draw up a matrix of items and months of the year that the Planning Commission has obligations to report or to do things and it would be like the Master Plan would be every 6 years or whatever on the matrix, election of Chair and Vice Chair should be a certain month and year each year, report to the Town Commissioners on what the Planning Commission has done for the prior year should be a definite month and year and then to report to the State of Maryland on the forest conservation.

Mr. Yost: Technically on that one there you guys really don't, we've been doing it for 10 years and we meet with the State and we just go over the plans that have been passed and John calculates the forested area or the disturbed areas but really it is just what you guys have approved, the reporting aspect of it has nothing to do with you, like I said we have been doing it for 10 years.

Mr. Coakley: Oh so we've been reporting and haven't been aware of it. Then you can leave that off the matrix but the other items I think I need to...

Mr. Yost: That is a good idea I will do that.

Mr. Coakley: Thank you. Anything else?

Mr. Bachman: Yeah George I would like to repeat my statement that I appreciate Tom Kettler coming in and making his request to amend the development regulations straight up.

Mr. Coakley: I do too. And I hate to say but my limited time on the Planning Commission though every time the Planning Commission has made accommodations like that it tends to come back and adversely affect us in some way or another and that is my personal observation but it seems like inevitably that something comes up a couple of years down the road and everybody said who in the heck would ever have allowed such a thing to happen.

Mr. Hoewing: Pipestems is that what we are talking about.

Mr. Coakley: Well that is one of them. But I know we had another special exception over in Wesmond where I think initially they gave a special exception because when the house was built it was a couple feet over the property line and then somebody wanted to add a 2 car garage that made it a zero lot line situation and we ended up giving the special exception to that even though I was opposed to it so the person living next door to them I mean when they look out their window their sight line is almost right to the edge of the corner of that 2 car garage now you know it is not a normal looking out onto a front lawn type thing and stuff but and there are a lot of things over in the Wesmond subdivision back in the 70's when they built that that they put houses that were too large for the lots, they had lots that were smaller than what the plan had originally called for and then it wasn't caught until after the house was built and sold and stuff and everything, so that is that. Ok any comments from citizens, Tom did you have any other comments.

Mr. Kettler: No I guess there was one other thing I'll talk to John about the issues of the air conditioning I may have to come back and bore you all about that, that is kind of a new deal and I'm not sure how to...

Mr. Yost: County not us.

Mr. Kettler: Why John if the County is requiring it and you all have your own zoning authority power do you have to abide by what Montgomery County is doing.

Mr. Strong: They are the ones who issue the cancelled permit and the requirement is, the question that is asked, is the unit within the building restriction lines and if it is not than they (inaudible) from the Commissioners each individual lot.

Mr. Coakley: So we could grant a special exception then.

Mr. Yost: It would be a variance on each lot.

Mr. Strong: And as you said it is not unusual if somebody builds a building in the wrong spot it is not unusual for a jurisdiction to grant a variance to that building restriction line but you better have a real good reason why, such as the building was already built and the surveyor made a mistake and put it in the wrong place.

Mr. Coakley: We had one somewhere within the last 2 or 3 years that was like 1 foot off or something, and we granted a variance on something.

Mr. Wright: What is their rationale why do they want to make sure that...

Mr. Strong: It goes back to Clarksburg, the problem was they ended up sticking the air conditioning units in between the buildings and the firefighters there was no way that they were going to get through there if they ever had to get to the back of the building.

Mr. Wright: So that is their concern firefighting.

Mr. Yost: That is exactly what it was there.

Mr. Strong: Health and safety is their main concern.

Mr. Hoewing: Well that was part of the discussion we had on the bay window too so this is a lot further out than 2 ½ feet, its probably like 3 ½ feet isn't it for an air conditioning unit.

Mr. Strong: It depends on how it is set.

Mr. Hoewing: It's at least 2 ½ feet.

Mr. Strong: Yeah. What Winchester has done is a lot of them are just strapped to the side of the building so they are as flush as they can be but they haven't had a --- issue of building restriction lines, but a lot of them are strapped on the side of the building.

Mr. Yost: And they are really tight they are right on the line.

Mr. Coakley: That is ¾ acre zoning over there too.

Mr. Kettler: (Inaudible) I mean we are not Clarksburg, we are not in a 5 foot setback, its not an issue like Clarksburg, the Town has a blanket rule that says the air conditioner is located (inaudible) I don't know but...

Mr. Hoewing: I wouldn't object but the only real issue that I heard discussed in not approving this was the safety one mostly right, so if that is the issue then we could do an exception.

Mr. Wright: The Town could, the Town could reduce the setbacks but I don't know what the County's specific objection was so if its zoning than we have the authority but if its something else some other considerations...

Mr. Strong: The primary one would be health and safety and that would be something and if we reduce it is that going to present an issue or for the fire department and that would be a question to ask and maybe on an individual basis because we are talking if its on both sides or you have two houses opposite each other now you are narrowing it from, now you are at what...

Mr. Coakley: 12 feet.

Mr. Strong: 12 feet yeah.

Mr. Coakley: 11 feet.

Mr. Strong: Is that enough for them to do their duty because there is supposed to be an offset (inaudible) well it has to do with the size of the building and how it is sited.

Mr. Coakley: The other thing too is if you have accoutrements coming closer to the property line than people are going to want to plant trees to shield some of it like the AC unit and stuff and everything and then as the trees grow up and get a little bit larger and stuff you have the branches if a fire truck tries to get back there.

Mr. Bachman: Well what if you plant a tree in between your houses then, the fire trucks can't go around the tree.

Mr. Strong: It's more for the guy on foot who is dragging a hose to the rear of the building.

Mr. Hoewing: 15 feet seems to be plenty enough space for a man to walk through.

Mr. Strong: I agree but I am not the firefighters.

Mr. Hoewing: Well you said the --- was just a few feet that is the difference.

Mr. Strong: That is correct (inaudible) what the fire restriction line is, I thought it was 10 feet at one time.

Mr. Coakley: Ok any other comments?

Mr. Hoewing: So we are just going to let that one sit?

Mr. Coakley: Well I think Alan is going to check number one to see if we can override the County mandates since we have our own zoning and Planning Commission.

Mr. Wright: I will need to check with somebody who is willing to make any decisions.

Mr. Yost: Or if it is a mechanical permit they bring in every time.

Mr. Hoewing: How many square feet Tom did you say these houses are?

Mr. Kettler: Sorry.

Mr. Hoewing: How many square feet are the base of these houses, did you say 10,000.

Mr. Coakley: 10,000?

Mr. Hoewing: What was the square footage?

Mr. Kettler: All of these houses will be 2450 square feet up to we have one that we are going to have that is slightly over 4000.

Mr. Hoewing: So they are not that big. That one that is out there now, is that one of the bigger ones?

Mr. Kettler: One of the bigger ones.

Mr. Hoewing: That is what I thought.

Mr. Kettler: It is a brand new house and just FYI we hope to have it open by April.

Mr. Coakley: I don't know I get uncomfortable just going through Elizabeth's Delight because of the hoity-toity atmosphere over there.

Mr. Kettler: This is not the hoity-toity Elizabeth's Delight. We are working against hoity-toity.

Adjournment

Mr. Coakley: Well ok if there is nothing else do I hear a motion to adjourn?

Mr. Stump: I move we adjourn.

Mr. Bachman: Second.

Mr. Coakley: All in favor?

All: Aye.