

**POOLESVILLE PLANNING COMMISSION
MEETING OF DECEMBER 16, 2009**

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

Call to Order

Mr. Coakley: Planning Commission Meeting of December 16, 2009 is called to order. Present are all Planning Commission Members along with the Town Manager and Town Attorney.

Announcements

Mr. Coakley: Lets see do we have any announcements? No announcements.

Citizen's Comments on Agenda Items

Mr. Coakley: Tonight we have minutes of November 18 for approval, we have Planning Commission training, under old business we have Williams Adventure, Underground Storage Ordinance, Solar Guidelines, are there any comments from citizens on the agenda items so far.

Approval of Minutes

Mr. Coakley: Ok hearing none then do I hear a motion for the approval of the November 18 minutes.

Mr. Hoewing: So moved.

Mr. Bachman: Second.

Mr. Coakley: All in favor.

All: Aye.

Mr. Coakley: The minutes have been approved.

New Business

Mr. Coakley: Ok under new business we have the Planning Commission Training. I don't know if you all got a chance to read it, it was in our package but we are all required to take the Planning Commission Training that the Maryland Department of Planning along with the University of Maryland is creating and it looks like that is going to be an online course and the material Wade gave us said that you could also get hard copies if you wanted to do it that way, or you can probably do a combination of both.

Mr. Yost: That is correct. The course is not ready yet, they are supposed to be prepared by December 31 of this year, you have 6 months to complete it, they said it will take about 4 hours so hopefully it will be done sometime in January.

Mr. Coakley: Did they request or did you provide anything specific that the Town of Poolesville does.

Mr. Yost: Everything is centered around Article 66B which is State Law so that is it.

Old Business

Mr. Coakley: Ok the next item under old business is Williams Adventure and prior to doing that and speaking of Planning Commission training maybe Wade and Alan can fill me in a little bit in doing a little research for this evening trying to decide what's fair and equitable when you are talking about RDT and then creating a cluster type environment

and I was looking under the Subdivision Regulations and it seemed somewhat confusing as to what the requirements are when you take clustering under RDT.

Mr. Yost: It is not a true cluster by our definition of our Code, if you have RDT you can zone it, you can have a 1 acre parcel subdivided out of the full lot, so that is what he has done is basically just straight by the Code. So it is not a true cluster by our standard or our definition, our definitions don't encompass 1/3 to 3/4 acre. But he can cut out 2 1-acre parcels that is exactly what he has done.

Mr. Coakley: And I know that the Subdivision Regulation says that once you do that you treat that for your side setbacks and all of your other standards and requirements the same as if it were a 1 acre lot and not a 25 acre lot and stuff and everything. But then the confusing part is what's the equitable way of deciding of park the reforestation, the park type parcel either what you give or in monetary in lieu of and all that and does that only refer to the 1 acre or does that apply to the 25 acres and I didn't think it was extremely clear in looking through this.

Mr. Yost: It's not I will defer to Alan on that question.

Mr. Wright: Well I don't think it is a matter of I mean you want it to be equitable but you have to follow what the Code says and when you are subdividing off a parcel and look at the Code with regard to...

Mr. Coakley: Well is it a true subdivision?

Mr. Wright: It's a subdivision.

Mr. Coakley: I mean is it truly a subdivided parcel because it is still attached to the 25 acres per se.

Mr. Wright: It's subdivided, it is it's own parcel.

Mr. Coakley: Oh ok.

Mr. Yost: He can't cut another, 3 lots is all he can have on that property, no matter how he subdivides it, this is just the minimum lots he can have.

Mr. Wright: Each of the lots becomes a separate parcel and I would say it has to be treated as such on this Code and that is what I recommend doing.

Mr. Yost: So is your questioning if he is developing 2 of the acres is that what the formula...

Mr. Coakley: Yeah for the formula determining parkland etc., and stuff and everything.

Mr. Yost: Is that right Alan?

Mr. Wright: Well he has got a lot that is already in existence, he is creating 2 additional lots that he wants to build on, you could argue that the subdividing is creating in effect 3 subdivided lots, I don't think that the Code is not exactly clear as to what acreage you use to determine how much, what kinds of contributions are required for parkland and so forth.

Mr. Coakley: Well in a subdivision like the Kettler subdivision we use a formula using the entire acreage, we don't exclude the flood plane area, the park areas and all that, we look at the entire parcel and say ok it was 136 acres whatever it was and that's the formula that we use but that certainly wouldn't seem an equitable way to do it if you are talking about looking at two parcels in an RDT.

Mr. Yost: The other thing you might want to consider is the Code does reference that whatever park facilities are in place are for that subdivision basically so you wouldn't want to extract enough land and just have 2 houses there with a park as far as being

equitable. We went through this last week with the Parks Board quite a while to get where we are with their recommendation.

Mr. Coakley: Ok.

Mr. Hoewing: Well it says there number one recommendation is to grant a waiver.

Mr. Yost: Right just because the discussion we are starting to have here.

Mr. Sneed: Is parkland open space is that the same concept.

Mr. Yost: Not really because if you have forested areas or wetland areas they can also be dedicated as open space. Tom Kettler does the only land he can do nothing with and he dedicated a lot of that also that we will have to maintain and take care of which may be a --- what compensation he spends and different things. So all that is lumped together as open space as we call it.

Mr. Sneed: What is parkland?

Mr. Wright: We don't accept that as parkland because we can't develop a park on it.

Mr. Coakley: Yeah it is defined in the Subdivision Regulations in the formula when you determine what parkland has to be dedicated by developer or something, it can't be steep bank it has to be flat, there is a pretty good definition to make sure that its not throw away land anyway.

Mr. Sneed: So if I purchase 1 acre of land in Poolesville and build a home on it I have to dedicate some portion of that to parkland to myself?

Mr. Yost: No that is why you ask for a waiver and that is why the waiver provision is in the Code.

Mr. Sneed: And would that waiver apply in this case to the 2 subdivision?

Mr. Hoewing: That is what the Parks Board is recommending.

Mr. Yost: It could be granted.

Mr. Sneed: Ok.

Mr. Bachman: What is the significance of the 20-foot public utility easement along the northern boundary of the property, you mentioned that a month ago but I want to be reminded.

Mr. Yost: Right two different things, one we have 3 wells on, well there is 2 right now, there is 1 being tied in together on Budd Road and it's tied into the system at Spates Hill and 107, there is only 1 location for those wells to go to, if that pipe was to break or go down we don't have another way, so we want to run a loop water system which actually dead ends in the water system as a whole, it has been on the books for awhile to run it from Budd Road to Hughes Road and this is where we had it actually defined in the plan we had a long time ago. Number two was in the Master Plan it defined the trail system now this easement wouldn't be on the trail but it could allow a buffer for a trail if it was put in Rabanales property.

Mr. Coakley: That would be where the trail cuts through.

Mr. Bachman: So the 20-foot public utility easement would be both for the purpose of being able to divide to put the pipe but also on top if you would want a trail?

Mr. Yost: No we would run the trail it would go probably on Rabanales property and we would have a 20 foot buffer basically from the trail, that is what this easement would provide. That is kind of where we...

Mr. Bachman: So you don't have a trail?

Mr. Yost: Currently no. (Inaudible) the 20 foot right of way for easement from Rabanales for the --- could build the trail.

Mr. Bachman: Ok so the 20-foot public utility easement here is to secure the land to be able to lay the pipe to have this loop.

Mr. Yost: And not specific to just that one, like any public utility whether it be power in the future, or sewer line whatever.

Mr. Bachman: And that is the trade-off they are asking for.

Mr. Yost: Well that is kind of the agreement that they came to at the Parks Board.

Mr. Bachman: Was that brought up --- month.

Mr. Yost: Last week. Oh yes, yes...

Mr. Bachman: It was brought up that there was a generous consideration made by the property owner to allow that.

Mr. Coakley: Ok any other...

Mr. Sneed: I have one other thing. Was there any discussion at the Parks Board about putting the trail in now?

Mr. Yost: No because the other ends of it aren't developed yet so it would just be a portion of it, no not at this time.

Mr. Sneed: What is at either end of the properties, sidewalk?

Mr. Yost: Well if you look at the plan there, it loops around that property as well as towards Spates Hill, which is you know 107, Spates Hill, you want that connectivity bringing it down...

Mr. Sneed: There is a sidewalk there right?

Mr. Yost: Coming down Rabanales side there is nothing there now.

Mr. Sneed: On Budd Road there is nothing there?

Mr. Yost: Exactly.

Mr. Sneed: So conceivably people could run down the road, run down the trail and then hit the sidewalk.

Mr. Yost: They could.

Mr. Sneed: So to answer my question there was no discussion about that now?

Mr. Yost: Correct.

Mr. Sneed: Should there be a discussion about that? Could that be something we discuss here or is that something they would discuss?

Mr. Yost: You overrule the Parks Board.

Mr. Hoewing: To be clear though Wade there was discussion on it they just decided not to go forward.

Mr. Yost: Right well there is not any money in our budget to actually build the trail right now.

Mr. Hoewing: So they did discuss it they just decided not to go forward.

Mr. Coakley: I mean if anything it would probably be used more by poachers to get in and get deer on the Rabanales property than anything else. Mr. Jamison would you like to say anything?

Mr. Jamison: I don't know that I need to add anything Mr. Coakley.

Mr. Bachman: When you mention #3 that Robert Jamison is going to enter into a Public Improvement Agreement and construct a 5-foot sidewalk what is the scheduled construction of the sidewalk in the context of construction on the 2 properties, would the sidewalk be done when the properties are done?

Mr. Coakley: Well that is normally in the agreement.

Mr. Yost: It would be in the agreement it could be any time in the future which is what they request like with the Rabanales property when it gets developed there is actually something to connect to that was a part of the PIA and he could just build it at the Commissioners request, which is not so far fetched.

Mr. Bachman: So number 3 is not naturally going to happen.

Mr. Yost: Not right now, whenever we ask for it he would agree that he would have to put in what we ask for, I mean he could put it in now if you guys want him to, I mean that was just the request that he had asked for the Parks Board, they didn't have a problem with it because there is nothing else there at this time.

Mr. Hoewing: And if it takes 10 years for Rabanales to develop or whatever then the sidewalk sits there for 10 years unused and deteriorating, which doesn't make a lot of sense. Might as well do them all at once and have a brand new sidewalk I would think.

Mr. Yost: But we have definitely secured the right of ways and public improvement agreement.

Mr. Sneed: He would have to pay for it?

Mr. Yost: Oh yes.

Mr. Sneed: What if he doesn't have the money then, is there, does that have to do with the payment...

Mr. Hoewing: We'll sue the pants off him.

Mr. Sneed: That is not good enough. I mean what guarantee that there will be money there then or anywhere for perpetuity.

Mr. Coakley: Is there a bond required with that?

Mr. Wright: Well if you had to collect the money there would be a lien against the property, which would be the public improvement agreement would be on record and would bind Mr. Jamison and any subsequent owners of the property and if when requested they did not build the sidewalk as required then I guess we would have to place a lien on the property.

Mr. Sneed: What other options do we have is there a bond option, what other options would we have to get the money now?

Mr. Wright: Well I suppose you could think in terms of requiring a bond but if you are talking about a period of time to keep a bond in effect or a letter of credit or something, there are some fees involved in that and it does tie up some of his money, so it is not an ideal solution as far as I am concerned.

Mr. Stump: What have we done historically in the past in this same situation?

Mr. Yost: Well every subdivision has a public improvement agreement, all the lots we are going through right now would have to build parks after so many homes are built or short timeframes, you could even put a timeframe if you wanted to. Same thing that is in the public improvement agreement and you could take it to Court and put a lien on the property, whatever you need to do.

Mr. Stump: So that is where I was going to specifically, historically we haven't had any bonds or money put in escrow, it's just been part of the agreement.

Mr. Yost: Bonds right now are typically short time.

Mr. Stump: It's a fixed timeframe in this case it is a totally open timeframe it could be anywhere from a year from now to 50 years from now or never, which is a difficult thing too.

Mr. Bachman: How much land does it require to build a sidewalk?

Mr. Yost: its ADA guidelines require 5 foot wide, I'm not sure of the width of his property off the top of my head.

Mr. Bachman: You mean a total in 5 feet in width or that is the width of the sidewalk?

Mr. Yost: Width of the sidewalk.

Mr. Bachman: You have --- on either side.

Mr. Stump: What is the easement side?

Mr. Yost: He already has a right of way 40 foot from the center of Hughes Road so that is going to be way back, the sidewalk is going to be sitting out here you are going to have 10 foot at least on each side of the easement or more.

Mr. Bachman: And the right of way is dedicated to?

Mr. Yost: The Town of Pooleville.

Mr. Bachman: So that makes the land on which the sidewalk would be constructed essentially...

Mr. Yost: Town property.

Mr. Bachman: Town property.

Mr. Yost: That is correct.

Mr. Bachman: Well then the only issue on the table is the issue of funds to build the sidewalk at whatever time that occurs. It isn't an issue of whether you have access to land?

Mr. Yost: Correct.

Mr. Sneed: And is the recommendation to install the trees according to regulations is that in front of us to decide whether we should waive it or take the recommendation to have them install the trees or plant the trees?

Mr. Yost: You can (inaudible) before you.

Mr. Sneed: Ok are we on that yet?

Mr. Coakley: Well no but it is sort of standard.

Mr. Sneed: Well I would say why have them do it, why not require that they don't plant anything if we are going to waive on the sidewalk we should require that they not plant anything on Town property then so that if it is ever developed down the road then the sidewalk and trees will all be planted at the same time. So I wouldn't require them to do trees in accordance just for 2 properties either right does that make sense?

Mr. Bachman: Well lets talk about it for a second, where is the, is there a tree line then is that what you are talking about installing street trees, is that a gap between the curb and the proposed sidewalk?

Mr. Yost: Yes it would be. We have to look at detail to see exact location of where that would be. The Code Book specifies the spacing of it, which would probably be 2 trees for each lot.

Mr. Hoewing: It would seem to be kind of silly to plant them now because they get big and then we may have to dig them out anyway.

Mr. Yost: And we didn't really get into a deep conversation the Parks Board about this at all I mean we just kind of brushed over it.

Mr. Hoewing: Yeah I think he is right it should be done at the same time.

Mr. Yost: Yeah and then the PIA could be --- with the sidewalk improvements.

Mr. Coakley: I am sure that homes will have landscaping also.

Mr. Sneed: Well I am saying we should require that they not be allowed to do any significant landscaping on the easement, significant plantings, because I don't want 10

years from now us going in with the Town if Rabanales is developed, we go in with the sidewalks and the regular trees and we want to do our thing, I don't want to be here with anybody coming to us saying oh we want to leave our trees, we planted them or our kids planted them when we moved in and we don't want to tear them down, it is what we did at the other corner up here about don't tear my trees down, I'd rather not I'm not going to be here in 10 years but I don't want to put anybody else in that position.

Mr. Yost: Technically if it is in our right of way and we need to destroy whatever it is for our purpose, it can be done, it has happened before when we did a sidewalk down in Westerly Avenue unfortunately trees had to come out and there were some unhappy people.

Mr. Sneed: Well that is what I am trying to avoid unhappy people, so I am dead serious about this, I mean they could garden it and low level landscaping would be fine.

Mr. Yost: Well we could put something in the PIA that they do plant things in the right of way it cannot or might have to be removed for the future improvement, word it some way that...

Mr. Sneed: No future whining about us.

Mr. Coakley: I am guessing if we waive the installation of the street trees that any landscaping will be done up closer to the property.

Mr. Bachman: I wouldn't waive the installation of street trees I would prefer them to --- street trees in accordance with the Subdivision Regulations until the time that the sidewalk is in, but I wouldn't drop this from the...

Mr. Coakley: Make that part of the PIA.

Mr. Yost: Right.

Mr. Coakley: Ok any other comments concerns?

Mr. Stump: To bring up a past topic, conditional approval number 2, why are we even talking about covenants?

Mr. Yost: It is in the Code Book.

Mr. Stump: (Inaudible).

Mr. Yost: Not yet. Yes you guys did but the Commissioners did not.

Mr. Stump: They haven't passed that yet?

Mr. Yost: No as a matter of fact it was thrown out, so either they submit a Covenants or a letter stating they are not going to have a Covenants, which is probably what is going to happen I would imagine.

Mr. Jamison: There will be no Subdivision Covenants on this site, Robert Jamison for the record.

Ms. Jamison: Do we have to submit a letter to that effect?

Mr. Yost: Yes.

Ms. Jamison: Ok we will do that thank you.

Mr. Coakley: Ok are we ready to move on this, do you want to make a motion?

Mr. Bachman: No I just want to recommend a revision to the wording of Parks recommendation number 4, go ahead?

Mr. Coakley: Uh huh.

Mr. Bachman: I would like to revise the Parks Board recommendation number 4 to read "defer the installation of street trees in accordance with Subdivision Regulations, Section 22 J until such time as the 5 foot wide sidewalk is constructed".

Mr. Stump: Second.

Mr. Coakley: Ok --- any motion.

Mr. Bachman: Including in the Public Improvement Agreement, ok is constructed according to the Public Improvement Agreement.

Mr. Yost: Right. And actually we may not want to specify a 5 foot sidewalk just because 5 years ago it was a 4 foot sidewalk that was ADA.

Mr. Coakley: NO BCD is a problem so it might be 7 or 8 feet.

Mr. Stump: Or that particular regulation might finally get overturned, personal preference sorry.

Mr. Coakley: Ok do I hear a motion then to approve the plan as submitted with the changes discussed?

Mr. Hoewing: So moved.

Mr. Bachman: Second.

Mr. Yost: Conditional approval correct.

Mr. Coakley: Yeah, all in favor?

All: Aye.

Ms. Jamison: Thank you.

Mr. Coakley: Thank you all. Next item Underground Storage Ordinance.

Mr. Yost: Ok in front of everybody tonight I placed, Bobbie had sent the wrong one out in your packets, so I placed another Draft Ordinance in front of everybody today, this is the correct one, and if you guys have any questions as we are going through this Kathy Mihm is here, her and Alan and I worked on this together so she knows in and out what the details are. George you had brought something up, most of the definitions which speaking to the existing gasoline underground storage tank system and it maybe should read fuel so we are not specifying just gasoline, you don't get kerosene or something else out I think it is a good idea and Alan did too when we talked about it so any type of oil anything so just fuel in general.

Mr. Stump: Unfortunately you can't quite do a complete little circular place there is a few areas where the specifics talk about special testing areas like gasoline constituent and say you have to do a little more careful than just that.

Mr. Wright: That occurred to me when you were suggesting this that there may be some things that are just aimed at gasoline and the tests that are performed and particularly for instance right there in the levels of concern it lists several elements on page 2, definition of levels of concern and then that is a measure of whether you are in compliance or not at least I don't know at least maybe peculiar gasoline and wouldn't apply to necessarily other kinds.

Mr. Coakley: Does kerosene have any of those elements?

Ms. Mihm: (Inaudible).

Mr. Wright: What we are doing here as I explained the last time was just trying to take over what the State has put into effect in some other counties but not in Montgomery in defining a high risk use areas and so that's we've made some changes as necessary to conform it to Poolesville with reference to the Town administering it versus the Department, you see that throughout, and defining a high risk use area in terms of the Town of Poolesville versus in general but we've basically tried to follow what the State had gone and just made sure that we had the highest level of detection that the State was providing in other counties but had to failed to include Montgomery County.

Mr. Hoewing: But if you use the term gasoline would it cover diesel tanks too, because those are definitely in gasoline filling stations.

Mr. Wright: They are in gasoline stations.

Mr. Yost: In fact Getty had a kerosene and a diesel tank.

Mr. Hoewing: Yeah they had both.

Mr. Stump: How big was the diesel and the kerosene?

Mr. Yost: I don't know.

Mr. Coakley: How what?

Mr. Stump: We were talking earlier about various sizes of fuel tanks and then combining them and you mentioned and I forgot that the Getty used to have diesel, I was just curious how small that was, it if fell underneath any of our...

Mr. Yost: As a single maybe but there were several tanks there that would catch it.

Mr. Hoewing: And gasoline is used throughout so I guess it wouldn't cover it.

Mr. Yost: Cathy let me ask you if we were to include kerosene and diesel and we are going to mandate you are supposed to have these wells monitored we would have to have specific guidelines for what they are monitoring for wouldn't you think.

Ms. Mihm: Well I think (Inaudible).

Mr. Yost: Oh ok.

Ms. Mihm: (Inaudible).

Mr. Stump: How bout fuel oil?

Ms. Mihm: Fuel oil...

Mr. Coakley: Well diesel and fuel oil are almost identical.

Mr. Stump: Almost.

Mr. Jamison: (Inaudible) I want to work with everyone in the Town and MDE (inaudible).

Mr. Hoewing: We need competition.

Mr. Jamison: And not only that --- and I don't see it being a Herculean moneymaker but I need it clean because it is sort of the tail wag of the dog, I've got a lot of real property and I don't have any underground storage tanks and I want that site cleaned and I want it --- for the Town and so I got it under study, just went under contract 5:00 today, and I am the contract --- so I don't know if I work with Wade, the Town and with Bobbie, Susan is going to work with MDE and we are going to try to get that site back up, clean and running. So that is my --- just what was going on with storage tanks and that sort of thing, if we all put our thinking caps on and pull together we could probably have something pretty good in the Town that is clean and state of the art.

Mr. Hoewing: That would be nice.

Mr. Jamison: We need another gas station, so I want to if I could help with any of this, bumping these regulations up for COMAR, and we are going to put 4 or 5 test wells on that site just as soon as I get the drillers and I think 3 or 4 --- to see what is there, so that we all have an idea, I am willing to share all and any of that information with all the Planning Commission members, and the Commissioners of the Town because we want it right we want to put a good business there, otherwise we will scrap it and do something else with the site.

Mr. Sneed: We appreciate that and if you mean by cleaning up the site to include the rear part of that property I would give you great kudos for that and I would volunteer right here today and I bet you I could guarantee or volunteer a number of other people that live

on the other side of that fence there that is adjacent to that property to come and help you clean up that back portion and maybe buffer the neighborhood.

Mr. Jamison: If I get that site that site would be ---, you look at all my real property in Montgomery County I have clean sites and I keep them clean, we will put a new face on it and it will look nice back there, it won't be a detractor from any of those houses in Elizabeth's Delight or anything across the street. I know I said it is the tail wag of the dog but I have a lot more assets than that and I don't that to be knocked down, you got to care for this Town (inaudible) you are not hooked into that. And I appreciate you bringing it up I don't mean to be (inaudible).

Mr. Coakley: Ok so we need to reword it to include...

Mr. Yost: So is just the term fuel good enough on page 2A the first definition, it says existing gasoline right just put fuel instead of gasoline.

Mr. Coakley: Because like under on page 2 under A1B it says used to fuel motor vehicles, well most don't run on kerosene or home heats.

Mr. Yost: Yeah that is the part where it would be more strict than what the State was.

Ms. Mihm: (Inaudible).

Mr. Yost: No I think it is small like 5 or 600 gallons. It is definitely smaller but it is part of a multi type system so it is still going to trigger, not that it is anything to worry about.

Ms. Mihm: I will check on the kerosene (inaudible).

Mr. Wright: You could just say store fuels something like that.

Mr. Hoewing: I guess the question Kathy though is there is really 3 questions, 1 is should we add things like diesel and kerosene, 2nd is if you just limit it to motor vehicle if you are talking about wellhead protection that should be the defining characteristic, it really is A) are the fuels stored in the ground could they possibly leach into the groundwater and cause problems, whether they are use of fuel vehicles or not...

Mr. Coakley: Yeah we want to get rid of that.

Mr. Hoewing: And then the 3rd thing is are those constituent levels of concern those chemicals there that have parts of gasoline I guess, are they the same kinds of levels of concern in diesel and kerosene.

Ms. Mihm: I would have to verify that.

Mr. Bachman: But there is agreement if we are going to include diesel fuel we won't use the term gasoline.

Ms. Mihm: (Inaudible).

Mr. Bachman: I don't think so.

Mr. Coakley: Or like Alan said just use the term fuel.

Mr. Bachman: Yeah I think if you use the term fuel and then put parenthetically gasoline, diesel and other as appropriate.

Mr. Yost: Including but not limited to.

Mr. Coakley: I have another question also, I think it said the test wells half a mile from the site.

Mr. Yost: No it refers, it just talks about making an inventory of drinking water well within a half-mile site.

Mr. Coakley: Oh ok maybe I misread that. I thought it said like monitoring wells a half-mile from the site that seemed a little far and I was wondering who you have to make friends with to put a monitoring well on their property if we don't own it.

Ms. Mihm: (Inaudible).

Mr. Yost: You can survey a groundwater use within a half-mile radius of the underground storage site.

Ms. Mihm: (Inaudible).

Mr. Yost: Kathy can I have you come up here, because the transcriber is going to be saying who was this.

Mr. Coakley: Inaudible.

Mr. Sneed: What about I mean are we missing other things, other hazardous materials that we would want to monitor or should be monitored.

Mr. Yost: For an underground storage tank?

Mr. Sneed: What about pesticides for an exterminating business.

Mr. Yost: Most of those aren't going to hold a huge volume like that, that are going to be underground it is probably easier and cheaper for them to have an above ground storage tank with a small concrete containment area. I don't think you should mix all the chemicals up and keep them in an underground tank I've never heard of that. Mr. Jamison is a farmer and they deal with pesticides, he could probably answer that question better than I if you want to ask him.

Mr. Sneed: Fertilizers do farmers do anything like that in the ground I guess not.

Mr. Jamison: No Sir. I have a Pesticide Maryland Applicator's License and we do not store any pesticide or fertilizer underground.

Ms. Mihm: Does the Wellhead Protection Ordinance have anything to that affect?

Mr. Yost: The Wellhead Protection Ordinance does speak to underground storage tanks across the board, it doesn't specify.

Mr. Hoewing: What does it say we can do about it then, does it say is there some regulatory authority you have, I don't remember now it has been a long time since we've read over it?

Mr. Yost: I would have to reference it again and see how it applies to it.

Mr. Hoewing: If you look at the front part of this it is kind of interesting where it is only focusing on the gasoline but it says "all underground storage tanks and piping systems shall meet the requirements of COMAR, which I don't know what those all say, but as amended from time to time for security containment double walled tanks, liners, vaults and underground piping" all underground storage.

Mr. Yost: Yep.

Mr. Hoewing: This is a subsection of what we are dealing with here.

Mr. Yost: That is exactly correct right per our Code we do reference this whole 26.104 whatever it is.

Mr. Stump: And actually the key is the next sentence you didn't read, in addition, so you got that requirement and then more details here.

Mr. Hoewing: And they must be requirements in COMAR regulations but I don't know what they say but.

Mr. Bachman: I would imagine these are more strict because they may apply to high risk groundwater use area.

Mr. Yost: Well that is what we did the State has two different types of regulations, one is for regular applications like a Montgomery County --- doesn't have high groundwater use and then there is for high risk groundwater areas, we followed that portion to put into our Codes and then we'd be covered.

Mr. Coakley: Ok my other question was on page 2 under A(2) and then down under A(7) I know we were very specific when we did the Wellhead Protection Ordinance to include areas outside the Town boundary and the way it is written (2) looks like it only refers to those areas within the Town where (7) does go back to our broader definition and does include some wellhead protection areas that go outside the Town boundaries, do we want to keep it that way or...

Mr. Yost: Even though we wouldn't have any regulatory authority outside the Town of Poolesville working in partnership with the County we would have something then to say look if you are concerned about this, this is what we have passed and this is our Wellhead Protection Area I don't think it is wrong to have it in there.

Mr. Coakley: Well no I think we should have it in there I'm just wondering if it should be the same for both (2) and (7).

Mr. Bachman: Its two different aspects, one is a high risk groundwater use area.

Mr. Yost: On how we define it correct.

Mr. Bachman: And that is within the Town of Poolesville and then 7 implies to wellhead protection area.

Mr. Yost: Yeah 2 should say the same thing as 7.

Mr. Bachman: Yeah if you want them to cover the same thing you have to use the same language.

Mr. Wright: We have a wellhead protection area it does extend beyond the Town boundaries and for whatever purposes we use them we define that because it does exist beyond the Town boundary but we can only regulate as a high risk groundwater use area the area within the town so that is why I wrote it that way, restricted it to the area within the Town of Poolesville.

Mr. Coakley: Ok just wanted to make sure you wanted to differentiate.

Mr. Bachman: So 7 is just a clarification of the fact that the wellhead protection area extends beyond the jurisdictional boundaries of Poolesville.

Mr. Wright: Well it was in the State Code so I left it following the State structure, it doesn't really clarify that because if you didn't know that it went beyond the Poolesville boundaries it wouldn't tell you that but we used that wellhead protection area definition and to say that high risk area is all of that wellhead protection area that lies within the Town of Poolesville.

Mr. Bachman: Would you want to clarify #7 so that it admits that wellhead protection area extends beyond the boundaries of Poolesville?

Mr. Wright: I don't think we need to.

Mr. Stump: It is just referencing whatever that mission is in the Master Plan if you modify it here than if the Master Plan changes you got to remodify this, this should just serve as a pointer, a clarification, a definition of whatever is in the Master Plan.

Mr. Hoewing: The main reason we established the Wellhead Protection Plan and included areas of influence outside of the Town are just so we had a way to influence whatever way we can use leverage wise, something that goes on out there we have no legal authority but we can certainly say we've adopted this because we are going to monitor this and be always watching and if something happens we want to have a say in it, now whether they will let us have a say, or whether we have to sue them who knows, it could be a lot of things we have to do but we don't have any legal authority.

Mr. Coakley: The more I read it the more it sounds like (2) should be the same as (7).

Mr. Yost: I don't see why it wouldn't be.

Mr. Wright: Well the only reason is because we don't have any authority beyond Poolesville boundaries.

Mr. Hoewing: Right.

Mr. Wright: And the wellhead protection area extends beyond the Poolesville boundaries.

Mr. Hoewing: Yeah they are 2 different things I think.

Ms. Mihm: Theoretically we would like to be able to regulate within the whole wellhead protection area regardless (inaudible).

Mr. Hoewing: I mean the high risk groundwater from our standpoint is what we can influence I think is what they are trying to say, which is in the Town.

Mr. Yost: Yeah but is it really, isn't it anywhere that we have all the Town protection area where we are drawing our water from should be...

Mr. Hoewing: It is but...

Mr. Yost: In our eyes hopefully we could use that to influence the County lets say they were doing something right outside the town limits.

Mr. Bachman: But he made a distinction the high risk wellhead protection areas is within the boundaries of the Town that we can control, the broader wellhead protection area can extend beyond the boundaries.

Mr. Yost: It does but we are saying high risk groundwater area means all areas within the Town's wellhead protection area and he went ahead and said within the Town of Poolesville I don't know why we have to limit it to that.

Mr. Hoewing: Yeah you are right.

Mr. Coakley: I would want to keep it as broad as possible.

Mr. Yost: That is what I am thinking.

Mr. Wright: If someone tries to put in an underground storage tank somewhere in the wellhead protection area but outside of the Town of Poolesville we have nothing to say about it.

Mr. Hoewing: No.

Mr. Coakley: Well I think...

Mr. Wright: We have no regulatory right, we can't require them to get a Special Exception on...

Mr. Coakley: We have no authority over it but we have plenty to say about it that you could raise to the County or on record as defining this area as part of our Wellhead Protection Area that influences our drinking water and we don't want you to allow dangerous chemicals.

Mr. Wright: We could say high risk groundwater use area means all areas within the Town's wellhead protection area as defined in the Poolesville Master Plan, I would scratch #7 because we don't really need two definitions.

Mr. Coakley: Let me get my old copy see if I have any other comments.

Mr. Yost: Well we did change things on C on page 3, number 3, we talked about that a little bit at the last meeting, it was 2000 gallons, we took it down to 1000 gallons.

Mr. Hoewing: So the COMAR regulations are actually adopted by the State now they would report though to us, do we actually send a copy of the report to the State too is that what is going to happen.

Mr. Yost: It is still going to be a joint thing go ahead Kathy, it is still going to be a joint thing they still have to apply to the State to do regular tanks and get them back in service and we will do an inspection, the only difference really is, is the monitoring of wells the State doesn't require those and we will...

Mr. Hoewing: Right well it also said the testing, they have to do this test...

Mr. Yost: Oh the testing that is right that is right.

Mr. Hoewing: They report to us as well as the State now is that what happens.

Mr. Yost: No we could definitely share that with the State if it is an issue the State is going to be the one that has to come out and do a clean up or remediation similar to what they are doing right now. That will be our requirement.

Mr. Hoewing: Look at number 5 it says detect the levels of concern, it says number one report the concentrations if they have a level of concern to the Town within 24 hours.

Mr. Yost: Yep.

Mr. Hoewing: So it doesn't go to the State at this point now.

Mr. Yost: He would have to go to the State.

Mr. Hoewing: So we would say we think they violated the regulation.

Mr. Wright: This section here with high risk groundwater use area regulations do not apply in Poolesville under the State regulations that is why we are trying to capture them so we cannot legislate for the State and say you have to report this stuff to MDE, we have to implement it ourselves so if I may have missed somewhere but I tried to change all the reporting requirements from the Department to the Town and the State will work with us on this but we have to take the primary responsibility for this.

Mr. Hoewing: Ok. But then if there is a violation the State does the enforcement, MDE does the enforcement.

Mr. Wright: Not on this.

Mr. Yost: Well I guess if the levels are high enough to trigger something that there was a spill or something going on yes they get --- that way. And at that point the Planning Commission may want to revoke the Special Exception or stop the --- until it is cleaned up, we have no authority to have that done.

Mr. Coakley: Ok any other...

Mr. Sneed: So on page 3 C (3) so we are saying we are essentially exempting 999 gallons from the regulation.

Mr. Yost: Basically you are exempting that if it is in a residential zone.

Mr. Wright: Well if it is not for commercial use.

Mr. Yost: Not for commercial use yeah it could be for residential use.

Mr. Sneed: So we are exempting residential use of 999 gallons from this is that ---?

Mr. Wright: Well there are regulations that require for underground tanks that are not within this high risk groundwater use these provisions and are not included in this legislation so it is not that underground tanks of up to 1000 gallons are exempt from all regulation it is just that's regulated by the State under separate regulations in COMAR.

Mr. Sneed: This applies to Poolesville.

Mr. Wright: Right and probably statewide including Poolesville but just this high risk groundwater use area legislation did not include Poolesville so we are trying to provide a little extra here but there are regulations that apply to underground tanks generally that are pretty onerous.

Mr. Stump: Is there any reason why they are not a part of this Ordinance then?

Mr. Wright: No we don't need to adopt well yeah because we don't need to adopt them in order for them to apply, they apply statewide they are already in effect.

Mr. Bachman: What is the possibility that before this is presented to the Commissioners would those regulations be amended to this as a reference so that they see...

Mr. Wright: Well they don't need to be included in this but I could certainly copy them off and provide them to everyone.

Mr. Sneed: Well the omission of this Ordinance is that it doesn't cover tanks on private property less than well any on private property.

Mr. Hoewing: Well the truth is it doesn't cover tanks at commercial sites either that are less than 2000 gallons this is only 2000 gallons or above.

Mr. Coakley: Its 1000.

Mr. Yost: You could buy a double roll above ground tank cheaper than you can to put one in the ground with all the piping associated, we just did it at the wastewater plant we had a 2500 gallon underground tank and the protection was worn off and the piping was bad and we took the whole thing out and got a new one above ground double oil tank with a small concrete catch basin around it much cheaper than you could have put a new tank underground so it wouldn't even make sense to do it.

Mr. Wright: People are basically going to above ground tanks now right up the street from us at the bank they replaced a tank and they put it above ground and put a little fence around it and our own Sandy Spring Friends Meeting had to replace the tank and we didn't go with the underground we just dug up the old one, replaced it with an above ground because the regulations on underground tanks are so expensive to comply with it doesn't make sense to do it. But I would be happy to go to COMAR and copy those regulations and send them around to everyone.

Mr. Bachman: I wasn't concerned about above ground tanks because you can also observe whether there is a leak on an above ground tank, the vulnerability with the low ground tank is you don't know what is happening to it.

Mr. Wright: Right that is what I am saying people are going to the above ground tanks because the regulation of the underground tank.

Mr. Bachman: I understand that I guess I was thinking about trying to make the Commissioners aware that any below ground tanks on residential properties are not covered by this, I think they should know that.

Mr. Hoewing: They are covered by State regulations.

Mr. Yost: The intent of this whole thing was due to the MTBE issue that popped up, the Commissioners they wanted us to look at an Ordinance that would protect us and these filling stations.

Mr. Bachman: It was governed by large commercial underground tank situations primarily existing of former filling stations.

Mr. Yost: Yes.

Mr. Bachman: Ok I understand now.

Mr. Sneed: How bout with that in mind though how bout asterisking the 1000 or footnoting it rather with a note that the State law governs less than --- under a 1000 gallons.

Mr. Wright: I think it would probably be appropriate for a note to that affect. I wouldn't I include it in the Code.

Mr. Hoewing: Yeah I mean that first paragraph basically says they are all covered, it just says in addition these cover beyond...

Mr. Yost: Right this is specific to...

Ms. Mihm: There is usually something in the wellhead protection also (inaudible).

Mr. Yost: I think it references COMAR.

Ms. Mihm: It probably does.

Mr. Sneed: The other comment I have is on the last page under record keeping a person may not make any false statement etc., there is no penalty clause after that so is that because if someone does make a false statement there is no punishment or that they can get away with making a false statement or that we have no authority to penalize them or punish them.

Mr. Wright: There is a provision it may be in the other section of COMAR that provides for penalties and again it may be outside of the section dealing with high risk groundwater use areas.

Mr. Sneed: But does that authority accrue to us?

Mr. Yost: Well generally under your authority for special exceptions and you can revoke somebody's Special Exception for noncompliance, which is what a filling station would be.

Mr. Hoewing: But the, the way this works anyway is that although we are getting the reports it is still an enforceable regulation by the State.

Mr. Yost: And in general this is, anything in the Code Book is punishable by a \$100.00 fine immediately and then a \$200.00 fine for each day the violation continues. So I would imagine it would fall under that too wouldn't it Alan.

Mr. Wright: It would.

Mr. Yost: A municipal infraction.

Mr. Hoewing: For a major corporation though that won't be any kind of fine so the State fines I would assume are a lot bigger.

Mr. Yost: I would think so too. If you have a knowledgeable spill you are not doing anything about it EPA will come in and...

Mr. Wright: Let me check that and let you know what applies and what could apply.

Mr. Sneed: And if that is the case if we can assume authority to assess penalties than I would suggest that we put language in that clause that says by permission or omission to cover ourselves for people who don't report something that they know to be happening.

Mr. Hoewing: Well we can't substitute for the State in imposing fines though, this is a State Regulation.

Mr. Wright: We have got to make this our own regulation.

Mr. Hoewing: Right but the enforcement is not something we would do.

Mr. Wright: We could make penalties applicable to this that we would make it because the State is not going to enforce this for us.

Mr. Yost: Well the recordkeeping I think was --- wasn't it --- instead of 2 high risk groundwater.

Mr. Hoewing: So we are going to do all of the enforcement now of this too.

Mr. Yost: I think our enforcement part would be collecting of the data, making them drill the wells and those things that is specific to us and not everything else in this Ordinance is Statewide already besides those couple issues.

Mr. Hoewing: Yeah but it says Wade that we will initiate investigate, we have 48 hours to determine the impacts on the groundwater, develop a corrective action plan, so we are telling them they have to do all that we are going to do that now instead of the State doing it just in this area with gasoline basically or filling stations basically.

Mr. Yost: I think we would have to initiate that, that aspect right there because that is just specific here to monitoring, I do believe what do you think Kathy?

Ms. Mihm: Well I think that --- monitoring if there is a problem it's too late to investigate it.

Mr. Yost: The State or by us?

Ms. Mihm: Well I think I believe that the Town would have to initiate it but the State if there is an exceeding of any of these action levels the State would be right there.

Mr. Yost: And then they would take over from that point.

Ms. Mihm: Yeah.

Mr. Yost: Ok.

Mr. Bachman: I thought the owner had to initiate the investigation that is what the wording says currently.

Mr. Hoewing: No it says report concentrations through the Town.

Mr. Bachman: No it says A) report concentrations; B) initiate investigation; and C) develop a corrective action plan, the burden is on the owner.

Mr. Hoewing: As directed by the Town.

Mr. Bachman: Yeah but C says it was directed by the Town, it looks like the A and B still the burden is on the owner.

Mr. Hoewing: Well the reporting has always been that way.

Mr. Bachman: Page 5, F, Section 2 it basically talks about if the concentration is equal to or greater than the levels of concern as defined in the subsection the owner shall do A, B, and C.

Mr. Yost: You know what as you are saying this I think it should be reported to the Town and the State within 24 hours, have both of us in there.

Mr. Bachman: Well I think that is a good idea.

Mr. Hoewing: All the testing has always been though, this is only the, its been done by the station owner. The annual testing is done by them so if they missed a test we would have to either, we have to make sure they do it.

Mr. Yost: Right that is on us, but for the other 2 if there is a determination that there is a level of detection of concern I think that is State and Town both, we both want to see what those reports are immediately and then be notified.

Mr. Coakley: Well if we are doing this because the State says its not that COMAR doesn't cover us.

Mr. Yost: Only portions of the high risk groundwater area are covered.

Mr. Coakley: Yeah I know in this area than why don't we go ahead and include penalties ourselves and then require reporting to us if we feel than that we should notify the State to get involved also than that would be our option.

Mr. Wright: That is what I would ---. Because we need to keep this separate from the other provisions, if there are violations of the other provisions governing underground storage tanks and they are violated there are provisions that require reporting to the State etc., this is just applicable to this portion of the COMAR that we are making applicable in Poolesville, so we are just basically stealing it from the State we are not involving the

State in any way, we don't have any authority to legislate for the State or do regulate for the State we are just taking this and making it our own, so we can report to the State if we have concerns about whether any violations involve violations also that the State would have jurisdiction over, we can pass it on to them.

Mr. Coakley: But I'd sooner be redundant possibly than I would have a loophole where we try to do something and the State says well no this strictly applies to your legislation and not ours and you have to enforce it and you say well gee we don't have any enforcement built into our Ordinance.

Mr. Hoewing: Is COMAR State regulation or is it Industry Standards of some type?

Mr. Wright: It is State Regulation.

Mr. Hoewing: State Regulation.

Mr. Wright: It's the Code of Maryland Agency Regulations and when you look in the COMAR there are volumes and volumes of regulations, they are organized by Department, so each Department has its own regulation, you know what Department you are concerned with you look under that section you see all the regulations that they have jurisdiction over in that Department.

Mr. Hoewing: It is just an intriguing thing because we are essentially enforcing regulations that the State adopts that we don't have any role in and whatever the COMAR Regulations require that is what we have to live with, not that that is bad but I don't even know what they say. If they change tomorrow and whoever the owner of the gas station is, is the one who has to do the testing and they are supposed to do it based on the COMAR requirements.

Mr. Wright: This is from a section of COMAR, COMAR 26.10.02 is the way they codify this and it is Chapter 02 on Underground Storage Tanks and that chapter generally applies to underground storage tanks and the section that we 02.03 just makes special provision for High Risk Groundwater Use Areas but the State says this only applies in Anne Arundel, Baltimore, Carroll, Cecil, Frederick, and Hartford Counties so we are left out. So if we want it to apply we have to adopt our own regulation, it wouldn't have to be exactly what the State does but our thinking is if we adopt something that is similar to what the State has we can cooperate with them and it will help us out in administering it.

Mr. Bachman: I think the first half of the idea is good that if the Town has the State regulation there is a better chance of cooperation and understanding of what we are trying to regulate and because it parallels what they want to regulate, I don't think we can assume the State is going to step in and help us. I thought that Mr. Jamison made an important point when he was talking about trying to protect the water system with the gas station purchase he is making, if the Town loses the quality of it's water system that is not a very good position for this Town to be in, that is sort of the beginning of the end if word gets out you are in a disaster.

Mr. Hoewing: Well that is why we developed the Wellhead Protection Plan but that is why I am confused about how this applies to that, these 2 things.

Mr. Bachman: Well this is kind of a protection of the Wellhead Protection Plan in terms of a large tank could make substantial damage to the quality of the water.

Mr. Hoewing: But that is why I think we should have the wellhead protection Plan looked at again because I remember discussing that exact thing and all the tanks have to comply.

Mr. Yost: With COMAR 26, which exempts Montgomery County. That is the high risk groundwater which is only the monitoring and the wells, that is all we are looking about putting in our Code that is not covered right now in Montgomery County by State Regulation.

Mr. Bachman: And I think the point about putting in some, what is it called?

Mr. Hoewing: Enforcement.

Mr. Bachman: Is important because I don't think that we can be sure that anybody else is going to enforce this.

Mr. Yost: And you are right the State is not going to enforce them drilling the wells and giving us testing data once a year that will be ours to enforce and I think the State is not going to help out. If there is a problem with it and you have high levels of --- in it or something, you give it to the State and then the State is going to help us at that point because then you are violating COMAR 26.

Mr. Bachman: I know they will help if there is a problem, but they are not going to help on the effort to prevent a problem.

Mr. Yost: Exactly.

Mr. Coakley: Well I think that under the recordkeeping aspect there should be a double whammy I think the Town should come up with some kind of enforcement criteria that if basically they make a fraudulent statement or misrepresent something that the Town has some kind of hammer and then if they have also broken any of the COMAR regulations it would be up to the State to have to re-report it if they want to go ahead and enforce anything against the individual.

Mr. Yost: So what are you thinking for a penalty?

Mr. Wright: There are some penalty provisions for underground storage tanks generally and I know I printed them out for my own use but I don't seem to have them with me, but I think George we should make them specifically applicable or something similar to this so that we don't...

Mr. Bachman: And I think that makes sense too make them parallel to the current existing regulations.

Mr. Coakley: Well I think it should be something similar to whatever penalties the State currently has for making false, misleading statements, representation, perjury whatever you want to call it.

Mr. Yost: And not only that, we skipped over 1 section was existing stations will have to comply and put in these monitoring wells within a certain timeframe, if they don't do that that is an --- for us to have to do something also where the State is not going to help us.

Ms. Mihm: The whole point of all of this is to make sure that A) they put the monitoring wells in; B) that they --- them; if they don't do it first thing I would recommend is the Town have the authority to contact someone to go put the wells in and it would sample the well, I mean that is the important thing is just to make sure its done and then see the results, if they don't do it well they don't do it but we then have the authority to have access to the well to sample them.

Mr. Coakley: I'm guessing if they didn't do that we currently have the authority to pull their permit and put them out of business.

Mr. Bachman: Yeah I think that is a better...

Mr. Yost: I do too.

Mr. Bachman: (Inaudible) report I wouldn't step in and spend a lot of money to do testing for them.

Ms. Mihm: That is what the EPA does if they determine a contaminated site they have the authority to go in and do the work themselves.

Mr. Bachman: And bill the property owner?

Mr. Coakley: So the penalty of closing them I think we probably already had within our authority, what I was thinking was if someone makes a false misleading report or statement to us that there should be some penalty associated with that also.

Mr. Bachman: Forcing the property owner to pay for the test is not a very, that is not much of a disciplinary action, that is just recouping your expenses, I don't find that to be very what do you call it disincentive to warrant --- doing testing, I'll just pay the bill.

Mr. Stump: That is not intended as a disincentive it is intended to make them know that if you don't have that kind of clause in there they can say alright we are just going to pay the fine, alright so they keep paying the fine but there is no requirement for them to then go do the sampling, this says well fine you can pay the fine but you are also going to get the sampling done by us to let the process continue, but that is not intended as a punishment, having them go pay for the testing that was done, some kind of punishment that is a separate issue.

Mr. Hoewing: What is weird about it though is that the way this is worded it doesn't really require them to report anything ever until there is a violation in the concentrations.

Mr. Coakley: There is an annual report.

Mr. Hoewing: No there isn't, it's an annual test it doesn't say they have to send us anything until there is a violation.

Ms. Mihm: I would recommend...

Mr. Hoewing: In fact none of these requirements about even fixing doesn't say that they have to, it just says they have to fix it, it doesn't say they have to certify that it has been fixed in a report saying that is how I fixed it here is how I did it, it is just a weird way they worded it I think.

Mr. Wright: You are referring to F on page 5?

Mr. Hoewing: No before that it says existing the owner of the station shall use a method approved by the Town, yes they have to use a method approved by the Town, yes they have to use a method approved by us to test, test all spills, sample each ---, install in accordance with COMAR, blah, blah, blah, test the samples, sample and test annually thereafter within 1 year and every 2 years test all primary piping again we are using Town and Department regulations, repair any leaks, again none of this says any of it that they have to tell us I fixed it here is how I did it.

Mr. Bachman: I agree.

Mr. Hoewing: And then if you go down to A it says the concentrations, you do the test if there is no concentration problems fine, again no report to the Town only when they have a violation do they have to report anything to us that I can see, it is just a weird...

Mr. Wright: Doesn't it say there on page 5 under Detection Levels concerning...

Mr. Hoewing: Yeah but that is the only time though Alan even fixing it they don't have to tell us anything.

Mr. Wright: Before even if they don't detect levels in excess of what is permitted they should still have to report their test results.

Mr. Hoewing: Yeah but I am saying it is not saying that right now.

Mr. Wright: Right.

Mr. Yost: We will fix that.

Mr. Bachman: Or repairs.

Mr. Hoewing: Even in repairs it doesn't say that they have to do anything like say I fixed it and here is how I did it.

Ms. Mihm: I think in addition to that I think it would be helpful for you Wade or the Town Manager to know that the testing was done but no...

Mr. Yost: Absolutely. I didn't even think of that but you are absolutely right.

Mr. Hoewing: It says they have to keep records but that is basically records and you could ask them but it doesn't say they have to ever do anything unless you ask.

Mr. Coakley: Yeah I thought there was an annual reporting requirement.

Mr. Hoewing: Not that I can see but...

Mr. Yost: I was just thinking there was too.

Ms. Mihm: But I think that that should be done at the peak of high water levels say April to May annually so you know that it is going to be done April to May annually when the water levels are the highest and they are more likely to capture to come down through the groundwater and then the report is submitted...

Mr. Coakley: That was in here somewhere.

Ms. Mihm: Regardless of whether detected or not I think you would want to see the results so that you know that the sampling was done.

Mr. Yost: Yep definitely.

Ms. Mihm: Say every July of every year.

Mr. Bachman: Then Wade doesn't have to tell us about the water until there is a problem.

Mr. Coakley: That must have been in the old version because I remember reading that.

Ms. Mihm: Maybe it was.

Mr. Coakley: Yeah that was in a prior version and you took it out.

Mr. Yost: He may have taken it out I didn't.

Mr. Hoewing: All it says right now is if the concentration of gasoline constituents in site groundwater sampling are less than the levels of concern the owner shall continue to sample and test, but it doesn't say ever report, tell anybody what I found or anything else.

Mr. Coakley: But the first version I read had in there about January and in the summer or something like that.

Mr. Hoewing: Wade went to lunch with one of these contractors and he got paid off its pretty clear.

Mr. Coakley: I guess.

Mr. Yost: Come on.

Speaker: They gave him this brand new regulation.

Mr. Hoewing: Said Wade you are going to love this one.

Ms. Mihm: Recommend an incentive having a trigger greater or less than a level that is concerning, these levels of concern are really high that it says really essentially any detectable compound (inaudible).

Mr. Bachman: Well maybe you have a problem you can't solve.

Ms. Mihm: Well especially an expensive problem I won't say (inaudible) but its definitely expensive but if there is any detected gasoline compound in the monitoring wells you have to be made aware of it, it may be a very low level and it...

Mr. Wright: Was that fair to say that any level would be...

Ms. Mihm: The detection limits at the --- say these are supposed to be analyzed --- the detection limits are not, at 5 parts per million you are not going...

Mr. Bachman: So the annual report or the report of any test has to specify what they found in certain categories.

Ms. Mihm: Well for the compound I think if they submit the monitoring data annually in July you have it.

Mr. Wright: It says submit in July but for testing done in April, May.

Ms. Mihm: April to May yeah.

Mr. Bachman: So they have a 60 day window to do the testing.

Mr. Sneed: Who does the testing, does it have to be a certified, qualified tester, should that be in here that it must be done by a qualified recognized expert tester?

Ms. Mihm: Well probably where it says in accordance with COMAR blah, blah, blah.

Mr. Yost: Yeah because it does say test water samples.

Ms. Mihm: (Inaudible).

Mr. Sneed: So we seem to be implying that we should be using whatever standards are established in COMAR. So at the risk of complete overkill on this issue should we consider annual certification then, make it an annual cert of their submission.

Mr. Yost: Why?

Mr. Sneed: Or just a report, are we gaining or losing anything. In other words when they submit the test results to us who is going to look at it, who is qualified to read it here.

Mr. Yost: Well our consultant will which will be Kathy.

Mr. Wright: That is up to us.

Ms. Mihm: Yeah what they would put in would just be the lab ---, the well, the date and the compound analyzed for.

Mr. Hoewing: And presumably the company that did it so you would be able to know whether the company was a qualified company or not.

Ms. Mihm: It is not a particularly cumbersome amount of data.

Mr. Sneed: But we are just getting the results.

Mr. Hoewing: Yeah.

Mr. Coakley: So Cathy you are going to check to make sure what elements or compounds are in kerosene versus gasoline and diesel fuel.

Mr. Yost: We will come up with some penalties.

Mr. Coakley: We'll come up with some penalties to put in for non-compliance, what else did we, we are making the change I guess to include the entire wellhead protection area.

Mr. Yost: Right I have a note also on tanks smaller than 1000 gallons.

Mr. Wright: Right a reference just to explain.

Mr. Yost: Reports and needed repairs, all reports should be sent to the Town annually and penalties.

Ms. Mihm: (Inaudible).

Mr. Coakley: Well we don't have much on page 6 on ours, it must be 5.

Ms. Mihm: Under F number 1 you see the levels of concern. You want any of the results to come to the Town whether they are (inaudible).

Mr. Wright: That will be pretty much necessary you have to continue to test anyway.

Mr. Yost: Yeah that is not even an option.

Mr. Bachman: Why would you take it out, why wouldn't you just have that if it doesn't or less than levels concerned you still have to submit a report.

Mr. Yost: That is what it will be right.

Mr. Coakley: You could make it so they have to submit a report each year.

Mr. Yost: And then the last thing we didn't really talk about was how long are we going to give existing stations to comply with this. I think Alan has 180 days in here.

Mr. Coakley: Top of page 5 has 180 days.

Mr. Hoewing: Could they still be in operation during that whole time period.

Mr. Yost: Oh sure I would think so. Well let's say Mr. Jamison he wants to come in he has to go for a Special Exception he would have to comply with this before he gets a Special Exception or as a condition of but I am not for sure if the Chevron has monitoring wells on that site.

Ms. Mihm: They may have some tanks I'm not sure of the construction of the ---.

Mr. Yost: I am not either we would have to find out but what did we say it was about \$9000.00 I believe for...

Ms. Mihm: It is about \$2700.00 per well to install the monitoring equipment.

Mr. Yost: And that is when we talk about how onerous this would be on a small business.

Mr. Coakley: What does a monitoring well consist of like what kinds of depth are we talking about?

Ms. Mihm: Well the quote we got was a 60 foot well and that is another thing we should probably look at, the water levels at that part of Town because it is under the influence of 2 and 5 and I don't know what the water level (inaudible) but if we can get access to the Jamison well we can find out real quick. And that will fluctuate during the year when well 2 is online or offline. But you want these monitoring wells to be clean at the upper level of the fluctuation because the gasoline --- is lower than water so your best chance of infecting anything (inaudible).

Mr. Coakley: Does our water sampling look for these compounds?

Mr. Yost: Yes.

Mr. Coakley: So that is a regular recurring thing also.

Mr. Yost: Yes.

Mr. Bachman: It is 180 days to put in their test wells right.

Mr. Yost: That is what it says now and was that something that was in the State language Alan?

Mr. Wright: The 180 days is in the State language.

Mr. Coakley: Well I have never personally drilled a well in my life is 6 months a reasonable time to...

Mr. Yost: I think it is the \$10,000.00 that is going to be onerous on a small business like the Chevron guy right off the bat, does he need a year to comply, two years is that more reasonable now I don't know.

Mr. Coakley: Well I looked at it this way if it costs \$10,000.00 or something like that waiting 2 years while he is polluting our aquifer, how does that benefit anybody, I mean if he has a viable business I would say borrow \$10,000.00 and then try to pay it off over 2 or 3 years or something like that. I'm not sure allowing our groundwater to be polluted for 2 or 3 years until somebody saves up enough money to monitor the fact that they are polluting our groundwater.

Mr. Sneed: So what about 1 year.

Mr. Bachman: No that is too long.

Mr. Coakley: I would say 6 months is...

Mr. Bachman: That is where we are at I think 6 months is reasonable if they want to petition for an extension that is a different issue, if they want to.

Mr. Sneed: But they are the only ones we are talking about right.

Mr. Yost: They are.

Mr. Sneed: And when they redid the station what 3 years ago 4 years ago they completely redid the entire property, they redid the gravel tanks everything there is brand new.

Ms. Mihm: They probably upgraded I don't remember what MDE told us what the specifics of those tanks were.

Mr. Yost: They are double oil tanks I know that.

Ms. Mihm: They are double oil.

Mr. Sneed: I mean if they are the only ones I think we are probably ok because it is essentially a brand new station.

Mr. Yost: It is you are talking impact from one business with this.

Mr. Sneed: Yeah and I would say you would be fine to take a 1 year loan right George.

Mr. Yost: And we just sampled all the wells around the whole location and we know that it is fine.

Mr. Sneed: Well let's leave it at 180 we'll have hearings too on this and people can come in and say well that is way too short.

Mr. Bachman: Well if that happens at a hearing then we are informed.

Mr. Sneed: Right.

Mr. Bachman: I mean I think that is what a hearing is for if we find out that we don't understand the business barriers to this than we would make an adjustment but I wouldn't make the adjustment based on worrying about something we are not sure is an issue. But the other thing I have been questioning is if the Town wants this done and the business owner says I don't have \$10,000.00 do we have any program that would provide an interest free loan or a low interest loan to a business owner to drill these wells and get it done.

Mr. Yost: Not this year.

Mr. Coakley: It would like SPA would have a program or something that would do that or the State of Maryland may possibly under their Clean the Bay Programs and those sorts of things.

Mr. Bachman: Because if somebody decides they are not going to do it and hire a good lawyer it is going to be a long time before we get the test wells done. It would be better to have an incentive I think to think about offering an incentive, it could be the state has some system in place of offering some kind of incentive or...

Mr. Yost: In the original language they had like it was a 3-year compliance window that the State had given.

Mr. Bachman: Well --- about the guy in the County who wouldn't fix his hot chocolate machine for 2 years I mean there are certain things which...

Mr. Coakley: Put you in a funk.

Mr. Bachman: Well I mean you just wonder what is going on.

Mr. Coakley: Hey you know they had a hot chocolate...

Mr. Bachman: Well they can adjust the prices on the gasoline there instantaneously but they can't fix their hot chocolate machine.

Mr. Coakley: That doesn't seem right.

Mr. Bachman: Apparently the guy doesn't like hot chocolate.

Mr. Coakley: Is there an alternative does McDonald's have hot chocolate.

Mr. Bachman: Make it at home. It was very convenient to be able to walk in there and get a cup of hot chocolate in the winter.

Mr. Sneed: Perhaps there is a State --- that would allow you to get a machine yourself.

Mr. Stump: I assume they will get a notification of the hearing when its...

Mr. Yost: Yes they will that and they will get a copy of whatever we finish up with here.

Mr. Sneed: So Alan you are still writing over there?

Mr. Wright: No I am finished writing.

Mr. Sneed: Can I make another recommendation or suggestion if I could a very minor one, well first of all on the omission you are caught up with that one or you agree with that one?

Mr. Wright: If the regulation requires them to report and they fail to report they are in violation.

Mr. Sneed: Good point.

Mr. Wright: So I will word it so that any violation of the regulations is punishable by whatever penalties are prescribed, it will cover them, the requirement whether it is an omission or commission.

Mr. Sneed: And then on the same section but under G1 I would suggest that in line 2 to the Town records there, to the Town records, insert upon request after Town.

Mr. Wright: After Town yeah.

Mr. Coakley: I thought we decided they were going to send us the results.

Mr. Sneed: These are things we ask for in addition, in the supporting documents or who knows what.

Mr. Coakley: I thought we talked earlier that we were going if they had a reputable firm like Frederick Town Lab or something come in and do the reporting that that would be part of the report to the Town that they would send us a copy of the results from a certified lab.

Mr. Sneed: So the records here is that restricted to that.

Mr. Wright: Records could be more broad than just the test results so it can't hurt to leave a request in for any other records.

Mr. Yost: Because I think there is a process they do to read the levels of the tanks and there is all kinds of different records we wanted to request.

Mr. Sneed: They could have two tests done independently and only submit one.

Mr. Bachman: Alan why not have a separate section that is not called recordkeeping but its called reporting or add recordkeeping under H on reporting so it is quite clear that there is a recordkeeping is one issue and reporting is another issue, that way they can't act like they were confused by the recordkeeping discussion, oh I just thought I had to keep the records, oh no it says I have to report, just make it a separate section.

Mr. Wright: Well I would suggest we just change this to F since number 1 is going to be pretty much irrelevant, I am going to change this to reporting and include all the reporting requirements that we have talked about.

Mr. Bachman: How did this come to the Town's attention?

Mr. Yost: Bill Robert's he actually called and said he smelled something and the State came out and sampled his well and it all started rolling at that point.

Mr. Hoewing: --- that he saw one of the tanks...

Mr. Yost: That is what it was a cap was...

Mr. Hoewing: He thought it was maybe rising or something, which it was, I guess.

Mr. Bachman: This is an important piece of work I really am very glad that however it came to the Town's attention you guys responded to it.

Mr. Coakley: Ok so we will see this another time.

Mr. Yost: Yes we will.

Mr. Coakley: Ok next item Solar Guidelines and at the last Commissioners Meeting the recommendations that we forwarded on alternative energy, the Town Commissioners more or less took a straw poll and geothermal passed as recommended with the closed loop horizontal system, solar farms was changed from being a Special Exception in the RDT to not allowing at all, and I do have a comment on that and that it seemed like the impetus behind not allowing a solar farm in the RDT was that there was a property tax argument that if you allowed the RDT land to have a commercial enterprise of some kind on it that the Town in essence would lose money because the owner of the land would be paying agricultural tax as opposed to a commercial tax, but when you logically think that through the Town is not losing any money on that, the only way the Town would be losing money would be if there was an immediate expectation of rezoning that property to commercial and you look through the development standards that we currently have and there are probably 30 permitted or Special Exception commercial type activities that are currently allowed in the RDT that would fall under a similar circumstance like a gun range, archery range, batting cages, and it goes on and on, basically non agricultural bases commercial enterprises that are the Code currently allows and everything so to me I think the Town Commissioners should relook at that issue and I think it's a rather specious argument that the Town is losing money because if someone had a small solar farm that would be providing a service possibly to the Town and the surrounding area of generating green electricity that I mean you can certainly screen those low lying solar panels so that if you are passing by it is not going to look obtrusive or anything else and like I said I think it is an area that needs to be relooked at and not have the Town Commissioners shy away as soon as they hear lost revenue or property tax issues or something that I think a lot of Town Commissioners don't understand anyway but...

Mr. Hoewing: I actually think there is only one Commissioner who has that feeling there was really one and the rest of us just had other reasons to say...

Mr. Coakley: Well I don't know it seemed to me in the audience from the straw poll taken at the time that that argument sort of caught everyone's ear.

Mr. Hoewing: I think it was much more that the, well 2 things, one that the County doesn't allow it we determined after all that.

Mr. Coakley: So.

Mr. Hoewing: Well I know but they have the Ag Reserve, which is a little bit bigger, and they don't even allow it so why are we having these small little properties here, which are not anywhere near as big and allow it. And I think the bigger argument was there is places like right across from, right in the middle of town, right across from Gary Hartz' farm that could be a solar farm, I mean it is one thing when it is out on Cattail Road, it is another thing when it is right there and third I think none of us really believed that

anybody is going to do that so why are we even worrying about it. So I think that was the argument that got I find not worth my time.

Mr. Coakley: Well we say nobody is doing it, however University of Maryland is doing up on Mount St. Mary's property in Emmitsburg.

Mr. Hoewing: Unobtrusive way, way out in the country yeah.

Mr. Sneed: Let me see if I understand what you guys just said, the Commissioners decided through a straw vote to not allow solar panels in larger spaces because of the appearance...

Mr. Hoewing: Solar farms.

Mr. Sneed: Solar farms because at least one of the reasons is an appearance issue and yet they want us to change to allow solar in the middle of Town for because they don't think it is an appearance issue.

Mr. Hoewing: Right.

Mr. Sneed: That's right.

Mr. Hoewing: No the reason they thought that is because it is allowed in all the residential areas why is it allowed there and not allowed in Town when small business can actually save a lot of money by putting up a solar panel I mean that was the reason I think. If it is a sight issue than we shouldn't allow it anywhere frankly if that is the concern, whatever that is what they recommended so we got to live with what they recommended.

Mr. Sneed: Ok so what they are asking tonight is on this piece of paper right.

Mr. Coakley: They asked us to readdress the solar in the commercial and the Central Business District.

Mr. Hoewing: And I forgot what originally we had was it line of sight is that what we said originally for businesses they couldn't adopt it if...

Mr. Wright: Couldn't be seen from the roadway.

Mr. Coakley: Well we also had it as a Special Exception which requires a \$650.00 fee to process and stuff and everything and their contention and I think it is a good point that...

Mr. Bachman: Waive the fee.

Mr. Coakley: Well either waive the fee or make it a permitted use under whatever restrictions that we want to come up with.

Mr. Bachman: Why not just waive the fee, either waive the fee and make it a Special Exception or make it a permitted activity and don't put a lot of restrictions on it otherwise if we are making a Special Exception under the permitted activity but with special concerns you know what I mean we are mixing we are confusing...

Mr. Coakley: Well we already have that under our Development Standards we already have...

Mr. Bachman: A list of permitted activities with ok.

Mr. Hoewing: It recently went to \$650.00 and the reason for that is it is supposedly a processing fee and do a Special Exception advertising and all that so that is why they have \$650.00 on it.

Mr. Coakley: But in looking through I personally feel that the way the permit set up is with our development standards right now that section 7 at least for the Central Business District, Section 7 of the subdivision regulations I believe would cover most of the concerns that we would have with...

Mr. Sneed: While George is flipping the pages can I ask what our options are here Wade or Alan or anyone else.

Mr. Coakley: It is on page 22.

Mr. Hoewing: Well I mean if you wanted to you could still go back with a recommendation but I think they have already made at a straw poll level they have already decided they don't want to have it be a Special Exception.

Mr. Sneed: I am sorry I missed what you said.

Mr. Hoewing: On a straw poll...

Mr. Sneed: No, no, no before that you said we could what?

Mr. Hoewing: Well you could always go back and say we still disagree but they have already decided they don't want a Special Exception.

Mr. Sneed: But an option of ours is to say we've received your request to reconsider, we are not going to reconsider that is one of our options.

Mr. Hoewing: Yeah I mean you could do that I think they are going to go forward I think it was pretty clear that they are not going to prohibit businesses from putting a solar panel on.

Mr. Sneed: Well why is it back here, why is it back here?

Mr. Hoewing: Because they want to have regulations about that because right now our regulations for Special Exceptions say you can't do it if there is a line of sight issue, there view was that is not going to make it restrictive, I mean how can they if we are going to allow it we can't say you can't have it so that it can't be seen from the roadway because some southern exposures are only going to be visible so you can't say they can't, if we are going to say they can have it you can't have a line of sight restriction.

Mr. Sneed: But we had that discussion though we had that it was a Special Exception.

Mr. Hoewing: I know but they decided not to have it a Special Exception.

Mr. Sneed: Well they can't have it both ways.

Mr. Hoewing: No they want to basically make it, I think what they are saying is in the residential area you did have restrictions about you can't waive it for example, you can't have it over the edge of the building those kinds of things that is what I think they are saying.

Mr. Sneed: So let me get back to our options.

Mr. Bachman: Saying what they want those same restrictions on the commercial area.

Mr. Hoewing: Well you may have other ways to do it but they want to make it so that it is not as, it's as unobtrusive as possible but still allows the business to have it I think is what they are saying.

Mr. Bachman: Ok I understand.

Mr. Coakley: And my thoughts are in looking at this that if you look under the Development Standard Matrix on page 14 you have Central Business District as footnoted and it says see Special Development Standards in the Central Business District Zone, Section 7 of this Code and you go to Section 7 and that is primarily what we were referring to when we were talking about the windmill at the Hardware Store.

Mr. Stump: Sharing that combination of the Site Plan Review and more important Section C on implementation, which has plenty of references to the Master Plan and all, there is plenty of leeway.

Mr. Coakley: Yes I think that we give plenty of info for us to discuss in looking at their site plan and stuff to determine whether or not we felt that aesthetically and everything fit in with the Central Business District.

Mr. Bachman: So would you again run over with me the items in the that you just referred to in the regulations, I mean you pointed out these pages and I'm looking for it and I don't...

Mr. Yost: It was zoning.

Mr. Coakley: Appendix B Zoning Code on page 14 is the Development Standards Matrix and if you look under CBD there is a footnote 2 after at the top which refers to Development Standards that are included under section 7 for Central Business District and that is where it basically talks about the aesthetics fitting in with the atmosphere of the small town configuration, town character.

Mr. Sneed: Does it cover safety, does it cover noise and sound decibel levels.

Mr. Coakley: I don't think solar has too much sound decibel levels but...

Mr. Bachman: What is the CBD reference you are making that is where I am lost.

Mr. Coakley: It is on page 22 in my copy, it is Section 7.

Mr. Hoewing: George I might be wrong but I don't on number B I think it has to do when you have a new building or you have a person who is going in to occupy an existing building and they want to get a permit, so if they are going to put a solar panel on you don't --- those correct.

Mr. Yost: Well you will need a permit now.

Mr. Hoewing: This is a Use and Occupancy Permit that is a different thing, so this doesn't apply I don't think, it is either a new building or a Use and Occupancy Permit those are when this applies, I don't think it applies to this permit we are talking about.

Mr. Coakley: But it can.

Mr. Hoewing: Well we can change it to say that but it doesn't say that right now.

Mr. Coakley: But if we footnote it and say that it needs to comply with the standards in Central Business District Zone Section 7 than that would apply to it. And I think that would give us enough leeway when we are reviewing the site plan and everything to determine whether or not we felt their placement, their selection of what type of solar array and everything fit into the character of the Central Business District.

Mr. Bachman: And so you are saying that we are going to require that they submit a site plan for a solar installation a solar system site plan would be required and we would define what that would involve.

Mr. Yost: And we already have that a little bit in there in a portion of the Ordinance we have written already.

Mr. Stump: That is for Commercial and CBD just to clarify.

Mr. Coakley: Well CBD is what it refers to right now, commercial should probably be a little more loose than that I think because...

Mr. Bachman: It says both on the page solar guidelines that we are looking at commercial and CBD.

Mr. Coakley: Well I know but I am saying whether or not we want section 7 to be I mean to me Section 7 is really specific to the Central Business District, the Commercial area I think we either need to leave it the way it is which is pretty open ended but in general I think commercial district you are talking about maybe people putting some solar panels on top of the shopping center.

Mr. Hoewing: Or it could apply to residential requirements which is not extending past the edge of the roof, not raising it up those kinds of things you could make those apply which would make sense it would keep it from being...

Mr. Yost: Well you probably would want to raise them up on the flat roof...

Mr. Hoewing: Yeah on the flat roof but I am talking about on the angled roof I think that is what the requirement...

Mr. Coakley: Well I think most of the shopping centers have flat roofs once you get behind the façade.

Mr. Bachman: I guess my thought would be part of the issue is not just to address the unique CBD issues of Poolesville in this part of it is to try to understand what does it mean to implement solar systems in our CBD and our Commercial area and to try to make sure that it doesn't detract from the Town so I guess we ought to try to observe both, require a site plan for both, it may be a different site plan but I think we ought to have a sense of what is how this is being implemented. We could protect the CBD and end up having something horrible in the commercial district and it still come back to haunt us.

Mr. Coakley: Does site plan required now in residential, I know I signed off on Kurt Behrend's I don't know did he just decide to submit one.

Mr. Yost: For his addition.

Mr. Coakley: No when he put his solar panels on his roof.

Mr. Yost: No there is no requirement for that now at all.

Mr. Bachman: Will there be?

Mr. Yost: Yes.

Mr. Bachman: A Site Plan?

Mr. Yost: No a permit.

Mr. Bachman: Well why not require a Site Plan till we find out what...

Mr. Coakley: Well with the permit you would have to provide a sketch or something.

Mr. Yost: A sketch yeah for a resident it would be much less.

Mr. Bachman: Is the Site Plan approved I mean the permit, if they ask for a permit they can get a permit.

Mr. Yost: Right like a shed or a fence or anything like that yes.

Mr. Bachman: Well this isn't a shed or a fence.

Mr. Yost: It's treated like one.

Mr. Coakley: Well it would be...

Mr. Yost: It would be treated like that even the way we have it written now.

Mr. Stump: As long as it meets the guidelines specified.

Mr. Yost: Yeah.

Mr. Coakley: This is what people submit when in this case they want to put a swimming pool with concrete decking or whatever in the backyard.

Mr. Bachman: This is a Zoning Compliance Permit Application would that apply to solar systems?

Mr. Yost: The way we are doing it right now some authority we have with zoning.

Mr. Bachman: And so this would go to the Board of Zoning Appeals.

Mr. Yost: No the Chairman of the Planning Commission signs off on these.

Mr. Bachman: But there is no review.

Mr. Yost: My Staff and then it is signed off by George he looks at it.

Mr. Bachman: I guess I think the decision of the Planning Commission in a broader sense is do we feel we need to have an overview capacity with regard to solar installations in the CBD to make sure it complies with the Master Plan, do we think we have to have an overview authority with regard to solar systems in the commercial district and third to we think we have to have overview of solar systems being built on commercial, I'm sorry residential and I think each one of them is a separate question to ask and to decide are we trying do we feel the need to protect something the overall big needs of the Town versus the rights of the individuals to do with their own property what they want whether they be homeowners or business owners.

Mr. Hoewing: Well in residential we are kind of revisiting it because they have already decided that it can be done and that it couldn't extend past the roofline.

Mr. Yost: We have guidelines on that.

Mr. Bachman: For residential.

Mr. Hoewing: That is what we decided.

Mr. Bachman: And the question is are we going to have guidelines for commercial, are they going to be required a permit like we are saying is required for the CBD or is it going to be open un-overviewed as it is for residential.

Mr. Yost: I think you are right I think there is a big difference between the commercial, CBD, and residential, residential is much easier the systems are pretty much designed to be flat on the roof so it is not a whole big, there is a difference and aesthetically we know exactly what they look like.

Mr. Hoewing: We also do have setback requirements though if you are going to put them on a pole, you can also...

Mr. Yost: Right we can address that.

Mr. Coakley: So my recommendation is to keep residential the way it is, where it is permitted with the development standards that we have in place or we recommended I guess to they can't extend beyond the roofline and it has to be flush mounted or close to flush mounted, there might be some degree of leeway or something to make it a little more effective but certainly not sticking way up or something and I am not sure exactly how to word that but do that. I think for Central Business District...

Mr. Sneed: Wait what about front street facing mounted...

Mr. Coakley: Well they are not allowed in the front at all.

Mr. Sneed: Ok.

Mr. Yost: In residences.

Mr. Hoewing: Oh yeah they are allowed in the front.

Mr. Yost: Yes otherwise half the people in Town won't be able to do it.

Mr. Hoewing: The only area we said they couldn't see them are no line of sight within the business district not in residential.

Mr. Yost: Exactly.

Mr. Coakley: I thought we were following the same guidelines as we would for any other structure.

Mr. Yost: No as a matter of fact in the commercial you said cannot be seen from any roadway.

Mr. Coakley: No, no, no I mean in residential.

Mr. Yost: No you didn't specify.

Mr. Sneed: I thought that too.

Mr. Yost: That was an argument you guys had...

Mr. Sneed: I remember the discussion and we said...

Mr. Yost: You guys got a copy of it right.

Mr. Hoewing: That is what it said that is what we decided.

Mr. Sneed: Well my recollection was there was a discussion I don't recall the decision, I recall a discussion where by it was stated that if they couldn't mount, the didn't have front south facing they would do a ground mount that was the discussion and I don't remember...

Mr. Hoewing: We sent recommendations to the Commission and that recommendation that we sent was those recommendations so either we voted on them or we missed it, but I think we voted on them, we voted to send those recommendations to the Commission and that is what they said, and part of the reason was if you are going to put something like that as a resident and you want it to work sometimes it will have to be in the front and today they are doing it all the time and there are a lot of places that have them, a lot of parts of town where they have them.

Mr. Yost: I can see putting them on the front of this building.

Mr. Sneed: That will look real nice. Well why wouldn't you do a ground mounted behind the building if the Town was thinking about solar energy why wouldn't they do a ground mount...

Mr. Yost: There are so many trees out back.

Mr. Hoewing: Have to cut down the trees.

Mr. Sneed: On the side you have plenty of side space.

Mr. Yost: Parking lot and then it is the farmland.

Mr. Sneed: Is there some other limitation to the ground mount that I am not aware of?

Mr. Stump: There is no place to put a ground mount out here. That is not their property on the side and behind us there is all the trees unless you want to take down the trees which is going to bring a whole other set of issues out.

Mr. Yost: We actually looked at doing a ground mount back there.

Mr. Hoewing: And I am remembering too Wade I don't think you can put a structure next to this building, it has got to be behind the end of the building correct.

Mr. Yost: Oh for sideline setback or something.

Mr. Hoewing: Yeah no I mean you can't put a utility shed right next to your house so it has got to be behind, same thing with this we couldn't put it out there but we could put it behind.

Mr. Coakley: That is what I thought I just said.

Mr. Hoewing: No you were talking about putting it on the roof in the front, you can put it on the roof in front.

Mr. Coakley: I know. We are talking about ground mount and I said I thought it followed the structure guidelines that you can't have it in the front yard.

Mr. Hoewing: But I am talking about rooflines.

Mr. Stump: Good Lord so I think we are all in agreement then.

Mr. Hoewing: Nothing is allowed in the front of the house ever no kind of structure that is different, no structure is allowed in the front of the house today, that would be a structure that is new in front of the house.

Mr. Bachman: On the roof.

Mr. Hoewing: Yes it is on the roof but it is a structure, yes it is it is a structure, it is raised above the roof it is not contiguous with the roof, it is not a shingle.

Mr. Yost: I think you could put a dormer on it and have the same argument.

Mr. Hoewing: Probably would you have to get a permit for that anyway?

Mr. Bachman: Well I want to get back to the question that was sent to us by the Commissioners though and that is they said they did not support a Special Exception for the Commercial and CBD with regard to solar and they kicked it back to us and they asked us or tasked us to produce guidelines or regulations that occupants in the Commercial and CBD zones could use that would suffice in meeting the intent of the Planning Commission's recommendation to make this use a Special Exception, so they have not, they did not entirely say there should be no restrictions, they said we don't want people to pay a \$650.00 fee but we do think that obviously there were reasons to want to have some caution and oversight in the installation of solar in the CBD and in Commercial so I am just recommending that we realize that the way this is written they are not separating out Commercial from the CBD here in terms of solar, they want us to have some oversight that is effective, if we are recommending that there be some kind of a Site Plan submitted for a CBD solar I would like to put the recommendation forward that we also ask for something like a Site Plan for a Commercial solar just because there is no, they did not as far as I read this exclude one from the other.

Mr. Yost: Correct.

Mr. Coakley: Well let me get back to what I was saying before we got a little off track or confused or whatever. My recommendation is that we make it a permitted use in the Central Business District using the guidelines that currently exist under Development Standard #2 which are the standards in the Central Business District Zone, which is in Section 7 of the Subdivision Regulation Code.

Mr. Sneed: And let me if I could bounce away from you again, I am sorry, I was trying to get to this earlier I didn't get around to it but picking up where Bob left off this paper says the reasoning was that the reasoning the Commission's reasoning was that to charge a small business \$650.00 for the Special Exception to install a system would be too expensive that is their reasoning. My comment and this is away from where you are going but I just want to get it off the table my response to that is I don't agree with that reasoning, I don't agree that \$650.00 for a Special Exception is unreasonable or too expensive, I view it as given the fact that I voted not in favor of solar in these areas anyway to begin with or that was where my heart was, I view that as a deterrent to having it done, if someone posed to expensive to me that is a deterrent from someone pursuing it than I am ok with that, secondly the \$650.00 that we do have to pay the cost of a Special Exception is in our rules for a reason and I don't see any reason to change that amount or at the concept or philosophy about charging that amount for Special Exceptions.

Mr. Hoewing: Well if they do that they are just going to make their own regulations then.

Mr. Sneed: And that is ok. If that is the case we can vote that and I can be home in 10 minutes.

Mr. Hoewing: You are not doing your job but that is all right.

Mr. Coakley: Ok let me finish up then, so my recommendation would be to Central Business District make it a permitted use following the guidelines of Section 7.

Mr. Stump: Reasonable for the CBD.

Mr. Coakley: For CBD, for residential keep the same recommendations that we currently have before the Town Commissioners with the setbacks for ground mount as well as the limitations on roof mounted as far as not hanging over the edges and we may even want to allow a certain amount of raising of the panels to increase efficiency. But I think what we need to concentrate on is the Commercial and what we want in a way of Development Standards for the Commercial, make it permitted, make them have to submit some kind of Site Plan through us for review and then determine what if any if we want to maintain the same restrictions that we have for residential but allow more leeway since most of the commercial space has flat roofs they may want to have raised panels but...

Mr. Yost: You know a Site Plan does trigger a few things you are supposed to have a Public Hearing for any Commercial Site Plans, you call it a Site Plan they have to submit it in essence you are going to have your own...

Mr. Coakley: Well then it won't be a Site Plan it will be a permit application.

Mr. Yost: Or you make it a Site Plan and it will be that then you can have much more control and it triggers a lot of things that being part of the Master Plan, just a whole host of things that have to come into a Site Plan.

Mr. Coakley: Well if you do that than it would make more sense to do what Bob said and just say if someone wants to submit a solar thing that it would be a Special Exception however we will waive the \$650.00 because to my knowledge the basis of the \$650.00 are any engineering review and advertising, mailing, etc., for a public hearing so if you are going to do that type of Site Plan that requires a public hearing and the advertising and all that then you are back up to whether you waive the \$650.00 and be generous in that instance or you maintain the same system we have, going under just the permit and the permit application process you don't have those same costs involved.

Mr. Stump: But that still gives us the ability to review, comment and kick it back based on primarily the Master Plan.

Mr. Yost: Or whatever guidelines you establish.

Mr. Coakley: Or whatever other Development Standards we have in place for that.

Mr. Stump: Right ok just want to make sure we have that.

Mr. Hoewing: So you are saying keep a Special Exception place then?

Mr. Coakley: No.

Mr. Bachman: I am.

Mr. Coakley: I am saying make it a permitted use in residential, keep the same standards that we currently had before the Town Commissioners, Central Business District use Development Standards currently contained in Section 7 that cover development and redevelopment in the Central Business District and then under Commercial we are going to have to decide what Development Standards we want to have apply to solar use in the Commercial District.

Mr. Bachman: Could you have it be the same as what you are recommending for the CBD?

Mr. Stump: That would be my recommendation.

Mr. Bachman: I mean because the CBD requires they submit a Site Plan right?

Mr. Hoewing: I think that is only for buildings and for occupancy permit so we would have to modify it.

Mr. Bachman: I don't understand why we are afraid to go back to the Commissioners and say we are willing to, we would like to keep it a Special Exception but with no fee,

we are not trying to create a barrier to this but we do want to have the ability to have very clear and structured oversight.

Mr. Coakley: Well if you go the Special Exception rule and you say no fee than the Town is still going to incur fees if you go through the Special Exception process.

Mr. Bachman: Well that is enough of a reason for the Commissioners to reject using a Special Exception than, they could say we don't want to pay the fee either, is that what you are saying is they will come back and say well we don't want to cover that.

Mr. Stump: It would have to come out of their own pocket.

Mr. Bachman: I mean that could be the easy way to brush this off but I would still like to have something that requires them to come in and show us exactly what they plan to do on either a CBD structure or a Commercial structure.

Mr. Coakley: Well I am saying that would be similar to when someone has to submit a permit and like I said in this case...

Mr. Bachman: No one has to, you look at that and sign off on it, there is 1 person's overview on that.

Mr. Coakley: Well with the exception if I, if Wade or myself look at this and say this is controversial it is not a swimming pool, it is not a tool shed, it is something that either the entire Commission has been involved in or should be involved in then we bring it before the entire Commission to discuss to vote on if we want to have people come in and discuss it, the owners or the builders or whatever than they do that and if necessary we hold a Public Hearing.

Mr. Bachman: But that is an Ad Hoc system in which you and Wade made that decision.

Mr. Coakley: It's a system that works though.

Mr. Bachman: There is just not much oversight I don't think in either one of those recommendations for Commercial or CBD. I thought the only reason we were having it as a Special Exception was the desire to try to be able to access the impact of solar on the visual quality of the Town.

Mr. Coakley: Well number 1 if one comes in we are determining whether Section 7 applies or not, that certainly isn't a decision that is going to be made by me personally.

Mr. Bachman: You can't say no to a permit can you?

Mr. Coakley: Sure.

Mr. Bachman: How?

Mr. Yost: If it doesn't meet the requirements of the Code, setbacks, height limitations, the basic...

Mr. Bachman: Very basic stuff though it has nothing to do with a solar structure.

Mr. Yost: No you are right.

Mr. Bachman: There is no check and balance in the idea of a permit I mean we are just basically kicking open a door and we need to admit that if we go with a permit system it is like let them do solar anywhere they want.

Mr. Coakley: Well you said that about Special Exceptions a couple months ago.

Mr. Hoewing: That's true.

Mr. Bachman: But the Special Exceptions for these 2 things had very clear requirements we would be holding them to.

Mr. Sneed: Well in addition there has been controversy around this issue a great deal of controversy this is a split, there is not a lot of consensus there is not a great consensus on this issue as far as I can determine certainly not on this Board.

Mr. Hoewing: Well I think the Commission number 1 I don't think that was the only reason \$650.00 that they came to this conclusion, they did want to permit it but they also gave you an out which basically says you can impose if you think a Special Exception process would require and it is still permitted, if you want special things that should apply you can do it in this case, we are just asking that it be permitted and not under Special Exception process so what George recommended is a different kind of process than anything else we have to do right now. I mean those guidelines in the Master Plan you would have to make a pretty good case that it is not too gaudy, it is not to modern looking on top of the roof, it has to look like maybe it is brown for example so it fits in I mean that would be the Savannah provisions.

Mr. Yost: Well those cover the Commercial area also.

Mr. Bachman: So how would we produce guidelines or recommendations to applicants in the Commercial and CBD zones, how would we go about that and would they come back to this Board for review and approval.

Mr. Hoewing: Well on a flat roof for example if they are raised you could say that they should be because flat roofs have walls around them, maybe you could say that they can't be excessively high above the wall I don't know something like that so they are not really visible.

Mr. Bachman: So is someone going to draft what those requirements would be for CBD and Commercial for this group to review?

Mr. Hoewing: Well they are asking you guys for ideas we could certainly have people draft it up if you have ideas that you thought ought to apply.

Mr. Sneed: Let me get back to this issue for a second and I'm still in favor of keeping the Special Exception. As I understand it the Commissioners have decided or are weighing, heavily weighing a request by CBD business that is the Hardware Store to put up a wind energy system on his property and the evidence points to the fact that the Commissioners did not agree with our recommendation yet because they haven't made a decision, well it tells me that the Commissioners are willing to treat each request to either of these Boards individually as it is brought to them for consideration, they have made it a point it seems to me to take a 1 person, 1 business with a loud voice complaining whiner in Town to bring this issue over a year period and the Commission has decided to listen to that and pay attention to 1 person's needs and request and so as it relates to this issue why wouldn't we do the same thing for anybody that wants to put a solar panel on their home in the CBD or the business district why wouldn't we maintain that standard and make everybody come in here individually and make their case to us.

Mr. Stump: I am not sure if I see that that's happening the way it is. We've given a set of proposed guidelines for pretty strict guidelines for wind energy to the Commissioners and they are leaning towards not doing any wind.

Mr. Hoewing: Right I think that might be what happened.

Mr. Stump: I'm almost certain that is going to be what happens.

Mr. Hoewing: Maybe but yeah I think...

Mr. Stump: Barring an act of God that is probably what is going to happen whereas with solar it is a whole different issue they are leaning towards solar but if you are going to permit the use they are saying we need to put guidelines on the use the same as we've done with residential use as opposed to just throwing it wide open to do anything you want, so I think the two the solar versus the wind are completely different issues.

Mr. Bachman: I understand that the only difference I have with that Chuck is I think that they respected the idea the concept of private property ownership, you can have solar panels here are some guidelines, and I understand that. I'm not sure that they are asking us to consider the CBD district as being the same as an individual property owner that can do whatever they want because if they did we wouldn't have all this mentioned about the value of the CBD in the Master Plan.

Mr. Stump: I am not sure where that is going.

Mr. Bachman: Well we don't have a big discussion in the Master Plan about residential the rights of residential people or worry about the quality of the residential it is taking care of itself, but there is a concern about the quality of the environment in the CBD and that is part of our responsibility and I support the idea of developing guidelines for how that would be implemented, but I don't support the idea of then saying go forth and multiply.

Mr. Stump: That is where you are losing me.

Mr. Bachman: A Special Exception requires that somebody have the authority to say yes or no and I believe that there is at least at the front end of this there needs to be ability of somebody to say yes this CBD solar system is a go, no this CBD solar system doesn't work.

Mr. Coakley: The permitting process provides that vehicle.

Mr. Stump: Assuming that there is some guidelines recurring process to...

Mr. Coakley: Well in --- CBD we would use Section 7.

Mr. Bachman: That is too vague for me. I have no idea what that would end up looking like.

Mr. Hoewing: Well it is the same guidelines we used for the CVS and they were very effective. Those were the guidelines we used, the CBD guidelines on the Savannah System, which is in the Master Plan, which are guidelines only, they are not requirements. We used that to pressure that guy and build that thing that way.

Mr. Coakley: And you relied heavily on that when you were discussing...

Mr. Hoewing: If we had regulations it would have worked no differently.

Mr. Yost: But that was a Site Plan you were reviewing.

Mr. Hoewing: Right.

Mr. Bachman: That was a Site Plan.

Mr. Hoewing: Right and that is what we are saying you can modify this so that it is not a Site Plan anymore but it is a permit that has the same effect as a Site Plan and to be fair to the Commissioners they are giving you that chance.

Mr. Bachman: Well from the conversation I had with it turns out the Chairman of CVS's was on my Board of Directors, they wouldn't have built that store here in Poolesville the way they did it if there wasn't a Site Plan that required them if they didn't have to submit a Site Plan for approval.

Mr. Hoewing: Of course.

Mr. Bachman: They talk about this building this store is unique in the CVS system they talk about it as being the outlier they don't want anybody else replicating...

Mr. Coakley: Well actually I understand they have been using this as a...

Mr. Hoewing: They have it actually has been adopted.

Mr. Bachman: Well they may have turned annoyance into opportunity as best they can, but the truth is they are still muttering about the Poolesville CVS I mean it surprised the

hell out of me because they had to jump through so many hoops to make it pass, but we don't have the ability to make anybody jump through any hoops with regard to solar systems in the CBD if we just use the permit process.

Mr. Sneed: You are making his point are you making his point?

Mr. Hoewing: No you are not listening. If you change it to do what George says which is essentially put a requirement in there that you have to follow even though it is not a permit process and you have to follow it is not a Site Plan process but you have to follow the same guidelines, you are in affect doing the same thing, you could then put pressure on somebody and say wait a minute that is not, it shouldn't be silver because that wouldn't fit the Town you are going to make it brown, it is going to be unreflective I mean those are the kind of things you could tell them following the Savannah Guidelines.

Mr. Bachman: And the permit is submitted to whom?

Mr. Coakley: The Planning Commission.

Mr. Bachman: As a whole or is that a decision made by an individual on the Planning Commission.

Mr. Coakley: The way it is currently set up permits if you want to put a pool in your backyard, if you want to put a shed in your backyard or something like that they come into the Town office for review by the Planning Commission and then years ago it was determined that rather than taking up time with us as a Body looking at every tool shed that somebody wanted to put in their backyard or something like that, that the Chairman of the Planning Commission would review them and if it's a normal run of the mill type of permit application, if it met all the requirements for side setbacks, for height restrictions and everything else go ahead and sign off on it. Those that like I said are either controversial or extremely interesting to the entire Commission because of a unique feature or something like that than I make sure that they come before the entire Commission.

Mr. Bachman: Well that makes sense because a shed is a shed is a shed, we've all seen them, but I haven't seen a CBD solar system.

Mr. Coakley: All of those would come before and particularly if we are using Section 7 I'm certainly not unilaterally going to determine whether or not Section 7 is applicable to that particular situation, its too subjective to me.

Mr. Bachman: And does Section 7 only apply to the CBD?

Mr. Coakley: Well that is my recommendation right now and I think we need to come up with some kind of Development Standards for Commercial. I think residential is ok.

Mr. Bachman: Why couldn't you just apply Section 7 to that as well?

Mr. Coakley: Because I don't think it is all that applicable since our commercial districts don't have the aesthetics like town character of the original town center, what are some of the other things, unique small town character etc. I mean a strip mall is a strip mall in a couple or our shopping center areas.

Mr. Bachman: Would you have the commercial permits come before the Planning Commission they same way the CBD's would.

Mr. Coakley: Well I would recommend that all the solar except residential.

Mr. Bachman: I understand I support that. I support the idea of making a permitting process with defined guidelines and that it come to the Commission for approval, and then once they become like a shed...

Mr. Stump: In 10 or 15 years from now it could be like a shed.

Mr. Bachman: Who knows 5 years it could be.

Mr. Coakley: Well I think technology is going to change so much in that area that it is going to be a constantly evolving thing.

Mr. Bachman: Ok I understand George the idea you are recommending and I support it.

Mr. Stump: Sounds like a good compromise.

Mr. Coakley: But all we have to do now I think is come up with some Development Standards for the Commercial application.

Mr. Wright: There are not too many really variables as far as a solar panel maybe I need to know more about it but if you are going to have it on a roof mount in the commercial district you got 2 options there sloped or flat roof, if it is on a flat roof you can limit the height, you can limit the distance from the edge, setback from the edge of the building. If it is on a sloped roof you can require that they be flat against the roof like we had in the residential, if they are free standing if you are going to permit free standing you can limit the setbacks from the property line from any other structure or that kind of thing, location on the lot and height and then there might be some restrictions on the type of whether it is reflective or I don't know whether any of those things would come into play but that seems to me about all that really is...

Mr. Bachman: Well that is based on the technology that we currently know. The Chinese are working overtime to dominate solar energy so who knows where we are going to be. We are not going to be the ones leading the way on this, I wish we were.

Mr. Wright: But zoning is concerned with the impact on the neighborhood primarily visual and what some other impact but solar is just going to sit there as far as I am aware it does not make any noise or anything, so it is visual impact.

Mr. Stump: Which in some locations could take into consideration line of sight like what is directly behind that shopping center I always forget.

Mr. Yost: The Skatepark.

Mr. Stump: So is the visual impact of something on that shopping center that would only be visible from the back the same as something on the top of Selby's, which is visible from residential areas so it does broaden it out a little bit more I, think. And unfortunately that gets into the whole subjective area so you can't make it quite as cut and dry as some of the other regulations which would make it a little more challenging possibly to finalize these regulations but my point is it is not quite as cut and dry, close but still like the approach.

Mr. Coakley: Ok so in the commercial we are going to have not to extend beyond the roofline.

Mr. Bachman: Aren't these already some of these already written out.

Mr. Coakley: Yeah we already have some written for the residential that will be applicable.

Mr. Bachman: So what were you saying about commercial than George?

Mr. Coakley: Well I don't think it should extend beyond the roofline and then I am not sure what we want to say about height.

Mr. Hoewing: A lot of those flat roofs don't have a lot of wall around them, these small ones so if you raise them up they are going to be visible.

Mr. Coakley: Well most of them in the front have a façade that goes up...

Mr. Yost: Are you worried more about it being visible from Fisher Avenue rather than other roads, Wootton Avenue?

Mr. Stump: I would say Fisher and Wootton they two that jump out at me. Little ones are going to have to be raised even if it is raised a few inches just to get over whatever other piping and other things are on top of those roofs, a little different than residential.

Mr. Coakley: Well if you want to say screened from roadways.

Mr. Yost: It's almost impossible to do that. If you --- now you look up on the roof you will see the air conditioner units and condensation units and everything like that all over the top of it, you don't notice it.

Mr. Coakley: Well we did do that with CVS, we had them raise their --- to cover the visibility of the AC stuff.

Mr. Hoewing: We made the man build a wall in the back so you couldn't see the trash compaction.

Mr. Bachman: Yeah the back of the building is even more interesting than the front. It was like how did they ever get them to do that.

Mr. Coakley: Or we can say limited visibility from roadways and then we could decide how limited.

Mr. Yost: And that was kind of what I was thinking too.

Mr. Stump: I think it will be really hard to make this cut and dry I think there is going to have to be some level of subjectivity in here.

Mr. Hoewing: That is what happened with CVS it was just all pressure back and forth, back and forth, back and forth.

Mr. Bachman: But we ought to be able to provide some general statement and then they are going to see what they mean, if we don't like what they turn out to be we are going to have to revise the statement.

Mr. Coakley: Or I think we just say limited visibility from roadways and then they can convince us whether it is limited enough.

Mr. Stump: All roadways or just Fisher and Wootton?

Mr. Yost: Don't specify leave it open, I think the broader the better at this point.

Mr. Bachman: How bout compatible with the aesthetics of the building design and neighboring structures, which who knows what that really means.

Mr. Yost: That would be good.

Mr. Coakley: I could live with that.

Mr. Bachman: I don't remember what I said, compatible with the aesthetics of the building design and the neighboring structures.

Mr. Hoewing: It's near the water tower.

Mr. Bachman: So George you said does not extend beyond the rooflines and probably plural lines, not disruptively visible on flat roofs.

Mr. Coakley: I think limited visibility from roadways.

Mr. Bachman: And I put compatible with the aesthetics of the building design itself and of the neighboring structures.

Mr. Stump: I can agree with that.

Mr. Coakley: And I would use the same wording we had for residential and that is it must not extend beyond sidelines of structure.

Mr. Hoewing: In terms of height restrictions if you had it on a pole no higher than 14 feet is that what you had.

Mr. Yost: Yeah.

Mr. Hoewing: Because that is what a shed is I think isn't it.

Mr. Yost: Yeah and any ground mount would have to conform with any sideline setbacks established right now for accessory buildings.

Mr. Coakley: Have we currently allowed any accessory buildings in the commercial area?

Mr. Yost: I have not seen an application come in for one.

Mr. Coakley: I mean some we do because like McKenzie we permitted pole barns or whatever and stuff and everything in there but like if one of the shopping centers wanted to put a kiosk or something like that in the parking lot.

Mr. Wright: Are you talking about the CBD?

Mr. Coakley: No commercial. So if Magruder wanted to put a kiosk over in their parking lot someplace...

Mr. Yost: No they don't allow it no accessory structures in commercial or CBD.

Mr. Coakley: Ok then they would be limited to roof mounted.

Mr. Bachman: And George on the July 15 version of the Sample Use Chart there are specifications for solar systems in the CBD and commercial.

Mr. Coakley: Yeah but that has sort of been shot down.

Mr. Bachman: But we are back talking about solar in the CBD and the commercial, those were the guidelines that we had we were looking at in the front end of this process, whether we want to keep them or not I don't know.

Mr. Hoewing: Actually it does say Accessory Buildings in uses it is permitted, it just doesn't have any guidelines. Wade it looks like it is permitted, it says accessory buildings and uses including automobile garages private permitted all the way across, it just doesn't have any guidelines.

Mr. Yost: Yes that is what we were just talking about too.

Mr. Hoewing: Yeah there are no guidelines for the Commercial District that is weird.

Mr. Bachman: When we are talking about solar in the Commercial District before we eliminated it...

Mr. Stump: Well we didn't ever eliminate it we said it's a Special Exception right.

Mr. Bachman: We said it must be located on rear of building or side not facing frontage in the CBD and Commercial, we didn't say the same thing in residential, is that an effort to try to preserve the visual quality of the CBD and the Commercial so we are going to put that down, must be located on the rear of building or side not facing frontage.

Mr. Coakley: Well I think that is just going to come into play under that Section 7 if we follow that for the Central Business District.

Mr. Bachman: We still need to have some specifics in here if at one point we thought in the CBD and the Commercial both, we had them both here as number 5, must be located on rear of building or side not facing frontage, I mean I am not saying we are going to decide to do that but at one point we thought that was going to be a requirement for a Special Exception so do we still want to have that in as a guideline?

Mr. Coakley: I have a sneaking suspicion that the Town Commissioners have taken a more liberal view of the use of solar in the commercial area, not that that should alter our recommendation.

Mr. Bachman: Well I know they said on going residential that the front of the building whatever faces north, south, south is south we are going to put it there but I would have some hesitation to be so open on the CBD, there are not that many buildings there.

Mr. Coakley: Well I think it would depend what it looked like and what type of solar they were using, if they are using the new Dow solar shingles than I would probably not have any objections in the CBD it would probably look...

Mr. Bachman: So you are thinking the comment that I made compatible with the aesthetics of the building design itself and of the neighboring structures, you have to also add then compatible to the aesthetics of whatever is in the Master Plan.

Mr. Coakley: Well for Central Business District I think...

Mr. Bachman: The aesthetics of the Central Business District of the building itself and of the neighboring structures.

Mr. Coakley: Well I think Section 7 is broad enough that it covers that and like I say we can use that outside of the Central Business District and not to beat a dead retailer but I think the CVS is an example of that, that you can apply a certain amount of pressure even if it doesn't specifically pertain but to show that this is the way that our Town thinks and wants things to be done.

Mr. Bachman: So what is the next step you will come up with a recommendation for this?

Mr. Coakley: Well are you going to redo it including...

Mr. Yost: Yeah I'll add all these in here in my notes here.

Mr. Bachman: Produce guidelines and regulations that applicants in the Commercial and CBD zones could use that would suffice in meeting the intent of the Planning Commissions recommendations to make this a Special Exception and you will bring those back to us for review is that right?

Mr. Yost: I will.

Mr. Wright: Are there buildings in the CBD that have face grooves.

Mr. Coakley: Some.

Mr. Yost: The building that is right there behind George's head.

Mr. Coakley: The old hotel. And Bassett's has a flat roof with the slant façade on the front.

Mr. Wright: All right there are some hard fast guidelines I think would be useful to put in, if you are talking about a pitched roof in the CBD and you want to put the same restrictions as a residential zone it will be flat on the roof, let them have it in the specific recommendation.

Mr. Coakley: Well the CBD I currently think Section 7 covers everything we need to review the permit and determine whether or not aesthetically, compatibly with that building and the surrounding buildings it fits. And like I said you also don't know what kind of solar system they are going to use instead of using PV panels they use the new PV shingles that is going to be a totally different animal.

Mr. Bachman: Link did you get a sense from the Commission meeting that there is going to be a rush to put solar in the CBD.

Mr. Hoewing: No I don't think they feel that way. I think they just wanted to make sure we comprehensively looked at all these issues that we have got on the table and try to deal with them at one time.

Mr. Yost: And they are catching a little flak from residents that they are being too restrictive on alternative energy sources, not being open minded and they have caught quite a bit of flak on it.

Mr. Hoewing: Right.

Mr. Bachman: Caulk their windows is my response.

Mr. Sneed: The policy and use chart we recommended I believe permits the use of these devices in about 80% of the Town if not more, what are they talking about.

Mr. Hoewing: I think a lot of it the perception is that it is just why did they take so long, that is what a lot of these emails that I get are, aren't you guys green, don't you care about this, there is a lot of people that are out there just saying why shouldn't people be able to do it, so partly it is that. But then on the other job we have which is the balancing act you got to try to do.

Mr. Coakley: Now speaking of balancing acts I know Cal has already come out and said that he is opposed to solar or whatever in Central Business District, are we under at least a pluralistic agreement that we should go forward with our recommendations to the Town Commissioners with permitting solar under the guidelines in the 3 areas that we have come up with.

Mr. Bachman: I haven't seen any guidelines yet. I am in support of the direction we are taking but that is about as far as I can go, I haven't seen what we are going to submit to the Commissioners yet.

Mr. Hoewing: But in concept.

Mr. Coakley: The guidelines are going to be that we retain the same ones for residential that we have currently submitted, we are going to use Section 7 as it exists now for the Central Business District and we are going to use for Commercial not to extend beyond the sidelines of the main structure, limited visibility from the roadways, and compatible with the building design and surrounding area.

Mr. Bachman: I understand but I'm not restricted to that. I have a concern that there are certain buildings in the CBD that are classic architectural design, they purely represent a certain kind of architecture and I am curious whether the State of Maryland Historic Preservation Commission or the National In Trust for Historic Preservation either encourages or discourages the installation of solar systems on the front of those buildings so I am curious and I am going to look into it and come back to this group and report, and if they strongly come out and say we don't recommend you destroy the quality of the building with those systems than I'm going to want to have that to be recommended that be part of the discussion.

Mr. Coakley: Well it would be a good argument to bring up when we are reviewing a permit under the guidelines of Section 7.

Mr. Bachman: Section 7 says nothing about historic preservation it says aesthetics a very broad term and I am thinking there may be some reasons that I don't even know, they may not exist but I am curious about it.

Mr. Hoewing: I don't think there is any building in Town that actually has historic, I don't what the designation is but...

Mr. Yost: On the National Registry.

Mr. Hoewing: Yeah but that is different there is no regulations that apply.

Mr. Coakley: Well I think Nessul's house or something is...

Mr. Hoewing: Yeah but that is not...

Mr. Yost: They are in the Master Plan listed actually.

Mr. Hoewing: Right.

Mr. Bachman: Well I am not saying that they are necessarily protected I obviously know that but there may be reasons not to impose, there may be reasons to be cautious in

approving solar systems for those buildings if it changes the way it looks as opposed to other buildings in the CBD or the Commercial section.

Mr. Coakley: But that to me would be covered under Section 7.

Mr. Bachman: I am not disagreeing with you but I am just leaving open for myself personally the option of coming back to this group and saying there is a strong argument to protect these buildings.

Mr. Coakley: I think we all agree with that.

Mr. Hoewing: Yeah.

Mr. Sneed: But to answer your question I am not in favor of this process but we are not taking a vote, I don't think we are going to be taking a vote right?

Mr. Hoewing: Well at some point we have to vote on the recommendations to the Commission.

Mr. Coakley: Yeah prior to sending the final product up to the Town Commissioners we need to vote on it.

Mr. Sneed: So Bob what you are saying is we should spend the time between this meeting and the next meeting developing this a little more and come back at the next meeting before we vote or recommend the vote.

Mr. Bachman: Oh yeah.

Mr. Hoewing: Yeah we don't have anything to vote on right now anyway because there is no language, we have concepts.

Mr. Stump: The Staff is going to put together the language based on what is discussed tonight and then have it for us next meeting to review and look at also any comments we bring to the next meeting.

Mr. Hoewing: I mean under George's concept I would think in the CBD if somebody came in and said I want to put a real shiny solar panel on the front of my roof and its an older building there we could say after a lot of discussion it doesn't fit the character of the CBD, if you want to put it in the backyard on a pole we have a different view of it.

Mr. Bachman: That is really what I am driving at. And George I would just like to circle back to a comment you made at the beginning of our discussion that you may not recall.

Mr. Coakley: You have a heck of a memory.

Mr. Bachman: That you didn't understand the rationale for the decision to eliminate entirely any solar activity in the RDT, I'm with you 100% on that. For me it gives me a sense of the potential for arbitrariness in the conclusions of the Commission.

Mr. Stump: But you can put a Heliport or Airport in the RDT, that is truly commercial.

Mr. Bachman: But down county they use the phrase NIMBY "Not in my backyard" but up here it is "Not in my RDT".

Mr. Stump: Not in my tax coffers I am sorry.

Mr. Coakley: But I got the impression that at least one member of the Town Commissioners was concerned that someone who owned RDT property may possibly make money while off of that property while still paying the tax rate of RDT.

Mr. Stump: There is tons of precedent already in the Use Chart to allow them to do that.

Mr. Coakley: And like I said just using the Hartz property as an example if that entire lets say if 15 of those 18 acres were devoted to solar panels the screening that you could do across the front of Fisher Avenue you would never know that they even existed there.

Adjournment

Ok that is everything that we have on our agenda and there is no one in the audience. Does anybody have any parting comments or anything, any other issues to bring up that we haven't addressed? Then do I hear a motion to adjourn?

Mr. Stump: I move we adjourn.

Mr. Bachman: Second.

Mr. Coakley: All in favor?

All: Aye.