

COMMISSIONERS OF POOLESVILLE
MEETING OF JANUARY 26, 2009

PRESENT: LINK HOEWING, TOM YEATTS, JERRY KLOBUKOWSKI, JIM BROWN AND EDDIE KUHLMAN. ALSO PRESENT WAS TOWN MANAGER, WADE YOST AND TOWN ATTORNEY, ALAN WRIGHT.

Call to Order

Tape Did Not Start Until this Point.

Mr. Kuhlman: CEDC and the Commissioner presenting the Holiday Lighting Awards Mr. Yeatts.

Mr. Yeatts: Thank you Eddie. Our Committee the Community and Economic Development Committee has been tasked this past year with judging the holiday lighting contest winners and I would like to thank Tim Whitehouse who stepped up and was the judge in this process I believe he gathered some of his close friends and relatives and pressed them into service as well and it was a difficult decision but I just want to go over some of the requirements for the holiday lighting contest we have 2 different sides there is basically everything that is on the north side of 107 and the south side, it seems more west and east to me but that is how we have decided to name it and we are judging in traditional holiday lighting, modern, and then also a separate category for town homes so I would like to go ahead and announce the winners. On the south side for traditional lighting the winner is Mildred Bell at 19909 Westerly Avenue, is Mildred here? Ok we will send her her announcement, she gets this festive holiday plaque. We have in the modern category south side, Peter and Katherine Brockdorff at 16916 Hillard, do they or any of their representatives, ok great Peter. For our town home on the south side we have Louis and Brenda Prince at 19712 Wootton Avenue. These people sacrificed their power bills to make our Town look good. On the north side, barely on the north side we have Steve and Kim Kelly at 17908 Elgin Road for traditional. Ok we will hold that for them. We have Stephen and Sandra Austin at 19304 Hempstone for modern, good job thank you very much there you go, and for town home on the north side we have Jeffrey and Candi Fisher at 17682 Kohlhoss Road, ok we will hold that one. Then we have a business, the most festive business I think everyone saw their inflatable ornaments getting batted around by the wind, I think one night some kids unplugged it and they were laying flat on the ground but Drs. Pike and Valega from our favorite local dentists.

Mr. Kuhlman: I think that was done by his son.

Mr. Yeatts: Tim, Margaret, oh it was done by his son, ok we will pass that on to Drs. Pike and Valega. We appreciate everyone's involvement in the holiday lighting ceremony and I think I speak for all the Commissioners when I say that some of these ornaments get better every year and it is always a pleasure driving through town. When I am coming home from Gaithersburg I can tell when I hit Poolesville because some people in Town especially along the route that I drive have some of the best lights that I see anywhere and I do get around so we appreciate that and that concludes the ceremony.

Mr. Kuhlman: And also the winner's names will be added to the plaque on the wall there at Town Hall. The next issue is probably what most of you are here for the presentation by Montgomery County Health Officer Dr. Tillman and if she can come forward. While she is coming forward I would like to let the public know that our State Senator Garagiola and our Council Representative Mr. Knapp have been on the phone with me Thursday and Friday over this issue, they are monitoring it, they are very concerned but both of them had previous meetings and they could not attend tonight. And Chris Van Hollen has a representative here if you would like to raise your hand. And also present tonight is Dr. Cliff Mitchell and unless I misunderstand then this is just a presentation from you guys to us and there is really no grounds for questions and answers.

Dr. Tillman: We can have cards passed out though.

Mr. Kuhlman: Ok thank you.

Dr. Tillman: Good evening Commissioner Kuhlman and other Commissioners, I hope you can hear me I know I am short...

Mr. Kuhlman: If you can just bend it down a little bit people have a hard time hearing when your back is to them, thank you Ma'am.

Dr. Tillman: We do appreciate you adding us to your agenda, I also appreciate that lovely music that really got to my heart my mother was a music teacher and I had my attempts at playing violin they did much better than I ever did so I thank you. We also thank the Town Manager for having us here as well and on your agenda. We wanted to take this opportunity because we do know that there has been a number of concerns expressed in the Town of Poolesville and we've received a number of reports and this has been going on for some 6 weeks and we wanted to at least give you an update of where we are at this point in time and if others had not heard to we have Dr. Clifford Mitchell is from the Maryland Department of Health and Mental Hygiene and I represent the Health and Human Services here in Montgomery County. The initial analysis of the Maryland Cancer Register really show no pattern of any (inaudible) or pattern of cancers out of the ordinary for the Town of Poolesville in comparison with Montgomery County or with the State, however, we did receive some additional reports from the community and in looking at them we realized that those have raised questions for us in which we don't have complete data or information and there are certain cancers that were reported by Poolesville residents to the Montgomery County Department of Health and Human Services, we referred them to the State and they looked in the Maryland Cancer Registry and for those that were in the Registry that could be identified it really does suggest that further evaluation is warranted and that investigation or that evaluation really does include more in depth medical record reviews as well as some interviews so that we have more information on what has come in to us. The point that is also very significant at this time is that the discussions between the County Health and Human Services and with the Department of Health and Mental Hygiene we have agreed and we have decided to invite the Centers for Disease Control and Prevention to aid us in these further evaluations and Dr. Mitchell can explain in further in terms of what those steps would be, so let me turn that over to him at this point in time.

Dr. Mitchell: Thank you very much. I apologize for my voice it is never good with the public health position in the transmittal stages for infectious disease so I apologize for my voice. But thank you very much for allowing me to be here I am Dr. Clifford Mitchell, the Director of the Environmental Health Coordination Program at the Department of

Health and Mental Hygiene and I have been working very closely with Dr. Tillman and her Staff and also the Maryland Cancer Registry in looking at the concerns and issues raised here in Poolesville. The analysis that Dr. Tillman spoke of involved the Maryland Cancer Registry data for which there are complete records and those are for the years 1994 to 2003. One of the things that we are doing is the Maryland Cancer Registry is actually in the final steps of finalizing their 2004 through 2006 data so one of the things that we will be able to do shortly within a matter of weeks is to extend the records that we have been looking at all the way up through 2006 for completed data. And Dr. Diane Dwyer who works on the Cancer Registry on this process has been very involved with us in this as well. We have been having discussions internally with a number of people including Dr. Tillman's Staff, The Maryland Cancer Registry and looking at the questions that have been raised we thought it was prudent to ask for some outside assistance. The way that works is we have contacted the Federal Centers for Disease Control and Prevention the CDC, there is a number of different mechanisms that they can use to assist us and we and they are discussing various ways that could happen, whether it is my direct assistance, whether it is by a review of records and so there are a number of steps but we have already taken the step of contacting them and they have indicated already that they are interested in and willing to assist us in this effort and so the way this will work is that there will be a request made to them through the State Health Department to assist, I have every expectation that that will be approved, we will then work together in a way that is most effective in terms of answering the questions that have been raised in Poolesville and I think that basically summarizes the process to date.

Dr. Tillman: And I would like to conclude with an important statement that I think is very important for the residents and those in the Town of Poolesville and as well the Commissioner do hear because it is intense work but it is also very confidential and private work that we do on behalf of those who are here so let me just state for you and for the record that the Department of Health and Human Services we have a privacy policy which reflects our commitment to protect the privacy of those we serve and those we serve have a legal right to privacy in the way their personal information is used so neither DHHS or DHMH will disclose confidential client information and that does include health or personal information that is protected from use or disclosure by federal, state, or local law, but it is also important for all of those who are in the audience and I didn't think I would have my back to them and I apologize but it is important for all of you to know and to have complete confidence that in all of our communications the state and the county will honor the privacy of anyone who has been diagnosed with cancer, so I thank you.

Mr. Kuhlman: All right how can the Town and the Commissioners help with this study?

Dr. Tillman: What we would like if it is at all possible is that we would like to distribute cards to the audience they can right down questions and their concerns, we will collect those, and we would hope that in one to two weeks we will have those responses for the general public and it can be posted on your website that would be a help so that others can have that information. We also have contact information that we would like to make available to you and to your residents in terms of who to call with concerns or questions and we will leave a copy of that here as well, if that can be posted then they can also be able to respond to us and then with those will be more questions and concerns and dependent on the nature than we will have those put into frequently asked questions or it

will be part of the information that we will be using to get more evaluation of what is going on.

Mr. Kuhlman: Ok and then I guess a two part question what and if I missed it I apologize but what kind of timeline are you expecting on this and understanding the patients or the cancer victims privacy right how does the Town find out if there is any implications on our water system, I mean we are hoping that there is not but I understand these people want answers and I would if I was them too but we also want and need answers too.

Dr. Mitchell: Commissioner I appreciate the question and what lies behind it as well so lets just say that this is really in some ways a two-phase process and I want people to understand how this will take place. The first question is really to understand more about the questions that have been raised with respect to cancer itself in the Poolesville area. As you may remember from the last time I was here one of the things that I talked about is the complexity of figuring out especially when you have got relatively small numbers, small groups of people, figuring out exactly what caused any one cancer is very, very complicated, we are not at that stage yet, we are first of all in the stage of understanding is there a potentially an issue with cancer in Poolesville and that's going to be the first issue that is raised with the CDC and the first issue that Montgomery County and we are going to be working on. Although it is difficult to know exactly how long that will take because one of the issues that we have to work out again with both the County and the State is the mechanism by which this takes place will involve potentially obtaining medical records and closed medical records have to be obtained from hospitals, there is a process that has to go through in order to obtain those records, there is a record review, in some cases it can take several weeks just to get the records back from Physician's Offices or hospitals so I would like to say this will be able to proceed quickly, I do think it is likely that we will start very quickly because I think the impetus is there to move ahead very quickly. Traditionally I think it is fair to say that what happens is we will get a fast start within a matter I would guess of weeks that we will be able to literally start the process. Part of this will also depend on the mechanism that CDC chooses and we choose together to implement this so if we are going to get a CDC person up here we need to get the person up here that will take a little bit of time but not much. Getting the design together, getting the reporting mechanisms together, getting records, reviewing records that can take in some cases a matter of several weeks to a month, six weeks, two months depending upon how many people we are talking about and what the extent of the review is, at the end of that process there will be an examination of all the data and that traditionally would take anywhere from a month roughly, I'm guessing that this first phase and this is purely a guess and I hate doing this because I am never right but I don't foresee that it is going to be done anywhere before 3 to 4 months, I can ask Dr. Tillman and get her impression but this is really sort of a ballpark guess, in some cases these things can go on for a lot longer if it turns out that the problem is more extensive and it is more difficult to get records so and I don't want to low ball the estimate because that is not fair to Montgomery County which has to respond to you, but I do think it is realistic to say that it will be several months minimum before we have the first process engaged where we have record review, record analysis, and then there may be some lengthy analysis depending upon how complicated the answer is, Dr. Tillman is that right?

Dr. Tillman: And I think that is probably a fair assessment, I would say and I would recommend that we return to you in about 6 months time if it is sooner we will certainly

let you know but we would like to be able to have another update about that time because you never know what is going to happen and these things do tend to get more complicated as you go forward.

Mr. Kuhlman: Of course Wade our Town Manager is always available to you and any information you want to disseminate to the community please feel free to contact him and we can post it on the website, we put out a quarterly newsletter, we can incorporate information in there also, any questions from the Commissioners?

Mr. Hoewing: What are the elements that are typically in a report like this that you make at the end of this process, what kind of things do you talk about in the report?

Dr. Mitchell: Well Commissioner Hoewing I think part of the issue would be again it sort of goes back to the discussion we had last time, it will be looking first of all at the overall cancer picture within the community and then there will be a more in depth examination of specific types of cancers, specific questions to look at whether or not a pattern is suggestive of something or not suggestive of something, and some of the issues that we look at like what the age distribution of the cancers do they appear to be in a younger cohort than we might expect otherwise, is it the same age and the same cancer as typically experienced, the sex, gender distribution, does it appear in the same people in the area as appears in the County and again I want to emphasize there are several issues with the numbers that become important here, one of which if it is very small numbers of people we have an issue in terms of reporting back which involves not violating people's confidentiality so we have to be circumspect sometimes about exactly how we describe things because if there are only a couple of cases of a certain type of cancer than we are not allowed by law from disclosing that confidential information but it is exactly that precisely kind of analysis that I expect to take place.

Mr. Hoewing: And based on the reading I have been doing on this, is it possible to be able to narrow it down to a specific type of thing that might have caused it or is it very difficult to do.

Dr. Mitchell: Typically that is very, very difficult to do and again as I said it is a two-phase process and we are starting off again by asking broadly the question does there appear to be something in Poolesville that is unusual with respect to cancer without regards to cause because we don't want to prejudge the cancer by looking only at a specific cause, we want to look at and understand broadly the question of is there a potential problem or not and at the end of the day there may not be or there may be but we want to be as fair as possible and not prejudge the conclusion.

Mr. Yeatts: I have a question. What initially caused you to believe that further evaluation was warranted there must have been some trigger?

Dr. Tillman: And actually that is based on the number of calls that we were beginning to receive and then at the County Health and Human Services and then referring to the Maryland Cancer Registry and to Dr. Clifford Mitchell and then hearing back that we don't have enough information and that something may or may not be unusual and that is really more of, ok we thought that the preliminary analysis that it was really keeping in pattern with what was in the County, what was in the State and we were fine, but that only took us up to 2003.

Mr. Yeatts: And that is my follow up question actually is that it sounds like there is 3 years worth of data being finalized, 2004 through 2006...

Dr. Tillman: Yes.

Mr. Yeatts: I was just wondering if it is typical that you go back in that far of a time period in terms of finalizing the data, I am not familiar with your data collection mechanism.

Dr. Mitchell: Yea although I am not part of the Cancer Registry I can work with them very closely. They are generally because they have to wait for a final diagnosis and a final report to be done from all of the reporting as is usual with the Cancer Registry typically they are sort of 2 years out of base with the current time frame so that what happens is they have to be sure that they have exactly the right diagnosis, exactly the right pathology on the readings for each case and then they submit to the CDC, to the National Registry what is considered a completed data set, they are in the process of doing that now for the most recent period which is 2003 through 2006. There is typically a lag for a number of different reasons, part of it has to do with the fact that there are cross border issues with getting results from hospitals, some of it has to do with general understanding of the way the diagnosis are certified and read by a certified tumor registrar so it is a fairly complicated and lengthy process and typically with both registry's that is the way they operate.

Mr. Yeatts: Is that a National Registry?

Dr. Mitchell: The Maryland Cancer Registry is a State Registry, it belongs to a National Registry so it is...

Mr. Yeatts: So I guess my underlying question is, is there anything about our data collection that would be less timely than the rest of the State or the rest of the Nation?

Dr. Mitchell: The answer to that and again I don't want to speak for the Cancer Registry so I am venturing out a little bit here but essentially what they are doing is what most Registry's do across the Country. Let me just say in addition it is important to note that although these are considered completed data so that they are the data with which you can calculate rates because we think they are as complete as we can make them, there are data in there up through 2008, 2009 that are coming in all the time, but the Cancer Registry when it calculates rates looks only at the completed years that have been certified. We can look at more recent data but we can't use the whole Registry for those 2 years the 7 and 8 to calculate rates for those years.

Mr. Yeatts: Thank you.

Mr. Kuhlman: Mr. Brown?

Mr. Brown: First of all I want to say thanks to everybody who is here tonight I know this obviously a huge issue for Poolesville, thank you too for coming up here today and bringing clarity to something that obviously everybody is very concerned about. I actually had a question about, specifically water has been one of the prime culprits that people here have been discussing over the past whatever the timeframe is, at what point in your investigation do you think you will be able to kind of or will there be a point in your investigation where you will be able to veer off to the side and hit water as part of the protocol for trying to figure out where we stand with that, I mean it is one of our towns biggest resident Commissioners issues that we have to work on.

Dr. Tillman: Let me say that we are aware of those concerns and we know that on I guess it was on December 8th you had more discussion at one of your meetings about that concern. The Maryland Department of Environment has been involved obviously with the Town of Poolesville and also our Department of Environmental Protection at the County, they will be involved in terms of as we go forward and look at these issues, if

there are some questions in terms of environmental exposures certainly we will be involving them and asking them to take a look at that as well, but whether or not we ever get to that answer is there an environmental link to what may or may not be going on in Poolesville we can't answer that, that is one of those uncertainties that we actually have to live with but they will be part of this process, they will become the multi-agency involved and so we will have the Federal, the State, the County level, we will have multiple agencies and what I was impressed in terms of the contact with the Centers for Disease Control its not just one center but we have got environmental you know our --- that have as well had their cancer prevention as well, so it doesn't just stay in one place but we would also like to say that in terms of contact information as we go forward and I don't know the logistics on when information can be posted but let me say for the health related concerns that you or your public may have they can call our Department of Health and Human Services information line I can give that to you now that is 240-777-1245 and for the time being for water quality concerns that still the Town of Poolesville so you have that information. And if there are some other concerns that the DET may be able to help people answer that number is 240-777-7700.

Mr. Kuhlman: Anything else? Mr. Klobukowski?

Mr. Klobukowski: No.

Mr. Kuhlman: Wade you got anything?

Mr. Yost: Nope just so I get the information I can post it tomorrow.

Mr. Kuhlman: All right well we thank you very much for coming up here tonight and being part of this and I would like to make a general statement to the Town that the Commissioners take this very seriously in a very proactive manner. The one well that people have pointed fingers at has not run or produced water for the Town for 18 months and the life expectancy of that well I don't know what is happening we have our Town Engineer, our hydro-geologist specialist working at great lengths trying to come up with some answers and get back with us some recommendations. I am kind of nervous about opening it up but is there anybody that has a pressing question they need to ask tonight. You need to come forward Ma'am so we can get it on the record, we need your name and address.

Ms. Poss: My name is Catherine Poss and I live on Hempstone Avenue here in Poolesville. I still don't really understand how you become part of the Cancer Registry (inaudible) or not.

Dr. Mitchell: Can I answer that? And again we sort of apologize for that (inaudible) but we don't choose to become part of the Registry. Physicians, Hospitals, Laboratories that treat patients with cancer are required to report that diagnosis to the Maryland Cancer Registry, so what happens is when you are treated for cancer, get a diagnosis, the report comes from multiple sources actually, the treating hospital, the treating physician, often time the laboratory where the pathology is read goes to the Cancer Registry so to answer your question simply it is if one is a patient with cancer then that fact is reported without you having to do anything about it.

Ms. Poss: What if you are treated in another State?

Dr. Mitchell: That is a very good question. One of the reasons that we have this issue about the time delay is that the Registry in fact does --- them but there are --- between the Registry and other jurisdictions to share data, so depending upon where you are treated that information may or may not be forwarded to the Registry, if you want to know for

sure whether or not, if one wants to know that for sure, the easiest way is to contact the Maryland Cancer Registry and you can talk to them directly about that.

Ms. Poss: Ok thank you.

Mr. Kuhlman: Thank you. Anybody else? Yes Ma'am.

Ms. Robinson: My name is Lylia Robinson, 17204 Spates Hill Road and my question is hypothetically speaking if for example when the data from 2004 and 2006 will be available to you and you will come to the conclusion that there is no pattern certain that everything is --- from the Maryland Cancer Registry that Poolesville doesn't have any kind of unusual cancer say, now generally my question is either the data available to you connecting water pollutants to different types of cancer general question because there is nothing out of the ordinary that you would go there but generally even is it available to the physicians or the scientists that...

Dr. Mitchell: I guess I can answer that not simply but we know something about the relationship of pollutants to cancer, we know that there are some pollutants that have been associated with cancer before, some of them very strongly with cancer and then some of them weakly or we are not sure or we think maybe but there is a whole range of confidence that we have in how much we understand about the relationship. So with some pollutants for example arsenic in water is one, we are actually pretty confident about the relationship between arsenic and cancer and there is a lot of data on that and that is one of the reasons that it is regulated very ---. Other materials it is a lot less certain...

Ms. Robinson: What about radionuclides?

Dr. Mitchell: Radionuclides we know cause cancer in certain cases and so the question is always what is the dose of the radionuclide, how much do you get exposed to, how much is that compared to the background and I have actually looked at the data associated with radionuclides in drinking water and I have to say there are some studies which suggest a relationship between radionuclides in drinking water and certain cases, there are other data which don't show much association and so you are asking a hypothetical with a lot of different steps in between the beginning and the end. One of the things that clearly we are interested in is looking at things that we know are likely based on science to cause cancer, we are certainly going to pay attention to things but we may have a question about that but I can't prejudge at this point what the answer is because I don't know what the data will show and that is one of the reasons we are doing the investigation and that will include a whole range of things including for example one of the things I mentioned last time I was here is knowing how long people have lived in Poolesville if they have cancer would be very important because if they just recently moved into the community its very unlikely because of what we call (inaudible) between when an exposure occurs and when the cancer becomes evident, it is very unlikely that that cancer was related to that exposure in Poolesville.

Ms. Robinson: My question is when I was reading why one of the wells was closed because of the radioactive elements in water and that is what I am asking radionuclides because it is a long-term cancer. I mean I moved here 2 years ago, I have 2 small children, I am really worried because it is a long term cancer exposure and if this 2004 and 2006 further on research comes out that you close your investigation or research and then in 15 years or 20 years one of my kids would end up with cancer that is why I want to know and I would appreciate that I wrote in my notes if you would consistently put

information that was found and also something about radionuclides more than on the EPA website a little bit more for us, I would appreciate that because I am really worried.

Mr. Kuhlman: Sure no I appreciate that. Ok time for 2 more yes Ma'am.

Ms. O'Farrell: Jeri O'Farrell, I live on Bruner Way, I was diagnosed less than a year ago with cancer. I won't be part of your study, can I voluntarily be part, can my cancer be studied, can I give you permission to look into my records.

Dr. Mitchell: Well let me say first of all I am very sympathetic, I am sorry for the fact that you are ill and the answer is yes and the way to do that is although I don't know (inaudible) here.

Dr. Tillman: Yes you may contact us with your information and that number that we gave would be the start of that process. It is also a situation that although as you heard that the data will be complete shortly up to 2006 this is an ongoing process in the Maryland Cancer Registry so data continues to come in as individuals are diagnosed as Dr. Mitchell explained that data is required to go into the Registry.

Ms. O'Farrell: Well I will be there for my first diagnosis in 96 this is my second diagnosis.

Dr. Tillman: Information does continue to go into the Registry so it doesn't stop with that and I also want to just as a general statement that because of the various issues, well let me first say that cancers are common there is no doubt about that and there are probably more than 100 cancers when we say cancer and given that we feel comfortable at this time that breast cancers, lung cancers, prostate cancers, colorectal cancers those are the most common and that they would not be the primary focus of what we are doing, just to let you know that that happens and it is not that I want to talk about individual cases tonight but we will be gathering information so if you have those concerns please call us and we are gathering that.

Mr. Kuhlman: Yes Sir.

Mr. Garth: Hi I am Phil Garth I live at 19934 Westerly Avenue. It is more for the Commissioners than anything, now with --- in the water because the water table is constantly changing with rain depends on everything how the water saturates the clay and the structure of the soil, now these wells where they are located, is the Town Commission doing anything about drilling sample wells around these other wells to take water samples have they increased the number of samples being taken in the testing that is done for the pathogens and stuff that might be in the water. You know just concerns it might be just affecting the one well if it isn't but how far out does the leeching go because with the constant you know I got a little bit of an environmental background but with the water table rising and falling and everything like that when we get a bunch of rain it is going to raise it and it is going to leech out it depends on the type of soil and the depth of the well, there is a lot of things that go into that.

Mr. Kuhlman: I am going to ask Wade to answer that, he knows more about the water.

Mr. Garth: I'm just curious is there increased water sampling being taken, is there samples around the well, how far out do you plan to go to take those samples and have you already started going around the other wells and testing them.

Mr. Yost: Simple yes to all your questions. We have been testing, the last 2 years we have increased the testing in all the wells for radionuclides, for Radon, for pathogens we test once a week, every single well. We do have some --- wells we do have around Town

also that we do monitor mostly for depths, levels, turbidity, pathogens, things of that nature.

Mr. Garth: And how would we get the answers to those wells, is that available to us?

Mr. Yost: Sure just put it in writing whatever you would like and I can get you a copy.

Mr. Klobukowski: Well isn't part of that answered in our Water Quality Report?

Mr. Yost: Our Water Quality Report basically lists things that we find small amounts of contaminants whatever it may be in the water but doesn't say that we did get 600 pathogen samples and they all came out clean, we don't speak to that, we only speak to the things that we find in the water.

Mr. Garth: Is it possible to put them on the website for everyone to pull up, you could put one thing for contaminants or anything like well 1, 2, 3, 4, 5, and just list it, the tests that were done.

Mr. Yost: Sure, well it's easy to say yes but it is about 400 different samples on each well throughout the year so that would take a little time.

Mr. Garth: I understand but I am just concerned that they are doing that to help them too because all the samples I know goes back to you can check the water and relate it back to the number of instances that have been...

Mr. Kuhlman: I think we will definitely take your suggestion under consideration and as Wade said the list of things that are being tested can --- way out and also understand the financial implications not that it isn't important but these tests are running about 4 to \$5000.00 each test so every sample we take when you ask to start looking for the radionuclides (inaudible) is spending about 4 to \$5000.00 per test.

Mr. Garth: Well I understand that but to get the information out the front door, access to the public would be better for the concerned public.

Mr. Hoewing: Wade we haven't just been testing for 2 years though the test that you are doing now are a little more extensive but we have been testing for many years for various things.

Mr. Yost: Oh definitely the last 2 years we just stepped up the radionuclide end of it.

Mr. Klobukowski: That was just on the 4 wells though right?

Mr. Yost: Pardon?

Mr. Klobukowski: That was just on a certain wells, it wasn't on all.

Mr. Yost: No all the wells were tested 2 years ago for the radionuclides when the regulations called...

Mr. Klobukowski: To closer monitoring of just certain wells, 9, 10, 11, and 7 right?

Mr. Yost: No and 4, 2, and 7 were also tested throughout the year also.

Mr. Klobukowski: Ok.

Mr. Garth: What about the new wells for the developments?

Mr. Yost: Both of those showed, they have been tested once to get the permit to bring them online and they were very low as far as any radionuclide levels, very low.

Mr. Garth: Ok.

Mr. Kuhlman: All right Dr. Tillman and Mitchell anything else you would like to say?

Mr. Klobukowski: Eddie I do have one question many of us have been here longer than 1994 when did the Cancer Registry start was that 1994?

Dr. Mitchell: The Cancer Registry has a complete date of starting in 1994 it actually goes back there are data from 1992 but they are not complete so it is really 1994 is the first year.

Mr. Klobukowski: So basically for people who have lived here since 1970's there is nothing to draw upon for people of quite a longevity living in Town?

Dr. Mitchell: Well there is no Maryland Cancer Registry data to draw upon.

Mr. Klobukowski: So I guess for the wider population as well as this area you cannot really look back and see the total number?

Dr. Mitchell: It would be very difficult to do that for a number of reasons and one of the challenges that we face is the Town has obviously grown so it becomes complicated to figure out exactly what the population is that would be at risk which is to say I think there was 5 people back then as opposed to 5000 people, it makes a big difference if 2 people got cancer back in 1970 for example and since we don't know what the denominator the number of the population on the bottom of the equation would be it would be very difficult to figure out and we don't know what the total number of people, we don't have data to fill in that number.

Mr. Klobukowski: All right thank you very much.

Dr. Mitchell: You are welcome.

Mr. Kuhlman: All right again we thank you both for coming up.

Mr. Yost: One quick question here, as far as scope of the study is going to go, is it reaching outside the boundaries of Poolesville or just the 20837 area code, how is that going to be part of the program?

Mr. Kuhlman: Yea given our geography we have a couple little hamlets that are right on our borders.

Dr. Tillman: Well just simply that is going to be part of the design in terms of working with the Federal Agencies and in terms of what the scope should be and particularly since these issues that we know that the zip code is larger than the Town of Poolesville and we know that your water distribution doesn't map exactly to that so that will be something that will definitely be explored in terms of what is the scope and the perimeters that we are focusing on.

Mr. Kuhlman: Ok.

Mr. Hoewing: And the old houses have well water that they are drinking directly from that same well, now our water system is basically mixed water so all the wells mix together for most houses.

Dr. Mitchell: Right and that is one of the things that makes the second part of that question (inaudible) so that is one of many, many things that makes that so difficult to figure out.

Mr. Kuhlman: All right so then to recap we are looking probably on figuring on you guys being back here in 6 months give or take with some more information. All right we thank you very, very much for taking the time to come up and we look forward to hearing your news.

Mr. Hoewing: Thank you.

Dr. Tillman: Thank you.

Dr. Mitchell: Thank you.

Announcements

Mr. Kuhlman: All right under announcements the Commissioners will be holding a budget work session this Saturday, January 31st here at Town Hall and it starts at 9:00, any other announcements?

Mr. Kuhlman: Just one I testified before the Montgomery County Board of Education on the 21st of this month, last Wednesday night on behalf of the Commissioners in support of the Poolesville Cluster.

Mr. Kuhlman: All right and lets move the mikes a little bit forward or get closer to the thing. All right any other announcements?

Approval of Minutes

Mr. Kuhlman: Hearing none call for a motion on the approval of the minutes of December 8 and January 5th.

Mr. Klobukowski: So moved.

Mr. Kuhlman: Is there a second?

Mr. Hoewing: Second.

Mr. Kuhlman: All in favor?

All: Aye.

Open Forum and Citizen's Comments on Agenda Items

Mr. Kuhlman: Open forum and citizens comments on agenda items. We have an appointment tonight to make to the CEDC Committee and that is for an appointed or elected official to be on and that will be Tim Pike any comments? And then we will be having a discussion at the request of the property owner of Deacon Dave Cahoon down on Budd Road over the annexation of his property years ago, any comments?

New Business

Mr. Kuhlman: All right appointment to the CEDC Tim Pike is there a motion for appointment?

Mr. Klobukowski: So moved.

Mr. Kuhlman: Is there a second?

Mr. Yeatts: Second.

Mr. Kuhlman: All in favor?

All: Aye.

Mr. Kuhlman: All right Mr. Cahoon if you would come forward to the table please and give your name and address for the record. Wade do we have a tripod or John thank you.

Mr. Cahoon: My name is Dave Cahoon I live at 16615 Budd Road in Poolesville. And wow did I pick the right day to come. I don't want to belabor too long but I would like to present to you something. Commissioners I come before you today and ask that you would consider honoring an agreement that was promised to me when I entered the Town, it was negotiated in a different climate, with a different administration but I believe it is fair and I believe it still applies today. A while ago I approached the Town with regards to this agreement and I was surprised to find that the Town has no record of that agreement and it apparently had never been filed with the State. The Town Attorney and my Attorney exchanged letters about the situation regarding this matter and apparently the Town Attorney contends that there is no agreement and he further contends that because the court decision had ruled against zoning rights for myself and other petitioners that that precludes me from asking my legal rights under this annexation agreement that was reached with the Town be honored. I respectfully submit those conclusions and the basis for them. To avoid dispute I wanted to come before you today to present my case, the Town Manager Wade Yost graciously allowed me to come on this agenda I don't know maybe I could have picked a better day. While I am up here the --- of the Town Attorney more details I provide information I respectfully submit that the

position that because there is an apparent omission and the failure of the --- being registered in the Town records and filed with the State though I think it is ludicrous to contend that the agreement was never entered in especially in light of the fact that I (inaudible) and likewise the Court decision referred to by the Town Attorney occurred before pre conditions in this agreement entitling me to new zoning ---. The court case and the decisions had nothing to do with my rights under the agreement. First I passed out a map for you and I would like to go over a little bit of the history of our annexation. In that map it shows the properties involved in the annexation and the two parcels that I own are in green and I was part owner of these two parcels adjoining each other and they were both 8 acres and I owned 1 parcel jointly with my sister and my brother-in-law and the other parcel which is the subject matter of this hearing is owned by my wife and I along with another couple and currently the first parcel is owned solely by my sister and my brother-in-law and the parcel in contention is owned by my wife and I. You should know too that the parcel that I own with my sister and my brother-in-law is also the subject of an annexation agreement which we negotiated with the Town at the time and the Town had this agreement and the agreement of all the other property owners in the annexed area except for mine only the one to my house and any contention in the absence of agreement of Town records and filed in the State is proving that no agreement was reached well I don't think it will fly. Even though the two 8 acre parcels look very similar they are actually very different, one property, the property which is the subject of this hearing is already developed it has a house on it I live there with my wife and another couple, now the other lot that I own with my sister and my brother-in-law was a vacant lot, it did not perk and it would only be usable if it ever had access to Town sewer. My brother-in-law lived in a townhouse in Gaithersburg at the time and our agreement was when we purchased the vacant lot next door that if they were able to build then the lot would be theirs, otherwise it would go to --- and I and we would have a larger piece of vacant land around our house and I gave them the interest in the lot because they eventually were able to build and it is wonderful that they can live next door to me. When we were approached to join with the others being annexed I realized that we might not be the most influential or connected among others being annexed, there were some names on that list that were legendary in Town and we were new in the area, having been in our house only 4 years and since we had moved to this rural area called Poolesville you would think Seneca Chase being built and other subdivisions coming on and so there was this --- and it was a concern of ours that we might be lost among larger interests and so we felt upon entering the Town it was important to us to consider what our rates were and to that end there is a long time friend of our family Joe Blocker who has done much to shape current Montgomery County and many other firsts, he is the main ---, he has a well known land use law firm and this is his area of expertise so we enlisted his aid and worked out with the then Town Attorney Dick McKernon an agreement that would allow us to enter the Town but would preserve us from (inaudible) and while the lot might have become a liability for me, our home, our enjoyment of it could be lost if there was significant development in the annexed land. Our house has 2 ponds and they are really kind of runoff to Poolesville and so if large parcels were given 1/3 acre zoning land from us it would increase runoff we would have to accommodate and this might mean that we would have to adjust our landscaping to account for it, it might increase the flood plain or it might even be taken by eminent domain to account for increased runoff, therefore we

spelled out an agreement that we negotiated with the Town Attorney that if there was any increased zoning granted to other property owners being annexed that it would be given to us equally and that is the annexation agreement that we signed and it is the one that was agreed to by the Town and it was the entire intention for modifications of the agreement, that was the entire intention, so I have here this was the communication that said (inaudible) and this is the original draft and then the response to that. I paid \$2500.00 for the paragraph. So I present Joe Blockers letter to the Town Attorney stating our objections to granting the easements without compensation and attached to it I submitted the original draft agreement offered by the Town and Joe had further contact with Dick McKernon by phone, that modified agreement was the one we signed with the Town and the sole modification of the agreement was paragraph 3 and all 4 signers of the document they still live in Poolesville and can affirm that the 2nd agreement was signed and the one that the Town agreed to and Mr. Blocker is still around to testify. Surely there would have been some note made within the public record if we were the only property in the annexed area who did not have an agreement with the Town and I have looked and found no such mention of any lack of an agreement. There must have been an agreement, what was the nature of that agreement, was it the standard agreement or had it been modified, I looked through the records and I found that at least half the property owners had modified the standard agreement to reflect their own individual needs and I can pass these around I didn't make copies for everybody, but Anna Vinci had modified hers and --- had modified theirs for zoning issues and Susan and Robert Jamison had modified theirs for some zoning issues and development issues, and Bernie and Kathy Mihm had modified theirs and Gary and Janet Hartz had modified theirs and also this one is important because on the other annexed property that we do have the agreement for that I entered into with the Town I had modified mine for the vacant lot, like I said I didn't have the same concerns for the vacant lot as I did for the house living in it but I was concerned that if that lot was involved in --- share of regional stormwater management plan and we added an attributable stormwater discharge (inaudible). So the 2nd agreement was modified that we do have copies of and if I was concerned enough to modify that agreement for a possibly worthless lot how much more would I want to protect the interest for my property so I submit the evidence as well as the testimony I can obtain, make it clear there is a modified agreement attached --- as the agreement that we reached with the Town. The Town Attorney contends that a lawsuit concerning zoning that I joined into in 1999 resulted in a ruling that I and the others were not legally entitled to a zoning change, he suggests that that precludes my rights under the annexation agreement, however that suit ran its course well before the --- of the annexation agreement occurred. The lawsuit was based on other rights and the claims separate from the annexation agreement, in other words had those land owners prevailed I would have benefited from a favorable change in zoning and I would not have to wait for preconditions of the annexation agreement to occur. The annexation agreement sets forth 2 circumstances that must exist before my property would be entitled to increased zoning, first one of the annexed property owners would have to receive more favorable zoning and second the easements over my property have to be granted to the Town so Maryann Powell's parcel which on the map is the blue one was given more favorable zoning by the Town reclassifying her 7.8 acre property from RDT to 2¼ acre zoning and this allowed her to make a 3 lot subdivision of the property plus allow for her house and she was also

given a tap so that she could live in the house. I have also granted easements requested by the Town in connection with the well I gave to the Town, please note that I was approached by Andy Johnson then President of the Town Commissioners when he was looking for wells with the idea that my property might be suitable. I and my wife were interested in helping out the Town while making sure our interest was protected and later to the good --- of Eddie Kuhlman we entered into an agreement to allow the Town to drill an exploratory well and if suitable conditions were found to allow the Town to put the well for Town use. Under the agreement if the Town decided they wanted the well I received water and sewer taps and a waiver of development fees, I also received the right for water free for up to a usage count which I thought was fair since my costs were zero for water at that time. I was encouraged to also see cash --- by zone and I was asking to work with it and I did not work with the Town because they were worried about their own property interest but my wife and I we wanted to ---. Please note too that I didn't pass it out but another objection that was made by the Town lawyer was that in the MOU agreement paragraph 7 it was added at the last minute. It provides in the agreement of the Town to provide taps and to waive development fees which is not by itself a commitment to provide better zoning, the provision related to the well, there was no discussion or issues related to the annexation agreement indeed I did not know if the Town would even accept the well and go forward with the MOU, no rights were given up --- to the annexation, either way I did not know at the time the Town's public records were incorrect regarding the annexation agreement. Again the Town's Attorney suggests that the well MOU precludes the right to that claim under this annexation agreement. My Dad who is a colleague of Joe Blocker and always raised us to think of community and society first, he was an attorney who took a cut in pay to leave private practice and work with the County, he took another cut in pay to become a Judge he was installed into the Montgomery County Human Rights Hall of Fame for his giving of installment with the County's --- his example is probably why I became a Minister and I devote much of my time to others. Later after the well MOU went into effect, I and my wife granted easements requested by the Town and at that time the second condition entitling us to more favorable zoning was --- I then approached the Town to exercise my rights and the time was right for me because my father-in-law is older and I really wanted to build a house for him on our property. His son, his daughter my wife, we live next door to each other and feel that we can best support him this way. Imagine my surprise when I sought to --- the agreement with the Town and they had no record of that agreement. Since then I have moved slow but as quickly as possible in light of my limited resources at the time and each day my father-in-law gets older and I really would like to resolve this matter as soon as possible. I come before you today to see if we could dissolve this without any formal dispute, my lawyer seems to think I have a case and I don't want to do that if it can be avoided, it is only because litigation is expensive for me, because it would be expensive for the Town, but I also like the history of me being a benefactor to the Town but however I have to also protect my own right and my family. The triggering events entitling me to rezoning have occurred and the Town is obligated I believe to comply. In the end I just want to be treated fairly, after all Maryanne Powell offered the Town a well and was able to benefit of it by the development of her property. My development is essentially the same size and configuration and I am just asking for --- for that parcel. If you deliberate on this matter I hope that you would be thinking of how you can resolve

this fairly with someone who is a good citizen of the Town. I went to the --- in Town and had him draw something that environmental engineers --- configuration so you can realize that not any large subdivision (inaudible) essential regrouping (inaudible).

Mr. Kuhlman: All right any questions?

Mr. Cahoon: Did your eyes glaze over when I read all that?

Mr. Kuhlman: No I mean you and I have had quite a few conversations on this subject David and I appreciate your frustration. Prior to my election in 1990 as Mr. Cahoon said his property as well as others was annexed. There is a Resolution describing his property being annexed to the Town but unfortunately neither he nor the Town can find the signed annexation agreement by both sides. This was not found out until quite a few years or decades later. To further complicate the matter in my opinion as Mr. Cahoon states the Town, Jerry and I think Link was on the Board at the same time, we negotiated with Mr. and Mrs. Cahoon for a well site on the property and part of the agreement that we gave them as he stated was the right for I think it was 4 taps in total. And the problem being the property is zoned RDT, Rural Density Transfer, which means he can only have 1 house on each of the 5 acres and under the RDT zone is not allowed to use the taps that he has been granted. I think I can speak for my colleagues that were on the Board at the time there was no thought or intention to hoodwink the Cahoon's in giving them something that we never knew they could use. I think it was clearly an oversight on all of our parts including the property owners and we didn't realize it was zoned RDT. The question is what do we do about it.

Mr. Hoewing: So he has taps?

Mr. Kuhlman: He has the right to 4 taps.

Mr. Hoewing: But the zoning doesn't comport with using 4 taps.

Mr. Kuhlman: Right exactly.

Mr. Hoewing: And there is no records to straighten out whether or not he has...

Mr. Kuhlman: Well both...

Mr. Hoewing: --- the Resolution.

Mr. Kuhlman: Jump in if you disagree with what I am saying David. There are 2 unsigned Annexation Agreements that have floated around. One was evidently drafted by the Town Attorney at that time, Dick McKernon, or the lead property owners at that time of that annexation which would have been the Jamisons. And then there is another agreement that was drafted by, or offered and added to by Mr. Cahoon's attorney Joe Blocker but it is not signed by either party. And I had went to Bobby and Susan Jamison who led the charge on this annexation and Susan is an attorney she did a lot of work for all the property owners, they have no signed agreement or copy of an agreement in their files, Mr. Cahoon has looked, he has had Mr. Blocker look, we have scoured the town files and nobody can produce a signed annexation agreement giving any terms. There is no doubt the property was annexed because it is clear in the annexation resolution that was adopted by the Town that it included the Cahoon property both parcels and then maybe Jerry can help clarify this I wasn't on the Board but the Town did do a comprehensive rezoning of the Town when was that?

Mr. Klobukowski: 1996, 97.

Mr. Kuhlman: 96, 97 and there were recommendations made for rezoning by the then Planning Commission and for whatever reasons the Commissioners disagreed with some of those recommendations and changed at the last, anyway when they adopted it they

made changes to the Planning Commission recommendation. Mrs. Powell was granted zoning under those recommendations so that is how come she was able to develop.

Mr. Hoewing: So do any of these parties Mr. Blocker or Susan Jamison remember actually seeing a signed copy of this, does anybody have recollection of it, do you actually remember signing it?

Mr. Cahoon: Yes we have the 4 signatures on our part they obviously remember it, Joe Blocker remembers negotiating with the Town and I asked Susan as to whether she remembers the exact wording on the final document...

Mr. Hoewing: But she remembers signing it.

Mr. Cahoon: She would remember that we had it signed so they could all give testimony.

Mr. Kuhlman: All I asked when I went up there was do you have a fully executed copy and Susan scoured her files and said she does not have a executed copy signed by both parties.

Mr. Brown: They could provide testimony for a revised annexation agreement?

Mr. Cahoon: Sure it would be my wife, myself, and Julie and Matt --- who are the signatures on that and Joe Blocker is not there for the signing but he could testify as to the negotiation with the Town Attorney to work out an agreement with the town.

Mr. Hoewing: And he wouldn't know whether you signed or not actually.

Mr. Cahoon: Pardon?

Mr. Hoewing: He would not know that it was actually signed.

Mr. Cahoon: No but Susan Jamison would know.

Mr. Hoewing: Susan would.

Mr. Cahoon: Yes. Unfortunately that although we can't produce an executed copy...

Mr. Kuhlman: Well I am sure Susan would know whether the Cahoon's at all signed the document, she would not have any knowledge as to whether Mr. Elgin who was President of the Commissioners at the time signed the document for the Town. The property was annexed it is clear that that happened and it is very clear that the Town negotiated with the Cahoons over a well site and we promised them and there is a signed agreement that they would have 4 taps and a right to use them and that the fees would be waived for using those taps.

Mr. Hoewing: And the words "And the right to use them" are in the agreement or does it just say that they have 4 taps?

Mr. Kuhlman: No it just says we give them 4 taps in perpetuity.

Mr. Yeatts: But if you give 4 taps and the zoning is RDT it makes no sense to provide 4 taps.

Mr. Hoewing: It sounds like one way or another we made an error.

Mr. Yeatts: Can we look to any overriding annexation agreement that crosses these boundaries and just say that it is included and that more over --- one where the Town limit lines have been modified.

Mr. Kuhlman: Tom I think before we try to answer that question I would like to call on Mr. Wright. He has reviewed all this stuff extensively and before we get in any further I would like to see what he has to say for the record.

Mr. Wright: I wanted to put my finger on the Memorandum of Understanding by which we got the easements and developed that part of the property and I probably have it here somewhere. I did quote from it, and I think everybody has a copy of my letter, which I responded to Mr. Hayden the Attorney who went to the Commissioners and was referred

to me and basically my research into this whole matter simply turned up a lot of negotiations none of which ever mention this agreement, in the testimony before the Planning Commission, in the appeal that was taken, places that you would have expected an agreement to have been mentioned because it was to the property owners advantage but there was never a whisper about having any rights under an agreement so now years later it is alleged that there was an agreement but simply I was never able to verify that and when I wrote to Mr. Hayden I said I invite you to provide me with documentation of the information to which you refer mainly a copy of the annexation agreement among other things and Mr. Hayden was adamant that there was an agreement and of course he didn't say that nobody could find it but so I simply wrote my opinion based on the fact that we had no agreement either recorded or otherwise signed by any of the parties much less all of the parties and no copy that was ever noted that it had been agreed, no written documentation that there had been an agreement to that effect so that was my conclusion that we hadn't, besides which we did have the comprehensive rezoning which had taken place subsequent to the annexation which had been appealed and was dismissed. So at that time any issues that could have been raised with regards to this rezoning that left all of those properties as RDT it should have been raised at that time and the appeal was dismissed so it was left as RDT zoning and in the negotiation that we conducted with regard to the easements we did say in the MOU paragraph 7 it is agreed that the Town has made no representations or understanding that residents property will be rezoned in the future or that a sewer line will be extended to the property, or that the property may be subdivided now or in the future so looking at that it seems to me to be pretty clear that when we did negotiate for the easement and gave taps in exchange we were about as explicit as we could be to say that we are not representing to you in any way that this property can be developed even though we are giving you these taps.

Mr. Hoewing: What date was that?

Mr. Wright: That was...

Mr. Kuhlman: 2004?

Mr. Yeatts: My question though is why would you give someone taps to something they can never use, that makes no sense at all, it had no value.

Mr. Hoewing: But it says it is a memorandum from the Town Attorney confirming that when all permits are obtained provided that proper zoning is achieved the water taps awarded in this MOU would be exempt from the normal allocation process.

Mr. Klobukowski: I think that was something that we had no right to even say.

Mr. Hoewing: Well if it wasn't rezoned we did, you can't rezone it by giving taps.

Mr. Klobukowski: No I don't think we had the right to begin with, to ever say that because we ought to have never been in the agreement period.

Mr. Hoewing: Well it was zoned Jerry because it could mean that they acknowledged that they didn't have the zoning changes that is why they are putting that language in there.

Mr. Klobukowski: Yea that is right, I'm sorry I think I understand where you are going now, we made the thing and then we realized we made a boo-boo, we said rather than go in and change it we will just make this amendment to it to reflect that zoning may not be possible to allow the use of the three taps is that what you are saying?

Mr. Hoewing: I don't know what date this memorandum was but...

Mr. Wright: There it is, I think this is where, February 5, 2001.

Mr. Hoewing: So that is way after the initial negotiations for the Memorandum of Understanding I guess right these were all done in 1989, 1999 pretty much.

Mr. Kuhlman: 1989 for the annexation.

Mr. Hoewing: Yea.

Mr. Wright: We agreed to grant one tap in one of the paragraphs, and then we agreed residents would be granted 3 water and sewer taps for possible future use in addition to the tap for water and sewer in paragraph A and B above giving the one tap, so 4 total. If in the future residents can use the 3 taps, all costs of constructing said lines to physically connect to public water and sewer lines will be at the resident's sole expense. The tap fees and impact fees for the 3 taps is waived. Such taps shall be irrevocable and run with the property and then it is in the last paragraph that we included the language that I read to you about "it is agreed the Town has made no representations or undertakings that the residents property will be rezoned in the future or that a sewer line will be extended to the property, or that the property may be subdivided now or in the future" so I guess it was just, I mean I don't know what the thinking was except that of course it can always happen that there would be a rezoning, now in a future comprehensive rezoning or for whatever reason it could be the property can be rezoned but not with reference to any agreement that was supposed to have taken place.

Mr. Cahoon: Can I express to the Town Attorney some of the rationale that was going on in my mind at least for the first point. I went on the appeal that they had for zoning and some of the other petitioners had said that they were going to petition for better zoning and as long as I didn't have to participate in any of the attorney fees I would be willing to join in with them and they were dealing with a different issue and since they hadn't --- an annexation agreement and neither had I given any easements nor had there been additional zoning granted, well at least not the second had happened at that point, it didn't seem pertinent that that annexation agreement would apply to any of the other petitioners for any of the reasons that they put forth in that agreement. Now on the MOU it was my understanding and we added it at the end that if we didn't know whether the well was ever going to go forward we didn't know whether anything was going to happen the intention was that at the end I was looking forward to being able to at least do some kind of --- subdivision on it and that was the basic understanding I had, and the development of the Town was granting me that in return. So that is what I was thinking.

Mr. Kuhlman: If I might ask a question Mr. Coakley is here tonight and he is Chairman of the Planning Commission, has the Planning Commission had any thoughts or conversations about, I know you have a Master Plan revision or review coming up George, but has there been any discussion about a comprehensive rezoning looked at or anything to date?

Mr. Coakley: There is a brief mention of it and the tenor of the other members of the Planning Commission wasn't leaning towards any comprehensive rezoning.

Mr. Yost: And the basis for that was really to deal with water and sewer, I mean that was the biggest issue.

Mr. Kuhlman: Yea because I mean bear in mind the one tap is used at your existing residence now and the 3 taps that he has holding they are counting against the treatment plant in our flows so I mean they are taking capacity away from the plant but they are not being used. We have to count that as a flow and as I said what year was that well agreement Alan do you have that in front of you?

Mr. Wright: The one I just mentioned?

Mr. Kuhlman: Yea the well agreement, the well MOU what year was that executed?

Mr. Wright: February 2001.

Mr. Kuhlman: Were you on Link at that time?

Mr. Hoewing: Not a Commissioner, I got elected that fall.

Mr. Kuhlman: So Jerry and I were the only ones that were on that negotiated with the Cahoons and I can speak for myself it was no intent on the Town to offer them something that they could never use and that we knew was worthless. I personally feel like we should try to do something to resolve this, what it is I'm not sure, Jerry you were on the Commission at the time.

Mr. Klobukowski: Well I would like to say something but I don't think it would come out the right way and...

Mr. Kuhlman: I'm usually guilty of that.

Mr. Klobukowski: Not against Eddie. But the land went through in the comprehensive rezoning, it was designated RDT and unfortunately the oversight occurred when the taps were being put in there and they should have never been in there, we should have had the foresight to understand what we had, well the history, we had the history and we didn't read it, we knew it was RDT but yet the agreement went forward it should have never gone forward for whatever reason we were not advised at that time that we were putting ourselves in jeopardy and at this point I see the land as being RDT and that is the way I look at it and that unfortunately is sort of what I tried to say earlier was is we made a mistake and upon realizing the mistake rather than going through and rewriting a whole new agreement we just amended a paragraph and we should have just said you get 1 tap or no taps whatever, basically you are giving us the well still meant you had to comport with all the requirements of the comprehensive rezoning, making your land RDT period and what we ended up doing was putting in these words that later on issued some possible hope somewhere in the future and I can understand the Planning Commissions reluctance to engage in the comprehensive rezoning and also the fact that we haven't even built out what we have yet to see the impacts on the total town infrastructure cost wise etc., so right now I am of the opinion we made a mistake and it was zoned RDT and that is the way I see it remaining RDT.

Mr. Cahoon: And what is your thought on my point about the original agreement when I entered into the Town?

Mr. Klobukowski: I don't know bottom line is there is no signed agreement, there is no signed agreement, from your perspective being on that side I can see your point, I would argue the same thing, but from my perspective I have no signed agreement and I am afraid of any sort of precedent that people would claim in jumping all the rules and regulations that we went through under the comprehensive rezoning and the water and sewer allocation and all that to me would be a total can of worms and I don't even want to go there.

Mr. Kuhlman: David the problem I have is there is no signed annexation agreement by both parties and...

Mr. Cahoon: That we have been able to find.

Mr. Kuhlman: That we have been able to find, produce, nobody can produce one put it that way...

Mr. Cahoon: Every other single property owner had an annexation agreement they were all signed.

Mr. Kuhlman: I know I understand.

Mr. Cahoon: They all individually negotiated them, am I the only one that...

Mr. Kuhlman: But where is that one that is signed by your side, we don't even have that.

Mr. Cahoon: I turned it in to Susan, it was delivered with all the rest of them and I waited for an executed copy to come back to me and where it ended up after that, but I mean my lawyer negotiated with the Town Attorney to go ahead and establish that but I still have that communication from him originally and we went through this when we came into Town and the whole idea was just to be treated fairly and that was the whole idea with coming in with a lot of bigger players and if they get something and all of a sudden I am the --- muscle for the project, I didn't want to be treated differently.

Mr. Kuhlman: But the point I was trying to make though David is without this produced executed agreement and the problem I have is you are saying there was language in there that the Town would help you rezone the property and that might not be the proper way to phrase it but there was some according to you some indication of help from the Town for rezoning in the future.

Mr. Cahoon: In the annexation agreement I gave you, yea it just said that if I granted easements to the Town that I would be given equal or better zoning than...

Mr. Kuhlman: The problem I have David is that no other annexation agreement in the Town files and I have been through every one back when we did the well search hot and heavy in 2000 I read every one, I have every one in my desk drawer at my home office, there is no indication, promise eluding or anything to anything about a rezoning or help of rezoning on any of the other annexation agreements so I am having a hard time without having an executed copy by both sides...

Mr. Cahoon: In the one I passed out there are 3 references to development fees which...

Mr. Kuhlman: I am on your side personally I think the Town owes you something, what it is I don't know that we can do because as I said Wade and I and Jerry were on that committee or Commission at the time, I mean we dealt with you in good faith that we were giving you a commodity that was worth something, now it looks like that commodity is worth nothing to you. Do you have a home on both of these 5-acre parcels or 8 acre?

Mr. Cahoon: On both 8-acre parcels there is a home, my sister and brother-in-law live next door.

Mr. Kuhlman: Ok but there is one home on each one and they are both hooked to the Town system?

Mr. Cahoon: Yes.

Mr. Kuhlman: Are you in a dire emergency for a response from this Commission?

Mr. Cahoon: No, no the only thing that is driving this is it has taken a couple of years just to get to this point.

Mr. Kuhlman: Yea I know.

Mr. Cahoon: I have had to write letters and the point is my father-in-law is getting a lot older and as he is getting more and more feeble my brother-in-law and my wife would like to be able to build a place and be able to take care of him and each year I let this go by and we lose an opportunity.

Mr. Kuhlman: Well what I would like to suggest and my colleagues can agree or disagree is that give us some time, produce any and all documents that you can find that pertain to this to the Town Manager, and make sure that each Commissioner has copies of every document that refers to this and we will put it on the agenda for an Executive Session hopefully within the next 2 or 3 meetings and see if the Commissioners can come to some conclusion of how to resolve this, whether it is favorable to you or not.

Mr. Yeatts: I would like to get a better look at that proposed division that you have up there as well, you are looking at 4 total lots including the one that you are already on, including a house on that piece, ok.

Mr. Cahoon: I just wanted to have a concept or an idea for an environmental engineer to come over and say well the wetlands are here, the flood planes are there, this is that whatnot, and then Dave --- in Town kind of drew some lines and there is actually a combination here on this proposal because as I said my sister and brother-in-law built a place over here and this is the 8 acre parcel and those (inaudible) and this is where we want to put the house.

Mr. Kuhlman: David if you could get your planner to print out a couple of copies of that and submit that to Wade along with any and everything that you can find to go along with this property and Wade will make copies and get them to us and like you say hopefully within the next 3 to 4 Commissioner Meetings we will get it on the Executive Session and have a discussion and get back to you.

Mr. Cahoon: And the salient points are I think Eddie I encapsulated them very well I tried to glaze your eyes over with all the legal ease but essentially I think I deserve parity at least to the Powell parcel you know it is a similar situation and what she ended up being able to do and what I was offered from the Town its kind of ---.

Mr. Kuhlman: Does any of the Commissioners have any problem with what I am suggesting?

Mr. Yeatts: None of these annexation agreements would be recorded with the County?

Mr. Kuhlman: All of them were recorded I would imagine.

Mr. Yeatts: So no record with the County?

Mr. Cahoon: It has been researched a couple times, my guess is...

Mr. Yeatts: Because I would run down there with a copy of it and record it. Seriously if it is not recorded then basically it doesn't exist even if you have a copy of it.

Mr. Yost: Well overall that annexation was recorded but not the individual agreement.

Mr. Yeatts: So none of the individual agreements are recorded with the County?

Mr. Yost: I'm not for sure if the other ones were on not but that might have been...

Mr. Cahoon: I think Joe Blocker when I asked him to see what the State records were and he went down and said we found your lot but it was --- in the annexation agreement...

Mr. Klobukowski: Wait it was annexation agreement for?

Mr. Yost: The next-door property.

Mr. Cahoon: The next-door property.

Mr. Klobukowski: Oh the next-door property.

Mr. Cahoon: I had an annexation agreement that we executed at the same time for different parcels, I mean with different parties of interest.

Mr. Klobukowski: I'm not sure I understand you have annexation agreements with different...

Mr. Yost: There were two 8-acre parcels and he owned both of them.

Mr. Cahoon: I think that is the confusion where the Town lost it because we only ended up with one parcel.

Mr. Klobukowski: I see what you are saying. You are saying basically ok, you said basically they saw your name, they said oh we got it and crossed it off and said oh we got two copies of the same documents.

Mr. Yost: That seems like exactly what happened.

Mr. Kuhlman: Ok well if you would work with Wade to produce anything and everything you can, see if you can get a couple copies of that made even just smaller doesn't need to be that big David and something you may want to consider, I showed my note real quick to Link is you and your wife and if you include your brother-in-law whatever in the conversation is maybe come back with, if we cannot find a way to let you use the taps, what is some other form of compensation that may be beneficial to you, anyway, if you can get us all that paperwork and Wade will make copies and get it to the Commissioners I want them to have some time and be able to go through it and then we will schedule an Executive Session to go over it.

Mr. Cahoon: Sounds good I appreciate it, the opportunity to present it to you, I didn't expect to do it at the end of a long day with tons of people in this room.

Mr. Kuhlman: Thank you Sir.

Mr. Cahoon: Thank you for everything.

Old Business

Mr. Kuhlman: Old business. Westerly swales, how long you going to be John?

Mr. Strong: I can't tell.

Mr. Kuhlman: You done already.

Mr. Yost: Time's up.

Mr. Strong: Yea ok, well let me just start at this point. The Westerly swales as the Commissioners all know have been an issue on the slope of the swales. The problem --- here, the 3 to 1 cutoff, there is a series of --- along here that show the 2 to 1 flow that is lined (inaudible). What we did is reduce the culvert pipe or --- to take a look and see what impacts would occur --- the slopes be built. And the good news is we didn't run into any problems in a drainage sense and we could take care of it with just putting in slopes, there was the concern at one point that we may have to put in drainage pipes for every section so that went away.

Mr. Klobukowski: So you are saying by just using dirt you can change the contour to make it acceptable?

Mr. Strong: That is correct. And having to move the existing culvert pipe under the driveway, that establishes the slope line. One of the things that we did encounter though as we moved the slope towards the house or the drainage swale toward the house we started to impact along the edge of the property line, that will require in some areas for the Town to gather a construction easement so we can grade in peoples yards and there will be some sort of --- in that area. Generally we are looking at moving the drainage culvert pipes anywhere from 3 to 9 feet and the cuts will be less than 2 feet or 1 ½ to 1 foot on this side and on the sidewalk side of course we will be adding soil to develop that 3 to 1 slope which this is over here. That is what the County uses as a maintenance slope at the current time. Again this is the property line here you can see where we are butting up against that property line when we rearranged the slope area, there will still be some

pieces of the slope right in the culvert pipes just keep raising it up in order to gather that slope. All the inlets stay in place, there is another issue, there is a series of cherry trees that run down the prospective swale area and those cherry trees would have to be either relocated or demo'd.

Mr. Klobukowski: Probably demo'd because every time I talk about relocation to anyone they say we can't do it. Lets me honest, lets go worse case and if you can relocate them fine but if they all have to be...

Mr. Yost: They have only been in 5 years I hope they can be relocated.

Mr. Klobukowski: Ok.

Mr. Yost: In the same location.

Mr. Klobukowski: No I understand what you are saying but I have always heard that once they are established certain trees you can't. You are the one that told me this at the Parks Board meeting.

Mr. Yost: Preston planted them they are probably still in plastic boxes at the bottom.

Mr. Kuhlman: Lets get back to reality.

Mr. Strong: Ok next slide. Again this is the shallow section along Butler Road and you can see the grading is not the greatest. The blue area right there is actually we had to put a --- in order to get that positive flow line established and keep the swale in the --- position. This is the property that was concerned originally, 19700 Whites Road, that precipitated all this, I can see here that some of the areas are a minimum of 2 foot probably 2 ½ feet of cut as we move back against that slope and we will be able to obtain the 3 to 1 slope.

Mr. Klobukowski: How much on average of the easement will we need to do this from property owners, what is the maximum we would need?

Mr. Strong: Well the maximum would be within the existing easements, you can see the property line, see that dash line that runs right there and comes back around, that is the property line --- well within the easement but we would recommend that areas that are extremely impacted like this one where we are actually crossing across the easement we would request a 20 foot construction easement only to do the grading purposes because the equipment that runs within there when they make driveways further up if you don't have a construction easement then it would...

Mr. Klobukowski: So you are saying in order to affect this you may disturb the homeowner's property beyond our easement and that covers us.

Mr. Strong: That is correct. This continues down to Hughes Road and as you see again we are butting up against that property line right through there to establish it, the reason for it is it is a little steeper over here and (inaudible) down to the existing swale. All right what is required to do the driveway culvert pipes vary from 3 feet to 9 feet, the estimated cost for doing the entire project is \$350,000.00 for the driveway --- demolition, importation of fill and the drainage site is probably another \$150,000.00 which brings the total project cost to \$500,000.00. This excludes replacement of fencing, plantings, there are some trees that have been replaced by the homeowners in the easement areas, also bushes and things like that. And then utility information was provided by others and I have to put that in there because we know it may not be as ---. Any questions?

Mr. Hoewing: Could you remind me again is there any problem that is created with drainage or to the Town sewer system or anything else with the way these swales are today.

Mr. Strong: The drainage system no, the drainage system adds water to the water table by simply using grass swales and containing the water that way so if there is any additional, when you are putting the water back in the soil and if you have an I&I problem where pipes are damaged in any way open joints those type of things, so you are putting water surface water into the system so you can possibly get more water --- and additional levels through I&I.

Mr. Hoewing: But the original concern was primarily safety for people having to cut grass there, that was it?

Mr. Strong: The primary concern was...

Mr. Yost: The slope issue.

Mr. Strong: The slope issue was 2 to 1, Montgomery County now, at the time 2 to 1 was acceptable as a standard. The County now realizes that the operation of lawn equipment is difficult on a 2 to 1 slope and that is what they do in a lot of places is place a ground cover rather than something that needs to be mowed. There is one (inaudible) I wasn't there when it was developed or why they went to the 2 to 1 minimum slope they have exceeded that in a couple of areas is that the driveway culvert is set, if you raise the roadbed by putting in the curb and you want to keep a 1 foot grading area along the sidewalk before you start to slope down so now you have raised it and raised it again and you have a 1 foot slope and your swale hasn't changed so this is a fixed point the only way to move this sidewalk up here the only way to get this slope to fall correctly is to move the pipe towards the house.

Mr. Hoewing: Well and the reason I am asking is how many houses are we talking about here total?

Mr. Strong: 38 I believe.

Mr. Hoewing: 38. It just seems like a lot of money, it almost seems like we would be better off just having the Town maintain those swales and cut grass or put in something else that doesn't need to be cut rather than do all this work if there is no other reason than just difficulty of mowing.

Mr. Kuhlman: Well that was sort of my question have we looked at it and talked with any of the property owners that if we went in there and put in the ewes or the ground cover where they didn't have to mow would that be satisfactory to them and also I know it has been talked about and I don't remember seeing a report what about closing it in like we did.

Mr. Strong: We looked at closing it in and we came up with a couple of --- Wade and I talked about it we were looking at first of all it changes a couple of things, you are no longer using that recharging of the groundwater coming back in the soil, you are also going to have maintenance issues down the line but the cost would probably (inaudible) we looked at \$300,000.00 because every time you have a driveway and it is a short distance you have to --- because a lot of flow comes this way and you can't make a --- area so it becomes an issue of piping in culverts and drain boxes, the type of drain boxes you use would be a lot and you would be having more drain boxes more often because we all have the same type of condition we had up at Spurrier where you had the elevation be able to carry across the frontline into the roadway into a gutter, that happened to work real well there.

Mr. Yost: As far as the 2 to 1 back to where Link was going I think, definitely the house on Whites Road and Westerly was the worst of all, you saw the large trap that had to be

made on there. That actually would be --- to fill in or put a culvert pipe in that one just because of the steepness of it and the difficulty if you cut it back. But how many were actually out there that wouldn't be that difficult just to take them back to 2 to 1 which was the original what the design was supposed to be, I mean we could look at it from that aspect rather than try to go to a 3 to 1.

Mr. Strong: Well if you went to the 2 to 1 it would be much easier to obtain. The problem is some of the slope is what dictates that 2 to 1 at the present time and we were running it I would say more than half of them were close in to be 1 ½ to 1 position where we were getting into that steep slope area. Keep it 2 to 1 we could probably get it done.

Mr. Yost: So you don't have to be that specific right now.

Mr. Klobukowski: The thing is will the homeowners be satisfied with a 2 to 1.

Mr. Yost: We've only had a couple complaints.

Mr. Klobukowski: Ground cover still has to be maintained, it still grows. Pachysandra can take over a whole area and keep growing right up your yard.

Mr. Hoewing: Have the Town come in every year and cut it back I mean what's the big deal with that.

Mr. Klobukowski: And future homeowner's may not necessarily care for the ground cover, I think we ought to fix this right and fix it the way it should have been.

Mr. Hoewing: I don't want to spend \$500,000.00 on it.

Mr. Klobukowski: Because we are going to run into the problem and like the whole point and then from the 92 Master Plan on as I recall the 96 one said the same thing is part of the reason for the swales was for recharge, so covering them up to me is not an option. And you can use the excuse that it can impact I&I but I thought part of the reason was to help lose the water table as well, now you probably can argue with evaporation and all this other stuff and the runoff and the time of year that you don't get a lot but whatever we get I think is needed within the Town borders and I think in a way if we are going to do it we ought to do it right, I don't like spending \$500,000.00 but and maybe we can defer some of that cost because if we need fill maybe we can get it from Kettler or Winchester when they are digging stuff up or they can put a pile somewhere for us to use to put in there to fill in but lets do it right and not have to go back and create another maintenance issue for the Town, you say oh plant some pachysandra well who is going to maintain the pachysandra, who is going to maintain because that is another expense over not 1 year or 10 years but forever.

Mr. Hoewing: (inaudible) cost because of the sidewalk and the curb and gutter we put in?

Mr. Kuhlman: That was my question. Aren't all the problem areas where we put retrofitted sidewalks?

Mr. Strong: Yes.

Mr. Klobukowski: But wait a second when you say put in the sidewalks its how they are put in.

Mr. Kuhlman: I'm not disagreeing.

Mr. Klobukowski: You make it sound like sidewalks is a dirty word.

Mr. Kuhlman: No, no, no, Jerry the point is the Town went out and retrofitted the sidewalks to the property and it was a great motive but like John said it is supposed to have curb, grass strip, sidewalk, and then a foot before the grade, mine don't, the grade starts right at the edge of the concrete, its start going down, the only reason why it is

livable because if you go over there and look on Hughes Road if I were a property owner over there I would have been screaming along time ago with the way those swales ended up after those sidewalks went in.

Mr. Klobukowski: Hughes Road or Westerly Road.

Mr. Kuhlman: Hughes Road I would be screaming along time ago, they are steep, they are deep, and that is why last year when we started talking about sidewalks again I was on record saying I will never vote to build another sidewalk that that swale is going to be like that again. I am so proud of what we did up on Spurrier and that is why I am hesitant to go along with this.

Mr. Klobukowski: Well considering the resistance we had to go forward with those sidewalks a lot earlier on anyway but bottom line is I think we ought to fix it and we ought to fix it right and if it costs us money unfortunately it should have been done right the first time and the Town was responsible for doing it right the first time so unfortunately we got to redo our work.

Mr. Kuhlman: Nobody is arguing with...

Mr. Klobukowski: Just like the sidewalks on Tom Fox.

Mr. Kuhlman: Nobody is arguing with partially what you said, my question and Link's question is, there are 2 options to look at, there is the option of planting ground cover, what is the cost of that, what would the homeowners feel about that, and the other option is what is the engineering estimate to close it in if that is possible, you say about the recharge but in my unengineering mind I mean that water is going to a stormwater pond we are just relocating the recharge.

Mr. Klobukowski: But not all of it goes to stormwater pond, not every rainstorm we have...

Mr. Kuhlman: I don't know where else it is going to go. If it goes into that pipe and the pipe goes to a stormwater pond that's where it is going to go.

Mr. Klobukowski: Well not every rainstorm is a gully washer, not every storm we get is...

Mr. Kuhlman: The point is Jerry we are not losing any recharge it may be redirected someplace else but you are not, just because you put water in a pipe doesn't mean you are going to lose recharge.

Mr. Hoewing: John are there particularly bad houses like 5 or 6 that really are so steep they should be fixed perhaps we could look at some kind of another option.

Mr. Strong: This is prorated at the (inaudible) so you can see a block at a time, if I were to do it you would probably want to look at it at a block at a time and that way the neighborhood wouldn't be disrupted.

Mr. Klobukowski: But I thought what you were asking was can you fix one or two that are the worst.

Mr. Hoewing: What I wonder is are there a couple that are really, really steep that look like they were really beyond most...

Mr. Yost: There are a handful that are.

Mr. Hoewing: Yea and if those, we can fix those, and do some other alternative that is cheaper for the other ones that weren't as bad. It is just \$500,000.00 to essentially fix something where, it needs to be fixed I admit that, but it is mainly a maintenance issue so either we can try to maintain it with some kind of planting and go back and trim it every year and if we spend \$5000.00 a year Jerry that is still going to take us 50 years to get

close to \$500,000.00. It just seems like a lot of money to fix something that is unsightly I admit in some places but not really hurting the Town.

Mr. Kuhlman: I think what I am hearing I haven't heard anything out of Jim what are you thinking?

Mr. Brown: Just thinking if there is some sort of phased in approach but I think no matter what we have to come up with a comprehensive game plan first and then figure out how to phase in second and that means coming to an agreement on what the actual plan would be.

Mr. Kuhlman: I think then what we need to do is Staff needs to go back, look at the planning option, try to talk to some of the property owners, go to the worst ones to see if that would be acceptable to them. Then also plantings of some type, then the second thing important to some of us are arranging and staging and whether it makes sense or not I mean if there are 7 houses on the block and 3 of them are terrible it might be just as well off to do all 7 of them but how to break this up a little bit more than \$500,000.00 in one swoop and I am very curious to see what an engineering number is for putting it in pipe

Mr. Yost: We talked about several --- I mean 2 different drains at least on some properties and less for less...

Mr. Kuhlman: Yea but I would still like to see how much.

Mr. Klobukowski: You gave us an estimate the last time we talked about this.

Mr. Yost: Yea you gave us a price it was like double that if I recall.

Mr. Kuhlman: I'm not like you I don't walk around carrying every single paper you ever...

Mr. Klobukowski: I don't walk around I just remember that he gave it to...

Mr. Kuhlman: Well then I would like to have it.

Mr. Klobukowski: Bottom line is before we start having engineers put pen to paper and start drawing I think we ought to go to each individual property owner...

Mr. Kuhlman: And what are we supposed to ask for?

Mr. Klobukowski: Well no you said lets go ahead and start engineering and ask for cost, before that I want to make sure that if we are going to do this the process is we talk to the individual property owners first and then we come back here and see what they say and then we decide.

Mr. Hoewing: I suspect if it is not those 3 or 4 that I saw that are really unsightly, that are really deep like the Grand Canyon, other homeowners as long as it is pretty plantings will be like no maintenance what do I worry about what do I care I don't use that swale anyway, they don't.

Mr. Kuhlman: Well there is a few of the property owners that are getting up in age and mowing this swale that we have created is a pain and I think the thing to do is go back.

Mr. Yost: It would be easier for us to mow it than to put plantings in.

Mr. Kuhlman: Well I understand but then we have Preston's statement that he is strapped and we are going to have to hire somebody else, there is a financial implication there but I think we need to look at that implication, the plantings and whether some of these property owners would accept that, and then the staging. And I would like to have the paperwork back on the piping.

Mr. Klobukowski: On the plantings some of these plantings you put in stuff and stuff grows strictly on the surface they don't hold any soil in place not like grass does to a degree so and we have enough droughts around here where those plantings will die and

the first gully washer that goes through is going to erode all that soil, I guess I am saying is there something that we could plant that will take the drought and secure the soil.

Mr. Yost: Nothing is easier than grass.

Mr. Klobukowski: Pardon?

Mr. Yost: Nothing is easier than grass.

Mr. Klobukowski: Right.

Mr. Kuhlman: We could plant navy people. All right so that is the game plan?

Mr. Klobukowski: So Wade how long do you think it will take you to survey all the property owners?

Mr. Yost: I will write something up this week and try to get a letter out to all of them is what I want to do for feedback I mean it depends how responsive they are. I could make up a questionnaire and hand deliver to each house I don't know.

Mr. Klobukowski: Yea I think that would be an excellent way to do it. And then make sure you check off when you get a response.

Committee Reports

Mr. Kuhlman: All right thank you John. Moving on Committee Reports Planning Commission Mr. Coakley.

Mr. Coakley: George Coakley Chairman of the Planning Commission. At our last meeting we had two preliminary exceptions that we were looking at, one was for a wind turbine in the central business district at John's Hardware Store. The other one was for a landscape contracting business in the RDT which is the MacKenzie property over on Cattail Road and we also reviewed the Master Plan amendment with the growth element.

Mr. Klobukowski: The turbine how tall is that going to be?

Mr. Coakley: Approximately 60 feet.

Mr. Kuhlman: But 60 feet to the motor and the blades are 12 feet so you are talking 72 feet maximum height.

Mr. Klobukowski: So he has to have a falling circumference of 72 feet or radius of 72 feet all the way around that right?

Mr. Hoewing: No.

Mr. Coakley: I don't believe there is a requirement we would have other than what we would require for safety.

Mr. Klobukowski: Well that is just it I don't know if it is different than towers but for every foot of a tower you would have to have a foot of clearance in a 360-degree area.

Mr. Hoewing: That is not what the engineer said.

Mr. Klobukowski: The point is it may not snap off at the base and fall nice and neat you know cut off right at the ground and fall laterally, it could break in half I don't know...

Mr. Coakley: Well we raised that issue I'm not sure if, I don't believe there is a Town's requirement for that.

Mr. Hoewing: No.

Mr. Klobukowski: Is there a standard, the Engineering Standard I can't think of what that is that lays out this stuff because sometimes there is international or US standards that specify that things should be adhered to, just because there is no Town standard doesn't necessarily mean we should just jump into something and say well there is no Town standard we can do whatever we want or he can do whatever he wants.

Mr. Kuhlman: That being in the CBD are you deeming that as a requirement of a public hearing?

Mr. Yost: Yes.

Mr. Kuhlman: All right and for anybody's information that wants to see approximately how tall this thing will be the bell tower on the Catholic Church is 70 feet in the air to the tip of it.

Mr. Hoewing: There are 3 out in Dickerson you can see them there as well.

Mr. Kuhlman: All right anything else Mr. Coakley thank you. Parks Board?

Mr. Brown: Parks Board has not met since our last Commissioner's Meeting but we do meet a week from this Wednesday night.

Mr. Kuhlman: CEDC?

Mr. Yeatts: We did not have a quorum.

Mr. Kuhlman: Ok.

Mr. Klobukowski: I have a question. The Parks Board I read in the synopsis in the paper that Mr. Davis writes the Monocle that you are considering 38 lights around the path.

Mr. Brown: That was the discussion.

Mr. Klobukowski: I just happened to find the plans for the park the other day going around rearranging stuff and there is 35 holes or docks along the path and I was just curious, were you just going to replace the existing path lighting with new ones. Now I assumed those docks were lights maybe I was wrong I couldn't find the legend on the blue print.

Mr. Yost: Might be pretty close it was based on manufactures recommendation from the wattage of the bulb and no new wiring would have to be placed in because what is out there, all the connections into those lights just basically rotted so taking that system out and having a whole new system put in.

Mr. Klobukowski: Ok which we would put in conduit?

Mr. Yost: Yes.

Mr. Klobukowski: Ok and one other thing you talked about the lights along the poles, along Fyffe and Milford Mill, is that going to be looked at with respect to backdrop and the lighting that is already out on the street there shining in to the park.

Mr. Brown: I'm sure it is going to be but that is also being taken up by the CEDC correct?

Mr. Yost: Right there is 2 recommendations coming forward to the Commissioners for consideration for the budget, the Parks Board wants to have the 38 bollard style lights all around the parking lot, the CEDC does not have the bollard style lights but have 4 12 foot Manchester style similar to those in the parking lot on either side one on Beall and one on Fyffe in between the path and the parking lot to light the parking areas as well as part of the parkway, Jim is going to wrestle with that one.

Mr. Klobukowski: Oh ok that sounds like an option.

Town Manager's Report

Mr. Kuhlman: All right Town Manager.

Mr. Yost: Lets see last weekend the water department was very busy with that cold air that came in, we had several broken water pipes, frozen water pipes especially with the Meadow Valley Townhomes a lot of pipes were freezing in the walls and in the front of the houses, meters were popping, and they did have one 8" water main break, I received a knock on my door at 3 in the morning and it was right outside my door.

Mr. Hoewing: What do you care you are sleeping.

Mr. Kuhlman: Devon said he had to do hardly any digging it was already dug. Yea I went down and saw that.

Mr. Yost: Next thing our new wastewater permit we have a tentative determination, a public notice is going to be going out in the next two weeks actually and if they receive any written requests for a public hearing that is open until the 26th for anybody to request a public hearing on it. Basically the difference in the permits are only going to be total phosphorous limits have gone way up to a .3 where they are at 2 right now parts per million for a monthly average and the total nitrogen we have a 9,137 pounds per year and that is actually calculated off 4 milligrams per liter multiplied by 750,000 gallons per day times 8.34 pounds per gallon of water so we can meet the 4 milligrams per liter per day, really the only thing we need to watch is to make sure our flows the average doesn't go over 750,000 gallons per day on an annual basis that would, even being a permit of 4 milligrams per liter if we go over the flows the pounds will go over for the year so that is the new thing they are doing. The thing with the phosphorous that is also measured in pounds per year, 685 pounds per year. Little bit new limits and new strategy to it but it is what they are doing with all wastewater plants to reduce the limits off of the bay.

Mr. Klobukowski: It seems like we are operating under the assumption or the presumption that the limits have been set moving forward with ENR and to what we would have to meet.

Mr. Yost: And that is what this is.

Mr. Klobukowski: That is those limits?

Mr. Yost: Yep.

Mr. Klobukowski: It is not that they haven't modified the original ENR limits?

Mr. Yost: No, no this is actually in writing what they will be but measured in pounds per year.

Mr. Klobukowski: Ok.

Mr. Yost: So they are watching everybody's flows at the same time rather than just a measurement to --- the concentration.

Mr. Hoewing: So this actually could be a cutback for some towns depending on the total flow they got.

Mr. Yost: Right exactly right.

Mr. Klobukowski: And right now we wouldn't have a problem with the ENR right or we would?

Mr. Yost: No we can actually meet 3 milligrams per liter for concentration for total nitrogen fairly regular, but 4 is going to be what we need to, we don't want to go over that, you know if we get a 5 on one month we drop it down to a 3 then that could average out and we will be fine as long as we don't go over the pounds per year that is where the...

Mr. Klobukowski: Ok what is the smallest we have ever gone as opposed to the highest we have ever gone?

Mr. Yost: In milligrams per liter or...

Mr. Klobukowski: Yea I mean have we ever gone down further below the...

Mr. Yost: That is for Phosphorous, for Nitrogen we had a .2, John said .2 I don't believe him. That would have to be pretty diluted water that is very low.

Mr. Klobukowski: Ok I was just curious.

Mr. Kuhlman: All right anything else?

Mr. Yost: That is it and that permit will become effective July of 2010.

Citizen's Forum

Mr. Kuhlman: All right thank you. Citizen's Forum anybody, Mr. Behrend.

Mr. Behrend: Kurt Behrend Hoskinson Road couple things, one we wait with bated breath your Resolution of the swale issue as Jerry mentioned Tom Fox Avenue and having property abutting that road that had a fairly steep swale but in and Eddie we did scream about it as you recall.

Mr. Kuhlman: You what?

Mr. Behrend: We owners did scream about the sidewalks that were put in and the original 4 foot asphalt path inside the easements as you would recall those issues so there wasn't much screaming done, nothing else happened. So I look forward to seeing your solutions here and seeing the precedence you will be setting on that. On another note as a member of the Parks Board we approached the lighting issue for the park out here I know at least a couple of us are going to be sitting on that Board and very interested in how a recommendation from a non-charter organization in this Town, strictly an advisory creation of the Commissioners will have impact on park properties, that is our Charter to look at the park properties. We have reviewed many of the lighting considerations in there and having an independent source come in to --- the Commissioners is a little disturbing. Taking care of those parks is our Charter and we take it very seriously. We look at the character of the parks, we look at the needs of the community, the impact on the neighbors, many factors go into decisions and recommendations we put forward and having an independent source of input to the Commissioners sort of undermines the reason for having a Parks Board. As one of the 2 or 3 chartered boards, 4 I guess with the Sign Board, Zoning Board of Appeals, there are 5 that appear in the Charter, having a Board that is not in the Charter come in and have a direct impact and potentially impacting the parks is of great concern to us so we will be watching that as well.

Mr. Hoewing: I think we've already had an impact on the parks because a lot of the activity in the parks is actually done by the CEDC.

Mr. Klobukowski: Still it doesn't matter...

Mr. Behrend: But that is our...

Mr. Hoewing: Let me finish, let me finish, I also think that you are the lead charter organization and we should give you due consideration that doesn't mean that independent input from other places including citizens by the way that is independent input too, so it doesn't mean...

Mr. Behrend: It isn't Link it isn't and here is why because it is a duly constituted advisory board of the Commissioners granted, therefore it has a different status than just the citizens coming in, they didn't make any direct budgetary impact.

Mr. Hoewing: Its not any budgetary impact.

Mr. Kuhlman: Well that is what the Parks Board is, is chartered but it is an Advisory Board and I look at this differently I guess Kurt, I see that the Parks Board maintains the parks or oversees the parks but the CEDC is the group that uses that park a lot.

Mr. Behrend: And those things Eddie do come through the Parks Board and we do support them we have for years before the CEDC was created.

Mr. Kuhlman: Yea but the CEDC is the ones that staff it and run it and they are making a recommendation as they see fit and as far as the lights the Manchester style lights goes I mean that was one thing I said on the first night meeting after the election, it is too dark

up there when we had an election and there needs to be lights out there on that road, you are going to have people standing out there just like tonight people parking up there and trying to walk down here in the dark it is not safe.

Mr. Behrend: And we approached that and we have discussed it and I will reference to the discussion on there of our discussion on that. There are alternatives to a 12-foot high light, it casts a lot of light Eddie as I have brought up many times to this Board there is a lot of light pollution in this Town there are better alternatives.

Mr. Hoewing: I can entertain an option where the CEDC would go to you guys make a recommendation and...

Mr. Yost: They did.

Mr. Hoewing: Ok so that is what is happening right, they are recommending and they can still come in and say they may have projected it but here is our view, that is fine, you are essentially giving us the official recommendation, you took their recommendation under advisement and you are telling us no on what they said that is fine, but they can still come in and say we don't agree here is why.

Mr. Klobukowski: The thing of it is, is the Parks Board has always been open to recommendations, they have always supported individual groups coming to them, Kurt did a --- effort in going out to every individual organization with respect to Whalen Commons what did they like to see, what was the points that they would like to have it the park, what should it include, what activities could possibly be used, will the landscaping permit that, how many trees, etc., benches, arbors, all that stuff was discussed and I have to agree with Kurt when you have an organization that is non-chartered and established they can have a recommendation but they should have come and made the recommendation without prompting to the Parks Board not doing an end around and all of a sudden has to be asked to go to the Parks Board.

Mr. Kuhlman: Wait a minute the lady came to the Parks Board...

Mr. Klobukowski: It was only after the issue was raised.

Mr. Kuhlman: (inaudible) Jerry and say that the CEDC did not come to the Parks Board with a recommendation.

Mr. Behrend: (inaudible) my concerns Eddie and I am glad they came. We always welcome people coming and talking to us absolutely. My concern is I am watching and I have seen it on several things and yes they use the park and yes it has been organized, great effort, love what is going on with it, things the Parks Board used to take full control of but you have got another venue with that fine, I see influence into the parks that is not coming through, yes they did come to the Parks, if we come with an alternate decision, well all of a sudden its "we didn't like the decision, they didn't take our decision, so we are going to come directly to you", I have an issue with that. That is the same thing as Planning saying well "you are not doing what we want Commissioners so we are going to go to the State and we are going to do it that way" we order you to do something the way we want it done...

Mr. Hoewing: Why don't you do it this way Kurt, I don't have any problem with the CEDC not testifying if you guys have concerns about that, why don't you at least tell us here is the recommendation we also got other recommendations including citizen recommendations put them all in there saying we did not accept these and here is why, I am fine with that.

Mr. Behrend: I will reference you to our discussions, I know you guys keep minutes, I will reference those discussions, I know Wade brings forward our reporting on that, I would be delighted to talk with you offline, I am not going to take up more public time on that where we went through with that.

Mr. Klobukowski: I would like to make one, sorry to interrupt you Kurt, one point is yes they came to the Parks Board, they came only after they were asked to come to the Parks Board, that should have never ever happened, they should not have been reminded that the Parks Board is in charge of the Parks, and just because they put events on in the Parks but that is like saying the owners of the Verizon Center don't have any responsibility or anyone can come in and use the Verizon Center for whatever they want, they get to choose what goes into the Verizon Center what events are held there, I mean to me it seems like the cart is trying to drive the horse instead of the horse driving the cart and I think the Parks Board...

Mr. Behrend: The full name is Parks, Recreation and Streets.

Mr. Klobukowski: That is right.

Mr. Behrend: And again great effort from the CEDC I love what you guys are doing in that respect putting more recreation in the parks I love seeing the parks used.

Mr. Yeatts: I can see how both of you would have that opinion and I know that the CEDC is a relatively new group and I am not aware of a copy of Roberts Rules of Order that are used in our meetings but the feeling was to share the impressions of the committee and its citizens who have actually been using the parks and I don't think there is anything that can be read into any of these actions in any way trying to do an end around on the Parks Board...

Mr. Behrend: Directly in Sir with the terms of the CEDC coming with a budget recommendation for lights in the parks, that is our purview, now if you want to come as a citizen and say what you want to say great but you are coming as a Commissioner organized body to say Parks Board didn't agree with us so this is what we want.

Mr. Klobukowski: It would sort of be like what happened with Bodmer Park we took all the recommendations of the various residents, parents, interested parties as to what equipment should be in Bodmer Park and we listened to everybody and we put together a package, we didn't have all of a sudden some outside group saying oh no you can't do this or you shouldn't do that, I mean that was their purview and they did a darn good job on Bodmer Avenue, everybody complemented us, every parent I ever ran into whose child used the park said it was a great thing what we did, so I think a lot of what they have done and I know I am probably going on here to a degree but I think what the Parks Board does and has done is a very good job.

Mr. Behrend: This is not meant, and I apologize for coming out of the conversation, it is not meant to be that Tom, it is something we need to work hand and glove with but ultimately we are the Body that is charged in the Charter with responding to you all with how the parks should be operated and run and lighting is included in that, safety, pedestrian safety is in our Charter, as some of these other gentlemen will know I am very vehement about both defending the rights of the Parks Board, the progress of the Parks Board, and pushing for what is right for the people of this Town as the 7 of us see it and it gets a little under my skin I guess when I see alternate forces coming in who are operating on different agendas.

Mr. Hoewing: Do they actually have a budget number?

Mr. Yeatts: I'm not aware of that.

Mr. Hoewing: Look you guys are the Parks Board, you recommend us to the lighting, we are going to take your recommendation as the primary recommendation and if we decide we don't like it then we decide we don't like it.

Mr. Behrend: I am going off a comment that was just made here of the CEDC is coming in with a recommendation for these kinds of lights the Parks Board coming in with a recommendation for these kind of lights, that presents an issue.

Mr. Kuhlman: Anything else, thank you Mr. Behrend. Mr. Coakley?

Mr. Coakley: George Coakley, a member of the CEDC...

Mr. Yeatts: The Press is getting happy there must be confrontation.

Mr. Coakley: As a member of the CEDC and also a staunch defender of 66B and the Planning Commission purviews I apologize to the Parks Board that we certainly should have gone through the Parks Board with any recommendations that we had on lighting.

Mr. Yeatts: But did the CEDC have an official recommendation with budgetary implications on lighting or was it simply on usage that you know wouldn't it be nice if we had this type of light.

Mr. Coakley: I am not sure because I was traveling and missed that meeting and I came back and found out that they had recommended some lighting differences in the park and stuff and I assumed that they had gone to the Parks Board.

Mr. Yeatts: I think I was in that meeting and it seemed to me that a member of our committee was going to testify at the Parks Board.

Mr. Yost: Right Mary Beth did.

Mr. Yeatts: Right and she was not greeted too warmly by one member of our Commission.

Mr. Klobukowski: No she wasn't and I apologized to her too.

Mr. Hoewing: So technically then we are not going to have 2 recommendations we are having a Parks Board recommendation right?

Mr. Yeatts: To the best of my knowledge that is where the CEDC's involvement ended, based on our usage here is what we think.

Mr. Coakley: So my public apology should be muted somewhat by the fact that the Parks Board treated our member...

Mr. Klobukowski: No the Parks Board did not, I did, lets not blame 6 other guys for what I did.

Mr. Kuhlman: Enough, enough, enough. Anybody else?

Adjournment

Mr. Kuhlman: Entertain a motion for adjournment.

Mr. Yeatts: So moved.

Mr. Hoewing: Second.

Mr. Kuhlman: All in favor?

All: Aye.

Mr. Kuhlman: We are adjourned thank you.