

**POOLESVILLE PLANNING COMMISSION
MEETING OF JULY 15, 2009**

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

Call to Order

Mr. Coakley: The Planning Commission Meeting of July 15, 2009 is called to order. Present are all Commission Members along with the Town Attorney and Town Manager. On the agenda tonight are announcements, citizen's comments on agenda items, approval of the minutes of June 10, 2009 and under old business Road Construction Ordinance and Alternative Energy Ordinance.

Announcements

Mr. Coakley: Are there any announcements?

Citizens Comments on Agenda Items

Mr. Coakley: Would you have any comments on any of the agenda items?

Approval of Minutes

Mr. Coakley: Ok do I hear a motion to approve the minutes of June 10, 2009?

Mr. Bachman: On page 2 of those minutes where the minutes summarize Mike Conley of Winchester Homes statement, see where it says Mike Conley Winchester Homes spoke, I would like to suggest that we replace the verb argued with the verb stated because I think it is a characterization of his comments...

Mr. Coakley: What line is that?

Mr. Bachman: First line.

Mr. Coakley: Oh ok I think that is a good idea, anyone have any other comments on that? Also is there an explanation for the fact that we really don't have minutes we have a summary?

Mr. Yost: The machine just didn't work. Either I hit the button or the back came unplugged something happened with the machine so it just didn't record.

Mr. Bachman: Can we have a comment to that effect in these minutes before they are approved?

Mr. Coakley: No it might be a good idea though to include that, that we do have a summary instead of a transcript.

Mr. Yost: Sure.

Mr. Bachman: Yea just something to that effect.

Mr. Coakley: Ok with those changes to we have a recommendation to approve the minutes of June 10th?

Mr. Bachman: I move we approve the minutes of June 10.

Mr. Stump: Second.

Mr. Coakley: All in favor?

All: Aye.

Old Business

Mr. Coakley: Ok no new business. Under old business road construction ordinance and we have a couple different opinions on that. I have a question Wade the agreement with Winchester is that for the total site plan not a phase, it is not phased like the Kettler project.

Mr. Yost: Yes right.

Mr. Stump: Start with an easy question Tom Kettler had proposed a set of minor modifications to John Strong's plan, I remember one of the request he had was that the developer be given the option of using some kind of --- cement to stabilize the ground, I don't know if we re-addressed that or did John have any additional comments?

Mr. Yost: No John was fine with that, that is typical in the County now if we have a spot that doesn't meet the criteria it automatically goes to that for the 12 inches and mix with the concrete so that would still fall right in line. And this would be our minimum standard I mean Tom had also said that 3 and then a 1 inch and 1 inch layer he said typically machines it is more than an inch and we said well that is not a problem so this is the minimum standard that we are looking at so they could put a road down. Another thing with this whole issue here, really I think there is 2 issues, one is just taking a look at a new standard and putting in place and the other is are we going to go ahead and have the plans that have already been approved changed. Now the Commissioners are going to meet on Monday night in an Executive Session to discuss this issue also because typically they are going to have the ultimate say on it, its not even retroactive because the roads haven't been graded to any level whatsoever, they have paved a certain portion they are stopped and they are not going to pave for quite a long time now because they just wanted to pave in front of the couple model homes they have up.

Mr. Coakley: That is why I was curious whether or not the agreement was a phased or a total...

Mr. Yost: Yea it is a total agreement. And the Commissioners actually are the ones that approve it and enter into the agreement.

Mr. Stump: They are 2 related separate issues.

Mr. Coakley: I sort of have mixed emotions because I think we don't know, a lot of our I&I problems I believe are the result of less than standard or lacks application of whatever standards existed at the time when Wesmond was being built and we are paying the penalty over the last 20 years for actually my personal opinion was 25 years ago 30 years ago it all should have been dug up and redone and I think it would have been less costly in the long run but that wasn't the route but I think it is a good idea to have the upgraded standards my concern is I am less than easy with making it retroactive because putting myself in the same place if I entered into an agreement with the Town as a business person if I was going to bring a business into this Town then I might be a little hesitant in the future if the Town changes in midstream to wonder you know I have made a business plan and this is what I am expecting with the existing regulations in place and stuff, you might be a little leery of going into something knowing there is a past history of changing in midstream.

Mr. Hoewing: It is all true I guess the counter balancing argument to that is that these standards have to deal with good quality, improving quality and reducing costs for the Town in the future, it is no different than safety changes in electrical lines for example, if they are in the middle of building something and they find some kind of new wiring I

think they would have to apply it whether they want to or not because of safety. This is almost the same thing this is about essentially maintenance not us having to repair it after they get finished with the development. I can see both arguments. The other thing that irks me in reading this letter there is some confusing stuff as a result Winchester relied on the PIA in structuring its financing and construction schedule for the project, oh it did, the PIA also include the impact fees by the way somehow those got changed, I don't know a little bit sweet for me but reading this thing.

Mr. Bachman: The impact fees were changed?

Mr. Hoewing: Yea we changed them and they came in and they requested it, they said that they had to be changed because the circumstances had changed and I agreed, the financial situation has changed dramatically and we did accommodate them.

Mr. Yost: Last month we did, they were lowered from \$17,000.00 per home to \$10,500.00 per home.

Mr. Hoewing: And they are arguing the PIA is a contract and its unchangeable basically, you can't make any changes.

Mr. Bachman: Did our Town Attorney say that the PIA was a contract and unchangeable at the time that Winchester came in?

Mr. Hoewing: No he didn't.

Mr. Wright: I did send a memo saying that the legal analysis is that developers cannot expect that there are going to be no changes and you have to pick a point at which the rights to continue to develop on your existing requirements are vested and the point of which the Courts have decided they are vested is when construction begins and the main cases that have said that no amount of planning or investment in the plans or calculations of what it is going to cost amounts to a vested right to develop under those regulations and so unless you have actually begun construction their rights to develop are not vested and yes that does present some inconvenience for developers and maybe some extra costs, the Courts have recognized that but we are not talking about an agreement between private parties we are talking about the Governments right to regulate and to legislate for the health and safety of the Town which we have in our Constitution so we are not just talking about we entered an agreement we are stuck with it, we have a responsibility to the citizens of the Town to enact legislation that is going to protect them and be in the best interest of the Town and the Courts have recognized the Governments right to do that.

Mr. Coakley: So the questions are should we agree to increase the requirements as recommended by the Town Engineer that being should we make it retroactive and with the PIA it appears that it is probably legal to do it but is it ethical to do it.

Mr. Bachman: Can I make a comment on that?

Mr. Coakley: Certainly.

Mr. Bachman: If I read the letter from Steven Lauder the Attorney it closes with "In the spirit of cooperation Winchester will agree to improve the sub-grade by amending soils and --- in that area to the average quality of sub-base resulting in CDI's scored below 6", the Town Engineer is asking for a minimum of 7, how much has Winchester moved toward our amended potentially amended requirements by offering to do 6?

Mr. Yost: None. None whatsoever, no and as Mike Conley testified at the last meeting he said the average grade was around 7 now we talked about that a little bit because he had the exact numbers from each bore sample and there was some as poor as 15, he has

to average out over the roadways a little bit a quarter mile of pavement put down and they went ahead and paved over that 15 area and he is going to have to pull it up, we are going to make sure of that. But just because they are saying the average well you can have some really bad areas and then you have road entrances it is actually a rock ledge in there well say that is great there that is a 2 or whatever.

Mr. Bachman: So they weren't testing every 500 feet to determine the quality of the...

Mr. Yost: I am not sure exactly what the distances are but that is the distance John was recommending in our revised Ordinance.

Mr. Bachman: So this is a meaningless gesture on their part with no ok thank you.

Mr. Hoewing: And the other thing to think about is that if we adopt this it means nothing if it doesn't apply to the developments because there is not going to be any major developments after that so a few new houses here and there.

Mr. Yost: Yea Winchester is the only one that could be possibly bucking it because Tom Kettler said fine this is definitely what I plan on doing anyway and then the other roads at Anna Vinci is a small roadway there, they don't have the PIA yet so that is not a problem.

Mr. Bachman: What is the scenario, we know what the scenario is in the developers proposed amendment they will do what they want to do, what is the scenario if we task this recommendation from the Town Engineer, what happens then is it binding on Winchester unless they go to court and get a different determination.

Mr. Wright: We would need to make sure that it is clear that it is binding. I think it would be worth our while to clarify that in the legislation.

Mr. Bachman: Right but lets say the legislation said this is binding, what is the next step for them, do they have to build the roads according to our standards or can they go ahead and build them according to theirs until a court decides?

Mr. Wright: They would need to build them according to the existing new standards.

Mr. Yost: New standards yes because we would not allow, John Strong actually has to be out there and give the ok for them to pave, if they are not doing it by the standard it is not ok to pave they can't move forward without the inspection signature, the sign off.

Mr. Bachman: So what does the Town lose by trying to insert a higher level of quality to the road surfacing in the last 2 subdivisions, what does it lose by taking that step.

Mr. Hoewing: You get taken to Court that is the only thing that would be the issue.

Mr. Bachman: But until that was resolved could they pave the streets in the Winchester subdivision.

Mr. Wright: They would have to get a Court order allowing them to do it.

Mr. Sneed: Or we would get a Court order prohibiting them from doing it.

Mr. Yost: Right there would be a stop order basically on any paving unless they complied with our standards. They would spend a lot more money in Court than they would just paving the road correctly.

Mr. Stump: They will do that calculation and decide which way to go.

Mr. Bachman: Well it is --- money toward the Court costs to the tune of \$7500.00 per home, how many homes are they building?

Mr. Yost: 98.

Mr. Sneed: I mean in business these things come up all the time. I am not sympathetic to them this may be retroactively applied this happens all the time. Certainly we wouldn't be expected to, I don't think we'd be expected to apply a rule or Ordinance into perpetuity so lets say they stop construction for 10 years, would they then be able to

restart in 11 years and apply the same rules while history may have changed. It doesn't necessarily speak to me that say to be that it is an unfair issue I am not convinced I think it is a business issue and if we are legal in our decision than I don't know that it is an ethical decision either I am not sure I agree with that or see that.

Mr. Coakley: I didn't say ethical I said equitable.

Mr. Sneed: Oh I am sorry.

Mr. Coakley: Ethical implies a moral.

Mr. Bachman: Did we pass such an Ordinance with the repair and reconstruction of the existing roadways outside of the 2 subdivisions have to meet those standards as well.

Mr. Yost: No we do that now.

Mr. Bachman: So we already use the standard.

Mr. Yost: Yes when we pave, matter of fact the parking lot for the park that is being placed in the Stoney Springs subdivision we pay for it and we made them put the gravel base in and pave it to our standards. Anybody that is experienced in working in this area with these soils they just know that there is several pockets of clay where it gets very moist and you need a good sub-base and Tom testified to that when he was here Mr. Kettler.

Mr. Coakley: At the last meeting Mr. Kettler mentioned something about getting some info to John Strong on what I think he had a --- alternative recommendation to what the Town Engineer was recommending.

Mr. Yost: Yea he gave it to us. Did you guys get that last time in your packets because Tom handed them out and on the back side there is --- it still has 6 inch of aggregate base and instead of having a 3-1 and 1 on the paved portions it was 2 ½, 1.5 – 1.5. And I think John when he was looking at this he still said he wanted to see 3 inch but if it was 1.5 and 1.5 that was fine, this is the minimum standard we are looking at.

Mr. Coakley: So we would still prefer going with the 3 inch.

Mr. Kettler: Can I (inaudible).

Mr. Coakley: Certainly.

Mr. Kettler: Just for clarification. Tom Kettler 18201 McKernon Way, the alternate paving just to refresh our memories from last month, the primary reason I recommended it is all my paving people do not like to put an inch of asphalt down they just think it is too thin it doesn't I mean they basically don't do it, I haven't done it for and that is not to say technically and physically it can be done but it is just we don't like to do it and I hate to see a standard or not have the option to do something that we think is as good or better what happens with what I am talking about is the way asphalt is laid down you put 3 inches or 2 ½ whatever the spec is and the other pavement goes over top the secondary course goes over immediately. So you have got in my design you have got 4 inches of asphalt that you are running off of the 6 inches of stone which is basically what you guys are looking at now I believe because you guys are looking at 3, 1 and 1 so instead of and actually at the end of the day if you look at the if you add it up I ended up with a 6 inches of stone, 5 ½ inches of asphalt so actually you end up with a ½ inch more of asphalt by my design but that's what I think is makes sense I think that is the minimum design we may have more than that the stone may be thicker we may have to increase the asphalt all of that will be predicated on the geotech stuff but I don't see 3 inches or 2 ½ inches being the issue because again you are going to end up and that intermediate course is important because it is what we call a binder course which is basically sealing off the base course

which tends to have larger rocks, the intermediate course has got smaller rocks and it keeps the water from beading through and in our situation we would, Winchester too I would imagine, we will build for a year or two or possibly more off of the 4 inches of asphalt before we top because what you don't want to do is top the street right off the bat because then all of a sudden trucks come in and they drag stuff up and then at the end of the day we leave and the street looks like a mess, so that is why we usually but the top course off until the very end of the construction when people are moving in, well people are already in at that point, I am sorry people are living there but it is a minor inconvenience while the people are living in the community, things like the manholes up a little bit, we tend to put a little asphalt so you can go over it, snowplows I know are an issue where they come banging into that thing so we put basically an asphalt temporary cone around it, but I don't know if that is clarifying it for you but all I was asking for last month is basically the ability or the option to do these other alternates if they would be acceptable by the Town not to say that if you all adopt the standard you have that is fine with me, I just wanted to be able to do something else that we think is practically better.

Mr. Wright: Tom what is the practical matter when you are dealing with this paving, how close are the tolerances I mean how exact are you talking about when you are talking about putting down an inch?

Mr. Kettler: Well that is the problem if you put down an inch it could get thinner and thinner and what happens is we've had this in some communities, is where the pavement literally starts to slide, the top portion slides off the base course because it is not quite binding it gets too thin, so yea I am not sure to answer your question I am not sure the percentage is back and forth and again if you think about asphalt if it ends up being an inch and a half it may be coming out of the machine at 2 or something and then they are rolling it and rolling it and rolling it, it is getting down to the finished product is the inch and a half or in the case of the Town's spec the finished product is an inch and it is not and to do that you need very fine stone and the less stone in the mix the weaker the mix which is why again the State has a 1 inch mix, it is a superfine mix there are different terms for it but again I talked to 2 different contractors that I use a lot and neither of them want to have anything to do with 1 inch.

Mr. Wright: Well I was just wondering how much play is acceptable in the industry, are you talking like plus or minus 1/8 of an inch?

Mr. Kettler: Yea I honestly don't answer that I mean I can certainly check on that I don't know. Yea I just don't know what the answer, yea, yea you are right if an inch I don't know how but whether that can get down to 3/4 or 1/2 and still be in tolerance I would have to check on that. And I think that is the other reason frankly for the inch and a half is if it gets a little thin in a spot ok inch and a half, inch and a third, a quarter maybe, that is one thing but if you have an inch and all of a sudden you are down to 3/4 then you are really, I mean we are talking about giant asphalt pavers rolling down with rollers and compressing so it is not realistic to think it is going to be absolutely 1 inch all the way through so that is a good point but I will check on that and get back to Wade.

Mr. Yost: I think it is probably just as simple as I mean it is the same amount of asphalt the same amount of sub-base, which is really the most important portion we are looking at here, but just to say this is our minimum standard and it can be an equivalent as approved by the Town Manager.

Mr. Kettler: Right equivalent or better.

Mr. Yost: Right and John said yes it is very difficult to get that 1 inch and --- said I can't see how there is going to be some that is not perfect that is for sure.

Mr. Hoewing: How did you get an inch out of this Tom is it based on the amount of uncompressed you know basically get just looking at it, how do they get an inch, because when you roll it out flat it comes out to an inch but they must know basically...

Mr. Hoewing: Yea it is a wheel kind of thing it is coming out and if you are doing that inch of topping you move over and measure the edge of the asphalt to the edge of the curb you should see an inch there because and then you have a crowd in the road and they are layering it and they are coming in a couple passes, they normally can't do it in one pass, and you saw in my letter I had very specific mixes which my geo-technical engineer reviewed for me in relation to Poolesville and again Montgomery County standards and Montgomery County, State Highway has a mix, Montgomery County has a mix, you know we are kind of mimicking what Montgomery County is doing at least that is what I thought which is what the Town typically sort of defers back to Montgomery County standards when there is not a specific standard so which is where he came up with the original standard which calls for no stone which again as Wade said from last month I personally I mean I can't speak for Winchester but we would never do that ok.

Mr. Bachman: At our last meeting in June when we had the testimony from the representative of Winchester Homes had the Town already made the final decision to return the \$7500.00 per home?

Mr. Hoewing: Yea.

Mr. Yost: Yes.

Mr. Hoewing: It is not returning it we are just not going to charge them an impact fee going forward of \$17,000.00.

Mr. Bachman: So is that \$700,000.00?

Mr. Hoewing: It is a lot of money. It is well above a half million.

Mr. Bachman: And so he walked in here and then followed up with a letter from his attorney saying I am not going to (inaudible).

Mr. Yost: On every issue we are dealing with, with Winchester Homes it's a battle.

Mr. Bachman: Who is his boss?

Mr. Yost: I don't know Mike is the Vice President of Winchester Homes I am not for sure who his boss is.

Mr. Bachman: I mean my thought is there is 2 ways to approach this I guess there is 3, we don't --- up on our design and approve our road construction requirements; 2) we find somebody who is persuasive they could talk to and who could perhaps be an advocate on behalf of our point of view and look for them to say yes and what money we have wouldn't have to go to legal...

Mr. Yost: Potentially.

Mr. Bachman: Do we have any leverage with this company in any way besides this one?

Mr. Hoewing: Well we could certainly implement this, they have no authority over it, they just have to decide what to do and --- we implement it so and to be fair to them the impact fees it wasn't, we weren't giving them a gift, I mean we had to look at the way the impact fees, there is a formula that is very complex and it does change over time and the economics have changed, we also had built some buildings like this building that were part of the impact fees that were supposed to be used to pay for this building and we found another way to pay for it, so there was some justification in lowering it so I am not

arguing that that wasn't right to do but I also think they pushed the envelop very, very hard and try to go further than we thought was justified and they would have if we hadn't stuck by our guns and said well here is the final number we are going to live with. So I think you are going to find them to be pretty tough in negotiating I think we are better off just saying we are going to adopt this or not adopt it, I think it is reasonable, if Tom thinks, here is another developer saying it is reasonable, it is about the future of the Town too and maintenance of roads and knowing we have roads that have these kinds of problems already so I don't see it as unreasonable frankly. And they haven't built much of the road yet it is not like they have paved the whole, just a very small portion of it.

Mr. Yost: And his boss is probably a Board of Directors I would imagine.

Mr. Coakley: Yea but you talk about being equitable if it is going to be applying to the other developers there is an equity aspect to that also. Well ok so I guess the first issue is do we recommend increasing the minimum paving requirements to the recommendation of the Town Engineer?

Mr. Hoewing: Just a clarification though Wade you still like John's recommendation better than the recommendation we got from Toms even though his argument sounded pretty reasonable.

Mr. Yost: No that is what John said too and so I think that we need to adopt what John laid out for the minimum standards and then you could have equivalent...

Mr. Coakley: Equal to or exceeding.

Mr. Hoewing: Ok so those would be things you could actually work on.

Mr. Yost: Yes we can because this is going to be, this is not even going to really work in Town, this is more of a standard that we are going to propose.

Mr. Hoewing: Ok.

Mr. Yost: So I will work that up.

Mr. Hoewing: Then I support it.

Mr. Coakley: Ok now do we need a motion to make a recommendation to the Town Commissioners?

Mr. Yost: Yes.

Mr. Coakley: Ok then let me hear a recommendation or a motion on increasing the standards.

Mr. Stump: I move that we adopt the road section profile standards submitted by the Town Engineer with the stipulation that the contractors have to meet them as a minimum but they can exceed them at the Town Manager's discretion, does that make sense?

Mr. Yost: Yes.

Mr. Coakley: Or a slightly different mix possibly.

Mr. Bachman: What was the term of that you used at the front...

Mr. Stump: I just used what John had titled his original notice to us, the road section profiles.

Mr. Bachman: And in the letter is BCS Mid Atlantic, LLC. is that John's firm?

Mr. Yost: No that is Mr. Kettler's. John's was Huron it was another form like this that had all the base sheets, 3 different sections.

Mr. Coakley: And those are the sections for primary, secondary and tertiary.

Mr. Yost: Exactly.

Mr. Coakley: Do I hear a second?

Mr. Hoewing: Second.

Mr. Coakley: All in favor?

All: Aye.

Mr. Coakley: Ok now I need a motion as to whether we feel this should be made retroactive.

Mr. Wright: Well just for the record I would not agree to the term retroactive, retroactive in my opinion...

Mr. Coakley: Or effective upon.

Mr. Wright: I would say it would be effective by any road that has not actually commenced construction.

Mr. Coakley: Ok.

Mr. Wright: Retroactive to me would mean you've got a road in, you have to tear it up and make it fit the new standard which we are not asking.

Mr. Hoewing: The other thing is I think it does sound like it had the implication as if this is a contract or something and it is not a contract, I think that is another reason I don't like the term, so construction going forward or whatever, new roads is good. And I believe it should myself.

Mr. Coakley: Would you like to word a recommendation?

Mr. Bachman: Or Alan do you want to recommend the wording because this might have a legal quality to it.

Mr. Wright: Well we are at the recommendation stage we can modify the language a little bit as the Commissioners look at this but I would say or just that this road construction amendment apply to all new construction that has not, the construction has not actually begun as of the effective date of the Ordinance. And I would in thinking about it I would think it would be appropriate to include the standards in the Code, the present language is that road construction shall meet the standards of the State, County or Town whichever is applicable and we don't have any at this point, we follow State and County standards and now we are proposing a Town standard so I would suggest that we would follow the language that is currently in there and just add except where it is a Town road the following standards will apply and insert the new road standards. I will draft something that will have the proper Ordinance form.

Mr. Hoewing: So it has to still be voted on by the Commission anyway.

Mr. Wright: Yea.

Mr. Hoewing: So we can word it when we get those.

Mr. Coakley: All right well how would you like to word our motion right now.

Mr. Hoewing: That we recommend to the Commission that they apply these paving specifications and requirements, paving standards is that the way to phrase it, paving standards to any roads that have not commenced construction or a portion thereof, and that they be adopted as part of the Town Code as well.

Mr. Sneed: Second.

Mr. Coakley: All in favor?

All: Aye.

Mr. Coakley: Ok anything else on that Wade?

Mr. Yost: No we are good.

Mr. Coakley: Ok second item, Alternative Energy Ordinance.

Mr. Yost: Well I added a couple things to the sample use chart and we can take a look at that and then Alan also suggested changes on the other proposed amendments that we

talked about at the last meeting, there were several different ones, from Christmas Tree sales to (inaudible). We did have a chance to meet with some solar people and some geothermal people, really just to get an understanding more of their business and we want to create these Ordinances I think and not prohibit them from doing this business, so it was a good learning experience and I jotted down quite a few things and emailed you guys some things we learned about a far as the solar panels. Also there was a letter from Cathy Mihm on geothermal, I asked her she is the hydrologist scientist that we use for the Town and she didn't really like the well system being drilled into the aquifer to much, it poses potential hazard not the chemical itself but anything I guess getting down in the --- and the aquifer.

Mr. Coakley: I like closed loop horizontal.

Mr. Yost: Yes exactly.

Mr. Hoewing: Do we know what they used for the medium, is it some kind of a chemical.

Mr. Yost: It is Propylene Glycol and it is a food grade type I put that in here also. It had to be a food grade non-toxic.

Mr. Coakley: I noticed one thing on the small wind generator standards, I didn't see anything in there about a fall area, were we going to include any kind of diameter like 1.2, 1.5% times the height of the tower.

Mr. Yost: Well the only thing was the setback, that would be the height of the pole itself and that was the only thing that we included so far. So that would just keep it from falling on somebody else's property but not your own.

Mr. Hoewing: And height means all the way to the tip of the blade when it is at the top.

Mr. Yost: Yes and I think yea I did have that on there.

Mr. Wright: Right pole mounted system height on page 2 under definitions, ground to tip of the blade at its highest point.

Mr. Coakley: And one other thing under definitions you had for solar systems you had private and commercial and for commercial you had large scale with multiple generators for grid use and then for private you had ground or roof mounted for onsite power use and then under wind generation you also had construction wind energy systems are for onsite consumption only. Well most of them they use some of it onsite but there is also the energy companies give credits for feeding back to the grid even on the less than 5 kilowatt units.

Mr. Yost: Right my intent was to take a look at that language word step it but the intent is just so somebody is not having a commercial operation and supplying other people with it. Within the RDT you see a lot of them coming up and there are actually people that are looking in Montgomery County to put a windmill farm up so that is why I read an article and that is why I included that not that we have one around here but it is happening in other areas.

Mr. Coakley: So I think we need to change the wording the way it is now it implies that you can't sell back to the grid and I think locally now either solar or wind or maybe both I think you get like 45 or 65 cents a kilowatt hour for...

Mr. Yost: Selling it back.

Mr. Coakley: Selling back to the grid yea.

Mr. Yost: So we could just say for non-commercial.

Mr. Stump: Can't quite say non-commercial.

Mr. Coakley: Yea I think non-commercial would (inaudible) that. Yea I think non-commercial for non-commercial use only.

Mr. Wright: How bout residential.

Mr. Yost: Well no because Selby's could put one up.

Mr. Stump: Right the point is they are trying to provide --- power to defer the power for that specific business as opposed to being in the business of making money.

Mr. Yost: Exactly.

Mr. Stump: Yea how to phrase that.

Mr. Yost: And it might not even be an issue but just trying to think of all angles.

Mr. Stump: You talking about that line, construction of wind systems are for onsite consumption.

Mr. Coakley: Or for non-commercial use only.

Mr. Stump: But John is putting one up for commercial use.

Mr. Coakley: Well...

Mr. Hoewing: He's not making money on it he is trying to save money.

Mr. Coakley: Yes and no I mean he is using it for his own consumption as well as a credit.

Mr. Stump: But my point is it's for onsite consumption.

Mr. Hoewing: Yea.

Mr. Stump: His credit is for that onsite consumption so I don't think that, at first I agreed but I'm not sure that this really needs to be changed.

Mr. Wright: I doubt that any of these units are going to overall are going to exceed the use on the site.

Mr. Yost: I agree with that.

Mr. Bachman: The term non-commercial on number 9 would have the effect of not --- left there excluding its use in the CBD.

Mr. Stump: It would exclude anybody but a private dwelling from using it as a matter of fact we could argue that the Town couldn't use it.

Mr. Wright: What number are you looking at?

Mr. Yost: Number 9 on the very first page.

Mr. Bachman: Comment number 9 as it relates to wind energy systems are for non-commercial consumption only. That change from onsite would effectively mean it can't be used in the CBD commercial business district.

Mr. Wright: I think you are pretty safe with onsite I think that is the best you can put in a sentence that would say this does not prevent the owner to take a credit for electricity that is fed back into the system.

Mr. Coakley: How bout if we put onsite consumption credit.

Mr. Yost: Credit what.

Mr. Coakley: Just credit because in essence that is what they do, they credit back to your account any purchase that they do to supply the grid and I think that would certainly later on if anybody reads it get the knowledge that we considered that and that that is what that applies to.

Mr. Stump: For onsite consumption or credit that is what you are proposing?

Mr. Coakley: Yes.

Mr. Stump: That makes sense.

Mr. Bachman: And Wade where you --- in the various things for the various zoning codes those remain --- or is that your recommendation.

Mr. Yost: Say that again on which one I am sorry.

Mr. Bachman: On the Use Chart you have the matrix here and across the top is the various zoning areas of the town and on the left side it is small wind energy systems and solar system and you filled things in...

Mr. Yost: Well I did and I pulled one out today that is blank.

Mr. Stump: You should have a blank one up there someone dated today.

Mr. Yost: Yea today I sent it out there.

Mr. Hoewing: So the way you have got this worded though Wade right now they just have to come in and get a permit for wind energy systems not for solar or for geothermal.

Mr. Yost: No and see what I did on the third page use permits that is going to this use permit will be for every all of them and in the number 1 requirements it will say no get rid of wind, no energy systems shall be. No I made sure we had a blank chart this time so.

Mr. Bachman: At some point we are going to have a filled in chart.

Mr. Yost: Absolutely.

Mr. Sneed: Do you have a blank chart?

Mr. Coakley: It should be in the one that was in your package today.

Mr. Yost: I sent it to everybody today.

Mr. Sneed: Ok.

Mr. Hoewing: How much more time do we have to make a decision, we had 6 months right?

Mr. Yost: This has to go to the Commissioners next month.

Mr. Hoewing: Next month ok.

Mr. Yost: This particular one.

Mr. Hoewing: --- other things or those are not restricted that way.

Mr. Yost: Correct, this needs to have a public hearing on it once we --- they are rather simple.

Mr. Bachman: What are we commenting on, on this then I am trying to figure out?

Mr. Coakley: We need to determine what blocks we want to fill in, in the --- of the chart.

Mr. Bachman: You wouldn't want to substitute you are filling in the same chart. The chart at the top just shows where you can do it but it doesn't show the requirements for doing it.

Mr. Yost: Correct the same way the --- is structured right now. You are right we need to take each one of them the small wind energy, the solar system and the geothermal and just break them down. The later of the two is probably the easier one to deal with.

Mr. Sneed: Say that again.

Mr. Yost: The solar and geothermal are pretty straightforward they should be pretty easy to look at, like the geothermal on page 3 I only have 3 things that are standard. Only horizontal closed loop systems are allowed; must be installed by a certified installer; and the system must use non-toxic food grade liquid chemicals. And they still have to comply with submitting the whole plan and everything else in Section A and B. And the only thing with that you just want to have it going to the backyard, can it be in the front yard, we didn't discuss any of that, I don't know how much land is required depends on

the size of the system, I don't see any reason you'd want to have to preclude not using the front yard.

Mr. Sneed: So do you want to start at the bottom and work up geothermal first? So to your question of how much space does it take, does that affect the size of the lot so if we are saying horizontal, closed loop horizontal.

Mr. Yost: It is like a 4 foot trench a 5 foot trench and depending on the requirements of the size of the structure that its going to be heating and cooling so it varies every structure what the requirements are, it may take the full yard several grids may take the whole back yard probably would in most of these cases.

Mr. Bachman: 5 foot trench, 5 feet wide 5 feet deep?

Mr. Yost: 5 foot deep and I am not sure of the pipe but it is probably 2 to 3 inch.

Mr. Bachman: And how long?

Mr. Yost: Depends on how big the structure is.

Mr. Coakley: A couple of the ones I have seen its an area about the size of this room maybe a little larger so it would be like a portion of a backyard or something and the one I saw I think they went down like 12 feet and to increase the amount of surface area it was almost like a slinky type of coiling plastic coiling that they used to basically just run up and down through here and then they just filled the dirt back in.

Mr. Wright: So you are saying it was a coil strung out in the trench.

Mr. Coakley: Well it wasn't a trench basically just dug out almost like a swimming pool type pit or something in the backyard and used if you bought like plastic tubing or something that was wrapped around the spool and you take it off the spool it stays looped.

Mr. Wright: How big a diameter was the actual tube that was carrying...

Mr. Coakley: Hard to say I'd say maybe ½ inch or something like that.

Mr. Stump: It probably varies from site to site as the technology changes.

Mr. Yost: Yea the guy I talked to was like --- they did exactly the grid go over come back up grid and then a series of that through the whole yard.

Mr. Sneed: Sounds attractive.

Mr. Yost: Its all underground once you are done.

Mr. Sneed: Oh it's all underground?

Mr. Yost: Yea they fill it back in and plant sod over it.

Mr. Stump: So the geothermal is there any reason not to permit it in all areas?

Mr. Yost: I can't think of a reason.

Mr. Coakley: Not to my knowledge. As long as all the requirements are met the only negative I would see would be is if it sprung a leak or something like that you might have a costly endeavor to try to find it.

Mr. Yost: And there is not that much chemical that is actually in the line and once it does get a leak the system quits working so they wouldn't have any heat or air conditioning because it is not pressurized. And it is typically plastic lines that last forever now, like you said even the grids have --- it was solid pieces of pipe.

Mr. Bachman: And Geothermal (inaudible) one system.

Mr. Yost: No it has some kind of a system, the ground is about 52 degrees.

Mr. Coakley: It works the same as a heat pump with the exception that a heat pump is using the outside air to either extract heat from that air in the winter or extract whatever the cooling is from it in the summertime and I guess if you go like 12 or 15 feet below the

surface there is almost a constant temperature somewhere around 55 or 57 degrees somewhere in that area and so in summertime it is cooler than what the outside air is normally, in the wintertime it is much warmer than what the outside air is most of the time, so it what I read they claim that it can save like 40% of a homes energy use.

Anyone have any concerns about not being able to put it anyplace?

Mr. Sneed: What about close proximity to well houses any reason. Cathy writes about making sure the coils are properly sealed to prevent aquifer contamination.

Mr. Yost: We are not allowed.

Mr. Coakley: That would be the vertical.

Mr. Sneed: So what do we do move to setbacks on geothermal if everybody you want to fill this in as we go. So for all the zones geothermal we have --- to you that no zone should be restricted or every zone should be permitted to have geothermal. Is that how you want to do this first?

Mr. Yost: Well really the RMUL --- the townhouses really should not be permitted they are too small it would be an inappropriate system for a townhome.

Mr. Sneed: For geothermal.

Mr. Yost: Yes.

Mr. Stump: So if they want to put it in this prevents them to do it, that is not our fault. If they own that property and it meets the requirements and they want to throw good money after bad (inaudible).

Mr. Coakley: Well actually if under construction we put in backyard...

Mr. Yost: (Inaudible).

Mr. Coakley: (Inaudible).

RECORDER MALFUNCTION – recorder fading in and out with static throughout the rest of the meeting.

Mr. Stump: In my mind the only possible question is if you are going to consider allowing it or a Special Exception.

Mr. Yost: That is what I would recommend a Special Exception.

Mr. Coakley: Ok solar system private use.

Mr. Stump: For all the residential areas what would be the rationale for not permitting it given that it meets all the other requirements?

Mr. Yost: I agree I wouldn't want to put it in.

Mr. Sneed: I mean just so I understand we will get for those and the rest of the above we will fill these in likewise like the sample chart below right?

Mr. Yost: Yes.

Mr. Bachman: I may not agree with the recommendation that we allow solar systems in all these categories of the zone.

Mr. Stump: Well is that not what we are discussing right now.

Mr. Coakley: This is your time.

Mr. Bachman: This is a big --- and this is the recommendation of the Town Manager (inaudible).

Mr. Coakley: Ok well my understanding is that Wade put this together to try to save time, it is certainly easier working with an existing document than creating it from scratch in this type of forum so my understanding was we were going through right now getting like a --- mode or recommendations on how we feel it should be filled out and

then it is still certainly open to further discussion and any alterations or changes prior to our final recommendation.

Mr. Bachman: (Inaudible).

Mr. Hoewing: So --- agree with what we are saying and I don't agree with that then we have to move on.

Mr. Yost: Well everything on the lower portion of the chart is what John and I came up with recommendation if they are permitted in the zone so we have a...

Mr. Bachman: (Inaudible) statement related to each other because of the current site and the setback attempting to comply, so why would (inaudible).

Mr. Yost: It is the recommendation to go to --- was also my recommendation.

Mr. Bachman: (Inaudible).

Mr. Yost: True but that is not my recommendation, why would I recommend 2 different things.

Mr. Bachman: My recommendation is until we deal with the broader issue of adjusting the CBD (inaudible).

Mr. Yost: I used the County as that is what they do.

Mr. Hoewing: It is terrible take up your whole yard just because we have a 10 foot setback which makes no difference because the neighbors never notice it, its 5 feet or 10 feet they are not going to notice.

Mr. Coakley: But hold that thought because they are certainly almost one in the same that we need to have uniformity at one time or another before our final recommendation.

Mr. Hoewing: These are also far less intrusive than a building could be, I have seen these they are just panels that is all they are, they are not huge.

Mr. Sneed: Solar panels.

Mr. Hoewing: Yea.

Mr. Sneed: But to get back to Bob's point are we comfortable proceeding filling in this grid on the top of the sheet and with the understanding that this is a recommendation to insert numbers for the next meeting at which point you know we can take straw votes on what we think the chart should look like in total.

Mr. Stump: Yea I agree with that.

Mr. Yost: Sure that is what I would do.

Mr. Hoewing: That is fine but the rest of these to be honest with you I didn't see a lot of difference in most of the Ordinances I looked at, I mean most of these you see in every one, it was nothing different so if you guys can think of something new and include it lets put it down.

Mr. Sneed: Now you are referring to...

Mr. Hoewing: The guidelines that he sent out, the appendix for the zoning code. In other words what --- the process and even most of these height for example that is very common to have the height all the way to the tip of it, most of them have that, even though --- of engineering most of these will never fall down, anyway it is just a safety precaution I think.

Mr. Yost: I'm not going to recommend it.

Mr. Hoewing: Well I assume until we vote these are all open for discussion.

Mr. Sneed: But to sort of add on to that point once we at least hope we at least finish this idea of which zones fit and which don't is there a way we can get the flyer to the next meeting so that we could have time to digest it. Right once you fill this in after tonight

assuming this will be a --- going forward will we get it before the next meeting where we...

Mr. Yost: Yea I can print it up as soon as tomorrow.

Mr. Sneed: But I am still not clear too I mean once we fill in the upper --- then we --- for these numbers below.

Mr. Yost: Right you may filling up the upper would help me on the lower portion some of this may not even count because you might not allow it in some zones so but I tried to fill them all in just to have it.

Mr. Sneed: My fear to is we are not taking straw votes tonight but on solar systems private use the line we are on right now, I am not if what ever we agree on which zones it applies to I am not saying that the numbers that are samples below apply to that.

Mr. Yost: Well sure I think every...

Mr. Sneed: Ok so we are on solar systems private use and your last suggestion was maybe not for multiple, multi-dwellings but then we are saying it is ok.

Mr. Yost: They are not prohibited anywhere now anybody can put up a solar system if they want.

Mr. Stump: In all the residential I can't see any reason to not permit it. I spoke about the commercial and CBD an interesting question.

Mr. Yost: That is you are right and definitely needs to be discussed, that could be a Special Exception if you make sure it is permitted, even though I wrote in there it has to be on the rear of the building but maybe there is not a southern exposure that is to the rear.

Mr. Hoewing: Did you think about that Wade (inaudible).

Mr. Stump: With the --- where you talked about various thing that we have to think about doing a Special Exception, if we find throughout the CBD as the example that the aesthetics of whatever is proposed doesn't fit into the character of the CBD would that be grounds for us to say no or would that not be something.

Mr. Wright: That is grounds for (inaudible).

Mr. Hoewing: You know what is really interesting about all this is our company has done a lot to try to save energy you know the biggest energy savings for buildings is painting your roof white, it saves you far more than a solar energy system would ever make you and yet that is probably the most obscene thing I could think somebody could do in my neighborhood is paint their roof white, but we can't control it, we can't tell people they can't paint their roof white but that would save them 8% of the energy usage for cooling especially, it is huge, so if they get the idea we may see that at some point. We paint a lot of our roofs but they are flat.

Mr. Coakley: Well with that in mind my recommendation would be that solar systems private use would be permissible except in central business district and that would be special exception.

Mr. Wright: The only thing we are talking about here (inaudible).

Mr. Hoewing: On the roof or the ground (inaudible).

Mr. Yost: Well on a flat roof it wouldn't be.

Mr. Hoewing: Yea that is right.

Mr. Yost: You want to be sure and go over that aspect on Fisher Avenue the commercial (inaudible).

Mr. Coakley: You also have weight requirement so you just can't continue to slap solar panels up there without the roof collapsing.

Mr. Yost: (Inaudible).

Mr. Coakley: Well would that fall under limitation of how much of your property you can cover, I know paving doesn't count, so the question is would that be considered a structure.

Mr. Yost: Definitely a structure.

Mr. Coakley: Well if it is a structure than you would be limited by how much of your square footage you can cover based on the zone.

Mr. Hoewing: (Inaudible).

Mr. Stump: The reason I ask whether we would consider that as grounds to turn down a Special Exception is why I asked --- it gives us the flexibility to treat each location on its merits without blanket saying ---.

Mr. Bachman: But I thought we discussed a few minutes ago that Special Exceptions basically (inaudible).

Mr. Stump: That is the question I was asking.

Mr. Coakley: The way I would look at it would be like in the commercial district you have I don't know if Mackenzie still owns it or not but the fencing company at the corner of Norris and Wootton and he could have an array of solar panels back in there and nobody would know about it, he could have solar panels on the rear of the old Jon's Video store and nobody would be aware of that but you have other historical buildings like Old Town Hall I certainly wouldn't want to see solar panels hanging from the roof there or a wind generator sticking up above it and the same with the building where the Attorney Roberts has his office, I don't think I would want to see solar panels on the roof of that structure, I wouldn't particularly care to see easily see solar panels on Mrs. Dietz house on the corner across from the Hardware Store the old brick home there and stuff but there is others like I said there is some that you either wouldn't know about or there would be no visual effects at all and others that I think would certainly detract from the Master Plan and the look of our central business district that we are trying to maintain.

Mr. Stump: That is why I just wanted to make sure that we could use that as grounds for denying a Special Exception request.

Mr. Hoewing: You mean --- the character of the CBD is that what you mean?

Mr. Stump: Right if that is ok.

Mr. Bachman: (Inaudible).

Mr. Hoewing: The question gets difficult though (inaudible) looks like --- that is the character of this town, if he came in and suggested that it would be hard for me to say that doesn't fit the town's character.

Mr. Bachman: (Inaudible).

Mr. Wright: To clarify that I was going to say I didn't think that you could really make a case to decide on a Special Exception based on aesthetics on a case by case basis and the only reason I thought that it would apply is like George said there are places in the CBD where you wouldn't even notice, you wouldn't even see it there if that were the case then it is kind of hard to say well we shouldn't allow it because if you can't even see it there you are not even going to notice it, it couldn't depend on whether the building is historic or not it depends on as Bob said the visual effect on the entire CBD, it is not whether this is a new building or a old building.

Mr. Stump: Right it could be specific use as no degradation to the aesthetics of the CBD as a whole.

Mr. Hoewing: What are the --- that allow you to turn down a Special Exception.

Mr. Coakley: Well for the record we don't approve or turn down Special Exceptions.

Mr. Hoewing: But we are creating a framework though so it is important.

Mr. Coakley: We give our opinion to the Board of Zoning Appeals.

Mr. Bachman: I'm not sure we should be inviting special exceptions where it is a category of decision making we don't have any influence on.

Mr. Hoewing: A really big challenge is there is some buildings in the CBD right now that are not in that good of shape and we have no control over them tearing those buildings down and coming back and saying lets build a new one.

Mr. Coakley: Well we do have control with what buildings they rebuild.

Mr. Hoewing: Sure they have to look like, well they don't have to we actually have guidelines they are supposed to come in and supposedly look like these buildings but the truth is they don't have to preserve the old building. That is how you got which probably never should have been approved but the new Selby's which is now the exercise area that probably never should have been approved but we didn't have the guidelines then the guidelines weren't adopted until 1990 in that Master Plan, but even those are just guidelines by the way I mean we had a heck of a time getting CVS to agree to those to make it look like it does today otherwise it would have looked like the ones you see down county which are modern and red and I don't think look anything like the Town. So it is helpful to have those there because you can say look the Town wants it that is why we have those here but they are not legally required they could just say we are going to do what we want to do.

Mr. Wright: Aesthetics by themselves are not grounds for approving or rejecting a particular building although it has been recognized as a component of the approval process and I frankly don't understand exactly how you rationalize that but that is what cases say you can use it but it cannot be the only thing that determines whether or not something is approved or not. The Special Exceptions in our Code doesn't reverse the general plan of the development of the Town, it doesn't adversely affect the health and safety of residents or workers in the area, or the use and development of adjacent properties and if there are any standards for Special Exceptions which you can attach or tie to Special Exception and only apply to that Special Exception that those must be met, I can think of a couple of others further back.

Mr. Stump: To clarify that one was proposed use does not affect adversely the general plan for the physical development of the Town as embodied in this Chapter (where I am reading from) and in any Master Plan or portion thereof. So the Master Plan has the intent for the CBD and the character so either you can use that to challenge Special Exception or that piece of the Code should go out of there.

Mr. Sneed: Or if we don't include solar systems for private or commercial use in these blocks then it is not an issue.

Mr. Stump: There is a whole block of other Special Exception cases already in, there is a Code where (inaudible).

Mr. Sneed: But if they are not granted permission then there is not an issue and I would carry Bob's point ahead hopefully to save time tonight but to say that both the commercial and CBD I wouldn't necessarily like to see the small wind energy systems,

large wind energy systems, solar systems in either private or commercial use in either of those zones CBD or commercial all the way up those 2 columns, the remainder of those 2 columns, it seems cleaner and I agree with what Bob is thinking, carryover discussion from this several months ago that we have been through this in terms of the tower already in terms of the central business district, so my recommendation...

Mr. Hoewing: You went beyond that though you said commercial too not just CBD so you are saying where the Selby's building is as well, because that is not in the CBD.

Mr. Sneed: Right and not allow Special Exceptions either it just seems cleaner and it keeps us honest on the integrity of the old town and carrying that down through the rest of the town adjacent to the CBD.

Mr. Hoewing: See it could well be ways and this is what happened with the CVS where we can make it look much more like the old even though it is new, you could do the same thing I am sure if you were creative with some of these as well like George said you could hide them for example so they are not visible at all. At least in the commercial area it would seem to make sense because that is not the same issue as the CBD which was set aside for different purpose for historical buildings and so forth, there are no historical buildings where Selby's is.

Mr. Sneed: Right but there is hardly a difference as you come out of the CBD down toward the shopping center, the small shopping center there, well across the street from here, there is hardly a difference as you drive this area here, through here, there is a transition I will grant you when you get to the next shopping center down there, which would sort of divide the area in half right but in terms of this area from here back there is hardly a difference that I can see, I don't know how you handle the lower end of the area the commercial district but.

Mr. Hoewing: I think if you are going to continue that line you need to look at the Special Exceptions because there are a lot of Special Exceptions in the CBD that would affect that issue of character for example I think there is a Special Exception to allow for electric power for something.

Mr. Stump: There is one for cell phones.

Mr. Hoewing: Is there, so they could do that.

Mr. Stump: With a Special Exception.

Mr. Hoewing: Yea so if you are going to do that you might as well go through the whole thing and say none of these could be allowed by Special Exception in the CBD because it changes the character. They are already allowed and they have been for 10 or 15 years or whatever.

Mr. Sneed: What are those again?

Mr. Hoewing: I haven't looked at the Use Chart but I think cell towers.

Mr. Stump: Cell towers are by Special Exception too, I was like what is the difference between a cell tower Special Exception and a tower for a wind turbine.

Mr. Sneed: Was it a height restriction though.

Mr. Stump: I don't remember but I believe that is separate.

Mr. Yost: That would be a separate issue right.

Mr. Hoewing: But the bigger issue clearly it doesn't look like the vision for the Town putting a cell tower.

Mr. Sneed: Well maybe that should be addressed then.

Mr. Hoewing: Well I am saying if you want to be consistent if that is the line you guys want to go on I think you need to look at all of it, I would rather not spend the time doing it but that would be the truth if you want to be consistent.

Mr. Yost: You are right radio stations, cable and television broadcasting stations and towers are supposed to be (inaudible) RDT commercial.

Mr. Hoewing: Yeah those are all towers.

Mr. Yost: Broadcasting and radio station towers.

Mr. Hoewing: Not that anybody is ever going to build them I doubt it.

Mr. Stump: They could ask.

Mr. Hoewing: They could.

Mr. Yost: That is definitely a conflict with what the Master Plan calls for in the CBD.

Mr. Stump: Unless somebody was maybe really hiding so that it was completely invisible and then it would be an interesting debate.

Mr. Hoewing: (Inaudible).

Mr. Sneed: Would let me write these down 1 at a time then the central business district first and just take that column up to the top there can we hear more discussion on whether those should have an X or shouldn't have.

Mr. Stump: Talking about the commercial the CBD the way I look at it is much more debatable than commercial, what is the rationale for not allowing especially solar in commercial, lets take a look at (inaudible) definitely can't see it from the front not from the side maybe from the back if you have the right angle you might be able to see it but I doubt it.

Mr. Sneed: But is it a road we want to go down and create this problem later on where those who have it argue I am sorry those that don't argue that others have it and then they should be entitled to it.

Mr. Stump: In my opinion yes I think we should address each case individually on its merits especially in the commercial district.

Mr. Bachman: If Mr. Selby came before the Town Commissioners and said we want to put solar panels on the roof of the grocery store to save money (inaudible).

Mr. Stump: How so?

Mr. Coakley: Well you could put into the regulation.

Mr. Bachman: In other words that a major employer producing a service that the Town relies on, on food service as the product and says I need to have a solar panel (inaudible).

Mr. Coakley: Than this would have to be changed.

Mr. Bachman: It would be a lot of pressure in the commercial...

Mr. Yost: You would approve his Special Exception if that is what he was going for.

Mr. Coakley: Well if it was not approved there wouldn't be a special exception he would have to petition the Town to change the Code to make it a special exception.

Mr. Stump: Have to go back through this whole process we are doing now I guess.

Mr. Bachman: But just for that one box.

Mr. Hoewing: Yeah.

Mr. Bachman: I don't think that is the grand solution then you are making agreements based on circumstances that explain themselves clearly see what I mean.

Mr. Coakley: That is what a Special Exception is supposed to do.

Mr. Bachman: That is not the way Special Exceptions work (inaudible).

Mr. Yost: I think you are right you don't turn it down but you can put caveats on it that it has to be placed certain ways you are right.

Mr. Wright: You can add Special Exception conditions that apply to that specific Special Exception. You can't pass a law that says a zoning law that says we are going to permit Selby's to have particular use now that would be spot zoning...

Mr. Bachman: Right but what I am saying is that in my opinion if you are concerned about the impact that of allowing something in a certain area of the zone its better to leave it blank and let the future decide by virtue of pressure to change it block by block that is the way I view it rather than use the word Special Exception.

Mr. Coakley: I personally would view that as a more slippery slope where talk of favoritism, cronyism and those sorts of things would come up where you would have a non permitted use but then because a situation arose and it was a favorite son of the town or a friend of a Town Commissioner or something like that then all of a sudden the Town Commissioners decide to hastily adjourn re-look at that one specific issue and say well ok now we are going to allow that to take place in this zoning and you can't do it spot wise so you...

Mr. Bachman: No but once you --- it is done, once the (inaudible) the special exception it is open to everyone, it doesn't matter what the case is that changes the point of view (inaudible).

Mr. Hoewing: I mean it is not like this is something people come in here going nuts saying I want this I want that it is very rare that people want anything anyway and what we are talking about here tonight its not like we are going to abandon anybody so and I don't think we should kind of over play how much this means, I think it is important don't get me wrong because I drafted the Master Plan I put that language in there with the character of the Town, I put the guidelines in there we adopted for the Town so I think it is important and I also do think we are having a hard time and I think some of these things actually are important (inaudible) and could be done in a way that is not visible and is not intrusive, we have to do it all the time we make cell towers that look like trees I mean and you just do what you can to make it work even though it is not perfect but it still works better than just saying I can't do it. You were saying though that there might be a way to build a special exception that actually builds in more of the character of the town or not can you do that, so maybe we ought to work on that.

Mr. Wright: (Inaudible).

Mr. Hoewing: In specific cases in this case we think because its there may have justification...

Mr. Wright: We don't have many of those if any in our Code. --- Codes that have each Special Exception will have a whole list of conditions that have to be met for that particular Special Exception.

Mr. Hoewing: So maybe that is the way to go. You mandate that it can't be obtrusive, you can't be visible from the street I mean I am saying that is extreme but you could do some of those things. You probably can't decide tonight but we are thinking about it at least. I mean there is no way the wind tower unless he did turn it in, if he did come in it was like an old one on a farm it would be hard to say that doesn't really fit the character of the town.

Mr. Coakley: But that is arguable also because to me that would be more characteristic of the agricultural reserve and not our central business district.

Mr. Hoewing: Although they were in cities and towns at one time, that is how they got water a lot of times, because they used to have stables in town and they used to have --- so I bet we had one in Poolesville.

Mr. Sneed: And they probably did fall down though.

Mr. Hoewing: In those days they probably did.

Mr. Sneed: Well you want to move off of these 2 columns and fill in the rest of the, see if we can agree on some of the other stuff just to move along a little bit or do you have a sense about the CBD by itself.

Mr. Coakley: Well lets go through the others, it seems like our only real hang up right now is with commercial and central business district. Like large wind energy systems commercial I mean my recommendation would be not to allow it anyway.

Mr. Sneed: Anywhere?

Mr. Coakley: Anywhere.

Mr. Stump: Does that mean the RDT?

Mr. Coakley: We have limited RDT but I certainly wouldn't want to see any of them be a wind farm.

Mr. Hoewing: We don't have enough land in this town to really justify that I don't think.

Mr. Sneed: I agree with that.

Mr. Coakley: And small wind energy systems I mean I would recommend for RDT to be permitted and possibly special exception in commercial and CBD based on the additional requirements set forth.

Mr. Sneed: I don't like that idea. We can discuss it now or next month.

Mr. Coakley: Well do something now.

Mr. Sneed: For the CBD the argument has already been made for the CBD, small wind energy systems we are talking about towers to the height that has been presented but my personal feeling is that in the CBD it does not meet, it is a violation of the Master Plan's intent and certainly at least with the CBD and I feel the same way about the commercial district down through town, I can't envision anywhere in the town limits where that tower would suit me.

Mr. Hoewing: So the RDT is the only place you think it should be allowed or not even there?

Mr. Sneed: I think I guess the RDT I could go along with the RDT.

Mr. Coakley: Any other comments?

Mr. Stump: I'm in favor of the wind and solar in special exceptions in CBD and commercial likely (inaudible) there restriction on the use of the property and the wind towers that have been presented are much less obtrusive than other things that already exist in the CBD or things that are already put on those properties without having to go through (inaudible).

Mr. Sneed: Did you say large, you didn't say large we are off of that right.

Mr. Stump: I could get talked into a special exception for the RDT for that but I have no --- one way or the other.

Mr. Sneed: So what is your sense from this 3 or 4 months ago when we went through this and citizens made their feelings known about those and this particular tower request.

Mr. Stump: Some of them were overwhelmingly in favor of it.

Mr. Hoewing: Which was the case, most of them were in favor of it.

Mr. Stump: Overwhelmingly I would say.

Mr. Sneed: You are talking about the people who word of mouth, no who came and testified.

Mr. Stump: Yeah and more importantly how many signatures were on the petition?

Mr. Hoewing: It was over 100.

Mr. Sneed: So your sense is that the petition signatures were an honest sort of nothing to do with the idea that the relationship with John and his business in Town.

Mr. Hoewing: Oh sure but there is nothing wrong with that. Just like Selby's I think people think it is an important institution and we need to help them save money. I mean I don't blame people and most of them there is no houses around so most of them are like it wouldn't bother me. I have not heard a thing and I go into Selby's all the time and I do Blog posts and I haven't heard one comment about that not one. So it hasn't raised a lot of concern in the town. It doesn't mean we should do it I just said from a resident standpoint I don't think it has become a big issue. I guess I am more in favor of trying to see if we can't come up with some kind of requirement to tie these to specific special exception ideas like it can't be obtrusive or it can't be visible things like that I would rather do that on some of these.

Mr. Coakley: Limitations.

Mr. Hoewing: Especially on solar, I think maybe wind would be harder but I think on solar it is pretty hard to argue that you couldn't do that in a way they wouldn't even notice it and it would be good for the owner to be able to save money that way.

Mr. Stump: Agreed. I find it really hard, I can see the debate on the wind but I am really having trouble seeing where restricting the use of solar especially in the commercial and CBD in a way that is unobtrusive (inaudible). If we are permitting it in the private areas (inaudible).

Mr. Bachman: --- small wind energy systems (inaudible).

Mr. Stump: I would be very much in favor of that. Now granted the other regulations would prevent it in most areas but that is fine.

Mr. Bachman: What other regulations?

Mr. Stump: The ones with minimal height and setback requirements.

Mr. Bachman: Why don't we adjust those setbacks and allow some properties to have all that (inaudible).

Mr. Stump: In commercial it is done entirely different especially on the solar.

Mr. Bachman: See I would go all or none --- you want to put them all over town fine you can do that, but if you don't want to put them all over town then I don't see putting them in one place other than maybe in the RDT (inaudible).

Mr. Coakley: Almost all zoning is set up that way.

Mr. Bachman: (Inaudible) we are protecting the quality of our residential real estate by virtue of that restriction. We also have in our Master Plan " --- attempts to try to define an effort to make any integrity --- visual image of historic --- of the town" and we are saying that a couple windmills don't matter I mean lets be consistent.

Mr. Stump: Well I argue that they are not inconsistent 1) the Master Plan are guidelines it is not set in stone and 2) who is to say that that wind tower as proposed don't fit into the small town characteristic. I think that there are things that are existing in town things they can put up without having to go through any zoning process that look much worse. It is a personal preference at that point and unfortunately there is a group of us whose

personal preference have --- balanced with the ones who need the property owners both residential and don't forget the commercial property owners.

Mr. Hoewing: We did actually a survey and then we had a citizen committee when we put the Master Plan together and the Vision Statement and certainly remembering back to that discussion the idea of the small town character was kind of the idyllic idea of a small town like we have now with the green and the buildings looking like they were in the 19th and early 20th century so that is all true. But I think we also recognize in thinking about it that we have a lot of modern stuff even with that the --- Road we have sidewalks and they didn't exist back when the town started so we did see it as (inaudible). What is the question about, in this case I think it is a question of technology is getting so good now it is possible to do this so I am willing to look at those kinds of standards that say you can't just put anything you want up if it is really intrusive but if you can find a way to make it fit in so it is not noticeable or not even visible it is worth thinking about. The wind tower is the hardest but I am still not on one level Bob (inaudible). I would like to try to wrap up some ideas along those lines of Special Exception for at least not even saying that you couldn't necessarily do wind systems I guess as long as they would not be intrusive and not be highly visible that would be impossible so it probably wouldn't be a standard they could meet but solar would be that way we could do it and so would geothermal. So what progress have we made tonight? Do you want to put together what it would look like and see if they mesh up or not because I don't think we are going to reach an agreement at this point.

Mr. Stump: (Inaudible).

Mr. Coakley: Well we have a couple lines done. Geothermal is done, solar system commercial is done.

Mr. Sneed: Well not really.

Mr. Coakley: Not solar I am sorry, large wind commercial is done.

Mr. Sneed: Two all or none lines.

Mr. Stump: Is there much debate on solar commercial?

Mr. Yost: No you guys said...

Mr. Coakley: Special Exception in RDT.

Mr. Sneed: We did not have agreement in that one.

Mr. Hoewing: No its nowhere else and I think we should allow solar --- if we can find a way to do it.

Mr. Yost: Well that is commercial.

Mr. Bachman: Where is the disagreement on solar systems?

Mr. Stump: Commercial and CBD I think.

Mr. Sneed: And on residential.

Mr. Wright: Well did anyone say that solar systems commercial would be permitted in any of the residential zones or commercial CBD for that matter it just struck me that...

Mr. Coakley: Only Special Exception RDT.

Mr. Wright: I mean I don't know what that involves in commercial solar system but it seems to me we would have to have a lot of solar panels to make it a viable commercial, it really wouldn't be appropriate in any of our residential zones.

Mr. Stump: Right tentatively said for RDT only and nowhere else.

Mr. Wright: That is what I thought the discussion was, there was no expression of an agreement.

Mr. Coakley: No we agreed on it.

Mr. Sneed: Well we agreed that it should go on the chart for consideration next month, that the Special Exception RDT we are not giving it thumbs up or thumbs down we are just not flushing over it tonight.

Mr. Coakley: Then my suggestion would be to make solar system private use permissible everywhere but CBD where a Special Exception would be required. It would be permitted everywhere except CBD where a Special Exception...

Mr. Stump: Yeah I understand I am sorry.

Mr. Yost: Do you guys want to take a straw vote on --- we could be directed to come up with Special Exception guidelines.

Mr. Stump: For solar?

Mr. Yost: Right.

Mr. Stump: I have no problem with that.

Mr. Yost: That would be the direction to go here with that I will write it up for next month or get it out earlier.

Mr. Hoewing: So you want to take a vote on that?

Mr. Coakley: Well my suggestion would be to have special note or something that would be non visible from street.

Mr. Sneed: For the CBD.

Mr. Coakley: Yeah.

Mr. Yost: From Fisher Avenue.

Mr. Stump: Are we talking private or commercial here?

Mr. Yost: I think we are talking commercial CBD right?

Mr. Coakley: Well it is private use but in the CBD.

Mr. Bachman: You are recommending we grant a Special Exception for solar systems private use?

Mr. Coakley: Um-huh.

Mr. Bachman: And we've added that I prefer to move that to the next level (inaudible).

Mr. Coakley: Well I would make it permissible in RDT and probably that only. Although out of curiosity I wouldn't mind if John Speelman put one up just to see what kind of success he actually got out of that as a trial thing. I know the town has been talking about possibly using green sources of energy and those sorts of things but...

Mr. Yost: We will probably turn to solar.

Mr. Coakley: Some of the information that I have gotten from other people they seem doubtful that in this area of Maryland it would be worth the cost of putting it up.

Mr. Bachman: (Inaudible).

Mr. Hoewing: Yeah I think he was just saying he would like to --- he wasn't saying he was proposing anything.

Mr. Sneed: So we have an agreement on that line then the small wind energy systems private use, that line we are in agreement?

Mr. Stump: --- see the Special Exception ---.

Mr. Bachman: Special Exception where?

Mr. Stump: CBD commercial.

Mr. Bachman: Small wind?

Mr. Stump: Yeah.

Mr. Hoewing: With the same kind of constraints that we are talking about making not visible (inaudible).

Mr. Yost: That is impossible.

Mr. Hoewing: It is I don't know how you do it. Not intrusive its either you can see it or you or not going to see it and if you are going to see it then you say you are going to allow it or not allow it.

Mr. Stump: Well I am not sure about invisible for solar, how do you make solar look...

Mr. Hoewing: No but you can make it not visible from Fisher Avenue, if they can't get a southern exposure than that is tough I mean that is what you would be saying.

Mr. Yost: Or you could make it ground mount.

Mr. Hoewing: Ground mount or something. So you are not totally closing off alternative energy options for them.

Mr. Coakley: There are other types of wind generators other than what looks like an airplane motor. There are some that are tubular my understanding is they are not as efficient as the blade type but you still have a round column coming up to be more effective it would probably be mounted on a pole 65 feet in the air instead of at ground level.

Mr. Hoewing: So it looks like we are effectively coming to a conclusion that we are going to deny John's petition then. And we are not going to allow the wind systems at all in the town essentially it sounds like.

Mr. Yost: RDT only.

Mr. Stump: That is the one I will disagree with I would just like to see them in commercial and CBD with Special Exception I am obviously outvoted on that but I will go on record saying I would still like to see them.

Mr. Coakley: Well I could lean that way and I think that with the restrictions it would only be 1 or 2 possible sites where they could be constructed.

Mr. Hoewing: I think in 10 years we are going to be finding out that most of the (inaudible) and never even notice the damn things.

Mr. Sneed: Even the solar technology is getting to where they don't have 4 inch or 6 inch or 5 inch panels but they have a film they can lay over your roof and I think that within 10 years that will be developed.

Mr. Hoewing: Probably not going to be as bad as you think.

Mr. Sneed: So then if we left those blocks blank then later in the future sometime we can fill those in with amendments saying if those types of new technologies that don't obstruct the CBD be permissible perhaps.

Mr. Coakley: Well I think when you are talking legislation or whatever that you have to deal with it here and now and not what we think is going to exist 5 years from now, 10 years from now.

Mr. Sneed: Well that is what we are doing we are dealing with the here and now being what the panels look like here and now and they look a certain way, same with the wind towers, here and now they look like a wind tower and your jet engine or whatever on the roof looks one way and 10 years from now it may look like something that wouldn't bother any of us.

Mr. Hoewing: But again what you may want to do instead of doing that though is to say if you think it is bad on the roof no matter what they could still put it on the ground, people do it all the time, so maybe if you don't allow anything at least allow that, that is

today's technology I mean there are certainly improvements that are coming but I don't think those are economically viable for most people.

Mr. Bachman: Solar systems?

Mr. Hoewing: Yeah. You could just say they are restricted to ground only and not any on the roof if you thought that was really an issue because at least they are not as visible they are in the backyard you could say that they can't be visible from the front yard if you wanted. I guess I am not convinced that is really necessary but at least I am throwing it out there for a compromise, I think actually it should be able to go on the back roof without a problem it is not that visible.

Mr. Yost: Well solar right now we have permissible everywhere and I think I heard 3 of you say Special Exception for commercial and CBD with appropriate other language.

Mr. Hoewing: But I thought I just heard that they wanted to take it out or you wanted to take it out and at some point in the future if the technology improved then go back and reconsider that is what I think he was saying.

Mr. Yost: I think he was talking about wind systems.

Mr. Hoewing: No he was talking about solar.

Mr. Yost: He went back and forth I am not for sure.

Mr. Sneed: You talking about me?

Mr. Hoewing: You were talking about solar weren't you?

Mr. Sneed: Just now?

Mr. Hoewing: When you were talking about the technology being improved so maybe we ought to just leave it blank.

Mr. Sneed: Oh I was talking about both.

Mr. Hoewing: I don't agree with that I think at least solar we ought to try. Wind in residential would be pretty bad if so many people applied which I don't think they will but that would be pretty...

Mr. Coakley: It would certainly be ugly.

Mr. Bachman: So you are saying basically per our discussion for a Special Exception for CBD for solar systems?

Mr. Hoewing: Yeah I think we should try to allow them somehow, yeah I do.

Mr. Bachman: How bout commercial.

Mr. Hoewing: Sure.

Mr. Coakley: Well my suggestion for solar system private use was permissible except in CBD where a Special Exception would be required.

Mr. Sneed: Solar did you say?

Mr. Coakley: Solar system private use.

Mr. Yost: Commercial also.

Mr. Coakley: Permissible in all zones yeah except CBD where a Special Exception would be required or is not visible from Fisher Avenue or Elgin.

Mr. Hoewing: You would have a hard time and John is doing it because his roof is this way and you can see it from anywhere.

Mr. Yost: Yeah he would have to do a ground mount towards the back, but what is the difference in commercial and CBD, or adopt them there then with the same guidelines.

Mr. Hoewing: Probably should be.

Mr. Bachman: Not on the roof right.

Mr. Yost: Roof or ground as long as it wasn't visible from Fisher Avenue or...

Mr. Coakley: Well the main difference being the way the Master Plan is written and the way the way the current town code is written the character of the town applies to CBD it doesn't apply to commercial or residential.

Mr. Hoewing: Yeah.

Mr. Stump: That makes sense to me.

Mr. Sneed: Can this change? Can the central business district boundaries change?

Mr. Coakley: Everything can change.

Mr. Hoewing: The next Master Plan it could sure.

Mr. Sneed: Ok. So it might be that the central business district contracts or expands in the next Master Plan.

Mr. Hoewing: Not likely but it could.

Mr. Sneed: I mean it seems to me Norris Avenue today seems to me arbitrary in a sense that you could pull that down into the general commercial today you know when it was drafted maybe not so much but...

Mr. Hoewing: There are not too many traditional homes the other direction from that other than if you want to include what is now Meadowlark and that is why Norris Road was chosen everything above that is more older houses and buildings and going out toward Beallsville the same thing. I mean the heart of it really was the Town Hall, Jamison's, at one time the old Selby's, the --- store and then the buildings going that direction towards Whites Ferry and up towards Beallsville and most of that is still there other than the old Selby's being torn down it is still pretty much there. Well have we come to any closer conclusions on a few things, I think we have gotten closer on some things, at least we have straw --- I think we can hotshot that. So what is the next step George to write up what we think we have at this point?

Mr. Yost: Yeah what I will do is clean this up and I will have to add a few notes to it, Alan and I can work on some correct language.

Mr. Wright: Some suggestions you can get rid of them or add to them.

Mr. Hoewing: Ok.

Mr. Coakley: Ok so we have basically 3 down and 2 to go I guess. We have agreed on geothermal, we have agreed on solar commercial I believe and we have agreed on large wind energy systems commercial. So we still need further discussion on solar systems private use and small wind energy systems private use.

Mr. Bachman: But only in commercial and CBD 2 boxes each right.

Mr. Coakley: I believe so I don't think anybody had any serious reservations about including it or not including it whichever in the residential. Ok I think that is as far as we are going to get tonight on that. Ok any other comments on anything else prior to adjournment?

Mr. Yost: We do have these drafts proposed not to drag it out we can talk about it at the next meeting.

Mr. Hoewing: Were these Wade part of the request that the Commission had to go through the Ordinances and --- update.

Mr. Yost: Yep.

Mr. Sneed: I am sorry was that the context of this?

Mr. Hoewing: I think that is what it is.

Mr. Sneed: What is it again?

Mr. Hoewing: I think the Commission asked that we go through the zoning ordinances and see if there are any conflicts or anything that needs to be changed or updated.

Mr. Stump: (Inaudible) come from debates we have had over the last year.

Mr. Yost: We had a couple of them yeah.

Mr. Coakley: And I see Mr. Wright had a couple good comments on a couple of them.

Mr. Stump: (Inaudible).

Mr. Bachman: (Inaudible).

Mr. Coakley: Ok well lets quickly look through it and see if there is anything we need to at least think about ourselves prior to the next meeting.

Mr. Stump: On the first one I liked Alan's wording when I read the original I had almost the exact same concern (inaudible).

Mr. Sneed: Do new residents get (inaudible). So we have had this discussion about Covenants in the past where there has been some debate back and forth about the usefulness and the honesty of having them and recognizing them in the new subdivisions when the fact that they are meaningless to the people who get them when they move in because what we are saying is...

Mr. Bachman: They are not meaningless.

Mr. Sneed: They are not meaningless when it comes to the question of --- override anything that doesn't agree with the Town Ordinance and so we have had this discussion a little bit in the past and I don't know why a part of me thinks we should be silent on the issue or we should say something to the affect that have a stronger statement that the Covenants when residents get them and when they move into town some stronger statement as to they are a guide for them I don't know how we characterize them to make an assertive effort that the residents understand more clearly that what they are being handed when they move in doesn't hold a lot of weight.

Mr. Stump: But it does hold weight as long as it doesn't violate Town Code, it is a contract, a private contract between --- and that holds as much weight as they want to use to enforce it or not enforce it. Our only issue is that if it conflicts with Town Code, Town Code wins so if you want to do that I say be silent either be silent or but don't go the other route.

Mr. Sneed: Well than maybe Covenants ought to have language because we have heard Covenants when they come in here and we don't approve them right but we just it is a courtesy as I understand them and so maybe the thing I am thinking about is the Covenants themselves when we hear them out of courtesy we ought to insert language to the residents that they understand more clearly when they become meaningless for them.

Mr. Bachman: In other words you are saying you have wording that you have got to read the Covenants (inaudible) reservations should be stating that any Covenants brought to us by developers --- those Covenants straight up (inaudible).

Mr. Stump: I am leaning toward that frankly lets do away with the whole issue, not a Town issue at all, but I can --- either one of your approach to that. Have the --- that they put some disclaimer text in them or just have nothing to do with it.

Mr. Bachman: I would prefer that it actually have it and whatever our wording is (inaudible).

Mr. Sneed: I guess that doesn't really relate to what we are doing in terms of amending our own regulations well that would be sort of a comment that we add to the record but doesn't really fit in the subdivision regulations per se, you think it could?

Mr. Bachman: Well one of the options is (inaudible) make out the requirement for the zoning. If you are going to...

Mr. Sneed: But there isn't.

Mr. Stump: Yeah currently there is, it is a requirement that we review it.

Mr. Bachman: And it be submitted to the Planning Commission and I guess (inaudible).

Mr. Coakley: Well the negative aspect of that is if some developer put in there that property owners are allowed to drill private wells to --- their barn use or something like that. That is definitely in violation of Town Code so in that regard I think the Planning Commission should review to make sure that there aren't permissible items in there that (inaudible).

Mr. Sneed: That doesn't matter right because if that happens then we would stop it if someone tried to put a well in.

Mr. Coakley: I know but suppose someone saw that in their Homeowner's Association and they went and they spent \$5000.00 or something to dig a 500-foot well in their backyard...

Mr. Sneed: And we would intervene.

Mr. Coakley: And then we come in later and say ok it is going to cost you another \$500.00 to abandon the well and see the way it is supposed to be done and stuff and everything and they say but it says right here in the regulations how do you allow a developer to come out with stuff like this if you know it is direct violation of the Town Code.

Mr. Sneed: Ok so would there be any objection to inserting language that would say minimize or a statement or a comment in the Covenants when they come before us that we establish a practice and we recognize that courtesy of putting in language that says this simply taking this and putting it into the Covenants.

Mr. Coakley: Well my suggestion and I will leave this to Alan because I am not sure what kind of legal loopholes it might bring up but require a front page or something like that that says this document is an agreement among the property owners of this development only and that if any conflict arises between what is in here and what is permitted or not permitted by the Town than the Town Code governs and that would be part of the document they would have and they would be aware of the fact that it is strictly an agreement among the property owners themselves and not in any way the burden of the Town to make sure that anything is done.

Mr. Bachman: Do we know what the position of Montgomery County is with regards to Covenants does the County review Covenants?

Mr. Wright: I don't believe they do.

Mr. Bachman: So they have a hands-off policy.

Mr. Coakley: With the exception though that and Alan correct me if I am wrong, most of Montgomery County have Homeowner's Associations which are granted by the State of Maryland I guess.

Mr. Wright: Homeowner's Associations are recognized by the County, and there are some restrictions on how they have to be set up and governed.

Mr. Bachman: Are they recognized by Poolesville?

Mr. Coakley: No.

Mr. Bachman: Ok I have to say this item I have no interest in discussion with --- any further tonight (inaudible) it is a catch 22 this whole thing and I think we need to be

careful on that. We don't believe in a Homeowner's Association to establish and enforce these Covenants we have no obligation to enforce them.

Mr. Hoewing: We don't have the obligation to enforce any part of the contract it doesn't matter what it is.

Mr. Bachman: Any what?

Mr. Hoewing: Part of the contract, that is what this is.

Mr. Bachman: The fact that we don't endorse Homeowner's Associations I think (inaudible). The County does endorse them...

Mr. Yost: They don't endorse them they just regulate...

Mr. Hoewing: And that is different.

Mr. Bachman: And they allow them to operate independently.

Mr. Hoewing: We do too, we just don't have anything to do with them, they are allowed to operate.

Mr. Yost: Right we have our own Homeowner's Association in the Townhouse there are 2 of them.

Mr. Bachman: Yea but every subdivision build here have had Covenants and there is established Homeowner's Association and there has been (inaudible) so I think if we don't want them then we either step away from the --- of Covenants completely.

Mr. Hoewing: That is where we are today we don't do anything with the Covenants.

Mr. Bachman: They get presented to us.

Mr. Hoewing: Yea but we don't do anything other than offer...

Mr. Bachman: I think we ought to have a policy that we don't encourage developers to issue establish Homeowner's Associations or to issue Covenants and any other regulations because otherwise we are just inviting trouble and a misconception. Everybody in my neighborhood they think these things that they sign are enforceable and...

Mr. Hoewing: They are totally enforceable. It is just like if you get an electric contractor and he screws up you can't come to the Town, you got to do something on your own.

Mr. Bachman: If I park my boat in front of my house...

Mr. Hoewing: That is different that is Town property, that is a Town street.

Mr. Bachman: No person ought to tell me I have to move my boat.

Mr. Hoewing: That is a Town street.

Mr. Bachman: The Town doesn't say I have to move my boat.

Mr. Hoewing: We can.

Mr. Bachman: But you don't.

Mr. Hoewing: But we can.

Mr. Bachman: But you don't.

Mr. Hoewing: If people complain we do.

Mr. Bachman: You can't park a boat in front of your house that is what the Covenants say you can't have a boat parked in front of your house.

Mr. Coakley: And if I was your neighbor and didn't like it I could take you to court.

Mr. Hoewing: Sure that is nothing different than any other part of life frankly, it is a private contract. I agree with you that we probably should not even have any, if we say we don't want to do anything just not have the Town Planning Commission even looking at it I don't have a problem with that. I think though the only caveat I would have is done

that mean Alan that and I think it does mean, it doesn't matter what happens our Town Code prevails no matter what.

Mr. Yost: Yes.

Mr. Hoewing: So no matter what we do it prevails.

Mr. Bachman: But if I was a developer I would say listen these were approved by the Town Planning Commission.

Mr. Coakley: No they were reviewed by the Town Planning Commission.

Mr. Bachman: Whatever it would be a big deal because they were reviewed by the Town Planning Commission, and that would be free and clear to me I mean...

Mr. Wright: Well who would you say that to?

Mr. Bachman: (Inaudible).

Mr. Wright: It would be false but...

Mr. Coakley: No it would be a misrepresentation that would be a true statement.

Mr. Wright: That they were reviewed yes but not the statement that they were approved.

Mr. Sneed: Reviewed.

Mr. Wright: Oh I thought you said approved.

Mr. Bachman: But then I changed it approved reviewed is it may not be as clear to them as it is to us.

Mr. Hoewing: You are right we should just remove any requirement from anything happening and just let them do what they want to.

Mr. Stump: I would rule that way, it is cleaner we should just be silent on the whole topic. If any private contract has something in it that breaks the law or breaks regulation then it is (inaudible). Any valid contract it is their responsibility to check the Ordinance or (inaudible).

Mr. Wright: Well I am not aware that the review has really accomplished anything in the past, we have looked at it and said ok.

Mr. Hoewing: Have we actually responded though Alan to any of these, well it says this is our response here, these are our comments.

Mr. Coakley: Only in the minutes.

Mr. Stump: I don't want to spend many hours reviewing one set.

Mr. Hoewing: Removing it simply is not doing anything maybe because we don't do anything with it anyway just symbolic but that is fine.

Mr. Coakley: Ok Christmas tree sales.

Mr. Hoewing: What stimulated this one Wade?

Mr. Yost: Several churches want to sell Christmas Trees and most of the churches are in the residential zone.

Mr. Coakley: There is 2 that are in commercial or something or CBD and the others are residential.

Mr. Wright: My only concern was I wasn't quite sure why we would pick up public schools and churches and potentially exclude businesses or other individuals who wanted to sell Christmas trees if they were, if they had the same property area.

Mr. Hoewing: Like Boy Scouts.

Mr. Wright: Yea Boy Scouts would be an example, we could just restrict it to non-profits.

Mr. Yost: Right but then a non-profit could live in a house too.

Mr. Wright: That is where the 20 parking spaces would come in, I mean I think that is reasonable because you don't want people parking all over and blocking the streets.

Mr. Stump: I like the intent of the schools and the churches being able to hold those I like the 20 parking spot limitation and then if you throw in non-profit I think it is better but I could go either way on it but I think the non-profit is a nice addition.

Mr. Bachman: John sells Christmas Trees.

Mr. Stump: For commercial purposes.

Mr. Yost: That is allowed in...

Mr. Coakley: That is already allowed in commercial and CBD.

Mr. Bachman: I'd add the word paved and onsite parking spaces, I got plenty of lawn I can get 20 cars in my front yard.

Mr. Coakley: I think we are done with that. Any other Christmas tree comments, ok Accessory Buildings and Structures.

Mr. Yost: This came up we do have a lot of people wanting to put sheds in and some of the lots are thinner than regular shapes and they ended up putting the shed in the center of their backyard or off to one side, swings sets are another thing they set them way out in a playground --- like that and we have had a lot of requests over the past few years they came up and tried to get the sideline set back so that is where those came from so and the County does also use 5 foot from the center.

Mr. Bachman: I would at least like to have more discussion on this topic beyond what we might be able to do tonight because of the late time because I view Montgomery County as being much more urban (inaudible) and they use it to determine the --- box sizes which might have had 50 foot --- much more spacious and when we look at pipestem driveways and pipestem lots we have a house sitting in front and then a driveway comes up and there is a house back here and lot lines are open (inaudible). I think it is worth some additional consideration.

Mr. Hoewing: I would doubt that our developments are any different than theirs in terms of how they are the lot sizes there are certainly some that are the older ones, but they have developments just like we do. I could just tell you approving these over the years it was just ridiculous having a 10 foot setback I mean nobody notices whether it is 5 or 10 except the homeowner which is bad for them because they can't really locate a lot of cases but they want to because of the setback, it just wastes space frankly, they have to put it 10 feet, it is just a waste, all that space is wasted behind that building that can't be used for anything so I know almost no homeowner would notice whether it is 5 or 10 feet they are just not going to notice it, the next door neighbor is not going to be bothered one bit.

Mr. Yost: Only have of them in town are at a 5-foot easement.

Mr. Hoewing: Yeah and they are most of them people do it anyway they just say screw you we are going to do it so I think it is kind of an incidental in a way.

Mr. Sneed: Well how long has it been 10 feet?

Mr. Hoewing: Forever.

Mr. Sneed: So what do you think the original intent of 10 feet was in Poolesville.

Mr. Hoewing: I have no idea.

Mr. Yost: It is 3 foot off the rear and 10 foot off the side so why 3 feet off the rear I don't know.

Mr. Coakley: Well 10 feet is still for sideline from your house.

Mr. Yost: No this is for an Accessory Structure only.

Mr. Hoewing: Yeah this is not for a side.

Mr. Coakley: So this is for shed, tool sheds and stuff and everything and they probably just decided well gee if that is the sightline or something down your house if you are looking at it then keep the accessory structures as the same thing but I don't know I don't know how they came about that.

Mr. Sneed: It is very possible it had a lot to do with Bob's argument out here back then more rural, more open space.

Mr. Hoewing: Except developments are developments it doesn't matter where they are so they are out in the middle of a rural area but they are still in a development they are still houses on 1/3 acres.

Mr. Sneed: And I would have a different opinion about the 5-foot not making that much difference because in my property I think it is a huge difference, 10 feet to 5 feet is a huge difference for me in terms of what I would want my neighbors to be constructing 5 foot over the boundary of my house, I have a peculiar lot in town I'm bordered by 4 different properties and it makes a huge difference to me 5 to 10 feet I mean not only that but from street side I would think it would be typical that that additional 5 feet closer to the property line would give a --- sight of the structure from the street right. So there comes a point where you are looking behind properties seeing what might otherwise be obstructed by the main residence.

Mr. Hoewing: The question is then why do you care about the neighbor who is next door this way and not the neighbor who is behind you because that is only 3 feet.

Mr. Sneed: I would, I would increase 3 feet if it was before us but...

Mr. Hoewing: I mean you are making people waste space in their yard that is ridiculous why would you want to do that? Maybe you would notice but I can't think of too many other people who would notice 5 feet versus 10 it is just not...

Mr. Wright: --- the lot is thinner more of a setback.

Mr. Hoewing: And also the different shapes I mean the really narrow shapes they have a real hard time doing anything with a 10-foot setback.

Mr. Sneed: That might be me because I am a cul-de-sac and it is pie shaped so...

Mr. Hoewing: You want people to be able to do something with their property, you don't want to restrict them so much they can't improve them.

Mr. Sneed: Where the person wanted to do that but it may not be improvement in the eyes of someone else.

Mr. Hoewing: Well that is always true nobody wants to have a shadow coming that is going to be true but...

Mr. Bachman: How many cul-de-sacs do we have in Town, quite a few?

Mr. Hoewing: Yeah unfortunately.

Mr. Bachman: Every one of them creates a very unusual...

Mr. Hoewing: Right awkward shape for a lot.

Mr. Bachman: Narrow in the front and spread out like a trapezoid or something. Well maybe we can just skip that.

Mr. Hoewing: It could be I mean we could vote on something right, if it's a 3 to 2 vote it is enough to make it happen.

Mr. Coakley: Well I tell you what at least on that Wade why don't at the next meeting why don't you bring in a couple site plans and then we can see...

Mr. Yost: What --- replacement (inaudible).

Mr. Coakley: Yeah.

Mr. Yost: Ok.

Mr. Coakley: Like see if we can find a worst case scenario or something like that where somebody but even on a pipestem or something that somebody if you are talking a sideline it normally isn't going to it would almost have to be in their front yard or something I think to affect the neighbors.

Mr. Yost: I agree.

Mr. Hoewing: But I definitely don't want to change the rear setback I mean if it has been doing this for 25 or 30 years and nobody has complained as far as I know we have never had complaints about people saying that is too much.

Mr. Coakley: All right what is the other one ok the variances and I like your wording on the special exception preview Alan.

Mr. Bachman: The only comment I have Alan about changing the wording from recommendations to comments is that we here requested a special exception but if we only made comments I don't see why we (inaudible). We don't have any leverage.

Mr. Wright: You don't have leverage but there is a practice at least in the County that certain types of approvals are circulated to various agencies not just granting information but various agencies transportation, health department, school system, whatever there is a list and for any comments by those agencies as to what impact the approval might have and the idea is that they have got a different perspective they might pick up on things that the agency that has the approval authority would miss.

Mr. Bachman: Would you want to expand it so any comment on the impact of the proposed special exception because otherwise I don't where we are directing the comments towards, are we trying to inform the Zoning Appeals Board with their perception of how it might have a negative impact (inaudible) doesn't make sense.

Mr. Hoewing: Well you modify it by meeting requirements in sections 3 and 10 which still has specific requirements about that is the part that talks about the character of the town and all that kind of stuff so it does go back.

Mr. Bachman: Ok so 3 and 10 do go back.

Mr. Hoewing: Yes.

Mr. Wright: I mean my thought in the Mevissen case where the main issue was the shared driveway and that was the topic of debate that the Planning Commission might say well we would like to point out that the Board of Appeals has this decision, this is a, it could be any situation like the shared driveway and you need to get a Special Exception or we don't think that you should approve it because of this rather than just come out with a blank statement, we have reviewed this and we think it ought to be approved or we reviewed it and we think it should be disapproved, now anything that makes those specific points to the Board of Appeals to consider in which is their job.

Mr. Bachman: Ok then lets say we sat and got a Special Exception and this group examined that and I had an opinion about it I had a comment, Cal's comment was directly the opposite, its like the negate each other, would those two comments be allowed to be presented or do we have to wrangle out what we agreed on and approved.

Mr. Wright: I would think you could be --- to present both.

Mr. Coakley: Ordinarily a Body like this tries to come to some consensus where you have a unified comment, now since we are providing comments though to another group

I mean our comments could certainly include both of that for them to consider themselves when it comes through.

Mr. Bachman: Because we weren't voting on comments.

Mr. Yost: They could get transcripts of the meeting.

Mr. Bachman: Pardon.

Mr. Yost: They do get transcripts.

Mr. Bachman: Sure I get transcripts of lots of meetings and you could (inaudible) I don't look at them. So I would rather if we would send them our comments specifically.

Mr. Hoewing: There are Commissions that we do like the Federal Trade Commission that are all issued a report and have recommendations or decisions but they will also have Commissioner so and so did not agree with this particular position and had the following comment, so you could do that too.

Mr. Bachman: All right.

Mr. Coakley: All right lets see then we got the last one on the shared driveway and Alan I liked your comments on that also.

Mr. Stump: My only question Alan was what did you have in mind by materially increases the number of cars?

Mr. Wright: Well legally it means that is has some impact that makes a difference not just that there is, if you have a you might have a tiny increase that you wouldn't even consider, but if you said that you couldn't ever approve a Special Exception that increased the number of cars using the driveway (inaudible).

Mr. Sneed: If we took out number of cars increases usage of the driveway does that make it worse much worse or change it?

Mr. Wright: This is not the only grounds.

Mr. Hoewing: So you want to make it vehicles.

Mr. Sneed: I mean I guess I was thinking along the lines of diminishes the value of the driveway, some use that...

Mr. Hoewing: (Inaudible).

Mr. Coakley: Anything further? We can go back over setbacks. Would you come up and identify yourself.

Mr. Barnes: Don Barnes 19735 Selby Avenue. The Appeal process that you just went through (inaudible).

Mr. Yost: (Inaudible).

Mr. Coakley: We are going to go back over it at our next meeting and hopefully at the end of that meeting we will have it at a stage where we can then send it to the Town Commissioners as a recommendation. The Town Commissioners I believe will have a public hearing.

Mr. Barnes: (Inaudible).

Mr. Coakley: However bear in mind that 2 of us have to get up very early.

Mr. Hoewing: I haven't eaten dinner yet.

Mr. Coakley: And one hasn't eaten dinner yet.

Mr. Barnes: You know we filed a Motion for Judicial Review on Special Exception 001-08 that was --- on June 30th and the ruling has been issued and I just want to know if you guys had the opportunity to read the ruling which I think was relevant to some of the discussion tonight (inaudible).

Mr. Coakley: The only thing I have seen is what I read in (inaudible) so other than that I am not too informed but my understanding would be that it goes back to the Board of Zoning Appeals and doesn't come back through us for any additional comments.

Mr. Wright: It would be remanded to the Board of Appeals for reconsideration but the Town Commissioners would be the ones to decide whether to appeal the decision or not and I haven't received a copy, the judges clerk said that when it was ready it would be sent out I don't know if you have had your own copy transcribed.

Mr. Barnes: Yes we went down and got a copy.

Mr. Yost: (Inaudible).

Mr. Barnes: Is there a timeframe for that?

Mr. Wright: 30 days from the date that (inaudible).

Mr. Barnes: I think that was the 30th.

Mr. Sneed: I take it it was a favorable decision for you.

Mr. Barnes: I guess a partial win yeah. I mean we would have liked to see it turned over completely but the Board of Zoning Appeal has (inaudible).

Mr. Wright: It was remanded to the Board of Appeals on the grounds that (inaudible).

Mr. Coakley: Thank you Mr. Kettler.

Mr. Kettler: Thank you very much I appreciate it.

Adjournment

Mr. Coakley: Do I hear a motion to adjourn?

Mr. Stump: Move to adjourn.

Mr. Sneed: Second.

Mr. Coakley: All in favor?

All: Aye.