

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

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

Call to Order

Mr. Coakley: Poolesville Planning Commission Meeting of March 18, 2009 is called to order. Present are all Commission members except for Link Hoewing and the Town Attorney has not arrived yet. The Town Manager and the Town Engineer are also present.

Citizen's Comments on Agenda Items

Mr. Coakley: This evening we have approval of minutes of February 18 and under old business we have Speelman wind generator application, St. Peter's dumpster enclosure, Longshore Property, and Brightwell Crossing – Phase II site plan approval. Does anyone have any comments on the agenda before we get started?

Announcements

Mr. Coakley: Ok hearing none Wade are there any announcements?

Mr. Yost: No there is not.

Mr. Coakley: Ok.

Approval of Minutes

Mr. Coakley: Ok and do I hear a motion on the approval of the minutes of February 18, 2009.

Mr. Sneed: I have a question first before we approve them. Page 4 line 5 the Mr. Sneed statement attributed to me, I did not make the statement, but does anyone remember making that statement?

Mr. Coakley: I think several people feel that way, I don't recall.

Mr. Sneed: Ok it is not critical.

Mr. Bachman: So you are saying strike that.

Mr. Sneed: At least strike me.

Mr. Coakley: Ok any other questions comments? Ok with that minor exception do I hear a motion to approve the minutes.

Mr. Sneed: Motion to approve the March 18, 2009, I am sorry the February 18, 2009 minutes.

Mr. Bachman: Second.

Mr. Coakley: All in favor.

All: Aye.

Mr. Coakley: Ok the minutes have been approved.

Old Business

Mr. Coakley: Ok there is no new business, under old business we have the Speelman wind generator application.

Mr. Yost: No other comments came in written or otherwise and the record was opened up at the last public hearing so back to you...

Mr. Coakley: Well one was in our...

Mr. Yost: Yea there was one written one.

Mr. Coakley: Yea we had one from a Candace Eck that lives over in Elizabeth's Delight and she felt that it wouldn't be in character with the downtown area of Poolesville.

Mr. Bachman: And we also had in the folder last month the one from the Nessul's. And you said you received an email?

Mr. Coakley: Yea I received an email from Commissioner Jerry Klobukowski that was not in favor of having a windmill in the Central Business District. Would anyone like to make any further comments?

Mr. Stump: If we do decide to go ahead with a windmill I am not saying I am or not but if we do that I am still in favor of some type of Ordinance based on --- some of the examples that we got from the Town Engineer last time. So whatever we do we will set a precedent.

Mr. Sneed: What is the question right now?

Mr. Coakley: We need to discuss and then make a determination.

Mr. Sneed: But I was under the impression from last month's meeting that we, there was a prevailing feeling that we should visit this issue relative to new Ordinance or Regulations in the Town to set standards not to vote up or down on this particular one but to study and evaluate and write standards and then judge this application on the basis of standards that we write, is that not what we talked about last month.

Mr. Coakley: We discussed it, my impression was that we would make a determination on this particular application and beyond that develop standards as we were in the process supposedly of looking at the entire Subdivision Regulations to come under our purviews and make any suggested changes to Town Commissioners for legislative changes and that would be part of...

Mr. Yost: And I have to say I agree with George because I do believe that we owe at least the applicant, have the obligation to approve or deny it at this time, follow the process through and that is part of the process in the application.

Mr. Sneed: So in light of the testimony and evidence that has been provided to us so far we have questions that have been raised about the safety of this device, whether it poses a hazard to the health and safety of people residents and customers, we have evidence and discussion about whether there is a noise issue related to the monopole both when it is operating optimally and when it is operating with a defect, we have some questions that have been raised as to whether it would be a nuisance in this particular site, we have 2 letters from residents opposing the monopole, we have an email from another citizen opposing the monopole, we have a letter from the Town Engineer that lists a variety of reasons why it would not be advisable at this time in the Central Business District for architectural design reasons or village concept reasons posing the opposite the vision statement, we have questions that have been raised whether it is insufficient numbers in that area of town that would negatively impact the preservation of the architectural and historic character of Poolesville and I guess the last thing is we have a statement that the monopole does not meet the intent of new construction guidelines right in John's letter or may not.

Mr. Strong: The question was raised regarding the per the Master Plan whether it falls under construction guidelines established in the Master Plan.

Mr. Sneed: And there has been, all of the stuff I've read and then on the opposite side of that we have had some lack of opposition but not all that sustained so evidence seems to support a vote in a particular direction so I don't know, if we are not able to design or establish measurements or standards first and vote I don't know whether I could vote any way but down on this at this time. How does everybody else feel?

Mr. Coakley: Bob you have any comments?

Mr. Bachman: When I have thought about this since the last hearing I have not although I knew the comments about safety and I knew the comments about noise I guess I tried to think about the Poolesville Old Town Center concept that is inherent in the business statement in the Master Plan and I've thought about it but I won't say I've thought about it exhaustively but it strikes me that the Master Plan business statement suggests that we ask some questions about anything that is proposed for the Poolesville Old Town Center that is my interpretation, if you look at the vision statement you can turn it into questions, for example you could ask I will just use the wind generator as the straw man, is the proposed wind generator consistent with the desire of residents to maintain a small town or village characteristics of Poolesville, is the architecture of the proposed wind turbine and tower quote aesthetically consistent which is stated in the Master Plan with the Poolesville Old Town Center associated historic structures, looking at the vision statement you could ask does the proposed wind turbine and tower and this could apply to anything that is proposed in the Town Center does it enhance the desirable features of the Old Town Center historical desirable features and does it incorporate these desirable features in the design of the new construction so it is aesthetically consistent with the Poolesville Old Town Center and associated historic design, and then finally you might ask is the proposed wind turbine and tower construction and design in harmony with existing older architecture which is also stated in the Master Plan. So I guess my perspective on this is does this type of construction which will be visible, it is going to be high in the air, does it work with the desire of the town to maintain the Old Town Center or is it in fact a step away from that, and I have to say that I think about the wind tower as 10 wind towers, I think that any business could then put one up and when I think about that I guess my answer is that I don't think that wind towers are in harmony with the existing older architecture of old town Poolesville. And I think there is lots of other things that I would also say that are probably not consistent, if we wanted to put up a cell phone tower in the old town I don't think in my mind that would be consistent in fact we have an example where we put it on the water tower as a way of making sure we didn't create another new structure, so those are my thoughts about it. I would appreciate any comments or thoughts from the rest of the Board.

Mr. Coakley: For the record Mr. Hoewing has arrived. Would you like to make some comments?

Mr. Hoewing: Well John knows I love his Hardware Store and I am probably the most faithful Commissioner that goes in there probably every weekend so I am a little biased because I want his store to be successful. But as I said at the last meeting I think one of the things about the issue that does concern me is the precedent of it, we are in this situation now where energy conservation is going to be if anything probably more important going forward so we are probably going to see more not only wind towers but

solar panels and all kinds of installations that some of which would be fine and some of which may actually have some detrimental impacts potentially on the Town's character and the way that the old town looks so my belief is that since there is no provision right now for a Special Exception for this in the guidelines I think we need to look at that and also look at whether we can actually come up with some guidelines and some guidance on how these kinds of things and probably things like solar panels if they are really obtrusive and are you know could change the way buildings look in town and maybe impact the character should be handled so at least this ought to be looked at for special provisions on its own, so I have a hard time voting for it because of the precedent at this point is my concern.

Mr. Coakley: Chuck?

Mr. Stump: I'll pretty much echo what Link said. I am ambivalent really on the look and feel in the old town issue, I think there is absolutely no safety or noise concerns I am concerned about the precedent and I think we need to have an updated Ordinance or what have you before we look into approving something like this right now but tend towards not doing this one but I'm of the strong opinion that we take some action on coming up with Ordinances as quickly as possible because I feel probably more requests like this, I kind of hope there will be more requests like this but we could be prepared for them.

Mr. Coakley: Ok so I guess my thoughts are the applicant agreed to remove it if there was opposition you know that is sort of a vague somewhat vague concept in that you know what opposition, how much does it have to be 5 people against it or 10 people against it whatever, but I think for a variety of reasons number one just out of curiosity to see what kind of cost savings if any it would generate because I have had some people tell me that they were a little skeptical as to how successful it would be as far as saving electricity or all that much compared to what the cost would be and stuff but as far as setting a precedent I think if it were tried on a trial period it would certainly give us more information as to what kind of regulations or exceptions to write for any potential future use of wind generators within the town and so I guess I am just sort of leaning towards if the applicant is willing to agree to a one year trial period with the Planning Commission making the final determination one year from now based on any additional feedback and any other information that comes in that if we make our final determination a year from now that we don't believe it is consistent with the small town atmosphere of the Central Business District of Poolesville then it has to be removed.

Mr. Sneed: My feeling about that is that the list that I rattled off earlier all these things remain and none of these are mitigated by a trial period so I am not persuaded by the offer to take it down while we appreciate it, I also think it is not, I also think that in itself is a precedent that is something we want to open up the community for in the future, other words a precedent of trial and error, while I appreciate the offer to try it for the applicant I don't know if that is a precedent by itself that we want to in most instances take on, there is plenty of evidence to support opposition here I don't think, I don't need to look, I mean we have the evidence in front of us we have letters and emails there is no I mean except for the applicants position on the application I don't know of one evidentiary proponent view that we have gotten, have we gotten one, has there been anything other than we are not sure that it is going to be noisy, we are not sure we think the safety issue is not really there, is there anything that has been offered on the opposite view.

Mr. Coakley: Well I think on almost any issue like this in the town the only people who normally come forward are those in opposition unless you are talking about a Skatepark or something like that where people say oh yea I want you to spend money for a park facility or something like that but...

Speaker: Or if you want an Optometrist next door.

Mr. Sneed: Again that is just my sense of it and I would be racing Link to your store this weekend of course because I am there as often as anybody and I do want the record to reflect that I do think you run the best hardware store in Poolesville.

Mr. Coakley: Anyone else have any comments?

Mr. Hoewing: The other, just to elaborate a little bit on that what I was trying to get to, if you look at Appendix B in the Zoning Code there is actually a section that talks about Special Exceptions and the reason we put that in there is that when you look at the list that actually lists all the different kinds of potential uses of land that might be proposed and the ones that have --- have to come in and say this is a use I know I can't use it without a Special Exception but because you got a list that I can actually apply for that, there is nothing here that covers this so that is what worries me it is a precedent we have either got to list it in here and say you can get a Special Exception and then you have to meet 3 standards: 1) The proposed use does not affect the --- of the general plan or the physical development of the town which is a character issue, 2) the proposed use will not affect the health and safety of the residents, and that is an issue we talked a little bit about and I really do I don't think there is a safety or health issue from what I've read about these devices and then 3) is a standard set forth a particular use for which a Special Exception may be granted have been met. So if there is a standard that we proposed as the Planning Commission, the Board proposes are met, if we have that in the list we could say you know we've looked at those and we recommend the Board give you a Special Exception, we don't have anything on this list so I don't know how we handle it frankly unless we do adopt it as a specific use.

Mr. Coakley: Well my understanding would be that as long as we feel it doesn't totally go outside our interpretation of the character of the central business district of Poolesville then it is up to this Board whether to agree to it or not.

Mr. Yost: Right now you are correct, you are exactly right that is the issue per the Code, does it meet the character of the downtown style and architecture that is exactly what the Code says and that is the issue.

Mr. Coakley: And I sort of take a different view on the precedent setting and that is I think you can set a negative precedent as well as a positive precedent and as far as I am concerned I don't believe we can be held to anything like that because we are looking at each applicant on its own merit and I think another applicant could come in and say well you allowed John to do this therefore you have to let me, I don't think that is necessarily true.

Mr. Hoewing: Why don't we do this George why don't we get a recommendation from the attorney on that issue because I don't agree with that interpretation. If you look at number C it says use is permitted in...

Mr. Bachman: Where are you on this Link?

Mr. Hoewing: Appendix B Section 3, there are 3 different zones...

Mr. Bachman: What is the page number on that?

Mr. Hoewing: Well page 3 of Appendix B and it says C uses permitted: The uses permitted as a matter of right in the CBD a different district are the ones with the letter P and there are several zonings in the following chart. Where the letter SE appears a Special Exception is required, where no letter appears the use is indicated as prohibited, so I don't think we can do this unless we have it listed here, because this is CBD this is not the general town, this is not the residential area, that is different, the residential area is different.

Mr. Yost: You are right.

Mr. Hoewing: If he interprets that we can approve it without this then I would reconsider my position to take a look at it again based on character issue but I don't think I can do that because my interpretation isn't that way.

Mr. Bachman: Well how can we ask a city attorney to reinterpret a clear statement on uses permitted?

Mr. Hoewing: No we are not. I am asking him to interpret whether we have to, whether George said and Wade said that we have the authority as a Planning Commission to essentially, he submitted a site plan, we can approve a site plan if we think it is within the character of town, the town's character, I don't think that is true I think that the CBD is different, it has listed, and I remember going through this we spent hours on this in 1998 in the Planning Commission putting this list together, it is exactly what the County does too in special zones, the CBD is a special zone, it is not the rest of the town, so I don't think it is right, I think we have to put it in there as a list.

Mr. Yost: I understand what you are saying now and I think you are right because that tract of land that wasn't listed in the use chart and if it wasn't listed than it wasn't permitted.

Mr. Bachman: It was prohibited, it wasn't that it wasn't permitted its prohibited...

Mr. Yost: Right.

Mr. Hoewing: Right.

Mr. Bachman: Which is a different verb.

Mr. Hoewing: But I'd like interpretation maybe that is not what the Town Attorney finds, if he finds that not right then I am willing to consider this as a site plan and approve it on its own merits.

Mr. Coakley: I am a little leery that interpretation because it is impossible to make up a laundry list.

Mr. Hoewing: Yea but a lot of things George could be fit under these categories, the trouble is this one can't be, we have had other examples of things that weren't exactly a hardware store but they were close enough that we could say yea this is a use that is close to a hardware store, its got enough features that are close to it that it fits, this doesn't fit any of these uses, it is not close enough to it, if it was I would say, if they had windmills for example listed I would say that's not a windmill but its close and we can approve it.

Mr. Coakley: Well to me it is not a use per se because the use of the site plan is a hardware store, you are talking about the --- application, it would be no different to be than if a new 8 stage furnace or something came out and one of the businesses in town wanted to take out their Trane air conditioning and heating unit or something and put in this new 8 stage heating device or something like that, it certainly wouldn't change the use of that property...

Mr. Yost: The elementary school and the high school both changed out their furnaces and rebuilt them and they had to come here for a use permit.

Mr. Coakley: I know but that wouldn't be included as one of the uses, what was the use of the site, a new heating plan, the use of the site was for a school.

Mr. Hoewing: Look George look under Use Chart on page 6, there are all these different uses and you can go, you can come in here and say, there is no reason John couldn't come in and say I want to put an antennae out there because Verizon has asked me to put an antennae and they are going to pay me and I will let them use part of my property for that he could come in and do that but that in the CBD is a Special Exception, you would have to get approval to do it, it is listed specifically, he can do that but he has to get approval. There is nothing in here that guides us that is the problem. And like I said I looked at the safety in this, I think it is innovative I think there is a lot of reasons that it is a good idea I just don't think I can do that primarily without thinking about the implications for the town zoning ordinance which I believe requires to have it listed in the CBD not for anything else.

Mr. Coakley: Well if you look at page 7 it says electric power transmission and distribution lines overhead carrying less than 15 kilovolts.

Mr. Hoewing: They are permitted so he wouldn't have to do anything but it is listed that is the point, it is listed specifically.

Mr. Coakley: Well how does that differ from...

Mr. Hoewing: It is not listed that is what I mean it is not listed.

Mr. Coakley: Wouldn't that be very similar though?

Mr. Hoewing: It is power lines that is pretty clear what that is, it is not a tower with a fan on it, which again I think it is a great idea but it is not listed.

Mr. Stump: Devil's advocate for a minute. Where would you throw a solar facility...

Mr. Hoewing: A what?

Mr. Stump: Some kind of solar facility on the roof.

Mr. Yost: You don't need...

Mr. Hoewing: Right now you don't need a permit.

Mr. Stump: Why not?

Mr. Hoewing: Because it's basically usually it is flat with the roofline it doesn't change the contour of the roof at all. I think you could make a case though in the central business district that it changes the character if it is really obtrusive and big that it might actually change the character, you could make an argument they might have to apply, it could. I would agree under number 2, under antennae for cellular communications and it says and similar uses you might be able to make a case that that's ok and similar uses, I mean it is spinning so it is not exactly the same, a cellular tower does have transponders on it and they are pretty noticeable and you get a special exception for the CBD for that. So I just want an interpretation from the attorney, if he says that is, I am fine with that, now we can do that interpretation ourselves I don't know if you guys feel comfortable doing it or we can wait until he makes a recommendation but that is only 1 month, I think it is worth doing that. So I would ask him to do 2 things, does he think section C means we have to have a specific listing or can we interpret it I think the antennae because it says and similar uses might be close enough if he interprets that close enough we aren't setting a new precedent we are just establishing that we are going along with the existing uses in here and interpreting it to mean this in this case. Now the definition is pretty a

little bit --- if there is a definition in the back that I should get some more detail about it so it is a little bit harder but because it says for cellular communications that is probably hard but I am willing to have him take a look at it.

Mr. Bachman: So let me understand the process if our attorney comes back and says no it is not there then it is a prohibited use.

Mr. Hoewing: No I am asking him something different, I am asking him to say do we have to have, if we could just approve it on a site plan basis fine, if instead we have to have it listed which I think Section C requires and I would like him to tell us that, if not than lets do the site plan.

Mr. Bachman: What's approve it on a site plan basis?

Mr. Hoewing: That is what they normally do they come in and say I want to use my property to add a garage to it, here is my site plan and you guys approve it.

Mr. Yost: If it is similar to something like George is talking about with the heat up at the high school which was the site plan that we listed in there.

Mr. Bachman: Right but they already had a heating system at the high school.

Mr. Yost: Right.

Mr. Bachman: We don't have any wind generating towers in the Town of Poolesville.

Mr. Hoewing: No.

Mr. Bachman: So as far as I understand the site plan does not apply to that because this application unfortunately there is no example of it.

Mr. Hoewing: I don't think so either but I know but I think there is some feeling that it does so lets get an interpretation, I am willing to wait for that.

Mr. Bachman: Well I'm not sure, I have to say there is even bigger and broader issues than getting an interpretation from your town attorney about a use chart here. I'm concerned about the, there is planning and then there is planning power and guidelines and then there is planning by exception, I'm a proponent of planning according to the guidelines provided by broad citizen input following a consistent process that was established by the municipality or the entity and then making decisions based on that until it is changed by the citizenry. The concept of Special Exceptions has become so commonplace that now it is not very special and its almost as if a Special Exception is the norm, that was never the intention of concept of Special Exceptions within the content of a plan. If you have a Master Plan that is what you follow and then if someone comes in and asks for a Special Exception it is a slippery uphill slope, it is like good luck buddy, gravity is probably against you but to be fair we need to provide opportunities for Special Exceptions in every case, but I just am concerned that the nature of the Planning Commission is always going to get the Special Exception request and my feeling is has the Planning Commission personally I don't want to get too comfortable with Special Exception requests, I want to get more comfortable with the intent and the specific statements and provisions of the existing plan until someone comes forward and says bad plan change it.

Mr. Hoewing: Well Master Plans can't anticipate things like this, they really can't.

There is no way we could have anticipated somebody would ask for a wind tower, that is why we don't have it listed, because we didn't think about it. Master Plans are guidelines they are expressions of what a vision of the town, what we want it to look like and feel like, so if we think again that we don't need to have it listed here and we think it doesn't fit the town's character and we don't want to approve the site plan then to do that legally

then we can do that, we can say we don't think it fits the town's character and that is legitimate. The other thing I would note is that when we put this list together there is probably more prohibitions in this than there are special exceptions, there aren't that many special exceptions, if you look at the boxes that are empty that means you can't do it there, that is a lot of boxes that says you can't do it there. I don't think we have that many special exceptions that we have granted either, we granted that one that we had a lot of controversy about for the eyeglass shop but not too many others that I know that we have granted recently so it is not frequent that we do that.

Mr. Coakley: Well again we don't grant them we recommend them.

Mr. Hoewing: I know the BZA does but I mean the Town hasn't granted that many.

Mr. Stump: I'm not sure your points are --- to each other.

Mr. Hoewing: No they are not.

Mr. Stump: I can see Link's point going first lets clarify whether a special definition is needed or not, just because we say it isn't needed doesn't necessarily mean that we are going to grant it but if (inaudible) clarify that we are going to grant it then I would like to look at the Ordinance/regulatory issues that we would want to put in place but then I don't think you guys are necessarily at odds with each other, your positions.

Mr. Hoewing: No though if people want to go and have a vote on whether that's we want to ask the Town Attorney to do that that is certainly your prerogative you can just say we don't want to do that we think we have the authority to do it on the site plan basis that is fine too. Planning Commission can do that, those kinds of things can always be taken to court at some point if we make the wrong decision, I am not saying we do make the wrong decision I'm just saying you could do that so I am comfortable either way. But I really do think it is pretty clear to --- upon it.

Mr. Yost: But your point you could deny it tonight but you can't approve it tonight.

Mr. Hoewing: Yea.

Mr. Sneed: Could do what say that again.

Mr. Yost: The point you could deny it tonight but you can't approve it tonight.

Mr. Hoewing: If my interpretation is correct, if it is not then you guys could say lets go ahead and have a vote on it.

Mr. Sneed: Well to your point Link about in the Master Plan process not being able to foresee every possibility I suppose that is why we do a renewal every 6 years so that we can catch up if we need to...

Mr. Hoewing: Right.

Mr. Sneed: But I have to say...

Mr. Coakley: Let me interrupt for a second, what he was quoting from is in subdivision regulations it is not in the Master Plan.

Mr. Hoewing: No that wouldn't be in the Master Plan. We don't even review these at all in the Master Plan. We did in 1998 but we haven't done it since at all.

Mr. Sneed: Maybe we should do that too.

Mr. Yost: That was one of the things that the Commissioners actually requested that we go to green initiatives and we go through the Subdivision Regs.

Mr. Sneed: And in addition to that, your offer to or this idea that we could do one or the other I have to say I won't be persuaded regardless of what the legal opinion is from the town, I won't be persuaded away from my position as it stands right now because there is overwhelming information here from citizens that suggest it is not a good idea for the

small town character of the town and I would ask maybe George for your input on this idea that most comments that we get are in opposition to the applicant what does that say about how we should consider the applicants.

Mr. Coakley: With a grain of salt. I think that most issues that come up before us the individuals who come to speak are the ones that it is either in their backyards and they don't want it in their backyards or they come to all the meetings and rarely have positive input.

Mr. Sneed: One other thing I would say is I would second Bob's comments about the hazards associated with a Board that is governed by special exceptions if I understood what he was saying and I would echo his and agree with his comments earlier.

Mr. Coakley: John.

Mr. Speelman: Hi I am John Speelman Poolesville Hardware I would just like to say this is the second meeting and that we have only had maybe 5 people in opposition, if you would like if I start a petition get signatures of people that everybody who has come in the store has read the three papers, most everybody in town knows what I want to do and everybody except the Nessul's thinks it's a good idea. Now this has gone on for 2 months and that's why this is a new area and that is why I'm willing to go out on a limb and put it up and take it down if there is some real opposition against it. Now you have got to start thinking outside the box to conserve and if you want to go with the --- the way the Town looks between the Chevron, the Getty being trashed I mean this thing is a stick sticking up and I think there is a whole lot more bigger issues as far as the flavor or the criteria of how the town looks then my windmill generator. Now I agree I think there needs to be legislation written and criteria set forth but the only way you guys are going to get that information is to see one. As far as I know George Coakley is the only one that has visited the site where they are.

Mr. Hoewing: I have seen them down in St. Mary's County. Not the same model but I have seen them. Like I said I think they are fine.

Mr. Speelman: Ok and now I am willing to go out on a limb and say I will take it down but you as Planning Commission members yes I was told that in the central business district I couldn't find anywhere in the Code where I couldn't do it, now maybe I am wrong but I came to you to educate you on this thing because if I am wrong then other people have been wrong on it. I think you do need to make it a Special Exception but you need legitimate information to see it, hear it, touch it feel it, look at it to make a reasonable decision. I don't know what else to say.

Mr. Sneed: I don't necessarily agree with that though that I need to see it, touch it, smell it, I just don't agree with it.

Mr. Speelman: That's fine but if you don't...

Mr. Sneed: The idea that you think that we need to start thinking outside the box I don't think that anyone here doesn't agree with that and I think moving toward green is certainly something that is all in our best interest but the thing that sets here at least for me I will speak for myself is the sense that I have is that it's a great, everything's great except right there, it's the location at this time, at this time and until such time as we have something that does guide us specifically in the Ordinances that will guide us. And the other thing is, it's actually your third time here right, third time here...

Mr. Speelman: Third or fourth and you leave the record open and then it is like now there has been very, very little opposition to this, a handful of people I mean there is 3000

people in the town, if you want us to go to referendum and lets look at it that way, we will do a, start a petition and let the Town vote. I mean is that the next step, would that be a better way of going, start to get it on the ballot and have a Special Election on it and see if the Town, the majority of the Town wants it or doesn't want it. I mean a lot of people I know want it, how this things work, they want to see my electric bills, you know this is the direction this country needs to start going and we got to start somewhere and I think this is a great opportunity for everybody, you know fitting in the flavor of the Town I mean one year, I was going to say 90 days but if it doesn't work out we can take it down, I'm not building it from brick and mortar it can be removed from the property and I think that is a pretty good offer. It's your decision but everybody that I have mentioned it to that came in the store thinks it's a great idea.

Mr. Coakley: Ok thank you. Barring hearing anything from the Town's Attorney like I said my feelings are that when the use list was made up it was done with the best knowledge available at the time for those people making it up. And since it is impossible to list every conceivable use for a piece of property and that things change more frequently than our legislation that if its not specifically listed then as far as I am concerned the Planning Commission would have legal authority under site plan review to include something that is not specifically listed as going to a special exception. So with that in mind I think we could vote either way.

Mr. Stump: How would you address the need for some sort of Ordinance regulation eventually to go along with it or something you think that would be covered? I was worried you were just sort of a compromise where say lets call it 6 months for the sake of argument, 6 month time frame to operate the windmill at which point --- is where you are heading, he would review the input from the citizens possibly with the benefits or drawbacks too environmentally from the windmill and at that point then look at addressing specific ordinances for --- before, how does that happen?

Mr. Coakley: Well I would view the review of the Town Code as a separate issue from this. Now if it were done on a trial basis or something then we could certainly use information that we got from that to construct any changes that we wanted to the Town Code but whether the applicant gets approved or not I think we still need to address that when we review all the Subdivision Regulations.

Mr. Stump: Which would be when?

Mr. Coakley: Well we are planning to do that, we have been asked by the Town Commissioners to do that with a list of our recommended changes.

Mr. Yost: Actually next month I was hoping to get that on the agenda since we got past the amendment just to look at the Master Plan, that was the next thing on the list.

Mr. Stump: So finally in the fall timeframe is probably when that would start to get finalized and be proposed, does that seem like a reasonable timeframe to you George?

Mr. Coakley: Yes but like I said I don't see where the 2 are necessarily locked in to each other.

Mr. Stump: I understand they are not necessarily locked into each other but I am nervous and hesitant to move on one without some I don't want to say assurance but some strong flavor that we are actually going to do more work on the other one. They may not be locked in right now but they are going to come back together at some point especially when we make the decision whether to keep it up or take it down and the next time

somebody comes up with another proposal for one which will probably be right around the time that or whether it be 90 days, 6 months, or a year expires.

Mr. Bachman: What are we talking about here. I am absolutely baffled by what we are talking about here. So will one of the two of you clarify, it sounds like you are moving towards a recommendation?

Mr. Stump: I am discussing one, George hasn't.

Mr. Coakley: Well Link had raised the issue that we should probably include wind generators under the special exception uses and come up with some guidelines in the Subdivision Regulations that pertain to it and if any kind of wind generation is going to be applicable or allowed in the central business district.

Mr. Bachman: So we would consider wind generation and how it would apply to R1-3, R1-2, R3-4, RMUL, RDT, COM, and CBD?

Mr. Coakley: Yea.

Mr. Bachman: Ok well that is, and what has that got to do though with tonight's decision?

Mr. Coakley: Well as I said I don't see what the 2 are connected, at least not right now.

Mr. Bachman: So maybe I am confused here but the zoning code says that if it is not listed here you can't do it. I mean I am not very comfortable with the idea of looking at something in black and white under uses permitted and it says where no letter appears, well no letter appears because the usage is not even in the Code and it is a new technology it could be applicable to a variety of zoning environments in this Town so I'm certainly not prepared to violate the Code to set up an example of something that is not in the Code. I would have to recuse myself just legally, I don't want to be involved in the potential fallout of that decision, I would recuse myself from stepping over the existing zoning code it would just be too awkward for me.

Mr. Coakley: And that is where the site difference is that I think Link is saying the same thing you are that if it is not specifically mentioned then it is prohibited.

Mr. Bachman: Well as it is currently written here that doesn't mean anything is prohibited in perpetuity because there is new uses like you say but until you address that in the same process that produced this matrix of uses I think at least my perception is that someone else could come in and say well you just violated your code and there is no reason to do that, only because there is nothing critical about the decision. John operates a great hardware store currently without a wind turbine and there is not a better hardware store I think anywhere where you can call up on the phone from your office and say hey John can you leave a bag outside your door at 7:00 when I get home with the following things in the bag, but there is not a sense of extreme urgency for the operation of John's business to step over the Code. There is an urgency that we take his recommendation, his application seriously and recognize that it may point out what is not in the Code and address it so that his request can be considered within the Code I think that is the right response for us is to make it possible to consider it legally.

Mr. Hoewing: George is right there are 2 ways to interpret it and I am just interpreting it based on Section C which has a use permit and we put a list of uses in here for a specific reason I think that we said these are the kinds of things you ought to look at and there is enough wiggle room in these that you can a lot of times fit things within them, its just this doesn't seem to do that to me. George is right though there is another section here and that's how Codes are written they can be conflicting that talks about how the central

business district we can approve site plans and they should include the following, including a certification from the Planning Commission they don't violate this Ordinance which you can interpret to mean it should be one of those things listed right or you can just interpret it to mean that we don't think that is necessary and we are going to go ahead and approve it because we have the authority to do that as long as it is within the character of the Master Plan which is also referenced so there are 2 ways to interpret it I agree with that. I mean I think the Commission just has to decide which one they think is right.

Mr. Bachman: There is some guidance in the current listing and I am not trying to be argumentative but I am trying to be consistent. I haven't seen anything where the use goes up in this list, anything with any height, they all have a Special Exception related to it, antennae for cellular communications – special exception across the board, radio towers and broadcasting stations and towers – special exceptions in the business district, so anything that goes up that can be seen will be above the height of either the standard residential or standard business height, the meaning of this is I would want to think about that, it would require a special exception for it, unless I am missing something here. Everything that goes up above the height of a house or store on this list seems to require a special exception.

Mr. Hoewing: What you could do I guess George is have a vote on the interpretation if you wanted to, your interpretation and if we vote for that then we can go ahead and approve the site plan or discuss it at least and decide what to do at that point. Or we can wait for the attorney to give us an opinion, I mean that is one way we can do it. It is really just a, at this point I think it is an interpretation issue which of these interpretations is right, not right, but is it the right precedent for the Commission to adopt.

Mr. Coakley: John let me ask you this, you had mentioned your electric bill being high because you are commercial as opposed to residential, what is your farm?

Mr. Speelman: The shop and the barn is commercial and my house is residential. We only have Allegheny only has 2 rates and with my electric bills runs \$1000.00 a month I have to raise my prices or look at some alternative energy sources that everybody is talking about the windmill generator. I am looking to spend some serious money here and I wouldn't put it up if it wasn't beneficial plus people can see it, it's a --- thing for me to do and this is where I think by putting something like this up it can save electric and (inaudible) but if this thing is turning its free electricity and I (inaudible) but I am saying this ought to be --- for everybody and that is why if there were legitimate complaints I would...

Mr. Coakley: Now what would be the difference between your taking the gamble on your commercial electric use on your farm as opposed...

Mr. Speelman: I'm putting them up on my farm that is a done deal, we have already got that in the works and that will be for my home and my farm, I mean it is free electricity and this country is --- and I think it is going to be good PR and I am trying to conserve. But I think legislation needs to, I think there should be criteria set forth for the next one but if you all have concrete information like here is a picture of what we have and this is where it is go see what it is all about and --- trial and error and he doesn't look and say hey (inaudible).

Mr. Coakley: When do you plan to put them up at your farm?

Mr. Speelman: Hopefully within the next 6 months.

Mr. Coakley: Ok Mr. Hernandez.

Mr. Hernandez: Carlos Hernandez, I want to address the issue of John's business. By installing this particular turbine with the current grants from the State of Maryland which would be about \$4500.00 and 30% of the total cost of the installation is a tax credit on the federal tax returns these turbines are really costing about half of what it would normally cost. By installing one of these John would actually be fixing the price of the kilowatts that the turbine produces by 8 cents a kilowatt for the next 20 years. We don't know what the price of Allegheny Power is going to be in the next 20 years but I can assure you it is going to be a lot more than 8 cents a kilowatt and bigger turbines, slightly bigger turbines would actually cut the cost down to about 5.5 cents a kilowatt. This is a train that is coming down the tracks, every county and every city in the State of Maryland is essentially dealing with the same issues, there is a big push from the Maryland Energy Administration, there is grants, and there is money being funneled for this for that sole purpose so we can get off foreign oil. I do understand the concerns with safety features, all of those were in the original application were given to Mr. Yost I don't know if you ever had a chance to look at them but these are all engineered structures that have they are guaranteed to stand for example 140 mile an hour constant winds and 182 mile an hour gusts, there is an American made product that has been introduced by the largest manufacturer of small wind turbines in the whole world, they have been doing this for a long time. Safety is an issue that they are really serious about. These turbines, thousands of them have been sold and there hasn't been an accident of a snow throw or blade thrown or anything like that so far. I am a dealer for that particular company so I am aware of these things that do come out. I don't know if there are any other issues that I may address having been doing this for almost 3 years now and currently part of the Board of the Carroll County and sustainability and I provide a lot of my free time to the Maryland Energy Administration to deal with small wind, this is something that it doesn't cost anything, it doesn't cause any harm, it doesn't change the wind or the quality of the air that goes through it, the noise that it produces the data was filed it is less than ambient noise as far as decibels is concerned. What I would, I don't know if there is wiggle room for the whole group to consider something called a demonstration project with John's application, maybe thinking a little bit outside the box but as an individual demonstration project it would allow for John to be able to take advantage of these grants which he is entitled to and also to reduce the cost of his electric power for his business and I don't know if there is room for something like that but I would certainly consider. I can tell you that most of the counties including the installation which was in Clarksburg which is Montgomery County, what I provided was the actual permit and all the data that would accompany that permit was approved and was installed on the 24th of December of last year and that particular turbine was very well accepted by the neighborhood and actually neighbors in that area also put one up. And I think that it might be the main fear that once we put one up that other people may want one but if you separate it totally out as a demonstration project it may allow you some wiggle room to say either we want to consider this, we want to study it, we want to try it out and as a Commission to really look at what the particular turbine has to offer advantages or disadvantages so you can actually study it, so you can have data that you can compare it and look at it as opposed to hearsay or other things that you seem to need here.

Mr. Coakley: You did raise a question though and that is if you take advantage of State and Federal tax credits and stuff and then if John said ok after a year I am going to remove it that seems like that might create some negative tax implications down the road.

Mr. Hernandez: No if you actually look at the law it will not because the only way he can actually get the grant for the tax credit is if it is actually installed, there is no provision in the law for example if the turbine gets decommissioned for any reason whether it fails or is taken down by lightning or an act of God or the Commissioners, you know it really doesn't apply to the intent of the law as a grant that is applicable. So it will be consistent and it will not hurt John.

Mr. Hoewing: Be careful he used to work for the IRS.

Mr. Hernandez: But this is something new that came with the --- package, it was one of these things that was kind of tied in it too, and it is 30% of the entire cost of the installation with no cap.

Mr. Coakley: Do you all have any questions for Mr. Hernandez?

Mr. Hernandez: Thank you.

Mr. Coakley: Wade do we have any requirements on after having a public hearing to when we have to make a decision on the application?

Mr. Yost: You can table it until the next meeting if you are waiting on an attorney's opinion or something.

Mr. Coakley: Ok why don't we go ahead and do that then if that is ok with the other Commissioners, wait and hear what Mr. Wright says and...

Mr. Sneed: Get it on what, on the question of what?

Mr. Coakley: Whether we actually have the authority to approve it or not.

Mr. Hoewing: I know it won't change your view but I think it is important, if we follow the process the way I think we should than I think we have to follow Section C which says it has to be listed in there. If he says that is not right then you can still vote against it because you already said you are going to and that is fine.

Mr. Sneed: Well that is what I started to get to earlier. John has been here several times we have taken up his time, he has spent money to be here, he testified to that the last time he was here. It wouldn't matter to me one way or the other if there was the sense of the board here that it wouldn't matter to three of us either, we could get this off the agenda tonight and we wouldn't take up any more of his time.

Mr. Hoewing: I don't think that is the issue, I think the issue is whether or not there is a precedent we are setting in terms of how we interpret the Code, I think we have to do that right, I don't think we ought to just decide we have the authority, I am not sure we do.

Mr. Sneed: Which is a question that could come up any night it could be on the agenda right?

Mr. Hoewing: That is why you have an attorney usually, so he can answer the question. So that would be my feelings.

Mr. Bachman: What are we asking our attorney again, I need to understand what we are asking him?

Mr. Coakley: Whether we have the authority at all to approve or if we don't have the authority to approve then we can just go ahead right now and just say well like Wade said earlier we can vote no but we may or may not have the authority to vote yes.

Mr. Hoewing: Your interpretation and I agree with that is that it is not listed therefore it is not a permitted use. I think there are some other beliefs that we actually have the

authority to approve the site plan no matter whether it is listed in that or not, I think we need to establish that question, if it is, because going forward we may have more of these kinds of things happen.

Mr. Bachman: I agree with that.

Mr. Sneed: Well given that statement and we all agree to that, we all agree with Mr. Hernandez and John that this is coming down the pike, we all want it to come, all of us are prepared for it to come so and you have said George that the two things are separate so given that can we now, lets say right now what do we do now to get that ball rolling, the message to the Commission, the recommendation to the Commission or Zoning Board to look at the Ordinances and the Code and start to plan for the future on this or just...

Mr. Coakley: You just threw a third ball into the mix. The one ball is whether or not this Commission has the authority to approve a site plan for a use that is not specifically listed or close to being specifically listed in the Subdivision Regulations, that is the one question. The other question or issue is that we have already promised the Town Commissioners that we would review the Site Plan Regulations and make recommendations for any changes or additions thereto, which we will do in the next several months. Then the third issue is the specific application at hand and that is it seems to be right now the consensus that we would have as a Body the ability to vote no on the applicants request but may or may not have the authority to vote yes so like Link said should we go ahead and vote on something that we don't have authority to vote both yea and nay, so if you go ahead and take a vote it is almost like you are saying well we know before hand this is going to be a negative vote, so consequently I would suggest waiting until we get feedback from the town attorney to make sure we have the authority to vote both ways before we take an official vote on the issue.

Mr. Bachman: Who established the --- Codes that we have now?

Mr. Hoewing: The Planning Commission in 1998.

Mr. Bachman: The list of uses when was that established?

Mr. Hoewing: I think it was 1998 was when we did it.

Mr. Bachman: By whom?

Mr. Hoewing: Well the Planning Commission did the work but the Commissioners ultimately had to vote to approve it so the Commissioners approved it. And I don't know who the Commissioners were then I guess they are listed somewhere.

Mr. Bachman: So essentially the first thing we are doing is we are saying that although the Planning Commission created the zoning code here, right we created this, identified uses that are permitted and not permitted, we are saying we don't know what that means?

Mr. Hoewing: That happens all the time. And there are conflicts all the time because I guarantee you that sometimes we have to straighten out that is just the way laws are because they are so complex.

Mr. Bachman: So the Planning Commission is essentially asking for a clarification of its own zoning document.

Mr. Hoewing: Yea and that is how it usually...

Mr. Bachman: That is different than your comment about a Site Plan isn't it.

Mr. Coakley: I am not sure what you are driving at Bob.

Mr. Bachman: Well I am just trying to, the question we are asking the attorney is whether this use that is being presented to us is prohibited or allowable by the current zoning code which the Planning Commission formulated 10 years ago.

Mr. Hoewing: One other point and that is that the Constitution is interpreted by the Supreme Court all the time, there are words there and they mean a lot of different things, even if he recommends something we don't have to take their advice unless he tells us that it is clearly illegal in which I don't think he will do, he may say my opinion is based on the way this is written and what I know of looking at the precedent that this is how you want to interpret it, but we are free to say we don't agree with that.

Mr. Bachman: Can someone frame the question we are going to direct to the attorney, that is all I was really asking about, I don't want to spend a lot of time on this but...

Mr. Coakley: I believe the question should be since the applicant's proposed use or extended use tangential use of the particular piece of property isn't specifically listed or close to being specifically listed as one of the exception items in the Town Code whether or not that means flat out that it has to be denied or that since when a list like this is put together you can't possibly list every potential use or tangential use whether or not the Planning Commission would just automatically have the authority to go ahead and approve or disapprove under the regular Site Plan review process.

Mr. Bachman: So are we making a motion to table this application until we get an opinion from the Town Attorney?

Mr. Hoewing: Yea I think, are we supposed to make a decision tonight, I think that is what we have to do.

Mr. Coakley: Would someone like to make a motion then?

Mr. Stump: I move we table this decision until we hear back from town attorney at the following meeting.

Mr. Bachman: About?

Mr. Stump: About his interpretation of the special exception area of the Code.

Mr. Coakley: Is there a second?

Mr. Sneed: I will second it.

Mr. Coakley: All in favor?

All: Aye.

Mr. Coakley: To be continued.

Mr. Speelman: Next Meeting?

Mr. Coakley: Yep.

Mr. Speelman: Referendum or what other options do I have?

Mr. Coakley: Is there an appeal process Wade?

Mr. Yost: There is an appeal process. I am not for sure exactly the Site Plan what it is, it might be the BZA or the Court of Appeals I am not for sure.

Mr. Hoewing: I don't think it is the BZA I think it is the court.

Mr. Yost: That is my thought also but at least with the special exceptions the court is the one.

Mr. Hoewing: Yea.

Mr. Speelman: Within 5 days, 30 days.

Mr. Hoewing: Right one way or another there will be a decision.

Mr. Coakley: Ok next item St. Peter's dumpster enclosure. John you want to go first.

Mr. Strong: This is the as built of St. Peter's facilities and they've completed everything with the exception of a dumpster enclosure which is supposed to go in this corner of the parking lot. It shows up on the approved plan the town approved and was supposed to be a barricade something along these lines. The St. Peters is asking not to have to build this enclosure, have it there, but not to have to build the enclosure.

Mr. Hoewing: Cost, what is the reason?

Mr. Coakley: Yea would you come up and give your name and address please.

Mr. Wroth: Ted Wroth, 18000 Elgin Road, third generation resident of the Town of Poolesville and this is a cost overrun that according to the county is not part of the stormwater management plan and that is what we are trying to rectify is the bond that we are holding for stormwater management. I did bring pictures if you would like to see them, part of our reason in addition to cost is that there are 2 dumpsters adjacent to it on the neighboring property that are not enclosed and for St. Peter's to go to the expense of \$2200.00 because we put it in our plan, whoever designed the plan, it was their idea of a way to enclose the dumpster but now in view of the financial situation going on around we are in a position where we haven't budgeted to spend this \$2200.00 and the county does not require it for stormwater management, I will show you what we have done to rectify the stormwater management concerns I don't know whether John saw that they filled that in.

Mr. Strong: The reason that I can't give a release on that is it's on the plan, if it's on the plan I have to go by what is on the plan.

Mr. Wroth: And I sent George an email from Bill Campbell from the County basically stating its effect and I don't know whether he shared it with you and all we are asking for is and I don't know what the right term is, but just that portion of the plan be excluded if you will from holding out the release of the bond.

Mr. Bachman: Do you have an estimate of what it would cost to construct the fence that you originally planned?

Mr. Wroth: \$2200.00 because and like what John mentioned its just this, well we wrote into the plan that it would be steel framed construction, wooden materials, cut specifically into the concrete of the curb, inside and we can't just, yea we could put up a couple 6x6 and a wooden fence around there but that is not what the plan says so we would still have to go back to what the plan says and although I have been a member of the church for 36 years I haven't I wasn't part of the design of this plan. But I find it a little amazing that we are going to have to be going to this expense when as you see in the diagram the neighboring property next door has them and they are not even situated in the same spot, it is wherever the dumpster gets picked up and dropped off by Titus that is where it ends up, at least ours will always be in this concrete pad and it will always be in the same spot. And maybe down the road when we do have some money we will build it because I am sure the Vestry, which I am a member of, elected to have that in the plan but just right now we are just asking for an exception to not have to do that so we can release the bond...

Mr. Hoewing: That actually backs up to the Baptist Church right, it doesn't back up to houses?

Mr. Coakley: There are settling ponds.

Mr. Wroth: The settlement ponds and that is still, I don't know if it is you or somebody, yea Rick, somebody has to do the inspection but that was completed last weekend so we

are hoping, as soon as we get a good shower, if anybody knows how to do a rain dance we could all use the water.

Mr. Coakley: Yea I don't know if any of you have driven by there but when you are coming on West Willard if you look over that way all you see are the 2 dumpsters in the shopping center parking lot there and the sea container that is next to Phoenix Systems so its hard I mean even I was actually looking for it tonight and I had some people crossing the street to go to the Thrift Shop so I couldn't take too much time but just glancing over I couldn't even pick it up over there, so I think the only people truly affected are the members of the church, so I personally have no qualms.

Mr. Yost: I reviewed the minutes also from when we approved the plan initially it was never a discussion as far as any enclosure being built around the trashcan and I don't recall even looking at it on the plan.

Mr. Coakley: I don't even recall it being mentioned.

Mr. Hoewing: This is what happened with AIG all that money got, oh nobody noticed it.

Mr. Sneed: The sample containers on the opposite property are they in any violation of anything?

Mr. Hoewing: They are unsightly but there is nobody there and its not like houses are around it or anything. We did spend a lot of time in the CVS they had to do all kinds of stuff to enclose theirs but that is an area where there is a lot of residential.

Mr. Yost: That is about it for any commercial area.

Mr. Hoewing: Yea we haven't done that.

Mr. Strong: Eventually there will be one on this side, a pretty good distance away.

Mr. Wroth: Yea that is from where the stormwater pond is up see the line of sight up to the dumpsters from there that is 180 feet or so.

Mr. Coakley: I didn't look real closely but the church dumpster is at least half the size of the other ones or probably less than that.

Mr. Strong: At the time of the preliminary plan I did for --- I do recall speaking with the engineer just I wanted to confirm that we were going with a gravel parking lot rather than a paved parking lot that was mentioned. I did mention the enclosure was (inaudible).

Mr. Bachman: Does the church have the ability to request a revision on the nature of the structure so that it costs less?

Mr. Strong: It would be...

Mr. Yost: They could but they would have to submit all new plans and have them drawn up and back through the county process, which they are trying to get away from that whole process of redoing plans and resubmitting them.

Mr. Coakley: There's fees attached to all that also so it could end up costing almost as much to resubmit the plans to the county as it would to build the fence.

Mr. Hoewing: It actually says if we even required to officially remove it they got to go through the entire permitting process again so, I guess this is a gentleman's deal then huh?

Mr. Strong: It would be a redline addition.

Mr. Coakley: Yea we just need to give John the authority.

Mr. Hoewing: Yea.

Mr. Sneed: If they were coming to us today with a Site Plan would we ask them to enclose this area?

Mr. Yost: Typically we only do that if it's like Link said with CVS the back end of Fisher Avenue very visible from the main street, really always had to be a consideration.

Mr. Bachman: But John just said there is going to be a subdivision put in that faces the back of the church.

Mr. Yost: Who has the picture?

Mr. Sneed: It would be this view here?

Mr. Wroth: Yea that would be the view and it is still 100 feet or more from the nearest house. We own the property behind so there would still be a buffer.

Mr. Bachman: Do you have a recommendation John?

Mr. Strong: It is an aesthetic one. The problem becomes if it is unkempt, churches tend not to have the same problem that pizzerias and restaurants and things like that have so if it is well kept it is not an issue and I think the Town has Codes to take care of unkempt...

Mr. Wroth: And if you look at the picture I have submitted you will see our 2 recycling bins next to that dumpster that the other property does not have, so we recycle our cardboard and our glass and bottles in addition to the dumpster so.

Mr. Sneed: I don't see those in the pictures.

Mr. Wroth: The close up one the 2 little roll offs right next to it those are recycling bins. The one picture that I wanted to take, I wanted to take it from this way back but see right there...

Mr. Stump: What are they constructed of?

Mr. Wroth: Plastic roll offs.

Mr. Sneed: Plastic roll offs, so in a high wind, what happens in a high wind with those?

Mr. Wroth: They are bungee corded down, we keep them inside for the most part, like tonight I will put them out down on the curb because Titus won't go in there and pick them up, just like anybody does.

Mr. Coakley: Anybody want to make a motion?

Mr. Hoewing: I guess it is that we approve John's authority to do a redline on the plan is that what we are putting, so that is the motion I am making. But I want to make it clear this is not setting a precedent for Tom Kettler to come in and get similar treatment for any similar type of device in his development, no wind tower either.

Mr. Coakley: Excluding the additional example do I hear a second to the motion?

Mr. Sneed: Yes.

Mr. Coakley: Ok all in favor?

All: Aye.

Mr. Wroth: Thank you very much and I will leave with no more questions.

Mr. Coakley: Is anyone here from Longshore?

Mr. Yost: Nope.

Mr. Coakley: And Brightwell Crossing Phase II Site Plan approval.

Mr. Kettler: Tom Kettler, 18201 McKernon Way, President of Brightwell Crossing. Tonight we are back before you and with me who will make the presentation tonight is Matt Wessell who has been our team leader for Rodger's Consulting and has been our engineer from the beginning on Brightwell Crossing. We are here tonight to get formal approval on the site plan for phase II, as you know we are moving forward with the design work on the second phase and Huron Engineering has reviewed and approved the overall construction plans at this point and I think this is one other step in our checklist of

things we are going through so with that I will turn it over to Matt and he will tell you what we are doing.

Mr. Wessell: This is Phase II of the Brightwell Crossing Preliminary Plan. It basically split into three areas, 1) this is existing Cissel Manor, 2) --- Cissel Manor and there is an existing --- which splits it into 3 areas. So basically what we have done is we have finalized --- that part of the preliminary plan and that is what we are here to get approved tonight. This plan has been reviewed by Huron Consulting as Tom had mentioned and John Strong has approved it with essentially two conditions, --- to put all the lots that are close to an easement into a conservation easement and also we need to get a --- permit from the County to do some grade work. This is (inaudible) and show you what is going on with the water and sewer lines etc., basically it is the same plan that was approved in the preliminary plan the only differences just things that we worked out going into (inaudible) instead of all the --- area being confined to this eyebrow space here we added a tot lot area over here, the tot lot actually grew in size we thought it would be nice to make this a focal point with the gazebo area here and the tot lot over here. The second --- area we did was changing up our stormwater management practices a little bit still doing --- in the development but we were able to tighten up the grading in the back of some of these houses and preserve more trees. The final difference is in coordination and working with the Parks Board we added along Cissel here and in front of the eyebrow here some raised crosswalks to provide some traffic calming and slow the cars down while people are crossing.

Mr. Coakley: What was on the corner where the new tot lot is?

Mr. Wessell: Right here?

Mr. Coakley: Yea.

Mr. Wessell: It was larger lots and essentially parking lots...

Mr. Hoewing: 150 old Oak trees that is all.

Mr. Wessell: That is the main difference and one other update is last time this year we went over the approved street names and the County has taken a second look at the street names and have cited an item in their zoning ordinance which says whenever you are proposing a new street directly across from an existing or continuing street you have to continue the same name so we had Lewis Orchard Drive here this is now going to be Jerusalem Church Road to keep the existing street name. We really wanted to keep Lewis Orchard as a street name so we took Dry Seneca and replaced it with Lewis Orchard Lane here and --- Zirpolo Court and labeled it Dry Seneca Court.

Mr. Kettler: And just to let you all know the street name issue and I worked with Wade and I actually fought it for the last 3 months but Park and Planning has the ultimate sort of authority to approve the overall street names and they have certain ordinances as Matt talked about and at some point we sent a couple letters, Wade sent letters in support of what we are trying to do but because Jerusalem Church coming across I just thought that would be a little more confusing because it already comes out on as everybody knows it already comes out twice on Jerusalem Road as it is, but it is what it is so we are being in compliance with what Park and Planning told us to do.

Mr. Hoewing: I'm bummed I thought Link Hoewing Lane was on there but its not there.

Mr. Kettler: You got to get off before you can get on.

Mr. Coakley: Who wrote that legislation?

Mr. Sneed: So this Site Plan has been approved previously right is that right?

Mr. Yost: The Preliminary Plan.

Mr. Wessell: The Site Plan is --- by Huron Consulting potentially approved.

Mr. Sneed: And just orienting myself the upper quadrant there that is come down toward the main road there, yea there, that entrance there is the entrance that we examined last year on the...

Mr. Kettler: Yea no accel/decel per many discussions.

Mr. Sneed: The two changes were the tot lot and the what?

Mr. Wessell: (inaudible) the raised crosswalks here (inaudible).

Mr. Coakley: To put the flood plain lots under conservation easement.

Mr. Hoewing: The park that is down in the corner is not there because it is not integrated with the rest of the development is that why, it is a separate site plan.

Mr. Kettler: That is Phase I the larger park right, yea that has already been approved.

Mr. Bachman: When was the preliminary plan presented to the Planning Commission?

Mr. Kettler: Many times.

Mr. Wessell: The current ordinance requires you to get it reapproved every couple years so last September it was reapproved.

Mr. Bachman: And the same number of building lots are in this?

Mr. Wessell: Yes (inaudible) total.

Mr. Bachman: $\frac{3}{4}$ acre.

Mr. Kettler: Well its $\frac{3}{4}$ cluster $\frac{1}{2}$ acre minimum, it is similar to the Schraf property.

Mr. Yost: Its for conserving forest from having conservation easements and...

Mr. Kettler: Yea so basically the lot sizes are equivalent to Tama and the Woods of Tama in that back section the front section are $\frac{1}{3}$ acre lots Phase I.

Mr. Bachman: Front section, Phase I, which we have already seen.

Mr. Kettler: Was $\frac{1}{3}$ acre so these are larger lots. They look smaller because it is 100 scale but Matt just didn't want to have to bring in a gigantic board but.

Mr. Coakley: Phase I is south of Dry Seneca Creek down to where they are building the park.

Mr. Bachman: And includes the park?

Mr. Coakley: Yes.

Mr. Kettler: We do have, just for the benefit of the newer Planning Commission members, there are all the larger areas where we have tree preservation we will be putting easements over top of those areas which will be highlighted on the plat which basically are designed to protect somebody from going back there and clear cutting forest in the backyard so we are not, its not like a single lot where it would make sense, where you have a large like that large contiguous forest that backs up to Woods of Tama.

Mr. Bachman: John do you have any...

Mr. Strong: They comply with all (inaudible) and one prior to construction.

Mr. Wessell: We would have it done the Committee (inaudible) actually put it on (inaudible).

Mr. Yost: Also Phase II has not been awarded water and sewer allocation as of yet so any approval would be contingent upon receiving those allocations per the Code.

Mr. Hoewing: That well that is on that property when would that come online Wade?

Mr. Yost: Tom?

Mr. Kettler: The well is on the first phase and you all see the pump house that we are building now we decided to get a jump on that 4 or 5 months ago, we are trying to get it

online, we had hoped to have it online now, the contractor is behind schedule due to some part problems but we hope to have it operational by late spring Link and then at that time there is a 2 month kind of shake down of the pump house where Wade will turn it on and coordinate it with the other wells in town and try to do a pump it fairly hard just to see if there is any problems with it, at that point MDE will give the final go ahead on that so we would hope that would happen, I'm hoping sometime this summer and I'd hope to have it done already so.

Mr. Coakley: Ok then do I hear a motion to approve the site plan with the recommendations from the Town Engineer?

Mr. Bachman: I make a motion to approve the Brightwell Crossing Phase II Site Plan with the recommendation of the Town Engineer.

Mr. Stump: Second.

Mr. Yost: And contingent upon awarding of water and sewer allocation.

Mr. Coakley: Goes without saying.

Mr. Hoewing: He's giving the order on which way to vote.

Mr. Coakley: All in favor?

All: Aye.

Mr. Coakley: Ok anything else? And what is our current status on our how easily we forget...

Mr. Sneed: Hiring a new attorney?

Mr. Coakley: No the plans...

Mr. Yost: I was thinking the same thing Cal.

Mr. Coakley: The plans that we are submitting to the State, the County and the State.

Mr. Yost: The State blessed it and the County came back with a few comments that they wanted to make sure we included in the document that we work with Montgomery County on these issues, they included our loads in their calculations, other than that they have approved it also, it is going to the Commissioners at the next meeting so we are good to go.

Mr. Hoewing: Another update too as you know we were asked by Senator Garagiola to support a bond for the construction of the Skatepark a \$200,000.00 bond. I testified this weekend on Saturday at the House and Senate Hearings on that and it is hard to tell. What these things are is a cattle call all day Saturday every Delegation goes up there Montgomery County, every Delegation Howard County, they all have projects and they are all looking for bond money. We only had 2 from Montgomery County though the Skatepark was one and the other was Black Rock Art Center and their grant was small so I think we have a shot at getting some money, so that could be very good. The Commissioners actually did vote formally to approve a Skatepark going forward with a Skatepark and we are not too far off from I think seeing something happen with that this year.

Mr. Bachman: Did they set a cost limit on it?

Mr. Hoewing: Well \$250,000.00 I think is the total that we say was the limit.

Mr. Bachman: Including the State fund?

Mr. Hoewing: Well that would be the budget for the project.

Mr. Bachman: Oh ok.

Mr. Yost: So hopefully get matching funds.

Mr. Coakley: At the last CEDC meeting we discussed I guess have focus group input groups get together and do it in house because we are certainly not going to ask the Town to front 10 or 20,000.00 or whatever to hire a consultant to be a facilitator or something like that so I think we can do it ourselves and get some decent feedback. I think the hardest part is going to be identifying who in the various categories we want to get in and how we are going to identify them and invite them specifically to come in and spend a Saturday or whatever to talk over different issues and decide what of the suggestions or ideas that come up we should then consider putting in the Master Plan in the next revision, so we need to start thinking how we are going to do that and if we could all participate I think that would be good but the way I would envision it would be to let's say take transportation is one of the areas and invite individuals in to discuss the various types of transportation which means people who like to walk, pedestrians, bicyclists, and maybe some of the farmers or whatever that pass through the town that we found out last time on streetscape had issues and concerns of their equipment if you had a road that exceeded a couple inches difference in height and stuff and all that sort of thing so I think we have to identify the types of people we would like to have and then figure out who to try to get, bring them in on a Saturday, have maybe we could get in our budget the rental of a white board or something like that to...

Mr. Yost: I have a white board I'll rent it to you.

Mr. Coakley: Ok. To help facilitate that process and then just go ahead and have them meet in groups of 4 or 5 come up with their ideas and have them present ideas to the entire group and then from that have the entire group select what of those ideas they would pick as like their top 5 or 6, that is the way I would envision doing it, I don't know...

Mr. Hoewing: Who is running it George, is the CEDC going to partner with the Planning Commission or how is it going to operate?

Mr. Coakley: Well I would envision both of us working together but then the ideas would certainly come to the Planning Commission it wouldn't be a decision made by CEDC that we would be locked into.

Mr. Hoewing: Ok so we are partners then.

Mr. Bachman: Is the CEDC going to run the focus groups or is the Planning Commission going to run the focus groups?

Mr. Coakley: I would envision it a group effort or volunteers from both groups that could make any given Saturday or something would act as facilitators to try and move the process along.

Mr. Bachman: Well would we have standard guidelines for the facilitators, for the focus group facilitation so the same process is used?

Mr. Coakley: I wouldn't envision sitting down and writing up formal guidelines, I think we could probably discuss a general tact that we would like to take to try to run the meeting.

Mr. Hoewing: I participated in a lot of focus groups in our company so I am pretty familiar with the process so.

Mr. Coakley: And I'm a trained facilitator from years ago.

Mr. Bachman: Oh ok so you guys are experts.

Mr. Hoewing: Not experts.

Mr. Coakley: That would be a stretch.

Mr. Hoewing: I put together the agenda and the questions a lot of times and of course facilitators are experts so they actually modify that and say that won't get you what you want you should do this instead.

Mr. Bachman: Will we review the questions before the focus groups are held on each topic area?

Mr. Hoewing: I think we should. We should have some kind of a script.

Mr. Coakley: Yea I think we need a guideline to go through to...

Mr. Bachman: While I am thinking about it, if we know we are going to do 5 focus groups, we know the questions we are going to ask in each category and if this Board sees them in advance of that process happening, otherwise...

Mr. Coakley: Or they may not be questions so much as like I said just have them form a discussion group and discuss how they would envision in this case say transportation, let them read what we currently have under transportation in the Master Plan and then get their input to see if they agree with what is in here if they have other recommendations they would like the Planning Commission to consider.

Mr. Hoewing: They come up with a subway system we dump it.

Mr. Bachman: So wouldn't there be a common set of questions for each section of the Master Plan that we would ask in this focus group thought, I mean wouldn't there be some commonality among the questions we ask of the group to consider, if we are giving them the section, the transportation section written before, I mean wouldn't we say is there anything in the current Master Plan section on transportation that you think should be removed, anything that should be revised, anything that should be added. I guess I am looking for a sense of some consistency in the input we are going to get category by category so we are not trying to figure it out as we go along.

Mr. Hoewing: Yea. We just did focus group or I just came back from New York for 2 days on products, we usually do ours on our products that is a little different, but generally you do start out with an overview of lets say in this case it was wireless products, do you usually use wireless products, do you have cellular phones, what do you do on your cell phone, you know you kind of generally discuss this case you probably would have some kind of an overview question about what do they think about the town's character, how it looks today, do they have concerns about that, have you read the Master Plan. You'd probably get them at least ahead of time to read the Master Plan, at least tell them when they come in it would be a good idea if you've reviewed it because we are asking questions about it, and then you can actually target sections after that but I think you are right you do need to think the questions out ahead of time and try to make them such that you do get fairly consistent, like on the transportation section you have 3 or 4 questions that are fairly similar as you would in other sections.

Mr. Sneed: So transportation would be like one Saturday and then like another chapter would be another Saturday that kind of thing.

Mr. Hoewing: Yea.

Mr. Sneed: So Bob are you volunteering to establish the first list of standard questions is that what I heard you say.

Mr. Bachman: I would be glad to develop a set of draft questions for this Board to review and revise and approve but I am not going out on a limb and put my questions.

Mr. Sneed: We have to look at those questions Bob.

Mr. Bachman: Yea my questions will be subversive you know that and they will also be very ---.

Mr. Coakley: That reminds me of the old thing at work that if somebody comes up with an idea then you are stuck with it.

Mr. Hoewing: So if you notice any questions like do you think George Coakley has done a good job of running the Commission.

Mr. Coakley: You don't think.

Mr. Hoewing: But I do think we ought to think seriously about who we invite and I think we really should have Stan Janet as one of the people because he knows more about the Town than anybody.

Mr. Coakley: Well since we are still on the record here I am going to suggest we...

Mr. Hoewing: I'm fine to record that.

Mr. Sneed: But the point is well taken in terms of guaranteeing or ensuring equity of views and I know this came up in some other committees where we make sure we don't stack, well there is no appearance of stacking the deck so we can talk about that another day.

Mr. Hoewing: That is a good idea though.

Mr. Coakley: Any other comments or questions?

Mr. Sneed: About that or something else?

Mr. Bachman: Very quickly we got the sketch plan for section 7 of the Westerly subdivision and did we get this this time?

Mr. Coakley: Either this time or last time.

Mr. Yost: I think it was last time and I am not for sure why Mr. Jamison is not prepared to come back with any concept plan.

Mr. Strong: It was a request that somebody, it was due to a comment that Rudy made and some of the Board members said they had not seen the plan so I simply that is what was presented to us.

Mr. Sneed: Would this plan includes the outlet to Westerly when previously it was not, previously the preliminary plan was approved for them not going out is that true?

Mr. Yost: There is no preliminary plan approved, concept plan is not even approved.

Mr. Sneed: They had asked conceptually not to have to go out or our concept was we didn't want that many exits.

Mr. Coakley: It's been a while ago but my recollection is that the original sketch plan showed the road going straight out to West Willard so that you would have Westerly Avenue and Bodmer...

Mr. Yost: Well Bodmer is at the bottom where it attaches to yea.

Mr. Coakley: Yea and then Bodmer would both go out parallel to West Willard Road and there was also some controversy and I don't know if that has been resolved yet or not where the soccer practice field is and the pump house which of that is owned by Jamison and which is owned by the Town.

Mr. Yost: Basically they own a strip of land straight up through the middle of those practice soccer fields to West Willard so we need to discuss doing a land swap with them, for the same parcel behind the well house if you were going to allow it to go all the way to West Willard, no resolve came in and of these issues which was in the sketch plan.

Mr. Coakley: And my thoughts were that it would make more sense because you would have West Willard coming out, I mean you have Westerly coming out, Westerly Avenue,

then you have Westerly Road which is just a jog down from there and then you would have Bodmer coming out a little bit further down and I think I felt that if we could limit that it would be better, it would make more sense just to bring Bodmer around into the street...

Mr. Yost: Oxley Farm.

Mr. Coakley: Yea Oxley Farm and that would allow the soccer field to stay as is and the pump house to stay as is and it wouldn't require a land swap with the town or anything like that.

Mr. Sneed: This is a great plan.

Mr. Coakley: The only thing is it would adversely affect those individuals who currently live on an unused street with the exception of those residents currently living there, it would put through traffic in front of their homes.

Mr. Hoewing: I didn't get the sense that he was coming back any time soon though, I might be wrong.

Mr. Strong: That property is turning agricultural.

Mr. Hoewing: Oh is it.

Mr. Yost: They are right now it is used for agricultural they cleared it.

Mr. Hoewing: Ok.

Mr. Bachman: So this has never been seen by the Planning Commission?

Mr. Yost: No it was like in 2004 maybe.

Mr. Coakley: They brought it in as a sketch plan a couple years ago.

Mr. Sneed: And I don't mean to keep us here but is there a reason why this wasn't higher on the allocation list back then is it because they didn't bring it to the Board?

Mr. Yost: Oh no the allocation...

Mr. Coakley: I believe they are number 4 on the allocation list.

Mr. Yost: No the townhouse is number 4, like number 5 or 6.

Mr. Coakley: Oh ok.

Mr. Yost: Because it was farther out from the center of town, I'm not sure what --- were involved with this.

Mr. Hoewing: And they had 5 the Committee that did that actually had 5 different categories of ways they assessed and they gave points to each of the plans and I don't remember beyond the center of town issue why it got lower points but it did.

Mr. Bachman: If we have questions about this plan who do we direct them to?

Mr. Strong: It was just something they brought forth, he will come back when he is ready to bring something forth and that plan may change, I mean it was just a concept and he said hey this is what I'm thinking at the time do you have any questions and that is as far as it went and it stopped right then and there.

Mr. Hoewing: There are no plans well he is farming it.

Mr. Bachman: So why are we getting it now?

Mr. Hoewing: Because somebody asked about it.

Mr. Yost: I wonder if those folks saw them clearing the land, which they did just recently to cultivate it for crops and thought that they were clearing it to build.

Mr. Hoewing: Yea that could be.

Mr. Stump: That was the exact question that was asked last meeting and one of you guys commented no they are planting it, they are getting ready to plant it.

Mr. Coakley: But Rudy Gole at the last meeting said I would like to put the seed of doubt in your mind as to making Oxley Farm a thru street that he liked it pretty much the way it was.

Mr. Bachman: But if we have any questions about this as members of the Planning Commission what do we do with this?

Mr. Coakley: Probably nothing right now.

Mr. Bachman: Well he may come back with this thing the same plan the next time he comes forward.

Mr. Yost: He may come back with that in the preliminary plan form.

Mr. Hoewing: Even if it was next week he would --- go through the process.

Mr. Coakley: Any other comments?

Mr. Stump: One question the last thing we got in our packet the --- from the Barnes what is our next step on that, nothing at the moment without anything from Alan?

Mr. Coakley: I don't believe anything.

Mr. Yost: I don't think you guys are supposed to do anything.

Mr. Stump: I was just curious.

Mr. Hoewing: They go to court is my view if they want to take it any further, so I am not worried about it.

Mr. Stump: So nothing is on our plate with that right now ok.

Mr. Bachman: However I would raise the objective thought that we think about approving future pipestems.

Mr. Coakley: Well that I think should be included in our Subdivision Regulation review.

Mr. Bachman: They clearly and this is the case of study create more problems in my mind and could create more problems than they are worth.

Mr. Hoewing: How many pipestems do we have in town, we've got several right?

Mr. Yost: Quite a few.

Mr. Hoewing: And this is one out of probably 15 so I think there is a unique circumstance here.

Mr. Bachman: I think they are uniquely vulnerable to...

Mr. Hoewing: Well sure.

Mr. Bachman: Because residents change, you don't know...

Mr. Hoewing: In some ways they are not any different than the issues you get with townhouses those are shared driveways too, these are shared facilities that's going to be an issue so they should have worked this out and my view is these are neighborly issues and they should have been worked out as neighbors and they decided to heighten it and that is their own decision.

Mr. Coakley: I agree with Bob I think there should probably be a more stringent review on our part of shared driveways when someone wants an exceptional use of their residence...

Mr. Hoewing: They know what they are getting when they buy the house. They buy the house, it's a pipestem there are thousands in Montgomery County they are not unusual so I am not saying that we shouldn't in regulation review not look at them and say do we want to limit them or put a higher standard for them that is probably legitimate but I don't think the pipestem was the issue here I just think these people took it to a higher level.

Mr. Coakley: From a selfish standpoint I think I would rather set a slightly higher standard from the get go than try and play perpetrator with neighbor disputes in town.

Mr. Hoewing: We had a bigger issue much bigger than the pipestem issue in our neighborhood about a woman who wanted to put in a Daycare Center and it turned out fine but at the time there were people screaming right and left and it was perfectly appropriate use and it was just that people came up with all kinds of scenarios and that is going to happen when you are in a neighborhood, you are living together.

Mr. Coakley: We've had a pigeon coop and we've had a pit bull...

Mr. Hoewing: The worst one and it is still there today I think it is the worst monstrosity is that barn that they made them put a flat roof on it, that is the most ridiculous thing I have ever seen and that was because the neighbors objected to that little peak was going to create a viewing obstruction, it is the weirdest looking barn I have ever seen. But you are right there is no reason to make things like that more likely to happen so if you can avoid a pipestem it is worth trying to do that.

Adjournment

Mr. Coakley: Anything else before we adjourn? Do I hear a motion?

Mr. Stump: I move we adjourn the meeting.

Mr. Hoewing: Second.

Mr. Coakley: All in favor.

All: Aye.