

The regular meeting of the Thurmont Planning and Zoning Commission was held on Thursday, December 22, 2005 at 7:30 p.m. Present were: John Ford, Chairman; John Kinnaird, Randy Cubbedge; Sandra Hunter; Denis Supercynski; Rick May; Jim Brown and Mayor Burns.

Mr. Ford welcomed everyone to the December Meeting of the Thurmont Planning and Zoning Commission. He stated the first item on the agenda was the approval of the November meeting minutes, the minutes were just received so the approval will be postponed to the December meeting. The next item was the Zoning Inspectors report Mr. Ford turned the meeting over to Mr. Brown.

Mr. Brown stated, "There were nine (9) Zoning Certificates issued from November 24th to December 20th 2005 for one (1) residential addition and eight (8) residential accessory uses. There have been a total of two hundred sixty eight (268) Zoning Certificates issued to date which compares to two hundred and sixty seven (267) for the same period in 2004. Zoning Certificates have been issued for fifty five (55) single family dwelling units so far this year which compares to nineteen (19) for the same period in 2004. There will be a final year end report at the January Planning and Zoning Meeting. There maybe some other permits come in between now and the end of the year."

Mr. Kinnaird stated, "Can I ask you a question. In Jermae Estates it says that twenty five (25) units were issued were they all issued at the same time or was that over a period of time?"

Mr. Brown stated, "They were all issued I think it was July 12th this year."

Mr. Kinnaird stated, "All in the same day?"

Mr. Brown stated, "Yeah."

Mr. Ford stated, "Oh, one other question I don't know if you really have any information on this or not but on Jermae Estates do you know how many lots were actually sold separately?"

Mr. Brown stated, "That weren't bought up by the developer?"

Mr. Ford stated, "Yeah."

Mr. Brown stated, "Let's see in the first section of Jermae Estates which was the horseshoe on the right hand side going in off of Moser Road there were two (2) that were kept by members of the Moser family and the other lots over there were sold to Dan Ryan."

Mr. Ford stated, "Okay and they were in the previous years..."

Mr. Brown stated, "They were in the first allocation. There were actually twenty eight (28) lots on that side of the road. So there were twenty five (25) there in the first twelve month period. Then there were three (3) lots, two (2) lots that had permits in the second twelve (12) month period because they didn't get anything developed on the other side of the road so they didn't get twenty five (25) on the second years allocation, they only got two (2). They got twenty five (25) in the next, third section and twenty five (25) in the forth twelve (12) month period so that's where they're at right now and the fifth twelve (12) month period will start July 11th 2006."

Mr. Ford stated, "And these other sections except for ignoring the horseshoe do you know if there are any..."

Mr. Brown stated, "There were one, two, three, four, five lots that were kept by members of the Moser family or their designated owners other than what was sold to Dan Ryan at the time of development. Thee (3) of those lots are being built on right now by the owners, one is Joe Moser, a Robert Ferguson and a Frank Long has those three (3), three (3) of them that I know of. The forth lot belongs to Larry Piper who was one of the developers of the first section and I think there was one down in the one cul-de-sac there that was owned by Jerry Moser but I don't know if he's sold that. He was the original owner of it when Dan Ryan bought the rest of the project."

Mr. Kinnaird stated, "Generally Speaking there aren't a lot of more lots that aren't owned by Ryan is that right?"

Mr. Brown stated, "There's at least... not under construction there is at least on (1) maybe two (2) that Dan Ryan doesn't own and I think there is an additional twenty seven (27) or twenty eight (28) that are left down there to be developed."

Mr. Kinnaird stated, "And those aren't owned by Dan Ryan or any other..."

Mr. Brown stated, "They're owned by Dan Ryan."

Mr. Kinnaird stated, "Okay so they are, so there are no other lots other than that one or two that in your mind that aren't owned by Dan Ryan?"

Mr. Brown stated, "Yes. And then there is one (1) still over in the first section that is owned by Frank Free. That was on (1) of the two (2) that was over on that side."

Mr. Ford stated, "On the first section."

Mr. Brown stated, "Yeah, right and that one there hasn't been developed on so there is either two (2) or three (3) that are under private ownership other than Dan Ryan."

Mr. Kinnaird stated, "So were these sections done as individual groupings I mean the first section was separate from the second section or is it all just..."

Mr. Brown stated, "They can build anywhere in the development..."

Mr. Kinnaird stated, "Okay, so the agreement covers all phases of the construction."

Mr. Brown stated, "Right its twenty five (25) per development per twelve (12) month period, and their anniversary date is July 11th. It didn't matter who owned the lots in other developments the developer would sell them to three or four different builders but they were allowed the twenty five (25) for a twelve (12) month period."

Mrs. Hunter stated, "So is it just a first come, first serve thing where people come in at the time to get..."

Mr. Brown stated, "First come, first serve. When twenty five (25) are issued for the twelve (12) month period they're done until the next twelve (12) month period starts, and it doesn't matter who applies for the twenty five (25)."

Mrs. Hunter stated, "So if the builder gets in with his twenty five (25) then that leaves none for individual people?"

Mr. Brown stated, "Right, it's whoever walks in the door first."

Mr. Kinnaird stated, "So was there someone other than the developer who got a permit this time?"

Mr. Brown stated, "Yes, there were three (3) ahead of Dan Ryan this last twenty five (25). Bob Ferguson, Frank Long and Joe Moser."

Mrs. Hunter stated, "So did they come in...did they have to wait until that day to come in..."

Mr. Brown stated, "Right, July 11th."

Mrs. Hunter stated, "So everybody just stands outside the door..."

Mr. Brown stated, "They were standing outside the door when the doors opened."

Mr. Cubbedge stated, "On July 11th were all the permits filled on that day or were there still permits available?"

Mr. Brown stated, "They were all gone, they we all gone by..."

Mrs. Long stated, "Those three (3) people plus the developer were here that day, that morning when we opened and applied."

Mr. Brown stated, "And everybody who had lots in that development were aware of the anniversary date."

Mr. Ford stated, "Oh, is that right?"

Mr. Brown stated, "Yes."

Mr. Ford stated, "The next item on the agenda is an administrative decision, Frank and Pat Free request for a Zoning Certificate. Mr. Superczynski or Mr. May do you have any comments on that."

Mr. May stated, "No, other than it's an administrative decision by the Planning Commission it must come back to you. The letter in request was routed to you."

Mr. Ford stated, "Okay, is there anyone representing the applicant, the author of the letter, is the author of the letter here?"

Mr. Frank Free stated, "I guess I'm the author of the letter and the reason for my submission of that was the fact that there is a limitation of twenty five (25) per year and I was just hoping that possibly maybe I could get one (1) and build on the lot that I own which is the last one in Phase I. Before maybe the next physical year is open up, but there again it's just a request and it depends on the boards decisions as to what happens. If it is approved then of course I'm sure I'd probably be building before the next twenty five (25) is issued."

Mr. Ford stated, "Okay any questions for...I assume your Mr. Free?"

Mr. Free stated, "Yes, Frank Free."

Mr. Ford stated, "Any questions for Mr. Free?"

Mr. Kinnaird stated, "Yeah, Frank if we did approve this would you build or...not to be nit picky about it but it seems to me if it's something that you really want to get done than we should certainly consider it. And I would like to be assured that if we did consider it that you would in fact have plans to build before the next date comes around because the two things in my mind are that I wouldn't want to have to repeat this and I would like to think that this would apply only to this particular issuance for the yearly issuance of the building permit unless it's in someone's mind to set a figure or percentage or something like that that would apply to all future and I don't know whether we would have that ability to do that, to set a percentage that would be set aside but the problem with that is then you come back to the same problem you're having if you set aside 10% which would be two (2) building permits and two (2) other people came in and the third person would left in the position that you're left in today so regardless of what level you set it at and you know this yourself there's always going to be a circumstance where someone's going to want something else and for that reason, for my own satisfaction I just would like to know that if we did do this that you are going to build a house or start a house this year."

Mr. Free stated, "It's my plan to do that yes, but of course the decision or the results will depend upon the decision that you folks..."

Mr. Kinnaird stated, "Had you thought about it, coming in on the 11th and applying for the permit?"

Mr. Free stated, "On the 11th of 2006?"

Mr. Kinnaird stated, "No, 2005."

Mr. Free stated, "I had thoughts about that but I didn't have everything in place so that was my fault I just didn't...I didn't have enough in place to come and to apply for the certificate of course then after that all the certificates were gone you know."

Mr. Kinnaird stated, "So you're asking for this consideration and modification, you're looking at for a one time thing or are you looking at it for...maybe if you didn't build this year next year you would come back and expect the same modification to still apply or do you in your mind see this as a one time thing?"

Mr. Free stated, "One time thing. I'm just trying to because of the cost of everything is going up."

Mr. Kinnaird stated, "Oh I understand yeah, every year that you put it off the cost will jump way up."

Mr. Free stated, "And I'm finding that more and more. I'd have been better off if I'd of tried to build a year or so ago but with my failure to do that of course I'm caught in the middle of price increases and so forth. So I just appreciate what position you make and I'll certainly abide by that."

Mr. Kinnaird stated, "Realistically if you were to start to plan to build a house when would you anticipate that you would be applying for a permit?"

Mr. Free state, "I'd say probably January, if it was approved. I doubt very much though even with apply for the permit in January probably there wouldn't be anything started until maybe March even at that because you get everything in place you know if you go through all the request for the permits and accept it through Frederick County there's a couple months right there. Thank you folks."

Mr. Cubbedge stated, "Denis I have a question if we go ahead and modify this one (1) where are we going to be as a board next year a builder comes in he says I'd like to modify two (2) and we say yes or we say no and then three, four years down the road a builder comes in your history shows you that you've modified for one (1), you modified two (2) you modified for three (3) I want to modify for ten (10) where do you think this is going to put this board and the town in a legal position?"

Mr. Superczynski stated, "My thoughts are that having come from jurisdictions where they have overall development or growth management controls in place town wide or county wide where there is a set number for the entire jurisdiction that can be issued they generally deal with that by only allowing a certain percentage to be pulled by a single owner or development entity so you don't have a developer or builder basically using up those available permits for the entire jurisdiction. The way you have it set up here, you don't have it set up in a way that precludes individuals from being able to develop. It's not...tilted that much in favor of the developer so from that stand point it seems that you've already offered a relief in that you don't...these do not set up restrictions on somebody going out and purchasing an individual lot and building a home. It does simply tie up somebody who is purchasing in a development with a restriction already in place. So from that standpoint the restriction doesn't seem over bearing." One other point to think about though is that the number twenty five (25) although not entirely arbitrary is a ball park figure. Whether it's twenty four or twenty six or twenty seven probably in the long range view of things doesn't make that much of a difference and this is an administrative maneuver by the commission so I guess my suggestion or my recommendation to you is simply document your reasoning, just establish the reasons for it. If this were something that could be done via a computer program if this was something that was something that was just sit out there as twenty five (25) come and insert your disk and you get your...its not. You have a group of human beings who are here to make a judgment call when necessary and that's your role I believe as planners in the town so you can take and do with that comment with what you will. I don't think moving one or two units in either direction makes a whole lot of difference but I would advocate that you definitely set up some findings or standards that document why you're making the decision in this particular case and I certainly think that one thing you could say is rising, building cost that's certainly not an issue that you would bring up in Board of Zoning Appeals case to prove a...in order to get a variance or something but I think it's entirely legitimate in this particular case the timing of construction and the economics went into establishing that number twenty five to begin with so I think its entirely fair to use economics...if you feel that that's something you want to do."

Mr. Cubbedge stated, "Do you know why the number twenty five (25) was...do you know why the number twenty five (25) was picked and how long we have used that twenty five (25)."

Mr. May stated, "We've used it for quite some time it was done when we had several subdivisions at one time. The feedback we got from developers and builders was the number of twenty five (25) was economically a good number, anything less than that they simply couldn't make it work in phases so based on that and the feeling of the commission to set a limit per subdivision so that theoretically we would have a limit and total throughout the town. The number twenty five (25) seemed reasonable to both sides."

Mr. Cubbedge stated, "And at that time basically we were looking at builders per say..."

Mr. May stated, "Yes, I think at the time we did that we probably had three (3) maybe four (4) subdivisions in the works."

Mr. Superczynski stated, "One angle of this is that regardless of whether it's a builder or an individual putting up the home ultimately an individual owns the home or lives in it so there is no difference really to an end user so I think really what you grapple with as a commission is, is it something that you can differentiate from in your status of being able to make a judgment call and I think that there are ways you could certainly reason it out and then establish that."

Mr. Kinnaird stated, "So the limitation of twenty five (25) is automatically applied to each and every development..."

Mr. Ford stated, "It's a condition put on the approval."

Mr. May stated, "That's right. It's formally done...during the subdivision process."

Mr. Kinnaird stated, "And so is that something that we can change then if we decided to change it we could adjust that to reflect a percentage arrangement or something."

Mr. May stated, "You could do a percentage. I would certainly...I would endorse Denis's comment that you look at it on an individual basis and make findings of fact that any exceptional or unusual circumstances that would warrant that change. But if you remember that number...we weren't sure what was coming in or whatever but everyone wanted some growth controls. That was a way to do it."

Mr. Kinnaird stated, "And there is nothing wrong with twenty five (25)."

Mr. Superczynski stated, "The other thing to consider to is that the units in the pipeline are really starting to dwindle in town so your not where you were five (5) or ten (10) years ago where you had several hundred."

Mr. Cubbedge stated, "And where this home is being built does not basically impact the...it's not a home being built with children in it that's going to effect the schooling."

Mr. May stated, "Well all of the was considered when the subdivision was approved and went through the A.P.F.O. test."

Mr. Superczynski stated, "But you're right it doesn't affect the Public Works Agreement, you're not altering something."

Mr. May stated, "That's correct."

Mr. Ford stated, "Any other questions for Mr. Free?"

No response.

Mr. Ford stated, "Any public comment?"

Mayor Burns stated, "Mine is an official comment as the Mayor of the Town of Thurmont on behalf of the Board of Commissioners. We have heard this time and time again from some of our residents that if the developers with big pockets show up here at three o'clock in the morning they virtually lock out anyone from coming here and getting a permit if they want all twenty five (25) and to use the example in this year although it gives an avenue for residents to show up to get their single permit if Dan Ryan was here first he'd of gotten them all. It's only because of the warning from me to many of the people that showed up they were here on time and first in line, second in line, or third in line so when I discussed it with the Board of Commissioners we fully endorse giving a...and I would rather not do a you decide once today and the next time somebody comes in...we like the number twenty five (25), of course if you have four (4) developments that's a hundred (100) homes a year but it is a tool as Mr. May said so it depends on how many developments you have going but we endorse a number lets say five (5) out of twenty five (25) so your agreement is binding with the developer that he is guaranteed that he will get his twenty five (25) homes a year but you set aside another five (5) for individual lot owners so that if the developer is here first and buys all twenty five (25) there's an avenue to assist those individual home owners to be able to build there homes without waiting another fiscal year just because they were second in line to the developer. We're not here to try to satisfy everyone we're just trying to level the playing field for A some of our current residents who want to build in a new development or individual people that don't have the knowledge. I'm going to tell you right now if I wasn't involved as the Mayor or in the town I'd have no clue that I had to show up first thing July, now you may say that's my problem but it is somewhat in my opinion unfair to individual lot owners that a developer could come in maximize the twenty five (25) and then they're locked out for another year and if it happened again the following year they'd be locked out another year. Now one of the residents who did get a permit, the Ferguson's had asked for consideration last year when we talking about impact fees and obviously I said there is no way I could honestly do that, understand your concern because the impact fees were going to go up significantly but I told them that they had to be there early. So the Board of Commissioners fully endorses having a number set aside. I prefer to have a solid number of five (5) lets say so you don't have twenty (20) people maybe coming in saying one year it's two (2), the next year it's three (3) we understand you may not be able to satisfy everybody but the bottom line is typically when developments are made they don't sell individual lots in the dozens, it's the one (1) or two (2) or five (5) or seven (7), not many out of the development because the builder want to reap all the benefits. So on behalf of the board I'm officially here to endorse allowing the individual homeowners some latitude from the Planning Commission as a matter of fact we all thought it was the Board of Commissioners decision to make and that we had twenty five (25) home on there and of course Mr. May corrected us and said no, that's up to the Planning Commission, they have to agree. I think this was bought up in the past between the Planning Commission and I don't know that it was favorable. I think it wasn't favorable, I maybe wrong but I want you know that on behalf of the Board of Commissioners we endorse it. First of all the pipe line is very small now we put in to

place Impact fees which will help revenues and this is just a tool by which to take care individuals and not to have it heavy toward the developer if he happens to show up in time or first. We endorse a decision to make a change.”

Mr. Cubbedge stated, “Were you guys asking in other words for each individual subdivision that comes through an additional five or are they say a year basis an additional five (5) cart blanch, in other words...”

Mr. Ford stated, “It would have to be per development because that’s the way the conditions applied by the Planning Commission.”

Mayor Burns stated, “I believe the intent of the board was if a new development were to come in and the number was twenty five (25) then a certain number is set aside for individual lot owner’s period for every development that happens. Thirty (30) is not a huge number I mean twenty five (25) depending again if you have three (3) or four (4) different developments going at once but it’s just a tool to allow the individual homeowners some latitude.”

Mr. Ford stated, “In the past have many developments sold individual lots?”

Mr. May stated, “No. This was relatively...what happened was the developer was the Moser family they started it got the infrastructure in for the first phase then they sold the rest to Dan Ryan who then completed the development. So you actually had two (2) developers involved.”

Mr. Kinnaird stated, “As the initial developer the Moser’s initially agreed to the twenty five (25) building permits, per year limitation and then sold additional lots to individuals?”

Mr. May stated, “I wouldn’t say they sold additional lots.”

Mr. Kinnaird stated, “Okay sold lots to individuals.”

Mr. May stated, “They sold some of the lots, yes.”

Mr. Kinnaird stated, “And is the disclosure of the fact that there is twenty five (25) building permit limitation on the development?”

Mr. May stated, “It’s on the plat, now whether they were informed of that I honestly don’t know I can’t answer that.”

Mr. Ford stated, “There is no requirement right now for the developer to inform a buyer.”

Mr. May stated, “No.”

Mr. Ford stated, “We could add that requirement if we wanted to but that would not necessarily solve the problem that Marty has indicated as people coming in here at three o’clock in the morning or whatever to get first in line.”

Mr. Kinnaird stated, “My question is Marty then on the one (1) year where a sixth person wanted a permit would you be hard and fast to say no?”

Mayor Burns stated, “Yeah I would, because I think you still have an avenue for those individuals to come here and not have to worry about a big developer. If one person is coming in and I think it should be specific, one (1) person, one (1) lot not another developer coming in who bought five (5) lots individually and comes in and buys them all. A person, some sort of language that protects that from happening to I even thought well could the developer then sell ten lots to somebody else and then the individuals come and get the permits and he still builds the lot. All those came into our minds but if their going to be that devious then we’ll make adjustments. It also should be noted I think that if I were to own a certain amount of acreage in town which the Moser property is in town now nothing precludes me from building three (3) or four (4) lots so long as I meet the Planning and Zoning approval even if that development is going in. So what we’re doing is we have individual lot owners who just happen to be within a development that can’t build but somebody right down the road here on Frederick Road can.”

Mr. Ford stated, “My only concern would be the developer thinking well gee I can get thirty, what I’ll do is I’ll just work five (5) potential buyers and I’ll sell them the lots and tell them to come and get their own permits and then I build thirty (30), that would be my concern.”

Mr. Cubbedge stated, “We couldn’t stop whoever would build anyhow. In other words if we have a property owner that goes in the development purchases a lot we authorize the...here is your Zoning permit he goes and gets Dan Ryan the builder to put the house in that’s perfectly legal.”

Mr. Superczynski stated, “The language we’re throwing around, builder and developer are two different things in terms of the subdivision...maybe devious isn’t the right word but in Massachusetts people did find interesting and quite creative ways to get around it by doing that and then when the regulations would change to try to sort of put that fire out you’d have legitimate situations with family ownership or limited liability corporations that were actually just families who purchased lots and then you were sort of faced with wow we didn’t mean to lock out these two (2) people who own the land together but are actually totally different and having builders put the things up. So I think if when you go back to them with your next subdivision or the next significant block of building lots maybe we could have that discussion at that point about sort of learn from some of the mistakes that have been made in other jurisdictions about how we can set up something that’s fair and allows the relief because it is a legitimate issue to think about and also look at how we’d devise definitions that differentiate a person who puts in the infrastructure, cuts the lots, goes through the process from a person who is actually building the homes. If the intention is to not allow a single builder to...control over the

flow of resources in a development then that's one thing versus a development entity that may or may not be the builder to begin with."

Mr. May stated, "This particular subdivision again is unique in that the second developer was also the builder. In most of our subdivisions here up until that time someone developed, someone else built it. As Denis is saying then you have a different set of circumstances. So I think if you look at that I think it really needs to be looked at carefully and the language that you want to use, really review closely so that everybody wins. I hate to use that phrase because not everybody wins ever but you know what I'm saying. That we can accomplish what you want to accomplish and still maintain some flexibility to accommodate the situations."

Mr. Superczynski stated, "And also Randy in response to your comment of the builder there are subdivisions in Frederick County that occur where you're limited to using you're a single builder or perhaps a collection of a small choice collection of builders in the subdivision. So you could end up in the situation where even though you have individual owners of lots they're still required to use Joe Builder...bob the builder to put up their house."

Mr. Cubbedge stated, "It's Urbana isn't it?"

Mr. Superczynski stated, "Urbana is one of them but there is a bunch of them that run that way so the easy to enforce sort of quality control and design guidelines and things like that."

Mr. Ford stated, "Any other questions for Mayor Burns?"

No response.

Mr. Ford stated, "I appreciate your bringing the message from the board."

Mr. Kinnaird stated, "Can I ask you a question. What is your personal...or the board's feeling on the solution in this particular case. Are you saying that we should allow...is your feeling that we should allow this one (1) exception?"

Mayor Burns stated, "It's my feeling that...well first of all I know Denis isn't a lawyer and I'm not saying that I am either but I did talk to our attorney specifically about his issue not for Mr. Free but for another applicant who has since already gotten a permit and it is your not penalizing the builder in any way because he agreed to twenty five (25) and go twenty five (25) so this is just an administrative decision on your part to make a exception. I believe the entire Board of Commissioners fully endorses allowing this exception but with the desire to make it a more formal future policy so that you don't do this for one (1) person and not for the next."

Mr. Cubbedge stated, "Do we make this at this point in time then...do we make this exemption now then?"

Mr. Ford stated, “No...”

Mr. Kinnaird stated, “No, we have to address Mr. Free’s issue and then I think we should look hard at making some adjustment to the policy so it applies to all developments from now on.”

Mr. Ford stated, “Right now the Zoning Regulations says we can put a limit on it for a development. That’s all it says basically so the next time this will come up is when another development comes up so unless we change our Zoning Regulations that says not only can we do it but here’s how we’re going to do it and that may not be appropriate because depending on different circumstances we may want to do it differently for different developments, at least that would appear to me. If we had four developments for example going at once maybe we want to lower the number or...so it would be the next time a development comes in that we would use that authority we would have to then decide what kind of a policy whether it be what the commissioners recommend or whatever we apply it when we put the condition on the approval.”

Mr. Kinnaird stated, “Can we track the conditions for each individual development then is that within our...”

Mr. Superczynski stated, “You can but you think in terms of what you do with the lighting policy. I mean think about putting together a paragraph and just calling it the policy on growth limits annual growth limits. You can also back it up if everybody in the town was just going nuts and saying there is way too much development or there is not enough development whatever then you might go back to zoning or subdivision and say not to exceed the accumulative limits. Say we had five (5) subdivisions going the cumulative limit can be no more than five (5) percent of the total building lots over the past ten (10) years. You can come up with nice ways to sort of manage the over all number so you don’t have twenty five (25) plus twenty five (25) plus twenty five (25) but the fact of the matter is you do have control at each application to do something. Again learning from the lighting policy it’s something you want to do before the next subdivision comes in. Let’s spend like thirty minutes on it at a meeting, put together that paragraph think of it you know in sort of a isolated theoretical since and then when you get someone coming to you you can go back to that policy and again you’re not bound completely by that policy. If at that point it seems it’s unreasonable for whatever reason or conditions have changed at that point the Master Plan will be slightly different updated or revised.”

Mr. Ford stated, “Okay any other questions for Mayor Burns?”

No response.

Mr. Ford stated, “Any other discussion?”

No response.

Mr. Ford stated, "If not I'll entertain a motion."

Mr. Kinnaird made a motion in the Free request that we allow Mr. Free as a one time exemption to the twenty five (25) Zoning Certificates per year allowed for Jermae Estates that he be allowed to apply for the Zoning Certificate between now and the annual date of July 11th, 2006 based on the circumstances of Mr. Free facing increased material and building costs and the possibility that he may not be able to get a building permit at the beginning of the next Zoning Certificate, at the beginning of next cycle. Mr. Cubbedge seconded the motion. Vote – all for. Motion carried.

Mr. Ford wanted added to the January agenda the discussion of a Policy for Zoning Certificate Limitations for Developments. Denis stated he will try to draft something up for that.

Mr. Superczynski stated, "So we've been making our way onto the Master Plan. We've been making our way through the surveys we've gotten through maybe a couple of hundred."

Mr. Ford stated, "How many have been received?"

Mr. Superczynski stated, "I don't know, I was supposed to count them before I left to day...we're about a third of the way through one of the boxes I guess."

Mrs. Long stated, "It was over four hundred."

Mr. May stated, "And I think I have few in the back that I want to give Denis this evening."

Mayor Burns stated, "You didn't find anymore bills tucked away?"

Mr. May stated, "No....they put it in the envelope so we opened every one of them and checked and we found several."

Mayor Burns stated, "Saved a stamp. It was only because it was late fee a lady was calling, I paid it."

Mr. May stated, "Yeah and I would have preferred to pay the stamp. (laughter) The thirty seven instead of the ninety seven."

Mr. Cubbedge stated, "Have we had anymore drop offs, did we seem to save..."

Mr. May stated, "No the bulk was from return mail."

Mr. Superczynski stated, "They're still out there so if anybody is, does watch this and still has their survey I'd invite them to go ahead and bring it in because we'll get it recorded."

Mr. Ford stated, "Please anybody that hasn't filled one out we definitely want them."

Mr. May stated, "They can drop it off here during the day there is a little box inside there or they can if they would drop it through the door."

Mr. Ford stated, "Anything else on the Master Plan?"

Mr. Superczynski stated, "I'm really waiting for...we'll get this information to you then we'll move on with that first public outreach meeting to be able to share the survey results. The technical updates we've updated most of the tables we'll have to have a discussion about...my numbers are different on the building permits just because I don't have all the reports so I've got to justify some of those."

Mr. Ford stated, "When would we start entertaining a request for rezoning?"

Mr. Superczynski stated, "You have...when you've gone through sort of looking at the goals from your old plan to see if any of them need to be revisited when we've established sort of the main thrust of any new policies you want to put forward and maybe at the point where we're just sort of starting to word smith the document then go forth with the zoning. The problem and you may have seen this at the County level for years the County has mixed the two processes a little bit too intimately and really it muddies both. It's hard...it's bad enough trying to explain any planning issue to people who aren't swimming in it on a regular basis and then when you start to mix zoning and the master planning together a little bit too closely it gets very difficult to understand what follows what and that's not to say that people's input wouldn't be valued as to how they ultimately what to see the land developed and if they want to speak in zoning terms that's fine. That's the tool we have to assign how land use maps get carried out in the future but in terms of that formal process that will be the last part of the process and then it should be pretty clean because that will be all that you have to deal with just that, amending the map, any map amendments that your looking at and you'll have a frame work within which to make the decisions which is really the most important part."

Mr. Ford stated, "That's the key is the rational for why we would even approve or disapprove a rezoning. I shouldn't say approve, disapprove make the recommendation. Okay anything else on Master Plan? Do you expect to have it for the next meeting?"

Mr. Superczynski stated, "January, well have it in January. There is two of us working on it now so one of us reads the answers and the other one types it in."

Mr. Ford stated, "The sign amendment we're not ready for that. I would put the Master Plan priority over the sign."

Mr. Superczynski stated, "But if we do end up with a meeting for whatever reason where we don't have a lot going on and I have a couple weeks. Like tonight would have been great, I didn't have any equipment available tonight, yeah tonight would have been perfect. Let's go ahead and throw it in there because it is an isolated item and it doesn't affect anything else."

Mr. Ford stated, "Okay anyone have anything else to bring before the commission? The next meeting will be the 26th of January, does anyone have a problem with that?"

Mr. Kinnaird stated, "Is it to late to ask a question?"

Mr. Ford stated, "No."

Mayor Burns stated, "Yeah I would like to... I thought you were going to open it back up to the public I'd like to discuss something quickly... We haven't discussed it as the Board of Commissioners about Commissioner Terpko not sitting up there, not voting on... and I want to give respect to his choices as an elected official and make those decisions on his own but there are things that he and I agree on. I've always been curious as to why a Commissioner would vote even if they recuse themselves on things that come before the Board of Commissioners. If you have I almost look at it as almost like you could have more political influence potentially on the board if an elected official sits up there and has a vote he can throw his proverbial weight around, might embellish, not embellish, maybe he won't say anything and we wish he would so I'm not necessarily opposed to his rational about not voting although our opinions why or why not are different and if you have alternates on the board I don't see any significant value added that an elected official sits on the Planning and Zoning Commission and casts a vote one way or the other however, if they're not part of the official commission I would recommend... (tape change)... on behalf of the Board of Commissioners, as a member much like Board of Appeal, Board of Appeals is a relatively a quasi-judicial separate body that the Board of Commissioners can't influence and we can get up and speak as a Commissioner or as an individual like I am tonight but what you guys say goes and I'm not necessarily opposed to that. I know its run differently in multiple municipalities and I'm not suggesting that you think about changing it yourself in your internal way you run your commission just because Commissioner Terpko has his opinions on it. It just so happens that one of those opinions happens to coincide with what I thought all along and I'd like you to actually think about it and think of what maybe is in the best interest of the commission as a whole and make any recommendations collectively to the entire Board of Commissioner for consideration."

Mr. Ford stated, "You have an ordinance now on Planning and Zoning which says that the commissioner is a member..."

Mayor Burns stated, "Correct."

Mr. Ford stated, "Which implies that he votes or he or she votes..."

Mayor Burns stated, "Or has the authority to vote. Whether he votes or not is..."

Mr. Ford stated, "Well they can abstain."

Mayor Burns stated, "Right, I agree."

Mr. Ford stated, "But they are a voting member..."

Mayor Burns stated, "Correct."

Mr. Ford stated, "And my feeling is I don't think that the board has been particularly influenced by having a commissioner on the board voting."

Mayor Burns stated, "Yeah and I didn't mean to imply that either."

Mr. Ford stated, "No, no but I'm just saying that's...when Glenn was here...it didn't make that much difference but it doesn't make much difference to me whether he sits on the board and votes or he sits out there. I do have a little problem as you said with him kind of being in between where he kind of act likes a member but he's not a member and so on. But if we do go and not have a commissioner be a voting member then I think we need another full time member and we need to change the ordinance."

Mayor Burn stated, "Absolutely."

Mr. Ford stated, "Okay."

Mayor Burns stated, "And I would hope that, it would be my personal desire that a commissioner would abide by the accepted practice of the commission until such time as he could address those issues with the Board of Commissioners and you all collectively to get buy in or objection to...instead of just arbitrarily coming in on the first meeting and saying I'm not voting and I'm not sitting up there with you guys. I think his...his motives are obviously genuine, but he feels strongly about it I just wish and I think we get there to make it official but I'd really like to know what you all think to the Board of Commissioners collectively on...hey we have no objection or we'd rather have it because one of the reasons I gave Commissioner Terpko this commission is to try to make Commissioners well rounded they should serve on every aspect of the town and this is one thing he hasn't had. Bill had it when he was a non-elected official, Glenn's had it multiple times, Wayne's had it, I'd love to be on it but it conflicts with my Frederick County MML meetings every...the same exact time all the time which is unfortunate. If I wasn't the President of the Frederick County MML right now I would love to. I think the Master Plan is very intriguing, very important and..."

Mr. Ford stated, "There are activities of this board that would benefit from input from the Commissioners as we're going through it like the Master Plan. Where we're talking about the strategies for the town for the next twenty years and you're going to approve or

disapprove it or change it whatever but it would be nice if we were kind of in sink so that whenever it went to you was pretty much what you people were willing approve.”

Mayor Burns stated, “Well I think that’s real important in key that when you start getting into the nitty griddy of the Master Plan that you invite the entire Board of Commissioners as audience members and ask us questions because...or formalize any question that you have of the board collectively in writing we will respond in writing because I don’t want a commissioner to stand up here or even me and tell you something on behalf of...you know even I was thinking about that tonight I did get permission from the entire board to be here tonight and was actually asked by a commissioner are you going on behalf of Mayor Burns or Marty Burns and I said we voted last week I’m going as the Mayor representing the Board. So obviously we don’t want any of those we’ll you were acting on your own so if we formalize it in writing a position or rational signed by me officially, a vote taken then you’ll have some clean, clear direction if you have the need and we’ll try to make ourselves available so that we have different commissioners in here and here it bring back to us...you know well I heard this lets get some clarification from them and help...you’re right, we don’t want you to spin your wheels, go through the whole process and then have the board say we aren’t doing that, we don’t agree, you’d rather know up front hey what do you think about this.”

Mr. Ford stated, “My personal opinion is I think we’d be better maybe if the commissioner was a liaison, non-voting and more as you say a...and change the ordinance.”

Mr. Kinnaird stated, “Would it be necessarily to change the ordinance. Could we add language allowing for the instance of someone who didn’t want to vote so that they would have the freedom to decide to be either an active member or a passive member and sit in the audience...to the existing language?”

Mr. May stated, “I see problems with that.”

Mr. Kinnaird stated, “It would have to be one way or the other.”

Mr. May stated, “It would almost seem then that you would be given the option to one month do it and one month not.”

Mr. Kinnaird stated, “Well it would be for his term. It would be language based on the term.”

Mr. Ford stated, “Yeah but the thing is that the next person comes in and says, Commissioner comes in and says I want to be in the board then you have to bump somebody.”

Mr. Kinnaird stated, “No, I feel the same way as John does he’s expressing he doesn’t want to be a voting member and I also feel the same way that if he’s not a voting member then he shouldn’t be a quasi member either and he should be here as either a citizen or a

representative of the board of commissioners. What I don't want to see is an advocate for any kind of special interest. If the Board of Commissioners has a feeling about something I'd like to hear that."

Mayor Burns stated, "Which is why I said we'll give that to you in writing because I was going to write something up but because I came here personally I didn't and he was going to bring that to the board, to you guys and it maybe better just to make sure there's no misunderstanding between the board that it's actually solidified in writing and we present our stuff to you. It's once a month so if we can't come up with something in a month to put in writing that this is the position of the board and then attend and then if you have questions about it we can get some clarity and stuff."

Mr. Kinnaird stated, "But I would like to see him here at each meeting."

Mr. Ford stated, "The other reason that I say a non-voting member is as Mrs. O'Neil expressed at the last meeting being an alternate for her, she indicated for her and also I had the same experience was a necessity for a significant period of time. That Zoning Ordinance is not the easiest thing to become familiar with. When you make decisions you're voting on decisions effecting fairly substantial economic and legal impact you really need to be familiar and the ability to sit and participate without having the responsibility of voting gives you the opportunity to become familiar with the ordinance and how it's implemented."

Mayor Burns stated, "Hey you think we could do that for the Board of Commissioners?"

Laughter.

Mayor Burns stated, "Because as Commissioner Terpko's always said there's no how to be a Commissioner Handbook. But no I...again this not to go against Commissioner's Terpko's desires or anything and I don't recommend making a change for Commissioner Terpko, I'm making the change because I agree with some of his statements maybe for different reasons and I think it may help the process and then if Commissioners, and you know that we are... not that you are not busy but we have multiple things that go on. If they are not there you don't lose a voting member that constitute dropping a quorum or you know you got somebody that would like to be there and participate and vote and can't. Now there is negative to that if that commissioner agrees with the majority members of the Board of Commissioners on a certain thing we lose a...almost vote you know but that's just the way it goes."

Mr. Kinnaird stated, "We certainly need five, we need five voting members."

Mr. Cubbedge stated, "I'm thoroughly in favor if he is not going to be a voting...which in my opinion means an active member. Then he becomes a member of the audience. My only problem I have with him being in the audience and I hope he can understand is he is still going to have and use the word advocacy or whatever, you're talking about the

commissioner carrying a little bit of a weight, he does... When Glenn was here you still have the commissioner speaking which carries a great influence to the public and I don't want the public to get the interpretation that we're not in sink up here as a panel and we may not agree with what he is stating because he's out in the audience and I don't want the public to get that kind of impression and I wonder if that would occur with him sitting out there."

Mayor Burns stated, "Well and it could occur with anyone of us sitting out there to because I know what you mean. I'll give you a prime example, Board of Appeals, I just popped in here one day heard a Board of Appeals and I said I'd like to speak, now I'm the Mayor but I was just here as myself. I said hey I think you guys got to get with the times I think the ordinance is wrong, you're going to make this man cut down this fence that he spent three grand on and I think you ought to look at the actual policy and see if you need to address the policy because I'd vote to change it right now. Well thank goodness they did listen to that, it carried weight because I think...my opinion I thought they were going to deny it and they ended up looking at different towns, making a new policy that did make much more since and I saved a resident from three grand cost. I wasn't trying to be advocate, I wasn't told to come here and I didn't know them I just showed up and voiced my opinion but it did like you said Randy I think it carried some weight for them to at least post pone the decision until they got some more information."

Mr. Superczynski stated, "There is distinction...what you brought up is that you're going to have political influence as a commissioner sitting at a board meeting and I think maybe what Randy is getting at is that there has to be a formal understanding that you've modeled it perfectly tonight, you've not expected or shown any special...you've worked within the format of the meeting, you've spoken as somebody, you know when somebody would from the public and that's how you would expect the liaison to work unless you set up a specific agenda item which sort of frees you from that formality but it's important for the individuals involved to understand that distinction. You know when you look at refusals from voting on an issue we were always taught that a commissioner literally steps away from the table or whatever it might be for the vote and in some cases that I've witnessed before they've left the room because of that influence, having somebody in that space who holds that position so I think to address your point if it does go to a pure liaison situation that it could be very easy just to sort of write down quickly that there is no special consideration other than you might want to make a regular agenda item comments from the liaison to the commissioners and then there is a way then you can sort of break through that formality."

Mr. Cubbedge stated, "I'd like to ask also that if you do decide to go forward in that manner that at the actual board of commissioners meeting on Tuesday evening that it is addressed to the town at that point in time what is going to be occurring so we get an idea that is coming from the Board of Commissioners so we again it doesn't look like we have two separate entities saying...or whatever we're having here this is a well thought out and agreed upon, new policy change type deal and the policy change is coming through the Board of Commissioners and endorsed by the Planning and Zoning Board."

Mr. May stated, "In fact if the ordinance is changed it would be advertised and a public hearing would be held."

Mayor Burns stated, "And I do again have to stipulate that we haven't talked as board, Commissioner Terpko brought up his concerns we were like Ron, but, I'm like well I got say I thought about this a little different reason so again I want to be clear that I recommend that we change it for the betterment of the commission because I agree maybe for different reasons but we do need you guys to think about how you would like that structure because I don't want to go proffer this to the board on behalf of Mayor Burns went to a meeting and they bought it, no I'd like to know how you'd like your commission to run and with Denis's input and I think that's great. You have a time where that commissioner liaison then can come up, is there anything from the liaison from the board and then officially they come up and you have hand outs or whatever and they say the Board of Commissioners met we discussed this issue and we support this it was a vote of five to 0 just like staff reports that we get and then so it's clear what your desires are, it's your commission."

Mr. Kinnaird stated, "But at the same time I'd like to get you to come up with some kind of expectation for what the member of your board will be acting at, at our meeting, if he is just in audience basically as a liaison."

Mayor Burns stated, "Right and that will be discussed between the Board of Commissioners as a okay Commissioner Terpko brought these ideas up and his concerns what are we going to do to modify the ordinance to specifically address his concerns and the way to operate and marry up with your desires as a commission on how you operate and then publicly obviously like Rick said if we change the ordinance then it's a public comment."

Mr. May stated, "And Mr. Cubbedge just so you are aware there will not be no meeting next week it will be the following week."

Mr. Cubbedge stated, "Yes sir I was aware remember I ran the camera for you the other evening. (laughter)"

Mr. May stated, "I wasn't sure that you were awake when you did that so...(laughter)"

Mr. Kinnaird stated, "Is this something that would require a motion on our behalf?"

Mr. Ford stated, "I think that's what Mayor Burns was interested in...well lets discuss it...basically what we're saying is that the liaison from the Board of Commissioners would no longer be a voting member, we would propose to increase...they basically would be replaced by a member from the public at large but the liaison would basically participate in meetings similar to the member of the audience and the board would include in it's monthly agenda an opportunity for the liaison to comment or provide input from the Board of Commissioners. Does that sound..."

Mr. Cubbedge stated, "...you would be then announcing the..."

Mr. Ford stated, "This is our recommendation."

Mr. Cubbedge stated, "...we will then be changing our first alternate will become a voting member from our group already and we would opening up for alternate position."

Mr. Ford stated, "Right."

Mrs. Hunter stated, "Will we still have two alternates?"

Mr. Ford stated, "I think two alternates is a good idea."

Mr. May stated, "I think we would have to go back...if it occurs I think we would have to go back and modify the guidelines for the..."

Mr. Ford stated, "Policy and Procedures."

Mr. May stated, "We would need to do that after its done and just for clarity Mr. Ford you made it that he would not be a voting member but in fact he would just simply not be..."

Mr. Ford stated, "Be a member, right."

Mr. Cubbedge made a motion that the Board of Commissioner is no longer a seated and active voting member of the Planning and Zoning Commission. The Board of Commissioner will be a liaison to the Planning and Zoning. The Board of Commissioner will be seated within the audience and at a point during the Planning and Zoning Commission Meeting will represent the Board of Commissioners comment. In addition a voting member taken from the Board of Commissioner alternate, first alternate will become a voting member and an additional alternate will be announced for the Planning and Zoning Commission. Mrs. Hunter seconded the motion.

Mr. May stated, "Could staff comment I think your wording was the alternate would be taken from the Board of Commissioners..."

Mr. Cubbedge stated, "Oh okay I meant from the Planning and Zoning Commission."

Mr. May stated, "This motion will probably go verbatim to the Board of Commissioners so I wanted to make sure it was clear."

Mr. Ford stated, "Any other discussion?"

No response.

Mr. Ford stated, "All in favor?"

Vote – all for. Motion carried.

Mr. Ford stated, “Okay any other comments?”

Mayor Burns stated, “I have one more I’m sorry. I did not get permission to come here tonight and talk to you on behalf of the Board of Commissioners I want you to know that we did discuss about potentially in a public meeting about potentially adding or changing the lighting out at the Blockbuster Video in light of the armed robbery. We do understand that there are some members on the commission that live near there and we were thinking of asking the owner if they would be willing to make slight modifications to the lighting to try to light it up just a little bit more just because it is fairly dark. We’d like you to maybe consider that next month, think about it. I think staff...Mr. May is going to contact the owners but obviously based on the Site Plan there were certain things that were done and approved and everything and we’re not trying to affect the homeowners and if we can do it but just maybe increasing the wattage or just changing little...and he has to agree to it because he’s already in and operational but I wanted to let you know that we did discuss it a little bit about trying to get a little bit more lighting out there for safety reasons.”

Mr. Cubbedge stated, “He’s just going to have to follow within the guidelines of the Lighting Ordinance.”

Mayor Burns stated, “Right, but we’re going ask them but if you wanted to opt in to the board I just wanted to let you guys know what we were considering because you guys have more experience than the Board of Commissioners sitting up at the table or at least me on knowing what kind of lighting...I mean you guys have been through that whole ringer with NVR and stuff so you might have some suggestions to us.”

Mrs. Hunter stated, “Is Blockbuster the one near me? It was an armed robbery?”

Mayor Burns stated, “Two guys, semiautomatic pistols, tied them up, undisclosed amount of cash...”

Mrs. Hunter stated, “We’re talking about lighting in the back or the front?”

Mayor Burns stated, “I’m thinking the front is what we’re talking about it looks real dark. The back I think has enough lighting I mean it’s the back. That would affect the homeowners more. I think that’s what Commissioner Terpko bought up, however, I want it to be known that we think they went out that way so. But it’s the front that I think looks real dark, it’s not the back.”

Mrs. Hunter stated, “Is it just that they don’t have anything...is it existing lighting...they don’t dim that at night time or anything do they?”

Mr. May stated, "I think they may cut them off...Blockbuster I think stays open later any other store out there I think those lights may go off while they are still open. I have a call into the project manager out there or..."

Mrs. Hunter stated, "So up in that corner, see I don't see that corner, CVS stays nicely lit and..."

Mr. Cubbedge stated, "The parking lot lights, the tower lights get turned off?"

Mr. May stated, "I believe they do."

Mayor Burns stated, "And I know Mr. May they did alter their hours since that, they changed it to close with every other business so they are not the only ones open, for that reason. I didn't know that either, they were the only business open when they were robbed and they changed their operation."

Mrs. Hunter stated, "So it was late at night?"

Mayor Burns stated, "It was ten thirty."

Mr. May stated, "So that may mitigate the circumstances, none the less I believe at that time I think those lights actually went off with the majority of the closes and they stayed open until eleven and I think everyone else was nine at the latest or something like that."

Mr. Ford stated, "I think there was another incident to in the parking lot a while back."

Mrs. Hunter stated, "There was an assault."

Mr. May stated, "I'm not sure that that had...dealt with the lighting issues. That was a separate..."

Mayor Burns stated, "Thank you, no more."

Mr. Ford stated, "Any other items?"

No response.

Without further discussion, the meeting adjourned at 8:40 p.m.

Respectfully submitted,

Rebecca E. Sharer-Long
Recording Secretary