

The regular meeting of the Thurmont Planning and Zoning Commission was held on Thursday, March 24, 2005 at 7:30 p.m. Present were: John Ford, Chairman; Commissioner Muth; John Kinnaird, Randy Cubbedge; John Woelfel; Sandra Hunter; Denis Supercynski; Rick May; Jim Brown and Anne Herbert-Rollins.

Mr. Ford welcomed everyone to the March Meeting of the Thurmont Planning and Zoning Commission. He stated Mrs. O'Neill has a health problem in her family so she will not be here tonight. The first item on the agenda was the Zoning Inspectors report Mr. Ford turned the meeting over to Mr. Brown.

Mr. Brown stated, "There were twenty two (22) Zoning Certificates issued from February 21<sup>st</sup>, 2005 to March 22<sup>nd</sup>, 2005 for one (1) five unit townhouse block, one (1) seven unit residential apartment complex, six (6) residential additions, fourteen (14) residential accessory uses and one commercial building for a total number of Zoning Certificates issued to March 22<sup>nd</sup> is forty three (43) with twenty two (22) single family dwelling units. For the same period in 2004 there were forty eight (48) Zoning Certificates with four (4) single family dwelling units. Any questions?"

Commissioner Muth stated, "Twenty two already?"

Mr. Brown stated, "Yeah well the seven (7) unit apartment complex that's the seven (7) apartment units which are above the retail/commercial for the Gateway Business Complex on North Church Street. That's a combination residential and commercial there. So that jumped it up to twenty two."

Mr. Ford stated the next agenda item is TA05-01 – A. Wayne Six, 21 Brown Avenue. Mr. Ford turned the meeting over to Mr. Supercynski for the Staff Report (see attached).

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

Commissioner Muth stated, "This isn't for Mr. Supercynski but I was contacted by Mr. Six soon after the last meeting he was pretty well confused as to what happened and what he needed to do and I suggested doing a Text Amendment was...I explained to him what happened and I thought that the feeling of the Planning Commission was that we wanted to help him out and I suggested to him a Text Amendment. At the time I hadn't really thought about what the Text Amendment should say and then I say this and I was confused as to how it helps. It would seem to me that something that's more appropriate would be putting something in about nonconforming uses a mobile home instead of one year it would be three years that it can be unused and still be occupied without having him to get rid of it just to solve his problem."

Mr. Kinnaird stated, "Would that apply to him then? Would you be able to make it retroactive?"

Mr. Supercynski stated, "You already have that decision hanging out there I think on the nonconformity and as I recall it was a 5 year lapse in the use?"

Commissioner Muth stated, "I thought it was one year."

Mr. Supercynski stated, “No, no I mean that this thing was actually out of use. It one year for the...so there’s two concepts that are floating here I think the proponents will probably mention a few of these. One is the concept of nonconformity, the nonconforming usage we talked about briefly last time and probably the metaphor of the planners and the attorneys use very often is the fruit on the vine, the rotting fruit on the vine that at some point the nonconforming use being a structure on the planet earth and being exposed to the things that wear us all down are eventually going to go away and the nonconforming use is set up for that to happen and it gives very practical advantage to somebody to maintain to a level that they can to keep the use going as long as we don’t have that cessation in the use. I think when we get to a 5 year period it starts to really stretch the meaning of the cessation of use in a nonconforming use. I think it’s entirely fair to consider the situation for these trailers and affordable housing but you also have to consider the decision sort of in the larger picture of protecting surrounding property owners and their property rights in terms of what they can reasonably expect the Planning Commission to do in terms of the or the Zoning Board in terms of the nonconforming use and there is an expectation that once those things do cease being used that...and I think at last meeting it was pretty clear that the argument that whole collection of trailers and parcels that the way the Zoning Ordinance is written that it was really narrowly focused on looking at the structure or lot so perhaps a Text Amendment that look at modifying that sentence would approach doing something for Mr. Six but then would open another can of worms in terms of nonconforming uses throughout the community. There is as new as Zoning is being about 100 years old in the United States this thing has been played out many times and not with Mobile Home Trailers in particularly but the idea of nonconforming uses and their lapses. The other thing to be fair if some of the case law that talks about nonconforming uses in terms of residential structures apartments or trailers if there is an intent and you can document the fact that someone continued to make an effort to rent the trailer during that period of time you might make an argument that the use did not cease. Even though there was not somebody in the unit there was a good faith effort to attempt to get that used and that’s pretty much what the zoning enforcement folks are looking for but in this case I haven’t seen any documentation if that was the case.”

Mr. Ford stated, “Any other questions for Mr. Supercynski?”

Mr. Kinnaird stated, “Just a comment that my feeling is that since it’s smack in the middle of others that are going to be allowed to be used that was my feeling on continuing to allow it and Mr. Six isn’t the one that hasn’t attempted to have the property occupied for the last 5 years it was the previous owner.”

Mrs. Hunter stated, “So it was a lack of enforcement on the town’s part that they should have approached the previous owner and said it’s nonconforming after 12 months and he should have had it removed.”

Mr. May stated, “I don’t think so, I don’t think our ordinance requires that it actually be removed. It just says that it will not be used again as a nonconforming use.”

Mrs. Hunter stated, “I thought that was one of the problems with...”

Mr. May stated, "That was a condition of the Planning Commission if I remember correctly."

Mr. Supercynski stated, "I think actually the vote you took I think eliminated that condition #2. It was one of the recommendations but."

Mr. Ford stated, "Yes, we have representative for the applicant."

Mr. Anne Rollins stated, "Good evening Mr. Chairman members of the commission for the record my name is Anne Rollins with the law firm of Miles & Stockbridge and I'm representing Mr. Six and 21 Brown Avenue LLC regarding this proposed Text Amendment. You'll have to forgive me I was not present at the meeting where you discussed the actual plan issue and issue of the trailer. I was one of the three attorney's who offered an opinion letter to Mr. Six stating that in my opinion an interpretation of your Zoning Ordinance that the one trailer should be allowed to continue because the cessation of use by that one trailer would not cause a cessation or lapse of the entire use."

Mr. Ford stated, "Did you get a copy of Ms. Borden's letter?"

Ms. Rollins stated, "I did get a copy of that and I respectfully disagree with her opinion. As a bit of background I've been practicing law for 16 years and 11 of those years I have been involved in municipal government practice so I'm a bit experienced in this area I used to be legal advisor to the City of Frederick Planning Commission, Board of Zoning Appeals and Historic District Commission was Deputy City Attorney for the City of Frederick for 4 years, City Attorney for the City of Taneytown for 4 years and I've represented a lot of municipalities so I have some experience in this area and I'm not just speaking off the cuff. I think Mr. Six would take a little bit of offense at the staff, and I didn't get your name but the staff person's metaphor of rotting fruit for his trailers but in any event let me kind of get into a little bit of background and tell you why I prepared the Text Amendment as I did. First of all I want to comment I didn't receive the Staff Report till just when you called the case so I didn't really have much time to look at it or respond to it, it would have been nice to have it a little sooner than that to maybe prepare a little bit of better response but let me kind of just speak from the staff report as I have read it and the comments that I've heard from staff. First of all as a bit of background let's talk about Zoning Text Amendments and what Zoning Text Amendments do. When you make a Zoning Text Amendment you are amending the text of the ordinance that will forever apply to every single applicant, property owner who comes in so what you want to try and do is make the text amendment as narrow as possible so that you're impacting fewer properties perhaps than greater. So my focus initially when Mr. Six contacted me and again not being at the meeting I was kind of going just by what his indication was that the commission seemed favorable that they didn't really feel that maybe he should have to get rid of the trailer and maybe a Zoning Text Amendment might be a way to cure that and remedy the situation on his particular property in light of the opinion that you received from council. With that being said I started looking at different sections of your Zoning Ordinance to see well where would be the area that we could modify it or amend the text that would be the least broad and the least intrusive to impact the fewest number of properties. So when I looked at I think he even said that someone had indicated and I guess it was you Mr. Muth that had suggested perhaps increasing the

amount of time before a lapse would be deemed to occur on your nonconforming use ordinance. So before I talk about the I guess I'd like to also talk a little bit about nonconforming uses and add to what staff has said. Nonconforming uses are generally not favored under Maryland Law or I don't think any states law and planning law nonconforming uses are not favored and I won't used the analogy to rotting fruit but I think what staff was getting at is that the thought is that when there is a rezoning of a property and a property then becomes nonconforming that you allow it to continue it is the term we're familiar with it's grandfathered in and you allow it to continue but that over time through attrition whatever over time that will die fade away and disappear and then you will be able to establish a new use on the property consistent with the Zoning Ordinance that would not be nonconforming. So that's why you have lapse any nonconforming use I've ever seen always has a lapse provision in it. Some are more lenient than others. Your attorney has taken a very strict interpretation of your ordinance in terms of the lapse but also in terms of how you define where and how that lapse would occur. My position and that of the two other attorneys who submitted opinion letters was that it's the use as a whole. It's the Mobile Home Park that is the use that is nonconforming. It's not just that one trailer so it's the whole use the part that was approved and has become nonconforming not just the one trailer so the lapse would have to be every single trailer would be vacant and unused for a period of a year or more before the whole use would lapse. In this case our position was only one unit, like one unit in an apartment building was vacant and therefore we didn't feel that there was any lapse involved. In spite of that again, your attorney advised to the contrary so then we get the issue of well what could we possibly do to the ordinance to allow this situation to continue because nonconforming uses are not favored in Maryland Law I hesitated to tinker or amend the section of the ordinance focusing on nonconforming uses and with respect to the suggestion of amending it maybe to say that the lapse would not occur after one year but maybe would occur after three well in the first place that wouldn't really help us because my understanding is I think it was for five years that this one trailer was vacant and again that was prior to the time that my client and owned the property. By doing that what you would be doing is not just for Mr. Six's property or for this Mobile Home Park but for every single nonconforming use of any type in the Town of Thurmont you would be saying now it's not one year it's two, it's three, it's five so that would be a very broad and drastic change to your Zoning Ordinance. It would also in my opinion because nonconforming uses generally are not favored under the law just anticipating based on the strict interpretation your attorney has taken previously I don't think your attorney would advise you to adopt that type of an amendment to the ordinance because it would cover to many possible uses all over town and would be increasing that time frame beyond what typically you see in most ordinances. Do I wish you would do that, sure, would it fix our problem, yes and so that would fix it but my thought was I don't think that's going to pass muster because of the fact that nonconforming uses generally are not favored. So I looked to try to find a way to amend the ordinance to be more specific just to Mr. Six's property and to resolve the concerns that the commission had and address those concerns at the same time taking kind of a narrow focus so we weren't impacting by our Zoning Text Amendment something that would impact a huge number of properties in the Town of Thurmont. My understanding is I think this and correct me if I'm wrong I think this is the only Mobile Home Park presently with that in mind that's why I thought well okay well lets focus on the definition of what is a Mobile Home Park then and see if we can fix this with a definition that just pertains to Mr. Six's property and therefore wouldn't impact every single other nonconforming use in the Town of

Thurmont but at the same time would fix this nonconforming use. So I focused on the definition and also in keeping with what I understand from Mr. Six some of the discussions were at the last meeting and as I understand from him some of the discussion focused on the fact that some of the attorneys concern as set out in that letter were that there were multiple lots here. Now our position is they're all in one deed and it is all one lot. They are all on one lot. Your attorney's position was well some of them are on this lot and that ones on another lot so you can't tie them together so again we would respectfully proffer that they're on one deed and they are in fact all on one property but in order to kind of get around that what I thought maybe was the issue that your attorney was focusing on I looked at the definition and thought that by adding the words adjacent or contiguous groups of sites lots or parcels it would address this situation because then all of the mobile home trailers on all of the parcels if your attorney chooses to take that approach that it's multiple parcels then all them on all of the parcels would be one nonconforming use and therefore one empty trailer in the whole park wouldn't cause the whole park to loose it's nonconforming status. I kind of think that even as your ordinance was drafted originally the fact that it says groups there that language was already there I didn't add that word groups, groups was already there and I kind of think in reading it that the intent at that time was to say any site lot or parcel or groups of those things, groups of sites lots or parcel maintained or intended for the purpose etc., etc. I think by adding in the words that I've added in it makes that more clear that that's what that would mean that any site lot or parcel or adjacent or contagious groups of sites, lots or parcels used for that particular use and purpose and maintained for that purposed for two or more mobile homes would be a mobile home park under your definition and by changing the definition I think it meets the intent of solving the problem or perceived problem on Mr. Six's lots if that's the attorney position and at the same time takes a very minimal approach and a very small adjustment to your Zoning Ordinance because your only adjusting one definition of what's a mobile home park as opposed to lets say that all nonconforming uses can now be 5 years before they lapse which is a huge change to your ordinance because that would cover every single nonconforming use in town. So I was trying to take having been attorney for municipalities before and sitting on that side of the table I was trying to put myself in your shoes and think if I'm on your side of the table what's the least invasive way to amend the ordinance to satisfy the circumstances on Mr. Six's property and be not so harsh and all encompassing an amendment to our Zoning Ordinance. So I was looking at it from two stand points from the stand point of zoning text amendments in general and not wanting to paint such a broad brush if you can paint a more narrow brush and from the picture of nonconforming uses knowing that they're not favored knowing that your attorney has already taken a very restricted view of those and thinking your not likely to want to change the definition of nonconforming uses and open up any bigger hole if you will for these nonconforming uses that are generally unfavored. So I was trying to take the most minimally invasive approach to amending your ordinance as possible with all do respect to staff I think it fixes the problem because if the concern in fact was that you've got five trailers on more than one lot and the one that's been vacant is sitting on a separate lot and therefore you loose it if you tie that lot in with the other lots, which in our opinion they are tied in because they're all on one deed of record then all five mobile homes are one big Mobile Home Park and one vacant mobile home in a mobile home park doesn't make it loose it's nonconforming use status because of the lapse in time so that's my reasoning and my logic of how I got to this amendment. I think it does it work, again I don't mean any disrespect to staff but that's my logic and how I was approaching it and I think it's probably about the least invasive way to amend

your ordinance and I do respectfully disagree with staff and think that it does fix the problem with Mr. Six's property. Thank you."

Mr. Ford stated, "I think we appreciate your efforts to minimize the impact on the Zoning Ordinance. I think after we discussed at the last meeting the possibility of the text amendment and some of us thought about it it appeared to be a rather difficult thing to do without causing a problem. Looking at Ms. Borden's letter it seems like the key phrase is if all of the trailers were located on the same parcel or lot then the out come would be different and the analogy would apply."

Ms. Rollins stated, "And again that's language that I was focusing on as well so I tied in the groups of lots because I think that solves the problem and I think actually the language is already there in the ordinance where it says the words groups. I just think it was perhaps in artfully worded so it's maybe not as clear as it could have been and I think just a few little words I've added make that intention more clearly and at the same time solve this problem."

Mr. Ford stated, "I think we have a couple options. One is to say okay this is your best shot at it and we take it and give it to our attorney for review, continue the action and give it to our attorney for review or the option is to propose some changes or of course the other option is to say no."

Ms. Rollins stated, "Or the other option is you can approve it and considering that you just cited the same language from your attorney's opinion letter that I was using as my guideline in drafting this change I think it's safe to say that this fits within what her intent was as far as defining the boundaries of this property and I think this addresses her major concern."

Mr. Ford stated, "I'm not an attorney and I don't think anybody else on the board here is so I don't know that we can agree or disagree with that."

Commissioner Muth stated, "Can I ask you a question about your interpretation?"

Ms. Rollins stated, "Absolutely"

Commissioner Muth stated, "Could you put a new trailer on this property then with your interpretation?"

Ms. Rollins stated, "Do you mean a new trailer as in an additional trailer or a new trailer to replace one that's already there?"

Commissioner Muth stated, "Either or both."

Ms. Rollins stated, "Well when you have a nonconforming use if the use is a five Mobile Home Park which in this case I believe there's five mobile home on the property then you have a nonconforming use for the 5 mobile homes. If one were destroyed by fire or something you could replace that with the new one to add a sixth mobile home would in all likelihood be considered an expansion or enlargement of your nonconforming use and generally that is not favored and usually is not permitted. But the

five that are there you could keep and replace and restore and renovate and keep operating.”

Commissioner Muth stated, “Okay.”

Mr. Cubbedge stated, “But you don’t have it specifically stating five mobile homes are in this park.”

Mr. Rollins stated, “No I do not and the reason is because someone might come along tomorrow and want to establish a Mobile Home Park and they may three or they may have ten. Your definition says two or more. It doesn’t specifically need to say five or else then you really are being very specific just to my client’s property.”

Mr. Cubbedge stated, “Okay but your statement if I’m interpreting to what you just said to Commission Muth you specifically just stated it is a nonconforming five Mobile Home Park.”

Ms. Rollins stated, “My client’s...my clients nonconforming use let me back up. When my client purchased the property there were five mobile homes on it before your Zoning Ordinance was enacted there were five mobile homes on this property so when your Zoning Ordinance was enacted and said well we don’t want mobile homes in that area they became the five mobile homes on this property became a nonconforming use the Mobile Home Park not each mobile home but the Mobile Home Park which consisted of five units. So in that case my client has a nonconforming approval to continue to use the five mobile homes in his Mobile Home Park so if anything happened to one of those units he could replace it and still have five to expand beyond that and have six or seven or eight or ten would be considered an expansion of the nonconforming use and in all likelihood would not be acceptable because generally legal nonconforming uses you don’t generally allow them to expand because the hope is over time there going to disappear you don’t want to let them get bigger is generally the thought under the law. With this definition because this is the definition of Mobile Home Parks for your entire ordinance not only for Mr. Six but for anyone else who may come along in the future and desire to establish a Mobile Home Park I didn’t specifically reference the number five I continue to carry the number of two or more makes a Mobile Home Park so it could be five in my clients case it might be ten if you later approve a ten unit Mobile Home Park for someone else on another property.”

Mr. Supercynski stated, “Here’s something to consider to in terms of the replacement I think there would be honest debate amongst attorneys and planners as to whether you could replace one of the units with a new unit. You’d have multiple problems. I don’t think there’s any argument that a catastrophic act of god that you’d be able to replace and I believe that most ordinances as you make that specific reference about that the ability to replace that but I think you would find severe practical issues here first off being that it would be hard to replace the existing mobile homes out there because it is likely that there are not mobile homes made at the current size of those existing units. You’d be looking at necessarily at an expansion if one was to be replace and then I guess the theoretical argument is if you can replace each unit theoretically the use never goes away as long as it’s continued and I’m not saying that that is right or wrong but that I think you would have to debate there as to whether that’s the intent of the nonconforming use.”

Ms. Rollins stated, "I would respectfully disagree. I mean there are other ways for a use to lapse obviously but to just say that you couldn't make any improvements to what's there because it would keep going on forever and ever would be to apply that a business owner can't improve and keep their business in good shape you're supposed to just let it crumble to the ground because that way the nonconforming use will go away sooner. That's not the law. The law is continuing that use as a viable use and if you stop the viable use then it goes away. Some ordinances even go further and have language that implies a clear intent on the part of the owner to abandon the use not just a cessation of the use. Your ordinance does not have that. It just has the one year period. So you think of different things that could happen that would cause a one year lapse and I just had a similar discussion yesterday with the Mayor and Alderman in Frederick as to proposing comprehensive rezoning and changing the zoning on a lot of properties that would make them nonconforming. But you think of some examples of what would cause your nonconforming use to lapse over a period of a year and some examples that come to mind would be for example you loose your tenant do to market conditions or whatever, conditions might exist you can't relet the property for more than a year and you would loose the nonconformity. Another example would be if you had a very major illness and you're a small business owner and your ill for a year and you can't run your business you'd loose your nonconformity or a catastrophic lose fire or something like that that you couldn't get it rebuilt within a year that might cause you to loose the use. So there is a lot of ways that a nonconforming use can cease over time or someone just says you know what I don't want to run a gas station here anymore I want to turn it into some other permitted use under the ordinance and then it goes away and that's what happens over time. It doesn't mean you can't renovate and keep your property in good condition in order that you can continue the use."

Mr. May stated, "That doesn't mean given the fact that you can renovate is what your saying that you could replace?"

Ms. Rollins stated, "I think you could but I will pick up one thing and I'm sorry I don't know your..."

Mr. Supercynski stated, "Denis by the way, Denis Supercynski."

Ms. Rollins stated, "Denis okay I don't mean to be...I will agree with one thing that Denis said about replacement and he said if one of these were damaged and were replaced you might have to go to something larger. I don't disagree with him that a bigger trailer could perhaps be interpreted as an enlargement or expansion of your use I think that's a pretty broad definition of it because you're not increasing the number of people the number of units one might just happen to be you know 20 sq. ft. larger than the one you had before. But I see you point in that argument. Do I think you could replace an apple with an apple, yes I do, an apple with an orange well then maybe your getting into...depending on what the orange looks like then maybe your talking about something different."

Mr. Supercynski stated, "The only reason I brought it up was because ten or twelve years ago when I was working in Maryland this issue came up often and at the time it was very clear that...it's not the matter of replacing apple with apple or apple with an orange

it's the fact that they don't make the apple anymore, you can't get it's perhaps a used...you might be able to come up something. It was very difficult to find some of the sort of the older units because the ones that are being manufactured now are much larger."

Ms. Rollins stated, "And that maybe the case and if that were the case then I hope for Mr. Six's sake that some catastrophic lose doesn't occur to one of these trailer but if it did and he came back in and ask to replace one of the trailer but the only trailer he could find was twice as large you know that maybe your interpretation that that would be an expansion of the use."

Mr. Ford stated, "If we approve this Text Amendment Mr. May I would assume then the attorney would look at it before it went to the Commissioners."

Mr. May stated, "That could be arranged yes."

Mr. Ford stated, "And if she said it's not going to change anything..."

Ms. Rollins stated, "Well I wish she were here so she could maybe understand my logic as well as far as how I approached it."

Mr. May stated, "And because she is not here I was going to ask Ms. Rollins if she would mind giving us a synopsis of your rational and we could submit that along with everything."

Ms. Rollins stated, "Okay I'd be happy to submit a written summary. Justification statement. Often times with things you'll submit a justification statement. I'd be happy to prepare something like that if that would be helpful because obviously you are the recommending body to the Mayor and Council that make the final decision as to whether the ordinance is amended so what we're seeking is your recommendation of approval something totally different could happen when we get to the Mayor and Council level."

Mr. Ford stated, "What would be the up side and down side of adding a sentence to the definition that something to the effect that a single Mobile Home Park shall be considered as a single structure a lot for the purposes of this..."

Ms. Rollins stated, "I'm sorry could you repeat that again?"

Mr. Ford stated, "A single mobile home park shall be considered as a single structure or lot for the purposes of this Zoning Ordinance. I was just trying to get a little more focus to the concern that the town attorney had."

Ms. Rollins stated, "Actually I think that addresses one of the other concerns and would be a good addition and my understanding is your intent is that in my clients case all five mobile homes make up the Mobile Home Park."

Mr. Ford stated, "Well the definition of Mobile Home Park is any site, lot or parcel or adjacent or contiguous groups of sites, lots or parcel maintained etc., etc., it seems to me that is the definition."

Ms. Rollins stated, "Right."

Mr. Ford stated, "It would seem to me then that spells it out that for the purposes of interpreting our Zoning Ordinance we would consider it as one lot or one structure. Is there a down side to that?"

Ms. Rollins stated, "No, I think that's exactly what it is and that was part of our argument and part of my interpretation in issuing my opinion originally. Your attorney took a different view that it's not one."

Mr. Ford stated, "Right, so if we..."

Ms. Rollins stated, "Adding the language absolutely would correct the problem. The reason I didn't suggest it is because your attorney already shot down that theory so I went with the combining the lots and parcels as multiple lots because her other concern and even said it would be a different out come if it was all on one lot because she's looking at it as one trailer being on a separate lot. We disagree it's all on one deed of record but assuming that's her interpretation that's why I was using the adjacent and contiguous sites or lots because I think it addresses the one concern that she had."

Commissioner Muth stated, "Would 30 day's continuance really hurt Mr. Six? The reason I'm asking is it sounds like to me the best solution would be for you to contact the town attorney. The impression I get of the board is we want to help you out but we just don't...we're not attorney's. We need to satisfy Lynn."

Mr. Kinnaird stated, "I don't think we need to satisfy Lynn I think we have to satisfy ourselves."

Mr. Rollins stated, "I think it was actually Debra who issued the opinion letter."

Mr. Kinnaird stated, "Yeah whoever the attorney was that issued it my understanding is it's not up to her to make the decision to make the recommendation or not it's our decision to make the recommendation. She may have input that she's already given us and I don't think it's up to her to decide one way or the other. She can certainly look at what we proposed and again give recommendations."

Ms. Rollins stated, "Your city attorney...in fact I expected your attorney's to be here tonight quite honestly but they've already given you one opinion as attorney for the town in all likelihood the Mayor and Council will probably ask the attorney to take a look at the proposed Text Amendment. I would just like for it to be clear...for you all to clearly understand where my logic and reasoning was and how I was trying to do the least invasive amendment to your ordinance and hope that they would concur with that this is a relatively minimal benign less invasive change to your ordinance that some other possible changes could be and I do think it solves the problem on Mr. Six's lot. Obviously I'm just concerned about Mr. Six you know future mobile home park owners are on their own. They can go get their own attorney to work things out for them. I'm just concerned with my client's situation and that's where my focus was. So my focus was merely on his property keeping in mind the concerns your attorney had expressed, keeping in mind

what I understood to be the concerns that this commission addressed and with my background in municipal law focusing on zoning text as a whole and the zoning text amendment process and nonconforming uses and the way that they are viewed under the law. So I was trying to really keep a narrow focus on it and not open up to big a can of worms for you.”

Commissioner Muth stated, “If I was to put on my other hat as Town Commissioner when I saw this I don’t get to vote tonight on this, but I would see this and the first thing I would do is say what did the town attorney think of this and they would say well okay fine we can change the text amendment and I said will it help Mr. Six and if they say no I mean am I supposed to disregard their opinion?”

Mr. Kinnaird stated, “Who the lawyers opinion?”

Commissioner Muth stated, “Yeah.”

Mr. Kinnaird stated, “The town lawyer’s opinion can’t be disregard.”

Commissioner Muth stated, “We certainly can but…”

Ms. Rollins stated, “Oh I don’t know clients disregard there attorney’s advice all the time. All we can do is give them the advice that doesn’t mean they listen.”

Mr. Supercynski stated, “The town attorney is to help you out so if there is a challenge on something that it’s held up and fulfills your intention so the way to go I think at this point is give it to the town attorney she will see from her standpoint what is not working here with this text and if it’s the intention of the commission to move forward with something that will help Mr. Six then taking the attorney’s recommendations we can craft something. The less is more approach might not at all work here we might be trying to do too much with those few words. It might be that you have to add some sentences that make it crystal clear that you don’t want that interpretation from a nonconforming use to apply in this kind of a case and so if you go to the attorney we can find out if she’s going to have a problem with the phrase of structure or lot because I’m still reading it as that structure being a hold up here and if she thinks that then we take it and we figure out what has to be done in terms of the text amendment that solves that.”

Mr. Kinnaird stated, “And I have no problem with giving it to the attorney as long as she understands speaking for myself that my position is that I want to see the use continue.”

Mr. Supercynski stated, “She’s covering your back so let her…so it’s sort of like putting it out there and saying poke holes in this and when you see where she poked the holes then you take it and fill them and I think that’s a smart way to use your town council and they’re going to be conservative as she would probably agree there trying to protect their interest and they’re trying to protect they’re decisions and make sure that…”

Commissioner Muth stated, “That’s why if she said its fine to change but if it’s not going to do anything for Mr. Six when Ms. Rollins hears that she’s going to say but it

does and we're going to end up going back and forth so we might as well do that before we change the amendment."

Mr. Cubbedge stated, "I have an argument. I'm looking at from the other side of the street I'm looking at the property owners in the adjacent area that have seen an abandon structure for five years. I mean we've had this definition and basically stay with the 12 month time period. This buildings been nonconforming for five years."

Mr. Ford stated, "It's been nonconforming ever since..."

Mr. Cubbedge stated, "Okay ever since the zoning was changed its been vacant for five years do the surrounding homeowners have the right to expect that because that has been vacant and by the rules we have here in Thurmont that that trailer will be removed and not reoccupied?"

Mr. Kinnaird stated, "Well to address that my understanding is that all the properties that surround that were owned by Mr. Martin is that true."

Mr. May stated, "Yes."

Mr. Kinnaird stated, "So Martin in fact owned not only the trailers but also the adjoining home that has been split off recently is that right?"

Ms. Rollins stated, "I believe so and..."

Mr. Cubbedge stated, "And there is no other property owners anywhere adjacent to abutting that location? That's who I'm referring to."

Commissioner Muth stated, "They had no expectation that trailer will be removed. That's not in our Zoning Ordinance. They may have an expectation it won't be reoccupied."

Mr. Cubbedge stated, "That's what I'm referring to."

Ms. Rollins stated, "And I think the response to that if I may is there's an offense known as blight and you know you hear police departments all the time talking about blighted neighborhoods and that is one indication if you allow the blight to continue then it gets worse and then people think well this is a blighted neighborhood and there's graffiti there so I can bust some windows to and I can throw some trash and it kind of perpetuates itself by contrast if property...so vacant buildings tend to encourage blight, vandalism and crime. It's better to have your buildings occupied than vacant so it really would be preferable to allow this additional mobile home to be occupied by a grateful family in search of affordable housing as opposed to remain vacant and unoccupied which then what happens maybe kids discover it and start using it as a hang out worst things can happen. I think the positive side would be that you could have it occupied again by a very...a family that would happy to be living there and would take care of it and make it look better than it does now as an empty unit."

Mr. Cubbedge stated, “Historically previous nonconforming when the time has run out Planning & Zoning has been very strict by following the guideline of other organizations or other companies whatever trying to reestablish and have not been vacant or reestablish or take as long time limit wise as this is taken so there is another piece of history there.”

Ms. Rollins stated, “With all due respect that’s a no fault of my client. My client purchased this property to try to improve it and make it a viable continue the viable operation there so it’s no fault of my client that’s it’s been empty for that period of time. He wants to occupy it and improve it and have it be a nice neighborhood.”

Commissioner Muth stated, “You’ve heard my concerns as the Town Commissioner.”

Ms. Rollins stated, “Yes sir.”

Commissioner Muth stated, “I mean what would you have us do tonight?”

Ms. Rollins stated, “Obviously my preference would be that you would say gee we really like this and we think it fixes the problem in a lease intrusive way and we recommend approval and send it up to the Mayor and Council that they could review it and make a final decision in that regard.”

Commissioner Muth stated, “Given that there is debate as to whether it really solves the problem for your client I mean in your mind it’s clear...I mean is it really in your clients best interest to do that or is it in do you think it’s in your clients best interest to try and come to resolution with our town attorney before we make a recommendation. I’m willing to say yeah if you want to do this fine its okay with me I’m just not convinced that it fixes the problem in my opinion.”

Ms. Rollins stated, “Well it depends at which stage you want to get your attorney involved. Do you want to continue it and you hold off on this and your attorney looks at it and tells you all what her opinion is and how you should decide or do you want to go and decide what you see fit and then what the logical next step is any event is that it goes to the town council at which point your attorney probably is going to review it. However you want to handle it I’m happy to do it my client just wants to get this thing approved and we’re trying to do it in a way that is not just something my client likes but that will be palatable and acceptable to the town so...I don’t since, based on the opinion letter we got I don’t sense your attorney wants to work with us to make this work. I sense that you all want to work with us to make this work so I hesitate to throw it back to your attorney because I don’t think your attorney wants to make this work. They’re taking a different view of it and I respectfully disagree with that view and opinion as did two other attorneys’ but you know lawyers can disagree all day long right.”

Commissioner Muth stated, “I think that we could...we could maybe take a straw man vote and suggest to the town attorney that we’re in favor of making this work somehow and we could potentially have and I can’t speak for my brethren commissioners but see if we could have her directed to work with Ms. Rollins to come up with a language that we’re both happy with.”

Mr. Kinnaird stated, “And that’s what I say I’d like for her to know that our intention is that we would like to see this fly.”

Ms. Rollins stated, “And I think that is a very good suggestion because text amendments can come from any source it doesn’t necessarily have to be me proposing it, my client proposing it. Staff can propose, the commission can propose, the council can propose, your attorney can propose a text amendment so if you instruct your attorney here’s our objective and here is the goal that we’re setting out to do, find a way to amend the zoning text that makes this work then that’s what your attorney has been instructed to do and I’m happy to work with your council I’m happy to work with Mr. May and Denis, happy to work with all of you to try and get to work and meet what your goal is as well as what my clients goal is, however you think that will work but I think that is a wonderful suggestion. If you all vote and express your intent is that you want to make this work and instruct your attorney to work with me or your attorney to work with the applicants attorney to try and come up with an acceptable solution. I’m happy to do that and I’m also happy as Mr. May suggested to prepare a summary or what my objectives were and my logic and rational in proposing what I have proposed here.”

Mrs. Hunter stated, “Basically we would be recommending this text amendment...what are recommending to the commissioners. Can the applicant go directly to the commissioners and give his side based on...just because our attorney has said one way and the other attorney said the other way could the commissioners vote in favor of Mr. Six anyway and say that there interpreting it...and the other side of that is assuming the commissioners say okay fine we agree with the intent we would like to have the affordable housing but we have to follow our zoning guidelines and it’s way past the twelve months so okay fine the rest can say he doesn’t have to take the trailer away but he can’t reuse it, that one because its nonconforming and it’s clasped. If we’re not requiring them to take it away then it just sits there forever unused.”

Ms. Rollins stated, “It could.”

Mrs. Hunter stated, “In which we created the blight thing that we don’t want.”

Mr. Supercynski stated, “You’re saying that he doesn’t have to remove the trailer but he could remove the trailer.”

Ms. Rollins stated, “He could but he’s not required to.”

Mrs. Hunter stated, “Part of his argument was that he didn’t want to remove the trailer of course he wants to fix it but I got the impression he was willing to leave it and not fix it.”

Mr. Supercynski stated, “Just keep in mind, I guess, is that your decision doesn’t cause the blight. The owner, the landowner, the owner of the property is in complete control over what happens and your decision one way or the other should advance whatever things you want to advance. If you want to make this work then I think it’s still smart to go back to the attorney she is just there covering you guys and see what she has to say and make...rather than going forward with a decision that again as Mr. Muth has said may have a problem when it gets to the commissioners. I think you guys want to be able

to make a statement to the town board that is going to hold up and I think that's how you use your town attorney at this point."

Ms. Rollins stated, "And my response to the issue of the blight is that while it's the landowners prerogative as far as avoiding the blight my client doesn't have to fix up that trailer and I can assure you is not going to put a lot of money into renovating a trailer that he can not get any financial remuneration from in terms of rent even at an affordable housing level. It will be fixed up if someone's going to be living there but if he's not making any money off of it and can't use it why invest money to renovate something he can't use. So over time will it deteriorate, probably, I mean if it's just left there vacant...my suggestion based on what I'm hearing you all say I obviously since that you would like for this to work somehow I also since that you are a little bit uncertain as to whether this would pass muster with your attorney's and then when it gets up to the council. My suggestion would be as Commissioner Muth had suggested that you all take a consensus vote that it's your intent that you want to make it work on this property and instruct or request your attorney to work with the applicant's attorney to come up with an amendment to the ordinance that will accomplish that objective."

Mrs. Hunter stated, "I have tendency to lean somewhat in Mr. Cubbedge's direction in that it's not Mr. Six's...he sort of inherited this but at the same time the lapse is extensive and the previous owner...the guideline was there, the zoning rule was there before and I have a problem...I'm not worried about that its going with the attorney I have a problem with allowing that much bending of that rule as far as I deal with multifamily housing I'm not real sure how I'd come down on the question of whether or not this is considered a multifamily whole thing but the way that phrase reads a structure or lot that has lapsed and that structure has lapsed and the fact that Mr. Six bought it he bought a preexisting condition which was under our guidelines that says it can't be used again and I understand it's the interpretation that we're negotiating over here and I just have a problem with...I can't come down openheartedly."

Mr. Cubbedge stated, "Does this have potential of anything else. I mean are we setting a case, precedence this didn't go and we're going to push to change this, to change this. Somebody else doesn't...I understand Mr. Six's his position to some degree but I also have to look at Mr. Six's responsibility in knowing when he purchased this property that there was this preexisting condition and I really don't like the fact that we're as a commission being... especially being said a blight I'm sorry, it is the owners responsibility and I think we have seen in the town commission meetings with some of the ordinance being passed now a homeowner responsibility to try and cure some of the problems we have and I just...if this was a twelve month time period and again the gentlemen who purchased this property knew how long or should have know or had it investigated in response to five years in a nonconforming use."

Ms. Rollins stated, "And if I may respond to that my client purchased the property, property singular, one deed, one property with five units on it and he was purchasing it as a Mobile Home Park not five mobile homes. He was purchasing it as a mobile home park which is consistent with what my opinion was you've got one property with five mobile home units on it that all make up one nonconforming use of a mobile home park so to have one unit vacant doesn't cause the whole use to lapse anymore than one vacant apartment in a apartment building to cause the whole building to lapse and the whole

apartment to lose its nonconforming status. So yes he purchased it knowing there was one vacant unit but it was one property so he bought it with that understanding and that impression not as your attorney has interrupted it as being multiple lots and individual uses.”

Mr. May stated, “In all fairness Ms. Rollins he was aware that that was considered the lapse of a nonconforming use prior to purchase. He and I discussed that.”

Ms. Rollins stated, “I wasn’t privy to those discussions so that’s the first I hear that.”

Mr. May stated, “I understand that that’s why I wanted to make everyone aware of that.”

Mr. Supercynski stated, “Mr. Cubbedge in terms of... I would defer to the attorneys in terms of setting legal precedent. It doesn’t seem to me that if you crafted something carefully enough that you’d be setting a legal precedent given the fact that it’s a nonconforming use we’re talking about a very specific kind of nonconforming use in the mobile home trailer but I think...the one thing you have to think about and again I’m not passing judgment upon it I’m trying to remain neutral on this. You do you have to act as a commission the way you see fit and you may be sending a message one way or another depending on how you act to others in a situation of a commercial investor or commercial developer and you have, the commission has every right to look out for the best interest of all residents of the town and sometimes that’s going to mean helping out commercial developers and folks who are trying to bring business into the town and sometimes its going to mean taking a more harsh approach perhaps to enforcing the nonconformity issue so I think it goes both ways but I don’t think you’d have a legal precedent issue.”

Ms. Rollins stated, “And if I could also add to that I think if I were suggesting you changed your...like I said at the...if I had suggested you change your nonconforming...definition of a nonconforming or the section on nonconforming uses to say five years well I think then you would be sitting a dangerous precedent because it would open up the door for all kinds of long term vacancies and lapses if you will. So again that’s why I was focusing in the interest of the town I’m trying to balance a lot of interest here to get this thing approved to make it as narrow as possible and not open the door an further but try and solve this one situation and I think that avoids the dangerous precedent that you seem to be concerned with which I can appreciate.”

Commissioner Muth stated, “I’m going to modify my suggestion a bit. I’m going to suggest that we approve this with the instructions that if the town attorney doesn’t think this solves Mr. Six’s problem she should suggest changes to it that would. That way...”

Mr. Woelfel stated, “I think as a commission we need to decide whether we want to help him because I’m kind of his opinion I think it lapsed in its nonconforming use and if I was a neighbor and I thought well maybe this is a way to get rid of a nonconforming use I’d be concerned as well.”

Mr. Kinnaird stated, “I tell you what it upsets me to think that neighbors would be planning on ways to get of the neighbors...”

Mr. Woelfel stated, "No, no, no and I don't mean it that way..."

Mr. Kinnaird stated, "No but I'm seen in some other things that have gone on recently in town."

Mr. Woelfel stated, "If we try to help someone who's been nonconforming, who have lost their nonconforming use four years ago because it's nonconforming after the first year where do you stop when someone else buys a property and says I didn't realize that this structure was nonconforming so now I want some text amendment now to change it so it is conforming or remains at a nonconforming status."

Mr. Kinnaird stated, "My original argument on this was that since this one is situated in the center of the group of nonconforming structures, it's not in the center but it's not its not on the outside edge of it either it's adjacent and surrounded by other trailers who are in the same situation and that was my initial feeling was that it would be a shame for no other terms to die any use of it."

Mr. Woelfel stated, "I agree with the people on both side of me I think they're right I think it's already lapsed and if it were a year...five years is along time."

Commissioner Muth stated, "I see it as affordable housing for some family."

Mr. Kinnaird stated, "That's exactly how I looked at it and that was my statement at the last meeting and I'd hate to see it taken away. The fact that its there and it's this close to being occupied as affordable housing is reason enough for me not to throw it away. Because your in a situation now where there are no...your not going to be able to put anymore of these in here not that anybody want mobile home parks in Thurmont but we just look at...(tape change)

Mr. Cubbedge stated, "...using council etc. and I'm just...and on top of that also and making the sure that maybe the needs of...I hate to go back some...and I just I can not see where this gives me the least little bit to...I can't I think it's the responsibility of the person purchasing should known where it's at obviously he did he spoke to Mr. May. He knew there was a nonconforming status. We're looking at a 5 year time period. We're looking at the potential say of the area of people around it. There are other people who are affected by this no matter how we look at it and I think our job is to follow by what we have as rules and regulations and go with that. If you want to change the rule or regulation then fine but this is where it is right now."

Mr. Kinnaird stated, "But you can't speak for the people that are in the surrounding properties and I don't see any of them here to speak for themselves. We can certainly consider their circumstance but I don't think there should be a lot of weight clipped to that particular angle of this because there are no...there's no one here to object to it."

Ms. Hunter stated, "To me it hinges on whether or not a Mobile Home Park is considered one entity with multiple units like multifamily housing apartment complex or whether Mobile Home Park is still considered based on the structure and to me that's...if we didn't have this discrepancy between what the attorney's are saying then it wouldn't...you've got three attorney's saying yes it does meet that one attorney saying

no it doesn't that it's a separate structure so it doesn't matter that it's in a park and it can't be anoglist to a unit within a building and so I deal with multifamily housing most of mine are mine are not stand alone houses they are apartments I see it as different. I understand that Ms. Rollins doesn't see it as different but I see it as different and based on the language in the Board of Appeals may grant a special exception in our Zoning code. There is no leeway a structure or a lot. So it's not a structure within a lot it's a structure or a lot so the structure it fell it's lapsed I don't see it as one part, one fifth of the whole and that's my problem I don't know that I'm voting tonight but that's my problem with it."

Commissioner Muth stated, "Just also remember that this Planning Commission is an advisory board to the Board of Commissioners and you have the choice of either suggesting that we approve this amendment, that we don't approve it or you don't have to render a suggestion but I will tell you when it comes before the Board of Commissioners I will advocate to get this property approved."

Mr. Ford stated, "The role of the Planning and Zoning Commission is to certainly to enforce the Zoning Ordinance and it also has a role to change it when we think it's appropriate and in this particular case I think at the last meeting not everyone that's here tonight was there at the last meeting but it sounded like the consensus of the board that it would be better if the applicant would somehow be allowed to fix up the vacant trailer and to provide housing for low income folks and that his motivation for fixing up the entire parcel would be improved. I don't see that it's total inconsistent with the goal of the board to come up with some, well approve text amendment which would subdify a in a very narrow fashion to this particular situation. We're going to be working on the Master Plan one of the things we probably will be looking at is low income housing and we have a major role in that. That's not out of our responsibility. I wouldn't say that our role is strictly to just enforce what the words say in here but I think we do that...to look out for the health, safety and welfare of the community and if we had some indication that they're were neighbors who would prefer that that trailer not be occupied then I don't think there'd be much question but if I was a neighbor I would probably prefer to see that trailer fixed up and occupied then remain empty for another five or ten years."

Commissioner Muth stated, "My recollection is the last there was a nonconforming use issue was I guess East Main Street that's the last one I can remember and there were advocates to...the nonconforming use where as tonight there is nobody here."

Mr. Cubbedge stated, "Well I make a suggestion that we move on a motion, let it go to a vote and wherever that vote goes I guess that's your straw vote and then that can go forward to the...as this commissions I don't want to say stand but for a lack of better word to the Board of Commissioners and then let them...this is what we have discussed this is I guess maybe where we're standing at, how we're standing whatever and let it go from there and at that point in time I'd say if there is pro, con or however it has occurred before at a commission meeting let those people be aware of it and begin. The Board of Commissioners do have the final say so on it, let them vote on it."

Mr. Ford stated, "I recommend any motion on this include the instruction that whatever...if the motion is to seek a wording change or a text amendment that would

permit the trailer to be occupied that it be drafted as narrow as possible so that it would not impact or set a precedence for other nonconforming uses in the Zoning Ordinance.”

Mr. Cubbedge stated, “Question, by doing that are limiting then the Board of Commissioners hands?”

Mr. Kinnaird stated, “No.”

Mr. Cubbedge stated, “Okay.”

Mr. Ford stated, “They can do anything they want.”

Mr. Kinnaird stated, “We’re just recommending. I think that we owe it...well we don’t owe it to anybody but I think it would be in our best interest to at least give the gentleman a chance. Especially since this is a follow up from the previous meeting we had where my personal opinion was that we were interested in seeing this problem resolved in favor of the trailer being able to be occupied and repaired and updated and make it livable.”

Mr. Cubbedge stated, “Well I go with my original statement that we...present to the Board of Commissioners with our straw vote...”

Mr. Ford stated, “Well it won’t be a straw vote.”

Mr. Supercynski stated, “I have to play the ignorance card because it’s dealt with differently in Massachusetts so I apologize for this but how different can the text amendment considered by the town board be before it has to be sent back to the Planning Commission for their recommendation? I mean they’re making a recommendation on the existing text if it goes to the town board and it’s changed so drastic...”

Ms. Rollins stated, “They don’t have to send it back they have the final say so this commission could say here’s what we’re proposing and the town council could get it and say okay we’re going to add a little bit here and they don’t have to send it back to you because they don’t need for you to approve it you’ve already made a recommendation we want this approved they can tweak the language at that point to their satisfaction.”

Mr. Supercynski stated, “What I guess I’m asking is how much leeway is there in that tweak because they could...”

Ms. Rollins stated, “They can totally revamp it. They can say well we hear they’re recommendation and we’d like to solve the problem to and maybe we don’t like this way but they come up with another way to do it.”

Mr. Supercynski stated, “What if the town board said we’re going to instead of looking at the definition of Mobile Home Park we want to tinker instead with the way nonconforming uses are dealt with is that...”

Ms. Rollins stated, “Well now in that case you would probably have...it wouldn’t have to come back to you but it would have to probably be readvertised and come back for another Mayor, Council meeting. The reason is when you advertise this you’re probably

going to advertise it as a Zoning Text Amendment to change the definition of a mobile home park and if they decide not to accomplish the goal by virtue of changing the definition of a mobile home park and they decide instead that they would like to change the section on nonconforming uses than that would not have been advertised. So some people reading the advertisement that says changing mobile home parks might say well I don't care but if they say change the definition of nonconforming uses a lot of people might care about that. So you would have to readvertise that because then you'd be changing a different section of the ordinance."

Mr. Supercynski stated, "So if the Board of Commissioners initiates a text amendment they don't have to send it to the Planning Commission for advice?"

Ms. Rollins stated, "If they're just changing...if they want to take your recommendation that we need to accomplish this objective and your opinion is it's going to be done by changing the definition of the Mobile Home Park and they instead decide we want to accomplish the same objective but we want to accomplish it a different way and skin a different cat if you will if it's changing a different section of the ordinance I think in fairness and to meet public notice requirements they would have to readvertise it and have a separate hearing on that but I don't think they would have to come back to this commission to make another recommendation because they've already gotten your recommendation they're just skinning the cat a different way. They don't have to listen to your recommendation they can do what they want but I do think they'd have to readvertise."

Mr. Cubbedge stated, "We should really send it to them as we're receiving this tonight?"

Mr. Kinnaird stated, "Yes."

Mr. Cubbedge stated, "Okay, this amendment is only coming to have this changed. In other words we're not sending to the commission..."

Mr. Ford stated, "We could modify this what was proposed by the applicant I would think and send it to the Commissioners right?"

Ms. Rollins stated, "Correct you could."

Mr. Ford stated, "I mean if we didn't think that their text amendment was...I would think we could vote on a modified but I don't hear anybody proposing that."

Ms. Rollins stated, "Well and again because I challenge you to find a less invasive way to change your ordinance than this, this is about as less advasive as I could get it."

Mrs. Hunter stated, "I think it basically comes down to what Glenn has said he's not sure that this fixes it for Mr. Six. That might be..."

Commissioner Muth stated, "I think there is a fair debate about whether it really fixes it."

Mrs. Hunter stated, “And I don’t have any problem with text amendments if it does...”

Ms. Rollins stated, “Well I do think it answers the question stated in your attorney’s opinion about if it were and I must of for quoted but then it would be different and this fixes that so in doing so I think it does address the issue but again that’s my opinion and my argument and I’m advocating that on behalf of my client and you all are welcome to disagree with that.”

Mr. May stated, “For everyone’s information if I could we have a section in our Zoning Ordinance that says no change in or departure from the proposed amendment as recommended by the Planning Commission shall be made less the same be resubmitted to said Planning Commission for it’s further recommendation. No amendments, supplement or change shall be made contrary to the recommendations of the Planning Commission except by a majority vote of the Commissioners.”

Ms. Rollins stated, “I’ll defer to Mr. May he’s much more familiar with your ordinance than I am.”

Mr. May stated, “It just sounds to me that in fact it would have to come back.”

Mr. Ford stated, “Any more discussion?”

No response.

Mr. Ford stated, “Now it’s my understanding reading our rules of procedure, Mr. Muth is going to abstain?”

Commissioner Muth stated, “I’m going to abstain right.”

Mr. Ford stated, “And our rules of procedure say that the alternate votes...in the absence that’s what it says.”

Commissioner Muth stated, “Not because I’m abstaining.”

Mr. Ford stated, “So it looks like Mrs. Hunter will not be voting. So I’ll entertain a motion.”

Mr. Kinnaird made a motion in the issue of Application for Text Amendment to the Zoning Ordinance #TA-05-01 he moved that we recommend the approval of this by the Board of Commissioners with the addition of a note that it be given to the lawyer for review with instruction that our intention is that she review it with an eye towards making it work. Mr. Cubbedge seconded motion. Vote – 1 for (Kinnaird), 2 against (Cubbedge, Woelfel), 1 abstention (Muth). Motion not carried.

Mr. Kinnaird stated, “Can I ask a question what is the applicant’s next step?”

Mr. May stated, “Well this will still go to the Board of Commissioners and I certainly think for everyone’s benefit the applicant and the town to go through the same process of having you submit a justification statement...”

Ms. Rollins stated, "Point of order and point of procedure all you have on the table right now is a failed motion. You don't have a positive motion."

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

Mr. Ford stated, "We have not denied nor have we approved it."

Mr. May stated. "I just wanted to make sure that everyone knows that even with a denial it goes forward."

Mr. Kinnaird stated, "They can still consider it."

Ms. Rollins stated, "But you don't have a denial right now you just have a failed motion."

Mr. May stated, "That's correct, your point of order is well taken ma'am."

Ms. Rollins stated, "I've sat through a lot of these meetings can you tell."

Mr. Ford stated, "If someone would like to make another motion to deny that's..."

Mr. Cubbedge stated, "The applicant can now submit if I'm not mistaken now can submit this to the Board of Commissioners..."

Ms. Rollins stated, "No sir."

Mr. May stated, "Her point is that there is only a failed motion. There is no motion to deny or..."

Ms. Rollins stated, "You have a failed motion so you've essentially taken no action and your job is..."

Mr. Cubbedge stated, "Right but she's now allowed to go to the Board of Commissioners."

Ms. Rollins stated, "No..."

Mr. May stated, "No you need to make..."

Ms. Rollins stated, "You need to make a recommendation one way or the other either to approve or deny and then I get to go to the Board of Commissioners either way, even if you recommend denial."

Commissioner Muth stated, "They could make a motion to not recommend anything. Either approve, deny or not..."

Ms. Rollins stated, "You could vote to approve, you could vote to deny..."

Commissioner Muth stated, “And you can vote to have no recommendation.”

Ms. Rollins stated, “Well you could say we’re not going to make any recommendation in all three cases I still get to go to the Mayor and Council and then they...but right now you don’t have any action so I need for you to take some kind of action whatever it may be and then I’ll just go to the next step and fight that battle.”

Mr. Cubbedge made a recommendation to not recommend the application for Text Amendment to the Zoning Ordinance TA-05-01. Mr. Woelfel seconded the motion. Vote – 2 for (Cubbedge, Woelfel), 1 against (Kinnaird). Motion carried.

Mr. Supercynski stated, “So for clarity was that recommending that they not approve it or was that not sending a recommendation because the way I heard that was that...”

Mr. Cubbedge stated, “We’re not recommending it.”

Ms. Rollins stated, “The way I understand it is you’re not making a recommendation one way or the other is how you just voted.”

Mr. Woelfel stated, “That’s what I seconded, that’s what I understood.”

Ms. Rollins stated, “Okay so you haven’t voted to deny it you’re voting not to make any recommendation. Your staying neutral is that a fair interpretation?”

Mr. Cubbedge stated, “Yes.”

Ms. Rollins stated, “And the record will reflect that.”

Mrs. Hunter stated, “Glen has that happened before where the Planning Commission has...”

Commissioner Muth stated, “I don’t remember...”

Mr. May stated, “It has.”

Commissioner Muth stated, “Mr. May can we put this on Tuesday for informal discussion with the Board, nonpublic hearing?”

Mr. May stated, “No sir.”

Commissioner Muth stated, “Really?”

Mr. May stated, “Have you not seen the agenda?”

Commissioner Muth stated, “Yeah, the agenda closes on Friday.”

Mr. May stated, “No sir the agenda closed today we’re not open.”

Commissioner Muth stated, “So we still can’t put it on?”

Mr. May stated, "I wouldn't think so."

Ms. Rollins stated, "May I just inquire when would this Mayor and Commissioner meeting held that...will we be advised of when that's scheduled?"

Mr. May stated, "Yes ma'am you will I'm not sure, I'll have to check and see what the advertising time and everything else and get that worked out and you will be notified."

Ms. Rollins stated, "Thank you all for your time and attention I appreciate...I know you have a long agenda so I appreciate all the time you spent on this, thank you."

Mr. Ford stated the next item on the agenda was the Master Plan update. He turned the meeting over to Mr. Supercynski.

Mr. Supercynski stated, "John has forwarded me a first draft of a residential survey for folks in town as way of sort of getting immersed in the process of doing the update. We thought about putting out a questionnaire to folks that would be mailed to households in Thurmont to get some responses on some of the issues that the commission sees as being important or critical in this next Master Plan Update. Does everybody have a copy of the draft? (see attached) Okay so we just thought that would be a good way to sort of engage folks in the process to begin with. I think the plan at this point at least if everyone has taken a look at the hand out from last month is sort of had a project scope and sort of our ideas about doing the update. There would still be public meetings and we'd still go through the same sort of process if you would for the plan but the this idea of the questionnaire again gives folks a chance to sit at home consider these things and talk about them and weight in on how they feel so I guess the first thing I'd want to know is if you want to as a commission work through the questions in your regular meeting or if you want to sort of send a couple of you off into a corner and we meet another time and just go through a questionnaire and maybe bring the more completed questionnaire to the to the commission for consideration I just want to know how to proceed on this because it can be in my experience of doing the questionnaire's there sort of the big ideas like where are the subjects we're going to talk about in the questionnaire but then there are also things like formatting and word smiting because my idea of what idea of what clear question is going to be really different than everybody else's now and then on top of that the fact that I'm so new here I don't want to inadvertently ask a question that is loaded in some way and I'm sure you guys would all step in and stop that from happening but it just might be something that is easier to accomplish as sort of a sub committee or whatever you want to call it." The board continued discussions on the survey questionnaire. Mr. Ford, Mr. Kinnaird, Mr. Cubbedge and Mr. Supercynski decided to get together before the next meeting to discuss the survey, email what they came up with to everyone on the commission and discuss it at the April meeting. Mr. Supercynski stated at the next meeting they could also start talking about the public outreach. There was also discussion of GIS use with the Update.

The next agenda item was on Sign Regulations which was continued from last month. The board discussed and reviewed the three Options Mr. Supercynski listed on the attached sheet. Mr. Supercynski stated he will email everyone for the next meeting a sample of a downtown oriented menu and a highway oriented menu for review.

The next item on the agenda is Changes to Zoning Ordinance Requirements for Shed, Garages, and other Accessory Structures. Mr. Ford stated we were asked by the Commissioners to deal with sheds. Mr. Ford had pictures of sheds that were built in Pleasant Acres, Altamont Avenue and one on Graceham Road which was not in town but was the same type of structure that was in question. Mr. Ford stated he went through different jurisdictions regulations in this area and tried to come up with something that could be proposed that would help solve the problem. The board discussed and reviewed the hand out from Mr. Ford (see attached). Mr. Ford will be taking the comments discussed and will redo the changes for the next meeting.

Mr. Ford stated he was asked to write a letter of support on behalf of the Planning Commission for the Main Street Program and he wanted the Board to review the letter before sending it. The board was in agreement of the letter.

The next Planning and Zoning Meeting will be held on April 28, 2005.

Without further business to discuss, the meeting adjourned at 10:40 p.m.

Respectfully submitted,

Rebecca E. Sharer-Long  
Recording Secretary