

A Town Meeting of the Thurmont Board of Commissioners was held on Tuesday, July 18, 2006 at 7:00 p.m. The following were present: Mayor Burns; Commissioner Blakeslee, Hooper, Terpko and Muth; Clerk Rick May; Denis Superczynski; Jim Rada (Dispatch); John Ford; Shirley DePaolis; Randy Cubbedge; Mr. Jeffries; Brian Lynch and Ingrid Mezzo (Gazette).

Mayor Burns welcomed everyone to the meeting.

Commissioner Muth led everyone in the Pledge of Allegiance.

The first item on the agenda is the Consent Agenda:

- Approval of Meeting Minutes for May 16, 2006, May 23, 2006, May 30, 2006 and June 6, 2006.

Commissioner Blakeslee made a motion to approve the Consent Agenda. Commissioner Terpko seconded the motion. Vote 4-for, 0-against, motion carried.

The next item on the agenda is the Public Hearing- Rezoning Case 06-01: Gerald Baltzell- 20 West Moser Road. Mayor Burns replied, "Next, Public Hearing Rezoning Case 06-01: Gerald Baltzell 20 West Moser Road. Is the applicant here? The applicant is not here? I guess I will then make sure that the applicant was notified?" Mr. May replied, "He was notified. He had surgery on his foot, I had talked to him on the phone, he wasn't sure he would be here. He would like for the case to go ahead and our attorney said there is no legal requirement that he be present." Mayor Burns replied, "Okay, thank you. I can turn it over to you Mr. May or Denis?" Mr. May replied, "Mr. Superczynski, if you don't mind." Mr. Denis Superczynski stated, "Good evening. Mr. Gerald Baltzell at 20 West Moser Road, Thurmont is seeking rezoning of his 39,000 square foot property. It's located on the east side of US 15, south side of West Moser Road, across from the Moser Circle Townhouses. I'm going to point to it up on the map up on the wall. I don't know if you can see this, but it's a small triangular shaped property, it's wedged; the townhouses are in that brown area just to the north. This is route 15 coming across and we have commercially zoned land just to the south. This appears to be one of the parcels that would've been bisected originally by Route 15 when it came through earlier in the century. The existing zoning is misstated in the bulk of the staff report. The current zoning is R2 which is considered medium density residential. The proposed zoning requested by Mr. Baltzell is R-5 which we consider high density residential or highest density residential district. The site is currently developed with a single family dwelling, carport, shed and two billboards. The surrounding land uses are quite mixed. There are 40+ townhouses across the street to the north, a single family structure immediately adjacent to the south, senior housing further to the south on Moser Road and the Cozy Inn complex to the west and south. Of course, US 15, which is limited access State Highway, form the northwest boundary of this site. Since the adoption of the 1998 Thurmont Master Plan and it's accompanying Comprehensive Rezoning, the Moser Circle Townhouses have been constructed, this residential development the townhouses was anticipated during the master plan process and maintained it's high density residential land use designation as well as it's R5 zoning during that process. In terms of the Master Plan designation, the subject parcel of Mr. Baltzell is designated in the 1998

Thurmont Master Plan as being medium density residential. The Master Plan differs slightly from the Zoning Ordinance. The Master Plan characterizes that designation as corresponding roughly with the R2, R3, R4 zoning districts which would allow residential density ranging from about 5 ½ dwellings per acre up to almost 11 dwellings per acre. Currently, we consider R4 high density residential; this is a bit of an archon point for this particular discussion. If this were to be an issue, we'd actually have to go to the Master Plan designation in its description of the property but as I'll get to in a minute it's probably not relevant based on other factors that concern this application. The current Master Plan, as you all know, is in the process of being updated and will likely be completed by year's end at which point it will be sent to the Mayor and Board for its hearing process and the ultimate decision on adoption. The Comprehensive Rezoning Process is set to begin later during this calendar year so we are literally within months of the Comprehensive Rezoning Process during which any of these rezoning requests that have come in or may come in the future, including Mr. Baltzell's could be considered. If this application is denied, Mr. Baltzell is not forbidden from bringing this back to the Board as part of a Comprehensive Rezoning process. In terms of public services, I'll move quickly. The APFO requires traffic impact study of any applicant seeking site plan approval or subdivision for a use that generates 25 peak hour trips, peak hour vehicle trips. I'm not so certain that this would apply to this project if it were to move forward. It's likely given the zoning and lay of the land that probably a maximum yield out of this site would be something anywhere from 8-9 townhouses, at its highest density development potential and that would not likely generate enough peak trips to require the traffic impact study. Of course, in terms of the school test the APFO would still require the school test as of March 31, 2006 the Primary School continued to be overcapacity state rated capacity at 109%. While the Elementary, Middle and High School continue to be rated at being under state rated capacity. In the case of the Middle School, it's still below 80%. In terms of water and sewer service, again the existing structure is currently served by public water and sewer facilities but we do have that standing consent order from MDE regarding the sewer allocations. In terms of access and circulation, vehicular access to the site will be via West Moser Road, not obviously access Route 15 from that point. There is pedestrian access as well via sidewalk system that reaches up into this part of town. Stormwater management, the applicant would be responsible, would be subject to any of our stormwater management regulations or guidelines in the town and in the county. Parks and recreation, the nearby facilities in town would serve this including the community park which is quite close physically. In terms of public safety, you would be looking at service from Thurmont Police Department, Frederick County Sheriff's Office, Maryland State Police, Guardian Hose Company and Thurmont Community Ambulance and until the opening of the new Regional Library down Moser Road; the current structure in the downtown area would serve this site as well. In terms of rezoning, state law article 66B sets up a pretty tough standard for the approval consideration of rezoning that is not part of the Comprehensive Rezoning process. It's commonly referred as the change and mistake rule. The statement in the existing zoning destination is quite difficult to prove, to find a mistake was made in existing zoning, the Planning Commission and the Board of Commissioners would have to find an assumption or fact uses a basis for the zoning decision has been proven incorrect or whether an error has been made implementing a zoning decision. Quite often, when it does occur it occurs as a

form of a mapping error where communication line isn't quite as good as it should be and ultimately a line does not get drawn or does get drawn where it was not intended. The site has been zone R1 since 1970 and it appears during the 1998 the Comprehensive Rezoning moved to R2 but it's pretty clear that Staff doesn't find evidence of a mistake as defined in article 66B that would show that this should indeed be R5 high density residential use and the Planning Commission found likewise. The other possibility for consideration of a rezoning out of the Comprehensive Rezoning process; would look at change in the character of the neighborhood. This is one, when these rezoning applications are successful; this is more often than not where they are successful in terms of a determination by an elected body. For the purposes of this rezoning application, the neighborhood is determined to the area south and west of Hunting Creek, east of US 15, north of the intersection of Thurmont Boulevard and Maryland 806 and northwest of the intersection of Weller Drive and East Moser Road. So, when we consider the neighborhood for a rezoning request, it's actually quite a large area and does certainly pull in quite a bit of land that can be considered as having an effect on the character of the neighborhood. The change in the character of the neighborhood is also typically measured from the date of the last Comprehensive Rezoning, again this dates from 1998 in the case of the Town of Thurmont and that did occur as a result of the Thurmont Master Plan update that year. Any new development improvements that are considered in determining whether significant changes occurred within the neighborhood must not have been anticipated by a municipal Master Plan. This is crucial in the application by Mr. Baltzell, essentially arguing that the change in the neighborhood was the result of the development of the Moser townhouses across the street. Not only was the land use designation in place and the zoning in place, as part of this comprehensive rezoning and not only were the improvements actually being planned and engineered at the time of the change, therefore it removes it from consideration in terms of the change, it was not an unanticipated change in that neighborhood. In terms of the change and mistake rule, it's been noted by quite a few people over the years that if you follow the logic to its logical conclusion, you end up with essentially circular arguments that would never allow you to cast a yes vote in favor of a change mistake when you're looking changing the character of the neighborhood. You're really only being able to look at the change at a mistake as a cartographic error. Again, this is reaffirmed through court hearings and court proceedings over the years but it is significant to note that the change in the character of the neighborhood must be significant and must not have been anticipated at the time and staff finds no evidence of a significant change in the character of the neighborhood that would justify rezoning of this property. In the Planning Commission at their May 25<sup>th</sup> meeting, considered this and held it's Public Hearing and voted unanimously to recommend against the zoning change due to the fact that there had been no mistake or found that there was no mistake in the zoning and that there had been not significant change in the character of the neighborhood as well and that was an unanimously recommendation. I would also mention that the request for high density residential zoning on the property would be consistent with the Thurmont Master Plan designation of medium density residential so even if the change or mistake argument could be forwarded successfully you still have the problem in terms of the Master Plan designation. Just kind of as a final point, with Comprehensive Rezoning just a few months away that is honestly the most appropriate time to consider a radial change in the zoning district for a piece of property,

I believe.” (See staff comments completed by Mr. Superczynski) Mayor Burns asked, “Anybody here representing the applicant? I have a memo from Zoning Administrator Mr. May (see attached).” Mr. May replied, “Mr. Mayor for the record, that is incorrect. It should read May 25<sup>th</sup>, not June 23<sup>rd</sup>. I put in the wrong date.” Mayor Burns replied, “May 25<sup>th</sup>...” Mr. May replied, “That’s correct.” Mayor Burns replied, “Board is there any discussion?” Commissioner Hooper added, “I’ve known the Baltzell’s and I know it’s been zoned since 1970 and I know how the law states to prove a change the character of the neighborhood, it has to be since the last rezoning and Ms. Baltzell was alive at the last Comprehensive Rezoning and didn’t want anything done with that and didn’t proceed to do anything but the neighborhood has changed and it’s my feeling that the area was rezoned R5 next to it in 1998, although nothing was built until after that, the neighborhood has changed. Just in fact in a couple months, it would give Mr. Baltzell a chance to apply at the Comprehensive Rezoning and go through that process and maybe at that time something can be done but I know we have to abide by the laws. Since the area down there was rezoned R5 at the last Comprehensive Rezoning, it would fall under that timetable. But neighborhood has changed down there since it was zoned R1.” Commissioner Blakeslee stated, “I just don’t see any reason to go against the findings of the Planning and Zoning Commission and Staff recommendations.” Commissioner Muth asked, “He could build on it right now with R2, put a few houses there right? If he did that, he would not be subject to the APFO, I think you have to have five to be subject to the APFO, isn’t that correct?” Mr. Superczynski stated, “It would depend on the number of units and R2 I don’t believe allows townhouses. I think it’s limited to duplex conversion...” Commissioner Muth stated, “So, R5 would actually make him assuming he built 5 or more units would subject him to the APFO?” Mr. Superczynski stated, “At R5, he would be able to do condominiums or apartments which could take you above that considerably.” Mayor Burns asked, “Anybody else? Do you believe that this is a prime piece of property, I think I said this at the last Planning and Zoning meeting that it would get the favorable endorsement for R5 at the Master or Comprehensive Plan update...” Mr. Superczynski stated, “I think when we look at this area, the whole area as you move north on 806 from the 15 exit at Thurmont Boulevard, I think the area from there all the way up to Water Street at the intersection needs to be considered as a whole. We need to really look at what’s the best bundle of uses for that area. We’ve talked through the Master Plan process; a lot of folks have spoken out about the fact that we need to look at developing more intensively within our current boundaries so that we can look at annexation not as our only way to grow as a community. We’ve also had considerable comment regarding the need to manage our growth and grow within a level of comfort for folks already here in Thurmont. So, any discussion of this property would look at the balance between the two. This is a very small piece of property and the likely yield is probably 8-10 units so in the big picture it’s not likely to contribute much in terms of negative impacts to town. The road is already there, there are already fairly high density residential developments in the area. It is close enough to be serve not only the public services that are called out in the APFO but the other services that we all need and think about in reality, the grocery store, some place to eat, some place to rent a movie, all of that is arguably within walking distance of this site so in that way, it’s a good site. One other thing that would have to be considered is the physical lay of that land, the drop down from the grade at US 15 is quite steep so from the site planning standpoint and the

engineering standpoint I'm sure the planning commission will be looking at that issue as well as whether the land is situated geographically in a good spot. They're also going to have to look at the site conditions to see what the best possible use is, it may be that medium density is appropriate or it may be determined that with high density development, you could actually afford to do the engineering to make it a safe site and to deal with that slope issue from 15. This is the kind of thing that would be considered and this is exactly why you'd look at it in a Comprehensive fashion because then you could really look at the whole picture and not just focus in on the one site because any change at this site could have perhaps a domino effect on some of the other land in the area and should be considered in some and not just by itself." Mayor Burns replied, "And the applicant was told, I assume that hey why are you coming to us now when we're doing the Master Plan, the Comprehensive Plan very shortly?" Mr. Superczynski, "I understand he was told at the point of application and then at the Planning Commission Hearing in May, we reiterated this sever times during the hearing so it was very clear that there would be another opportunity to do this." Mayor Burns asked, "Okay, any other discussion?" No response. Mayor Burns asked, "Public comment? Mr. Ford." Mr. John Ford replied, "I think it's very important that the commissions' actions support the Maryland Law. Once we start deviating from that you're going to be setting a very bad precedent for future people coming in looking for rezoning. I think unfortunately there's been a case in the past that didn't meet the criteria either but the law is very clear and there's a good reason for it and that is that the growth of your town and the land use is properly planned and isn't just a piece mill thing with people coming in whenever it's convenient for them and getting things changed. I think it's a very, very important that you stick by the very clear guidelines, not guidelines but the very clear requirements of the law because once you say it makes it a little convenient for the guy, I think you're setting a very bad precedent. Thank you." Mayor Burns replied, "Thank you, anybody else?" No response. Mayor Burns replied, "I'll entertain a motion?" Commissioner Blakeslee replied, "I make a motion we deny rezoning case 06-01." Mayor Burns replied, "Do I have a second?" Commissioner Terpko replied, "I'll second." Mayor Burns replied, "Any discussion? The only discussion I have is I'll reiterate what Mr. Ford said. There's a time to do it, it's through the proper process. We understand, having only a few more months it was a waste, respectfully so very respectfully so, if you'd just waited for the process to vet out, it could've taken care of itself, I believe favorably, comprehensively. So, I concur." Mr. Superczynski replied, "Could I make one comment, in your motion if you could include the findings that you found there to be no mistake and no significant change in the character of the neighborhood that will in the event..." Commissioner Blakeslee replied, "I don't think we have to do that Denis, I think the Planning Commission does but I we don't have to give a reason." Mr. May stated, "You're still obligated to make findings of fact and law and that would be a mistake or significant change." Mr. Superczynski, replied, "It would just help, if there is a challenge, it just keeps it clear." Mayor Burns replied, "Okay, a motion and a second, we have discussion..." Commissioner Blakeslee replied, "I'll amend my motion to say I recommend we deny 06-01 rezoning case due to staff recommendation of no change in the zoning or significant, no mistake in the original zoning and no change in the neighborhood." Commissioner Muth replied, "I'll second that." Mayor Burns replied, "Any discussion on the amended motion?" No response. Mayor Burns asked, "All in

favor?” Commissioner Blakeslee, Commissioner Hooper, Commissioner Muth and Commissioner Terpko voted all in favor of the motion. Vote 4-for, 0-against; motion carried.

The next item on the agenda is a discussion of bulk trash. Commissioner Terpko updated the Board regarding the proposed bulk trash pickup. Commissioner Terpko stated he has scheduled a meeting with Key Sanitation on July 19, 2006 regarding bulk trash. Commissioner Terpko stated there will be yard waste drop scheduled in August (TBA). There was a discussion amongst the Board of Commissioners regarding bulk trash. Commissioner Terpko stated he has scheduled a meeting with BFI on July 24, 2006 regarding bulk trash items.

Mayor Burns reminded the Board to get their official weight loss tallies in. Mayor Burns commented on the Thurmont Lions Club trolley trail project. Mayor Burns stated the Guardian Hose Company is offering a “Buy a Brick Campaign” at \$100.00 per brick. Mayor Burns stated the purchased bricks will be engraved and placed inside the new fire hall building. Mr. May stated the Guardian Hose Company has requested permission from the Board to place a flyer in the electric billing next month. The consensus of the Board is to allow the Guardian Hose Company “Buy a Brick” flyer to be placed in the electric billing next month.

Commissioner Blakeslee reminded residents of the Farmer’s Market held each Saturday at the Thurmont Carnival Grounds from 9 to 12:30 p.m. Commissioner Blakeslee stated National Night Out will be held on Tuesday, August 1, 2006 at the Thurmont Carnival Grounds. Commissioner Blakeslee stated representatives from the Thurmont Police Department, Guardian Hose Company, the Thurmont Ambulance Company and the Red Cross will be on hand during National Night Out. There will be a moon bounce, radar gun for measuring how fast kids can throw balls, face paintings and refreshments available. Commissioner Blakeslee stated the Thurmont Economic Development Committee will sponsor an Outdoor Movie “Shark Tales” on Friday, August 4, 2006 at the Thurmont Carnival Grounds beginning at 8:30 p.m. Commissioner Blakeslee stated he will be attending the Thurmont Lions Club meeting on Wednesday, July 26, 2006 where the Ochoa Family will make a presentation on their recent trip to the Holy Land. Commissioner Blakeslee congratulated Mayor Burns for being the biggest loser, losing 60 pounds and winning the Weight Loss Challenge.

Commissioner Hooper mentioned the 50-60’s Night will be held on July 29, 2006 at the Guardian Hose Company Carnival Grounds.

Mayor Burns commented on the spread of a violent, vicious and false rumor regarding a Thurmont Police Officer and Frederick County Sheriff Deputy.

Mr. Jeffries voiced concerns regarding zoning and planning. Mayor Burns suggested to Mr. Jeffries to voice his concerns to the Planning and Zoning Commission which meets on the fourth Thursday of each month. Mr. Jeffries suggested to the Board to have individuals pay for their own removal of bulk trash items.

Mayor Burns requested the Board to go into Closed Executive Session to discuss personnel issues. This action is taken pursuant to the Annotated Code of Maryland Section 10-508, Sub-section (a)(1)(i)(ii). Commissioner Blakeslee moved to close the meeting. Commissioner Hooper seconded the motion. Voting for the motion were Commissioner Blakeslee, Commissioner Hooper, Commissioner Muth and Commissioner Terpko. Vote 4-for, 0-against; motion carried.

Without further discussion the public meeting was adjourned at 8:01 p.m.

Respectfully submitted,

Tracy L. Schur  
Recording Secretary