

**ST. MARYS COUNTY
BOARD OF COUNTY COMMISSIONERS MEETING
CHESEAPEAKE BUILDING
Monday, November 10, 2008**

Present: Commissioner President Francis Jack Russell
Commissioner Kenneth R. Dement
Commissioner Lawrence D. Jarboe
Commissioner Thomas A. Mattingly, Sr.
Commissioner Daniel H. Raley
John Savich, County Administrator
Betty Jean Pasko, Sr. Administrative Coordinator (Recorder)

CALL TO ORDER

Commissioner President Russell called the meeting to order at 9:00 am.

DELETION TO AGENDA

Commissioner Russell announced the postponement of the Dept. of Land Use & Growth Management agenda item; i.e., Introduce (*First Reading*) Zoning Text Amendment to Allow Off-site Advertising for the Sale of Residential Real Property by the listing realtor or homeowner.

APPROVAL OF CHECK REGISTER

Commissioner Raley moved, seconded by Commissioner Jarboe, to authorize the Commissioner President to sign the Check Register for checks dated November 10, 2008, as submitted. Motion carried 5-0.

APPROVAL OF MINUTES

Commissioner Mattingly moved, seconded by Commissioner Jarboe, to adopt the minutes of the Commissioners meeting of October 28, 2008, subject to correction of the motion on Page 11. Motion carried 5-0.

The motion refers to a vote documented incorrectly in the minutes as 4-0. The minutes were corrected to reflect the vote as 5-0.

Commissioner Jarboe moved, seconded by Commissioner Dement, to adopt the minutes of the Commissioners meeting of November 3, 2008, as presented. Motion carried 5-0.

PROCLAMATION

A proclamation recognizing the week of November 9th, 2008, as America Recycles Week was presented to Richard Tarr and Keenon James.

BOCC YEARLY APPOINTMENTS FOR 2009

Commissioner Mattingly moved, seconded by Commissioner Dement, to appoint Commissioner Larry Jarboe as the Tri-County Council Commissioners Representative and Mary Lynn Stone as the St. Marys County At-large member. Motion carried 5-0.

Commissioner Raley moved, seconded by Commissioner Jarboe, to appoint Commissioner Tom Mattingly as the 2009 MACo Legislative Committee Member and Commissioner Jack Russell as the alternate member. Motion carried 5-0.

Commissioner Dement moved, seconded by Commissioner Raley, to appoint Tom Mattingly to the Nursing Center Governance Board for 2009. Motion carried 5-0.

Commissioner Russell acknowledged and thanked Commissioner Dan Raley, who is currently serving on the Southern MD Agriculture Development Commission, and noted that this appointment rotates to Charles or Calvert County in 2009.

Commissioner Jarboe moved, seconded by Commissioner Dement, to appoint Commissioner Tom Mattingly as Vice Chair of the Board of County Commissioners for calendar year 2009. Motion carried 5-0.

COUNTY ADMINISTRATOR

1. Draft Agendas for November 18 and 25, 2008
2. **St. Marys County Public Schools** (*Dr. Michael Martirano, Superintendent of Schools; Brad Clements, Chief Operating Officer*)

Commissioner Raley moved, seconded by Commissioner Mattingly, to approve and authorize Commissioner President Russell to sign the budget amendment allowing the transfer of \$2.5 million from the PS0601 Land Acquisition capital project to the PS0807 Land Acquisition capital project, as approved by the Board of Education on October 29, 2008 and as presented today by the Superintendent. Motion carried 5-0.

Commissioner Mattingly moved, seconded by Commissioner Dement, to approve the St. Marys County Board of Educations categorical transfer request realigning \$15,000 among categories, as approved by the Board of Education on October 29, 2008, and to sign the letter of consent as evidence of this approval. Motion carried 5-0.

- 3. St. Marys County Sheriffs Office** (*Lt. Ed Willenborg; Erin Shoemaker, Fiscal Mgr.*)

Commission Dement moved, seconded by Commissioner Mattingly, to approve and authorize Commissioner President Russell to execute the MD Dept. of Human Resources Child Support Cooperative Reimbursement Agreement Application and the related budget amendment in the amount of \$45,555, increasing the project budget revenues and expenses. Motion carried 5-0.

- 4. Dept. of Economic and Community Development** (*Bob Schaller, Director; Robin Finnacom, Executive Dir., Community Development Corporation; John Groeger, Deputy Dir., DPW&T*)

Commissioner Raley moved, seconded by Commissioner Dement, to approve and sign the Memorandum of Understanding with the State Highway Administration committing county funding for the acquisition of easements for the MD Rt. 246, Great Mills Road Streetscape Project. Motion carried 5-0.

- 5. Dept. of Human Services** (*Cynthia Brown, Community Services Div. Mgr.*)

Commissioner Jarboe moved, seconded by Commissioner Dement, to accept the FY09 Community Traffic Safety Program grant from the State Highway Administration, in the total amount of \$116,200, and to approve and authorize Commissioner President Russell to sign the related budget amendment in the amount of \$11,900, reducing the budget to match the grant award. Motion carried 5-0.

- 6. Dept. of Public Works & Transportation** (*John Groeger, Deputy Director*)

Commissioner Raley moved, seconded by Commissioner Mattingly, to approve and authorize the Commissioner President to sign the Public Works Agreement and three Public Works Agreement Addenda, as cited on Mr. George Erichsens memo dated November 5th, 2008, as submitted. Motion carried 5-0.

Motion specifically pertains to the following:

Public Works Agreement for Town View Subdivision, located in the 3rd Election District, with an expiration date of September 1, 2009.

Public Works Agreement Addendum for McIntosh Subdivision, Section 1, located in the 6th Election District, with an expiration date of November 1, 2009.

Public Works Agreement Addendum for Clements Landing Subdivision, Phases 1 and 2, located in the 8th Election District, with an expiration date of May 1, 2009.

Woods of Rue Purchase Subdivision, located in the 8th Election District, with an expiration date of November 1, 2009.

Commissioner Jarboe moved, seconded by Commissioner Dement, to approve and sign the Resolution establishing a four-way stop on Charlotte Hall Road at the intersection with Oaks Road, located in the 5th Election District, with an effective date of November 24, 2008. Motion carried 5-0.

7. Office of the County Administrator (*John Savich*)

Commissioner Mattingly moved, seconded by Commissioner Dement, to adopt Ordinance 2008-10 for the purpose of re-recording Ordinance 2008-5 in order to correct a clerical error made in the notation of the adoption and effective dates, which were incorrectly noted as 2007, rather than 2008. Motion carried 4-1.
(Commissioner Jarboe voted no, since he voted against the original ordinance.)

COMMISSIONERS TIME

The Commissioners highlighted upcoming events, events attended over the past week and personal interest items.

TOUR

The Commissioners participated in a tour, hosted by the Department of Public Safety, of the Emergency Communications Backup Center, 41655 Courthouse Drive.

LAND USE AND GROWTH MANAGEMENT: PUBLIC HEARING: TO CONSIDER RECOMMENDATION FROM PLANNING COMMISSION TO CORRECT ERRORS ON ZONING MAP #39; CASE #08-245-001, HARBOR VIEW MARINA

Present: Jeff Jackman, Sr. Planner

The public hearing commenced at 6:30 pm and was held in the meeting room at the Chesapeake Building, 41770 Baldrige St., Governmental Center Campus.

Mr. Jackman stated for the record that notice of the hearing has been published in the October 24, 2008 and October 29, 2008 issues of the Enterprise and stated the purpose of the public hearing was to discuss and obtain public testimony relative to considering the recommendation from Planning Commission to correct errors on Zoning Map #39; i.e., change the zoning on properties located at 40000 Mary Helen Way (Parcel 16, Lot 1); 21658 Joe Hazel Road (Parcel 351, Lot 500-1A); and 21652 Joe Hazel Road (Parcel 351, Lot 2); in the Compton Area of the 3rd Election District, from Rural Preservation District (RPD) to Commercial Marine (CM).

On October 15, 2008, the Planning Commission adopted Resolution No. 08-15 (by a vote of 6 in favor and 1 opposed) recommending correcting the mapping errors.

The recommendation of the Planning Commission calls for CM zoning for the entirety of Lot 1 of Harbor View Villas rather than for the portion between the waters edge and the residences on Lots 2, 3, 4 and 5 of Harbor View Villas as recommended by staff.

The zoning maps that are currently in effect were drafted in 2002 utilizing tax maps prepared in 2001. Mr. Jackman reviewed an exhibit showing the placement of a CM zone over a portion of Parcel 351, Lots 2 and 500-1A on Map 39, explaining that there is neither a marina nor any commercial use existing or planned within Parcel 351, Lots 2 and 500-1A. The intent of this CM zone was to accommodate the Harbor View Marina located at 40000 Mary Helen Way, which is situated within the easterly portion of Parcel 16 of Map 39.

Mr. Jackman provided an overview of the history and use of Parcel 16 and presented the *Staff Recommendation* (as documented in the Public Hearing Staff Report, dated October 24, 2008). Zoning Map 39 was drawn in error with respect to the location of CM zoning on Parcel 351 and should be corrected by changing the zoning at that location to RPD. As for Harbor View Marina, staff finds that the predominant residential character of the area was reinforced with the construction of the duplexes in 1999 on lots 2, 3, 4 and 5. Furthermore, the design of Harbor View Villas as shown on the recorded plat separates the marina from its required vehicle parking by a pedestrian walkway between the residences. Therefore, notwithstanding the continued presence of the marina, staff maintains that any commercial zoning within Parcel 16 could result in negative impacts on those and other adjacent residences. Also, subsequent development of the site will not satisfy applicable zoning standards, notably building setbacks, flood plain restrictions, parking requirements and limitations on disturbance within the 100-foot Critical Area Buffer. Denial of the CM zoning and continuation of the RPD zoning would retain the non-conforming use of the property, and thus would not deny reasonable use of the property. The existence of a mistake by the Board of County Commissioners at the time of the comprehensive rezoning *permits* the Board to grant a reclassification, but does not require it to do so. Staff recommends maintaining RPD zoning on the entire Parcel 16.

Mr. Phil Dorsey, property owner and applicant, presented information in support of the Planning Commissions recommendation (to correct the mapping error, retain CM zoning). Mr. Dorsey submitted the following documents (exhibits):

Harbor View Marina Exhibit Index

Exhibit # 1	Letters from the Dorsey Law Firm (8/26/05 to D. Canavan and 11/22/05 to J. Jackman)
Exhibit # 2	History reference (excerpt It Aint Like it Was Then The Seafood Packing Industry of Southern Maryland)
Exhibit # 3	Clean Marina Certification related correspondence
Exhibit # 4	11/20/00 letter to Mr. Dorsey from Dept. of Planning & Zoning (J. Grimm)
Exhibit # 5	Natural Resources Police correspondence
Exhibit # 6	Commercial Marine Zoning History
Exhibit # 7	Community letters (addressed to the St. Marys County Planning Commission): 9/19/08 from Daniel Fitzgerald 9/19/08 from Jim Banagan 9/19/08 from Bryan Puff Barthelme 9/22/08 from Tucker Brown
Exhibit # 8	Twelve (12) 8 x 11 color photographs (marina property)
Exhibit # 9	Pier and Slip Easement Detail (one page)
Exhibit #10	State of MD Dept. of Assessments and Taxation, Commercial Worksheet Reassessment Year 2008

Mr. Dorsey stated that Harbor View has been commercial since zoning was initiated (early 1920s) and that he purchased the property 20 years ago. Mr. Dorsey provided a brief overview and background about the property and said hed been assured the mapping would be fixed.

Commissioner President Russell opened the hearing for public testimony at 7:26 pm.

Public Testimony

Lesley Yates, 19417 Rena Ct. (39979 Mary Helen)

Ms. Yates provided testimony in opposition to the Planning Commissions recommendation, (and in support of staffs recommendation). Ms. Yates referenced the property advertising (which emphasized the water view) and the Declaration of Covenants, Conditions, and Restrictions of Harbor View Subdivision (citing the townhouse units will be used for residential purposes only) and expressed concern for impact of commercial activity on property value, privacy and security, noise, and parking.

Ms. Yates said her and her husband were not in objection to a proposed bed and breakfast, but wanted documented assurance that the building or landscaping will not block the view of the bay.

Ms. Yates said she was in agreement with Mr. Jackmans staff recommendation that no change be made in the zoning of Parcel 16 (Map 39). A copy of Ms. Yates letter/testimony (dated November 10th 2008) was submitted to record.

Tom Davis, 39982 Mary Helen Way - recognized the history of the property but wanted to ensure the rights of property owners are protected.

Mr. Phil Dorsey said Ms. Yates rents (her town home) and that hed only met her once. He submitted a copy of Declaration of Covenants, Conditions, and Restrictions of Harbor View Subdivision and an enlarged excerpt from the Plat of Harbor View Villas; i.e., General Notes 17 through 23, and General Notes defining the owner, engineer, site information, and parking.

Commissioner President Russell closed the hearing for public testimony at 7:45 pm.

When questioned by the Board, Ms. Christy Chesser, County Attorney, acknowledged the Boards authority to grant partial CM zoning on lot 1, but cautioned that doing so would create another non-conforming situation (lot needs to be one acre for CM zoning). Relative to the Boards authority to grant with conditions, Ms. Chesser said addressing conditions, such as height, would be addressed in the development plan and not within the Boards discretion.

Ms. Chesser clarified and Mr. Shire concurred that the purpose of this public hearing is relative to correcting an error in mapping.

Commissioner President Russell closed the public hearing 7:50 pm and set the ten day open record period.

ADJOURNMENT

Commissioner Dement moved, seconded by Commissioner Jarboe, to adjourn the meeting. Motion carried 5-0.

The meeting adjourned at 7:50 pm.

Minutes Approved by the Board of County Commissioners on _____

Betty Jean Pasko, Sr. Admin. Coordinator (Recorder)