

BOARD OF COUNTY COMMISSIONERS' MEETING

Tuesday, September 28, 1982

Present: Commissioner George R. Aud, President
Commissioner Larry Millison, Vice-President
Commissioner Richard D. Arnold
Commissioner Ford L. Dean
Commissioner David F. Sayre
Edward V. Cox, County Administrator
Judith A. Spalding, Recording Secretary

The meeting was called to order at 9:05 a.m.

APPROVAL OF VOUCHERS

Commissioner Millison moved, seconded by Commissioner Sayre, to approve payment of the vouchers as submitted by the Director of Finance. Motion unanimously carried.

APPROVAL OF MINUTES

Commissioner Dean moved, seconded by Commissioner Arnold, to approve the minutes of the Commissioners' meeting of Tuesday, September 21, 1982 as corrected. Motion unanimously carried.

COMMENDATION TO WAYNE DELOZIER

Present: Wayne Delozier, Animal Warden

The Commissioners presented a Commendation to Wayne Delozier for dedication as Animal Warden for the County for the past 13 years.

PRESENTATION OF CHECK
AMERICAN WIND SYMPHONY ORCHESTRA

Present: Betty Wilson, Coordinator
Dave Morgan, Economic Development Coordinator

The Commissioners presented a check in the amount of \$1500 to Mrs. Wilson, as the County's contribution towards having the American Wind Symphony Orchestra perform in St. Mary's County next year.

ST. MARY'S GARDEN APARTMENTS
PURCHASING AND TEARING DOWN BY NAVY

Present: Joseph Mitchell, Public Housing Coordinator

Mr. Mitchell appeared before the Commissioners to bring them up to date with regard to recent developments concerning St. Mary's Garden Apartments. He stated that the original plan for the Navy to purchase the complex and to renovate them at a cost between \$24,000,000 and \$28,000,000 has been changed. He stated that Congress has now tentatively appropriated \$19.5 Million Dollars for the purchase and demolition of the apartments and the rebuilding of 250 units.

Mr. Mitchell advised that he is keeping in close contact with Navy officials and Congressional representatives as to the developments of this matter. He stated that the Maryland State Highway Administration will be conducting a preliminary relocation study and recommended that the Commissioners withhold taking any action until completion of that study.

The Commissioners concurred and requested Mr. Mitchell to keep them apprised of the developments in this matter.

PROCLAMATION NO. 82-51
TRICK OR TREAT NIGHT

The Commissioners agreed to approve and sign Proclamation No. 82-51 designating Sunday, October 31, 1982 as the official Trick or Treat Night in St. Mary's County.

BUDGET AMENDMENT NO. 83-09
COUNTY ADMINISTRATION

The County Administrator presented the referenced Budget Amendment recommended for approval by the Director of Budget and Data Services as follows:

INCREASE:

Acct. #001-016-501-10-11 (Regular Salaries) by \$9,755

DECREASE:

Acct. #001-016-509-10-11 (Regular Salaries) by like amount.

Commissioner Millison moved, seconded by Commissioner Aud, to approve Budget Amendment No. 82-09 as set forth above. Motion unanimously carried.

RESOLUTION NO. 82-25
UNAPPROPRIATED FUND BALANCE - FY 81-82

The County Administrator presented the referenced Resolution restricting the amount of the unappropriated fund surplus for fiscal year ending June 30, 1982 to 5% of the budget (\$1,236 552). Any amount beyond the approved unappropriated fund surplus of 5% will be applied to Bond Anticipation Notes redemption at such time as the Board of County Commissioners shall determine.

Commissioner Aud moved, seconded by Commissioner Arnold, to approve and sign Resolution No. 82- Motion unanimously carried.

REQUEST FOR ABATEMENT OF TAXES
ST. PETER CLAVER - FIRST DISTRICT PARK PROPERTY

The County Administrator presented correspondence from the Director of Recreation and Parks dated September 22, 1982 advising that as part of the Lease Agreement dated August 8, 1979 for 15 acres of the St. Peter Claver property for a First District Park, the Commissioners would abate the local share of any increase of property taxes. The County tax is \$551.83 and therefore under the terms of the Agreement, abate is requested.

Commissioner Sayre moved, seconded by Commissioner Millison, to authorize the abatement of \$551.83 as set forth above. Motion unanimously carried.

TRI-COUNTY YOUTH SERVICES BUREAU
REQUEST FOR RENEWAL OF LEASE

The County Administrator presented correspondence dated September 22, 1982 from the Executive Director of the Tri-County Youth Services Bureau advising that the current lease on the Charlotte Hall property terminates June 1983 and requesting a renewed three-year lease. Mr. Cox stated that it is the staff's recommendation that the lease be renewed as requested.

The Commissioners gave their concurrence.

OFFICE OF COUNTY ENGINEER

Present: John Norris, County Engineer

DUKE'S RETREAT

Mr. Norris advised the Commissioners that on January 11, 1978, the County accepted a check in the amount of \$1,104.85 from Mr. John Hodges to cover the cost of surface treating the road in Duke's Retreat at a future time when deemed necessary. Mr. Norris reported that further development has occurred on this road and the property owners are now requesting the completion of the road. In line with the County's commitment as set forth in the January 11, 1978 minutes, the Commissioners gave their concurrence.

REQUEST FOR RELEASE OF BOND
ROLFE ROAD, SECOND DISTRICT

Mr. Norris reported that the County holds a corporate bond requiring Mr. T. Brooke Bryan to construct a turn-around for vehicles on Rolfe Road. Correspondence dated September 23, 1982 was received from a resident, Mr. John W. Williams, advising that his private driveway was expanded so that the school bus could turn around and that this has been successful for the past two years. Therefore, Mr. Williams suggested that the bonding requirement for Mr. Bryan be cancelled.

The Commissioners gave their concurrence.

PUBLIC WORKS AGREEMENTS
WILDEWOOD SUBDIVISION, NEIGHBORHOOD TWO, CLUSTER THREE, PLAT ONE

Mr. Norris presented the following Public Works Agreements for Wildewood Subdivision, Neighborhood Two, Cluster Three, Plat One as follows:

(1) By and between Paragon Builders, Inc. and St. Mary's County Commissioners guaranteeing the completion of the Wildewood Boulevard Extended to October 1, 1984;

(2) By and between Paragon Builders, Inc. and St. Mary's County Commissioners guaranteeing the construction of White Oak Parkway by October 1, 1984.

Mr. Norris pointed out that at this time he has not received the Deed and Plats nor the County Attorney's signatures for the referenced Public Works Agreements and approval by the Commissioners would be contingent upon same.

Commissioner Millison moved, seconded by Commissioner Arnold, to approve and authorize Commissioner President Aud to sign said Public Works Agreements with the contingencies as set forth above. Motion carried with Commissioner Dean abstaining.

PUBLIC WORKS AGREEMENT
VALLEY DRIVE ESTATES

Mr. Norris indicated that he received notification from the developer of the referenced project that he intends to forward a Public Works Agreement and Letter of Credit from Maryland Capital Savings. In anticipation of receipt of those documents, Mr. Norris requested authorization from the Commissioners for Commissioner President Aud to sign the Public Works Agreement once the County Attorney's signature has been received.

Commissioner Millison moved, seconded by Commissioner Arnold, to authorize Commissioner President Aud to sign the Public Works Agreement. Motion carried, with Commissioner Dean abstaining.

BID TALLY SHEET - PROJECT NO. SM 83-1-2
DRIVEWAY ENTRANCE PROJECT

Mr. Norris presented the bid tally sheet for the referenced project and requested the Commissioners to acknowledge the one and only bidder, Copenhagen Asphalt, in the amount of \$9,382. Bid will be awarded upon receipt of funds from the bonding companies.

The Commissioners gave their concurrence.

PROJECT NO. SM 80-1-6
RECONSTRUCTION OF McINTOSH ROAD/BRIDGE
BID TALLY SHEETS

Mr. Norris advised the Commissioners that in order to comply with Federal Regulations for funding of the referenced project, each item of the project had to be bid and awarded separately. The following are the project bids and action taken on each:

(1) Furnishing Reinforced concrete culvert pipes and materials

Commissioner Aud moved, seconded by Commissioner Dean, to award the bid to Gray Concrete Pipe Co., the lowest bidder, in the amount of \$19,725, as recommended by the County Engineer. Motion unanimously carried.

(2) To deliver Crusher Run Aggregate and Rip Rap

Commissioner Aud moved, seconded by Commissioner Dean, to award the bid to Rockville Crushed Stone, Inc., the lowest bidder, in the amount of \$12,724.92, as recommended by the County Engineer. Motion unanimously carried.

(3) Construction of Triple Celled, Concrete Box Culvert

Commissioner Aud moved, seconded by Commissioner Dean, to award the bid to Bates & Associates, the lowest bidder, in the amount of \$90,226.25, as recommended by the County Engineer. Motion unanimously carried.

(4) Furnishing corrugated pipes and materials

Commissioner Aud moved, seconded by Commissioner Dean, to award the bid to Republic Steel Corporation, the lowest bidder, in the amount of \$10,163.26 as recommended by the County Engineer. Motion unanimously carried.

(5) Furnishing of approximately 5,525 C.Y. Bank Run Gravel,
7,800 Borrow Excavation and 240 C.Y. Select Borrow Excavation

Mr. Norris advised that he would like to award this bid in a combination if possible of selecting the lowest bidder for "Delivered at the Site" (Base Company in the amount of \$47,337) and "Pick-up at Pit" (J.R. Woodburn, Inc. in the amount of \$17,888.75). Commissioner Aud moved, seconded by Commissioner Arnold, to accept the County Engineer's recommendations. Motion unanimously carried.

(6) Furnishing of Topsoil

Mr. Norris recommended awarding this bid as a combination of "Delivered" (Base Company at the rate of \$6.40) and "Pick Up at Site" (J.R. Woodburn at the rate of \$4.50).

Commissioner Aud moved, seconded by Commissioner Arnold, to accept the County Engineer's recommendation. Motion unanimously carried.

(7) Furnishing of Traffic Control Signs

Commissioner Aud moved, seconded by Commissioner Dean, to award the bid to Highway Safety the lowest bidder, in the amount of \$916.75 as recommended by the County Engineer. Motion unanimously carried.

(8) Furnishing of Straw Bales

Commissioner Aud moved, seconded by Commissioner Sayre, to award the bid to Webster Tippet and George E. Spalding, who each bid \$1,000, as recommended by the County Engineer. Motion unanimously carried. Mr. Norris stated that he would purchase half of the straw bales from each.

(9) Provision of an Office Type Number 1 Trailer

Commissioner Aud moved, seconded by Commissioner Sayre, to award the bid to Mobile Offices, the lowest bidder, at the monthly rental rate of \$145. Motion unanimously carried.

AIRPORT IMPROVEMENT GRANT

Mr. Norris presented the Grant Approval from the Federal Aviation Administration for the referenced project which includes obstruction removal on the existing runway and placement of that material as embankment for the construction of a parallel taxiway.

Commissioner Millison moved, seconded by Commissioner Arnold, to approve and authorize Commissioner President Aud to sign said Grant, pending signature of County Attorney. Motion unanimously carried.

MODIFICATION PLANS
FINANCE OFFICE AND PERSONNEL OFFICE

Mr. Norris presented and reviewed the plans for the modifications to the Financial Office and Personnel Office on the first floor of the Governmental Center. The Commissioners gave their concurrence.

PROCEDURES - SPECIAL TAXING DISTRICT
STORM DRAINAGE IMPROVEMENTS

Mr. Norris presented Procedures for the Establishment and the Construction of Storm Drainage Improvements within a Special Taxing District. The Commissioners advised that they were in agreement with the concept, but would make a final decision once they have reviewed the document more thoroughly.

PROJECT NO. SM 82-4-7
SENIOR SERVICES' CENTER

Present: Billye McGaharn, Senior Services Coordinator
John Norris, County Engineer

The Commissioners reviewed the bid tally sheet for the referenced project noting that the lowest bid was from Bru-Mac, Inc. in the amount of \$193,193 as the Base Bid.

Mrs. McGaharn indicated that Alternate #1 (Toiler Rooms) and Alternate #2 (Food Service) were necessary items at an additional cost of \$35,000. The Commissioners agreed that these items were needed and advised that they would get a determination as to source of funding from the Director of Budget and Data Services and make a decision as to the awarding of the bid at next week's meeting.

(Commissioner Aud and County Administrator, Ed Cox, left meeting to attend the Radiological Emergency Plan Drill at the Emergency Operations Center.)

MARYLAND VETERANS HOME (CHARLOTTE HALL) WATER SUPPLY

Present: Walter Raum, Director, Environmental Hygiene

Mr. Raum advised the Commissioners that the consultant for the construction of the Maryland Veterans Home at Charlotte Hall had recommended that a 10-inch well be dug for the water supply. Mr. Raum reported that he wanted to make the Commissioners aware that the Health Department has recommended two six-inch wells as a water supply so that there is a back-up. He stated that the area is rapidly growing and this would allow for extra water supply.

The Commissioners expressed their concurrence and requested Mr. Raum to submit this endorsement in writing.

EXECUTIVE SESSION

Present: Billye McGaharn, Senior Services Coordinator
Joseph P. O'Dell, Director, Budget & Data Services

The Commissioners agreed to meet in Executive Session in order to discuss a matter of Personnel. The Session was held from 10:35 a.m. to 10:55 a.m.

OFFICE CLERK II POSITION
OFFICE OF PLANNING AND ZONING

Present: Frank Gerred, Director, Office of Planning and Zoning

Mr. Gerred advised the Commissioners that Lana Orr, Office Clerk, II, in the Office of Planning and Zoning, Grade 7, has submitted her resignation as of October 22, 1982. Therefore, Mr. Gerred requested that the County Commissioners authorize the initiation of the hiring process to fill this vacated position. The Commissioners gave their concurrence.

ACQUISITION OF LAND
POINT LOOKOUT STATE PARK

Present: Joseph Ridgell, First District Resident (Spokesman)

(Also Present: Betty Ridgell, John Lore, David Hoffman, Joan Tennyson, Mr. Peterson, Stanley Raley, Ed Curly, Mark Bradburn, and other interested citizens of the First District.)

Mr. Ridgell appeared before the Commissioners to submit correspondence requesting that the Board include in its Legislative Package an item disallowing the State to acquire any additional land for the expansion of Point Lookout State Park.

Commissioner Dean pointed out that the first step would be to determine if the State does have intentions to acquire additional land. Contact has been made with the Department of Natural Resources to this effect and once a determination is made then the Commissioners would decide what action should be taken.

Mr. Ridgell asked each of the Commissioners to express his opinion of the matter. The Commissioners stated that they were sympathetic to the citizens' concerns and that they would like to be kept informed of any negotiations for land acquisition. The State will be made aware that additional land acquisition is contrary to the wishes of the community.

During discussion, questions were raised concerning the County's acquisition of land at St. Inigoes for a boat launching ramp, whether the land "perked" for installation of sanitary facilities. The Commissioners advised that they would direct this question to Mr. Baggett, Director of Recreation and Parks.

Further, the residents inquired as to the status of correspondence forwarded September 21, to the Secretaries of the Department of Natural Resources, State Planning and Health and Mental Hygiene regarding the use of the Point Lookout Sewage Treatment Plant by the community. The Commissioners advised that a response has not been received to date, but copies will be forwarded to them once they are received.

In closing, the citizens of the First District advised that they have formed a group called J.U.S.T. (Joint Use of Sewage Treatment Plant) and would like the Commissioners to put in writing the actions that they have taken today. Commissioner Dean agreed to prepare said correspondence.

OFFICE ON AGING
RSVP GRANT SUPPLEMENT

Present: Billye McGaharn, Senior Services Coordinator

Upon review of the RSVP Grant Supplement Application for FY 82-83 (total project amount - \$60,413), Commissioner Sayre moved, seconded by Commissioner Arnold, to approve and authorize Commissioner President Aud to sign said Application. Motion unanimously carried.

DECISION DISCUSSIONS

Present: Frank Gerred, Director, Office of Planning and Zoning
Anita Meridith, Recording Secretary
Robert Taylor
Al Watson
Thomas Usher
Ralph Magnus

Commissioners Present: Larry Millison, Ford L. Dean, David Sayre and Richard Arnold. Commissioner Aud, honoring a former commitment, was absent.

MSUB #82-0104 - USHER'S SUBDIVISION
MSUB #82-0321 - AL WATSON

Both considerations are appealing the Planning Commissioners' decision which denied request for resubdivision.

Commissioner Sayre reflected that he had been absent, due to hospitalization, when these appeals initially appeared before the Board of Commissioners. For said reason, he requested that the Board consider deferring action on the pending matters, in order to afford him an opportunity to further review the correspondence and various documentation, so he might participate in the decision.

Commissioner Dean offered several "background comments", which he felt might offer summation of the request and subsequent actions to date: These two cases appeared before this Board, as a result of the Planning Commission's denial, wherein the applicants, in turn appealed said decision to the County Commissioners. The two are being considered together, due to the similar nature of the two cases, i.e. both are proposed, as minor subdivisions, to be served by a right-of-way, private road, which also serves a number of other parcels of record. The question then arises as to how many lots do the subdivision regulations of the County permit to be served by the road and what should be the policy of the County with respect to private roads.

Commissioner Dean stressed that he felt that the Subdivision Regulations, as they were currently written, prohibited more than eight lots to be served by a private road. He reflected that if the two requests were to be approved, it would exceed the limited number of eight and therefore, be in direct violation of those existing regulations. Mr. Dean emphasized that it would be a mistake for County policy to allow large scale development on private roads.

Speaking to his fellow Commissioners, Mr. Dean felt that what was decided, with respect to these two cases, would, in effect, result in the policy for the County. A large map was displayed and Mr. Dean advised that those markings, depicted in yellow, were "some, and probably not all, of the similar private right-of-ways. So, the policy you set in these cases, is going to be the policy that's going to effect development on these right-of-ways, as well."

Commissioner Millison stated that if the County wanted to take that position, that it might want to consider changing the Minor lots from eight to ten. Mr. Millison stressed that while it were true, that the Commissioners would ultimately have to render a decision, he did not feel that the applicants of these two appeal actions, "should be penalized because we are now addressing something that possibly, should have been addressed in the past."

Commissioner Dean offered that the Board was being requested by the applicants through this appeal action, to overturn and reverse the decision of the Planning Commission in order for the Commissioners to overturn their decision, several things must be found. First, that the Planning Commission acted arbitrarily and capriciously; or, acted contrary to the County's regulations. He did not feel that this was the case in either instance.

Mr. Robert Taylor, engineer for Mr. Al Watson, at this point offered the history of the application and current appeal action. Mr. Taylor advised that the original concept had been for a 8 lot plan. When realizing that there was a conflict, the applicant then went to the Planning Commission seeking decision as to the number of lots which would be allowed. In researching the deeds for contiguous properties, it was ascertained that there were three lots of record which used the road. This left five lots to be developed, which was the number requested by Mr. Watson. Mr. Taylor advised, "They (Planning Commission) split their decision and they voted it down but they asked if we came back, asking for five, we would be approved, as long as the people living on the road had no objection to Al (applicant) using up the other remaining lots which would be developed on that road." Mr. Taylor felt that Mr. Watson would not be in violation with the regulations, if those five lots were approved at this time. Commissioner Dean injected that should those other property owners, served by the right-of-way be willing to indicate no objections to relinquishing their right, in writing, he would have no problem with approving the five lots, in that individual case. However, he reflected upon the Planning Commission's former concern regarding, the seemingly unfair policy with respect to such a "first come, first served" policy.

Mr. Ralph Magnus addressed the Board and felt that there was a third option open to the Board, as it was "within the purview of this Board to overrule the Planning Commission. Although the Planning Commission can look at the regulation, as it is written, only this Board can interpret the intent that was put into that law and I think that needs to be clarified and brought out."

Mr. Gerred noted that the Planning Commission's decision for denial was based upon the restriction of eight lots on a private road. Staff suggested that if the Board should overturn the Planning Commission's decision, the Commissioners should issue some findings that would support such an overturning and afford the Planning Commission with a basis for future decisions.

As a member of the initiating Board of Commissioners, adopting the Subdivision Regulations, Commissioner Millison stated that it had always been his intent that every land owner have the right to develop eight lots, as long as he met the requirements and that this problem, which had just now arisen, had never been addressed. He felt that a consideration of any amendment to the regulations, should be protection of the landowner, who through passage of time or transfer of ownership of the property, might have to go through major subdivision process to simply give his child a lot.

The questions before the Board were offered in summarization as follows:

1. What do the regulations now permit?
2. What was the intent of the regulation?
3. What should be the County's policy?

Commissioner Dean stressed, "I am firm in my conviction that the regulations now say, and I am firm that it was the intent of those regulations, that no more than eight lots were permitted to be served by private road." When the Subdivision Regulations were revised in 1976, a provision was made for private roads, on a limited basis and the Commissioners included in the regulations that a private road may be allowed by the Planning Commission, however, only in minor subdivisions and no more than 8 lots could be served. Therein lies the intent.

Therefore, Commissioner Dean emphasized, that in order for this Board to overrule the Planning Commission, which was entirely within the prerogative and authority of the Board of County Commissioners, there must be a basis for doing so. Mr. Dean stressed, "I believe the regulations do not allow the approval of these two applications, as submitted, pure and simple."

Commissioner Sayre again advised that he would appreciate the opportunity to participate in this decision, however, based on his knowledge, this date, he felt that he simply could not make a fair decision. He requested the Board to defer action for one week, in order that he could acquaint himself with all the information regarding these two cases and hopefully arrive at some knowledgeable conclusion.

The Chair advised that it had always been the policy of the Board to respect a fellow members request to grant an extension of time for study and/or deliberation, and he felt that the Board should abide by Commissioner Sayre's request, in this instance, and defer until next week. Commissioner Arnold concurred. However, he stressed that the applicants were deserving of a decision and that the members should definitely vote on the pending matters at the Board's next meeting.

PUBLIC HEARINGS

The full complement of the Board was in attendance. Staff included Frank Gerred and Anita Meridith of the Office of Planning and Zoning.

ALPD #82-0979: WILLIAM P. COATES, SR.

Request to establish an Agricultural Land Preservation District for approximately 180 acres, currently zoned R-1, located in the 7th Election District on Route 470 between Route 242 and Sugar Hole Road in Clements, Maryland, Tax Map 31, Block 19, Part of Parcel 27.

The members familiarized themselves with the location of this property.

Mr. Gerred advised that the applicant would be volunteering into the program for a minimum of five years and would have one year in which he could opt and every year thereafter. The applicant would also be entitled to sell development rights to the State.

Commissioner Millison moved, seconded by Commissioner Sayre, to recommend to the State District Committee, approval of this Agricultural Land Preservation District.

The motion passed unanimously.

ALPD #81-0042: WILLIAM D. BOYD, SR.

Requesting approval of the sale of development rights easement in an approved Agricultural Land Preservation District of approximately 188 acres, currently zoned AR-2, located on Route 238 in the 4th Election District, Tax Map 17, Block 23, Parcel 56.

Staff advised that this application was a request to sell development rights. The district was approved approximately one year prior. In response to Commissioner Arnold's query as to the purchase price per acre, Mr. Gerred advised that the price was determined per bid with the rate being less than the difference between agricultural value and development value. Thus, the bid could differ from 1% to 100%.

Commissioner Dean moved, seconded by Commissioner Arnold, to recommend an approval of the William D. Boyd, Sr. application for the sale of development rights.

The motion passed unanimously and a positive recommendation will be sent to the State Board.

APPOINTMENT
METROPOLITAN COMMISSION

Commissioner Dean moved, seconded by Commissioner Millison to appoint Mr. George Quade of Bushwood to the Metropolitan Commission for a term to expire June 30, 1985. Motion unanimously carried.

The meeting adjourned at 1:30 p.m.

Approved


George R. Aud, President