

BOARD OF COUNTY COMMISSIONERS' MEETING

Tuesday, April 5, 1983

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 9:10 a.m.

APPROVAL OF VOUCHERS

Commissioner Millison moved, seconded by Commissioner Aud to approve payment of the bills 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 March 22, 1983 as submitted. Motion unanimously carried.

WAITRESS/WAITRESSES  
FEDERAL TAX WITHHOLDING

Commissioner Arnold brought to the Commissioners attention the fact that effective April 1 any waiter or waitress will be compelled to have 8% of the total check written on a table he/she serves withheld from their regular pay. He requested that the County Administrator prepare correspondence to our U.S. Legislators requesting additional information relative to this matter. The Commissioners concurred in this recommendation.

MENTAL HEALTH/ALCOHOLISM ADVISORY COUNCIL  
HALF-WAY HOUSE FOR ALCOHOLISM

Present: Elizabeth Sally Raley, Chairperson  
Richard Martin

The County Administrator explained that the County had advertised for public sale a piece of property consisting of approximately 3.15 acres located in Charlotte Hall. Subsequently the Mental Health/Alcoholism Advisory Council has expressed an interest in this property for the location of a half-way house for alcoholism.

Dr. Martin advised that it was the request of the sub-committee of MH/AAC that the Commissioners defer a decision on awarding the bid on the property until such time as a "perc", MH/AAC would be amenable to looking at other county-owned parcels in the Charlotte Hall area.

After discussion, the Commissioners agreed to withhold a decision on awarding the bid for the purchase of the property for one month as per the above request.

TRICCA ISSUE

Present: Elizabeth Sally Raley  
Dr. Richard Martin

The County Administrator advised that the Office was in receipt of a telephone call from Senator Fowler yesterday, April 4 advising that there will be a meeting in Annapolis regarding the Tri-County Center for Children

and Adolescents (TRICCA) on Wednesday, April 6 at 8:30 a.m. In response to an inquiry from Mrs. Raley regarding Commissioner attendance at this meeting, Commissioner Aud stated that he will be in Annapolis on other county matters and would be glad to cover this meeting as well.

BIDS ON SALE OF SHERIFF'S DEPARTMENT AUTOMOBILES

For the Commissioners' information, the County Administrator presented the bid tally sheet for the sale of six used Sheriff's Department Vehicles.

ZONING AMENDMENT RESOLUTION NO. 83-05  
ZONE #82-0753 - HARRY BARRETT

(Request to rezone 7.43 acres from R-1, Rural Residential, to CM Commercial Marine. The property is located on Jutland Creek, off Smith Subdivision Road in the First Election District, Tax Map 70 Block 5, Parcels 107 and 143.)

Commissioner Arnold moved, seconded by Commissioner Millison to sign the referenced Zoning Amendment Resolution approving the rezoning from R-1 to CM. Motion carried.

AMENDMENT TO RSVP GRANT  
GRANT #440-359712 - AMEND 04

The County Administrator presented the Notification of Grant Award for the RSVP Program - Revised for the purchase of an electric typewriter (\$950) and file cabinet (\$150).

Commissioner Arnold moved, seconded by Commissioner Dean, to authorize Commissioner President Aud to sign said NGA. Motion unanimously carried.

BUDGET AMENDMENTS

On behalf of the Director of Budget and Data Services, the County Administrator presented the following Budget Amendments for the Commissioners' review and approval:

No. 83-46 - County Engineer - To transfer funds to acquire projected data processing equipment and upgrade CPU memory capacity.

No. 83-50 - Sheriff's Office - To institute new forms for reporting purposes. To increase overtime account based on overexpenditure during July - December time frame and provide sufficient funds for remaining three months of fiscal year.

Commissioner Arnold moved, seconded by Commissioner Sayre, to approve and authorize Commissioner President Aud to sign said Budget Amendments. Motion unanimously carried.

GRANT FUNDED POSITIONS - TUBMAN DOUGLASS

The County presented a memorandum dated March 24, 1983 from the Personnel Officer regarding the establishment of Grant- Funded positions as per the request of Joseph Mitchell, Public Housing Coordinator as follows:

1. Program Manger, G-13, part time
2. Maintenance Mechanic, Grade 7, full-time
3. Clerk-Typist, III, Grade 5

These positions are contingent upon receipt of Section 23 HUD funds and any reduction of funding could create reduction of force.

Commissioner Arnold moved, seconded by Commissioner Dean, to approve the filling of these positions. Motion unanimously carried.

#### APPOINTMENTS

Commissioner Aud moved, seconded by Commissioner Dean, and unanimously carried to make the following appointments to Boards, Committees and Commissions for terms as indicated:

#### AGRICULTURAL LAND PRESERVATION DISTRICT

#### TERM TO EXPIRE

William Dixon	December 31, 1986
Floyd Raley	December 31, 1985
Robert Jarboe	December 31, 1985

#### AIRPORT COMMISSION

Ed Thompson	June 30, 1983(1986)
-------------	---------------------

#### MENTAL HEALTH/ALCOHOLISM ADVISORY COUNCIL

Rev. Eamon Dignan	June 30, 1985
-------------------	---------------

#### SO. MD. RC&D BOARD

Edward Swecker	March 1, 1986
Phillip Miller	March 1, 1986

#### ELECTRICAL EXAMINERS BOARD

Adrian Hall	December 10, 1986
-------------	-------------------

#### CLEARINGHOUSE PROJECT NO. 83-3-432 RETIRED SENIOR VOLUNTEER PROGRAM

The County Administrator presented the referenced clearinghouse project and recommended that it be forwarded to the State with the comment that it is not inconsistent with this agency's plans, programs or objectives. The Commissioners gave their concurrence.

#### TRI-COUNTY ANIMAL SHELTER

The County Administrator presented correspondence dated March 30 from Calvert County Commissioners agreeing to the recommendations of the County Administrators of the three counties as to the operation of the Tri-County Animal Shelter. The correspondence stated however, that they were not in agreement in the extensive use of volunteers for human contact with the animals. Mr. Cox requested the Commissioners' endorsement in the recommendations for the operation of the Shelter.

Commissioner Dean moved, seconded by Commissioner Aud, to accept the recommendations of the three County Administrators. Motion unanimously carried.

MARYLAND LOCAL GOVERNMENT INVESTMENT POOL

As a follow up to the decision by the Board at the March 22, 1983 meeting, the County Administrator presented an Agreement to participate in the Maryland Local Government Investment Pool and an accompanying Resolution. The Commissioners gave their unanimous concurrence to authorize Commissioner President Aud to sign the Agreement and to authorize the signing of the Resolution.

CHAMBER OF COMMERCE - TOURIST INFORMATION CENTER

The County Administrator advised that the correspondence had previously been received from the Chamber of Commerce regarding the Information Center to be manned by the Chamber and requesting funds from the County. Mr. Cox stated that the staff has reviewed the budget request and recommended funding in the amount of \$7,800 rather than the originally approved amount of \$16,977.

The Commissioners gave their concurrence.

CORRESPONDENCE

The County Administrator presented the following items of correspondence for the Commissioners' review and approval:

1. To Mrs. Elizabeth Raley, Chairperson, Mental Health/Alcoholism Advisory Council accepting the Council's recommendations regarding the required drug abuse advisory function.

2. To Dr. William Marek expressing the Commissioners' formal endorsement of the Tel-Med System to meet the growing need for public health information.

The Commissioners agreed to sign and forward the two items of correspondence as presented.

RESIDENT MAINTENANCE ENGINEER - SHA

Present: John D. Raley

Mr. Raley appeared before the Commissioners to present a monthly report and to accept input as to road, sign and drainage problems.

BAY CENTER  
INGRESS/EGRESS PROBLEM

Present: Irvin K. Jones, owner/developer  
Eugene Copsey, developer  
John D. Raley, SHA  
William Lacey, SHA  
John Norris, County Engineer  
Frank Gerred, Office of P & Z

Mr. Norris advised that the purpose of this meeting was to discuss the ingress/egress situation relevant to the new Bay Center located at the corner of Md. Rt. 235 and St. Andrews Church Road (Md. Rt. 4). He stated that the County approve the site plan with an entrance onto Rt. 235 and the denial of an entrance onto St. Andrews Church Rd. According to Mr. Jones, it now appears that State Highway Administration has approved an entrance onto Md. Rt. 4 (St. Andrews Church Rd.) which in the opinion of the County Engineer's Office and Office of Planning & Zoning will create a hazardous situation.

Mr. Jones requested that the Commissioners grant permission to construct the curb on county property or to waive the curbing requirement in order to place the entrance on Md. Rt. 4.

Discussion ensued as to whether the County's decision to deny the entrance could be overturned by SHA as well as discussion of safety and reconstruction of the intersection. Also discussed with the possibility of an exit for westbound traffic only.

In conclusion, the Commissioners requested Mr. Norris to contact Mr. Larry Elliott, Traffic Engineer, SHA, to discuss this situation and return to the Commissioners' next week with recommendations.

DONATION OF LAND  
SECOND DISTRICT PARK

Present: Mr. and Mrs. Robert Dean, Sr.  
John V. Baggett, Director, Recreation and Parks

Mr. and Mrs. Dean appeared before the Commissioners to offer a donation of 60 acres of land in the Second District to be used and maintained exclusively as a public park. In expression of appreciation, the Board presented a Commendation and a County Seal for generous donation. In addition the Commissioners agreed to allow the Deans to name the park if they so desire.

COPPAGE HEIRS  
(Mrs. Calloway)

Present: Mrs. Mary Calloway

Regarding property sold to the State by the County which Mrs. Calloway claims belonged to the Coppage heirs, the County Administrator advised that the State has advised by telephone that there was no evidence to change the current status. The State has indicated that Mrs. Calloway should contact her attorney and pursue civil action. Mrs. Calloway requested that a new survey should be performed and at the County's expense. Discussion ensued regarding this issue and it was agreed that Mrs. Calloway's attorney, John Pliesse, should contact the County Attorney.

BOND PURCHASE AGREEMENT

Present: Mark Adler, Bond Counsel  
Eugene Glover, Placid Harbor  
Charlotte Hayes, Attorney on behalf of Placid Harbor  
Joe Densford, County Attorney  
Dave Morgan, Economic Development Coordinator

Mr. Adler explained that the purpose of this meeting was to present certain documents for the Commissioners' signatures relative to the issuance of bonds for the financing of the Placid Harbor project. He stated that the FDIC insured bonds went on the market last week and were sold in amounts up to \$100,000 for an aggregate total of \$6,000,000.

Ms. Hayes presented Resolution No. 83-07 entitled "Industrial Revenue Bonds - The International Association of Machinists and Aerospace Workers" authorizing the issuance of said Bonds along with the Underwriting Agreement which has been reviewed and signed by the County Attorney.

After review and discussion, Commissioner Millison moved, seconded by Commissioner Arnold, to approve and sign Resolution No. 83-07. Motion unanimously carried.

Further, Commissioner Dean moved, seconded by Commissioner Sayre, to authorize Commissioner President Aud to sign the Underwriting Agreement. Motion unanimously carried.

PRESENTATION OF RETIREMENT CHECK  
VOLUNTEER FIREMAN RETIREMENT

Present: Harvey I. Bailey

The Commissioners presented Mr. Bailey with his first Volunteer Fireman Retirement check. Mr. Bailey has served 34 years and is currently with the Seventh District Fire Department.

PROCLAMATION NO. 83-22  
PRIVATE PROPERTY WEEK

Present: Lyle Sackie  
Charles Frederick  
Phyllis Leighton

The Commissioners presented the referenced Proclamation designating the week of April 10-16 as Private Property Week in St. Mary's County.

TAXPAYERS' ASSOCIATION

Present: Mrs. Robrecht  
Claude Jarboe

Mrs. Robrecht presented a draft letter to be signed by the President of the Taxpayers' Association regarding certain complaints relative to the Assessment Office. Endorsement by the Board was requested and the Commissioners advised that they would review the letter and make a decision later.

REZONING HEARING  
ZONE #82-1164  
ORIE P. BEASLEY

Present: Frank Gerred, Director, P & Z, Robin Guyther, Planner, OPZ, Laura Clarke, Planner, OPZ, Peggy Childs, Recording Secretary, George Sparling, Esq., Attorney for Applicant, Penny Beasley, Applicant, Jim Kenney, Esq., Karen Abrams., Robert Miedzinski, Pritzi Klear, Massey Bell, T.W. Bell, Mary L. Gough, Mable Dearing, Walter A. Lloyd, Dolly Davidson, Patricia Davidson, Howard A. Lamb, Linda and Kenneth Lamb, Howard A. Lamb, Jr., Sandra Lamb, Irene Lamb, Sara Lamb, Melissa Lamb, Sue Thorne, John R. Marum, Anne H. Marum, Gary & Sue Lockhart, Susan Nowak, Reid Davidson, Roberta Davidson.

ZONE #82-1164 - ORIE P. BEASLEY

Requesting rezoning of approximately 11.209 acres, located on Rue Purchase Road, 8th Election District, Tax map 43, Block 3, Parcel 209, from R-1, Rural-Residential, to R-15, Multi-Family.

Commissioner President George Aud opened this public hearing at 1:35 p.m. Planner Robin Guyther read the Notice of Public Hearing which appeared in the March 16 and March 23, 1983 issues of The Enterprise, and presented the return receipts of notification letters which were sent

by Certified Mail to property owners within 200 ft. of the property. Mr. Guyther ascertained from attorney George Sparling that the property had been posted with the notice of this hearing, and at this time the Planning Commission record was entered into evidence. Mr. Guyther stated that the Planning Commission has recommended DENIAL of this rezoning request based on lack of proof for change or mistake and lack of proof of change in the neighborhood as defined by the Planning Commission.

Attorney George Sparling, representing the applicant, Mrs. Penny Beasley, explained that they were basing their case on change in the area, the legal effect of which would serve as the basis for alleging mistake in the drafting of the Ordinance - a failure of the Ordinance to address anticipated changes in the area and to address a solution for meeting of the need generated by those changes.

Mr. Sparling presented Mr. Chuck Ellison, Jr., as an "expert witness" in this case. In response to Mr. Sparling's questions, Mr. Ellison stated that he is a Vice President in the engineering firm of D.H. Steffens Co., located in Lexington Park and LaPlata, in charge of the land planning and civil engineering functions. Mr. Ellison stated that he has a B.S. in Civil Engineering from the University of Maryland and graduated in continuing education courses from George Washington University, Pennsylvania State University, the University of South Carolina, and through the American Society of Civil Engineers, of which he is a member. One-third of these upper-level course, Mr. Ellison said, were courses in land planning, transportation courses and courses of that nature. Since 1971, Mr. Ellison stated, he has been involved with a number of companies working primarily in the land planning field, examining zoning issues, preparing preliminary plans and zoning concepts of various pieces of property in Maryland and Virginia. Mr. Ellison said he is a member of the American Planning Association and the Urban Land Institute, and said he has testified before approximately 18 planning bodies and courts in Montgomery, Prince George's, Charles and St. Mary's Counties, plus the Town of LaPlata, City of Bowie, and Town of Indianhead, and in Fairfax and Louden Counties in Virginia.

Mr. Ellison stated that he has visited the property in this case, and described it briefly as approximately 11 acres of R-1 zoned land fronting on Rue Purchase Road, one-half mile off of Maryland Route 235, in close proximity to the north boundary line of the Naval Air Station. He said it is a finger of land, relatively a narrow, long, fairly flat area, with a swale or drainage divide on each side of the property running down to a body of water called Green Holly Pond. The main portion of the property is clear with a woods line on both sides of the property; the adjacent properties are wooded. Mr. Ellison stated that he is familiar with the Lexington Park area as an extensive amount of his work is there, a good deal of which involves trying to predict for his clients what is occurring today and what will be occurring in the future in Lexington Park, and advice on how to best proceed with their property.

Mr. Sparling asked Mr. Ellison if there have been any changes in the Lexington Park area relating to growth and the supply and demand for housing. Mr. Ellison said not only since 1974, when the Ordinance was adopted, but also within the last 3-4 years in particular, there has been a significant change in the character of Lexington Park - there is increased activity at the Naval Air Station, there are programs that are under serious consideration there that will result in different employment centers and a gradual change in Lexington Park proper; where it used to be pretty much retail oriented, there will be much more demand for office space.

Mr. Sparling asked Mr. Ellison whether this change has resulted in an increased demand for housing. Mr. Ellison said that it has and that the entire housing market nationwide is changing primarily due to high

construction costs and high interest rates on mortgages, and there seems to be occurring throughout the area a change in the type of housing people can afford and changes in the inherent desires of what people are willing to accept as a living experience. Mr. Ellison said he felt there was a very good demand for housing in Lexington Park across the entire spectrum of dwelling types.

Mr. Sparling asked if, as an expert in land planning, Mr. Ellison had an opinion as to whether the St. Mary's County Zoning Ordinance has adequately addressed this change that he has described. Mr. Ellison stated that the St. Mary's County Zoning Ordinance is not tremendously different from other Zoning Ordinances in many other counties in that when it was developed it was in response to a problem that was arising requiring more control and more regulation of properties. In a sense it was as much of a problem solving document as it was a document to plan how the future should go. Any zoning issue, Mr. Ellison said, is very emotional, especially in an area that does not have zoning and is getting ready to adopt a Zoning Ordinance; almost by necessity Zoning Ordinances in most counties did not really address what was going to happen in the future and what type of zoning categories and where those zoning categories should apply. He said he thinks St. Mary's County's Zoning Ordinance is fairly typical in that sense - it is a very good document for working with existing pieces of property as the zoning applied, but it was not really a comprehensive rezoning document laying out a program as to how existing urban areas or growth areas might expand and how we could address that expansion as it was occurring.

Mr. Sparling asked if Mr. Ellison's opinion persists with respect to this proposal; Mr. Ellison said it does. Mr. Sparling addressed the several classifications of residential zoning in the Ordinance from R-1 to R-4, which basically provides for detached residences, and then jumping to R-15, which permits large apartment complexes of significant density. Mr. Sparling asked if, in Mr. Ellison's opinion as a land planner, the gap between R-4 and R-15 represents an adequate addressing of the housing need just described. Mr. Ellison said, in his opinion, it would be an excellent idea to have an intermediate category that would allow housing units or dwelling types something other than single family detached, such as triplexes, 2-family units, zero lot line units, but at a much lower density than the R-15 category which is, by its definition, 15 units per acre.

Mr. Sparling asked Mr. Ellison to explain "sector zoning." Sector zoning, Mr. Ellison said, is one of three or four basic zoning theories or concepts of how urban areas have developed and how they can be expected to grow over time, and is in essence saying that if you start with a central business district or an intense commercial area such as Lexington Park, and you try to predict what would happen in the future as that area grows, that housing and commercial uses will grow out in either sectors or some type of concentric ring, and it's a continually expanding process, so that when you start with day one and you have your central core, your least dense and usually most expensive housing would be in the outermost area. Mr. Ellison said this type of zoning is a recognized theory of land planning, contained in many texts and reference works, and cited in particular "Urban Land Use Planning", by Chapman and Kaiser.

Under the concept of sector zoning, Mr. Sparling asked, could Mr. Ellison briefly describe how that would apply to the Lexington Park area? Mr. Ellison said if you took Lexington Park at the point in time when it was created you would have the central core of business and the Naval Air Station where it is now; immediately around the business area you would have homes of some density that was appropriate to people working within the Park and who would want to be relatively close to it, and, as you proceeded outward from that area along Routes 246 and 235, you would come into areas of lower and lower density and more expensive housing.



Then, as Lexington Park would grow, the area of commercial uses would expand outward, and would develop the transition zone, which to a great deal has developed, and you would have a tendency for more dense uses to come in closer to the commercial area and your less dense uses to come in closer to the commercial area and your less dense uses to push even farther out in the County.

Under such a concept, Mr. Sparling asked, would multi-family zoning be appropriate in the area immediately north, adjacent to the Naval Air Station? Mr. Ellison said very likely it would be. Mr. Sparling asked if the Lexington Park Policy Plan itself does not urge the concentration of growth to this area adjacent to the Naval Air Station and immediately north thereof; Mr. Ellison said he believes that it does. This is the general area in which the property of this application lies. There are also a number of single family residences along Rue Purchase Road and small clusters of homes along Rue Purchase Road.

Mr. Sparling asked Mr. Ellison if he was familiar with the concept of "mixing" as a planning concept; Mr. Ellison stated that he is, that it is in his opinion a very valid concept which says that if you take a given geographic area that has some relatively fixed or well-defined boundaries, it would be appropriate to provide a variety of living types within that geographic area. Looking at Mrs. Beasley's property in particular, you might be talking about the land bordered by the Naval Air Station, Route 235 and Route 4, and saying that, within that quadrant, it would be nice to have a variety of living types and experiences available to people that want to live in that particular geographic location.

Mr. Sparling then asked Mr. Ellison to identify five photographs. These were identified as pictures of the Beasley property, providing an overall view of the property and the partially finished structure on the property. These photographs were made a part of the record of this proceeding. Mr. Sparling then asked Mr. Ellison what, in his professional opinion as a land planner, would be the best use of this property. Looking at the property, Mr. Ellison said, it does not readily lend itself to a single family detached subdivision, primarily because it is a relatively narrow, long strip of land, and about all you could do with it is run a road down one side or the other and drop off lots in a rectangular fashion, and, other than the frontage on the pond, there is really no physical feature on it today that is particularly attractive for the particular use. Mr. Ellison said he really thinks the best use for it would probably be some type of cluster housing - either small, zero lot line homes, or perhaps some two-family homes or triplexes, with relatively low density, some two to three per acre maximum use that could be set in the center of the property and buffered well from the surrounding property, utilizing the waterfront frontage as open space and common use area. However, Mr. Ellison said, this would be very expensive because the existing improvements on the property would have to be removed.

Mr. Sparling asked Mr. Ellison how Mrs. Beasley's proposed use of 13 efficiency apartments, with respect to feasibility, compatibility with the neighborhood, and impact on the neighborhood, would compare with the use he had just described as the most appropriate. Mr. Ellison stated that the two principal features of that particular use would be the building itself and the parking area that would serve the residents of the building. He said he has not seen any architectural plans for the building, but he doesn't think it would be necessary or practical to alter the exterior of the building to convert it into apartments of some type, so the exterior view would remain the same. The biggest problem, he said, would be the parking facility - you need a certain number of parking spaces for the number of apartments that would be provided, and since parking is, by its nature, a fairly large black-topped area, it would require some type of screening, probably in the neighborhood of berms with pine trees or something of that nature to buffer the parking areas from the adjacent properties and

provide relatively minimal impact. Considering the building that is there and the state of the land as it exists today, Mr. Ellison said, he felt you could convert it into the proposed use in an attractive manner with minimal impact on adjacent properties.

Mr. Sparling asked Mr. Ellison to compare the traffic problem that might be attendant to 13 efficiency units with the traffic that might be generated by conventional single family detached dwelling subdivision. It would probably be about equivalent, Mr. Ellison stated. Under the R-1 zoning category, depending on the success of percolation tests and general layout of the land, you would probably get a minimum of 6-7 units on the site and maximum of 9-10, so if we assume 6 or 7 in the normal trip generation factor for single family detached of 9 trips per day per dwelling unit you are talking about 63 trips in and out of the property along Rue Purchase Road on any given day. Apartments, by their nature, do not have as many people living in them, especially one bedroom apartments, so you do not have as many trips per day from apartments as you do from single family dwellings. The accepted standard is about 5 trips per day for the average one bedroom apartment; 13 apartments would equate to 65 trips per day from the property, which is basically the same as the single family detached proposal.

Mr. Sparling asked, with respect to soil erosion, stability of the ecology, would there be a material difference between use of the property as proposed by the applicant with the use as single family residences? Mr. Ellison said there are some existing erosion problems that would have to be resolved regardless of the result of this rezoning, but said the difference between the proposed use and a single family existing use is relatively minimal, and it would be mainly the parking area. As long as the parking area is installed properly, so that the water does not run off too quickly and create an erosion problem, he does not think there would be any significant changes in the effect on the adjacent watershed, and said he thought both the existing use or the proposed use would be less offensive to the environment than 6 or 7 single family detached residences. The techniques for providing protection during construction are relative straight forward and simple, Mr. Ellison said, and are really questions of maintenance - making sure that you always have a good grass cover, making sure that if any erosion develops you address it quickly and solve the problem quickly, and so on.

Mr. Sparling asked if Mr. Ellison, when examining the adjoining property, found it to be sporadically populated with single family dwellings; Mr. Ellison said that he had. Mr. Sparling asked if he had found the general area to be occupied by more than 50% single family dwellings, would this change his opinion as to the amenability of this property to the proposed use. Mr. Ellison said it definitely would have, than whenever you have an area that is predominantly one particular use, regardless of the legal proof of a rezoning, he would hope that we would try to maintain the integrity and keep the use consistent.

Mr. Sparling asked if the proposed use of the land tend to address the need which Mr. Ellison discussed earlier and which is not addressed by the Zoning Ordinance; Mr. Ellison said there does appear to be a shortage in the Lexington Park area of rental housing - any area that is near a military facility usually has a reasonable demand for some type of housing and there is not a great deal of rental housing available, so in that sense it would address the need. Mr. Sparling asked if, based upon all the particulars Mr. Ellison had just related, did he feel that the applicant's use would be an appropriate one? Mr. Ellison stated that he thought, with the proper safeguards and the proper limitations on density, the proper requirements for buffering and landscaping the parking area, that the proposed use can be placed on the property in an acceptable manner.

Mr. Kenney asked if a person could live very well on this 11 acres in a single family dwelling and have a nice environment. Mr. Ellison replied that he could. "So you don't have to have 13 people to 'feel good' about this piece of land?" Mr. Kenney continued. Mr. Ellison said from a planning standpoint he thinks it would be a somewhat waste of the piece of land - 11 acres is more than the average person would require to support most of the needs that they would want or the type of living that they do, and it does seem to be a waste of a somewhat valuable resource.

Mr. Kenney asked Mr. Ellison what he understands the purpose of this application project to be? Mr. Ellison said he understands Mrs. Beasley has somewhat "inherited" this building and she would like to convert it into 13 one-bedroom apartment units. "What would each of these apartments have?" Mr. Kenney asked. Mr. Ellison said he was not aware of that. Mr. Kenney asked if he had any idea of the number of bathroom facilities, the number of kitchen utilities? Mr. Ellison said that he had not asked that questions in detail, that he assumed they would be reasonably equipped apartments with their own facilities. Mr. Kenney asked if Mr. Ellison had seen any drawings or engineering design concepts with the parking lot; Mr. Ellison said he has not. Mr. Kenney asked if he had any idea what the amount of "covered area" would be as a result of the improvement of this property? Mr. Ellison answered roughly 800 sq. ft. per apartment exclusive of the building area. "Does the amount of covered area have an impact on the areas of runoff?" Mr. Kenney asked. Mr. Ellison replied yes, the quantity of runoff is directly related to the amount of impervious or unvegetated areas.

Mr. Kenney asked Mr. Ellison if, in evaluating this position, he was afforded any of the design criteria by the applicant? Mr. Ellison replied that, to the best of his knowledge, there is no particular design criteria at this time. "And you were not given full drawings and details as to exactly what would be located on this property other than the fact that it will involve 13 units?" Mr. Ellison replied, "That is correct." Mr. Kenney asked Mr. Ellison, in talking about the background of the housing need, if he could tell him how much land is presently zoned to accommodate efficiency apartments in the Lexington Park area that has not been improved? Mr. Ellison said no, he could not, and added that he could not tell how much of that land is on water and sewer. Mr. Kenney asked if there was any way that Mr. Ellison can indicate that there is insufficient zoned land for the accommodation of apartments in the Lexington Park area? Mr. Ellison said there is not, with the information he has available to him now. Mr. Kenney asked what Mr. Ellison believes would be the most reasonable yield of this land as R-1 single family property, based on what he knows about it. Mr. Ellison said probably 6-8 lots, or single family detached residents.

Mr. Kenney explained that he had no further questions of Mr. Ellison but if there would be staff questions of Mr. Ellison, whose testimony was not before the Planning Commission, he may have some further questions after those. Mr. Gerred replied that staff did not have any questions at this time.

Mr. Sparling, however, stated that he would like to ask Mr. Ellison a couple of questions, and asked Mr. Ellison if, when he was talking about the R-15 density not being appropriate for this land he was talking about the entire 11 acre tract? Mr. Ellison said this is correct, at R-15, which could permit a maximum of 165 units, this would be totally inappropriate in that area. Mr. Sparling asked whether the context of the entire tract would not be inappropriate with this particular portion within the concept of the applicant's proposal? Mr. Ellison said the final summary he made to his last question was that with the proper safeguard or conditions and limitations on density and also for landscaping, screening and buffering, the property could be rezoned to R-15 and could be protected in the proper fashion. Mr. Sparling asked if the

property is large enough to consider a planned unit development and Mr. Ellison said it is not, but Mr. Ellison said if you assume that the Ordinance is espousing the goals of planned unit developments, and you assume that would be a nice goal to achieve, even though you don't have the land mass required, then the only technique available for achieving the goal is some type of comprehensive rezoning that would use individual existing categories and apply them to specific properties that were appropriate for that to achieve the same goals as the PUD zoning category.

Mr. Sparling stated that, although Mr. Ellison has not seen any architectural plans for the final development of this building, he has seen the building itself; Mr. Ellison said this is correct. Mr. Sparling added that if the Health Department has given approval for the installation of septic system and water system, the number of bathrooms and kitchens would not be of any planning importance other than to the people inside the building. Mr. Ellison said that, from a planning standpoint, he does not have to worry about what would happen to the interior of the building - his primary concern would be the exterior of the building and the parking areas. He said a 13-unit building is not a major project in the context of work that he is used to, and he doesn't have too much trouble in envisioning how it would fit together on the property. Mr. Sparling said as far as all the design criteria, they would be applicable only to the normal planning or development process. Mr. Ellison said yes, there are certain design criteria that should be reviewed and discussed with a project of this nature; however, it's really a matter of proper application and they can be achieved in the normal planning process for any category that you would apply to them.

Mr. Kenney asked Mr. Ellison, if, in response to Mr. Sparling's question, he is saying that the tract itself is not what he would consider to be a good R-15 tract, but that a part of it might not be a bad R-15 tract. Mr. Ellison said he thought what he was trying to say is that there are uses permitted in the R-15 category, such as multi-family and townhouses, that can be placed on this piece of property in an acceptable manner with appropriate safeguards on the physical features, such as screening, landscaping and what not, and limitations on the overall density. Mr. Ellison said if you wanted to take a density limitation and say that you would only rezone a small area of the tract, he can accept that argument. Mr. Kenney stated that, as a matter of fact, it is not a good R-15 piece of land, is it? Mr. Ellison said in the normal context of R-15, that would be correct.

Mr. Kenney said that what Mr. Ellison was really doing was making a "silk purse out of a sow's ear." Mr. Ellison said that would be Mr. Kenney's conclusion. Mr. Kenney said Mr. Ellison was taking a bad situation and trying to make it work the best it could under the circumstances. Mr. Ellison said that yes, he would be the first to admit that what you have there is certainly not a very attractive feature - you have a large gravel area, you have erosion problems that are being created now and are ongoing and part of the goal is to find a solution to that problem - the most attractive solution possible. Mr. Kenney said that Mr. Ellison was dealing with a solution and not really with an overall planning concept. Mr. Ellison said yes, to some extent. Mr. Kenney said if he came to Mr. Ellison and asked him to plan him a town, this is probably not where he would put an R-15 piece of land as a practical matter. Mr. Ellison said if Mr. Kenney came to him and asked him to plan him a town, they would not look at 11 acres, they would look at an entire geographical area, and in the context of the entire area it is possible that you would have some other use on that property. Mr. Kenney said especially if he had already built his water and sewer system and had it out away from there.

Mr. Sparling stated that Mrs. Beasley had 5 individuals who would like to speak very briefly in favor of her application. Mr. T.W. Bell, Mr. Robert Miedzinski, Mrs. Massey Bell and Mrs. Pritzi Klear all testified that they support this application and to the fact that housing is very badly needed in the County. In response to Mr. Kenney's question, it was noted that they do not live or own property in the immediate area of this property.

Mrs. Beasley stated that when she had found herself the owner of this property she noticed that it had an erosion problem, and she had immediately contacted Mr. John Hall, County Soil Conservation Agent, and he agreed to work with her to correct it which she would definitely do, and which problem was there prior to her owning the property.

Attorney Jim Kenney came forward once more. Mr. Kenney said they assume that the presentation before the Planning Commission would be before the Board and they would have an opportunity to review that. Mr. Kenney then called his witnesses to describe the neighborhood and some of the reasons why there has been no change in the neighborhood or mistake in the original zoning that would justify the rezoning of the property. Mr. Kenney's first witness was Mr. Howard Lamb, Jr. who presented an aerial photograph of the subject property and surrounding property. Mr. Lamb said he thought it was interesting to note that the expert witness had talked about 11 acres, or, under R-15, 165 homes, and then uses that argument against the single family dwelling R-1. The property, Mr. Lamb said, is approximately 11 acres, but approximately half of that is unusable for single family dwelling or R-1, unless you want to build a house on stilts, because there is a huge swale that comes all the way up to Rue Purchase Road. Mr. Lamb said they of the community are deeply concerned about the pond. About 4 years ago, Mr. Lamb said, they had a very serious problem in the failure of a septic system upstream from Green Holly Pond which caused a noxious weed that encompassed the entire area - it was so thick, Mr. Lamb said, that you couldn't row a boat or a canoe in it - the odor was quite bad, and it took about a year and a half to correct the problem. Mr. Lamb said they have just now started getting crabs back.

Mr. Lamb said the creek is a badly sited area. In the hearing before the Planning Commission, he said, he presented several pictures. Contrary to what Mrs. Beasley has said about trying to do something about the area, she has aggravated the problem. Mr. Lamb said she has taken down the brick facing on the front or creek side and dumped it down in the swale and covered it up with dirt. Due to the rains we have been having in the last month or so, Mr. Lamb said, all you can see now is "brick bat". He said he went out in the canoe during this last rain and there is a solid stream of yellow silt where it has washed over the brick bat. He said Mrs. Beasley has done no planting, she hasn't cut grass, she hasn't done anything since she acquired the property. Mr. Lamb said they understand that Mrs. Beasley got this property under unusual circumstances, but it is her property, and they don't think they should bear the brunt of her problems, particularly since she hasn't made any effort to stop the erosion in this area.

Mr. Kenney asked Mr. Lamb to point out on the map how many people live in the area and are represented in the Green Holly Pond Association. Mr. Lamb noted 17 families, all single family dwellings, and said they are all members of the Association.

Mr. Sparling asked where the failing sewage system is located. Mr. Lamb replied that it was in Bayview Trailer Park, located north of the pond on Millstone Landing Road. Mr. Sparling noted that any sewage system could fail, and Mr. Lamb agreed but said that if this rezoning request was approved you would be putting 13 bedrooms and 13 kitchens where there was to have been 3 or 4 bedrooms and one kitchen. Mr. Lamb said he had talked to Walter Raum of the Health Department about this site and the former owner. The former owner had a house trailer sitting across from the house and put in 396 ft. of pipe that failed miserably on the trailer.

He said that this was brought to Mr. Raum's attention and when they came out and did their test borings they tested the entire site. He said there are only two areas that passed, and Mrs. Beasley would have to pump the sewage up to the approved site. Mr. Sparling pointed out that if you had 6-8 lots on the property you would still have 13 bedrooms. Mr. Lamb said you couldn't do that because only three lots passed the perc test.

Mr. Kenney called John Richard Marum, longtime resident of the area, and asked him to relate to the Board some of the concerns that he and his neighbors have against the rezoning of this property. Mr. Marum said he lives at Batty's Purchase. He said there are two features about the area in which they live - the rural setting and privacy. Up to this point, Mr. Marum said, they have enjoyed both of those features all the time that he has lived there. Mr. Marum said one of his main concerns would be the condition of the road - it's very twisty and curvy and narrows down to a point at the end where two cars cannot pass each other, there are school buses that come down this road and it is potentially dangerous - in the years past there have been a number of accidents on the road. Mr. Kenney asked what impact in terms of use would a 13-unit structure place on the road as Mr. Marum sees it. Mr. Marum said there are 17 families who live down the road, what we would do would be to add 13 transit people who we don't know and who will probably not be a family type of person - he said there would be a great deal more traffic.

Mr. Kenney presented to the Board photographs of the dwelling in its present condition and said the ravines and southward going around the property relates to Mr. Lamb's testimony.

Karen Abrams, Esq., co-counsel for the opposition in this case, was called by Mr. Kenney to address the legal issues of change and mistake. Ms. Abrams referred to the memo she had distributed to the Commissioners which she said had also been given to the Planning Commission. Ms. Abrams said when a Zoning Ordinance goes into effect it is presumed that the original zoning is well planned and is permanent, and to sustain a piece-meal rezoning there must be strong evidence of mistake in the original zoning or evidence of a substantial change in the character of the neighborhood. The burden of proving that change or mistake exists is on the applicant, and it is a very difficult burden to overcome, Ms. Abrams said. In addition, she said, even if change or mistake are found, that only permits the legislative body to rezone the property, it does not require them to do so, and this would have to be based on a decision that the rezoning would be good for the neighborhood or beneficial for the neighborhood in general.

Ms. Abrams said the applicant must establish all elements of his or her case - first of all, where is the neighborhood, what particular area constitutes the neighborhood, what changes have occurred since original zoning that affect the property itself - not just the County, not just Lexington Park, but the property itself, and also the fact that these changes result in a character change in the neighborhood that would justify this particular rezoning. If all these things are not established, Ms. Abrams said, then the case has not been proven as required by Maryland Law. If density is requested by a subdivision plan that exceeds the density that is recommended in the Comprehensive Plan, the application can be denied even though it may meet other requirements of the Zoning Ordinance. This rezoning must be in the public interest. Ms. Abrams cited some particular cases for the Commissioners where these questions had not been met and stated that, in her memo, she also goes through particular sections of the Comprehensive Plan that address what is required when you want to have higher density residential or commercial development in waterfront areas, and the fact this this

property is on tidal water and is on particularly sensitive natural areas requires very special attention to how it's going to be developed and the density to which it is going to be developed. She said the Comprehensive Plan has paragraph after paragraph talking about the protection of our water wildlife and breeding areas for clams and rock fish, etc., and not putting those areas in a position where that wildlife is going to be in danger, and said that what Mr. Lamb testified to before shows that we have to be very careful about the erosion, the silt, and what we do to the inlets that come off the River and off the Bay.

This particular area, Ms. Abrams said, is part of what the County has designated a "waterfront Protection" zone, and there are spelled out in the memo some very strict restrictions on developing within the waterfront protection zone. One of the things that is mentioned is that there needs to be at least 350 acres if you're going to have a high density residential development in the waterfront protection zone - it must be connected to water and sewer, there must be adequate road capacity, there must be adequate provision of public infrastructure, there must be preservation of the designated natural areas, a maximum provision of open space according to the housing types in the development and maintenance of public access to the waterfront areas to be considered. Ms. Abrams said she does not think this property meets the requirements either of the Zoning Ordinance, the Comprehensive Plan, or Maryland Case Law.

Mr. Sparling said there are two items before the Commissioners - is there a legal basis for granting the rezoning, and is it advisable? With respect to advisability, Mr. Sparling said, they have 11 acres and are proposing 13 units, only slightly exceeding permitted density. Mr. Sparling said the talk of high density zoning such as Ms. Abrams made reference to works on the assumption of R-15 zoning, which would permit the 165 units. Mr. Sparling said there is a parade of horrors, but it has been made quite clear to this Board what is intended for the property. With respect to traffic, he said, they have precisely, for all intents and purposes, the same impact which would be occasioned by development of this land in the permitted density by single family residences. With respect to water and sewer problems, Mr. Sparling said, he shares Mr. Lamb's and Ms. Abrams' concern with the ecology, but he doesn't think we should decide zoning cases on the basis that the septic system of a faraway trailer court failed; that is what the Health Department is for, and staff report indicates the Health Department has given approval to the type of system that would serve the nature and volume of this particular use. In essence, Mr. Sparling said, the applicant is proposing no greater density, no greater impact, no greater traffic, no greater water and sewer than that which is envisioned by single family improvements.

Mr. Sparling stated that with respect to Mr. Kenney's contention that he was trying to make a "silk purse out of a sow's ear", he submits that he is trying to make a cloth purse out of a sow's ear - the point is that we have to deal with given situations, we have a tract that is in the midst of somewhat improved land. Mr. Ellison's testimony involved a very crucial point, Mr. Sparling said that if this entire neighborhood was more than 50% improved by single family residences, his testimony and recommendations and opinions would differ. With respect to the permissibility, Mr. Sparling said, he has argued change - change in the needs of Lexington Park, change in the demand for housing, a change in the demand for various types of housing. Legally, Mr. Sparling said, this adds up to mistake as opposed to change in the neighborhood. He said it is the same size peg - quantity and quality - it's a question of whether it fits into a round hole for change in the neighborhood, or a square hole called "mistake." Mr. Sparling cited the case of Jobar Corporation vs. Rogers Ford Community Association, 236 Md. 105 (1964)

which he said stands for the single proposition most relevant to this case - the failure of the Zoning Ordinance to address reasonably anticipated needs, and to anticipate the need generated by documented and accepted intensity at Patuxent Naval Air Station of itself can constitute a mistake.

With respect to the other aspect - burden of proof, Mr. Sparling cited to the Board the case of Missouri Realty, Inc. vs. Ramer, 216 Md. 442 (1958), and said the key principal there is that the burden is lighter, somewhat different when you're talking about a change from R to R, as opposed to from R to C. The law recognizes that it is not as onerous a burden to prove change or mistake when you're talking about alteration within a category of use. Mr. Sparling said he felt that, under the applicable burden of proof, that he has established that there has been a change in the area of Lexington Park and the Patuxent Naval Air Station surrounding it, and it should have been anticipated, that the Ordinance does not fully address that need, that there is an omission in the Ordinance, and this falls within that omission. If there were that mythical R-9 category, Mr. Sparling said, that is what he would be applying for, but Mr. Ellison's theory is quite correct - we don't have that mythical category, but this property can meet that need and not prove any greater detriment to the community than what is reasonably expected, and it is upon that premise that he feels the Ordinance contains a mistake in general, a failure to address this, and that he is entitled to a rezoning of R-15 of this particular portion of the property, based upon that mistake.

Mr. Arnold said he had a couple of questions he would like to ask. Mr. Arnold questioned the criteria of one-half mile used in this case to define the neighborhood. Mr. Arnold asked what determines the half mile from a mile or a mile and a half, relating to some other cases that were decided prior to this case?

Mr. Gerred said the Planning Commission takes a recommendation of the staff for what is the neighborhood and establishes the neighborhood by law. The criteria for the establishment is based on a number of things - including density, development, natural features that exist and where natural barriers to development occur. If you're talking about a residential neighborhood, Mr. Gerred said, you're talking about things that would stop a road or continuation of development. In this particular case, he said, the boundary south is the Naval Air Station; going to the North you have a development beginning on the other side of Esperanza Farms which begins a new neighborhood; then from Rt. 235 to the water are the other two sides of this neighborhood. It's just a natural process, Mr. Gerred said - it just happens to be a half mile, and one-half mile is a good range for setting up a neighborhood and making a continuous community in terms of how far children walk and the interaction of the community. In a commercial rezoning case, Mr. Gerred said the edge of the boundary may be a little different because you're looking at something that affects different kinds of situations.

Mr. Dean inquired about the dimensions of the building. Mrs. Beasley said it is approximately 6,000 sq. ft. - 3 floors, a basement. Mrs. Beasley added that each apartment would have one bathroom, one bedroom, a living room with fireplace, a kitchen and dining area.

Mr. Arnold asked if a neighborhood and a community would be the same thing and asked about the fact that the Navy has hired half a dozen people to look into where the new people coming in would locate - would that constitute a change in the neighborhood. Mr. Gerred said in that particular instance that impact would be looked at more as if there is no space for them in the community, no place for them to go because of the demand created, and it would be a mistake that that space wasn't zoned properly, rather than change. Mr. Arnold asked how you



Mr. Sparling proceeded to question the applicant, Mrs. Orie P. "Penny" Beasley. Mrs. Beasley stated that she is, in fact, the applicant in this request, and has owned the property since July 9, 1982. Mrs. Beasley said she came into ownership of the property by virtue of a mortgage foreclosure - she had held the second mortgage on the property, and when the first mortgagor had foreclosed on the previous owner, she had to bid on the property to protect her second mortgage. At the time she acquired the property, Mrs. Beasley said, the existing improvements were present. Mrs. Beasley said she had an architect and a builder look at the structure for stability and for advice on what to do with the property, and they told her to finish it off as a private residence would be prohibitive in the area of just heating, and they suggested that, since it is so huge, the best use would be to convert it into 13 bachelor apartments. Mrs. Beasley said she intends to occupy the right-hand wing herself.

Mrs. Beasley stated that she has applied for rezoning of only a portion of the 11 acres, that she has no intention of seeking approval of the County to erect any additional improvements, and she and Mr. Sparling have discussed dedicating the remaining acreage, either in fee simple or by nature of a perpetual easement, to St. Mary's County to provide open space. Mrs. Beasley said her whole concept was to finish the building and keep the whole remainder of the 11 acres as open space. The only need she would have for the property, she said, would be for subterrestrial sewer facilities and the parking area.

At this point attorney Jim Kenney, representing Green Holly Pond association, opposition in this rezoning case, came forward to question Mr. Ellison. Mr. Kenney asked Mr. Ellison how he would describe the theory of zoning used in the Comprehensive Plan and the Zoning Ordinance for St. Mary's County. Mr. Ellison stated that, if he had to pick a theory, he would say it probably most corresponds to the concentric ring theory - building out from your development area. He said it is sort of a variation between concentric ring and the sector zoning - they both say that you have transition zones and that you are proceeding out from the central area, that things are gradually changing with time.

Mr. Kenney asked Mr. Ellison, in the Comprehensive Plan for St. Mary's County, was there a growth area recognized to accommodate transition & other types of changes for the Lexington Park area, and, if so, where is that area? Mr. Ellison said he has not read the Comprehensive Plan recently and really couldn't answer that question. Mr. Kenney asked him if he was familiar with an urban zone concept, and, if so, was he familiar with where in the County that zone is located? Mr. Ellison replied that no, he was not sure of the definition Mr. Kenney was using with an urban zone context. Mr. Kenney said, if he understands the thrust of Mr. Ellison's testimony relating to the applicant's property, he is really saying that there is no category between R-4 and R-15 that meets his concept of what the needs of Lexington Park might be at this point in its history. Mr. Ellison said that what he is testifying to is that he feels there is a need for another intermediate category that would provide something between the single family detached residence permitted in the R-4 district and the townhouses and multi-family uses permitted in the R-15 district, at some lower density. He said he thinks that is a general need in St. Mary's County and in many counties.

Mr. Kenney asked if, based on his knowledge and experience, Mr. Ellison believes the property to be a good R-15 piece of property. Mr. Ellison said at the permitted density in the R-15 category, no. Based on the present state of the law in St. Mary's County at this time as it relates to Planning & Zoning, Mr. Kenney asked, can your proposal for this piece of property be legally put into effect without rezoning this property to R-15. Mr. Ellison said no, not to his knowledge.

Mr. Kenney asked Mr. Ellison if the St. Mary's County Zoning Ordinance recognizes a mixed use concept so far as residential and certain other uses are concerned, and indicated that to be a permissible, even desired, effect? Mr. Ellison said yes, he thinks mixed uses are recognized and encouraged in the provisions of the Zoning Ordinance for Planned Unit Development, PDR zones of varying densities, and he feels that this particular Ordinance is very strong in encouraging that type of use. Based on that, Mr. Kenney asked, would it be fair to say that the Zoning Ordinance does recognize the mixed use concept and has made provision for the mixed use concept in appropriate areas? Mr. Ellison said yes it has, but the regulations as they exist in the Ordinance provide certain limitations on area requirements for different size planned unit developments, and if you are working in an area or you are looking in an area that is somewhat chopped up, as many areas of the County are, there is no way to utilize the PDR requirements to achieve a mixed use concept except under combined properties.

Mr. Kenney asked what would be the planning theory behind requiring larger tracts of land to implement the mixed use theory? In basic, Mr. Ellison replied, you need a reasonable-sized piece of property, usually with a variety of terrain on it, to provide a variety of dwelling units in the appropriate setting. In other words, if you had a large, flat area that might be appropriate for apartments you wouldn't want to use that for single family detached, and, conversely, if you had a wooded area with some steep slopes, you wouldn't want to mass grade that and put apartments on it. So the idea of the land mass is to, hopefully, a number of physical features that can be used in different formats, advantageous ways to produce the end product. Mr. Kenney asked if an 11 acre tract lends itself of this type of planning concept. Mr. Ellison replied, "Not usually."

Mr. Kenney asked if there is any relationship between the R-4 zone and the R-15 zone, something that they have in common that gives the opportunity for increased density? Mr. Ellison said he believes the only two items they have in common is that you can use two family dwellings or duplex-type dwellings in the R-4 zone with certain limitations, and you can use those in the R-15 zone. Mr. Kenney asked if there is any type of infrastructure requirements that relate to more intense use of property? Mr. Ellison said yes, you normally require public water and sewer facilities, depending on the number of units proposed you may or may not require particular road improvements or a road network that would serve a property, and then there would always be the proximity to other public facilities - libraries, schools, firehouses. Mr. Kenney asked if this property has public water and sewer. Mr. Ellison replied that it does not.

When Mr. Ellison testified, Mr. Kenney asked, regarding the best use of the property, would he define for the record what he means by the "best use of the property?" Mr. Ellison stated the "best use of the property" as he described here was what he thought was appropriate if somebody gave him that particular piece of property and there were relatively few constraints upon it and he could sort of "play with it" and decide what would look attractive and what would work out well, and what would fit on it quite well. With a minimum number of constraints, Mr. Ellison said, the use he described could work quite nicely - it could be a very attractive living experience. Mr. Kenney asked Mr. Ellison if his definition had anything to do with the normal concept used in appraisal techniques of highest and best use, looking to its economic value. Mr. Ellison said there may be some similarities, but that was not the intent.

would differentiate between a neighborhood and a community. Mr. Gerred said a neighborhood originated as an area to serve an elementary school in a built up area - he said that has changed somewhat because of bussing, but that is how it originated.

Mr. Sparling said the concept of defining a neighborhood by a half-mile radius, one-mile radius, and two mile radius - none of these are permissible criteria. He said you can have a neighborhood which is a very small or a very large unit, depending upon circumstances. He said you can have a change to that which constitutes a basis for rezoning, or you can have what you commonly think of a mistake - that property which should have been zoned something else and is just an oversight. Mr. Sparling said what he has is a change in the community which, although it's changed, is legally defined as a mistake.

Mr. Kenney responded that when we talk about change or mistake rule and change in the neighborhood we're talking about something a little more circumscribed than what Mr. Sparling was referring to, and he said the law isn't a change in the neighborhood it's a change in the character of the neighborhood. Whether you apply that very concentrically to a half mile radius or a service area or whether you apply it to the entire town of Lexington Park, he said, you can't do that because actually the character hasn't changed. He said Mr. Sparling is correct - if you're adopting that concept of not anticipating a need in the neighborhood then that is really a mistake, as far as the law is concerned.

Mr. Kenney said there are two things that have to be considered - one is the whole concept of whether or not the change was anticipated, and Mr. Kenney said he thinks if you read the Comprehensive Plan and the Zoning Ordinance they do deal with those types of problems that they have in Lexington Park. The Second issue, he said, was the burden of proof, and, although Mr. Sparling says he may not have as great a burden of proof because this is R to R, there is absolutely no proof before the Board that the types of changes in terms of growth of the Naval Air Station were not anticipated; in fact, he continued, the Comprehensive Plan and the Ordinance indicate that it was anticipated. When you are talking about mixed use communities in a waterfront area Mr. Kenney said, the Ordinance is very clear about how you would deal with that - there are reasons why you use large tracts to do that sort of thing, to do the internal planning techniques that are necessary to make the mixed uses work - you don't do it with an isolated piece of land of eleven acres.

Mr. Aud asked if there was anyone in the audience who wished to speak in favor of or opposed to this rezoning. Mrs. Barbara Davidson ("Dolly"), said she has owned her property since 1948, and she said from her dining room window to the wall of Ms. Beasley's property is 195 feet. Mrs. Davidson said she was concerned from a safety point of view - if you have 13 young men living in a house, they're all going to have at least a car and probably a motorcycle also. The driveway, she said, goes right by the bus stop and the people living there are very cautious because they are family people, but from a safety point of view having that many more single people there changes the characteristic from a community standpoint.

Mrs. Beasley said, in closing, she would like to say that the 13 bachelor apartments that she proposes there would not cause any greater density; as a matter of fact, far less density would be caused by 13 bachelor apartments than there would be if she were to sell that property off in one acre lots, creating a density of approximately 45-50 people. Mrs. Beasley said the property has woods to the right, woods to the left, the water on one side and the State road on the other, so that basically when you drive into the property you see nothing to the left and nothing to the right.

Commissioner Aud stated that the Commissioners would hold the record of this hearing open until the 26th of April, providing an opportunity for anyone who wished to review the case and rebut anything that's in the record.

The hearing was adjourned.

INDUSTRIAL SITE PLAN  
NO. 82-1386 PINE HILL PARTNERSHIP

Present: Frank Gerred, Director, Office of P&Z

(Requesting industrial site plan approval and waiver of the storm water management requirement. Located at the St. Mary's Industrial Park.)

Mr. Gerred presented the referenced Site Plan and indicated that the Commissioners had previously granted approval for Building No. 1 and approval is now needed for Buildings No. 2 and No. 3. It has the approval of all appropriate agencies and the Planning Commission has recommended approval to the County Commissioners.

Commissioner Dean moved, seconded by Commissioner Millison, to approve said site plan. Motion unanimously carried.

It was noted for the record that the neighborhood considered in this Site Plan is Rt. 235 from the Naval Air Station to Far Cry Road.

HOSPITAL BOND REFUNDING ISSUE

Present: Joseph P. O'Dell, Director, Budget & Data Services

Mr. O'Dell presented a memorandum dated April 5 setting forth the particulars regarding the Hospital Bond Refunding Issue and requesting two decisions by the Board:

1. The method to be used in negotiations for the new general obligation issue;

Mr. O'Dell stated that after reviewing the proposals from Alex Brown & Sons and Baker, Watts & Co. that it was his recommendation that the "net cash refunding - deferred debt service saving" method be used.

The Commissioners concurred in this recommendation.

2. The firm to negotiate with.

Mr. O'Dell stated that based on discussions with the two firms, it was his recommendation to select Alex Brown & Sons as the underwriting firm. Discussion ensued as to the selection of a financial advisor and it was agreed to Mr. O'Dell would endeavor to search for an independent firm outside the State of Maryland.

OFFICE OF COUNTY ENGINEER ITEMS

Present: John Norris, County Engineer

FLASHING BARRICADES  
BID TALLY SHEET

Mr. Norris presented the bid tally sheet for the referenced project and recommended awarding the bid to Selecto-Flash, the lowest bidder. Commissioner Millison moved, seconded by Commissioner Arnold. Motion unanimously carried.

RESOLUTION NO. 83-09  
CHANGES TO ROAD STANDARDS

Based on a previous decision by the Board to approve the plates for the changes to road standards, Mr. Norris presented Resolution No. 83-09.

Commissioner Dean moved, seconded by Commissioner Aud, to approve and sign said Resolution. Motion unanimously carried.

DRIVEWAY ENTRANCE PERMITS

Mr. Norris presented the following Release and Assignment for Driveway Entrance Permits that the county has received payment from the bonding company:

<u>Principal</u>	<u>Amount</u>	<u>Permit No.</u>
J&T Homes, Inc.	\$410	79-B0956
" " "	\$410	79-B0639
" " "	\$427	79-B0638
" " "	\$365	79-B0721
" " "	\$365	79-B0352
" " "	\$365	79-B0722
" " "	\$365	79-B0835
" " "	\$365	79-B0917
" " "	\$365	79-B0918
" " "	\$365	79-B0919
" " "	\$365	79-B0920
" " "	\$365	79-B0921
Cecil Hepner	\$405	79-B0040
Cecil Hepner	\$405	79-B0113

Commissioner Arnold moved, seconded by Commissioner Millison, to approve and authorize Commissioner President Aud to sign said Release and Assignments. Motion unanimously carried.

BID TALLY SHEET  
"T" HANGAR UNITS  
ST. MARY'S COUNTY AIRPORT  
PROJECT NO. SM 83-4-2

Mr. Norris advised that bids were solicited for the referenced project and no bids were received. He stated that there was not enough support by aircraft owners for this type of building.

PRE-APPLICATION  
AIRPORT IMPROVEMENT PROGRAM

Mr. Norris presented the referenced Grant Pre-Application for Land Acquisition, Obstruction Removal and Airport Navigation Aids which is a budget authorized project.

Commissioner Sayre moved, seconded by Commissioner Dean, to approve and authorize Commissioner President Aud to sign said Grant application. Motion unanimously carried.

REIMBURSEMENT TO COUNTY EMPLOYEE  
DAMAGE TO VEHICLE

The County Engineer requested the Commissioners' consideration for reimbursement to Mr. Cooper whose vehicle was backed into while working at the Clements Landfill. The cost for repairs is \$158.00.

Commissioner Dean moved, seconded by Commissioner Arnold, to reimburse Mr. Cooper as recommended. Motion unanimously carried.

LEXINGTON PARK STORM DRAINAGE  
EASEMENT - FINNICOM PROPERTY

Mr. Norris advised that only one more easement needs to be acquired for the referenced project; namely, the Finnicom property. Mr. Finnicom has agreed to grant the easement to the County.

1981 DRIVEWAY ENTRANCE PERMIT  
COUNTRY LAKES - ISRAEL SWAREY

Mr. Norris advised that the developer of the referenced project, Israel Swarey, has posted a certified check for the driveway entrance permit. Mr. Swarey has not indicated a willingness to complete the work in a timely manner and Mr. Norris has recommended setting a deadline of June 1, 1983. If the work is not completed by that date Mr. Norris said the driveway will be completed by the County. The Commissioners indicated their support of this recommendation.

PROJECT NO. SM 83-1-5  
AGREEMENT FOR RENTAL CONTRACT

Mr. Norris presented an Agreement by and between Board of St. Mary's County Commissioners and Raymond Woodburn for the referenced project. Commissioner Millison moved, seconded by Commissioner Sayre, to authorize Commissioner President Aud to sign said Contract. Motion unanimously carried.

ASSIGNMENT OF FUNDS AGREEMENT  
EDWARD J. AND MAXINE W. COOK

Mr. Norris presented an Assignment of Funds Agreement dated April 5, 1983 by and between Mercantile Mortgage Corporation and Mercantile Safe Deposit & Trust Company and the Board of County Commissioners for the completion of grading and stabilization in compliance with the County's Grading Ordinance for Forest Run Drive in Forest Run Subdivision owned by Edward J. Cook and Maxine W. Cook. Commissioner Sayre moved, seconded by Commissioner Arnold to approve said Agreement. Motion unanimously carried.

ACCEPTANCE OF DEED  
RIVER HILL ROAD AND RIVER ROAD

Mr. Norris presented a Deed dated February 18, 1983 by and between Joseph A. Dillow and Betty D. Dillow and the County Commissioners of St. Mary's County conveying to the County River Hill Road and River Road located in Town Creek Manor Subdivision, Section 1-C, Block A, B, C, Eighth Election District.

Commissioner Millison moved, seconded by Commissioner Aud, to accept said Deed. Motion unanimously carried.

CLOSING OF McINTOSH ROAD

Mr. Norris advised that it would be announced through the news media next week that McIntosh Road will be closed to through traffic in order for dirt to be moved across the bridge. Appropriate agencies (Board of Education, Fire Departments and Rescue Squads, Sheriff, State Police, etc.) will be notified as well.

SURFACING PROGRAMS

Mr. Norris advised the Commissioners that the \$300,000 program for surface treatment did not include preparatory work. He further advised that the recommended budget did not include funds for the slurry seal program. He stated that the asphalt overlay program is in the recommended budget and a schedule of those projects is awaiting their decision. He advised that if the funding remained as currently set forth in the recommended budget that he would have to reorganize the surfacing schedule and expend considerably more money by using asphalt overlay program versus slurry seal program. This would amount to about a six-fold increase in cost.

The Commissioners expressed concern regarding this matter and requested Mr. Norris to withhold any decision until they had an opportunity to discuss the funding and the issue of the restricted transportation bond funds for the slurry seal work with the Director of Budget and Data Services.

DUKE'S RETREAT SUBDIVISION

Mr. Norris advised the Commissioners that funds were not included in the Recommended Budget for the improvement of roads in Duke's Retreat Subdivision. He requested concurrence from the Board to use the Asphalt Overlay account to do this work in that the County had made a prior commitment for this project. The Commissioners gave their concurrence.

FY '83 - '84 BUDGET HEARING SCHEDULE

Commissioner Dean stated that the budget hearings had been scheduled for April 26 and 27 and because of a conflict in his schedule requested the Commissioners' concurrence in changing the dates. After discussion it was agreed to change the Budget Hearings to May 2 (Board of Education) and May 3 (All other Departments).

ORGANIZATION

COUNTY DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT

As a follow up to a memorandum dated February 17, 1983 to the Commissioners regarding the establishment of a County Department of Economic and Community Development, Commissioner Dean moved, seconded by Commissioner Aud to accept the recommendations as set forth in said memorandum. Motion unanimously carried.

RESOLUTION NO. 83-05 AND NO. 83-06  
TAX ABATEMENT (ST. MARY'S GARDEN APARTMENTS)

The County Administrator presented the referenced Resolutions (No. 83-05 for FY '81-'82 and No. 83-06 for FY '82-'83) for the Tax Abatements for St. Mary's Garden Apartments for the Commissioners' review and signatures.

Commissioner Sayre moved, seconded by Commissioner Aud, to approve and sign said Resolutions. Motion unanimously carried.

ZONING AMENDMENT RESOLUTION NO. Z83-05  
OTTILIA R. SCHAFFER - ZONE #82-1276

(Request to rezone a parcel of land consisting of 3.017 acres between the north and south bound lanes of Md. Rt. 5 and known as Parcel 24, Block 14 on Tax Map 9, Fifth Election District, from AR (Agricultural Residential) to C-2, Commercial.)

Commissioner Sayre moved, seconded by Commissioner Arnold, to approve and sign said Zoning Amendment Resolution No. Z83-05. Motion unanimously carried.

ADJOURNMENT

The meeting adjourned at 4:50 p.m.

Approved,

  
\_\_\_\_\_  
President