

BOARD OF COUNTY COMMISSIONERS' MEETINGTuesday, December 20, 1988

Present: Commissioner Carl M. Loffler, Jr., President  
 Commissioner Robert T. Jarboe  
 Commissioner John G. Lancaster  
 Edward V. Cox, County Administrator  
 Judith A. Spalding, Recording Secretary

(Commissioner Bailey was not present.)

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

APPROVAL OF MINUTES

Commissioner Thompson, moved, seconded by Commissioner Lancaster, to approve the minutes of the Commissioners' meeting of Tuesday, December 13, 1988. Motion carried.

APPROVAL OF BILLS

Commissioner Bailey moved, seconded by Commissioner Jarboe, to approve payment of the bills as presented. Motion carried.

RESOLUTION NO. 88-34USE OF COMMUNITY DEVELOPMENT ADMINISTRATION FUNDS

Present: Joseph Mitchell, Director, DECD  
 Dennis Nicholson, Deputy Director, DECD

The referenced individuals appeared before the Commissioners to present a Resolution for the Commissioners' signatures approving the development of rental housing at Patuxent Woods to be financed in part by the Community Development Administration of Maryland.

After discussion Commissioner Lancaster moved, seconded by Commissioner Thompson, to authorize Commissioner Loffler to sign the Resolution as presented. Motion carried.

COUNTY ADMINISTRATOR ITEMS

Present: Edward V. Cox, County Administrator

1) APPOINTMENTS  
BOARDS, COMMITTEES AND COMMISSIONS

Commissioner Lancaster moved, seconded by Commissioner Jarboe, to make the following appointments:

<u>Adult Public Guardianship Review Board</u>	<u>Terms to Expire</u>
Brady P. McKaig	12/31/91
<u>Agriculture Commission</u>	
Karen J. Gailey	12/31/91

2) AIRPORT COMMISSION BY-LAWS

Commissioner Thompson moved, seconded by Commissioner Jarboe, to approve the by-laws for the Airport Commission and to sign and forward correspondence to the Chairman of the Airport Commission indicating compliance with Resolution No. 88-03 and approval of the by-laws. Motion carried.



3) MARYLAND YOU ARE BEAUTIFUL  
SENIOR CITIZEN CREATIVE WRITING CONTEST

Commissioner Thompson moved, seconded by Commissioner Lancaster, to sign and forward correspondence to Ms. Floraine Applefeld of the Governor's Office designating Gene Carter, Director, Office on Aging, to represent St. Mary's County in the Second Annual "Maryland You Are Beautiful" Senior Citizen Creative Writing Contest. Motion carried.

4) S.M.I.L.E. ADULT DAY CARE  
TRANSFER OF GRANT FUNDS TO COUNTY GOVERNMENT

The County Administrator presented documentation relative to the formal transfer of \$19,946 of State of Maryland grant funds for the S.M.I.L.E. Program to County Government.

Commissioner Thompson moved, seconded by Commissioner Lancaster, to authorize Commissioner Loffler to sign the the documents relative to the transfer of grant funds. Motion carried.

5) CORRESPONDENCE TO ST. MARY'S COLLEGE

Relative to correspondence from the Vice-President for Planning and Research, St. Mary's College regarding the College's use of county property on Lei Drive, the County Administrator presented a response indicating the County's willingness to make the property available as described.

The Commissioners agreed to sign and forward the letter.

6) JUVENILE JUSTICE ADVISORY COUNCIL GRANT  
ASSESSMENT AND DAY TREATMENT PROGRAM

On behalf of Walden/Sierra the County Administrator presented the referenced grant application for Children in Need of Supervision (CINS) Assessment and Day Treatment Program and requested the Board to sign correspondence to the Governor's Juvenile Justice Advisory Council in support of the funding of the program.

Commissioner Lancaster moved, seconded by Commissioner Jarboe, to authorize Commissioner Loffler to sign the letter as presented. Motion carried.

7) CONTRACT SERVICE AGREEMENT  
HIGH RISK YOUTH SPECIALIST

The County Administrator presented a Contract Service Agreement with Ann Kovalchik as High Risk Youth Specialist, providing support services to the Office of Community Services for the County Alcohol and Drug Abuse Prevention Program.

Commissioner Lancaster moved, seconded by Commissioner Thompson, to approve the Contract Agreement as presented. Motion carried.

8) POWER PLANTS

The County Administrator presented a memorandum dated December 15, 1988 from the Director of Finance requesting authority to begin exploratory negotiations with PEPCO regarding location of power plants in St. Mary's County.

During discussion Commissioner Jarboe recommended that BG&E and any other energy providers also be contacted.

After discussion Commissioner Lancaster moved, seconded by Commissioner Jarboe, to authorize staff to proceed with negotiations with PEPCO, BG&E, and other energy providers regarding location of power plants. Motion carried.



9) SELECTION OF VICE-PRESIDENT

The County Administrator reminded the Commissioners of their policy to select a Vice-President of the Board alphabetically on an annual basis. Therefore, Commissioner Thompson moved, seconded by Commissioner Jarboe, to appoint John G. Lancaster, as Vice-President, effective January 1, 1989. Motion carried.

DEPARTMENT OF PUBLIC WORKS

Present: John B. Norris, Jr., Director  
Dan Ichniowski, Engineer

1) CAPITAL PROJECT STATUS REPORT

Mr. Norris and Mr. Ichniowski presented and reviewed the Department of Public Work's Capital Project Status Report setting forth the status as of December 31, 1988 for Engineering, Highways, Marine projects, and Solid Waste. With regard to the Dukehart's Creek project, Commissioner Jarboe moved, seconded by Commissioner Lancaster, to proceed with condemnation for the obtaining of easements. Motion carried.

2) CLAIMING LETTER OF CREDIT  
NATIONAL MOBILE HOME PARK - SECTION 5

Mr. Norris presented correspondence addressed to Maryland Bank and Trust claiming Letter of Credit in the amount of \$23,000 for Grading Permit No. 88-29 for National Mobile Home Park - Section 5.

Commissioner Thompson moved, seconded by Commissioner Lancaster, to authorize Commissioner Loffler to sign the letter claiming letter of credit. Motion carried.

OFFICE OF PLANNING AND ZONING  
INDUSTRIAL SITE PLAN NO. 88-1379  
ST. MARY'S COUNTY AIRPORT - NEW HANGARS

Present: Jon R. Grimm, Director, Office of Planning and Zoning  
Robin Guyther, Deputy Director, Office of Planning and Zoning  
Joe Densford, County Attorney  
Edward V. Cox, County Administrator.  
Peggy Childs, Secretary, Office of Planning and Zoning

Members of the audience included: Vince DelGavio, Michelle Brosco, Jim Chesley, D. Breslaur, Mary G. Fleury, George J. Fleury, Phiip H. Dorsey, III, and Shane Mattingly.

STSP88-1379, COUNTY AIRPORT T-HANGAR  
Seeking site plan approval for an additional hangar at the County Airport. The property is zoned Industrial and is shown on Tax Map 34, Block 76 as Parcel 299.

Present: Mr. Dan Ichniowski, County Engineer

Mr. Ichniowski stated that when the existing T-hangars were put in, paving was not put in; there was a problem because of this and it was necessary to come back and put in marsh mats, and we now have an agreement with the manager that this area will be paved. This project will construct a hangar, the ramps going to the mats and a ramp in the back. Mr. Ichniowski proceeded to elucidate on the site plan and the use of space at the airport.

Mr. Guyther remarked that this plan has been approved by the Airport Commission and the Planning Commission has recommended approval.



A motion was made by Mr. Thompson and seconded by Mr. Lancaster to sign the site plan approval for an additional hangar at the County Airport. Motion was unanimously carried.

SUB#8801081: FLEURY PROPERTY

(Planning Commission Appeal)

Requesting a waiver of public road requirements to add a twelfth dwelling on a private right-of-way off Bull Road. The property is zoned R-1 and is shown on Tax Map 40, Block 21 as Parcel 61.

Present: Dr. George Fleury, Applicant  
Mary G. Fleury, Applicant  
Phil Dorsey, Legal Representative  
Joe Densford, County Attorney  
Ed Cox, County Administrator

Mr. Phil Dorsey stated that the applicant had been before the County Commissioners approximately a month ago and, at that time, the Commissioners asked that the County Attorney review this Appeal in depth. Mr. Dorsey stated that he has spoken with Mr. Densford and he indicated he would give his opinion on this.

Mr. Dorsey introduced Dr. Fleury and reiterated the information he had presented at the County Commissioners meeting held November 1, 1988, i.e., that Dr. Fleury was appealing the Planning Commission's decision withholding the granting of a waiver which would allow Dr. Fleury to add another dwelling unit to his property. Dr. Fleury and his family have five houses on his property and there are, at present, eleven using the private road. Dr. Fleury feels the regulations regarding the number of lots or dwellings on a private road, which are contained in the subdivision requirements, do not apply to him since he is not subdividing.

Mr. Dorsey explained that Dr. Fleury wished to obtain a building permit to build a house for another member of his family. Mr. Dorsey also cited Section 40.01., 2.g. of the Zoning Ordinance which allows for a single lot to have more than one principal place of residence or building as long as the residence was for a relative in consanguinity and providing a minimum lot area is allocated each dwelling. Mr. Dorsey stated further that the Planning and Zoning Office position has been that it would fall under the subdivision regulations and would not be exempt from the road requirements which would increase the burden on this particular road. Mr. Dorsey feels that under the Zoning Ordinance 41.05, the exceptions previously noted were established. Mr. Dorsey further disclosed that he had obtained assent from all of the adjacent property owners, and they have absolutely no opposition to Dr. Fleury building another house on his property.

At this time, Dr. Fleury addressed the Commissioners and reiterated his testimony given at the County Commissioners meeting of November 1, 1988, i.e., disclosed how long the property had been in the possession of his family, and that at one time they were told they could build as many houses as they wished as long as they were for family members. Dr. Fleury stated that this is a year-round residence, and the only regulation they can find that affects the residences on a County road is the subdivision ordinance itself, which states that exempt from these regulations are lots of record. Dr. Fleury concluded by stating he felt it would be within the stipulations of the County Ordinance to give them the permit.

Mr. Dorsey pointed out that if they were allowed to have the permit to build a house for their son, that individual could not sell his house without the assent of everyone involved. Mr. Dorsey remarked that this was a unique situation and a very important point.



Mr. Densford added that, basically, the legal challenge in this case is the prohibition against more than 8 lots on a privately owned and maintained road, which is contained in the subdivision regulations. Mr. Densford stated that he thinks when the Ordinance is rewritten this limitation will be placed in the Zoning Ordinance, not just in the subdivision regulations and this will cure the problem with which the Commissioners were faced.

Mr. Densford further commented that he believes the intent was to have a broader impact, beyond the subdivision regulations and to extend to situations such as this. Mr. Densford stated that he is not recommending that this section be interpreted in a manner which would determine this section does not apply because he thinks it does, but is placed, unfortunately, in the wrong legal context. However, Mr. Densford pointed out that the Commissioners have the right under the subdivision regulations to grant waivers of those rules, and permit this as a waiver if they feel there are extenuating circumstances and that it will not set a precedent which will cause problems in the future.

Mr. Densford noted that one of the mitigating factors against a precedence setting decision, if the waiver is granted, is that, hopefully, within the next six months we will have a new Zoning Ordinance which will prevent this situation from reoccurring.

In addition, Mr. Densford wished to point out that if the Commissioners decided to grant a waiver, then it is important to note for the record, that the County would not be bound in permitting a subdivision of these various dwellings. Dr. Fleury believes this is in the interest of his family, but it is possible a situation could arise in the future where some family members would want to sell, which would lead to a subdivision situation, and the County would be asked to subdivide these properties when they may not be dividable. It would be possible to end up with more than one house on a lot. Mr. Densford concluded by stating that the County would not be creating that situation, since it would be the result of the owner's request.

Mr. Loffler stated that, in his view, it is the intent of the regulation to maintain adequate roads for St. Mary's County. No matter where it is, or who the parties are, it is still the same regulation which was meant to upgrade an inadequate road, and there is nothing here that changes the intent of the regulation, and multiple people on a gravel road is substandard.

After a brief period of discussion, Commissioner Thompson moved that the Commissioners approve Dr. Fleury's request for a building permit for his son. There being no second to the motion, further discussion ensued.

Mr. Guyther pointed out that the situation is clouded, which is why, on the issue of the road, it was taken to the Planning Commission, who recommended that these new regulations be written, to ask for an interpretation. Their interpretation was that the intent of these regulations was to insure there could be no more than eight dwellings on a road. There is some vagueness in the regulation, but, again, the Planning Commission interpreted the regulation to say that there could not be more than eight dwellings on a road.

Mr. Densford commented that the interpretation has been consistent to mean dwellings as well as lots of record--this is a pre-existing lot of record, there is no question about that, and those are excepted from the regulations; this concerns not just lots of record, but the number of dwellings involved, and when those are counted, it is over the limit. In response to a question from Mr. Dorsey, Mr. Densford pointed out that the question is not density, or permission to build a certain number of dwellings on a lot, the question is what kind of a road must serve those lots and must serve those dwelling

At this time, Mr. Dorsey asked whether or not it was possible for this piece of property to be subdivided, to which Mr. Guyther responded in the affirmative, if a public road was established.



Through further discussion, it was determined that Dr. Fleury did have two options, which were to bring the road up to County standards, or establish a parallel road, either of which would put him in compliance with the Zoning Ordinance.

Mr. Guyther commented that he wished to make it clear that even if the road issue is settled, there is a zoning and density issue that has changed since this application originated, and the zoning may not allow another house on the lot.

Mr. Dorsey noted that they had no objection to a deferment on this matter if they left today knowing that the same rules as exist today would apply in the future, and also requested time to explore other avenues such as subdividing and bringing the road up to county standards or establishing a parallel road. Commissioner Loffler stated that he could not give the applicant that assurance.

There being no motion and second, Commissioner Loffler deferred a decision on the application for one month.

OFFICE ON AGING  
REVISED PROPOSAL - S.M.I.L.E. ADULT DAY CARE

Present: Gene Carter, Director, Office on Aging  
Sigfried Wolff, State Office on Aging  
Daniel Ichniowski, Department of Public Works  
Grace Loffler, S.M.I.L.E.  
Norman Breslauer, "

The referenced individuals appeared before the Commissioners to present revised proposals with regard to S.M.I.L.E. Adult Day Care Construction. Mr. Carter outlined the original commitments by the County for the donation of two parcels (north and south of the county) and participation in the funding for two adult day care centers. After the County assumed the responsibility of S.M.I.L.E., these commitments were re-examined. Mr. Carter stated that it would be in the best interest of the elderly community to change direction.

Therefore, the Office on Aging proposes that the Weisman Center (Carver Heights) be revised to a combined center to provide adult day care and full service senior center. With regard to the Charlotte Hall location (Ripple Center), Mr. Carter indicated that it would be premature to make a commitment to build a facility at this time; therefore, the application to the Department of Health and Mental Hygiene for a new facility is being withdrawn. In its stead Mr. Carter recommended that the County enter into a lease agreement for a building on Rt. 247 (previously Oakville Day Care Center).

During discussion Mr. Carter explained the costs and funding for the Weisman Center stating that estimated construction costs is approximately \$800,000 (Day Care portion - State funds: \$300,000; County funds: \$99,049; Senior Center portion - \$200,000; County funds: \$200,000)

In conclusion Mr. Carter requested the Commissioners' approval of the following:

1. To authorize Department of Public Works to proceed with architectural/engineering work on a combined facility in order to develop reliable cost estimates.
2. To authorize Office on Aging to move forward with a Senior Center Capital Improvement Grant Application to State Office on Aging in the amount of \$200,000.
3. To authorize County Administrator and Director of Finance to identify and recommend source of funds for county match for the state grant.



After discussion, Commissioner Lancaster moved, seconded by Commissioner Thompson, to accept the referenced recommendations. Motion carried.

COMMENDATIONS

The Commissioners presented the following Commendations:

Leonardtwn High School Girls Field Hockey Team - For winning first place in the 3A Division in the State Championships.

Great Mills High School Girls Volley Ball Team For winning second place in the 2A Division in the State Championships.

Francis Taylor - For twenty years of dedicated service as a member of the Metropolitan Commission.

EXECUTIVE SESSION

Present: Edward V. Cox, County Administrator

Commissioner Jarboe moved, seconded by Commissioner Lancaster, to meet in Executive Session in order to discuss matters of Personnel. Motion carried. The Session was held from 11:55 a.m. to 12:30 p.m.

7:00 P.M.

PUBLIC HEARING

USERS FEES FOR CONSTRUCTION AND DEVELOPMENT

Present: Charles H. Wade, Jr., Director of Finance  
Bruce Jennings, Cox, Long and Colvin

Present in Audience: John Norris, Director, Public Works, Dan Ichniowski, Public Works; Jon Grimm, Director, Planning and Zoning; Robin Guyther, Deputy Director, OPZ; Edmund Wettengel, developer; Woodrow Conner; Mary Whetstine; Floyd Williams; Joe Sedlock (Enterprise); Louis Eberle; Minnie Russell; John Brigham; John Quade; Tom Morris (Simmons Cable); Leonard Greess; Jim Spence (Assessment Office); Herb Redmond; Joseph Gough (Planning Commission).

The Board of County Commissioners conducted a public hearing to address the adoption of a revised fee schedule for the review, evaluation, and processing of construction and development project application submissions to the Office of Planning and Zoning and the Department of Public Works. the County Commissioners have determined that the fees charged to the developers for the County to review, evaluate, and process construction and development project applications, in order to ensure compliance with County zoning regulations and other requirements, should cover the costs incurred by the County to provide these services. The current fees have been determined to be inadequate and the revised fee structure will enable the County to recover these costs on an equitable basis from applicants.

Mr. Wade read the notice of public hearing.

Mr. Wade reviewed particulars regarding the General Fund Budget including revenue sources.

Mr. Jennings reviewed the Summary Presentation regarding the Construction and Development User Fee Schedule and proposed Schedule of Fees.


The hearing was opened to questions and comments from the audience.

After questions and comments, the public hearing was closed, and the Commissioners may make a decision after a ten-day waiting period. A tape of the hearing is on file in the Commissioners' Office.

ADJOURNMENT

The meeting adjourned at 9:40 p.m.

APPROVED,

  
Carl M. Loffler, Jr.  
President