

BOARD OF COUNTY COMMISSIONERS' MEETING

Tuesday, August 15, 1989

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

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

APPROVAL OF MINUTES

Commissioner Thompson moved, seconded by Commissioner Lancaster, approve the minutes of the Commissioners' meeting of Tuesday, August 8, 1989.

Commissioner Loffler requested corrections to the minutes with regard to Local Government Insurance Trust and Supervisors of Elections.

Commissioner Jarboe indicated that he has objection to the portion of the minutes regarding the signing of the Impact Fee Resolution for the following reasons:

- ° There was no opportunity to look at the Resolution before it was signed.
- ° There was no discussion as to its implementation
- ° There was no discussion regarding the October 4 Resolution that established the \$2500 (school construction) fee as to what would happen to those individuals who received a Certificate of Occupancy after April 1, 1989.
- ° There is a question as to whether this was a violation of the Open Meetings Law.

Commissioner Bailey stated he opposed the method by which the decision and Resolution were made and prepared and stated for the record the following:

- ° That the Impact Fee question was not on the agenda for decision. It should have been.
- ° That the Resolution was prepared without being called for in public session. It should have been.
- ° That he was not notified in advance that it would be signed at Green Holly. He should have been
- ° That he did not see the Resolution until Wednesday.
- ° He requested that the Resolution be called for a vote, voted on, and signed in public session.

Commissioner Jarboe voted in favor of approval of the minutes with the exception of the portion related to the signing of the Resolution for the Impact Fee. Commissioner Bailey voted against the motion. Motion carried four to one.

APPROVAL OF BILLS

Commissioner Thompson moved, seconded by Commissioner Lancaster, approve payment of the bills as presented. Motion carried.

ST. MARY'S COUNTY ALLIANCE FOR ALCOHOL AND DRUG ABUSE

Present: Joe Dick, Coordinator

Mr. Dick advised that the Governor's Commission on Drug Abuse has requested the local Alliance to submit a report addressing the needs and concerns of our community regarding alcohol and drug abuse. He, therefore requested authorization by the Board for Commissioner Loffler to sign correspondence to the Governor's Commission forwarding a report on the needs and concerns and a "battle plan" on the "War on Drugs."

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

MARYLAND SMALL CITIES
COMMUNITY DEVELOPMENT BLOCK GRANT

Present: Joseph Mitchell, Director, Economic & Community Development

Mr. Mitchell advised that \$10,000 had been awarded to St. Mary's County for the Small Cities Community Development Block Grant for the County's Affordable Housing Strategy Development project, and, therefore, presented a Grant Agreement for the Commissioners' approval.

Commissioner Lancaster moved, seconded by Commissioner Thompson, to authorize Commissioner Loffler to sign the Grant Agreement as presented. Motion carried.

COUNTY ADMINISTRATOR ITEMS

Present: Edward V. Cox, County Administrator

1) SUPERVISORS OF ELECTIONS

As a follow up to last week's discussion, the County Administrator presented correspondence addressed to the Supervisors of Elections clarifying compensation issues. The Commissioners agreed to sign and forward the letter.

2) COMMUNITY COLLEGE MEETING

The County Administrator presented correspondence inviting the legislators to attend a meeting with John Sine, President of the Charles County Community College on August 30 to discuss alternative sites for a St. Mary's community college. The Commissioners agreed to sign and forward the letter.

3) BLESSING OF THE FLEET

The County Administrator presented correspondence for the Commissioners' signatures welcoming the public to the Twenty-second Annual Blessing of the Fleet, and which will be placed in the Seventh District Optimist Club booklet to be distributed at the event. The Commissioners agreed to sign the letter.

4) INNOVATIVE AND ALTERNATIVE SEWAGE DISPOSAL SYSTEMS

The County Administrator presented correspondence from the Department of Health and Mental Hygiene forwarding an updated Innovative and Alternative Sewage Disposal Agreement and requesting Commissioner Loffler's signature. Mr. Cox indicated that unspent grant money will remain available to the County for replacement of failing septic systems, and that St. Mary's County is allowed to continue the program on a year-to-year basis.

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

5) TRI-COUNTY COMMISSIONERS' MEETING

The County Administrator presented correspondence addressed to the President of Tri-County Council, Robert Jarboe, recommending that the issues addressed in his August 1 letter be addressed at the next Tri-County Commissioners' meeting.

The Commissioners agreed to sign and forward the letter.

6) CLEARINGHOUSE PROJECT NO. MD890719-0561
FmHA RURAL RENTAL HOUSING
MAYFLOWER MEWS APARTMENTS

The County Administrator presented the referenced clearinghouse project, which has been reviewed by the Office of Planning and Zoning, and recommended forwarding it to the State with the comment that it is consistent with this agency's plan's programs and objectives.

The Commissioners gave their concurrence.

7) STATE'S ATTORNEY'S OFFICE

The County Administrator advised that with additional personnel in the State's Attorney's Office the current office space is inadequate. In going over the space needs with Assistant State's Attorney Fritz, Mr. Cox advised they agreed to contact the Leonardtown Commissioners regarding leasing of the old town hall that had been leased by the Sheriff's Department. He stated that if the Commissioners concur, negotiations would be made with the Town.

Commissioner Bailey moved, seconded by Commissioner Lancaster to authorize the County Administrator to proceed to locate additional space for the State's Attorney's Office. Motion carried.

DEPARTMENT OF FINANCE

Present: Charles Wade, Director

1) BOND ISSUES

Mr. Wade distributed and reviewed a proposed St. Mary's County Financing Schedule and requested approval of the following:

Fiscal Year 1987 Bond Issue

To prepare a Resolution amending the bond issue purpose:

To eliminate:

Longview Beach road project	- \$704,500
FDR Boulevard	- 44,475
Total	\$748,975

To fund:

FY '89 project - Sheriff's Department	- \$ 71,045
FY '90 projects - Asphalt Overlay	400,000
Eighth District Elem.	225,000
St. Andrews Landfill	52,930
Total	\$748,975

PUBLIC FACILITIES BONDS OF 1988

To use funds remaining from Kline Drive project (\$19,951) which has been completed and prepare a Resolution amending bond issue to fund:

St. Andrews Landfill \$ 19,870

Commissioner Lancaster moved, seconded by Commissioner Thompson, to prepare the Resolutions as referenced above. Motion carried.

Fiscal Year 1990 Bond Issue

Mr. Wade listed the projects to be included in the FY '90 bond issue as follows and requested the Board's approval to proceed:

Great Mills Wall Renovation	\$ 58,000
Maintenance Storage Building	40,000
Esperanza HVAC	118,000
Greenview Knolls Addition	609,000
Dynard Elementary Addition	300,000
Community College	180,000
County Office Space	300,000
Governmental Center Access Road	175,000
Wicomico Shores	1,355,000
St. Andrews Landfill	148,200
Fifth District Transfer Station	161,800
Clements Paving	40,000
Total	\$3,485,000

Commissioner Lancaster moved, seconded by Commissioner Bailey, to authorize Director of Finance Wade to proceed as requested. Motion carried.

2) LOCAL GOVERNMENT INSURANCE TRUST

Mr. Wade presented documents explaining the County's participation in the Trust's coverage of general liability, automobile liability, and public official's liability. The Trust's Board of Directors has decided after consultant's advice to change the capitalization program for basic coverage and that each jurisdiction be assessed an amount to cover this recapitalization. St. Mary's County's contribution is \$219,401. Mr. Wade suggested that the County's contribution can be funded by use of budgeted debt service funds which would require extending the initial interest period for the upcoming bond issue.

A second issue is a new program by the Trust to provide expanded and excess liability coverages and environmental liability. To participate in the additional coverage the cost to the County is \$805,627 if paid in cash and \$809,967 if financed. Staff recommended the County Commissioners delay participation at this time and that the issue can be re-examined after the FY '89 audit report in November or during the FY '91 budget process.

Commissioner Jarboe moved, seconded by Commissioner Lancaster, to accept Mr. Wade's recommendations as referenced above. Motion carried.

LENGTH OF SERVICE AWARDS

Present: Margaret Childs, Planning and Zoning
Jay McGrath, Public Works

The Commissioners presented Length of Service Awards to the referenced individuals for 15 years of service in county government.

COUNTY COMMISSIONERS' TIME
DRAFT AGENDA

Commissioner Jarboe raised the question of the purpose of the draft agenda and stated that it was not his intent to handicap departments, but that he felt that items of importance should not be added after the draft agenda had been distributed to the Board. He stated that information as to what is going to be on the next Commissioners' schedule should be made available to them in sufficient time to prepare for the meeting.

Commissioner Bailey cited the impact fee/transfer tax decision that occurred at the August 8 meeting stating that this had not been an item on the draft agenda distributed to them on August 1.

The County Administrator indicated that more careful attention would be given to this.

EXECUTIVE SESSION

Present: Edward V. Cox, County Administrator

Commissioner Thompson moved, seconded by Commissioner Lancaster, to meet in Executive Session on a matter of Personnel. Motion carried. The Session was held from 11:30 a.m. to 11:55 a.m.

Present: Vivian Marsh, Deputy Director
Peggy Childs, Recording Secretary.

PUBLIC HEARINGS - OFFICE OF PLANNING & ZONING

ZONE #89-0433 - LAND OF T. KING CLARKE

Requesting rezoning of 1.091 acres from R-1, Rural-Residential, to C-2, Commercial for this site within the development district of Lexington Park, located along the north side of MD Route 235 between Town Creek Drive and Maple Road, and shown on Tax Map 35C as Parcel 17.

Present: Attorney Mike Harris
Larry Day and Bill Humenik, of Larry Day Associates

Commissioner Loffler opened the hearing at 1:12 p.m. Mr. Marsh advised this public hearing had been advertised by the Office of Planning & Zoning in The Enterprise on July 26th and August 2, 1989 as required by law.

Attorney Mike Harris with Larry Day and Bill Humenik represented the owners/applicants, Michael O'Brien and Tom Harmon. Mr. Harris offered as Applicant's Exhibit A-1 the placard posted on the property on July 27, 1989. Offered as Exhibit A-2 were the certified letters to contiguous property owners, with postal and return receipts, which were mailed on July 28, 1989. Mr. Harris asked the Commissioners to accept the Planning Commission record of this request as Exhibit A-3.

Mr. Harris stated the property is called the Land of T. King Clarke because Mr. & Mrs. Clarke retain a life estate on 1/3 of the property; although the applicants are requesting rezoning of the entire parcel, only 2/3 of it will be actively used for commercial at this time.

He said the Commissioners will find in the Findings of Fact presented to the Planning Commission that the applicant has met the burden of proof and that there has been a change in the character of the neighborhood to support the rezoning to C-2. Staff has made a positive recommendation for the rezoning and also the current comprehensive rezoning designates this as commercial, so the applicant is really only asking that the process be speeded up.

Mr. Harris said the Planning Commission has recommended approval with the condition that the only exit/entrance onto Route 235 be located at the southwest corner of the property, which he feels is unreasonable because it would take away their flexibility of locating that entrance. He said the applicant has the burden of convincing the Planning Commission at the site plan stage that they need to move that entrance for several reasons, one of which is that there is a tremendous ravine there, and, secondly, because the recommended entrance is on the life estate portion of the property, which allows no commercial ventures.

Mr. Harris said they have proposed a centralized entrance with Dash-In and have also proposed to realign another joint entrance with Dash-In on Maple Road to align with Dynamac, his point being that the history of this application has been 100% cooperation, and he requests the applicant be allowed the flexibility to work with staff and the Commission to determine the location of the 235 entrance, and asks that the Commissioners rezone the property without that condition.

Commissioner Loffler stated he is concerned with the Commissioners getting into site plan approval, and said he wants to restrict entrances onto 235 but he thinks that is a Planning Commission function. Mr. Marsh stated there are many different options, but the overriding concern is to control 235 and that's what the Planning Commission was speaking to with their condition. Mr. Bailey stated he doesn't agree with limiting access until it is determined what will be on the property.

Commissioner Loffler opened the hearing to public comment. Hearing none, the hearing was closed. The Commissioners will hold the record open for 10 days and make their decision in two weeks.

SPEC #89-1187 - MACKALL & MARTEL RICKETTS
Requesting sewer category change from S-5 to S-3 for three lots off of Rosebank Road, zoned R-1/RCA & RPD, located in Compton, 3rd Election District, shown on Tax Map 39, Block 24, Parcels 48, 50 and 102.

Present: Mackall and Martel Ricketts
John Norris, of Norris, Gass & Ocker
Larry Petty, Director, Metropolitan
Commission

Mr. Marsh advised that this public hearing was advertised in The Enterprise on July 26th and August 2, 1989.

Mr. Norris explained that the Messrs. Ricketts own properties on Breton Bay at the termination of Rosebank Road, and are requesting a change in sewer category. He said this is a unique request and presented a sketch of the property, which the brothers have owned since the 1960s except for one parcel purchased in 1978 which they use as a summer home.

Mr. Norris said the brothers had applied for perc tests in March 1977 in order to build on the properties fronting on Breton Bay, but the properties could not support an onsite septic system and alternative systems do not work. Therefore, their only recourse is to seek public sewer.

Mr. Ricketts indicated they are 3 years to retirement and find the only way they can build on their property is to tie into the St. Clements Shores sewer line.

Mr. Petty advised that in 1977-78 an attempt had been made by Fox Burroughs and B. I. Mattingly to organize a collection system for the Cherry Cove community and run a line to the treatment plant; at that time there was capacity available. However, it proved to be so expensive that people simply did not want to participate, so the idea was dropped, and currently there are no plans for service down to that area nor is there capacity available in the plant.

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Mr. Norris stated MetComm is working with State Health to try and get additional capacity, based on the plant design of 350 gpd per EDU and the actual flow figures, which are considerably less. The Ricketts went before the Planning Commission on June 12th and received a favorable recommendation for the sewer change, with the stipulation that the recommendation did not guarantee an EDU allocation, and it was their intent to install a small diameter line at their own expense; however, there are currently no allocations available. Mr. Norris said they are asking approval in order to get an allocation should it become available and to continue to explore with MetComm a combination project which would also allow other properties in that area to hook up.

Mr. Petty added that when the allocations were all doled out and requests continued to come forward, MetComm suggested to OPZ that they might want to take a look at the St. Clements Shores community and decide what kind of growth they wanted to occur out there, so some prudent judgments could be made as to what size the plant should ultimately be and what increment/phasing should occur.

Mr. Marsh said that staff agrees and the Planning Commission has recommended that a comprehensive study be done for the whole area and what the County wants to do there. He said it doesn't do us any good to change the sewer category if there is no sewerage, or to run a half-mile over here and a mile over here, it would be like spot zoning. We really need to look at the whole thing comprehensively and decide what needs to be done overall and expand the plant to fit the need so that people like the Ricketts don't have to build their own individual lines.

Mr. Marsh quoted staff's memo to the Planning Commission dated July 5, 1989 recommending a comprehensive study by the Planning Department, Health Department and MetComm, and staff's memo of August 1, 1989 to the Board of County Commissioners, which concludes: "The Planning Commission, on July 10, 1989, unanimously agreed that we should discontinue processing sewerage category changes until a comprehensive study is completed and the Sewerage Treatment Plant is expanded."

Mr. Norris asked the Commissioners to look at this as a two-stage approach: first, something is going to happen to free up some allocations in a short time frame; secondly, in the overall project there will probably be an expansion of the treatment plant.

Commissioner Jarboe said it appears that we really need to look at the whole situation and Mr. Petty replied that is true, that we should look at whether there are other properties out there that the Comprehensive Plan should recognize if the County wants to have turned into subdivisions, and if we do, we should also look at the future of Breton Bay and anyone else in between, and decide whether we want growth to occur there or whether we don't. And if we don't, he said, we won't build an addition to the plant.

He said approval of this request would have to be with the understanding that there is no capacity currently available, but he thinks in a couple of years there will be a nominal amount available, and this will put the Ricketts "one step up" on other requests. Then if the demand were greater, or if the study were to conclude we needed more capacity, we would go forward with an expansion of the plant.

Mr. Norris said the change in category would allow the Ricketts to begin the engineering work to put them in a position to go forward when capacity becomes available, and will also allow other people to get involved if they so desire.

Commissioner Loffler opened the hearing to public comment.

Mr. Laurence Stutz, of Breton Bay Estates, said his subdivision of 24 lots was established in 1953; 14 lots are built on, 10 of them cannot be. He said this is a family subdivision and they would like to build on these 10 back lots in the next year or so, and there are also some marginal systems on the front lots, so he is in favor of the request in the hope that they may be able to tie into the sewer line.

Mr. Herb Redmond said he was before the Planning Commission a month ago for the Hawes property, which is right next door and has the same situation - the father gave the land to the son and daughter, but an allocation does not exist, and there are other people who can't do anything as far as perc tests are concerned, so he is totally in support of the change and a comprehensive study.

The public comment portion of the hearing was closed.

Mr. Marsh pointed out that the staff report contains two recommendations - one from staff and one from the Planning Commission. He said staff's recommendation to the Planning Commission was for denial, or maybe a better word would be deferral, until a comprehensive study is done. That is why the Planning Commission wrote the Commissioners about the overall study and are we going to continue to process w/s changes without the study (?) because we don't know where we want the line to go. He said he is pretty positive the area the Ricketts are in would be included and would be served.

Mr. Norris said he both agrees and disagrees, because we need the study, but this request is not for new development, it is for people who live there and family members, and is just to allow them the enjoyment of their property by providing working sewage systems.

Commissioner Loffler closed the hearing. The record will be kept open for public comment for 10 days and the request will be scheduled for a decision in two weeks.

These public hearings were concluded at 2:03 p.m.

APPEAL OF PLANNING COMMISSION DECISION - 2:05 p.m.

FSUB #88-0460- SWAN'S REST SUBDIVISION
(Section 2)

Requesting final approval of Lots 1 thru 5 of this property containing 95.681 acres total and located in the 3rd Election District off of MD Route 244, zoned T-1/RPD, and shown on Tax Map 49, Block 14, as Parcel 137.

Present: Applicant Donald Cryer
Oliver Guyther, Attorney for Applicant
Herd Redmond, D. H. Steffens Co.
Jon Grimm, Director, OPZ
Joe Densford, Assistant County Attorney

Mr. Guyther presented to the Commissioners a picture of the subject property, showing the existing minor subdivision on Flood Creek, which is a 7 lot subdivision served by a 50 ft. gravel road. Mr. Cryer is applying for a second subdivision of 5 lots on the other end of the road toward MD Route 244, and wishes to pave only that section of the road which serve those 5 lots. DPW states that when the first subdivision was approved, Mr. Cryer was told any further subdivision would require the road to be brought up to County standards and paved for the entire length. The Planning Commission, at their meeting of July 24th, approved the subdivision by a 3-2 vote, with the condition that the entire road be built to County standards.

The applicant is appealing the Planning Commission's decision on the grounds that it is illegal in that there is no requirement in the Zoning Ordinance or the Subdivision Regulations which authorizes the Planning Commission to impose such a condition, and that the Planning Commission has approved at least seven similar subdivisions without such a condition. Mr. Guyther offered into evidence the following exhibits for the applicant:

- #A-1 - Appeal signed by Mr. Guyther 7/18/89
- #A-2 - County Commissioners' Minutes of 6/3/86 regarding Minor Subdivision Regulations
- #A-3 - Deed for Swan's Retreat with Covenants and Restrictions
- #A-4 - Deed dated 11/21/88 for Lot 2 to Thomas and Sharon Chapman, with 50 ft. gravel right-of-way and Covenants & Restrictions
- #A-5 - Opinion of Frank J. Gerred, former Director of the Office of Planning & Zoning dated 8/14/89 regarding this application
- #A-6 - Plat of Section One, "Widow Woods", dated 11/1/78
- #A-7 - Plat of Lot 23, Section One, "Widow Woods Subdivision", dated November, 1981.

Mr. Guyther quoted Ford Dean, Chairman of the Minor Subdivision Review Committee, who stated that a man should not be penalized if he had roadfront lots on a County or State road and make them be part of a minor subdivision. Mr. Guyther stated for the record that the application for the 7 lot subdivision was filed in March of 1986 but wasn't completed until 1987 due to wet month percs, so an environmental statement was completed, stormwater mnagement was done, the road bond was set and the subdivision was approved on February 22, 1988. He said there is nothing in any of the TEC comments for that approval which requires or even suggests the road would have to be blacktopped.

The Planning Commission, as a result of this discussion/decision, requests guidance and clarification from the County Commissioners regarding the subdivision rights of parcels of record as of 1978.

Mr. Cryer testified that, at no time during the approval process for the 7 lot subdivision, was he told that the road would have to be paved in its entirety for any further development. However, Ms. McIndoe's letter of February 5, 1988 states that "Further development may warrant a public road classification in the future." But DPW comments for plans for Section II, circulated April 26, 1988 do state that a public road will be required.

Mr. Cryer testified it will cost him \$62,000 to pave the 2,400 ft. section required by DPW, in addition to the \$38,000 to pave the road from the cul-de-sac. Mr. Guyther said, further, the road serving the 7 lot subdivision is owned by the 7 property owners, conveyed to them by deed, and they each pay the costs of maintenance, and to require a public road would breach the covenants of their deed.

Herb Redmond, of D. H. Steffens Co., cited Widow Woods Subdivision as a precedent, in which Lot 23 of that subdivision was further subdivided, and those plats have been entered as exhibits A-6 and A-7. He reiterated that both Ford Dean and Robin Guyther specifically said that lots fronting on a public road would not be subtracted from the minor subdivision, adding he would like to see the matter cleared up. Mr. Redmond said he couldn't see why the County would want to maintain that road for a private subdivision.

Assistant County Attorney Joe Densford explained his interpretation of the situation, saying that he thinks Mr. Cryer is meeting the requirements of road building; what he is not meeting is the definition of a minor subdivision as Mr. Densford reads them.

He said the Subdivision Regulations say that, as of 1978, you "lock in" the existing parcels of record throughout the County - that is the record date for creating parcels of record. In 1978, Mr. Cryer owned this entire farm as a parcel of record. The regulations provide that you can create a minor subdivision out of a parcel of record with no more than 8 lots, and excludes from that those lots which have "frontage on a public road". The way it is being applied here is that all of these lots will have access to Route 244 through the subdivision road, so frontage to him does not mean they border it but they have to access it, and these lots do not, so it is actually a major subdivision because he has taken that "parcel of record" and created more than 8 lots on it.

Having said that, Mr. Densford added he thinks Mr. Cryer meets the requirements of the Zoning Ordinance and Subdivision Regulations, because he is going to pave up to the cul-de-sac, so what he feels is in order, if the Commissioners are inclined to grant some relief, is not a reinterpretation of the regulations, but perhaps a waiver.

Commissioner Loffler opened the appeal to public comment; Mr. Redmond commented that those lots do have frontage on a public road and he thought the State would be receptive to shared entrances; he said he doesn't know that Mr. Cryer would want to do that, but if they had known this issue would have come to this point, that road would never have been put there.

The appeal was closed at 2:51 p.m. The Commissioners will schedule a decision at a later date.

ST. MARY'S PUBLIC SCHOOLS
DYNARD ELEMENTARY SCHOOL

Present: William Burroughs, Superintendent of Schools
Jim Marsh, Administrative & Fiscal Services, SMPS
Jerry Himmelhaber, School Construction
Marie A. Fort, Principal, Dynard Elementary
John McFadden, President, Board of Education
Robert Kirkley, "
Al Lacer, "
Jonathan Nelson, "

Representatives of St. Mary's Public Schools and Board of Education appeared before the Commissioners to discuss and request approval of changes to the Educational Specifications for Dynard Elementary School. Mr. McFadden advised that the Board of Education had voted on August 8 to update the School Master Plan and to change the school classroom capacity to reflect staffing goals in the planning of future construction projects. On August 15 the Board of Education approved a recommendation by the Superintendent that the Dynard Elementary School project be changed to reflect both the adopted classroom capacity and additional program areas that were not previously addressed in the Educational Specifications for the project.

The original classroom proposal as budgeted indicated 15 classrooms at 14,360 square feet and the Board of Education recommends amending this to 19 classrooms at 18,090 square feet. In addition the Board recommends approval of the following program space additions:

- Pre-Kindergarten Room, Toilet and Storage
- Chapter I Resource/CR Reading Room
- Guidance Counselor's Office/Conference Room
- Assistant Principal's Office
- Increase Listening - Viewing Room to Serve as Computer Lab

Total Additional Square Footage - 2,130

Additional Furniture/Equipment and Architect's Fees

Mr. McFadden pointed out that if the Commissioners concur in this expense, it would be an allocation for the FY '91 budget.

After discussion Commissioner Lancaster moved, seconded by Commissioner Thompson, to approve the concept of increasing classroom rooms from 15 to 19 and of the recommended space additions, furniture, equipment, and architect's fees as set forth above. Commissioners Jarboe and Bailey voted against the motion stating that since this proposal was just given to them, they did not have adequate time to review the figures and look at the fiscal impact. Motion carried three to two.

A copy of the Board of Education's presentation is on file in the Commissioners' Office.

CHESAPEAKE BAY CRITICAL AREA LOCAL PROGRAM AND REGULATIONS
PUBLIC HEARING

7:00 p.m.

Present: Jeff Jackman, Land Use Planner
Peggy Childs, Recording Secretary, OPZ.

A list of attendees is on file in OPZ.

County Administrator Ed Cox opened the meeting at 7:03 p.m., announcing that this public hearing was advertised in the July 26th and August 2, 1989 editions of The Enterprise, and introduced Mr. Ford Dean, Chairman of the Critical Area Review Task Force appointed by the Board of County Commissioners, who gave a history of the program.

Mr. Dean advised that in 1984 the Maryland General Assembly passed the Chesapeake Bay Critical Area Legislation, creating the Critical Area Commission and developing criteria by which each county and municipality bordering the Chesapeake Bay estuarine system would develop a local critical area program to regulate land use and development of land within 1,000 ft. of the mean high water mark, or the heads of tides.

St. Mary's County then hired a consultant to work with the Office of Planning & Zoning to develop a program, and appointed the Critical Area Review Task Force to review the pending program.

Mr. Dean said the Task Force dedicates their efforts to the memory of two of their members who are now deceased: Mel Holland and Bruce Haskell. The other members are: R. Johns Dixon; Oliver Guyther; Claire Mulford; John Bohanan, Jr.; F. Elliott Burch, Jr.; Jack Witten; Charles Young; Michael Whitson; and Mr. Dean. Also present was former State Senator J. Frank Raley, Jr., who is the County member of the State Critical Area Commission, and Mr. Ren Serey, of the State CAC, who has worked with the County, providing valuable assistance in developing the local program.

Mr. Dean said the final draft, dated July 15, 1989, is the subject of this hearing, the purpose of which is to solicit public comment, following which the record will remain open for 10 days for written comment. The Task Force will review the public comments and apply them as appropriate, following which the document will be changed/approved by the County Commissioners and forwarded to the State for ultimate approval.

There are two fundamental parts to the program - the text of the Ordinance and the maps of property within the critical area, and there are three classifications of properties based on the level of development as of December 1, 1985. Mr. Dean urged anyone with property in the critical area to review the maps within the next 10 days. The maps are on display in the Office of Planning & Zoning and Mr. Jeff Jackman may be contacted for an appointment.

The floor was opened to public comment, following which, Mr. Dean said, there are comments and unresolved issues which he has received which he would like to add to the record.

Mrs. Elinor Cofer, President of the St. Mary's Friends of the Chesapeake, spoke regarding enforcement. She said she worked on the Comprehensive Plan for two years and has worked on the Critical Area also, and it has been an agonizing process, and she is pleading for safeguards against loopholes which developers can slip through and for strong enforcement, without which, she said, we won't have much of a document.

Mr. Dean responded to Viki Volk, of The Enterprise, that growth allocation is an unresolved issue. He said the County is allowed by law to convert up to 5% of its Resource Conservation Area, about 1,500 acres, to a more intense development. The Task Force has developed a policy whereby that 5% would be allocated over time into three categories:

- (1) 60% would be awarded as a result of a design competition activity - a project would be submitted by the property owner and scored by point values;
- (2) 20% would be reserved for single lot subdivisions;
- (3) 20% would be reserved for minor subdivisions of up to 5 lots per parcel, depending on the size of the parcel.

The unresolved issue is how much would be subtracted from the growth allocation for each subdivision lot; they had proposed a development envelope of 20,000 sq. ft. but the CAC staff proposes the entire lot be subtracted. At this rate, the 5% would be used up very quickly. One idea which may be proposed is that those subdivision lots be limited to 1 or 2 acres, but the issue is, as yet, unresolved.

Mr. Dave Sayre asked about a friend of his who owns 3½ acres on St. George's Island, which is a peninsula, and his property borders both the Potomac River and St. George's Creek. He has planned for years to build a retirement home there and also would like to sell off an acre to someone else, and now he doesn't know if he will be able to do that.

Mr. Dean replied that this gets right to the heart of the critical area program, because individual property owners will be restricted as to what they can and cannot do. He said the first step is to go to the maps and see how his property is classified. If it is RCA (Resource Conservation Area) he would not be able to subdivide without a growth allocation; but if it is a "grandfathered" parcel, he would be able to build one house, provided he can meet any other requirements. If it is LDA (Limited Development Area) he would be able to subdivide it.

A key element of the program provides that property served by public water or sewer, even though undeveloped on Dec. 1, 1985, may be classified LDA, and, although the local program does not identify those properties, it contains a mechanism whereby a property owner who can meet that criteria can apply for LDA classification.

Viki Volk asked what staffing will be required to enforce the program, which will fall to the Office of Planning & Zoning. Mr. Jackman replied the State had entirely funded program development, but feel local jurisdictions should participate in implementation costs. We lost \$80,000 in FY 89 because our program was not completed, and funding available in FY 90 is only about half of that.

Oran Wilkerson, of the Potomac River Association, asked if surface mining and commercial timbering are prohibited in the buffer. Mr. Dean said surface mining is prohibited entirely in the local program, but the task force has been asked by a private citizen to reevaluate that prohibition, and he will research the program to see if they are prohibited in the buffer. Mr. Wilkerson added that we must have enforcement or the program won't be worth the paper it's written on.

Jack Witten, also of the PRA, asked whether this is a plan or an ordinance. Mr. Dean replied that it was a conscious decision of the Task Force to combine the two into one document. He said the concept has been accepted by the CAC panel and reviewed by the Attorney General, and Mr. Dean feels it will meet the legal test

Mr. Dean explained the Critical Area Program will "overlay" the zoning districts and the most stringent restrictions will apply with the exception of density, which will be governed by the Critical Area Program. Mr. Jackman said there is a Planning Commission subcommittee considering extending all interior zoning districts to the shoreline, which would then be overlaid by the Critical Area.

Jack Witten, speaking as a member of the Critical Area Commission, stated that it is important to remember that this is a national initiative the State of Maryland has passed, and all the coastal states are looking at what we are doing. He said the price of waterfront property in the State of Maryland has skyrocketed, and the other thing the program has done is to put all the waterfront counties on a parity as to how they use their land at the water's edge and gives them an even opportunity to compete in the real estate market. He said Virginia and Pennsylvania are following particularly closely what is being done here, and similar legislation may be generated by those two other states on the Chesapeake Bay.

Mr. Witten stated that enforcement of the plan is going to be difficult, and he thought a new ethic has to be adopted by the County staff to react to the law; the current professional staffs of the Metropolitan Commission, DPW, and the Office of Planning & Zoning cannot cope with this requirement unless they get more people - they are vastly understaffed as opposed to Charles and Calvert Counties, and this imposes additional requirements, and the Commissioners are going to have to look at the fee structure to make sure enough revenue is generated to pay the enforcers, and that we have sufficient staff in the Office of Planning & Zoning in terms of numbers and in terms of quality.

Mr. Sayre stated that people who live on the water will pay a tremendous price for it, because the taxes will be raised according to the increased value of waterfront property in the critical area, and he wants the Commissioners to realize this because they set the tax rate.

Mr. Dean stated one comment he has received that will be on the Task Force agenda when they reconvene, and Mr. Dean said he thinks all comments received should be addressed by the Task Force, is regarding the prohibition of development on slopes greater than 15% in LDA and RCA. The comment was made that in an RCA of 20 acre per dwelling unit density, and where the lot could conceivably be 20 acres, that to additionally restrict the development on slopes of 15% or greater could cause a specific hardship, because that may be the area with the view of the water. That would be an individual situation, but may be a valid concern, because it would seem that with proper controls one could construct one house on a 20-acre parcel without further degradation of the Chesapeake Bay.

Minnie Russell said she understands the theory of the critical area program is to increase public access to the water, including marinas, and decrease the number of private residences on the waterfront, and asked Mr. Dean to explain the logic behind that. Mr. Dean said he doesn't know that it does that, the program does permit the additional development of water-dependent facilities, it doesn't encourage marinas but permits their development under stringent standards, but it does restrict residential development permits an expansion of access to the water.

Ms. Russell said she has problems realizing a private residence would create more contamination to the Bay than a public facility such as a marina. Mr. Dean said her question is certainly one than can be debated, but it is not the prerogative of the Task Force to do so, because we have to go by the State-mandated criteria, but he said the stringent regulations provide more protection than if we had none.

Ms. Russell said she has just returned from a boat trip to Newport News, Hampton Roads, Norfolk, and you see wall to wall mansions, all with boathouses and seawalls of various materials, but you see none here. She asked if any consideration has ever been given to easing the restrictions on seawalls with the Corps of Engineers. Mr. Dean said this is a philosophical point not within the purview of the Task Force, because there are times when development of waterfront property improves water quality, because it provides the economic incentive to pay for such projects as shore erosion, and, in the absence of the development and the economic incentives, if the property is required to be maintained in an undeveloped state, will continue to erode and add sediment loading to the water, so the point is very valid and is, perhaps, missed in the criteria. But again, that is not something the Task Force had any latitude with.

Ms. Russell asked if there was anyone the Task Force could discuss this with. Mr. Dean repeated the Task Force role was limited, but there are many other issues of water quality that may not be addressed by the plan, and that is a valid point.

Commissioner Loffler said he thought the reference to boathouses should be discussed, and asked, under this plan, if there will ever be another boathouse. Mr. Dean said that individual piers are permitted, but he doesn't know about boathouses, and Mr. Serey said he doesn't think the plan addresses them. Therefore, Mr. Loffler said, it would have to be a covered structure 100 ft. back from the shoreline at a minimum. Mr. Dean said they would add boathouses to the list of comments.

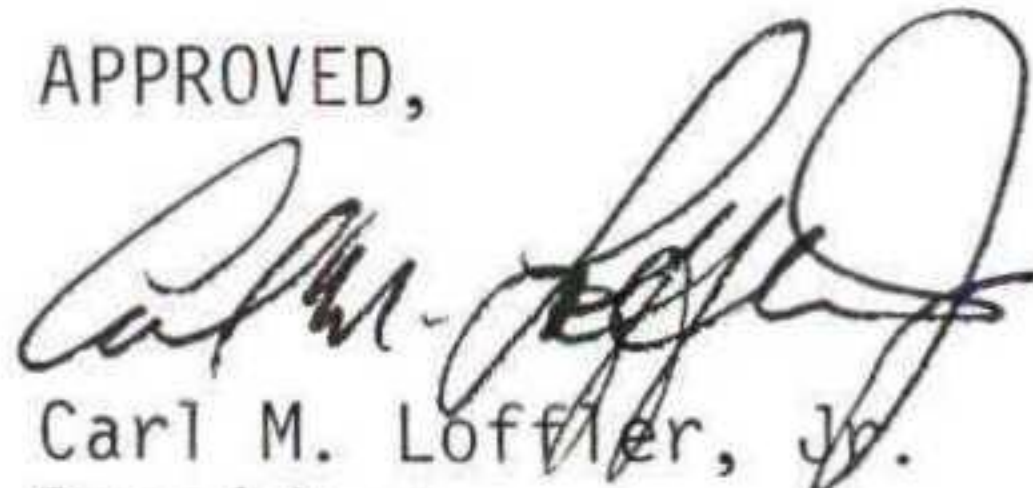
Michael Lynch asked if there were any issues where the County plan was more stringent than the State's. Mr. Dean replied there were, and the restriction on gravel mining is an example.

This concluded the public hearing. Commissioner Loffler reiterated the record would be held open for 10 days for additional comment. Commissioner Lancaster moved to adjourn at 8:03 p.m., seconded by Commissioner Bailey. The public was invited across the hall to review the critical area maps.

ADJOURNMENT

The meeting adjourned at 4:15 p.m.

APPROVED,



Carl M. Loffler, Jr.
President