

BOARD OF COUNTY COMMISSIONERS' MEETINGTuesday, October 24, 1989

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

(Commissioner Thompson was not present.)

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

APPROVAL OF MINUTES

Commissioner Lancaster moved, seconded by Commissioner Thompson, to approve the minutes of the Commissioners' meeting of Tuesday, October 17, 1989. Motion carried.

APPROVAL OF BILLS

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

COUNTY ADMINISTRATOR ITEMS

Present: Edward V. Cox, County Administrator

1) REGIONAL HEALTH PLANNING

As a follow up to last week's discussion, the County Administrator presented correspondence addressed to Health Officer Dr. Marek expressing the County's interest in pursuing his proposal for a new regional health planning activity for the tri-county region and stating that Calvert and Charles Counties are also interested.

The Commissioners agreed to sign and forward the letter.

2) RESPONSE TO MS. DEMKO  
DRUG EXPOSURE IN SCHOOLS

Relative to concerns expressed by Dawn A. Demko in correspondence dated October 6, regarding drug exposure in the schools, the County Administrator presented a response addressing the county's efforts in this area.

The Commissioners agreed to sign and forward the letter as presented.

3) I. D. EQUIPMENT CORPORATION  
PATUXENT WOODS PROJECT

The County Administrator presented correspondence addressed to Senator Simpson explaining the situation regarding the contractor, I.D. Equipment Corporation, for Patuxent Woods Housing Authority project.

The Commissioners agreed to sign and forward the letter as presented.

4) BUDGET AMENDMENTS

The County Administrator presented the following Budget Amendments recommended for approval by the Director of Finance:

No. 89-83

Finance

To transfer unprogramed revenues from the capital fund to the general fund. Sources of revenue are from state grant by the Garvey Senior Center, Tall Timbers, etc.

No. 90-15  
Procurement

To fund capitalization requirements of Local Government Insurance Trust.

Commissioner Thompson moved, seconded by Commissioner Lancaster, to approve and authorize Commissioner Loffler to sign the Budget Amendments as presented. Motion carried.

5) RESOLUTION NO. ALPD #89-27  
THOMAS COX AND WALDO BURNSIDE

(Application to designate 181 acres of land on Md. Rt. 252 in Ridge as an Agricultural Land Preservation District (ALPD) which is zoned R1/RPD and RCA and is located in the First Election District on Tax Map 70, Parcel 41/Block 12 and Parcel 203/Block 17)

The Commissioners having conducted a public hearing on the referenced application on September 26, 1989, Commissioner Thompson moved, seconded by Commissioner Lancaster, to approve and sign Resolution No. 89-27 recommending the ALPD designation as requested. Motion carried.

6) CORRESPONDENCE TO LEGISLATORS  
1990 LEGISLATIVE PACKAGE

As a follow up to last week's review of the 1990 Legislative Package, the County Administrator presented correspondence addressed to the Southern Maryland Legislative Delegation setting forth the Commissioners' positions on each item. Mr. Cox indicated that the letter will be presented to the delegation at the October 30 breakfast meeting.

The Commissioners agreed to sign the letter as presented.

7) SOUTHERN MARYLAND ELECTRIC COOPERATIVE  
REQUEST FOR BOND REQUIREMENT WAIVER

The County Administrator advised that Frank Gerred of SMECO appeared before the Commissioners on September 12 to request a general waiver of the bonding requirement for Southern Maryland Electric Co-op. Mr. Cox indicated that Mr. Ichniowski, Director of Public Works and he recommended that a general waiver not be granted because it would weaken the County's control of projects and because it would have to be granted to all firms similar in nature to SMECO. Mr. Cox further recommended that if a firm could demonstrate that public good would be served by a waiver, the Commissioners could consider such on a case-by-case basis.

The Commissioners agreed with the recommendations.

Relative to the specific request from Mr. Gerred for a waiver of the bond requirement for the switching station on Hewitt Road, Mr. Cox advised that a check in the amount of \$81,900 has been posted by SMECO, that the project was near completion, that the check had been held without cost to SMECO, and that it would be returned upon satisfactory completion of the project.

The Commissioners agreed with this course of action and directed Mr. Cox to prepare correspondence to SMECO advising them of the above decisions.

8) DAY AFTER THANKSGIVING

The County Administrator presented correspondence from the County Employees' Association inquiring if the Commissioners' were going to grant Friday, November 24, 1989, the day after Thanksgiving, as a forced leave day for employees.

Commissioner Bailey moved, seconded by Commissioner Lancaster, to declare the day after Thanksgiving a day of forced leave. Motion carried.

9) ZONING AMENDMENT RESOLUTION NO. Z89-04  
BAY DISTRICT VOLUNTEER FIRE DEPARTMENT  
(BAILEY STATION)

The Commissioners having conducted a public hearing on August 29, 1989, Commissioner Bailey moved, seconded by Commissioner Lancaster, to approve and sign Zoning Amendment Resolution No. Z89-04 granting the rezoning application from R-2 to C-2. Motion carried.

LEONARD HALL DRILL HALL  
DAY CARE CENTER PROPOSAL

Present: Debra Dudley, Leonard Hall School

Mrs. Dudley appeared before the Commissioners to request the Board's consideration to revise the lease between Leonard Hall and St. Mary's County to allow a portion of the Leonard Hall Drill Hall to be used as a child day care center. She stated that if approved, improvements would need to be done in order to meet Health Department standards. She pointed out that the center would accommodate 20 - 30 children with county government employees having first option. Proceeds for the center would go to Leonard Hall School. She further requested that, if granted, the day care use would continue even if the School closed.

The Commissioners indicated that staff would review the request looking at the future of the school and facilities, and whether it should be tied to the use of the school.

EXECUTIVE SESSION

Present: Edward V. Cox, County Administrator  
Mary Pat Agostinelli, Administrative Officer

Commissioner Bailey moved, seconded by Commissioner Lancaster to meet in Executive Session to discuss a matter of property acquisition. Motion carried. The Session was held from 9:50 a.m. to 10:10 a.m.

WALDEN/SIERRA, INC.  
COMMUNITY BOND PROPOSAL - SIERRA HOUSE

Present: Kathy O'Brien, Walden/Sierra  
Sue Gelrud, President, Walden

The referenced individuals appeared before the Commissioners to explain the application to the State for a community bond to finance the construction of a new Sierra House. The cost of construction is approximately \$385,824, of which the State will provide 75% of the funding (\$289,368) and the County is requested to provide a loan for the balance of 25%, which is estimated to be \$96,456. The current Sierra House, a residential facility for adolescent girls with emotional problems and drug abuse history, was constructed in 1977. Because of the increased problems and need for additional space, a new facility is proposed, and the present facility would be used for outpatient treatment and office space.

Ms. O'Brien pointed out that in 1974 Walden/Sierra requested a loan from the County on the same basis and had been repaid through fees. The house will be a two-story structure, which will house 14 girls instead of the current ten.

The Commissioners indicated support of the concept and indicated that staff will develop a recommendation for consideration by the Board.

DEPARTMENT OF PUBLIC WORKS

Present: Dan Ichniowski, Director

1) USER FEE  
ROAD INSPECTIONS  
(COUNTRY LAKES AND LAUREL RIDGE)

As a follow up to previous discussion held October 10 regarding road inspection user fees, Mr. Ichniowski reviewed the history of the projects and discussed the issues. He stated that the fee was adopted in January and revised in August to provide for 7% of construction costs rather than per lot fee.

With regard to Laurel Ridge and Country Lakes, Mr. Ichniowski submitted the chronological list of events stating that final plans had been submitted for approval August 8 and August 22 respectively. In that the fees cover inspection costs, which occur after plan approval, these developments are subject to the road inspection fees. He pointed out that the fees had been paid for these projects "under protest" and will remain in escrow until project completion. Actual costs will be compared to fee costs and will be reconciled through either refund for overages or billing for shortfalls. Because of additional administrative costs, Mr. Ichniowski indicated that this should not be a permanent policy for all projects.

The Commissioners were in agreement that the fee should not be revenue-producing, but should be cost recovery, and if it is revenue-producing that a retro-active adjustment be made.

2) CALLING LETTERS OF CREDIT

Mr. Ichniowski presented the following correspondence calling Letters of Credit:

- ° Tosca Subdivision - Premery Drive  
Letter of Credit No. 00672288  
Public Works Agreement with Interstate General Company  
Maryland National Bank - \$293,000
- ° Greenview West Longfields Village  
Letter of Credit #A1-11-4-1987  
Public Works Agreement with James J. Dobry  
First National Bank of St. Mary's
- ° Patuxent River Farms - Patuxent Boulevard  
Mariner's Drive  
Danforth Court  
Riverside Drive  
Spinnaker Court  
Bond No. P01424 - Homestead Insurance Company - \$473,000  
Public Works Agreement with Route 347 Realty Corp.
- ° Patuxent River Farms - Patuxent Boulevard  
Bond No. P01423 - Homestead Insurance Co. - \$721,000  
Public Works Agreement with Route 347 Realty Corp.

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

1990-1991 COUNTY BUDGET INSTRUCTIONS

Present: Charles Wade, Director of Finance

Mr. Wade presented a memorandum addressed to All Spending Units setting forth budget instructions for the 1990-1991 County Budget.

The Commissioners agreed to sign and forward the letter as presented.

EXECUTIVE SESSIONS

Present: Edward V. Cox, County Administrator

Commissioner Bailey moved, seconded by Commissioner Lancaster, to meet in Executive Session in order to discuss matters of Property Acquisition, Personnel, and Property Acquisition. Motion carried. The Sessions were held as follows:

Property Acquisition

Also Present: Dan Ichniowski, Director, Public Works

Held from 11:15 a.m. to 11:25 a.m.

Personnel

Also Present: Dr. William Marek, Deputy Health Officer

Held from 11:25 a.m. to 11:50 a.m.

Property Acquisition

Also Present: John V. Baggett, Director, Recreation and Parks

OFFICE OF PLANNING & ZONING

PUBLIC HEARINGS - WATER & SEWER CATEGORY CHANGES

SPEC #88-0547: Robert Lee Owens  
(W-6 to W-3D)

Mr. Vivian C. Marsh, Deputy Director for the Department of Planning and Zoning announced this case and explained that the staff report, previously distributed, identified this application as a request for a water and sewer category change from W-6 to W-3D. The public hearing was duly advertised in The Enterprise newspaper in the October 4, 1989 and October 11, 1989 issues, respectively.

Staff advised that the request had been considered by the Planning Commission some time ago as a six lot subdivision. The developer now wishes to construct a community water system to serve this subdivision which would necessitate a change in the water and sewer category, as submitted. The Planning Commission having recently reviewed this latest request, issued a favorable recommendation to the Board of Commissioners for the category changes.

There was no response to the Chairman's inquiry as to whether the applicant was present or represented.

Commissioner Loffler opened the hearing to public comment and asked whether anyone present wished to speak either in favor or opposed to the subject application. Hearing no response, the Chair noted that the public portion of the hearing would be closed and that the file would remain open for ten days for additional written comment.

SPEC #89-0846: Lexington Park McDonalds  
(W-5D to W-3D and S-5D to S-3D)

Mr. Marsh identified this application and as in the previous case, advised that this application had been duly advertised in The Enterprise in the October 4, 1989 and October 11, 1989 issues. This matter was reviewed by the Planning Commission and was recommended for a water and sewer category change. The property is located on the northbound lane of Route 235 at the intersection of Millstone Landing Road.

The Chair inquired whether anyone was present representing the applicant. There was no response. The hearing was opened for public input, with the Chair inquiring whether anyone wished to speak either in favor or opposed. Hearing no comment, the public portion of the hearing was closed. The Chair noted that the file would remain open for ten days for additional written comment.

ZONE #88-1736: National Mobile Home Park  
(Mobile Home Park to C-2, Commercial)

Present: Karen Abrams, Counsel for the Applicant  
Herbert N. Redmond, Jr., DH Steffens Company  
David M. Jenkins, DH Steffens Company

Mr. Marsh briefed the Commissioners on the particulars of this rezoning request for C-2 zoning. The property is located at the corner of Route 235 and Hewitt Road. The hearing was properly advertised in The Enterprise on October 4, 1989 and October 11, 1989 and was posted with the public hearing placard, as provided by the Department of Planning and Zoning (photographic evidence received and noted in the file).

Counsel, Karen Abrams, noted her appearance as legal representative for the applicant and provided the returned postal receipts from the certified letters of notification sent to all contiguous property owners within 200 ft. of the subject parcel.

A large site plan of the property was displayed and presentation ensued in concert with said document. Commissioner Loffler noted that the briefing packages distributed to the Commissioners contained a site plat/map which was somewhat different than the plat on display. Mr. Marsh advised that originally the staff report erroneously included a portion of land that was adjacent the right-of-way. Ms. Abrams noted that portion of land on the opposite side of right-of-way which had recently been sold/transferred to a Mr. Steuben; that land being described as a "condominiumized trailer park."

Ms. Abrams introduced Mr. Herbert N. Redmond, Jr., of the D. H. Steffens Engineering Company, who identified the 20.527 acre parcel, depicted on the plat, outlined in pink, and familiarized the Commissioners with the physical characteristics of the property, topography and contiguous and surrounding properties and landmarks.

NOTE: Commissioner Jarboe entered the meeting at this point.

Mr. Redmond advised that the property enjoyed 878 ft. of frontage. He noted on the plat that portion of the site for the realignment of Hewitt Road. Mr. Redmond emphasized that negotiations between the owner and the Department of Public Works were on-going with regard to the acquisition of that portion of the property necessary to complete the upgrade realignment of Hewitt Road.

Ms. Abrams spoke to the legal aspect upon which this application was based; i.e., change in the character of the neighborhood. Counsel based that property change on the numerous rezonings which had occurred in the area and more intensification of the existing commercial uses within this defined "neighborhood". The boundaries of the neighborhood were cited later in the hearing as follows: Northerly boundary - North side of Maryland Route Route 235 to a depth of approximately 1700 ft.; Southern boundary - parallels Route 235 to a depth of 1400 ft., coinciding with the existing old railroad right-of-way; East and West boundaries - Intersection of Route 235 and Millstone Landing Road and Maryland Route 235 and Pegg Lane. Other changes having occurred in this area which were felt to have contributed substantially to the changes in the character of the area were the impending realignment of Hewitt Road and the fact that public utilities (water and sewer) were now available to this property.

Counsel emphasized the fact that this property was no longer suited to mobile home park development. She cited the fact that the trend was moving away from mobile homes to condominium/townhouse, permanent, low-cost housing, as was substantiated via the recently adopted Comprehensive Land Use Plan. She cited the fact that her clients were of the opinion that they simply could not provide a decent housing unit to the public and would be gradually "phasing out" the existing mobile homes that were on this site. The existing 90 mobile homes on this site will be moved out in stages, so not to displace a large number of people at one time.

Ms. Abrams noted that this property was designated and recommended by the Planning staff for commercial zoning under the new comprehensive zoning for the County. She explained that because of the length of time it had taken toward full implementation of the Comprehensive Plan, maps and Zoning Ordinance, the owners of the property, who were anxious to formalize their commercial zoning status, had opted to move forward with a formal rezoning application, seeking this commercial designation. In closing, counsel urged that this property was simply better suited for commercial as opposed to residential, thus the rezoning was based on that factor, coupled with the obvious change in the character of this area.

Mr. David M. Jenkins of the D. H. Steffens Company spoke to the neighborhood boundaries and emphasized that this was a neighborhood with generalized land uses, incorporating commercial zoning and other mixed uses and zonings, the majority being heavy commercial zoning and land uses along both sides of Maryland 235, in varying depths. Mr. Jenkins spoke at length to the numerous intensification of uses and rezonings which had occurred since 1974. Maps were displayed depicting the various zoning categories in various colors. The sewer line runs adjacent the railroad right-of-way, and as noted previously, pending approval from the Metropolitan Commission, this property could be served by that public utility. Public water lines run along Route 235 and would also be available to this site.

Mr. Jenkins spoke at great length to the other findings, necessary and pertinent to this rezoning hearing; e.g., population change, compatibility to the Comprehensive Plan, school impact, etc. All of these topics are delineated in detail and are contained in the written report and findings of fact, as submitted to each of the Commissioners and incorporated in this public hearing record/file prepared by the D. H. Steffens Company.

Entered into evidence, as Applicant's final exhibit was a series of photographs of the subject property, which were displayed as a panoramic view of the property. (All exhibits referenced and used during these presentations are included in the aforereferenced report submitted into evidence.

Ms. Abrams noted that this area, particularly this property, had become more commercially oriented and with the designation of this property as commercial in the Comprehensive Plan, coupled with the realignment of Hewitt Road traversing through the middle of this property, tended to negate the opportunity for development of this property as a mobile home park, or any other type residential development in this area. Thus, counsel urged that the Board of Commissioners consider these facts in unison with the planning staff and Planning Commission's favorable recommendation and grant the C-2 Commercial zoning.

Mr. Vivian Marsh acknowledged that both the planning staff and Planning Commission had agreed with the applicant's contention relative to change in the character of this neighborhood and, in accordance with the new Comprehensive Plan, had issued a recommendation for C-2 zoning of this property. The staff report was made available to the Board prior to this hearing and remains part of this public hearing record/file. Mr. Marsh emphasized that the two key issues discussed by the Planning Department and the Planning Commission with regard to this application had been the realignment of Hewitt Road and future access. Enumerating on the latter, Mr. Marsh advised that lengthy discussions had occurred regarding future access and specifically where that access should be. While the Planning Commission had not issued a conditional recommendation, there had been strong feeling by that Board that all future access to those parcels should be off Hewitt's Road with no new accesses allowed off Route 235. The Planning Commission urged the applicant to design the access(es) at site plan stage to conform to that policy. Counsel responded that while the owners were not opposed to that suggestion, they would not want to be "pinned down by it until we got to site plan stage because we don't know what the site plan is going to be..."

The hearing was opened to public input. Commissioner Loffler asked whether anyone present wished to speak either for or against this rezoning application. Hearing no response, the hearing was closed; however, the record will remain open for ten days for written comment.

DECISION/DISCUSSION

ZPUD #88-1868: PATUXENT PARK WEST  
PEGG ROAD ACCESS POLICY

NOTE: Commissioner Lancaster excused himself from participation in this matter and left the meeting.

Mr. Marsh advised that on October 3, 1989, the County Commissioners had considered an issue relative to the Patuxent Park West rezoning application, as it pertained to another policy issue regarding limited/restricted commercial access on Pegg Road. At that time, the Board had remanded the issue back to the Planning Commission seeking a policy directive by the Planning Commission, prior to rendering a decision on the Patuxent Park West application. Staff advised that an informal poll of the Commission members had resulted in a split decision of 4 to 3 in favor of limited commercial access. Mr. Marsh distributed a copy of the action taken by the Planning Commission the previous evening with regard to formulation of a policy for Pegg Road and an issue paper jointly derived by DPW and the Planning staff regarding access off Pegg Road.

Commissioner Loffler stated that he was concerned with establishing whether any other commercial access(es) had been granted. Commissioner Jarboe also voiced interest in whether any other formal approvals had been granted and noted that he understood that some provisions had been agreed to by other parties with regard to responsibility for installation of a controlled traffic device on Chancellors Run Road for the Bean/Harkins property development. The Commissioners voiced their concern with the need for consistent action.

Discussion ensued and Commissioner Loffler urged that there must be some exchange for the taking of that portion of this property for Pegg Road, be it in the form of a residential bonus (higher density) or monetary relief. He emphasized that if the land was restricted, it had no value, and, therefore, there must be a reasonable exchange, conducive to both parties.

Karen Abrams, attorney for the Patuxent Park West property, commented that there were two major issues to be addressed:

1. Access - The applicant has no problem with a conditioned approval for access limitation; and
2. Whether or not a commercial pocket included in this PUD would be allowed on Pegg's Road.

Speaking for her clients, Ms. Abrams noted that limited access was not a problem. At this point, what the applicants sought was a resolution as to whether or not the commercial area could be moved, as presented during the former presentation, which had included a request to move the commercial area and granting of a residential bonus (See Minutes of October 3, 1989). She urged that her clients simply wanted to know whether or not they would be granted their request for the commercial area on Pegg Road.

Mr. Marsh commented that the County could not go back and take away any previous approvals; however, the County could, if it chose to do so, embark on a new policy that would protect this viable transportation route.



Following lengthy discussion among the Board, Commissioner Jarboe motioned, seconded by Commissioner Thompson, and unanimously passed (Commissioner Lancaster was not present) to instruct the County Attorney to prepare the appropriate resolution granting an approval for Application ZPUD #88-1868 for the Patuxent Park West PUD granting an amendment to the original PUD which would add forty-one (41) residential units and increase commercial use from 1 acre to 3.35 acres, with restricted access off Pegg Road.

The Commissioners concurred that the Planning Department would develop in concert with the Planning Commission an official Policy with regard to future access onto Pegg Road for the Commissioners' further consideration and action.

EXECUTIVE SESSION

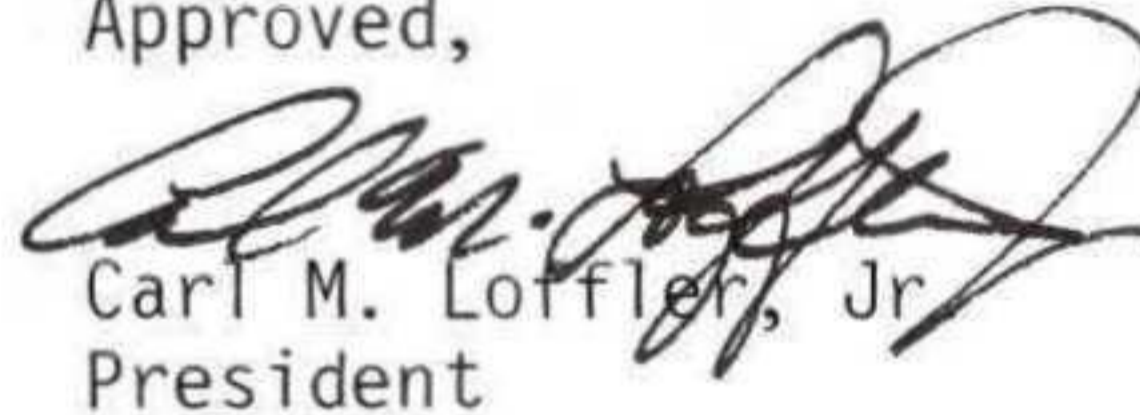
Present: Edward V. Cox, County Administrator  
Charles Wade, Director of Finance  
John Cox, Cox, Long, and Colvin

Commissioner Bailey moved, seconded by Commissioner Thompson, to meet in Executive Session to discuss a matter of personnel. Motion carried. The Session was held from 2:30 p.m. to 3:10 p.m. (Mr. John Cox left at 2:40 p.m.)

ADJOURNMENT

The meeting adjourned at 3:10 p.m.

Approved,

  
Carl M. Loffler, Jr.  
President