

BOARD OF COUNTY COMMISSIONERS' MEETINGTuesday, January 23, 1990

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

(Commissioner Thompson was no present.)

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

APPROVAL OF MINUTES

Commissioner Bailey moved, seconded by Commissioner Lancaster, to approve the minutes of the Commissioners' meeting of Tuesday, January 16, 1990. Motion carried.

APPROVAL OF BILLS

Commissioner Bailey moved, seconded by Commissioner Lancaster, to approve and authorize Commissioner Loffler to sign the Schedule of Bills as presented. Motion carried.

COUNTY ADMINISTRATOR ITEMS1) BUDGET AMENDMENTS

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

No. 90-30
Recreation and Parks

Justification: To provide funding for emergency snow removal.

No. 90-31
Personnel

Justification: To provide funding for assistance with interview process in Personnel due to illness of the Personnel Assistant.

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

2) CORRESPONDENCE

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

- ° Bay Interceptor Sewer Line - To St. Mary's Friends of the Chesapeake responding to concerns regarding connections to the Bay Interceptor Sewer Line and stating that the County will be reviewing its policy prior to making any decisions.
- ° Boatel California - To Potomac River Association of St. Mary's County, Inc. forwarding copies of the Quit Claim deeds associated with the Boatel California project.

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

3) WATER/SEWER AMENDMENT RESOLUTIONS

The Commissioners having conducted a public hearing and held subsequent discussion, the County Administrator presented the following Water/Sewer Amendment Resolutions for the Commissioners' approval:

- ° No. W/S 90-01
ABELL'S LANDING (SPEC #87-0280)

Application to amend the Comprehensive Water and Sewer Plan for property located in the Third Election District of St. Mary's County, containing 54.744 acres of land, located on the north side of St. John's Road, Abell's Landing Subdivision, from W-6 to W-3D.

- ° No. W/S 90-02
HEARD PROPERTY (SPEC #89-1342)

Application to amend the Comprehensive Water and Sewer Plan for property located in the Eighth Election District of St. Mary's County, containing 39.22 acres of land, more or less, located on Chancellors Run Road at Norris Road, known as Heard's Estates, from S-5 to S-3D.

Commissioner Bailey moved, seconded by Commissioner Jarboe, to approve and sign the referenced Water and Sewer Amendment Resolutions. Motion carried.

4) ANIMAL SHELTER ADVISORY COMMITTEE

The County Administrator presented correspondence addressed to the Charles County Administrator submitting the name of Cathy Martin, Vice-President, St. Mary's Humane Society, to service on the Animal Shelter Advisory Committee.

Commissioner Bailey moved, seconded by Commissioner Jarboe, to sign and forward the letter as presented. Motion carried.

5) APPOINTMENTS
BOARDS, COMMITTEES, COMMISSIONS

Commissioner Bailey moved, seconded by Commissioner Lancaster, and unanimously carried, to make the following appointments:

<u>Building Authority Commission</u>	<u>Term to Expire</u>
Joseph R. Densford	No Term
<u>Joint Committee on Student Population</u>	
Anne Marum	No Term
<u>Zoning Board of Appeals</u>	
Joseph C. Ellis (Alternate)	12/31/92/96

6) OFFICE OF PLANNING AND ZONING
OFFICE SPACE

The County Administrator presented a memorandum dated January 9 from the Director of Planning and Zoning requesting that the office space in the Miedzinski building currently used by Department of Social Services be designated for use by the Office of Planning and Zoning.

The Commissioners gave their concurrence.

7) INFORMATION RELEASE
ST. MARY'S COUNTY AIRPORT RUNWAY

The County Administrator presented an Information Release stating that based on an Environmental Assessment Report the proposed 900 foot extension of the St. Mary's County Airport Runway 29 has received Federal Aviation Administration approval.

8) POWER PLANT SITING ACT
HOUSE BILL 261

The County Administrator advised that in the 1970's the Power Plant Siting Act was passed by the Maryland General Assembly. This bill provided that if the property was not used as power plant site in fifteen years, it would revert back to the owner. Delegate Arnick is introducing House Bill 216 which would change the stipulation that the property "shall" revert back to the original property owner to "may". Since the 15-year period is nearing and time is needed to consider alternative uses, Marianne Chapman, Environmental Education Coordinator for St. Mary's Public Schools, has recommended that the Commissioners support House Bill 216.

Commissioner Bailey moved, seconded by Commissioner Lancaster, to agree to support House Bill 216 as requested. Motion carried.

9) PERSONNEL
CORRECTIONAL FACILITY ADMINISTRATOR

The County Administrator presented a memorandum dated January 22 from the Personnel Office advising that the Sheriff has selected Douglas C. Devenyns as Correctional Facility Administrator, Grade 18, Step 4, in the Sheriff's Department.

Commissioner Bailey moved, seconded by Commissioner Lancaster, to approve the selection as presented. Motion carried.

10) ELECTRICAL EXAMINERS BOARD - BY LAWS

The County Administrator presented correspondence forwarding revised by-laws to the Electrical Examiners Board for review and acceptance and to be returned to the Commissioners for formal adoption.

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

11) WATERWAY IMPROVEMENT GRANT APPLICATION
WICOMICO WATERFRONT/MUNICIPAL GOLF COURSE

The County Administrator presented a Waterway Improvement Grant Application in the amount of \$25,000 to be submitted to the Department of Natural Resources for the referenced project. The grant funds will be used for construction of a shelter building containing lavatory, additional services, and marina pier.

Commissioner Bailey moved, seconded by Commissioner Lancaster, to authorize Commissioner Loffler to sign the grant application as presented. Motion carried.

12) ZONING AMENDMENT RESOLUTION NO. Z90-01
PATUXENT PARK WEST (LIBERTY LAND DEVELOPMENT CORP.)

The County Administrator explained that Zoning Amendment Resolution No. Z89-06 approved on November 21, 1989 contained an error, and therefore, should be rescinded and replaced with Resolution no. Z90-01. The corrected Resolution eliminates the stipulation that no access be permitted on Pegg's Road.

After discussion Commissioner Bailey moved, seconded by Commissioner Lancaster, to rescind Zoning Amendment Resolution No. Z89-06 and approve and sign Zoning Amendment Resolution No. Z90-01. Motion carried.

AGRICULTURE SYMPOSIUM

Present: Joseph Mitchell, Director, Economic & Community Development
Martha Daughdrill, Agriculture Specialist

Mr. Mitchell and Ms. Daughdrill appeared before the Commissioners to advise of plans to conduct an all-day Agriculture Symposium and to request the Board to co-sponsor the event with the Agriculture Seafood Commission. Mr. Mitchell stated that the symposium is scheduled for Tuesday, February 20 at the Blue Marlin Room, ADF North. The symposium will include a review of the state of agriculture in the county, future of agriculture, comments from officials and the community relative to livestock, tobacco, aquaculture, etc.

After discussion the Commissioners agreed to co-sponsor the Agriculture Symposium on February 20 as requested.

PROCLAMATION
NATIONAL CATHOLIC SCHOOLS WEEK

Present: Representatives of St. Mary's County Catholic Schools

The Commissioners presented a Proclamation designating the week of January 28 to February 3 as National Catholic Schools Week.

ONE HUNDRED-DAY UNUSED SICK LEAVE CLUB

Present: Deborah Parsons

The Commissioners presented Deborah Parsons with a One Hundred-Day Unused Sick Leave Club Certificate.

DEPARTMENT OF PUBLIC WORKS

Present: Dan Ichniowski, Director

1) ADDENDUM TO PUBLIC WORKS AGREEMENT
PATUXENT PARK WEST (COLUMBIA COMMONS)

Mr. Ichniowski presented an Addendum to the Public Works Agreement by and between Liberty Land Development Corp. extending the deadline for completion of work in Patuxent Park West (Columbia Commons), Eighth Election District to July 1, 1990.

Commissioner Bailey moved, seconded by Commissioner Lancaster, to approve and authorize Commissioner Loffler to sign the Addendum as presented. Motion carried.

2) PUBLIC WORKS AGREEMENT
MAIDEN'S FANCY SUBDIVISION

Mr. Ichniowski presented a Public Works Agreement by and between Regina R. Hewitt and St. Mary's County guaranteeing completion of improvements in Maiden's Fancy Subdivision, Second Election, by July 1, 1990.

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

3) ROAD RESOLUTIONS
WICOMICO SHORES SUBDIVISION

Mr. Ichniowski presented the following Road Resolutions for consideration by the Board:

◦ R90-26

Designating the following streets as Stop Streets:

Crescent Lane as it intersects with Executive Boulevard
Sandy Court as it intersects with Executive Boulevard
Sycamore Drive as it intersects with Executive Boulevard
Sycamore Court as it intersects with Sycamore Drive
Hills Drive as it intersects with Sycamore Drive
Bush Court as it intersects with Hills Drive
Hilltop Court as it intersects with Hills Drive
Army-Navy Drive as it intersects with Executive Boulevard
Prospect Hill Road as it intersects with Army-Navy Drive
Prospect Hill Road as it intersects with Shenandoah Drive
Shenandoah Drive as it intersects with Executive Boulevard
Hills Drive as it intersects with Executive Drive

◦ R90-27

Posting speed limits as follows:

Aviation Yacht Club at 30 miles per hour for its entire length

Executive Boulevard at 25 miles per hour for its entire length

◦ R90-28

Posting speed limits as follows:

Streets within Wicomico Shores Subdivision at 25 miles per hour.

4) CALLING LETTERS OF CREDIT

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

- Anderson Site
Grading Permit #89-41
Letter of Credit #308 with Maryland Bank & Trust
in the amount of \$5,500
- St. Georges Hundred (formerly Chancellors Run Estates)
Grading Permit #86-01A
Letter of Credit #310 with Maryland Bank & Trust
in the amount of \$122,000.
- Madison Minor Subdivision
Public Works Agreement
Letter of Credit #A1-9-26-1989 - First National Bank of St. Mary's
in the amount of \$5,900
- Lowe's of Lexington Park
Construction Permit 09/89 ROW-09
Letter of Credit #LC968-090397-G with Wachovia Bank & Trust
in the amount of \$50,000
- Wildewood Mall
Grading Permit #89-20A
Letter of Credit #306 and #307 - Maryland Bank & Trust
in the amount of \$84,000 and \$53,500

- ° North Indian Creek Commercial, SWM
Grading Permit #89-18
Letter of Credit #A2-0-22-1988 - First National Bank of St. Mary's
in the amount of \$24,500

Commissioner Jarboe moved, seconded by Commissioner Lancaster, to authorize Commissioner Loffler to sign the items of correspondence as presented to be forwarded, if necessary. Motion carried.

5) NOTICE OF PUBLIC HEARING
ABANDONMENT OF SECTION OF OLD ROUTE 249

Mr. Ichniowski requested approval to proceed with a public hearing on the abandonment of Old Rte. 249 in the vicinity of the entrance to the Piney Point Aquaculture Center, Second Election District, to be conducted by the Commissioners on February 20.

After discussion the Commissioners authorized Mr. Ichniowski to proceed.

6) APPLICATIONS FOR ADDITIONAL ELECTRIC SERVICE

Mr. Ichniowski presented the following Applications for Additional Electric Service:

- ° To provide electric service to Ridge Transfer Station
- ° To provide electric service to Valley Lee Transfer Station
- ° To provide electricity to the State Office Building at the Governmental Center.

7) USED OIL RECYCLING

Mr. Ichniowski distributed information to the Commissioners indicating that St. Mary's is one of the top counties in collecting used motor oil in 1989. Collection points in St. Mary's include St. Andrews, Clements, Oakville, Ridge and Valley Lee.

EXECUTIVE SESSION

Present: Edward V. Cox, County Administrator

Commissioner Bailey moved, seconded by Commissioner Lancaster, to meet in Executive Session to discuss matters of personnel. Motion carried. The Session was held from 10:20 a.m. to 10:50 a.m.

EXECUTIVE SESSION

Present: Joseph R. Densford, County Attorney

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

OFFICE OF PLANNING & ZONING

Present: Joe Densford, County Attorney
Jon Grimm, Director, Planning & Zoning
Peggy Childs, Recording Secretary

1) BUILDING CODE DISCUSSION

Mr. Densford presented the Draft Ordinance, stating paragraph 5 had been changed to eliminate the requirement for architectural drawings for one and two family dwellings; a plot plan showing drainage and a sketch plan showing dimensions of the structure and all doors, windows and other openings must be available at the construction site. There were also some changes to paragraph 9 regarding manufactured homes. The reference to the BOCA Mechanical Code to be deleted from paragraph 10 is Mr. Wiggin's suggestion,

Mr. Densford stated he was anxious that nothing be overlooked in this document, as he realized its importance, and suggested, since he is unfamiliar with this sort of code, that the final document be remanded to the Task Force for their stamp of approval. Commissioner Loffler stated, and the Commissioners agreed after discussion, that the document should be returned to BOCA, the Southern Maryland Building Industry Association and the Task Force for their review. Mr. Grimm stated the SMBIA meets February 1st - this would provide the opportunity for review as a group. Staff will provide copies to SMBIA and BOCA and the Building Code Task Force and get back to the Commissioners with their comments, hopefully, on February 6, 1990.

Mr. Grimm presented a comparison of the current Building Permit Fees with the additional fees proposed by the Middle Department Inspection Agency. Following discussion the Commissioners directed the fees be clarified on the schedule to show exactly what they cover; e.g., the energy inspection is included in the MDIA fee, but electrical and plumbing inspections will still be additional.

2) 1:00 - CRITICAL AREAS PUBLIC HEARING

Present: Joe Densford, County Attorney
Jon Grimm, Director, Planning & Zoning
Jeff Jackman, Land Use Planner
Peggy Childs, Recording Secretary.
Ford Dean, Chairman of the Critical Areas Task Force

Commissioner Loffler opened the hearing and introduced Task Force Chairman Ford Dean, who gave a history of the program, and Jeff Jackman, who outlined the proposed changes to the State-approved plan. The County is allowed to modify the plan approved by the State on December 6, 1989 during this 90-day period; however, those changes must be submitted to the State for final approval. The purpose of this public hearing is meet legal requirements, solicit public input, and to present the proposed changes to the 11/21/89 draft contained in the memorandum to the Board of County Commissioners dated January 23, 1990, on file in OPZ, to the public. Also under consideration is the adoption of the official critical area maps and an amendment to the Zoning Ordinance incorporating the critical area program by reference. The Commissioners have elected not to make a decision today, but to hold the record open for 10 days for additional comment.

Mr. Dean stated the change causing the most concern and attendance at this meeting today is the proposed change to Map 48, for Maryland Rock. Mr. Dean explained that this piece of property had been classified as IDA on the original maps that went to the Critical Area Commission. The Task Force, using the rationale of the November 21st draft, changed that classification to RCA, the present classification. Briefly stated, the methodology used development existing on December 1, 1985 to classify properties either IDA, LDA, or RCA, as follows:

IDA if the prevailing density of the developed parcels was greater than 4 du per acre and subareas which were developed predominantly with commercial, industrial, or institutional uses were also classified as LDA. Such subareas also have to meet the minimum test size of 20 acres.

LDA if the prevailing density of developed parcels was greater than one dwelling unit per 5 acres, but less than 4 du per one acre. Such subareas also have to meet the minimum test size of at least 15 acres unless developed as a water dependent facility.

RCA if the prevailing level of development did not meet the test for IDA or LDA as stated above.

The Task Force proposed to change MD Rock to RCA because, upon restoration of the property as required under a conditional use, it would not conform to IDA or LDA. An attorney for MD Rock, Mr. Dean said, called to the Task Force's attention the fact that the original "40-acre parcel" was not operating as a conditional use, but as a nonconforming use. Since then, he said, the Task Force has had staff and the County Attorney research the issue and found that the "original 40 acres" has been found by the Courts to be a legally constituted nonconforming use.

Therefore, the Task Force proposes to delete the paragraph providing the rationale for the RCA designation and change Map 48 so that a portion of the original 40 acres (less than 15 acres, including the offices, the barge loading facility, and the conveyor belt that leads to the stockpile) will be classified as a water dependent facility, or LDA, because it is less than 20 acres. Mr. Dean said this is what they have done with every water dependent facility in the County, and offered Staff's Exhibit S-1, a map of the LDA classification, available for review.

The Commissioners had no questions of Mr. Dean, and Commissioner Loffler opened the hearing to public comment, limiting initial comments to 5 minutes per speaker but explaining additional time would be allowed after everyone wishing to speak had been heard initially.

Dr. George Fleury, property owner directly across Breton Bay from Abell's Wharf, stated that he and his wife have fought the mining operation since 1974 and offered as Opponents' Exhibit O-1 portions of the State criteria for development, 14.15.02, paragraphs .01, .02, .03, .04, and .05, stating the property does not meet the criteria for intensely developed areas or limited development areas as it does not have a concentration of industrial uses, but does meet the requirements for RCA. Dr. Fleury pointed out that the site was County property for 100 years, enjoyed by hundreds and even thousands of County residents until, in 1950, the County Commissioners, in a moment of weakness, deeded this land to a private individual in exchange for 1/10 acre known as Abell's Wharf. Dr. Fleury urged the Commissioners to protect the area by placing it in an RCA district where it rightfully belongs, and also to take whatever steps they can to return the property to the people of St. Mary's County, its rightful owners.

George Weeks stated he was unable to obtain the 11/21/89 Draft, the only copy available in the Libraries being the May Draft. Mr. Weeks also stated the hearing today is at an inconvenient time for working people, and asked the Commissioners to hold the next such public hearing at a time when most of its citizens could be present. Mr. Weeks stated he felt the Code of Maryland Regulations Article 14.15.07 on surface mining was the applicable regulation, and said the barging operation was an adjunct to the mining operation, and, since you can move material by other than water, it is not water dependent; further, he said, the washing operation uses surface water and not tidal bay water, and it, also, is not water dependent.

Joe Greenwell questioned the rationale that the Abell's Wharf area is not part of Conditional Use 74-02, stating the Conditional Use application is titled "Abell's Wharf", the Abell's Wharf area being well defined in the community. He said 17 of the 33 conditions of 74-02 pertain to activities at Abell's Wharf, and he didn't see how the conditional use agreement and permit could not apply. Mr. Greenwell suggested a task force be appointed to determine what is "Abell's Wharf"?

Attorney Warren Rich, representing MD Rock Industries, entered the following Proponent's Exhibits:

- #P-1 - Warren Rich letter to Chairman of the Critical Area Task Force dated January 16, 1990
- #P-2 - Computer copy of State aerial map dtd 10/17/85

#P-3 - Court of Special Appeals' Decision of 10/20/89
in M. Martha Mattingly v. MD Rock Industries
which states the nonconforming use area precedes
zoning in St. Mary's County.

Entered by reference was a letter from then County Attorney Ernie Bell to Mr. Dean dated January 27, 1975 recognizing the 40 acres as a nonconforming use area.

Mr. Rich stated the County Commissioners and the Board of Appeals have recognized the nonconforming use over and over again. He said you don't just look at water dependency - the test is what are the intensely developed areas and how are they described; and the truth of the matter is that this is not a Resource Conservation Area, which is characterized by a nature-dominant environment, it is dominated by industrial and commercial uses which have existed since 1984. As a consequence, there is no alternative under the State criteria and the County but to declare it an IDA for the entire area. He said the law is the law, and, as unpopular as the cause is, the law requires it to be what it is.

Attorney Phil Dorsey stated the pact made in 1974 (CU 74-02) was a "pact with the devil", and the devil has not abided by the 33 conditions, and he did not think the industrial district regulations have been complied with. Under the new Zoning Ordinance, Mr. Dorsey said, mining operations greater than 5 acres will be called "permissive conditional use" and nonconforming uses greater than 5 acres will be eliminated, and he asked that the Commissioners deny the LDA classification. He said the pact with the devil has resulted in the barging of sludge here and said the barging operation shown in the 1985 photo submitted by Mr. Rich does not resemble the barge operation there today, which has been expanded more than three times.

Mr. Dorsey offered as Opponents' Exhibit #0-2 pictures of the gravel operation and talked about a letter he received from DNR when MD Rock made application to dredge Lovers' Point. The hearing examiner indicated MD Rock had inserted an illegal stone revetment along the shoreline; however, no action was taken. Mr. Dorsey said you can be sure the small property owner's violation would not have been disregarded.

Attorney Dan Guenther, representing The Greenwell Corporation, consisting of neighboring property owners to MD Rock, said he was concerned with the premise that the Court had decided the 40-acre parcel is a nonconforming use; he said this is not correct. Mr. Guenther stated Mr. Densford, the County Attorney would agree with this, and presented for the record Opponents' #0-3 (Greer v. MD Rock) and Opponents #0-4 (Mattingly v. MD Rock) stating they address only the September 11, 1975 agreement and not the 40 acres; he said Opponents' #0-5 (Esch v. MD Rock) considers whether the barge-loading facility was an accessory use to the 213 acres. Mr. Guenther went on to say that at this time there is no case in the State of MD which has determined that the 40 acre parcel is a conditional use or nonconforming use. Therefore, he asks that the change in classification not be made.

Regarding Mr. Rich's letter of January 16, 1990 (Proponent's #P-1), Mr. Guenther said the Task Force has already stated that only a portion of the 40 acres constitutes a water dependent facility. Mr. Guenther stated there is so much ambiguity existing regarding the 40 acres that he asks the County Commissioners to join him in a suit to have the Court make a determination.

Attorney Joe Densford stated since he had been quoted by Mr. Guenther he would like to clarify his views, and said he had explained to Mr. Guenther that he was not that familiar with the Greer and Mattingly cases, since St. Mary's County was not a party to either, but he was familiar with the Esch case which holds, plain and simple, in black and white, on the last page of the Opinion, that the shipping use of the property is a valid nonconforming use. He said the Court does not explain the amount of acreage or area used by the shipping use, but does conclude, very clearly, that it is nonconforming and a valid lawful use.

Attorney Walter Dorsey said he is a lifelong resident of St. Mary's County and used to swim at Abell's Wharf. He said his concern is that the elected officials and department heads in the past have been too accommodative to MD Rock, disregarding the feelings of the taxpayers of this community. He said there are thousands of taxpayers that oppose MD Rock and Aleck Loker has told him there were hundreds of people opposed in 1975, and Attorney Oliver Guyther and Langenfelder had assuaged them by saying it would be closed down in 1989, but he said what started out as a one-bucket gravel operation has become one of the biggest monsters and deep water ports in Southern Maryland, and the question is, "Are the Commissioners going to allow it to expand?"

Mr. Dorsey said MD Rock has not demonstrated in the past that they should be accommodated; they have brought sewage from White Plains/Blue Plains; they have brought portions of the 14th Street Bridge; they have built structures illegally and, Mr. Dorsey said, it is the Commissioners' responsibility to look into that. He said they have put in a conveyor belt that is over the 40 ft. height limitation and have enlarged the operation without regard to the zoning process. He quoted the Esch opinion which he said held the shipping operation to be an accessory use. Mr. Dorsey said the County Attorney seems to have taken the side of MD Rock as did the former Zoning Administrator when the public landing exchange was made, even though the Director of Recreation and Parks had told the Commissioners it was a dangerous situation existing there and the public landing should be changed. Mr. Dorsey said it is the Commissioners' responsibility and duty to stop interference with public landing and public rights-of-way.

Mr. Dorsey said he has been told MD Rock has had oil spills; they have brought in super barges shipping materials to Florida; they have run aground in oyster bars, doing several hundred thousand dollars worth of damage; their barges have capsized, and have caused substantial siltation, and the question is, "Are we going to put an end to it?" He stated the mining operation was applied for a month before the 1974 zoning, and they received their grading permit the same day. On May 23, 1974, a day before the Zoning Ordinance was effective, he said, they came in and made application for a settling pond and it was signed the same day. In March 1975 they received a grading permit to excavate an additional 2400 cubic yards of gravel, an enlargement of the operation. Mr. Dorsey said if there was a nonconforming use, certainly it has expired, and charged further there is no zoning permit for any structure.

Mr. Dorsey said we cannot believe MD Rock, as Mr. Rich said 3 years ago they did not want to enlarge their operation, and, within months, he had written a letter asking that it be zoned industrial. He said the taxpayers feel the elected officials should accommodate the citizens of the County and not MD Rock and should not do anything to allow MD rock to expand the operation which, in good faith, county officials told the residents would terminate in 1989.

George Weeks spoke again regarding the environmental aspects of the situation, citing Corps of Engineers' environmental impact statement requirement and their requirement for public input, and asked whether such a statement has been prepared. Mr. Weeks also cited the Clean Water Act, which requires a NPDES discharge permit and also requires a spill contingency plan and a spill control plan, and he hasn't seen that MD Rock has these plans available. In addition, the Resource Conservation/Resource Recovery Act requires that all tank operations, particularly underground tanks, meet certain requirements. Finally, he said, the CERCLA and SARA laws concerning waste dump sites and materials which industrial operations have within their premises must be followed and must be reported to the public, and asked whether all of these laws have been fulfilled. If not, he said, there are considerable civil and criminal penalties, and the Commissioners should first ascertain MD Rock's compliance status with regard to the State and Federal environmental laws before allowing any additional work to be done.

Phil Dorsey commended the Commissioners for placing additional money in the budget for enforcement, saying the public welcomes this action to help to monitor a situation such as this in the future. He said with the Commissioners' help the citizens can help to resolve some of these atrocities, and said he hopes the Commissioners will instruct Planning & Zoning to help them as citizens to establish a mechanism to help monitor and deter these type of activities which have occurred in the past.

Warren Rich said there is nothing on the table to expand anything, the issue is simply how should this area be designated under State and local rules. He said the controlling factor is what was the site on December 1, 1985 - the law is clear, and the issues that have been raised today have been raised again and again. Mr. Rich said the last line in Esch says that the barging operation was an accessory use to an existing nonconforming use on that property, and asked the Commissioners to look at the issue without the rhetoric and screaming, and decide it in an appropriate, legal-like manner.

Mr. Rich said his client purchased the property in 1980 or 1981, and he cannot sanction anything that happened before that, but since 1981 MD Rock has attempted to be a good neighbor and have attempted to do good things; they have won a number of national awards for the restoration of this property; they employ a number of people; they are in total compliance with State and Federal requirements; they meet water quality testing and are a law-abiding company. Mr. Rich said they are not going to go away, they are going to attempt to be a good neighbor - it may not be totally feasible or easy, but they are going to make the effort, and he is here today to represent that to the Commissioners.

At this point, Mr. Dean asked Walter Dorsey about a piece of property in Rodo Beach. Mr. Dorsey said he has a very small interest in the property, the primary owner is Mr. Jimmy Roach, an 85-year old resident and a business man in the County for 60 years. It is a 5-acre parcel in a 1956 recorded subdivision, zoned commercial in 1974, which Mr. Roach would like to have designated LDA. Commissioner Loffler directed that Mr. Roach contact the Planning & Zoning Office regarding his request.

Joe Greenwell stated to the Commissioners that the residents want Maryland Rock closed down, and asked what action will be taken. Commissioner Loffler responded that the issue today relates to the Critical Areas designation and that the record will be held open for 10 days to allow additional public comment; immediately thereafter the Commissioners will make their decision.

Bert Abell asked to speak before the meeting was closed. Mr. Abell said he is one farm removed from Maryland Rock and said the Commissioners need to look at this in detail. He said he has lived there since 1968 and has attended many meetings, and he was told the operation would cease in December 1989. He said the gravel has been used up on the original two farms, and now MD Rock is getting gravel from other locations miles away - every day trucks go by his road with gravel to get washed, and Mr. Abell asked why that should be when the operation was to cease in 1989 or when the gravel ran out.

Mr. Abell said he has lived in the area all his life, and, as a property owner he is concerned. As a kid, he said, he could go down to the Bay at low tide and pick up a bushel of oysters. As a young man farming he has counted as many as 28 oyster boats, but there has not been an oyster in Breton Bay in many years. He said thank God he put air conditioning in his house, at least he can sit in the house - he tried to sit in his yard and it was impossible for the noise. He said he hopes the Commissioners think very seriously about whether this should be stopped or should be continued. He said from the gathering here today the people would like to see it finished, and he personally would like to see it stopped.

Commissioner Loffler closed the public comment portion of the hearing and asked Jon Grimm about the current status of the operation. Mr. Grimm stated an appeal was filed with the Board of Appeals appealing his interpretation that the conditional use cease on 12/31/89. The Board of Appeals upheld his decision and an appeal from the Board's decision had been filed with the Circuit Court asking that the Board's decision be stayed and the operation be allowed to continue pending another hearing with the Board of Appeals on February 22, 1990.

Mr. Grimm said OPZ has attempted to close down some things related to the conditional use expiration, but thinks some other things are appropriate to continue from prior Court actions based on nonconforming use status.

Commissioner Loffler stated there are two separate issues here today - the critical area issue and the other issue which the Commissioners will discuss more fully with staff; however, he said, if part of the operation is shut down by Court order it should be shut down until the Court has cleared the case.

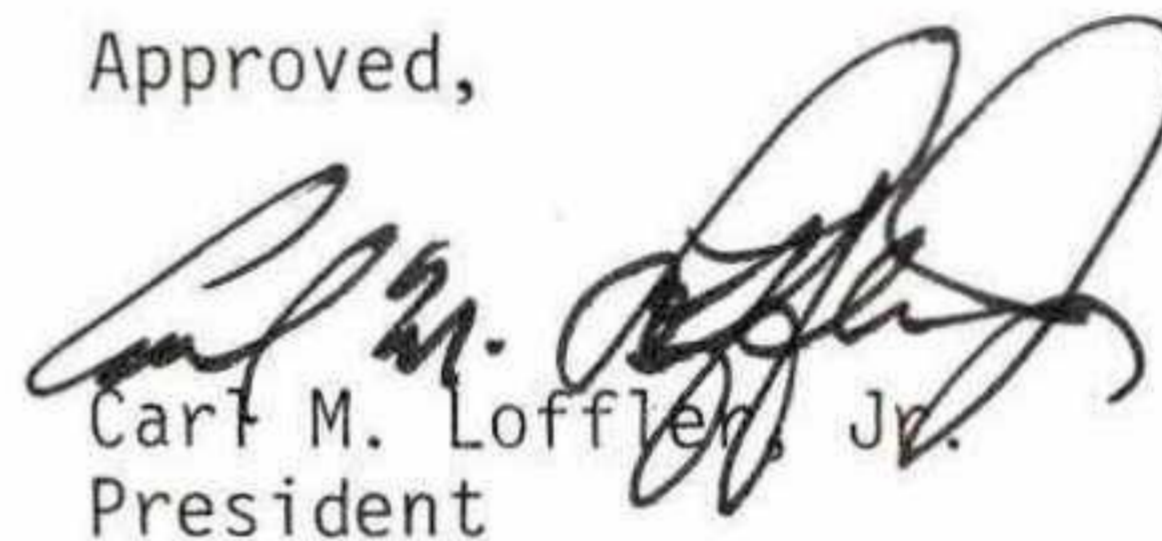
Commissioner Jarboe agreed that it is a separate issue, and there is more to that issue than what we are talking about today.

Commissioner Loffler reiterated that the record will remain open for written comments for 10 days.

ADJOURNMENT

The meeting adjourned at 3:45 p.m.

Approved,



Carl M. Loffler, Jr.
President