

BOARD OF COUNTY COMMISSIONERS' MEETINGTuesday, February 6, 1990

Present: Commissioner Carl M. Loffler, Jr., President  
 Commissioner Robert Jarboe  
 Commissioner W. Edward Bailey, Commissioner  
 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, to approve the minutes of the Planning and Zoning portion of the Commissioners' meeting of Tuesday, January 23, 1990. Motion carried.

Commissioner Thompson moved, seconded by Commissioner Jarboe, to approve the minutes of the Commissioners' meeting of Tuesday, January 30, 1990, exclusive of the Office of Planning and Zoning portion. Motion carried.

Commissioner Jarboe moved, seconded by Commissioner Bailey, to approve the minutes of the Office of Planning and Zoning portion of the Commissioners' meeting of January 30, 1990. Commissioner Loffler abstained. Commissioner Lancaster did not vote because he was not present at the January 30 meeting. Motion carried.

APPROVAL OF BILLS

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

COUNTY ADMINISTRATOR ITEMS1) 1990 LEGISLATIVE ITEMS

The County Administrator presented information setting forth the status of the County's legislative items which had been submitted to the legislative delegation in Annapolis. In addition he presented a copy of prefiled legislation pertaining to the Transfer Tax and pointed out elements of the bill. He stated that the bill states that the authority granted to impose a transfer tax shall terminate after July 1, 1995.

After discussion the County Administrator stated that if the Board concurred, he would indicate to the legislative delegation to proceed forward with the bill.

The Commissioners gave their concurrence.

2) LETTER OF CONGRATULATIONS  
ADMIRAL DONALD V. BOECKER

The County Administrator presented correspondence extending congratulations to RADM. Donald V. Boecker for his recent promotion and addition of a second star.

The Commissioners agreed to sign and forward the letter.



3) BUDGET AMENDMENT NO. 90-37  
OFFICE OF PLANNING AND ZONING

The County Administrator presented the referenced Budget Amendment recommended for approval by the Director of Finance with the following justification: To provide funds for new personnel authorized by the County Commissioners.

Commissioner Bailey moved, seconded by Commissioner Lancaster, to approve the Budget Amendment as submitted. Motion carried.

4) APPOINTMENTS  
BOARDS, COMMITTEES AND COMMISSIONS

Commissioner Lancaster, seconded by Commissioner Jarboe, and motion carried, to make the following appointments to the Extended Day Care Planning Committee:

Rev. Allen Bauer	No Term	Janet Kellam	No Term
Mary Blakely	"	Phyllis Leighton	"
Lenore Blevins	"	Jim Marsh	"
Jean Campbell	"	Joan Marsh	"
Flo Chakeles	"	Rhodesa Lee Millham	"
Ginny Christensen	"	Peggy Nosek	"
Claude Clark	"	Elaine Ohler	"
Jean Dean	"	Susan Paul	"
Susie Diaz	"	Carole Pinckney	"
Marie Fort	"	George E. Smith	"
Kathy Glaser	"	Becky Stevens	"
Deborah Goldbach	"	Jayne E. Sullivan	"
Bonnie Hernandez	"	Sue Wilkinson	"
Linda Himmelheber	"	Teri Wilson	"
Robert Hmieleski			

5) CENSUS '90

The County Administrator presented correspondence to be forwarded to Chairpersons of Boards, Committees, and Commissions requesting them to support the 1990 Census through completing the forms or part-time temporary employment opportunities.

The Commissioners agreed to sign and forward the letter.

6) BOATEL CALIFORNIA  
RESPONSE TO RESIDENT

The County Administrator presented correspondence responding to January 24 correspondence from M. L. and F. A. Anderson of Patuxent Beach Road. The response addresses questions raised regarding quitclaim deeds associated with Boatel California project.

The Commissioners agreed to sign and forward the letter.

7) HOLLYWOOD VOLUNTEER FIRE DEPARTMENT  
LOAN AGREEMENT

The County Administrator advised that the Hollywood Volunteer Fire Department is requesting the Commissioners' approval of the financial for the construction of a new fire station and approval is needed by the Commissioners to proceed with a public hearing. Mr. Cox distributed copies of the proposed Notice of Public Hearing and the Resolution authorizing and approving the financing of this facility. The Agreement will not constitute an indebtedness against the credit or taxing powers of St. Mary's County.

Commissioner Loffler indicated that he would not participate in the discussion or public hearing in that his brother is involved in this project.

After discussion, the remaining Commissioners gave approval to proceed with the hearing on the Loan Agreement.



8) RESOLUTION NO. 90-03  
ECONOMIC DEVELOPMENT COMMISSION

The County Administrator advised that the Economic Development Commission currently has 19 members and Resolution No. 89-05, which re-established the Commission, set the membership at 15. Therefore, Mr. Cox presented Resolution No. 90-03 removing the 15-member limitation and stating that the Board of County Commissioners shall determine the number of members by the appointment process.

Commissioner Thompson moved, seconded by Commissioner Lancaster, to approve and sign Resolution No. 90 - 03. Motion carried.

METROPOLITAN COMMISSION  
PINEY POINT SEWER LINE

Present: Steve King, Metropolitan Commission  
Joseph Densford, County Attorney  
Tom Russell, Director, Environmental Hygiene

The referenced individuals appeared before the Commissioners to advise that Cedar Cove Marina has requested permission from Maryland Department of Environment to connect 21.69 EDU's for boat slips to the Piney Point Sewer Line. According to an Agreement dated November 1986 service to the line was restricted as follows: Existing structures served by uncorrectable, failing on-site systems; would not significantly change the existing use; and would not significantly change the sewage flow contributions. He stated that failure to abide by this Agreement could result in the return of the approximately \$5,000,000 in state and federal grant funds. Therefore, Mr. King requested direction from the County Commissioners as to how to resolve this situation.

Discussion ensued regarding the amount of allowable EDU's as it applies to the 1986 Agreement.

After discussion Commissioner Jarboe moved, seconded by Commissioner Lancaster, to prepare correspondence to the Metropolitan Commission that based on the criteria of the 1986 Agreement a total of 8 EDU equivalents are to be allocated to Cedar Cove based on service only to the buildings as specified in Mr. King's January 19 memorandum. The septic system serving the 2 bungalows may be used to serve the marina boat slips and should be restricted to marina use. If the owners desire to serve the boat slips through the public sewer systems the equivalent flow must be taken out of the eight equivalent dwelling units and appropriate number of structures shall be abandoned. Motion carried.

ALLIANCE FOR ALCOHOL AND DRUG ABUSE PREVENTION

Present: Cynthia Brown, Director, Office of Community Services  
Judy Landau, Public Information Specialist

DRUG FREE SCHOOL ZONE SIGNS

Ms. Brown presented a check in the amount of \$3,000 representing donations from local businesses to provide funding for 150 Drug Free School Zone Signs.

FREEDOM FEST '90

The referenced individuals appeared before the Commissioners to submit a proposal for a Freedom Fest '90 to be held July 4, to consist of activities reinforcing the concept of freedom as it pertains to our heritage, personal freedoms, and freedom from alcohol and drug addictions. The day-long event is planned to be held at Dorsey Park with family picnics, music, games, speakers, and fireworks.



Ms. Landau pointed out that in order for this program to be effective, donations will be solicited from the business community and the public. The Alliance anticipates support from the Department of Recreation and Parks, Fraternal Order of Police, Veterans' groups, civic organizations, and others.

In conclusion Ms. Landau requested the Commissioners' support and endorsement in this effort, including a guarantee of funding in the amount up to \$8,000 to cover funds that may not be raised.

Commissioner Bailey moved, seconded by Commissioner Thompson, to endorse the Freedom Fest '90 project, and to provide funding up to \$8,000 if necessary. Motion carried.

PROCLAMATION  
NATIONAL CHILD PASSENGER SAFETY AWARENESS WEEK

Present: Sgt. Jamie Raley (and daughter)  
Sgt George DeLozier

The Commissioners presented the referenced Proclamation designating the week of February 11 - 17 as National Child Passenger Safety Awareness Week.

OFFICE OF PLANNING & ZONING  
BUILDING CODE

Present: Jon Grimm, Director, OPZ  
Joe Densford, County Attorney  
George Wiggin, Middle Department Inspection Agency  
Peggy Childs, Recording Secretary, OPZ.

Mr. Densford distributed the revised resolution for adoption of the building code, stating that he had met last week with County staff, Mr. Wiggin, Jim Kenney - Chairman of the Building Code Task Force, Chairman of SMBIA, and representatives of the construction industry to look at the adopting resolution. BOCA also concurs with the revisions. As a result of the group discussion, the following changes are proposed to the Special Provisions on Page 2:

- (2) As set forth in Section 115.2.1 of the BOCA Code, OPZ would have the authority, as well as the Code Official, to approve other inspectors the developer or contractor might use. It was pointed out that we might not have someone in-house knowledgeable about steel construction, stress concrete, or other types of commercial construction and may have to rely on architectural engineers in that field to provide written certification that it meets the code.
- (5) Mr. Wiggin states the location sketch on the Zoning Permit will be sufficient for his inspections, but the language further states that other regulations may apply (site plans, etc.) for certain kinds of structures.
- (6) Extends #5 language to other types of construction.
- (10) Slight change to indicate that as long as a certification is received from the State or HUD a prefabricated one and two-family dwelling need not be inspected for insulation or framing, but would have to have footer and final inspections. At Mr. Wiggin's suggestion, if there are any modifications after it comes from the factory, it would have to be inspected.



- (12) New paragraph providing that electrical, plumbing, and sign provisions of the BOCA Code are deleted.
- (13) Deletes plumbing portion of the One and Two Family Dwelling Code.
- (14) Fills in the blanks as required by the adopting jurisdiction.
  - (d) Certifies we have been granted authority by the State to adopt and enforce the Code and provides fines for violations.
- (15) General concensus at the meeting last week that this was the acceptable way to do this. Mr. Densford states has discussed this with Mr. Grimm and they feel that the impact fee required at the issuance of a building permit will prevent a rush on permits to beat the effective date of the Code. Mr. Wiggin felt if we were going to grandfather in one type of building we should grandfather all types.
- (17) Required by enabling legislation.

Commissioner Lancaster commented that we have come a long way in adopting an acceptable code and have gotten all the possible alternatives and he feels it is a job well done.

Commissioner Loffler asked about the fee schedule, and it was agreed that that will be discussed next week and everyone will be provided with an updated copy.

#### CRITICAL AREA TASK FORCE REPORT

Present: Ford Dean, Task Force Chairman  
Member Michael Whitson  
Member Sonny Burch  
Jeff Jackman, Land Use Planner, OPZ

Chairman Ford Dean distributed a Summary of Comments received from the 1/23/90 public hearing and the Task Force's Final Report. The Report, along with the November 21, 1989 Draft, the official zoning maps, and the 1/23/90 Memorandum make up the "final recommended version" of the County's proposed Critical Area Program. The Program must be adopted in final form by the Commissioners and forwarded to the State for final approval.

The Task Force's final recommendations are the ones outlined in the 1/23/90 Memorandum, with two changes:

- (1) TM 48 - Maryland Rock

Mr. Dean presented Revised Exhibit S-1, a map of MD Rock with 22.168 acres outlined in yellow proposed by the Task Force to be changed to IDA.

- (2) TM 73, P 165 - Rodo Beach

5 acres proposed to be changed to LDA.

Discussion concerned the proposed change to MD Rock. Mr. Dean stated there had been much testimony at the public hearing, and several different letters since, but, although there are many issues involved with MD Rock, the only issue before the Task Force was the application of the County's mapping rules with respect to the property. Mr. Dean said the County is required to classify the property, as all others in the Critical Area, as IDA, LDA, or RCA according to the mapping rules; they have applied those rules and the reasons for their recommendation are as follows:

- (1) The size of the property is 22.168 acres, meeting the 20-acre threshold of the IDA.



- (2) It is/was being operated as a water dependent facility as of 12/1/85 and meets the test of IDA because, on 12/1/85, it was not characterized as being predominantly natural habitat but was employed as an industrial use.

For these reasons the Task Force feels, if it is going to consistently apply the County's mapping rules, taken from the State Law, the property appropriately meets the designation of IDA.

Commissioner Loffler stated to Mr. Dean that he did not agree with the facts as stated because the zoning of a property is determined by the zoning maps; if the zoning is to be changed there is a process to change the zoning. Commissioner Loffler said he hasn't been able to find a zoning map that shows the property as industrial or nonconforming, and it must go through the County's process for rezoning. Mr. Loffler said he is gravely concerned that we are trying to do that with the Task Force and the Critical Area legislation, and he is opposed to it.

Commissioner Loffler said gravel mining is done in residential, commercial and industrial areas and is controlled by the Board of Appeals. Because of the destructive nature of the operation, he said, we put a lot of requirements on it, and one is that when it intrudes on a neighborhood and affects the public we put a time limit on it. It does not require special zoning, he said, to mine gravel, and to give them different zoning because they mine gravel is to him a false application of the rules. Unless we can show in the tax maps that this is zoned in a certain manner or is, in itself, a nonconforming use, we have to go through a process, and Mr. Loffler said he didn't feel the Commissioners' table or the Task Force is the place to do it.

Commissioner Loffler said the operation can exist the way it is today under the rules that have been applied; if in fact they need to go through a legal process to change the category," there is a process for that. Mr. Loffler said he had spent a lot of time down there when the Zoning Ordinance came in and he knew what was going on as his boats were racing down there, and he doesn't know that it was industrial because he didn't see it - he saw a gravel mining operation, a bar and restaurant. He said that doesn't mean his memory might not be poor, but there has to be appropriate evidence to show that there needs to be a zoning change and it has to go through a process that this County has, and he urges the Commissioners not to make the recommended change, because we are really doing is establishing zoning and establishing a direction from the Commissioners that will, in essence, go back and become law.

Mr. Dean said, of course, the decision rests with the County Commissioners and not the Task Force - they are simply making a recommendation to the Board, but he would like to state that, in the classification of the property per the Critical Artea Program, it is not a threshold requirement to determine what the zoning is, but rather the test that is applied is what was the use of the property as of 12/1/85. The classification under the Critical Area Program is separate from the zoning category. The other point, he said, is that the County's Attorney has indicated that it has been upheld by the Courts that this particular piece of property is a legally constituted nonconforming use, which was also the opinion of Ernie Bell, the County Attorney in 1975, and he said this portion meets the test of IDA.

Commissioner Loffler replied that the legal boundaries have not been defined, and said obviously there were nonconforming uses there - there was a bar and restaurant and other little activities - but it was a very small, confined area, and he thinks the property has to go through due process to be defined, not defined here as we are trying to process the critical areas. He said we are defining areas that have not been presented in evidence, nor have they been presented in evidence to the Planning Commission.



Sonny Burch, Member of the Task Force, stated Mr. Loffler could be 100% right, but he wanted to caution him that the Task Force has applied the same mapping rules to this parcel of land as other nonconforming uses, and said there are other properties the Commissioners would have to look at if they made this determination. He said the decision the Task Force had to make had nothing to do with zoning, it had to do with what the Critical Area law says, and, more importantly, that as of 12/1/85 it was being used as an industrial use. Mr. Burch said they have identified in yellow the area they feel was being used as an industrial use. He said it is not Task Force's decision to make but, in all fairness to everybody within this Program, the Commissioners would have to go back and take a look at some others that they used the same mapping rules for. Mr. Burch added he wanted to make that very clear.

Commissioner Loffler said, in other words, the Task Force determined, without going back to the tax maps, what they construed as being nonconforming? Mr. Whitson replied they were assured by the County Attorney that the area was nonconforming and, on that basis, they applied the mapping rules. Commissioner Loffler responded that he has not seen the evidence that there is a prescribed area, a prescribed function, showing the industrial use. He said you cannot count the digging of gravel. Mr. Burch stated this has nothing to do with mining, there is no mining done on this portion, the mining is done somewhere else - this is the processing part. He said they had used the maps and tools available, and he was very comfortable with the other properties along with this that they did not apply any different rules to this property.

Commissioner Jarboe stated he knows the Task Force has spent a lot of time with this, but he thinks it should remain RCA because, if it ceased to operate for a year or was removed it would revert back to the original zoning classification before Langenfelder bought it. He said the problem he has what happens to the 22.168 acres if the operation ceases to exist? Mr. Dean replied it would be IDA as far as Critical Areas; Mr. Jackman stated the zoning classification proposed under the new Ordinance would be RPD.

Commissioner Jarboe reiterated that he thinks we have to let the business continue as long as it operates within the guidelines and regulations, because barging is probably the cheapest way to haul gravel and saves wear and tear on the roads, but reiterated his problem is what happens when it ceases. He added there is a procedure for them to go through to change the classification. Mr. Jackman said the procedure spelled out is to correct an oversight. If an area is missed that meets the test for IDA it can be called to their attention and will go before the Planning Commission, the Commissioners and then to the State and can be properly classified without being charged against the County's growth allocation.

The motion was made by Commissioner Bailey to accept the Task Force's recommendations, stating that the zoning of the property will take care of anything else and if the Task Force applied the same criteria overall the Commissioners should accept their recommendations. The motion was seconded by Commissioner Lancaster but was defeated by a 2-3 vote, with Commissioners Loffler, Jarboe and Thompson voting against.

Commissioner Thompson stated that he thinks the Task Force did their job but he was also concerned with the outcry from the citizens regarding MD Rock, and asked County Attorney Joe Densford for his opinion. Mr. Densford replied that the only thing he felt comfortable in telling the Commissioners is that the Court has held that the shipping use on the property is a nonconforming use, which means that it could continue indefinitely. Commissioner Jarboe asked about the time frame for adopting the program, and was advised by Mr. Jackman that a decision is needed today for the Commission's meeting tomorrow and approval on March 14th.

The motion was made by Commissioner Thompson to delete the recommended change for TM 48, leaving the RCA designation for MD Rock intact. Otherwise the Task Force's recommendations are accepted and the program is adopted. The motion was seconded by Commissioner Jarboe, who stated that this does not stop MD Rock from operating, and they do have an appeal process. The motion passed by a vote of 3-2, with CCRS Loffler, Jarboe and Thompson voting in favor and CCRS Bailey and Lancaster voting against.



BOARD OF EDUCATION  
CATEGORICAL CHANGES

With regard to the Commissioners' decision of January 16 to not approve the categorical transfers using unused health insurance premium funds, Commissioner Thompson indicated that he would like to cast his vote in that he had previously abstained from voting. He stated that he did not completely understand what was involved and felt that the Board of Education should be allowed to use the funds for school facilities (\$57,400) and for an assistant superintendent (\$57,700).

After discussion Commissioner Thompson moved, seconded by Commissioner Loffler (Commissioner Loffler stepped down as Chairman, and Commissioner Lancaster presided over the meeting during this discussion), to appropriate \$115,100 of the unused health insurance premium funds to be used as referenced above. Commissioners Thompson, Loffler, and Lancaster voted in favor, with Commissioners Bailey and Jarboe voting against. Motion carried three to two.

DEPARTMENT OF PUBLIC WORKS

Present: Dan Ichniowski, Director

1) ADDENDA TO PUBLIC WORKS AGREEMENTS

Mr. Ichniowski presented the following Addenda to Public Works Agreements for the Commissioners' consideration:

- Maydel Manor - By and between James D. Cryer, Sr. and the Board of County Commissioners extending the deadline for completion of roads by September 1, 1990; backed by Letter of Credit in the amount of \$45,000 with First National Bank of St. Mary's.
- Madison Subdivision By and between Tom Madison and the Board of County Commissioners extending the deadline for completion of roads by August 1, 1990; backed by Letter of Credit in the amount of \$5,900 with First National Bank of St. Mary's.

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

2) AGREEMENTS - FEDERAL AID

Mr. Ichniowski presented the following Agreements for consideration by the Board:

- By and Between State Highway Administration of the Department of Transportation of Maryland and St. Mary's County for Federal Aid Urban Non-Attributable Highway Funds in the amount of \$15,773.
- By and between State Highway Administration of the Department of Transportation of Maryland and St. Mary's County for Federal Aid Secondary Highway Funds in the amount of \$108,819.

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

STAFF MEETING

The Commissioners attended the monthly staff meeting held at the Garvey Center.



RECREATION AND PARKS  
COMMENDATIONS

Present: John Baggett, Director, R&P  
Claude Clarke, Recreation Supervisor

The Commissioners presented Commendations as follows:

Volunteers for Stuffed Ham Festival - George B. Reeves, James B. Beavan, Sr., Hilton Harrod, Karen Gailey, Ethel Thomas, Cindy Woodburn, Martha Daughdrill, Kathy Bailey, Sherri Buss, Christel Cywnar, Frank Johnson, Betty Johnson, Linda Clarke.

Donations of Hams for Stuffed Ham Festival - Hill's Country Store, Hills Club, T's Cove, Evans Seafood, Hill's Halfway House, St. Mary's Nursing Center, Olde Breton Inn, Sheaffer's Food Market, Maryland Way Restaurant, St. Mary's Landing, Ye Olde Restaurant, Belvedere Motor Inn, Bailey's Restaurant, 7th District Optimist Club.

Donation of Money for Stuffed Ham Festival - Mattingly's Finer Foods

Volunteers for the 1989 Christmas House - Thomas G. Johnston, Tim Brosnihan, Liliane Jarboe, Nellie Richardson.

CRITICAL AREAS

With regard to previous discussion earlier in the meeting, Commissioner Jarboe requested a reconsideration of the vote on the Critical Area recommendations submitted by the Task Force. Commissioner Jarboe stated his reasons for requesting the re-vote are that he believes he was mistaken at the time of the earlier vote and did not have correct information. He stated that conversations with staff of Planning and Zoning and the County Attorney have led him to believe his earlier vote was incorrect, and that he now wished to vote to support the recommendations of the Task Force. On the specific issue of the designation of some of the property of Maryland Rock, he stated that he believed the evidence demonstrates a use pre-existing the December 1985 threshold and a survey plat demonstrates an area of more than 20 acres, thus changing the LDA designation to IDA.

Commissioner Loffler disagreed with Commissioner Jarboe's statements that evidence existed, but agreed that he had the right to request a revote on the issue.

After discussion commissioner Jarboe moved, seconded by Commissioner Bailey, to accept the recommendations of the Critical Area Task Force and that accordingly, the information for Tax Map 48 as submitted by the Task Force should be forwarded to the Maryland Critical Area Commission. Commissioners Jarboe, Bailey, and Lancaster voted in favor, with Commissioners Loffler and Thompson voting against. Motion carried three to two.



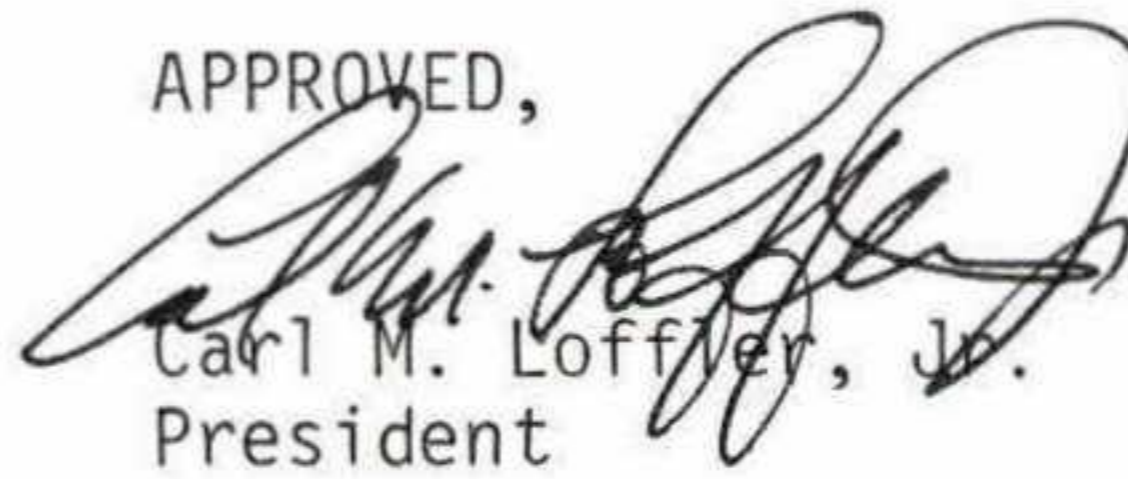
The Commissioners conducted a public forum accepting questions and comments as follows:

- Doug Ritchie - Critical Areas (Maryland Rock)  
Capital Budget (Recreation facilities at Piney Point  
Elms Beach property and Wicomico Shores
- Dick Myers - Critical Areas (Maryland Rock)
- Louis Eberle - Critical Areas (Maryland Rock)  
Piney Point Recreation facilities
- Pattie Morgan - Mechanicsville Elementary School  
(need for 10-month secretary)
- Cheryl Blazer - Therapy Pool at Loveville School
- Gay Fowler - Therapy Pool at Loveville School
- John Johnson - Freedom Landing Group Home
- Oran Wilkerson - Critical Areas - Maryland Rock  
Piney Point Recreation facilities  
Town Creek Wharf (Johnny on the Spots)
- John Baggett - Public access to waterfront

ADJOURNMENT

The meeting adjourned at 9:55 p.m.

APPROVED,



Carl M. Loeffler, Jr.  
President