

**ST. MARY'S COUNTY
BOARD OF COUNTY COMMISSIONERS**

February 11, 1992

Page 35

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

(Commissioner Loffler was not present at beginning of meeting.)

CALL TO ORDER

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

APPROVAL OF MINUTES

Commissioner Bailey moved, seconded by Commissioner Thompson, to approve the minutes of the Commissioners' meeting of Tuesday, February 4, 1992. Motion carried.

APPROVAL OF BILLS

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

COUNTY ADMINISTRATOR ITEMS

Present: Edward V. Cox, County Administrator

1) ASSESSMENT AND FISCAL MATTERS INFORMATIONAL MEETING

Relative to last week's discussion of the referenced meeting, the County Administrator advised that Commissioner Loffler has a conflict in scheduling with February 19 and has suggested February 25.

The Commissioners gave their concurrence to set the public informational meeting on the assessments process and economic and fiscal outlook for the County on February 25 at Chopticon High School, 7:00 p.m.

2) LIBRARY EMPLOYEES - COUNTY'S FLEXIBLE BENEFITS PLAN

The County Administrator presented a response to the Southern Maryland Regional Library Association indicating that the library employees are not eligible to participate in the county's flexible cafeteria benefits plan.

After discussion Commissioner Bailey moved, seconded by Commissioner Thompson, to sign and forward the letter. Motion carried.

3) HOUSE BILL 80 - CHARTER HOME RULE

As a follow up to last week's discussion, the County Administrator requested whether the Commissioners had any comments on the referenced proposed legislation. Commissioner Thompson noted that having served on the Charter Board, she was aware that there was not adequate time to construct a charter under the current law. Drafting a charter is a difficult and time-consuming process, and the proposal to extend the time to 18 months, she stated, would be beneficial. She further concurred with the proposal to change the referendum on the adoption of the charter from a special election to a regular election because she felt that it would give more people an opportunity to participate. It would also give more time for explanation of the charter to the public.

After discussion Commissioner Thompson moved to support the legislation as presented. Motion failed for lack of a second.

**4) ST. CLEMENTS MUSEUM ANNUAL AUCTION
UNCLAIMED BICYCLES**

The County Administrator advised that the St. Clement's Island-Potomac River Museum will be holding its annual Richard Arnold Memorial Auction to benefit the museum and its programs on Saturday, March 7. The Sheriff has offered to donate two unclaimed bicycles for the auction with the Commissioners' approval.

Commissioner Bailey moved, seconded by Commissioner Lancaster, to authorize the donation of the two bicycles for the auction as requested. Motion carried.

5) FISCAL 1993 BUDGET - BOARD OF EDUCATION.

In preparation for the meeting with the Board of Education later in the day, the County Administrator presented a summary of the spending units' requests and projected revenue estimates and a synopsis of the fund balance. He pointed out that the County has a fund balance of \$1.4M to do one of two things: (1) to patch Fiscal Year '92 cuts from the State of Maryland, which have not yet been defined; or (2) to help towards the variances between expected revenues and already submitted expenditure requests for Fiscal Year 1993.

Commissioner Thompson suggested that the synopsis of spending units' request include the actual 96% of the Fiscal Year 1992 budget as requested for the Fiscal Year 1993 budget. She stated that this would tell the Board of Education that the County does not anticipate having revenues to fund the full Board of Education budget requests. County Administrator Cox explained that the amounts listed show the Fiscal Year 1992 approved amounts, and a summary of all requests by the spending units, and he would add the information she requested.

(Commissioner Loffler entered the meeting - 9:40 a.m.)

Commissioner Lancaster pointed out that there were three items of information he would like to have from the Board of Education prior to his making a decision on that budget: (1) 96% budget request; (2) amount needed to maintain services at current levels; and (3) a list of priorities of additional items.

Relative to state budget reductions, Commissioner Jarboe stated that it may be the first part of April before the state makes its budgetary status known.

6) SLUDGE APPLICATION IN ST. MARY'S COUNTY

The County Administrator advised that the County has received seven applications for sludge applications in the County. These applications represent a number of properties scattered throughout the County and is coming from a number of sources, Leonardtown, Pine Hill Run and a treatment plant in Prince George's County. County Administrator Cox further pointed out that the Commissioners have had presentations by the State of Maryland and applicators of the sludge.

Mr. Cox stated it was his recommendation to send correspondence to the county's Agriculture/Seafood Commission requesting them to address a study of sludge issues; i.e., chemical changes to soil, limitations on use of sludge-applied land, reliability of permitting and monitoring measures, environmental cautions, advisability of charging transportation or application fees, and requirements for land record notations.

Discussion ensued regarding the County's authority regarding sludge application. The County Administrator advised that because it is a state licensed activity, the state regulates the application. Commissioner Jarboe indicated that if the County did not want to accept sludge on property in the County, and if the County does not have a say in the matter, he suggested that the matter be decided by a judge.

After discussion the Commissioners agreed to defer a decision on the seven applications received in the County for sludge application.

After further discussion Commissioner Thompson moved, seconded by Commissioner Lancaster, to sign and forward the letter to the Agriculture and Seafood Commission as presented. Motion carried.

7) PERSONNEL - CIRCUIT COURT

The County Administrator presented a memorandum dated February 11 from the Personnel Officer recommending the appointment of F. Michael Harris as Juvenile Master (Grade 24, Step 4) and Theresa Miller as secretary to the Juvenile Master (Grade 12, Step 4), effective February 18, 1992.

Commissioner Lancaster moved, seconded by Commissioner Jarboe, to approve the appointments as presented. Motion carried.

8) RESPONSE CORRESPONDENCE - ASSESSMENTS

The County Administrator presented correspondence responding to George Steinbeck regarding assessment and budget concerns. The Commissioners agreed to sign and forward the letter.

9) **ST. JAMES KENNEL**

The County Administrator presented a memorandum pointing out that the County has leased runs at St. James Kennels so that citizens could drop off stray animals without going the long distance to Hughesville and for emergency pickups for the animal wardens. He stated that the use of leased runs at St. James Kennel has diminished to the point where the Deputy Director of Emergency Management has recommended cessation of the lease.

After discussion Commissioner Lancaster moved, seconded by Commissioner Bailey, to terminate the lease as recommended. Motion carried.

BOARDS, COMMITTEES COMMISSIONS PROCESS

Present: Delores Murphy, Clerk, County Administrator's Office
Mary Pat Pope, Administrative Officer

The County Administrator advised that as a result of concerns addressed by the Commissioners staff has been working on improving the Board, Committee and Commission appointment process. Miss Murphy distributed a handout outlining the issues (public notification of vacancies, getting people to participate, and membership applications on file over one year) and options for handling each of these issues.

During discussion of purging membership applications, Commissioner Thompson suggested that since most of the appointments are made for December 31 and June 30 expiration terms, that applications be held until after those appointments are made. She stated that this would give people who have applications in an opportunity for consideration.

Commissioner Loffler gave his concurrence with the process for appointments, but felt that the Chair of a committee should not be the one making contacts to see if individuals eligible for reappointments are interested in reappointment. He stated that this was the Commissioners' Office's responsibility. He further suggested that applications be kept on file for two years.

Commissioner Bailey suggested that letters be sent to applicants indicating that their application is one year old and inquiring whether they were still interested. He recommended that the applicant sign the bottom of the letter to indicate continued interest rather than completing a new application. Commissioner Jarboe agreed stating that this way applications could remain on file for more than two years.

Staff will revise the process according to the Commissioners' suggestions and resubmit it to the Board.

ST. MARY'S COUNTY SHERIFF'S DEPARTMENT RETIREMENT PLAN ANNUAL REPORT

Present: Jerry Colvin, Chairman
George Foster, Personnel Officer

The referenced individuals appeared before the Commissioners to present the 1991 Annual Report for the Sheriff's Department Retirement Plan. Mr. Foster cited its purpose and general information relative to total members, contribution rates and estimated costs to the County. Significant activities include pretax contributions and annual statements. Plans for the future include actuarial valuation, employee benefits statements, finalizing disability provisions, and plan review and update if necessary.

A copy of the Annual Report is on file in the Commissioners' Office.

PROPOSED ENVIRONMENTAL HEALTH FEE SCHEDULE

Present: Dr. William Marek, Health Officer
Tom Russell, Director, Environmental Hygiene

The referenced individuals appeared before the Commissioners to present a proposed environmental health fee schedule for the Board's review and consideration. Dr. Marek explained that the environmental health fees have not been amended in six years and costs have risen dramatically in that time. The proposed fee schedule includes two options for restaurant permits--a flat rate of \$100 per permit or by priority (\$50 to \$150).

Discussion ensued regarding privatization of certain areas of the health department, and Dr. Marek responded that privatization would be acceptable for health care, but did not recommend it for environmental matters unless there were strong controls by government.

After discussion Commissioner Jarboe moved, seconded by Commissioner Thompson to approve the following Environmental Health Fee Schedule, to be effective March 1, 1992: Commissioner Bailey abstained from the motion. Motion carried 4-0-1.

<u>Restaurants</u>		
Flat Rate	-	\$100 per permit
Plan Review (New)	-	\$100
Plan Review (Remodel)	-	\$ 20
Temporary Permits	-	\$ 20
<u>Onsite Sewage Disposal</u>		
Perc Tests		
Single Lots	-	\$150
Subdivision	-	\$150
I&A (Mound, etc.)	-	\$150
Septic Systems		
Permits & Inspections	-	\$ 75
Re-Inspections	-	\$ 25
Plat Review		
Record Plat & Sewage Easement	-	\$ 75
Building Permit Site Plan	-	\$ 50
Public Water/Sewer Record Plat-	-	\$100
Building Permits/Additions	-	\$ 20
Well Permits	-	\$ 80 or state law maximum whichever is less
Water Sample	-	\$ 40
Burning Permits	-	\$ 20
Trash Truck Inspection	-	\$ 20
Private Pool Permit	-	\$ 20
Public Pool Permit	-	\$100
<u>Lead Paint Analysis</u>	-	\$ 75/hour
<u>Septic Installers License</u>	-	\$100/year
<u>Copy Fees</u>		
Microfiche	-	\$ 1/page
Xerox	-	\$.25/page

PERC TEST SEASON

Mr. Russell advised the Commissioners that wet month perc testing will not start until March 1 because monitoring wells are down.

PROCLAMATION

FUTURE BUSINESS LEADERS OF AMERICA WEEK

Present: Representatives from Leonardtown High School

The Commissioners presented the referenced Proclamation designating the week of February 10 -14 as FBLA Week in St. Mary's County.

DEPARTMENT OF PUBLIC WORKS

Present: Dan Ichniowski, Director

1) PUBLIC WORKS - ROAD PROGRAM - FISCAL YEAR 1992

For the Commissioners' information Mr. Ichniowski presented the following road program schedules: Asphalt Overlay (7.34 miles); Surface Treatment Program (55.98 miles); and Slurry Seal Program (23.79 miles).

2) ACCEPTANCE OF DEEDS

Mr. Ichniowski presented the following Deeds for the Commissioners' review and consideration:

Hickory Hills

Dated January 27, 1992 between Mayjack, Inc. and Board of County Commissioners for St. Mary's County accepting roads in Hickory Hills into the County Highway Maintenance System.

Pegg Road Reconstruction (Deeds and Easement Agreements)

- Deed and Easement Agreement between Philip Barnes, Joseph E. Barnes, Flora A. Jarrett, Marie H. Lynch, Paul Barnes, Keefe Johnson, Alicia Johnson Crafton, Fran Johnson, Russell Fenwick, James Fenwick and Theresa Fenwick Singleton and Board of County Commissioners of St. Mary's County,

- Two Deeds and an Easement Agreement dated January 30, 1992 between Barbara B. Murphy and the Board of County Commissioners of St. Mary's County.

Commissioner Jarboe moved, seconded by Commissioner Bailey, to accept and authorize Commissioner Loffler to sign the Deed for Hickory Hills and Deeds and Easement Agreements for the Pegg Road Reconstruction project. Commissioner Lancaster abstained. Motion carried. 4-0-1.

3) ADDENDUM TO PUBLIC WORKS AGREEMENT
CEDAR COVE, SECTION 4

Mr. Ichniowski presented an Addendum to a Public Works Agreement between Heritage Manor Homes, Inc. and St. Mary's County extending the deadline for improvements to March 1, 1993. Addendum is backed by a Letter of Credit with Maryland Bank and Trust Company in the amount of \$104,000.

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

4) CORRESPONDENCE CALLING LETTERS OF CREDIT

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

Watts-Watson Office Warehouse Complex, SWM

To First National Bank of St. Mary's
calling Letter of Credit A1-3-1991
in the amount of \$18,100
for Grading Permit #91-25

Great Mills Center, Phase 3

To Maryland Bank and Trust Company
calling Letter of Credit #321-A
in the amount of \$58,750
for Grading Permit #89-42

Commissioner Lancaster moved, seconded by Commissioner Thompson, to authorize Commissioner Loffler to sign the referenced correspondence, to be forwarded if necessary. Motion carried.

5) CHARLES COUNTY COMMUNITY COLLEGE
CORRESPONDENCE TO GOVERNOR

As a follow up to previous discussions relative to the location of the community college off of Indian Bridge Road, Mr. Ichniowski presented correspondence to Governor Schaefer giving assurance that this project is a high priority item for St. Mary's County. The letter requests the Governor's assistance in expediting the process of transferring the property from the State to St. Mary's County.

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

6) ROAD RESOLUTION NO R92-03
DRUM CLIFF ROAD

Mr. Ichniowski presented the referenced Road Resolution posting Drum Cliff Road at 25 miles per hour for its entire length from its intersection with Jones Wharf Road.

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

7) WETLANDS LICENSE - CAT CREEK

Mr. Ichniowski presented the Wetlands License for the maintenance dredging and extension of timber jetty for Cat Creek and the Patuxent River at the Cape St. Mary's Marina public boat ramp. He stated that although funds are not currently available for the project, if funds do become available those projects that have permits will be given a high priority. The permit is good for two years.

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

EXECUTIVE SESSIONS

Present: Edward V. Cox, County Administrator

Commissioner Bailey moved, seconded by Commissioner Lancaster, and motion carried, to meet in Executive Sessions as indicated below:

Property Acquisition/Litigation

Also Present: Joseph Densford, County Attorney
Dan Ichniowski, Director, Public Works
Joseph Mitchell, Director, DECD
Larry Petty, Director, Metropolitan Commission

(Held from 11:50 a.m. to 12:05 p.m.)

Property Acquisition

Also Present: Joseph Densford, County Attorney
Karen Abrams, Attorney, Board of Education

(Held from 12:05 p.m. to 12:20)

Personnel

(Held from 12:30 p.m. to 12:55 p.m.)

COUNTY COMMISSIONERS/BOARD OF EDUCATION

Present: Al Lacer, President, Board of Education
Jean Campbell, "
Robert Kirkley, "
Jonathan Nelson, "
Fred Wallace, "
Joan Kozlovsky, Acting Superintendent of Schools

1) 1990 ANNUAL AUDIT LETTER

With regard to the Board of Education 1990 Audit Letter and the County's auditor's management letter of December 2, 1991, Mrs. Kozlovsky presented and reviewed the Report on Agreed-Upon Procedures by Wooden & Benson (Board of Education's auditor). She pointed out that out of 21 concerns addressed by the county's auditor in its December 2 correspondence, action has been or will be taken on eight. The report indicates Wooden & Benson's findings on each of the items, and that no action will be needed on the remaining items.

Mr. Lacer noted that the Board of Education will continue to review procedures for updating and strengthening.

A copy of the Wooden & Benson Report is on file in the Commissioners' Office.

2) FISCAL YEAR 1993 BUDGET

Commissioner Loffler began the discussion by stating that all spending units, including the Board of Education, had been requested to submit a budget at 96% of the Fiscal year 1992 budget with justifications for dollars above the 96%.

Mr. Lacer referred to his correspondence of January 31 wherein he indicated that the Board of Education could not prepare the requested budget without knowing whether the Commissioners were going to fund the negotiated salaries. He referenced correspondence dated February 3 from the law firm of Littler, Mendelson, Fastiff and Tichy which indicates that the County was legally bound to fund the negotiated salaries. Mr. Lacer stated that prior to the Board of Education submitting the requested budget, they needed to know whether the Commissioners were going to fund the negotiated salary agreements.

Commissioner Lancaster reiterated his previous request for information regarding the Board of Education budget, to which Mr. Lacer responded that Board's proposed budget is based on assumptions of maintaining same level of services at the same staffing levels.

Ms. Kozlovsky distributed a handout regarding state aid to education as presented in SB 275 - Budget Reconciliation Act, which includes reduced funding for School Transportation Aid. Discussion ensued regarding state budgetary reductions for education, Commissioner Loffler suggested that the Board of Education and County work together in taking a position that the State should be living up to its obligations for educational funding by adhering to its formula. He stated that the counties should not be picking up the state's reductions.

A work session on the Fiscal Year 1993 budget with county staff and Board of Education is scheduled for Wednesday, February 12.

DEPARTMENT OF PLANNING AND ZONING

Present: Jon Grimm, Director
Scott Kudlas, Environmental Planner
Peggy Childs, Recording Secretary.

PUBLIC HEARING - 2:50 P.M. **1992 CRITICAL AREA GROWTH ALLOCATION SUBMITTALS**

Legal Notice published in The Enterprise on 1/24/92 & 1/31/92.

A list of attendees is on file in the Office of Planning & Zoning

Mr. Grimm announced that this is the County's second year of the Growth Allocation Process, under which the County's Critical Area acreage is distributed over a 15 year period, at approximately 5% per year. The County's beginning acreage was 1,686 acres, minus 16 acres allocated in 1990 = 1,670 acres for allocation over the remaining 14 years, or 119 acres per year. Of these 119 acres, 20%, or 23.8 acres each is available for Single Lot Subdivisions and Minor Subdivisions, and 60%, or 71.4 acres, is available under the Design Competition Category. This year we have one application under the Single Lot Category for 4.2 acres, two applications under the Minor Subdivision Category totaling 11.909 acres, and one application under the Design Competition Category for 15.22 acres.

As a result of last year's process, two adjustments are recommended for the local process; i.e., all environmental review and TEC comments, as well as public hearing comments, should be forwarded to the County Commissioners along with the Planning Commission recommendation. The Commissioners will consider those comments in making their decision, and applicants will then revise their plans, based on the Commissioners' decision. The revised plans will then be forwarded to the State. This will hopefully result in a much more understandable and manageable process.

Secondly, staff recommends strict adherence to the local program requirement of 1.5 acre lot size in the Minor Subdivision Category. The State is requiring that the entire parcel be subtracted from the growth allocation; however staff believes that is not the way the program was written, it is not our local interpretation, and flies in the face of the County's stated objective to minimize the amount of land subtracted. Staff feels the 1.5 acre requirement is valid and the County has filed suit challenging the State's action and is awaiting the outcome.

Mr. Kudlas presented the applications and Staff Reports for the growth allocation requests.

Single Lot Category

ISUB #91-1646 - SOTTERLEY CLIFFS FARMSTEAD

Requesting a change in overlay classification from RCA to LDA for a single-lot subdivision, using 1.2 acres of growth allocation. The parent parcel contains 15.05 acres, 8.75 of which is in the Critical Area. The property is zoned RPD (RCA Overlay), and is located in Hollywood off of Sotterley Road, past Vista Road on left; Tax Map 21, Block 21, Part of Parcel 148.

Owners: Joseph Mitchell/Elizabeth Sherman
Agent: McCrone, Inc.

Present: Mr. Mitchell

Mr. Kudlas advised the application was reviewed by the Environmental Review Team and the TEC on 11/20/91, however the application does not meet the

parcel of record requirement for growth allocation. The Critical Area Ordinance requires that a parcel must have been created prior to December 1, 1985 and this property was recorded in 1989. Staff and the Planning Commission recommend denial on that basis.

Mr. Mitchell said he concurs with staff's recommendation that the application does not meet the Critical Area Ordinance in its present form. He stated the intention of the request is to move the house site from an area 1,000 ft. back from the water to an area 400-450 ft. from the water for greater water access. If the requested site is approved, the building site, or development right outside of the Critical Area would have to be abandoned.

Mr. Mitchell pointed out, however, that the farmstead subdivision was recorded in 1989 during the interim period when the County was operating under an overall Critical Area Ordinance and 1 in 20 density, and there was no provision for use of growth allocation. Even though the Critical Area Ordinance was adopted by the State in 1985 and provided growth allocation, the Condition did not adopt its local Ordinance until March of 1990, so there was a window of a couple of years when an applicant could not take advantage of growth allocation.

Had the subdivision been recorded after March 1990, Mr. Mitchell said he could have applied for growth allocation at that time, but he certainly understands staff's perspective that the parcel of record date still would not have met the 12/1/85 requirement, and he is not sure it does any good to speak of the merits of the request because of the inconsistencies with the program itself.

Mr. Kudlas stated the density did not change when the County adopted its Critical Area Ordinance, it is still 1-20 under the RCA zoning. The problem with this application is that they did not have enough acreage within the Critical Area to develop more than 3 building sites, so they were allowed to subdivide part of the Critical Area for this lot, but not to put the actual building site within it.

The Chair opened the hearing to public comment.

Leyla Samadi Wilson and Jim Chaney asked for clarification regarding the Critical Area and Critical Area Buffer, and disturbance of steep slopes. Mr. Chaney stated he considers that whole area as critical and any development would disturb the topography of the land. Mr. Loffler responded that, if this were approved, there are restrictions on what could be built in what areas, based on State criteria and local requirements.

Ronny Gray stated the property is a backbone and the ravine is steep, some 75 ft. or so above the water, even though the top is flat. Mr. Mitchell replied that the area McCrone has set aside is more than sufficient to accommodate the house without disturbing the slopes at all.

Ms. Wilson said she has lived in this area for 30 years, choosing to raise her children here. She said there used to be an incredible beach and grasses along the River there, and she thinks we have to be very, very careful where we are putting houses on the River. Mr. Loffler replied that is why we have the Critical Area rules and this is a subdivision request, the applicant is not asking for a variance of any of those rules.

There were no further questions, and this public comment portion was closed.

Minor Subdivision Category

ISUB #91-1644 - CHRISTMAS HILL

Requesting a change in overlay classification from RCA to IDA for a five (5) lot minor subdivision and one farmstead through the use of 6.319 acres of growth allocation. The property contains 212.32 acres, is zoned RPD (partial RCA Overlay), and is located off of Route 244 on Drayden Road to Frog's Marsh Road, 1.6 miles to site; Tax Map 58, Block 22, Parcel 82.

Owner: J. Laurence Millison
Agent: Norris, Gass & Ocker Engineering, Inc.

Present: Donnie Ocker and Jon Norris, of NGO
Nancy E. Paige, Attorney for Mr. Millison

believes larger lots, such as they have there now, help to maintain the rural atmosphere, and would provide increased tax revenue to the County. Ms. Stone said also the roads are very poor and said Mr. Millison is not the only developer with property down there, Mr. Davis has property there as well.

Commissioner Loffler commented it is very interesting that the arguments that keep coming back are entirely in opposition to what the State has ruled towards. The 2020 itself pushed toward smaller-lot, clustered subdivisions to leave the open space for environmental reasons. The County Ordinance is written from the State Critical Area Plan, he said, what is not approved by the state isn't the size of the lots, it has to do with how much is taken out of growth allocation.

Commissioner Bailey added the developer could make them 10 acre lots, but then he would use up 50 acres of growth allocation, and one of the reasons the Commissioners made the lot size smaller is so that one developer doesn't come in and wipe out our growth allocation for the next 20 years. He said there are other people all over the County that are interested in having their waterfront property worth something, and he does think it is better to cluster smaller lots.

Commissioner Loffler stated we are not here today to debate the State's or the County's Critical Area Plan; we are here to discuss the conformity of this application with that Plan and public comments that may be negative to this application. These items have been discussed very much not only at the County level but at the State level, and the State's consensus of opinion is that clustering is the future for creating open space.

Ms. Stone said she really is not opposed to 5 nice lots there, she is just concerned that they are so small, and maybe making them closer to 1.5 acres than 1.2 might make them a little bit better.

Mr. John Koszeghy said he has been in the County since 1959 and bought a beautiful parcel of land in Mr. Stone's development called St. Mary's River Estates. One of Mr. Stone's objectives, he said, was to maintain as large a parcel as possible, and their parcel is 5+ acres. When Mr. Ocker called him last night, he said, he was a little disturbed, because he is afraid this is a situation where a developer goes in and develops a little piece and then potentially you are looking eventually at a 2-story or 3-story condos. He referred to the condos in Solomons; now the construction is dead, he said, they cannot develop any further, the road is deteriorating, the woods have been cut, it is unclean, and his concern is that we are heading in that direction.

Mr. Koszeghy said he agrees that this property should be preserved and perhaps 1.5 acres would be better than 1.2; he said he sees deer down there, squirrels, and rabbits, and if he wants to see people he goes to New York, Baltimore, Washington, or L.A. He also expressed concerns that the septic won't support the lots and a long-term clean life; he said he thinks we will have pollution within 5-6 years because the wells will be contaminated.

Liz Reisman, of Dockside Lane, off of Frog's Marsh, said she hears what the Commissioners and staff are saying, but said she questions whether anyone would disturb more land on a 20 acre lot than a 1.2 acre lot. There is a homestead already on the property, there are 66 acres, and she sees this as whether to allow two 20-acre lots plus the homestead or 5 smaller lots plus the homestead. She said she thinks the property owners have all spoken to the point that they think 1.2 acres is small and that 20 acre would be far better. She said this is a very different area and it does not meet the fourth criteria - there is no LDA adjacent to it.

Commissioner Loffler stated that St. Mary's County has Health Department regulations, whether you are on 25 acres or one acre you have a 10,000 sq. ft. easement set aside for septic unless you are on sewer. It is strictly regulated by our Health Department and there is a well separation, and the chance of pollutants to the well are just as much at a risk or considered not to be a risk, if the soils pass percolation. All that is yet to come, he said, and would not be any different if the lots were 8 acres, 20 acres, or 1.2 acres.

Commissioner Thompson said she sees a lot of subdivided lots on the map provided with the Commissioners' package, and asked what would constitute it being LDA. Mr. Grimm replied that the map is an old map which has been updated. Mr. Kudlas added the existing LDA as shown was determined by conditions that existed as of 12/1/85. Ms. Stone responded that a lot of those lots are zoned agricultural lots, not to be built on, especially the ones adjacent to Christmas Hill. Mr. Grimm stated he would check to see whether the lots are buildable or not.

Nancy Paige, Attorney for Mr. Millison, stated she thinks the Board has really focused on an issue exactly as the developer sees it, and that is that the clustering is intended to protect the environmental nature of the area rather than destroy it. She said the assumption of the audience is that the cluster development will have a negative impact on the environment; in point of fact, it is because of the cluster that there will be this very large lot of undeveloped shoreline. Mr. Norris added that the reason we go through this process is that the County ends up with property that is protected and preserved.

Mr. Mays again asked what the County will do in the future when the property owners are in there and the sewage goes bad. Mr. Loffler reiterated that can happen on any property whether you have 5, 50, or 1,000 acres, if the property owner is not responsible and the Health Department reneges on its responsibility. He assured the public the Commissioners are not going to let them pollute and they are not going to let the 1.2 acre property owners pollute. Mr. Mays replied he thinks the Commissioners would be making a big mistake if they don't consider factors like this, along with wildlife.

Mr. Loffler responded that is why the State and our Health Department has a requirement that those lots, when developed, will have percable land and 10,000 sq. ft. set aside to protect the surrounding area and the inhabitants. If the property does not pass perc, he said, it will not be developed, and the restrictions are much more severe today than ever before. But that is not what we are judging today, he said, that is yet to come, and they will adhere to it if the Commissioners allow them to proceed; there are other agencies that will look very closely at each part of the application as it goes through the process.

Several other questions or misconceptions were put forward regarding the Critical Area Process, and Mr. Grimm suggested that he or Mr. Kudlas, or both, would be glad to come to a meeting to explain the Critical Area Program and Growth Allocation Process, or anyone who would like could come to the OPZ office and they would be given the same time that OPZ would give the developer to understand the process.

Mr. Koszeghy stated his concern that the small lots would devalue the larger lots; Commissioner Loffler responded that can't happen here to the extent Mr. Koszeghy is talking about. You cannot control property unless you own it, Mr. Loffler said, but there are other restrictions which apply outside of the Critical Area Process. Zoning protects you, he said, and that is why we are here today. Intensely Developed Areas have another whole set of criteria, he said, and this cannot go, by our own Critical Area rules, to the next step, to IDA.

Liz Reisman asked if the 5 lots plus the homestead gets approved, what becomes of the rest of the property. Mr. Ocker replied if the State determines the 20 acres must be set aside there will be 26 acres encumbered, leaving a balance of 40 acres. This would allow 2 lots at 20 acres each or the applicant could apply again under the growth allocation process. But none of that is being proffered at this time; what is being requested is 5 lots plus the homestead; if the 20-acre set aside is required this would total 7 lots, including the homestead.

The Chair closed this public comment portion of the hearing.

ISUB #91-1648 - WINDWARD COVE

Requesting change in overlay classification from RCA to LDA for a 5 lot minor subdivision using 5.599 acres of growth allocation. The parent parcel contains 31.318 acres, is zoned RPD (RCA Overlay), and is located on the north side of Breton Beach Road; Tax Map 48, Block 14, Parcel 20.

Owner: John C. Courembis
Agent: D. H. Steffens

Present: Herb Redmond, of DH Steffens

Mr. Kudlas advised this plan was reviewed by the ERT in November 1991; the applicant has met all submission standards for the minor subdivision category. Applicant has also met 2 of the 4 Locational guidelines and General Principles. The requested conversion is not contiguous to existing LDA and would therefore require use of a portion of the 843 acres of non-adjacent allocation. Lots 1 and 2 are located 300 ft. from mean high tide and tidal wetlands, but Lots 3 and 4 provide only a 100 ft. setback.

Mr. Kudlas stated that 66 acres of the 212 acre parent parcel is in the Critical Area, and applicant is proposing a cluster development of five lots, totaling 6.319 acres of growth allocation, under the Minor Subdivision Category. The ERT and TEC reviewed the plan in November 1991, finding that the project has met all the submission standards of this category and 3 of the 4 policies which apply under the growth allocation process. However, he said, it does not comply with the Locational Guidelines in that the project is not contiguous to existing LDA; therefore the 6.319 acres would have to be deducted from the County's non-adjacent allocation, which is 50% of the growth allocation acreage, or 843 acres total.

Mr. Kudlas continued that the project does not impact water quality or pre-designated habitat protection areas, one of which is a bald eagle site on the property. Applicant has met the management criteria set forth in the local program for bald eagle sites, as well as agreeing to abide by DNR criteria for managing bald eagle sites. In addition, Mr. Kudlas said, we have some local principles for growth allocation, and the project meets 3 of those 4 guidelines; i.e., the clustering provision, the non-impact on habitat protection, and the 300 ft. setback.

He stated the lots are no greater than 1.5 acres in size, and staff recommends we adhere to that portion of the program relating to how the growth allocation is mapped. The State has recommended a 20-acre set-aside, however there is nothing in our local program that requires that and staff and the Planning Commission recommends that not be a condition of approval. Both staff's and the Planning Commission's recommendation is for approval, subject to the conditions that ERT and TEC comments be addressed prior to the project being forwarded to the State, and that the bald eagle management guidelines be adhered to.

Mr. Ocker presented as #A-1 the certified notices and return receipts from contiguous property owners, but noted that, due to a map error and a totally unintentional error by NGO, there are 4 possibly contiguous property owners who were not notified. As recommended by staff, Mr. Ocker said, he had notified the 4 property owners and discussed with them whether they had a problem with the project going forward. The 4 property owners are: Mr. & Mrs. John Koszeghy, Mr. & Mrs. John L. Bohanan, Mr. & Mrs. Shepard McKenney, and Mr. & Mrs. Walter Szlendak. Mr. Ocker said he had contacted the property owners as requested, Mr. Szlendak through his representative John Collich, and they had stated no problem with the error in notification and with allowing the process to go forward. Mr. & Mrs. Koszeghy were present at this public hearing, and Mr. Ocker said he appreciated their taking the time to come here.

Mr. Ocker described and located the project for those present, stating it is the confusion as to what Mr. Davis, a property owner to the west, may or may not own that raised some mapping questions and the led to the notification issue. He stated the smallest lot is 1.246 acres and the largest is 1.269, with a maximum 20,000 sq. ft. of disturbed area and a maximum footprint of 2,400 sq. ft., including garage. They will be clustered on the wooded plateau, with each lot line a minimum of 300 ft. away from the River to maintain the wooded area and wildlife corridors which will remain untouched, even though the Forester recommended the property be cleared due to the maturity of the trees. Re-forestation to compensate for clearing of the building sites will be placed in area so as to allow the existing forest there to mature, and backfill to it, which will provide a new habitat for the existing wildlife.

Mr. Ocker said that due to the slopes on the property, none of which are greater than 15%, they have provided an expanded buffer with no clearing or development within that buffer. This is a restriction they placed on themselves, he added; the lot line may go beyond the buffer, but the development will not.

During the Planning Commission public hearing, Mr. Ocker said, it was stated that there was a bald eagle nesting site on the property. He said he had not sighted the nest in his field inspection, but it was confirmed and mapped by the State. The protection zone established by the State for bald eagle nest sites consists of three concentric circles around the nest at a maximum of 1/4 mile. In this case only one piece of the outermost zone from the nesting site, Zone 3, touches the Critical Area, he said, and it is not a "no build" zone, it is a zone in which building activities are curtailed from June 15th to December 15th, after the eagle has left the nest. The proposed road building appears to be the only construction activity within any of the protection zones, and only within Zone 3, however activity during the nesting season would have to be restricted.

The lots are not on the waterfront, they are waterview lots with water access. If it is deemed that the 20-acre set aside is required, the owner has agreed that it will be provided, Mr. Ocker said, and the area of development totally protected by open space, with open space agreements through the Homeowners' Association.

The question of tax assessment for the waterview lots was raised during the Planning Commission hearing, Mr. Ocker said, so he had contacted the Assessment Office, which determined that an undeveloped lot of this size in an area of this nature would have a value of \$80,000 - \$100,000. Putting a \$200,000 home on the property would increase the taxes to approximately \$28,000 - \$30,000 a year.

Mr. Ocker said they have had the property surveyed by a licensed forester, Rudy Baliko, who recommended the forestry management of the property and the reforestation to provide the backfill as stated earlier, and these recommendations have been implemented into their plan. A Farm Management Plan has now been completed by the Soil Conservation Service and is now in the process of being implemented. The Plan has been submitted as part of the record.

In conclusion, Mr. Ocker said they are creating new habitat areas by the reforestation, they do not intend to clear any more than is absolutely necessary, covenants will be placed in the lot restrictions to do so, and they are monitoring and will continue to monitor the bald eagle nesting site. It is a 1989 nesting site location and he said this is the time that the eagles come back to the nest, so he is not out there monitoring every day, but people who live in the area will call him if the birds are seen and he will go out and ascertain whether they are using that site or some other site, without disturbing the birds. Otherwise, they will wait until the State comes back to do their audit on the site; he does not want to scare the birds, Mr. Ocker said, but he has not seen them yet.

The Chair opened the hearing to public comment.

Jack Mays, an adjoining property owner, stated he thought Mr. Millison has been given some bad advice in the development of these 5 lots in that they are too small for correction of possible sewer problems. Mr. Grimm replied that clustering is recommended by our Critical Area Program which, in fact, sets a maximum lot size of 1.5 acres in minor subdivisions.

Joe Austin question what he said he was hearing as disparity between RCA and LDA and that the lots should be larger. Mr. Austin also commented about the roads in the area, saying there are no lines on the road and they are dangerous, and if we put more people down there the roads will have to be corrected, and God forbid if a school bus has to come down that road.

David Frazier spoke to the history of the property, saying it is very difficult to appreciate the natural beauty of it by looking at a series of lines on a piece of paper. He said it is a little piece of Maryland that has stayed the same since the date on the County seal, 1637, and probably prior to that, with no disturbance whatsoever. He talked about the value of the bald eagle, the white-tail deer and the wild turkey, which has just recently been discovered in this part of the County, having found its way here from Calvert County. He said he understands it's a man's right to develop his property as he sees fit, but the property has been undisturbed for hundreds of years; there is a beech tree on the property that you can't get your arms around, Mr. Frazier said, and you know it is over 500 years old, and it seems to him that this development will be destroying something we will never get back again, not in anybody's lifetime.

Mr. Frazier said he thinks at some point we have to ask ourselves, as human beings, whether it's time to back off a little bit and really, truly, carefully consider what we're doing to the surface of this planet and our own back yard, and he would ask the Commissioners to take the time to ride down that narrow, winding road that they live on, that they love so much, and take a look at this piece of property and the animals that you see there, because 10 years from now, or possibly one year from now, they won't be there anymore. He said he appreciates the energy spent for protection of the bald eagle, it is a very important point, and he can't thank the Commissioners and the Planning Commission enough for taking that into account.

Mr. Grimm reiterated that the environmental comments under the Critical Area growth allocation will be required to be addressed at this time; however any consideration for actual subdivision of the property; e.g., roads, will be addressed at a subsequent time at which we will apply all the standards of the Zoning Ordinance and Subdivision Regulations. If DPW indicates the road does not meet the Adequate Facilities provision of the Ordinance, he said, the Planning Commission will not be able to grant subdivision approval for the property.

Carol Stone, also a Frog's Marsh resident, also opposed the 5 small lots, saying the developer also owns a parcel behind this that is not in the Critical Area, and she is afraid this will set a precedent for building small acreage lots, which will not be compatible with the existing community. She said she

Mr. Kudlas said the Planning Commission has recommended approval with 3 conditions: (1) If approved by the Commissioners, the ERT and TEC comments shall be addressed before the project is forwarded to the State; (2) A Critical Area Planting Agreement for afforestation shall be executed by the applicant; and (3) The lotting pattern shall be reconfigured to comply with the 1.5 acre lot criteria of the minor subdivision category.

Herb Redmond, of D. H. Steffens Company presented the plan, stating they have no problem with reconfiguring the lots to minimize the growth allocation deduction. However he questioned the 300 ft. setback requirement, stating he thinks it is stated the requirement "should" be met, rather than "must" be met. He said the soils are not highly erodible and they are not impacting any slopes greater than 15%; this is all agricultural land being farmed as such. No construction is proposed in the wooded areas he said and, in fact, some reforestation will be provided in the cleared areas.

Mr. Redmond stressed the fact that, since this is waterfront property, they would certainly like to have some portion of the property to have waterfront view. There is no guarantee that the property will perc as they have set it up, he said, and he thinks it is very important that the 300 ft. setback rule be considered, but whether it be a "must" is a question that he would argue on their side.

Mr. Redmond asked Mr. Kudlas for some direction as to the lots being made contiguous, and referenced the one project approved last year by the State, the Avenmar project, which he said he thought was not a contiguous lot pattern. Mr. Kudlas replied the Avenmar property was contiguous in that it contained a small strip of LDA property. Mr. Redmond stated he feels they can address staff's comments.

The Chair opened the hearing to public comment; hearing none, the public comment portion for this application was closed.

Design Competition

ISUB #88-0434 - ST. WINIFRED'S ESTATES

Requesting change in overlay classification from RCA to LDA for a 17-lot subdivision using 15.22 acres of growth allocation. The parent parcel contains 165.88 acres, with 60.43 acres in the Critical Area. The property is zoned RPD (RCA Overlay), and is located on the east side of Oakley Road, Maryland Route 470; Tax Map 17, Block 19, Parcel 27.

Owner: Edward D. Middleton
Agent: D. H. Steffens

Present: Herb Redmond, of DH Steffens

Mr. Kudlas stated this is the single Design Competition entry and received a score of 45.55 out of a possible 70-80. The request is for 16 lots in the Critical Area and one additional lot outside, for a total of 17.889 acres in the development envelope and 15.22 in the Critical Area. Applicant has two pieces of land which will constitute his 20-acre set-aside and a 20-acre lot reserved for himself. The project was reviewed by the ERT in November 1991.

Mr. Kudlas stated there are no real submission standards for the Design Competition other than certain performances to compete for points, however this project does meet what standards there were. The Locational Guidelines and General Principles not met by the project are that it is not contiguous for existing LDA and would require use of a portion of the 50% non-adjacent location; secondly the project is located 250 ft. from tidal wetlands or tidal waters at its closest point, rather than 300 ft.

Applicant has complied with the mapping rules within the Design Competition Category and the requirement for the 20-acre set-aside. The Planning Commission recommended approval with the conditions that all ERT and TEC comments be addressed and that a Critical Area Planting Agreement be executed before the project is forwarded to the State.

Mr. Redmond stated he feels they can meet most of the suggestions required by staff and they have looked at moving two of the lots to address the 300 ft. setback, but again stressed that there should be due consideration for each individual project regarding what we are dealing with as far as the land is concerned. This property is also agricultural, Mr. Redmond said, and a portion will be reforested with .6 acre replanted; they have kept the tree line and buffers and they will not be disturbed. The lots are small, he said, because they found the indication of the soils to be very good in this area. The 15% slopes are far outside of their development envelope, he said, and they feel the

subdivision, for all intents and purposes, does meet all of the guidelines. It does not meet them exactly, as staff would like to see, he said, but that is something the Board will consider, and he thinks that is something that should be considered not only for this project, but for the future.

The Chair opened the hearing to public comment.

Ms. Donna Martinez stated she lives on the creek which will exactly look across the wetlands and has lived there for 18 years, building on property that has belonged to her property for decades. Over those 18 years, she said the marsh has deteriorated because of various pollution problems. She said they used to watch carp come into the creek to spawn - they don't do that anymore; they used to watch the muskrats court in the springtime, but over-hunting in the area has caused the death and the loss of many of those little animals. That marshland is very fragile, she said, and they're proposing to put these homes between that driveway and the land that slopes directly into that marsh. Her concern isn't so much to stop the development as to save the marsh, she said. When the bald eagle sits down in the middle of that marsh, Ms. Martinez said, it is the grandest sight anybody will ever see, and when you put more homes around that marsh he won't come in there.

There are homes on the other side of that property already, she said, and what bothers her is why not put the development on the other side of that property away from this marsh to save the wildlife. Ms. Martinez said people all up and down 470 are clear-cutting that land, so we're talking about the animals being able to move on, and they're not going to be able to move on if the area continues to develop like that.

Ms. Martinez said they didn't know about this until about a week ago and she was shocked, because their dream was that marsh protected them, and they were there to protect it. She said the Commissioners have no idea how they feel about that marsh, they have watched it deteriorate and they would like not to see it deteriorate any further.

Ms. Martinez said homes sitting in that area flood - the area on either side of the creek and the little bridge area that is right down the slope from the driveway floods. The driveway comes right out of the knoll, she said, and the road drops so you can't see from either side, so even the entrance of the driveway is a hazard. She said she sees a lot of problems, and they have had a very short time to communicate with their neighbors and come up with something to present to the Commissioners, but she really wishes they would re-think this area for this development.

Ken Bergling stated he has lived here for 5 years, moving here from D.C. and then from St. Charles because they like the country, like everybody else. He said this is the first time they have seen this, and asked if it is normal procedure that you don't see anything regarding something that's going to be developed in your area before you have to come to a hearing? Mr. Grimm replied a hearing had been held at the Planning Commission level but it is not mandated for soliciting comment and they do not require notification of adjoining property owners or posting of the property, but the Planning Commission agenda is published as a public service in The Enterprise. It is the County Commissioners public hearing which requires notification of property owners.

Mr. Bergling asked whether the Commissioners ever see the property they are making the decision on? He said there is a bald eagle, foxes, blue heron, and all sorts of wildlife there. It won't be there anymore with 17 homes going in there, he said. Commissioner Loffler stated the swamp is a protected area, and Mr. Kudlas added there are requirements the applicant must meet to do that. Mr. Redmond reviewed the plan with the concerned property owners.

Mr. Bergling questioned the purpose of the cluster and also the location of the development on the swamp side of the farm. Commissioner Loffler stated the owner of the property has certain development rights, and the only way you can stop him is to buy the development rights away from him. There is a provision for that in our Zoning Ordinance, he said, but they have to be purchased and he has to be willing to sell them.

Annette Madel, whose property abuts the development property, stated she does not know the chain of events and asked if Mr. Middleton has had the property perked. Mr. Redmond replied that it has, and Mr. Kudlas stated the project has been reviewed by DNR through the Environmental Review Team process, and they had no negative comments.

Ms. Madel said Mr. Middleton has cut a huge swath of grassland right down through the marsh and has put a duck blind in there and they are hunting right in the grasslands and marshlands at the mouth of the creek. She said she

doesn't know whether this is allowed or not, but she has seen a really big difference in the wildlife between this year and last year - last year Ms. Madel said she counted 74 swans in their creek, this year she has seen no more than seven all winter long; right across the way from Mr. Middleton's property is a feeding ground for geese, so they fly directly over Oakley Road due to the marsh, and they have had virtually none this year.

Ms. Madel said he has clustered his homes as close to the water as he can get, and what everyone here is concerned about is that the cluster of homes in that one little spot off of that big farm will have a huge impact on that creek.

Ms. Kathleen Bergling stated when they moved there from St. Charles and Mechanicsville she had realized her dream come true; her husband drives over 100 miles to work each day, she said, and they had moved here with a retirement home in mind. Now everything will be changed, she said, they have lived in a development and they know what it is like. She said she is a novice at this, she doesn't know everything that goes on, but she has to say she is not happy.

Ms. Martinez asked if the homes will have water access, saying they have seen the same things Ms. Madel has seen; they have had 34 ducks in the creek, now they have two - they have been killed by people who want to develop the land and obviously don't care about it. It is their right to hunt there, she said, but it is the property owners' right to enjoy that wildlife, and she thinks that's what made them most angry - if Mr. Middleton wanted to build the homes for his profit and still have the wildlife he would put them on the other side of that property, because where they are located is a danger to that area, that marsh and the swamp, and she just doesn't understand it.

Abel Martinez said he can see the location of the wells but the sewage will run down into the wetlands because the property is so close to it; he said he knows because he has seen it. He said Oakley Bridge is under repair now and it is constantly under repair and he has tried to report people speeding across the bridge, and hunting from the bridge; they closed the dump in Clements he said and now people dump right in that creek. If you go to the bridge, he said, you can see mattress and springs going down the river. The property might perc 25 or 50-60 further up, he said, that's where you will put your well, but the sewage will run down, it will not go up.

Commissioner Loffler repeated what he had said earlier about septic regulations, saying they are stricter now probably than when these people built their houses. The tests are more rigid today, he said, and we really haven't had problems with the recent developments and the recent perc tests; where we have problems are with grounds that should never have passed perc, with one set of drainfields and no expansion room on .8 acre or less lots. The Board will not determine that the current Health Department Code is not accurate today, he said, that's not what this hearing is about; it is about factual information as to the Critical Area and this application. He said he does not want them leaving the meeting today thinking what they said it true because it's not, and if they have any questions as to whether these types of things are being done, they need to get together with Tom Russell of the Health Department to ensure them that these things are not happening.

Mr. Kudlas reminded that if appropriate water and sewer cannot be obtained on a growth allocation property within 3 years, it reverts back to the County.

Joseph Dufresne stated he owns property nearby but he doesn't think it abuts except maybe at one point, and asked the spectrum of the conditions used for "scoring" the project. Mr. Kudlas stated every project will not have the same amount of points available to it because the nature of each existing site may be different, and points are given for certain performances related to the environment which exceed the requirements of the Ordinance; i.e., they are bonus points.

Mr. Dufresne asked if these things are taken into account by the Commissioners in considering the request; Commissioner Loffler stated that the Commissioners rely on the Planning Commission, DNR, and other agencies, including the Environmental Review Team, which consists of the Chesapeake Bay Watershed Forester, the Regional Planner from the Critical Area Commission, a representative of Soil Conservation Service, Maryland Forest Park and Wildlife Chesapeake Bay Wildlife Biologist, and representatives from DPW, the Health Department, MetComm, Mr. Kudlas from OPZ, and a citizen representative at-large appointed by the Commissioners.

Mr. Kudlas stated that they did not visit the site as a group, but he visited the site and he feels pretty comfortable in saying the Health Department visited the site. Judge Dufresne asked if Mr. Kudlas visited the site by land, adding the property really should be looked at from the water approach.

Judge Dufresne asked if the Commissioners verified information submitted as part of the application, especially whether the property had been checked to see if its being farmed, saying he doesn't recall anything being planted since tobacco was planted there. Commissioner Loffler stated he thought that was

irrelevant to the application. Mr. Kudlas replied that there is a Critical Area Farm Plan approved by the Soil Conservation Service which does have an active status.

Judge Dufresne asked if anybody has asked if anyone has checked about the availability of water for drinking, saying he is a little surprised that that is not a consideration in the Commissioners' deliberation. Commission Loffler said there are adequate aquifers under the County to support it. He responded to Judge Dufresne that the rezoning is the process before the Commissioners today.

Commissioner Thompson asked why the developer picked this area for the houses as opposed to an upland area. Mr. Redmond responded they are here today because the lots are in the Critical Area; if they were on the other side of the 1,000 ft. line they wouldn't have to be here, but they could still cluster the development.

Mr. Madel stated where they are developing is, in her viewpoint, the most critical area because it is right on the marshland, and she doesn't understand how that is not critical. And they have cut this huge swath of marsh grass, she said, whereas she was not allowed to disturb one single piece. Mr. Grimm replied that he is not familiar with that, but he would look into it.

Judge Dufresne identified the bodies, saying there is a real embankment there, and that is why there is a real value to observing the site from the water. The site chosen, he said, is surrounded by a very dense marsh, with lots of wildlife and a drop-off that he thinks may be over 15% and that should be verified. He reiterated that he thinks it is incumbent upon anyone making a recommendation for development on that spot to take a look at it from the water.

Ms. Bergling stated her objection to the 17 lots and entered into the record her letter to that effect.

Ms. Martinez said there are very few people living on that little creek and they are all here, and she speaks for a 91-year old property owner and her mother, both of whom could not be here for the hearing. Mr. Martinez asked who owns the wetlands, saying it backs up, and during Hurricane Agnes the Oakley Bridge was under water for three days, and asked why the houses can't be placed further up.

Commissioner Loffler stated the property where the houses will be put are 20 feet above the marsh area, and said further the Commissioners must determine their decision based on factual information, not just that the property owners do not like the houses there. Ms. Madel asked how long they have to provide factual information to the Commissioners, and Commissioner Loffler responded today. She responded that something is not right and she thinks some of our experts have made a mistake, because she was not allowed to do the things this man is doing, and she is wondering why he is allowed to do them.

Commissioner Loffler responded the Commissioners and staff will check on what she has said the applicant has done, but that is outside of what he is asking to do here, because in fact, Commissioner Bailey said, this proposal is outside the wetlands and has nothing to do with what he may have done down there. Judge Dufresne asked if the things applicant has done wouldn't affect the Commissioners' decision and perhaps give them an indication that perhaps he's not deserving of this exemption from the applicable laws.

Commissioner Bailey responded the Commissioners listen to public comment, they listen to both sides, but Commissioner Loffler stated the Commissioners cannot make their decision based upon whether or not they like you; in fact, he said, you have to be a blank person, and they have to base it on the facts that are presented to them.

Judge Dufresne asked again, if the Commissioners know whether anyone has observed the site from the water and compared the plat to what is on the ground, adding he thinks that observing the property from the water would be essential. Commissioner Loffler said he would say that all of the ERT members have visited the site, and suggested Judge Dufresne check with Paul Chesser, the citizen member of the ERT.

Mr. Grimm stated staff would verify that the plat is accurate and they will check on the other questions raised and report back to the Commissioners as their staff.

The public hearing was closed at 5:25 p.m.

COUNTY ADMINISTRATOR ITEMS - P.M. SESSION

10) PERSONNEL - DIRECTOR, EMERGENCY MANAGEMENT AGENCY

The County Administrator presented a memorandum dated February 11 from the Personnel Officer recommending the nomination to the Governor for the appointment of Paul Wible as the Director of the St. Mary's County Emergency Management Agency, Grade 23, Step 2.

After discussion Commissioner Bailey moved, seconded by Commissioner Lancaster, to nominate Mr. Wible as requested. Motion carried.

11) QUIT CLAIM DEED - TOWN CREEK MARINA

Also Present: Joe Densford, County Attorney

Mr. Densford presented a Quit Claim Deed dated January 27, 1992 between George C. Sung and Carolyn Sung and Board of County Commissioners of St. Mary's County regarding property at the Town Creek marina. Commissioner Loffler requested that the words "legally permitted" be added to the fifth paragraph after "existing and any future".

Commissioner Bailey moved, seconded by Commissioner Lancaster, to accept the Quit Claim Deed as amended. Motion carried.

12) LEONARD HALL JUNIOR NAVAL ACADEMY

Also present: Mary Pat Pope, Administrative Officer

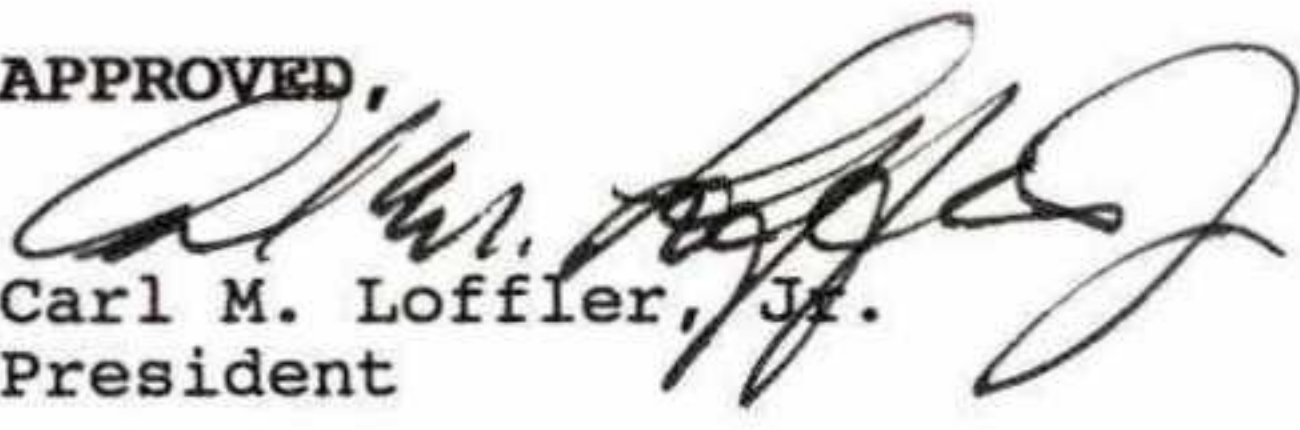
Ms. Pope distributed a detailed chronology of information regarding unpaid invoices by Leonard Hall Junior Naval Academy for rent, utilities, fuel, etc. Correspondence has been forwarded to LHJNA regarding payment and the removal of the drill hall from the lease. In light of the fact that no responses have been received, Ms. Pope presented proposed correspondence to the LHJNA Board of Trustees noting failure of payment of items due, and in accordance with Section 19 of the lease terms, indicating that the Commissioners intend to terminate the lease at the end of the current school year.

After discussion Commissioner Lancaster moved, seconded by Commissioner Thompson, to sign and forward the letter as presented. Motion carried with Commissioner Bailey voting against.

ADJOURNMENT

The meeting adjourned at 5:40 p.m.

APPROVED,


Carl M. Loffler, Jr.
President

