

ST. MARY'S COUNTY  
BOARD OF COUNTY COMMISSIONERS

March 3, 1992

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

**CALL TO ORDER**

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

**APPROVAL OF MINUTES**

Commissioner Jarboe moved, seconded by Commissioner Lancaster, to approve the minutes of the Commissioners' meeting of Tuesday, February 25, 1992. Motion carried.

**APPROVAL OF BILLS**

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

**PROFESSIONAL PURCHASING CERTIFICATION**

Present: James Haley, Procurement Officer  
Carol Gallagher, Assistant Procurement Officer

Mr. Haley presented Ms. Gallagher to the Commissioners stating that she has recently completed the National Institute of Government Purchasing's Certified Professional Public Buyer Program.

The Commissioners presented the official certification to Ms. Gallagher and expressed their congratulations.

**COUNTY ADMINISTRATOR ITEMS**

Present: Edward V. Cox, County Administrator

1) **COUNTY PROPERTY TAX CREDIT - NEW CONSTRUCTION**

The County Administrator advised that Section 9-207 Tax Property Article provides for the Commissioners to grant up to a 100% county property tax credit for newly constructed dwellings and commercial buildings which are unsold and unrented. The County Attorney by memorandum dated February 26 has requested whether the Commissioners wish to place this tax credit into effect by adopting a local ordinance. The Commissioners deferred a decision until next week.

2) **RECREATION AND PARKS COMPREHENSIVE PLAN**

The County Administrator advised that \$25,000 local funding for the Recreation and Parks Comprehensive Plan had been eliminated from the Department of Planning and Zoning's 1992 Budget as part of the reduction plan because state matching funds were not expected. However, Department of Natural Resources has advised that the \$25,000 state grant for the Plan has been approved, and the Director of Recreation and Parks in a February 27 memorandum has indicated that the Department of Planning and Zoning will be requesting reinstatement of the county's share, and he supports this request.

County Administrator Cox requested authorization to work with staff to determine a source of funds.

After discussion Commissioner Lancaster moved, seconded by Commissioner Thompson, to locate a source of funding for the County's local match for the Recreation and Parks Comprehensive Plan, as requested. Motion carried.

3) **WOOD TREATMENT PLANT TASK FORCE  
RESPONSE TO POTOMAC RIVER ASSOCIATION**

In response to correspondence dated February 19 from the Potomac River Association, the County Administrator presented a letter indicating that the members of the Wood Treatment Task Force represent the County's best interest and have the experience and competence to fulfill their role.

The Commissioners agreed to sign and forward the letter.

**4) DEPLATTING OF LEXWOOD DRIVE**

The County Administrator advised that by a Deed prepared in February 1988 the Housing Authority deeded a 60 foot right-of-way through Lexwood development to the County. However, HUD has approved a grant for the second phase of the Lexwoods project, and the Housing Authority needs to get the right-of-way back in order to meet Planning and Zoning requirements for setbacks. The Department of Public Works has indicated that the County has no plans for a right-of-way through that parcel and has requested the Commissioners to approve deplattling of the right-of-way and return the property to the Housing Authority.

The Commissioners directed the County Administrator to request Mr. Ichniowski to discuss Lexwood Drive right-of-way and agreed to defer a decision until next week.

**5) ECONOMIC IMPACT FEE EXEMPTION  
ST. GEORGE CATHOLIC RECTORY**

As a follow up to last week's discussion, the County Administrator presented correspondence addressed to the Pastor of St. George Catholic Church approving the non-payment of the Economic Impact Fee on the condition that the new building is a replacement of an existing dwelling and that upon completion, the existing mobile home will be removed from the premises.

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

**6) BAY DISTRICT VOLUNTEER FIRE DEPARTMENT**

At the request of the Bay District Volunteer Fire Department, the County Administrator presented correspondence addressed to ISO Commercial Risk Services requesting them to conduct a planning meeting with the BDVFD. Because of the anticipated expansion of the Naval Air Warfare Center Aircraft Division, commercial and residential growth in the Lexington Park area is expected over the next three years, and the meeting is needed to evaluate the possibility of an improved insurance rating.

The Commissioners agreed to sign and forward the letter.

**7) PATUXENT ESTUARY DEMONSTRATION PROJECT**

In response to correspondence dated January 24, the County Administrator presented correspondence to the Maryland Office of Planning submitting the names of the following individuals to serve on the working committees of the Patuxent Estuary Demonstration Project: Scott Kudlas (Technical Studies Committee); Jeff Jackman (Planning Committee); and Bruce A. Young (Implementation Committee).

Commissioner Lancaster moved, seconded by Commissioner Thompson, to appoint the referenced individuals and to sign and forward the letter as presented. Motion carried.

**8) CRIMINAL JUSTICE MEETING**

The County Administrator presented correspondence to participants in the Criminal Justice meetings inviting them to a meeting on March 31 at 3:30 p.m. at the Carter State Office Building. This meeting will provide an opportunity to discuss trends, progress and improvements as well as to chart new courses of action.

The Commissioners agreed to the March 31 meeting date and to sign and forward the letter as presented.

**9) ST. MARY'S COUNTY LOW-RENT PUBLIC HOUSING**

In response to correspondence dated February 20 from HUD, the County Administrator presented a letter offering comments relative to proposed development by the Housing Authority of two low-to-moderate income family housing projects (eight at Patuxent Woods and 50 on McIntosh Road when sewer line is completed). The letter indicates the importance the Commissioners place on the provision of adequate affordable housing, notes that the two referenced projects are of the highest priority, and offers the Commissioners support and endorsement.

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

10) **ST. MARY'S ASSOCIATION OF RETARDED CITIZENS**

The County Administrator stated that representatives from ARC have advised that the Developmental Disabilities Administration (DDA) is considering an increase in the payment system rate for ARC residential program. St. Mary's ARC currently receives 79% of the direct care rate, which contrasts to Charles and Calvert Counties which receive 107% of the direct care rate. Charles and Calvert are reimbursed at the higher rate because they are included in the Washington Metropolitan Statistical Area. DDA is considering increasing St. Mary's to 92%.

Therefore, County Administrator Cox presented correspondence to the Department of Health and Mental Hygiene supporting the proposed increase to ARC to 92% stating that St. Mary's should be included with Charles and Calvert Counties in that the three counties are considered a single economic region.

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

**PROCLAMATION  
NATIONAL RED CROSS MONTH**

Present: Murray Jackson, Chairman, Red Cross  
Other Red Cross representatives

The Commissioners presented the referenced Proclamation designating the month of March as National Red Cross Month.

**ALLIANCE FOR ALCOHOL AND DRUG ABUSE PREVENTION**

Present: Cynthia Brown, Director, Office of Community Services  
Judy Landau Pedersen, Public Information Officer  
Joe Dick, Alliance for Alcohol and Drug Abuse Prevention  
Walt Biscoe, "

The referenced individuals appeared before the Commissioners to request the Commissioners' support and endorsement of Freedom Fest '92 which is planned to be held July 4 at the Fairgrounds. Ms. Brown noted the success of the past events stating that this will be the third year. Ms. Pedersen reported that total anticipated expenses is approximately \$14,600 with the hope that revenues will surpass that amount.

In conclusion Ms. Pedersen requested the Commissioners to provide a financial guarantee.

After discussion Commissioner Bailey moved, seconded by Commissioner Thompson, to guarantee funding as requested Motion carried.

**EXECUTIVE SESSION - PROPERTY ACQUISITION**

Present: Edward V. Cox, County Administrator

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

**COMMUNITY SERVICES COORDINATION COMMITTEE - ANNUAL REPORT**

Present: Gene Carter, Chairman  
Cynthia Brown  
Larry Harvey

The referenced individuals appeared before the Commissioners to present the 1991 Annual Report for the Community Services Coordination Committee. Carter noted the purpose of the committee as stated in its bylaws. He further reviewed significant activities which included changing its focus to include making suggestions to the Commissioners regarding the development of program initiatives and strategies. Challenges facing the Committee included addressing reduction in funding support, which touched all agencies. Plans for the current year include seeking a level of participation by all members and extending membership to agencies not currently represented. The Committee's long range goal is to develop a ten year plan for the revision and continued development of the human service system which will be presented to the County Commissioners.

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

**DEPARTMENT OF PLANNING AND ZONING  
GROWTH ALLOCATION DISCUSSION**

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

Mr. Loffler stated he has reviewed the four Growth Allocation Projects and he is having trouble seeing the firmness of County zoning as we work with the Critical Area Overlay, and asked that staff separate the county zoning from the Critical Area Overlay; i.e., if it is 1 in 3, show him where we have the land set aside, or the same control we would have if the project were a farm off of Route 235.

Mr. Grimm responded that is a challenge he thinks staff has met and obviously has to meet, but he would do that. He also presented to the Commissioners a report addressing the outstanding issues or questions raised on the various cases at the public hearing. He stated for the record that the questions and answers have not changed staff's position on any of the cases.

**ISUB #91-1646 - Sotterley Cliffs Farmstead (Single Lot Category)**

Mr. Grimm stated there were no specific questions on Sotterley Cliffs, but the issue here is that the project does not comply with our program, so staff recommends denial. This was a farmstead subdivision with large lots established after December 1, 1985 but before the enactment of our own Critical Area Program, so this property, which had something less than 60 acres, had 3 development rights at 1 in 20; the third parcel had some land in the Critical Area but no building right. This request was to move the building right from outside of the Critical Area into the Critical Area for the 3rd lot by use of growth allocation; however, the subdivision was recorded in 1989, so it did not meet the threshold date of 12/1/85 and is not eligible for growth allocation.

**ISUB #91-1644 - Christmas Hill (Minor Subdivision Category)**

Debate during the public hearing centered around the character of the neighborhood and the lotting pattern in the general vicinity and whether the lots were of a character that was similar to LDA or LDA designated. Properties directly adjoining this property are not LDA but they do have some LDA characteristics. The way LDA zoning was established, Mr. Grimm said, was that on 12/1/85 essentially we took a snapshot of the way lots were established and that character of development was the basis on which LDA designation was given throughout the county.

The parcels surrounding Christmas Hill are the Stone parcel and another parcel which has some history in OPZ files. Mr. Grimm said he has provided some background information in the report, but none of that changes staff's recommendation. Both staff and the Planning Commission recommend approval of all four projects.

Commissioner Loffler asked if the appropriate land is set aside under County zoning. Mr. Grimm replied County zoning is 1 in 3 and for 5 lots the applicant would require 15 acres; he has volunteered to set aside more than that. In fact, he said, the residue of the parent tract also has with it additional acreage; so there are two ways we can accommodate it - one is the Critical Area set-aside which has been proffered by the applicant, and another is a development restriction on the balance of the property for the 3-acre density set-aside.

Responding to Mr. Loffler, Mr. Kudlas stated that, once this subdivision is completed and recorded, the applicant could come back, under another category, for subdivision of the remaining 40 acres under the Critical Area; however, the set-aside could not be subdivided.

Commissioner Loffler talked about regarding the 1.5 acres as a minimum or maximum, and said he agrees with the 1.5 maximum as he feels no one should be able to take a great amount of growth allocation - 1) because it is a very valuable commodity; and 2) from a protection aspect. What he really has a problem with, Mr. Loffler said is the amount of concentration; the Critical Area advocates tight clustering but, as you get smaller in lot size, the concentration becomes more intense.

Mr. Kudlas replied that was not a design competition project, and the language in the program says, "The maximum size of a single lot shall not exceed 1.5 acres." Mr. Grimm added the acreage will basically be determined by the ability of the soils to handle sewage disposal and Health Department regulations.

Commissioner Thompson asked how the set-aside areas are marked? Mr. Grimm replied different subdivisions do show up on the tax maps as having open space parcels, and OPZ would label it on the subdivision plat as a parcel designated for open space purposes, and said perhaps, if the project is approved, staff could sent a note over to the Assessment Office with the plat indicating that

it should not be given a parcel number. It depends on the type of development, Mr. Grimm said, sometimes it's labeled "parkland," sometimes "open space," and a cluster subdivision such as Hunting Quarter has open space shown on the tax maps. These could be owned by the developer but are typically owned by a Homeowners Association, which has to have legal documents associated with it and be tied to the Deeds that are transferred.

Commissioner Loffler asked how the open space is taxed. Mr. Grimm replied he did not talk with Mr. Spence about that but he believes it is taxed and pro-rated to each of the lots. He said he did talk with Mr. Spence about waterfront, waterview, and water access properties, and there is some differential in values - approximately 10% to 15% on total value of waterfront vs. water access properties in a given community, but the access, or open space or recreational amenities are pro-rated among the assessments of all of the properties. Therefore, communities with significant recreational or open space amenities will probably be valued higher than a similar community without these amenities. Mr. Grimm said staff would label it as Parcel "A", for instance, with a note required on the plat saying that it was dedicated to meet open space or density requirements of the subdivision.

**ISUB #91-1648 - Windward Cove (Minor Subdivision Category)**

No unanswered questions from the hearing; however, Mr. Grimm said the RCA is also 1 in 3 density and the 5 lots would require 15 acres, with a density set-aside for the remainder of the 15 acres.

Commissioner Thompson said she would like to be able to reassure herself and the citizens that the set-aside will not come back for development, and asked in order for that to happen, would not the development have to come back before this Board or through the Planning Commission? Mr. Grimm agreed that any changes to any of the restrictions or conditions either of the growth allocation approval or a subsequent subdivision approval would have to be reviewed and reconsidered in the same fashion as the original application. If it were a condition of the growth allocation zoning change that would be a County Commissioner decision; if it was a condition of a subdivision plat approval that would be a reconsideration by the Planning Commission.

Regarding the Sotterley Cliffs application, Mr. Kudlas replied Mr. Mitchell's recourse would be to the Circuit Court. Mr. Grimm added one of the things he has asked Mr. Kudlas to look at, with the committee that is looking at modifications to the Critical Area Ordinance is to see if there is any leeway between the 12/1/85 date and local program adoption date of March 1990, and if we can modify for projects that went through in accordance with our density requirements at that time, to allow them to be eligible for growth allocation.

As a aside issue, Mr. Grimm said Mr. Mitchell had asked him if he should drop his project and he encouraged him not to lay his project aside until we look into this issue. This does not pre-dispose any decision, he said, but it raises the issue.

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

Mr. Grimm said Mr. Kudlas has researched the existence or location of the eagle's nest and, according to the sources of the response, the location of the nest does not impact this site under our current regulations. Commissioner Loffler said his greatest concern is the set-aside area and as he remembers last year's discussion, we do not consider anything that is totally non-buildable, such as wetlands, for a set-aside, and asked where we meet the Critical Area conditions and County zoning.

Mr. Grimm stated the way we have done it with last year's projects and with the Zoning Ordinance restrictions for Resource Protection is that anything other than State wetlands can be considered for density calculation purposes, and when it's considered for density calculations it can also be considered for a reservation for density purposes. What staff would do, he said, would be to determine where the State limit for the wetlands is, and that land below that cannot be counted, but private wetlands above that point could be considered both for density and for set-aside.

Mr. Kudlas added this is, in fact, private tidal wetlands and therefore staff allowed them to include that as part of their reservation. He added he believes the State program does permit that and that it is consistent with the policy used last year with the Avenmar project. There is a 24-acre Critical Area set-aside, Mr. Kudlas said, which includes fastlands and a part of the pond area, and the 20-acre RPD set-aside is in another area. At 1 in 3 density, he said 17 lots were calculated for the 60+ acres, 16 within the development envelope which will be mapped as LDA, and one unit outside the Critical in a 20-acre lot.

Commissioner Loffler stated, then, if this is approved, the applicant could have one residential unit for the rest of the land, and pointed out if the applicant ends up with ownership, rather than deeding over the right to that subdivision, for the rest of his and his heirs' life they will be paying taxes on something they can never build a residential unit on.

Commissioner Loffler said he is not really happy with the lot size in this project, that it doesn't make sense to him, since there is 40 acres sitting out there, to have 1/2 acre lots and restrict the septic systems and de-values the lots. He said it bothers him that we are promoting that type of development; it seems to fit the rules, but it makes one wonder why we created these rules.

Commissioner Jarboe pointed out the one lot outside of the development could be agricultural land with one house on it, which will free up the farm land. Mr. Kudlas the applicant has indicated he would continue farming on the land even after they built the house.

Commissioner Loffler said he agrees that the 40 acres could be used for farmland but he has a problem with the reserved area being used for anything. Mr. Grimm replied the set-aside must retain the RCA character and permitted uses in the RCA include farming and forestry. Commissioner Loffler asked how the property by the water's edge will be marked so that it will be left in its natural state? Mr. Kudlas replied that area will be an afforestation area which will be restricted by covenant for no disturbance, and there is a standard about remaining forest in the Critical Area when a project is approved, so he thinks the standard notes and the fact that this portion of the field is contained in that reservation area will restrict that portion of the set-aside in its natural state.

Commissioner Loffler said he follows the words but his concern is 5 years from now when somebody goes out there and harvests the trees and plants it, how do we know, or how do future generations know that that restriction is on there, and if that restriction is on there, when does farmland cease to be farmland? Commissioner Jarboe replied if it has not been plowed in 3 years.

Mr. Grimm stated if the Commissioners grant approval, staff should designate Parcel 'A', which is the tidal/nontidal and forested lands portion of the set-aside as an "Open Space Preserve - Not to be Developed" on the plat, with an accompanying note not only on the rezoning conditions but on the subdivision plat when this goes forward through the Planning Commission approval process.

The other parcel should be designated Parcel "B" or some other appropriate designation and allowed to be used for the RCA category uses, if that is the Commissioners' decision; however, he said, the Commissioners could also restrict it the same way as Parcel 'A'.

Commissioner Bailey said he thinks the lots are a little small too and asked if the applicant can't get percs on the small lots can he make them larger to get the percs as long as he stays within the 15.22 acres? Mr. Grimm replied the request is for 16 lots on the 15.22 acres plus one lot on the balance of the property, and that is what would be available to the applicant.

Regarding the question about cutting the marsh grass, Mr. Grimm said there are certain things that you can do without Army Corps of Engineer permits but the cutting of the marsh grass would have required an environmental permit from OPZ, and staff could find no such permit in our files. Staff will follow up with the landowner.

The Commissioners asked staff to bring the projects back with the appropriate notes, and the decisions will be made at that time.

**METROPOLITAN COMMISSION - WATER/SEWER AMENDMENT RESOLUTIONS  
(ST. GEORGE ISLAND, AIREDELE ROAD)**

Present: Joseph Densford, County Attorney  
Paul Chesser, St. George Island Civic Association

As a follow up to previous discussions Mr. Densford presented the Resolution amending the Comprehensive Water and Sewer Plan for the referenced Metropolitan Commission projects. Mr. Densford advised that sections of the Agreement with the civic association, which is attached to the Resolution, have been incorporated into the Resolution. Mr. Chesser indicated that the St. George Island Civic Association has recommended approval of the Resolution and Agreement.

During discussion of Airedele Road, Commissioner Jarboe suggested that language be added that the project would be contingent upon neighborhood approval of the disposal site. Mr. Densford indicated that another option could be to request MetComm to give assurance that there would be a public hearing on the cost to the residents. Commissioner Loffler pointed out that he thought a public hearing would be required.

In conclusion the Commissioners requested Mr. Densford to determine if a public hearing is required, further to amend the Resolution as necessary, and return to the Board next week for a decision.

**MARYLAND ROCK COURT CASE**

Present: Joseph Densford, County Attorney

As a follow up to last week's discussion, Mr. Densford stated that it was his opinion that the County has 10 days from this date to appeal Judge Raley's decision to overturn the Board of Appeals ruling on the Maryland Rock Court case.

During discussion of whether the County should appeal Judge Raley's decision to the Court of Special Appeals, Commissioner Loffler inquired whether any Commissioner had a conflict in this matter and wished to not participate. He stated that letters have been received objecting to certain members of the Board participating, and he stated that a determination would have to be made by the Ethics Commission. He pointed out that he felt that Commissioners Bailey and Jarboe have a potential conflict of interest and if they should remove themselves from the discussion. No Commissioner responded with an intent not to participate.

Commissioner Bailey suggested that the Commissioners get a recommendation from the Board of Appeals whether or not to pursue this matter further. Commissioner Lancaster stated he was in favor of getting a recommendation from the Board of Appeals as well as from the County Attorney.

When questioned whether the County Attorney could give the Commissioners an opinion whether to appeal, Mr. Densford stated he would prefer doing that in an executive session.

Commissioner Thompson moved, seconded by Commissioner Lancaster, to meet in Executive Session to discuss a matter of litigation. Motion carried.

(Commissioner Jarboe left the meeting because of a previous commitment to travel to Washington, D. C. on county business.)

The Executive Session was held from 12:05 p.m. to 12:45 p.m. (Present were: Commissioners Loffler, Bailey, Lancaster and Thompson; County Administrator Edward V. Cox, County Attorney Joseph Densford, and Director of Planning and Zoning Jon R. Grimm.)

After the Executive Session Commissioner Bailey moved, seconded by Commissioner Lancaster, to table for a week the decision whether or not to appeal Judge Raley's decision until the Commissioners get an opinion from the Board of Appeals. Commissioners Loffler and Thompson voted against the motion. Motion defeated because of a lack of majority.

Commissioners Loffler and Thompson indicated they were opposed to going to the Board of Appeals because they believed the matter should not be delayed and the Commissioners should proceed with filing the appeal.

Commissioner Thompson moved, seconded by Commissioner Loffler, to appeal the court decision on the Maryland Rock case. Commissioners Bailey and Lancaster voted against the motion. Motion defeated for lack of a majority.

During discussion Commissioner Loffler requested the County Attorney to state for the record his opinion regarding aspects of Judge Raley's decision.

County Attorney Densford stated that he supported the decision by the Board of Appeals and Planning Director Grimm in determining the boundary line between Maryland Rock's conditional use and non-conforming use areas. He indicated that the Board of Appeals' and Director Grimm's decision was supported by the evidence in the record. He did point out, however, there were parts of the court's ruling he did agree with, that there is a non-conforming use on the property; however, it is the size of the non-conforming and conditional use that is in question.

Mr. Grimm indicated that he agreed with Mr. Densford and pointed out that he had followed the terms and conditions of the Zoning Ordinance. He advised that a consultant had been hired to help determine the boundary line and that the Board of Appeals and he had based their decision on the evidence. He further stated that the decision was not arbitrary and capricious.

During discussion Mr. Densford noted for the record that the Commissioners had asked for his opinion on certain issues in public which he gave; however, he pointed out that he had discussed with the Commissioners other issues in Executive Session and he stood by those comments, which he was not at liberty to discuss in public session.

Commissioner Loffler stated he would meet with the Ethics Commission later in the day to discuss the status of Commissioners Bailey and Jarboe.

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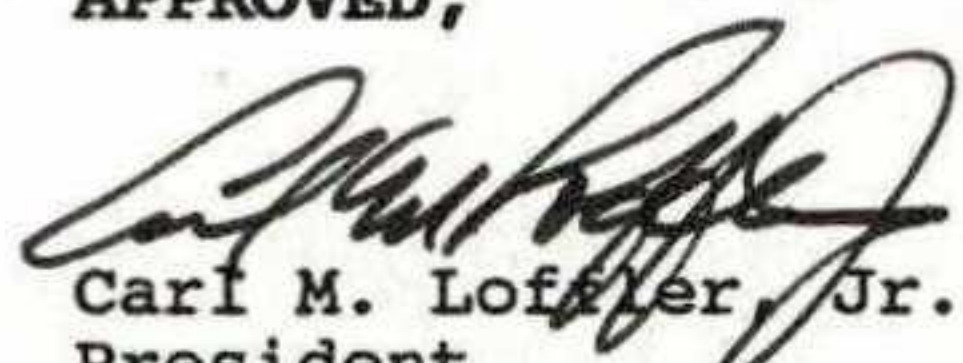
**STAFF MEETING**

The Commissioners attended the monthly staff meeting at the Carter State Office Building.

**ADJOURNMENT**

The meeting adjourned at 2:30 p.m.

APPROVED,



Carl M. Loffer, Jr.  
President