

ST. MARY'S COUNTY
BOARD OF COUNTY COMMISSIONERS
JULY 12, 1994

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Present: Commissioner Carl M. Loffler, Jr., President
Commissioner W. Edward Bailey
Commissioner Robert T. Jarboe
Commissioner John G. Lancaster
Commissioner Barbara R. Thompson
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 Lancaster moved, seconded by Commissioner Jarboe, to approve the minutes of the Commissioners' meeting of Tuesday, July 5, 1994. Motion carried.

APPROVAL OF BILLS

There was no Check Register this week because of the end-of-the year closing process.

COUNTY ADMINISTRATOR ITEMS

Present: Edward V. Cox, County Administrator

1) **Voting Machines**
Response Letter and Budget Amendment No. 95-02

The County Administrator advised that correspondence dated June 30 was received from the Supervisors of Elections attorney requesting the Commissioners' consideration for the purchase of 25 voting machines from Kent County. Kent County has gone to a new voting system and has made the Shoup machines, the type used by St. Mary's, available. County Administrator Cox presented return correspondence indicating the Commissioners' approval of purchasing the 25 Shoup Voting Machines at \$50 each. The letter also responds to the Election Board's request to address the possibility of changing the voting machine system for the County stating that the Election Board should revisit the issue during the development of the Fiscal Year 1996 budget. In addition Mr. Cox presented Budget Amendment No. 95-02 providing funding in the amount of \$1,250.

Commissioner Bailey moved, seconded by Commissioner Jarboe, to sign and forward the letter approving the purchase of the 25 Shoup Voting Machines from Kent County and to approve and authorize Commissioner Loffler to sign Budget Amendment No. 95-02 as presented. Motion carried.

2) **St. Mary's Youth Memorial Trustees**
Request for Building Permit Fee Abatement

The County Administrator advised that a request was received from the St. Mary's Youth Memorial Trustees for an abatement of the building permit fee for the construction of a pavilion. The request is in compliance with County's Resolution No. 75-53, and therefore, the County Administrator recommended approval of the request.

Commissioner Bailey moved, seconded by Commissioner Lancaster, to approve abatement of the building permit fee as requested. Motion carried.

3) **Property Tax Assessment Appeal Board - Nominations**

The County Administrator presented correspondence addressed to Governor Schaefer submitting three nominations to serve on the Property Tax Assessment Appeal Board. The State requires the submission of three names for each vacancy: Submissions are: Barbara Chapman, Chris Bowes, and Judy Sterling.

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

4) **Request for Executive Session - Personnel**

The County Administrator requested the Commissioners' approval to meet in Executive Session to discuss a matter of personnel (reclassification) later in the meeting.

Commissioner Lancaster moved, seconded by Commissioner Bailey, to meet in Executive Session to discuss a matter of Personnel (Reclassification), as authorized by Article 24, Section 4-210(a)1. Motion carried.

Reclassification Request
Typist Clerk I - DECD

Later in the meeting after the Executive Session, the County Administrator presented a memorandum dated July 7 from the Personnel Officer recommending the reclassification of the Typist Clerk I, Grade 10 position in the Department of Economic Development to Typist Clerk II, Grade 11. The Personnel Officer's memorandum advised that after meeting with the Director of DECD, the County Administrator, and himself concerning the duties assigned to the two individuals holding the job-sharing position, it was determined that Typist Clerk I does not adequately describe the duties and tasks currently assigned to these positions.

Commissioner Thompson moved, seconded by Commissioner Lancaster, to approve the reclassification of the Typist Clerk I, Grade 10, in DECD, to Typist Clerk II, Grade 11. Motion carried.

5) **Budget Amendments**

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

No. 95-01
Sheriff's Department

To provide for early hire of correctional officers to meet training schedule (were previously scheduled to be hired in October (\$17,792)

Commissioner Lancaster moved, seconded by Commissioner Bailey, to approve and authorize Commissioner Loffler to sign Budget Amendment No. 95-01 as presented. Motion carried.

No. 95-03
Various Departments

To provide budget authority to departments based on encumbrances unliquidated at year-end (\$5,841,578).

Commissioner Jarboe moved, seconded by Commissioner Lancaster, to approve and authorize Commissioner Loffler to sign Budget Amendment No. 95-03. Motion carried.

6) **Historic District Commission
Approval of Bylaws**

The County Administrator presented the bylaws for the Historic District Commission and advised the Commissioners that they are in compliance with County Resolution No. 88-03. Mr. Cox, therefore, presented correspondence addressed to the Historic District approving the bylaws as submitted.

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

7) **Department of Public Works Documents**

On behalf of the Director of Department of Public Works the County Administrator presented the following documents for the Commissioners' review and approval:

**Addendum to Public Works Agreement
Summerwood Subdivision, Section 1**

Between William P. Gloster, III and Gretchen G. Gloster and Board of County Commissioners for St. Mary's County extending the deadline for completion of improvements to October 1, 1994. The Addendum is backed by a Bond with International Fidelity Insurance Company in the amount of \$194,000.

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

Claim Letters

Cedar Cove, Section 5 - Letter to Maryland National bank calling Letter of Credit #290427 in the amount of \$35,000 for Grading Permit No. 90-35.

Rt. 235 Spoil Site - Lexington Park - Letter to Maryland National Bank calling Letter of Credit #615588 in the amount of \$18,000 for Grading Permit No. 88-43.

Milestown Oak Estates - Letter to First National Bank calling Letter of Credit #A1-10-09-92 in the amount of \$13,100 for Public Works Agreement.

Greenbrier, Section 1, formerly Whaler's Creek Runn- Letter to Maryland National Bank calling Letter of Credit #290428 in the amount of \$69,000 for Public Works Agreement.

Cedar Cove, Section 5- Letter to Maryland National Bank calling Letter of Credit #290429 in the amount of \$353,000 for Public Works Agreement.

Johnson Farm Estates, Section 2 - Letter to Maryland Bank and Trust calling Letter of Credit #534 in the amount of \$254,500 for Public Works Agreement.

Hearts Desire, Section 1 - Letter to Old Line National Bank calling Letter of Credit #105 in the amount of \$17,500 for Public Works Agreement.

Breton Bay PUD - Letter to Signet Bank/Maryland calling Letter of Credit #S0520 in the amount of \$254,500 for Public Works Agreement.

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

8) **Appointments
Boards, Committees, Commissions**

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

<u>Commission for Women</u>	<u>Terms to Expire</u>
Theresa M. Cassagnol	6/30/95/99
<u>Ethics Commission</u>	
Charles K. Walsh	6/30/97
<u>Tri-County Animal Shelter Advisory Board</u>	
William P. Bell	No Term

9) **Chancellors Run Activity Center
Status Report**

As a follow up to last week's discussion the County Administrator presented a memorandum dated July 11 from the Director, Department of Public Works setting forth a status report on the remaining inspections and approvals for the Office on Aging's Chancellors run Activity Center. Final approvals have been received from the State Fire Marshall's Office, Health Department, MDIA, MetComm, and Planning and Zoning. A Use and Occupancy Permit was also obtained on July 7. The memorandum further addressed the status of the contract including the status of punch list items.

DEPARTMENT OF PLANNING AND ZONING

Present: Jon Grimm, Director and
Peggy Childs, Recording Secretary.

1) **Discussion Decision
Vested Rights**

Pursuant to their public hearing of June 28, 1994, the Commissioners discussed the vested rights projects, determining that the following projects would be eliminated from the grandfathering proposal, subject to the following:

Cedar Cove PUD (Pickett's Harbor at Cedar Cove / Villas at Water's Edge) - As part of an approved PUD, these projects have development standards in place to guide them to re-approval; this is a procedural issue and grandfathering is not necessary to preserve development rights.

Countryside / Hidden Acres - Neither of these projects had received final approval and it appears they do not qualify for vested rights. Mr. Grimm will research the files to see whether bonding arrangements or dedication of land guaranteeing this project were part of the agreement for Pegg's Road and report back to the Commissioners.

By unanimous vote, development rights were grandfathered under ZO #78-43 for a period retroactive to May 1, 1993 and for one year from the date of this approval, for the following projects:

- Bay Ridge Estates, Phase 2: Motion - Bailey/Lancaster.**
- Essex South, Sections 4B & 4C: Motion - Bailey/Lancaster.**
- Lynch Subdivision: Motion - Jarboe/Bailey.**
- Courtyards at Great Mills (Mattapani Village): Motion - Bailey/Lancaster.**
- Heard's Estates, Section 4: Motion - Bailey/Lancaster.**

2) **Extension Of EDUs
Holland Forrest Landing & Tri-Co Comm Development**

Mr. Grimm proffered a memorandum from the Metropolitan Commission verifying that debt service for both Holland Forrest Landing and the project across the road formerly owned by Billy Fitzgerald and now owned by Tri-County Community Development have been paid since 1992.

Based on that information, Commissioner Lancaster moved to extend the allocation of 64 EDUs for Holland Forrest Landing and 20 EDUs for the Tri-County Community Development project for a period of 4 years from 10/15/94, or 10/15/98, per staff's and the Planning Commission's recommendation. Commissioner Bailey seconded the motion. Motion unanimously carried.

REQUEST FOR EXEMPTION OF ECONOMIC IMPACT FEE

Present: Ernest S. Carter, Applicant
Philip Dorsey, Attorney for Applicant
Jon Grimm, Director, Planning and Zoning

As a follow up to May 25 correspondence from the Department of Planning and Zoning to Mr. Carter relative to an outstanding impact fee, Mr. Carter and Mr. Dorsey appeared before the Commissioners to request an exemption for payment of the fee. Mr. Dorsey recited the history of the case stating that Mr. Carter had purchased the property in 1992 with the intent of renovating the house; however, he opted to replace the house with a trailer for his son. In 1992 the Seventh District Fire Department and Thompson Construction Company stated in writing that the structure was habitable; however the Department and Planning Zoning conducted an inspection in April of 1992 indicating that it was not habitable. Mr. Dorsey referred to County's Resolution No. 89-06 which allows the exemption of the fee if the new structure replaces an existing habitable structure. Because of DPZ's determination that it was not habitable, Mr. Carter was charged the Economic Impact Fee. In January of 1993 Mr. Carter wrote a letter to Planning and Zoning indicating his contention that the house was habitable.

During discussion Mr. Grimm noted that DPZ had used the standards of the Livability Code to determine whether a structure was habitable, but since the County has adopted a local building code, his office now uses the CABO One and Two Family Dwelling Code.

After discussion of what criteria would determine a structure to be uninhabitable, the Commissioners suggested that the Department of Planning and Zoning develop a more precise definition of "habitable" and "uninhabitable" in order to avoid any future misunderstandings.

After discussion Commissioner Jarboe moved, seconded by Commissioner Lancaster, that the structure was habitable and therefore Mr. Carter should be exempt from paying the impact fee. Motion carried.

ABELL'S WHARF PROPERTY

Present: Jon Grimm, Director, Planning and Zoning
Joe Densford, County Attorney
Phil Rollins, Director, Recreation and Parks

As a follow up to the June 21 presentation by Attorney Philip Dorsey, the referenced individuals appeared before the Commissioners to report on questions raised at that meeting. Mr. Grimm presented a memorandum dated July 7 addressing the following issues:

- o The D. H. Steffens survey dated February 6, 1990 is a valid survey of the property. Mr. Grimm noted that the drawing was not a site plan, but a drawing that is required for submission of an application for change in critical area designation.
- o The boat ramp is located on "Parcel B" (2nd parcel) adjacent to the county-owned parcel.
- o The application by Florida Rock for a zoning map amendment is in the hands of the applicant. TEC comments had been submitted to the applicant in April 1994; however, there has been no resubmission by the applicant in response to the comments. The next step would be a Planning Commission public hearing and then the Board of County Commissioners. Florida Rock claims a mistake was made on the overlay.
- o It appears that the county-maintained boat ramp is located on Florida Rock property, and Mr. Dorsey has requested a new survey to determine if the boundaries set forth in the Florida Rock submission conform with what the county believes is the public landing area.

Mr. Rollins pointed out that Department of Recreation and Parks only involvement with the property is removal of trash. He stated that the property adjacent to the county-owned parcel has been used for parking of vehicles using the boat ramp and the county has been maintaining the property in conjunction with the boat ramp for some time.

In response to Commissioner Loffler's inquiry regarding Mr. Dorsey's concern about the possibility of Maryland Rock subdividing the land, Mr. Grimm indicated that there has been no application for subdividing the property.

Commissioner Loffler recommended that staff contact representatives of Florida Rock to formalize an agreement allowing the public's continued use of the boat ramp.

STREAMLINING DEVELOPMENT REVIEW AND APPROVAL PROCESS

Present: Jon Grimm, Director, DPZ; Aleck Loker, Director, DECD; Larry Petty, Director, MetComm; Tom Russell, Director, Environmental Hygiene; Rob Smith, MDIA; Mary Pat Pope, Administrative Officer; Sue Wilkinson, DECD; Bruce Young, Soil Conservation; Pete Breck; F. Elliott Burch, Jr.; Joe Gough; Bill Mahaffey; John Norris;

The County Administrator explained that the purpose of the meeting was to review the status and implementation of the various consultant report's recommendations regarding streamlining the review and approval process. Areas of review included:

Improving the TEC Process

Mr. Grimm reported:

- o At its May 18 meeting the TEC agreed to change its format by meeting as an agency only group and by changing the meeting dates from the third Wednesday to the Thursday after the second Wednesday.
- o DPZ supports simplifying the subdivision regulations to establish basic (1 to 5 lots) and major (more than 5 lots) This will be on the Planning Commission's calendar by the end of the calendar year.

- o DPZ supports establishing deadlines for the review of revised plan submittals (an internal deadline of one month from date of receipt). He stated DPZ should also track applicants resubmission times on a project-by-project basis.
- o DPZ supports establishing written policies to guide decisions regarding preservation of priority protection areas - Forest Conservation Act Regulations. (Commissioner Loffler suggested that DPZ get an interpretation from the State of the provisions of the Regulations). Mr. Grimm noted that the interpretations will be given in writing.
- o DPZ acknowledged the importance of the "Fast Track" review process and that Commissioner-approved "fast track" projects be given top priority for review.

Improving Permit Process

- o TEC is reviewing the recommendation requiring applicants to drop off permit applications, establishing specific turnaround goals, and training of staff to review applications for completeness
- o DPZ supports allowing minor exterior construction applications to be walked around and is in process of preparing Customer Assistance Guide.
- o DPZ agrees to look at concept of a centralized review fee collection but other agencies present noted areas of possible conflict (Soil Conservation Service indicated that a delay in collection of fees may create fund shortage in paying employees.
- o DPZ supports updating Customer Assistance Guide #1 - How to obtain a building permit contingent upon implementation of permit process improvements.
- o DPZ supports the elimination of the following forms: Water Resources Protection Agreement and Sediment and Erosion Control Plan Exemption form by incorporating them into the zoning permit form. (The Economic Impact Fee Agreement will remain a separate document.)
- o DPZ has requested deferment of privatizing plumbing inspections using MDIA because the County currently has a plumbing inspector.
- o DPZ has agreed to prepare list of common home improvements requiring building permits as well as a list of those improvements that do not require permits.

The group agreed to continue discussion of the consultant's recommendations at next week's Commissioners' meeting.

EXECUTIVE SESSION

(Authorization given earlier in the meeting.)

Personnel (Reclassification)

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

Authority: Article 24, Section 4-210(a)1
Time Held: 12:45 p.m. - 12:55 p.m.

Action Taken: The Commissioners reviewed the reclassification request and agreed to meet in open session to take formal action.

**FISCAL YEAR 1995 BUDGET
BOARD OF EDUCATION**

Present: Charles Wade, Director of Finance

Mr. Wade presented correspondence addressed to the Board of Education for the Commissioners' review and signature indicating the Commissioners received the Bd/Ed's Fiscal Year 1995 Budget and requesting clarification of certain issues before taking action on approving the categories. Areas requiring clarification include: information concerning the Information System (data processing); health insurance (justification for using "prospective" coverage system and a track of expenditures); explanation of location of remainder of the county's one-time appropriation of \$900,000; rationale for computation and awarding of steps for teachers' salaries (and fiscal impact); and explanation of why Bd/Ed did not comply with §5-105(d) of the Education Article regarding "unliquidated surplus."

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

7:00 p.m.

**PUBLIC HEARING
PROPOSED ZONING ORDINANCE AMENDMENTS**

Mr. Grimm presented text and mapping amendments for the Commissioners' review. The proposals are recommended for approval by staff and by the Planning Commission on 5/23/94, following its public hearing held on 5/9/94. In addition to the mapping amendments recommended by the Planning Commission, there are two new proposals for mapping amendments: TM34, P318 - Otis Wood - Remove Commercial zoning designation from the residential portion; and TM46, P7 - Abell Property.

Following the presentation, the following issues were raised during the public comment portion:

Article 1 - no comments.

Article 2:

Mapping Amendment 43/384, Marv Franzen, from RL to C

This amendment is not recommended approval for on the basis that the 1981 "conditional rezoning" to CLO was never complied with by the applicant.

Carl Franzen presented "new information" to substantiate the request. Some of the points made were:

- (1) The CLO rezoning is valid based not only on the facts and circumstances but by case law, which holds that zoning takes place at the time of the zoning decision and is not contingent upon "ministerial procedural requirements."
 - (2) There is no such thing as a conditional rezoning; there are rezonings with conditions. Applicant will accept a condition limiting the use to an office building.
 - (3) Other CLO zonings did not require site plan approval.
 - (4) The conditions of rezoning were without time limitations and were a "one-of-a-kind" scenario. The property was never mapped as commercial; to deny the rezoning without notice from DPZ is a deprivation of due process.
- (7) The finding that the rezoning was invalidated by the comprehensive rezoning of 1990 is unreasonable because:
- (a) The file was classified as a completed zoning case in DPZ and was not reviewed during the two year comprehensive zoning process.
 - (b) The site plan was not submitted because they carry time limitations and applicant was not ready to build.

In conclusion, Mr. Franzen summarized that they are ready to build a nice office building on this site which would be of little impact to the neighbors and an asset to the County and the County's tax base. The site is not highly desirable for residential purposes and applicant requests that the zoning be corrected.

Article 3 - no comments.

Article 4:

48.07 - Vested Rights

Len Greess, Vested Rights Committee, read a prepared statement highlighting the fact that, despite the involvement and approval of a number of development and industry-oriented individuals in drafting this section, and that fact that extensive historical data was used to support the provisions recommended by the committee and the Planning Commission, the Commissioners have chosen to respond to the opinion of one of the committee members and revise the proposal. The committee met over a 4-month period, and the members were experienced, knowledgeable and articulate, with an able chairman and assistance from DPZ. 48.07 was the result of extensive research and was reviewed and approved by the County Attorney before being forwarded to the Planning Commission. The Planning Commission held a public hearing on 2/28/94, attended almost entirely by the building/developer community. There were no objections to Section 48.07 as it was written; only one letter was received during the open comment period, which was from the Potomac River Association, requesting a rationale for allowing up to 6 months after final plat approval to go to record.

Ms. Greess said the committee had reviewed allowances of other counties and St. Mary's County, and 6 months seemed a reasonable amount of time, based on historical data; however, the County Commissioners saw fit to extend the 6-month period to one (1) year, based on their position that 1/3 of the projects could not meet the 6-month deadline. The committee was impressed with the fact that 2/3 of developers surveyed in a sample period could meet the 6-month limitation, and almost all the delays in the remaining 30% were due to avoidable application actions and delays. He asserted that the one year period could delay the normal increase in property assessments of subdivisions and the imposition of increased taxes rightfully

payable and said his information, from having contacted bankers and insurance companies providing guarantees for developers, is that anyone with an acceptable financial statement could get a letter of credit or bond without difficulty within 3-6 weeks, and it appears that the County could be improving procedures to accommodate the minority of developers who cannot qualify financially. He urged the Commissioners to adopt the well-supported Vested Rights Committee / Planning Commission proposal for 48.07.4.b(2) by changing the 12-month period to 6 months in which to record the final plat.

Oran Wilkerson, the Potomac River Association, supported Mr. Greess' statement, saying the Association believes public officials have an obligation to make their decisions based on fact, not on supposition or self-serving representations.

48.07.5 - Phased Projects

John Norris, of Norris, Gass & Ocker, stated he doesn't believe the proposed language is what he understood the committee's dialogue to be. He said his interpretation was that the final approval of the project would be with the first section, as opposed to final approval of the entire site. Mr. Grimm responded that he is sure the proposed language is from the report of the committee to the Planning Commission, but he will double-check.

Article 5: - 53.15 - Home Occupations / Art. 8 - Definitions

In response to Mary Ann Chasen's questions, Mr. Grimm stated the following:

1.b - The 200 sq. ft. limitation (which only applies to the RL and RVC districts) has been taken out of the definition because the definition should not set the standard - the standard should be set in Article 5. Prescribing the 200 sq. ft. limitation in the definition would also prohibit home occupations from going to 500 sq. ft. in the RPD District as allowed by Article 5.

1.d - Home occupations are not allowed in accessory buildings in the RL and RVC districts but they are proposed to be allowed in accessory structures in the RPD. Ms. Chasen said she thinks this will be confusing to the general public; many of the home-based businesses have trouble now finding out what they're supposed to do. (Note: DPZ has Customer Assistance Guide #2 - "How to Obtain a Permit for a Home Occupation.")

3.c - Vehicle traffic - A requirement in Section 56.00 states that off-street parking be provided in other than the front yard to prevent people pulling from backing out into traffic.

3.f - Grocery stores not allowed as home occupations in the RPD. Caterers are allowed, as they are not retail grocery stores. Sale of farm products is allowed. Mr. Grimm pointed out a typographical error in this section; i.e., the comma between "ordnance sales" and "shops" should be eliminated.

Article VI - no comments.

Definitions - no comments.

John B. Norris, Jr., of NG&O, and Chairman of the Chamber of Commerce Governmental Affairs Committee, stated the Chamber will be submitting written comments regarding the amendments during the written comment period.

Mr. Norris commented also on transportation bufferyards, establishing that the Planning Commission does not have the authority under Article 5 to waive the dimensional standards and stating that the bufferyards are far in excess of what is needed. For example, for a major collector in an RPD district, 100 ft. will be added on each side of the R/W which cannot be used for other than to traverse it with a driveway. He said he was hoping we would address it comprehensively by sections of highway or by allowing the Planning Commission to have some variance leeway.

Mr. Grimm noted that that section is not proposed for change. Mr. Norris' comment is relative to his desire to effect some change to a provision which has not been proposed for change. He said the Planning Commission has agreed that the setbacks need to be looked at and

they propose to do that during the update of the Comprehensive Plan and the 1995 comprehensive rezonings. Mr. Norris commented he doesn't believe we should wait until 1995.

Fertilizer Storage in the RPD

Mr. Norris stated that he would like to open up the requirement that fertilizer must be stored in tanks or completely enclosed buildings and allow it to be stored in any appropriate structure.

The public hearing was concluded at 9:02 p.m. Commissioner Loffler announced that the record will remain open for 10 days to accept written comment and will come back on the Commissioners' agenda in about 2 weeks.

ADJOURNMENT

The meeting adjourned at 9:02 p.m.

Minutes Approved by Board of
County Commissioners on 7/19/94

Judith A. Spalding
Recording Secretary