

**ST. MARY'S COUNTY
BOARD OF COUNTY COMMISSIONERS
NOVEMBER 29, 1994**

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 9:10 a.m.

APPROVAL OF MINUTES

Commissioner Thompson moved, seconded by Commissioner Bailey, to approve the minutes of the Commissioners' meeting (including the Planning and Zoning portion of the meeting) of Tuesday, November 22, 1994. Motion carried.

APPROVAL OF BILLS

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

COUNTY ADMINISTRATOR ITEMS

Present: Edward V. Cox, County Administrator

- 1) **Resolutions**
Road Name Changes

As a follow up to public hearings and discussion held November 11, the County Administrator presented the following Road Resolutions for the Commissioners' review and approval:

Resolution No. Z94 - 20 Renaming the roads in the Third and Sixth Districts (public hearing held September 27, 1994)

Resolution No. Z94 - 21 Renaming the roads in the 8th Election District (public hearing held August 30, 1994)

In addition County Administrator Cox presented a memorandum dated November 29 from the Enhanced 911 Uniform Addressing System Task Force indicating that the road numbers of

"Commanche Lane" had been inadvertently reversed on the presentation documents. "Commanche Lane" (County Road #30710) was advertised for renaming because it duplicated "Commanche Lane" (County Road #30650). At the hearing it was presented that "Commanche Lane" (#30650) was proposed to be renamed to "Blackfoot Drive." The Task Force requested the Commissioners to change action taken on November 22 to rename #30710 to "Blackfoot Drive" instead of #30650.

Commissioner Jarboe moved, seconded by Commissioner Lancaster, to approve and sign the Resolutions as presented and further to correct the action on Commanche Lane as requested. Motion carried.

2) **1995 Summer of Safety Arts Grant**

Also Present: Joe Dick, Director, Alliance for Alcohol, Drug Abuse Prevention
Walter Biscoe, Coordinator, "

Mr. Dick and Mr. Biscoe presented the Maryland State Arts Council Arts Project Grant Application for the Summer of Safety Arts Camp for Fiscal Year `1996 in the amount of \$60,000. Mr. Dick explained the grant will provide funding for a six-week summer day camp sponsored by the Office of Community Services and the Department of Recreation and Parks to be held in seven economically disadvantaged neighborhoods.

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

3) **Reaffirmation of Support - Courtyards at Great Mills**

The County Administrator presented correspondence addressed to the Maryland Department of Housing and Community Development wherein the Board of County Commissioners reaffirms its support of the 192-unit Courtyards at Great Mills garden apartment complex. County Administrator Cox advised that the Commissioners had endorsed this project in October of 1993 and the State by letter dated October 6, 1994 requests the County's reaffirmation of the project.

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

4) **Contract - Property Acquisition
Skipjack Property**

Also Present: Aleck Loker, Director, DECD
Joe Densford, County Attorney

In conjunction with the Lexington Park Redevelopment Project, Mr. Loker and Mr. Densford presented the Contract of Sale between Skipjack Realty, Inc. (the seller) and the Board of County Commissioners of St. Mary's County for the Skipjack Property located on Tulagi Place in Lexington Park. The Contract, in the total sale price of \$470,000, sets forth the payment amount and due date.

After discussion Commissioner Bailey moved, seconded by Commissioner Lancaster, to approve and authorize Commissioner Loffler to sign the Contract of Sale as presented. Motion carried.

5) **Personnel**

The County Administrator presented the following Personnel items for the Commissioners' review and consideration:

Engineer Technician Positions

Public Works Department

As a follow up to last week's discussion the County Administrator re-presented the November 21 memorandum from the Personnel Officer requesting approval to reclassify the two Draftsmen, Grade 13, positions in the Department of Public Works, to Engineer Technician, Grade 16, positions.

The November 21 memorandum explained that because of vacancies in the Department within the Engineering Division, a reevaluation of the duties of the draftsmen positions determined that the draftsmen were doing engineer technician duties.

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

**State's Attorney's Office Employee
Grievance Hearing**

The County Administrator indicated that the Commissioners had signed correspondence at last week's meeting to the Attorney for a former State's Attorney employee indicating the date and time for the Grievance Hearing; however, because of additional information and legal advice from the Attorney General's Office, County Administrator Cox presented correspondence addressed to the Attorney Fritz advising that it has been determined that the individual is not a merit employee and, therefore, would not be granted a Formal Grievance Hearing.

Discussion ensued as to whether the County had a contractual agreement with the State's Attorney's Office that his employees would be treated as merit employees.

The Commissioners agreed to add this item to the request for executive session later in the meeting.

Later in the meeting after the Executive Session, County Administrator Cox presented the letter to Attorney Fritz indicating that a Formal Grievance Hearing would not be granted.

County Administrator Cox pointed out that the Attorney General and State's Attorney have made the interpretation that the individual is not a merit employee, which the Commissioners are acknowledging in this letter. He stated that this interpretation is beyond the jurisdiction of the County Commissioners.

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

Commissioner Loffler noted that even though the Commissioners approved and signed the letter, it did not mean that the Commissioners do not support the merit system in this case.

PROCLAMATION

Present: Donald Brown, American Red Cross
Carol Stone, "

The Commissioners presented a Proclamation designating December 1, 1994 as World AIDS Awareness Day.

DEPARTMENT OF PUBLIC WORKS

Present: Dan Ichniowski, Director

- 1) **Unified Committee for Afro-American Contributions
Tulagi Place Monument**

Also Present: Elmer Brown
Donald Moore
Reginald Brown

The referenced individuals appeared before the Commissioners to present a proposal to erect a monument to recognize Afro-American contributions by individuals and organizations that have provided a positive and significant impact on the County and to request the Commissioners' support. The monument, to be located at Tulagi Square in Lexington Park, will be placed in a park-like setting.

During discussion Mr. Elmer Brown requested that the County consider providing water and electric service once the monument site is approved.

After discussion Commissioner Bailey moved, seconded by Commissioner Lancaster, to endorse the Afro-American Monument at Tulagi Place in Lexington Park and further to provide for water and electricity as requested. Motion carried.

2) **Contract of Sale
St. Andrews Landfill Expansion**

Relative to the expansion of the St. Andrews Landfill, Mr. Ichniowski presented a Contract of Sale between Donald Lee Warsing and Rose L. Warsing and the Board of County Commissioners of St. Mary's County for the purchase of .78 acres, more or less, together with all improvements thereon and all appurtenances thereto in the amount of \$119,500. Mr. Ichniowski advised that an appraisal had been done on the property and the purchase price was based on that appraisal.

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

3) **Easement Agreement
Utility Corridor - Paternoster**

Mr. Ichniowski presented an Easement Agreement between The Board of County Commissioners of St. Mary's County and Southern Maryland Electric Cooperative, Inc. and Romeo C. Paternoster and Ivano Paternoster to allow access across the railroad right-of-way in Charles County.

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

4) **Community College Demolition Project
Petition for Grant Funding**

Mr. Ichniowski advised that on November 7 he had contacted three Commissioners to get approval for Commissioner Loffler to sign the Petition to the Maryland Higher Education Commission for Grant Funding in the amount of \$59,395 for the demolition of existing structures at the community college in St. Mary's County. Therefore, he requested affirmation from the Board for the approval of the Petition.

After discussion Commissioner Jarboe moved, seconded by Commissioner Thompson, to affirm the approval of the Petition for Grant Funding as requested. Motion carried.

5) **Laurel Ridge
Status Report**

Mr. Ichniowski presented a status report on the construction of Arlington Drive in Laurel Ridge stating that the Public Works Agreement expires December 1, 1994; however, the majority of the work is scheduled to be completed this week by the developer. Items to be completed include surface paving, installation of guardrail, sediment traps removed, shoulders adjusted with top soil and sod, and bare and eroded areas repaired with topsoil.

Mr. Ichniowski advised that he will be presenting correspondence calling letters of credit for this project and recommended that the Commissioners approve the signing of the letters and not extend the deadline as it appears the developer should complete the items by December 1.

The Commissioners requested Mr. Ichniowski to send a status report on the road project to the residents of the area.

6) **Claim Letters**

Mr. Ichniowski presented the following correspondence calling Letters of Credit for the Commissioners' approval:

Grading Permits

Forest Knolls Subdivision - To First National Bank of St. Mary's calling Letter of Credit #A2-12-23-92 in the amount of \$25,000.

Laurel Ridge, Section 4B - To Maryland Bank & Trust Company calling Letter of Credit #253 in the amount of \$50,600.

Public Works Agreements

Tosca (Parcel D) Carmen Woods - To Maryland Bank & Trust Company calling Letter of Credit #289223 in the amount of \$10,000.

Tosca (Parcel C) Warwick - To Maryland Bank & Trust Company calling Letter of Credit #290159 in the amount of \$30,000.

Cook Hall Run - To Maryland Bank & Trust Company calling Letter of Credit #290530 in the amount of \$35,300.

Potomac Sands, Phase 2 - To First National Bank of St. Mary's calling Letter of Credit #A27-01-94 in the amount of \$15,000.

The Landings at Piney Point - To Maryland Bank & Trust Company calling Letter of Credit #225 in the amount of \$424,000

Jenni's Dawn, Section 4 - To County First Bank calling Letter of Credit #10037 in the amount of \$16,000.

Laurel Ridge, Section 4B - To Maryland Bank & Trust Company calling Letter of Credit #243 in the amount of \$265,800.

Commissioner Jarboe moved, seconded by Commissioner Lancaster, to approve and authorize Commissioner Loffler to sign the Claim Letters (to be forwarded if necessary). Motion carried.

DEPARTMENT OF PLANNING AND ZONING

Present. Jon Grimm, Director
Joe Densford, County Attorney
Dan Ichniowski, Director, DPW
Peggy Childs, Recording Secretary.

DISCUSSION/DECISION - VESTED RIGHTS

STSP #87-0088 - COUNTRYSIDE, PHASE II

Developer: Israel Swarey

Mr. Grimm and Mr. Densford appeared before the Commissioners to answer questions raised by the Commissioners on November 22nd regarding whether the 1988 Public Works Agreement between the County and Mr. Swarey and the subsequent payment of \$148,00 to build Pegg Road constitute a commitment for grandfathering privileges under ZO #78-43.

One of the issues raised at the November 22nd meeting was that neither the Countryside nor the Hidden Acres projects appeared on any list requesting grandfathering throughout this 3-year process. Mr. Grimm conveyed to Commissioner Jarboe that he had researched the lists and Countryside was not on them. It was not until the Commissioners public hearing on June 28, 1994 that any information was submitted.

County Attorney Joe Densford stated that he was not at last week's meeting but he has reviewed the minutes of the meetings and examined the 1988 Public Works Agreement with the developer and he doesn't see the connection between this project and grandfathering. He said the project doesn't meet the same conditions as the other properties which were allowed to be grandfathered and he sees nothing in the agreement that would lead him to a different conclusion. In 1988 we did not have the new Ordinance the County made no commitment to hold the one-acre density beyond and into the 1990 Ordinance.

Mr. Densford continued that this developer has had plenty and plenty of time and years of notice regarding the grandfathering being considered by the Commissioners, and he never came forward. Now, suddenly, years beyond the grandfathering deadline, he steps forward, and Mr. Densford said he thinks the developer is grasping at straws.

Commissioner Loffler stated he didn't think the focus was the grandfathering so much as what formula was used to establish the \$148,000 paid by Mr. Swarey; however, Commissioner Loffler was not at last week's discussion, and Commissioner Thompson stated the grandfathering is exactly what is being discussed.

Commissioner Loffler said his concern was the relevance of the \$148,000 to Phase 2, however when calculated on a per-lot basis the difference was not significant, and the developer would have had to build the road anyway.

Commissioner Bailey contended, as he has all along, that he didn't think the developer would have paid the \$148,000 if he had not counted on the 72 single-family units. Commissioner Thompson pointed out that the developer himself has reduced the number of units to 60 and, even under the new Ordinance, could still get 52 units with an approved site plan. He would have to pay the impact fee for the 52 units but no additional road construction costs.

Mr. Ichniowski recounted once again how the agreement came about, stating that it was the Planning Commission's decision that development projects along Pegg Road from Jarboesville Run to Chancellors Run Road would pay \$600 for road construction +\$500 for economic impact/recreation and parks fee per unit. Even though the Countryside project was on the other side of Jarboesville Run the Planning Commission required the same payment per unit for this project. Mr. Swarey appealed the Planning Commission's decision to the County Commissioners, asking why he should pay the \$600 road cost when he was having to build part of Pegg Road himself, and instead of the \$600 per unit cost the agreement was reached that DPW would build the road and that Mr. Swarey would pay the County \$148,000 as his share of Pegg Road construction costs.

Commissioner Thompson moved to deny vested rights under ZO #78-43 for Countryside, based on the fact that it does not meet the grandfathering requirements. Since there was no other second, Commissioner Loffler seconded for discussion purposes.

Commissioner Thompson commented that she didn't understand the reluctance to second the motion, because the project is not approvable. Commissioner Bailey said he didn't second the motion and would not vote for it because he didn't think the developer would have paid the \$148,000 unless he expected to get the 72 units and the 72 units were included in all the developer's documents. Also, he said at that time the County was dragging its feet in getting Pegg Road built on the other side of Jarboesville Run. Commissioner Loffler responded that the 63 units already built and the 52 units under the 1990 Ordinance, or a total of 115 units, amounts to less than \$100 per unit for road costs, and he doesn't think that is outlandish.

Commissioner Loffler called for the vote and the motion passed by a vote of 3-2. Grandfathering was denied. Commissioners Thompson, Loffler and Lancaster voted in favor of the motion; Commissioners Bailey and Jarboe voted against.

#88-1858 - HIDDEN ACRES

Mr. Grimm advised that this is also a project which does not meet the grandfathering requirements; there is no plan approval and it does not qualify under the Forest Conservation Act regulations. However, since it was submitted along with the Countryside development at the June 28, 1994 public hearing, some action is required by the Commissioners.

Commissioner Thompson voted for disapproval of vested rights under ZO #78-43 based on the fact that the project does not meet the grandfathering requirements. Commissioner Loffler seconded the motion for purposes of discussion.

Commissioner Thompson again commented on the reluctance of the other Commissioners to second the motion, pointing out that, other than the information presented at the public hearing, this project has never even been considered for grandfathering. Commissioner Bailey commented that it was not listed on the Commissioners's agenda either.

Commissioner Loffler called for the vote, which passed by a vote of 3-2. Grandfathering was denied. Commissioners Loffler, Thompson, and Lancaster voted in favor of the motion; Commissioners Bailey and Jarboe voted against.

Commissioner Jarboe explained that his reason for voting against the motion is because he thinks there may have been some justification for grandfathering and there may have been some other projects that were missed, and he believes the project deserves some consideration.

ST. CLEMENTS WOODS GROWTH ALLOCATION

County Attorney Joe Densford advised that the Commissioners discuss this matter in Executive Session.

Prior to going into executive session, Commissioner Loffler stated for the record that he thinks it is grossly unfair for a State Commission to go through a process establishing rules and approving a program and then to go against the program they have approved. He stated that money has been invested to follow the Critical Area rules and now they are saying they don't like what they passed. We have a contract with the State in our program and he said the State has a contractual obligation to the County; if they want to change the contract there is a process for doing that, but he feels badly that this project has been delayed and it is a shame that the State is not living up to its obligation.

Commissioner Bailey agreed, stating if the St. Clements Woods application fits our program it should be approved and the County should take the State to Court.

RECOGNITION OF OUTGOING COUNTY COMMISSIONERS

At this time county employees attended the Commissioners' meeting to greet the outgoing County Commissioners (Commissioners Loffler, Bailey, Jarboe and Lancaster). Each Commissioner indicated it was an honor to serve as County Commissioner and expressed appreciation to the employees for their dedication.

EXECUTIVE SESSION

Commissioner Jarboe moved, seconded by Commissioner Bailey, to meet in Executive Session to discuss matters of Litigation (Pegg Road, Growth Allocation, and Parcel of Record), as provided in Article 24, Section 4-210(a)8 and Personnel (Willenborg Grievance Discussion), as provided for in Article 24, Section 4-210(a)1. Motion carried.

Litigation (Pegg Road)

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
Joseph Densford, County Attorney
Dan Ichniowski, Director, DPW
James Haley, Procurement Officer
Judith A. Spalding, Recording Secretary

Authority: Article 24, Section 4-210(a)8
Time Held: 11:06 a.m. - 11:12 a.m.

Action Taken: Mr. Ichniowski and Mr. Densford reviewed the referenced case, made recommendations to the Commissioners, and the Commissioners agreed to take official action in open session.

Litigation (Growth Allocation)

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
Joseph Densford, County Attorney
Jon Grimm, Director, DPZ
Judith A. Spalding, Recording Secretary

Authority: Article 24, Section 4-210(a)8
Time Held: 11:15 a.m. - 11:40 a.m.

Action Taken: Mr. Grimm and Mr. Densford reviewed the particulars of this matter and the Commissioners agreed to take action on a letter in open session.

Litigation (Parcel of Record)

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
Joseph Densford, County Attorney
Jon Grimm, Director, DPZ
Judith A. Spalding, Recording Secretary

Authority: Article 24, Section 4-210(a)8
Time Held: 11:40 a.m. - 11:55 a.m.

Action Taken: Mr. Grimm and Mr. Densford reviewed the status of the referenced matter and made recommendations to the Commissioners.

Personnel (Willenborg Grievance Discussion)

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
Joseph Densford, County Attorney
Judith A. Spalding, Recording Secretary

Authority: Article 24, Section 4-210(a)1
Time Held: 11:55 a.m. - 12:05 p.m.

Action Taken: The Commissioners discussed the grievance request and agreed to take formal action on a letter in Open Session.

PEGG ROAD

Present: Dan Ichniowski, Director, DPW
Joseph Densford, County Attorney

As a follow up to the Executive Session Mr. Densford advised that an out-of-court settlement had been reached on the suit against the County by Driggs Corporation regarding the Pegg Road project. The settlement is in the amount of \$95,000.

Commissioner Bailey moved, seconded by Commissioner Lancaster, to authorize Commissioner Loffler to sign the mutual release relative to the referenced settlement offer. Motion carried.

**CRITICAL AREA COMMISSION
GROWTH ALLOCATION**

Present: Jon Grimm, Director, DPZ
Joe Densford, County Attorney

Mr. Grimm presented correspondence addressed to Senator Arthur Dorman relative to difficulties encountered by St. Mary's County regarding the growth allocation process under the Critical Area regulations. The CAC has adopted policy statements used in allocating critical area requests and are apparently being used to supersede the County's program. In particular the letter noted difficulties experienced with the Growth Allocation request for St. Clement Wood in that the State has required the deduction of 18.5 acres (the size of the entire parcel) rather than the 1 1/2 acre (the size of the area being developed).

During discussion Commissioner Loffler suggested that the letter be signed by the Commissioners and that the County also pursue legal action against the CAC regarding its decision relative to St. Clements Woods.

Commissioner Jarboe moved, seconded by Commissioner Lancaster, to sign and forward the letter and pursue legal action against CAC. Motion carried.

ADJOURNMENT

The meeting adjourned at 12:20 p.m.

**Minutes Approved by Board of
County Commissioners on 12/6/94**

Judith A. Spalding
Recording Secretary