

**ST. MARY'S COUNTY  
BOARD OF COUNTY COMMISSIONERS' MEETING  
FEBRUARY 25, 1997**

Present: Commissioner Barbara R. Thompson, President  
Commissioner Paul W. Chesser  
Commissioner Frances P. Eagan  
Commissioner Lawrence D. Jarboe  
John J. Kachmar Jr., County Administrator  
Judith A. Spalding, Recorder

(Commissioner D. Christian Brugman was not present due to illness.)

**CALL TO ORDER**

The meeting was called to order at 1:05 p.m.

**APPROVAL OF MINUTES**

**Commissioner Jarboe moved, seconded by Commissioner Chesser, to approve the minutes of Tuesday, February 18, 1997 and the Special Meetings of Thursday, February 20 and February 24, 1997, as presented. Motion carried.**

**APPROVAL OF BILLS**

**Commissioner Jarboe moved, seconded by Commissioner Chesser, to authorize payment of the bills. Motion carried.**

**ADDITIONS/DELETIONS TO AGENDA**

Commissioner Eagan moved, seconded by Commissioner Chesser to add an Executive Session on Personnel (Criminal Justice Coalition) in response to a memorandum from the County Administrator. Motion failed one to three with Commissioners Thompson, Chesser, and Jarboe voting against.

**Commissioner Eagan moved, seconded by Commissioner Jarboe, to add the discussion to the agenda later in the meeting in Open Session. Motion carried three to one with Commissioner Thompson voting against.**

Other items added to the agenda:

- \* Proclamation for Procurement Month
- \* County Commissioners' Time

**Commissioner Jarboe moved, seconded by Commissioner Eagan, to approve the Agenda as amended. Motion carried three to one with Commissioner Chesser voting against.**

**CONSENT AGENDA**

The Consent Agenda included the following:

**Correspondence**

- a. To Richard W. Carroll, Carroll's Equipment, referring them to Planning and Zoning to invoke Fast Track for a speedy review of zoning in order to rebuild.
- b. To John Mattingly, Agriculture and Seafood Commission, advising that the County will take any steps available within the law to facilitate the rebuilding of Carroll's Equipment in Dameron.

- c. To Mr. Victor L. Johnson concerning review of a possible mapping error.
- d. To Mr. Robert Brown, St. Mary's County Football Organizations, Inc. referring him to Recreation and Parks regarding routine use of a playing field.
- e. To Senator Roy Dyson regarding the decision to send "mothballed" ships elsewhere.
- f. To Mr. Ivan Petric regarding the extension of telephone calling areas for Southern Maryland residents.
- g. To Senator Dyson and Delegates O'Donnell, Slade and Wood acknowledging their efforts towards defeating the proposed Maryland cigarette tax and if failed, requesting consideration to negotiate for funds to assist St. Mary's County in its agricultural preservation efforts.
- h. To Vernon Gray, Chairman, Alliance of Concerned Taxpayers, regarding his suggestion for implementing a Multi-track Expanded School Year calendar in St. Mary's County.
- I. To Lynne M. Redmond, President, Library Board of Trustees, regarding her suggestions for increasing the library presence in Lexington Park.

During discussion of the Consent Agenda Commissioner Thompson questioned the revisions to the letter to the Library Board of Trustees(i.), to which the County Administrator responded that it was revised to reflect the Commissioners' discussion regarding the library task force and its responsibilities.

**After discussion Commissioner Eagan moved, seconded by Commissioner Jarboe, to accept the Consent Agenda as presented. Motion carried.**

#### **COUNTY ADMINISTRATOR ITEMS**

Present: John Kachmar Jr., County Administrator

1. **Public Schools - Relocatable Classrooms**
  - a. Budget Amendment No. 97-29 - (To provide funding for design of the relocation of modular classrooms for the 1997-98 school year.)
  - b. Resolution No. 97-06 - Public Facilities Bonds of 1995 (Relocatable Classrooms)

**Commissioner Eagan moved, seconded by Commissioner Chesser, to approve and authorize Commissioner Thompson to sign Budget Amendment No. 97-29 and to authorize the Board to sign Resolution No. 97-06 as presented. Motion carried.**

2. **Boards, Committees, Commissions**  
**Letter of Appointment**

**Commissioner Jarboe moved, seconded by Commissioner Eagan, to sign the letter appointing Stanley Goodwin to the Cable Advisory Committee. Motion carried.**

3. **Department of Public Works**
  - a. **Resolution No. 97-07**  
**Mt. Wolf Road**

Revised Resolution denying realignment of Mt. Wolf Road

**Commissioner Jarboe moved, seconded by Commissioner Eagan, to approve and sign Resolution No. 97-07 denying the realignment of Mt. Wolf Road. Motion carried.**

- b. Public Works Agreement for Lockes Creek Estates; backed by Letter of Credit with Maryland Bank and Trust in the amount of \$79,000;

**Commissioner Eagan moved, seconded by Commissioner Chesser, to approve and authorize Commissioner Thompson to sign the PWA as presented. Motion carried.**

- c. Public Works Agreement for Roscommo, LLP, for Cedar Grove Farm Subdivision, Phase 1, 2, 3; backed by Letter of Credit with First National Bank of St. Mary's in the amount of \$402,900;

**Commissioner Chesser moved, seconded by Commissioner Jarboe, to approve and authorize Commissioner Thompson to sign the PWA as presented. Motion carried 3-0-1 with Commissioner Eagan abstaining because she is on the Board of Directors for First National Bank of St. Mary's.**

- d. Addendum to Public Works Agreement for Greenview West PUD; backed by Letter of Credit with First National Bank of St. Mary's in the amount of \$102,000;

**Commissioner Jarboe moved, seconded by Commissioner Chesser, to approve and authorize Commissioner Thompson to sign the PWA's as presented. Motion carried 3-0-1 with Commissioner Eagan abstaining because she is on the Board of Directors for First National Bank of St. Mary's.**

- e. Road Resolution No. R97-06 establishing Yield Signs at the intersections of Boaz Street/Park Place and Park Place/Island Road.

**Commissioner Chesser moved, seconded by Commissioner Eagan, to approve and authorize Commissioner Thompson to sign Road Resolution No. R97-06, as presented. Motion carried.**

4. **House Bill 743 - Roads - Procedures  
Additional Amendments - Public Hearing Requirements**

Also Present: Douglas Durkin, County Attorney

Mr. Durkin reviewed with the Commissioners additional amendments to HB 743 - Road Openings/Closings/Realignments, as recommended by the Director of Public Works.

(a) To have Planning Commission conduct public hearing rather the Board of County Commissioners. **(The Commissioners agreed to continue to conduct the public hearings.)**

(b) to amend public hearing notice requirement from three weeks to two weeks to make it consistent with other public notice requirements in the County. **(The Commissioners agreed to amend the public hearing notice requirement as recommended.)**

(c) To concur with the Director of Planning and Zoning's recommendation that road improvements not be included in the County's Transportation Plan. **(The Commissioners had previously concurred in this recommendation.)**

County Attorney Durkin advised that he will revise the bill with the one amendment (No. 2), as recommended by the Board.

(Later in the meeting the Commissioners discussed an additional legislative proposal - HB 764.)

**HB 764 - St. Mary's County - Subdivision of Land  
Validity of Specified Deeds (Parcel of Record)**

County Attorney Durkin advised that he received a telephone call this date from Delegate Wood regarding the status of HB 764 and presented the following information:

- \* Delegate Wood indicated that the Economic Matters Committee had temporarily postponed action on HB 764 because of the County's testimony given on February 19 relative to the issue of the application of the bill to subdivisions of eight lots or fewer the comparison to last year's bill (HB 1331).
- \* That the September 1996 submission for the 1997 Legislative Package included language to limit the application to eight lots or less.
- \* That HB 764 as drafted on January 31, 1997 by the legislative delegation did not include the eight-lot limitation.
- \* Delegate Wood stated that 1996 HB 1331 was amended to limit the application of the bill to those properties that had a valid building permit issued prior to June 1, 1996 or which meet the minimum lot size requirements of the Zoning Ordinance on the day that the deed was recorded.

During discussion County Attorney Durkin requested the Commissioners' consideration to amend the bill to clarify that it was intended to fix subdivision problems rather than title problems pertaining to the validity of deeds.

**After discussion Commissioner Jarboe moved, seconded by Commissioner Eagan, to send correspondence to the County's legislative delegation indicating that the Board does not approve of HB 764 as drafted on January 31, 1997. Motion carried.**

**Commissioner Chesser moved seconded by Commissioner Eagan, that the Board of County Commissioners reaffirms its support of the legislation as submitted in September 1996 with the eight-lot limitation (and does not include limits regarding building permits or lot size as contained in the amendment to the 1996 HB 1331). Motion carried three to one with Commissioner Jarboe voting against.**

**In addition it was the consensus of the Commissioners to reject an amendment to HB 764 to indicate that this curative act is intended to cure subdivision problems rather than title problems associated with deeds.**

**5. Airport Manager Contract**

The County Administrator requested the Commissioners' approval to extend the Airport Manager's contract for one year. He advised that the Procurement Officer, James Haley, also serves as the Airport Manager, and advised that the Airport Manager Contract expires in March. He pointed out that there were budgetary considerations--the fact that the FY '98 Recommended Budget contains a proposal to make the Airport Manager full time, and that the Board may want to revisit the issue to determine whether modifications were needed.

**After discussion Commissioner Eagan moved, seconded by Commissioner Jarboe, to extend the Airport Manager's contract for one year.**

**After further discussion of the motion, Commissioner Eagan moved, seconded by Commissioner Chesser, to amend the main motion to extend the contract for six months in order to allow time to revisit the contract for possible changes. Motion carried.**

**Motion carried on the amended main motion.**

## **PROCLAMATIONS**

The Board of County Commissioners presented the following Proclamations:

- \* American Red Cross Month - March
- \* National Women's History Month - March
- \* Purchasing Month - March

## **PUBLIC HEARING**

### **COMPREHENSIVE WATER AND SEWER PLAN AMENDMENTS**

All Commissioners were present except Mr. Brugman. DPZ staff present were Jon Grimm, Director; Jeffrey Jackman, Principal Planner; Peggy Childs, Recording Secretary.

#### **CWSP #96-0484 - TOWER ESTATES**

Requesting a water category change from NPS (No Planned Service) to RW (Rural Water). This 5-lot subdivision is zoned RPD and is located adjacent to the Country Lakes water tower; TM12/BLK1/P98.

Legal Ad published in The Enterprise on 2/5/97 & 2/12/97. #A-1 - Certified Receipts of notification to contiguous property owners.

The 2/21/97 Staff Report provides the analysis required by the Comprehensive Water & Sewerage Plan and the State statute. Because the property is outside of the development centers, a CWSP amendment is required and must be approved by the County Commissioners and the State. The Planning Commission has granted concept approval for the subdivision and recommends approval of the category change. The request is similar to the one approved for Bruce Knolls Subdivision in this area; in that case some adverse comments were received from the State, but MDE did approve the request.

Commissioner Eagan asked the status of the Country Lakes water system, stating when she was on the Metropolitan Commission there were problems because of insufficient water. Mr. Higgs replied that, since then, a second water tower and another well have been added to the Country Lakes system. In fact, the amendment is being requested at MetComm's behest.

The Chair opened the hearing to public comment.

Commissioner Jarboe stated he talked to Sam Hertzler about the request. Mr. Hertzler owns the adjoining farm and Commissioner Jarboe said he is concerned every time he sees farmland disappearing, but Mr. Hertzler stated had no problems with the request and with someone using his property the way he wants to. Mr. Higgs added the property adjacent to the Hertzler farm is a Forest Conservation Area, and the buffer between the two properties will be maintained.

Commissioner Chesser asked about the water study that was done in this area? Mr. Grimm replied that he hasn't seen any figures since 1993, when the State commented that the Aquia aquifer is more than adequate to handle the growth in this area, but will contact the Health Department and MetComm and report back to the Commissioners. Mr. Jackman noted that the Chapman's Landing project in Calvert County which accesses the Aquia aquifer was sufficient to trigger taking a second look at the water supply.

The hearing was closed. The record will remain open for 10 days for written comment and will be brought back in two weeks for a decision.

**PUBLIC HEARING  
AGRICULTURE LAND PRESERVATION DISTRICTS.**

Also present: Donna Scasser, of DED

**ALPD #96-3010 - BRIAN RUSSELL**

90 acres located in the Clements area; TM24, BLK4, P80

**ALPD #96-3011 - GLENN RUSSELL**

25.8 acres in the Clements area; TM18, BLK22, P207.

**ALPD #96-3012 - WALTER F. RUSSELL, SR.**

5 acres in the Clements area; TM24, BLK5, P32.

This request is to combine these 3 contiguous properties into one Agricultural Land Preservation District for Russell family members. The State Foundation requires at least 100 contiguous acres to establish a District; together, the properties total 120.8 acres. The 5 acre tract of land joins together the 90 acre and 25.8 acre tracts, crossing over Route 242. The properties meet soil requirements and are in an area where the County wants agricultural uses to continue.

Both the Agricultural Land Advisory Board and the Planning Commission recommend approval.

**ALPD #96-9009 - ANDREW, BETTY AND WALTER RUSSELL, JR.**

125 acres on Route 234 in Clements; TM24, BLK 19, P72.

Ms. Scasser stated this request is to put the property in a 5-year agricultural district to help guarantee the property owners the right to farm and allow them to apply to the State to sell their easements as of 7/1/97. Both the ALPD Advisory Board and the Planning Commission recommend approval.

Commissioner Thompson opened the hearing to questions and comments from the public on both applications. Ken Birdener, a contiguous property owner, asked what this means. Ms. Scasser replied it means that the owners want the property to stay a farm; putting it in an Agricultural Land Preservation District will ensure that the land will be farmed in perpetuity and the owners may sell their development rights to the State so it will not be subdivided.

The public hearing was closed. The record will remain open for both applications for a 10-day period to receive written comment, and will be brought back in two weeks for the Commissioners' decisions.

**OFFICE ON AGING  
AMERICANS WITH DISABILITIES ACT**

Present: Gene Carter, Director, OOA  
Steve Norman, Assistant County Attorney

Mr. Carter appeared before the Board to present the Notification of Grant Award for the Americans with Disabilities Act for the Office on Aging. State Grant funds are in the amount of \$131,800, for the period of 7/1/96 - 6/30/97, and will be used for transportation services required under the ADA.

During discussion Mr. Norman pointed out that as directed by the County Commissioners he reviewed the referenced ADA Grant Agreement. He reported that although the Agreement appears to be legally sufficient, there were several areas he wanted to bring to the Board's attention (including payment time limits; assigning restrictions; account systems; project director requirement; audits and maintenance of records). In addition Mr. Norman provided a list of standard additions that should be inserted in the grant agreements whenever possible (sovereign immunity; third party beneficiary; no individual liability; and severability).

**After discussion Commissioner Jarboe moved, seconded by Commissioner Eagan, to authorize Commissioner Thompson to sign the Notification of Grant Award as presented. Motion carried.**

In conclusion the Commissioners suggested that the standard additions recommended by the Assistant County Attorney be included in future grants. Mr. Norman was directed to contact Maryland Transit Authority to determine if these additions were allowable.

## **COUNTY ATTORNEY**

Present: Douglas Durkin, County Attorney

### **1. Tax Exempt Municipal Bonds for Volunteer Fire Departments**

Also Present: Representatives from various emergency services

Mr. Durkin advised that there were several issues relative to volunteer fire departments and rescue squads, and that the purpose of this meeting was to discuss one of those issues--tax exempt municipal bond financing for equipment purchases. Interest has been expressed by several companies to use tax exempt municipal bonds for the purchase of equipment, and the Commissioners need to make a decision whether the Board or Emergency Services Committee would conduct the required public hearing. Therefore, County Attorney Durkin presented a draft Resolution appointing the Emergency Services Committee as the Board's agent to conduct public hearings required by the Internal Revenue Code on these private activity bonds.

During discussion County Attorney Durkin related other tangent issues including:

- \* that two volunteer companies have gone to the County Commissioners rather than to the ESC, and with the adoption of this Resolution ESC would become the clearing house for these transactions.
- \* That Bay District Fire Department has expressed interest in another form of financing (the St. Mary's County Capital Revolving Financial Fund); and the County Administrator indicated that this method of financing may be a better arrangement than the municipal bonds because of the high loan origination cost.
- \* That the County Attorney advised the County Commissioners that their authority with regard to approval of financing is limited to the Internal Revenue Code and does not include any dispute that may arise relevant to service area boundary lines.

**After discussion Commissioner Eagan moved, seconded by Commissioner Jarboe, to approve and sign Resolution No. 97-08 - St. Mary's County - Tax Exempt Municipal Bonds for Volunteer Fire Departments, which delegates the Emergency Service Committee to conduct the public hearings. Motion carried.**

### **1. Legal Representation**

#### **Board of Appeals/Planning Commission/Planning Staff**

Mr. Durkin advised that under the Attorney's Code of Professional Conduct, an attorney cannot represent two different parties in an adversarial role without full disclosure to both parties and without the consent of both parties. He pointed out that he has assumed the responsibility for both the Planning Commission and Board of Appeals. The Board of Appeals hears appeals from a decision of the Zoning Administrator or decision of the Planning Commission; makes decisions on site plans and subdivision plats, and it is difficult when he is representing the Planning Commission and defends its position and then represents the Board of Appeals which is the 'judge,' thereby creating a conflict of interest. This applies to any attorney in the County's Department of Law.

He recommended that in order to save money, that his department continue to represent the Board of Appeals, Planning Commission and Planning staff, that in cases of conflict of interest, a "Chinese Wall" be erected by assigning one attorney to represent one agency and the other to represent the other agency with the attorneys agreeing not to discuss the case. If the Commissioners do not agree, outside counsel would have to be hired.

**After discussion Commissioner Jarboe moved, seconded by Commissioner Eagan, to accept the recommendation that the County Attorney continue to represent the Board of Appeals, the Planning Commission and planning staff. Motion carried.**

## COUNTY COMMISSIONERS' TIME

### State Discharge Permit Application

Commissioner Jarboe advised that a citizen brought to his attention a Notice of Application Received by the Maryland Department of Environment for a State Discharge Permit Application published in *The Enterprise*. He recommended that correspondence be drafted for the Board's signatures addressed to MDE requesting a public informational meeting as provided for in the Notice.

The Commissioners gave their concurrence and agreed to sign the letter on Thursday when they meet to review the Board of Education budget.

### Longview Beach Criminal Investigation

Commissioner Jarboe referred to the recent murder in Longview Beach and the fact the neighbors in the community are very upset. He suggested that the Commissioners contact the Sheriff to request he provide daily public information to the Commissioners and community as to the progress of the investigation.

The Commissioners concurred that Commissioner Jarboe contact the Sheriff and inform him of the community's concerns.

## AIRPARK SALES AND SERVICES, INC. FBO LEASE APPLICATION

Present: James Haley, Airport Manager  
Douglas Durkin, County Attorney

Mr. Haley appeared before the Commissioners to present a *Letter of Understanding* with respect to the Terms and Conditions for the Lease Negotiations for Main Fixed Base Operator and Flight School Operations at the St. Mary's County Airport. The *Letter of Understanding* will serve as an agreement between the Board of County Commissioners and Airpark Sales and Services, Inc. until such time as amendments to the 1987 Airpark Sales & Services, Inc. and the 1990 Allied Hangar's Inc., Lease and Operating Agreements, and a new lease and operating agreement for flight school operations have been finalized.

**Commissioner Chesser moved, seconded by Commissioner Jarboe, to authorize Commissioner Thompson to sign the *Letter of Understanding* as presented. Motion carried.**

## INTRODUCTION OF HEALTH OFFICER

Dr. Ebenezer Israel, the newly appointed Health Officer for St. Mary's County, introduced himself and requested a meeting with the Board in Executive Session.



**EXECUTIVE SESSION**

Commissioner Eagan moved, seconded by Commissioner Chesser, to meet in Executive Session to discuss a matter of Personnel (Health Officer), as provided for in Article 24, Section 4-210(a)1. Motion carried three to one with Commissioner Jarboe voting against.

**Personnel - Health Officer**

Present: Commissioner Barbara R. Thompson, President  
Commissioner Paul W. Chesser  
Commissioner Frances P. Eagan  
Commissioner Lawrence D. Jarboe  
John J. Kachmar Jr., County Administrator  
George Foster, Personnel Officer  
Dr. Ebenezer Israel, Health Officer select  
Judith A. Spalding, Recorder

Authority: Article 24, Section 4-210(a)1  
Time Held: 4:50 p.m. - 5:05 p.m.

Action Taken: The Health Officer discussed his appointment as Health Officer and requested the Board's support relative to certain issues.

(Because of time limitations, the scheduled Executive Session on Personnel was postponed until next week )

**CRIMINAL JUSTICE COALITION MEETINGS  
ADMINISTRATIVE CONCERNS**

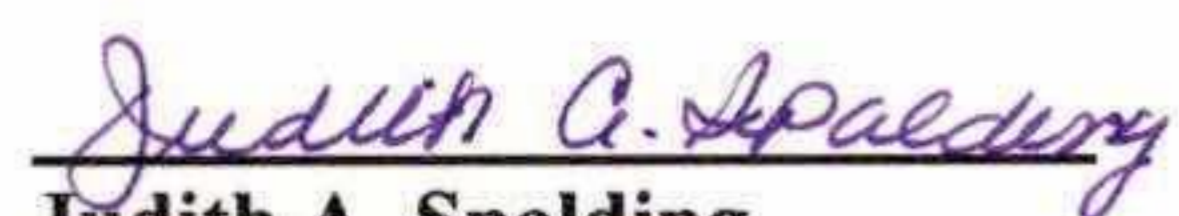
The Commissioners discussed concerns of the County Administrator relative to conducting the Criminal Justice meetings as contained in a confidential memorandum as well as the selection of a coordinator for the development of "HotSpot Communities" strategies. He requested general direction regarding the meetings and suggested that the Commissioners submit names for the "HotSpot" Communities Strategy.

The Commissioners addressed other issues of concern including each Commissioner's role relative to direction and policy, the need for communication when there are concerns, and how to resolve differences among the Board members.

**ADJOURNMENT**

The meeting adjourned at 6:10 p.m.

Minutes Approved by Board of  
County Commissioners on 3/14/97

  
**Judith A. Spalding**  
Recording Secretary

