

BOARD OF COUNTY COMMISSIONERS MEETING

Tuesday, January 25, 1983

Present: Commissioner George R. Aud, President
Commissioner Larry Millison, Vice-President
Commissioner Richard D. Arnold
Commissioner Ford L. Dean
Commissioner David F. Sayre
Edward V. Cox, County Administrator
Margaret Nelson, Recording Secretary
Judith A. Spalding, Recording Secretary

The meeting was called to order at 9:15 a.m.

(Margaret Nelson took the minutes at this point.)

APPROVAL OF MINUTES

Commissioner Arnold moved, seconded by Commissioner Dean, to approve the minutes of the Commissioners' meeting of January 18, 1983 as submitted. Motion unanimously carried.

REVISED RSVP GRANT
OFFICE ON AGING

Present: Billye McGaharn

Mrs. McGaharn presented for Commissioner approval the Revised RSVP grant No. 440-3597 for a total amount of \$63,007, of which \$50,406 represents federal funding; \$12,601 represents non-federal funding. The grant is for the period of September 30, 1981 through March 31, 1983. The Budget Director reviewed and was in agreement with the grant. There was unanimous approval of the revision by the Board.

OFFICE SPACE NEEDS
CLERK OF CIRCUIT COURT

Present: Mary Bell, Clerk
Evelyn Arnold, Deputy Clerk

The Commissioners were informed of space needs for the Clerk's office in order to store file cabinets that are now occupying space in the hallways. The Board agreed to take the matter into consideration and alleviate the problem when space becomes available.

LEONARDTOWN COMMISSIONERS
WETLANDS REQUEST

Present: John Baggett, Director of Recreation & Parks

Mr. Baggett explained to the Board the fact that the Town of Leonardtown in its construction of the new sewage treatment facility destroyed certain wetlands. By State and Federal regulations, there must be wetland restoration at that site or at another site as an exchange. Mr. Baggett stated that he has been working with the Leonardtown Commissioners for an exchange site at St. Inigoes and recommended that the Board of County Commissioners approve the use of an exchange site at the St. Inigoes recreation facility. The cost of which will be borne by the Town without any detriment to the county's recreation facility.

The Board approved Mr. Baggett's recommendation and directed him to complete the implementation of the proposal with the Town Commissioners.

REPLACEMENT OF LEONARDTOWN BASE STATION

Present: Thomas Oliver
Director of Civil Defense

The Board of County Commissioners gave unanimous approval for the replacement of the Leonardtown base station as recommended by the Director of Civil Defense to be purchased from existing funds.

COUNTY ADMINISTRATOR ITEMS

Present: Edward V. Cox

Job Training Partnership Act

Correspondence was presented for Commissioner approval to be forwarded to Governor Hughes and the St. Mary's County Chamber of Commerce requesting that the Southern Maryland Tri-County area be designated the service delivery area for St. Mary's, Charles and Calvert Counties. The Board gave unanimous approval.

Sheriff's Department - Uniform Upkeep

At the request of Commissioner Arnold and the Budget Director, the Board was in agreement to discuss the request of Sheriff Pettit to have the uniforms cleaned at the county's expense and return a decision in two weeks after they have gotten a better understanding of the fixed costs involved.

Budgetary Control Correspondence

Correspondence was directed to each department head requesting that their respective departments do not exceed the FY84 budget authority as indicated in the FY84 budget document. The January 10, 1983 correspondence from the Budget Director requesting Commissioner approval of Attachment I outlining change orders required for various departments because of over expenditures and contemplated expenditures not budgeted at this time was unanimously approved by the Board.

Maryland Environmental Service

There was unanimous approval by the Board to designate Mr. John B. Norris, County Engineer, as the county's liaison to work with the Maryland Environmental Service for technical assistance on recycling.

Clearinghouse Project 83-12-167
Beechwood Condo of Wildewood

Clearinghouse Project 83-12-167 was presented stating that VA feasibility funding was being sought. The Board gave unanimous approval of Item No. 1 as recommended by the Director of Planning & Zoning.

Appointment to Metropolitan Commission Board

Commissioner Aud made a motion, seconded by Commissioner Millison to appoint Mr. L.G. Raley for a term to expire June 30, 1984 to the Metropolitan Commission Board filling the unexpired term of Mr. Jack Witten who resigned. Motion carried.

(At this point, Judith Spalding took the minutes for the remainder of the meeting.

SOUTHERN MARYLAND HEALTH SYSTEMS AGENCY

As a follow up to last week's presentation regarding a request for funding of the Southern Maryland Health Systems Agency Program in the amount of \$2800, Commissioner Dean moved, seconded by Commissioner Aud, to approve the request contingent upon funding by the other three counties. Commissioner Millison voted against the motion, commenting he recognized the importance, but did feel the need for the funds had been sufficiently demonstrated. Motion carried.

BUILDING PROJECT STATUS

The County Administrator advised the Commissioners that meetings with appropriate agencies regarding the Nursing Home, the Jail and relocation of Social Services have been conducted and the Commissioners will be kept apprised of the progress as it develops.

INTRODUCTION OF NEW ACTING DISTRICT ENGINEER - SHA

Present: John D. Raley, Resident Maintenance Engineer
Bob Olson, Acting District Engineer
John Norris, County Engineer

Mr. Raley introduced Mr. Olson to the Board of County Commissioners and stated that he is the new Acting District Engineer for State Highway Administrator for this area. He is replacing Mr. Ed Meehan who was transferred to another area.

At this point, the Commissioners discussed various areas of concern regarding road improvements. Mr. Raley requested that he meet monthly with the Board to discuss any problems brought to their attention. The Commissioners agreed.

APPROVAL OF VOUCHERS

Commissioner Millison moved, seconded by Commissioner Sayre, to approve payment of the vouchers as submitted by the Director of Finance. Motion unanimously carried.

RESOLUTION NO. 83-01
ESTABLISHMENT AND CONSTRUCTION OF
STORM DRAINAGE IMPROVEMENTS WITHIN
A SPECIAL TAXING DISTRICT

Present: John Norris, County Engineer

Having conducted a public hearing on the adoption of the referenced Resolution, Commissioner Aud moved, seconded by Commissioner Millison, to approve and adopt Resolution No. 83-01. Motion unanimously carried.

HOLLY HILLS
WILDEWOOD SUBDIVISION

Present: John Norris, County Engineer

Mr. Norris reviewed the plans for the Holly Hills Section of Wildewood Subdivision and advised that the developer is requesting a waiver of the center line radius requirements. He stated that because of the short length of road involved, the developer would keep the standard at R-8 and the center line at R-7.

The Commissioners gave their concurrence to grant this waiver, with Commissioner Dean abstaining.

RENTAL CONTACT SERVICES
PROJECT NOS. SM 83-6-3, SM 83-6-4 and SM 83-6-5

Present: John Norris, County Engineer

Mr. Norris presented the bid tally sheet for the referenced projects as follows:

SM 83-6-3
CARPENTRY AND MILLWORK

Mr. Norris recommended awarding the bid to Cameron Construction. The Commissioners gave their concurrence.

SM 83-6-4
ELECTRICAL MODIFICATIONS

Mr. Norris recommended awarding the bid to Owens Electric, the lowest bidder. The Commissioners gave their concurrence.

SM 83-6-5
PLUMBING MODIFICATIONS

Mr. Norris recommended awarding the bid to Steve Lacey, the lowest bidder. The Commissioners gave their concurrence.

PROJECT NO. SM 83-2-1
BID TALLY SHEET
HIGH CUBE VAN

Present: John Norris, County Engineer

Mr. Norris presented the bid tally sheet for the referenced project and recommended awarding the bid to Ritter Chevrolet, the lowest bidder in the amount of \$11,735.50.

Commissioner Millison moved, seconded by Commissioner Dean, to accept this recommendation. Motion unanimously carried.

LEONARDTOWN ARMORY RENOVATIONS
TITLE SHEET FOR PLANS

Present: John Norris, County Engineer

Mr. Norris presented and reviewed plans for the renovations to the Leonardtown Armory for its use as a library and requested authorization for Commissioner President Aud to sign the title sheet.

After review, Commissioner Dean moved, seconded by Commissioner Sayre, to authorize Commissioner President Aud to sign said Title Sheet. Motion unanimously carried.

ST. GEORGE'S CREEK DREDGING PROJECT

Present: John Norris, County Engineer

Mr. Norris presented correspondence addressed to the U.S. Army Corps of Engineers regarding the St. George's Creek Dredging Project and stating that the County is willing to enter into a contract to fulfill the required items of local cooperation.

UNIFORMITY OF CRITERIA
DETERMINATION OF CHANGE OF NEIGHBORHOOD

Commissioner Millison raised the issue that there should be uniformity in determining an area for change of neighborhood in zoning cases. If there is a particular area designated for change of neighborhood, it should apply for all zoning cases in that area.

After discussion the Commissioners agreed that the staff of the Office of Planning & Zoning should be instructed to make the same criteria applicable to all in the administration of the Planning & Zoning regulations in order to avoid the appearance of preferential or discriminatory treatment.

PROCLAMATION NO. 83-03
VOCATIONAL EDUCATION WEEK

The Commissioners presented the referenced Proclamation designating the week of February 6-12, 1983 as Vocational Education Week in St. Mary's, County.

PROCLAMATION NO. 83-04
FUTURE BUSINESS LEADERS OF AMERICA WEEK

The Commissioners presented the referenced Proclamation designating the week of February 6-12, 1983 as Future Business Leaders of America Week in St. Mary's County.

PROCLAMATION NO. 83-06
NATIONAL HEART MONTH - FEBRUARY

The Commissioners presented the referenced Proclamation designating February 1983 as Heart Month in St. Mary's County.

COMMENDATION - F-18 PROGRAM

Present: Ed Laney

Because of certain critical remarks in the Enterprise newspaper regarding the F-18 Program, the Commissioners invited representatives of the program to appear before the Board to receive a Commendation recognizing the outstanding and praiseworthy contributions the F-18 Program has made to the County.

The Commissioners expressed their appreciation for the many benefits reaped by having the Program located in St. Mary's County.

(Commissioner Sayre left the meeting - 2:00 p.m.)

INDUSTRIAL SITE PLAN
STSP #82-1374 - EVERETT PINKERTON
ST. MARY'S INDUSTRIAL PARK

Present: Frank Gerred, Director, Planning & Zoning

(Requesting site plan approval for 4,040 square foot addition on Lot 17 of the Industrial Park. The property is located on Tax Map 34, Block 2, Parcel 550 in the Sixth Election District).

Mr. Gerred presented the referenced Site Plan and indicated that approval was given by the Planning Commission at their meeting of January 24. All appropriate agency approvals have been given.

After discussion, the Commissioners gave their concurrence to approve Site Plan No. STSP 93-1374.

FY 1984 BUDGET

Present: Joseph P. O'Dell, Director, Budget & Data Services

By way of a chart presentation and a memorandum dated January 2, 1983, Mr. O'Dell reviewed with the Commissioners the Debt Service Projection Table and the preliminary capital project financial issues. During discussion, Mr. O'Dell requested action by the Board on the following:

1. To submit a legislative proposal authorizing the establishment of Building Authority.
2. To alter the County's federal/state grant policy that had been originally established in the budget discussions in November.
3. To budget General Revenue Sharing in full entitlement rather than the $\frac{1}{4}$ entitlement that exists under the present law.

After discussion, the Commissioners agreed to accept Mr. O'Dell's recommendations on the three referenced issues.

COUNTY ENGINEER'S OFFICE
PROJECT STATUS REPORT

Present: John Norris, County Engineer

As a continuation of last week's presentation, Mr. Norris further reviewed the status of various projects of his office. During the review Mr. Norris brought several matters to the Commissioners' attention:

1. Lexington Park Storm Drainage Project - Mr. Norris requested the Commissioners' acceptance of \$200,000 from the State Highway Administration for partial funding of the project. The Commissioners gave their concurrence.
2. Hodges Lane (off of Laredore Road) - Mr. Norris indicated that the cost of this project is \$14,000 and is a prior county commitment; however, there is no budget authorization.
3. St. Patrick's Creek - Mr. Norris indicated that the County must arrive at a location for the spoils deposit by March 1983.

In conclusion, Mr. Norris advised that he would be returning with a list of capital projects that he will outline and request a funding decision.

HOSPITAL AND OTHER FACILITY CONCERNS

Present: Edward V. Cox, County Administrator

The County Administrator made a presentation to the Board from a memorandum dated January 21 (a copy of which is on file in the Commissioners Office) detailing several items requiring decisions concerning the hospital and other county/state facilities concerns. Four general policy directions were given by the Commissioners at the conclusion of the presentation and discussion:

1. That the criminal justice system should be kept unified at the Courthouse facility (Courts, Jail, Sheriff, State's Attorney);
2. That the current health department building be given to the Sheriff for offices and juvenile detention;
3. That the Health Department be placed at the State Multi-service Center (hospital);

4. That the County negotiate with the State the County's purchase and renovation of the hospital facility with a subsequent gross lease arrangement with all state agencies other than District Court being located at the Multi-service Center.

PERSONNEL ITEM

The County Administrator presented a memorandum from the Personnel Officer advising of the resignation of Mrs. Ellen Hewitt, Assistant Director of the Emergency Operations Center. Authority was requested to begin the hiring process to fill this vacancy. The Commissioners gave their concurrence.

REZONING DECISION DISCUSSION
ZONE #82-0753 - HARRY BARRETT

Present: Frank Gerred, Director, P & Z
Robin Guyther, Planner, P & Z
Anita Meridith, Recording Secretary

Request to rezone 7.43 acres from R-1, Rural-Residential, to CM, Commercial Marine. The property is located on Jutland Creek, off Smith Subdivision Road in the First Election District, Tax Map 70, Block 5, Parcels 107 and 143.

Mr. Gerred related that the staff report had included a recommendation for denial, as the applicant had failed to prove either change or mistake.

Commissioner Millison inquired how the size of a neighborhood was determined. Mr. Gerred responded that each case was considered on its own individual merits and was usually defined by the Planning Commission, however, normally, a neighborhood boundary was defined by some physical or man-made obstacle.

Staff noted that in this instance, the applicant argued mistake alleging he was in operation in 1974 and should have been zoned commercial. It was determined that while he had his pile driving equipment on site and was in the process of building his own pier, this in itself, did not constitute a commercial enterprise, as building one's own pier was permitted in the R-1 district. Furthermore, the applicant was unable to provide any evidence of his alleged commercial business, i.e. checks or other legal documentation which would have been supportive of an on-going commercial enterprise in 1974. Therefore, staff concluded, that the applicant could not prove factual change.

Commissioner Millison disagreed with the Planning Commission and staff's recommendation, stating that he felt that there had been a dramatic change in the boat traffic in the county since 1974. He cited the numerous changes within the Eighth District and the thousands of boaters who used the Point Lookout State Park during the summer months. He felt that with all of this added marine traffic, that there was a greater need for marine repair facilities such as this applicant was proposing. He urged the Board to consider the fact that the County was spending thousands of dollars to encourage industry to come into the County, and here, was the case of an individual who simply wanted to continue in his present business and enlarge to offer a wider range of services to the people of St. Mary's County. Commissioner Millison stressed that an approval of this request not in any way place hardship or burden upon anyone but contrarily, would benefit the County and its citizenry by provision of a direly needed service, serve to employ local people and add to the tax base.

Commissioner Aud felt that this was rather a "clear cut" case, as the applicant simply had not proven change or mistake.

Commissioner Millison reiterated that this rezoning post the opportunity to add industry to the County, which would be an asset to the watermen and sports fishermen, and one which was certainly compatible with the neighborhood, in as several other marina facilities were also existent in this area. Commissioner Millison stressed that the number of people coming into the County, using the County's facilities for beating, fishing, etc. had increased dramatically since 1974 and certainly constituted change in the neighborhood and met the test, i.e. justification of the change rule for rezoning.

Commissioner Dean offered what he termed "several significant points" with respect to this consideration. He noted that at the hearing, the applicant stated that the purpose of the rezoning was to repair and store boats only. The applicant further based his request on the mistake factor, contending that the property had been used commercial at the time of adoption of comprehensive zoning in 1974. Furthermore, the applicant's request was for 7½ acres, inclusive of two parcels. The first parcel purchased by the applicant in 1974 only comprised 1.5 acres and the remainder of the property was not purchased until March of 1977. Commissioner Dean stated, "It would seem to me that it would be hard to conclude that if he didn't own the property until 1977, that he had not established thereon, a commercial enterprise that was mistakenly zoned in 1974" Mr. Dean stressed that he did not see how the Board could justify "mistake" given those factors, or consider the increase in boat traffic for the entire County and compare it to this case.

Commissioner Millison felt that the Board should review this case in terms of the character of the property, as opposed to who owned the property or when the property was acquired.

Commissioner Arnold offered that it would be pretty hard to prove mistake, however, he questioned how the staff arrived at their conclusion that no change could be proven. Mr. Gerred advised that the applicant had not argued change at his hearing and, therefore, staff had not addressed the possibility of change in the neighborhood. He stressed that it was encumbered upon the applicant, to present the factors in his case, and change in the neighborhood simply had not been addressed. Commissioner Arnold questioned whether staff as a normal procedure, would not advise the applicant, in advance, of the points he should pursue in presenting his case, in this instance, specifically, address the change rule. Mr. Gerred responded that in justification of change, it would have to be shown that there was a change in the neighborhood that substantially would effect the land use and this simply had not occurred in this area. Mr. Gerred reflected that the applicant could have argued, for instance, that this was a very good site for the operation, that the water was deep enough to accommodate marine traffic, that there were two other marinas adjacent to this property, however, he did not present any such factors at the hearing. Mr. Gerred reiterated that presentation or argument of those types of factors, at the time of the hearing, to substantiate the change rule, was encumbered the applicant and was not presented, and this was all that the staff was saying, i.e. that the change argument had not been presented.

Commissioner Millison noted that there had been tremendous growth in the First District, more so than any other district in the County. In reviewing the subject property and surrounding area, Commissioner Millison noted that he would be in favor of having all three marinas commercially zoned (the subject property, Hewlett's Marina and Seaside Park.)

Commissioner Dean asked whether it would be appropriate in such a rezoning case before the Board of Commissioners, to conclude that the applicant had not provided sufficient basis to support his request, and provide the applicant with additional opportunity to submit additional evidence. Mr. Gerred stated that it would be appropriate to reopen the hearing, if the Board felt it required more information. Commissioner Millison felt that reopening the hearing was a waste of time, as the Board was knowledgeable, at this point, what the factors of this case included, whether they had been presented by the applicant, or not.

Discussion of the Board ensued and Commissioner Dean noted that the Board must make a finding of fact and must have a basis for a decision. He felt that the applicant's presentation had been limited by offering that the purpose of the request was to bring the existing operation into conformance and it was obvious from all testimony and evidence of record, that he simply did not own the entire property in 1974. Therefore, he contended that if the Board could not find sufficient basis for an approving action and should the matter be appealed to the Court, he felt that the Court would certainly overturn an approving decision by the Board. Mr. Gerred injected that the court had in some cases, allowed the opinion and knowledge of the Board of County Commissioners or their counsel to be entered, as long as it was in the findings of fact. However, as staff, Mr. Gerred advised that the applicant had not outlined or presented those facts and consequently, would caution the Board against being placed in a bad position, based on the facts, as presented.

The Commissioners discussed the possibility of a comprehensive zoning for this area, and asked staff whether an inventory of the commercial marine properties in the County either zoned or nonconfirming uses were available. Mr. Gerred responded affirmatively and offered that staff would also provide a map for the Board's further consideration.

The Commissioners instructed staff to make inquiry and seek responses from the owners of the Hewlett Marina and Seaside Park Marinas, as to the possibility of having their properties conjunctively zoned commercial marine.

The Chair advised that this matter would be continued for two weeks, at which time, the Board would take up further consideration of the pending matter.

1983 LEGISLATIVE PACKAGE


ITEM NO. 30 - STATE ACQUISITION OF LAND IN ST. MARY'S COUNTY

Commissioner Millison moved, seconded by Commissioner Arnold, that the referenced Legislative Item be included in the County's Legislative Package. Commissioner Dean amended the motion by adding that the Commissioners reserve the right to review the item further and take a formal position at a later date. Motion carried.

ADJOURNMENT

The meeting adjourned at 4:25 p.m.

Approved,


George R. Aud, President