

BOARD OF COUNTY COMMISSIONERS' MEETING

Tuesday, May 31, 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
Judith A. Spalding, Recording Secretary

The meeting was called to order at 11:55 a.m.

APPROVAL OF VOUCHERS

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

APPROVAL OF MINUTES

Commissioner Arnold moved, seconded by Commissioner Sayre, to approve the minutes of the Commissioners' meeting of Tuesday, May 24, 1983. Motion unanimously carried.

REZONING DECISION DISCUSSION

ZONE #83-0131

DAN RIDGELL (ORAVILLE AMOCO)

Present: Frank Gerred, Director, P & Zoning
Anita Meridith, Recording Secretary

Requesting rezoning from R-1, Rural-Residential, to I-1, Industrial. The property contains 2.10 acres and is located on Maryland Rt. 235, Oakville, Sixth Election District, Tax Map 14, Block 22, Parcel 109 and part of Parcel 25.

Commissioner Dean distributed his written findings of fact relative to the Ridgell application to the other members of the Board and staff for consideration. Said findings of fact offered a positive recommendation for C-2 Commercial rezoning, basing said approval on mistake in the original zoning of the property.

Commissioner Dean also pointed out, that the property had operated as a garage and service station for twenty-one years and was contiguous to another long standing nonconforming use (junkyard). Further consideration was given to the fact that there was no developed residential property in the immediate vicinity and that adequate site distance was enjoyed by the property.

Given all of the above factors, Commissioner Dean remarked that while he felt there was no basis for rezoning of this property to I-1, Industrial, he did feel that due to the fact that the property was commercially developed, coupled with the other aforementioned factors, that a rezoning to C-2 would create no adverse impact on other properties within the immediate vicinity and was a legitimate candidate for C-2 zoning.

The motion from the previous meeting (May 24, 1983) remaining on the table, was read aloud, whereupon Commissioner Dean asked that the motion be amended to instruct the County Attorney to prepare the appropriate adopting resolution, the basis for said action, as contained within his paper.

The motion and second remaining, vote was called, with Commissioners Arnold and Dean voting aye and Commissioner Aud abstaining. Commissioner Millison and Sayre having previously cast their affirmative ballot, the motion passed.

BESCHE OIL
ZONE #82-1464

Requesting rezoning of .71 acres from R-2, Low Density Urban Residential, to C-2, Highway Commercial. The property is located on Route 246, Great Mills Road, Tax Map 51, Block 7, Parcel 286, Eight Election District.

Mr. Gerred provided each of the members with a copy of a resolution, proffered by the applicant's attorney, for the Board's consideration. Mr. Gerred advised that staff reviewed the applicant's proposed text and found no objection to any of the language.

Commissioner Millison moved, seconded by Commissioner Arnold, to adopt the resolution, as submitted in the Besche Oil Company, which would rezone this .71 acres of land to C-2, as approved by the Assistant County Attorney.

Vote was called with Commissioners Millison, Sayre, Arnold and Aud voting aye and Commissioner Dean abstaining. The motion passed.

REILLY PROPERTY
ZPUD #82-1135

Requesting rezoning from R-1, Rural -Residential, to PDR 1.0, Planned Development Residential, one dwelling unit per acre. The property contains approximately 416.7 acres and is located on Md. Rt. 235 and Far Cry Road, 1st and 8th Election Districts, Tax Map 59, Block 145, Parcel 4. Rezoning would allow up to 400 dwelling units to be constructed.

Concurrent with the rezoning request is a request to change the classification of the property from W-6, to W-3, and from S-6 to S-3, in the St. Mary's County Comprehensive Water and Sewer Plan.

Commissioner Dean reflected that the Reilly application was scheduled for next week's consideration and in view of this pending PUD application, he asked staff to briefly outline the major points of concern.

Mr. Gerred provided the following major issues:

1. Proffer of land to the County;
2. Proposed road to serve the property;
3. Use by the Boy Scouts of America of the open space to be deeded to that organization.
4. Total density requested (number of units).

SUMMER YOUTH EMPLOYMENT PROGRAM
CETA CONTRACT

Present: Phebe Barth, Youth Services Coordinator
Larry Rosen, State Training & Employment Office

The referenced individual appeared before the Commissioners to present for the Commissioners' approval, a contract with the Department of Human Resources (Training and Employment Office) for the County's Summer Youth Employment Program. The funding from the State for the Program is in the amount of \$58,730 which will be used to employ 50 young people.

After discussion, Commissioner Dean moved, seconded by Commissioner Millison, to authorize Commissioner President Aud to sign the referenced Contract. Motion unanimously carried.

PROPOSED CHANGES TO COUNTY MANUAL OF PERSONNEL POLICIES AND PROCEDURES

Present: Gerda Manson, Personnel Officer

Having distributed the proposed changes to the County's Manual of Personnel Policies and Procedures at last week's meeting for the Commissioners' review, the Personnel Officer highlighted several of the proposals.

After discussion, Commissioner Dean moved, seconded by Commissioner Arnold, to accept the staff's recommendations regarding the proposed changes as follows:

1) Personnel Manual (update)

That the yearly review and update of the Manual be discontinued and that changes be made only as needed with review by an ad hoc committee.

2) 0705 (b) Panel

That there be no screening panel if announcement yields five applicants or less.

3) 0803 Selection

Excepting the Sheriff from the 15-day limitation for making a selection from a listing of eligibles for Deputy and Correctional Officer positions.

4) 0804 - Pre-Employment Physical Examination

That pre-employment physicals be given to Sheriff's Deputies, Correction Officers, drivers of county vehicles and persons selected for hazardous jobs. Candidates for other positions will be required to sign a health statement before appointment.

5) 0809 - Part-time appointments

That when feasible, part-time employees be given permanent status, making them eligible for all fringe benefits on a prorated basis.

6) 0903 (b) - Reduction in Force

That part-time service with the County be credited for the purpose of breaking ties.

7) 1203 Exclusion (a)

That part-time, temporary and contract employees be permitted to use the grievance and appeal process if they have a complaint.

8) 1303 Educational Assistance

That educational assistance be granted in accordance with certain eligibility requirements.

9) 1403 Leave Records

That leave records remain in the Finance Office until payroll is entered in the computer. After that has been accomplished, supervisors will keep leave requests and certify the employee's leave on the time sheets.

10) 1406 (d) 2. - Sick Leave

That one day sick leave be allowed in the event of death of certain relatives.

11) 1408(c) Jury Service

That an employee dismissed from jury duty shall return to his job site and work the remaining number of hours of his regularly scheduled work day. The total number of hours of jury duty and work shall not exceed the number of hours normally worked.

12) 1409 Unpaid Leave (Health Insurance)

That an employee on LWOP be allowed to continue in the County health insurance program, provided he pays 100% of the premium.

13) 1409 Unpaid Leave (Retirement)

That an employee be allowed to purchase service credit while on LWOP.

14) 1409 Unpaid Leave (Status Upon Return to Duty)

That periods of LWOP in excess of 30 days shall be deducted from employee's anniversary date and service credit.

15) 1502 - Responsibility and Authority

Personnel Folders have been moved to the Personnel Office. Leave, timesheets and pay records will be removed from the Personnel folders and given to the Finance Office for filing and maintenance.

16) 1603 Policy (c)

That the paragraph in Manual allowing 4 hours of overtime if employee is recalled after working hours be removed as it is in conflict with current policy.

17) 1603 - Policy (f) and (g)

That the State's is as follows: "If a person is required to work when other employees have been released because of an emergency, the time worked is counted as additional time. Up to 40 hours reimbursement is by compensatory time, any time over 40 hours is reimbursed at time-and-a-half." However, the Commissioners agreed to continue with the County's current procedures.

(A more complete description of the proposals and staff recommendations are set forth in memorandum dated May 23, 1983 from the Personnel Officer to the Board of County Commissioners.)

UPDATE ON BONDING REFINANCING ISSUE

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

Mr. O'Dell requested that at least three Commissioners be present on Friday, June 17, 1983 at 10:00 a.m. along with members of the Metropolitan Commission in order to review and accept or reject the bid proposals by Alex Brown and Son for the bond refinancing issue. The Commissioners agreed to meet on that day as requested.

Mr. O'Dell further stated that due to the recent deterioration of the market a decision will have to be made this Friday, June 3 whether to proceed with issuing the preliminary official statement and obtain the rating for the bonds from the rating agencies. It was agreed to use three-quarters of a million dollars as the breaking point concerning present value calculations.

CORRESPONDENCE

The County Administrator presented the following items of correspondence for the Commissioners' review and signatures:

1) To Sheriff Pettit and State's Attorney Walter Dorsey formally commending them and their personnel for quick, efficient and effective work accomplished during the recent murder investigation concerning a young female who was murdered in Charles County and whose body was brought to St. Mary's County.

2) To our local legislators for their assistance and efforts during the 1983 Legislative Session.

BUDGET AMENDMENT NO. 83-63
COOPERATIVE EXTENSION
PURCHASING AND LOGISTICS

The County Administrator presented the referenced Budget Amendment recommended for approval by the Director of Budget and Data Services as follows: To solicit bids to acquire micro-computer as a stand-alone unit in local office. Replace addressograph equipment plus provide word processing, data base management and mathematical capabilities.

Commissioner Arnold moved, seconded by Commissioner Aud, to approve and sign Budget Amendment No. 83-63 as presented. Motion unanimously carried.

CLEARINGHOUSE PROJECT NO. Sm83-5-588
GRANT APPLICATION FOR CHESAPEAKE BAY MANAGEMENT
CENTER AND MONITORING PROGRAM

The County Administrator presented the referenced Clearinghouse project and recommended that it be forwarded to the State with the comment that it is not inconsistent with this agency's plans, programs, or objectives.

The Commissioners gave their concurrence.

SOMERSET VS. HORNBECK
(DISTRIBUTION OF STATE FUNDS)

Present: Dr. Larry Lorton, Superintendent of Schools

Dr. Lorton appeared before the Commissioners to discuss the referenced action in which St. Mary's, Caroline, Somerset and Baltimore City school systems filed suit regarding a more equitable distribution of state funds for the support of public education. Dr. Lorton requested the Commissioners' support in having the questions raised in the action resolved. He went on to explain the background and particulars of the court action stating that Judge Ross had ruled in favor of the counties; however, the appellate court remanded the case back to the state legislature.

Dr. Lorton requested that correspondence be prepared to the Governor urging that a task force be appointed charging them with coming up with recommendations for the 1984 Maryland General Assembly.

Discussion ensued as to the proper course of action and Commissioner Dean stated he agreed with the legislative course of action; however, he felt that all avenues should be explored. He suggested that Dr. Lorton determine the deadline for filing an appeal and that the County be in a position to appeal if necessary.

Dr. Lorton advised that he would look into this and report back to the Commissioners

PLANNING CONCERNS

Present: J. Frank Raley, former member of Planning Commission

Mr. Raley appeared before the Commissioners to discuss a variety of planning concerns related to the Lexington Park area, St. Mary's City and the St. Inigoes/NESEA area.

Mr. Raley's remarks centered around issues of roads, water and sewer, storm water management and comprehensive zoning. He urged the Commissioners to look ahead to the challenge which growth will present to the referenced areas and stated that St. Mary's County will one day be one of the wealthiest counties in the State of Maryland.

The Commissioners informed Mr. Raley of several items now under consideration and already planned related to the matters he discussed such as the road system, water and sewer system serving NESEA, recent storm water management regulations, etc.

The Commissioners thanked Mr. Raley for his concerns and service to the community as a member of the Planning Commission and the committee that developed the Lexington Park proposed plan.

OFFICE OF COUNTY ENGINEER'S ITEMS

Present: John Norris, County Engineer

1) Nursing Home Project

Mr. Norris presented the Agreement by and between the Board of County Commissioners of St. Mary's County and Gaudreau, Inc. for performing a feasibility study of three alternative methods for increasing St. Marys' Nursing Home as well as for the preparation of the Certificate of Need for submission to Southern Maryland Health Systems Agency.

Commissioner Dean moved, seconded by Commissioner Arnold, to approve and sign said Agreement. Motion unanimously carried.

2) Authorization for Signature
Public Works Agreement
Wildewood, Neighborhood 3

Mr. Norris requested authorization for the President to sign the appropriate Public Works Agreement Irrevocable Letter of Credit, when received, for Wildewood, Neighborhood Three, Cluster 2, Plat 1, extending the completion date to June 1, 1984. The bonding amount will remain the same. The documents are expected today; however, if not received the County will be required to make claim on the bond, which is due to expire June 1, 1983.

Commissioner Arnold moved, seconded by Commissioner Sayre, to authorize Commissioner President Aud to sign the PWA when received. Four Commissioners voted in favor, with Commissioner Dean abstaining. Motion carried.

3) Addendum to Public Works Agreement
Forest Run Subdivision

Mr. Norris presented an Addendum to the Public Works Agreement by and between Edward Cook and Maxine W. Cook and the St. Mary's County Commissioners amending the draw schedule, Revised, "Exhibit A", for Forest Run Subdivision.

Commissioner Millison moved, seconded by Commissioner Arnold, to approve and sign said Addendum. Motion unanimously carried.

OFFICE OF COUNTY ENGINEER'S ITEMS (Continued)

4) Londontowne Subdivision

Mr. Norris advised the Commissioners that he had a Public Works Agreement and a surety presented by the developer by Londontowne. There is a joint county/developer drainage project required to be initiated with the commencement of the development project. He stated that the Development Agreement required the developer to pay a percentage of a construction cost of the drainage system. The funding mechanism provided by the developer requires co-signature of the county and the developer in order for the the county to make a draw on the funds. Mr. Norris recommended that this Agreement not be accepted and the county have sole authority to access the funds. The developer in turn would earn interest on the money until drawn on by the County. If the cost exceeded the construction estimate the developer and the county by an Agreement would share in the increased cost. In addition, Mr. Norris advised that the original concept provided for an open channel flow adjacent to a residence that bordered the Londontowne development. Mr. Norris indicated that as the design is now complete it is possible and desirable to now pipe that flow of water underground and that cost should be added to the developer's responsibility estimated at \$4,000. Mr. Norris indicated that the County has worked with this developer to provide housing and is not desirous of impeding his progress but felt that the above change must take place.

After discussion of Mr. Norris' recommendations, the Commissioners gave their concurrence.

5) St. Clement's Island-Potomac Museum

Mr. Norris gave the plans for the proposed new museum building indicating the site of the current structure, the new site and parking area. He requested the Commissioners' concurrence in using the firm of FEDCO to work with the County on a cost plus basis to do some of the architectural drawings in order for the bid package to be prepared by summer. This would be at a cost of less than \$5,000, which will be taken from state funds.

The Commissioners gave their concurrence.

6) Highway Maintenance Division

Mr. Norris presented to the Commissioners a copy of the handout which he distributed at a recent Taxpayer's Association wherein the proposed Highway Maintenance System is described.

He stated that the County has now established its budget creating this Division and requested that in accordance with the Transportation Article of the Annotated Code of Maryland that he be identified as the "Roads Engineer."

The Commissioners concurred in this request.

Further Mr. Norris advised that he needed to begin the design of the building to be erected at the St. Mary's Landfill to house the Engineer's Office staff and proposed Highway Maintenance Division and requested authorization to utilize the architectural services of FEDCO on a cost plus basis to perform some of the schematic design work as his current staff load would not allow that to be performed in house.

The Commissioners gave their concurrence.

7) Storm Water Management Regulations

As a follow up to last week's discussion, Mr. Norris discussed the proposed Storm Water Management Regulations developed by the Department of Natural Resources to go into effect July 1, 1984. By way of a chart presentation, Mr. Norris proceeded to review the background, purpose, requirements, criteria and comments. In preparation for the public hearing being held tomorrow, June 1 in LaPlata on this subject, Mr. Norris

reviewed what he believed should be the recommendations of St. Mary's County, which included requesting an extension of review and adoption time and certain exemptions.

The Commissioners concurred with Mr. Norris' recommendations and requested that he keep them informed as to the developments of the proposed Regulation.

EXECUTIVE SESSION

Present: Harris Sterling, Director of Finance
Edward V. Cox, County Administrator

Prior to leaving for the Amber Meadows Rezoning Hearing, Commissioner Arnold moved, seconded by Commissioner Sayre, to meet in Executive Session in order to discuss a matter of Personnel. (Commissioners Aud, Arnold and Sayre left the Session at 2:45 to go to the Rezoning Hearing.) The Session was held from 2:20 p.m. to 3:00 p.m.

REZONING HEARING

ZONE #81-0163 - MAYJACK, INC.
(AMBER MEADOWS)
HELD 3:00 p.m.

Application requesting rezoning and approval of a concept development site plan for approximately 52 acres, located off Maryland Route 235 & Chancellor's Run Road in the 8th Election District, on Tax Map 42, Block 6, Portions of Parcels 18, 51 & 71. Request rezoning from R-2, Residential, to MH, Mobile Home Park.

County Commissioner President George Aud opened the public hearing with Commissioner members Richard Arnold and David Sayre also in attendance Commissioners. Larry Millison and Ford L. Dean both abstained from participation. Planning staff present included Frank J. Gerred, Director of the Office of Planning and Zoning Robin Guyther, Planner, OPZ, and Anita Meridith, Recording Secretary.

Those persons formally noting their attendance, via the official "Sign-In Sheet", are noted; said documentation incorporated within the case file.

Mr. Theodore P. Weiner, Esq., County Attorney, was introduced by the Chair and advised that per request of the Board of County Commissioners, he would be in charge of the conduct of the hearing and explained to the audience, the procedure which would be followed with respect to testimony and cross-examination.

Mr. Weiner advised that the Planning and Zoning staff would submit, based on the presentation this date, a review of the record and recommendation to the County Commissioners; said analysis and recommendation to be submitted subsequent to this hearing, which would be filed in the proceedings, as part of the record, prior to June 14, 1983, whereupon the County Commissioners would hold a hearing on June 21, 1983 at 1:30 p.m., to afford the public the opportunity to review and offer comment regarding that staff report. Mr. Weiner noted that should anyone wish to submit written comment for the record, those remarks should be filed with the Office of Planning and Zoning on or before June 14th and anyone wishing to offer rebuttal to those written comments would be afforded that opportunity at the June 21st meeting.

Mr. Gerred advised that the Public Hearing Notice was advertised in the Enterprise Newspaper, a publication of county-wide circulation, in their May 13, 1983 issue, providing due legal notification of this hearing.

At this point, the applicant's attorney, Mr. Wayne M. Munday, Esq., LaPlata, Maryland, accompanied by co-counsel, Mr. Thomas Daugherty, 32 Shangri-La Drive, Lexington Park, Maryland, came forward and presented for the record, the postal receipts from the certified letters of notification sent to all contiguous property

within 200 ft. of the subject property. (Marked Applicant's Exhibit #1)

Mr. Gerred introduced into the record, the Planning Commission's previous record and recommendation.

Mr. Robert Gray, Esq., of the law offices of Handen and Singerman, P.O. Box 289, Prince Frederick, Maryland 20768, representing the Greenview Knolls and Barefoot Acres Citizens Associations and various individuals and neighbors in the community opposing this application, asked whether he would be afforded the opportunity to cross-examine Mr. Gerred with respect to the Planning Commission and staff reports. Mr. Gray explained that this cross-examination dealt with a motion, which he had previously indicated that he may raise with respect to the validity of holding this public hearing, absent a recent Planning Commission recommendation, current staff report and current TEC reports. Mr. Weiner, acting on behalf of the Board of Commissioners, granted Mr. Gray's request, whereupon Mr. Gray proceeded to cross-examine Mr. Gerred. Mr. Gray introduced co-counsel Mr. Allen Handen of the same law firm.

During cross-examination Mr. Gerred provided that the former staff report, prepared under his general supervision by Mary I. Raley, dated April 15, 1981, remained as the most current staff report relative to the pending matter. Asked whether staff intended to remand the matter to the Planning Commission for that Board's input, Mr. Gerred responded that the Judge had remanded the matter back to the Board of County Commissioners who had subsequently scheduled this hearing, thus meeting that remand. Mr. Gerred advised that he could not make a judgement, at this point, whether the facts and recommendations, as contained within the staff's report were still valid, until he had heard the applicant's presentation this date.

Mr. Gerred stated that he felt that the Mobile Home District was a floating zone and based this opinion on the description of the zone, its placement in the Special District section of the Zoning Ordinance, and was so reported to the Planning Commission on May 1979. That reference related to a request for a Mobile Home Park designation for Mr. Ed Cooke (Suburban Mobile Homes) which was explained as a request for an interpretation of the Ordinance in order to apply the R-2 District Standards in the area that was zoned Mobile Home Park.

Mr. Gray asked what was required to rezone a euclidean zone. Mr. Gerred responded that two tests must be made, under State Law, or a mistake in the original zoning of the property.

Mr. Gray moved into evidence, Opponent's Exhibits A and B.

Opponent's Exhibit A. - Document concerning basis for the staff and Planning Commission's opinion regarding the Suburban Mobile Home Estates.

Opponent's Exhibit B. - Copy of resolution regarding # 80-3231 for National Mobile Homes

Mr. Gerred provided that while the review of the Zoning Ordinance was mandated on an annual basis, said review occurred on an on-going basis, numerous times throughout the year. He testified that he felt that the language in the Ordinance, under the Mobile Home Park District, was "adequate" and had not been changed since the initial hearing of this application.

Mr. Gerred provided an up-date on the housing situation in the Lexington Park area since the initial hearing, advising of several major occurrences, i.e. Navy's acquisition of Center Gardens and plans for demolition of those units and reconstruction of 250 units, thereby reducing that housing stock by 750; secondly, the application of several condominium units (\$50,000 - \$60,000 price range) and the parks which had resulted in the reduction of the available total units.

In response to Mr. Gray's formal request, that the County Commissioners remand this case to the Planning Commission for an up-dated report, Mr. Weiner per finding of the Board, responded that in reviewing Judge Wood's Opinion, he felt that the Order was clear in stating that the County Commissioners would conduct hearings on this matter and that the procedural error had been the lack of cross-examination at the original hearing in front of the County Commissioners. Accordingly, Mr. Weiner denied Mr. Gray's request.

The applicant's attorney, Mr. Wayne M. Munday, explained that this application was relatively simple in concept and went on to explain that the request involved a 52 acre tract for designation as a Mobile Home Park District on the basis that the MHP was a floating zone.

Mr. Munday called upon a series of witnesses who offered various testimonies regarding engineering, planning and zoning and need for housing.

The first witness called was Mr. Charles D. Ellison, Vice-President and Chief Engineer of the D.H. Steffens Engineering Company, 4 Willows Circle, Lexington Park, Maryland 20653. Mr. Ellison offered his credentials and hearing no opposition from anyone regarding his authority as an expert witness, cross-examination proceeded with his presentation regarding the site plan for this proposed project. Entered into the record, marked Applicant's Exhibit #2, was a large detailed Site Plan, having been prepared by the D.H. Steffens Engineering Company. The proposal outlined was one which incorporated 52 acres and was laid out in a horizontal configuration showing the location of the proposed lots, open space, recreation facilities and other amenities such as access roads, and location of the storm water management devices.

Mr. Ellison provided some statistics relative to the projected traffic flows for this project and compared them with a project of the same size, developed as single family homes. He explained that a lot of the information was gained through a traffic study having been conducted by the Institute of Transportation Engineers. The following figures were provided: A single family residence produces an average flow of 10 trips per day, per unit, as compared to 5.4 vehicle trips generated per day by a mobile home owner. This difference would result in a figure of 1,500 trips per day. During the course of other questioning, Mr. Ellison offered that statistics would indicate that a mobile home park would generate fewer number of school aged children than a development of single family detached residences. Consequently, he did not feel that this proposal would adversely affect the school system, by placing an undue number of children within the system.

Mr. Munday asked Mr. Ellison to provide a description/boundary of the designated neighborhood. Mr. Ellison offered that the neighborhood relative to this particular property would be along the Route 235 corridor running from St. Andrews Church Road up to the main entrance gate at Lexington Park. In conclusion, Mr. Ellison stated that he felt that the proposed use would be compatible for reason that it was a floating zone and was appropriate within a residential neighborhood and as such, was within an area close to employment center and would minimize traffic travel time. Further consideration was given to the fact that it was adjacent to an existing mobile home park and was well shielded from residential surroundings.

Applicant's Exhibit #3 was explained as a composite plan, showing the location, in color codings, of: Yellow - developed area; dark green - some of the adjacent property owned by Mayjack, Inc; light green - land owned by Maryland Manor Mobile Home Park; gray - existing railroad right-of-way and some of the commercial properties fronting on Rt. 235; green - (Small strip indicated on the upper right hand side of the site) - some of the few remaining residential parcels along Route 235.

Mr. Gray was provided the opportunity of cross-examination of Mr. Ellison's testimony. Mr. Gray reminded the Board, that they must examine this application, under case law, in the State of Maryland, considering the highest potential use of this property rather than as submitted under this application, and must accordingly, consider the highest potential vehicular trips, impact on schools, etc. Mr. Gerred injected that rather than confuse the public in thinking that 400 units could be developed, when the plan only called for 191, he emphasized that under a floating zone, the specifics of the plan were approved (units) and that plan could not be extended beyond that specific number. Mr. Gray asked a series of questions relative to the comments submitted by the TEC agencies and asked for Mr. Ellison's opinion with respect to impact upon the schools, site distance, storm water management and need for housing.

Mr. Weiner opened the floor to anyone wishing to ask Mr. Ellison any questions.

Mrs. Nancy Williams of 300 Spruce Drive, Town Creek, Lexington Park, Maryland, advised that she has been active in the local PTA and she contradicted Mr. Ellison's former testimony that trailer parks produced fewer school aged children than single family residences. Mr. Ellison advised that his figures were based upon state figures available and current information received from the St. Mary's Board of Education.

A five minute recess was called, whereupon the Board reconvened to consider testimony offered by opposition's witness, Mrs. Helen C. Massey of 133 Belvoir Road, Great Mills (Mr. Weiner having granted this singular change to the agenda). Mrs. Massey read a prepared written statement which offered her many concerns relative to this proposal, noting her chief concern with the history of trailer park maintenance in the County and the possible deterioration of this project, once it was developed.

Mr. Weiner opened the floor to cross-examination of this witness.

Mr. Darrel L. Conley of Lexington Park took exception with Mrs. Massey's reference to "stability" and asked how long a person had to live as a resident in the community to be stable. He advised that he had been a mobile home resident in St. Mary's County for over 10 years and he took offense with the notion that "because I elect to keep my housing cost somewhere in the vicinity between \$15,000 and nowadays \$35,000 to \$40,000, as is outlined in the latest newsletter put out by the Maryland Manufacturers Home Industry..."

Mr. Paul L. Elia, President of the Barefoot Acres Citizens Association address 206 Norris Drive, California, Maryland, asked whether it had been Mrs. Massey's intent to argue the point that people living in mobile home parks were of less stature in life. Mrs. Massey responded that her former reference had been "that I'm sympathetic to their needs and happiness" and she did not mean to cast aspersions on trailer home owners. She stressed that what she was trying to get across was that, "I do not feel that the mobile home parks in St. Mary's County have given the mobile home owners a fair shake. I think we have seen them deteriorate and I do not see that there is any standard that has been set that this will be any better."

Dr. D.L. Conley asked whether Mrs. Massey had had the opportunity to review the existing section of the Ordinance that governed mobile home parks. Mrs. Massey responded negatively. Mr. Conley urged her to do so and stated that it was now virtually impossible for the County Commissioners to grant a MHP which would allow the construction of a park which could compare to any of the existing parks in St. Mary's County today.

Mr. Munday pointed out that there were ten (10) pages contained within the Zoning Ordinance which outlined requirements for the Mobile Home Parks. He also stressed that there was not a single mobile home park developed in the County that had been build in accordance with those requirements. (this will be the first).

Mr. Weiner reflected that since there were no further questions of this witness, he would turn the hearing back to the applicant's case and presentation.

Mr. Munday called Mr. Frank John Gerred, Director of the St. Mary's County Office of Planning and Zoning, having served in that capacity for the last seven(7) years. Mr. Gerred offered his educational and professional credentials and was accepted as an expert witness in the field of planning and zoning.

Mr. Munday asked whether Mr. Gerred was familiar with the terms euclidean and floating zones, to which he received a positive response. Mr. Munday asked Mr. Gerred whether he had an opinion as to whether this was a floating zone or euclidean zone because of the placement of the section of the Ordinance under Special District, and because of his intent, as author of the 1978 version of the Ordinance, that Mobile Home Parks, Camper Park and other Special Districts be considered floating zones.

Mr. Gerred provided a description of the difference between euclidean and floating zones and he reiterated the staff's opinion of 1979 relative to the Suburban Mobile Home request relative to interpretation of application of the R-2 district standards in an area zoned MHP. In response to Mr. Munday's question, Mr. Gerred responded that he felt that the application was compatible with the purposes for which the MHP was established, and he felt it was compatible with the existing uses in the neighborhood.

Mr. Gray cross-examined Mr. Gerred and following a lengthy dissertation regarding the changes to the Ordinance which occurred subsequent to 1976 with respect to the MHP designation by Mr. Gerred, Mr. Gray asked that the staff provide for the record, a copy of 1976 Zoning Ordinance, as it existed at that time.

Mr. Weiner opened the floor to questioning of Mr. Gerred.

Mr. Paul Elia asked whether the authorship of the Zoning Ordinance was Mr. Gerred's singular effort. Mr. Gerred responded that the original Ordinance was written by a firm out of Washington, at the request of the County Commissioners. Mr. Gerred subsequently took over the administration of the Ordinance and took upon himself the task of rewriting various sections. (in order to clarify) and reorganization of the initial effort. Mr. Elia questioned why he had not specifically noted, in the rewriting, that MHP was a floating zone. Mr. Gerred advised that this had just inadvertently been overlooked.

Called as applicant's witness, Mr. W.C. Dutton, Jr., Upper Marlboro, Maryland 20870, came forward and introduced himself as a planning advisor and consultant, as it related to zoning and planning. Mr. Dutton provided his educational and professional credentials and advised that he had studied all documentation relative to this consideration. Mr. Gray challenged the qualifications of Mr. Dutton to speak as an expert witness, noting that his objections were based on the fact that Mr. Dutton was not familiar with Judge Wood's Opinion and that he had not testified in a Maryland Court of Law as an expert witness. Following brief deliberation, Mr. Weiner, speaking on behalf of the Board of County Commissioners, ruled that he did not feel that Mr. Dutton's lack of testimony in a Maryland Court was a controlling factor nor the fact that Mr. Dutton had failed to study Judge Wood's opinion in great detail and consequently, would allow Mr. Dutton to speak as an expert witness in the field of planning and zoning.

Mr. Munday asked Mr. Dutton whether he had an opinion, as a planning and zoning expert, as to whether the provision in the St. Mary's County Zoning Ordinance dealing with Mobile Home Parks was a euclidean or floating zone. Mr. Dutton responded that he felt it was a floating zone and having reviewed this application, in concert with the Zoning Ordinance, felt that the plan was compatible with the neighborhood, met the density requirements and all other applicable concerns.

Mr. Weiner inquired whether anyone in the audience had any questions of Mr. Dutton. Hearing no response, applicant's counsel introduced his next witness, Mr. Joseph Mitchell, Executive Director of the St. Mary's County Housing Authority, Director of the County Housing Office and Director-Designee of the Department of Economic and Community Development. Opposition's counsel did not challenge the authority of Mr. Mitchell, speaking as expert witness in the field of housing.

Mr. Mitchell explained that a housing survey had been conducted in the County the previous year, resulting in the finding that there was a "tremendous housing shortage in St. Mary's County that reaches across all of the spectrums of housing." Mr. Mitchell offered that the cost of housing placed a normal stick built house out of the reach of the medium income family, and as a result, alternative forms of housing, i.e. manufactured and mobile homes were a viable alternative. Mr. Mitchell expounded on the statistical data derived from the 1982 census and provided the figures for the average monthly income in the County, vs. average housing costs, and types of housing available in the County.

Mr. Gray asked Mr. Mitchell a series of questions, whereby Mr. Mitchell provided the following: The average mean income per household in St. Mary's County is \$21,000; less than 2% of the total housing in the County was vacant/available; 3% of the total population in St. Mary's County could afford that \$50,000 priced home (this information supplied by HUD). Mr. Mitchell explained the formula whereby a family would qualify for a specific priced house; using the average income of \$21,000, a family attempting to purchase a \$50,000 home, after considering principal, taxes, insurance using an interest rate of 12 1/4 per annum, said family simply would not qualify.

Mrs. Williams questioned whether an enlisted person, coming into the County would experience difficulty in finding housing and related a personal experience whereby she knew a family who moved to the County and had found suitable housing within a two week period.

Mr. Munday, at this point, waived his right to all upon further witnesses and offered into evidence, marked Petitioner's Exhibits #2, #3, #4, Site Plan, Area Description, and Housing Market Study, respectively.

Five minute recess.

Turning over the floor to Mr. Gray for the opposition, counsel advised that prior to offering testimony by his witnesses, he would like to make several requests of the County Commissioners. First, that the Commissioners review the validity of the application. He argued that as a matter of law, the application was invalid and therefore, could not move forward, referring specifically to two sections of the Zoning Ordinance, i.e. 70.0 (2) and 38.05(1). He noted that with respect to the first, as a prerequisite for the filing of any zoning application, under section 70.01(2) requires that the names of all stockholders having interest greater than 5% be named in the application as having interest. In this instance, there are two corporations involved, namely Mayjack, Inc. and Maryland Capital Corporation and counsel stressed that this prerequisite had not been satisfied.

Mr. Gray continued that he would also base his request to the Commissioners to consider deferral of this pending matter, based on Sec. 38.05 (1) as that section related to the requirement that the application have an engineering plan, pursuant to the aforementioned,

which would include reference to soils, ground water, drainage of topography. Calling attention to the application and to the somewhat dated staff report, Mr. Gray reflected that both outlined specific problems with those aspects of the site plan. Mr. Gray stated that the applicant was required, at the time of the application, to show compliance that there was no hazard and by the very documents contained within the staff and the County reports, there was absolute evidence of certain problems. For the reason stated above, Mr. Gray contended that the application should have been forwarded to the Planning Commission due to the staleness of the case and said body hold hearing and review the application, affording the staff the opportunity to reevaluate and provide an up-dated staff analysis and recommendation. Mr. Gray stressed that the Planning Commission's previous motion had included a split vote amongst the members, which certainly was indicative on some type of concern on their part.

Called as opposition's first witness, was Mr. Thomas E. Dobry of 551 Church Drive, Greenview Knolls, Great Mills, Maryland. Mr. Dobry advised that he lived 1/2 mile from the subject property. Mr. Dobry offered his opinion with respect to a rezoning of the property, stating that the development of this area would have a detrimental effect on his property and surrounding properties within the Greenview Knolls community. Mr. Dobry spoke at length to a variety of concerns regarding possible rezoning of this property as follows: school impact, impact upon roads, (specifically inadequate site distance on Chancellor's Run Road), capacity of the sewer (MetCom) and the effect of same caused by additional rezoning, depreciation of property values and lack of protection provided through existing County Ordinances.

Entered into the record, marked Opposition's Exhibit C was a staff report relative to the Painter rezoning request.

Mr. Weiner opened the floor to anyone not represented by counsel, wishing to question Mr. Dobry. Hearing no inquiries, Mr. Gray called his second witness.

Mr. Paul L. Elia, President of the Barefoot Acres Citizens Association (representing 125 homes) address 26 Norris Drive, came forward and advised that he lived 1/2 mile from the subject property. Mr. Elia felt that a rezoning of this property would have a negative impact on the value of his property. Mr. Elia reiterated Mr. Dobry's concerns and spoke to his main concern as that of the lack of up-dated technical reports on this proposal. Mr. Elia felt that there had been changes in the area, which the County Commissioners should consider in concert with recognition of whether there was a need for this type of proposal. Mr. Elia felt that the Board should reevaluate their concerns and recognize that this was a rezoning request, as opposed to an emotional issue of economics.

Mr. Elia spoke to the fact that most of the trailer parks in the County were in a deplorable state of disrepair and voiced concern with what types of safeguards would be imposed, under this proposal, to guard against the likelihood of what had become the norm in the County regarding the state of trailer parks. Mr. Elia asked the Commissioner members to consider the following with respect to this application: need for housing, impact on schools, quality of education due to overcrowding, setting precedent for floating zone, capacity of sewer allocations and impact on existing customers, taxes of mobile home parks vs. single family homes.

Mr. Weiner inquired whether anyone had any questions of Mr. Elia. Hearing none, Mr. Gray called his next witness.

Mr. James Dobry of Chancellor's Run Road, Greenview Knolls, Great Mills, Maryland, came forward and advised that he lived 1/4 mile from this proposed trailer park. If this request should be approved. Mr. Dobry felt felt that this park would eventually evolve into "one massive trailer park" which he emphasized would be "very poor land planning." Mr. Dobry stated that an approval of this application would seriously

depreciate and "crucify" the property values in the area and further felt that such an action by the Board could be considered "unconstitutional."

Mr. Dobry spoke at length to the serious conditions presently existing on the Chancellor's Run Road and emphasized that the proposed entrance to this park was situated on one of the most hazardous roadways in the County. Mr. Dobry felt that an approval of this park would not solve the overall long-range housing problems within the County, noting that "trailers" are notorious for fast depreciation..." and questioned the general lack of government and administrative controls when considering the deteriorated condition of numerous trailer parks throughout the County.

Mr. Weiner inquired whether anyone had any questions of Mr. Dobry. Mr. D. L. Conley inquired whether Mr. Dobry or any of his fellow members of the St. Mary's County Taxpayers' Association had tried to implement change to the tax structure. Mr. Dobry responded affirmatively and added that he had also attempted to try to clean up the slum conditions within the existing trailer parks, to no avail.

At this point, Mr. Gray moved into evidence those exhibits which had been previously submitted in the original hearing, formerly marked Opponent's Exhibit #1, through #7 inclusive, noting that the exhibit numbers might not correspond to that previous numerical listing. Mr. Weiner noted that staff had previously entered the former case file into the record, said documentation containing all exhibits of the previous record.

Mr. Gray advised that this completed his presentation, insofar as calling witnesses for the opposition.

Mr. Weiner recognized those persons having previously signed a separate sheet, indicating their desire to offer testimony, starting with Mrs. Doris Conley, President of the St. Mary's County Mobile Homeowners and Tenants' Association.

Mrs. Conley spoke at length offering an overview of her family background and community involvements. Mrs. Conley acknowledged that there were problems with the existing mobile home parks in the County, which was the reason for the formulation of the St. Mary's County Mobile Homeowners' and Tenants' Association. Mrs. Conley spoke to the many human aspects of mobile home ownership and emphasized that because she chose to live in a mobile home did not automatically typify her as a second-class citizen. She advised that there were 1,500 mobile home owners in St. Mary's County and she emphasized that she had been involved for the last year in a diligent effort to try to implement new county regulations which would upgrade the old existing parks throughout the County. She advised that she had offered testimony before the Senate and at present there were 20 bills pending before the legislature which if passed, would offer relief to the existing mobile home parks through mandatory regulations and safeguards which would be implemented throughout the State. Mrs. Conley emphasized that the new existing Ordinance offered concrete guarantee that there would not be any more dilapidated, deteriorating, mismanaged parks as experienced in the past. Speaking for herself and on behalf of the St. Mary's County Mobile Homeowners' and Tenants' Association, Mrs. Conley remarked, "...I want to live where I can be proud to say I live..."

Following a ten minute recess, the Board reconvened and took up the pending consideration.

Mr. Thomas Wheeler was recognized by the conductor, Mr. Weiner, officiating on behalf of the Board of Commissioners. Mr. Wheeler advised that he would waive his right to speak at this time; however, he would submit his comments in writing for inclusion within the record.

Mrs. Nancy Williams was recognized and came forward. Mrs. Williams referenced a former exhibit entered in the previous hearing by Mr. Phillip M. Conti (regarding traffic patterns and increased traffic impact) and asked that said exhibit be included in this public hearing record. Staff advised that said documentation would be so included. Mr. Munday objected to the inclusion of this document, stating that he did not feel that said intersection had any bearing on this particular public hearing. Mr. Weiner ruled, on behalf of the County Commissioners, that said exhibit would be admitted on the basis that it had been made a part of the previous record. Mrs. Williams called attention to the fact that the Board should also consider the public safety as there was a small shopping center and 50 town-house units proposed at the intersection of Town Creek Drive and Rt. 235, which would also add further congestion and serious hazard to this intersection.

Mrs. Williams offered for the record, marked Opponent's Exhibit E, a letter of opposition from the Town Creek Garden Club.

This concluded all testimony and public input and applicant's counsel and opposition's counsel were afforded the opportunity for closing remarks.

Mr. Gray reiterated his former request, that Mr. Gerred enter into the record, a copy of the Zoning Ordinance, pre 1978, specifically, that edition prior to the 1978 revisions wherein the Mobile Home Park text was scattered throughout the Ordinance and staff subsequently condensed same.

Mr. Gray took this opportunity to read aloud a portion of Judge Wood's Opinion regarding this application, quoting from pages 4 and 5 of that text.

Mr. Gray remarked that he had argued this date, that the applicant must bear the burden of proof. He suggested that Judge Wood's Opinion was simply offering that "you all did plan a Planned Unit Development to be a floating zone. You know how to do it and you did it successfully in that Ordinance. The language for the Mobile Home Park no matter how much we would like it, Mr. Gerred would like it to be a floating zone, simply does not meet those standards and those criteria for Planned Unit Development." Mr. Gray advised that he had no previous knowledge of an "official" having previously advocated that the site development plan for one district was applicable to another district or that the Planned Unit Development criteria were applicable to a Mobile Home Park. He submitted that he knew of no other situation in the State of Maryland where, absent some sort of indication of a cross-over for a site development plan. He felt that "while the intentions may be there, we would suggest to the County Commissioners that the Mobile Home Park District existed prior to 1978 as a euclidean zone and existed after 1978 as a euclidean zone." He stressed, "What you need to show for a euclidean zone is change or mistake, and not one shred of evidence has been introduced to that effect." Secondly, Mr. Gray pointed out that the Board of County Commissioners for St. Mary's had rezoned the National Mobile Home Park based on the euclidean standards finding mistake in the original zoning of the property. Mr. Gray felt that the Commissioners "cannot have your cake and eat it too." He stressed that having found mistake in the National Mobile Home Park application, using the euclidean zone, the same must be applied to this application. Lastly, Mr. Gray stressed the importance of having a valid, up-to-date Planning Commission report and recommendation and urged that the Commissioners consider remanding the case back to the Planning Commission for an update of this consideration.


Mr. Munday addressed the issue raised by Mr. Gray with respect to the invalidity of the application based on Sections 70.0(2) and 38.05(1) of the Zoning Ordinance. Mr. Munday noted that those sections were not applicable to this request. He explained that those sections applied to authority for an amendment. Mr. Munday stressed, "We are not asking for an amendment of a euclidean zone as we said earlier, we are asking for an application under the floating zone." He also questioned the compliance with Section 38.05(1) regarding the site plan. Mr. Munday argued that a "different variety

of site plan is required at the various stages in the development process." Counsel noted that he had previously commented with respect to opposition's motion to resubmit to the Planning Commission and would not reiterate his former testimony. He spoke to the testimony offered by opposition's witnesses and felt that the majority of that testimony was irrelevant, ridiculous and had no bearing. Mr. Munday stressed that what the Board must consider, under this request, was whether the applicant had met the burden of proof for a floating zone application. Counsel Munday agreed with opposition's contention that the St. Mary's Zoning Ordinance was not perfect, however, he noted, "I have never seen one yet that was ... but it doesn't have to be perfect it just had to be good enough and we suggest that it is good enough." Mr. Munday felt that Mr. Dutton's testimony was extremely candid in that he "not only told you those forces of the Zoning Ordinance which he felt supported his opinion, as an expert that this was a floating zone, he just as candidly told you those forces that were weak." Mr. Munday quoted from the "Guide to Maryland Zoning Decisions"-Abrams (recognized zoning authority in Maryland), Aubinoe v. Lewis 250 MD 645(1968) under Findings Required - citing the elements under Section 2.4: "The vital and decisive determinations of the zoning authority in passing upon an application for a floating zone category are whether the application complies with the expressed purposes for which the accomplishment of the floating zone was established and that the zoning is compatible with existing uses in the general neighborhood." Mr. Munday recalled that the only testimonies given relative to this "vital and decisive determination" were by Messrs. Gerred, Dutton and Ellison, and all had stated that the applicant had met the test. For the reasons so stated, counsel for the applicant requested that the Board grant the rezoning request.

Mr. Weiner advised those present, that written comments would be accepted prior to June 14th and must be filed with the Office of Planning & Zoning. Those written comments will be made available on June 21st at the County Commissioners' public hearing to be held at 1:30 p.m., said hearing to be held specifically for the purpose of allowing anyone the opportunity to cross-examine any other person making comment.

Hearing no further testimony, Mr. Weiner acting on behalf of the St. Mary's Board of County Commissioners, called the hearing adjourned at 9:25 p.m.

Approved:


George R. Aud, President