

BOARD OF COUNTY COMMISSIONERS

TUESDAY, OCTOBER 16, 1984

Present: Commissioner George R. Aud, President
Commissioner Ford L. Dean
Commissioner David F. Sayre
Edward V. Cox, County Administrator
Judith A. Spalding, Recording Secretary

(Commissioner Millison was not present due to illness.)
(Commissioner Arnold was not present.)

CALL TO ORDER

The meeting was called to order at 9:20 a.m.

APPROVAL OF MINUTES

Commissioner Dean moved, seconded by Commissioner Sayre, to approve the minutes of the Commissioners' meeting of Tuesday, October 9m 1984 as submitted. Motion carried.

APPROVAL OF BILLS

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

OFFICE OF COUNTY ENGINEER ITEMS

Present: John Norris , County Engineer

1) AMENDMENT TO SEPTEMBER 18 MINUTES
PATUXENT PARK WEST

Mr. Norris advised that an item was inadvertently omitted from the September 18 minutes; i.e., the Public Works Agreement in the amount of \$37,500 by and between Patuxent Park West Villas Ltd., Partnership and The Davis Corporation and the Board of County Commissioners of St. Mary's County for the completion of roads in the RFG&F Professional Center, Eighth Election District.

Commissioner Dean moved, seconded by Commissioner Sayre, to approve the referenced Public Works Agreement and further that the September 18 minutes be corrected to reflect this. Motion carried.

2) EXTRA WORK AUTHORIZATION NO. 1
SLURRY SEAL PROGRAM

The County Engineer presented the referenced Extra Work Authorization in the amount of \$8,554.40 for the increase of Item #501 slurry seal coat using emulsified asphalt.

Commissioner Sayre moved, seconded by Commissioner Dean, to authorize Commissioner President Aud to sign said change order. Motion carried.

3) MONTGOMERGENCY CONSTRUCTION COMPANY CONTRACT
MACHINE PATCHING

The County Engineer requested authority to extend the contract with Montgomery Construction Company, Inc. to do machine patching by surface treatment of various roads at a cost of \$40,000. Funds are in the highway maintenance budget.

Commissioner Sayre moved, seconded by Commissioner Aud, to approve the extension of said contract. Motion carried.

COUNTY ENGINEER ITEMS (continued)

4) PURCHASE OF SNOW PLOW

The County Engineer requested authorization to purchase an additional snow plow in the amount of \$2770 from Valk Equipment. Commissioner Sayre moved, seconded by Commissioner Aud, to approve this request. Motion carried.

5) SHA SALT SHELTERS

The County Engineer advised that the State Highway Administration will allow the County use of the salt shelters and the County will pay for the use of the salt as it is used. Next fiscal year, the County will have to have its own storage system.

6) SOUTHAMPTON SUBDIVISION
STREET LIGHTING

Mr. Norris advised that he has received a number of requests from the residents of Southampton for street lighting and stated that in the past the response has been that the County policy was not to extend the street lighting system. However, because of the number of requests and because that it was an area that previously had a street light system, the requests should be re-evaluated. Commissioner Dean suggested that a policy be developed that would include new and existing housing developments. Mr. Norris stated he would return to the Board with a recommendation.

7) PROJECT NO. SM 85-2-5
ONE-TON REGULAR CARGO VAN
ONE-HALF TON VEHICLE
ONE-HALF TON PICKUP TRUCKS (3)

The County Engineer presented the bid tally sheet for the purchase of the referenced vehicles for this year's lease/purchase program and recommended awarding the bid to Bell Motor Company, the lowest bidder. He stated that included in the bid was the trade-in of the County's El Camino, and that because of travel between the new facility on St. Andrews Church Road and the Governmental Center, he decided to retain this vehicle. The trade-in value of the El Camino was \$3,000 which will increase the bid to \$37,710.

Commissioner Dean moved, seconded by Commissioner Aud, to accept the County Engineer's recommendation and award the bid to Bell Motor Company, the lowest bidder. Motion carried.

8) GRANT PREAPPLICATION
ST. MARY'S COUNTY AIRPORT

The County Engineer presented the referenced Grant Preapplication for obstruction clearing and apron expansion at the County Airport in the amount of \$381,400. Mr. Norris stated that the Airport Commission has reviewed the application and recommended approval and submission to the Federal Aviation Administration. This project is for the County's FY '86 fiscal year budget.

After discussion, Commissioner Dean moved, seconded by Commissioner Sayre, to authorize Commissioner President Aud to sign the referenced pre-application for the St. Mary's County Airport project. Motion carried.

COUNTY ENGINEER ITEMS (continued)

9) CONSTRUCTION EASEMENT
SPRING VALLEY/LONDONTOWNE DRAINAGE PROJECT

The County Engineer presented a Construction Easement dated October 3, 1984 by and between Eldon L. Bekkum and Martha L. Bekkum and the Board of County Commissioners of St. Mary's County for construction/drainage improvements at Spring Valley/Londontowne (Project No. SM 83-1-1).

Further, Mr. Norris advised that bids were received in May to complete the referenced project and the lowest bidder was Rapp Construction, Inc. in the amount of \$14,184. Approval by the Board to accept the lowest bidder is requested. A transfer of funds, source of funds to be determined by Budget Officer, will be needed.

Commissioner Dean moved, seconded by Commissioner Sayre, to accept the Construction Easement as presented. Motion carried.

10) KATHY CIRCLE - GOLDEN BEACH
SPECIAL TAXING DISTRICT

The County Engineer advised that there will be a public hearing on the establishment of a special taxing district for road improvements for Kathy Circle, Golden Beach. Mr. Norris distributed the handout that will be distributed at the hearing.

11) LEONARDTOWN RC&D PROJECT

Mr. Norris presented the title page for the Leonardtown Critical Area Treatment RC&D Plan for the Commissioners' review and signature.

Commissioner Dean moved, seconded by Commissioner Sayre, to authorize Commissioner President Aud to sign the title page. Motion carried.

12) PROJECT NO. SM 85-4-6
RELOCATION OF COUNTY ENGINEER'S OFFICE

The County Engineer presented the bid tally sheet for the relocation of the County Engineer's Office to the new Md. R. 4 site and recommended that the bid be awarded to Quality Transfer & Storage Co., the lowest bidder, in the amount of \$1,410.

Commissioner Aud moved, seconded by Commissioner Sayre, to accept this recommendation. Motion carried.

13) FENCE REPLACEMENT
LEXINGTON PARK METHODIST CHURCH

Mr. Norris requested authorization for the County to provide material for approximately 250 feet of fencing for the Lexington Park Methodist Church. This project is for the replacement of fencing which the County removed during the Lexington Park storm drainage project. The cost for the fencing materials is \$752.03 and the church will provide the labor. The Commissioners gave their concurrence.

PUBLIC HEARING
ECONOMIC DEVELOPMENT REVENUE BONDS
EXPLORATION PARTNERSHIP

Present: Joseph Mitchell, Director, Dept. of Economic & Community Dev.
David W. Morgan, Economic Development Coordinator

(Commissioner Dean noted for the record that two members of the Board are absent and in order to conduct the public hearing, he would sit in in order to constitute a quorum.)

The Commissioners conducted a public hearing on the adoption of a Resolution concerning the proposed issuance of Economic Development Revenue Bonds for Exploration Partners or Exploration Partners Limited Partnership in a maximum aggregate amount not to exceed \$2,700,000. Proceeds of the sale will be used to finance the acquisition and construction of 50,000 square foot office building located on Tax Map 43, Parcels 371 and 173, Eighth Election District, Lexington Park.

Mr. Morgan noted that the public hearing was being held for the purpose of indicating the name change of the owner of the facility. The name change was approved on August 28.

The Commissioners agreed to defer a decision until a later date.

REGIONAL RIDESHARE PROGRAM OF SOUTHERN MARYLAND

Present: Michele Hansen, Transportation Coordinator

Ms. Hansen appeared before the Commissioners to explain the recently implemented Regional Rideshare Program of Southern Maryland and to request the County's assistance in publicizing the program. She stated that the Program, funded through a federal grant, is coordinated through the Tri-County Council, Maryland Mass Transit Administration and Metropolitan Washington Council of Governments. Ms. Hansen presented a folder of information explaining the background, benefits and other aspects of the program and went on to explain the computerized ride-matching system.

After discussion the Commissioners expressed their appreciation to Ms. Hansen for explaining the Program and offered their assistance in whatever way possible.

COUNTY ADMINISTRATOR ITEMS

Present: Edward V. Cox, County Administrator

1) BUDGET AMENDMENTS

The County Administrator presented the following budget amendments recommended for approval by the Budget Director:

- a) No. 84-24
Recreation and Parks
Purchasing

Justification for Adjustment: To acquire gas-powered trimmer for maintenance of grounds.

Commissioner Dean moved, seconded by Commissioner Sayre, to approve and authorize Commissioner President Aud to sign said Budget Amendment. Motion carried.

COUNTY ADMINISTRATOR ITEMS (continued)

b) No. 84-25
County Engineer

Justification for Adjustment: Additional Funds to Issue Contract to Rapp Construction.

Commissioner Dean moved, seconded by Commissioner Sayre, to approve and authorize Commissioner President Aud to sign said Budget Amendment. Motion carried.

2) CORRESPONDENCE TO PUBLIC SCHOOLS
BUDGET VARIANCE

The County Administrator advised that the Budget Director had previously submitted a memorandum to the Board regarding the Public School's request for a budgetary variance and, therefore, has prepared correspondence for the Commissioners' signatures in response. The response indicates approval of the request, but requests that in the future approval be obtained prior to the expenditure of the funds. The Commissioners agreed to sign and forward said letter.

3) PERSONNEL

The County Administrator presented the following personnel items for the Boards' consideration:

a) Sediment Control Inspector
Office of Planning & Zoning

Memorandum dated October 10 from Personnel Officer requesting authority to fill the position of Sediment Control Inspector, Grade 10, Office of Planning & Zoning, which will be vacated by the promotion of Phil Shire.

Commissioner Dean moved, seconded by Commissioner Sayre, to approve this request. Motion carried.

b) Plumbing Inspector
Office of Planning & Zoning

Memorandum dated October 15, 1984 from Personnel Officer recommending the promotion of Jessie Baltimore to the upgraded Plumbing Inspector position, Grade 13-14, effective October 22.

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

c) Highway Engineer
Office of County Engineer

Memorandum dated October 16, 1984 from Personnel Officer recommending the selection of Larry Craig Donmoyer to fill the vacancy created by the resignation of Glenn Gass in the Highway Engineer position, Grade 15, effective dated to be negotiated.

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

COUNTY ADMINISTRATOR'S ITEMS (continued)

4) AMENDMENT TO SOLID WASTE PLAN
SPEC 84-1253

(An amendment to the St. Mary's County Solid Waste Plan to permit the establishment of a landfill on the property owned by John R. Stevens, to permit operation of a landfill. The property is shown on Tax Map 51, Block 7, as part of Parcel 185, Eighth election District.)

Having conducted a public hearing on October 9, 1984 on the referenced application, Commissioner Sayre moved, seconded by Commissioner Dean, to approve and sign Resolution No. 84-31, approving said Amendment. Motion carried.

5) JOB TRAINING PARTNERSHIP ACT
REDESIGNATION OF SERVICE DELIVERY AREA

The County Administrator advised that correspondence dated September 26 was received from the Department of Employment and Training inquiring whether the tri-county wished to redesignate its Service Delivery Area. Mr. Cox stated that the current delivery area has been successful and, therefore, it is the recommendation of the tri-county staff not to change it. The Commissioners gave their concurrence.

6) DISK STORAGE/COMPUTER SYSTEM

The County Administrator presented correspondence dated October 4, 1984 from the Budget Director requesting authority to increase disk storage space and to upgrade printer because of additional needs by the County and the Health Department. Cost is approximately \$22,000 with funds to come from Health Department, Office of Budget and Data Services and from the Reserve.

The Commissioners gave their concurrence.

7) 1985 LEGISLATIVE PACKAGE

The County Administrator presented the 1985 Legislative Package which contains items submitted from various county agencies and departments. There will be a public meeting on the package on October 25, 7:30 p.m. at the SMECO building in Leonardtown in order to receive additional items and to receive comments from the Community prior to the Board taking action to support or not to support the items.

8) NOVEMBER 6 MEETING

In that Tuesday, November 6, is a holiday, Election Day, the Commissioners agreed to cancel their meeting of that week.

EXECUTIVE SESSION

Present: Edward V. Cox, County Administrator
John Norris, County Engineer

Commissioner Sayre moved, seconded by Commissioner Dean, to meet in Executive Session in order to discuss a matter of litigation. The Session was held from 11:20 a.m. to 11:35 a.m.

AGRICULTURAL/RESIDENTIAL ASSESSMENT

Present: William Lawrence, Supervisor of Assessments
James Spence, Assessment Office

In response to concerns expressed by the Commissioners, the referenced representatives of the Assessment Office appeared to explain the policy for assessing farm/woodland as residential when it is no longer in agricultural use. Mr. Lawrence explained to the Board the legal requirements for the assessment office to determine whether or not there is continued agricultural use made of properties with agricultural use assessment. If the Assessor finds no apparent agricultural use of certain properties, then a market value assessment will be given those properties. Mr. Lawrence explained that every three years each parcel in St. Mary's County is physically reassessed. Some people, for whatever reason, misunderstand the assessment notice and miss the 45 days appeal period; therefore, those properties reassessed from agricultural use to market value must pay the additional tax levy. Mr. Lawrence added that if any person believes his property has been incorrectly assessed, he should contact the Assessment Office and follow the appropriate procedures for correcting the assessment.

Mr. Lawrence also explained that the State Department of Assessment has issued directions for the assessment of forestland. If there is no approved DNR forest plan, or one of comparable worth, the timberland will be given market value assessment unless it is part of an active farm which has been given agricultural assessment.

The Commissioners thanked Mr. Lawrence and Mr. Spence for explaining this matter.

PROCLAMATION NO. 84-51
NATIONAL BUSINESSWOMEN'S WEEK

The Commissioners presented the referenced Proclamation designating the week of October 16-21, 1984 as National Businesswomen's Week in St. Mary's County.

PROCLAMATION NO. 84-57
TRICK OR TREAT FOR ANIMALS

Present: Kay Daugherty, Humane Society
Barbara Ezelle, " "

The Commissioners presented the referenced Proclamation designating October 31, as Trick or Treat Day for Animals.

OFFICE ON AGING

Present: Billye McGaharn, Senior Services Coordinator

1) SENIORS UNITED FOR INDEPENDENCE
DONATION OF BUS

Mrs. McGaharn informed the Commissioners that Seniors United for Independence has offered a vehicle to the Office of Aging for transportation services to the elderly and requested formal acceptance by the Board of County Commissioners so that the vehicle may be properly titled and insured.

The Commissioners unanimously accepted the vehicle from Seniors United for Independence and requested Mrs. McGaharn to forward to that corporation the Commissioners formal appreciation and gratitude.

OFFICE ON AGING (continued)

2) JOB TRAINING EMPLOYMENT PROGRAM FOR THE ELDERLY

Mrs. McGaharn advised the Commissioners that she is in the process of preparing a grant application for the training of elderly people for employment and requested the Board's concurrence in authorizing Commissioner President Aud to sign the application when it is prepared in order for it to be submitted to the State on Thursday, October 18.

Commissioner Dean moved, seconded by Commissioner Sayre, to authorize Commissioner President Aud to sign the grant application with the understanding that the Commissioners have the right of refusal if the grant is awarded. Motion carried.

OFFICE OF PLANNING AND ZONING

PUBLIC HEARINGS

1:00 P.M.

Commissioners present: George Aud, Ford Dean, and David Sayre. Commissioners Arnold and Millison were absent. Staff present: Robin Guyther, Planner, and Anita M. Meridith, Recording Secretary, Office of Planning and Zoning.

Members of the audience included: Jack M. Shriver, Cecelia Ann Holley, Dale Dean, Debbie Dean, Betty Mason Holley, Martin Privot, James Brown and V. J. Penkiunas.

Mr. Guyther read the notice of public hearing aloud, as advertised in the Wednesday, September 26, 1984 issue of The Enterprise Newspaper, providing legal notice for the following public hearing(s):

NOTE: Mr. Guyther did not participate in the last public hearing for: ZONE # 84-0580: MARYLAND CAPITAL CORPORATION
(Breton Bay Gardens)

ZONE # 84-0747: TEXT CHANGE TO ZONING ORDINANCE
(Home Occupations)

Sec. 53.08: Request to change the amount of area required to conduct a home occupation. Currently, an enclosed area of 500 sq. ft. is the maximum permitted area in which a home occupation may be conducted. The proposal would increase the maximum usable area to 1,000 sq. ft. for certain home occupations, namely, ceramic shops.

Mr. Guyther brought the Commissioners attention to the legal opinion regarding home occupations, prepared by Board of Appeals' Attorney, Mr. Charles W. Mander, staff report and recommendation and minutes of the St. Mary's County Planning Commission relative to this consideration, contained within the member's packages, distributed this date.

Mr. Guyther offered the background with respect to this application, noting that the current regulations limited a ceramic shop to 500 sq. ft. within a home. Several citizens have submitted requests to the Planning Office, asking for a change in the County's regulations by an amendment to the Ordinance which would effect an enlargement of the area, as they felt that the allotted footage was rather restrictive. Staff's analysis did not ascertain any specific trends in trying to derive a

uniform size for all ceramic operations. It was pointed out that the Planning Commission issued a negative recommendation due to their concern that "it would open the door up to commercial uses in residential areas."

The Chair asked whether anyone wished to speak either for or against the proposed text change.

Mr. James A. Kenney, III, Esq. spoke in favor of the amendment. Mr. Kenney acknowledged the concerns voiced by staff and the Planning Commission (i.e. would open up noncommercial areas for a commercial use), however, he felt that the Commissioners should consider the general nature of the typical ceramic shop in the County. He felt that the differentiating factor was the consideration of whether or not the subject operation used a kiln. In the majority of these cases, most of the people involved are typically those who enjoy this as a hobby, attend classes and work on their own individual projects. Mr. Kenney felt that this was not the "traditional commercial retail business, as we normally understand it. The clientele tends to surround itself around a particular shop, a particular person doing this type of work, a teacher, if you will, this sort of thing." Counsel argued that it made sense that there be an "exception" to the 500 sq. ft. allotted in cases of ceramic shops. At the same time, he acknowledged that there may be instances, where certain controls might be necessary in particular cases; however, he felt that there were other ways to implement those controls, e.g. through the Conditional Use process. Mr. Kenney also asked that the Board consider that the margin of profit from such an operation, would not support placement of the business/use in a commercial area.

Staff advised that under the existing regulations, no more than 500 sq. ft. of the dwelling could be used for a home occupation. However, if an accessory building to the residence was used, it then became a conditional use. It was noted that the Board of Appeals had taken the position that even if a home occupation were situated in an accessory building, the 500 sq. ft. limitation was still invoked. Commissioner Dean stated that he did not feel that the latter was the intent of the Ordinance. Commissioner Aud added that perhaps the Board should also consider specifically addressing that issue, as well.

Hearing no further testimony, the hearing was closed.

ZONE # 84-0977: JACK SHRIVER "THE GREENERY"

Requesting rezoning of 13.3 acres from R-1, Rural-Residential, to C-2, Commercial. The property is Parcel 327 on Tax Map 34, Block 2, located on Maryland Route 235, Hollywood, in the Sixth Election District.

Mr. Guyther advised that evidence had been submitted into the record, attested to by the former owners, that the nursery was in operation prior to adoption of the Comprehensive Plan in 1974, however, at that point in time, only one (1) acre of this property (front portion) was zoned commercial. The applicant wishes to expand his business and has subsequently submitted an application for rezoning for a portion of his property (approximately five acres). Should the application be successful, it is understood that a survey of the property would be mandated. The Planning Commission recommended approval with the stipulations that:

a. A 50 ft. wide evergreen buffer be provided along all boundaries of the property zoned R-1. (There has been a verbal request from one of the contiguous neighbors that the buffer not be placed along their property. The Planning Commission addressed this exception and suggested that condition a. could be modified, provided said contiguous neighbor submitted that request in writing.)

b. The following uses are prohibited: Drive-In Theaters, Sheet

c. Understanding that if the property is rezoned, a survey would be required.

The postal receipts from the registered letters of notification sent to all contiguous property owners were received into the file and marked Applicant's Exhibit No. 1. The applicant advised that the property had been legally posted. The complete Planning Commission file was entered into the record.

Commissioner Aud asked whether anyone in the audience had any commentary either for or against.

Mrs. Debbie Dean came forward, advising that she owned property directly behind the subject parcel. Mrs. Dean advised that she was not opposed, however, she asked the applicant to expand on the specifics of the proposal, i.e. size of the proposed building, location of ingress/egress, type of materials to be stored. Mr. Shriver responded to each question and Mrs. Dean related that she was satisfied with the proposal and reiterated that she was not opposed.

Staff pointed out that the applicant had based his rezoning request on the premise of mistake in the original zoning of the property, substantiated by correspondence (contained within the subject record) from the former owners verifying that the map submitted by the applicant, indicating the location of the initial operation was accurate. The mistake argument was also supported by evidence of a Commercial Trader's License issued to the former owners, dated May 21, 1965.

Mr. Shriver addressed the Board stating, "I want to thank you gentlemen. I guess you gentlemen are responsible for your public servants. I've dealt with several counties and it is an absolute pleasure to do business down here. Everybody has been very helpful and have gone out of the way to help us, and I certainly do appreciate it and I thank-you."

Hearing no further testimony, the hearing was closed.

SPEC # 84-1377: BOCA BASIC ENERGY CONSERVATION CODE

July 1, 1982 the County Commissioners adopted the BOCA Basic Energy Conservation Code/1978 by Resolution No. 82-17. This proposed amendment will be to adopt the 1984 BOCA Code and subsequent revisions.

Staff explained that several years ago, the County adopted the BOCA Energy Code. However, in drafting the Resolution, the document only addressed the adoption of the "1978 Edition of the Code." Since the Code has recently been updated, it is now necessary to adopt the 1984 edition. The State has reviewed the County's adopting resolution and has rendered decision that St. Mary's County and sixteen other Maryland counties merely adopted the 1978 Code and didn't incorporate in their adopted resolution, automatic revisions to the Code. Thus, the proposed change would adopt the '84 edition and any subsequent revisions to the BOCA Energy Code.

Commissioner Aud asked whether anyone in the audience wished to offer comment with regard to the BOCA Basic Energy Conservation Code. Hearing no response, the hearing was closed.

ZONE # 84-0580: MARYLAND CAPITAL CORPORATION
(Breton Bay Gardens)

Requesting rezoning of seven acres from R-1, Rural-Residential, to R-15, Townhouse Garden Apartments. The parent parcel contains 27.5 acres. It is located on Maryland Route 5, just south of Leonardtown, adjacent to Minitex, Third Election District, Tax Map 40, Block 6, Parcel 52.

NOTE: As noted previously, Mr. Robin Guyther did not participate in this case. Having previously read the public hearing publication regarding this case, he advised that a zoning brief would be prepared by Mr. Gerred and distributed to the Commissioners within the next few days.

Mr. Oliver Guyther came forward and noted his appearance as counsel/agent for the applicant, Maryland Capital Corporation, P.O. Box 236, Lexington Park, Maryland. Counsel introduced Mr. Jim Brown, of Harkins Associates, Inc., 12301 Old Columbia Pike, Silver Spring, Maryland 20910, Telephone No. (301) 622-9000 and Mr. V. J. Penkiunas, Engineer and Architect of this project, Penkiunas and Associates, 8855 Annapolis Road, Lanham, Maryland 20706, Telephone No. 577-5053.

Counsel acknowledged the presence of Mr. Martin Privot, contiguous property owner, and invited him to come forward and take a closer seat.

Entered into evidence, marked Applicant's Exhibit No. 1, were the postal receipts from the registered letters of notification sent to all contiguous property owners, coupled with a sample of the notice letter.

Materials marked Applicant's Exhibit No. 2, were entered into the file, containing site map of the area, indicating the subject property outlined in yellow, listing of changes in the defined neighborhood and area map indicating areas of change in the neighborhood (applicant's copies marked Exhibit A, Schedule I and Schedule II, respectively).

Applicant's Exhibit D was distributed to the Board - Topographical, Stormwater Management Plan.

The subject property is located on the west side of Route 5, adjoining the Minitex Corporation, just out of the corporate limits of Leonardtown. The property is presently zoned R-1 and the applicant is seeking a rezoning of the parcel to R-15. The proposed development plan for the property is to build on three acres a total of 42 units comprised of 16 one (1) bedroom and 26 two (2) bedroom units. Counsel noted that while the zoning being sought allowed 15 units per acre, this proposal would only utilize $13\frac{1}{2}$ units per acre. 55 parking spaces will be required. The building coverage was given as 10% of the three acres and the vehicular area would incorporate $17\frac{1}{2}\%$. Schematic drawings of the buildings were posted, depicting two and three story buildings.

Counsel referenced Applicant's Exhibit No. 2 and explained that the first page of the document, marked Exhibit A, (area map) indicated those properties which were considered "the neighborhood." Mr. Guyther pointed out that the heavy black line outlined the "boundaries of Leonardtown" and "the area outlined in yellow, which is basically, the south-east portion of Leonardtown and the area of where the existing sewage treatment plant is and subject property." Turning to Schedule I of Applicant's No. 2, counsel advised that he had listed 26 changes in the neighborhood which has occurred since adoption of the Comprehensive Plan in May of 1974. However, following consultation with Mr. Frank Gerred, Director of the Office of Planning and Zoning, Mr. Guyther amended his list somewhat and now contends that only those properties listed, not marked with an asterick remained within the defined neighborhood (20 alleged changes remaining). Schedule II was described as a spot location, indicating the placement of each of the purported changed areas. In summation, counsel argued that there had been "an abundance of change in that neighborhood through those twenty changes that we've listed."

Mr. Guyther alleged that there had been a mistake in the original zoning of the property. Counsel provided: "Those charged with implementing the Comprehensive Plan by preparing and adopting a Zoning Ordinance, made a mistake in zoning subject parcel R-1. Such a designation 'flies into the teeth of the comprehensive plan' by violating the plans' designation of its Urban District, and failing to zone this parcel for high density use, as it was within a few hundred feet of then (and now) existing water and sewerage facilities."

Other Exhibits of record included:

Applicant's Exhibit No. 3 - Staff report and recommendation. Counsel pointed out that while staff found no changes in the character of this neighborhood from the adoption of the Comprehensive Plan (the location of the Leonardtown Wastewater Treatment Plant was anticipated in the Comprehensive Plan), the staff report noted that a mistake was made in not recognizing the effect of the Leonardtown commercial core and the other intense uses in the neighborhood, so that more intense use should have been allowed by the original zoning. Staff report further outlined that there was a need for more dense residential development in the vicinity of Leonardtown.

Applicant's Exhibit No. 4 - Memorandum of Law - Statement of Fact, submitted by Mr. Oliver R. Guyther.

Counsel referenced a copy of the Chesapeake Bay Critical Areas Bill and pointed out that any rezoning that had not been accomplished by June 1 was covered by an interim provision which noted that the local legislative body (in this case, the County Commissioners) shall make a finding, based on the burden of proof of the developer to show that the development proposed would not pollute a tributary of the Chesapeake Bay. Mr. Guyther explained that he brought this up, only because he thought it was interesting to consider whether or not Breton Bay was a tributary of the Chesapeake Bay or a tributary of the Potomac River and sequentially, was the Potomac River a tributary of the Chesapeake Bay. Mr. Guyther stated, "But to be practical, is something done here going to pollute this bay here. I don't know, I don't think the legislatures have been clear enough in that, but at least we don't have that burden, but what we're going to do today, is through our engineer, give you the evidence that you will need to make a finding of fact that these forty-two (42) units will not in any way pollute the bay. That's what the legislature has said that you do in the interim."

In response to Commissioner Sayre's question, Mr. Penkiunas advised that the proposed development would be connected to the Leonardtown Sewerage System and would be served by public water.

Mr. Penkiunas spoke at length to the engineering aspects of the proposed development and emphasized that as much of the natural wooded area as possible would be preserved. He indicated the area of the proposed road system and placement of the units on the plan. Ingress/egress to the site will be off Rt. 5 at the existing entrance. He spoke to the proposal with respect to the stormwater management plan and advised that the "lowest part on the site is elevation 20." A system of perforated storm drain pipes will be utilized so that any run off will percolate in the area transgressing down the hill into the soil and will be connected into a proposed buried stormwater management structure. The exact placement of the units was given as "somewhere in the range of 1,000 ft...the marsh area is somewhat closer than that."

Applicant's Exhibit No. 5 - Plat of Survey for L. Roger Richardson, prepared by W. L. Bowman, Registered Land Surveyor, dated October 1959.

Commissioner Aud asked Mr. Privot (contiguous property owner) whether he had any questions. Mr. Privot asked how far the project was

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from the marsh land in the vicinity of his property. Mr. Penkiunas, scaling from the plat, assessed the distance as "somewhere about 450 to 500 ft. from our property corner to where the marsh is identified on this plat."

Mr. Guyther stated he would like to offer the testimony given at the public hearing at the Planning Commission Meeting and the exhibits entered, as part of this public hearing record.

In response to question of Commissioner Dean, Mr. Brown advised that the apartments would be rental units, to be financed through FHA (Farmers Home Administration). The rents were estimated at \$212 per month for a one bedroom unit and \$252 for a two bedroom unit. The cost for this development was given as 1.5 million dollars and another \$80,000 of equity required by the developer.

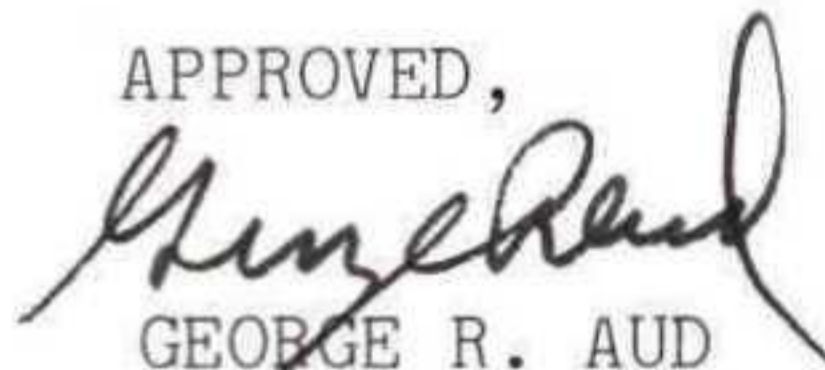
Counsel also advised the Board that several property owners in the area had approached him, seeking assurance that the existing water line which ran through the Minitec property was protected during construction. (This old line, constructed some sixty ago, currently serves five homes in the area.)

There being no further testimony, the hearing was closed and the matter taken under advisement.

ADJOURNMENT

Meeting adjourned at 2:30 p.m.

APPROVED,



GEORGE R. AUD
PRESIDENT