

BOARD OF COUNTY COMMISSIONERS' MEETING

Tuesday, October 16, 1990

Present: Commissioner Carl M. Loffler, Jr., President
W. Edward Bailey, Commissioner
Robert T. Jarboe, Commissioner
John G. Lancaster, Commissioner
Rodney Thompson, Commissioner
Edward V. Cox, County Administrator
Judith A. Spalding, Recording Secretary

(Commissioner Thompson was not present at beginning of meeting.)

CALL TO ORDER

The meeting was called to order at 9:10 a.m.

APPROVAL OF MINUTES

Commissioner Lancaster moved, seconded by Commissioner Bailey, to approve the minutes of the Commissioners' meeting of Tuesday, October 9, 1990. Motion carried.

APPROVAL OF BILLS

Later in the meeting when Commissioner Thompson was present, Commissioner Bailey moved, seconded by Commissioner Thompson, to approve payment of the bills as submitted. Motion carried.

VISITOR FROM NETHERLANDS

Present: Hank Bolding, Assistant Town Manager, Netherlands
Joseph Mitchell, Director, Economic & Community Development

Mr. Mitchell introduced Mr. Bolding, Town Manager for Lelystadt, Netherlands. He stated that he is in this country on an internship.

ST. MARY'S HOSPITAL

ECONOMIC DEVELOPMENT REVENUE BONDS

Present: Peter Lambert, Administrator, St. Mary's Hospital
Paul Barber, Assistant Administrator
Michael Davis, Attorney, Hospital Board
Joseph Densford, County Attorney

Mr. Lambert advised that St. Mary's Hospital has been negotiating the purchase of a new computer system, which will be paid for through economic development revenue bonds by the Town of Leonardtown. In order to provide security to the bondholders, a first lien on the new equipment must be granted to the bondholder. Mr. Davis pointed out that the Commissioners have a first lien on the hospital's real property and its equipment. The loan cannot be completed without the Commissioners' approval of the hospital's creation of a security interest in favor of the bondholders in the new equipment. The mortgage states that the Commissioners may subordinate its interest and the mortgage would not be impaired by doing so. This would allow the hospital to give a first lien to the Town of Leonardtown for the purchase of the equipment.

After discussion Commissioner Lancaster moved, seconded by Commissioner Bailey, to approve a lien on the equipment as described and subordinate the security interest in such equipment granted to the County Commissioners of St. Mary's County from St. Mary's Hospital pursuant to the aforesaid Mortgage, and allow a first security interest in favor of the Commissioners of Leonardtown. Motion carried.

CORE SERVICE PROJECT

Present: Dr. William Marek, Health Officer
Dennis Scott, Chair, St. Mary's County Core
Frank Sullivan
Kathy O'Brien
Mary Clements

The referenced individuals appeared before the Commissioners to bring the Board up to date with regard to the mental health Core project and to request official endorsement proceed with the establishment of a St. Mary's County Core Service Project. Mr. Sullivan indicated that the proposal was initially for a tri-county core service project; however, Charles and Calvert Counties did not wish to go proceed with a regional approach. Each county, therefore, is proceeding to have a core service agency of its own. Mr. Sullivan advised that the Commissioners' endorsement is needed to set up a Core Service agency within the local health department and to establish a county board to work with Dr. Marek and staff to involve citizens in the planning and coordinating of services to the mentally ill. Mr. Sullivan pointed out that the Commissioners' endorsement of this project is conditioned on the understanding that there is no county financial participation.

After discussion Commissioner Bailey moved, seconded by Commissioner Jarboe to endorse the St. Mary's County Core Service project and to sign the letter granting this endorsement. Motion carried.

COUNTY ADMINISTRATOR'S ITEMS

Present: Edward V. Cox, County Administrator

1) CORRESPONDENCE TO TOWN OF LEONARDTOWN

The County Administrator presented the following items of correspondence addressed to the Leonardtown Council:

- In response to September 21 correspondence relative to placement of an elevated water storage tank on the south/east side of the county governmental center property. The letter denies the request because of the County's construction of a storage/maintenance facility and fenced compound for confiscated vehicles and other equipment at that site.
- In response to August 1 correspondence relative to the disposal of sewage sludge from the Leonardtown Waste Water Treatment Facility. The letter denies the request because of the substantial monitoring and controls placed on the County by the State regulations, and recommends that the Council contact the Metropolitan Commission regarding use of the Naval Air Station's facility.

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

(Commissioner Thompson entered the meeting - 10:05 a.m.)

2) INTERAGENCY COMMITTEE FOR SENIOR CARE PROGRAM

The County Administrator presented correspondence addressed to the Maryland Office on Aging indicating that the St. Mary's County would prefer to postpone the expansion of the local Inter-Agency Committee for the Senior Care Program until Fiscal Year 1992.

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

3) LIBERTY LAND DEVELOPMENT
PAYMENT OF ECONOMIC IMPACT FEE

The County Administrator advised that correspondence from Liberty Land Development was received requesting payment of the Economic Impact Fee be delayed from the time of the Building Permit to the time of Certificate of Occupancy. Mr. Cox presented a response to Mr. Curley stating that the Commissioners could not make an exception for one or a few and, therefore, any policy would have to apply to all equally. The letter indicates that the policy should remain unchanged.

Commissioner Thompson moved, seconded by Commissioner Lancaster, to approve and sign the letter as presented. Commissioner Bailey voted against the motion. Motion carried. four to one.

4) BUILDING TRADE FOUNDATION, INC.

The County Administrator mentioned last week's discussion regarding the Building Trades Foundation's request to charge only \$500 impact fee instead of \$2,000 because of the timing of the project. Mr. Cox stated that he discussed the matter with County Attorney Densford who indicated that the County could, in fact, only charge \$500 because that was the fee that was in effect at the time. It would therefore not be a waiver but an actual charge of the fee.

The Commissioners concurred with this ruling.

5) LEONARDTOWN VOLUNTEER RESCUE SQUAD
REQUEST FOR SURPLUS VEHICLE

The County Administrator presented correspondence from the Leonardtown Volunteer Rescue Squad requesting a surplus vehicle from the Sheriff's Department when one becomes available.

Commissioner Jarboe moved, seconded by Commissioner Lancaster, to approve the request and that it be put on the list with other requests in the Procurement Office to be accommodated when one becomes available. Motion carried.

6) MARYLAND ROUTE 5 THROUGH ST. MARY'S CITY

The County Administrator presented a response to the St. Mary's City Commission's request for a change in the character of Md. Rt. 5 from the southern border of St. Mary's College to Bauer Road. The letter points out that this would require additional review and discussion and indicates that County's Departments of Public Works and Planning and Zoning will discuss this with the State Highway Administration.

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

7) GRANT AGREEMENT AND EASEMENT
INNOVATIVE AND ALTERNATIVE SEWAGE DISPOSAL SYSTEM

As a follow up to last week's discussion, the County Administrator presented an Agreement dated September 25 among Joseph C. and Edna M. Long, St. Mary's County Health Department, and the Department of Environment for the installation of an innovative and alternative on-site sewage disposal system on property on Cedar Lane, First Election District. Mr. Cox indicated that the property is an existing site.

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

8) REQUEST FOR FEE REFUND
CHRISTIAN B. STAUFFER

The County Administrator presented correspondence from Christian B. Stauffer requesting a refund of the economic impact fee of \$2,000 because he does not intend to build as originally planned. Mr. Cox indicated that the Office of Planning and Zoning does not have the authority to return the Economic Impact Fee and it is the Commissioners' prerogative to do so. In that the impact fee is not going to be engaged through the building permit, Mr. Cox recommended that the Commissioners return the fee, but not the charges incurred in issuing the building permit.

Commissioner Thompson moved, seconded by Commissioner Lancaster, to establish a policy that if a building permit is rescinded and there is not increase in residential development, any impact fees that had been paid will be refunded. Motion carried.

9) INFORMATION RELEASES

The County Administrator presented the following Information Releases for the Commissioners' review and approval:

Announcing that St. Mary's County Government has been selected by the Margaret Brent Business and Professional Women as Employer of the Year. The designation will be shared with Bendix Field Engineering Corporation.

Announcing the employment of Ms. Paula Martino for the position of Chief, Inspections and Enforcement in the Department of Planning and Zoning, effective October 22.

Commissioner Thompson moved, seconded by Commissioner Lancaster, to authorize the distribution of the referenced Information Releases. Motion carried.

10) NOTIFICATION OF GRANT AWARD
INTERIM TITLE III

The County Administrator presented an Interim Notification of Grant Award for programs funded under the Older American's Act for Fiscal Year 1991. The award covers the first three months of the fiscal year and will be superseded by a revised award. The amounts are consistent with those in the approved Area Agency Plan previously presented.

Commissioner Lancaster moved, seconded by Commissioner Thompson, to approve and authorize Commissioner Loffler to sign the Notification of Grant Award as presented. Motion carried.

11) BUDGET AMENDMENTS

The County Administrator presented the following Budget Amendments recommended for approval by the Director of Finance:

No. 91-10
Women's Center

Justification: Rent for Women's Center (\$4,500)

No. 91-11
County Administrator

Justification: "Know Your County" pamphlet (\$5,000)

No. 91-15
Board of Elections

Justification: Rent for Miedzinski Building for Storage of voting machines. Maintenance storage facility not available as planned.

No. 91-16
St. Mary's County Public Schools

Justification: Fund appropriation short-fall in order to correct a drainage problem.

Commissioner Bailey moved, seconded by Commissioner Lancaster, to approve and authorize Commissioner Loffler to sign the Budget Amendments as presented. Motion carried.

ORDINANCE NO. 90-19
REPEAL AND REAUTHORIZATION OF ENERGY TAX

Present: Charles Wade, Director of Finance

The Commissioners conducted a public hearing on October 2, regarding requests to modify the administration of the St. Mary's County Energy Tax. Modifications under consideration are:

1. Changing the tax payment date from the 21st of the month to the last day of the month;
2. Changing the method of levying the tax from a per unit sale tax to a percent of sale.

Mr. Wade recommended accepting Modification No. 1; however, with regard to Modification No. 2, Mr. Wade did not recommend approval but stated that if the Commissioners do approve it that it not be effective until the tax is levied for Fiscal Year 1992.

After discussion Commissioner Bailey moved, seconded by Commissioner Lancaster, to accept Modification No. 1 changing the tax payment date to the last day of the month. Motion carried.

The Commissioners agreed to delay discussion of Modification No. 2 until the preparation of the Fiscal Year 1992 budget.

Later in the meeting, Commissioner Bailey moved, seconded by Commissioner Thompson, to approve and sign Ordinance No. 90-19 with Modification No. 1. Motion carried.

TRAFFIC PROBLEMS - MD. RT. 235

Commissioner Lancaster reported that there were two more accidents in front of his house on Md. Rt. 235 in Lexington Park, and stated that this is a continuing serious problem.

DEPARTMENT OF PUBLIC WORKS

Present: Dan Ichniowski, Director

1) TALL TIMBERS SHORE EROSION DISTRICT

Mr. Ichniowski presented a Tall Timbers Shore Erosion District Project Summary and requested the Commissioner to accept acting as the District Council and acknowledgment of the maintenance responsibility.

Commissioner Jarboe moved, seconded by Commissioner Lancaster, to accept the responsibility as requested. Motion carried.

2) HOLLYWOOD SHORES SPECIAL TAXING DISTRICT

Mr. Ichniowski advised that a petition has been received from property owners at Hollywood Shores for the establishment of a Special Taxing District for shore erosion control. He stated that he needed the Commissioners acceptance of the petition so that it can be forwarded to the Department of Natural Resources. Mr. Ichniowski stated that the next step would be the feasibility study by the Department of Natural Resources for cost estimates and work to be done.

Commissioner Bailey moved, seconded by Commissioner Jarboe, to accept the petition as recommended. Motion carried.

3) EASEMENT AGREEMENT
HUGHESVILLE BAPTIST CHURCH

Mr. Ichniowski presented an Agreement among St. Mary's County Commissioners, Southern Maryland Electric, and the Hughesville Baptist Church granting use of the railroad right-of-way from mile post 13 to Md. Route 231 for ingress and egress to the property.

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

4) EASEMENT AGREEMENT
CEDARVILLE PARK, INC.

Mr. Ichniowski presented an Easement Agreement among St. Mary's County Commissioners, Southern Maryland Electric, and Cedarville Park, Inc. granting permission for the placement of a fence on a portion of the railroad right-of-way in order to provide security for a modular home sales center located adjacent to the railroad right-of-way in Hughesville.

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

5) PUBLIC WORKS AGREEMENTS/ADDENDUMS

Mr. Ichniowski presented the following public works agreements and addendums for the Commissioners' review and consideration:

Public Works Agreement
Swann's Rest, Section 1

Dated October 2, 1990 between James D. Cryer and St. Mary's County guaranteeing the completion of Swann's Court in Swann's Rest, Section 1, Third Election District.. The Agreement is backed by a Letter of Credit in the amount of \$41,000.

**Addendum to Public Works Agreement
Summitt Hill, Section 1**

By and between Summitt Hill, Inc. and St. Mary's County Commissioners extending the deadline for completion of improvements to September 1, 1991. The Addendum is backed by a Letter of Credit in a reduced amount of \$70,000 with Old Line National Bank.

**Addendum to Public Works Agreement
Richneck Subdivision, Section 1**

By and between Ripple Brothers Construction and St. Mary's County Commissioners extending the deadline for completion of improvements to October 15, 1991. The Addendum is backed by a Letter of Credit in the amount of \$29,000 with First National Bank of St. Mary's.

Commissioner Bailey moved, seconded by Commissioner Thompson, to approve and authorize Commissioner Loffler to sign the Public Works Agreement and Addendums as presented. Motion carried.

PROCLAMATION
TRICK OR TREAT

The Commissioners issued a Proclamation designating Wednesday, October 31, 1990 as the official Trick or Treat Night in St. Mary's County.

BOARD OF EDUCATION SUPPLEMENTAL BUDGET

Present: Charles Wade, Director of Finance

As a follow up to last week's discussion, Mr. Wade presented a summary setting forth the October 9 proposal, Commissioner Loffler's alternate proposal, and staff's alternate proposal in preparation of the joint Commissioners and Board of Education meeting scheduled for October 23.

During discussion of the proposals, Commissioner Loffler requested Mr. Wade to remove the Sixth District Middle School site and the relocatable classrooms from his proposal in that he believed these were not part of the Board of Education's supplemental budget.

After discussion Commissioner Jarboe moved, seconded by Commissioner Bailey, that the information be presented for discussion only at the October 23 joint meeting and that no action be taken at that time. Commissioner Loffler and Thompson voted against the motion. Motion carried three to two.

EXECUTIVE SESSION

Present: Edward V. Cox, County Administrator
Dan Ichniowski, Director, Public Works
Joseph Densford, County Attorney

Commissioner Bailey moved, seconded by Commissioner Lancaster, to meet in Executive Session to discuss a matter of property acquisition. Motion carried. Session was held from 11:15 a.m. to 12:15 p.m.

OFFICE OF PLANNING AND ZONING

Present: Jon Grimm, Director
Joe Meinert, Deputy Director
Peggy Childs, Recording Secretary.

1:00 p.m. - PUBLIC HEARINGS

ZONE #85-1181 - BOWLING TRUSS COMPANY

Requesting rezoning from AR/RPD to I-1, Industrial. The property contains 6 acres and is located on the east side of Big Chestnut Road, south of Route 234, in the 3rd Election District/ TM 31, Block 12, P 167.

Owner/Applicant: Bowling Partnership

Also present: John Bowling
Ed Bowling
Jim Kenney, Attorney for Applicant
Bill Humenik, Larry Day Surveying & Land Planning

Mr. Meinert offered the staff report and entered into the record Staff Exhibit #S-1, a photo showing the property was posted by staff as required. He advised the Planning Commission voted unanimously in August to recommend denial of the rezoning, but made a strong recommendation as part of the motion that the County Commissioners do everything within their power, other than rezoning, to help the applicant and keep the business in the County. Staff also recommends denial of the rezoning for reasons stated in the August 27, 1990 staff report. If the Commissioners should approve the rezoning, staff requests sufficient findings of fact to process the rezoning.

Attorney Jim Kenney entered the following exhibits for applicant:

#A-1 - Certified Receipts from property owners within 00 ft. of the property.

#A-2 - Boyds Civic Association v. Montgomery County.

#A-3 - RPD Section of SMCo Zoning Ordinance.

Mr. Jim Kenney called Bill Humenik, who offered an as built site plan and findings of fact, citing a County population projection of 112,120 people in the year 2005, which indicates a need to broaden and industrial and commercial tax base and provide employment. He also addressed adequate public facilities, saying the site is presently served by an individual well and a separate holding tank, but the applicant is willing to take whatever measures are necessary to meet the adequate public facilities provision from a sewage standpoint. Mr. Humenik said no further impact to Big Chestnut Road is anticipated, although they have designed a commercial entrance and upgrading of the road per SHA and DPW recommendation. Schools will not be adversely impacted; however, the taxes generated would help the school system. Traffic impact to Route 234 and Route 5 would be minimal.

Mr. Humenik said the business is a long-standing operation in the County, but the Bowlings had a definite need for expansion and the only way they can get the financing they is through some means other than a nonconforming use. He said the business has not affected a change in the neighborhood and they feel the rezoning could do nothing but help their situation.

Applicant John Bowling, President of Bowling Truss & Supply, entered as #A-4 a synopsis of the business from 1978 to the present. The letter states Bowling Truss started in 1978 with seven employees and \$200,000 in sales, with a \$50,000 annual payroll. Today they have grown to 35-40 employees and \$5 Million in sales, with a \$500,000 annual payroll, and pay \$40,000 a year in Payroll Taxes, over \$3,000 in Personal Property Tax, \$8,000 in Licenses and Permits, \$24,000 in Utilities, \$20,000 in Professional Fees, and \$50,000 in Gas and Oils. Their products are sold all over Southern Maryland and Virginia (King George County) with 70% in sales outside of St. Mary's - this brings money into St. Mary's County.

Mr. Bowling said they went to OPZ in 1982 and was advised by staff to build their business and not to apply for rezoning, that a new Comprehensive Plan was to be done which would take care of the nonconforming use. At that time the fee for rezoning was \$115; today it has cost him over \$4,000 and eight years to get where he is. He said now they are asking for the help they were told they would get in 1982; they feel they deserve it. Mr. Bowling said he was born and raised in the County and they want to keep the business here, but they can't continue to grow and build the industry if they can't get the help they need from the County; they feel they deserve it. He said he has no problem with taking a zoning with stipulations that would help his neighbors, and is asking for something that would work for all parties and for the County also.

Ed Bowling, Partner, said it is purely a matter of economics and borrowing power. Mr. Kenney said when the present Ordinance changed the business from a nonconforming use to a conditional use, they made it a one-use property, and lending institutions are not willing to make an investment without some sort of leverage. Mr. Kenney said we have an ordinance that says we have one industrial district; this makes it very hard to let this business develop even for the truss operation. He said he thinks the mistake involved is the failure to recognize a long term business necessary for the growth of the County and to create viable economic places where it can develop. This type of operation, Mr. Kenney said, just not lend itself to industrial property. Mr. Kenney said the Bowlings relied on government and now, because of government's advice, they are left without the argument for change they would have had if they had moved forward prior to the new Plan.

Joe Mitchell, Director of DECD, said even if the Bowlings were in a position to relocate there was not much land in the 4th and 5th Districts where they could relocate. He said also the Bowlings have built their business on building the trusses in the County for resale outside of the County, and said they need to be close to their customers and to the northern and western boundaries of the County - they would not be able to work successfully in the 8th District and it would add another 20 minutes of travel time in each direction. He said it appears that everything they want to do would involve leveraging their property, and lending institutions look closely at what they could put there. If the business is limited to a truss plant and the Bowlings cannot make it work, he said, it is difficult to think that a bank could step in and run it.

Mr. Mitchell said the Planning Commission obviously wants to support their staying in the County, and he has gone through DECD's limited assistance programs and cannot provide the Bowlings with any more help than they are receiving - they are looking for some working capital and nothing is available. He said he thought the Comprehensive Plan ultimately ought to be amended to provide more industrial sites, but at this point he cannot help them. Mr. Mitchell said further if they were to sell their property they might have a hard time getting what they put into it, because someone else wouldn't be able to run it. Mr. Mitchell's letter dated July 23, 1990 in support of the business is part of the record and was provided to the Commissioners in their information package.

In summary, Mr. Kenney referenced #A-2 and #A-3, and asked the Commissioners to look through the permitted or conditional uses allowed in the RPD. It is a heavy district, Mr. Kenney said, and some of the potential conditional uses are ones that some people wouldn't want in their back yards. Secondly, he said, the Comprehensive Plan is not a straight jacket in the zoning process, and asked that the Commissioners recognize the mistake in this situation and consider applicant's request.

The Chair opened the hearing to the public.

Mr. George Matisick, acting as spokesman for the neighbors and residents of Big Chestnut Road, provided commentary on an 11 minute video tape, taken by him and his wife, of the surrounding agricultural area, being farmed today by the children and grandchildren of the families that were there 100 years ago. He noted the narrow width of the road (19 ft.) and said the trailer trucks entering 234 from Big Chestnut Road block traffic both ways when the turn. The tape showed where the road has been patched as a result of damage from the trailer trucks, and showed existing damage where Big Chestnut meets 234. There are no shoulders on the road, he said, and the road will have to be widened to accommodate the rezoning, at the expense of the taxpayers. Mr. Matisick stressed that these farms are not dormant, but are actively being farmed, the farmers earning their livings from the farms.

Mrs. Sarah Guy Matisick, a lifelong resident of Big Chestnut Road, presented a letter to the Commissioners (Opponents #O-1) giving an overview of the history of the property and the residents' concerns, from the Bates Rezoning request in 1976 through the present, noting that the property is agricultural by use and zoning and stating the inadequacy of the road, fire and water/sewer concerns, and erosion and runoff. Mrs. Matisick made reference to a reduction of the property from 12 acres to 6, saying that Mr. Bates had sold the property in three pieces. Commissioner Loffler asked staff to provide documentation as to when this occurred in relation to the 1974 Ordinance.

Opponents #O-2, 44 letters signed by residents of Big Chestnut Road or adjacent property owners, petition the Commissioners to deny the rezoning request. This was presented by Ray Guy, also a lifelong resident of Big Chestnut Road. Mr. Matisick also introduced as Opponents #O-3 their "Findings of Fact", addressing the issues used to determine "change" in a rezoning, and as #O-4 Mrs. Matisick offered photographs of industrial uses that could happen under the Zoning Ordinance and that is their greatest fear, she said. This is her home and her children's home, Mrs. Matisick said, and they need the Commissioners' help to keep it as it is.

This concluded public comment and testimony, and the Chair closed the hearing, announcing that it would be held open for 10 days for additional public comment, following which the Board will discuss and/or decide in two weeks.

SPEC #89-1986 - SHORT ACRES

Requesting a sewerage category change from S-6 to S-3D to accommodate a sewage disposal facility in the Critical Area. The property contains 6.317 acres, is zoned RL/RCA, and is located in the 8th Election District on Rue Purchase Road/Camp SAYSF Road; Tax Map 43, Block 4, Parcels 109 & 490.

Owner/Applicant: Al Watson
Also Present: Attorney Mike Harris, for Applicant
Attorney Karen Abrams, for
Green Holly Pond Civic Assoc.
Attorney Jim Kenney, for Loker and Cook
Bill Humenik, of Larry Day Surveying & Land Planning

Mr. Grimm said this is the residue parcel of a proposed minor subdivision and noted the Commissioners saw this before in an appeal of recordation of the subdivision, which recordation was overturned by the Commissioners because the sewerage category change was not approved as necessary prior to in-house approval of the sub-division. That recordation has been voided in the land records, he said.

The Planning Commission reviewed this request to allow sewage to be moved off the development site to a remote drainfield for the purpose of developing property in the Critical Area. Staff recommends the County adopt a Policy on Shared Facilities and appropriate action for approval or denial in accordance with that policy, with particular attention to the Critical Area Criteria for the property on which the disposal site is located. The Planning Commission recommended on September 10, 1990 that the category change be approved in accordance with the recommended shared facilities policy of the Critical Area Commission. The Critical Area Policy and two alternative proposals are included in the Commissioners' information package.

Mr. Harris stated he believes we are here today to ask for a sewer category change. In answer to Commissioner Loffler's question, he stated the difference between this property and the sewer on Airedale Road is that this is a private system that the applicant is obligated to construct and maintain. Applicant has recorded easement to locate the system on property that is not in the Critical Area as well as a bonded Public Works Agreement with MetComm requiring them not only to construct and maintain the system in accordance with MetComm's criteria, but also, if public sewer is made available in the future, the applicant will have to tie into that.

Mr. Harris explained the history of the voiding of the recorded subdivision plat, and noted the Planning Commission's recommendation for approval provided applicant meets the Critical Area Criteria. He said "shared facilities" is not a dirty word, the County does have shared facilities in other districts, and he is not asking to be relieved from any criteria for the shared facilities or for the Critical Area, he has to meet the criteria or he doesn't get approved. By their letter of August 24, 1990, Mr. Harris said, the Critical Area Commission stated if the DNR standard for a 4 ft. separation between the onsite system and the groundwater were adhered to they could support this proposal, as no County in the State has a groundwater protection plan of its own.

The 30,000 sq. ft. shared facilities easement on the lot outside the Critical Area has been perked and approved by the Health Department; the recorded easement gives agreement gives the property owners the right to get into the easement for repair and maintenance, and MetComm's Public Works Agreement gives them the right to do those same things in the event it is not being properly maintained, and puts the burden of the maintenance expense on the backs of the users, not the taxpayers. Mr. Harris repeated that his client is prepared to honor the Critical Area criteria, and he hopes we don't get bogged down in "what-if's", because if they cannot meet the criteria, they won't get approval.

Attorney Karen Abrams, representing the Green Holly Pond Association, which consists of most of the people owning the neighboring parcels, stated the Critical Area criteria for approval which have not been met are:

- The lot must have been legally recorded as of 12/1/85.
- The "perkable" lot and the nonperkable lot must be owned by the same person, or, if they are not, they must be adjacent to each other.

Ms. Abrams said there was talk of transferring the residue lot to Larry Day so he would own both parcels, but the idea is to sell the three lots and then you wouldn't have common ownership; the only way you could maintain ownership under those circumstances would be to subdivide off that piece of Larry Day's land and grant it to the three lot owners, and there are a lot of complications in that.

She said the problem she has with Mr. Harris' back-door approach is that this is only one instance - there could be hundreds of other lots around the County that didn't perk that will want to pump their sewage too, and, in ignoring the establishment of a County policy the Commissioners will have to deal with each one of them, and she thinks it is a major problem to grant this category change without having a policy because you open that door.

Ms. Abrams continued in her opinion the Planning Commission sort of dumped this on the Commissioners, because they were asked to recommend a policy and then grant or deny this request in accordance with that policy. She said she thinks they were saying they wanted to stick to the Critical Area legislation, in which case these lots would not pass, but they didn't quite say it that way, and she thinks the Commissioners do the County and themselves a disservice to grant this request without a policy, and, if the Commissioners are going to set a policy today, the question is should they have done that without a public hearing and public input.

Ms. Abrams said she thinks the only way this project can meet the Critical Area criteria is to disregard the grandfathering and common ownership issues; however, if you adopt the Critical Area criteria she thinks you have to deny this category change.

Commissioner Loffler opened the hearing to public comment.

Attorney Jim Kenney, representing John and Ann Cook, stated he thought Mr. Harris was asking the Commissioners to dissect the case and that's how it got to the Commissioners the first time, as there were other issues involved, and he would like to be able to say that those issues have been resolved but, although there has been a good faith effort on his client's part to do that, they have not all been resolved at this time. He said what the Commissioners are really being asked to do is avoid the policy issues regarding shared facilities, and he is also not sure the Critical Area issues shouldn't be resolved before the Commissioners act, because if we keep treating this in small pieces we are not going to see and deal positively with all the problems involved in this issue.

Ken Lamb, area property owner, asked if the planning staff didn't recommend denial based on the Critical Areas criteria. Mr. Grimm replied staff's recommendation was that a County policy be formulated before any decision was made, and, in the absence of a County policy, the CAC's recommended policy be upheld. In its current state, he said, he doesn't believe the application meets the Critical Area recommended policy, but he believes ownership is the only outstanding issue, as it is staff's opinion in working with the Critical Area Commission that grandfathering, except as stated in this policy, is a moot issue, because under the RL/LDA, 3 lots in 6 acres would be permissible and approvable if the property had perked or if it had public sewer.

Alan Lamb, adjacent property owner, also spoke, saying he doesn't think the grandfathering issue should be allowed. Ms. Abrams added the way she reads the Critical Area allowing shared facilities, even though this property may have a higher density capability, if the lots were not recorded prior to 12/1/85 they don't qualify. Mr. Grimm stated this is not a mandate of the Critical Area legislation, it is a policy of the CAC, which has no legislative authority; this Board does and the State does.

Commissioner Loffler questioned the Planning Commission's recommendation, saying they are the Commissioners' advisers. Mr. Grimm said he thinks it was the Commission's desire to see the project approved in a manner consistent with the CAC policy and the motion was for approval provided that it meet the criteria of CAC policy. He said staff's recommendation was for establishment of a policy and it is staff's recommendation to the Board as well, and reviewed the policy options with the Commissioners.

Mr. Harris pointed out that this project is still viable even without a shared facility, and what puts it on the table today is the desire of the property owner to use one sewer line. He said pumping sewage is done all over the County and all over the United States, but he can very easily cut the 30,000 sq. ft. sewage disposal area into three 10,000 sq. ft. sites, run three sewer lines, and he wouldn't have a shared facility anymore. He said his project has a right to move forward because of a sewer category that doesn't cost the County any money, it is not jeopardizing anybody in St. Mary's County to change the category at the developer's expense, and a policy stating that the shared facility has to meet the Critical Area criteria is a good policy. If the category is not changed he is stopped, he said, and he is not asking the Board to do anything other than change it.

This concluded the public hearing. The record will be held open for 10 days with a decision scheduled in two weeks. The hearing concluded at 3:05 p.m.

DEED OF EASEMENT AGREEMENT

The County Administrator presented a Deed of Easement Agreement between Board of County Commissioners and St. Mary's Metropolitan Commission conveying to MetComm an easement for the installation of a sewer line through the Leonard Hall property at the Governmental Center relative to the Tin Top Hill project.

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

CRIMINAL JUSTICE MEETING

The Commissioners attended the quarterly Criminal Justice meeting which was held at the Leonardtown Library.

ADJOURNMENT

The meeting adjourned at 4:45 p.m.

Approved,


Carl M. Loffler, Jr.
President

