

BOARD OF COUNTY COMMISSIONERS' MEETING

Tuesday, October 23, 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

CALL TO ORDER

The meeting was called to order at 11:00 a.m.

APPROVAL OF MINUTES

Commissioner Bailey moved, seconded by Commissioner Lancaster, to approve the minutes of the Commissioners' meeting of Tuesday, October 16, 1990. Motion carried.

APPROVAL OF BILLS

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

MARCEY HOUSE

INFORMATION RELEASE

Present: Larry Harvey, Director

Mr. Harvey appeared before the Commissioners to present an Information Release announcing that October 28 will mark the first anniversary of Marcey House. He reported on the success of the program and that it has been very well received throughout the tri-county area.

In closing the Commissioners commended Mr. Harvey for his efficiency in operating Marcey House.

COUNTY ADMINISTRATOR'S ITEMS

Present: Edward V. Cox, County Administrator

1) CORRESPONDENCE
CRIMINAL JUSTICE MEETING

The County Administrator presented correspondence addressed to the participants of the October 16 Criminal Justice Meeting thanking them for their participation. County Administrator Cox also presented correspondence to Father Peter Caputo thanking him for his presentation on the house arrest program.

The Commissioners agreed to sign and forward the letter.

2) APPOINTMENT
TRI-COUNTY COMMUNITY ACTION COMMITTEE

Commissioner Thompson moved, seconded by Commissioner Bailey, to appoint Mr. John Evans to the Tri-County Community Action Committee for a term to expire December 31, 1993. Motion carried.

3) RESOLUTION NO. 90-18
PVC VINYL PIPE
REQUEST FOR PUBLIC HEARING

The County Administrator presented a memorandum from County Attorney Densford regarding a complaint from the building industry relative to the County's adoption on October 9 of the referenced Resolution which requires that all PVC pipe meet or exceed standard for Schedule 40. Mr. Densford has recommended that the Commissioners extend the effective date of the Resolution from November 1, 1990 to December 1, 1990 and in the interim conduct a public hearing.

Commissioner Jarboe moved, seconded by Commissioner Lancaster, to accept the County Attorney's recommendation as referenced. Motion carried.

4) BUDGET AMENDMENT NO. 91-17
BOARD OF EDUCATION

The County Administrator presented the referenced Budget Amendment recommended for approval by the Director of Finance with the following justification: To upgrade the Great Mills High School athletic facility - \$30,000.

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

5) PERSONNEL
REQUEST FOR LEAVE WITHOUT PAY

The County Administrator presented a memorandum dated October 17 from the Personnel Office requesting approval for 60 days Leave without Pay and continuation of health insurance benefits at the current premium rates for Shirl A. Hagen.

Commissioner Bailey moved, seconded by Commissioner Thompson, to approve this request. Motion carried.

County Administrator Cox pointed out that staff will come back to the Board with an amendment to the Personnel Manual making this a policy.

6) CUSTOMER SERVICE WORKSHOP

The County Administrator presented a memorandum requesting the Commissioners' favorable consideration for a Customer Service Workshop to be conducted by Mr. Alden of the University of Maryland who had made a presentation at the October staff meeting. Mr. Cox stated that the workshop would be sponsored by the Commissioners for all department heads at the beginning of the Commissioners' new term.

After discussion Commissioner Lancaster moved, seconded by Commissioner Bailey, to approve the workshop as presented. Motion carried.

DIRECTOR OF FINANCE

Present: Charles Wade, Director

1) FISCAL YEAR 1992 BUDGET INSTRUCTIONS

Mr. Wade presented a memorandum and the Fiscal Year 1992 Budget Instructions to be distributed to all spending units upon approval of the Board of County Commissioners.

Commissioner Lancaster moved, seconded by Commissioner Bailey, to approve forwarding the budget instructions as presented. Motion carried.

2 RESOLUTION NO. 90-20
AUTHORIZATION TO "PICK-UP" EMPLOYEE CONTRIBUTIONS
TO THE RETIREMENT SYSTEMS

Mr. Wade advised that the Internal Revenue Code allows the County to "pick up" employees' contributions to the county's retirement plans and, therefore, presented the referenced Resolution allowing the County to "pick up" mandatory employee contributions within the meaning of the Internal Revenue Code. He stated that he is awaiting an appropriate ruling from the Internal Revenue Service permitting this "pick up."

During discussion Commissioner Jarboe suggested that the Employees' Association have an opportunity to review the Resolution. Mr. Wade agreed, but pointed out that because of the timing, requested that the Commissioners' approve the Resolution, get comments from the Employees' Association, and should there be a problem, rescind approval.

After discussion Commissioner Bailey moved, seconded by Commissioner Lancaster, to approve and sign Resolution No. 90-20 as presented, with the stipulation that the Employees' Association review the document for comments. Motion carried.

3) BOARD OF EDUCATION
SUPPLEMENTAL BUDGET

Mr. Wade presented and reviewed information relative to the Board of Education's supplemental budget requests which will be discussed with the Board of Education later in the day.

PROCLAMATION
RED RIBBON WEEK

The Commissioners presented the referenced Proclamation designating October 20 - 28 as Red Ribbon Week Campaign for drug awareness activities.

OFFICE OF PLANNING AND ZONING

Present: Jon Grimm, Director
Peggy Childs, Recording Secretary

1:00 PM - PUBLIC HEARING

ZONE #90-1216 - SMCo OFFICE OF PLANNING & ZONING

Present: Attorney Jim Kenney, for Jack Gelrud
Attorney Nancy Paige, for Millison Development
(Cedar Cove PUD)
Gene Kopp, of Millison Development Company
Bud Lamb, NAS Patuxent River

Requesting zoning amendments to correct two mapping errors in the County's official Aircraft Installation Compatible Use Zone (AICUZ) Overlay Zoning Maps to accurately reflect the 1979 AICUZ Manual Boundaries. The properties involved are (1) Patuxent River NAS and properties located at the northwest corner of Routes 712 and 235 (Parcels 9, 97, 112, 118 and 119 on Tax Map 52), zoned R-1/AOA3; and (2) Part of Cedar Cove PUD (Parcel 87 on Tax Map 52), zoned PDR3.5.

Applicant: OPZ

Mr. Grimm advised the legal ad for this public hearing was published in The Enterprise on October 3, 1990 and October 10, 1990, and stated the request is to exclude properties (1) and to continue the AICUZ boundary line through the Cedar Cove PUD to include property (2). Entered as Applicant's #A-1 were photographs showing the properties were posted as required and, as #A-2, the notification letters and certified receipts from property owners within 200 ft. of the subject properties.

Mr. Grimm stated the application is the result of a presentation by staff and Navy Officials to the County Commissioners in April of this year regarding the AICUZ overlay program. At that time staff discovered what they believe to be two errors on the current AICUZ maps related to the 1977 AICUZ study, specifically the inclusion of properties (1), which does not coincide with the Navy's AICUZ boundaries, and an interruption of the AICUZ line excluding property in the Cedar Cove PUD. This proposal is to correct those two errors.

Entered in support of findings of fact was information regarding population change, public facilities available within the area, transportation and general development capability or compatibility of the lands in the proposed rezoning and in the general vicinity. The proposed zoning amendments are supported by NAS officials; the Planning Commission held a public hearing with staff recommendation and County Attorney input and recommended in favor of rezoning amendments for the properties at both locations.

Attorney Jim Kenney asked for the record how this rezoning affects his client, Mr. Jack Gelrud. Mr. Grimm replied it is his understanding that Mr. Gelrud, owner of Lot 4, Parcel 4, was notified as a property owner within 200 ft. of the subject property, and the requested rezoning amendments would not affect his property.

Commissioner Loffler opened the hearing to public comment.

Attorney Nancy Paige, representing Millison Development Company, spoke in opposition to the zoning amendment, stating she understands the sole purpose of the change is to correct a perceived mistake, and her position is that there was no mistake and the discontinuation of the AICUZ line through Cedar Cove PUD was deliberate, and was the result of a Circuit Court Consent Order in litigation brought in 1979 by Westinghouse Corporation, then the owner of the property.

Ms. Paige offered development background of the Cedar Cove property from 1969 through the Westinghouse acquisition and 1974 rezoning. In the 1979 litigation, she said, Westinghouse claimed vested rights prior to the AICUZ regulations; in fact, in 1973 the County requested an opinion from the Maryland Attorney General as to whether the AICUZ regulations could be applied. His opinion, offered in evidence as Opponent's #O-1, concludes that, where the subdivision is under development and public facilities have been installed, the developer would have vested rights. This prompted a settlement agreement between the County and Westinghouse, dated 9/17/79, which became part of the Circuit Court Decree and Order dated 10/2/79, all before adoption of the AICUZ regulations. The agreement and Order were entered as Opponent's #O-2.

The terms of the 9/17/79 settlement agreement state that its purpose is to preclude the application of any further AICUZ modifications to the PDR, providing the developer conformed the finalized development plan to the existing AICUZ regulations (1977 footprints). Subsequent to that

agreement there were other agreements between the then developer and the Navy, Ms. Paige said, and her client has succeeded to the benefits and burdens of those agreements; however, they do nothing to change the 1979 settlement agreement. Ms. Paige read paragraph 9 of the agreement and the clause which provides for compensation to the developer for any loss of development rights resulting from further imposition of AICUZ designations by the County.

Ms. Paige reiterated if the County proceeds with this rezoning nonetheless it seems to her that this is the wrong process, a comprehensive or piecemeal rezoning based on public need must be pursued. If that happens, she said, she and her client will address the situation at that time, but the record is clear and there is no mistake regarding the AICUZ line through the Cedar Cove property. Frank Gerred, former Director of Planning and Zoning, agreed that the paper trail speaks for itself, and the situation in 1979 was as stated by Ms. Paige, and the Commissioners at that time agreed that they would not subject Cedar Cove to any further change in the AICUZ footprint.

Mr. Grimm stated the Planning Commission's recommendation was based on their feeling that it was a mistake not to continue the line for several reasons; i.e., the Navy's position that just compensation has been paid for the rights they acquired under the restrictive easement, and that to the best of our knowledge there would be no detrimental affect to the PUD in terms of its overall development density. If, in fact, there is any potential problem with exceeding the requirements of the Navy's restrictive easement, the PUD allowances under the Zoning Ordinance could shift that property, and, in fact, imposing the overlay would not do anything more than the restrictive easement has already done, Mr. Grimm said. Mr. Grimm asked that the County Attorney provide the Commissioners with a summary, as his statement to the Planning Commission was to the effect that, at a minimum, the development agreement referenced the restrictive easement, if it didn't apply the overlay zone.

Commissioner Loffler stated if the Navy has purchased rights to restrict the density that in itself will control the density in that area, and asked if the County's exposure would be any greater or lesser because the line is not dotted in, and what difference it makes whether the line is shown, if it does not further restrict the property. Mr. Grimm replied there was discussion at the Planning Commission that the line would provide public notification and identification for potential purchasers that the boundary exists.

Ms. Paige responded that there are two issues here -the relationship between the owner of the property and the Navy and the relationship between the owner of the property and the County, and she sees this as an attempt by the County to impose further restrictions that it stated in the 1979 agreement it would not do. If the County has a reason to put this line on the property that has nothing to do with the exchange by the Navy given for its restrictions, but is a new deal and the cost to the developer is something that should be established in a subsequent stage of this process, should the County determine to place the line on the property, but there is nothing presented here that is evidence of a mistake, there is no public purpose presented as part of the record to suggest that this line is needed now when it was not needed in 1979.

She said Commissioner Loffler's questions trouble her because the suggestion is that, in 1981, when Westinghouse agreed with the Navy to enter into restrictive covenants, that somehow abrogated the prior deal, and it didn't, it was a separate deal. That might be part of the reason the Navy didn't object to the 1979 deal with the County, she said, because it had a collateral deal, but that doesn't address the question of whether a line may be placed on the maps today that would restrict

this property in a way that it was not restricted by the County in 1979. There is a principle here, she said, which the owner feels very strongly about and he will take whatever steps are necessary to defend, and that is that this line may not be placed here without compensation by the County for whatever impact it has on the property, in accordance with the Court Order. The 1979 agreement, Ms. Paige said, was reiterated in the 1984 development agreement (Opponent's #O-3) between Mr. Millison and the County, paragraph 5 of which repeats virtually verbatim the restriction of the 1979 agreement.

The question, she said, is not how much it will cost the County for what it is taking, but why put the line on there to begin with, why invite a controversy that is clearly precluded by the agreements on record and which is not necessary for any public purpose. Commissioner Loffler asked if the Planning Commission considered drawing the line around the Cedar Cove property and showing it under the Navy agreement. Mr. Grimm replied he doesn't think so, that he thinks that is part of the County Attorney's recommendation.

The public hearing was closed at 1:50 p.m. Commissioner Loffler stated the record would remain open for 10 days for written comment and a decision schedule in two weeks.

PROCLAMATION

The Commissioners presented the referenced Proclamation designating November 9 and 10 as Buddy Poppies Day - Veterans of Foreign Wars.

BOARD OF EDUCATION

Present: Dr. William Burroughs, Superintendent
Joan Marsh, President
Jean Campbell
Robert Kirkley
Al Lacer
Jonathan Nelson

1) Board of Education Administrative Office Facility

Also Present: Dan Ichniowski, Director, DPW
Jerry Himmelheber
Frank Barnett

Mr. Ichniowski reviewed the process for developing the Request for Proposals for the provision of a 40,000 square foot administrative office facility for the Board of Education. The Commissioners' approval of the Request for proposal is required. Mr. Ichniowski stated that during development of the RFP questions were raised regarding the level of service and the standards to which the building would be constructed. He indicated that it was the consensus of the Committee that it was to be built to the standard of quality of the county office building at the governmental center complex.

Issues raised during discussion included:

Inclusion of 6,000 square feet for the audio/visual staff and maintenance facility.

Space size for the Board of Education members.

Space size for Superintendent and Assistant Superintendent.

After discussion the Commissioners agreed to review the Request for Proposals at next week's meeting, make a decision on the document, and respond to the Board of Education with a determination.

2) Supplemental Appropriation

Also Present: Charles Wade, Director of Finance

Mr. Wade presented and reviewed information relative to the Board of Education's Supplemental Budget requests. The information included a chart outlining the October 9 proposal, Commissioner Loffler's alternative recommendations, and staff's alternative recommendations.

During discussion Dr. Burroughs recommended the following with regard to the County's proposal:

- That if the \$180,000 is not expended for fuel that funds be applied to text books and other instructional needs.
- In the area of the \$240,000 deferrals to accept Mr. Wade's proposal with some modifications; to take reduction in the deferred items and get authorization from the Commissioners to purchase or lease the copier at the Loveville office; to use some of the funds towards a computer programer to not start until February 1; and to implement the seven-period day paraprofessionals, to be delayed until January 15.

Mr. Himmelheber distributed information setting for the the proposed accelerated Capital Improvement Program for Fiscal Year 1991-1996 which indicates that the county will not get out of the relocatable classroom mode until 1997. Dr. Burroughs pointed out that nine relocatables will be needed next year, and stated that the Board of Education is considering borrowing or leasing relocatable units. He stated that the Board of Education will submit recommendations regarding this.

In conclusion the Commissioners requested that the Board of Education's proposals be put in writing, forwarded to the Commissioners, and the Commissioners will make a decision at next week's meeting.

3) Great Mills High School Athletic Facility

Commissioner Loffler advised that the Commissioners allocated \$30,000 to Recreation and Parks to bring the facility to Recreation and Parks' standards. Other items beyond those standards should come through the Board of Education budget requests.

HISTORY OF ST. MARY'S COUNTY FAIR

Present: Dwight Chakles, Principal, Leonardtown High School
Myra Raspa, Publications Class, LHS

Mr. Chakles and Mrs. Raspa appeared before the Commissioners to present each with the History of the St. Mary's County Fair, which was prepared by the Publications Class of Leonardtown High School. The book is a result of two years of research.

The Commissioners thanked Mr. Chakles and Mrs. Raspa for the books.

EXECUTIVE SESSION

PROPERTY ACQUISITION

Present: Dan Ichniowski, Director, DPW
William Delaney, Dean, St. Mary's County Campus
Charles County Community College Board Members

Commissioner Thompson moved, seconded by Commissioner Bailey, to meet in Executive Session to discuss a matter of property acquisition. Motion carried. The Session was held from 4:25 p.m. to 4:55 p.m.

7:00 P.M.

AIR INSTALLATION COMPATIBLE USE ZONE
JOINT LAND USE STUDY

Present: Capt. Ken Storms, Office of Economic Adjustment
Capt. Donald Wright, Commander, NAS
Jon Grimm, Director, Planning and Zoning

Mr. Grimm began the meeting by reviewing the County's AICUZ overlay maps.

By way of overhead slides, Capt. Storms explained the process for an AICUZ Joint Land use Study. He stated that the main purpose of the study was to balance the mission of the military facility with the growth of the community. He further described the process to do the study. The County must decide what is to be accomplished with the plan, what resources to put towards the plan, what the scope of work will be. The grant request, once completed, is to be submitted to Capt. Storms. The grant is a cost-sharing grant program, which runs for a year with the possibility of an extension if needed. Capt. Storms indicated that the study can be done in three ways: in-house, contract, or a combination.

During his presentation, Capt. Storms described plan implementation recommendations which include: property acquisition, acquisition or dedication of easements, subdivision regulations, plans review. He stated that the implementation recommendations are the local jurisdiction's responsibility. The process includes recognizing the problem, develop a plan, do the study, and implement the recommendations. Capt. Storms explained the OEA grant process which includes working up the determination and findings, developing the grant, providing funds and monitoring the study.

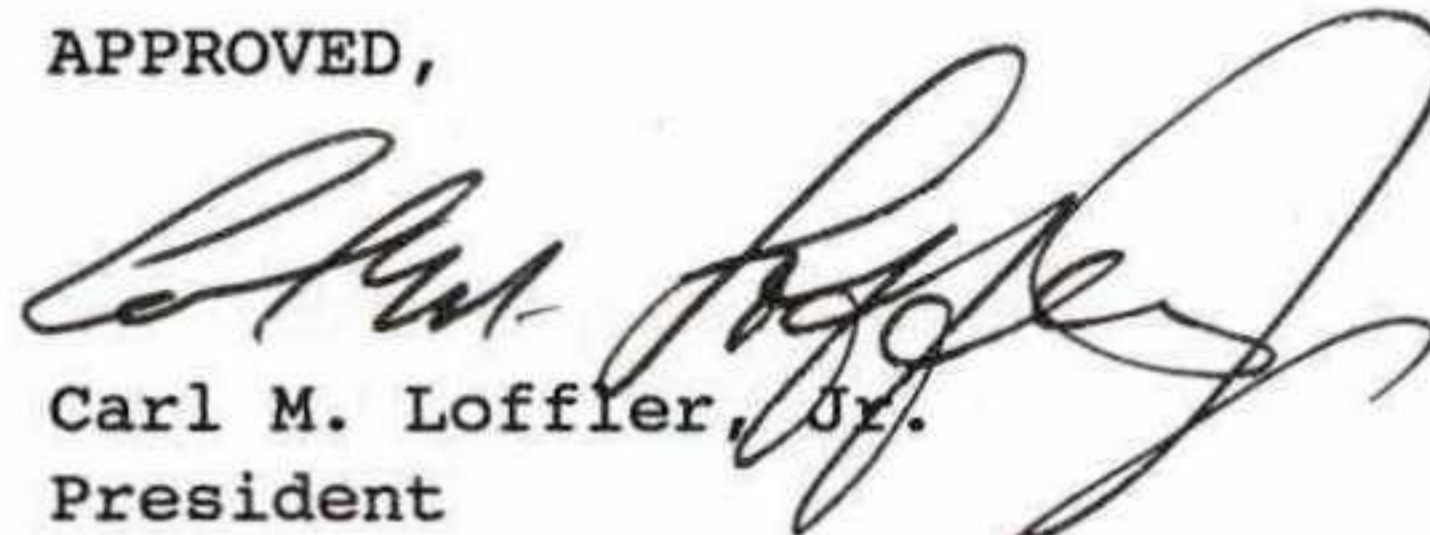
In response to an inquiry from County Administrator Cox, Capt. Storms advised that from the time he receives the information it would take a month to process the grant application.

In conclusion the Commissioners thanked those in attendance for the presentation and that the Commissioners look forward to working with them on this project.

ADJOURNMENT

The meeting adjourned at 8:00 p.m.

APPROVED,



Carl M. Loffler, Jr.
President