

ST. MARY'S COUNTY
BOARD OF COUNTY COMMISSIONERS

March 30, 1993

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

CALL TO ORDER

The meeting was called to order at 9:05 a.m.

APPROVAL OF MINUTES

Commissioner Bailey moved, seconded by Commissioner Lancaster, to approve the minutes of the Commissioners' meeting of Tuesday, March 23, 1993. Motion carried.

APPROVAL OF BILLS

Commissioner Bailey moved, seconded by Commissioner Lancaster, to authorize Commissioner Loffler to sign the Check Register as presented. Motion carried.

COUNTY ADMINISTRATOR ITEMS

Present: Edward V. Cox, County Administrator

1) **Grants**

The County Administrator presented the following grants for the Commissioners' review and consideration:

Walden/Sierra - Outpatient Addictions Treatment Program

Correspondence to the Alcohol and Drug Abuse Administration accepting the Memorandum of Understanding for the Outpatient Addictions Treatment Program, amended to reflect the county's willingness to accept funds on behalf of Walden/Sierra, Inc., which had been previously operated through the St. Mary's County Health Department. The annual budget for total outpatient is \$696,009.

Historical Trust Agreement

Agreement between Maryland Historical Trust and County Commissioners of St. Mary's County for implementation of the Phase I grant project to conduct an historic sites inventory.

Commissioner Bailey moved, seconded by Commissioner Lancaster, to approve and sign correspondence to the Alcohol and Drug Abuse Administration accepting the amended Memorandum of Understanding and to approve and authorize Commissioner Loffler to sign the Historic Trust Agreement as presented. Motion carried.

2) **Response Letter - St. Mary's County Airport**

The County Administrator presented correspondence addressed to Mr. William M. Branch in response to his March 23 letter in which he expressed concerns regarding noise and safety at the County Airport. The letter states that the Commissioners have requested the Airport Commission to address his concerns. Therefore, Mr. Cox also presented correspondence addressed to the Airport Commission requesting its attention to Mr. Branch's concerns.

The Commissioners agreed to sign and forward the letter.

3) Letters of Appreciation

The County Administrator presented letters of appreciation addressed to Chairpersons of Boards that have presented their Annual Reports and to individuals who have completed their terms on various boards and commissions.

The Commissioners agreed to sign and forward the letter.

**4) Council on Children and Youth
Acceptance of By-Laws**

As a follow up to previous discussion the County Administrator presented correspondence addressed to the Council on Children and Youth approving the revised amended by-laws for the Council on Children and Youth, which are in compliance with Resolution No. 88-03.

Commissioner Thompson moved, seconded by Commissioner Bailey, to approve the by-laws and sign and forward the letter as presented. Motion carried.

5) Hollywood Elementary School

The County Administrator presented a response to the President of the Hollywood Elementary PTA's letter of March 10 indicating that through a reallocation of funds in Fiscal Year 1993 and supplemental funding in Fiscal Year 1994, the Commissioners have provided the requested amount for the furniture and equipment.

The Commissioners agreed to sign and forward the letter as presented.

**6) Clearinghouse Project No. MD930311-0228
St. Mary's College - Utility Easement**

The County Administrator presented the referenced Clearinghouse Project, advised that it has been reviewed by the Department of Public Works, and recommended that it be forwarded to the State with the comment that the project is consistent with the County's plans, programs and objectives.

The Commissioners gave their concurrence.

**7) Appointments
So. Md. Resource Conservation & Development Board**

Commissioner Bailey moved, seconded by Commissioner Lancaster, and motion carried, to appoint the following individuals to the referenced Board for terms as indicated:

J. D. Blackwell (regular member)	03/01/95
Robert Tourigny (alternate member)	03/01/95

8) Flexible Benefits Plan Additions

The County Administrator presented a memorandum dated March 30 from the Personnel Officer requesting approval to add a BC/BS Preferred Provider Network and a \$10 generic prescription option to the current Flexible Benefits Plan. The PPN program would allow an employee to use a PPN provider and pay only a flat fee (\$15) for each visit.

After discussion Commissioner Lancaster moved, seconded by Commissioner Jarboe to approve the referenced additions to the County's Flexible Benefit Plan. Motion carried.

9) **Health Information Display**

The County Administrator presented a memorandum dated March 18 from the Wellness Committee requesting permission to display educational material related to health issues in the Governmental Center.

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

10) **Budget Amendments**

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

No. 93-45
Alcohol Beverage Board

Justification: To cover costs for attendance at the Maryland State Alcohol Beverage Association Spring Meeting. (\$600)

No. 93-46
Public Works

Justification: Additional county matched funds for the Adult Day Care (\$12,000)

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

11) **Legislative Package Status Report**

For the Commissioners' information, the County Administrator presented an updated report on the status of the County's Legislative Package items.

12) **St. Mary's Building Trades Foundation**
Request for Waiver of Fees

The County Administrator presented correspondence dated March 16 from the St. Mary's County Technical Center Principal advising that the Building Trades Foundation will be constructing another building in the Wilderness Run Subdivision, Lot #32, Section 2. The letter requests waiver of the building permit fee and deferment of the impact fee until the Certificate of Occupancy is issued.

Commissioner Bailey moved, seconded by Commissioner Lancaster, to approve waiver of the building permit fee and deferment of the impact fee until issuance of the CO. Motion carried.

13) **Response Letter - Social Service Concerns**

The County Administrator presented correspondence addressed to Judee G. Smith responding to letters sent individually to the Commissioners regarding her child. The Commissioners letter indicates that the matter has been investigated by the Department of Social Services, and because there is an active legal case, it would be inappropriate for the Commissioners to intervene.

The Commissioners agreed to sign and forward the letter as presented.

**PROCLAMATION
NATIONAL AUCTIONEERS' WEEK**

Present: Rodney Thompson

The Commissioners presented the referenced Proclamation designating the week of April 4 - 10, 1993 as National Auctioneers' Week in St. Mary's County.

**ANNUAL REPORT
BUILDING AUTHORITY**

Present: Jon Grimm, Chairman
Edward V. Cox
Dan Ichniowski

The referenced individuals appeared before the Commissioners to present the 1992 Annual Report of the Building Authority. Mr. Grimm reviewed the significant activities of the group and pointed out the major focus of 1992 was the expansion of the Nursing Center by 60 beds.

A copy of the report is on file in the Commissioners' Office.

**ANNUAL REPORT
TRI-COUNTY COUNCIL**

Present: Gary Hodge, Director

Mr. Hodge appeared before the Commissioners to present the 1992 Annual Report for the Tri-County Council. Mr. Hodge highlighted the mission statement and activities referring specifically to the naval base consolidation and realignment, agriculture projects, transportation, and environmental issues. He pointed out that one of the main roles of Tri-County Council is one of advocacy which include areas concerning medevac in Southern Maryland and Potomac River Fisheries Commission concerns.

During discussion the Commissioners inquired about the funds allocated in FY '93 for the Agriculture Specialist position that had not been filled. Mr. Hodge responded that although the position was listed in FY '93 funds were not requested; however, it is being requested in the FY '94 Budget.

A copy of the report is on file in the Commissioners' Office.

ALCOHOL, DRUG ABUSE PREVENTION - SUMMER CAMP PROGRAM

Present: Cynthia Brown, Director, Office of Community Services
Joe Dick,
Walter Biscoe
Phil Rollins, Director, Recreation and Parks
Judy Pedersen, Public Information Specialist

The referenced individuals appeared before the Commissioners to advise that the Alliance has received a \$16,500 grant for the start-up and implementation of a model summer camp program. By way of a visual display, Mr. Dick and Mr. Biscoe outlined the need for youths to have structure in order to develop self-discipline and the need for the summer camp programs in certain areas of the county to provide this structure to the youth. Mr. Biscoe advised that analyses were conducted in two communities (St. Joseph's/King Kennedy and Southampton). He pointed out the criteria used in the analyses (enforcement, youth, community safety and community projects) and stated that the areas addressed were problems, action and outcome.

During his presentation Mr. Biscoe pointed out the survey indicated a need for a structured program to build self-esteem and self-discipline.

Mr. Dick advised that a grant application has been submitted to VISTA to develop a summer program partnership with VISTA and Recreation and Parks.

Mr. Biscoe indicated that the Alliance is requesting the following from the Commissioners:

- o Affirmation that there is a need for structured recreation camps
- o Review of the current policy of "pay as you go" to determine other essential service shortfalls
- o Budgeted funding commitments for the Summer of 1995 (FY '95 and '96)

Mrs. Pedersen distributed an Information Release regarding the \$16,500 grant and announcing the development of the summer camp program. The Commissioners agreed to distribute the Information Release as presented.

FISCAL YEAR 1994 RECOMMENDED BUDGET

Present: Edward V. Cox, County Administrator
Martha Jones, Budget Analyst

As a follow up to last week's discussion the County Administrator advised that the Fiscal Year 1994 Recommended Budget has been prepared in accordance with the Commissioners' direction. Therefore, Mr. Cox presented the FY '94 Recommended Budget which provides for a General Fund Budget of \$68,972,859 and a Capital Budget of \$12,930,137; is based on a property tax rate of \$2.32 and the piggyback income tax at 50%.

Public Hearings on the budget are scheduled for April 20 (Board of Education) and April 27 (All Other Spending Units).

After discussion Commissioner Bailey moved, seconded by Commissioner Thompson, to approve and sign the Fiscal Year 1994 Recommended Budget as presented. Motion carried four to one with Commissioner Lancaster voting against.

RESOLUTION NO. 93-13

ST. MARY'S COUNTY GENERAL OBLIGATION BOND SALE

Present: Charles Wade, Director of Finance) at Alex Brown
Sam Ketterman, Alex Brown and Sons) & Sons in Baltimore

By way of a telephone call, Mr. Wade, calling from the office of Alex Brown and Sons, presented the bids for the St. Mary's County General Obligation Bond Sale as follows:

Kidder Peabody - 5.37077
Ferris Baker, Watts - 5.313335
Prudential (disqualified for not getting bid in on time)

Mr. Wade recommended that the County accept the lowest bidder, Ferris, Baker, Watts.

Commissioner Lancaster moved, seconded by Commissioner Jarboe, to accept the low bid from Baker, Watts, and Ferris, and to approve and sign Resolution No. 93-13 providing for the award of \$8,375,000 of general obligation bonds designated as Public Facilities Bonds of 1993. Motion carried.

EXECUTIVE SESSIONS

Commissioner Bailey moved, seconded by Commissioner Lancaster, to meet in Executive Sessions to discuss matters of Personnel (Consideration of Appointments to Boards, Committees, Commissions) as provided in Article 24, Section 4-210(a)1 and Litigation (St. Mary's Press), as provided in Article 24, Section 4-210(a)8. Motion carried.

Personnel

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

Authority: Article 24, Section 4-310(a)1

Topic: Personnel - Consideration of Appointments to Boards,
Committees, Commissions

Time Held: 11:45 a.m. - 12:00 Noon

Action Taken: The Commissioners reviewed the current status sheet, made nominations, and directed staff to prepare appointment letters for official appointment next week.

ANNUAL REPORT MENTAL HEALTH AUTHORITY BOARD

Present: Francis Fenwick, Chairman
Francis Sullivan, Program Manager
George Roberson, Vice-President

The referenced individuals appeared before the Commissioners to present the 1992 Annual Report for the Mental Health Authority Board. Mr. Fenwick reviewed the Board's accomplishments, responsibilities, significant activities (mental health coordination and provision of services), and challenges for the current year. Mr. Sullivan spoke on the funding sources and the availability of grants and further stated that one of challenges for the future is addressing the area of services for youth.

A copy of the report is on file in the Commissioners' Office.

ANNUAL REPORT COUNCIL ON CHILDREN AND YOUTH

Present: Mary Fletcher, Chairperson
Wayne Guy
Becky Stevens, Community Services Coordinator

The referenced individuals appeared before the Commissioners to present the 1992 Annual Report for the Council on Children and Youth. Mrs. Fletcher reviewed significant activities of the Council (speakers, volunteer recognitions, information distribution); problems and challenges encountered; and plans for current year. During discussion of problems and challenges Mrs. Fletcher noted the lack of support from the State Office on Children and Youth.

A copy of the report is on file in the Commissioners' Office.

**PROCLAMATION
CHILD ABUSE PREVENTION**

The Commissioners presented the referenced Proclamation designating the Month of April as Child Abuse Prevention Month.

**RESOLUTION NO. 93-14
METROPOLITAN COMMISSION
GENERAL OBLIGATION BOND SALE**

Present: Frances Eagen, Chairperson
Rufus Dyer
Leroy Williams
Pat Woodburn
Elizabeth Woodard
Larry Petty, Director, MetComm

Charles Wade, Director of Finance) calling from Alex Brown
Sam Ketterman, Alex Brown & Sons) & Sons in Baltimore

By way of a telephone call, Mr. Wade, calling from Alex Brown & Sons in Baltimore, advised that the lowest bid was from Baker, Watts, and Ferris with an overall rate of 5.79%.

The Metropolitan Commission voted to accept the bid and sign its Resolution for the award of the bid to Baker, Watts, and Ferris.

Commissioner Bailey moved, seconded by Commissioner Lancaster, to approve and sign Resolution No. 93-14 approving the passage and adoption by the St. Mary's County Metropolitan Commission of a resolution awarding the Commission's general obligation bonds designated as "St. Mary's County Metropolitan Commission Bonds of 1993. Motion carried.

**ANNUAL REPORT
ELECTRICAL EXAMINERS BOARD**

Present: Arthur Goode, Jr., Chairman
George Kalnasy, Jr.
Joe Lynch
John Finch
Don Haskin

The referenced individuals appeared before the Commissioners to present the 1992 Annual Report for the Electrical Examiners Board. Mr. Goode highlighted activities of the Board (administration and grading of electrical examinations, license issuances and renewals, participation in state committees and boards) and plans for calendar year 1993.

During discussion of the proposed amendments to the Electrical Ordinance, Mr. Goode stated that he was going to survey electricians in the county for comments after which the Commissioners will schedule a public hearing.

A copy of the report is on file in the Commissioners' Office.

ETHICS COMMISSION

Present: Charles Mander, Chair
Serita McFarling
Richard Portee
Joe Densford, County Attorney

1) **Annual Report**

The referenced members of the Ethics Commission appeared before the Commissioners to present the 1992 Annual Report of the Commission. Mr. Mander highlighted the activities of the Commission (meetings, advisory opinions, presentation of draft Ordinance).

During discussion of problems and challenges, Mr. Mander pointed out that on certain occasions the County Attorney cannot assist the Commission because he represents county officials. He further stated that it would be helpful to the Commission if financial disclosure statements in which financial interest in businesses are listed are required to indicate whether such business entity was doing business with the County during the reporting period.

A copy of the report is on file in the Commissioners' Office.

2) **Draft Ethics Ordinance**

Mr. Mander presented and reviewed the draft amended Ethics Ordinance pointing out changes since the presentation to the Commissioners in August of 1992.

During discussion Commissioner Loffler indicated his concern with the proposed requirement in Section 8 (Interest in Business Entities) for listing the names and addresses of partners. He stated that if it had to be a requirement that it should be given to the Commission confidentially.

Mrs. McFarling advised that the information would be a matter of public record and would be available to those who reviewed the Financial Disclosure Form and stated she had two concerns about receiving the information confidentially: (1) That when the information is given to the Ethics Commission it would have a duty to monitor it and the Commission did not have the capacity to monitor it and (2) that if at any time the information was to be released the Ethics Commission could then be charged with "leaking" it and subject to liability.

Mr. Densford presented a memorandum enclosing correspondence from the law firm of Piper & Marbury which states "it is probable that the proposed amendments to the Ethics Ordinance would be sustained if challenged for infringing the privacy rights of third parties whose identities are provided to the Ethics Commission in the proposed disclosure process." The letter cites two cases as reference.

During discussion Mr. Mander indicated that the Commission would research the cited law cases.

After discussion the Commissioners agreed to take the draft Ordinance to public hearing (May 4 - 7:00 p.m.) with the revision to Section 6.F.2.b as presented by the Commission and let the citizens speak to the proposal.

STRATEGIC BUSINESS PLAN FOR TECHNOLOGY TRANSFER

Present: Joe Mitchell, Director, Economic & Community Development
Joe Garner, Booz-Allen & Hamilton Inc.
Brian Harper, "
Rik Sneeuwjagt, "
Sue Wilkinson, DECD

Mr. Mitchell stated that the purpose of the meeting was to present to the Commissioners the feasibility study completed by Booz-Allen & Hamilton relative to technology transfer. The technology transfer plan, initiated by the County Department of Economic and Community Development, defines the steps to achieve the economic benefits technology transfer can offer the community.

Mr. Sneeuwjagt highlighted the study stating that it was done in four phases beginning with the interviewing of technology organizations in the county to determine what technology is available for transfer or commercialization. He stated that a survey was conducted with various organizational elements resulting in a 58% response rate. Mr. Sneeuwjagt advised that there appears to be a great need to develop a comprehensive data base and resource guide.

Mr. Sneeuwjagt pointed out that in order to achieve the goals of the technology transfer plan objectives would include the following:

- o Establishment of a steering committee and working group receiving direction from DECD to identify opportunities and initiatives
- o Identification of congressional technology transfer legislation and application for federal and state grants
- o Development and update of comprehensive County technology resource capabilities database
- o Development of a Technology Resource Guide
- o Development of information marketing tools

In conclusion Mr. Mitchell suggested that the Commissioners review the Strategic Business Plan and offer any comments.

The Commissioners agreed to review the material and have a meeting at a later date to discuss the Plan.

DEPARTMENT OF PUBLIC WORKS

Present: Dan Ichniowski, Director

1) Policy Statement - Sedimentation Control Ordinance Grading Permits for Stormwater Management Facilities

As a follow up to previous discussions, Mr. Ichniowski presented the referenced Policy Statement regarding grading permits for stormwater management facilities. He stated the statement has been reviewed by engineering and development firms with comments being received from four firms. Mr. Ichniowski recommended that the Commissioners adopt the Policy Statement.

The Commissioners suggested that since it appears that some of the engineering firms did not understand the policy statement that prior to adopting it, there be a meeting for further explanation.

2) Correspondence Calling Letters of Credit

Mr. Ichniowski presented the following correspondence calling Letters of Credit as indicated:

Summerwood, Section 2

To First National Bank of St. Mary's calling Letter of Credit #A1-4-15-1991 in the amount of \$68,000 for Grading Permit No. 91-24.

Trapp Hall Farmetts (Lot 3)

To Selective Insurance Company of America calling Bond No. B812487 in the amount of \$3,000 for Construction Permit #CP 04/92 ROW-01

Richneck, Section 1

To First National Bank of St. Mary's calling Letter of Credit #A1-10-1-90 in the amount of \$29,000 for Public Works Agreement.

Southgate Center, SWM

To Maryland Bank and Trust Company calling Letter of Credit #412-C in the amount of \$52,000 for Grading Permit #91-01.

Commissioner Lancaster moved, seconded by Commissioner Jarboe, to authorize Commissioner Loffler to sign the correspondence to be forwarded if necessary. Motion carried.

**EXECUTIVE SESSION
LITIGATION**

(Authorized in previous motion)

Present: Commissioner Carl M. Loffler, Jr., President
Commissioner W. Edward Bailey
Commissioner Robert T. Jarboe
Commissioner John G. Lancaster
Commissioner Barbara R. Thompson
Edward V. Cox, County Administrator
Joseph Densford, County Attorney
Dan Ichniowski, Director, Public Works
Judith A. Spalding, Recorder

Authority: Article 24, Section 4-210(a)8

Topic: Litigation - St. Mary's Press

Time Held: 4:50 p.m. - 5:15 p.m.

Action Taken: The County Attorney brought the Commissioners up to date regarding the referenced legal matter and received direction from the Commissioners as to how to proceed.

7:00 P. M.

**DEPARTMENT OF PLANNING AND ZONING
CONTINUATION OF PUBLIC HEARING
ROUND THREE GROWTH ALLOCATION PROCESS**

Present: Jon Grimm, Director, DPZ
Mary Owens, Environmental Planner
Jill Branson, Planner I
Joe Densford, County Attorney
Peggy Childs, Recording Secretary.

**CDSP #91-1717 - LITTLE CREEK DEVELOPMENT
(Design Competition Category)**

Requesting change in overlay zoning classification from RCA to LDA through the use of 8.38 acres of growth allocation to allow 120 condominium units. The property contains 59.3912 acres with 51.87 acres in the Critical Area, is zoned RL (partial RCA Overlay), and is located on the southeast side of Patuxent Boulevard, east of Myrtle Point; Tax Map 34, Block 6, Part of Parcel 126.

Owner: Clearbrook Farms Ltd.
Applicant: Virginia Knight, of "Little Creek," Alexandria, VA
Agent: Land Services Group, Inc.

Present: Karen Abrams, Attorney for Applicant
Virginia Knight, Little Creek
Jeff Kozero, Land Services Group
Kingston Creek / Mill Cove / Myrtle Point Residents

Legal Ad published in The Enterprise on 3/3/93 & 3/10/93

- #A-1 - Photo of posting of property for 3/23/93 hearing and this continuation
- #A-2 - Certified Receipts of notification to contiguous property owners
- #A-3 - "Little Creek" response to Staff Report

This public hearing was continued from March 23, 1993 at applicant's request. Commissioner Loffler advised that speakers would initially be limited to 3 minutes to allow everyone a chance to be heard; after everyone has spoken once he said he would allow those who wanted to speak a second time to do so.

Mr. Grimm briefly described the growth allocation process and stated this is the only application submitted in the Design Competition Category this year. Staff has provided background and analysis of the application in the 3/16/93 Staff Report, which has been provided to applicant and to the Commissioners. Staff cannot support the application without further satisfactory responses to issues identified in the Staff Report; if judged as presented and designed, staff does not recommend approval.

Mr. Grimm advised that the Planning Commission held a public hearing on the application on 1/25/93 and, on 2/22/93, voted not to recommend the deferral requested by the applicant and to recommend denial of the use of growth allocation for the request, based on the outstanding issues.

Karen Abrams, attorney for the applicant, spoke to several issues:

Due Process - Ms. Abrams said she had understood from Ms. Knight that staff was recommending that the Planning Commission defer the case on 2/22/93 to allow the applicant time to revise her proposal, and that the application would be pulled from the agenda; instead the request for deferral was denied, as was the application. She said she had a problem with that because the applicant thought she had more time to work on the plan, but she did not. Ms. Abrams also objected to the Planning Commission members visiting the site with members of the opposition without the applicant being notified or invited; they were not given the opportunity to show the property themselves or to respond to whatever comments were made. She said applicant asks for a fair shot, and she hopes before the night is over they can schedule a visit to the site with the Commissioners.

Plan Revisions - Ms. Abrams said changes have been made and they are still making changes to the plan to try and accommodate not only staff's concerns but the opposition's as well. She said this process is a competition, and to allow no amendments is not fair to the competition process. We only have one project competing against itself, Ms. Abrams said, and to say that it cannot be revised and improved to meet the concerns doesn't make good sense, legal or otherwise.

Working with Staff - Ms. Abrams said she gets very concerned when an applicant works with staff and then the Planning Commission turns down staff's recommendation. Why hire qualified, talented people to advise you and then not take their recommendation, she asked?

Opposition - Ms. Abrams said the applicant understands the neighbors' concerns; they have made some changes and are ready to make a lot more to meet their concerns. However, she reminded the Commissioners that they need to make their decision based on the facts, not emotions or personal need, because what would make the opposition happy would be nothing, and that just isn't reality.

Jenny Knight submitted Applicant's #A-3, a written response to staff's comments, and gave her professional background. She said she and her engineer have been working with staff to come up with a project that is sensitive to the environment and were advised that they are presenting a concept and could make changes as appropriate; that's why she was confused at the Planning Commission stage, because the other two projects made significant changes in their projects, and got approved.

Ms. Knight walked through her written report, stating they see this as an opportunity to provide high quality housing for professionals who will be relocating to the Naval Air Warfare Center. She stated the driving force behind building condominiums is the impervious surface issue and, from a profitability standpoint, single family would be the most profitable, but from an environmental standpoint the small footprint of the condominiums is better; 120 condos is the maximum they would build, however they are seriously considering not building that many, but scaling them down and making the units larger within the building.

Applicant's engineer, Jeff Kozero, said they will build 5 buildings on approximately 8 acres, at 2.4 to 2.6 units per acre, leaving as much open space as they can. A stormwater management pond is proposed on a corner of the property, graded towards the center of the property to conduct runoff back to the pond, with buffers and landscaping along the shoreline to further filter water that may drain toward Kingston Creek.

Mr. Kozero said he has come up with a "minor modification" to the proposed plan, which would increase the buffer along the shoreline from 100 ft. to 150 ft., moving the pond toward the center of the parking lot, with porous paving in the parking lot. This approach would filter the water three times - through the parking lot, the pond, and then through the wetland area to the creek. The buildings would be shifted slightly away from the water which will increase the green area on the peninsula by about 2 acres. He said staff commented about using a 200 ft. buffer, however it constricted their buildings so that the parking area was toward the tip of the peninsula; and a 300 ft. buffer would leave nothing to be developed on the property, but the 150 ft. buffer would work for them.

Ms. Knight added that, because of the opposition expressed at the Planning Commission hearing, they have removed the existing dock to protect Little Kingston Creek. They had volunteered to meet with the neighbors prior to that decision but the neighbors showed no interest, Ms. Knight said, so they will remove the pier on their own.

Mr. Grimm noted the following outstanding issues:

- (1) Applicant cannot meet the 300 ft. setback policy guideline established by the Critical Area regulations.
- (2) A PUD is required to accommodate density at four units per acre, as proposed, and will be pursued by the applicant if growth allocation is approved.
- (3) Scoring - The project received maximum points for a number of items, but did not receive high points for the lack of increased buffering and impervious surface cover.
- (4) Tidal wetlands previously used to calculate density has been determined to be State tidal wetlands and removed from the project; this will necessitate that the property boundary be shifted to provide additional land to offset loss of the tidal wetlands.

Having identified these issues in the Staff Report, Mr. Grimm said staff offered to the Planning Commission that they would support applicant's request for a deferral to revise the plan and address these points, based on the fact that there are no other projects in the Design Competition category; had there been other projects in this category, he said he could not have supported the request for deferral. Should the Planning Commission not grant the deferral, staff's recommendation was that the project not be approved. The Planning Commission pointed out the regulations state that a plan may not be revised after it has been submitted and said in this case the project would need complete revamping, and voted not to grant the deferral and to recommend denial, based upon the four outstanding issues.

Commissioner Loffler questioned how the property will be served by water and sewer, stating that, unless this property is part of the PUD for the Myrtle Point property, he doesn't see how water and sewer is available. Mr. Grimm replied he has information from MetCom that the Hanover Run (Myrtle Point) line is sized to allow additional capacity, however Mr. Loffler stated he recalls a very strong discussion during the Myrtle Point approval that water/sewer would be restricted for that PUD only. Mr. Grimm responded it is his belief that this property could be served by public water and sewer, but he will double check.

Ms. Knight responded that applicant will not build up to 4 units per acre, 2 units per acre is their ballpark density. Mr. Grimm stated that that is based on 41 acres calculated as the result of changing the property boundary and reducing the impervious coverage percentage with set-asides for afforestation, but that is not the proposal that is the subject of this hearing, he would categorize it as a proffer to address the outstanding issues.

The Chair opened the hearing to public comment.

The following is a list of Kingston Creek / Myrtle Point / Mill Cove area residents who spoke in opposition to the project: L. Wayne Smith; Dr. Martin Barley; Richard Pelz; Raymond Dudderar; Louis Eberle; Betsy Barley; Jack Witten; Joe Bernier; Dee Seidenberg; John Tifford; Nuran Miller; Phil Seidenberg; Laura Shaw; Gloria Gehrig; Nancy Rogers; Jane Sypher; and Julie Delaney.

The overwhelming concern of the residents was that the development would be a major change to the character of the existing neighborhood and will destroy the creek and the ecology. Photos of Little Creek were produced, showing its small size and narrow entrance. It was pointed out that the impact of the development on county schools is unknown. Mr. Pelz stated he has an oyster project on the creek, developed by a grant from the University of Maryland for an aquaculture project in St. Jerome's Creek, and the location of the development near the mouth of the creek will affect the creek and the salinity of the creek, which will damage the estuarine system and disease the oysters.

The residents expressed confusion as to what plan was being reviewed; however Mr. Grimm responded that the original plan is the subject of this public hearing. Mr. Dudderar contended that the 3.43 units per acre density of the plan would overburden the watershed and affect water quality, producing noxious runoff that cannot be filtered or flushed from the creek. Extensive recreational activities on the tiny beach was also a concern, as it was felt they would ruin the "little sandbar." Mr. Dudderar recommended that the project be denied for growth allocation this year but that a revised application be invited for next year's round of growth allocation projects.

Louis Eberle entered as Opponents #O-1 his written statement objecting to the project based on concerns that, without adequate stormwater management and soil conservation plans, the project will cause irreparable environmental damage to Little Creek and the Patuxent River. John Tifford stated the neighbors would like to see 1-2 acre density on this property, similar to what is there now, and would like to see removal of the pier written into the zoning of the property as a perpetual agreement.

Jack Witten, of the Potomac River Association and a public member of the Chesapeake Bay Commission, said this is not only about protecting a piece of land but protecting the Patuxent River, the model river for managing non-point source pollution for the Chesapeake Bay Program. He said, having worked with the Critical Area Task Force on the growth allocation strategy, the design competition category was never visualized as a "no competition" process but a design *competition* process, not a "blank check" to modify a project over and over. He said he thinks sewer availability is a very important point, since Congressman Henry Gonzales is challenging the sale of "perfect lands" by the FDIC until rules are developed to properly protect them, and it is unknown what will happen to the Hanover Run property.

L. Wayne Smith said he was told by MetCom that the sewer has not been completed because the pumping stations have not been completed, and said Mr. Petty, MetCom Director, told him he wasn't sure the Hanover Run sewer lines could handle effluent from the proposed Little Creek development. Dee Seidenberg asked how thought-out the project is and whether a study has been done to see whether people relocating to the Naval Warfare Center would want this type of development?

Jack Witten spoke for a second time, stating that growth allocation was an anomaly that was tacked onto the Critical Area regulations to take care of hardships and provide local government maneuvering room to make decisions which would accrue to the general benefit of the whole population. He said this is an obscene, obsolete development that should not be put on the shoreline. This is more than a neighborhood problem, Mr. Witten said, it is a County problem; this is a very special river with a very special place in the Chesapeake Bay Program and he trusts the Commissioners to make the best decision for the community and the river.

Responding to a question from Commissioner Loffler, Mr. Grimm repeated that the Commissioners are reviewing the plan that was reviewed by the ERT and the Planning Commission, and said he takes the applicant's comments as a proffer to address the environmental concerns. He said the growth allocation process spells out

that a concept plan will be submitted and reviewed, scored, and processed but the concept plan, by definition, will undergo some changes. He said for the past two years and at the start of this process we have accumulated the technical comments received during the public hearing process. After the plan was approved by the Commissioners the changes were made by the applicant and then the plan was returned for the Commissioners' sanction before it was sent on to the State.

Commissioner Loffler responded that he has heard changes far beyond technical changes discussed for this plan, including a change in density. Mr. Grimm responded the Commissioners should consider 120 units, as proposed, unless the applicant is willing to proffer something less than that, and that will be a binding restriction on the approval should the Commissioners grant it. He said the application is confined to an envelope of development area, then within that area the design can be addressed in a detailed fashion.

Commissioner Thompson stated that it would help her to put this into perspective to see the Critical Area maps for this area as well as the zoning maps, because this property is adjacent to an LDA, even though it is residential.

Ms. Knight stated she has been working with staff for nearly a year, and they consider the improvements they have made minor; they have been working to make this the best possible project there is, given this type of development. She said they could easily have shown townhouses or single families that blanket the site, but they didn't think that was responsible. There will be a condo association with the buildings and they will write the rules - it will be very restrictive. Ms. Knight said the individuals they expect to live in the development will be professionals and they have done extensive market studies, studying the region very carefully; they would not commit this amount of money and effort to a project they think is going to fail.

Ms. Abrams stated this is the plan that has been processed and the overlays have shown how minor changes can be made to accommodate the concerns. She said there is no point in having staff if you cannot address and respond to their concerns, and if they can't respond, there's something wrong with the process. She said if the Commissioners approve the project and place restrictions on the approval, they will meet them or they won't have the development. They were not given the opportunity to address the concerns in front of the Planning Commission, Ms. Abrams said, and they want to do it now.

The Chair closed the public hearing at 9:47 p.m. A complete tape of the hearing is on file in DPZ.

ADJOURNMENT

The meeting adjourned at 9:47 p.m.

Minutes Approved by Board of
County Commissioners on 4/6/93

Judith A. Spalding
Recording Secretary