

**ST. MARY'S COUNTY
BOARD OF COUNTY COMMISSIONERS' MEETING
February 10, 1998**

Present: Commissioner Barbara R. Thompson, President
Commissioner D. Christian Brugman
Commissioner Paul W. Chesser
Commissioner Frances P. Eagan
Commissioner Lawrence D. Jarboe
John J. Kachmar Jr., County Administrator
Judith A. Spalding, Recorder

CALL TO ORDER

The meeting was called to order at 11:05 a.m.

EXECUTIVE SESSION

Commissioner Jarboe moved, seconded by Commissioner Chesser, to meet in Executive Session to discuss a matter of Personnel (Interviews for Human Resources Director), as provided for in Article 24, Section 4-210(a)1. Motion carried.

Personnel (Interview for Director of Human Resources Position)

Present: Commissioner Barbara R. Thompson, President
Commissioner D. Christian Brugman
Commissioner Paul W. Chesser
Commissioner Frances P. Eagan
Commissioner Lawrence D. Jarboe

Authority : Article 24, Section 4-210(a)1

Time Held: 11:20 a.m. - 1:05 p.m.

Action Taken: The Commissioners conducted interviews for the position of Human Resources Director.

APPROVAL OF MINUTES

Commissioner Eagan moved, seconded by Commissioner Chesser, to approve the minutes of Tuesday, February 3, 1998, as presented and the February 3, 1998 Planning and Zoning portion of the minutes (Growth Allocation Decisions), as presented. Motion carried.

APPROVAL OF CHECK REGISTER

Commissioner Chesser moved, seconded by Commissioner Jarboe, to authorize Commissioner Thompson to sign the Check Register. Motion carried.

ADDITIONS/DELETIONS TO AGENDA

Commissioner Chesser moved, seconded by Commissioner Eagan, to accept the agenda with the following amendments: to delete the Eddie Mahe Co. (Community Survey results); and to add in its place a discussion with the Director of Planning and Zoning regarding the Comprehensive Plan. Motion carried.

Commissioner Chesser moved, seconded by Commissioner Eagan, to delete the Nursing Home Issues Discussion from the Agenda for February 12 and 17. Motion carried.

CONSENT AGENDA

Correspondence to:

1. Timothy Bischof regarding monthly increase in hangar rent at the St. Mary's County Airport.
2. Hope Swann regarding diligent work of the Planning Commission in preparing the Draft Comprehensive Land Use Plan.

3. President of the Potomac River Association regarding comments and perceptions related to a number of various topics.
4. Reunion Chairman of the 9th and 10th (Horse) Cavalry Association regarding upcoming reunion.
5. Donald Ervin regarding school bus drivers' pay scale and health benefits.
6. President of Public School Bus Drivers' Association regarding safety concerns related to school buses.
7. President of Bay Country Estates Homeowners Association regarding Expanded calling areas being pursued through the Public Service Commission.
8. Chair of the Public Service Commission requesting a study of the potential costs and/or benefits of local expansion of telephone calling areas.
9. Lynn Fitrell welcoming her return to the St. Mary's Women's Center as Executive Director.
10. Various letters to individuals regarding proposed rezoning of property for the First Colony development: Shelby Guazzo; Mary Sasho; Chester Personette; Oran Wilkerson; Robert & Virginia Thompson.
11. Governor Glendening support the additional classroom building at the Southern Maryland Higher Education Center.

Commissioner Brugman moved, seconded by Commissioner Eagan, to approve the Consent Agenda as presented. Motion carried.

COUNTY ADMINISTRATOR ITEMS

Present: John J. Kachmar Jr., County Administrator

1. **Budget Amendment**
No. 98-26 - DECD
(Funding through DECD for administrative officer position for the balance of FY 98 - \$28,191)

Commissioner Chesser moved, seconded by Commissioner Eagan, to approve and authorize Commissioner Thomson to sign Budget Amendment No. 98-26 as presented. Motion carried four to one with Commissioner Brugman voting against.

2. **Department of Public Works Items**

- a. Claim Letter in the amount of \$236,200 for Grading Permit No. 90-01, Cedar Cove Subdivision, Section IV; backed by a Letter of Credit with Maryland Bank & Trust Company.

Commissioner Jarboe moved, seconded by Commissioner Eagan, to approve and authorize Commissioner Thomson to sign Claim Letter as presented. Motion carried.

- b. Claim Letter in the amount of \$125,000 for Grading Permit No. 96-18, St. Mary's Medical Center; backed by a Letter of Credit with Maryland Bank & Trust Company.

Commissioner Jarboe moved, seconded by Commissioner Eagan, to approve and authorize Commissioner Thomson to sign Claim Letter as presented. Motion carried.

3. Letter to Board of Education

(approving inclusion of following grant awards in the Board of Education FY '98 budget: HotSpots - \$16,000; Educating Children with Disabilities - \$67,457; Educating Children with Disabilities - \$2,529)

Commissioner Chesser moved, seconded by Commissioner Jarboe, to approve and sign the letter to the Board of Education, as presented. Motion carried.

4. Ordinances

Fiscal Year 1998 Supplemental Appropriations

Ordinance No. 98-08 - Department of Recreation and Parks

\$30,000 in state grant funds for the purpose of providing additional staffing, transportation and other services for the Teen Center - After School Program)

Ordinance No. 98-09 - Department of Recreation and Parks

\$10,000 in state grant funds for the purpose of initiating a community-based service hub engaging youth in service-learning activities in the out-of-school hours)

Ordinance No. 98-10 - Marcey House

\$4,986 in state grant funds for the purpose of expanding or enhancing treatment service delivery, and to provide support for services to individuals who are no longer eligible to receive supplemental security income benefits as a consequence of their addiction.

Ordinance No. 98-11 - Office of Community Services

\$2,670 in state grant funds for the purpose of expanding and enhancing prevention services at the local level.

Commissioner Chesser moved, seconded by Commissioner Eagan, to approve and sign the Supplemental Appropriation Ordinances as presented. Motion carried.

5. Department of Health and Mental Hygiene Grant Compliance Documents

(Relative to Grants which were subject to a public hearing on 1/27 (Item No. 6 above)

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

6. Letter to Southern Maryland Legislative Delegation

(Supporting in principle the goal of House Bill 599, the Nutrient Management Practices Improvement Act of 1998.)

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

**7. Metropolitan Commission
Bonding of Treasurer**

(County Code requires MetComm Treasurer to be bonded and that the \$25,000 bond be approved by the Board of County Commissioners. the bond, which also covers all employees, is paid for by MetComm.)

Commissioner Eagan moved, seconded by Commissioner Chesser, to approve the bonding of the Metropolitan Commission Treasurer as requested. Motion carried.

8. Disposition of Property Adjacent to Clements Landfill

The County Administrator referred to the February 3 memorandum from the Legal Department regarding the disposition of the referenced property. The memorandum states that Ms. Somerville and the Reeves had walked the property line and it appears that they are not interested in the same piece of property. Staff was directed to determine whether an additional public hearing was required and what steps need to be taken to resolve the issue.

9. Nursing Center Administrator Position

As a follow up to last week's discussion in Executive Session, the County Administrator indicated that the individual he contacted had declined the position, and therefore, a 30-day extension of the temporary administrator at the Nursing Center is necessary.

After discussion regarding composition of the selection committee for a Nursing Center Director, the Commissioners indicated their concurrence to extend the current contract from February 19 for 30 days.

**PROCLAMATION
PURCHASING MONTH**

Present: James Haley, Director, Office of Central Services

The Commissioners presented the referenced Proclamation designating March as Purchasing Month.

COMPREHENSIVE PLAN DISCUSSION

Present: Jon Grimm, Director, Planning and Zoning
Douglas Durkin, County Attorney

At the request of the Commissioners, Mr. Grimm appeared before the Board to address a number of issues relative to the Comprehensive Plan.

Commissioner Eagan raised the following questions:

- * Referred to letter from Chair of Planning Commission dated January 20 transmitting the Plan, but no minutes have been received showing the motion and votes of the Commission to transmit the draft Plan to the County Commissioners.
- * Attached to draft was a summary of individual requests and comments and the Planning Commission's responses. She requested a copy of the minutes showing the votes on the responses.
- * Referred to Article 66B and the reference the section indicating that failure of the Planning Commission to take action within 60 days from and after the date of official submission shall be deemed approval [of the Comprehensive Plan} and failure of the local legislative body (the County Commissioners) to act within 60 days from and after date of submission of the recommendations of the Planning Commission shall be deemed concurrence with the Planning Commission's recommendation. Commissioner Eagan questioned when the 60-days started. (Mr. Grimm responded that the 60 days began from the date of submission - January 20, 1998. He further offered to research the records for the motions and votes of the Planning Commission.)

Discussion ensued regarding the actions of the Planning Commission and whether it was done by consensus, whether votes were taken and whether minutes were taken during the work sessions. Other areas of discussion included the 74 letters requesting zoning actions and how they were addressed by the Planning Commission and planning staff, whether the Board of County Commissioners could take actions on individual properties (e.g., from Route 4 to Town Creek Drive on Route 235 to be changed to Commercial zoning), and concerns that submission and approval of the Plan must be done correctly and legally in order to avoid any repercussions.

Mr. Grimm indicated that the Commissioners could request certain zoning actions (text amendments/ zoning maps), similar to what was done with the Animal Shelter, and it would follow the normal rezoning process in accordance with the law (it would have to be based on "mistake" or "change in neighborhood." He pointed out that it was more advantageous to the property owners that the changes be addressed during the comprehensive plan update in that there would be more flexibility in determining land use.

During discussion the Commissioners Brugman and Jarboe referred to the Sign Ordinance and the continuing concerns civic organizations and churches have with displaying signs announcing special events. Commissioner Jarboe inquired whether there could be exemptions in order to allow them to display the signs on the side of trailers and asked that the County work with these groups. Mr. Grimm referred to work sessions regarding sign requirements in the comprehensive plan and the efforts made to bring local sign regulations into compliance with state highway regulations. It has been included in the draft plan. Mr. Grimm indicated he thought the issue of signs had been resolved and he would check into it. The County Attorney referred to requirements of the Zoning Ordinance, but pointed out that if it was a matter of interpretation, action for exemption could be made.

Relative to procedures and documentation regarding the Planning Commission's action on the Comprehensive Plan, County Attorney Durkin referred to the provisions of Article 66B that requires amendments to the Plan to be done by Resolution of the Planning Commission. With regard to the role of the County Commissioners, Article 66B indicates that the Commissioners "shall adopt the Plan as a whole or for one or more major geographic sections or divisions of the jurisdiction, and further shall adopt any amendment or extension thereof or addition thereto."

With regard to the 60 days, Mr. Durkin stated that that only applies to the capital improvement plan issues.

During further discussion Mr. Grimm noted that the Planning Commission will be appearing before the Commissioners next week to present its recommendations on the final draft of the Plan. He stated that the Commissioners can accept or reject the recommendations and the Commission will do what the Commissioners direct it to do. If the Commissioners reject the draft Plan it can be returned to the Planning Commission with instructions to make whatever changes necessary to get the Plan adopted.

(Commissioner Chesser left the meeting - 3:15 p.m.)

After discussion Commissioner Jarboe moved, seconded by Commissioner Eagan, to require the Planning Commission to submit the Plan by Resolution. Motion carried.

(Commissioner Chesser returned to the meeting - 3:20 p.m.)

Commissioner Jarboe moved, seconded by Commissioner Brugman, that the Commissioners establish a policy in support of church and civic organizations (non-profit groups) by allowing banner signs to be displayed by those groups in a safe manner with the property owner's permission on a temporary basis (not more than 30 days), that would include banner signs on barns, trucks, trailers, fences, etc. Motion carried with Commissioners Thompson and Chesser abstaining. Commissioner Thompson stated she abstained because she did not have all the information (why signs were not allowed on trailers and whether it was a formal or informal ruling).

COLLIFLOWER AND PETERSON EROSION CONTROL REQUIREMENTS

Commissioner Jarboe advised that Steven Peterson, of Colliflower and Peterson, forwarded a letter inquiring why there were extra requirements for piers for erosion control. Mr. Grimm stated Mr. Peterson had a meeting with staff on this issue and that to the best of his knowledge, the matter has been resolved with Planning and Zoning and that his issues are with the State Department of Natural Resources. DPZ will be submitting a draft response for the Commissioners' consideration. Commissioner Brugman requested that a copy of the letter be forwarded to the State Legislators.

PENDING LIST

The County Administrator reviewed the current Pending List. Additional information included the following:

Emergency Radio Communications - County Administrator will be meeting with MCI next week.

Courthouse Project - Two bid packages will be going out: (1) construction documents; (2) temporary modulars.

FDR Boulevard - Staff to contact SHA to request a presentation to the Commissioners for a report on the project including the Feasibility Study.

Aquaculture Education Center - Commissioner Chesser advised that the Board of Education is considering including this in its environmental studies.

Animal Shelter Proposal - County Administrator to prepare draft agreement for next week.

ARTICLE 66B LEGISLATIVE PROPOSAL

Present: Douglas Durkin, County Attorney
Jon Grimm, Director, DPZ
Mary Lynn Stone, Growth Commission

Mr. Durkin appeared before the Board to present the proposed comprehensive revisions to Article 66B, which is the enabling law for planning and zoning in St. Mary's County. Mr. Durkin's review included the fact that there were four enabling laws for planning and zoning in Maryland which has added to the confusion; history of Article 66B (including past revisions, and the Growth Act, case laws, court decisions regarding variances, discretionary planning and zoning decisions); as well as other issues (Growth Commission position, strengthening role of the comprehensive plan, creation of state-wide uniformity, elimination of "change" or "mistake" rule, changes in procedures for adoption of subdivision regulations); characterizations of the bill offered at MACO including (that the bill is fairly neutral, issues regarding variances, state and county roles regarding planning issues, comprehensive plan content issues, etc.)

In concluding his presentation Mr. Durkin indicated that the Commissioners had three options relative to the proposed legislation: (1) support the bill; (2) oppose the bill; (3) or request summer study.

Mr. Grimm indicated that there was a number of beneficial provisions in the revisions for commissioner counties, for general planning purposes, and for the citizens in expediting the review process, but there were some conflicts in the bill (variances, critical area, building performance standard provisions, and sale of unsubdivided property). Mr. Grimm indicated he would be submitting his comments in writing to the Commissioners.

In closing the Commissioners directed the County Attorney to communicate with the County's Legislative Delegation advising that he has been directed to review the draft bill and that the County will be developing recommendations. Mr. Durkin was requested to report back to the Commissioners in two weeks with recommendations to transmit to the legislators.

**FIRST COLONY PUD PROJECT
OFFICIAL CLOSING OF PUBLIC HEARING**

Present: Jon Grimm, Director, DPZ

All Commissioners were present. DPZ staff present were Jon Grimm, Director; Phil Shire, Planner; and Peggy Childs, Recording Secretary. Assistant County Attorney Steve Norman was also present.

CONTINUATION OF PUBLIC HEARING

ZPUD #96-1607 - FIRST COLONY PUD

Requesting approval of Development Plan and proposed zoning change from Low Density Residential (RL) and Commercial (C) to Planned Unit Development - Mixed Use (PUD-X). The property contains 228.89 acres and is located at the southern quadrant of MD 235/4; Tax Map 34, Blocks 22/23, Parcels 444, 455, 456, 490 & 516.

Present: Owner Casimir Szlendak and Don Cropp, of Porto Bello Development Attorney Bill McKissick, Pat Mudd, Chris Cowie, Pat Coggins, and other members of the First Colony Development Team.

This hearing was continued from January 13, 1998, for applicant to submit information specifically requested by the County Commissioners. At the end of this meeting the hearing will be closed and the record held open for 10 days for written comment, which will then be forwarded to the County Commissioners. However, once the hearing is closed, no new information can be submitted and the Commissioners must deliberate only on information presented during the public hearing. Mr. Grimm said he has reviewed the Zoning Ordinance with Mr. Norman and they both believe there is no time limit for the Commissioners' to act.

The Ordinance requires specific findings to be made in approving the PUD, and the Planning Commission's recommendation makes the findings required by the Ordinance. Mr. Grimm said the Commissioners may adopt the Planning Commission's findings or make their own, and may impose any conditions they think is necessary for the public health, safety, and general welfare.

At the hearing of January 13th, the Commissioners wanted to know what the retail portion of the PUD will look like from MD 235 and requested information regarding the phasing of the project in accordance with the MD 235 road improvements. Chris Cowie offered a video and artist renderings to illustrate the view from 235, adding that the rolling topography, the plantings or the lack thereof, and the existing frontage properties along 235 will provide a clear view in some places and obscure it in others.

Don Cropp, of Porto Bello Development, spoke about the phasing of the development and presented a proposed build-out schedule, revised 2/10/98, and a SHA letter dated 7/3/97 regarding interim road improvements required of First Colony. The retail centers will not open until the Fall of 1999, when the interim improvements are scheduled to be complete. The schedules are as follows:

SHA 235 Improvements Schedule

Shoulder conversion to 3rd thru-lane; Summer 1998 - Fall 1998
Interim improvements; Summer 1999 - Fall 1999
Ultimate Phase 1 Improvements; Summer 1999 - Spring 2001

First Colony Buildout Schedule

Retail/Commercial; 1999 - 2001
Mixed-Use Commercial; 1999 - 2002
Non-Residential (Office); 2000 - 2001
Multi-Family Units; 2000 - 2005
Single Family; 2001 - 2006

Nancy Randall, of Wells & Associates, traffic consultants, agreed that SHA has included the First Colony interim road improvements in their design and, according to them, their schedule is still on target.

Mr. Cropp took this opportunity to correct some "misinformation" he said has been circulated about First Colony. He noted the land donated for FDR Boulevard and that the developer will build his portion of the road. He noted the 5 pages of concessions by this developer and said they have a good working relationship with the county and will be here for the county to come to, should there be anything the county doesn't like.

Commissioner Chesser asked if building materials for the development could be delivered at night to reduce traffic congestion and noise during construction. Mr. Coggins replied that that is not possible and said it is FAISON's experience that there are more complaints regarding trucks and noise at night than in the daytime. In addition, the SHA road construction is to be done at night and, when completed in the Fall of 1998, construction trucks will be using the new shoulder lane to access the development, resulting in only minimal traffic impact.

Commissioner Eagan pointed out that First Colony is not located on the boundary of the development district as has been stated, and that the development district actually extends to the Industrial property across from Wildewood. The discussion concluded with questions by Commissioner Eagan regarding the possibility of eventual commercial zoning from the Industrial property down Route 235.

Commissioner Thompson closed the public hearing at 5:00 p.m. The record will remain open for written comment for 10 days, until February 20th. On conclusion of the open record period, the comments received will be compiled and dispersed to the County Commissioners, and the application scheduled for decision.

**LOCAL MANAGEMENT BOARD
MEMORANDUM OF UNDERSTANDING**

Present: Douglas Durkin, County Attorney
John Kachmar Jr., LMB Incorporator
Steve Welkos, "
Alexis Zoss, "
Ella May Russell, Director, Department of Social Services
Other Interested Parties

Mr. Durkin opened the meeting by giving the history of the establishment of the non-profit corporation, the Local Management Board, and that the Commissioners had directed him to prepare the necessary documents to form the corporation for the Commissioners' consideration. He stated that he prepared the Articles of Incorporation, the by-laws (which can be amended at a board of directors meeting without the county commissioners' approval) and the minutes of the organizational meeting. The Maryland Department of Assessments and Taxation approved the Articles of Incorporation on November 20, 1997.

Ms. Zoss raised a number of questions regarding the Articles of Incorporation, conflict of interest issues, attendance, and the makeup of the Board of Directors. (A copy of her letter setting forth her concerns is on file in the Commissioners' Office.)

Ms. Blazer stated that she believed that the LMB should be more representative of the ordinary citizen and less agency representation. She suggested representation include the following: day care provider, county council of PTA, private psychologist, single parent, a consumer (someone who has received service from an agency).

In conclusion Mr. Durkin presented the Memorandum of Understanding among the State of Maryland, St. Mary's County, and the Local Management Board regarding the establishment of a comprehensive children and family interagency Service delivery system. He recommended that the Commissioners authorize Commissioner Thompson to sign the MOU as presented. He further advised that he is preparing a Resolution to handle the necessary transitions.

After discussion Commissioner Chesser moved, seconded by Commissioner Jarboe, to approve and authorize Commissioner Thompson to sign the Memorandum of Understanding as presented. Motion carried.

Commissioner Eagan moved, seconded by Commissioner Jarboe, to address and make a decision on the other issues at next week's meeting. Motion carried four to one with Commissioner Chesser voting against.

ADJOURNMENT

The meeting adjourned at 6:25 p.m.

**Minutes Approved by Board of
County Commissioners on 2/17/98
Judith A. Spalding
Judith A. Spalding
Recording Secretary**