

**ST. MARY'S COUNTY  
BOARD OF COUNTY COMMISSIONERS' MEETING  
March 31, 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 Eagan moved, seconded by Commissioner Chesser, to meet in Executive Session to discuss a matter of Personnel (Boards, Committees, Commissions), as provided for in Article 24, Section 4-210(a)1. Motion carried three to two with Commissioners Brugman and Jarboe voting against.**

**Commissioner Chesser moved, seconded by Commissioner Eagan, to meet in Executive Session to discuss a matter of Personnel (Mental Health Authority), as provided for in Article 24, Section 4-210(a)1. Motion carried four to one Commissioner Jarboe voting against.**

**Personnel (Boards, Committees, Commissions)**

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  
Delores Lacey, Appointments Secretary

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

Time Held: 11:18 a.m. - 11:55 a.m.

Action Taken: The Commissioners reviewed the current status sheet, made nominations, and gave direction to staff.

**Personnel (Mental Health Authority)**

Present: Commissioner Barbara R. Thompson, President  
Commissioner D. Christian Brugman (left session at 1:20 p.m.)  
Commissioner Paul W. Chesser  
Commissioner Frances P. Eagan  
Commissioner Lawrence D. Jarboe  
John J. Kachmar Jr., County Administrator  
Douglas Durkin, County Attorney  
Dr. Ebenezer Israel, County Health Officer (attended from 12:48 p.m. - 1:50 p.m.)  
Judith A. Spalding, Recorder

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

Time Held: 11:55 a.m. - 1:50 p.m.

Action Taken: The Commissioners continued discussion regarding a Mental Health Authority personnel matter, continued review of options, and agreed to take action in open session.

**Follow Up to Executive Session**

**Commissioner Eagan moved, seconded by Commissioner Chesser to direct staff to draft a letter to the Mental Health Authority directing that they not engage in negotiations for a contract until such time as the Board of County Commissioners completes its deliberations as to who the County wants to have as its Mental Health Case Management provider. Motion carried.**

**PROCLAMATION - BUILDING SAFETY WEEK**

The Commissioners presented a Proclamation designating the week of April 5-11, 1998 as *International Building Safety Week*.

**APPROVAL OF MINUTES**

**Commissioner Eagan moved, seconded by Commissioner Jarboe, to approve the minutes of the Budget Work Session held, Thursday, March 26, 1998 as presented. Motion carried.**

The Commissioners deferred a decision on the minutes for the Commissioners' meeting of Tuesday, March 24, 1998 until verification of the vote on the motion made by Commissioner Eagan regarding direction given to the Planning Commission regarding the Comprehensive Plan.

**Later in the meeting after staff reviewed the video and advised that the vote was four to one with Commissioner Chesser voting against, Commissioner Brugman moved, seconded by Commissioner Jarboe, to approve the minutes of Tuesday, March 24, 1998 as corrected. Motion carried.**

**APPROVAL OF CHECK REGISTER**

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

**ADDITIONS/DELETIONS TO AGENDA**

**Commissioner Eagan moved, seconded by Commissioner Jarboe, to accept the agenda with the following amendment: to correct the time for the zoning amendment public hearing to 4:15 p.m. Motion carried.**

**CONSENT AGENDA**

**Correspondence to:**

1. Edward A. Sprague regarding solid waste and First Colony rezoning.
2. Various letters to individuals regarding the Draft Comprehensive Land Use Plan.
  - a. Larry Greenwell, SMC Commission on the Environment
  - b. Sheila Collicott
3. To Judith A. Osborn regarding growth management, the Draft Comprehensive Land Use Plan and development of Myrtle Point Park.
4. Gretchen Richie concerning Senate Bill 88 (special license plates to fund dog and cat sterilization).
5. Letter to various individuals regarding the Board of Education Budget.
  - a. Emily Jackson, President of the SMC Council of PTAs
  - b. Emily J. Thomas-Harned, President of the Town Creek Elementary School PTA
  - c. Piney Point Elementary School PTA
  - d. Edwin W. Weaver, Student Transportation, Blue Ribbon Task Force
  - e. Wayne and Patricia Parsons
  - f. Charlene Taylor, President of Spring Ridge Middle School PTSA Committee

6. Various letters to individuals regarding education funding in St. Mary's County.
  - a. Mark J. Pinkel, Senior at Leonardtown High School
  - b. Casey Lott, Senior at Leonardtown High School
  - c. Jason Sierra, Senior at Leonardtown High School
  - d. Matthew Holzbauer, Senior at Leonardtown High School

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

During discussion Commissioner Brugman stated that he had some concerns with regard to the letters relative to the Comprehensive Plan stating that he did not think it was appropriate to indicate displeasure with volunteer members of boards in a letter to citizens. He referred to the statement in the letter that a majority of the Commissioners felt comfortable with the new Planning Commission members, which implies that there were some Commissioners who were not comfortable with the selection.

#### **COUNTY ADMINISTRATOR ITEMS**

Present: John J. Kachmar Jr., County Administrator

##### **1. Draft Agenda - April 7, 1998**

During review of the draft agenda Commissioner Thompson indicated that solid waste issues need to be addressed and that there needs to be a public hearing scheduled in order for the Solid Waste Plan to be amended to reflect the changes the Commissioners have made.

##### **2. Budget Amendment No. 98-36 - Recreation and Parks**

Funds to be transferred for completion of Piney Point sitework and parking lot (\$25,000)

**Commissioner Brugman moved, seconded by Commissioner Jarboe, to reject the budget amendment as presented. Motion carried three to two with Commissioners Thompson and Eagan voting against.**

During discussion Commissioner Brugman stated he questioned the moving of funds from Bushwood Wharf and that the Bushwood Wharf project has been ongoing for a couple of years. Further Commissioner Jarboe pointed out during discussion that there was an ownership problem at Bushwood Wharf and inquired whether that issue had been resolved. Commissioner Eagan indicated she wanted more information before considering this budget amendment.

##### **3. Grant Document**

**Alcohol and Drug Abuse Prevention Program and Marcey House  
Modification to Memorandum of Understanding**  
(Supplemental Award #2 (\$35,492))

**Commissioner Jarboe moved, seconded by Commissioner Eagan, to approve and authorize Commissioner Thompson to sign the Modification document as presented. Motion carried.**

##### **4. Resolution No. W/S 98-01**

**Comprehensive Water and Sewer Plan Amendments**  
(Follow up to 4/29/97 and 11/18/97 public hearings)

**Commissioner Eagan moved, seconded by Commissioner Chesser, to approve and sign Resolution No. W/S98-01 as presented. Motion carried.**

5. **Personnel - Office of Sheriff**  
(Follow up to previous executive session - Requesting exception to hiring policy)

**Commissioner Chesser moved, seconded by Commissioner Eagan, to waive the Personnel Manual policy and hire Mark Howard as a deputy in the Sheriff's Office at a Grade 10, Step 3, because of his experience, effective April 9, 1998. Motion carried.**

6. **Letter to Governor's Office of Crime Control and Prevention  
Maryland Victims of Crime Funds**

(Letter in support of St. Mary's Hospital's request for Maryland Victims of Crime Funds for the Sexual Abuse Nurses Examiners Program in St. Mary's and Calvert Counties.)

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

7. **Letter to State Board of Education  
Maintenance of Effort**

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

#### **COUNTY COMMISSIONERS' TIME**

##### **Three Oaks Center**

Commissioner Chesser referred to the funds for Three Oaks Center being removed from the Recommended Budget and requested consideration to reinstate those funds.

#### **PUBLIC HEARING**

##### **1998 SUPPLEMENTAL APPROPRIATION ORDINANCE**

Present: Steve Welkos, Director of Finance

The Commissioners conducted a public hearing to consider a supplemental appropriation of \$10,000 from the Governor's Office of Crime Control & Prevention which may be used for the purpose of paying overtime to officers performing approved law enforcement functions under the Maryland HotSpot Communications Initiative within targeted zones in Lexington Park, Maryland.

Hearing no comments the public hearing was closed. The record will remain open for ten days.

#### **FISCAL YEAR 1999 RECOMMENDED BUDGET**

Present: Steve Welkos, Director of Finance

As a follow up to a number of work sessions, Director of Finance Welkos appeared before the Board to present and review the Recommended Budget for Fiscal Year 1999.

Areas of discussion included: Sheriff's request regarding overtime compensation; Three Oaks Center; and the \$569,000 set aside for the Board of Education upon receipt of a prioritized list.

It was the consensus of the Commissioners that any changes can be considered during deliberations for the final budget.

**After discussion Commissioner Eagan moved, seconded by Commissioner Chesser, to sign the Recommended Budget for Fiscal Year 1999 as presented. Motion carried four to one with Commissioner Chesser voting against.**

During discussion of the motion Commissioner Eagan moved, seconded by Commissioner Jarboe, that instead of a line item, that the \$569,000 be placed in the designated fund balance until the County receives the Board of Education's prioritized list. After discussion the motion failed 0 to 5. The Commissioners stated that the \$569,000 has been set aside for the Board of Education and that members of the Bd/Ed have assured the Commissioners that a list of priorities will be submitted; and further, the Commissioners will be going to public hearing on the budget and conducting deliberations on the various requests.

In addition during discussion of the motion, Commissioner Thompson suggested that a public hearing be held on the Solid Waste Plan because the Commissioners have included using general revenue funds to fund the solid waste program.

## **LITIGATION DOWN VS. QUADE**

Present: Douglas Durkin, County Attorney

Commissioner Chesser moved, seconded by Commissioner Thompson, to meet in Executive Session to discuss a matter of Litigation (*Down vs. Quade*), as provided for in Article 24, Section 4-210(a)8. Motion failed two to three with Commissioners Brugman, Eagan and Jarboe voting against.

County Attorney Durkin provided the Commissioners with the background on the referenced legal matter, *Downs vs. Quade*, a lawsuit that involves a .68 acre parcel that has been almost entirely consumed by the Chesapeake Bay Critical Area buffer, by the County's setback requirements, and the designated area for a mound system, leaving the landowner with only 298 square feet of building area. The Board of Appeals approved variances for the property, which has been challenged in court by neighboring property owners. The first challenge went as far as the Court of Special Appeals; the current appeal is in the Circuit Court.

During his presentation Mr. Durkin advised the Commissioners that he has not made a formal admission in court that this case is an unconstitutional taking of private property; however, if it is determined to be unconstitutional taking, he offered three options for the Commissioners' consideration:

1. Challenge the validity of the legislation that creates the regulatory taking for purposes of invalidating the unconstitutional portion, or, if the County is responsible for the unconstitutional legislation, the Ordinance should be amended.
2. Condemn the property or await a takings lawsuit, and any fair market value for the land and any other appropriate money damages as may be awarded by the Court, or
3. Grant a variance so as to avoid the unconstitutional confiscation of private property.

Other options presented by Attorney Durkin were: (1) zoning map amendments to take the property out of the critical area zone; (2) text amendment to rewrite the restriction to remove the 100 foot buffer. Mr. Durkin pointed out, however, the Commissioners did not have the authority to do either option in that they were state mandated.

Areas of discussion included challenging the critical area restrictions because they do not provide for variances; ramifications of challenging the constitutionality of the entire critical area restrictions or to make it specific to this case only; court decisions requiring a property to be unique before a variance can be justified; legislative/administrative remedies; and correspondence to the Attorney General regarding the validity of statute and regulations.

After discussion Commissioner Eagan moved, seconded by Commissioner Brugman, to challenge the validity of the Critical Area regulations and the DNR regulations. Motion failed one to four with Commissioners Thompson, Chesser, Eagan and Jarboe voting against.

During discussion of the motion, Commissioner Chesser expressed concern regarding the possible impact on the Chesapeake Bay if the critical area law is determined to be invalid and that the Commissioners should move cautiously one step at a time; Commissioner Jarboe indicated concurrence with Commissioner Chesser and that the County's zoning ordinance should be revised to reflect variance requirements as is done in other counties; Commissioner Thompson indicated this situation raises a good question about the establishment of the 100 foot buffer and what it was based on, and that it needs to be pursued.

**After discussion the Commissioners directed the County Attorney to draft correspondence to the County's Legislative Delegation providing them with the exhibits of the referenced law suit and requesting a legislative resolution to the matter.**

#### DEPARTMENT OF PLANNING AND ZONING

All Commissioners were present. DPZ staff present were Jon Grimm, Director; and Peggy Childs, Recording Secretary. County Attorney Doug Durkin was also in attendance.

#### PUBLIC HEARING

#### TEXT/MAPPING CHANGES TO ZONING ORDINANCE

To correct errors in the Zoning Ordinance

Legal Ad published in The Enterprise on 3/13/98 & 3/20/98

#S-1 - Certified Receipts of notification to contiguous property owners

#S-2 - January 30, 1998 Staff Report

#S-3 - DPZ File

Mr. Grimm advised that the subject properties were posted by staff as to the public hearing and the specific change appropriate to each property. The changes are to reinstate text which was erroneously omitted from the Ordinance and to correct typos and housekeeping errors found over the years in the 1990 Zoning Ordinance. A finding of "mistake" is required for the mapping changes. Commissioner Eagan asked Mr. Grimm to point out instances as he went along where applications were denied because of these mistakes. He agreed, stating there were a half-dozen or so applications for accessory uses or expansions to existing uses which may have been affected, varying from office buildings to duplexes to home occupations, and he would be glad to provide that information during the open record period.

On February 9, 1998, the Planning Commission held a public hearing on the proposed changes, and, on February 23, 1998, recommended approval as follows:

Page #	Citation	Issue
		Do a global search and remove all old § references
14	Table 20.2	Correct District § numbers
25	Tables 2.1-.10	Add Ag District on all Table of Uses; remove old § numbers from bottom of tables; insert former RNC language allowing existing uses as "conditional uses" by neighborhood zone.
	Table 2.8	Add accessory uses in the RNC; correct roadside standard language; Remove old § numbers.
	Table 2.10	Correct PUD-X minimum tract size to 20 acres.
215-216	§40.10.4	Insert old §34.00.2(j) in commercial zones for vehicular access points.
223	§42.6.2	Change §40.5 to 55
275	Table 48.06.1	Correct to 48.6.1
275	§48.6.1	Remove "except in the RNC"

Page #	Citation	Issue
284	§51.1.6	Change §38.3 to 38.2
306	§53.15.2	Change §20.2.31 to 20.2.3
306	§53.15.3	Remove §32.1 reference
307-311	§53.18	Mobile home & mobile parks: reorganize §c,d,e under §53.18.1. Under §58.18.3.a, change §40.5 to 55.
322	§53.28	Insert former bed and breakfast standards
326	§55.00.2.a	Change (6) to "(f) below"
359	§61.9.2	Change "first class mail" to "certified mail"
369	§66.1	Typos. 4 5. continuance, 5 6. additional requests, 6 7. appeals
373	§66.3.4.b	Change §66..8 to §66.0.8
399	Definitions	Roadside stands - shall not exceed <del>750</del> 2,000 sf

**Zoning Map Amendments** (to correct 1990 mapping mistakes)

Sophie Clayton - TM 52, P 191, aka TM59, P/O Parcel 145 - correct PUD to RPD

Cecil's Store - TM 50, Parcels 241 & 342 - correct RPD/CL to CL

Clarke's Landing Restaurant - TM 27, Parcel 159, Lot 1 - Correct RPD to CL

Clarke's Landing Bulk Plant - TM 27, P 159, Lot 1 - Correct RPD to CM

Carl Schmitz - TM 26, P 838 - Correct CM to RPD

Gertrude Cusic - TM 26, P 52 - Correct RPD to CL

Kessler Body & Equipment - TM 63, P 132 - Correct from RPD to CL

\* Sues's Store - TM 27, P 395 - Correct RPD to CL (Owner now requests RPD).

Commissioner Jarboe asked how other property owners, who think their property was zoned in error, could get included in these mapping changes. Mr. Grimm replied it is too late for them to be considered during these rezonings, but they should write a letter during the 10-day open record period to be considered at a later date.

County Attorney Doug Durkin advised that piecemeal rezonings are legal as long as there is adequate evidence of change or mistake and the change was not anticipated at the time the comprehensive plan, zoning ordinance and maps were adopted. Under Maryland case law, a finding of "mistake" can be made, if:

- (1) The assumptions relied upon in the last comprehensive rezoning were incorrect.
- (2) At the time of the last comprehensive rezoning, existing facts or foreseeable trends were not considered.
- (3) Subsequent facts reveal that assumptions and conclusions relied upon at the last comprehensive rezoning were erroneous.

Mr. Durkin stated the Commissioners could avoid the change or mistake issue altogether if they treat the rezonings as part of the comprehensive zoning now underway. Regarding the text changes, that decision is a legislative action and can be done without applying the change or mistake rule.

Mr. Grimm replied he believes the summary of the Planning Commission's recommendation provides the legal and factual foundation to make those findings, but provided copies of his February 20, 1998 memo, which shows where staff relied upon an inventory of nonconforming uses, tax data and tax data, and found, subsequent to the 1990 comprehensive rezoning, found that there were errors in the data base used to make the zoning map decisions.

Commissioner Jarboe questioned Table 2.2, which allows manufactured home and camper sales on industrial property, but not repair. He said he thought, in the Dick's RV decision, the Commissioners said you could do the repairs on industrial property. Mr. Grimm replied he will check into that and provide a response during the open record period.

The Chair opened the hearing to public comment.

Dan Carroll, the owner of Sues's Store, said the store has been vacant for 4 years and he has been trying to sell it, but can't. He has made improvements to the property, the underground gas tanks have been removed as required by MDE, who is monitoring the property. The property is not sellable and he doesn't want zoning that will make the property any more expensive to maintain. Mr. Carroll said he has been paying commercial taxes on the property since 1988-89 and he is requesting the property be downzoned to RPD. Mr. Grimm noted that the property was never really zoned commercial, but he doesn't know whether that would affect his taxes paid or not. Commissioner Jarboe pointed out, if the property is downzoned to RPD, it cannot be sold as a store and the residential assessment might be higher than the commercial assessment.

Mr. Carroll responded that he just wants to get the taxes lowered. He said the neighbors don't want it zoned commercial and neither does he. He said how it is zoned is not an issue with him as long as the taxes don't go up and asked if, under the current RPD zoning, he could sell it as a residence? When told that he could, Mr. Carroll said then he'd like to see it remain.

Kelly Smith, who owns property adjacent to Sues's Store and who spoke against the rezoning at the Planning Commission hearing because of the size of the lot, said she was confused. Mr. Grimm replied that the Planning Commission recommended the rezoning to CL to correct the mistake, but Mr. Carroll is requesting the property remain residential. If the Commissioners choose to take no action, the property will retain its current zoning of RPD.

Sonny Burch, the leaseholder for the Clarke's Landing Bulk Plant, agreed with the proposed rezoning to CM, but said he is concerned that the error was discovered through an Estate. He said he has been trying to get the zoning corrected for 2 years. Regarding the Clarke's Landing Restaurant and the Carl Schmitz zonings, which were switched in 1990, Mr. Burch said Mr. Schmitz is planning to build a home on his property, and he could not have done that with the incorrect CM zoning.

Greg Brenner, Laurie Webb, and Bob Wahl, spoke on behalf of Bell Atlantic, who is anxiously awaiting a text amendment to Table 2.8 to allow accessory uses in the RNC. They attested to the critical need to upgrade their Patuxent Park station by the 4th quarter of 1998, in response to the tremendous increase for telephone lines created by computers and the Navy Base expansion. They said they are on the brink of desperation and several areas of the county, including Leonardtown and Ridge, are in jeopardy of losing service during peak evening hours. The amendment is required to allow Bell Atlantic to apply for conditional use approval from the Board of Appeals to expand their Patuxent Park facility. They asked that the Commissioners approve the text change as expeditiously as possible.

Attorney Karen Abrams, spoke on behalf of her clients, the Sophie Clayton heirs, providing the history of the property, which was mistakenly included in the Reilly PUD in 1986.

**There were no further comments. The public hearing was closed at 5:54 p.m. The record will remain open for 10 days for written comment, following which a decision will be scheduled by the Commissioners. Mr. Grimm will provide the information promised and draft a Resolution for the County Attorney's review and the Commissioners' signatures.**



**ZONING ORDINANCE DISCUSSION**

Because the Planning Commission will be occupied with the rewrite of the Comprehensive Plan in the coming months, Mr. Brugman moved that an outside consultant be hired to help prepare a Draft Zoning Ordinance for review by the Commissioners in conjunction with the Comprehensive Plan. Mr. Brugman said, hopefully, both documents can be adopted by Summer.

The motion was seconded by Commissioner Chessser and passed by a vote of 5-0. Staff was directed to prepare a Request for Proposal to hire the consultant.

(Commissioner Eagan left the meeting at 6:16 p.m.)

**EMPLOYMENT CONTRACTS**

Commissioner Jarboe moved, seconded by Commissioner Brugman to meet in Executive Session to discussion a matter of personnel (employment contracts for County Administrator and Director of Economic Development). Motion failed one to three with Commissioners Thompson, Chessser, and Jarboe voting against. Relative to the County Administrator's contract Commissioner Thompson requested additional information prior to beginning the review.

**ADJOURNMENT**

The meeting adjourned at 6:30 p.m.

Minutes Approved by Board of  
County Commissioners on 4/7/98  
*Judith A. Spalding*  
Judith A. Spalding  
Recording Secretary