

**ST. MARY'S COUNTY
BOARD OF COUNTY COMMISSIONERS' MEETING
August 4, 1998**

Present: Commissioner President Barbara R. Thompson
Commissioner D. Christian Brugman
Commissioner Lawrence D. Jarboe, Vice President
Commissioner Paul W. Chesser
Commissioner Frances P. Eagan
Mortimer L. Smedley, Assistant County Administrator
Judith A. Spalding, Recorder

CALL TO ORDER

The meeting was called to order at 1:05 p.m.

APPROVAL OF MINUTES

Commissioner Jarboe moved, seconded by Commissioner Eagan, to approve the minutes of the Commissioners' meeting of Tuesday, July 28, 1998, as presented. Motion carried.

APPROVAL OF CHECK REGISTER

Commissioner Jarboe moved, seconded by Commissioner Eagan, to authorize Commissioner Thompson to sign the check register, as presented. Motion carried.

ADDITIONS/DELETIONS TO AGENDA

Commissioner Jarboe moved, seconded by Commissioner Eagan, to accept the agenda as amended (to delete the discussion on the Clements Landfill property in that the Commissioners had already made the decision on July 21 to go ahead with the subdivision of the property). Motion carried.

CONSENT AGENDA

Correspondence to:

1. Paul Armstrong, State Highway Administration, regarding maintenance of medium plantings and landscaping along reconstruction of MD 235.
2. Paul Armstrong, State Highway Administration, regarding Opticom system at intersection of southbound MD 5 and Mechanicsville Road.
3. Jim Claudill pertaining to improvements along Route 235 between NAS North Gate and MD Route 4.
4. Leonard Raley, SMC Fire Board Association, regarding MCI proposal.
5. James D. Blackwell Jr. relative to request for rezoning of property located on Gunston Drive.
6. Jack Thompson relative to request for rezoning of property on Clover Hill Road.
7. Paul Chiriaco, So. Md. Association of Realtors, relative to Comprehensive Land Use Plan.
8. George T. Edmonds regarding flooding conditions in Piney Point Shores.

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

COUNTY ADMINISTRATOR ITEMS

Present: Mortimer Smedley, Assistant County Administrator

1. Grant Documents
 - a. Department of Planning and Zoning
(Historic Preservation Grant Agreement – Phase 5)

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

- b. Office on Aging
 - (1) Grant Application – Child and Adult Care Food Program
State Funding: \$39,000

Commissioner Chesser moved, seconded by Commissioner Eagan, to approve and authorize Commissioner Thompson to sign the Grant Application as presented. Motion carried.

- (2) Grant Agreement – Senior Nutrition; Senior Guardianship; Senior Information and Assistance; Senior Care
(State Funding: \$158,472)

Commissioner Chesser moved, seconded by Commissioner Eagan, to approve and authorize Commissioner Thompson to sign the Grant Agreement as presented. Motion carried.

- c. Office of Community Services
Comprehensive Traffic Safety Program
(State Funding: \$52,000; County Funds: 40% in-kind match/\$16,000)

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

2. Local Government Insurance Trust
Sixth Amendment to Trust Agreement

(LGIT has dissolved its capitalization fund and is returning the capital originally invested to set up the Trust to the original members; the agreement also amends language in the "Rules for Arbitration" section.)

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

3. Local Government Investment Report (required by State to be filed twice a year)

Commissioner Chesser moved, seconded by Commissioner Eagan, to approve and authorize Commissioner Thompson to sign the Local Government Investment Report as presented. Motion carried.

4. Information Release
(Maryland Association of Counties Summer Conference)

Commissioner Brugman moved, seconded by Commissioner Eagan, to approve distribute the Information Release as presented. Motion carried.

5. Boards, Committees, Commissions
Letters of Appointment and Appreciation

Commissioner Brugman moved, seconded by Commissioner Jarboe, and motion carried to make the following appointments.

Commission on Aging

Richard Bjurberg

Terms To Expire

6/30/2001

Commission for Women

Michele DeMoss-Coward

6/30/2001/2005

Southern Maryland Travel and Tourism Committee

Lawrence S. Haskell

Karin B. Stanford

NO TERM

NO TERM

6. Piney Point Lighthouse Keepers Quarters Lease Agreement
(Certification received indicating the property passed inspection)

Commissioner Eagan moved, seconded by Commissioner Chesser, to approve and authorize Commissioner Thompson to sign the Lease Agreement as presented. Motion carried.

**PROCLAMATION
NATIONAL NIGHT OUT**

The Commissioners presented a Proclamation designating Tuesday, August 4, 1998 as National Night Out.

COUNTY COMMISSIONERS' TIME

University of Maryland Boards Study

Commissioner Chesser reiterated his request for a copy of the referenced University of Maryland study. Staff will have a copy made available to him.

Boat Ramp at Piney Point

Also Present: Phil Rollins, Director, R&P

Commissioner Eagan advised that she received a telephone call from a gentleman regarding the boat ramp at Piney Point. There is a raised cement strip on the ramp to prevent cars from going past it into the water; however, when the tide is high, it is not visible, and people are getting their boats scraped when trying to get them in the water.

Mr. Rollins said that the cement block will be relocated, but the work will not be done until next spring or summer.

Meridith Property

Commissioner Jarboe advised that the trailer has been removed from the Meridith property (the property the county confiscated from a drug related arrest), and that it has been reseeded by DPW and is now an attractive site. He congratulated DPW and the County Attorney's office in their efforts of turning something negative into something positive.

Airport Commission/Airport Leases

Commissioner Thompson raised the question of how the dissolution of the Airport Commission affects the airport leases; however, she said it was her understanding that the leases were being rewritten and may be addressed in the rewrites.

DEPARTMENT OF PLANNING AND ZONING

Present: Jon Grimm, Director, DPZ

Comprehensive Plan – Sensitive Areas Plan

Mr. Grimm appeared before the Board to address questions raised regarding the Sensitive Areas portion of the Comprehensive Plan. Commissioner Jarboe inquired that even though the Comprehensive Plan was being held up for rewrite, whether the County still had to adopt a Sensitive Areas Plan.

Mr. Grimm responded that the County was under mandate to adopt the Sensitive Areas Plan by July 1, 1998. The Maryland Office of Planning sent a letter to the County that failure of the County to adopt the required sensitive areas element may result in an imposition of regulations that have been prepared, but not yet promulgated relative to the four sensitive areas within the 1992 Planning and Growth Act: streams and their buffers, flood plans, steep slopes and habitats of threatened and endangered species. Commissioner Jarboe inquired whether the State plan more restrictive than what the County is planning to adopt.

Mr. Grimm responded that there are some areas that are more restrictive. He further pointed out that County Attorney Durkin has reviewed the proposal by the State and responded to the Assistant Attorney General (by letter dated April 28) indicating it was his belief that the State, under the Planning Act, does not have the authority to impose regulations. There is an administrative procedures act requirement to promulgate regulations which must be followed.

Mr. Grimm pointed out that there are provisions in the current Zoning Ordinance under Section 49 that address resource protection standards for streams, flood plains, and steep slopes. The missing component is the protection of threatened and endangered species outside of the critical area on parcels that are exempt under the Forest Conservation Law. There are requirements under the critical area law to identify and protect the habitats of threatened and endangered species and requirements within the Forest Conservation Act for the identification and protection of threatened and endangered species, but unlike the critical area law, within the FCA there is an exemption that could exclude certain habitats covered by the State law.

A letter from MOP indicated that our draft plan conformed fully to the all of the requirements of the 1992 Planning Act.

Discussion ensued regarding the adoption of the Sensitive Areas Plan separate from the adoption of the Comprehensive Plan. Mr. Grimm indicated that one of the conclusions of the County Attorney was an option to do that, and if so a public hearing would not be required because a hearing had been held in October; however, Mr. Grimm pointed out that this advice must be coupled with other legal advice which is that the Commissioners must accept or reject the Plan as it was submitted to the Board by the Planning Commission.

Mr. Grimm indicated that it might be appropriate to make a motion requesting the Planning Commission to recommend only the sensitive areas component of the Plan and that the Planning Commission submit this recommendation to the Commissioners by Resolution.

During discussion Commissioner Jarboe expressed concern that the State could withhold Rural Legacy funding to the County if the Sensitive Area component was not adopted. Mr. Grimm stated that one of the oversight abilities of the State was to withhold funding, and Rural Legacy funding as well as other funding could be at risk.

Commissioner Eagan moved, seconded by Commissioner Jarboe, to direct the Planning Commission to review the Sensitive Area component of the draft 1998 Comprehensive Plan as an amendment to the current 1988 Comprehensive Plan and

that the Planning Commission submit it to the Commissioners by Resolution. Motion carried four to one with Commissioner Chesser voting against stating he thought the draft comprehensive plan was a good plan and should not be adopted piecemeal.

During discussion Commissioner Thompson questioned the adoption of the sensitive areas portion of the draft 1998 plan as an amendment to the 1988 plan without going to public hearing, and further questioned the changes in the draft comprehensive plan relative to changes to the development district maps based on the sensitive areas. It should be done in a comprehensive way to better address the issues of growth and resource protection and the provisions of the 1992 Planning Act. Commissioner Thompson requested a review of the issue that a public hearing would not be required before it comes back to the Commissioners by Resolution.

**Unified Land Use Development Code/Comprehensive Plan
Procurement Process**

Also Present: Jim Haley, Director, Office of Central Services

As a follow up to a request by Commissioner Eagan, staff appeared before the Board to discuss the procurement process for the preparation of the Unified Land Use Development Code. Mr. Haley explained that the Commissioners on April 1 directed staff to begin the process to complete the Unified Land Use Development Code (Zoning Ordinance). Samples of Request for Proposals (RFP's) were received from the National Institute of Government Purchasing. After review of the samples, staff decided to send out Requests for Qualifications (RFQ's) to get list of firms that could provide this service. 100 letters were sent and ten responses were received, which were reviewed by staff and a short list developed.

Concurrently during this process, Director of Planning and Zoning Grimm developed a scope of services. Interviews were held July 1, and staff selected the highest technically ranked firm, DIET. Mr. Haley reported that a request for cost proposal was requested from this firm and is expected on August 14 after which the negotiation process would begin. (If the selected firm is determined to be unacceptable costwise, the County will go with the second firm.)

Commissioner Eagan inquired whether the firm selected for the writing of the Zoning Ordinance could use the information the Planning Commission has been working on regarding the Comprehensive Plan and incorporate it into the writing of the Zoning Ordinance. She said it was her understanding that the Planning Commission had addressed most of the issues raised by the Commissioners and there were a couple more to address. She said it did not look like this Plan could be written so that it can go to public hearing and get back in front of the Commissioners before the election and this should not be part of an election year process. These Commissioners should be able to decide on the Plan because it was this board which requested that certain portions be rewritten.

Mr. Grimm suggested that he take this question to the Planning Commission and see if they would like assistance in writing of the Plan. He pointed out that the progress (or lack of progress) was not because of lack of support, information, data, options, or discussion of options but it was his opinion that it was because of lack of consensus. He was hoping that it could be scheduled for public hearing in September. There are two issues remaining; agricultural preservation including TDR's and access management controls along major thoroughfares. It was Mr. Grimm's opinion that having the consultant would not expedite the process because the Planning Commission does not lack support to get the plan written and back to the Board, but the Commission needs to make some decisions about their recommendations.

Commissioner Thompson stated that a Comprehensive Plan is being drafted which drives the Zoning Ordinance and which will not be adopted by the current board. A public hearing could be held and the Plan adopted by this Board; however, the new Board, which will have to implement the plan via the maps and zoning ordinance, may not want

this plan. She stated she did not think this Board should go forward with this Plan and that this Board should let the new board carry it forward.

After discussion Commissioner Eagan moved, seconded by Commissioner Brugman, to request the contractor, DIET, that when they submit their cost for the Zoning Ordinance to also provide costs if they also wrote the comprehensive plan from the information the Planning Office would submit to them. Motion carried four to one with Commissioner Thompson voting against.

(A decision will not be made regarding the writing of the Comprehensive until costs and time frame are submitted.)

Mr. Haley pointed out that in order to complete the process for the writing of both documents, it would take approximately nine months to a year.

MYRTLE POINT FIDS STUDY STATUS REPORT

Present: Phil Rollins, Director, Recreation and Parks

As a follow up to previous discussion, Mr. Rollins presented the results of the Forest Interior Dwelling Bird Species Study (required by the Critical Area Commission) at Myrtle Point, and pointed out that the Study indicated that "West Woods" portion of the property contains the property's only official habitat. He stated that the consultant that did the study did not think this would present a problem; however, the Critical Area Commission has only had the report for a couple of days and has not come to any conclusion whether or not there is any problem. This area has been designed for camping and should not interfere.

Mr. Rollins advised that the consultant has been directed to proceed with the completion of the Comprehensive Master Plan based upon the results of this report, and the Plan should be completed by the end of August. It will be distributed to the various boards (Recreation and Parks, Planning Commission, County Commissioners). September 28 has been tentatively set for a joint meeting with the Planning Commission and Recreation and Parks board at which the consultant will give a presentation on the draft. A similar presentation will be made to the Commissioners in early October.

Commissioner Brugman indicated that the plan had been delayed long enough and requested that the meetings be moved up.

During discussion Commissioner Jarboe referred to HB 673 which prohibits the denial of access to public property to fisherman and inquired about the cable across the property inside the gate at Myrtle Point. Mr. Rollins responded that the cable was not for the purpose of denying access to the water, but to control access for safety reasons because there is no staff at the site. Mr. Rollins responded that he would look at the access road to and see if it could be made a parking area. He further expressed concern that the road may go through the archaeological areas.

Other areas of discussion included whether the property was actually "pristine" (the central area of the park is not pristine); the \$200,000 allocated in FY '99 for the park (for design, construction, and development); buffer areas; location of fields, use of the fields as practice fields rather than games; that 20% will be used for active park (with the remaining 80% for nature and archaeological sites).

In conclusion the Commissioners requested Mr. Rollins to see if the joint meeting could be moved up (possibly September 14).

**PUBLIC HEARING – WICOMICO SHORES SUBDIVISION – PHASE II
GOLF COURSE DRIVE EXTENDED**

Present: George Erichsen, Director, Department of Public Works
Douglas Durkin, County Attorney
Larry Petty, Director, Metropolitan Commission

The Board of County Commissioners conducted a public hearing to receive comment on the Golf Course Drive Extended Special Taxing District relevant to rescinding Ordinance No. 95-13 which established the district for the purpose of constructing a road in the Wicomico Shores Subdivision, Fourth Election District (from Golf Course Drive to Lake Drive North (approximately 2,700 feet in length).

Mr. Erichsen read the notice of public hearing which was published in *The Enterprise* on July 22 and July 29, 1998.

Mr. Erichsen explained the history of the project, Phase II of Wicomico Subdivision, (containing 59 lots, 35 of which are owned by individuals and the remainder by Wicomico, Inc.) the proposed assessment (\$340 per year per owner) and further explained each of the three phases and the estimated costs.

In response to an inquiry from Commissioner Eagan as to whether Phase III can be discussed during this hearing, Attorney Durkin said it may only be discussed if it is relevant to this public hearing; however, to discuss the Phase III project outside the scope of this hearing would require another public hearing.

Other areas of discussion included whether the establishment special taxing district was done properly (County Attorney Durkin there were three issues to consider (sufficiency of title to road bed; sufficiency of petition and identification of the boundaries; and policy decision of the board). He stated there is sufficiency of title from the perspective of a title examiner for the road but it does not rise to the level that this board has asked for—the County has received a quit claim deed which is minimally sufficient; there was sufficiency of the petition; and the County Administrator had previously raised a policy question—is this an appropriate use of government financing in this case? The Commissioners have legislative discretion with this issue.

The hearing was opened for comments from the public.

Ralph J. Schweinefuss – Requested the Commissioners to reverse their decision to rescind the Ordinance pointing out that a number of people purchased their lots with the understanding that the Commissioners would approve the taxing district (that roads, water and sewer would be put in).

Bob Knapp – Expressed concern about the Commissioners' intention to abandon the taxing district.

William Hulcher – Reiterated the points he made at the July 14 meeting; stated that people bought the lots under the assumption the subdivision would be built out; pointed out that the County currently collects approximately \$2,000 in property taxes, and that revenues would increase to approximately \$70,800 making it a win/win situation. (Mr. Hulcher submitted copies of petitions requesting reversal of the decision to rescind the Ordinance establishing the taxing district.

Shawn Hughes (nee Slagle) – Requested that the Commissioners reconsider their decision to rescind the ordinance establishing the special taxing district.

Art Thomas – Requested reconsideration of the decision to rescind the Ordinance establishing the taxing district.

Robert Grant – Stated he would like to see the special taxing district go forward.

The public hearing was closed; the record will remain open for ten days for written comment.

At the conclusion of the hearing, Commissioner Eagan moved, seconded by Commissioner Jarboe, to request a public hearing for the discussion of Phase III for a special taxing district.

During discussion of the motion, the Commissioners agreed to vote against the motion and schedule a discussion on Phase III at next week's meeting (August 11, 1998). Staff was directed to report on what needs to be done to proceed with a special taxing district (informational meeting, petitions, public hearing, etc.).

The motion failed by vote of 0 to five.

EXECUTIVE SESSION

Commissioner Chesser moved, seconded by Commissioner Eagan, to meet in executive session to discuss a matter of Personnel (County Attorney's Evaluation), as provided for in Article 24, Section 4-210(a)1. Motion carried.

Executive Session - Personnel (County Attorney's Evaluation Review)

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

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

Time Held: 4:15 p.m. - 4:25 - p.m.

Action Taken: The Commissioners reviewed with the County Attorney his annual performance evaluation.

ADJOURNMENT

The meeting adjourned at 4:25 p.m.

NATIONAL NIGHT OUT

The Commissioners participated in the National Night Out activities.

Minutes approved by the
Board of County Commissioners on 8/11/98

Judith A. Spalding
Judith A. Spalding, Recorder