

**ST. MARYS COUNTY**  
**BOARD OF COUNTY COMMISSIONERS' MEETING**  
**September 8, 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  
Mortimer L. Smedley, Assistant County Administrator  
Mary M. Langley, Recording Secretary

### **CALL TO ORDER**

The meeting was called to order at 1:10 p.m.

### **APPROVAL OF MINUTES**

Commissioner Eagan moved, seconded by Commissioner Jarboe, to approve the minutes of Tuesday, September 1, 1998 as amended. Motion carried.

### **APPROVAL OF BILLS**

Commissioner Eagan moved, seconded by Commissioner Chesser, to authorize the payment of bills as presented. Motion carried.

Commissioner Brugman moved, seconded by Commissioner Chesser, to authorize the payment of bills for the coming week, as there will be no meeting on September 15, 1998. Motion carried.

### **ADDITIONS/DELETIONS TO THE AGENDA**

**Commissioner Eagan moved, seconded by Commissioner Brugman, to approve the agenda as amended** [add: Planning Commission—Recommendation on Remand of Comprehensive Land Use Plan (CLUP); Budget Amendment for CLUP/Land Development Code Consultant; County Attorney—Recommendation on Piece-mealing MCI proposal; and Planning & Zoning—Resolution to adopt Sensitive Areas Element as amendment to CLUP]. **Motion carried.**

### **CONSENT AGENDA**

The Consent Agenda included the following correspondence to:

1. Secretary Griffin, MD Dept. of Natural Resources, relative to the proposed Waterway Improvement Taxing District for Dukehart's Creek.
2. Linda Lamone, State Administrative Board of Election Laws, relative to recent audit of local boards of supervisors of elections.
3. Deputy Secretary Porcari, MD Dept. of Transportation, relative to rights-of-way acquisitions.
4. Joseph Suchomel relative to request for materials for students in Greece.
5. Various individuals relative to Wicomico Shores Special Taxing District, Phase II.
  - a. John R. Kennedy
  - b. Lee F. and Elizabeth Levangie

6. Headmaster Suzanne Youngson, Leonard Hall Junior Naval Academy, relative to request to limit parking near the academy (two versions—a & b).

**Commissioner Eagan moved, seconded by Commissioner Brugman, to approve the Consent Agenda with the exception of letters #2 and 6B (send 6A). Motion carried 4-1, with Commissioner Jarboe voting against.** Commissioner Jarboe indicated that he would not be supportive of anything about Wicomico Shores until the development company provides certain guarantees in writing. Commissioner Thompson requested that Catherine Countiss, Supervisor of Elections, come before the County Commissioners to explain the audit findings and what is being done to correct them before the upcoming election.

#### **COUNTY ADMINISTRATOR ITEMS**

Present: John J. Kachmar Jr., County Administrator

1. Ordinance 98-42 – FY 1999 Supplemental Appropriation  
Circuit Court / Family Support Services Coordinator -- \$35,790 State Grant Funds  
(Follow up to August 25, 1998 public hearing)

**Commissioner Brugman moved, seconded by Commissioner Eagan, to approve and authorize Commissioner Thompson to sign Ordinance 98-42 as presented. Motion carried.**

2. Grant Agreement – Office of Central Services  
FY 1999 Statewide Special Transportation Assistance Program (SSTAP)  
\$72,116 State Grant (75%); \$24,039 County Funding

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

3. Department of Public Works Documents
  - a. Street Light Change Order – SMECO  
Street light (already installed by SMECO) at the intersection of MD Route 4 and Indian Bridge Road.

**Commissioner Eagan moved, seconded by Commissioner Chesser, to approve and sign the SMECO Street Light Document as presented. Motion carried.** Commissioner Thompson indicated she would delay signing until later in the meeting after the Director of Public Works provides an explanation of the document.

At a later time during the meeting, George Erichsen indicated that SMECO has basically providing the light pro-bono, being paid back through the electric fee of \$11.02 per month. He advised that he would like to see a formal program come out of this.

- b. Public Works Agreement Addenda
  - (1) Christmas Hill Subdivision--extending completion date to September 1, 1999; backed by a Letter of Credit in the amount of \$21,000 provided by the Maryland Bank & Trust Company.

**Commissioner Chesser moved, seconded by Commissioner Eagan, to approve and authorize Commissioner President Thompson to sign the Public Works Agreement Addendum as presented. Motion carried.**

- (2) Kedges Strait at Cedar Cove Subdivision--extending completion date to September 1, 1999; backed by a Letter of Credit in the amount of \$517,300

provided by Nations Bank.

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

- c. Public Works Resolution 98-16 accepting the extension of Mount Wolfe Road into the County's Highway Maintenance System.

**Commissioner Eagan moved, seconded by Commissioner Brugman, to approve and authorize Commissioner President Thompson to sign Resolution 98-16.**

Commissioner Brugman indicated he seconded the motion for discussion purposes only as he had questions concerning the length of the extension. The Commissioners indicated they would put the question to the Director of Public Works later during the meeting. **Motion failed 0-5.**

At a later time during the meeting, George Erichsen stated that the road was being extended 135 feet from the end of the existing pavement. This allows the development to come on to a county road.

**Commissioner Chesser moved, seconded by Commissioner Eagan, to approve and authorize Commissioner President Thompson to sign Public Works Resolution 98-16. Motion carried.**

- d. Public Works Agreement for Willow Woods Subdivision, 8th Election District; a Letter of Credit in the amount of \$826,500 provided by the First National Bank of St. Mary's.

**Commissioner Brugman moved, seconded by Commissioner Jarboe, to approve and authorize Commissioner President Thompson to sign the Public Works Agreement as presented. Motion carried 4-0-1 with Commissioner Eagan abstaining because she is on the Board of Directors of the First National Bank of St. Mary's.**

- e. Public Works Agreement Claim Letter for Stratton Subdivision in the amount of \$71,300 provided by the Northern Central Bank.

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

- f. Public Works Agreement for Hickory Hills Subdivision, Section 2, 8th Election District; backed by a Performance Bond in the amount of \$458,000 provided by the United Pacific Insurance Company.

**Commissioner Jarboe moved, seconded by Commissioner Brugman, to approve and authorize Commissioner President Thompson to sign the Public Works Agreement as presented. Motion carried.**

- g. Sight Distance Easements (2) for Samuel Franklin and Mary Copsey for the Hidden Acres Subdivision, located off Baptist Church Road, 4th Election District.

**Commissioner Eagan moved, seconded by Commissioner Chesser, to approve and authorize Commissioner President Thompson to sign the two (2) Sight Distance Easements as presented. Motion carried.**

4. Management Information System Department  
Master Lease Agreement for Equipment Purchase with Crestar Bank

**Commissioner Brugman moved, seconded by Commissioner Jarboe, to approve and**

**authorize Commissioner President Thompson to sign the Master Lease Agreement as presented. Motion carried.** Commissioner Eagan requested that the department head provide a briefing to the Commissioners at the next meeting as to the progress made to date in connecting the buildings and updating computer equipment.

5. Resolution 98-40 -- Lexington Park Library Task Force  
(Resolution establishing the Task Force, outlining duties and responsibilities and designating membership composition.)

**Commissioner Eagan moved, seconded by Commissioner Chesser, to approve and sign Resolution 98-40 as presented. Motion carried.**

6. Boards/Committees/Commissions

- a. Letters of Appointment

**Commissioner Brugman moved, seconded by Commissioner Jarboe, to make the following appointments and to sign the letters of appointment as presented. Motion carried.**

<u>Commission</u>	<u>Terms to Expire</u>
<b>Economic Development Commission</b>	
Doug Ahearn – Chamber of Commerce Rep.	6/30/2000/2003
Rich Pelz – Agriculture, Seafood & Forestry Com. Rep.	6/30/2001
<b>Plumbing Board</b>	
Charles J. Bryson	6/30/2001
John R. Butterfield	6/30/2001
<b>Job Training Partnership Act (Private Industry Council)</b>	
Carol Drury – Reappointment	6/30/2002
<b>Safety Committee</b>	
Mary O'Brian	No Term

- b. Letter of Appreciation to B. I. Mattingly for service on the Plumbing Board which has come to an end because term expiration.

**Commissioner Eagan moved, seconded by Commissioner Jarboe, to approve and to sign the Letter of Appreciation as presented. Motion carried.**

8. Board of Education Grant Award -- \$16,000 Department of Education Funding Parent Information and Training Center for parents of children with disabilities  
(Letter to Board of Education approving inclusion of grant award in FY 1999 budget.)

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

**SUPERVISOR OF ELECTIONS (SABEL AUDIT)**

Present: Catherine Countiss, Supervisor of Elections

At the request of the Board, Ms. Countiss updated the Commissioners on actions taken to correct the recent audit findings of the State Administrative Board of Election Laws (SABEL), namely a lack of cellular phones and security at the warehouse. Ms. Countiss indicated that Building Maintenance has re-keyed the doors at the warehouse and that she is in possession of the only keys. They are keeping a log of everybody who goes into the warehouse. She has a personal cell phone, but it is impractical to use all day because of reception and power supply. They have been renting pagers for the last three elections for the chief judges and they are getting longer extension cords for the phones in the school offices. She has also asked that deputies occasionally check the warehouse and is getting a deputy for election night at the recommendation of SABEL.

Commissioner Chesser requested that she get a price on an alarm for the warehouse. The Commissioners requested that staff redraft correspondence to SABEL to indicate that the Board has met with Ms. Countiss relative to the issues raised in the audit report and that they have been reassured that the issues have been or will be addressed in the near future. The redrafted letter was presented later during the meeting.

**Commissioner Jarboe moved, seconded by Commissioner Eagan, to approve and sign the letter to SABEL. Motion carried 4-0-1 (Commissioner Chesser had left the room prior to presentation of the letter).**

**COUNTY COMMISSIONERS****Comments Attributed to Senator Hoyer Concerning Conduct of County Commissioners**

Commissioner Eagan read from her personal prepared statement responding to criticism the current Board of Commissioners has endured, noting in particular the comments attributed to Senator Hoyer as quoted in the Washington Post, and enumerating the accomplishments of the Board.

**Street Lighting at Intersection of Route 4 and Wildewood Boulevard**

Commissioner Chesser expressed concern over the dangerous situation created at this intersection because of the location of the entrance and the lack of lighting. Commissioner Eagan noted that the Board has discussed this before but no action was taken because they were told the light had to be paid for by the homeowners association. Assistant County Administrator Mortimer Smedley stated that George Erichsen, Director of Public Works, had provided correspondence dated July 23, 1998 listing five different alternatives the county could pursue. Later during the meeting, Mr. Erichsen advised that the department has paid for street lighting out of the department's operating budget for various projects. He also indicated that the go-around lane at the Wildewood intersection was of serious concern. Commissioners Brugman and Chesser requested that Public Works look into the go-around and lighting and get back to the Board with pricing.

**SPECIAL ROAD TAXING DISTRICTS - COUNTY ATTORNEY'S POLICY ISSUES  
(Discussion/Decision - Review of policy issues)**

Present: Douglas S. Durkin, County Attorney  
George A. Erichsen, Director of Public Works

Mr. Durkin and Mr. Erichsen reviewed policy issues with the Board, including whether or not to: reinstate the 1/1/77 limitation on subdivisions; continue extending to new developments with substandard roads; continue permitting new development with substandard roads, and; continue expansion of new development with substandard roads via Planning Commission waivers.

Mr. Durkin indicated that, by virtue of the current subdivision regulations, the county is

creating a need for new taxing districts for roads and that it is a fairly common practice of the Planning Commission to grant waivers. The policy should distinguish between farmsteads, which can readily maintain their roads, and developments. Mr. Erichsen stated that 80% of all taxing district requests are for small developments. Many items can be handled in conjunction with the Unified Land Development Code by denoting developments with 5 lots or less as private and anything above that as public. Commissioner Thompson noted that there is also a difference between subdivisions as to those evolving over a period of time and those created by developers.

Other major issues included:

Whether or not to implement a new procedure so that staff work on new districts is not commenced until specifically authorized by the Commissioners. Mr. Durkin stated that only 24% of the proposed taxing districts go to completion although a great deal of staff time and resources go into the process. Mr. Erichsen requested that the Commissioners continue to allow Public Works to hold public informational meetings and to do a site visit cost estimate which is relatively inexpensive (\$65).

Whether or not to require 100% landowner consent before presentation to the Commissioners. The current requirement is 51%. They recommended a simple majority where there are no landowner objections, perhaps 75%, or where the county can obtain clear title to the road, and 100% where all landowners own a piece of the road.

Whether or not to relax the clear title requirements if there is no risk to the county involved. Mr. Durkin gave Mulberry South as an example and recommended that the Board accept the defective title and go forward with the taxing district. The Board gave their concurrence.

Mr. Erichsen requested that the Commissioners consider a revision of the current Taxing District Policy (for clarification) to combine point #8 (indicating that only those subdivision streets or roads constructed prior to January 1977 shall be eligible for consideration) with point #2 (related to construction cost responsibilities).

Commissioner Thompson requested that staff continue to provide the petitioners with a ballpark figure through the public information meeting process so that they understand the costs involved; to draft the taxing district policy as proposed noting comparisons to the current policy, and; to continue the consideration of the ordinance and levy issues at another time.

#### **DEPARTMENT OF PLANNING AND ZONING PRIORITY FUNDING AREA MAP DESIGNATION**

Present: Jon Grimm, Director of DPZ

Mr. Grimm stated that by October 1, 1998 each jurisdiction must certify to the Maryland Office of Planning certain "Priority Funding Areas"(PFA) that will be eligible for state funding assistance for capital projects such as roads and schools. These are locally certified areas where growth is planned, infrastructure is already in place and are consistent with criteria established by the Smart Growth and Neighborhood Conservation Act. He reviewed the five criteria areas of the PFA designation (existing communities, existing communities with water but no sewer, expansions beyond the developed periphery of existing communities, areas other than existing communities and rural villages) and displayed draft maps locating the areas that met the criteria. He stated that all, with the exception of rural villages, can be reviewed annually and re-designated. The Commissioners expressed concern over school construction occurring outside the PFA, such as in the case of Hollywood Elementary School. Mr. Grimm indicated that a change to the designation or an exception could be sought.

Mr. Grimm will bring back correspondence for the County Commissioners signature forwarding to the Office of Planning the county's PFA designations for state certification.

**PLANNING AND ZONING  
RESOLUTION 98-41 -- SENSITIVE AREAS**

Present: Jon Grimm, Director of Planning and Zoning

Mr. Grimm indicated that, on August 25, 1998, the Planning Commission endorsed the recommended sensitive areas element as a "mini-plan" amendment to the 1988 Comprehensive Plan. Mapping is used as a resource guide and not to define the areas; determinations are to be made on a point-by-point and case-by-case basis. Resolution 98-41 adopting the amendment was presented to the County Commissioners for their consideration.

Commissioner Chesser stated that he voted against this when it initially came up, not because he had a problem with the concept, but because he felt it should be incorporated into the draft plan and not as a modification to the 1988 plan.

**Commissioner Eagan moved, seconded by Commissioner Jarboe, to approve and sign Resolution 98-41 amending the 1988 Comprehensive Land Use Plan. Motion carried 3-2 with Commissioners Chesser and Brugman voting against.**

**PLANNING COMMISSION  
RECOMMENDATION ON REMAND OF CLUP**

Present: Frank Taylor, Planning Commission Chair  
Hal Willard, Planning Commission Vice-Chair  
Jon Grimm, Director of Planning and Zoning

Mr. Taylor stated that the Planning Commission completed their work on the last of the seven points on the remand of the Comprehensive Land Use Plan (CLUP) and voted to forward the changes to the County Commissioners. He summarized the changes made and requested that the Board not ask the consultants to rewrite the CLUP but to instead provide a "peer review."

Mr. Grimm indicated that the next step after distribution of the revised draft is a legal review. Also, a determination needs to be made as to whether a public hearing requiring a 60-day review and comment period is required.

The Commissioners requested a joint meeting on September 22, 1998 to review the changes prior to any public hearing and requested that the County Attorney begin his legal review of the document.

Commissioner Eagan stated that she was not aware that the Planning Commission had only two areas left of the remand to address. She requested that the consultant's task be changed from "writing" to "peer review" of the CLUP and that the Adequate Facilities portion of the plan be addressed.

Mr. Kachmar indicated that, based on the Commissioners' decision of last week, the consultants have begun work on the Unified Land Development Code (ULDC) and CLUP under a tight timeline. Since that time, the Director of Finance has advised that a supplemental appropriation ordinance, which requires a public hearing, was not necessary as there are funds available in the existing appropriation authority resulting from over budgeting of employee salary and benefit costs. Budget Amendment 99-3 in the amount of \$368,790 had been prepared for the Commissioners' consideration, based upon a negotiated reduction in fee for writing both documents. During discussion it was determined that the consultant's base fee of \$60,000 for the CLUP could constitute the review of the plan.

**Commissioner Eagan moved, seconded by Commissioner Jarboe, to direct staff to go forward with Unified Land Development Code and to negotiate the cost to go forward with just the peer review of the Comprehensive Land Use Plan, with adequate public facilities included. Motion carried 4-1 with Commissioner Chesser voting against.**

In that this constitutes the third change to the consultant's directive and that the consultants have been working at risk under a tight time schedule, Mr. Haley requested that the Commissioners approve an appropriation of \$263,000 plus \$60,000 (\$323,000) and authorize him to negotiate under that appropriation.

Commissioner Thompson indicated she would not vote on the appropriation to include \$60,000 for the peer review. Commissioner Chesser stated that the county should be doing this work themselves, and the money would be better used to hire staff consultants at Planning and Zoning to do this task.

**Commissioner Eagan moved, seconded by Commissioner Brugman to adopt Budget Amendment 99-3, amended to \$323,000. Motion carried 3-2 with Commissioners Thompson and Chesser voting against.**

#### **COUNTY ATTORNEY DECISION ON MCI PROPOSAL**

Present: Douglas S. Durkin, County Attorney  
James P. Haley, Manager, Office of Central Services

Mr. Durkin indicated he had researched the Commissioners' questions concerning the MCI proposal, specifically, whether deviating from the original scope of work (only accepting certain components) was legal. He stated that the county's solicitation was vague; it did not clearly state that the vendor must provide personnel to operate the system; and that it was his opinion that the county could accept various portions of the MCI proposal.

Mr. Haley indicated that case law on this issue basically allows the contract officer discretion in this area and that the Commissioners have the ability to accept all or a portion of the proposal. As the county's chief negotiator, he requested direction on how the Commissioners' wanted the Negotiating Team to proceed.

In response to citizen concerns that the solicitation was written so that only one specific vendor could respond, Commissioner Eagan distributed a copy of the original solicitation that went out. She stated that it is very vague and anyone could have responded, even a one-person company. Commissioner Thompson indicated that she has seen the solicitation, but a copy was only provided to her after many repeated requests. She felt the county should continue on its course of negotiations with MCI so that they can be confident that the emergency communications system has been thoroughly evaluated.

**Commissioner Brugman moved, seconded by Commissioner Eagan to direct the Negotiating Team to remove outsourcing of the 911 dispatching personnel and that those people be retained in house. Motion carried.** As to the remaining components of the proposal, it was the consensus of the Board to allow staff the latitude to negotiate all other areas to the best advantage of the county and to bring it back to the Commissioners.

#### **EXECUTIVE SESSIONS**

**Commissioner Chesser moved, seconded by Commissioner Eagan, to meet in Executive Session to discuss a matter of personnel/potential litigation, as provided in Article 24, Section 4-210(a)1/8. Motion carried 4-1 with Commissioner Jarboe voting against.**

**Commissioner Chesser moved, seconded by Commissioner Eagan, to meet in Executive Session to discuss a matter of potential litigation, as provided in Article 24, Section 4-210(a)8. Motion carried 3-2 with Commissioner Jarboe and Thompson voting against.**



**Executive Session – Personnel/Potential Litigation (Sheriff's Retirement Plan)**

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  
Mortimer L. Smedley, Assistant County Administrator  
Melvin A. McClintock, Human Resources Director  
Dee Kramer, Benefits Coordinator, Human Resources  
Mary M. Langley, Recording Secretary

Authority: Article 24, Section 4-210(a)1/8

Time Held: 6:40 p.m – 5:13 p.m.

Action Taken: Staff reviewed issues relative to the deviation from the Sheriff's Retirement Plan policy to allow reinstatement of a former employee into the plan, and the Commissioners agreed to take action in open session.

**Executive Session – Potential Litigation (St. Mary's County Airport)**

**Follow-up from executive session of September 1, 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  
Mortimer L. Smedley, Assistant County Administrator  
Douglas S. Durkin, County Attorney  
James P. Haley, Airport Manager  
James S. Stirling, Office of Capital Projects Director  
Cynthia Dykeman, Airport Operations Coordinator  
Mary M. Langley, Recording Secretary

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

Time Held: 5:15 p.m – 7:00 p.m.

Action Taken: Staff reviewed issues relative to airport lease amendments; the Commissioners gave direction to staff and agreed to take action in open session.

**FOLLOW UP TO EXECUTIVE SESSIONS**

Commissioner Jarboe moved, seconded by Commissioner Chesser, to deviate from the Sheriff's Retirement Plan policy to allow the reinstatement of a former employee into the plan. Motion carried 4-1 with Commissioner Eagan voting against.

Commissioner Eagan moved, seconded by Commissioner Brugman, to direct staff to proceed as directed in executive session and to get back to the Commissioners in two weeks.

**ADJOURNMENT**

The meeting adjourned at 7:10 p.m.

Minutes Approved on 9/22/98  
by Board of St. Mary's County Commissioners

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Mary M. Langley, Recording Secretary