

**ST. MARY'S COUNTY
BOARD OF COUNTY COMMISSIONERS' MEETING
Governmental Center
August 22, 2000**

Present: Commissioner President Julie B. Randall
Commissioner Joseph F. Anderson
Commissioner Shelby P. Guazzo
Commissioner Thomas A. Mattingly, Sr.
Commissioner Daniel H. Raley
Alfred A. Lacer, County Administrator
Judith A. Spalding, Recorder

CALL TO ORDER

The meeting was called to order at 10:05 a.m.

ADDITIONS/DELETIONS TO AGENDA

Commissioner Anderson moved, seconded by Commissioner Raley, to accept the agenda as amended (to delete Property Acquisition Executive Session). Motion carried.

APPROVAL OF CHECK REGISTERS

August 11, 2000

Commissioner Mattingly moved, seconded by Commissioner Anderson, to authorize Commissioner President Randall to sign the Check Register. Motion carried.

August 18, 2000

(Commissioner Raley requested clarification on payment of finance charges to Chesapeake Publishing)

Commissioner Raley moved, seconded by Commissioner Anderson, to authorize Commissioner President Randall to sign the Check Register. Motion carried.

APPROVAL OF MINUTES

Commissioner Mattingly moved, seconded by Commissioner Anderson, to approve the minutes of the Commissioners' meeting of Tuesday, August 8, 2000, as (amended) presented. Motion carried.

**DEPARTMENT OF PLANNING AND ZONING
COMPREHENSIVE SUSTAINABLE PLANNING AND DEVELOPMENT PROGRAM**

Present: Jon Grimm, Director

Mr. Grimm appeared before the Board to request approval to proceed with developing a proposal for an overall strategy for sustainable development in concert with the update of the Comprehensive Plan through the Capital Improvement Program. The Comprehensive Plan update is required to be completed by July 2003; however, with doing the sustainable development study concurrently with the comprehensive plan, the plan would be completed ahead of the State's schedule.

Areas of discussion included:

- ❖ Preparation of area plan for Callaway Village Center and for the Charlotte Hall/Mechanicsville Town Centers.
- ❖ Coordination of various study efforts through sustainable development project and the comprehensive plan update.

- ❖ Issue of recorded, platted but undeveloped lots of record.
- ❖ Models for policies options/impacts for lots of record to study economic, demographic and fiscal aspects.
- ❖ Possibility of reduction in capital project costs.
- ❖ The need for reports from consultants (which is tentatively scheduled for September 12), as well as reports from meeting on Sustainable Development at St. Mary's College and at the State (being prepared).
- ❖ The need for information on the number of developable lots.

After discussion Commissioner Anderson moved, seconded by Commissioner Raley, to direct Mr. Grimm to prepare a project outline, costs, funding sources for an update of the comprehensive plan to include sustainable development process to be submitted to the Commissioners for a decision. Motion carried.

FIRST COLONY APPEAL OF PLANNING COMMISSION DECISION PROPOSAL FOR BJ'S

All Commissioners were present. DPZ staff present were Jon Grimm, Director; and Peggy Childs, Recording Secretary. Acting County Attorney Patrick Murphy was also present.

FIRST COLONY APPEAL (TRAMMEL CROW)

Appealing the Planning Commission's 3/13/2000 decision that the proposed deletion of the "theater complex" and entertainment uses within Mixed Commercial Area #3 of the PUD-X, in exchange for a "BJ's Wholesale Club" constitutes a Major Amendment to the approved Development Plan.

Present: Attorney Steve Braun and Richard Kabot, representing Trammel Crow

Mr. Murphy stated the primary issue before the Commissioners is whether Trammel Crow's application to substitute a BJ's Wholesale Club for a theater complex in Mixed Commercial Area #3 is a major or minor amendment to the PUD. He said he had expected the Board to make that decision today and direct staff to prepare the legal document putting the decision in writing. He referenced a memo dated 8/15/00 from Jon Grimm stating that the Supplement "I" entered into the record by Mr. Braun during the July 11th hearing is the plan that is a part of the PUD document.

Commissioner Guazzo made a motion, seconded by Commissioner Anderson, to deny the First Colony (Trammel Crow) appeal of the Planning Commission's March 13, 2000 decision and to make it clear that the Planning Commission's decision that the proposal was a major amendment to the First Colony PUD was a correct decision.

After the motion, each commissioner stated his or her position. Commissioner Raley stated the issue is not about movie theaters, it is that an entertainment area was an integral part of the PUD and that theme was woven throughout all the hearings. He said the issue is, if the movie theater and entertainment portion of the PUD is to be changed to put in a commercial activity, does that constitute a major amendment, and he thinks there is no question that it does and that the Planning Commission's decision was correct. We are not saying that BJ's can't go in there, Mr. Raley said, we are saying it has to go through the process for a major amendment to the PUD document. He said he believes the motion is the correct motion and he will support it.

Commissioner Guazzo said the current Zoning Ordinance enabling legislation for review and approval of Planned Unit Development applications states that the intent of a PUD is that they can be designed and are encouraged to be innovative with creative designs. Ms. Guazzo said she has first-hand knowledge of the PUD application, and First

Colony spoke to that intent of the PUD by saying that their innovative and creative plan was to create a PUD that was a total package, that people could live there, work there, and be entertained there. That was the premise that appealed to enough of the people who had to vote on this to make it a reality.

Under the basis for approval and under amendments for approval to PUDs, Ms. Guazzo said it states on page 181 of the Zoning Ordinance that PUD projects shall be developed only according to the approved final plan and all supporting data. It says further that the final plan and all supporting data shall be binding on the applicants and shall limit and control the use of premises (including the internal use of buildings and structures) and location of structures in the PUD as set forth therein. It goes on further to say that major changes which alter the concept or intent of the planned development, including a change of use, may be approved only by submission of a new preliminary plan and subsequent amendment of the final development plan.

Ms. Guazzo said it is quite clear from all our deliberations and her time with the Planning Commission - and she did work intimately with First Colony to set up the terms and conditions of the final approving document - that entertainment was a consistent theme for Commercial Parcel 3. She said she thinks the supporting documents speaking of hotels and multiplex theaters are referenced in the First Colony financial documents, in the minutes of the public hearings and minutes of the deliberations of the Planning Commission and, based on that, she made her motion.

Commissioner Anderson said he thinks Commissioners Raley and Guazzo have expressed the details behind the motion very well, and he will support the motion. He said he was a Planning Commission member while the project was being reviewed and, while he didn't support the project, he did participate in the discussions. Mr. Anderson said it was obvious that one of the reasons the project passed the Planning Commission by a 4-3 vote was the developer's interest in presenting a community which would allow for people to take care of all the business they would have, including entertainment within the bounds of the project. It is obvious from the review of the documents that entertainment was an integral part of the original plan and he believes it was one of the deciding factors that allowed this project to be approved, and to delete entertainment from the project constitutes a major amendment. Mr. Anderson said the Planning Commission made the right decision, and he supports the motion.

Commissioner Mattingly said he has looked through all the materials presented to the Commissioners and he agrees with the comments made so far. He said he thinks the project so far has been done reasonably well, but, throughout the entire document it identifies entertainment as a major piece of the project, and that was probably used as a bargaining tool for final approval, because it was a total community project. For that reason, Mr. Mattingly said he will support the motion to declare it a major amendment, which has to go through the process.

Commissioner Randall said she agrees with everything that has been said. She said she also reviewed all the documents and listened to testimony from First Colony and from staff, and included in the approved PUD was approval of recreational facilities. It is there. She said if she was a commissioner that had voted on this PUD she would expect recreational facilities to be provided as was agreed to in the document. More specifically, Ms. Randall said to ask to develop *any* business other than recreation is, in her opinion, a major amendment and she will vote to deny the appeal.

Ms. Randall called for the vote on the motion, which passed by 5-0.

After the Commissioners' decision, Mr. Braun stated he didn't know if the record is clear with regard to County Exhibit 6 - the plan showing the movie theater. He said Mr. Grimm's memo makes it clear that it was not part of the PUD documents, and he would renew his objection to that being part of the record of the appeal for that reason. He said he thinks the record needs to be clear as to whether the Commissioners are considering that plan as an exhibit or not considering it as an exhibit.

Mr. Murphy replied that he has received Mr. Grimm's memo and the written document which the Board will sign will illustrate the factual basis and the background for the Commissioners' decision in further depth, including whether they relied, or did not rely on, Supplement "I." Mr. Braun said he strenuously objects to that; that the Commissioners decide what they rely on, their counsel doesn't.

Commissioner Randall replied that the five commissioners would sign the approving document. She said it will absolutely be the commissioners' decision and it will indicate whether they included that, or not, in their decision.

Commissioner Guazzo took exception to Mr. Braun's comments interjected at the last minute. She said the memo he refers to has been available to the commissioners for two weeks and she thinks each and every one of them stated "in our review of the documents" in making their comments today. It is quite clear to her, she said, that all of the commissioners have done their homework and reviewed all of the documents, and she doesn't think they need to specify what that means. Commissioner Randall agreed, saying she really doesn't see it as an issue.

Mr. Raley stated, then, staff will prepare a legal resolution and it will be ready by next week? Mr. Murphy replied that it will.

Trammel Crow Settlement Offer

Following the appeal hearing on July 11th, Trammel Crow made a proffer to the Commissioners in order to avoid future litigation. The proffer consisted of the planting of additional trees at the First Colony shopping center and a \$50,000 contribution to the county for whatever recreational facility it chooses. Commissioner Randall asked if Mr. Braun would like to continue that proffer and have the Board put it back on another agenda for discussion? The Board must decide if it will give the proffer consideration, but she said she would like to hear from Mr. Braun whether it is still on the table. Mr. Braun replied that he had just conferred with Trammel Crow and that was a settlement offer to try to avert further legal action. He said his client indicates that, if the county is open to discussing it today, he is willing to do that. If it is going to go beyond today, he would withdraw the offer.

Ms. Guazzo said it was her understanding when the proffer was put forward that it was separate and apart from the appeal. However, the appeal having been denied, she said she thinks any proffer Trammel Crow makes or has made should return as part of their application for a major amendment to the PUD. Proffers rightfully go through the Planning Commission for its review and approval and major amendments come forward to the commissioners. She said she thinks to review it at this time would be putting the cart before the horse.

Mr. Anderson stated the proffer was made to prevent the major amendment and the decision the commissioners just made sends the proffer back through the amendment process. Mr. Braun said it was only a settlement proposal to consider some alternatives to avoid further legal proceedings and, perhaps, reach some agreement.

Commissioner Randall thanked Mr. Braun for the clarification but said she is hearing from the commissioners that they will not consider the settlement

ECONOMIC IMPACT FEE ORDINANCE REVISIONS DISCUSSION/DECISION

Present: Patrick Murphy, Acting County Attorney
Robin Guyther, Director, Permits Office
Jon Grimm, Director, DPZ

As a follow up to the public hearing and previous discussion, the Commissioners discussed the amendments to the Economic Impact Fee Ordinance. Discussion ensued regarding criteria for a lot to be eligible for the intra-family transfer exemption; the date by which intra-family subdivision of lots would be eligible for a waiver; whether the

transfer of an entire parcel of record would be eligible; and the method by which any reimbursements would be considered.

After discussion Commissioner Raley moved, that Section 5.H of the Economic Impact Fee Ordinance (#2000-018) of the St. Mary's Board of County Commissioners be amended to read as follows:

- ❖ **A lot of a minor subdivision created from a parcel of record or a lot of record, or the transfer of an entire parcel of record or lot of record, which is transferred to a member or members of the transferee's immediate family, as those terms are defined herein. In no event shall there be exempt more than an aggregate of three qualifying transfers per transferee(s), regardless of how the property is titled.**
- ❖ **To use remove the provision of the June 1, 2000 deadline for waiver eligibility.**
- ❖ **That the exemptions apply to one parcel of land.**

Amendments to the motion were offered as followed, accepted by the mover, Commissioner Raley, and the seconder, Commissioner Mattingly.

- ❖ **That the amendments be effective as of the date of Ordinance No. 2000-18 (June 1, 2000).**
- ❖ **That the amendments would apply to any eligible exemptions as grandfathered by Section 9 of the existing Ordinance.**
- ❖ **That the remainder of Ordinance 2000-18 remain in full force and effect.**

Motion carried four to one with Commissioner Guazzo voting against stating that she had voted against the original motion because it was not in accordance with the Comprehensive Plan which directed the financial burden to those who benefit from the County's growth; further that the \$4500 Economic Impact Fee was less than she felt was called for in the guidelines of the Comprehensive Plan.

COUNTY ADMINISTRATOR

Present: Alfred A. Lacer, County Administrator

1. Draft Agendas for August 29 and September 5, 2000

(During discussion of draft agendas, Commissioner Raley moved, seconded by Commissioner Anderson, that the text amendment to allow residential use in the commercial district come directly to the Commissioners. Motion carried 4-0-1 with Commissioner Mattingly abstaining.

2. **Department of Public Works Items**

Present: George Erichsen, Director DPW

- a) Claim Letter to First National Bank of St. Mary's in the amount of \$1,500 for Entrance Permit No. 96-2955 issued to Genevieve B. Herbert and Judith L. Gibson. The R20 entrance is located off Hurry Road, Dynard Estates Subdivision, 4th Election District.
- b) Public Works Agreement Addendum for Victoria's Grant Subdivision, Phase III, 8th Election District, extending the completion date to July 1, 2001. The letter of credit provided by the Maryland Bank & Trust Company in the amount of \$150,000 remains as posted.
- c) Public Works Agreement Addendum for Hunting Quarter Subdivision, Section 2, 2nd Election District, extending the completion date to July 1, 2001. The letter of credit provided by the Maryland Bank & Trust Company in the amount of \$39,000 remains as posted.

- d) Public Works Agreement Addendum for Avonlea Subdivision, Section 1, 5th Election District, extending the completion date to July 1, 2001. The letter of credit provided by The First National Bank of St. Mary's in the amount of \$58,000 has been reduced to \$28,900.
- e) Public Works Agreement Addendum for Rue Woods Subdivision, Section 1, 8th Election District, extending the completion date to July 1, 2001. The letter of credit provided by The First National Bank of St. Mary's in the amount of \$37,000 remains as posted.
- f) Public Works Agreement Addendum for Hickory Hills PUD Subdivision, Sections 3A & 3B, 8th Election District, extending the completion date to July 1, 2001. The letter of credit provided by the Bank of America in the amount of \$162,000 has been reduced to \$35,000.
- g) Public Works Agreement Addendum for Hickory Hills PUD Subdivision, Section 3C, 8th Election District, extending the completion date to July 1, 2001. The letter of credit provided by the Bank of America in the amount of \$197,700 has been reduced to \$52,000.
- h) Public Works Agreement Addendum for Aberdeen Subdivision, Section 2, 2nd Election District, extending the completion date to August 1, 2001. The letter of credit provided by the Cedar Point Federal Credit Union in the amount of \$58,700 remains as posted.

Commissioner Mattingly moved, seconded by Commissioner Anderson, to approve and authorize Commissioner Randall to sign the Public Works documents. Motion carried.

3. **Department of Finance**

FY 2001 Noxious Weed Eradication Grant Agreement and Contract
(up to \$4,000)

Present: Elaine Kramer, Director of Finance
Lynn Saunders, Dept. of Agriculture

Commissioner Anderson moved, seconded by Commissioner Mattingly, to approve and authorize Commissioner Randall to sign the Grant Agreement. Motion carried.

4. **Grant Documents**

- a. Department of Planning and Zoning
(FY 2001 Critical Area Grant Contract - \$46,000)

Present: Jon Grimm, Director, DPZ

Commissioner Anderson moved, seconded by Commissioner Mattingly, to approve and authorize Commissioner Randall to sign the Grant Contract. Motion carried.

- b. Department of Recreation and Parks
Maryland Boundless Playgrounds Grant Initiative (\$200,000)

Present: Phil Rollins, Director
Art Shepherd, Recreation Supervisor
Christina Mack, Therapeutic Recreational Specialist

After a presentation on the proposal for a Boundless Playground (which will provide recreational opportunities for all citizens) to be located at Willows Road Park, Commissioner Mattingly moved, seconded by Commissioner Guazzo, to approve and authorize Commissioner Randall to sign the Grant Application. Motion carried.

During discussion the Commissioners requested that the grant be amended to emphasize that indicate that Willows Road Park is located in Lexington Park, which the County has embarked on a significant revitalization project, and that this playground project would benefit all the County's citizens; to get information from the school system regarding the

numbers of special needs children in the Lexington Park area; to change "segregation by age" to "age appropriate areas."

In addition the Commissioners requested Mr. Lacer to contact the Superintendent of Schools to inform them of the County's grant proposal for a Boundless Playground in that the school system is also applying for a grant for Lexington Park Elementary School.

- c. Office of Community Services
Community Traffic Safety Program Grant Agreement
(Federal \$45,700; Local \$18,200)

Present: Joe Donick, Alliance Coordinator

Commissioner Guazzo moved, seconded by Commissioner Anderson, to approve and authorize Commissioner Randall to sign Agreement. Motion carried.

5. **Legal Department**

Charles G. & Mary R. McDaniel Property Documents

- a. Deed
- b. Lease Agreement
- c. Agreement for Permission to Sublet

Commissioner Raley moved, seconded by Commissioner Mattingly, to approve and authorize Commissioner Randall to sign the referenced documents. Motion carried.

**PUBLIC HEARING
SUPPLEMENTAL APPROPRIATIONS**

Present: Elaine Kramer, Director of Finance

The Commissioners conducted public hearings on the following supplemental appropriations for Fiscal Year 2001.

Office on Aging

Also present: Gene Carter, Director, Office on Aging

Supplemental appropriation of \$10,105 in State grant funds from the State Department of Aging for the purpose of providing funds to reimburse the county for costs incurred in the administration of the Medical Waiver for home and community based services for older adults.

Circuit Court

Also present: Theresa Yeatman, Circuit Court

Supplemental appropriation of \$63,600 from the State Department of Human Resources, through the St. Mary's County Department of Social Services for provided the L. A. Program – a legal advocacy service for non-custodial parents with court ordered child support in the County.

The hearing was opened for comments from the audience.

Doug Ritchie – Questioned the reason for the supplemental funds.

Hearing no further comments, the public hearing was closed; the record will remain open for ten days for written comment, after which it will be placed on the Commissioners' agenda for decision.

AIRPORT MASTER PLAN

Present: George Erichsen, Director, DPW
Charles Lamb, Consultant, Delta
George Jarboe, Transportation Supervisor
Patty Steigman, Airport Business Manager

Mr. Erichsen and Mr. Lamb appeared before the Board to discuss the options to be studied relative to the Airport Master Plan.

Highlights and areas of discussion included:

- ❖ Three proposed layouts, cost estimates of each, and design standards for each approach category (B – small aircraft; C – larger aircraft) for commuter service.
 - #3 – runway extension (\$8M)
 - #11 – new runway and taxiway (\$16M)
 - #16A -- new runway/purchase of residential and commercial lots (\$28M)(All options require relocation of Lawrence Hayden Road.)
- ❖ That the Navy does not support dual use of its air fields with the County's commuter service.
- ❖ That the Planning Commission recommended that the County pursue upgrading the Master Plan in compliance with the Comprehensive Plan which includes a precision approach and commuter air service and to pursue all options available.
- ❖ That FAA will support funding that is justified once the Airport Master Plan has been approved.
- ❖ The four criteria which FAA and MAA suggest for a larger design standard: approach category C; visibility reduced below one mile; precision instrument approach; and approach lighting system.
- ❖ Whether commuter service could operate with current alignment (if possible, but would be atypical and would be restricted to a limited type of aircraft. This is consistent with the Board's most recent correspondence to the MAA.
- ❖ The need to look at future needs and the need for protection of the airport from encroachment during the study period is needed as a part of the ULDC. Mr. Grimm was requested to schedule time with the Commissioners regarding this matter.
- ❖ Concerns about impact on residents and developing properties. Mr. Erichsen emphasized the need to protect the approach surfaces in accordance with grant assurances which may likely include fee simple acquisition.
- ❖ Time frame for completion of environmental assessment once the Commissioners make a decision as to what option to study (will take up to 18 months).
- ❖ The need for an Airport Master Plan is critical in order to receive grant funding (however, property acquisition monies would still be reimbursable once the Plan was approved and adopted).

During discussion the Commissioners gave concurrence to eliminate Exhibit 11 and to consider three options—do nothing; Exhibit 3; or Exhibit 16A.

In conclusion the Commissioners agreed that the environmental study should take into account socioeconomic impacts and that the Director of DECD should assist in this effort. Additionally the Commissioners directed staff to prepare a fee proposal for the environmental/economic impact study of each of the three referenced options and return to the Board for a decision to proceed. State monies should be eligible to cover the costs.

COMPREHENSIVE SOLID WASTE PLAN UPDATE REVIEW

Present: Claire Whitbeck, Chair, Solid Waste Advisory Committee
Donnie Hammett, “
Dan Ichniowski, “
Dudley Lindsey “
George Erichsen, Director, DPW

Representatives of the Solid Waste Advisory Committee appeared before the Board to present an overview of the revisions to the 1998 Comprehensive Solid Waste Plan. Ms. Whitbeck briefed the Commissioners on the highlights of the Plan, stating that the plan has been extensively revised. Revisions to Chapter 1 include a process for proving that an applicant's property should not have been included in the exclusion zone, and with detailed maps of the exclusion zone; Chapter 4 revisions include language that the exclusion zone is mandatory, and bufferyard requirements for solid waste facilities; Chapter 5 revisions include a continuation of the current method of processing convenience center trash with recommendations for allowing a trash taxation district.

Other areas of discussion included:

Announcement that a Solid Waste Manager has been hired and will begin work on September 5.

SWAC recommended that the draft Plan be placed on the County's web page.

SWAC will be distributing the draft plan for agency comments.

SWAC would like to hold public informational meetings in October.

The need for a contingency plan for the long term for the disposal of solid waste; contingency plan should bridges (Route 301 and Route 4) be closed down.

Other areas of discussion included disposal of large items (e.g., sofas), facility for recyclables, commercial hauler costs; advanced solid waste disposal technology; criteria for landfills.

After discussion the Commissioners agreed to schedule a public hearing in November on the proposed update of the Solid Waste Plan.

COUNTY COMMISSIONERS' TIME

Gypsy Moth

Commissioner Guazzo referred to July 25 correspondence from the Department of Agriculture regarding the gypsy moth suppression program and indicating that there is an increase in the gypsy moth population statewide. In order to predict outbreaks and infestation levels, surveys, which are cost share with the State, are needed. The Commissioners requested that staff look into this and draft a response letter for the Commissioners' signatures.

Expression of Sympathy

Commissioner Raley reported the loss of one of the County's prominent citizens, Jack Daugherty, and expressed sympathy to his family.

Ridge Carnival

Commissioner Raley announced that the Ridge Carnival will continue this weekend and urged citizens to attend.

Halloween

Commissioner Raley advised that he received a telephone call from a constituent about the date for Halloween. The Commissioners indicated that October 31 was a Tuesday, and it would not be changed.

Maryland Association of Counties Summer Conference

Commissioner Randall reported that the various sessions at the MACo conference were informative and that she would give a report on them next week.

Birthday Wishes

Commissioner Randall stated it was her mother's birthday and wished her a very Happy Birthday.

EXECUTIVE SESSION

Commissioner Guazzo moved, seconded by Commissioner Raley, to meet in Executive Session to discuss a matter of Personnel, as provided for in Article 24, Section 4-210(a)1. Motion carried.

Personnel

Present: Commissioner President Julie B. Randall
Commissioner Joseph F. Anderson
Commissioner Shelby P. Guazzo
Commissioner Thomas A. Mattingly, Sr.
Commissioner Daniel H. Raley
Alfred A. Lacer, County Administrator
Judith A. Spalding, Recorder

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

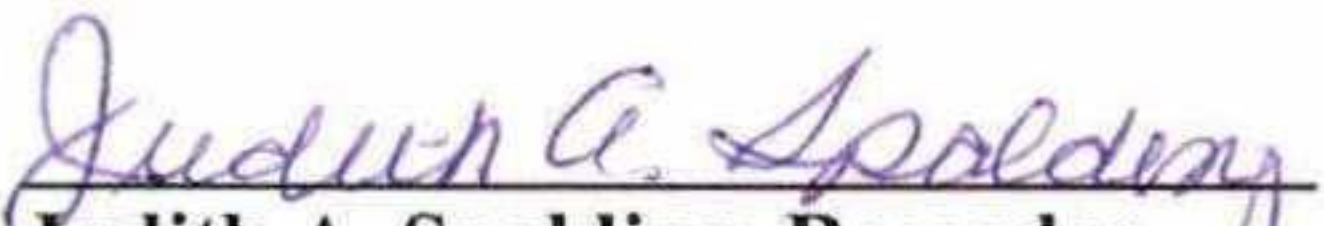
Time Held: 5:38 p.m. – 5:42 p.m.

Action Taken: The Commissioners discussed appointments to the Social Services Board and gave direction to staff.

ADJOURNMENT

The meeting adjourned at 5:42 p.m.

**Minutes Approved by the
Board of County Commissioners on 9/5/00**


Judith A. Spalding, Recorder