

**ST. MARY'S COUNTY
BOARD OF COUNTY COMMISSIONERS' MEETING
Governmental Center
Tuesday July 16, 2002**

*Commissioner President Julie B. Randall was not present at this meeting.
Commissioner Joseph F. Anderson represented the Board at a funeral and
departed the meeting at 11:30 a.m.*

CALL TO ORDER

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

ADDITIONS/DELETIONS TO AGENDA

Commissioner Mattingly moved, seconded by Commissioner Anderson to accept the agenda as amended (add Personnel Authority [Article 24, Section 4-210(a)] to the Executive Session agenda.) Motion carried.

APPROVAL OF CHECK REGISTER

Commissioner Anderson moved, seconded by Commissioner Mattingly, to approve the bills and to authorize Commissioner Raley to sign the Check Register. Motion carried.

APPROVAL OF MINUTES

Commissioner Anderson moved, seconded by Commissioner Mattingly, to approve the minutes of the Commissioners' meeting of Tuesday, July 9, 2002, as corrected. Motion carried.

COUNTY ADMINISTRATOR

Representing SMECO, George Allen delivered the 2001 SMECO annual report to the Commissioners and presented Commissioners with a check in the amount of \$9,522.62 as part of a \$4.6 million capital credit refund. Mr. Allen thanked the Commissioners for their support.

1. Draft Agendas: July 23, 2002 and July 30, 2002
2. Employment Contract: Finance Director

Commissioner Mattingly moved, seconded by Commissioner Guazzo, to approve and authorize Commissioner Raley to sign the employment contract for Finance Director. Motion carried

3. Grant Documents
 - a. Office of Community Services
 - (i) Ratify Agreement with Md. Dept. of Education and sign \$13, 136 budget amendment re St. Mary's County Public Schools Food Service (*Cynthia Brown, Joe Donnick*)

Commissioner Guazzo moved, seconded by Commissioner Anderson, to approve and authorize Commissioner Raley to ratify the agreement with Md. Department of Ed. and sign the budget agreement. Motion carried.

- (ii) Sign Commitment Letter from Md. Dept. of Business and Economic Development for \$58,000 grant to fund feasibility study of Lexington Park Focus Enterprise Zone (*Robin Finnacom*)

Commissioner Guazzo moved, seconded by Commissioner Anderson, to authorize Commissioner Raley to sign the commitment letter for grant funds for the Lexington Park Focus Enterprise Zone. Motion carried.

- b. *State's Attorney's Office (*Michael J. Stamm, Deputy State's Attorney*)
Sign revised cover page reflecting corrected total cost to Child Support
Division's Cooperative Reimbursement Grant Agreement previously
approved.

Commissioner Mattingly moved, seconded by Commissioner Anderson, to authorize Commissioner Raley to sign the revised cover page for Child Support Division Coop Reimbursement grant agreement. Motion carried.

4. *County Attorney's Office (John Norris)
Presentation of Lease for space at Capt. Walter F. Duke Airport

Commissioner Guazzo moved, seconded by Commissioner Anderson, to authorize Commissioner Raley to sign the lease at W. F. Duke Airport. Motion carried.

5. Department of Economic and Community Development (*Alan Kutz, V.P., Economic Community Dev. Institute, CSM; Danita Boonchaisri, Director, Small Business Dev. Center and Entrepreneur & Leadership Center; Marge Ridgell; John Savich, Director, DECD; Karen Everett, Manager, Business Dev., DECD*)

SBDC staff will present annual report. Sign Memorandum of Understanding with CSM for FY03 counseling services provided by CSM's Small Business Development Center. (\$15,000)

John Savich, DECD, introduced Mr. Kutz, VP, Economic Community Development Institute, CSM, who provided the following information:

- 150 counseling sessions conducted assisting clients with decision-making skills for their small businesses or to go from a small business to a medium sized one.
- Worked with clients to obtain about \$800,000 in loans from SBA and also through the Strategic Assistance Consulting Fund. Have worked with several existing businesses to assist them with marketing programs and with their strategic planning.
- This year, will use the same process to assist farmers who want to grow their farms as businesses.
- The \$15,000 St. Mary's County provides SBDC resulted in an office opening in Lexington Park which provides full-time counseling and other assistance 5 days per week. The facility is also used for Corporate Training and base-related activities.

Commissioner Anderson moved, seconded by Commissioner Guazzo, to authorize Commissioner Raley to sign the MOU with CSM for FY03 services provided by SBDC. Motion carried.

UPDATE ON THE ELMS MANAGEMENT PLAN

Present: Jon Grimm, Director Planning & Zoning and Chairman, Elms Advisory Committee
Sandy Patty, Elms Advisory Committee Member
Linda Dudderar, SMCPS, Committee Member
Marianne Chapman, SMCPS, Committee Member
John Horton and Ford Dean, Citizen Appointees
Dr. Robert Paul, SMCM, Committee Member
Phil Rollins, Director Recreation and Parks

This plan lays out the organizational framework and assignment of responsibility for managing the Elms property over the next 10-25 years that will accommodate both the State's interest in the site for future power plant use and the interests of other users of the

site. The County's lease agreement with the State ends October 1, 2003. The objective is to have the management plan in place to guide a long-term lease for post October 2003.

The Elms Management Plan is not a master plan but a document that the Committee and Power Plant Research Program hopes will guide cooperative multi-use of the property well into the future. Clearance is being sought from the Commissioners to present the document to the Board of Education, Recreation and Parks Board, and the Planning Commission in the fall and then to return to the Commissioners to present a formal recommendation.

The Elms Advisory Committee's recommended management goals are:

- Protect the property as a power generation plant site
- Protect the site's environmental and cultural resources.
- Encourage and support use of the Elms for environmental education and recreation to develop an "ethic of stewardship" for our youth.
- Maintain and manage the entire Elms tract as a single, integrated site.

The Board of County Commissioners concurred with the Elms Management Plan as presented.

LEXINGTON PARK LIBRARY – STATUS REPORT

Present: Richard Rohrbaugh, Director Facilities Management
Gary Whipple, Project Manager

Mr. Rohrbaugh's efforts on the Navy Museum project were commended.

Library Roof Status

- Mid May roof distortions were noted and discussed with the contractor.
- June 20, the architect, roofing contractor, and staff, went on the roof and opened 5-6 sections of the roof and found a major problem. On this date, a letter was issued to the architect and contractor that the roof was unacceptable.
- July 3, an expert was brought in and issued a report. Subsequent to this report, the contractor has agreed he will replace the roof at his expense and within the timeframe for the library opening.
- The problem was moisture in the substrate of the plywood and some improper nailing and spacing.
- There will be no impact on the budget and the library opening.
- September 18, is the anticipated end of construction date.
- Currently, construction is 12 calendar days behind schedule but re-sequencing can be beneficial.
- October 7 is the scheduled move date which should take five days.

COUNTY COMMISSIONERS' TIME

Commissioner Mattingly

- A bake sale benefiting the Knott family is underway today at the Governmental Center.
- The Consumer Affairs Office grand opening was held and the office is now open on Tuesdays at the Tri-County Council office on Burnt Store Road, Hughesville.
- Congratulations to the Raleys' who recently celebrated their 30th wedding anniversary.
- The Leonardtown VFD Carnival is underway. Please continue to support this activity.
- The ALS installation celebrated their 19th anniversary providing an all volunteer paramedic service to the County. Please consider becoming members and being trained as volunteer paramedics.
- The Trails Dedication ceremony, held in memory of Francis Wathen, was well attended by friends and family. The Wathen family was very proud to have a trail system in Lancaster Park dedicated in his memory.
- On July 15, MetCom and the Planning and Zoning staff, conducted a public informational meeting at the Hollywood Fire House on the potential for sewer

service in the Hollywood Town Center area. Approximately 75-100 people attended.

Commissioner Anderson

- Thanks to Kim Cullins, Director, St. Clements Island Museum, and all those involved for putting together the 4th Annual Jazz and Seafood Festival. Great entertainment and a great evening was enjoyed by all.
- Thanks to the Community Development Corporation and Job Connections who held an open house last week in Lexington Park. St. Mary's County is well on our way to having the best workforce development network in the state of Maryland.
- There will be a celebration to mark increased mass transit service in our community. *Staff was directed to look into whether or not mass transit could be extended further into Lexington Park.*
- Growth Allocation: Clearbrook Farms
This piece of the county is fragile land in a fragile ecosystem. Past attempts to develop it were denied. This property should not be intensely developed. *Consider pulling it out of the development district.*
- Chingville Road: Atlantic Coastal Trucking
Another criminal and obscene act of harassment has occurred to people who have been trying to live in peace and quiet expecting the laws to be enforced. This problem has been going on for four years and must end immediately. *Request Permits and Inspections provide a comprehensive report to the Board on what they have done in the past and what they are doing now to enforce the Board of Appeals action and statement. When a complaint is made, the party must identify themselves, which I do not agree with. Where in the policy or ordinance does that requirement exist, and, when a complaint is made, does staff notify the people against whom a complaint is made and tell them who made it. This report is needed ASAP.*
- Lexington Manor
 - Some people are using premises as a dump. Hopefully the sheriff has increased surveillance on this property.
 - Leaks in the water system have been ongoing for quite some time. Steve King, MetCom, investigated the premises and found many more problems. These leaks have resulted in over 1 million gallons of water being wasted. Given our drought situation, this loss is reprehensible. The management group is advising people they can't do needed repairs on the units because the Lexington Manor Survival Team and the County Commissioners are making them repair the water leaks.
 - *Request a status report from Permits and Inspections on enforcement of the Livability Code. Why aren't the derelict buildings being boarded up? At one point, the landowners were making progress, but now it appears to have been reversed. There is no evidence that the current Livability Code is being enforced.*
- Board of Elections: Space requirements
 - No satisfactory resolution to their space needs has been reached.
 - *Request the Board of Elections be invited to a future Board of County Commissioners meeting to openly discuss their space requirements.*

Commissioner Guazzo

- Chingville/Harassment
 - Practical suggestion: *Ask Dr. Icenhower, County Health Officer, about tracking the contents of the trucks. It appears that the producers of the sludge contract with the buyer; and the producers of the sludge contract with a trucking company. There is no apparent record of where the trucks go from the producer, who the producers are, or the site where the sludge is dumped. This appears to be a missing component of the tracking system.*
- Recently, the County lost a productive and artistic gentleman, Gordon Janssen. A memorial service was held this past weekend. Gordon not only produced works

of art for the community but he was also one of the original developers of the North End Art Gallery. This gallery showcases local talent and is an asset to our County. Gordon will be sorely missed and our sympathies go to his family.

- Board of Elections
The letter from their attorney was addressed to our homes and that is not appreciated. County Commissioners have County mailing addresses, so please use them in the future.

Commissioner Raley

- Chingville Road
 - It is an extremely complicated issue and has a whole lot of aspects to it. However, there are three things that can be done:
 - Planning and Zoning and Permits and Inspections are charged to enforce the decision of the Court of Appeals.
 - When there is a complaint lodged with these offices that the Board of Appeals decision is not being adhered to, they need to investigate.
 - Regardless of the issue, harassment is absolutely not acceptable. Action must be taken.
- Board of Elections: Space needs
 - When Board of Elections were upstairs in a cramped space, this Board acted to double their space and under the proposed plan on the table now, this Board is prepared to almost double their space again.
 - The letter received from the attorney to the Board of Elections was not appreciated for its threatening aspect.
- Attended the Navy Museum meeting on June 15. The committee had applied for federal funds under an obscure program through DOT, which has approximately \$65 million nationwide to fund certain projects for "access." The committee had applied for \$3.5 million of these funds.
Some time ago, the Board sent a letter to Senators Mikulski, Sarbanes, and Congressman Hoyer but has not received a response. *The museum has asked that a brief letter be drafted to follow up on the status of these funds.*

(Peggy Childs recorded the following Public Hearing portion of the meeting)

PUBLIC HEARING: GROWTH ALLOCATIONS

Present: Jon Grimm, Director, Planning and Zoning Department
Sue Veith, Environmental Planner, Planning and Zoning Department
Peggy Childs, Recorder

Mr. Grimm stated at the outset that DPZ files for all four growth allocation applications contain: 1) Legal notice that the hearing were advertised in The Enterprise on 6/26/02 and 7/03/02; 2) Photographs of the placards showing that the properties were posted by staff with notice of the public hearings; and 3) Certified Receipts of notification to all contiguous property owners.

The Critical Area Ordinance allows the County Commissioners to grant "growth allocation" of RCA properties within the Critical Area, whereby they are "upzoned" to LDA. When the Commissioners have reached a decision, the applications will be forwarded to the Critical Area Commission, who must sanction the Commissioners decision. From the 1690 growth allocation acres approved for St. Mary's County, we have used 132 acres, leaving a balance of approximately 1558 acres. Today's applications represent a total of a little over 43 acres, which has been calculated under the recently negotiated "Consent Decree" between the County and the Critical Area Commission. The new agreement stipulates that any property of less than 20 acres which is approved for growth allocation must be subtracted in its entirety from the growth allocation acreage.

Today's hearings are on the growth allocation request and the Planning Commission's recommendations for the four applications, which are being reviewed under Section 38.2 of Zoning Ordinance #90-11, because the Critical Area Commission has not officially adopted the Critical Area provisions proposed under the new Zoning Ordinance. In Chapter 27 of the new Ordinance, #Z-02-01, these cases are specifically

allowed to continue under their process started prior to the County's adoption of the new Ordinance.

ISUB #00-100-058 – Colton & Mossey Lea

Requesting Critical Area Growth Allocation for a single-lot subdivision. The property contains

approximately 4.56 acres, is zoned RPD (partial RCA Overlay), and is located on the north side

of Oakley Road, approximately 0.9 miles east of its intersection with MD 242; Tax Map 38,

Block 24, Parcels 33 & 256.

Owner/Present: Thomas Colton

Also present: Herb Redmond, of DH Steffens Company, Inc., Agent

The Planning Commission conducted a public hearing and has recommended approval of this application, subject to the conditions that the balance of the parent parcel, or 11.08 acres be mapped as LDA and that notes be required on the subdivision plat that no further subdivision may occur on the 11.08 parent parcel, and notes on the official zoning map that no additional dwellings shall be allowed on the unsubdivided parcel.

Herb Redmond, of D. H. Steffens Company, representing the applicant, Thomas Colton, in this case, provided a history of this property and entered the following exhibits:

- #A-1 Certified Receipts of notification to contiguous property owners
- #A-2 Plat of Lot 1 of Mossey Lea – 2.99 acres owned by Donald/Charlotte Morgan,
MRB 358/5 06/15/87; MRB 26/25 12/11/46
- #A-3 Plat of Lot 2 of Mossey Lea – 2.54 acres recorded at MRB 2626,
Thomas Colton,
MRB 381/236; Plat at MRB 26/26 12/11/86
- #A-4 Plat of Lot 1 of Colton Subdivision – Plat recorded at MRB 030/053 on 11/22/98
Renie O. Quade, et al EWA 1339/59A 10/27/94
- #A-5 Copy of Tax Map showing Mossey Lea & Colton Point Subdivisions
with respective rights-of-way
- #A-6 Copy of Tax Map showing subject property for growth allocation with existing 50-foot and 20-foot rights-of-way
- #A-7 Health Department Boundary Line Adjustment Plat of Thomas Colton Subdivision
and Lot 2, Part of Mossey Lea dated 7/16/02 (revised 2/27/02 RWS)
- #A-8 Plat of Lots 3-6, Part of Mossey Lea – Revised Plat @ MRB 32/103 5/04/90
showed Lot 3 having 3.7 acres

The applicant seeks to create a new lot, Lot 2 of Thomas Colton Subdivision, out of an existing agricultural parcel. The proposed lot will be served by the 50-foot right-of-way that serves Lot 1 of Mossey Lea and Lot 1 of Colton Subdivision. The proposed lot and the residue of Colton Subdivision and its 1992 mapping is comprised of 11.08 acres, which will be mapped LDA and restricted from further development as required under the 2001 Consent Decree, if the growth allocation is awarded.

Mr. Redmond said this is an intra-family growth allocation request. The Planning Commission scored the project at 55 points out of a possible 141; however there is no way a single-lot subdivision can achieve 141 points under the growth allocation process. Reading the Planning Commission's recommendation into the record, Mr. Redmond said notes on the plat are good, but he believes the 11.08 acres needs to be a part of the recording.

Mr. Redmond said Mr. Colton has agreed to enter into a road maintenance agreement with Mr. Donald Morgan to maintain the 50-foot right-of-way, but he believes there are actually three users of the road today.

Commissioner Guazzo pointed out that Lot 3 is 6.008 acres, 3.7 of which is in the Critical Area. Ms. Guazzo said this would normally be enough acreage for an intra-family transfer, and it concerns her that the mapping of the 11.08 acres would take away the 3.7 acres in the Critical Area from Lot 3 and preclude an intra-family transfer. Ms. Veith replied that only one additional lot can be allowed on the 11.08 acres and this application is the first under this "first-come, first-served" process. She said Lot 3 could not do an intra-family transfer because they don't have 7 acres, which is required in the RCA under the Zoning Ordinance. Ms. Veith said this 4.56 acres is not an intra-family transfer, it is growth allocation and, if Mr. Colton could do an intra-family transfer, he wouldn't need growth allocation.

Ms. Guazzo said she really feels that what staff has created would have been valuable to the Commissioners if it were a little more usable, and asked Ms. Veith to provide something they can look at while they're making their decision. She said she doesn't want to take up any more time but this is very troubling to her and she will reserve the right to consult with staff and ask some more questions.

Commissioner Raley noted there are 12 existing trees on the property and asked how many more will have to be planted? Mr. Redmond replied that the 15,586 square foot of afforestation easement will be expanded to over 22,000 square feet, or one-half acre. Ms. Veith stated she will do the calculations and provide the Commissioner with the number of additional trees during the open record period.

The Chair opened the hearing to public comment.

Heidi Norris, of 20929 Mossey Lea Lane, stated she bought her property because it was in a rural area and at the time she was assured that there would be no more building on either Mossey Lea or Tony Farrell Subdivisions. She said the property is less than 132 feet to Canoe Neck Creek and there is a big ditch that runs alongside Morgan's driveway and feeds into Canoe Neck Creek and Church Swamp. There are a lot of eagles there and they fly over her house every evening. Ms. Norris said Mr. Colton purchased 7 acres, more or less, in 1986, stating that he just wanted a little bungalow where he wouldn't have another house in front of him. Shortly after his purchase, he built another house right in front of the Morgans, thereby obstructing their view. Last year, he sold that house with 2-3 acres of land. She said Mr. Colton says the lot is for his daughter to live on so she can take care of him. If that is a major concern for him, why did Mr. Colton sell the other house last year? She said if Mr. Colton sells the property, it will put more permanent traffic on her single-lane gravel driveway, where there is already five dwellings.

Ms. Norris said when Mr. Farrell sold the remainder of his property, which was about 64 acres, he was told there could be no more dwellings without paving the roads. He lost three percs that were on this property, a value of somewhere in the neighborhood of \$100,000, because of it. She said she told Mr. Colton if he would sign something that his daughter would live there and the property would not be sold, she wouldn't contest it, but he laughed and said he didn't think so. Mr. Colton also told her when he added a bedroom to his existing house last year that he did it for resale value.

Ms. Norris said the river was closed a month last year because of pollution and all the building in this area is contributing to the problem, putting the last of the real watermen out of business. She said growth allocation doesn't change the fact that she is the one who is being punished by having her country setting upset, and she doesn't see why the rules apply for some people, who are trying to make ends meet, and not for others who have retired here and want to constantly build up the area and then retreat to their homes in the country wherever they choose. Ms. Norris said the county has grown so much in the last few years that the Seventh District and the Ridge area are the last two areas that are country. It's getting to be a miniature Waldorf down here, and it's not fair to the local people who are from here and have chosen to make their homes here.

Mr. Thomas Colton, the applicant in this case, said, as far as his daughter living there, she will have her own entrance and he doesn't see where it makes any difference. As far as selling the property, Mr. Colton said today he's not going to sell it, but tomorrow he might sell it but, as of right now, he figures on living there until he dies and if his daughter wants to build a house there and it's approved, he doesn't see anything wrong with it.

Commissioner Raley asked staff whether the CAC has recommended denial of the application? Mr. Grimm replied they wrote a letter asking 10 questions or clarifications, among them the amount of allocation to be granted. Commissioner Mattingly asked staff whether the Critical Area Commission would deny the application if the County approved only 4.56 acres of growth allocation? Mr. Grimm replied he believes the CAC will only approve it with conditions consistent with the Consent Decree, but staff can ask the question during the open record period. Commissioner Guazzo asked Ms. Veith to overlay the 11.08 acres on Mr. Redmond's Exhibit 5, so the Commissioners can have a good picture of what's involved.

Commissioner Raley closed the public hearing, leaving the record open for 10 days for written comment.

ISUB #00-140-039 – BOHANAN PROPERTY, Lots 500-1 & 500-3

Requesting Critical Area Growth Allocation for a 2-lot subdivision. The property contains

6.341 acres, is zoned RPD (RCA & LDA Overlay), and is located on the north and south

sides of Snow Hill Manor Road, approximately 0.7 miles west of its intersection with MD 5;

Tax Map 58, Block 24, Parcel 16 and Part of Parcel 18.

Owners: John L. Bohanan, Sr. and John L. Bohanan, Jr.

Present: Donnie Ocker, of NG&O Engineering, Inc.

Legal Ad published in The Enterprise on 6/26/02 & 7/3/02

Property posted by staff

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

Parcel History: In 1985 at the time the Critical Area was established, the subject land was part of a 6.78 acre tract identified as Tax Map 58, Block 24, Parcel 18. In 1992, Parcel 18 was subdivided by Richard H. Pembroke to create Lot 1 (3.730 acres) and Parcel A (3.050 acres). In 1995, Lot was resubdivided to create Lot 500-1 (3.403 acres), Outlot A (0.552 acres for a sewage reserve easement to serve Parcel 19), and Outlot B (0.338 acres for a sewage reserve easement to serve Parcel 136). In 1996, Parcel A was subdivided by Ralph and Katherine Clark to create Parcel 500-A (1.713 acres for a sewage reserve easement to serve Parcel 17) and Parcel C (1.335 acres for a sewage reserve easement to serve Parcel 16 owned by the Bohanans).

Under the Chesapeake Bay Critical Area law, RCA land cannot be used for development unless sufficient density for that development exists. Pursuant to the Critical Area Commission written policy dated June 27, 1989, the creation of septic systems in the RCA constitutes development. Lot 1 of Pembroke used all available RCA density for Parcel 18. Therefore, the outlots and parcels created in the Resource Conservation Area after 1992 can only be used as locations for the sewage reserve easements for the LDA lots across Snow Hill Manor Road, if growth allocation is granted. Critical Area Commission staff finds that all of the land of Parcel 18 as it existed in 1985 must receive growth allocation and be mapped as LDA.

The Planning Commission, after public hearing, recommends that the balance of the parent parcel, totaling 6.341 acres be mapped as LDA and that notes be required on the zoning map to provide that no further subdivision or development may occur within the 6.341 acres.

Commissioner Raley asked staff whether the CAC's written policy dated 6/27/89 that septic systems constitute development is a policy or a law and what force and effect it has if it is a policy? Mr. Grimm replied he believes it has every effect, because the Commission is the oversight and approval authority for growth allocation. He added this is something that staff has arm-wrestled with the CAC over a long time, but the Commission treats a sewage reserve easement in the RCA that serves a development right in the LDA as its own separate and distinct development right.

Commissioner Guazzo asked if there is a house on each of the four waterfront properties and if there is a house on Lot 500-1 and how large that parcel is? Mr. Grimm replied there is a house on each of the four waterfront properties; there is a house on Lot 500-1 built in 1999 and it contains 3.403 acres.

Mr. Ocker gave the history of this property and said Mr. Bohanan wants to develop his property, which is two pieces – one is a property on the River side owned by John Bohanan, Jr., which consists of two very small strips on each side of a one-acre parcel in the middle. Mr. Bohanan, Sr. has bought a piece of land from the Clarks and wants to put a house on it, but he also wants to reserve a perc test for a failing system, since that seems to be happening in that area. They all use the septic easements across the road now, not on the River side. Mr. Bohanan got a set of percs that passed through the Health Department and they cut the lot up to provide John Jr. with a set of percs for his lot and John Sr. with access to the water through one of the 15 original strips of land that Mr. Bohanan has bought throughout the years.

Mr. Ocker said you can't have a buildable lot unless you have a perc test or central sewer. He said they meet the requirements necessary to provide sewage easements for both houses and are asking for growth allocation for Mr. Bohanan and to correct the category to allow development rights to exist.

Commissioner Guazzo said she counts 5 houses already on the 6+ acres, not counting the Bohanan application. Mr. Ocker said the area the Bohanans want to reserve would be on the north side of South Snow Hill Manor Road and there are 5 perc tests, but only one house on that piece. The houses that are on the River side, or the south side, fall under an LDA category already and are individual parcels of record.

Commissioner Guazzo said, unlike the first case, it looks like there really is nothing more than can be developed on the 6+ acres other than this request today, because the Clark piece is only 1.7 acres and they would have to combine it with their property on the water side and have a successful perc. However, as stated before, this is a first-come, first-served process and the Clarks would have had to have gotten here first.

Commissioner Raley opened the hearing to public comment.

Jim Harden, of 47450 South Snow Hill Manor Road, submitted for the record a letter from Katherine Clark dated July 14, 2002, which was entered as Opponents' Exhibit #O-1, and said there is nothing in the record that indicates how the lots would be subdivided, but he would prefer the house to be built on the back part of the lot. He said there is a discrepancy in acreage between the Staff Report for this hearing and the Planning Commission hearing, and he believes the correct acreage is 6.78.

Anna Gasparovic Haskell, also a resident of South Snow Hill Manor Road, read her prepared statement entered as Opponents' #O-2 and said she had written an earlier letter which she hoped the Commissioners had received. Ms. Haskell said her parents owned Snow Hill Farm, which abuts this property, since 1927. She said the subject property has been subdivided 3 times and noted that a portion of Snow Hill Farm is zoned 1:20, asking the reason for the discrepancy between the two properties? Ms. Haskell had other questions regarding the growth allocation process and said she is definitely opposed to the application and would appreciate receiving a detailed explanation of her questions.

Commissioner Raley asked staff for the correct acreage of the parcel. Ms. Veith said it is 6.34 according to all the recorded deeds.

Commissioner Raley closed the public hearing, leaving the record open for 10 days for written comment.

ISUB #01-100-043 – PROSPECT HILL, Lot 18

Requesting Critical Area Growth Allocation for a one-lot subdivision. The property contains approximately 9.73 acres, is zoned RPD/RCA, and is located on the south side of Knight Road, approximately 0.5 miles east of its intersection with Bull Road; Tax Map 40, Block 27, Parcel 92 and Part of Parcel 94.

Owner: Mark Henderson, Jr.

Present: Shawn Day, of Day Tech Associates, Inc.

Legal Ad published in The Enterprise on 6/26/02 & 7/3/02

Property posted by staff

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

This request is for a one lot addition to an existing subdivision, this portion being located within the RCA with an underlying zoning of RPD. The total growth allocation request is for approximately 9.73 acres as required under the Critical Area Consent Agreement, however the proposed lot itself is only 1.5 acres. Like the previous single-lot applications, it was scored relatively low by the Planning Commission, receiving a score

of 69 out of a possible 149 points. The Planning Commission has recommended approval with three conditions, including removal of an existing dirt road paralleling the shore and provision of a new right-of-way and gravel access road and revegetation of the abandoned roadbed and the same two conditions as the previous cases; i.e., the allocation of the total 9.73 acres and notes on the plat restricting any further subdivision within the LDA portion of the property.

Commissioner Mattingly questioned staff about the Consent Decree. Staff replied that the requirements are being applied statewide and have not been challenged by any county to our knowledge. She said urban counties are using their growth allocation more rapidly than St. Mary's but other rural counties are using it at about the same rate. Mr. Grimm noted that the County had approved 6 or 7 previous growth allocation requests deducting only the 1.5 acres for single-lot subdivisions but the CAC had denied the applications when they were sent to the State and the applications were being held hostage and could not obtain a building permit, so the County reluctantly agreed to the Consent Decree and to subtract the total acreage from growth allocation. Mr. Grimm stated, without subtracting the full acreage, he believes the CAC will deny these four growth allocation projects and they would be in the same boat as the others.

Shawn Day, of Day Tech Engineering, representing the Applicant, stated the request is to convert Outparcel B, a 9.73 acre outlot, into a building lot for Mr. Henderson. This is a large-lot subdivision, with the houses located quite a distance back from the road. The application meets the growth allocation requirements as far as lot area and buffering requirements. At the Planning Commission hearing there was a lot of opposition about the location of the proposed structure in the center of what is now a field, because it would block the water view of an adjoining lot. Mr. Day said it was difficult to meet the desired 300 foot buffer and still maintain the adjoining lot's water view; however, the 300-foot buffer is really only a suggestion for single lots. He said he has reconfigured the lot closer to the edge of the field with the required 100-foot buffer and with a forest conservation easement to maintain undisturbed the wooded portion of the property so, although they cannot meet the 300-foot requirement, the buffer is more than 100 feet and there seems to be no disadvantage from an environmental impact point of view.

Commissioner Guazzo asked whether the right-of-way will remain gravel? Mr. Day replied that no decision has been made as to that, but paving is calculated the same as gravel for impervious surface. There will be notes on the plat that density reservation parcels 1 and 2 and open space parcel B will not be built upon or subdivided, if the growth allocation is approved.

Commissioner Raley opened the hearing to public comment.

Attorney Karen Abrams, representing the owners of the right-of-way through their daughter, Connie Bromley, said the problem is that no one has really discussed the elimination of the right-of-way with them and it cannot be done without their permission. She said they are not saying "no," but she wants to make it clear that the Fronelichs must be involved. Commissioner Guazzo added there also needs to be an agreement as to who will maintain the road.

Commissioner Mattingly questioned whether the existing driveway will continue to the old house? Ms. Veith replied that the driveway will continue to the old house, which does not look to be habitable, and the portion to be relocated is where the right-of-way runs parallel to the shoreline at the crest of the hill.

Lt. Col. Rich Richardson, who lives on Buzzard Point, said the road is not gravel and is hardly a road; when it rains it is mud and right now it is just plain dirt. He said he thinks we all like the rural nature of the county but he is not opposed to growth at all. Lt. Col. Richardson said Dr. Henderson has done an excellent job in developing the property on Knight Road and asked that the Commissioners approve his request.

This concluded the public comment in this case. Ms. Veith was asked by the Commissioners to check the acreage of the property and report back. She pointed out that, under the Critical Area regulations, if you provide the 300-foot buffer, you can deduct that from the growth allocation award and she will provide that calculation also.

The public hearing was closed at 3:51 p.m. The record will remain open for 10 days for written comment.

ISUB #01-110-023 – CLEARBROOK FARMS

Requesting Critical Area Growth Allocation for 28 lots on 16 acres. The property contains 59.0 acres and is zoned RL (partial RCA Overlay), and is located on the southeast side of Patuxent Boulevard, approximately 1500 feet north of Myrtle Point Road; Tax Map 34, Block 6, Parcel 126.

Owner: G&I LLC
Present: J. A. Chisholm, P.E., LLC

Legal Ad published in The Enterprise on 6/26/02 & 7/3/02

Property posted by staff

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

This is a design competition project which uses the "development envelope" concept, or 28 lots on 16 acres; however, the Critical Area Commission is requesting deduction of 23 acres of growth allocation, which includes 7 acres for the 4 lots and community beach existing on the site. Staff's position is that 16 acres is what our local program calls for. The Planning Commission scored the application at 129 points out of a possible 161 and recommends the application be denied for a variety of reasons, including character of the neighborhood and the nature of the development.

Mr. Chisholm, of 2661 Riva Road in Annapolis, gave a brief history of the property, stating the total property contains 59 acres with approximately 52 acres in the Critical Area. Their request is for 28 lots clustered on 16 acres. He said the balance of the property will remain in forest conservation which cannot be further subdivided, and which will increase the forest cover from 11 to 21.7 acres. The property is intended to be served by public water and sewer proposed for The Woods at Myrtle Point and stormwater management will be provided through best management practices and will meet the 2001 criteria.

Mr. Chisholm said the existing beach and tidal pond will be left in their natural state and title will go to the homeowners' association. Individual slips will not be allowed, but the existing pier will be accessible to the homeowners for crabbing and fishing or a place to launch kayaks or canoes, subject to Critical Area regulations.

Commissioner Guazzo asked whether the applicant has responded to the Critical Area Commission's letter of April 29, 2002 which asked some 18 questions? Mr. Chisholm replied that they have not responded as yet but agreed to provide a response within 10 days.

Commissioner Anderson asked the condition of the public water/sewer infrastructure? Mr. Grimm said it is his understanding is that there is capacity in the lines but that the lines are not serviceable. If the project were approved, the lines would have to be made serviceable before the plat was put to record or be subject to a bond or service agreement held by MetCom.

Commissioner Anderson said we know this is a fragile piece of property and a letter from a previous study stated that only 3 of the 61 tidal creeks in the County have characteristics as poor as those found in Little Kingston Creek for assimilating the pollution effects of growth. Allowable density and growth allocation aside, he asked if we have determined whether the capacity of the property, the creek and the tidal area will sustain growth at this density? Ms. Veith replied, in her opinion, the 300-foot buffer provision and meeting the current stormwater management criteria, along with planting an additional 10 acres of trees on the site, will protect the creek, based on all the information she has. She said she believes the project will mitigate, if not eliminate, the impact of this actively-tilled agricultural parcel and make the property more stable than what is happening there now.

Mr. Chisholm said, at the Planning Commission hearing, the opposition had a witness who spoke about phosphorus going into the creek from the farming operation and provided a graph showing that, on the property not being farmed, the pollution was significantly reduced. He said that supports Ms. Veith's statement. In addition, the establishment of the wooded buffers as opposed to the fertilized lawns will provide a significant buffer between the creek for runoff to be assimilated into the soil. He said that everything that is not in lots or is not woodlands now will be replanted as forest or allowed to regenerate.

Commissioner Guazzo noted from public testimony at the Planning Commission hearing there seemed to be a question as to whether Clearbrook Farms would have a right, with the change of ownership, to use the water from First Colony. Mr. Grimm replied the public infrastructure would have to be put into place in accordance with MetCom specifications and if there were easements that were required from the other owner, it would be up to this landowner to negotiate that, but it is available. As to whether the current infrastructure is usable, Mr. Chisholm replied if the developer cannot resolve that issue in 3 years the growth allocation would be rescinded. Mr. Grimm explained that the Ordinance specifies "substantial progress" within 3 years and said a site plan or subdivision approval, or a MetCom bond or public works agreement would typically constitute "substantial progress;" however, the Commissioners could define "substantial progress" should they approve the application.

Commissioner Guazzo asked, if the applicant gained growth allocation approval, could he record the plats as he goes through the subdivision process or could he record them piecemeal? Mr. Grimm replied he could record them in sections, but the only thing that is grandfathered would be the rezoning. If the rezoning is granted and subdivision plats are filed, they would have to conform to the new Subdivision Ordinance, #Z-02-02.

Commissioner Guazzo suggested the Commissioners ask the applicant allow them to view the property on site to get a good understanding of what is being proposed. Mr. Chisholm said he didn't think his client would have a problem with that. The other Commissioners agreed. Staff will arrange the site visit and report back.

Commissioner Raley noted that the Planning Commission recommended denial and asked whether the applicant has addressed any of their concerns? Mr. Grimm replied that individual Planning Commission members had concerns that the project was incompatible with the character of the neighborhood, there were concerns with the infrastructure and the fragility of the site.

Commissioner Anderson asked Mr. Chisholm if he has developed sensitive lands like this before and, if so, what the impact of the development was? Mr. Chisholm responded he developed an 800-acre subdivision in Anne Arundel County that had an eagle's nest and part of it was in the Critical Area. It was done in an "ag soils" method, which took into account erodible and non-erodible soils; it had prehistoric artifacts, two historic houses which were preserved, the archaeological resources were put in open space, and the lots were clustered similar to this project except they were one-acre on well-and-septic; it consisted of approximately 150 homes. Mr. Chisholm said he has lived there for 8 years and there are more woodlands on the site now than there was prior to the development, even though they cleared about 50 acres for the houses.

Commissioner Guazzo asked if staff would speak to Clare Whitbeck's comments which state that stormwater management provisions are absent. Ms. Veith replied there was a general statement that stormwater management would conform to the manual but there was no description on the plans and a condition of any subdivision approval would be that it would be designed to meet the new requirements. Because the plan was a concept plan, it did not require any detail on stormwater management but it will be required in the preliminary and final plans.

Commissioner Raley opened the hearing to public comment.

Peg Lang, of 23672 Myrtle Point Road, said she doesn't have any specific concerns but she notices that most of the people who do have concerns were unable to come to this meeting. Ms. Lang said she lives across the road from the proposed development and The Woods at Myrtle Point and she is concerned about the way these two rather large developments will change her neighborhood. She said she is concerned about what this is going to look like, what it will do to her well water, she is concerned about erosion and what this will do to Little Kingston Creek and what impact it will have on the county's land at Myrtle Point.

Ms. Lang said it seems like she and many of her associates are opposed to any kind of development, and she supposes on the surface that is true, but the bottom line is they really want to see things done right. She said the critters that live in the waters and on the land don't have anyone to speak for them, and most people don't have the expertise or the money that developers have, and she hopes the Commissioners will take that into consideration.

Frank Smirbeck, of Fairfax, VA, manager for G&I LLC, named other waterfront developments he has done and said he has probably developed over 6,000 lots in the last 5 years in Maryland, Virginia, and Pennsylvania. He said he thinks they addressed some of the Critical Area Commission's comments when they submitted their new plan, but they will go through them point-by-point and try to make their position clear, either meeting or exceeding expectations. Mr. Smirbeck said he had a lengthy meeting with the surrounding citizens after the first meeting and he thinks the overwhelming concern is what the project will do to the fragile environment of Little Kingston Creek. He said there will be less phosphorus and nitrates going into the creek after their development than there is now, even without the additional property out there that could be farmed. He said he built the first best management practice pond in Fairfax County and it functioned well and continues to function today.

Mr. Smirbeck said this is a waterfront community and there is going to be more traffic on the creek, but he doesn't know that there wouldn't be more boat traffic anyway, if the property is left alone. He said they need to address that with the citizens as the subdivision process goes forward as to how they can better protect the creek with rip-rap, stormwater management ponds and, if there is a boat ramp, it would be for the residents of that community primarily for boarding and loading their boats but harboring them somewhere else, and that could be governed by covenants and restrictions.

Mr. Smirbeck said they have been involved in this property for a long time, but the only association they have with the former developer is that they were lenders. They are now the owners and there is no loan on the property. He said they talked with Mr. Szlendak of First Colony and The Woods at Myrtle Point about water and sewer and he knows they must install a pumping station for the system to work for them or they have to be in control of their own destiny and do whatever it takes to provide water and sewer, whether it takes replacing or relining the lines. He said he thinks the price range of the houses will be \$500,000 or more and that he may or may not build the homes himself.

Sam Thompson, of 45550 Deer Crossing Lane, spoke to the recreational area and the community pier and said he thinks it would make more sense to move the community pier closer to the inlet and the beach area so it would be one continuous piece for water access. It would be away from the head of the creek and he thinks the people who live there would enjoy it more, because they wouldn't be split between two recreational areas. He said he knows that, eventually, something is going to be done with the property, and he agrees with Ms. Lang that the citizens just want to see it done right. His other point, Mr. Thompson said, is that the 16 people who were involved in improving the inlet spent around \$183,000 to do that, but they won't be responsible for maintaining the inlet when that is paid for.

Commissioner Mattingly asked Mr. Thompson whether he thought relocating the pier to the beach area would encourage more boating traffic than having it less accessible? Mr. Thompson replied that he rebuilds boat engines and, if he bought a house here, he would want to be able to use the water and he would want someplace to tie up at least temporarily. There seems to be a consensus that they won't get 28 boat slips, but they're going to have to have something, maybe 6 slips. Commissioner Mattingly asked whether Mr. Thompson thinks there is an advantage to having boat traffic to help maintain the channel? Mr. Thompson said he doesn't think the boat traffic will do anything to help or hurt the quality of the inlet, and boats that are not left overboard but are trailered do a whole lot less environmental damage than boats that are bottom-painted and, if you moved the pier up farther, you would minimize boat traffic in the creek itself a little bit. Commissioner Guazzo commented she would think there would be a problem with parking.

This concluded public comment. The public hearing was closed at 4:55 p.m. The record will remain open for 30 days for written comment, for the commissioners to visit the site, and for staff and the developer to provide the requested information.

EXECUTIVE SESSIONS

Commissioner Anderson moved, seconded by Commissioner Guazzo to meet in Executive Session to discuss matters of Personnel and Property Acquisition, as provided for in Article 24, Section 4-210(a)1 and 4-210(a)11, respectively. Motion carried.

Property Acquisition

Present: Commissioner Joseph F. Anderson
Commissioner Shelby P. Guazzo
Commissioner Daniel H. Raley
Alfred A. Lacer, County Administrator
Phil Rollins, Director, Recreation and Parks
Janet Parks, Real Property Manager
Donna Gebicke, Admin. Asst. to BOCC, Recorder

Authority: Article 24, Section 4-210(a)11

Time Held: 5:06-5:28 p.m.

Action Taken: The Commissioners discussed a property acquisition matter.

Personnel

Present: Commissioner Joseph F. Anderson
Commissioner Shelby P. Guazzo
Commissioner Daniel H. Raley
Alfred A. Lacer, County Administrator
Donna Gebicke, Adm. Asst. To BOCC, Recorder

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

Time Held: 5:28-5:36 p.m.

Action Taken: The Commissioners discussed Ethics Commission appointments and gave directions to staff.

ADJOURNMENT

The meeting adjourned at 5:36 p.m.

Minutes Approved by the
Board of County Commissioners on 7/23/02



Donna Gebicke, Administrative Assistant
to the Board of County Commissioners