

**ST. MARY'S COUNTY
BOARD OF COUNTY COMMISSIONERS' MEETING
Governmental Center
May 8, 2001**

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
Kate Mauck, Recorder

CALL TO ORDER

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

ADDITIONS/DELETIONS TO AGENDA

Commissioner Guazzo moved, seconded by Commissioner Raley, to accept the agenda as presented. Motion carried.

APPROVAL OF CHECK REGISTER

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

APPROVAL OF MINUTES

Commissioner Raley moved, seconded by Commissioner Mattingly, to approve the minutes of the Commissioners' meeting of Tuesday, May 1, 2001 as corrected. Motion carried.

Commissioner Mattingly moved, seconded by Commissioner Raley, to approve the minutes of the Commissioners' Special Meeting of April 30, 2001 as presented. Motion carried.

COUNTY ADMINISTRATOR

Present: Alfred A. Lacer, County Administrator

1. Draft Agendas for May 15 and May 22, 2001
2. **Agricultural Seafood Specialist**
Signing of ALPD Letter to State (follow up to last week's meeting)

Present: Donna Sasscer

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

3. **Department of Recreation and Parks**
Commitment Agreement with Boundless Playground Grant Inc.
Maryland Boundless Playgrounds Challenge Grant Program
(State Funding \$75,000; County Funding \$100,000 budgeted in FY 2001)

Present: Phil Rollins, Director, Recreation and Parks

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

4. **Walden/Sierra, Inc.
Grant Proposals**

Present: Patti Shade
Betsy Cooksey

- a. Intermediate Care Facility (State Funds \$832,000)
- b. Intermediate Care Facility (State Funds \$66,347)
- c. Sierra House (State Funds \$438,820)
- d. Sierra House (State Funds \$180,600)
- e. Walden Counseling (State Funds \$145,984)
- f. Walden Counseling (State Funds \$785,671)

Commissioner Anderson moved, seconded by Commissioner Mattingly, to approve Grant Proposals 4a through 4f inclusive and to authorize Commissioner Randall to sign. Motion carried.

5. **Boards, Committees, Commissions**
Letters of Appointment

Commissioner Mattingly moved, seconded by Commissioner Anderson, and motion carried, to sign the letters of appointment to the following individuals:

<u>Agriculture Preservation Advisory Board</u>	<u>Term to Expire</u>
James W. Spence	12/31/2006
<u>Commission on Aging</u>	
Clancy Lyall	6/30/2004
Kitty Turner	6/30/2004
<u>Commission on the Environment</u>	
Peter R. Worch	12/31/2003
<u>Development Review Forum</u>	
Lowell H. Ruff	12/31/2003
<u>Economic Development Commission</u>	
Jane Loughran	6/30/2004
Eleanor Tydings-Reynolds	6/30/2004
<u>Ethics Commission</u>	
M. Martha Neal	6/30/2001
<u>Family Center of St. Mary's Advisory Committee</u>	
Juanita Nether	12/31/2003
Dennis Nicholson – <i>Reappointment</i>	12/31/2003
<u>Human Relations Commission</u>	
Bernadette Lewis	6/30/2004
Wilma Murrow	6/30/2005

Planning Commission

Tom Watts 12/31/2002

Social Services Board

Melvin A. McClintock 6/30/2002

6. Department of Human Resources

Health Care Benefits Enhancement – Disease Management Program

Present: Dawn Drew, Acting Director of Human Resources

Commissioners outlined concerns and questions they had regarding the Disease Management Program. *The Human Resources Department was requested to provide documentation regarding how this program is working for other counties/regions in the country and bring the matter before the Commissioners in the next nine months to one year for review.*

7. Proposed NASA Lab for St. Mary's Tech Center

Request for Complete Application for Funding and Letter

Present: Linda Price, Public Information Officer
Charlene Newkirk, Assistant to the County Administrator
Robert Taylor, Principal, SMCPS Technical Center

Commissioner Anderson moved, seconded by Commissioner Raley, to direct staff to complete the application and to provide a letter to Senator Mikulski for the Board of County Commissioners to sign. Motion carried.

8. Office on Aging

Grant Document - Additional Title IIID Funding (Federal: \$28,915)

Present: Gene Carter, Director, Office on Aging
Jennie Page, Deputy Director, Office on Aging

Commissioner Raley moved, seconded by Commissioner Anderson, to approve and authorize Commissioner President Randall to sign Grant Modification. Motion carried.

9. Introduction of Director of Economic and Community Development

Present: John Savich, Director of Economic and Community Development

Mr. Lacer introduced the newly hired Director of Economic and Community Development to the Board of County Commissioners. Mr. Savich was warmly welcomed by all that were present.

PROCLAMATION – NATIONAL NURSES WEEK

Present: Monica Hayden, Director of Nursing, St. Mary's Nursing Center
Sheree Poole, Assistant Director, St. Mary's Nursing Center

The Board of County Commissioners issued a proclamation recognizing May 6 through May 12, 2001 as National Nurses Week.

CHAMBER OF COMMERCE -INVITATION TO TRADE FAIR

Present: Janet Cook, Executive Director, Chamber of Commerce
Frank Goldbach, President, Chamber of Commerce
George Hayden, Trade Fair 2001 Chairman
Mary Ann Murray, Accountant, Trade Fair Committee

Mr. Goldbach provided an update to the Board of County Commissioners regarding the Chamber of Commerce, stating that there were currently 620 members registered. He announced that the Chamber awarded Business and Economic Community Alliance (BECA) Scholarships to local high school students in the highest amount ever awarded by the Chamber. Commissioners were invited to the Chamber's Annual Meeting at the College waterfront on June 11th.

Mr. Hayden provided an outline of the variety of events that will occur at the Trade Fair, to be held on Saturday, May 19th and Sunday, May 20th from 10:00 to 4:00 at the Fairgrounds. This event is the largest fundraiser that is held annually by the Chamber of Commerce, and it is in its 19th year. Seventy-four vendors have registered to participate, and there will be no charge to citizens.

The Board of County Commissioners were invited to attend the vendor awards to be held at 12:30 on Saturday, May 19th. Awards for the best inside booth and best outside booth will be presented.

Commissioners commended the efforts of the Chamber and the Trade Fair staff for their outstanding work. Commissioner Mattingly presented a proclamation regarding the Trade Fair 2001.

SOUTHERN MARYLAND SOAP BOX DERBY PRESENTATION AND REQUEST FOR FUNDING

Present: John Alvey, President, Lexington Park Lions Club
Jess Davis, Secretary and President-Elect, Lexington Park Lions Club

Mr. Alvey presented information on the Southern Maryland Soap Box Derby event that will occur on Saturday, June 16th, 2001 in Leonardtown. A main topic of discussion was the need for more effective advertising for this popular event.

Commissioners were invited to the event, and were asked to consider providing funding to assist with the costs involved.

Commissioner Raley moved, seconded by Commissioner Anderson, to provide \$1,500 from this year's Commissioner's Reserve Account to go toward the Lexington Park Lions Club for the Southern Maryland Soap Box Derby. Motion carried. Commissioners directed the Public Information Officer to place information regarding the event on the County's website. The Lions Club was directed to work with the County's Tourism Coordinator to further publicize the event. Additionally, Commissioners asked the Lions Club to use our standard budget process for inclusion in future years from the Tourism budget.

RIBBON CUTTING CEREMONY 911 EMERGENCY MANAGEMENT BUILDING

The Board of County Commissioners departed for an 11:30 a.m. ribbon cutting ceremony for the 911 Emergency Management Building.

Peggy Childs recorded the following portion of the minutes:

PUBLIC HEARING BEN OAKS SUBDIVISION (WATER CATEGORY CHANGE) CWSP #00-120-028

Present: Jon Grimm, Director, Planning and Zoning
Peggy Childs, Recorder

The public hearing was conducted in order to request a water category change from NPS (No Planned Service) to RW (Rural Water).

The property contains 385.48 acres, is zoned RPD, and is located on MD 5/235 in Mechanicsville;

Tax Maps 9 & 13, Blocks 15 & 3, Parcels 56 & 9.

Owner: J. D. Murray, of Bay Mills Construction
Present: Randy Barrett, Mike Rodevick, Barrett Associates, Inc., Agents
Attorney Anthony Brown, representing Mr. Murray

Legal Ad published in The Enterprise; posting of property by staff
#A-1 Certified Receipts of notification to contiguous property owners
#S-1 4/30/01 Staff Report

Mr. Barrett has taken the former Section III of Persimmon Hills and combined it with 5 lots of Persimmon Hills Section I and Sections 2 and 3 of the Valley Woods Subdivision, to form a new subdivision known as Ben Oaks, and is seeking approval for a community water system.

Mr. Barrett provided for the record the following additional exhibits:

#A-2 MDE WRA Nontidal Wetlands and Waterways Permit
#A-3 Health Department comments and approval under individual wells and with community water

Two elevated storage tanks will be provided with a minimum of 94,131 gallons of elevated storage, slightly more than required; however, they have not bought the tanks yet and Mr. Barrett said if they could find a larger tower available, they will buy it. The system will have a minimum pressure rating of 40 psi, the required gradient, and 5 fire hydrants will be installed along with an 8" line along 235.

Mr. Grimm said the 5 lots have received final approval; Sections 2 and 3 of Valley Woods (18 lots) received preliminary reapproval on March 13, 2000; and the remaining 93 lots have received concept approval. The 5 lots and the 18 lots are vested under the current zoning ordinance and for stormwater management. The 93 lots are not vested at this time. The point was made regarding the 93 lots that are currently under the concept plan: they would fall under the new stormwater management proposal and the regulations of the ULDC if they are not at the approval point by the Planning Commission by the time those two documents are approved. The Planning Commission conducted a public hearing on the water category change on November 27, 2000 and recommended approval to RW as requested.

Commissioner Randall opened the hearing to public comment. Linda Murdock of 39700 Persimmon Creek Road, which has individual well and septic and is located behind Persimmon Hills I and II, read a prepared statement into the record, entered as #O-1. Ms. Murdock noted that the Ben Oaks development site is directly on the floodplain and headwaters of Persimmon Creek and most of the soil displacement caused by the construction will wash into the Creek, which will take the silt and soil runoff through the Rural Legacy land at Trent Hall and Cremona; thence to the Patuxent River and the Chesapeake Bay, posing a serious environmental hazard to our watershed, to aquatic and forest wildlife, and the creek and river.

Ms. Murdock stated this contiguous forested area supports a large number of wildlife species and an extensive survey should be constructed to ensure that no endangered or rare species exist on the property. Furthermore, Ms. Murdock said this land actually sits directly in the area of the county targeted for preservation under Maryland Program Open Space and project Greenprint, and it would be a travesty to let the Ben Oaks Subdivision ruin it. In addition, Ms. Murdock said she has low water pressure now and her magnolia tree is already suffering; if we don't get some rain soon she believes there could be significant issues about water in this area, and 114 homes may not be supportable.

Ms. Murdock stated the conditions of the permit issued for the Nontidal wetlands crossing are extensive and need to be followed to the letter, including the times of year that they can work. She said this 350 acres is perfect for preservation, and asked that the Commissioners influence a movement toward that goal.

Tom Russell, of MetComm, said MetComm signed a groundwater appropriation permit to access the Magothy Aquifer. The problem is that he does not know where the Magothy Aquifer runs out and the Patapsco Aquifer begins, so it may be in the Upper Patapsco, but it is definitely not in the Aquia.

Commissioner Guazzo asked if it is possible that the applicant could go back and decide to do individual wells. Mr. Barrett replied that is not their intention, that they have been pursuing the community water system for some time, and the only purpose of any modification of the central water system would be progress; otherwise, there is no reason to change.

Mr. Raley asked Mr. Russell how this approval would affect the existing water system. Mr. Russell replied that they will have fire protection and will have elevated storage on the other side from the existing tank, so in case of an outage, they can push water from either direction. Ms. Guazzo talked about additional capacity. Mr. Barrett replied they have not bought their water tank yet, but there will be at least some additional capacity.

Commissioner Randall asked what incentive there is for the applicant providing a community water system. Mr. Barrett replied basically because MetCom and the Health Department told them that is what they would like to have, but they are at the point where they need a decision, or else they may have to go back to individual wells, even though this is a better plan. Commissioner Anderson said the issue is whether this project should go forward at all and the negative impact the development will have on the watershed. Commissioner Mattingly, however, stated it is premature to get into the merits of the project and fire protection is an important issue to fire and rescue. He said this is a very positive thing from a public safety standpoint. Ms. Murdock agreed with both Commissioners, stating the water tower is the right thing to do if this project goes forward, and she does not oppose the water system.

Doug Ritchie, of 26590 Three Notch Road, stated that it does not take long for the water to run off these hills and get into the creek, contrary to flat lands somewhere else, and the nitrogen load into the estuary will increase as a result of this development.

Commissioner Randall closed the public hearing at 2:40 p.m. The record will remain open for written public comment for ten days, with a decision to be scheduled at a later date.

Kate Mauck recorded the remaining meeting minutes:

**PUBLIC HEARING
REVISED ST. MARY'S COUNTY PUBLIC ETHICS ORDINANCE**

Present: John Roberts, Member, Ethics Commission
Patrick Murphy, County Attorney

The Board of County Commissioners conducted a public hearing regarding the proposed revision of the St. Mary's County Public Ethics Ordinance. Notice of Public Hearing had been properly advertised on April 25 and May 2, 2001. Mr. Roberts outlined the proposed changes in the Ordinance, and he stated that the State Ethics Commission had already approved the proposed changes prior to submission for final approval to the Board of County Commissioners.

Proposed changes in the Ordinance involve Section 6A – Financial Disclosure. Section 6A1 outlined “Elected Officials and Employees of St. Mary's County” that must file a full and complete Financial Disclosure Statement. Section 6A2 outlined “Appointees to Voluntary Boards and Commissions” that must file a newly revised version of the Financial Disclosure Statement.

The Board of County Commissioners directed the County Attorney to research and provide them with recommendations regarding the following issues:

- ◆ Determine whether Section 4J (exemptions and modifications) is outlined in Ethics Ordinances of counties other than St. Mary's;
- ◆ Look into listing Board of Education elected officials and/or employees on List 1 versus List 2 in Section 6A; and
- ◆ Research adding a generic statement to filing requirements of financial disclosure statements to include allowing the flexibility to require filing for specifically identified employees/department heads, etc.

The hearing was opened for public comment and the following individuals spoke:

Louise Snell – Co-President of the League of Women Voters – Ms. Snell was of the opinion that individuals should not be the ones to interpret what they should or should not disclose on Financial Disclosure Statements. This would produce a loss in confidence to the public regarding a lack of conflict of interest for Board, Committee and Commission members. Additionally, she expressed concern that the proposed Ordinance was silent regarding the definition of the word “relationship”.

Len Greess – Mr. Greess indicated that separating the filing of Financial Disclosure Statements into two lists/versions would undermine confidence and possibly give an appearance of a potential conflict. He was of the opinion that the shortage of volunteers to Boards, Committees and Commissions was not due to the Financial Disclosure Statement. He indicated the shortage of volunteers preceded the filing requirement. Mr. Greess felt that it would be preferable to have vacancies on Boards instead of undermining appropriate ethical standards. He recommended specific changes to Sections 6A1 and 6G of the Ordinance and offered to assist in the rewriting of the document.

Jack Witten – Potomac River Association – Mr. Witten has had experience with the Lancaster Resolution, the Ethics Law and the Open Meetings Law. He indicated that all three of these laws should not be weakened and that it was important to maintain the integrity of these laws in order to protect the public.

Robert Lewis – Mr. Lewis stated that he had routed the Ordinance to various attorneys and they stated that the St. Mary's County Ethics Ordinance is the most severe Ordinance of its type in the State. They encouraged the county to keep it that way. Mr. Lewis doubted many individuals had resigned from boards simply due to the Financial Disclosure requirement.

Donald Brown - Chairman of Republican Party, St. Mary's County – The Republican Party feels that having the strongest Ethics Ordinance in the State is a good thing. Mr. Brown feels that all individuals should be required to file the same Financial Disclosure Statement, and that a “weaker” version should not be approved.

Pam Coerber - Would like to have a definition provided in the Ordinance for the term “relationship”. She wanted to know what defines “relationship” and who decides if one exists. Additionally, Ms. Coerber feels that the original Ethics Ordinance is a very good document, and she urged Commissioners not to dilute it.

Doug Ritchie – Suggested page 9 Section 5D regarding tickets or free admission include the word “local”, to indicate in the county in which an individual has been elected.

Clare Whitbeck - Ms. Whitbeck felt there are plenty of qualified candidates for boards. She indicated the purpose of the change to the Ordinance is to enable Commissioners to appoint people who refuse to file financial Disclosure Statements and must have something to hide. She urged Commissioners to keep the Ordinance the way it was prior to the proposed changes.

Donna Sasscer – Ms. Sasscer has worked closely with the Historic Preservation Board and the Agricultural Preservation Advisory Board, and has witnessed the loss of one individual from a board due to the Financial Disclosure Statement requirement. She stated that these individuals simply did not understand the need for the disclosure and that

other farmers feel the same way regarding the requirement for filing for members on advisory boards.

Discussion took place between Commissioners and Mr. Roberts regarding guidelines to come from the Ethics Commission in order to clearly define filing requirements for specific boards.

Linda Murdock - Stated that if some advisory boards are to be exempted from filing, there should be a specific statement in the Ordinance to indicate this.

Commissioner President Randall closed the public hearing. The record will be kept open for ten days in order to accept written public testimony. The item will then be placed on a future agenda for a decision.

Peggy Childs recorded the following portion of the minutes:

UNIFIED LAND DEVELOPMENT CODE

Present: Chris Drummond, ULDC Facilitator
Jon Grimm, Director, Planning and Zoning
Peggy Childs, Recording Secretary, Planning and Zoning

Mr. Drummond began by telling the Commissioners the redraft on the technical aspects of the ULDC is progressing at a good pace and he thinks we are on target with what the Commissioners expected of him, but the redrafting because of policy decisions is not moving as quickly as he had hoped. If a public hearing is to be scheduled in June, Mr. Drummond asked that the Commissioners set aside 2, 3, or 4 days of uninterrupted time to discuss these policy issues. Mr. Drummond said he still is not clear on subdivisions in the RPD, and this has very important and far-reaching impacts on TDRs, PDRs, and the Ag Overlay.

Depending on the Commissioners' decisions today regarding the Ag Overlay and Rural-Residential districts, Mr. Drummond said elements of the 1999 Comprehensive Plan must be amended concurrently with the adoption of the ULDC, because there are specific action items in the Comp Plan that direct the creation of the Ag Overlay and Rural-Residential Zone and direct residential density limits in the RPD which are specific, and these are arguably inconsistent with the Commissioners' February decision on density. He asked for direction to start the 60-day notice process to amend the Comp Plan.

Commissioner Randall directed that staff provide the Resolution adopting the Comp Plan to Mr. Drummond, because she said there was a compromise at the Commissioners' table to change the action boxes in the Comp Plan from directives to examples.

A lengthy discussion followed during which the Commissioners clarified their density decision of February 20th as well as the use of TDRs in the RPD. The February decision reduces density from a potential of 63,632 new dwelling units, which are available today under 1:3 zoning, to a cap of 29,290 new dwelling units in the rural district. Additional lots could be developed with TDRs *only from other RPD lands*. TDRs can be transferred within the RPD but cannot be transferred from an area outside the RPD into the RPD. TDRs can be transferred from the RPD to growth areas. Previously, FARs in the growth districts were significantly less and TDRs were necessary to achieve maximum density in the development districts but, under the Planning Commission draft, FARs have been increased in the growth areas so that TDRs are only required for *bonus density*. Commissioner Guazzo asked about the transfer of density in the Critical Area. Mr. Grimm replied that it is allowed under the Growth Allocation process. Mr. Drummond said he doesn't understand that, because it is his understanding that, in other counties, the Critical Area Commission has approved the transfer of density from one area of the Critical Area to another.

The Commissioners directed the following for the topics outlined in Mr. Drummond's 5/4 memorandum:

Ag Overlay

Mr. Drummond stated, in the RPD with an Ag Overlay, subdivisions would be limited to 5 lots. You would, however, double your TDRs to 2 per acre instead of one. Mr. Drummond and staff recommend deleting the Ag Overlay from the text and maps of the ULDC because most of the purposes which established the need for the overlay are satisfied through the sliding scale density decision.

No decision. The Commissioners need to look at the maps, the acreage, and the ramifications of keeping the Ag Overlay in addition to their sliding-scale density decision. Commissioner Guazzo offered another option: to adjust the boundaries of the Ag Overlay. Commissioner Randall said without the Ag Overlay, she is concerned about a vehicle for prioritizing prime soils for Ag Preservation and PDR programs, and asked that Donna Sasscer be present when we talk about this. Mr. Drummond pointed out that Ms. Sasscer reviewed the recommendations contained in the May 4th memo, and they have her blessings.

Rural Residential Zone

Mr. Drummond and staff recommend eliminating the RR Floating Zone, given the sliding scale density decision by the Board. The Citizens Technical Review Committee also recommends deletion of the RR. However, it is recommended that the subdivision design criteria of Section 45.4 and 45.6 be required for all rural subdivisions.

The Commissioners concurred generally, but Commissioner Raley stated he would like to see what the design criteria are. Staff was directed to put the criteria in the draft document for public hearing.

Nonconforming Uses

This is the draft ordinance prepared by county staff last winter for nonconforming uses within the AICUZ. Deputy County Attorney John Norris said, before we schedule this for public hearing, however, a decision will have to be made in the pending court case. If the Commissioners want to include an amortization schedule in the AICUZ within the ULDC document going to public hearing, there will have to be a discussion of the ramifications of that.

Commissioner Randall stated she agrees with this philosophically and wants to do it. Ms. Guazzo said we need to distinguish between nonconforming *uses* and nonconforming *structures*, and whatever ends up in the ULDC must accomplish that so that, in the future, the Board of Appeals will have stronger guidelines to work under. Mr. Lacer stated the idea was to focus on this within particular areas of the county without raising the issue of amortization countywide. However, Mr. Norris said there is a separate question as to whether or not the distinction between nonconforming uses and noncomplying buildings and structures should be applied in every situation of nonconforming and noncompliance, and not just in the AICUZ.

Commissioners Randall and Guazzo agreed with making this draft ordinance part of the ULDC document that goes to public hearing, but said it needs to be brought back for further discussion in other areas of the county. Commissioner Randall said she would also like to know how other counties handle this issue.

Commissioner Randall said she will work with Mr. Drummond to schedule two additional days of discussion and then we will see where we are. She suggested perhaps we could devote half of the day to discussing these things that we have been adding to the list and the other half to PDRs.

The ULDC Work Session adjourned at 5:25 p.m.

EXECUTIVE SESSION

Commissioner Guazzo moved, seconded by Commissioner Mattingly, to meet in Executive Session to discuss matters of Litigation as provided for in Article 24, Section 4-210(a)8. Motion carried.

There was no recorder present during Executive Session

Property Acquisition

Present: Commissioner President Julie B. Randall
Commissioner Joseph F. Anderson (*departed at 7:20 p.m.*)
Commissioner Shelby P. Guazzo
Commissioner Thomas A. Mattingly, Sr.
Commissioner Daniel H. Raley
Alfred A. Lacer, County Administrator
Patrick Murphy, County Attorney

Authority: Article 24, Section 4-210(a)8
Time Held: 5:35 p.m. to 6:30 p.m. and 6:45 p.m. to 8:07 p.m.

Action Taken: Commissioners directed staff to proceed as directed on three matters of litigation.

Commissioner Randall was absent during the public forum portion of the meeting.

PUBLIC FORUM

The Board of County Commissioners came back into open session to conduct their regularly monthly public forum. Commissioner Guazzo opened the evening public forum for public comment. As there were no individuals present wishing to speak, Commissioner Guazzo closed the public forum. The evening public forum adjourned at 6:39 p.m. Commissioners then re-entered Executive Session and concluded the meeting at 8:07 p.m.

ADJOURNMENT

The meeting adjourned at 8:07 p.m.

**Minutes Approved by the
Board of County Commissioners on 5/15/01**

Kate Mauck
Kate Mauck, Recorder