

**ST. MARY'S COUNTY
BOARD OF COUNTY COMMISSIONERS' MEETING
GOVERNMENTAL CENTER
Tuesday, September 4, 2007**

Present: Commissioner President Francis Jack Russell
Commissioner Kenneth R. Dement
Commissioner Lawrence D. Jarboe
Commissioner Thomas A. Mattingly, Sr.
Commissioner Daniel H. Raley
John Savich, County Administrator
Betty Jean Pasko, Sr. Administrative Coordinator (Recorder)

CALL TO ORDER

The meeting was called to order at 10:07 AM.

APPROVAL OF MINUTES

Commissioner Mattingly moved, seconded by Commissioner Jarboe, to adopt the minutes of the Commissioners' meeting of August 28, 2007, as presented. Motion carried 5-0.

APPROVAL OF CHECK REGISTER

Commissioner Mattingly moved, seconded by Commissioner Jarboe, to authorize the Commissioner President to sign the Check Register dated September 4, 2007, as presented. Motion carried 5-0. Commissioner Raley stated that he would vote to approve the bills, with the exception of last two items on page 32.

PROCLAMATION: NATIONAL TEEN COURT MONTH

Present: Cynthia Brown, Division Manager, Recreation, Parks, and Community Service
Kelsey Bush, Youth Coordinator, Recreation, Parks, and Community Service

Teen Court is a juvenile deterrence program for first time non-violent offenders. The program enables first time juvenile offenders to be prosecuted, represented, and adjudicated by a group of the offender's peers. 1,210 youth court programs in 49 states and the District of Columbia provide restorative justice for juvenile offenders, resulting in effective crime prevention, early intervention and education for all youth participants.

The Board of County Commissioners urged the citizens of St. Mary's County to celebrate the valuable contributions that youth courts and their volunteers make to keep our county and our nation's communities safe.

COUNTY ADMINISTRATOR

1. Draft Agendas for September 11 and 18, 2007

2. **Dept. of Recreation, Parks and Community Service** (*Phil Rollins, Director*)

Commissioner Dement moved, seconded by Commissioner Jarboe, to approve and authorize Commissioner President Russell to sign the United States Tennis Association grant application for the Tennis Court Improvement Project at Cecil Park and to sign the related letter of support. Motion carried 5-0.

Commissioner Dement moved, seconded by Commissioner Mattingly, to approve and authorize Commissioner President Russell to sign the budget amendment decreasing the Portable Toilet/Trash Removal Grant Project #MD0807 by \$5,975 to align the budget with the actual grant award. Motion carried 5-0.

3. **Dept. of Public Works & Transportation** (*George Erichsen, P.E., Director*)

Commissioner Jarboe moved, seconded by Commissioner Dement, to approve and authorize Commissioner President Russell to sign the Memorandum of Understanding between the BOCC and Mr. Leonard Copsey, allowing for the use of a portion of his property, thereby providing a school bus turnaround, and to approve and sign the No Parking Resolution prohibiting vehicles from parking on Delabrooke Road from the Old Horse Landing Creek Bridge crossing for a distance of approximately 100 feet to the end of Delabrooke Road, Monday through Friday, during the hours of 6:30 AM through 9:00 AM and 2:00 PM through 4:30 PM. Motion carried 5-0.

4. **Dept. of Economic & Community Development and the Housing Authority of St. Mary's County** (*Bob Schaller, Director, DECD; Dennis Nicholson, Exec. Dir., Housing Authority*)

Commissioner Raley moved, seconded by Commissioner Mattingly, to approve and authorize Commissioner President Russell to sign the Memorandum of Understanding between the Board of County Commissioners for St. Mary's County and the Board of Commissioners for the Housing Authority to provide \$75,000 in County funding from the Workforce Housing Initiatives funds for the installation of a sprinkler system in the six-unit townhouse building at 46799 South Shangri-La Drive, in Lexington Park, known as the "New Phoenix." Motion carried 5-0.

DEPT. OF LAND USE AND GROWTH MANAGEMENT: CONSIDERATION OF A PROPOSED ZONING ORDINANCE TEXT AMENDMENT REGARDING ACCESSORY DWELLING UNIT PROVISIONS (*FIRST READING*)

Present: Denis Canavan, Director, Land Use & Growth Management
Sabrina Hecht, Planner IV, Land Use & Growth Management

Ms. Hecht presented the proposal, to consider a Zoning Ordinance Text Amendment to amend Chapter 51 governing accessory dwelling units to require that the principal dwelling or accessory dwelling unit must be occupied by the owner of the lot, as a First Reader in accordance with the policy for text amendments and requested approval to proceed to the Planning Commission as a public hearing.

Accessory dwelling units, attached or detached, are commonly referred to as in-laws suites, au-pair suites, or apartments. Traditionally they are constructed after the main dwelling unit. Accessory dwelling units may:

1. Provide older homeowners with rental income, companionship, security and services, enabling them to stay more comfortably in their homes and neighborhoods that they may have been forced to leave because of rising costs.
2. Be occupied by elderly parents who want to be close to their children, an au-pair or live in nanny for younger children or for the adult children who haven't yet left the principal structure, but are now living in their own quarters above the garage.
3. Add inexpensive rental units to suit the needs of smaller households, while providing affordable housing opportunities.

Accessory dwelling units are permitted as an accessory to an allowable use in all zones except Community Commercial (CC), Industrial (I), and Office Business Park (OBP).

The proposed amendment adds language (page 51-42) as follows: 2.a.6, The principal dwelling unit or the accessory dwelling unit constructed after (*amendment effective date*) must be occupied by the owner of the lot.

Discussion ensued regarding enforcement, impact on selling (if someone wants to buy and rent both), owners that need to relocate and want return later to retire (such as a military family), and other potential loopholes. Commissioner Raley suggested adding information in Land Records that would appear when conducting a title search.

Commissioner Raley moved, seconded by Commissioner Dement, to accept and approve the first reading of a proposed amendment regarding accessory dwelling unit provisions and authorize County staff to proceed to the Planning Commission for their review and recommendation and to ask county staff to inform the Planning Commission of BOCC concerns and comments expressed today. Motion carried 5-0.

COMMISSIONERS' TIME

Commissioners reviewed their participation in events held during the previous week and thanked all those involved for their service to the community.

PUBLIC HEARING: TO CONSIDER A PROPOSED ORDINANCE FOR SUPPLEMENTAL APPROPRIATIONS TO THE COUNTY'S FY08 OPERATING BUDGET AS FOLLOWS:

(1) DEPT. OF PUBLIC SAFETY - TO REFLECT AN ANTICIPATED AWARD OF APPROXIMATELY \$604,000 FROM THE MD EMERGENCY NUMBERS SYSTEM BOARD TO UPGRADE EXISTING MAPPING SOFTWARE

(2) DEPT. OF PUBLIC SAFETY – ALT. OFFICE OF THE SHERIFF - TO REFLECT AN INCREASE OF APPROXIMATELY \$1,000,000 IN THE 911 SYSTEM RE-BANDING PROJECT COST, WHICH IS REIMBURSED BY NEXTEL COMMUNICATIONS

Present: Elaine Kramer, CFO, Finance
Dave Zylak, Director, Public Safety

The County is in the final stages of negotiating its Frequency Re-banding Agreement (FRA) with an expected value of \$1.75 million, of which \$750,000 is already in an approved project. Additionally, the County is in the final stages of a potential award of approximately \$604,000 from the Maryland Emergency Numbers Board. This “grant” would fund the upgrade of technology related to 911 dispatch. The application was approved by the BOCC at its meeting on August 21, 2007.

Ms. Kramer began by stating for the record that the public hearing was advertised in the August 26 and September 2, 2007 editions of the Enterprise newspaper. At the time the ad was placed, the figure was \$1,713,000 but is now closer to \$1.5 million. It was stress that whatever the re-banding figure works out to be, it will not exceed \$1.5 million.

Mr. Zylak stated that the process has been long and changing, but they are close to awarding a contract. Confirmation in writing this week is expected regarding the \$604,000 for Looking Glass software (IT numbers board). The re-banding issue is more complex. It is not 911, it is for the 800 MHz radio system reconfiguration to minimize interference. Mr. Zylak indicated that he will come back before the Board to present the FRA, which will include cost and methodology specifics. Last Friday, the FRA went to Nextel's attorney for signature approval. The FRA will include the work order process, such as if additional radios are needed. Consultant costs will be reimbursed to the County.

Commissioner President Russell opened the hearing for public testimony at 11:47 AM.

There was no public testimony and no signatures on the sign-up sheet.

Commissioner Russell closed the public hearing at 11:48 AM and set the ten day open record period.

Commissioner Mattingly moved, seconded by Commissioner Dement, to enter into Executive Session for the purpose of discussing Real Property. Motion carried 5-0.

EXECUTIVE SESSION

Real Property

Present: Commissioner Francis Jack Russell, President
Commissioner Kenneth R. Dement
Commissioner Lawrence D. Jarboe
Commissioner Thomas A. Mattingly, Sr.
Commissioner Daniel H. Raley
John Savich, County Administrator
Christy Chesser, County Attorney
George Erichsen, Director, DPW&T
Robert Schaller, Director, DECD
Liz Passarelli, Real Property Manager
Donna Gebicke, Recorder

Authority: Article 24, Section 4-210(a)11
Time Held: 12:03 – 12:30
Action Taken: Commissioners discussed real property acquisition.

PUBLIC HEARING (DEPT. OF LAND USE & GROWTH MANAGEMENT): TO CONSIDER PROPOSED TEXT AMENDMENTS TO THE ST. MARY'S COUNTY COMPREHENSIVE ZONING ORDINANCE FOR THE PURPOSES OF AMENDING THE AIR INSTALLATIONS COMPATIBILITY USE ZONE (AICUZ) BY PROHIBITING NEW RESIDENTIAL DEVELOPMENT WITHIN THE ACCIDENT POTENTIAL ZONE-TWO (APZ-2)

Present: Denis Canavan, Director, Land Use & Growth Management
Jeff Jackman, Sr. Planner, Land Use & Growth Management

Commissioner President Russell opened the public hearing at 6:30 PM. Commissioner Raley offered a motion resulting from the executive session held earlier in the day.

Commissioner Raley moved, seconded by Commissioner Jarboe, to direct the staff to proceed as discussed in the Executive Session with regards to property acquisition. Motion carried 5-0.

Mr. Canavan stated for the record that the public hearing was advertised in the August 17 and 22 editions of the Enterprise newspaper. It was clarified the purpose of the public hearing is to receive public testimony and to consider amendment to the text of the St. Mary's County Comprehensive Zoning Ordinance (Z-02-01), specifically, amend Chapter 43 "Air Installations Compatible Use Zone (AICUZ) and Airport Environs (AE) Overlay", Figure 43.3.A "Land Use Compatibility in Aircraft Accident Potential Zones" to prohibit residences in the APZ-2 Zone.

Mr. Canavan referenced and reviewed the Public Hearing Staff Report, dated August 30, 2007. A copy of the staff report was provided to the Commissioners and copies were placed in the hallway for the public.

The intent of the proposed text amendment is to prohibit new residential development within the APZ-2 overlay and not adversely affect the existing residences or vacant residential lots that are part of a subdivision. Pending residential subdivisions filed with the County prior to April 10, 2007, may proceed through the development process (planned residential development will be grandfathered in).

Following a public hearing conducted on June 25, 2007, the Planning Commission approved the proposed text amendment and authorized the Chair to sign PC Resolution 07-11 to convey to the BOCC its recommendation that the amendment be approved. Staff endorses the Planning Commission's recommendation and further recommends adding a new subpart regarding the grandfathering of pending residential subdivisions.

Copies of the following documents were introduced into the record as exhibits:

- (1) Southern Maryland Navy Alliance, Encroachment Study Committee, Key Findings & Recommendations, dated February 2007
- (2) Letter dated April 23, 2007, from Captain Glen Ives to Mr. Denis Canavan
- (3) Letter dated April 25, 2007, from Mr. Christopher T. Longmore, Esq, of Dugan, McKissick, Wood, and Longmore, Attorneys-at-Law, to Mr. Denis Canavan
- (4) Signed Planning Commission Resolution No. 07-11 "Restricted Residential Use in APZ-2 Recommended amendments to Chapter 43 of the St. Mary's Comprehensive Zoning Ordinance" (Date of adoption: July 23, 2007, vote: 6 ayes, 1 nay)
- (5) Letter dated August 17, 2007, from the St. Mary's County Chamber of Commerce to Mr. John Savich

Mr. Canavan continued by reviewing background, analysis, and proposed text amendment excerpts from the staff report.

There are approximately 1,100 acres covered by the APZ-2 overlay zone. Tax records list 762 properties within this overlay zone owned by 633 parties or individuals. On August 28, 2007, LU&GM mailed a copy of the proposed amendment to these 633 landowners. The following table indicates the acreage within each base zone covered by the overlay:

Base Zone	Acres in APZ-2
RPD (Rural Preservation District)	38.4
RL (Residential, Low Density District)	495.3
RH (Residential, High-Density District)	6.9
RNC (Residential Neighborhood Conservation District)	73.7
RMX (Residential Mixed Use District)	9.6

DMX (Downtown Mixed Use District)	146.0
CMX (Corridor Mixed Use District)	4.6
OBP (Office Business Park District)	273.0
I (Industrial District)	8.6
Roads	43.9
Total	1,100

Within these base zones and APZ-2 overlay there are approximately 700 dwelling units. These homes are primarily located within subdivisions such as Essex South, Emerald Hills, Southampton, Forest Heights, Patuxent Park, Greens at Hilton Run, Forest Park, Southern Pines, a portion of Section 1 of Cedar Cove and Southwoods, and scattered single family homes that are not within recorded subdivisions. A single subdivision known as Glen Forest is located on land owned by the Federal Government and is exempt from zoning regulations.

Given the grandfathering clause and the intent of the proposed amendment to prohibit new subdivisions for residences, the next focus of this analysis is on the viability of the undeveloped portions of the RPD, RL, RH and RNC zoned properties within the APZ-2 overlay.

Potentially affected RL zoned parcels:

Tax Map	Parcel	Base zone	Undeveloped portion in APZ-2	Analysis
51	331	RL	32 acres	Essex Woods, an approved preliminary subdivision that includes 58 lots in the APZ-2 (case 03-120-014); will not be recorded prior to the effective date of this amendment. Therefore a modification to the proposed text is necessary to assure completion of the development.
51	265	RL	14 acres	The Greens at Hilton Run are 328 apartment units within 56.3 acres; avg density is 5.8 d.u. per acre. 14 of those acres are vacant and are within the APZ-2 overlay with a base zoning of RL. Because the density available to parcel 265 has been fully utilized, these 14 acres are to remain in open space.
51	319	RL	11.5 acres	The total area of the parcel is 47 acres. A subdivision could be configured to keep lots out of the APZ-2. The proposed amendment would allow density from the portion of the property within the APZ-2 to be transferred to the portion that is outside

				the APZ-2 at the rate of 2 dwellings per acre – the result would be that up to 23 additional dwellings could be located within the portion of Parcel 319 that is outside of APZ-2.
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Following the Planning Commission’s review and recommendation on the proposed amendment, staff realized that two cases are currently being processed (06-110-064, for S. R. Smith, and 06-120-019, Forest Park) that would not be grandfathered, and could not proceed to recordation without modification of the proposed amendment. These developed properties are each under two acres in size and are being divided into additional lots. Staff concludes that a new subpart “c.” is necessary to allow these two submitted applications to proceed to record: “c. All pending residential subdivisions filed with the County prior to April 10, 2007 may proceed through the development process.” April 10 is the date of the County Commissioners’ first reading of the proposed amendment.

Proposed Text Amendment language:

Upon review of the existing language, staff is recommending changes to Figure 43.3.A titled “Land Use Compatibility in Aircraft Accident Potential Zones” of the Zoning Ordinance as follows:

In the row titled “Single-family”, in the column titled “APZ-2”, delete “B²” and insert “C²”.

Repeal footnote #2 on page 43-9 and readopt that same footnote, rewritten as follows: Residences are not allowed in the APZ-2 Zone after (*effective date of this amendment*) unless in conformance with paragraphs “a”, “b”, “c” and “d” below as applicable:

- a) Residences existing as of (*effective date of this amendment*) are not considered non-conforming and may be altered or replaced in conformance with the existing development standards and paragraph “d” below.
- b) Vacant recorded lots within a residential subdivision may be used for residential purposes in accordance with existing development standards and paragraph “d” below.
- c) All pending residential subdivisions filed with the County prior to April 10, 2007 may proceed through the development process.
- d) Residential construction after (*effective date of this amendment*) will comply with existing development standards and applicable sound reduction measures found in Figure 43.2.A.
- e) Where properties are partially within the APZ-2 Overlay, and within a base zone in which residences are permitted, residential density may be transferred from the portion within the Overlay to the portion outside of the Overlay at a density of two (2) dwelling units per acre.

Mr. Canavan requested that a copy of the Public Hearing Staff Report be entered into record.

Commissioner President Russell opened the hearing for public testimony at 7:07 PM.

Public Comments:

Alan Hewitt, 22896 Piney Wood Circle, California, MD 20619

Mr. Hewitt introduced himself as not only a property owner, but as a licensed realtor and a member of the Legislative Affairs Committee Southern Maryland Association of Realtors (SMAR). On behalf of SMAR, Mr. Hewitt voiced general opposition to the text amendment and expressed concern that the text amendment infringes on property owner rights. For the record, SMAR supports and values positive working relationships with the local government and the Patuxent River Naval Air Station.

Feels the text amendment, which affects 300 properties, was hastily drafted and is based on potential, not actual data, that the Planning Commission has already addressed within existing zoning ordinances. Today's zoning ordinance states that the APZ-2 zone is the least potential for aircraft accidents. Regarding the noise contour map, day/night average sound levels data should be used (no such study has taken place to determine if there will be an increase from the joint strike fighters or the unmanned aerial vehicles, just states potential). Questioned the urgency of the text amendment. Should have been jointly drafted (LU&GM and the Navy).

Rather than relying upon an arbitrary amendment, urged the commissioners to reject the proposal in favor of a more refined and realistic approach to the problem of encroachment. Recommended that LU&GM assemble a group, that includes property owners, and work with the Navy. Also, local government should participate in studies conducted by the Navy. Questioned to what extent is noise the primary encroachment issue. Zoning should be crafted that both protects the best interest of the Navy and is fair to tax payers / property owners.

Commissioner Raley asked Mr. Hewitt if he was at the Planning Commission hearing. Mr. Hewitt responded yes and that he provided the same testimony.

Gary Messner, 21427 Lee Dr., Lexington Park, MD 20653

Mr. Messner referenced the displayed zoning map and showed the location of his residence. Commented that the noise contour maps are based on 1970s data. Mr. Canavan clarified that the contour maps use 1999 data and were provided by the Navy this year (2007). Mr. Messner stated Pax River is getting more involved and with the strike fighters, getting more data. Questioned if the (encroachment) issue is a noise issue or accident issue? Doesn't believe discounting the potential for accidents is valid. Questioned if Navy personnel were involved with drafting the text amendment (liaison). Mr. Canavan responded yes, they have been supportive of this text amendment, and have been supportive of addressing all of the land use issues in the area nearby the navy base.

On page 3 of 9 (of the Public Hearing Staff Report), parcel 319, was redistricted to a larger section. Can this be considered when looking at parcel 331? Mr. Canavan responded no; can't slide (density) out of APZ-2, and provided two differences; i.e., have a subdivision plan submitted (for parcel 319) and do not have a subdivision plan on this (for parcel 331). Mr. Messner added that he did not hear of this public hearing until a few days ago (when he received the letter). Grandfathering allows them (developers) to do what they want. It was clarified by Commissioner Mattingly, and confirmed by Mr. Canavan and Mr. Jackman, that the application for that project has been in existence for at least two years, (the case number was generated in 2003, over four years ago).

Jerry Nokleby, 17777 Grace Lane, Tall Timbers, MD

Mr. Nokleby introduced himself as the owner of Nokleby's Surveyors, Inc. and thanked Denis Canavan and staff for making the recommendation (pending residential subdivisions filed with the County prior to April 10, 2007 may proceed through the development process). Mr. Nokleby represents the two projects that are affected by the APZ-2 line, (2 of the 3 projects affected by the text amendment; Essex Woods and Forrest Park). Mr. Nokleby continued by providing details regarding the projects. Essex Woods is a large development, 400 lots. Forrest Park is a re-subdivision proposal of lot 18. Essex Woods, four phase project, is located within the Lexington Park Development District. Reconfiguration would require a complete project redesign. Dennis Edwards and Tom Harmon placed faith in the St. Mary's County zoning ordinance. \$500k has been spent in the design phase. Four years, \$200k in interest payments. 120 pages of construction drawings have been produced. Close to receiving final approvals. Record plats prepared for phase 1 and phase 2 is close behind. To start over, will be additional obstacles; e.g., the encroachment study and clustering provisions (may require TDRs). Reiterated the value the project will bring to the LPDD and that it was three years into design before there was any problem (with zoning / APZ-2). Page 4 of 9, c, (of the Public Hearing Staff Report) will allow for two projects. Small number in APZ-2, will not adversely affect the Navy's ability to continue to operate in St. Mary's County. Lived in the middle of APZ-2 for 20 years.

Commissioner Raley questioned 34 acres, 68 lots (parcel 331) is different than what is in the staff report. Mr. Canavan was tasked with double-checking the acreage and number of lots within APZ-2 (before the end of the comment period).

Tom Harmon, 23110 Almond Ct., California, MD

Provided no testimony.

Tim Wood, 44478 Whitestone Pl., Tall Timbers

Expressed (from the audience) that he supports the comments made by Mr. Hewitt.

John Norris, 44731 St. Andrew's Church Road, 20619

Mr. Norris began by stating that he also spoke at the Planning Commission public hearing. Feels this is a very important text amendment, has a lot to do with protecting the way the County is intending to grow, protecting most significant economic engine, and protecting the quality of life. Referenced Mr. Hewitt's testimony and the June 27 Enterprise article, (Planning Commission's recommended denial for the Glazed Pine Subdivision).

Mr. Norris continued by stating the action the commissioners have before them is flawed in several respects.

1st page of staff report, indicates there is new noise data (bottom of page). There is no new noise data. The mail log reflects a letter was received in March from Capt. Ives using 1998/1999 environmental impact noise data. Questioned the basis. The Navy's joint land use study not complete. New aircraft could be louder, or could be a falsehood.

The Planning Director dictated no change (will be considered to the) APZ-2 boundary until new noise data is obtained.

With respect to effect of text amendment on various districts, three properties (table) that are zoned RL, one that can proceed with an amendment the other one has already realized its density only leaves one other use, 11.5 acres sole property affected. Yet, creating exemptions. Mennonites and fire sprinklers, not asking for exemptions. Creating exemptions where exemptions are not necessary.

Mr. Norris submitted a letter dated September 4, 2007, addressed to the County Commissioners for St. Mary's County, for inclusion into the record.

Mr. Messner questioned what remodeling/increased costs may be incurred; e.g., triple paned windows and increased insulation and asked for consideration.

Debra Sexton, Essex South

Stated she has several concerns with this amendment. Will impact her as a homeowner regarding any additions (will cost a lot more money). A lot more jobs are going to be coming to this area. We have to have things in place to support (the additional growth). APZ zones are zoned for schools that have the lowest number of student population. Other schools in the county are over-populated. It was clarified that concerns voiced (infrastructure) pertain to and are addressed under APF (Adequate Public Facilities), which addresses land use relative to school capacity, public safety, police, water/sewer, etc (covered under a different section of the ordinance).

Commissioner Jarboe asked Mr. Canavan how many acres the County contains. Mr. Canavan responded 300 plus 1000 acres, but mores specifically, within the Lexington Park Dev. District, the county is down to about 16,000 acres, (1100 acres APZ), the rest is available.

Mr. Canavan added that as a result of further study of noise contour data, may need to revisit the size, shape, and configuration of the Lexington Park Development District to

protect both the long term operations of the Navy base and also to find suitable areas for residential and commercial development.

Commissioner President Russell closed the public hearing at 7:40 PM and declared the record remain open for ten day, during which time written comments may be submitted to the Board of County Commissioners.

ADJOURNMENT

Commissioner Mattingly moved, seconded by Commissioner Dement, to adjourn the BOCC meeting adjourned. Motion carried 5-0.

Minutes Approved by the Board of County Commissioners on _____

Betty Jean Pasko, Senior Administrative Coordinator