

## Minutes of the County Commissioners of Worcester County, Maryland

February 6, 2007

James L. Purnell, Jr., President  
Louise L. Gulyas, Vice President  
Judith O. Boggs  
Linda C. Busick  
James C. Church  
Robert L. Cowger, Jr.  
Virgil L. Shockley

Following a motion by Commissioner Shockley, seconded by Commissioner Boggs, the Commissioners unanimously voted to meet in closed session at 9:00 a.m. in the Commissioners' Conference Room to discuss legal and personnel matters permitted under the provisions of Section 10-508(a)(1), (7) and (8) of the State Government Article of the Annotated Code of Maryland and to perform executive actions. Also present at the closed session were Gerald T. Mason, Chief Administrative Officer; Kelly Shannahan, Assistant Chief Administrative Officer; Edward H. Hammond, Jr., County Attorney; Kim Moses, Public Information Officer; Deedee Rouse, Director of Human Resources; Rick Wells, Director of Environmental Programs; and Bob Mitchell, Deputy Director of Environmental Programs. Topics discussed and actions taken included: hiring Erin Kulynycz as a Planner II within Comprehensive Planning, and Edward Simpson as a Vehicle & Equipment Mechanic III within the Roads Division of Public Works; promoting Dennis Looney to Recycle Foreman within the Solid Waste Division of Public Works, and Carol Ross to Permits Administrator within Development Review and Permitting; appointing Jody Falter and Marilyn James to the Commission for Women, Jeff Kelchner to the Social Services Board, and Kathy Drew to the Agricultural Preservation Advisory Board; reappointing Lester Shockley, Jr. to the Soil Conservation District Board of Supervisors, and Patricia Schrawder to the Shoreline Commission; reviewing potential and pending litigation; receiving legal advice from counsel; and performing executive actions.

After the closed session, the Commissioners reconvened in open session. Commissioner Purnell called the meeting to order and announced the topics discussed during the morning closed session.

The Commissioners reviewed and approved the minutes of their January 16, 2007 meeting, as presented.

The Commissioners met with Development Review and Permitting Director Ed Tudor to discuss the County's position on a proposal from the Town of Berlin to de-annex the Taylor and Davis properties and to rezone those properties prior to de-annexation provided that the Commissioners would concur with the rezoning upon de-annexation. Mr. Tudor reviewed the history of the original annexation and subsequent plans to develop the property. Mr. Tudor stated that the property, if returned to the

County, should return to its original A-1 Agricultural zoning, since certain portions of the property were rezoned by the Commissioners only because of their proposed use by the Town. In response to a question from Commissioner Church, Mr. Tudor stated that the Town could change the Town zoning of these properties prior to de-annexation, but that such an action would not require the County to accept the new designation under County zoning. Mr. Tudor stated that his recommendation was based upon the fact that any prior approval of the change in zoning was predicated upon the agreement by the Town to provide public water and sewer to the site for use as a technology park and residential development. In response to a question from Commissioner Church, Comprehensive Planning Director Sandy Coyman stated that the two properties were not evaluated during the development of the new Comprehensive Plan because they were considered to be part of the Town. He strongly recommended that if these properties are de-annexed the Commissioners initiate a Comprehensive Sectional Rezoning in order to establish the proper zoning of these two properties in accordance with the Comprehensive Plan. Commissioner Boggs stated that the letter from Mark Cropper, attorney for Thomas H. Ruark and Monogram Building & Design, stating that Berlin would not provide water and wastewater service is not accurate, since the Town is in the process of upgrading its wastewater treatment plant (WWTP). She concluded that service has just not been provided as quickly as the developer may have preferred.

Mr. Cropper stated that attempts by him and his clients to negotiate for the provision of water and wastewater service from the Town have been futile even though Berlin had promised in 2000 to provide these services in an expeditious manner. He stated that as of today, the Town has failed to address these issues, and even if the issues could be addressed today it would still be a minimum of four years before the promised services could be delivered. Mr. Cropper stated that such a vague plan could not accommodate the project within a realistic time frame nor was such a time frame contemplated when the original agreement was made. He stated that these properties are recognized in the County Comprehensive Plan as properties to be developed within the Town of Berlin and therefore should be permitted to be developed regardless of whether they are in town or outside the Town limits. Mr. Cropper stated that his clients are asking the Commissioners to concur with the Town's rezoning of the properties prior to de-annexation. He stated that if the Commissioners do not concur with the rezoning, his client will be forced to take legal action against the Town for failing to comply with their agreement.

Commissioner Purnell stated that Commissioners Gulyas, Shockley and he had been on the Board in 2000 when the town originally requested the properties be rezoned upon annexation. He stated that the Commissioners had expressed concerns and were not initially in favor of doing so, but in the end had approved their request since the Town seemed intent on moving forward with development of the Technology Park. He advised Mr. Cropper that the Commissioners could not commit to any rezoning upon de-annexation without following proper procedure. Commissioner Gulyas concurred, advising him that approving a rezoning upon de-annexation would set a bad precedent throughout the entire State. She stated that Berlin has a plan to upgrade its system, and the developer must work with the Town. Commissioner Church stated that the property should be allowed to be developed in the County if Berlin is unable to

provide the needed infrastructure. He stated that the Comprehensive Plan supports development of this property as part of Berlin and should therefore permit development even if it is not part of the Town.

Commissioner Shockley stated that he almost voted against the original rezoning upon annexation because he did not think it was the right thing to do. He agreed that the developer was in a tough position, but stated that they must continue to try to reach some acceptable agreement with the Town. He stated that the Comprehensive Plan limits growth outside municipalities and if this property were to be developed in the County, then other properties would have to be removed from the growth area to account for the change. Commissioner Shockley stated that if de-annexed, he was inclined to assign an A-1 Agricultural zoning designation to the property, as it was prior to annexation. Commissioners Purnell and Gulyas concurred. In response to a question from Commissioner Shockley, Mr. Cropper stated that the developer had offered to pay for treatment plant expansion, but the problem is that the plant cannot be expanded from an engineering standpoint.

County Attorney Edward H. Hammond, Jr. recommended the developer propose to build his own plant and acquire spray fields then negotiate to turn them over to the Town upon buildout, as is the case with such development within the County. He stated that such a proposal could be a tremendous benefit to the town. Mr. Cropper stated that he had made such offers to the Town in the past and been denied.

Chief Administrative Officer Gerald T. Mason stated that a letter from the Town of Berlin is asking the Commissioners if they would concur with a proposal to rezone these properties prior to any de-annexation. He stated that the Commissioners cannot agree to such a future action. Following much discussion and upon a motion by Commissioner Gulyas, the Commissioners unanimously agreed to write to the Town to explain that they could not commit to any future rezoning upon de-annexation and encouraged Mr. Cropper and the Town to work together in good faith to resolve this issue.

The Commissioners held a public hearing to consider a proposed amendment to the Worcester County Comprehensive Water and Sewerage Plan to expand the Riddle Farm Sewer System and Sewer Planning Area. The Riddle Farm Sewer Planning Area expansion proposal requests public sewer service from the Riddle Farm sewerage system to serve Wal-Mart/Home Depot south of US Rt. 50 (Tax Map 26, Parcels 303 and 455), and the proposed Ocean Landing II commercial development, adjacent to Wal-Mart/Home Depot (Tax Map 26, Parcels 301, 302, and 305). The portion of the sewer planning expansion area designated Commercial Center by the Worcester County Comprehensive Development Plan will be designated S-1, Immediate Service, while the portion designated as Agriculture will be designated as S-6, No Planned Service. Comprehensive Planning Director Sandy Coyman explained that the amendment would allow the Riddle Farm Wastewater Treatment Plant (WWTP) to be expanded from a capacity of 0.2 million gallons per day (MGD) to a total capacity of 0.28 MGD to accommodate the expansion of the sewer planning area. He noted that the Planning Commission had reviewed the proposal and found it to be consistent with the Comprehensive Plan. In response to a question from Commissioner Shockley, Mr. Coyman stated that the previously approved spray irrigation fields on Parcel 305 would

be retained by the developer for possible future use on that parcel. He further stated that the equivalent dwelling units (EDUs) needed to serve the recently proposed Berlin Volunteer Fire Department (BVFD) substation to be located in the development were not included in the 92 EDUs identified in the original application, but should be added. In response to a question from Commissioner Gulyas, Mr. Hammond stated that no EDUs had been allocated for the homes on Silver Point Lane as the cost to run the sewer lines to these properties was too high and would not be financially feasible for these property owners.

Attorney Mark Cropper explained that a two-acre parcel had been donated as part of the Ocean Landing II project for use by the BVFD and would require service by separate agreement from Riddle Farm. Deputy Public Works Director John Ross stated that only one to two EDUs would be required to provide service to the property. Commissioner Shockley stated that the BVFD must receive service from Riddle Farm or he would not support the expansion. Mr. Cropper understood.

Commissioner Purnell opened the floor for public comment.

There being no public comment, Commissioner Purnell closed the public hearing.

In response to a question by Commissioner Boggs, Mr. Hammond stated that the County is currently completing an agreement with the developer regarding the future allocation of the additional 173 EDUs that will be available upon expansion of the existing plant after 92 EDUs are allocated to the WalMart-Home Depot and Ocean Landing II projects and 2 EDUs are allocated to the BVFD. Following some discussion and upon a motion by Commissioner Church, the Commissioners unanimously approved the amendment to the Water and Sewerage Plan, including service to the BVFD property, and agreed to adopt a formal resolution to that effect at their next meeting

The Commissioners met with past Commission for Women President Roseann Bridgman and current President Susan Schwarten to review the Worcester County Commission for Women's 2006 Annual Report. Ms. Bridgman outlined many of the groups objectives and initiatives during the past year, paying particular attention to the success of the McGuffey Book Club initiative to provide first and second graders enrolled in public school with age-appropriate books for their use and enjoyment over the summer. Commissioner Boggs stated that she was impressed by their accomplishments and especially pleased with the Directory of Women Entrepreneurs. Commissioner Gulyas stated that she looked forward to handing out books to students on June 4. Commissioner Busick stated that she was pleased that the Commission for Women was recognizing young women of tomorrow. Commissioner Purnell thanked Ms. Bridgman for providing the Commissioners with the report.

Development Review and Permitting Director Ed Tudor updated the Commissioners on the proposed Woodlands at Whiton subdivision project in Wicomico County, a 562-acre site bounded on the east by Whiton Road and on the north by Powell School Road and on the south by the Worcester County boundary line, which is currently being reviewed by the Wicomico County Planning Commission (WCPC). He stated that the

Wicomico County Comprehensive Plan and the development standards contained in their Zoning Code call for "small cluster developments," yet do not define what is considered "small." He further stated that when the WCPC met to discuss this issue on January 11, 2007, Wicomico County staff reported that the project constituted the largest single subdivision request since 1986 and asserted that a request for 188 lots should not be considered "small." He concluded that the WCPC directed legal council to provide them with a determination of what is meant by "small cluster developments." Mr. Tudor stated that staff will continue to attend each of the meetings on the project to represent the County's interests.

Mr. Tudor updated the Commissioners on the findings of the Sediment and Erosion Control Delegation Review, noting that the County has been granted delegation authority for an additional two years. Mr. Tudor praised the efforts of staff members Chris McCabe and Ryan Presock for administering the program in a very professional manner, which was duly recognized by the State. He advised that the only reported deficiencies were in the plan review aspects of the program, which are the responsibility of the Soil Conservation District (SCD), for which the State requested that the County work more closely with the SCD to provide sediment traps and basins on construction sites. Mr. Tudor stated that the new SCD Plans Reviewer seemed willing to work with the County on this matter.

Pursuant to the recommendation of Human Resources Director Deedee Rouse and upon a motion by Commissioner Shockley, the Commissioners unanimously named Genworth (formerly known as General Electric) as the Long Term Care (LTC) Insurance carrier. Ms. Rouse stated that a LTC group policy with defined plan choices would be offered to County and Board of Education employees as a 100% voluntary supplemental insurance at no cost to the County.

Pursuant to the recommendation of Ms. Rouse and upon a motion by Commissioner Gulyas, the Commissioners unanimously approved an agreement that would permit Life Line Screening to use the training rooms in the Worcester County Government Center on June 6, 2007 to provide vascular and bone density screening for employees and their spouses at the employee's expense and to allow employees to use paid miscellaneous leave to participate in the screening.

Commissioner Purnell left the meeting.

Pursuant to the request of Finance Officer Harold Higgins and upon a motion by Commissioner Shockley, the Commissioners unanimously agreed to waive the standard bid process and declared B. Donald Kimball, Inc. to be the sole source for the purchase of an IBM series i 520 Express Power 5+ Model with Accelerator at a cost of \$61,750 and \$4,000 for the second and third year maintenance. Mr. Higgins stated that the current AS/400 System, which IBM will no longer upgrade, has reached both an end-of-life cycle and its maximum storage capacity. Mr. Higgins further stated that funds are

available within the Other General Government category of the County budget for this purchase.

Pursuant to the request of Economic Development Director Jerry Redden and upon a motion by Commissioner Boggs, the Commissioners unanimously authorized Commissioner Gulyas to sign the application for a Maryland Department of Business and Economic Development (DBED) matching grant of \$37,000, with the County's \$18,500 match to be funded from within the existing Economic Development budget. The grant would be used to perform a sole source study for the purpose of developing a strategic plan to bring critical land and infrastructure for the following purposes: fit the County's distinct tourism character; extend the tourist season; appeal to changing tourism demographics; create more year-round jobs; provide infrastructure needed for the Berlin Technology Park; provide seasonal employee/workforce and senior housing; and support the goals and objectives of the Comprehensive Plan. In response to a question from Commissioner Boggs, Mr. Redden stated that the study will address the feasibility of locating the Atlantic Coastal Park project at various locations in northern Worcester County. In response to a question from Commissioner Church, Mr. Redden stated that the possible locations are not consistent with the growth areas identified in the Comprehensive Plan. However, he stated that the Comprehensive Plan supports tourism and economic development concepts such as the Atlantic Coastal Park but makes no provision for their exact location. Commissioner Church expressed concern that amusement parks are not succeeding in other areas and may not be appropriate for Worcester County. In response to a question from Commissioner Church, Mr. Redden stated that the study will address the current economic status of the enterprises that may be interested in locating in Worcester County.

Pursuant to the request of Comprehensive Planning Director Sandy Coyman and upon a motion by Commissioner Shockley, the Commissioners unanimously authorized Commissioner Gulyas to sign an application for FY08 Coastal Bays Rural Legacy funds from the State in the amount of \$1,000,000, with a proposed County match of up to \$100,000 not to exceed 20% of the grant amount, in order to continue acquiring easements in the Coastal Bays Rural Legacy area.

Pursuant to the request of Mr. Coyman and upon a motion by Commissioner Shockley, the Commissioners unanimously authorized Commissioner Gulyas to sign a Rural Legacy Application requesting \$2.1 million, with a Worcester County match of \$100,000, to be used to create a Dividing Creek Rural Legacy Area in collaboration with Somerset County and The Nature Conservancy. In response to a question from Commissioner Boggs, Mr. Coyman stated that grant funds would be awarded to those residing closest to the Pocumoke River and Nassawango Creek, with other interested individuals receiving funds on a first-come first-serve basis. Mr. Coyman stated that if the application is approved, Worcester and Somerset Counties would develop a Memorandum of Understanding (MOU) to determine how the grant funds would be divided. He further noted that the Worcester County match would be used only to purchase easements within Worcester County.

The Commissioners met with Mr. Coyman to review a draft letter to Pocomoke City outlining the Worcester County Planning Commission's and staff's comments on the draft Pocomoke City Comprehensive Plan, congratulating the City for its planning efforts and offering comments. Following some discussion and upon a motion by Commissioner Shockley, the Commissioners unanimously approved the letter.

Pursuant to the request of Mr. Coyman and upon a motion by Commissioner Shockley, the Commissioners unanimously approved a no cost contract modification extending the Cedar Hall Wharf Boat Ramp environmental design project through March 31, 2007.

Pursuant to the request of Mr. Coyman and upon a motion by Commissioner Boggs, the Commissioners unanimously authorized Commission President Purnell to sign a letter of agreement and a Lower Shore Land Trust (LSLT), Inc. Endowment Fund Agreement transferring Rural Legacy Program stewardship funds of \$88,089.26, which represents 1.5% of each Rural Legacy conservation easement transaction from 1998 to 2003, into an interest bearing endowment fund with the Community Foundation of the Eastern Shore.

Pursuant to the request of Mr. Coyman and upon a motion by Commissioner Shockley, the Commissioners unanimously authorized Commissioner Gulyas to sign the 2006-2007 Maryland Coastal Bays Program Implementation Grant Contract, awarding the County \$10,000 to build a bio-retention area at Public Landing in conjunction with the rip-rap and revetment project. Mr. Coyman stated that the County had requested a grant of \$25,000 to cover project costs. However, he and Public Works Director John Tustin were in agreement that the project could be scaled back to come in within the \$10,000 budget.

The Commissioners reviewed and discussed a letter from Patricia Jackson, Election Director for the Board of Elections, advising that the Elections Board had met recently and completed a review of the 2006 polling places and found them to be adequate for the 2008 Presidential Election cycle. Commissioner Shockley stated that he had previously met with the board and expressed the need for an additional polling place in his district. Commissioner Cowger stated that residents in Pocomoke had expressed concern with the polling places there as well. Following some discussion, and upon a motion by Commissioner Cowger, the Commissioners unanimously directed staff to set up a meeting between the Commissioners and the Board of Elections to discuss these matters.

Public Works Director John Tustin updated the Commissioners on the status of providing public water to the residents of Lewis Road in West Ocean City. Mr. Tustin stated that all the necessary supplies and equipment to complete the project had been delivered and the project would be started by the Town of Ocean City within the week and should be completed within three months.

Pursuant to the request of Mr. Tustin, the Commissioners unanimously agreed to hold the annual E-Cycle Program and Household Hazardous Waste Collection Day on April 28, 2007 from 10:00 a.m. to 2:00 p.m. at the West Ocean City Park and Ride. The County, in cooperation with the Maryland Department of the Environment (MDE) and Maryland Environmental Service (MES), sponsors this annual program.

Mr. Tustin informed the Commissioners that the construction work on the Snug Harbor Sewer System is now complete and the system is operable. He stated that two connections have been made and the grinder pumps are transporting wastewater from those houses to the Assateague Pointe Wastewater Treatment Plant for treatment and disposal. More connections are anticipated in the near future. He stated that the project was completed ahead of schedule and under budget.

The Commissioners met with Mr. Tustin to review a letter from the Maryland Department of the Environment (MDE) officially approving the re-rating of the Ocean Pines Wastewater Treatment Plant (WWTP) to a capacity of 2.5 million gallons per day (MGD). Mr. Tustin stated that this provides an additional 200,000 gallons of capacity that could be used to serve the proposed Greater Ocean Pines Sanitary Service Area (GOPSSA). Mr. Mason stated that the staff report and recommendation on creating the GOPSSA would be proposed by the Environmental Programs Department and submitted to the Commissioners for their consideration at a future meeting.

Pursuant to the request of Mr. Tustin and upon a motion by Commissioner Cowger, the Commissioners unanimously approved bid specifications for the purchase of one low boy trailer to be utilized by the Roads Division of Public Works. In response to a question from Commissioner Shockley, Mr. Tustin agreed to look into the possibility of purchasing a used trailer as well.

Pursuant to the recommendation of Mr. Tustin and upon a motion by Commissioner Shockley, the Commissioners unanimously approved bid specifications for the purchase of propane gas service for a period of two years to serve County facilities.

Pursuant to the request of Mr. Tustin and upon a motion by Commissioner Shockley, the Commissioners unanimously agreed to waive the standard bid process and piggyback onto an existing contract with Highland Tank of Manheim, PA to purchase one reserve collection system receiver tank in the amount of \$14,249.06.

Pursuant to the request of Mr. Tustin and upon a motion by Commissioner Shockley, the Commissioners unanimously approved bid specifications for portalet service for a period of two years at the boat landings, solid waste sites, firing range and recreational parks.

Pursuant to the request of Mr. Tustin and upon a motion by Commissioner Shockley, the Commissioners unanimously authorized Commissioner Gulyas to sign Cell 4 Construction Change Order No. 3, which incorporates a twenty-three day non compensable time

extension for the month of November due to adverse weather and drying conditions, revising the current completion date to March 9, 2007. Mr. Tustin stated that a further Change Order is anticipated due to the winter shut down to extend completion into June. In response to a question from Commissioner Boggs, Mr. Tustin stated that they can continue using Cell 3 through June 30, but will need to begin using Cell 4 immediately upon opening.

Mr. Tustin updated the Commissioners on the results of the semi-annual gas monitoring conducted during the months of May and August 2006 at the former Berlin Landfill by EA Engineering. He noted that there were no methane concentrations observed in any of the monitoring probes for these two quarterly events.

Mr. Tustin updated the Commissioners on the results of the latest gas sampling at the former Snow Hill Landfill, which was completed in May 2006 by EA Engineering. He noted that the report generally suggests that landfill gas concentrations which exceed the lower explosive limits (LEL) were observed in gas probes 3, 7, 10, 11, 12 and 13. He stated that continued semi-annual sampling will continue with the expectations that these concentrations will diminish as a result of the daylight gas trenches that were installed as part of the original design.

The Commissioners met with County Attorney Edward H. Hammond, Jr. to review a proposed QuitClaim Deed for an abandoned road known as "Old County Road" and shown on Tax Map 16 starting at the northwest corner of Parcel No. 21 and proceeding generally in a southeasterly direction to the northeast corner of Parcel No. 53 and then to the southeast corner of Parcel No. 21 to be deeded to Hilda S. Ayres for the term of her natural life and thereafter to be owned by William Ayres and Linda Ayres, as tenants in common. Mr. Hammond stated that this roadbed is not needed by the County. Following some discussion and upon a motion by Commissioner Shockley, the Commissioners unanimously approved the QuitClaim deed as presented.

The Commissioners met with Chief Administrative Officer Gerald T. Mason to review the next steps in implementation of the Comprehensive Plan. Mr. Mason stated that necessary Code changes and new Maps must be completed in compliance with the approved Comprehensive Plan. He stated that this task would be one of the single most important accomplishments of the Commissioners this term, and suggested the Commissioners Task the Department of Development Review and Permitting (DRP) with the job of drafting the Code changes, which will then need to be reviewed by the County Attorney and the Planning Commission before coming to the Commissioners. He urged the Commissioners to instruct the department to make this a top priority, and refrain from giving them any future duties or special projects until this is complete. He stated that the Department of Comprehensive Planning should be tasked with the job of developing the Comprehensive Rezoning Maps to be complete at the same deadline. He stated that both Comprehensive Planning and DRP had advised him that the project could be completed within approximately six months if these provisions were set in place. Mr. Mason concluded that the completion of this project would require several work sessions with the Commissioners to provide guidance to staff. Following some discussion and upon a motion by Commissioner Boggs, the

Commissioners unanimously concurred with the proposal as outlined.

The Commissioners answered questions from the press, after which the board adjourned to meet again on February 20, 2007.