

Minutes of the County Commissioners of Worcester County, Maryland

June 17, 2008

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

Following a motion by Commissioner Church, seconded by Commissioner Purnell, with Commissioner Cowger absent, the Commissioners unanimously voted to meet in closed session at 9:05 a.m. in the Commissioners' Conference Room to discuss legal and personnel matters permitted under the provisions of Section 10-508(a)(1), (4), (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; Kim Moses, Public Information Officer; George Bradley, Director of Human Resources; John Tustin, Director of Public Works; John Ross, Deputy Director of Public Works; Jennifer Savage, Enterprise Fund Controller; and Jerry Redden, Director of Economic Development. Topics discussed and actions taken included: hiring Mike Truitt as a Roads Worker II within the Roads Division of Public Works; reviewing a proposal for a business to expand in Worcester County; considering acquisition of real property for public purposes; reviewing potential and pending litigation; receiving legal advice from counsel; and performing executive actions.

Commissioner Cowger was absent from the meeting.

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

The Commissioners reviewed and approved the minutes of their June 3, 2008 meeting, as presented.

The Commissioners presented a retirement commendation to Public Safety Answering Point (PSAP) Supervisor Cindy Longwell and thanked her for contributing 34 years of dedicated service to the Worcester County Emergency Services Office.

The Commissioners met with Superintendent of Schools Dr. Jon Andes, Board of Education (BOE) President Garry Mumford, Vice President Bob Hulburd, and members Jonathan Cook, Bob Rothermel, Donnie Shockley, and Sara Thompson, and various BOE staff to discuss the BOE's request for a supplemental appropriation in the amount of \$385,000 to cover

unanticipated expenditures for Special Education and Operation of Plant in excess of the FY08 BOE budget. Dr. Andes advised that the original deficit was \$991,000 but the BOE was successful in reducing costs in various areas by more than \$600,000, thereby reducing that amount to \$385,000. The overages occurred in four budget areas as follows: \$290,000 for Special Education; \$184,500 for Pupil Transportation; \$470,000 for Operation of Plant; and \$47,000 for Maintenance of Plant. Dr. Andes stated that the BOE advised the Commissioners of possible cost overruns in November 2007 and submitted a letter to them on June 12, 2008 confirming the amount of the over-expenditure. Dr. Andes stated that unforeseen expenses in the area of Special Education included hiring one teacher, a private duty nurse and providing one-on-one therapy services for special needs students who had relocated to Worcester County after the start of the 2007-2008 school year. With regard to the Operation of Plant category, Dr. Andes stated that the BOE is a member of the Eastern Shore Energy Trust and bids all sources of electricity, fuel and propane to assure they are getting the best possible prices. However, the 30% increase in energy and fuel costs in recent months could not have been foreseen.

Commissioner Boggs stated that everyone is tasked with managing escalating energy costs. She further stated that the BOE is the only County department or agency that failed to adjust their expenses during the year to cover rising energy and fuel costs. She advised that the BOE has come before the Commissioners nine out of the past 10 years to request supplemental appropriations to cover cost overruns and should learn to better manage their budget. Commissioner Boggs concluded that she would have voted differently on the FY09 County Operating Budget if she had been aware of the amount of these overruns, therefore, she could not support this request. In response to a comment by Dr. Andes, Commissioner Boggs stated that she has and continues to fully support education; however, she expressed frustration that Dr. Andes had known about the cost overruns and failed to notify the Commissioners prior to the adoption of the FY09 County Operating Budget.

Commissioner Busick stated that both the Commissioners and the BOE members are elected officials, and for the good of the County they must learn to live within their respective budgets. She noted that both have an obligation to the students, teachers and taxpayers of the County. She concluded that the Commissioners should have been informed of the unanticipated cost overruns before they finalized the FY09 County Operating Budget.

Commissioner Church stated that the BOE could not have anticipated the cost overruns and applauded them for locating \$600,000 within their budget to offset those costs. He stated that he would support their request for additional funds. However, he stated that the BOE needs to work harder and develop a contingency plan to address cost overruns in future years.

Commissioner Purnell stated that he has always and will continue to support the BOE, especially in troubling financial times such as these.

Commissioner Gulyas stated that she too supports the BOE, particularly special education. She thanked the BOE for locating \$600,000 within their budget to reduce the unanticipated expenditures, but stated that they should pay attention and set aside funding early on to cover unanticipated expenditures in the future.

Commissioner Shockley stated that he was not upset about the cost overruns, particularly since no one could have foreseen the increase in fuel and energy costs, but he was upset that the BOE knew the amount of the over-expenditures at the time the Commissioners were developing the FY09 budget and had remained silent. He stated that the relationship of the Commissioners

and the BOE is like a marriage, and to achieve success in that relationship both parties must communicate openly. He stated that he would not support a supplemental appropriation in future years.

Following much discussion and upon a motion by Commissioner Church, the Commissioners voted 4-2, with Commissioners Boggs and Busick voting in opposition, to reallocate \$185,000 from the State's Attorney's Office building project and \$200,000 from the Jail renovation and addition project within the FY08 County Operating Budget to cover the BOE's \$385,000 over-expenditure in Special Education and Operation of Plant.

Pursuant to the request of BOE Chief Financial Officer Vincent E. Tolbert, CPA and upon a motion by Commissioner Gulyas, the Commissioners unanimously authorized Commission President Shockley to sign the BOE's Annual Budget Certification Statement, which the BOE is required to submit to the Maryland State BOE detailing County funds appropriated for FY09.

Pursuant to the request of Mr. Tolbert and upon a motion by Commissioner Gulyas, the Commissioners unanimously approved the County Appropriation Transmittal Schedule for Fiscal Year 2009 for the BOE totaling \$75,388,472.

Upon a motion by Commissioner Gulyas, the Commissioners unanimously adopted Resolution No. 08-11, adopting the Solid Waste Enterprise Fund Budget and Fees for July 1, 2008 through June 30, 2009 as conceptually approved after their public hearing on June 3, 2008 and which includes an increase to the Solid Waste tipping fee from \$55 to \$60 per ton.

Upon a motion by Commissioner Gulyas, the Commissioners unanimously adopted Resolution No. 08-12, adopting Sanitary Service Area Budgets, Assessments and Charges and Establishing Classifications for July 1, 2008 through June 30, 2009 as conceptually approved after their public hearing on June 3, 2008.

The Commissioners held a public hearing to receive public comment regarding the cost of the proposed construction of a water tower and waterlines to serve customers in the Newark Service Area (NSA). Public Works Director John Tustin reviewed the project, and stated that based upon competitive bids recently received for the project, the estimated cost for this project would range from \$647,003 if a used, multi-leg style water tank is constructed to \$807,603 if a new pedestal style water tank is constructed, plus an additional \$78,886 for waterlines. Mr. Tustin advised that by including Maryland Department of the Environment (MDE) grant funds at a finance rate of 3% over 20 years, the construction project would result in a monthly increased cost per equivalent dwelling unit (EDU) of \$40 for the used tank or \$59 for the new tank, which equates to an annual increase to residents' water bills of \$160 to \$235 per EDU. He further stated that the County would continue to pursue additional funds from MDE to seek to lower this cost. Mr. Tustin concluded that if the Commissioners choose to purchase the used tank, which would equate to a total project savings of approximately \$150,000, it could be installed and operational within eight months while a new tank would not be operational for twelve months. In response to a question by Commissioner Gulyas, Mr. Tustin stated that the used tank would be completely

refurbished and come with the same warranty as a new tank with the same life expectancy.

Commissioner Shockley opened the floor to receive public comment.

Bobby Kitchens, a resident of Berlin and owner of a small subdivision in Newark, asked if the quarterly fees would be assessed to all properties, both developed and undeveloped lots. Enterprise Fund Controller Jennifer Savage stated that in order to assure that costs for the new infrastructure in the NSA are affordable, the fees would be assessed to both developed and undeveloped lots. Mr. Kitchens stated that he saw nothing wrong with purchasing a used tank provided it is properly refurbished and installed.

There being no further public comment, Commissioner Shockley closed the public hearing.

Upon a motion by Commissioner Gulyas, the Commissioners unanimously approved the purchase and installation of the used, refurbished tank from Utility Service Company of Elkton, Maryland at a cost of \$506,500 and provisional installation of waterlines from Bunting and Murray Construction Corporation of Selbyville, Delaware at a cost of \$78,886.

The Commissioners met in Legislative Session.

The Commissioners met with Development Review and Permitting Director Ed Tudor to review draft legislation that was requested by the Planning Commission and prepared by staff to increase the maximum permitted size of subdivision plats. Mr. Tudor stated that staff concurred with the Planning Commission that a larger plat would reduce the number of pages necessary for subdivision plats. However, staff did not agree that the maximum size should be left open-ended, which could encourage submittal of extremely large plats that are difficult to review, handle and store. Mr. Tudor stated that additionally, staff concluded that a minimum plat size of 8.5 inches by 11 inches should be consistently specified as well, and thus the draft legislation stipulates the aforementioned minimum plat size while the maximum acceptable was set at 24 inches by 36 inches. Mr. Tudor advised that both the Planning Commission and County staff favorably recommended the proposed legislation, and asked the Commissioners to introduce the proposed bill as emergency legislation. Following some discussion and upon a motion by Commissioner Boggs, Commissioners Boggs, Busick, Church, Gulyas, Purnell and Shockley introduced the aforementioned proposed bill as Emergency Bill 08-4 (Subdivision - Plat Requirements). The Commissioners unanimously agreed to hold the public hearing on the bill during their special legislative session on July 22, 2008.

The Commissioners reviewed draft legislation that would amend the Zoning and Subdivision Control Article to remove certain time limitations on political campaign signs. Mr. Tudor advised that the legislation was drafted by County staff in response to a letter from the American Civil Liberties Union (ACLU), which referenced a recent Federal District Court decision on a case filed by the ACLU against Baltimore County. Mr. Tudor explained that Baltimore County's Zoning Ordinance, much like Worcester County's ordinance, restricted the length of time that political campaign signs could be displayed. He stated that the Court found that the signs were a form of protected speech and any time limits on their display were, therefore, unconstitutional. Mr. Tudor further advised that the Court decided against Baltimore County and granted the plaintiff's motion for attorney's fees and costs totaling almost \$68,000 to be paid by Baltimore County. Mr. Tudor concluded that he had discussed the issue with County

Attorney Sonny Bloxom, and both of them felt it was wise to simply amend the County ordinance to remove the time restrictions. Following some discussion, Commissioners Boggs, Busick, Church, Gulyas, Purnell and Shockley introduced the aforementioned proposed bill as Bill 08-5 (Zoning - Temporary Political Signs). The Commissioners unanimously agreed to hold the public hearing on the bill during their special legislative session on July 22, 2008.

The Commissioners closed the legislative session.

The Commissioners reviewed a letter from Charles R. "Buddy" Jenkins, Sr., Chairman of Bay Shore Development Corporation, advising of the ongoing discussions between himself and the State Department of Assessments in regards to the Jolly Roger Amusement Park and the Pier property, and stating that because it is so late in the County's FY09 budget process he plans to postpone his request for tax credits until FY10.

Pursuant to the request of Emergency Services Director Teresa Owens and upon a motion by Commissioner Gulyas, the Commissioners unanimously authorized Commission President Shockley to sign a Memorandum of Agreement between Maryland Emergency Management Agency and Worcester County Emergency Services regarding FY 2008 Emergency Management Performance Program for grant funding of \$50,973 to be used to enhance and strengthen emergency management capabilities at the State and local level.

State's Attorney Joel Todd announced to the Commissioners that a grant of \$39,911 from the Maryland Mediation and Conflict Resolution Office (MACRO) to cover a portion of the salary for a Mediation and Conflict Resolution Officer within the State's Attorney's Office, which was set to expire in FY08, has been extended through FY09. Mr. Todd stated that although the FY09 budget had already been approved, the Town of Ocean City's recent decision to decriminalize their ordinance on alcohol violations would reduce the need for one temporary Office Assistant within the State's Attorney's Office, thereby, freeing up funding of \$7,474, which could then be used to cover the County's matching salary portion of approximately \$7,071. He explained that the mediation position has been extremely valuable to his office, as it has helped to prevent crimes and in cases where a crime has already occurred it likely deterred future crimes from occurring. Commissioner Boggs thanked Mr. Todd for informing them of the strong need his office has for this position. Commissioner Gulyas thanked Mr. Todd for finding funding within his existing budget to continue this position and encouraged him to locate alternate funding sources to continue the program in the event that the grant expires in the future. Following some discussion and upon a motion by Commissioner Church, the Commissioners unanimously approved the grant application and authorized the transfer of \$7,071 within the FY09 budget for the State's Attorney's Office to cover the County's matching grant requirement.

In a related matter, in response to a question by Mr. Todd, Commissioner Shockley stated that a portion of funding for the new State's Attorney's Office had been reallocated to the Board of Education to cover their budget shortfall in FY08, but this action would not delay the project.

Pursuant to the request of Court Administrator Richard Outten and upon a motion by Commissioner Gulyas, the Commissioners unanimously agreed to waive the standard bid process and declared CourtSmart Digital Systems, Inc. to be the sole source for the purchase of

digital recording systems in each of the four courtrooms within the Worcester County Circuit Court building in Snow Hill at a cost of \$127,595 and video at a cost of \$5,000 per courtroom for an additional cost of \$20,000 for a total of \$147,595. Mr. Outten advised that State grant funding of \$127,595 is available for the project and funds of \$20,000 are available within the FY08 budget to cover the additional cost.

Comprehensive Planning Director Sandy Coyman met with the Commissioners to review and discuss potential land preservation opportunities. Mr. Coyman stated that Comprehensive Planning has located 14 properties that could be considered for preservation as well as a passive park with walking trails, canoe/kayak access, and picnicking, which could be named in honor of Ilia Fehrer, a lifelong conservationist whose efforts have helped protect lands and waters within Worcester County. He stated that currently no funding opportunities are available to acquire any of the possible sites and recommended Comprehensive Planning work with Recreation and Parks Director Sharon DeMar Reilly and the Trust for Public Lands (TPL) to prepare and submit a Coastal and Estuarine Land Program (CELCP) grant proposal, which is due by June 30, 2008, and identify other possible funding sources for land acquisition. In response to a question by Commissioner Gulyas, Mr. Coyman advised that staff had not contacted any of the 14 property owners as yet, but if land were to be acquired the County may be required to provide matching grant funds of approximately \$240,000 available within the FY09 budget for the purchase. Chief Administrative Officer Gerald T. Mason advised that Program Open Space would not be a good source of funding, since grant funds had been reduced significantly for FY09. Following some discussion and upon a motion by Commissioner Gulyas, the Commissioners unanimously authorized staff to proceed with identifying possible properties and grant funding and to work with Ms. Reilly to identify additional funding sources and TPL to assist with landowner contact and grantsmanship.

Pursuant to the request of Environmental Programs Director Bob Mitchell and upon a motion by Commissioner Gulyas, the Commissioners unanimously adopted Resolution No. 08-13, amending Health Department Environmental Fees to remove review fees for mobile home parks and campgrounds, which are now reviewed by the Environmental Programs Department.

In a related matter, pursuant to the request of Mr. Mitchell and upon a motion by Commissioner Gulyas, the Commissioners unanimously adopted Resolution No. 08-14, establishing fees for applications processed by the Department of Development Review and Permitting, Comprehensive Planning and Environmental Programs to add mobile home park and campground permit review fees for Environmental Programs. Mr. Mitchell explained that both resolutions were housekeeping measures, transferring responsibility from the Health Department to Environmental Programs for reviewing and issuing permits for mobile home parks and campgrounds.

The Commissioners met with Public Works Director John Tustin to discuss a proposal to upgrade the County's existing fuel facility in Snow Hill. Mr. Tustin stated that the current system serving the facility was installed in 1987 and has been repaired twice a month for the last three months. He advised that replacement parts for this system are no longer available, and recommended purchasing replacement pumps at a cost of \$19,266.71 from Commercial Fuel

Systems (CFS), which presently maintains the existing system and fuel supply. Following some discussion and upon a motion by Commissioner Gulyas, the Commissioners unanimously agreed to waive the standard bid requirement and authorized the purchase and installation of replacement pumps to CFS as requested.

Pursuant to the request of Mr. Tustin and upon a motion by Commissioner Boggs, the Commissioners unanimously approved bid specifications for the design and permitting services for the West Ocean City Harbor Boat Ramp Renovation project. Mr. Tustin advised that previous plans only included replacing the finger piers; however, the Department of Natural Resources (DNR) had suggested the entire site be renovated and awarded the County \$25,000 in Waterway Improvement grant funds for the project.

Pursuant to the request of Mr. Tustin and upon a motion by Commissioner Busick, the Commissioners unanimously approved EA Engineering, Science and Technology's 30% submittal for the Northern Worcester County Homeowner Drop-Off Facility to be located at the intersection of Bishopville Road and U.S. Rt. 113 in Bishopville and located on Tax Map 9 as Parcel 264. Mr. Tustin stated that the project would cost approximately \$874,800.

Upon a motion by Commissioner Busick, the Commissioners unanimously declared their intent to exempt this project from the provisions of the Zoning Ordinance as a County project and directed staff to forward the proposed exemption for the Drop-Off facility to the Planning Commission for review and comment.

The Commissioners met with Mr. Tustin and Mr. Tudor to discuss a letter from the State Highway Administration (SHA) requesting permission to access the lands of the public boat ramp known as Shell Mill Landing to determine if the site was suitable for wetland mitigation that would result from the potential reconstruction of the U.S. Rt. 50 Bridge. In response to a question by Commissioner Shockley, Mr. Tustin stated that the site consists of approximately 1.18 acre. Both Mr. Tustin and Mr. Tudor advised that they had no issue with SHA accessing the property to investigate the feasibility. Mr. Tudor explained that any such mitigation would not take place for several years and must first be approved by the County. Following some discussion and upon a motion by Commissioner Boggs, the Commissioners unanimously approved the SHA's request to access the site for investigation.

The Commissioners met with Enterprise Fund Controller Jennifer Savage to discuss funding for the Mystic Harbour North Water Tower. Ms. Savage advised that the Maryland Department of the Environment (MDE) ranked projects in the list of priority for Maryland Drinking Water Revolving Loan funds for FY09. She stated that MDE would fund the first 10 projects with the next 12 to be added to a waiting list for future funding. She stated that the Mystic Harbour water tower project ranked 61 out of the 66 projects and felt that prospects for future funding were low. She advised that since the County has secured a site and begun design of the tank, it would be prudent to include the \$1.3 million project in the next bond issuance. She stated that the proposed project would result in an increase to users in the Mystic Harbour Service Area (MHSA) of approximately \$13 per equivalent dwelling unit (EDU) per quarter. Mr. Mason advised that staff will spend the summer months preparing bond resolutions and

preparing to go to the bond market in October 2008, so it was not necessary for the Commissioners to decide on this issue today. Commissioner Shockley recommended staff prepare a list of proposed Public Works projects in order of priority to be considered by the Commissioners for inclusion in the upcoming bond issuance. Following some discussion and upon a motion by Commissioner Gulyas, the Commissioners unanimously directed staff to prepare a short list of proposed Public Works projects in order of priority for bonding consideration by the Commissioners.

Pursuant to the recommendation of Ms. Savage and upon a motion by Commissioner Boggs, the Commissioners agreed to consider including an additional \$2.5 million in their request for funding when they go to the bond market in October 2008 and advised staff to include the project within its list of proposed Public Works projects. These funds would be used to purchase and install fire hydrants in sections of Ocean Pines that are currently without fire protection as requested by the Water and Sewer Advisory Council for the Ocean Pines Service Area. Ms. Savage explained that the anticipated impact on ratepayers is an additional \$7 per EDU per quarter.

Pursuant to the request of Mr. Tudor and upon a motion by Commissioner Church, the Commissioners unanimously authorized Commission President Shockley to sign the State of Maryland Department of Natural Resources (DNR) Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (CACB) Grant-in-Aid Program for FY09 funding of \$33,000 for the purpose of assisting Department of Development Review and Permitting (DRP) staff in carrying out their responsibilities under the CACB Critical Area Protection Program. Mr. Tudor stated that this is an annual grant, which has been reduced by \$12,000 for FY09. He advised that the County spends well over \$100,000 to administer this program.

Mr. Tudor met with the Commissioners to address allegations made by Assateague Coastal Trust (ACT) Executive Director Kathy Phillips in a letter to County Attorney Sonny Bloxom that delays in implementing the new Comprehensive Plan have resulted in the development of 346 potential new lots on 1,284 acres in the E-1, Estate District. Mr. Tudor stated that DRP had experienced challenges in finding sufficient time to work on implementation of the plan, but have established a program to complete the work. He advised that if all involved adhere to that proposal, the plan should be complete and ready for review by the Commissioners by December 2008. He stated that with all due respect to Ms. Phillips' letter, the Comprehensive Plan calls for a long-term phase-out of the E-1 District rather than elimination of it. However, once the Planning Commissioner began talking about the potential elimination of the E-1 zone, property owners began submitting development proposals for properties in that zone. He stated that while the zoning maps and text amendments are not yet complete, the County has developed and/or adopted many new plans and regulations to implement the goals and objectives of the new Comprehensive Plan as follows: soft shoreline stabilization, promote site design for stormwater management plans; worked with Comprehensive Planning on Sea Level Rise Response, the Northern Worcester Transportation Plan, and updates for the Water and Sewer Plan; text amendments to promote spray irrigation and control sewage sludge; completed text of commercial design guidelines to be reviewed by the Commissioners in August 2008; worked

with the Maryland Association of Counties (MACo) and State on Critical Area issues for House Bill 1253 - Chesapeake and Atlantic Coastal Bays Critical Area Protection Program, and House Bill 1220, Chesapeake and Atlantic Coastal Bays Green Fund; and worked with State to develop plans for future upgrades to MD Rt.589, which is a major component of the transportation plan outlined within the Comprehensive Plan. In response to a question by Commissioner Shockley, Mr. Tudor confirmed that the zoning text amendments and maps would be ready for the Commissioners to review by December 2008. Following some discussion, the Commissioners thanked Mr. Tudor and his staff for their ongoing work to implement the goals and objectives of the Comprehensive Plan.

Pursuant to the request of Finance Officer Harold Higgins and upon a motion by Commissioner Gulyas, the Commissioners unanimously approved out-of-state travel for Information Technology Technician Susan McMichen to attend a three-day conference for National Association of Government Webmasters in St. Charles, Illinois from September 10-12, 2008.

The Commissioners answered questions from the press.

Following a motion by Commissioner Boggs, seconded by Commissioner Gulyas, with Commissioner Cowger absent, the Commissioners unanimously voted to meet in closed session at 11:41 a.m. in the Commissioners' Meeting Room to perform executive actions. Also present at the closed session were Gerald T. Mason, Chief Administrative Officer; Kelly Shannahan, Assistant Chief Administrative Officer; and Kim Moses, Public Information Officer. Topics discussed and actions taken included performing executive actions.

After the closed session, the Board adjourned to meet again on July 1, 2008.