

Minutes of the County Commissioners of Worcester County, Maryland

October 7, 2008

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

Following a motion by Commissioner Purnell, 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), (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; Sonny Bloxom, County Attorney; Kim Moses, Public Information Officer; George Bradley, Director of Human Resources; and Jerry Redden, Director of Economic Development. Topics discussed and actions taken included: acknowledging the hiring of Robert Price and Jeff Kelchner as part-time Sheriff's Deputies and William Seifken as a School Crossing Guard within the Sheriff's Office; acknowledging promotion of Susan Ailstock to Office Assistant IV within the Sheriff's Office; approving hiring of 275 Election Judges for the General Election on November 4, 2008; appointing Bill Killinger to the Shoreline Commission; considering a proposal for a business organization to locate, expand or remain in Worcester County; 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 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 September 16, 2008 meeting, as presented.

Pursuant to the recommendation of Public Works Director John Tustin and upon a motion by Commissioner Gulyas, the Commissioners unanimously awarded the best bid for the purchase of a Case model 580M, Series III backhoe with extendable dipper for use within the Water and Wastewater Division of Public Works to Folcomer Equipment of Greenwood, Delaware in the amount of \$61,995. In his memo, Mr. Tustin pointed out that the largest disadvantage of the JCB model 3C-14FT EXT backhoe offered by the low bidder, TRI Supply and Equipment of Salisbury at a cost of \$59,434, was the availability of parts and the potential for costly repairs as the nearest service center is located in New Castle, Delaware.

The Commissioners met with Mr. Tustin to review the following low bids for the purchase of vehicles: one mid size 4x4 SUV at a cost of \$20,451, five ½-ton pickup trucks at a cost of \$13,704 each, one 1-ton stake body truck at a cost of \$27,202, four full size patrol vehicles (identified) at a cost of \$22,927 each, three full size patrol vehicles (unidentified) at a cost of \$22,788 each, and one 1/2-ton pickup truck at a cost of \$15,809 from Hertrich Fleet Services, Inc. of Milford, Delaware; one 1-ton utility body truck at a cost of \$21,354 from Criswell Chevrolet, Inc. of Gaithersburg, Maryland; and one full size 4x4 SUV at a cost of \$26,523 from Bob Bell Pontiac GMC of Baltimore, Maryland. Mr. Tustin advised that \$374,900 had been budgeted to purchase these vehicles; however, the actual purchase cost was only \$339,931, a savings of \$34,969. Commissioner Shockley suggested that the County could save even more money by purchasing remaining 2008 models that are able to meet the required bid specifications rather than purchasing the proposed 2009 models. Commissioner Cowger concurred provided that new 2008 models are available. Following some discussion and upon a motion by Commissioner Gulyas, the Commissioners unanimously awarded the low bids for the purchase of identified and unidentified vehicles within the Sheriff's Office as follows: four full size patrol vehicles (identified) at a cost of \$22,927 each and three full size patrol vehicles (unidentified) at a cost of \$22,788 each to Hertrich Fleet Services, Inc. of Milford, Delaware.

Upon a motion by Commissioner Gulyas, the Commissioners unanimously directed staff to contact each of the low bidders to determine if any remaining new 2008 vehicles meeting the required bid specifications are available for purchase in place of the 2009 models at further discounted costs. If not, the Commissioners agreed to approve the remaining low bids as recommended.

Pursuant to the request of Mr. Tustin and upon a motion by Commissioner Gulyas, the Commissioners unanimously approved a Change Order from Bunting and Murray Construction of Selbyville, Delaware in the amount of \$95,775.80 to install the 8" waterline, valves, fire hydrants and connections that will serve the new Worcester County Developmental Center in Newark.

Pursuant to the request of Mr. Tustin and upon a motion by Commissioner Church, the Commissioners unanimously approved bid specifications for the purchase of membrane equipment for the Mystic Harbour Wastewater Treatment Plant replacement. Mr. Tustin explained that by purchasing the membrane treatment equipment separately, it would be possible to design the new system around the equipment. He advised that the equipment should cost approximately \$1 million, and staff is seeking a 40-year low interest loan (at approximately 2.75% interest) from the United States Department of Agriculture (USDA) Rural Development to fund the project with up front financing from the General Fund.

Pursuant to the request of Mr. Tustin and upon a motion by Commissioner Purnell, the Commissioners unanimously approved bid specifications for the purchase of Bituminous Concrete for resurfacing approximately 18.82 miles of County roadway. Mr. Tustin advised that as in previous years the bid form provides an escalation/de-escalation clause to account for fluctuations in the cost of asphalt and he assured the Commissioners that the Roads Department

will be prepared to revise the actual mileage of road paving to stay within budget constraints. In response to a question by Commissioner Gulyas, Mr. Tustin stated that the Roads Department plans to begin paving in spring 2009.

The Commissioners held a public hearing on the program progress of the following Maryland Community Development Block Grant (CDBG): MD-08-CD-23, a \$300,000 grant to fund the rehabilitation of 18 homes occupied by Worcester County residents with low to moderate household incomes. Housing Program Administrator Jo Ellen Bynum informed the Commissioners that to date six projects have been completed, six are under construction and four are awaiting confirmation of supplemental funding from the State Special Loans Program.

Commissioner Shockley opened the floor for public comment. There being no public comment, Commissioner Shockley closed the public hearing.

After some discussion and upon a motion by Commissioner Gulyas, the Commissioners unanimously approved the progress report.

Pursuant to the request of Ms. Bynum and upon a motion by Commissioner Gulyas, the Commissioners unanimously approved bid specifications for the rehabilitation of a single family home in the Berlin area.

At the request of Assistant Chief Administrative Officer Kelly Shannahan and the recommendation of Robert Doory, Bond Counsel with Miles & Stockbridge, P.C. and upon a motion by Commissioner Gulyas, the Commissioners unanimously approved Resolution No. 08-30, providing for the issuance and sale by the County Commissioners of Worcester County, Maryland of its General Obligation Bonds in an aggregate principal amount not to exceed \$35 million in funding for the Pocomoke High School (PHS) Renovations and Additions project. Mr. Shannahan advised that the bond sale is scheduled to occur on Tuesday, October 21, 2008. Following some discussion, the Commissioners thanked Chief Administrative Officer Gerald Mason, Finance Officer Harold Higgins, Assistant Finance Officer Phil Thompson and Budget Officer Kathy Whited for their efforts to make the Commissioners' visit to the rating agencies in New York City from October 1-3, 2008 a success.

State's Attorney Joel Todd informed the Commissioners that his office was advised by Commission President Shockley and Governor Martin O'Malley to apply for and has been awarded a \$57,200 grant through the Governor's Office of Crime Control and Prevention (GOCCP) Collaborative Supervision and Focused Enforcement Initiative. Mr. Todd explained that the grant was to be used to fund a part-time Crime Analyst position with an annual salary of \$36,810.85 and fringe benefits of \$7,817 for a total salary of \$44,627.85 and for equipment to aid this position in the amount of \$12,200. In response to a question by Commissioner Boggs, Mr. Todd advised that the Crime Analyst would track crime trends and then help various police agencies and the State's Attorney's Office develop strategies to help prevent future crimes from occurring. Commissioner Cowger reiterated that the Commissioners enacted a hiring freeze for all non essential personnel beginning September 16, 2008. In response to a question by Commissioner Cowger, Mr. Todd stated that this one-year grant would likely be eligible for renewal for a period of three years and would require no County funding. Following some

discussion and upon a motion by Commissioner Cowger, the Commissioners voted unanimously to accept the grant for the Crime Analyst position with the understanding that the continuance of the Crime Analyst position would be contingent upon continued grant assistance at no cost to the County.

Pursuant to the recommendation of Emergency Services Director Teresa Owens and upon a motion by Commissioner Gulyas the Commissioners unanimously agreed to waive the standard bid process and authorized the purchase and installation of equipment to be installed in the County's 911 Center for two projects as approved by the State Emergency Number Systems Board (ENSB). The first project (# 09-32) will replace the second Uninterrupted Power Supply (UPS) located in the basement of the Government Center, which provides power until the generator kicks in during a power failure. The total cost of this project is \$39,603.46 as follows: \$24,553.46 for purchase of the equipment from Critical Power Group of Leesburg, Virginia; \$1,350 for purchase of a bypass panel from Electrical Power and Controls - Control Switches International, Inc. of Long Beach, California; \$8,700 for installation to be performed by John E. Kelly & Sons Electrical Construction, Inc. of Upper Marlboro, Maryland; and \$5,000 for the remainder of the work to be completed by County staff. The second project (# 09-34) will update the closed circuit camera system located in the 911 Center to an Internet Protocol (IP) based system. The total cost of this project is \$35,602.95 to be provided and installed by Absolute Security Group, Inc. of Salisbury, Maryland. Ms. Owens advised that the upgraded closed circuit camera system would enable all cameras located in the Court House, Government Center and new State's Attorney's Office to reside on the same server, and have UPS backup power supply to provide access 24 hours a day. Ms. Owens advised that these two projects would be fully funded by the State ENSB.

Comprehensive Planning Director Sandy Coyman updated the Commissioners on the status of the Bishopville Pond project, advising that the final existing hydrology and hydraulic conditions analysis have been submitted to the State Highway Administration (SHA) on August 15, 2008, and the design team is awaiting the SHA's comments. Mr. Coyman advised that the SHA continues to place restrictions on the project to assure that further stress is not placed on the existing bridge. He advised that the design team is seeking final approval of the stockpiling permit from the Maryland Department of the Environment (MDE), and additional ironstone for the stone weirs will be moved to the site in the coming weeks. Mr. Coyman further added that the Maryland Department of Natural Resources (DNR) has agreed to contribute funding to pay for the transfer of ironstone to the project staging site; and the County, DNR and SHA are preparing the Memorandum of Understanding (MOU) for the project. In response to a question by Commissioner Boggs, Mr. Coyman stated that the County is attempting to determine who owns the land which makes up the bottom of the pond. County Attorney Sonny Bloxom advised that the County could resolve this issue by requesting the surrounding property owners to quitclaim the property to the County. Following some discussion, the Commissioners thanked Mr. Coyman for updating them on the project.

Pursuant to the request of Recreation and Parks Director Sharon DeMar Reilly and upon a motion by Commissioner Boggs, the Commissioners voted unanimously to reject all bids

submitted under the previously approved bid specifications to purchase and install 50/30 foot candle lighting on two softball fields at Showell Park and one softball field at Newtown Park and instead approved revised bid specifications to purchase and install 30/20 foot candle illuminating lights at these locations. Ms. Reilly stated that the change was recommended when it was discovered that the 50/30 foot candle lighting would cost significantly more to operate than the budget would allow. She advised that the 30/20 foot candle lighting falls within the Illuminating Engineering Society of North America for baseball and softball field lighting for competitive and recreational play.

Pursuant to the request of Environmental Programs Director Bob Mitchell and upon a motion by Commissioner Boggs, the Commissioners unanimously authorized Commission President Shockley to sign an agreement between Richard Dennis King, owner of 611 Ventures, Inc., and the County Commissioners of Worcester County, Maryland limiting the seating capacity to 41 seats at his restaurant known as Pepper's Tavern and located at 12507 Sunset Avenue, Unit No. 8 E in Ocean City, Maryland which is the maximum number of seats for which the property's wastewater capacity will support.

Mr. Mitchell discussed a proposal to require nitrogen reducing pre-treatment units to be installed on all new septic systems in the Critical Area of Worcester County as recommended in the County's Area of Special Concern Plan. Mr. Mitchell explained that under Maryland's adopted Nutrient Cap Management and Trading Policy, the greatest impact for reducing nitrogen delivery rates to the local waterways is to impose these regulations for septic systems on lots within the Critical Area which are assumed to have an 80% delivery rate. Septic systems on lots within 1,000 feet of other surface waters are assumed to have a 50% delivery rate while systems on all other lots have only a 30% delivery rate of nitrogen to the local waterways. Based on the current potential for additional septic systems in the critical Area, requiring pre-treatment systems on new construction could result in the reduction of 8,650 pounds of nitrogen per year in the Coastal Bays Critical Area and 415 pounds per year in the Chesapeake Bay Critical Area. Furthermore, requiring existing systems to upgrade to pre-treatment systems could ultimately reduce 18,043 pounds of nitrogen per year in the Coastal Bays Critical Area and 1,989 pounds per year in the Chesapeake Bay Critical Area. In comparison, the Ocean Pines Wastewater Treatment Plant which treats 1.15 million gallons per day of wastewater generates only 10,502 pounds of nitrogen per year. Mr. Mitchell explained that the pre-treatment requirement could either be imposed through a text amendment to the Critical Area Ordinances of the Code of Public Local Laws of Worcester County, Maryland (the Law) or as an amendment to the Comprehensive Water and Sewerage Plan (the W&S Plan). He stated that while the text amendment to the Law would be more enforceable, since the W&S Plan is regulated by the Code of Maryland Regulations (COMAR), he would be able to enforce the regulations of the W&S Plan as the local representative of the Maryland Department of the Environment (MDE). Mr. Mitchell further stated that large septic systems would be regulated through their groundwater discharge permit from MDE while individual lots could be required to install the systems for all new construction or as a condition of approval for any variance application. He explained that limited funding was available through the Bay Restoration Fund (BRF) for septic upgrades to install pre-treatment units on lots in the Critical Area which could also be used for new septic

systems.

Commissioner Gulyas stated that the pre-treatment requirement should be imposed throughout the Critical Area. Commissioner Busick agreed and stated that these requirements should be imposed on all new construction. In response to a question from Commissioner Boggs, Mr. Mitchell explained that the BRF grants had been targeted for replacement systems in the Critical Area as there was only a limited amount of funding available which would be quickly exhausted if it was available for new systems countywide. He further explained that the lower nitrogen delivery rate for non-waterfront lots makes these lots a lower priority for requiring pre-treatment septic systems. In response to a question from Commissioner Cowger, Mr. Mitchell stated that pre-treatment units add approximately \$10,000 to the cost of a new septic system. In response to a question from Commissioner Shockley, Edward A. Tudor, Director of Development Review & Permitting (DRP), recommended that in order to impose these new regulations, the Commissioners should first amend the W&S Plan to require the installation of pre-treatment septic systems on all new construction in the Critical Area and later amend the County's Critical Area Law which will need to be amended in the coming months to implement the provisions of House Bill 1253 which was adopted by the State earlier this year. He further suggested that the Critical Area Law provide that Mr. Mitchell has the authority to grant variances to this requirement as the local MDE representative. After much discussion and upon a motion by Commissioner Gulyas, the Commissioners unanimously agreed to direct Mr. Tudor to coordinate the preparation of an amendment to the W&S Plan to require septic pre-treatment for all new construction in the Coastal Bays Critical Area and Chesapeake Bay Critical Area in Worcester County. The Commissioners further directed Mr. Tudor to prepare a text amendment to the County's Critical Area Laws to require septic pre-treatment for all new construction in the Critical Area to be enacted in conjunction with the amendments required to implement the provisions of House Bill 1253 (HB 1253) once the State has developed the appropriate regulations and guidelines.

Mr. Tudor met with the Commissioners to review the Critical Area Commission's (CAC) HB 1253 Overview of 2008 Legislation, which will fill gaps in operational structure and enhances State-Local coordination; clarify and strengthen enforcement procedures; streamline the Critical Area Program in order to enhance consistency, predictability and fairness; and protect Maryland's tidal shoreline from negative impacts of growth and development. Mr. Tudor covered the highlights of the bill as follows: a 200-foot buffer would be required for projects in the Resource Conservation Areas (RCA) which is an expansion from the prior 100-foot buffer requirement; required licensing and violations by contractors and others, which includes requiring that fines be issued for all violations within the Critical Area; shore erosion protection provisions which favor soft shoreline erosion techniques such as marsh creation over bulkheading and other hard structures; new standards for the awarding of Growth Allocation based upon standards rather than guidelines in order to direct new growth to Priority Funding Areas; empowering the CAC to promulgate their own regulations; imposing lot coverage requirements instead of impervious surface requirements; enabling local jurisdictions to establish administrative variance procedures; requiring local jurisdictions to adopt lot consolidation and reconfiguration provisions; requiring that fines be issued for all violations; and updating the Critical Area maps and boundaries based on current aerial imagery.

In response to a question by Commissioner Boggs, Mr. Tudor stated that Bay Point Plantation was among the subdivisions in Worcester County that would have been able to meet the new Growth Allocation standards if they had been in place at the time of development, however the Public Landing area would not meet the requirements. Mr. Tudor further stated that the County has been very prudent in awarding Growth Allocation. In response to a question by Commissioner Shockley, Mr. Tudor stated that the new legislation with regard to enforcement imposes no minimum fine but states that the County would be required to fine all violators. He stated that rather than impose fines on landowners who have made innocent mistakes in the past, the County has opted to work with them to correct the problem, and that it would be his preference to continue to operate in this fashion. In response to a question by Commissioner Church, Mr. Tudor advised that landowners would be required to install soft shorelines for erosion control unless MDE approves otherwise or unless the area has been mapped to permit hard shorelines due to specific conditions that warrant bulkheading or other hard structures. Mr. Tudor concluded by stating that once the CAC develops regulations and implementation guidelines, he would draft a local bill to amend the Worcester County Atlantic Coastal Bays Critical Area Law and the Worcester County Chesapeake Bay Critical Area Ordinance to comply with the provisions of HB 1253. Following some discussion, the Commissioners thanked Mr. Tudor for the update.

In response to a request by the Commissioners, Mr. Tudor provided them with information and ordinances concerning Wind Energy Conversion Systems (wind turbines), including information on wind turbine acoustic noise, fact sheets and information from the American Wind Energy Foundation and the American Wind Energy Association, recent professional magazine articles, news stories and publications from organizations concerned about the effects of wind power and wind resource maps for both the United States and specifically Maryland and Delaware. In response to a question by Commissioner Church, Mr. Tudor stated that regulations concerning the installation of wind turbines on lots in Worcester County will be included in the Comprehensive Zoning Ordinance which he and DRP Deputy Director Phyllis Wimbrow are currently drafting. The Commissioners thanked Mr. Tudor for providing them with the information on wind turbines and looked forward to reviewing the draft regulations when the Comprehensive Zoning Ordinance is presented to them in the near future.

The Commissioners answered questions from the press, after which they adjourned to meet for lunch with members of the Liquor Control Board.

The Commissioners met with Liquor Control Board (LCB) Chairman Donald Hastings, and members Joe Jackson and Larry Wilkinson and Executive Director Brian Sturgeon to review and discuss LCB operations and to consider the LCB's request to support State legislation that would allow the LCB to price wholesale and retail sales separately.

Mr. Hastings thanked the Commissioners for meeting with them and reviewed the LCB's operations. He advised that the LCB had met with members of the Worcester County Licensed Beverage Association (WCLBA) and had revised certain aspects of their operations at the WCLBA's request including: removing competing wine items from the LCB store in Berlin that are sold at Cheers; revising payment terms to match those of the

commercial wholesalers which in some cases allows licensees up to 45-days to make payments to the LCB; and resuming monthly mailing of the Beverage Journal price list to the licensees. LCB members requested the Commissioners support of proposed State legislation that would de-couple the mark-up on wholesale and retail sales which would enable the LCB to better respond to market conditions in their retail operations. The LCB further agreed to cap the mark-up on their wholesale operations as requested by the WCLBA. After some discussion, the Commissioners requested a copy of the draft State legislation and expressed their conceptual support subject to review of the final language. The Commissioners thanked the LCB members for meeting with them.

The Commissioners adjourned to meet again on October 21, 2008.