

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

August 4, 2009

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

Following a motion by Commissioner Purnell, seconded by Commissioner Shockley, 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; Sonny Bloxom, County Attorney; Kim Moses, Public Information Officer; Harold Higgins, Finance Officer; John Tustin, Public Works Director; and John Ross, Public Works Deputy Director. Topics discussed and actions taken included: nominations for Property Tax Assessment Appeal board vacancy; considering an appointment to the Ethics Board; reviewing potential and pending litigation; receiving legal advice from counsel; and performing executive actions.

Commissioner Shockley left the meeting to attend a meeting with Congressman Frank Kratovil.

After the closed session, the Commissioners reconvened in open session. Commissioner Gulyas called the meeting to order and announced the topics discussed during the morning closed session. She further announced that Commissioner Virgil Shockley was meeting with Congressman Kratovil.

The Commissioners reviewed and approved the minutes of their July 21, 2009 meeting, as presented.

Ed Hammond, President of the Berlin Heritage Foundation, Inc. and former County Attorney, invited the Commissioners to attend the Berlin Peach Festival on Sunday, August 9, 2009 from Noon to 6:00 p.m. and presented them with a framed festival poster. At the urging of Mr. Hammond, Commissioner Busick committed to baking a peach pie for the pie making contest at the event.

The Commissioners met with Development Review and Permitting (DRP) Director Ed Tudor and Attorney Hugh Cropper to review and discuss a Federal Emergency Management

Agency (FEMA) Variance Request filed by Mr. Cropper on behalf of William C. Rowland, Jr. pursuant to Section BR 2-307 of the Worcester County Building Regulations Article. The variance request is to permit two chicken houses and a mechanical/electrical building with finished floors and associated equipment located below the ordinance required base flood elevation of nine (9) feet. The property is located at 6269 Bessen Lane in Stockton and shown as Parcel 45 on Worcester County Tax Map 94 and is located in both the A-12 and V Flood Zones. Mr. Tudor reviewed the situation, advising that Worcester County only performs final inspections on agricultural structures, and the Zoning Permit that was issued on September 18, 2008 for the structures clearly indicate a 9-foot base flood elevation and called for an as-built survey and Elevation Certificate upon completion. Mr. Tudor advised that it was upon submission of final inspection request documents that the circumstances of the case came to light, and staff met with Engineer Stacy Hart to discuss the options available to address the problem. As a result of their meeting, DRP submitted a Variance Request form along with copies of the entire file and associated correspondence from Mr. Cropper to David Guignet, P.E., State and National Flood Insurance Coordinator for the Maryland Department of the Environment (MDE), for comment as required by local law.

In his letter, Mr. Cropper requested a variance for the finished floor and associated mechanical equipment for these structures to be located anywhere from 3.5 to 3.7 feet below the base flood elevation and for the structures not to be flood proofed. Mr. Tudor stated that Mr. Guignet responded to the variance request on July 14, 2009, taking the position that the applicant has failed to demonstrate good and sufficient cause for the variance, failed to demonstrate that a failure to grant the variance would result in exceptional hardship; and failed to flood proof the structures. Mr. Tudor pointed out that Mr. Guignet's comments are advisory only, and the County Commissioners are not bound by them. However, FEMA is notified in the County's biennial reports of all variances granted and the conditions concerning each application, and the granting of excessive numbers of variances can adversely affect flood insurance rates for all insured properties within Worcester County.

In response to a question by Commissioner Busick, Mr. Tudor stated that at this point it would be extremely difficult to elevate the structures. In response to a question by Commissioner Gulyas, Mr. Tudor stated that provided the Commissioners continue to be very conservative in granting FEMA variances in the future, doing so in this case should not adversely affect the County's flood rating. He stated that in addition to this permit, the County has only issued two permits for chicken houses in the past year, and regulations for inspecting them are quite different than those for constructing residential housing. In response to a question by Commissioner Church, Mr. Tudor stated that the two original chicken houses and mechanical pump that were demolished were nearly 50 years old, and the new facilities were built in the same footprint as the previous structures. Commissioner Church stated that he understood that the original houses had never flooded and the new structures sit two feet higher than the old ones. In response to a question by Commissioner Boggs regarding the possibility of elevating the equipment in the chicken houses themselves, Mr. Tudor stated that the equipment sits at ceiling level, and the roof would have to be raised to further elevate the equipment. County Attorney Sonny Bloxom noted that County regulations permit the granting of such variances if kept to a minimum. Commissioner Purnell stated that the original chicken houses were old and needed to

be replaced, and the current owners should not be penalized for upgrading their existing operations. Commissioner Cowger concurred, but stated that in the future the County should consider requiring an Elevation Certificate prior to the construction of agricultural structures to avoid similar situations from occurring. In response to a question by Commissioner Busick, Mr. Tudor stated that he concurs wholeheartedly with granting a variance for the chicken houses, but must give pause to granting a variance for the mechanical/electrical building because this structure contains fuel and oil which could contaminate the water in a flood event.

Mr. Cropper stated that the chicken houses and mechanical /electrical building are located in the middle of a 408-acre working farm. He stated that the former houses, which were built in 1955 and 1957, had a finished floor elevation of approximately 4 feet and were replaced with new, state of the art houses that cost \$800,000 to construct and are elevated to 5.3 and 5.5 feet respectively. He stated that the original structures never flooded and the new houses are far more substantial and sit more than a foot higher than the old ones, which further decreases the likelihood of flooding or causing damage to adjacent properties. Mr. Cropper stated that the new houses represent economic growth in the County and have tripled the assessed value of the property. He pointed out that Mr. Rowland met every requirement, including setbacks, and the houses pose no threat to public safety. In response to a question by Mr. Cropper, Ms. Hart confirmed that the three structures would not fit anywhere else on the property. Mr. Cropper closed by confirming that flood proofing the structures is not a viable option, there is no other location on the property where these facilities could have been erected, and elevating the current structures would pose a serious economic hardship on his client. Therefore, he asked the Commissioners to grant the variance requests.

Following much discussion and upon a motion by Commissioner Boggs, the Commissioners voted 5-1, with Commissioner Gulyas voting in opposition, to approve the requested variances based upon the unique circumstances in this case as explained by Mr. Tudor and Mr. Cropper. Commissioner Gulyas stated that she was opposed due to the importance of FEMA flood insurance to the residents of Worcester County.

The Commissioners met with Mr. Tudor to discuss a request for the abatement of a nuisance related to tall grass and unsecured structures on property owned by Charles and Jacqueline Bullis and located at Market Street and Payne Town Road as identified on Worcester County Tax Map 71 as Parcel 10. Mr. Tudor stated that the specific nature of the alleged nuisance is the uncontrolled growth of grass, weeds, and other rank vegetation to a height of over one foot and several unsecured structures that are open to trespass but not beyond any reasonable hope of rehabilitation or restoration. He stated that DRP contacted the property owner by letter in June 2009 concerning complaints made about this property, and to date has not received a response. Following some discussion and upon a motion by Commissioner Church, the Commissioners declared the property a public nuisance and ordered the vegetation to be cut and the buildings to be secured from trespass within a period of no more than 21 days.

Pursuant to the request of Recreation and Parks Director Sharon DeMar Reilly and upon a motion by Commissioner Boggs, the Commissioners unanimously authorized staff to pursue funding from the Maryland Department of the Environment (MDE) for the creation of a soft

shoreline to replace the failing bulkhead at Greys Creek Nature Park in northern Worcester County using in-kind staff services as the local match. Ms. Reilly stated that the project would cost approximately \$80,000, and the project would be postponed if grant funding was not approved. In response to a question by Commissioner Gulyas, Ms. Reilly stated that the living shoreline would enhance the educational opportunities already available at the site.

Pursuant to the request of Economic Development Director Jerry Redden and upon a motion by Commissioner Boggs, the Commissioners unanimously adopted Resolution No. 09-19 supporting a Department of Business and Economic Development (DBED) loan in the amount of \$50,000, with a County match of \$25,000, to Bel-Art Products, Inc. to renovate and expand its existing facilities in Pocomoke City to generate an additional 25 manufacturing jobs. Mr. Redden explained that this resolution replaces Resolution No. 09-9 adopted on April 21, 2009, as DBED will deal directly with Bel-Art rather than through the County.

Pursuant to the request of Emergency Services Director Teresa Owens and upon a motion by Commissioner Boggs, the Commissioners unanimously authorized Commission President Gulyas to sign a Memorandum of Agreement between Maryland Emergency Management Agency and Worcester County Emergency Services regarding FFY 2009 Emergency Management Performance Program grant funding of \$64,717.00, which is to be used to enhance and strengthen emergency management capabilities at the State and local level.

Pursuant to the request of Ms. Owens and upon a motion by Commissioner Boggs, the Commissioners unanimously approved a draft Private Road Name Application, which was created to ensure that all property owners are in agreement on the proposed naming of private lanes before being brought to the Commissioners for approval and providing that the applicants must pay for the sign installation by the County. In response to a question by Commissioner Gulyas, Public Works Director John Tustin confirmed that the sign cost of \$166.50 associated with installing road signs for private lanes covers all related costs.

Pursuant to the request of Health Officer Debbie Goeller and upon a motion by Commissioner Busick, the Commissioners unanimously authorized Commission President Gulyas to sign the Core Public Health Service Funding Agreement between the Maryland Department of Health and Mental Hygiene and Worcester County from July 1, 2009 through June 30, 2010, which certifies that Worcester County will contribute \$4,513,144 of the Worcester County Health Department's \$5,035,803 budget in FY09/10, and the State will contribute \$522,659.

Pursuant to the request of Ms. Goeller and upon a motion by Commissioner Boggs, the Commissioners unanimously authorized Commission President Gulyas to sign a letter to Dr. Kaye Bender, President of the Public Health Accreditation Board (PHAB), supporting the application of the Worcester County Health Department to be a Beta test site for standards promulgated by the PHAB for the newly coordinated Public Health Accreditation process. Ms. Goeller stated that if selected, the Health Department would receive a grant of approximately

\$27,000 to assist their efforts in achieving accreditation as a test site.

The Commissioners met with Mr. Tustin to review bid specifications for the purchase of one (1) mid-size sedan for use by the Health Department using funds from an Alcohol and Drug Abuse Administrator's grant, and to discuss whether to competitively bid this vehicle to Worcester County dealerships or purchase the vehicle from Hertrich Fleet Services of Milford, Delaware under the existing State of Maryland contract. Following some discussion and upon a motion by Commissioner Cowger, the Commissioners unanimously approved bid specifications to competitively bid the vehicle to local dealerships.

Pursuant to the recommendation of Mr. Tustin and upon a motion by Commissioner Boggs, the Commissioners unanimously awarded the best bid for the Courthouse fan coil air conditioner(s) replacement project to Joseph M. Zimmer, Inc. of Salisbury, Maryland for their base bid of \$68,000.00 plus an additional \$10,200.00 to install programable wireless thermostats at a total project cost of \$78,200.00.

Pursuant to the request of Mr. Tustin and upon a motion by Commissioner Church, the Commissioners unanimously approved two contract proposals from Mr. Meticulous of Salisbury, Maryland for additional custodial services as follows: \$89.08 per day for twice per week cleaning (104 days per year) for the new State's Attorney's Office building; and \$87.50 per day for three times per week cleaning (156 times per year) for the Snow Hill Branch of the Worcester County Library. These service agreements will be added as an addendum to the contract with Mr. Meticulous for custodial services at other government buildings countywide.

Pursuant to the recommendation of Mr. Tustin and upon a motion by Commissioner Boggs, the Commissioners unanimously approved a contract between Worcester County and Assateague State Park (ASP) for the Worcester County Public Works Department to provide recycling containers at ASP and adapt the normal monthly billing system to include a service fee of \$185.00 per pick up to service the containers. Mr. Tustin stated that the Maryland Department of Natural Resources (DNR) has agreed to pay the per service fee and the plan will go into effect immediately.

The Commissioners met with Mr. Tustin to review the results of the annual Citizens Scrap Tire Drop Off Day held on Saturday, May 9, 2009. Mr. Tustin advised that 107 vehicles responded to this event by bringing in 1,518 tires for recycling, weighing a total of 53.53 tons, which is significantly lower than the 213 residents who brought in 3,906 tires for recycling in 2008. Mr. Tustin stated that the numbers had likely decreased because significant progress has been made at prior events to remove excess tires from the area, and continuing to conduct these annual events will stop tires from being dumped in streams, ditches and along County roads. In response to a question by Commissioner Boggs, Mr. Tustin stated that the total cost of this event was \$21,353.

Upon a motion by Commissioner Church, the Commissioners unanimously adopted

Resolution No. 09-20 reclassifying certain Mystic Harbour Sanitary Service Area Wastewater Equivalent Dwelling Units (EDUs) to West Ocean City Sanitary Service Area EDUs to resolve and settle the pending litigation brought by Timothy O'Shea of West End Condominium, LLC and others. County Attorney Sonny Bloxom stated that even though the County denies it has any liability in this case, this resolution is in the best interest of the County.

The Commissioners answered questions from the press, after which they adjourned to meet again on August 18, 2009.