

Minutes of the County Commissioners of Worcester County, Maryland

June 2, 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 Church, 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; and George Bradley, Director of Human Resources. Topics discussed and actions taken included: discussing combining and reclassifying the position of victim/witness coordinator and Mediation Director in the State's Attorney's Office; appointing Ed Montgomery and Pete Buesgens as Co-Directors of the Local Management Board for a six-month trial period; personnel matters related to the FY10 Operating Budget; considering appointments to various County boards and commissions; 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 Gulyas called the meeting to order and announced the topics discussed during the morning closed session.

The Commissioners reviewed and approved the minutes of their May 19, 2009 meeting, as presented.

The Commissioners presented a commendation to the Pocomoke High School's Girls Softball Team, the Warriors, for capturing the 2008/2009 Maryland Class 1A Girls Softball Championship Title.

The Commissioners presented a retirement commendation to Captain Stuart Murray, who served within the Worcester County Sheriff's Office for more than 20 years and for his role as commander of the Sheriff's Tactical Armed Response (STAR) Team, helping to create the first bomb dog team for the Sheriff's Office and helping to apprehend and convict a serial rapist who was the first to be convicted in Worcester County based on DNA evidence alone.

Pursuant to the request of Mary Beth Quillen, Assistant Director of Administration

within Social Services, and upon a motion by Commissioner Shockley, the Commissioners unanimously authorized Commission President Gulyas to sign the 2009 Rental Allowance Program Grant Agreement for additional funding in the amount of \$9,882, increasing the total grant to \$39,882. The grant is between the Maryland Department of Housing and Community Development (DHCD) and Worcester County and will be administered by the Worcester County Department of Social Services.

Pursuant to the recommendation of County Attorney Sonny Bloxom and upon a motion by Commissioner Purnell, the Commissioners unanimously authorized Commission President Gulyas to sign the Exclusive Use Agreement between the County Commissioners and Special Olympics Maryland, Inc. to store their boats and to hold Special Olympics sailing training at the Public Landing beach area from June 2, 2009 through September 1, 2009 with the continued provision that the training shall not interfere with other public use of the facility and that the County be released of liability for any claims which may arise from such use.

Pursuant to the recommendation of Public Works Director John Tustin and upon a motion by Commissioner Church, the Commissioners unanimously awarded the low bid from Hegarty & Associates, Inc. in Berlin at a cost of \$324,999, including alternates 1-5, for renovation services at the former Tyson office building in Berlin, which will be converted for use as the new Northern Worcester County Senior Center.

Pursuant to the request of Mr. Tustin and upon a motion by Commissioner Boggs, the Commissioners unanimously awarded the low bid for Generator Preventive Maintenance Service on 73 generators located throughout the County to Curtis Engine and Equipment of Baltimore, Maryland for three years ending June 30, 2012 at a total annual cost of \$19,700.

Pursuant to the recommendation of Mr. Tustin and upon a motion by Commissioner Purnell, the Commissioners unanimously awarded the low bid for the purchase of propane gas to be provided to 15 locations throughout the County to Sharp Energy of Pocomoke City, Maryland at a mark-up cost per gallon of \$0.2099 for a period of two years commencing with the date of award and ending May 31, 2011. The Commissioners further confirmed that the late bid from Peninsula Oil & Propane could not be accepted.

Pursuant to the recommendation of Mr. Tustin and upon a motion by Commissioner Shockley, the Commissioners unanimously awarded the low bid for Cedar Hall Boat Ramp relocation and design services to Lane Engineering, LLC of Easton, Maryland at a cost of \$5,895. In response to a concern from Commissioner Cowger, Mr. Tustin advised that the new boat ramp will be extended out farther into the water than the existing ramp.

Pursuant to the request of Mr. Tustin and upon a motion by Commissioner Boggs, the Commissioners unanimously approved bid specifications for replacing the fan coil air conditioners in the Worcester County Courthouse and agreed to encumber funds of \$79,490 in the FY09 budget set aside for this purpose.

Pursuant to the request of Mr. Tustin and upon a motion by Commissioner Boggs, the Commissioners unanimously approved the staff recommendation to use phase II of the federal stimulus funds recently allotted to the County by the State Highway Association (SHA) to pave the following federal aid eligible County roads: a 1.98-mile stretch of Seahawk Road from US Rt. 50 to Sinepuxent Road at an estimated cost of \$230,362; a 6.84-mile stretch of Nassawango Road from MD Rt. 12 to the joint near Scotty Road at a cost of \$791,798; and a 2.74-mile stretch of St. Lukes Road (Part A) from MD. Rt 12 to mail box #2324 and (Part B) from the joint near the tax ditch to Stevens Road. Mr. Tustin stated that County staff will work diligently to meet the stringent federal permitting process to start the paving projects this fall. In response to a question by Commissioner Boggs, Mr. Tustin stated that the County will bid the project on a per-mile, per-ton basis that includes overlaying, striping and shoulder work and will only authorize the work that these federal funds will cover at no cost to the County. In response to a question by Commissioner Cowger, Mr. Tustin stated that federal guidelines mandate that projects funded through the stimulus package must be open to all bidders.

The Commissioners met with Mr. Tustin to review and discuss a request from attorney Joe Moore, representing the Ocean Pines Association (OPA), to revise the existing Agreement Regarding Road Maintenance and Standards between the OPA and the County Commissioners to declare three bridges located on the following roads within Ocean Pines as public easement bridges: Clubhouse Drive, Ocean Parkway just south of the intersection with Clubhouse Drive and North Gate. Mr. Tustin and County Attorney Sonny Bloxom explained that the OPA would be eligible to receive federal and/or State funds to repair or replace these bridges if the County Code was amended to add a category for public easement bridges under Section PW 1-204 of the County Code and then if these bridges are removed from the list of excluded roads and bridges in the agreement and placed within the public easement category. Mr. Tustin confirmed that such an action would not cause the County to incur responsibility for maintaining the bridges. Following some discussion and upon a motion by Commissioner Busick, the Commissioners unanimously authorized Mr. Tustin and Mr. Bloxom to prepare the legislation and revised agreement to establish these bridges as public easement bridges in Ocean Pines.

The Commissioners met with Development Review and Permitting Director Ed Tudor to discuss Nuisance Abatement Order No. 09-4 on property owned by the late Oneida L. Elliott and located at 12107 Ocean Gateway immediately adjacent to the easternmost entrance of the Riddle Farm development on the north side of US Rt. 50 and shown on Worcester County Tax Map 26 as Parcel 38, Block B, Lot 41. Mr. Tudor recalled that James Elliot, of Ocean Gateway and heir to Ms. Elliott's property, had met with the Commissioners on April 21, 2009 for a nuisance hearing and had subsequently been granted a 40-day extension to make substantial progress on the cleanup of his property. However, Mr. Tudor reported that as of today the nuisance has not been abated nor has any substantial progress been made. Following some discussion and upon a motion by Commissioner Church, the Commissioners directed staff to began the nuisance abatement process and clean up the property using County forces with all costs to be charged to the property owner.

The Commissioners met with Comprehensive Planning Director Sandy Coyman to

review the Planning Commission's May 14, 2009 findings of consistency with the Comprehensive Development Plan for Worcester County and their favorable recommendation for the revised amendment to the Comprehensive Water and Sewerage Plan to reflect the replacement and expansion of the Mystic Harbour Wastewater Treatment Plant (MHWWTWP). The amendment application was initially submitted by the Commissioners in 2008 and approved as Resolution 08-23. However, the amendment was disapproved by the Maryland Department of the Environment (MDE) due to concerns about system operation and consistency with the new Comprehensive Plan. Mr. Coyman explained that the revised amendment changes the water and sewerage plan designations for portions of the service area to make them consistent with the new Comprehensive Plan, and these changes are reflected on the revised service area map. Mr. Coyman further explained that the purpose of the proposal to replace and expand the existing MHWWTWP has not changed. The MHWWTWP proposal provides for a new plant to be constructed on the current site, which is located east of Stephen Decatur Highway about 280 feet south of its intersection with Sunset Avenue and identified on Worcester County Tax Map 27 as Parcel 629. The new MHWWTWP will treat to enhanced nutrient removal (ENR) standards and have a capacity of 450,000 gallons per day (gpd) which will serve an additional 666 equivalent dwelling units (EDUs). The additional EDUs will be used to provide service to infill lots within the existing Mystic Harbour and West Ocean City Sanitary Service Areas and may be used to bring the Ocean City Airport, Eagle's Landing Golf Course and the Worcester County Humane Society online. Upon a motion by Commissioner Church, the Commissioners agreed to schedule a public hearing on the proposed revised amendment on July 7, 2009.

Pursuant to the request of Mr. Coyman and upon a motion by Commissioner Busick, the Commissioners unanimously authorized staff to apply for a Maryland Coastal Bays Program (MCBP) mini-grant of \$5,000 to cover the cost to print an additional 3,000 copies of the How To manual "Rain Gardens in Maryland's Coastal Plain."

Pursuant to the recommendation of Mr. Coyman and upon a motion by Commissioner Busick, the Commissioners unanimously approved the County's match of \$200,000 from the Rural Legacy Program (RLP) Grant for the Maryland Coastal Bays Program's (MCBP) National Estuary Program (NEP) grant for October 1, 2009 to September 30, 2010. In response to a question by Commissioner Boggs, Mr. Coyman advised that the County has been awarded \$500,000 in RLP funds for FY10, and the use of these funds to constitute the local match for the NEP grant for MCBP is an accepted practice. The County will not be required to make a cash match.

Recreation and Parks Director Sharon DeMar Reilly informed the Commissioners that of 100 applicants, Worcester County Recreation and Parks was awarded the 2008 Physical Activity Excellence Award in the youth group category by the Maryland Department of Health and Mental Hygiene and the State Advisory Council on Physical Fitness.

Pursuant to the request of George King, Agency Procurement Specialist with the Health Department, and upon a motion by Commissioner Boggs, the Commissioners unanimously rejected the submitted proposal for halfway house services beginning July 2009 for homeless men who are treated by Worcester County, as the bid failed to meet all of the requirements

contained in the Request for Proposals (RFP). The Commissioners further authorized Health Department staff to negotiate with the local halfway house vendors, Second Wind of Salisbury, Maryland and Right Turn of Maryland in Cambridge, Maryland, and Samaritan House Ministries of Annapolis, Maryland to negotiate an acceptable contract for these services.

Chief Administrative Officer Gerald T. Mason reviewed the final proposed FY 2009/2010 Operating Budget for Worcester County, which calls for \$173,591,023 in appropriations for the coming fiscal year, a decrease of \$15,935,897 or 8.41% less than FY09. Mr. Mason explained that the reduction to real property tax revenues is \$2.6 million due to the decreased assessments beginning July 1, 2009 and reduced new construction in the County. The Homestead Credit cap of 3% equates to a revenue reduction of \$11,187,134, which will be passed on to the County's qualified principal resident homeowners effective July 1, 2009 based on the current tax rate of \$.70 per \$100 of the assessed value. Mr. Mason further stated that reductions are included for Income Tax, which is anticipated to decline \$500,000 over the prior budget, while Transfer Tax, Recordation Tax and Interest on Investments will collectively decrease by \$4,950,000 due to the economic downturn and anticipated market conditions. The rate change in Food Tax from 1% rate to ½% equates to a loss of revenue of \$965,000, although this revenue is passed through to the Town of Ocean City. State budget cuts have decreased Highway User Tax revenue by \$4,286,502 over the prior year. Mr. Mason stated that the FY10 budget includes increased benefit costs and the appropriation to the Trust Fund for Other Post Employment Benefits (OPEB) due to Governmental Accounting Standard Board (GASB) mandates, but does not include a cost of living salary increase, step increase or a longevity bonus for County and Board of Education employees.

Commissioner Cowger stated that the Commissioners worked hard to cut \$16 million in expenditures to avoid raising taxes.

Commissioner Church stated that working on the FY10 budget was not a lot of fun, but that the Commissioners had taken the necessary actions to maintain the fiscal health of the County. He cautioned that the reconciling of the FY11 budget would be far more difficult than this year's, if economic conditions do not improve.

Commissioner Busick stated that this budget process is by far the most difficult task in which she's ever been involved, but remarkably at the 11th hour the Commissioners were able to present a balanced budget with no need to furlough or layoff county employees. She explained that the Commissioners stated publicly that furloughs and layoffs would only be considered if no other options were available to balance the budget. She concluded that the Commissioners have not done what they promised, and for that she was grieved.

Commissioner Boggs stated that there are obvious inequities in this budget, and the pain is certainly not shared equally or fairly throughout the County. She stated that this budget was balanced largely through the teamwork and efforts of the County employees, and to deliberately inflict more pain on members of this team through layoffs was totally unnecessary and uncalled for and cannot be justified under a guise of fiscal responsibility.

Commissioner Shockley thanked staff for their efforts to balance the budget and stated that while there were many things wrong with the FY10 budget, there were also many things that were right too. He stated that the County must keep moving forward.

Commissioner Purnell stated that it was evident last year that difficult days were ahead for the County. He stated that it should be clear to all that when the State cuts Highway User Revenues by more than \$4 million that the County must go back and readjust spending. He stated that it takes broad shoulders to make the decisions necessary to keep the county out of the red. He concluded that he hopes the people of the county will understand that the Commissioners did the best they could with what they have in the coming year, and he believes the Good Lord will see us through.

Commissioner Gulyas stated that the past three months of addressing budget issues have been the hardest of her entire life, and expressed her indignation that people would question her integrity. She stated that she cares about the students, the senior citizens and the environment which were all provided for in the budget; however, the Commissioners made some very rash decisions in the budget process, and, therefore, she could not support the FY10 Operating Budget due to Board of Education issues and County personnel issues.

Upon a motion by Commissioner Church, the Commissioners voted 6-1, with Commissioner Gulyas voting in opposition, to adopt Resolution No 09-11 adopting expense budgets and establishing tax rates for Fiscal Year 2009/2010.

With Board of Education (BOE) President Bob Hulburd and Superintendent of Schools Dr. Jon Andes present in the audience, the Commissioners reviewed and discussed a letter from the Commissioners to the BOE, which outlines the total FY2009/2010 appropriation to the Board of Education of \$72,341,450, which includes \$71,954,064 for maintenance of effort (MOE) accounts and \$387,386 for retirement for BOE employees. As outlined in the letter, the Commissioners reduced Instructional Salaries by \$565,447 and returned \$548,691 within the category of Textbooks and Classroom Supplies and \$16,756 within Other Instructional Costs. A motion by Commissioner Boggs to send the letter failed 2-5, with Commissioners Shockley and Boggs voting in favor and Commissioners Busick, Church, Cowger, Gulyas and Purnell voting in opposition.

Commissioner Church stated that the Commissioners should not vote to send the letter at this time, because the BOE is in the audience today to request that the Commissioners return funding to the Instructional Salaries category. Chief Administrative Officer Gerald T. Mason advised that the County is required by law to send the letter to the BOE. He stated that the letter must be sent before the BOE can request a categorical transfer within their approved budget.

The Commissioners recessed for five minutes to provide the County Attorney with an opportunity to determine the legal requirements for notifying the BOE of the annual County appropriation for education.

Mr. Bloxom advised the Commissioners that the current law mandates that the County must contact the BOE in writing within 15 days of adopting the budget to inform them of the annual County appropriation for education. Upon a motion by Commissioner Boggs, the Commissioners voted 6-1, with Commissioner Church voting in opposition to send the proposed letter as written.

Upon further discussion and a motion by Commissioner Church, the Commissioners voted 5-2, with Commissioners Boggs and Shockley voting in opposition, to allow Dr. Andes to

submit a letter requesting a categorical transfer within the BOE budget to be considered by the Commissioners during their afternoon session.

The Commissioners answered questions from the press, after which they adjourned for lunch.

After lunch the Commissioners reconvened in open session.

The Commissioners held a public hearing to receive comments on the proposed FY09/10 Solid Waste Enterprise Fund Operating Budgets. Mr. Mason stated that the purpose of the public hearing was to receive comments on the proposed budget. He then yielded the floor to Enterprise Fund Controller Jennifer Savage and Public Works Director John Tustin. Ms. Savage presented a PowerPoint presentation and summarized the proposed budget, stating that the Town of Ocean City has signed a contract to have the town's solid waste picked up and hauled out of state by a private company for a period of three years, which will reduce revenues by about \$1,550,000 and significantly reduce the volume of waste at the landfill. She stated that she will have a final cost analysis ready for the Commissioners to review during their June 16, 2009 meeting that includes the reduction in revenues and increased life expectancy of Cell 4 along with the reduction in salaries after they are able to determine the full number of Solid Waste Division employees who choose to take advantage of the retirement incentive being offered by the County. Ms. Savage reviewed proposed budget increases in the current solid waste tipping fee from \$60 per ton to \$65 per ton for municipal waste. In response to a question by Commissioner Shockley, Mr. Tustin stated that Cell 4 is now expected to last until 2015. He advised that Cell 5 is currently in the design and permitting phase, and he is hoping to receive authorization from the Maryland Department of the Environment to begin mining Cell 1 soon. In response to a question by Commissioner Gulyas, Mr. Tustin stated that there is no expiration date on design plans for Cell 5. In response to a question by Commissioner Cowger, Ms. Savage advised that in hindsight staff had grossly overestimated the funds that would be available for the FY10 requested budget, as funding levels were based on previous waste management trends during the height of the building boom and including Ocean City's waste stream. She stated that reserve funds within the enterprise fund could be used to reconcile budget shortfalls. Mr. Tustin concurred and advised that the cost of design and construction for Cell 5 would be funded from the \$7.5 million enterprise reserve fund. He stated that other options for reducing Solid Waste costs include reducing hours of operation at the Central Landfill and Transfer Stations and downsizing staff through retirement incentives.

Commissioner Gulyas opened the floor for public comment.

Woody Shockley of Ocean City Public Works advised that the town contracted their waste management services to ETR of Pennsylvania starting June 17, 2009, a move that would save the town approximately \$430,000 annually. In response to a question by Commissioner Boggs, Mr. Shockley advised that the town would continue to direct demolition materials and hazardous waste to the County Landfill.

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

The Commissioners agreed to further discuss this matter and adopt the Solid Waste Enterprise Fund Budget by resolution at their next meeting on June 16, 2009.

The Commissioners held a public hearing on the proposed FY09/10 operating budgets, assessments, user charges and other charges for each of the 11 sanitary service areas and sub-areas operated by the Worcester County Department of Public Works, Water & Wastewater Division. Ms. Savage reviewed the County's various service areas. She stated that proposed increases to fees to cover projected expenses are as follows: Assateague Pointe would increase from \$55 to \$65 per quarter for each park trailer, and from \$93.75 to \$103.75 per quarter for each single family dwelling; Edgewater Acres would increase from \$2.80 to \$4.91 per 1,000 gallons used up to 10,000 gallons per quarter, and from \$3.50 to \$4.91 per 1,000 gallons used from 10,001 gallons to 25,000 gallons per quarter, and from \$13.50 to \$25 per quarter accessibility charge for unimproved lots; The Landings would increase from \$128 to \$150 per quarter base rate, and from \$100 to \$150 per quarter accessibility charge for unimproved lots; Lighthouse Sound would increase from \$200 to \$210 per quarter, and from \$75 to \$85 per quarter accessibility charge for unimproved lots; Mystic Harbour would increase from \$128 to \$138 per quarter domestic base rate, and from \$240 to \$250 per quarter commercial base rate, and from \$75 to \$100 per quarter accessibility charge for unimproved lots; Newark would increase from \$128 to \$138 per quarter domestic rate, and from \$150 to \$162 per quarter commercial base rate; Ocean Pines would increase from \$128 to \$133 per quarter domestic base rate, and from \$240 to \$245 per quarter commercial base rate, and from \$0 to \$.80 per 1,000 gallons used up to 10,000 gallons per quarter; West Ocean City would increase the residential fixture rate from \$8.75 to \$9.75 per fixture and the commercial fixture rate from \$12 to \$13.25 per fixture; and there are no proposed changes for Briddletown, Riddle Farm or River Run. In addition to user fees, assessments will be levied in the Newark, Ocean Pines, South Point Village, Sunset Village, Snug Harbor, Oyster Harbor and West Ocean City service areas or sub-areas to make debt payments.

Commissioner Gulyas opened the floor to receive public comment.

Carman Marinelli of Toll Brothers, developers of The Landings, expressed concern that the accessibility charge had increased from \$100 to \$150 and noted that two years ago the cost was only \$25 per lot. Ms. Savage advised that the initial \$25 was set before there was any history or actual expenses with which to set the rates. She explained that the high cost is due to the lack of sales in the subdivision. John Ross, Deputy Director of Public Works, explained that the operation of The Landings is very labor intensive due to cleaning of the shallow water injection wells, which is also reflected in the rates.

Ellie Diegelman of Ocean City stated that responsibility for paying for water and sewer to unimproved lots was a cost of doing business that developers must absorb. She recommended developers seek to recover lost funds via insurance.

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

Following some discussion the Commissioners conceptually approved the proposed rates and charges and agreed to adopt the formal resolution at their next meeting on June 16, 2009.

The Commissioners met with Dr. Jon Andes, who handed out a new letter from Board of Education (BOE) President Bob Hulburd requesting a categorical transfer in the FY10 BOE

Budget as follows: increase Instructional Salaries by \$415,447, reduce Instructional Support Services by \$40,000; reduce Textbooks and Classroom Supplies by \$298,691, reduce Other Instructional Costs by \$16,756 and reduce Operation of Plant by \$60,000. In his letter, Mr. Hulburd advised that the categorical transfer would allow the BOE to fund Textbooks and Classroom Supplies at a level of 86% of the FY09 level by adding \$250,000 above the amount originally proposed by the BOE and avoid layoffs of educational staff. Commissioner Shockley stated that during the budget hearing several teachers expressed grave concern that they would not be able to provide needed classroom materials because funding had been cut from materials of instruction. He requested that the BOE restore funding for textbooks. Commissioner Boggs stated that the Commissioners had returned money to this category in the budget because parents and teachers alike had requested this category be funded. In response to a question by Commissioner Boggs, Dr. Andes stated that the BOE will not seek to refill 10 vacant positions. Commissioner Gulyas expressed her appreciation that the BOE was willing to make some concessions to balance the needs of the BOE with the concerns of the parents and teachers. In response to a question by Commissioner Cowger, Dr. Andes stated that the teachers union is satisfied with the proposed categorical transfers as requested. Commissioner Boggs stated that she needed more time to consider the request before she could vote for it. Following much discussion and upon a motion by Commissioner Church, the Commissioners voted 6-1, with Commissioner Boggs voting in opposition, to approve the proposed categorical changes.

Dr. Andes recognized that this has been an extremely challenging budget year, and he appreciated the support he received from the Commissioners.

Upon a motion by Commissioner Church, the Commissioners voted 4-3, with Commissioners Boggs, Church, Cowger and Purnell voting in favor and Commissioners Busick, Gulyas and Shockley voting in opposition, to publicly confirm the actions taken during their May 26, 2009 closed session meeting to downsize government through the consolidation of Comprehensive Planning, Development Review and Permitting (DRP) and Environmental Programs, and the elimination of the following 11 positions: 1 BHZ/Plan Reviewer III, 1 BHZ/Plan Reviewer II, 1 DRP Specialist, 1 License Permit Clerk II, 2 License Permit Clerk I, 1 Plumbing Inspector, 1 Planner I, 1 Office Assistant III, and 2 Office Assistant II. In response to a question by Commissioner Boggs, Mr. Bloxom stated that the vote taken does nothing more than publicly confirm the action that has already taken place. He further explained that the Commissioners acted properly in discussing this matter in closed session, but now that the action has been taken, it is appropriate to reconfirm in open session.

Commissioner Shockley left the meeting.

Following a motion by Commissioner Busick, seconded by Commissioner Boggs, with Commissioner Shockley absent, the Commissioners unanimously voted to meet in closed session at 2:38 p.m. in the Commissioners' Meeting Room to discuss legal and personnel matters permitted under the provisions of Section 10-508(a) 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; and Kim Moses, Public Information Officer. Topics discussed and actions taken included administrative matters.

The board adjourned to reconvene at 7:00 p.m. in the Commissioners Meeting Room at the Worcester County Government Center to conduct a public hearing on the proposed Comprehensive Text Amendments to the Zoning and Subdivision Control Article of the Code of Public Local Laws of Worcester County, Maryland (Emergency Bill 09-1), Comprehensive Countywide Reclassification Zoning Map Amendments and Design Guidelines and Standards for Commercial Uses in Worcester County, Maryland to implement provisions of the County Comprehensive Plan.

Commissioner Gulyas called the meeting back to order at 7:00 p.m. and announced the topics discussed during the closed session meeting that took place earlier that afternoon.

The Commissioners met in special legislative session.

The Commissioners held a public hearing on Emergency Bill 09-1 (Zoning and Subdivision Control Article), which was introduced by Commissioners Boggs, Busick, Church, Cowger, Gulyas, Purnell, and Shockley on April 21, 2009 and if adopted would repeal and re-enact the Zoning and Subdivision Control Article of the Code of Public Local Laws of Worcester County, Maryland in its entirety. The public hearing was to further receive comment on the Countywide reclassification Zoning Map Amendments and Design Guidelines and Standards for Commercial Uses in Worcester County. Mr. Mason reviewed the procedures for the special legislative session and advised that the public comment period would remain open until June 12, 2009. Development Review and Permitting (DRP) Director Ed Tudor advised that the Zoning and Subdivision Control Article, Reclassification Zoning Map Amendments and Design Guidelines were three key components of the adopted Comprehensive Plan. He provided a summary of the workshops that were hosted by DRP throughout the County to address residents' inquiries, most of which centered around proposed changes to individual properties. Mr. Tudor stated that while this is a good plan, no plan is perfect and staff would compile and forward all public comments received through the close of the public comment period to the Planning Commission for their review and consideration before final action by the County Commissioners. He explained that the new Code includes new nomenclature. For example, the former Conservation District is now referred to as the RP Resource Protection District, former B - Districts are now C - Districts (Commercial), and former M - Districts are now I - Districts (Industrial). County Attorney Sonny Bloxom stated that both written and verbal comments would be accepted; however, he encouraged speakers to consider submitting their comments in writing within 10 days to assure that staff fully understand their concerns.

Jean Darcey of Berlin opposed the revised Comprehensive Rezoning Map amendments, stating that it was too complicated and included too many different zoning categories. Ms. Darcey also questioned why Bill 09-1 was an emergency bill. Mr. Bloxom responded that it is so the legislation would become effective immediately upon passage rather than have a 45-day waiting period.

Carl D'Alessandro of Berlin stated that he is concerned that this plan strays away from the goals of the award winning Comprehensive Plan. He urged the Commissioners to continue the protection and preservation of farmland, which are key components in the success of the

tourism industry in Worcester County. He noted that visitors come for the wide open spaces and natural wonders of the Eastern Shore, not the strip malls and gas stations.

Christine Lieb of South Point asked the Commissioners to retain the current E-1 Estate District to protect the existing rural character and quality of life and to stop her community from becoming another Toll Brothers community.

King Burnett, attorney for the Atlantic Coastal Trust (ACT) Board of Directors, thanked County staff for their hard work, pointed out that the proposed language had much for which they could be proud, but that it also had many shortcomings, including the rezoning of E-1 areas to A-2 Agricultural District, which is misleading and not appropriate. He stated that the code should be more in conformance with the Comprehensive Plan.

Bill Killinger of Berlin stated that the proposed amendment does not require enough passive open space. He stated that communities with natural spaces are more desirable places to live and would be more consistent with the goals of the Comprehensive Plan. He suggested that RPC regulations should require 50-90% of open space to be passive open space.

Sandra Frazier of Berlin thanked the Commissioners and Planning staff, noting that there was a lot to be proud of in the proposed amendments, including retaining the 5-lot agricultural subdivision rule, but that the biologically sensitive areas of Sinepuxent and Lewis Roads and Ayres Creek, all currently zoned A-1 Agricultural District, should not be rezoned to A-2. She also opposed the proposed zoning of Pine Shore South on MD Rt. 611, the commercial zoning across from Stephen Decatur High School and the R-1 zoning in South Point.

Attorney Mark Cropper noted that, in the interest of time and in respect of the 3-minute time limit for each speaker, his written arguments had been submitted earlier, and requested the Planning Commission consider all comments and formulate new suggestions based upon these requests prior to the County Commissioners' final action. In response to a question by Mr. Cropper, Mr. Bloxom stated that future workshops on this issue would be open to the public.

Larry Whitlock congratulated staff for the exemplary job they did of getting the message out about the proposed changes, presented the Commissioners with written comments and asked them to consider revising the draft Design Guidelines to apply to commercially zoned acres only, noting that in hard economic times like these, businesses would be severely impacted.

Harold Scrimgeour of Stockton stated that it is vital for the Commissioners to get stakeholders involved in this process. He stated that no presentations were given at the workshops to present the County's vision through the Code. He opposed the removal of 16 previously approved uses from the A-1 zone, noting that doing so would make it more difficult for farmers to earn a living. He stated that the Commissioners should be encouraging farm-based business and manufacturing of agricultural products in the A zones. He also favored higher density to create more liveable/walkable communities and permitting alternative energy farms.

Kathy Phillips, ACT Coastkeeper, stated that while staff has been working on the revised Zoning and Subdivision Control Article for 2 years, constituents have only known about the proposed changes for about three weeks. She stated that the language therein does little to protect and improve water quality in the St. Martins River and other waterways in the County that have been impacted by fertilizer and the dumping of treated effluent. She further noted that the language in the proposed zoning code does not, but should include language that specifically addresses Total Maximum Daily Load (TMDL) requirements, identifies impaired waterways, environmentally sensitive areas, and requires additional buffers.

Finn McCabe of Bishopville asked the Commissioners to rethink and reword the ordinance addressing wind energy systems, which as written would unduly prevent the installation of such systems on many residential properties. He specifically requested amendments to the requirements for setbacks, braking and noise suppression and to allow large wind farms to be developed.

Macky Stansell of Berlin asked the Commissioners if the newly proposed County rezoning matches the core principles of the Comprehensive Plan, and warned that the proposed rezoning of Gum Point Road and other areas of MD Rt. 589 closely resembles a 10 pound (lb) bag of manure in a 5 lb sack and cautioned the Commissioners not to rezone these areas.

Todd Burbage of Berlin thanked the Commissioners for their work and expressed support for a TDR program to help remove excess E-1 and commercial zoning.

Jack Burbage of Berlin advised that his written request had already been submitted and urged the Commissioners to call him if they have any questions.

Ryan Bergey of Ocean City and speaking on behalf of the Friendship Community Association respectfully opposed rezoning any of the areas immediately surrounding Friendship Road to A-2.

Richard Blevins of Stockton and owner of Twin Oak farms stated that the proposed A-2 zoning is both good and bad, requested limits on TDRs in the Stockton area, and requested the Commissioners assemble a group of community stakeholders to weigh in on issues related to land use and alternative energy, which needs to be revisited.

Joan Jenkins of Berlin asked the Commissioners to continue to protect the fragile wildlife areas of the Maryland Coastal Bays and important migratory bird areas from new growth, so these areas can be enjoyed by future generations. She also suggested that TMDLs should be addressed in the Code.

Tom Patton of South Point stated that the Atlantic Coastal Bays (ACBs) are among the most impacted waterways in the State, and this group of Commissioners has the opportunity to go down in the Hall of Fame, if they will take this opportunity to protect water quality while also protecting the quality of life.

Joanne Donovan of Ocean Pines thanked the Commissioners for approving the requested MOE budget earlier in the day, stated that this rural county is blessed with many opportunities for fishing and boating, opposed rezoning any areas from A-1 to A-2 and commercial zoning across from Stephen Decatur Middle and High Schools and asked the Commissioners to table any vote on the proposed regulations and allow residents to be part of the process.

Hawley Waterman, President of the South Point Homeowners Association (SPHA), stated that the SPHA submitted a petition with 175 signatures opposing the rezoning of their area to R-1. He stated that area residents are scared to death of the possible density that would be permitted with the proposed rezoning and asked some 100 members of the SPHA to stand and be recognized. Commissioner Boggs commended the residents of South Point for being engaged in their local government and thanked them for attending the hearing.

Palmer Gillis of Ocean City stated that he is currently working on plans to build professional and medical offices on a parcel of land located at the intersection of MD Rt. 589 and MD Rt 90 and zoned B-1 Neighborhood Business. He questioned why this property is slated to be down-zoned to R-2 Suburban Residential District and asked the Commissioners to zone the

site C-2 General Commercial District, as professional and medical communities make good neighbors.

Mark Elliot of Berlin stated that the existing laws governing the zoning of his property are sufficient. He asked the Commissioners not to approve the proposed regulations regarding accessory apartments because it would limit his plans to construct an accessory apartment on his nine-acre parcel of land to just 900 square feet and require it to be within 100 feet of the main dwelling.

Art Sachs of Ocean Pines stated that the ACBs back up to his yard and expressed concern that these waters must be protected from the nitrogen and phosphorous found in treated effluent. He asked the Commissioners to protect the ACBs from becoming the sewer of Worcester County.

Kate Patton of Berlin, speaking on behalf of the Lower Shore Land Trust (LSLT), stated there are considerable inconsistencies and areas of disconnect in the A-2 zoning designation that would unravel important land preservation goals that have proven to be effective. She asked the Commissioners to resist the pressure to rezone areas from A-1 to A-2 in the heart of the ACBs watershed, particularly the Holly Grove Swamp area, which should be rezoned RP Resource Protection District, and to maintain the 5-lot subdivision in the agricultural zone, implement a TDR program and address sea level rise.

Raymond Shanley of Berlin opposed the proposed rezoning of the South Point/Sinepuxent Neck area from E-1 Estate District to R-1 Residential District for fear that it would permit over-development in sensitive areas.

Bob Abele of Ocean Pines and the Maryland Coastal Bays Program (MCBP) thanked the Commissioners for keeping the minor subdivision regulations of the A-1 district intact and asked the Commissioners to retain a strict limit of 5 housing units with clustering in these areas, so that farmers grow soybeans and not houses.

Steve Farr of Ocean Pines stated that the A-2 zoning is a good idea for certain areas, but not Stockton or the areas surrounding Herring, Turville and Trappe Creeks because such a change would seriously impact wildlife. He further stated that stronger language should be used to limit development rights in the proposed consolidated development rights subdivision.

Bud Heim of Ocean Pines stated that the Comprehensive Plan calls for smart growth, and people are not very happy that many provisions of the Comprehensive Plan are not being implemented in the new Code. He stated that the Commissioners need to review the language in the proposed Zoning and Subdivision Control Article and take a hard look at how these changes will impact water quality and agriculture.

Ed Ellis of Bishopville, a former Planning Commission member involved in the drafting of the Comprehensive Plan, stated that the Planning Commission gave the Commissioners a road map, and now it was up to them not to drive the bus off the cliff. He urged them to pursue the TDR program to allow the County to grow in a reasonable, rational way and avoid over-development.

Tom Ayd of Showell asked the Commissioners to consider his written request, which was submitted previously, to zone his property C-2.

Mitch Parker of Ocean City thanked the Commissioners for taking time to hear all the concerns brought before them at the hearing, and advised that his written comments had already been submitted.

Ellie Diegelman of Ocean City asked the Commissioners to adhere to the Comprehensive Plan and smart growth goals to conserve natural resources and protect the environment.

Susan Lobue of Ocean City asked the Commissioners to approve the proposed parking regulations immediately, which would allow her to expand her restaurant prior to the start of the summer tourist season.

Ralph Lohmann, President of the Bishopville-St. Martins Neck Community Association, opposed A-2 zoning anywhere in the County, and stated that the proposed Zoning and Subdivision Control Article in Section ZS 1-101 mis-states that it is in accordance with the Comprehensive Plan. He asserted that, rather than protection, the proposed A-2 district serves as a blank check that encourages urban sprawl and the transfer of development rights to parcels that should not be developed.

Dave Wilson, MCBP Executive Director, thanked DRP staff for their hard work in helping to resolve nearly 35 issues he had with the proposed Zoning and Subdivision Control Article, leaving only 11 issues to still be resolved. He thanked what was the Comprehensive Planning Department for putting together one of the best Comprehensive Plans in the State, applauded the use of A-2 zoning in most areas, with the exception of the MD Rt. 611 corridor, and asked the Commissioners to develop a better plan for TDRs.

Carrie Samis of the MCBP applauded the County's efforts to consolidate development rights, but noted that the plan allows for inappropriate uses, including allowing developers to transfer development rights from marsh and other areas that do not perc and that should have no development rights. She applauded DRP staff for eliminating the defragmentation of forest land.

Mary Ochse of Ocean City stated that the proposed language in the Zoning and Subdivision Control Article does not meet the smart growth goals called for in the Comprehensive Plan and does little to protect natural resources. She stated that the Comprehensive Plan does not call for the A-2 district, and the proposed consolidated development rights subdivisions should not be permitted. She also advised that the Adequate Facilities Ordinance cited in the Comprehensive Plan was not included and should be.

Trish Kicklighter, Superintendent of Assateague Island National Seashore, requested the zoning along MD Rt. 611 in South Point remain E-1 to protect the water quality in the Sinepuxent and Assawoman Bays as well as preserve the rural nature of the area surrounding the park. She also maintained that the Holly Grove Swamp area should not be zoned A-2.

Ed Consler, speaking on behalf of the residents of the Bali Hi RV Park, asked the Commissioners to consider amending the Zoning Ordinance regarding vinyl protection coverings to permit vinyl enclosures on porches in campgrounds, which create additional living space and add beauty.

Rebecca Ferguson of the Bali Hi RV Park in Berlin asked the Commissioners to permit vinyl protection coverings on porches in campgrounds such as hers, so outdoor porches could continue to be used during adverse weather conditions and keep out bugs.

Frank Gunion of South Point stated that his area is a tapestry of forests, farms, wetlands, recreational areas and golf courses that are serviced by one country road and should not be further developed. He requested that the Commissioners limit development in sensitive areas and curb sprawl.

John Medlin of Ocean City echoed the sentiments of others and stated that he has nothing further to add.

Reggie Mariner of Berlin stated that Parcel 29 located on Tax Map 20 should not be downzoned from B-2 General Business District to C-1, but rather zoned C-2.

Bruce Nichols of Snow Hill stated that the Commissioners should continue to limit the subdivision of farmland while promoting diversification to make farming more profitable.

Kim Quillin of South Point, an area biologist, stated that the Comprehensive Plan did a remarkable job of providing for sustainable growth; however, the proposed Zoning and Subdivision Control Article creates just the opposite. She stated that many opportunities for responsible growth have been missed in this amendment, including stronger guidelines for subdivisions, TDRs and measures regarding TMDLs.

Jan Adamchak of South Point stated that her area has enjoyed a slow rate of growth, and advised that the proposed rezoning would run counter to the existing character of the area.

L. Monroe Lewis of Cape Isle of Wight thanked the commissioners for the outstanding cartography on the County Zoning Maps. He noted that all the parcels of land surrounding his property have been zoned R-2, though his was not and questioned whether a mistake had been made. He asked the Commissioners to rezone his property R-2 Suburban Residential District in keeping with the surrounding properties.

Greg Menoche of Southwest Windpower in Dagsboro, Delaware stated the proposed zoning is too restrictive with respect to the development of alternative energy, specifically with regard to the height and setback requirements, as well as the noise and braking provisions for wind turbines, making most installations nearly impossible. Mr. Menoche stated that Mr. Tudor explained that the setback requirements were specifically designed to protect surrounding properties from the noise emitted by wind turbines.

Anita Ferguson of the MCBP stated that she does not oppose development, rather she believes in smart growth. She stated that language within the Zoning and Subdivision Control Article should be reworded so that subdivisions are required to coexist with forests and farms in a way that protects open space and other valuable resources by requiring conservation subdivision designs.

Betty Groton of Snow Hill opposed the use of a wooded parcel of land neighboring her 163-acre property for spray irrigation and asked the Commissioners to consider permitting her to further subdivide her property, so her grandson could build a home.

Bruce Clark of Berlin advised that his concerns regarding a property located north of Showell that should be zoned C-2 had already been submitted in writing for their consideration.

Gabe Purnell of Berlin stated that he was concerned about some of the uses permitted by the A-2 district, but was not necessarily opposed to the Lewis Road area being zoned that way. He further stated that the Commissioners must work to preserve the historic minority communities by assigning zoning districts that provide opportunities to develop affordable housing. He also expressed concern about the proposed commercial zoning across from Stephen Decatur Middle School.

Alice Tweedy of Snow Hill opposed rezoning of properties from A-1 to A-2 in the Stockton area and along the Chincoteague Bay, stating that doing so would have an adverse impact on forests and wetlands.

Michelle Merritt of Snow Hill asked the Commissioners to rezone a small mobile home park located on Castle Hill Road from A-2 to R-4 General Residential District, to permit future expansion of the park.

Reg Hancock of Stockton stated that the Comprehensive Plan is intended to foster agricultural heritage and urged the Commissioners to adhere to this mission for the common good and welfare of the County. He expressed concern about the proposed A-2 district and its use around Stockton. He stated that the Code will be valid for at least 20 years and urged the Commissioners not to compromise their planning principles.

Marvin Steen of Ocean Pines thanked the Commissioners for meeting with area residents and noted that he had submitted two requests in writing for their consideration, one with regard to his property and a second with regard to property owned by the Ocean Pines Association.

Sandi Smith of Ocean City thanked the Commissioners for listening to her concerns and requested that the Zoning and Subdivision Control Article mirror the goals and objectives of the Comprehensive Plan.

Robert Purcell of Bishopville requested that property in Showell be rezoned from C-1 to C-2 to remain consistent with the current zoning of the properties.

Jerry Moskowitz of Berlin stated that the Zoning and Subdivision Control Article should conform to the Comprehensive Plan, specifically with regard to the ACBs.

David Curson of Baltimore, a representative of the Audubon Society of Maryland-DC, congratulated staff on their award winning Comprehensive Plan, which protects natural resources through smart growth. He asked the Commissioners to continue to protect Important Bird Areas (IBA) along the ACBs, Pocomoke Forest and River, Cypress Swamp and other areas of Worcester County, which is home to 30,000 species of migratory birds.

John Nemeskay asked the Commissioners to do more to protect area waters from contaminants in wastewater effluent, including pharmaceutical, to protect the commercial fishing industry and prevent mutant crabs.

Carol Cain of Berlin, an area biologist, stated that she was impressed that the citizenry of the County seemed to have such a clear understanding of TMDL requirements and asked the Commissioners to continue to mirror the goals highlighted in the Comprehensive Plan. She further stated that golf courses should not be an acceptable use in the Agricultural District.

Prentiss Ginn of Pocomoke requested his property be rezoned from A-1 to C-1 so that he could construct a community store, noting that the character of the neighborhood has changed in recent years.

Joe Green, of Ocean Pines and chair of Safe Travel Along Route (STAR) 589, stated that the proposed zoning should not permit development on MD Rt. 589 until transportation issues along this corridor have been addressed.

Commissioner Gulyas thanked everyone for attending the public hearing, reminded them that the record would remain open for written comments until Jun 12, 2009, and advised that the Commissioners would take each comment into consideration.

The board adjourned at 9:46 p.m. to meet again on June 16, 2009.