

Minutes of the County Commissioners of Worcester County, Maryland

September 1, 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 Boggs, 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; George Bradley, Director of Human Resources; John Tustin, Director of Public Works; and John Ross, Deputy Director of Public Works. Topics discussed and actions taken included: promoting Dechond Mumford and transferring Frank Baker from the Roads Division and Arlester Horne from the Solid Waste Division to fill three vacant Plant Operator Trainee positions within the Water and Wastewater Division of Public Works; appointing Barbara Passwater to the Commission for Women; 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 August 18, 2009 meeting, as presented.

The Commissioners presented a proclamation to Emergency Services Director Teresa Owens, Deputy Director Fred Webster and Volunteer Services Manager Cyndy Howell recognizing September as Emergency Preparedness Month and encouraging citizens to participate in programs like the free Community Emergency Response Training (CERT) to better prepare themselves to respond to emergency situations in their communities.

The Commissioners presented a proclamation to Ms. Howell recognizing September 11, 2009 as the National Day of Service and Remembrance and urged all citizens to volunteer their time with the organization of their choosing to help better the community. Also in attendance were representatives from various non-profit organizations, including Heather Gates of Women Supporting Women, Alice Tweedy of Coastal Hospice, Regina Jones-Brake of Assateague Island

National Seashore, and Court Appointed Special Advocates (CASA) members Brigitte Saulsbury, Brooke Gemberling, and Martha Moskowitz of Habitat for Humanity.

The Commissioners reviewed written correspondence from Denise Eberspeaker, Director of Fund Development and Communications for the Chesapeake Bay Girl Scout Council, asking the County Commissioners to approve a Local Government Resolution that would enable the Girl Scouts to deliver a project known as "Girl Scout Leadership Experience" to extend the benefits and opportunities of Girl Scout programming to at-risk girls in designated Smart Growth communities in Worcester County. In her correspondence, Ms. Eberspeaker informed the Commissioners that the approval of the County Commissioners is required in order for the council to seek the support of the Neighborhood Partnership Program of the Maryland Department of Housing and Community Development. She also noted that under the Neighborhood Partnership Program locals can receive Maryland Tax Credits for their donations to the Girl Scouts, which provides a valuable incentive for local businesses and individuals to contribute. Following some discussion and upon a motion by Commissioner Shockley, the Commissioners unanimously adopted Resolution No. 09-21, Approving a Project to Extend the Benefits and Opportunities of Girl Scout Programming to At-Risk Girls in Designated Smart Growth Communities in Worcester County, Maryland.

Pursuant to the request of County Extension Director Laura Hunsberger and upon a motion by Commissioner Shockley, the Commissioners voted 6-1, with Commissioner Gulyas voting in opposition, to authorize the Extension Office to carry over \$1,193.39 in FY09 funding to FY10 to purchase a new liquid crystal display (LCD) projector, which will be used for training purposes. Commissioner Gulyas favored the position of County Budget Officer Kathy Whited who had recommended that the County apply the surplus to reduce FY10 budget expenses in light of recent cuts from the State.

The Commissioners met with Ms. Whited to review the latest round of FY10 State budget cuts to Worcester County, which total \$2,589,056 and include direct and indirect aid to the Health Department, Wor-Wic Community College (WWCC), and the municipalities of Berlin, Ocean City, Pocomoke and Snow Hill. These mid-year cuts were approved by the Board of Public Works on August 26, 2009 and impact the County's current FY10 Operating Budget. Ms. Whited reviewed the cuts as follows: police aid of \$48,153 and highway user revenues of \$865,000 for a total funding reduction of \$913,153 to Worcester County; police aid of \$198,232 and highway user revenues of \$1,219,223 for a total funding reduction of \$1,417,455 to the municipalities; \$168,509 funding reduction to the Health Department; and \$89,939 funding reduction to WWCC. Ms. Whited advised that staff would be proposing suggestions to address these cuts in funding in October after the County is able to complete the audit on the FY09 Operating Budget. Commissioner Cowger stated that the Commissioners are faced with making some drastic decisions and wondered at what point the counties say, "Enough is enough," to the State for robbing them of highway user revenues, public safety, health department and other specific funds to fill its dwindling coffers. In response to concerns raised by Commissioner Cowger, Commissioner Boggs advised that the Maryland Association of Counties (MACo) had been informed in April 2009 that further cuts in funding were on the horizon and at that time was given the opportunity to weigh in on where funding cuts should be made. Commissioner Boggs noted

that MACo officials opted for one-time cuts to highway user revenues and other such areas to divert any move by the State to hand over responsibility for funding teachers' pensions and Assessment Office costs to the Counties, as these were more likely to be permanent. In response to a comment from Commissioner Shockley that the State had cut highway user revenues to Worcester County by 90%, which is far greater than the 25% threshold allowed, County Attorney Sonny Bloxom advised that the counties are at the mercy of the State and in fact have little or no recourse in such instances. He recalled that the State justified the gasoline tax to the public by promising these funds would be used to repair roads, but stated that it was up to the public to hold State officials accountable to use the funds in this manner. In response to a question by Commissioner Shockley, Mr. Mason stated that the County currently receives very little State funding, but it is likely that the State's next move will be to attempt to transfer State responsibility for the local Assessment Offices and teacher pensions to the counties. Following some discussion, the Commissioners thanked Ms. Whited and asked staff to provide them with recommendations for shouldering the State funding cuts as soon as possible.

The Commissioners met with Public Works Director John Tustin to review vehicle bid recommendations to purchase a vehicle for use by the Health Department with Alcohol and Drug Abuse Administrative Grant funds. Mr. Tustin explained that the lowest local bid was \$4,045 higher than the State contract bid. Upon a motion by Commissioner Busick, the Commissioners voted 6-1, with Commissioner Cowger voting in opposition, to piggyback on a State bid from Hertrich Fleet Services, Inc. of Milford, Delaware to purchase one 2009/2010 Dodge Avenger with funds from the Alcohol and Drug Abuse Administration grant at the contract price of \$15,656.00 for use by the Health Department.

Mr. Tustin informed the Commissioners that the next E-Cycle and Household Hazardous Waste Collection Day would take place on Saturday, October 31, 2009 from 10:00 a.m. to 2:00 p.m. at the Showell Elementary School parking lot. The County, in cooperation with the Maryland Department of the Environment (MDE) and Maryland Environmental Service (MES), sponsors this annual program.

The Commissioners met with Worcester County Sewer Committee members, including Chief Administrative Officer Gerald T. Mason, Assistant Chief Administrative Officer Kelly Shannahan, County Attorney Sonny Bloxom, Public Works Director John Tustin and Deputy Director John Ross, Development Review and Permitting Director Ed Tudor, Planning Manager Sandy Coyman, Environmental Programs Administrator Bob Mitchell and Enterprise Fund Controller Jennifer Savage, to discuss the capacity of the Assateague Pointe Wastewater Treatment Plant (APWWTP) in response to the recent request to provide wastewater treatment services for the 26 currently unserved lots in the Snug Harbor Subdivision. At the request of Commissioner Church and to address issues raised in recent correspondence from the Maryland Department of the Environment (MDE), Mr. Tudor reviewed the actual number of gallons of effluent treated by the APWWTP and sprayed from the holding lagoon on an annual basis, noting the increase from 7,674,000 gallons of treated sewage in 1997 to 10,407,000 gallons of treated sewage in 2008. He pointed out that these figures are less than the plant's permitted annual sewage treatment capacity of 15,304,450 gallons. However, he cautioned that even though the plant is not operating at full capacity at this time, from a planning perspective the plant has already committed

to treating 26,631,005 gallons annually, leaving the plant well over-committed by 11,326,557 gallons annually.

Mr. Tudor stated that, while not immediately obvious, other factors must be considered when evaluating available sewer capacity. First, developer Troy Purnell retained 25 sewer equivalent dwelling units (EDUs) of the 78 EDUs assigned to Snug Harbor, none of which are currently in service. Second, Frontier Town is permitted by agreement to have 6,667 gallons of sewage effluent treated by the APWWTP each day, 365 days per year, though currently the campground only contributes to the flow rate for five months out of the year. He stated that, if the campground chose to operate year round, the flow rate could increase by approximately 1,000,000 gallons. Third, adding the 26 unserved lots in Snug Harbor to the APWWTP at a rate of 250 gallons per day (gpd) per EDU would generate an additional 2,372,500 gallons per year. He stated that the potential additional flows from these three sources total 5,653,750 gallons per year and would increase the total flow rate to 16,060,750, thus exceeding the current permitted discharge limit. He stated that the plant would then not just be over-committed from a planning standpoint, but it would also have actual flow rates exceeding the permit limits by 756,300 gallons per year. Mr. Tudor concluded that in analyzing issues such as this, the Sewer Committee believes it is prudent to rely on the planning numbers rather than actual flow rates to establish available capacity, particularly as the County has no alternative disposal facilities available.

With regard to the possibility of serving the undeveloped lots from The Landings Wastewater Treatment Plant (TLWWTP), Mr. Tudor referred to a letter written by MDE Deputy Secretary Robert Summers to Delegate Norman Conway stating, "although this plant could potentially be expanded to accommodate new growth, most recent operational data suggests that the plant is not currently meeting the required treatment threshold and expansion of this plant is not likely in the near future." Mr. Tudor also reviewed the findings of the Sewer Committee concerning the location of many of the undeveloped lots within the Coastal High Hazard or "V" Flood Zone, noting that great care should be taken when contemplating any action that would further increase development in this high hazard area.

Commissioner Church stated that the issue of providing sewer service to the 26 undeveloped lots in Snug Harbor has remained unresolved for seven years, and the inability of these land owners to be served by the sewer line that now runs right in front of their properties only adds to their frustration. In response to questions raised by Commissioner Church regarding capacity and the operation of the plant, Mr. Ross stated that even if it was possible to tweak the APWWTP to provide additional treatment capacity to serve the undeveloped lots in Snug Harbor, the remaining issue is the County's inability to dispose of the treated effluent. Commissioner Gulyas stated that the Commissioners have discussed this issue several times since 1998, and the answer is still the same: the County cannot provide sewer service to the 26 undeveloped lots because the plant is already over committed, which in and of itself could cause problems down the road. Commissioner Boggs concurred, stating that the facts speak for themselves, there is no capacity and the County can't offer something it doesn't have to give. She thanked staff for their report. Following some discussion and upon a motion by Commissioner Boggs, the Commissioners voted 4-3, with Commissioners Boggs, Busick, Gulyas and Shockley voting in favor and Commissioners Church, Cowger and Purnell voting in opposition, to reaffirm their prior position that capacity is not available to serve the 26 undeveloped lots in Snug Harbor.

Mr. Tudor stated he was happy to report that the Planning Commission held their last of

five work sessions on the draft Zoning and Subdivision Control Article, Design Guidelines and Standards for Commercial Uses and Zoning Maps and had made a number of suggested revisions to reflect public concerns. He advised that an official letter of transmission from the Planning Commission would be forthcoming and recommended the Commissioners schedule their own work sessions to go over all of the public comments and the Planning Commission's recommendations. The Commissioners concurred and agreed to schedule work sessions on October 6 and 20, 2009 at 1:30 p.m. following their regularly scheduled meetings.

The Commissioners met in legislative session.

The Commissioners conducted a public hearing on Emergency Bill 09-5 (Criminal Law - Salvia), which was introduced by Commissioners Boggs, Busick, Church, Cowger, Gulyas, Purnell and Shockley on August 18, 2009. County Attorney Sonny Bloxom reviewed the proposed Emergency Bill, which would add a new Subtitle V - Crimes Involving Dangerous Substances and Paraphernalia - establishing regulations to prohibit the possession and distribution of salvia and its related paraphernalia in Worcester County. Mr. Bloxom stated that the emergency bill was modeled after the recent Ordinance adopted by the Ocean City Mayor and Council on August 3, 2009, and he reviewed the proposed legislation, which includes the Legislative Findings, Definitions, Prohibited Acts, and Violations and Penalties. He then entered various constituent letters, news articles and facts about salvia and its primary psychoactive constituent, salvinorin A, into evidence, including a February 18, 2009 letter from Maryland Attorney General Douglas F. Gansler to the Senate Judicial Proceedings Committee urging the committee to add salvia divinorum and salvinorin A to the Schedule I - Controlled Dangerous Substances list; an August 5, 2009 letter from Commission President Gulyas to Attorney General Gansler supporting his efforts to make salvia illegal in the state; a July 22, 2009 letter to Delegate James N. Mathias from Dan Friedman, Counsel to the General Assembly, advising that the Town of Ocean City has authority to regulate the possession and sale of salvia within the town; a January 27, 2009 memo outlining the Maryland State Police's (MSP) position supporting House Bill 8 entitled Criminal Law - Salvia Divinorum - Controlled Dangerous Substances; an August 2, 2009 letter to the Ocean City Council from Kathleen E. Chidester, whose efforts led to the statewide ban of salvia in Delaware following her son's suicide, which was attributed in part to his experiences using this herb; pictures taken by Commissioner Busick on August 31, 2009 of salvia on display with bong, hookahs and other drug-related paraphernalia at the Outrageous Outlet on MD Rt. 611 in West Ocean City; and research highlighted on Wikipedia regarding the description, history, and immediate hallucinogenic effects of salvia on users, which include uncontrollable laughter, past memories, sensations of motion, visions of membranes, merging with or becoming other objects, and overlapping realities, such as the perception of being in several locations at once. Mr. Bloxom stated that if the Commissioners are inclined to pass this legislation it would become effective immediately.

The Commissioners received expert opinion on the matter from State's Attorney Joel Todd, Worcester County Sheriff Charles Martin, Health Department Deputy Director Dr. Andrea Mathias, Ocean City Police Captain Robert Bokinsky; and MSP Lieutenant Earl Starner of the Berlin Barracks.

Mr. Todd stated that Salvia is a very dangerous hallucinogenic drug used by society's youngest and most vulnerable individuals. He stated that his previous concern regarding whether the MSP lab could test for salvia has been addressed, and noted that the hallucinogenic herb can be

differentiated from its garden variety cousin both visually and in the lab. He further noted that the MSP would be ready to begin testing for the presence of salvia within one week. He then reviewed several comments made by salvia users from www.youtube.com and High Times Magazine, stating that the effects of the high range from time travel to the holy grail of unconsciousness. He advised that the effects were so dramatic and instantaneous that product directions warn that a sitter must be present at all times while the user is under the product's influence. He reviewed several written comments by users who reported experiences that ranged from feeling as if they had fused with a flesh-colored checker board, to being sucked into the television to being found clutching the couch and screaming. He stated that a video on You Tube actually showed an adult male using the product while children could be heard playing in the background. He stated that such a product should not be available to the general public, and he urged the Commissioners to pass Emergency Bill 09-5. In response to a question by Mr. Bloxom, Mr. Todd stated that the proposed violations and penalties, which imposes imprisonment of up to six months or fines of up to \$1,000 for being found guilty of this misdemeanor crime, were reasonable. Commissioners Shockley and Church stated that law enforcement officials should make appropriate efforts to notify local businesses of the new law over the next few days and use discretion before commencing enforcement actions.

Sheriff Martin showed samples of salvia and advised that the Sheriff's Office would like to see this drug removed from the streets. He stated that the children of Worcester County should be high on education, not drugs, and he urged the Commissioners to pass Emergency Bill 09-5. In response to a question by Commissioner Shockley, Sheriff Martin stated that the department's drug dogs are not now but can be trained to detect salvia. In response to a question by Commissioner Gulyas, Sheriff Martin stated that staff will make use of awareness training created by the United States Navy to enforce the new law if passed. In response to a question by Commissioner Busick, Sheriff Martin advised that in the near future the Eastern Shore Criminal Justice Academy and other law enforcement training agencies will likely implement training regarding salvia.

Dr. Mathias provided background concerning both the medical and public health issues associated with the use of salvia. She stated that drug tests are not designed to detect this substance and doctors don't know to ask their patients if they have used or suffered any ill effects from it, so currently there is no data available to determine if this herb is a public health threat. However, currently salvia is the only hallucinogen on the controlled dangerous substances list that has not already been banned. She supported adding salvia divinorum and salvinorin A as Schedule I - Controlled Dangerous Substances. She stated that given the lack of available data it would be difficult to make the public health argument that salvia is broadly abused, but this herb does fit the chemical nature of other drugs that are currently both scheduled and regulated in the hallucinogenic category. She advised, therefore, that the Health Department supports passing the proposed emergency bill.

Captain Bokinsky presented a PowerPoint presentation on salvia, which included the following information: definition and effects; where salvia can be purchased; how salvia is marketed; Ocean City Police Department (OCPD) incident reports involving salvia; drug potency; first hand accounts of salvia users; US Department of Justice Drug Enforcement Administration's classification of salvia divinorum as a drug of concern and an accompanying eight factor analysis; criminalization of salvia by several states and countries; Ocean City Ordinance 2009-19 banning salvia within the Town of Ocean City; and artwork illustrating several people's experiences while

on salvia. He stated that after speaking with salvia users who had been detained by the OCPD, 80% of them stated they will most likely use salvia again. He strongly urged the Commissioners to pass Emergency Bill 09-5.

Lieutenant Starner confirmed that the MSP supports listing salvia as a Schedule I - Controlled Dangerous Substance and supported the passage of Emergency Bill 09-5.

Commissioner Gulyas opened the floor to receive public comment.

Ellie Diegelman of Ocean City asked questions regarding how the banning of salvia would affect the sale of rolling papers and other items that could be classified as paraphernalia. In response, Mr. Bloxom stated that such items can be used legally with tobacco, and it was only when they are linked to the sale of salvia that they are considered paraphernalia and thereby illegal.

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

In response to a question by Commissioner Shockley, Mr. Bloxom stated that the bill does not need to be amended to provide that the law may be superceded by State law if a Statewide ban is later approved. Commissioner Church stated that it would be good public relations for Sheriff's Deputies and MSP Officers to pay courtesy calls to shops known to sell salvia to notify them that this product has been banned within Worcester County. Following some discussion and upon a motion by Commissioner Purnell, the Commissioners voted unanimously to adopt Emergency Bill 09-5 Criminal Law - Salvia. Commissioner Gulyas thanked Commissioner Busick for leading the charge to ban salvia in Worcester County. Commissioner Busick stated that it is a banner day for Worcester County and urged State legislators to ban salvia statewide. The Commissioners thanked the panel of expert witnesses for their testimony, which was invaluable in helping them to reach their decision regarding the need to immediately ban salvia in Worcester County.

The Commissioners answered questions from the press, after which they adjourned to meet again on September 15, 2009.