

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

February 16, 2010

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

Following a motion by Commissioner Gulyas, seconded by Commissioner Boggs, with Commissioners Purnell and Shockley absent, 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 administrative functions. Also present at the closed session were Gerald T. Mason, Chief Administrative Officer; Kelly Shannahan, Assistant Chief Administrative Officer; Sonny Bloxom, County Attorney; Kim Moses, Public Information Officer; George Bradley, Director of Human Resources; and John Tustin, Director of Public Works. Topics discussed and actions taken included: discussing hiring of a Planner in Development Review and Permitting; appointing David Dypsky to the Water and Sewer Advisory Council for the Mystic Harbour Service Area; reviewing potential and pending litigation; receiving legal advice from counsel; and performing administrative functions.

Commissioner Shockley arrived at the meeting.

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

The Commissioners reviewed and approved the minutes of their February 2, 2010 meeting, as presented.

The Commissioners presented Snow Hill Middle School (SHMS) Principal Janet Simpson with a check in the amount of \$1,000 and a commendation honoring SHMS for being named as a Maryland Blue Ribbon School of Excellence for the 2009-2010 school year.

Commissioner Purnell arrived at the meeting.

Pursuant to the request of George King, Agency Procurement Specialist for the Health Department, and upon a motion by Commissioner Gulyas, the Commissioners unanimously awarded the bid for the production and distribution of the 2010 Play It Safe in Ocean City Senior Guide booklets and posters to Delmarva Printing of Salisbury, Maryland at a cost of \$10,865 for

75,000 booklets and \$243.80 for 500 posters for a total cost of \$11,108.80.

Pursuant to the request of Emergency Services Director Teresa Owens and upon a motion by Commissioner Gulyas, the Commissioners unanimously agreed to waive the standard bid process and accepted the proposal from Toshiba International Corporation for the replacement of the uninterruptible power supply (UPS) at the Klej Grange radio tower at a cost of \$18,532.50 under the government GSA contract, which is available to the County.

Pursuant to the request of Economic Development Director Jerry Redden and upon a motion by Commissioner Busick, the Commissioners unanimously agreed to authorize Mr. Redden to apply for a Maryland Energy Administration (MEA) Empower Energy Efficiency and Conservation Block Grant for the purpose of developing programs with the Worcester County Board of Education and Wor-Wic Community College to train students in the assembly and operation of solar panels and green technologies. Mr. Redden explained that the intent of the proposed program is to help reduce the County's dependence on non-renewable energy and create job opportunities. In response to a question by Commissioner Church, Mr. Redden advised that there is no cost to the County to receive the grant.

Pursuant to the request of Elections Supervisor Patricia Jackson and upon a motion by Commissioner Gulyas, the Commissioners unanimously agreed to support a request from the Board of Elections (BOE) to include Worcester County in enabling legislation that would allow the BOE to alter the number of regular members by elevating substitute members to regular member status for pay and voting purposes. In response to a question by Commissioner Gulyas, Chief Administrative Officer Gerald T. Mason advised that the savings or additional cost to the County from non-election to election years would be a near wash, as on non-election years the County would incur an additional cost of \$2,900, while in non-election years the County would save \$3,180 if all five BOE members were regular members.

Pursuant to the request of Development Review and Permitting Director Ed Tudor and upon a motion by Commissioner Gulyas, the Commissioners unanimously authorized Commission President Church to sign the Memorandum of Understanding (MOU): FY2008-FY2010 Dividing Creek Rural Legacy Area (RLA) Project between the County Commissioners and the Lower Shore Land Trust, Inc. (LSLT), which applies to the execution of the FY08/09 Dividing Creek RLA Grants awarded jointly to the County, the Somerset County Commissioners and the Nature Conservancy; and to the Farm and Ranchland Protection Program (FRPP) Cooperative Agreement between the Natural Resources Conservation Service (NRCS) and the LSLT. This grant obligates \$960,000 from NRCS to be used for the purchase of farmland protection easements in the RLA.

Pursuant to the request of Mr. Tudor and upon a motion by Commissioner Busick, the Commissioners unanimously authorized Commission President Church to sign FY10 RLA Grant Agreements in the amount of \$1,000,000 to Worcester County for the Atlantic Coastal Bays RLA and \$500,000 jointly to Somerset and Worcester Counties for the Dividing Creek RLA. Mr. Tudor advised that these grants do not require matching funds from the County. In response to a

question by Commissioner Shockley, Mr. Tudor explained that interest in the Dividing Creek RLA is limited, and since past demand for the program has not exceeded available funding, the County has not needed to establish a specific priority of properties to be funded. In response to a question by Commissioner Busick, Katherine Munson, Planner IV with DRP, explained that fliers are mailed to waterfront property owners in both RLAs and meetings are held to inform them of the program and encourage their participation.

Pursuant to the request of Mr. Tudor and upon a motion by Commissioner Gulyas, the Commissioners unanimously authorized staff to apply for an FY11/12 Bay Restoration Septic Grant from the Maryland Department of the Environment (MDE) to upgrade septic/on-site sewage disposal systems with best available technology (BAT) for nitrogen removal within the Chesapeake and Atlantic Coastal Bays Critical Areas. In response to a question by Commissioner Church, Environmental Programs Manager Bob Mitchell explained that there are approximately 90 property owners on a waiting list for these funds, and how many of those properties receive funds depends on the pool of money. Mr. Mason added that the State had recently raided these funds to balance their budget.

The Commissioners met with Mr. Tudor to review the Planning Commission's findings of consistency with the Comprehensive Development Plan for Worcester County and their favorable recommendation to amend the Comprehensive Water and Sewerage Plan to add the Virginia Department of Transportation's New Church Rest Area Station to the sewer planning area for Pocomoke City and to provide for a sewer main widening project within the current city limits and to request the County Commissioners hold a public hearing and take action on this proposal. Mr. Tudor explained that the applicant advises that the rest area station's flow will not exceed 10,000 gallons per day (gpd) in the sewer planning area of Pocomoke City. He stated that the town has ample capacity in the wastewater treatment plant (WWPT) to accommodate this flow, which would equate to a maximum of 40 equivalent dwelling units (EDUs) of flow. He further explained that there will be approximately 6,100 linear feet (LF) of force main needed to connect the rest area, with 1,245 LF of the main on Pocomoke City's right of way, which will tie into an existing force main just north of the Maryland Department of Transportation (MDOT) US Rt. 13 North Welcome Center just across the State line in Worcester County. Upon a motion by Commissioner Gulyas, the Commissioners unanimously agreed to schedule a public hearing on the proposed amendment to be held on March 16, 2010.

The Commissioners met with Mr. Tudor to review a Worcester County Comprehensive Water and Sewerage Plan (The Plan) amendment submitted by the Town of Berlin to add a proposed expansion to the spray irrigation capability of the Town of Berlin with an addition of the property identified on Tax Map 48 as Parcel 23 south of Newark. Mr. Tudor advised that the applicant requests the amendment to meet the mandate of the County to transition to a land-based effluent disposal method, which was prescribed by a previous Water and Sewerage Plan amendment (2007-36). He stated that in that amendment conditions were placed on the town to upgrade its treatment plant in stages and to provide for the removal of treated effluent from the local stream by directing it to land application within 3-5 years. He stated that it is also

a condition of their current wastewater discharge permit to discontinue the direct discharge by 2012. Mr. Tudor stated that the applicant is requesting to modify the type of discharge location and type for a portion of the treated wastewater from the upgraded Berlin Wastewater Treatment Plant (WWTP). This retrofit of the existing WWTP will provide a plant that is physically capable of treating 750,000 gallons per day (gpd), but is presently permitted for 600,000 gpd by MDE. Mr. Tudor advised that MDE will change the rated capacity of the plant once further effluent discharge capacity is permitted by land application, and the plant will have the design capability for expansion to 1,000,000 gpd in the future. He concluded that this proposal seeks to establish a land application discharge for, at a minimum, the additional flow needed to bring the current design capacity to 750,000 gpd. Mr. Tudor advised that the Planning Commission found The Plan amendment to be consistent with the Worcester County Comprehensive Plan, existing zoning in the area and the previous mandate of the County Commissioners and therefore gave it a favorable recommendation. Upon a motion by Commissioner Gulyas, the Commissioners unanimously agreed to schedule a public hearing on the proposed amendment to be held on March 16, 2010.

Michael Day, Main Street Program Coordinator with the Town of Berlin, informed the Commissioners that the town is seeking State legislation that would allow either a pub-brewery or micro-brewery to operate within the Town of Berlin's designated Enterprise Zone. Mr. Day explained that town residents expressed an interest to establish a micro-brewery in the old Tyson Poultry Plant. He stated that this \$6.8 billion industry continues to grow at a rate of 5% - 8% per year, even with the economic downturn. He further advised that after the town posted interest on a national micro-brewery website to entice potential craft brewers to relocate to Berlin, he had received 1,500 responses in a period of two weeks, 10 of which were legitimate inquiries. He explained that since that time one crafter has already met with him to further consider the viability of relocating the Berlin. Mr. Day asked the Commissioners to support the town's request for enabling legislation. Commissioner Church stated that the Berlin Chamber of Commerce, as well as the town's leading establishments that currently have alcoholic beverage licenses, supports this legislation, and advised that a large micro-brewery would be a huge asset to Berlin. Following some discussion and upon a motion by Commissioner Gulyas, the Commissioners unanimously agreed to support the town's request.

The Commissioners met with Economic Development Director Jerry Redden, Tim Crosby, President and Chief Executive Officer of Crosby & Associates Architects and Planners of Raleigh, North Carolina and Mike Nally of Miken Builders of Dagsboro, Delaware to review the findings of phase 2 of a development feasibility study for a potential 550,000 square-foot Delmarva Science and Technology Enterprise Park (DSTEP) on 80 acres in Pocomoke City. Mr. Redden advised that the study looked at creating a green technology park that takes into consideration the regional partners of Wallops Federal Facility and the University of Maryland Eastern Shore and its new schools of engineering and pharmacy, along with the strengths Worcester County has as a rural community. He stated that the proposed DSTEP would pave the way to bring skill-and knowledge-based jobs to the region over the next decade. Mr. Crosby reviewed a PowerPoint presentation that included the following: project goals, which include creating a vibrant, sustainable campus for bio-pharma or aerospace users; successful model

components, including joint ventures with local universities, grants to off-set start up expenses, infrastructure and capital loans, training grants, tax-incentive programs, and job creation tax credits; potential users, including those from the life science, aerospace and specialized research industry; potential partners, including bio-pharma companies; and an enterprise park master plan, which includes an education and business incubator center, aerospace and life science project/research facilities, business office and production facilities and research support facilities to be completed in four phases. Mr. Redden stated that this would be a “green” project, able to generate up to 20% of its own energy on-site. He further advised that the facilities would occupy only 40% of the land, leaving the remaining 60% as open space. In response to a question by Commissioner Busick, Mr. Crosby advised that there are hundreds of obstacles to recognize and overcome when deciding whether such a project will work in Worcester County, not the least of which includes other areas aggressively jockeying to attract these same industries. However, he advised that the largest hurdle was just getting to this point. In response to a question by Commissioner Church, Mr. Crosby advised that the presentation was meant to inform the Commissioners of the progress being made on the preliminary studies related to this \$175 million project and asking for their support as the next phase of the project moves forward. Mr. Redden advised that the next step of the project will be to focus on attracting potential bio-pharma and aerospace industries. He stated that the proposed park would take 10-15 years to develop and would generate upwards of 650 to 1,100 construction jobs throughout the construction process. Following much discussion, the Commissioners thanked Mr. Redden, Mr. Crosby and Mr. Nally for the presentation and wished them well as they move on to the next phase of the project.

The Commissioners met in legislative session.

The Commissioners conducted a public hearing to receive public comment on Bill 10-1 (Natural Resources - Forest Conservation), which was introduced by Commissioners Boggs, Church, Cowger, Gulyas and Purnell on January 19, 2010. The bill would amend the Worcester County Forest Conservation Law to implement changes mandated by the No Net Loss of Forestry Act of 2009, as described in Title 5, Subtitle 16, of the Natural Resources Article of the Annotated Code of Maryland and to modify references to zoning districts to be consistent with the recently repealed and reenacted Worcester County Zoning and Subdivision Control Article. Mr. Tudor reviewed the proposed bill and stated that while the respective State bill did not specifically require local jurisdictions to amend their local laws to conform to the State law, they did specify that we must apply the new standards by October 1, 2009, which the County has been doing. He explained it would be advantageous to amend the County’s local Forest Conservation Law to be consistent with State law. Mr. Tudor stated that the crux of the bill is as follows: reduce the threshold for clearing allowed from 40,000 square feet to 20,000 square feet; higher priority is given to urban tree canopy goals; the fee in lieu requirements have doubled from \$0.15 per square foot to \$0.30 per square foot; adding language that requires reporting and easements placed on properties to be submitted in Geographic Information Systems (GIS) or Computer Aided Design (CAD) format; and includes updates made to the Worcester County Zoning Code. Mr. Tudor stated that the most controversial changes are the inter-family exemption for transfers, which was amended from two generations to one inter-family exemption for transfers, and how the County evaluates redevelopment. In response to a question by

Commissioner Church, Mr. Tudor advised that Bill 10-1 mirrors the State law, and by having a local law in compliance with the State area residents would benefit by being able to work with County government rather than a State agency in Salisbury or Annapolis with regard to permit applications and compliance.

Commissioner Church opened the floor to receive public comment.

Harold Scrimgeour of Stockton stated that the County is not required to adopt the State legislation, but is able to adopt its own ordinance, a move he encouraged the Commissioners to take. He advised that these laws are written for urban counties and are not reflective of the needs of Worcester County. He stated that in Worcester County you cannot count a shade tree planted in your yard as forest to meet the requirements, and determinations of net tract area were not correct. He went on to say that the County should not bow to the State, and should instead adopt its own manual, like two other nearby jurisdictions have done to tailor the law to suit their own circumstances. He recommended assembling a committee to develop a plan that fits this County and further recommended several provisions of the draft bill that should be amended. Mr. Tudor replied that he strongly disagreed with Mr. Scrimgeour's comments. He stated that while the County can adopt its own technical manual to tweak minor aspects of the program, it cannot change the requirements of State law. For instance, the County cannot allow inter-family transfers beyond a single generation just by putting alternate language in a technical manual. He further stated that the technical manual, as the name implies, is a document related to the technical aspects of forest conservation. Mr. Tudor went on to say that the term "forest" is a defined term, and a single landscape tree does not qualify as a forest by definition.

Ellie Diegelman of Ocean City stated that information on the proposed bill was not available on the County website, but admitted that she had not checked area newspapers where such information is required by law to be published. The Commissioners confirmed that letters and advertisements notifying residents of this hearing were sufficient.

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

In response to a question by Commissioner Busick, Mr. Tudor advised that Mr. Scrimgeour is suggesting the County develop a manual, which is permitted but could not supercede State law. In response to a question by Commissioner Gulyas, Mr. Tudor advised that there are many benefits to developing the proposed manual; however, the County could not use the manual to circumvent the new inter-family transfers or other requirements of the new State law. Commissioner Shockley stated that he could not support the new law due to the adverse impact on the agricultural community. Following some discussion and upon a motion by Commissioner Shockley, the Commissioners voted unanimously to table Bill 10-1 and directed staff to work with the forestry board to develop a technical manual that provides forestry regulations better suited to our rural county for the Commissioners to consider along with Bill 10-1 at a later date.

The Commissioners conducted a public hearing on Bill 10-2 (Natural Resources - Stormwater Management), which was introduced by Commissioners Boggs, Cowger and Gulyas on January 19, 2010. Mr. Tudor reviewed the proposed bill, which amends the Worcester County Stormwater Management Ordinance to implement changes mandated by the State Stormwater Management Act of 2007, as described in Title 26, Subtitle 17, Chapter 2 of the Annotated Code of Maryland. He stated that the purpose of this subtitle is to protect, maintain and enhance public

health, safety and general welfare by establishing minimum requirements and procedures that control the adverse impacts associated with increased stormwater runoff. Mr. Tudor advised that the goal is to manage stormwater by using environmental site design to the maximum extent practicable to maintain the pre-development runoff characteristics after development as nearly as possible and to reduce local flooding and stream channel erosion, pollution, siltation, and sedimentation. Mr. Tudor stated that rather than building large, expensive holding ponds, this legislation seeks to help developers coordinate building size with stormwater needs and to treat water at down spouts and other areas. He advised that agricultural structures are required to be regulated by this legislation, which hasn't been in County law before, but that it would not apply to projects receiving stormwater or sediment approval by May 2010. He further noted that the bill increases the amount of stormwater that must be treated during redevelopment to 50%, an amount that is still lower than that which is required for new development.

Commissioner Church opened the floor to receive public comment.

Harold Scrimgeour of Stockton stated that this new legislation offers several favorable alternatives to developing large stormwater ponds, explaining that it is much cheaper to develop a grass swale than install concrete piping to redirect runoff to a pond. However, he expressed concern with regard to the inclusion of agricultural structures and bond requirements. In response, Mr. Tudor advised that a cashier's check would be accepted in lieu of a bond. Stormwater Plan Reviewer Bobby Shockley advised that the cost of the average bond for such projects would be minimal and was unlikely to exceed \$1000.00, since the new regulations require less structural components and therefore are less costly. In the case of agricultural and single family structures, he advised that a bond was unlikely to be required at all. In response to a question by Commissioner Purnell, Mr. Tudor advised that an existing chicken house damaged in the recent snowstorm would be able to qualify for a waiver to the bonding requirement to repair the damaged structure. In response to a question by Mr. Bloxom, Mr. Tudor advised that it was the department's interpretation and longstanding application that bonds were only required for stormwater management plans that required structural elements, and only in cases where a building permit for other construction on the site was requested prior to the construction of the stormwater facility. Therefore, applicants could choose to build the stormwater management facility rather than bond it. He further advised that certain projects without structural practices could also qualify for waivers. In response to a question by Mr. Scrimgeour, Natural Resources Administrator Chris McCabe explained that language regarding sediment and erosion control remained unchanged in the new bill, with the exception that stormwater management ponds are no longer classified as Best Management Practices. Mr. Scrimgeour requested staff provide a workshop to area residents and developers to explain how the new legislation would affect them.

Ellie Diegelman of Ocean City stated that these are issues the County must be prepared to face head on when the economy improves and development resumes locally, and she suggested the Commissioners consider assembling a task force to address issues related to bonding and the inclusion of agricultural structures in the new law.

There being no further public comment, Commissioner Church closed the public hearing. Following some discussion and upon a motion by Commissioner Busick, the Commissioners unanimously agreed to table the matter until staff is able to address the issues surrounding the bonding requirements.

The Commissioners met with Mr. Bloxom to review a proposed bill that would clarify the County Commissioners' executive powers to create, change, discontinue or abolish County offices and departments and to remove or assign additional functions to such offices and departments as administrative actions. Following some discussion, Commissioners Boggs, Busick, Church, Cowger, Gulyas, Purnell and Shockley introduced the aforementioned proposed bill as Bill 10-3 (County Government - Departments and Offices). The Commissioners unanimously agreed to hold the public hearing on the bill during their next legislative session on March 16, 2010.

Commissioner Church closed the legislative session.

Pursuant to the recommendation of Public Works Director John Tustin and upon a motion by Commissioner Boggs, the Commissioners unanimously awarded the best bid to construct the FY10 Ocean Pines New Fire Hydrant Project within the Ocean Pines Service Area to Dixie Construction, Company, Inc. of Churchville, Maryland at a total cost of \$2,082,968.00. Mr. Tustin advised that previous County experience with the low bidder, Marcor Remediation, Inc., was not good, and the references contacted did not instill confidence that Marcor could complete the work satisfactorily. On the other hand, references for Dixie Construction were very favorable, which lead to staff's recommendation that the bid from Dixie Construction was the best bid. The Commissioners concurred.

In a related matter, the Commissioners then reviewed a request from the Water and Sewer Advisory Committee for the Ocean Pines Service Area to consider using excess funds from the project to complete the waterline interconnection between the Ocean Pines and Riddle Farm Service Areas. Mr. Tustin stated that the fire hydrant project was originally estimated to cost \$2,500,000, but the bid had been awarded for just \$2,100,000, leaving a surplus of \$400,000, which is nearly the same amount of funding needed for the interconnection project. Mr. Tustin advised that the Advisory Committee recommends the Commissioners use these surplus funds for the interconnection, provided the anticipated \$7 per equivalent dwelling unit (EDU) quarterly debt retirement can be maintained. Following some discussion and upon a motion by Commissioner Boggs, the Commissioners unanimously agreed to schedule a public hearing to receive public comment on the proposal to construct the Ocean Pines and Riddle Farm Service Area interconnection using surplus loan funds of \$400,000. Mr. Tustin advised that at the next meeting of the County Commissioners on March 2, 2010 staff will present the Commissioners with a recommendation for funding both projects through low interest loan funding from local banks.

The Commissioners met with Mr. Tustin to review a request from Robert Bolton who owns a vacation home at 5 Water's Edge in Ocean Pines to adjust a high water and sewer bill. Mr. Tustin reviewed the history behind the request, stating that for the past quarter the readings on the meter at this residence showed a usage of 178,950 gallons. However, the homeowner's average usage in the past was between 2,000 - 4,500 gallons of water per quarter. Mr. Tustin stated that staff took note of the high water usage before Mr. Bolton was billed and tested the meter, which was found to be in proper working order. Mr. Tustin advised that when Mr. Bolton received the water and sewer bill in the amount of \$2,399.76 in January 2010 he called to question the high water bill, and at that time staff again retested the water meter. The follow-up

readings showed a return to his prior usage pattern of less than 5,000 gallons per quarter. Mr. Tustin stated that the water meter test confirmed that the water had gone through the homeowners system and been treated by the Ocean Pines Wastewater Treatment Plant (WWTP). However, in an effort to work with the homeowner, County staff had agreed to reduce the bill by eliminating the top tier of the water rate and bill for all of the water used at the lowest possible rate, resulting in a reduction of \$803.70, thereby reducing Mr. Bolton's balance to \$1,585.55. Mr. Tustin advised that Mr. Bolton is requesting the bill be further reduced. In response to a question by Commissioner Church, Mr. Tustin explained that no leaks were found by Mr. Bolton's plumber inside his home or by the County outside of the home. He further stated that flow from even a small pipe, such as a toilet, that continued to run for one month could use 78,000 gallons of water. In response to a question by Commissioner Busick, Enterprise Fund Controller Jennifer Savage advised that when staff notices an excessively high water usage they note the bill and ask the homeowner to contact them. Following some discussion and upon a motion by Commissioner Gulyas, the Commissioners unanimously supported the staff decision to reduce the original bill by \$803.70 at the lowest possible rate, but denied the request for further reduction. The Commissioners further authorized staff to offer Mr. Bolton a payment plan to satisfy the bill over time if Mr. Bolton so desires.

Pursuant to the recommendation of Mr. Tustin and upon a motion by Commissioner Gulyas, the Commissioners unanimously declared the proposed list of County vehicles and equipment to be surplus property and agreed to notify the public of their intent to advertise the proposed disposal by auction on GovDeals.com.

Commissioner Purnell thanked Mr. Tustin and the staff of the Roads Division of Public Works for their efforts to clear County roads of snow following the recent winter storms. He also advised that the Town of Berlin was having difficulty clearing Seahawk Road, which is posing a risk for school buses traveling in the area, and he asked staff to work with the town to ensure that the road is cleared after future snowstorms. Mr. Bloxom advised that the County could not clear this city street without the town's agreement. Following some discussion and upon a motion by Commissioner Purnell, the Commissioners voted 6-1, with Commissioner Gulyas voting in opposition, to work with the town to address the snow removal. Commissioner Gulyas stated that such a request should go through the Board of Education, not the County.

The Commissioners answered questions from the press, after which they adjourned to meet again on March 2, 2010.