

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

March 16, 2010

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

Following a motion by Commissioner Purnell, seconded by Commissioner Gulyas, 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; Harold Higgins, Finance Officer; John Tustin, Director of Public Works; Ed Tudor, Director of Development Review and Permitting; and Bob Mitchell, Environmental Programs Administrator. Topics discussed and actions taken included: appointing Cindi McQuay to the Commission for Women; reviewing potential and pending litigation; receiving legal advice from counsel; and performing administrative functions.

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 March 2, 2010 meeting, as presented.

The Commissioners met with Public Works Director John Tustin to receive public comment on the proposed disposal of surplus County property, consisting of 20 vehicles and several pieces of furniture and equipment no longer used by the County, by auctioning these items on GovDeals.com.

Commissioner Church opened the floor for public comment.

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

Upon a motion by Commissioner Shockley, the Commissioners unanimously approved the list of vehicles and equipment as County surplus property to be sold online at [www.govdeals.com](http://www.govdeals.com), with the exception of the dump body of the dump truck to be salvaged for use on a replacement vehicle.

The Commissioners met with Recreation and Parks Director Sharon DeMar Reilly to

review the names of the two winners of the Good Sports Award issued by the Mid-Atlantic Recreation and Parks Sports Alliance (MARPSA). Ms. Reilly announced that Jakob LeMay, a sixth grade student at Snow Hill Middle School, received the Youth Athlete Award for his participation in After School Zone, summer camp and youth soccer programs, and David Burkhead received the Coach Award for his involvement in the Spike Express Youth Volleyball program. Ms. Reilly explained that MARPSA is a consortium of Recreation and Parks Departments and other organizations representing sports officials and sport governing bodies in the region, and the MARPSA Good Sports Award program is designed to recognize coaches and young athletes who have modeled good sports behaviors in local athletics.

The Commissioners met with Fire Marshal Jeff McMahon and Berlin resident Rodney Belmont to honor 13 firefighters and paramedics from the five agencies that responded to the scene of a house fire on Flower Street in Berlin on Friday, October 9, 2009 and rescued Mr. Belmont from the home, thereby saving his life. Mr. Belmont explained that since the fire he had been in critical condition at the R. Adams Cowley Shock Trauma Center in Baltimore, Maryland for two months and is now 95% recovered. He stated that he would not be here today if it were not for the efforts of the police, firefighters and paramedics that all contributed to his rescue. He thanked each of the public safety officials present for their roles in the rescue. The Commissioners presented commendations to the Berlin Volunteer Fire Company (BVFC), Berlin Police Department (BPD), Ocean City Volunteer Fire Company (OCVFC), Showell Volunteer Fire Department (SVFD) and Worcester County Sheriff's Office (WCSO) for responding to the house fire and thanked the members of these organizations for all they do to protect the lives and properties of the residents and visitors of Worcester County. The Commissioners then presented commendations to BVFC members Chief Derrick Simpson, Captain Eric Budd, Harry Trimble, Ethan Wallace, David Lewis, Adam Tinnell, William Scott and Charles Ward, BPD Lieutenant Jeffrey Dale Lawson and WCSO Deputy Anthony Rhodes. Those receiving commendations but who were unable to attend included BVFD members Austin Purnell and Charles Townsend and OPVFD Paramedic James Corron, III.

The Commissioners conducted a public hearing regarding the cost of the proposed construction of a waterline to interconnect the public water distribution systems in the Ocean Pines Service Area (OPSA) and the Riddle Farm Service Area (RFSA) of Worcester County, Maryland to add redundancy for maintenance purposes and special circumstances in both areas. Public Works Director John Tustin reviewed the proposed project, noting that the Commissioners have established a budget of \$400,000, and funding is proposed to be derived from the \$2.5 million loan for the FY10 Ocean Pines New Fire Hydrants Project, which will be constructed for approximately \$2.1 million, leaving the remaining \$400,000 available to complete this project. Mr. Tustin advised that as previously approved for the FY10 Ocean Pines New Fire Hydrants Project, based upon proposed financing for the \$2.5 million project at a rate of 4% over 15 years, these two construction projects would result in an annual cost per equivalent dwelling unit (EDU) in the OPSA totaling approximately \$29 per EDU, which would be billed quarterly at an estimated cost of \$7 per EDU. He advised that the County will continue to seek additional funding sources to reduce the cost for the ratepayers. Commissioner Boggs supported the project as well as the proposed funding, informing those in attendance that this

project has been a high priority for several years. However, funds had not been available in the past to move forward with this project.

Commissioner Church opened the floor to receive public comment.

Assistant Chief Administrative Officer Kelly Shannahan read a letter from E. Dennis Escher, P.E., DEE, Consulting Environmental Engineer and former Facilities Project Manager for Worcester County, recommending an alternative to the proposed connection. In his letter, Mr. Escher proposed extending the 12-inch line from the southern end of Pennington Commons southward along MD Rt. 589 to Grays Corner thence eastward along Grays Corner Road to the Riddle Farm water facility. Public Works Deputy Director John Ross stated that while Mr. Escher's suggestion is not a bad idea, there would be significant issues running the line along MD Rt. 589. He further stated that the interconnection proposed by the County is less expensive and permits have been secured. In response to a question by Commissioner Boggs, Mr. Ross confirmed that the project would be delayed if the proposed route was changed.

There being no further public comment, Commissioner Church closed the public hearing. Upon a motion by Commissioner Busick, the Commissioners unanimously authorized staff to move forward with construction of the project as proposed.

Pursuant to the recommendation of Enterprise Fund Controller Jennifer Savage and upon a motion by Commissioner Busick, the Commissioners unanimously adopted Resolution No. 10-9 authorizing financing for a fire protection system in the Ocean Pines Service Area of up to \$2.5 million through Taylor Bank with an interest rate of 3.94% for 15 years. The loan would fund the Ocean Pines New Fire Hydrants Project and the interconnection of the public water distribution systems in the OPSA and RFSA.

Pursuant to the request of George King, Agency Procurement Specialist for the Health Department, and upon a motion by Commissioner Gulyas, the Commissioners unanimously authorized Commission President Church to sign a lease agreement for an apartment at 405 Lark Lane, Apt. B in Ocean City at a cost of \$8,500 for the period beginning May 21, 2010 and ending on September 13, 2010 to be used to house the Hot Boards Assessment Unit for the Ocean City Youth Health Center during the summer of 2010. The lease is funded by a grant from the Alcohol and Drug Abuse Administration. Mr. King advised that alternate housing was considered but eliminated when determining whether to renew this lease.

Pursuant to the request of Emergency Services Director Teresa Owens and upon a motion by Commissioner Gulyas, the Commissioners unanimously authorized Commission President Church to sign the Addendum to the Memorandum of Understanding between the Maryland Department of the Environment (MDE) and the Worcester County Local Emergency Planning Committee (LEPC) regarding the Maryland State Community Right-To-Know Fund LEPC Grant awarding the LEPC a grant of \$5,367.00 for planning and training activities.

Pursuant to the request of Ms. Owens and upon a motion by Commissioner Boggs, the Commissioners unanimously authorized Commission President Church to sign the Emergency Alert Systems (EAS) Memorandum of Understanding (MOU) between Worcester County Government and the Maryland Emergency Management Agency (MEMA) and the Maryland

D.C. Delaware Broadcasters Association and evidence their agreement to follow the MOU by executing a Joinder Agreement to the MOE. Ms. Owens outlined the purpose of the MOU, which is to establish and agree to procedures for delivering important emergency information such as AMBER alerts and weather information targeted to a specific area that originate with the local governments or MEMA on behalf of the local governments and are transmitted thereby through EAS to Broadcasters.

Pursuant to the request of Economic Development Director Jerry Redden and upon a motion by Commissioner Gulyas, the Commissioners unanimously authorized Commission President Church to sign a letter affirming that Worcester County will require compliance with Community Development Block Grant (CDBG) job creation, record keeping and repairing requirements with respect to the grant agreement between the County Commissioners and the Department of Business and Economic Development (DBED) to develop a restaurant at the Delmarva Discovery Center (DDC) in Pocomoke City. Mr. Redden explained that the restaurant will create new jobs in Pocomoke City, 51% of which will be taken by persons whose family income does not exceed Section 8 low and moderate income limits established for Worcester County by the U.S. Department of Housing and Urban Development (HUD). In response to a question by Commissioner Boggs, Mr. Redden advised that the restaurant, which would be owned by the Town of Pocomoke and leased to a private contractor, would be a separate entity from the DDC and accessible from an outside entrance and, thereby, not directly affected by the operations of the DDC.

The Commissioners met with Mr. Redden to discuss whether to offer \$3,647,000 in Recovery Zone Economic Development Bonds and Recovery Zone Facility Bonds to businesses in Worcester County. Worcester County is a One Maryland "Qualified Distressed County" as recognized by the State of Maryland and has been identified by the County in good faith and within its discretion as having significant poverty, unemployment and general distress. Mr. Redden explained that businesses located within Priority Funding Areas (PFAs) that seek to redevelop and or expand could be eligible for these tax free bond funds at reduced interest rates, with the caveat that the bond process is initiated no later than June 30, 2010. He advised that PFAs are existing communities and places where State investment is authorized to encourage and support economic development and new growth, which include but are not limited to Ocean City, Berlin, Ocean Pines, West Ocean City, Newark, Snow Hill and Pocomoke. In response to a question by Commissioner Church, Mr. Redden stated that he has spoken with several hotels and larger businesses in the area about the potential of offering the bonds, but none of the companies he has spoken to could be prepared to move forward with such an offer by the end of FY10. In response to a question by Commissioner Boggs, Mr. Redden stated that he would work with Public Information Officer Kim Moses to inform area businesses of the availability of the Recovery Zone Economic Development Bonds and Recovery Zone Facility Bonds. Assistant Chief Administrative Officer Kelly Shannahan confirmed that only businesses located within PFAs of the County would be eligible for the bond funds. Following some discussion and upon a motion by Commissioner Gulyas, the Commissioners unanimously adopted Resolution No. 10-10 designating Worcester County PFAs as Recovery Zones for the purpose of issuance of Recovery Zone Economic Development Bonds and Recovery Zone Facility Bonds.

The Commissioners reviewed and expressed their support for House Bill 1431 - Worcester County Alcoholic Beverages - Pub-Breweries and Micro-Breweries. If passed, this legislation would add Worcester County to the list of counties in which the holder of a Class 6 pub-brewery license may sell malt beverages for off-premises consumption under specific conditions, and more specifically would allow either a pub-brewery or micro-brewery to operate within the Town of Berlin's designated Enterprise Zone and other enterprise zones in the County.

Recreation and Parks Director Sharon DeMar Reilly informed the Commissioners that the Worcester County Recreation & Parks Department was awarded the Maryland Community PLANT (People Loving and Nurturing Trees) GREEN Award for 2009, which marks the tenth year in a row the County has received this designation from the Maryland Urban and Community Forest Committee (MUCFC) of the Maryland Association of Forest Conservancy District Boards and the Maryland Department of Natural Resources Forest Service. She recognized Parks Superintendent William Rodriguez and park employees for their work and thanked Natural Resources Administrator Chris McCabe and others in the Development Review and Permitting Department for their reforestation efforts, which were instrumental in helping the County qualify for the award. Commissioner Church commended County staff for the teamwork that resulted in earning this award and expressed his pride in each of the departments involved.

The Commissioners met in legislative session.

The Commissioners conducted a public hearing on Bill 10-3 (County Government - Departments and Offices), which was introduced by Commissioners Boggs, Busick, Church, Cowger, Gulyas, Purnell and Shockley on February 16, 2010. County Attorney Sonny Bloxom advised that the proposed bill is a housekeeping measure and 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. Mr. Bloxom reminded the Commissioners that this is not an extension of their administrative powers, rather it simply clarifies that the Commissioners are exercising powers that have already been granted to them by the State of Maryland, since the County Commissioners serve as both the legislative and executive branch of County Government. He refuted allegations made by one area newspaper that the bill extends the right of the Commissioners to make wholesale changes to departments in closed session, noting that 99% of all administrative functions take place in open session. However, issues regarding personnel have and will continue to be considered within the confines of closed session as an executive action to protect the individuals being affected. To further elaborate, he pointed out that during the past week the Town of Ocean City combined several departments, which was an executive action of the Town Manager and, therefore, was not discussed in open session by the Ocean City Mayor and Council.

Commissioner Shockley stated that simply because the Commissioners have the power to make such changes in closed session does not mean they should. He further suggested that the Commissioners should televise their meetings. Commissioner Boggs countered that transparency should not trump employee privacy. She stated that it would be callous and unconscionable for

the Commissioners to announce layoffs of specific employees or in specific departments to the press prior to notifying those whose jobs were to be impacted. Commissioner Purnell concurred, stating that none of the Commissioners wanted to lay off employees last year, but budget shortfalls and the need to improve efficiency demanded that they make such cuts. He stated that the decision to move forward with the layoffs rightly occurred behind closed doors to protect employees. However, he agreed that the Commissioners are entering a new era of electronic communications, and options for airing the meetings should be considered, but that is not the matter to which they are addressing in this legislation. He urged the Commissioners to stick to the topic at hand.

Commissioner Church opened the floor to receive public comment.

Tom Jones, President of Assateague Coastal Trust (ACT), opposed Bill 10-3, stating that it only seeks to justify the Commissioners' actions to consolidate departments and layoff employees behind closed doors last spring. He stated that the Commissioners must balance the public's right to know with dignity for employees to protect against the darkening of government. He stated that while it might be painful to the employees involved, this discussion should have occurred in the public eye and been determined on the merits of the public need.

Edward Lee, President of the Worcester County Branch of the National Association for the Advancement of Colored People (NAACP), supported ACT's position. He stated that allowing the press the opportunity to address the Commissioners during meetings while denying the public the same right does not lead to transparency in government. He stated that the Commissioners must work to change the public's negative perception of closed session meetings to truly create open government.

Joan Roache of Ocean City opposed Bill 10-3 and stated that the Commissioners should make greater efforts to engage the public in the decision-making process to avoid hastily deciding to consolidate departments and lay off employees. She also requested that Commissioners' meetings be aired on television. Mr. Bloxom countered Ms. Roach's assertion that the consolidation of departments was hasty, stating that County administration and key staff worked together to develop a sound plan to right-size government and eliminate non-essential positions that would not be needed once the three departments were again under one roof.

Lorraine Purnell-Ayres of Snow Hill, representing Concerned Citizens of Worcester County, spoke in opposition to Bill 10-3. She stated that discussions regarding the consolidation of the three departments should have taken place in open session for transparency's sake. She also explained her frustration that agenda items for upcoming meetings are not announced until the day prior to each meeting. She stated that in the age of information there is no excuse for the public to be uninformed on matters to be discussed by the Commissioners.

Ellie Diegelman of Ocean City stated that she opposed Bill 10-3. She agreed that it would have been hurtful to discuss the layoff of individuals in public, but any discussion regarding the streamlining of government is public information and should take place in open session. She also stated that the Commissioners should provide the public with information about the meetings on the Fridays prior to each meeting rather than Mondays and should televise their meetings and/or hold evening meetings to encourage public participation.

Emma Klein of Snow Hill stated that the Commissioners should have sought input from employees whose jobs were slated for elimination about possible alternate actions that could have been taken to save their jobs. She took issue with the fact that the employees in question,

including herself, knew nothing about the layoffs prior to being hustled out of the building on a Friday afternoon following adoption of the FY10 budget. She stated it was her hope that sacrificing her job helped the County close the budget deficit, particularly as the cost to her family continues to be significant.

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

Commissioner Church stated that he appreciated each of the comments presented to the Commissioners, and he assured the public that their ideas to create greater transparency would be considered in the coming months. However, the issue before the Commissioners for consideration today is based solely on amending County law to clarify the powers already granted to the County by the State. Commissioner Cowger concurred, stating that the discussion was a good one but had little to do with Bill 10-3. At the request of Commissioner Church, Mr. Bloxom reiterated that Bill 10-3 simply clarifies that the Commissioners already have the power to reorganize Worcester County Government, whether in open or closed session. He stated that historically such discussions take place in open session, but are also permitted to take place in closed session, especially when specific positions are being discussed. He further stated that the bill is timely because the Commissioners must once again consider ways to reconcile the deficit and adopt a balanced FY11 County Operating Budget. Commissioner Boggs explained that Worcester County is a Code Home Rule County whereby the Commissioners serve as both the legislative and executive branch of government. She stated that the bill is clear and concise, not like a 2,000-page bill being proposed at the federal level that no one can understand. Commissioner Gulyas stated that she would prefer to consider the testimony presented and vote on the bill at a later date. Commissioner Church acknowledged that public input is a key element in how government operates. He stated that each of the Commissioners are appointed to represent one of seven districts, and that their actions are transparent because they remain in constant communication with constituents. He urged everyone in attendance to recognize that Bill 10-3 is simply a housekeeping issue confirming the Commissioners rights to take certain executive actions. Following much discussion and upon a motion by Commissioner Boggs, the Commissioners voted 5-2, with Commissioners Gulyas and Shockley voting in opposition, to adopt Bill 10-3 as presented.

Commissioner Church closed the legislative session.

The Commissioners conducted a public hearing to consider a requested amendment to the Worcester County Comprehensive Water and Sewerage Plan filed by the Town of Pocomoke City, Maryland to add the Virginia Department of Transportation (VDOT) New Church (VA) Rest Area and Visitor's Center to the Town of Pocomoke City's sanitary sewer service area and widening of a length of sewer force main within the Pocomoke City town limits. Development Review and Permitting Director Ed Tudor explained that though the Visitor's Center is located in Virginia, it is important to tourism. He advised that the Maryland Department of Planning (MDP) found the proposed amendment to be inconsistent with both the Worcester County Comprehensive Plan and the Town of Pocomoke City's Comprehensive Plan because this extension of services to the Virginia Visitor Center is not anticipated nor addressed in either plan. He concluded that staff has worked with MDP to address their concerns and stated that while not specifically addressed such service is supported in the Comprehensive Plan under the provisions for tourism. He then reviewed the proposed amendment, advising that the maximum

service commitment will be 10,000 gallons per day (GPD) or 40 equivalent dwelling units (EDUs). The sewer line would connect with the end of the town's sanitary main on the Maryland side of the State line. All intervening properties along the transmission line are proposed to be designated S-6 (no Planned Service), while the Visitor's Center property will be designated S-1 (Present - 2 Years) in the Worcester County Comprehensive Water and Sewerage Plan. Mr. Tudor further explained that the proposed amendment also includes various sewer main widening upgrades leading to the Town of Pocomoke City's wastewater treatment plant (WWTP) within the incorporated town boundaries. He went on to advise that the Planning Commission reviewed the application and found it to be consistent with the Worcester County Comprehensive Plan.

Commissioner Church opened the floor to receive public comment.

Pocomoke City Mayor Mike McDermott asked the Commissioners to adopt the proposed amendment, noting that VDOT would incur all costs associated with the project and the town would in turn have a better functioning system. In response to a question raised by Commissioner Cowger, Mayor McDermott assured that the town would not use the expansion to provide service to any properties in Virginia other than the Virginia Visitor's Center. He stated that the Virginia Visitor's Center and Maryland Welcome Centers are both vital to tourism in Worcester County. In response to a question from Commissioner Gulyas, Mayor McDermott stated that he looked forward to working with the County on a plan to continue operations at the Maryland Welcome Center if the State ceases operations on June 30, 2010.

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

Upon a motion by Commissioner Cowger, the Commissioners voted unanimously to adopt Resolution No. 10-11 amending the Comprehensive Water and Sewerage Plan for Worcester County for addition of the VDOT New Church (VA) Rest Area Station and Sewer Main Enlargements in the Pocomoke Service Area and directing staff to continue to work with MDP to address their concerns.

The Commissioners met with Chief Administrative Officer Gerald T. Mason and Budget Officer Kathy Whited to review the requested Worcester County Departmental Operating Expense Requests for Fiscal Year 2010/2011. Mr. Mason provided a summary of the requested operating budget, and stressed that this is only the requested budget. He stated that the estimated general fund revenues based on current tax rates total \$160,665,859, which is a decrease of \$12,925,164 or 7% less than the current year. He stated that, since State budget cuts are not finalized, the County could be further burdened by continued State cuts and or transfer of State funding responsibilities and unfunded mandates. He advised that the requested general fund operating expenditures total \$165,578,241, which represents a decrease of \$8,012,782 or 4.6% less than the current year. However, the difference of \$4,912,382 must be reconciled by either reductions in expenditures, additional revenues or a combination of the two. Mr. Mason reviewed with the Commissioners the anticipated general fund revenues, requested general fund expenditures and general fund issues to be resolved. He stated that Net Property Taxes declined by \$10,547,048, due to the decrease in assessments and are based on the current tax rate of \$0.70 per \$100 of the real property assessment. Income Tax revenues are anticipated to decline \$2,224,000 from the current year and representing a 17% decline due to economic conditions. Other local taxes include flat revenues for Transfer Tax and Recordation Tax, and State Shared

Taxes decreasing \$961,111 in Highway Users Tax Revenue. Mr. Mason advised that County departments and agencies, excluding the Board of Education (BOE), cut \$8.01 million from their budgets for a total budget reduction of 4.6% from FY10. He stated that this budget does not include furloughs or layoffs, which may be considered during budget work sessions. Mr. Mason advised that the BOE has presented a Maintenance of Effort (MOE) budget of \$71,876,829 which reflects a reduction of \$614,992 representing a 0.8% reduction from that of FY10 due to a decline in the student population.

The Commissioners informed the audience of the public hearing on the budget scheduled for May 4, 2010 at 7:00 p.m. The Commissioners informed the audience that the hearing is proposed to be at Worcester Technical High School in Newark, and further advised that the upcoming budget work sessions will take place on March 23, 2010, May 11, 2010 and May 25, 2010.

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

Commissioner Purnell left the meeting.

After lunch, the Commissioners reconvened in open session.

The Commissioners conducted a public hearing to consider a requested amendment to the Worcester County Comprehensive Water and Sewerage Plan filed by the Town of Berlin, Maryland to add an additional spray irrigation site for the Town of Berlin's wastewater treatment plant (WWTP). The proposed amendment includes adding an additional spray irrigation facility on a 200-acre property located on Five Mile Branch Road in Newark and more specifically identified on Worcester County Tax Map 48 as Parcel 23 for land application disposal of treated wastewater effluent from the WWTP. Commissioner Church outlined the procedures for the public hearing, explaining that staff would present the application and comments, followed by the applicant's comments, after which the public hearing would be open for comment for rebuttal before the hearing was closed and the Commissioners consider action.

Mr. Tudor reviewed the proposed amendment, as outlined in a memo by Environmental Programs Administrator Bob Mitchell, and advised that the Planning Commission found the amendment to be consistent with the Comprehensive Plan and granted the plan amendment a favorable recommendation. Mr. Tudor stated that the amendment is based on a resolution adopted by the Commissioners on December 18, 2007 requiring the Town of Berlin to upgrade its WWTP in stages to remove treated effluent from the local stream by directing it to land application within 3-5 years. The capacity of the WWTP now under construction will increase from 600,000 gallons per day (gpd) to 750,000 gpd and include Enhanced Nutrient Removal (ENR) capabilities to remove nitrogen to 3 milligrams per liter (mg/l) and phosphorus to 0.3 mg/l, which meets or exceeds the Class II Effluent requirements of the Maryland Department of the Environment (MDE) for treated effluent. In his memo, Mr. Mitchell advised that the town's present land application site in Libertytown is permitted to receive the WWTP's current discharge capacity during the summer months. However, for land application to be successful year-round, additional land is needed. He concluded in his memo that MDE completed a

hydrogeologic analysis of the proposed site and found that the land is suitable for land application.

Berlin Mayor Gee Williams stated that in 2007 the Commissioners directed them to locate land for spray irrigation and discontinue discharging the treated effluent in the stream. He further stated that Town officials have developed a plan to do just that, and he requested the Commissioners to support the proposed amendment.

Attorney Joe Moore, representing the applicant (Town of Berlin), reviewed the plan amendment and the proposed spray site, stating that the zoning of the proposed site allows spray irrigation fields and storage lagoons for Class II effluent as a permitted principal use. He stated that a total of 135.3 acres of the proposed site are excessively well drained and suitable for irrigation at an application rate of 2"/week, and a total of 11.4 acres of the proposed site are somewhat well drained and suitable for irrigation at an application rate of 0.67"/week. Mr. Moore then pointed to a letter from Ching-Tzone Tien, Ph.D., P.E., Groundwater Discharge Permit Chief with MDE, advising that the referenced site is feasible for irrigating the proposed 408,000 gpd of Class II effluent with a buffer distance of 25 feet to the property lines, and confirming that preliminary approval is given for planning purposes. Mr. Moore stated that this amendment was designed to help make Berlin a good neighbor and environmental steward by removing nutrient from the Newport Bay and moving it to land application. He stated that the town has been diligent in its search for a suitable spray irrigation site for many years, and this site meets the requirements placed on them by the County and MDE.

Upon questioning by Mr. Moore, Robert Hand, Land Planner, stated that the proposed amendment is consistent with five objectives of the Worcester County Comprehensive Plan, which include the following: new wastewater discharge should use land application or existing ocean outfalls when most appropriate; for new systems, land application of treated effluent is the preferred disposal method; acquisition of rights to suitable land treatment sites should begin in the short-term; and provide adequate public health, safety, social, recreational and waste disposal services. He further explained that the amendment meets two of the following public infrastructure objectives: the safe and environmentally sound water supply and disposal of wastewater generated in Worcester County; and use land application of treated wastewater as the preferred wastewater disposal method where appropriate. Mr. Hand advised that the property located on Five Mile Branch Road is the closest site to the Berlin WWTP with suitable soils to accommodate spray irrigation.

Mark Prouty, of URS, Corp, a professional engineering firm contracted by the Town of Berlin to upgrade the WWTP, advised that the proposed site is among the best he's seen in his 30 years of investigating spray irrigation sites. He also explained that only Class II effluent, which is treated to an extremely high level and would produce little to no noticeable odor, would be sprayed on the site. In response to a question by Commissioner Shockley, Wastewater Superintendent Jane Kreiter, a licensed WWTP operator, advised that Berlin will meet and/or exceed the 25-foot setback requirements on the proposed spray irrigation site. In response to a question by Commissioner Church, Ms. Kreiter confirmed that the distance between the proposed spray site and the nearest home is 1,400 feet away. She went on to state that the Town has studied the migration of groundwater from the property and found that this water drains through the soils and into the groundwater where it then moves slowly in an east to west pattern into the Pocumoke River. Mr. Prouty concurred, noting that the groundwater monitoring wells

confirm that nitrogen in the water is reduced significantly while passing through the soils. He stated that the Town analyzed seven possible sites that were closer to the town than the property at Five Mile Branch Road; however, none of these sites were suitable for spray irrigation. Mr. Prouty reviewed the *Berlin Spray-Irrigation Facility Monitoring Well Data*, noting that since the institution of spray irrigation anywhere there has been no incidence of disease associated with this method of disposal. He concluded that the effluent that would be sprayed on this property would be Class II Effluent, which is clear, odorless and the most highly treated level of effluent. By comparison, he noted that Class II Effluent is sprayed on the Riddle Farm Golf Course, and Class I Effluent, which is treated to a lesser degree, is sprayed on both the River Run and Lighthouse Sound Golf Courses. Furthermore, the effluent currently being sprayed at the Libertytown site is Class I Effluent.

Commissioner Shockley expressed concern that a portion of the property is located within the Chesapeake Bay Critical Area (CBCA), noting that spraying would not be permitted within the 1,000-foot buffer. Commissioner Church advised that the spray irrigation site at the Riddle Farm is located well within 1,000 feet of the shoreline, which is within the Atlantic Coastal Bays Critical Area (ACBCA). Mr. Tudor clarified that while the CBCA encompasses an area well within 1,000 feet of the shoreline, spraying would only be prohibited within the CBCA buffer, which is the first 100 feet from the shoreline.

Commissioner Church opened the floor to receive public comment.

Attorney Steve Smethurst, representing 12 Newark families opposed to the location of the proposed spray site in their community provided testimony. He advised that the families are troubled that the site is 10 miles from the Berlin WWTP and requested documentation that this site is superior to other sites closer to Berlin. He further stated that the residents question compliance with public health and environmental protection standards. He took issue with the labeling of the new WWTP as a superior nutrient removal system, advising that a similarly labeled plant in Salisbury has failed miserably on more than five occasions within the last year alone. Mr. Smethurst expressed concern that the spraying of treated effluent could pollute shallow wells, and stated that it is almost unbelievable for the rational mind to conceive that there isn't a more suitable site for land application closer to Berlin. He then called on several Newark families to express their concerns regarding the proposed spray irrigation site.

Brandon Age, of Newark, stated that he lives right across the road from this property and is very familiar with it, since he hunts on it and rides his four-wheeler on the site. He reviewed several photos of the property, showing standing water in the wooded areas. He expressed his concern that the spray site would contaminate nearby drinking water and spread airborne diseases.

Ted Bradford, of Newark, stated that an exponential number of geese, some diseased, would be attracted to the retention pond to be developed on the property and could cause health concerns for his organic, hormone free, Angus beef cattle that would likely eat the bird droppings. He stated that the spray irrigation operation could be devastating to his farm operations.

Bill Serman, Jr., of Newark, who farms grain and runs a refuge shooting area with guided goose and duck hunts, opposed the proposed site, stating that the influx of geese to the retention pond could spread diseases to his fowl and damage crops. He also expressed concern that Berlin may not be able to effectively manage the new system and could have problems like they have

experienced in Salisbury.

Joan Scott, of Newark, stated that her mother owns a large farm near the proposed spray site, and she is concerned that already high nitrogen levels in the drinking water would become even higher. She stated that area residents use this land for horseback riding and other outdoor recreational pursuits and questioned whether signs would be strung around the property to warn those wishing to access the site that the land is poisoned. She questioned potential odor, soil testing for nitrogen levels and possible disease passed from geese to pigs. Lastly, she questioned how many pumping stations would have to be maintained between Berlin and Newark to transport the treated effluent to the proposed spray irrigation site and who would maintain the spray site to keep runoff from overflowing the storage lagoon. She concluded by stating that the residents want answers to their questions and asked the Commissioners not to rush.

Lee Bradford, of Five Mile Branch Road, stated that he is concerned that the odor from the spray irrigation site will make life unbearable for nearby residents who are already burdened by the odor from the Central Landfill. He asked if the spray irrigation site would cause the mosquito population to explode and how the Pocomoke River would be affected.

Commissioner Church invited Mr. Moore and Mr. Prouty to answer the concerns raised by the public. Mr. More reminded those in attendance that a spray irrigation site is a principal permitted use on this property. He also advised that the majority of the soils on this site have been identified as excessively well drained and will sift nutrients and other elements that may be present in the Class II effluent from reaching the groundwater.

Mr. Prouty advised that up-gradient samples of groundwater taken from the site show that water flowing onto the property have nutrient levels higher than 10 mg/l, while down-gradient samples have nutrient levels that are diluted to a level that is much lower than 10 mg/l. He stated that groundwater does not flow toward the adjacent residential properties and, ultimately, the groundwater that leaves this site will have a lower nutrient concentration, which is the goal of spray irrigation. He advised that Class II Effluent is much cleaner than any other effluent and is in wide demand in many areas of the country. He stated that treated effluent will be stored in the storage pond during periods of inclement weather or when the ground is too frozen to absorb the treated effluent, and at no time will treated effluent be released into the nearby ditches. He further explained that the property is now private property and would be posted as such. Furthermore, he saw no potential for aerial problems, overflows, disease or excess mosquito populations, as these issues have not been a problem of any of the four existing spray irrigation sites in the County. Lastly, he advised that two pump stations will be used to transport effluent to the site and the pumps and spray field would be continuously monitored by the Town of Berlin.

In response to a question by Commissioner Church, Mr. Prouty explained that the Town will disinfect any residuals that could be in the treated effluent to decrease any potentially unpleasant odors. He confirmed that the Town of Berlin allots a sizeable budget to maintain operations at their WWTP and disposal facilities.

Ellie Diegelman, of Ocean City, stated that the Commissioners should heed the concerns raised by the residents of Newark who do not want this spray site in their community. She stated that the disposal of treated effluent is Berlin's problem, not Newark's.

There being no further public comment, Commissioner Church closed the public hearing. In response to a question by Commissioner Busick, Mr. Tudor stated that Worcester

County has several ENR plants, all of which treat effluent to higher levels than that which is required by the State of Maryland. Commissioner Boggs concurred, noting that the Ocean Pines WWTP is among them and is recognized as a model throughout the State. Commissioner Shockley supported the Town of Berlin's efforts to move to land application, but opposed the use of the proposed site in Newark for spray irrigation due to its close proximity to the Pocomoke River. Commissioner Cowger opposed the proposed spray site as well, noting that the residents of Newark do not want it there. Following much discussion and upon a motion by Commissioner Boggs, the Commissioners voted 4-2, with Commissioners Cowger and Shockley voting in opposition and Commissioners Boggs, Gulyas, Church and Busick voting in favor, to adopt Resolution No. 10-12 amending the Comprehensive Water and Sewerage Plan for Worcester County for the addition of this spray irrigation facility to serve the Berlin WWTP as proposed.

The Commissioners met with Development Review and Permitting Director Ed Tudor to discuss correspondence from Kristin Saunders Evans, Assistant Secretary Land Resources for the Maryland Department of Natural Resources (DNR), and Frank W. Dawson, III, Assistant Aquatic Resources for DNR, advising that the previously proposed preservation of the Ayres Creek-Holly Grove Swamp Phase II by former Comprehensive Planning Manager Sandy Coyman in 2008 recently ranked 3<sup>rd</sup> out of 57 preservation projects nationally and has been awarded \$1,375,000 in federal funds. However, Mr. Tudor advised that this also requires a one-to-one non-federal match, and both DNR and the National Oceanic and Atmospheric Administration (NOAA) are requesting the County Commissioners provide NOAA with written confirmation of their intent to hold title to the land as well as their desired role related to this project. Mr. Tudor stated that the Maryland Coastal Bays Program (MCBP) has agreed to assume management responsibilities for the property, and DNR is working to secure a \$500,000 contribution toward the non-federal match. Furthermore, the Trust for Public Lands is continuing to explore additional private donors who could make up the additional \$875,000, though at this juncture such funds have not been identified. Mr. Tudor went on to explain that, since the inception of the plan to protect this property, the County's economic and budgetary situation has changed drastically, and County funding is not available to offset any portion of the non-federal match requirement. In response to a question by Commissioner Shockley, Mr. Tudor stated that the property would likely be used for conservation or perhaps timber management. Commissioner Church suggested the Commissioners conceptually agree to move forward with the project with the caveat that funding is identified through DNR and the Trust for Public Lands to provide the non-federal match requirement at no cost to the County. Following some discussion and upon a motion by Commissioner Gulyas, the Commissioners unanimously agreed to provide the requested letter of support for the preservation of this property and agreeing to hold title to the property, with the express understanding that no County funding is available for this project.

The Commissioners met with Mr. Tudor to discuss executing the Contract of Sale for the purchase of a 552-acre conservation easement on a 775-acre tract of land owned by E.S. Adkins and Company and located on Oak Hall Road in the Dividing Creek Rural Legacy Area (RLA). Mr. Tudor stated that the other 223 acres of the tract are not encumbered by the RLA and are to

instead be encumbered by a Wetland Reserve Program Easement. He advised that though three separate appraisals were obtained on this property, the RLA requires the low and high appraisals to be thrown out, which settles on the mid-line value of \$828,000 or around \$1,500 per acre. Mr. Tudor stated that while the contract does not absolutely require the expenditure of County funds, Katherine Munson, Planner IV within DRP, recommends expending \$100,000 of the \$531,000 in County funds set aside for matching RLA funds, for this purpose. He explained that doing so would help secure State funding for future purchases, as matching funds help the County leverage State funds for this purpose. However, he recognized the difficult economic times facing the County and advised that the local match is not required. In response to a question by Commissioner Shockley, Ms. Munson stated that the County could submit the application with no match and could decide whether to provide matching funds in June 2010 after the budget is adopted. Commissioner Church stated that the FY11 County Operating Budget reflects a revenue shortfall of \$4.9 million, and recommended tabling this issue until budget issues can be adequately addressed. Following some discussion and upon a motion by Commissioner Busick, the Commissioners unanimously authorized Commission President Church to sign the Contract of Sale without a commitment of County matching funds.

The Commissioners met with Mr. Tudor to review a letter from Matt Banks and other residents of Windsor Road in West Ocean City requesting the Commissioners address the issue of barking dogs within the County, and in particular a dog residing on a neighboring property that barks continually throughout the day and into the wee hours of the night. Mr. Tudor stated that a dog's bark does not exceed the decibel levels prescribed by the County Noise Ordinance. However, after the cursory review of the General Code Publishers website, there are several jurisdictions that have adopted local ordinances dealing with barking and/or howling dogs from which the County could draw upon to develop its own customized ordinance. Following some discussion, the Commissioners directed staff to investigate sample ordinances from other rural counties and to present their findings and recommendations to the Commissioners at a future meeting for their review and consideration.

Upon a motion by Commissioner Busick, the Commissioners unanimously authorized Commission President Church to sign the Joint Wetland Permit Application for the Bishopville Dam Removal and Stream Corridor Enhancement Project. Assistant Chief Administrative Officer Kelly Shannahan advised the Commissioners in a memo that the current financial sponsors include the U.S. Fish and Wildlife Service (USFWS) for \$480,000 and NOAA for \$30,000, leaving a shortfall of approximately \$300,000 for which Federal Stimulus funding has been requested by DNR. In addition, based on the current plan for the project, the improvements will impact nearby property owners by incorporating them into the Critical Area. Specifically, the tidal wetlands line will move at least 80 feet upstream from its current location at the face of the dam, and the Critical Area will extend 1,000 feet from the new tidal wetlands line, thereby incorporating additional properties into the Critical Area. In his memo, Mr. Shannahan concluded that if the Commissioners agree to sign the wetland permit at this time, they remain under no obligation to move forward with the project in the event that sufficient funding and other concerns are not adequately addressed.

Pursuant to the recommendation of Mr. Tudor and upon a motion by Commissioner Shockley, the Commissioners unanimously adopted Resolution No. 10-13 establishing a Shared Sanitary Facility serving property owned by NASLANCO, LLC, Nassawango Golf Course Inc., and Brian Kane to serve Nassawango Estates, an 11-lot subdivision located on both sides of Nassawango Road outside Snow Hill and surrounded by the Nassawango Golf Course, and more specifically identified on Tax Map 70, Parcels 2, 20 and 21 in Worcester County, Maryland. The Commissioners further authorized Commission President Church to sign the Shared Sanitary Facility Agreement between the County Commissioners of Worcester County, Maryland, NASLANCO, LLC, Nassawango Golf Course, Inc., and Brian Kane. The aforementioned package will discharge a maximum of 3,300 gallons per day (gpd) of treated effluent into an approximately 11,000,000-gallon pond on the golf course property. Water would then be withdrawn from the pond to irrigate the greens and fairways at the golf course.

Pursuant to the request of Mr. Tudor and upon a motion by Commissioner Shockley, the Commissioners unanimously agreed to schedule a joint public hearing on April 20, 2010 to consider applications filed by Soule' and Associates, engineer, and Mark Cropper, attorney, on behalf of Steen Associates Inc. for a proposed amendment to the Worcester County Water and Sewerage Plan and an expansion of the Ocean Pines Sanitary Service Area (OPSSA). The application for amendment to the Water and Sewerage Plan seeks to add the water and sewerage systems for a proposed 60-lot subdivision on a portion of the properties shown as Parcels 67 and 74 on Worcester County Tax Map 21. The applicant also proposes the sanitary service area for the project be re-designated from S-3 and W-3 (service in 5 to 10 years) to S-1 and W-1 (immediate service). Mr. Tudor stated that the Ocean Pines Association (OPA) would "annex" the subject property into Ocean Pines, relinquish their rights to 60 equivalent dwelling units (EDUs) of water and sewerage treatment capacity currently allocated to them for properties in Ocean Pines, and request the County Commissioners reassign that capacity to Steen Associates to be used on the subject property for a proposed 60-lot subdivision.

The Commissioners met with Mr. Tudor to review a letter from Steven M. Brown, Navigation Branch Chief for the U.S. Army Corps of Engineers (COE), informing them of the potential need for maintenance dredging of the federal navigation project in the West Ocean City Harbor. In his letter, Mr. Brown advised that the project provides for a channel 10 feet deep and 150 feet wide from the inlet channel to the project harbor, with widths of 150 to 200 feet to the head of the harbor and with two turning basins of the same depth. He stated that the hydrographic condition survey indicates about 23,500 cubic yards of material will need to be dredged to restore the channel plus two feet allowable over depth. He concluded that the project requires the local sponsor to fulfill the terms of the Local Cooperation Agreement, which includes providing the COE with a suitable placement site and right-of-ways at the expense of the local sponsor prior to maintenance dredging. Mr. Tudor stated that the COE has requested a flat upland site located within 1.5 miles of the project area with a suitable effluent return to adequately contain the runoff from the disposal site. However, he explained that the County does not own land within the target area that would be suitable for such disposal. Mr. Tudor advised that dredge spoil disposal sites in general have been difficult to identify and generally are located far in excess of the 1.5-mile distance from such project sites. He stated that staff members have

discussed a number of alternatives with COE Project Manager Robert Blama, including transporting the material to the Central Landfill to be used for cover material, transporting the material to the State Highway Administration property in Bishopville to be used for either the Bishopville Pond project or the Wetland Restoration project, re-nourishment of Skimmer Island in the Assawoman Bay, and/or placement at the Ocean City Municipal Airport, to name a few. He stated that staff will continue to work with Mr. Blama to determine the best possible disposal site. Following some discussion and upon a motion by Commissioner Gulyas, the Commissioners unanimously agreed to send a letter to Mr. Brown supporting the Maintenance Dredging project and confirming that the County is actively working to identify a suitable disposal site for the dredge materials with COE Project Manager Robert Blama.

Pursuant to the recommendation of Public Works Director John Tustin and upon a motion by Commissioner Gulyas, the Commissioners unanimously approved bid specifications for replacing the roof shingles at the Worcester County Senior Center in Ocean City.

Pursuant to the request of Mr. Tustin and upon a motion by Commissioner Busick, the Commissioners unanimously approved bid specifications for the installation of a wastewater pumping station, force main and waterline to serve the Showell Elementary School by the Ocean Pines water and sewer facilities.

The Commissioners noted that the deadline for the County to request that nonrecurring costs be excluded from the upcoming FY11 Board of Education (BOE) budget is March 31, 2010, and noted that at this time no nonrecurring costs have been identified in the BOE budget. Mr. Mason stated that while the BOE is proposing one-time Technology funding of \$300,000 and Capital Projects of \$127,405, both of these expenses are proposed to be paid out of the BOE's fund balance, not County funding.

Mr. Mason informed the Commissioners that the BOE submitted an FY11 Maintenance of Effort (MOE) Budget, and the deadline for the County to apply for a waiver for the FY11 MOE Minimum Funding Level is April 1, 2010. The Commissioners concurred that it is too early to determine whether the County will need to request a waiver for the FY11 MOE at this time and should wait until State budget cuts to the counties are announced later this month before making their final decision.

Commissioner Church stated that the local nonprofit organizations had requested the County's continued support of House Bill 56, entitled "Worcester County - Slot Machines for Nonprofit Organizations" as the bill was recently passed by the House and was now being considered by the Senate. Upon a motion by Commissioner Shockley, the Commissioners unanimously agreed to send a letter of support for passage of the bill to Senator Lowell Stoltzfus with copies to members of the Senate Budget and Taxation Committee.

The board adjourned to meet again on April 6, 2010.