

Minutes of the County Commissioners of Worcester County, Maryland

June 16, 2020

Joseph M. Mitrecic, President
Theodore J. Elder, Vice President
Anthony W. Bertino, Jr.
Madison J. Bunting, Jr.
James C. Church
Joshua C. Nordstrom
Diana Purnell

Following a motion by Commissioner Nordstrom, seconded by Commissioner Bertino, the Commissioners unanimously voted to meet in closed session at 9:00 a.m. in the Commissioners= Meeting Room to discuss legal and personnel matters permitted under the provisions of Section 3-305(b)(1) and (7) of the General Provisions (GP) Article of the Annotated Code of Maryland and to perform administrative functions, permitted under the provisions of Section GP 3-104. Also present at the closed session were Chief Administrative Officer Harold L. Higgins, Assistant Chief Administrative Officer (CAO) Kelly Shannahan, incoming CAO Weston Young; County Attorney Roscoe Leslie, Public Information Officer Kim Moses, and Human Resources Director Stacey Norton. Topics discussed and actions taken included: hiring David Citroni as a Maintenance Worker I for the Water and Wastewater Division and Bruce Shockley as a Roads Worker II for the Roads Division of Public Works; promoting Jennifer Keener from Zoning Administrator to Deputy Director for Development Review & Permitting and Damian Priznar from temporary to permanent Sergeant at the Jail, and other personnel matters; receiving legal advice from counsel; and performing administrative functions, including reviewing the FY20 monthly financial update and potential board appointments.

Following a motion by Commissioner Nordstrom, seconded by Commissioner Bertino, the Commissioners unanimously voted to adjourn their closed session at 9:32 a.m.

After the closed session, the Commissioners reconvened in open session. Commissioner Mitrecic called the meeting to order, and following a morning prayer by Gary McCabe of Oak Ridge Baptist Church in Berlin and pledge of allegiance, announced the topics discussed during the morning closed session.

The Commissioners reviewed and approved the emergency session minutes of their May 28, 2020 meeting and the open and closed session minutes of their June 2 meeting as presented.

The Commissioners reviewed and discussed various board appointments.

Upon a nomination by Commissioner Church, the Commissioners unanimously agreed to reappoint Joseph Weitzell and to appoint Bruce Burns to fill the position created by the expiration of the term of Bob Hunt to the Water and Sewer Advisory Council for the Mystic Harbour Service Area for four-year terms each expiring December 31, 2023; and to reappoint

Deborah Maphis and Gail Fowler to the Water and Sewer Advisory Council for the West Ocean City Service Area for four-year terms expiring on December 31, 2023.

Pursuant to the written request of Board of Education (BOE) Chief Financial Officer Vincent E. Tolbert and upon a motion by Commissioner Bertino, the Commissioners unanimously authorized Commission President Mitrecic to sign the BOE's Annual Budget Certification Statement, which certifies County funds of \$93,992,139 for BOE expenses, \$633,000 for school construction, and \$12,494,881 for Debt Service for BOE projects in the FY21 County Operating Budget.

Pursuant to the written request of Mr. Tolbert and upon a motion by Commissioner Nordstrom, the Commissioners unanimously approved the County Appropriation Transmittal Schedule for FY21 for the BOE totaling \$93,992,139.

Pursuant to the written request of Mr. Tolbert and upon a motion by Commissioner Purnell, the Commissioners unanimously authorized Commission President Mitrecic to sign the Certification Statement Teacher Salary Incentive Grant Program, awarding State funds of \$165,478 in FY20 and FY21 to the BOE. This funding will be utilized to increase the teacher salary scales by \$800 for steps 1-5 and by \$650 for steps 6-10. The Commissioners and BOE met the grant requirement by approving a salary increase of at least 3% over the prior year.

Pursuant to the request of Mr. Perlozzo and upon a motion by Commissioner Bertino, the Commissioners unanimously approved bid specifications for West Ocean City commercial boat slip leases for a period of five years. Mr. Perlozzo explained that the bids include a 2% escalator during years two through five.

Pursuant to the request of Mr. Perlozzo and upon a motion by Commissioner Purnell, the Commissioners unanimously agreed to waive the standard bid process and authorized County staff to solicit a proposal from Long Fence Company of Capital Heights, Maryland to complete additional fence improvements at John Walter Smith Park, Newtown Park, and Showell Park. Mr. Perlozzo explained that the Commissioners awarded the low bid to Long Fence Company on December 17, 2019 for athletic field fencing at other County parks. He advised that Maryland Department of Natural Resources (DNR) Program Open Space (POS) funds will reimburse the County for 90% of project costs.

Mr. Perlozzo provided the Commissioners with two options to construct concessions and bathroom facilities at Showell Park, following their March 9, 2020 rejection of all project bids, which exceeded budgeted funds to design and build these facilities. Mr. Perlozzo advised that POS funds could be used to reimburse 90% of project costs; however, additional funds are needed to purchase water and sewer capacity in equivalent dwelling units (EDUs) for the project. In response to a question by Commissioner Bertino, Mr. Perlozzo stated that the builder is prepared to begin construction upon approval of this project.

Following some discussion and upon a motion by Commissioner Bertino, the Commissioners unanimously approved option one to hire a project manager to construct the project at a total cost of \$190,500, including the purchase of EDUs, to build a permanent

structure for concessions and bathrooms at the park.

The Commissioners met with Mr. Perlozzo to discuss the proposed Workforce Back to Business COVID-19 Assistance Grant Program, which is proposed to run from July 1-15, 2020, to provide needed grant funding to small businesses and farmers in the County. Mr. Perlozzo stated that his staff receives calls daily from businesses that are struggling, and that while \$2.28 million from the Coronavirus Aid, Relief, and Economic Security (CARES) Act has been allocated by the Commissioners to help provide grant relief, this funding likely will not be enough to provide grants to all of the applicants. Mr. Perlozzo reviewed the proposed program and suggested the review committee be comprised of Economic Development Advisory Board members and local experts in commercial banking, agriculture, and manufacturing, to review the applications, rank them based on criteria, and provide grant award recommendations to County Administration. He explained that applicants could review frequently asked questions and apply online at www.chooseworcester.org. He advised that funds would be awarded on an expedited basis, based on a specific set of criteria, and with follow ups in place to assure that all grant funds are spent properly. In closing, he commended Economic Development Deputy Director Lachelle Scarlato, who took the lead on this project, and noted that the proposed process is in line with that of other Maryland counties, the state, and nation, and may be eligible for any future CARES Act funding that may become available.

Commissioner Bertino commended staff for their work on this project, but noted that the award process should be independent from the Commissioners. In response to questions by Commissioner Bertino, Mr. Perlozzo reviewed the various advertising and marketing mechanisms that are in place to assure businesses countywide are aware of this grant program. County Attorney Roscoe Leslie stated that grant awards should be based on a set of solid evaluation criteria that is made clear to applicants up front. Mr. Perlozzo confirmed that his staff is working to develop this criteria and clear instructions, and he also agreed that they could postpone the application period for one week to run from July 8-22 to provide the Commissioners with additional program details at their July 7 meeting. Ms. Scarlato stated that they did not include the \$1,000 Economic Injury Disaster Loan (EIDL) grant as an exclusionary criteria for applying for the proposed County grant program. She noted that, though the application will ask if applicants have received Paycheck Protection Program (PPP) or EIDL funds, such awards would not necessarily exclude those businesses from this grant opportunity.

In response to concerns raised by Commissioner Purnell, Ms. Scarlato stated that County staff recognize and are prepared to reach the business community, including those who are not members of a local chamber of commerce and those in the agricultural community, to assure they are aware of and have adequate time to submit applications for this grant program.

Following some discussion and upon a motion by Commissioner Bertino, the Commissioners unanimously authorized staff to move forward with the Work Force Back to Business COVID-19 Grant Program subject to approval of the final details at their meeting on July 7.

Pursuant to the request of Commission on Aging (COA) Director Rob Hart and upon a motion by Commissioner Nordstrom, the Commissioners unanimously approved the Statewide Special Transportation Assistance Program Funding Transition Plan, with funds of \$126,975.08 from the Maryland Transit Administration (MTA) and a County match of \$42,325.03, to

transition senior transportation from Shore Transit through the Tri-County Council (TCC) for the Lower Eastern Shore to the COA. Mr. Hart stated that the COA originally requested a local match of \$34,100, but because of a slowdown in existing programs due to the COVID-19 crisis, he can reallocate funds of \$8,225.03 within the FY21 budget to meet the local match recommended by the TCC.

The Commissioners conducted a public hearing to consider an amendment to the Water and Sewerage Plan, as submitted by Environmental Programs Director Bob Mitchell on behalf of the County Commissioners, to amend the equivalent dwelling unit (EDU) allocation table for the Mystic Harbour Sanitary Service Area (SSA). The proposed amendment seeks to allocate 29 EDUs from the Infill and Intensification category and nine EDUs from the Vacant or Multi-lot Properties category in Area 1 (north of the airport) to the Frontier Town Campground category in Area 2 (south of the airport) to accommodate a 112-campsite expansion on the existing campground property.

Environmental Programs Director Bob Mitchell reviewed the amendment, which was developed at the request of the Commissioners on April 14, 2020. He stated that the Planning Commission found that the application was consistent with the Comprehensive Plan and gave it a favorable recommendation, and he urged the Commissioners to approve this amendment.

Commissioner Mitrecic opened the floor to receive public comment.

Attorney Hugh Cropper, representing Sun TRS Frontier Town, LLC, noted that the proposed use of EDUs from the Infill and Intensification category is consistent with the Comprehensive Plan. He concurred with the Planning Commission's findings and asked the Commissioners to accept the findings and Mr. Mitchell's testimony as his testimony as well.

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

Commissioner Bertino stated that he supports the request to shift these EDUs. However, he recognized that the EDUs in this area are diminishing, the Mystic Harbour Wastewater Treatment Plant (WWTP) capacity is limited, and opportunities to expand the WWTP are limited due to a lack of options to dispose of treated effluent.

Following some discussion and upon a motion by Commissioner Bunting, the Commissioners unanimously adopted Resolution No. 20-12, amending the Comprehensive Water and Sewerage Plan to amend the EDU allocation table for the Mystic Harbour SSA for Frontier Town Campground.

The Commissioners conducted a public hearing to receive public comment on the proposal to establish a Residential Planned Community (RPC) floating zone on the property known as Shady Side Village, located on the southerly side of MD Rt. 707, west of Greenridge Lane, and more specifically identified on Tax Map 26 as Parcel 157, which as outlined in the Step 1 plan consists of a proposed 37-unit townhouse development in the Existing Developed Areas land use category of the Comprehensive Plan. Zoning Administrator Jennifer Keener stated that the property is zoned R-4 General Residential District, and the project is composed of 37 residential units on 4.67 acres, once tidal wetlands and the road widening along MD Rt. 707 have been deducted. She stated that open space of 2.27 acres includes 0.16-acre of active recreation and 0.3-acre of passive recreation, with the remaining 1.81 acres to be set aside as natural open space. The proposed project maintains sensitive non-tidal wetlands and existing

wooded areas to the maximum extent practicable and will not have an adverse impact on local traffic and transportation patterns. Therefore, the Planning Commission gave a favorable recommendation to the request to establish the RPC floating zone for Shady Side Village.

Commissioner Mitrecic opened the floor to receive public comment.

Hugh Cropper, IV, attorney for Shady Side Village, reviewed details of the redevelopment project, concurred with staff's findings, and asked the Commissioners to accept these findings as his testimony as well.

Architect and Engineer Keith Iott agreed that the project is classic infill development, is consistent with surrounding development, with a single point of access, and meets or exceeds the RPC requirements.

Chris McCabe, environmental consultant and owner of Coastal Compliance Solutions, testified that the petitioned area is located within approximately 1.8 acres in the Atlantic Coastal Bays Critical Area, where plans include planting and maintaining a 100-foot buffer and eradicating and replacing the bamboo with natural plants.

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

Upon a motion by Commissioner Church, the Commissioners unanimously adopted the Planning Commission's Findings of Fact and approved the RPC.

Pursuant to the written request of Wor-Wic Community College (WWCC) President Dr. Ray Hoy and upon a motion by Commissioner Bertino, the Commissioners unanimously adopted Resolution No. 20-13, adopting the FY21 WWCC Expenditure Budget by Function totaling \$28,833,263, including a Worcester County local funding share of \$2,418,122, as approved in the FY21 County Operating Budget on June 2.

Upon a motion by Commissioner Bertino, the Commissioners unanimously adopted Resolution No. 20-14 adopting the Sanitary Service Area Budgets, Assessments and Charges and Establishing Classifications for the Water and Wastewater Enterprise Fund for July 1, 2020 through June 30, 2021, as conceptually approved after their public hearing on June 2.

Upon a motion by Commissioner Bertino, the Commissioners unanimously adopted Resolution No. 20-15 adopting the Solid Waste Enterprise Fund Budget and Fees for July 1, 2020 through June 30, 2021, as conceptually approved after their public hearing on June 2.

Upon a motion by Commissioner Bertino, the Commissioners unanimously adopted Resolution No. 20-16 adopting a budget of \$930,000 for the Liquor Control Enterprise Fund to enable continued operation of the Pocomoke retail liquor store (RLS) from July 1, 2020 through June 30, 2021, as conceptually approved after the public hearing on June 2. Commissioner Mitrecic requested that legal counsel update the Commissioners on the status of the Pocomoke RLS lawsuit within the Court of Special Appeals at their next closed session meeting on July 7.

Upon a motion by Commissioner Bunting, the Commissioners unanimously adopted Resolution No. 20-17 establishing fees for applications processed by the Department of Development Review and Permitting and the Department of Environmental Programs effective July 1, 2020.

Upon a motion by Commissioner Bertino, the Commissioners unanimously adopted the Findings of Fact and Zoning Reclassification Resolution No. 20-02, regarding Rezoning Case No. 424, filed by Attorney Hugh Cropper, IV, on behalf of Hooper's Restaurant, to rezone approximately 0.25-acre of land located to the north of U.S. Rt. 50 and east of Golf Course Road in West Ocean City and more specifically identified on Tax Map 27 as Parcel 569 from R-3 Multi-Family Residential District and RP Resource Protection District to C-2 General Commercial District, as conceptually approved at their June 2, 2020 meeting.

Commissioner Elder temporarily left the meeting.

Pursuant to the request of Environmental Programs Director Bob Mitchell and upon a motion by Commissioner Nordstrom, the Commissioners unanimously authorized Commission President Mitrecic to sign a letter of support for an application from the Maryland Department of Natural Resources (DNR) to the National Fish and Wildlife Foundation (NFWF) for grant funds to help cover construction costs for the Selsey Road resiliency project. Mr. Mitchell stated that the County was awarded funding from DNR for a Community Resilience Grant for this project to assist with coastal impacts of climate-related hazards, which covered the design and permitting costs and were also intended to cover construction. However, due to the COVID-19 pandemic, State funds previously allocated to cover construction costs may no longer be available. He noted that NFWF grant funds could help cover funding gaps in the construction costs.

Commissioner Elder returned to the meeting.

The Commissioners met in legislative session.

The Commissioners conducted a public hearing on Bill 20-4 (Natural Resources - Forest Conservation Law), which was introduced by Commissioners Nordstrom and Purnell on May 19, 2020. Mr. Mitchell reviewed the draft legislation, with proposed changes by County Attorney Roscoe Leslie, advising that the purpose of Bill 20-4 is to address necessary changes to the County's forest conservation law to comply with State legislation adopted during the 2019 Maryland General Assembly revising the Maryland Forest Conservation Act. Natural Resources Administrator Janelle Gerthoffer advised that major changes include the demonstration of the unavailability of forest mitigation bank credits, procedures, and assurance of mitigation, and an update to the County fee in lieu rates.

Commissioner Mitrecic opened the floor to receive public comment.

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

Commissioner Bunting stated that he could not support this bill, as forest conservation has become more costly to the public, leaving individuals with limited incomes unable to meet the mitigation fees.

Upon a motion by Commissioner Nordstrom, the Commissioners voted 4-3, with Commissioners Church, Mitrecic, Nordstrom, and Purnell voting in favor and Commissioners Bertino, Bunting, and Elder voting in opposition, to approve amendments to the bill, as suggested by the County Attorney.

Upon a motion by Commissioner Nordstrom, the Commissioners voted 4-3, with Commissioners Church, Mitrecic, Nordstrom, and Purnell voting in favor and Commissioners

Bertino, Bunting, and Elder voting in opposition, to adopt Bill 20-4 (Natural Resources – Forest Conservation Law) as amended.

The Commissioners conducted a public hearing on Emergency Bill 20-5 (Zoning - Height of Manufactured and Mobile Homes), which was introduced by Commissioners Bertino, Bunting, Church, Elder, Mitrecic, Nordstrom, and Purnell on May 19, 2020. Development Review and Permitting Director Ed Tudor reviewed the bill, which would amend Section ZS 1-314, Manufactured and mobile homes and manufactured and mobile home parks, of the Zoning and Subdivision Control Article to remove the 15-foot maximum height limitation for one-story manufactured and mobile homes while retaining the limitation of one story. Mr. Tudor advised that the bill received a favorable recommendation from the Planning Commission and staff. In response to a question by Commissioner Bunting, Mr. Tudor stated that a stick-built home that meets the square footage requirements could not be constructed in one of the manufactured and mobile home parks, but could be permitted in certain zoning districts.

Commissioner Mitrecic opened the floor to receive public comment.

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

Upon a motion by Commissioner Bertino, the Commissioners unanimously adopted Emergency Bill 20-5 (Zoning - Height of Manufactured and Mobile Homes) as presented.

The Commissioners met with Mr. Tudor to review a text amendment application submitted by Mark S. Cropper, seeking to amend ZS 1-339(a)(10) of the Zoning and Subdivision Control Article to include the E-1 Estate District as one of the zoning districts in which a home occupation of up to 3,000 square feet in gross floor area may be permitted in an accessory building. Mr. Tudor stated that such home occupations are currently limited to the A-1 and A-2 Agricultural Districts on parcels of greater than 80,000 square feet. He stated that the proposed text amendment received a favorable recommendation from the Planning Commission.

Following some discussion, Commissioners Bertino, Bunting, Church, Elder, Mitrecic, Nordstrom, and Purnell introduced the aforementioned text amendment as Bill 20-6 (Zoning - Home Occupations in the E-1 Estate District) and agreed to schedule a public hearing on the bill for July 21, 2020.

Commissioner Mitrecic closed the legislative session.

The Commissioners met with Mr. Mitchell to consider revising the sewer flow calculations for shell buildings, as part of the standard sewer flow calculations, which were adopted by the Commissioners on December 3, 2019 by Resolution No. 19-37. Mr. Mitchell stated that a developer is currently required to purchase suitable sewer and water capacity to cover the minimum flow for a shell building, and minimum capacity is the retail rate (0.05 gallons/square foot) multiplied by the interior area with no tenant fit-outs. Thus, the number of equivalent dwelling units (EDUs) would be calculated from that gallon total, utilizing the specific service area's EDU flow value and rounding up to the next whole number to determine the total EDUs needed. However, he noted that the County currently has a customer building a medical office facility approximately 70,000 square feet in size who believes that the County Commissioners agreed to require only one EDU per shell building regardless of the size of the structure, with additional EDUs to be purchased at the time of tenant fit-out. Mr. Mitchell stressed that the retail rate is the lowest use flow rate. Therefore, any proposed use of a shell

building would already have an allocation for the minimum sewer flow, so a developer would only be required to purchase additional EDUs if the proposed use is calculated to generate additional flow based upon the County's standard sewer flow calculations at fit-out. He assured that using this method to calculate the minimum sanitary capacity purchases required for a shell building permit carries absolutely no risk of an over-purchase of EDUs to the end user for a commercial structure.

Commissioner Mitrecic stressed that requiring a developer to purchase EDUs up front on a project results in an undue financial burden, and that on December 3, 2019 he voted for Resolution No. 19-37, with the understanding that it would allow a developer to purchase only one EDU up front for a shell building, with the remainder of EDUs to be purchased at the time of fit-out prior to final occupancy.

In response to a question by Commissioner Elder, Mr. Mitchell stated that the developer constructing the 70,000-square-foot medical facility would be required to purchase 24 EDUs at total buildout at a cost of roughly \$11,417 per EDU. However, based on the retail rate (0.05 gallons/sf), the developer would only be required to purchase 12 EDUs up front. He noted that sewer capacity may not be available for such a project if not reserved early on. Commissioner Elder stated that the up-front purchase amounts to a significant expense and stated that lack of capacity is the risk of the developer.

Commissioner Mitrecic reviewed the two options before them for determining the sewer flow calculations for shell buildings as follows: option 1 - calculating at the established rate for retail stores; or option 2 - assigning one EDU to be purchased prior to issuance of a building permit, for the shell building with additional EDUs to be purchased after tenant fit-out, before occupancy.

Upon a motion by Commissioner Bunting, the Commissioners unanimously adopted Resolution No. 20-18, clarifying standard sewer flow calculations for determining initial required capacity for non-residential shell buildings to be served by public sewer systems, based on option two, assigning one EDU to be purchased prior to issuance of a building permit, for the shell building with additional EDUs to be purchased after tenant fit-out, before occupancy.

The Commissioners conducted a public hearing on the proposed establishment of the St. Martins by the Bay Water Sanitary Service Area (SSA). Mr. Mitchell stated that John E. Shook, Jr., President of the St. Martins by the Bay Homeowners' Association (HOA), the applicant, submitted an application to expand the Ocean Pines SSA to provide public water service to the existing St. Martins by the Bay community, which is located immediately north of the Synder property on Beauchamp Road, south of the St. Martins River, west of the White Horse Park community, and east of the Dolly Circle community. He stated that the 58 properties in the St. Martins by the Bay subdivision consist of 28 single-family homes, 26 townhouses, four undeveloped lots, and a community pool. More specifically, the subject property is identified on Tax Map 16 as Parcel 6, Parcel 86 (Lots 7-14, Blocks A and C), Parcel 87 (Lots 1-6, Blocks A and B), Parcel 88 (Lots 15-26), and Parcel 91 (Lots 1-8 and 10, 11A, 12A, 13, 40, and 50). Mr. Mitchell stated that the property is currently being served by private water, which the community will be required to disconnect and install an extension to connect to an appropriate location within the Ocean Pines water distribution system if the SSA is approved. He stated that the community is currently designated W-1 (immediate to two years) in the County's Master Water and Sewer Plan for water service. He concluded that the total estimated project cost would be

\$750,000, which includes an equity contribution based on the purchase of 58 EDUs, with debt payment at a cost of \$600 per petition per year (\$800 if financed over 20 years), and water usage at a cost of \$250 per year or \$55-\$70 per quarter, per lot included in the petition, and the County would apply for a combination of grant and low-interest loan funds through the United States Department of Agriculture (USDA) for this project. He concluded that staff finds that the proposed connection will be feasible from an engineering standpoint and desirable for the health, safety, and welfare of the property owners and their customers.

Commissioner Mitrecic opened the floor to receive public comment.

Mr. Shook, speaking on behalf of the St. Martin by the Bay HOA, advised that the existing system was built in 1984 and is failing. He stated that the HOA paid \$30,000 last year to maintain this water system, and he thanked the Commissioners for their consideration of this request.

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

Upon a motion by Commissioner Bunting, the Commissioners unanimously adopted Resolution No. 20-19 approving the establishment of the St. Martins by the Bay Water SSA.

The Commissioners answered questions from the press, after which they adjourned at 11:34 a.m. to meet again on July 7, 2020.