

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

August 2, 2016

Madison J. Bunting, Jr., President  
Merrill W. Lockfaw, Jr., Vice President  
Anthony W. Bertino, Jr. (Absent)  
James C. Church  
Theodore J. Elder  
Joseph M. Mitrecic (Absent)  
Diana Purnell

Following a motion by Commissioner Lockfaw, seconded by Commissioner Purnell, with Commissioners Bertino and Mitrecic 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 3-305(b)(1) and (7) of the General Provisions Article of the Annotated Code of Maryland and to perform administrative functions. Also present at the closed session were Harold L. Higgins, Chief Administrative Officer; Kelly Shannahan, Assistant Chief Administrative Officer; Maureen Howarth, County Attorney; Kim Moses, Public Information Officer; and Stacey Norton, Human Resources Director. Topics discussed and actions taken included: hiring Peggy Ellerman as an Office Assistant III for the Water and Wastewater Division of Public Works, Mark Kuhn as an Electronic Services Installer for Emergency Services, Mark Huey as a part-time Social Media Coordinator for Tourism, Adam Phipps-Dickerson as a Natural Resources Specialist II and promotion of Jenelle Irwin from Natural Resources Planner II to Natural Resources Administrator for Environmental Programs, transferring Alexa Gillis from Office Assistant V within the Family Services Division to Office Assistant V within the Administrative Division of the Circuit Court; acknowledging the hiring of Teikera Tenner as Manager within the Shore Spirits Retail Liquor Store in Pocomoke, Kenneth Reed as a full-time Deputy Sheriff for the Road Patrol Division and Patricia Donaldson and Gary Adelhardt as part-time School Resource Deputies within the Sheriff's Office, and Ashley Lewis as Assistant Support Services and Special Projects Liaison, Rachel Jones as a full-time Library Services Assistant I within the Snow Hill Branch and Ashley Cuffee and Elena Coelho as part-time Library Services Assistant Is within the Berlin Branch of the County Library; receiving legal advice from counsel; and performing administrative functions.

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

Commissioners Bertino and Mitrecic were absent from the meeting.

The Commissioners reviewed and approved the minutes of their July 19, 2016 closed and open session meetings as presented.

The Commissioners met with Housing Program Administrator Jo Ellen Bynum regarding a request by the Maryland Department of Housing and Community Development (DHCD) for Worcester County's continued participation in the "On Behalf Of" (OBO) Maryland Mortgage Program, which provides low interest loans primarily to first-time home buyers as well as to those homebuyers who have not owned their principal residence within the last three years, as well as the Maryland Home Credit Program. Upon a motion by Commissioner Purnell, the Commissioners unanimously agreed to irrevocably transfer Worcester County's full \$1,817,702 tax-exempt housing bond allocation to the DHCD Community Development Administration for use in issuing housing bonds or mortgage credit certificates on behalf of Worcester County, as set forth in the 2016 allocation of the Maryland State Ceiling for use under the Maryland Mortgage Program and the Maryland Home Credit Program.

Pursuant to the request of Ms. Bynum and upon a motion by Commissioner Lockfaw, the Commissioners unanimously approved bid specifications for the general rehabilitation of a single-family home in the Bishopville area, which is to be funded through the County's current Community Development Block Grant (CDBG) for Housing Rehabilitation.

Pursuant to the written request of Health Department Fiscal Officer Julia Parker and upon a motion by Commissioner Lockfaw, the Commissioners unanimously authorized Commission President Bunting to sign the FY17 Department of Health and Mental Hygiene (DHMH) Local Health Department Unified Funding Document, which is the approved base award from the State of Maryland totaling \$8,281,650 to the Worcester County Health Department as of July 1, 2016.

Pursuant to the request of Budget Accountant Kim Watts and upon a motion by Commissioner Elder, the Commissioners unanimously authorized Commission President Bunting to sign the Governor's Office of Crime Control & Prevention Grant Award and Acceptance Form for funds of \$67,648 for the grant-funded position of Heroin Coordinator within the Sheriff's Office, a position approved by the Commissioners at their June 21, 2016 meeting.

Pursuant to the request of Recreation and Parks Director Paige Hurley and upon a motion by Commissioner Elder, the Commissioners unanimously approved out-of-state travel for Mr. Hurley and Kelly Rados, Special Events & Marketing Coordinator for Recreation and Parks, to attend the Teams National Conference in Atlantic City, New Jersey from September 26-29, 2016 at a cost of \$1,200 for lodging and meals. Mr. Hurley advised that there is no registration cost for Ocean City, Wicomico and Worcester Recreation and Parks Department representatives to attend the conference because they are members of Team Maryland and the Mid-Atlantic Amateur Sports Alliance (MAASA) which covers these expenses.

The Commissioners met with Development Review and Permitting Director Ed Tudor to discuss scheduling public hearings for two utility scale solar projects. Commissioner Church recused himself from the discussions due to potential conflicts of interest and left the meeting.

Pursuant to the recommendation of Mr. Tudor and upon a motion by Commissioner Elder, the Commissioners voted unanimously to schedule a public hearing on September 6, 2016

to consider an application submitted by Longview Solar, LLC to approve a Step I Concept Plan for a utility scale solar energy system on a 285-acre property located on the southerly side of Libertytown Road (MD Rt. 374), approximately 0.4 mile east of Cedar Lane Road, and identified on Tax Map 24 as Parcel 5, Lot 5. Mr. Tudor stated that the Longview Solar - Heron Project includes a proposed utility scale solar energy system consisting of approximately 85,670 panels anticipated to produce a 26-megawatt (DC) output. He further stated that the application received a favorable recommendation from the County Planning Commission.

Pursuant to the recommendation of Mr. Tudor and upon a motion by Commissioner Elder, the Commissioners voted unanimously to schedule a public hearing on September 6, 2016 to consider an application submitted by Longview Solar, LLC to approve a Step I Concept Plan for a utility scale solar energy system on a 258-acre property located on the northerly side of Public Landing Road (MD Rt. 365), across from the intersection with McCabes Corner Road, and identified on Tax Map 64 as Parcels 4, 71, and 72. Mr. Tudor advised that the Longview Solar - Seabeach Project includes a proposed utility scale solar energy system consisting of approximately 63,320 panels anticipated to produce an 18-megawatt (DC) output. He further stated that the application received a favorable recommendation from the County Planning Commission.

Commissioner Church rejoined the meeting.

Pursuant to the request of Public Works Director John Tustin and upon a motion by Commissioner Lockfaw, the Commissioners unanimously approved the list of Waterway Improvement Project Grant Applications to be submitted to the Maryland Department of Natural Resources (DNR) for consideration in the State's FY18 budget in the following order of priority: \$50,000 to resurface/overlay the parking lot at the pavilion and pier at Public Landing Boat Ramp; and \$50,000 to resurface/overlay the parking lot at South Point Boat Ramp.

Pursuant to the request of Mr. Tustin and upon a motion by Commissioner Lockfaw, the Commissioners unanimously approved bid specifications for the purchase of one brush chipper for the Roads Division of Public Works, with funds of \$45,000 available within the FY17 budget for this expense.

Pursuant to the request of Mr. Tustin and upon a motion by Commissioner Lockfaw, the Commissioners unanimously approved bid specifications for the purchase of four offset hydraulic rotary cutters for the Roads Division of Public Works, with funds of \$48,136 available within the FY17 budget for this expense.

Pursuant to the request of Mr. Tustin and upon a motion by Commissioner Lockfaw, the Commissioners unanimously approved bid specifications for the purchase of two cab tractors for the Roads Division of Public Works, with funds of \$142,200 available within the FY17 budget for this expense.

Mr. Tustin met with the Commissioners to discuss a proposed Change Order for the

Riddle Farm Commercial Water and Sewer Infrastructure Project. Mr. Tustin stated that construction of the Riddle Farm Commercial Water and Sewer Infrastructure Project is moving at a rapid pace; but one issue has come to light that needs to be addressed to continue forward. He advised that sub-grade organic soil conditions in the 350-foot crossing of the 14th fairway of the Man of War Golf Course will prevent the construction of a gravity sewer by trenchless method, as proposed in District B, the eastern portion of the project. Mr. Tustin explained that the golf course owner, Tom Ruark, who is providing the easement for this effort, will not allow the golf course to be disturbed by using the open trench method to construct the gravity portion of the project to dewater, open cut, bring suitable bedding material in and lay the pipe. Therefore, concept plans have been developed to construct a low-pressure sewer line and revised waterline route that will provide sewer to the properties on the south side of Rt. 50 in the vicinity of the eastern terminus of Samuel Bowen Boulevard in order to avoid any disturbance to the golf course. Mr. Tustin stated that timing is important, since construction is ongoing and approvals from the Maryland Department of the Environment (MDE) and possibly other regulatory agencies will be required before this work can commence.

In response to a question by Commissioner Elder, Mr. Tustin advised that the Finch and Steffey properties and others served by this low-pressure sewer line will be required to purchase and utilize individual grinder pumps for service to their respective properties, a cost the property owners had not originally anticipated but have agreed to pay. He stated that they will also be responsible for electric and maintenance costs for the grinder pumps. Upon a motion by Commissioner Elder, the Commissioners voted unanimously to approve the Change Order for the Riddle Farm Commercial Water and Sewer Infrastructure Project.

The Commissioners met with Mr. Tustin to review a letter from MDE Water Management Administration Director Lynn Buhl that identifies eight Sanitary Sewer Overflows (SSO) that occurred in the County from July of 2014 to June of 2015 and advising that each SSO is subject to penalties of up to \$10,000 per day; however, MDE has offered to settle all eight SSOs for one payment of \$3,100 without admission of liability or concession. Mr. Tustin advised that the SSOs identified by MDE were caused by a combination of pump station mechanical/ electrical failures and sewage force main breaks, and each SSO was corrected by County staff and reported to MDE at the time of occurrence. Mr. Tustin advised that the first overflow resulted from a complete electrical failure in Mystic Harbour Pump Station Number 7, resulting in a grease trap overflowing near Sunset Grill, three of the identified overflows were a direct result of ongoing upgrades in the Ocean Pines wastewater collection system, and another was a mechanical failure at Pump Station B in Ocean Pines, a station that has now been totally reconstructed. Mr. Tustin stated that the complete elimination of these types of incidents is difficult, and he praised staff from the Water and Wastewater Division of Public Works for responding quickly to repair and report them as required. Mr. Tustin recommended settling with MDE as proposed. Upon a motion by Commissioner Purnell, the Commissioners unanimously agreed to settle the penalties for all eight SSOs for one payment of \$3,100 without admission of liability or concession.

The Commissioners met with Environmental Programs Director Bob Mitchell to discuss changes that Governor Larry Hogan's administration proposes to make to the State Nutrient

Management Regulations regarding spray irrigation operations by relaxing 2012 regulations that were phased in over four years and went into full effect on July 1, 2016 to restrict the application of wastewater in the winter months starting in 2016 for large wastewater treatment plants (WWTP) and to restrict smaller WWTPs beginning July 1, 2020. Mr. Mitchell explained that the 2012 regulations stipulate that there can be no application of manures to farm fields over the winter, beginning November 1, and also eliminates emergency authority to allow spreading of manure to avoid an overflow at a manure storage facility. These regulations will impact four existing County wastewater treatment plants (WWTP) that utilize spray irrigation to reuse treated effluent to irrigate forested lands and golf courses, two additional County WWTPs to come online in the near future, the Town of Berlin's WWTP which has removed point source discharge and irrigates all treated effluent, and the Town of Snow Hill's WWTP, which is operating under the Chesapeake Bay nutrient cap and will transition to spray irrigation to serve future growth. He stated that the Maryland Department of Agriculture (MDA) Nutrient Advisory Committee is considering amending the provisions concerning the winter time application of nutrients. Mr. Mitchell stated that he and Public Works Deputy Director John Ross did not learn about these rules until last year because the rules governing spray irrigation in winter months were contained within a regulatory requirement that is primarily reserved for agricultural operations, and the State did not alert any spray operation permittees about the provision. He stated that, when County staff discovered this change, they alerted the Town of Berlin because the municipal WWTP is likely to be classified as a major plant and because the town is a member of the Maryland Association of Municipal Wastewater Agencies (MAMWA), which has strong lobbying and legal support. He stated that it is vital that the County and towns are able to preserve the operational flexibility to utilize spray areas in wintertime when favorable weather permits. Therefore, he recommended sending a letter to MDE and the Nutrient Advisory Committee seeking a reversal of the ban on winter applications and advising that these regulations have real fiscal consequences to the State's jurisdictions that dispose of treated effluent by way of spray irrigation, as it could result in the need to purchase additional storage facilities and lands for spraying effluent.

Commissioner Elder stated that the letter should also be expanded to include the impact on the agricultural communities, as area farmers are also banned from spreading manure in the winter and have only a small window to do so in the spring when wet weather can impede efforts to spread manure on the fields. Following some discussion and upon a motion by Commissioner Elder, the Commissioners unanimously agreed to send a letter to the State that identifies the ramifications to jurisdictions on Maryland jurisdictions and the farming community and seeking a reversal of the ban on winter applications.

Pursuant to the request of County Attorney Maureen Howarth and upon a motion by Commissioner Elder, the Commissioners unanimously approved out-of-state travel for Ms. Howarth to attend the International Municipal Lawyers Association (IMLA) annual conference in San Diego, California from September 28 to October 2, 2016 at a total estimated cost of \$2,561.

The Commissioners reviewed and discussed various board appointments.

Upon a nomination by Commissioner Church, the Commissioners unanimously agreed to appoint Mary Martinez from the Whispering Woods Homeowners Association to the Mystic

Harbour Water and Sewer Advisory Council for the remainder of a four-year term expiring December 31, 2016 to replace Gerri Moler who resigned.

At the request of Commissioner Bunting in response to phone calls and emails the Commissioners received from concerned residents, Development Review and Permitting Director Ed Tudor and Mr. Mitchell briefed the Commissioners on State and County laws, including a draft text amendment before the Planning Commission, that locally regulate the development of industrial-scale poultry operations known as concentrated animal feeding operations (CAFO).

Mr. Tudor provided an executive summary of the state and local laws and regulations governing these proposed facilities, after which he outlined the basis provisions of a conceptual text amendment currently being considered by the Planning Commission that could revise the local laws governing poultry houses. He stated that agriculture in Worcester County is an important industry, with poultry operations serving as the primary permitted use with only minimal setback requirements in the A-1 and A-2 Agricultural Zones and the E-1 Estate District, and as a special exception in the RP Resource Protection Zone with additional setbacks for those to be constructed near existing houses and churches. He stated that Harold Scrimgeour submitted a text amendment application on February 29, 2016 to limit the establishment of industrial-scale poultry operations, and County staff spent eight weeks working with him to refine the proposed amendment that would create a new section in the Zoning and Subdivision Control Article that defines and regulates poultry housing units based on the four distinct size categories as follows: poultry housing unit - a single poultry house with a gross floor area of 36,000 square feet; poultry operation, small - a farm containing not more than one poultry housing unit and which does not utilize a tunnel ventilation system; poultry operation, medium - a farm containing at least two but not more than three poultry housing units or a farm with only one poultry housing unit that utilizes a tunnel ventilation system; and poultry operation, large - a farm containing more than three but not more than 12 poultry housing units. Mr. Tudor stated that proposed setbacks of 500 feet for medium and large scale poultry operations are significantly greater than those that would be required for small poultry operations (100 feet from the property line). He advised that the text amendment proposes density requirements be determined on a sliding scale, with acreage, setback and buffering requirements to increase based upon the number and size of each poultry house. He stated that the Planning Commission developed a work group that has reviewed and will be providing an update to the Planning Commission on August 4, 2016 regarding their work to develop a draft text amendment, and eventually to the County Commissioners once a bill has been reviewed and approved by the Planning Commission. He stated that the emergence of industrial-scale poultry houses has caused great concern to many residents in all three Lower Eastern Shore counties, and Somerset, Wicomico and Worcester Counties are each working to develop regulations that will properly regulate these operations. He cautioned, however, that this is a process that should not be rushed due to the ramifications.

In response to a question by Commissioner Elder, Mr. Tudor stated that poultry projects currently in the development phase would not be impacted by the text amendment unless the Commissioners enact a moratorium on new permit applications. In response to a question by Commissioner Bunting, Mr. Tudor stated that two industrial-scale poultry operations proposed to be developed in Worcester County are currently in the permitting process and would not be

subject to these new regulations.

Mr. Mitchell reviewed the environmental aspects of the Notices of Intent (NOIs) and permit process for CAFOs, which cover construction activities, erosion and sediment control plan, waterway construction permit, water supply appropriations, and discharge, as well as the role of the public in the application review process. He stated that adjoining property owners have the right to request a public hearing during the water supply appropriations permit process. He concluded that there is a lot of misinformation in the media that is generating a great deal of concern, but that poultry farm owners can ease much of these concerns simply by taking the proper steps to be good neighbors, such as not positioning tunnel ventilation exhaust fans on the sides of poultry houses that face neighboring homes and other occupied structures.

Following some discussion, Commissioner Bunting thanked staff for their presentation and update.

The Commissioners answered questions from the press, after which they adjourned to meet again on August 16, 2016.