

Minutes of the County Commissioners of Worcester County, Maryland

January 3, 2017

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

Following a motion by Commissioner Elder, seconded by Commissioner Bertino, the Commissioners unanimously voted to meet in closed session at 9:30 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; Stacey Norton, Human Resources Director; and Ed Baker, Contractual Attorney for the County. Topics discussed and actions taken included: considering a request for three new Sheriff's Deputies for the Sheriff's Office; 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.

The Commissioners reviewed and approved the minutes of their December 20, 2016 open and closed session meeting as presented.

Pursuant to the request of Housing Program Administrator Jo Ellen Bynum and upon a motion by Commissioner Lockfaw, the Commissioners unanimously awarded the low bid to rehabilitate a single-family home in the Snow Hill area to Benchmark Contracting Services, LLC of Bel Air, Maryland at a total cost of \$18,600. Ms. Bynum advised that the project is to be funded through the County's current Community Development Block Grant (CDBG).

Pursuant to the request of Warden Garry Mumford and upon a motion by Commissioner Elder, the Commissioners unanimously approved bid specifications to replace nine digital video recorders at the County Jail. Warden Mumford advised that funds of \$75,000 are available within the FY17 budget for this purchase. In response to a question by Commissioner Bertino, Warden Mumford advised that the bid specifications call for standard components that are regularly manufactured to assure replacement parts will be available as needed in the future.

The Commissioners met with Public Works Director John Tustin to discuss the bid results to replace the overhead doors at the Worcester County Roads facility on U.S. Rt. 113 north of Snow Hill, Maryland. Mr. Tustin advised that the sole bid of \$93,465 from Masterjack of Bishopville exceeds FY17 project funding of \$61,110. Therefore, he recommended rejecting this sole bid, revising the specifications to include adjusting the previously limited work hours, and then re-bidding the project. In response to a question by Commissioner Mitrecic, Mr. Tustin advised that the Masterjack representative was one of six contractors who attended the pre-bid conference, and the lack of bids was likely due to the limited work hours specified in the original bid package.

Upon a motion by Commissioner Mitrecic, the Commissioners unanimously agreed to reject the sole bid from Masterjack and authorized Public Works officials to revise the bid specifications and rebid the project, without needing additional approval from the Commissioners until the final bids are received. At Commissioner Mitrecic's request, Mr. Tustin agreed to add Hickman Overhead Door and any other known suppliers in Delaware to the bidder's list.

Pursuant to the request of Mr. Tustin and upon a motion by Commissioner Church, the Commissioners unanimously approved bid specifications for the purchase and application of bituminous concrete blacktop to resurface approximately 26.08 miles of County roadway for the Roads Division and for resurfacing approximately 12,661 square yards of parking lots at County Boat Landings for the Maintenance Division of Public Works. Mr. Tustin advised that funding of \$1 million is available within the FY17 General Fund budget for County road paving, along with \$1 million in the approved FY16 Assigned Fund Balance, and separate funding from the Maryland Department of Natural Resources (DNR) Waterway Improvement Funds will be utilized to resurface the Shell Mill Boat Ramp and Public Landing parking lots.

The Commissioners met with Mr. Tustin to review bid specifications to replace the Big Mill Road Bridge, which was severely damaged during a storm in October 2016. Mr. Tustin advised that all regulatory permits have been applied for as emergency in nature, and it is his understanding that all necessary Maryland Department of the Environment (MDE) permits should be approved by the time bids are received. Mr. Tustin advised that staff applied for but has not yet received approval from the State Highway Administration (SHA) for State Aid Bridge Funding to cover \$343,106 or 80%, leaving the County responsible for funding \$85,776 or 20% of the total estimated project cost of \$428,882. Due to the emergency nature of this project, he advised that it's important to get the project out to bid, while staff works through the regulatory process with SHA to address additional State requirements, which include a significant environmental review.

In response to questions from Commissioner Lockfaw, Mr. Tustin advised that lower water levels in the creek are due to the washout of the roadbed west of the bridge and the box culvert, which occurred when a large chunk of the marsh mat broke away from the upstream shoreline and became wedged in the culvert, forcing the water level to rise and to eventually wash away the road west of the bridge. He advised that the water levels will be restored when the road and bridge are repaired. Following some discussion and upon a motion by Commissioner Lockfaw, the Commissioners unanimously approved bid specifications to replace the Big Mill

Road Bridge.

In a related matter, at the request of Commissioner Lockfaw, the Commissioners agreed to send a letter to local representatives in Annapolis to elicit their support for the project and to inquire with SHA to expedite their review and approval.

Pursuant to the recommendation of Assistant Chief Administrative Officer Kelly Shannahan and upon a motion by Commissioner Lockfaw, the Commissioners unanimously accepted the revised offer from Mike Ramadan, the new liquor store tenant at the Gold Coast Mall in Ocean City, to purchase shelving from the former Shore Spirits Retail Liquor Store (RLS) at that location at a cost of \$1,000, saving the County up to \$3,000 in man hours to remove these items prior to expiration of the RLS lease on January 5, 2017. Mr. Shannahan advised that the book value of the shelves is \$0 due to depreciation.

Pursuant to the recommendation of Mr. Shannahan and upon a motion by Commissioner Purnell, the Commissioners unanimously agreed to extend the contracts for legal advertising services for an additional year through December 31, 2017 from both The Daily Times Group (The Daily Times, Worcester County Times, and Ocean Pines Independent), which serves the entire County, at \$1.00 per line (which is equivalent to the prior cost of \$8.00 per column inch) and the Ocean City Today Group (O.C. Digest/O.C. Today), which serves northern Worcester County, at \$3.00 per column inch. Mr. Shannahan advised that awarding bids to both organizations allows the County to maximize exposure and ensures future competition. He further explained that Ocean City Today Publisher Stuart Dobson offered to add publication of the Bayside Gazette, which now serves southern Worcester County, at an additional cost of \$3.00 per column inch, for a total cost of \$6.00 per column inch for ads operating in all three newspapers; however, the only fair way to consider the revised proposal from Mr. Dobson would be to rebid the legal advertising, which he does not recommend. In response to a question by Commissioner Bertino, Mr. Shannahan advised that County staff posts legal advertisements on the County website, and future bid specifications could include a requirement for successful bidders to post legal advertisements on their websites as well. However, he cautioned that both the Delmarva Media Group and Ocean City Today Group provide the County with fair legal advertisement costs, which have included options for annual extensions, since the contracts were originally awarded for a two-year period beginning on December 31, 2005. He advised that it is unlikely that these favorable costs would be reduced if the County was to rebid for legal advertising.

The Commissioners reviewed and discussed various board appointments.

Upon nominations by the Board of Library Trustees and a motion by Commissioner Mitrecic, the Commissioners unanimously agreed to reappoint Holly Anderson and appoint Nancy Howard, to replace Richard Polhemus whose term expired, to the Board of Library Trustees for five-year terms each expiring December 31, 2021.

Upon a nomination by Commissioner Lockfaw, the Commissioners unanimously agreed to reappoint Mike Hooks to the Recreation Advisory Board for an additional four-year term expiring December 31, 2020.

Upon a nomination by Commissioner Elder, the Commissioners unanimously agreed to

appoint Eugene Magee to the Soil Conservation District Supervisors, for a five-year term expiring December 31, 2021, to replace Kirk Carmean whose term expired.

The Commissioners conducted a public hearing to receive comments on the proposed Worcester County Comprehensive Solid Waste Management Plan for 2017-2026. Mr. Tustin reviewed the plan, as prepared by EA Engineering, Science, and Technology, Inc., PBC, in accordance with the Code of Maryland Regulations (COMAR) 26.03.03 and as required by Sections 9-503 and 9-1703 of the Environment Article of the Annotated Code of Maryland. He stated that the overall goal of the plan is to provide a system of solid waste management and resource recovery that will handle the County's current and anticipated future solid waste volumes economically, while protecting the environment and preserving public health and safety to maintain a better quality of life in the County. Specifically, the plan addresses existing and projected solid waste management, including solid waste collection systems and recyclable materials collection, assessment of County needs, and a plan of action to address those needs. Mr. Tustin noted that the plan, originally developed in 1990, was updated by EA Engineering in 1999 and 2010, and the most recent update includes new data from the latest period, incorporates changes in operations, and addresses comments and concerns by the Maryland Department of the Environment (MDE) and the Worcester County Solid Waste Advisory Committee, in particular MDE's concern that the special events recycling plan be incorporated into the plan.

In response to questions by Commissioner Bertino, Mr. Tustin advised that Section 2.4 Comprehensive Planning and Land Use, which recommends a recycling rate of 40 percent of the County's solid waste, is a long-term goal. He also concurred that the Ocean Pines area sites, White Horse Park and Veterans Memorial, should be eliminated from Section 3.1.10 Special Events Recycling Program (SERP), as these are private, not public, lands and as such are not required to meet the requirements of the SERP. Lastly, Mr. Tustin confirmed that the County has no permanent County-provided recyclables collection system, but instead provides recycling containers, located in diverse locations throughout the County, which are brought to the County-operated recyclables collection system in Newark, which is not open to the public.

Commissioner Bunting opened the floor to receive public comment.

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

Upon a motion by Commissioner Bertino, the Commissioners unanimously adopted Resolution No. 17-1 adopting the Comprehensive Solid Waste Management Plan for Worcester County, Maryland for 2017-2026, as amended to eliminate reference to the two Ocean Pines sites from the provisions of the Special Events Recycling Program.

The Commissioners met with Chief Administrative Officer Harold Higgins to discuss the Ocean City Tax Differential request. Mr. Higgins advised that the Town of Ocean City began requesting a tax differential in 1999, and this request falls under the Tax Property Article Section 6-306 of the Annotated Code of Maryland, which defines a tax setoff as one of two things: a tax differential, which is the difference between the general county property tax rate and the property tax rate that is set for assessments of property in a municipal corporation; or a tax rebate, which is payment to a municipal corporation to help the municipal corporation fund services or programs that are similar to county services or programs. Mr. Higgins stated that Ocean City officials assert that a tax differential is warranted to recognize and credit Ocean City taxpayers

for services provided by the town and paid for by town property taxes, which the County does not provide to Ocean City taxpayers. He advised that tax setoffs can take the form of either property tax rate differentials, or tax rebates, or a combination of the two. He advised that a number of counties in Maryland have established a tax differential, which creates two separate tax rates, one for those within municipalities, and one for those living in unincorporated areas. He further pointed out that both Worcester County and Ocean City commissioned separate studies to determine the level of and dollar total of duplicated services, with the County study identifying \$7.8 million in County property tax revenue for services not provided or duplicated in Ocean City, and the town study identifying \$17.1 million in property taxes that should not be paid by Ocean City taxpayers. Mr. Higgins stated that, based on the County study, a tax differential would result in a property tax rate reduction of \$0.03 per \$100 of assessed value for Ocean City property owners and a property tax rate increase of \$0.057 per \$100 of assessed value for property owners outside of Ocean City, and these rates would vary from year to year depending upon assessments and expenditures.

Mr. Higgins reviewed the State law, noting that Worcester County is not required to provide a tax setoff to Ocean City or any other municipality in the County; though, it has been the County's ongoing practice to issue County grants to municipalities to offset a portion of the cost of services provided to County taxpayers who reside in their towns. However, once a request for a tax setoff was received, the County was required by State law to submit to the municipal corporation financial records and other documentation regarding County revenues and expenditures and designate appropriate policy and fiscal officers or representatives to meet and discuss the nature of the tax setoff request, relevant financial information of the county and municipal corporation, and the scope and nature of services provided by both entities. He advised that this must occur at least 90 days before the required budget adoption date, which is the first Tuesday in June. Therefore, he proposed meeting with Ocean City officials in February or early March, submitting a Statement of Intent to Ocean City on or before March 21, 2017 when the requested budget is released to the public. He noted that the Statement of Intent shall contain an explanation of the level of the proposed tax setoff (if any); a description of the information or process used to determine the level of the proposed tax setoff; and an indication that, before the budget is enacted, town officials are entitled to appear before the County Commissioners to discuss or contest the level of the proposed tax setoff. Furthermore, municipal representatives shall be afforded an opportunity to testify before the County Commissioners at the County Operating Budget public hearing on May 2, 2017.

Mr. Higgins reviewed four options available to the County to address the tax differential request as follows: continue the current practice of issuing County grants to municipalities, and consider the results of the Tax Differential Study to determine the amount of future grants to Ocean City; issue a tax differential, to include establishing a lower County property tax rate for properties within Ocean City and a higher County property tax rate for all properties outside Ocean City, with the property tax rate in Ocean City to be reduced by \$0.03, while the property tax rate outside Ocean City would increase by \$0.057, for a total tax differential of \$0.087 cents; provide a tax rebate, to include providing a direct County payment to Ocean City for providing certain services or programs; or enter into a Memorandum of Understanding (MOU) with Ocean City, to commit the County to increase the annual grant program to the level identified in the Tax Differential Study, recognizing that the County's Tax Differential Study identifies a total of \$3.8

million of duplicated services funded through property taxes that are paid by Ocean City property owners. He concluded that the County spent the past eight years in recession and was in no position to offer additional funding to the town; however, it now appears that revenues are beginning to increase.

In response to a question by Commissioner Bunting, Mr. Higgins stated that if the County issued a tax differential to Ocean City taxpayers the annual unrestricted grant to the Town of Ocean City would be eliminated.

Commissioner Mitrecic stated that town officials have been extremely patient over the years and made good faith efforts to work with the County regarding their tax differential request, and if the Commissioners refuse to grant at least some form of good faith increase at this juncture, they are likely to seek restitution through judicial channels, noting that the County's own study acknowledges Ocean City taxpayers fund \$7 million in duplicate services.

Commissioner Elder stated that threats of legal action are a bullying tactic and noted that the County incurs a number of costs that the study cannot address, such as Ocean City visitors who commit crimes outside the municipality, which result in additional costs to the Sheriff's Office and Jail, and the State wealth formula, which identifies Worcester County as a rich county due to Ocean City property values and thus assigns Worcester County the lowest per-pupil funding in the State. He stressed that the County is just beginning to come out of an eight-year recession, so it is too soon to begin negotiating increased funding to Ocean City.

Commissioner Church stated that town officials have been fairly patient in their request for a tax differential from the County. He pointed out that Ocean City is the goose that laid the golden egg for Worcester County, and while he would not be willing to agree to any change that would result in a tax increase for his constituents, he noted that the Commissioners should address the request by increasing the town's annual grant. Commissioner Mitrecic concurred, noting that it is not his or the town's intent to increase the tax rate for those in the rest of the County, but noted that the County could offer relief through a number of other channels, such as adjusting the administrative fees the County receives for collecting and processing the room tax or food tax.

Commissioner Bunting stated that if the intent is to offer relief to Ocean City property owners for funding duplicate services the only fair option is to approve a true tax differential, since just giving Ocean City more money does not address the real issue.

Following much discussion and upon a motion by Commissioner Bertino, the Commissioners voted 6-1, with Commissioner Mitrecic voting in opposition, to continue the current practice of issuing grants to municipalities.

The Commissioners answered questions from the press, after which they adjourned to meet again on January 17, 2017.