

Minutes of the County Commissioners of Worcester County, Maryland

March 15, 2016

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

Following a motion by Commissioner Mitrecic, seconded by Commissioner Lockfaw, 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 Leigh Adams as a Welcome Center Greeter for Tourism; hiring Raymond Layton as a Landfill Operator III and promoting Richard Mills from Warehouse Driver within Liquor Control to Utility Mechanic I within the Solid Waste Division, and agreeing to promote Mike Mitchell from Solid Waste Manager to Solid Waste Superintendent and reclassifying the position Recycling Manager Ron Taylor to Recycling Coordinator after his retirement on June 19, 2016 within the Solid Waste Division of Public Works; approving one unpaid Marketing Intern position for Volunteer Services; authorizing Swim Aides to be hired at Step 2 to meet FY17 minimum wage requirements; postponing a request for an additional position within the State's Attorney's Office for FY17 Budget discussions; acknowledging the hiring of Michael W. Newcomb, III as a Road Deputy within the Sheriff's Office, and Michael Harmon as a part-time Custodian at the Snow Hill Branch 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.

The Commissioners reviewed and approved the minutes of their March 1, 2016 open and closed session meetings as presented.

The Commissioners presented a proclamation to Mimi Dean, Interim Prevention Director for the Health Department, recognizing the week of April 4-10, 2016 as Public Health Week in Worcester County. Ms. Dean encouraged the public to participate in two events to be hosted by the Health Department during Public Health Week, which include the annual Tortoise and Hare

Dare Walk/Run on April 2 in Pocomoke, and Working for Worcester Public Health Conference on April 6 in Ocean City.

The Commissioners received objections and other public comment on the proposed disposal of surplus County vehicles and equipment no longer used by the County, by auctioning these items on GovDeals.com. There being no objections, the list of personal property, including vehicles, furniture and equipment will be sold online at www.govdeals.com as County surplus property.

Pursuant to the request of Economic Development Director Merry Mears and upon a motion by Commissioner Elder, the Commissioners unanimously approved Resolution No. 16-6, acknowledging and supporting the re-designation of the Snow Hill Arts and Entertainment District and agreeing to provide an income tax subtraction modification for qualified artists residing in the district; authorizing the governing body to grant a property tax credit for certain renovated buildings within the district; and authorizing the government body to grant certain exemptions from the admissions and amusement tax in the district.

Pursuant to the request of Ms. Mears and upon a motion by Commissioner Bertino, the Commissioners unanimously authorized Commission President Bunting to sign the Independent Contractor's Agreement between the County Commissioners of Worcester County, Maryland and Fawn Mete and Ryan Mete (Contractor) for the 2016 Summer Step Up and Reach for the Stars STEM Camp and Internship Program. Ms. Mears advised that the program has been funded at \$77,000 annually since 2013 and serves more than 40 students each year. She stated that this year, to meet increased demand, the program will include a leadership development component for students who may need additional professional development instruction before entering the workplace, thus increasing overall program participation to 58 students.

Pursuant to a request by Emergency Service Director Fred Webster and upon a motion by Commissioner Bertino, the Commissioners unanimously waived the standard bid process for the purchase of switches and approved an authorized over-expenditure in the amount of \$36,586.49 to replace the Court House phone system by installing new phones in the judges' offices in FY16 rather than in FY17 as originally scheduled, due to a catastrophic failure of the existing phone system. The Commissioners awarded the contracts to complete the project as follows: \$17,897 to Alliance Technology Group, LLC of Hanover, Maryland for the purchase and installation of the new phone system under their current contract with the County; and \$18,689.49 to ePlus of Pottstown, Pennsylvania for the purchase of switches to support the new system. Mr. Webster explained that ePlus has performed work for the County in the past, and he was comfortable that the pricing was favorable, even though that the bid process was waived.

The Commissioners met with Public Works Director John Tustin to discuss bid recommendations for the Snow Hill Health Department and Worcester County Recreation Center (WCRC) condenser coil replacement project. Mr. Tustin stated that funds of \$24,700 and \$30,000 for the Health Department and WCRC, respectively, were reserved in the FY16 Unassigned Fund Balance; however, all bids received exceeded the allocated funds. Therefore,

he recommended awarding the low bid to replace the condenser coils in the Health Department at this time and postpone the WCRC replacement until a later date, as provisions can be made to cool the WCRC in the summer months if needed. Upon a motion by Commissioner Lockfaw, the Commissioners unanimously awarded the low bid to replace the existing HVAC rooftop unit condenser coils at the Health Department in Snow Hill to Wilfre Co., Inc. of Hebron, Maryland at a cost of \$43,173 plus \$2,048 for the alternate coil coating for the York units for a grand total of \$45,221.

Pursuant to the recommendation of Mr. Tustin and upon a motion by Commissioner Lockfaw, the Commissioners unanimously approved bid specifications for the purchase of pipe to be utilized by the Roads Division of Public Works.

The Commissioners met with Mr. Tustin to review and discuss the Mosquito Control Program budget for the 2016 season, as outlined in a letter to the County from Daniel J. Schamberger, Maryland Department of Agriculture (MDA) Mosquito Control Acting Program Manager. Mr. Tustin stated that the proposed budget requires County funding of \$83,940 for the Mosquito Control Program in Worcester County, with State funding of \$82,260 and community funding of \$240,300 for a total budget of \$406,500. Mr. Tustin stated that staff has made no changes to last year's program. Upon a motion by Commissioner Lockfaw, the Commissioners approved the proposed budget for Worcester County Mosquito Control for Calendar Year 2016 between the Maryland Department of Agriculture (MDA) and the County Commissioners. Mr. Tustin advised that, like last year, area residents who participate in the program would be required to pay the \$65 fee per residential household up front to cover a portion of the cost of spraying.

Upon the recommendation of Mr. Tustin, based on a requirement by the Maryland Department of the Environment (MDE), and upon a motion by Commissioner Mitrecic, the Commissioners unanimously authorized Commission President Bunting to sign the Central Landfill Property Declaration of Covenant. In response to a question by Commissioner Lockfaw, Mr. Tustin explained that the covenant provides that, once the County no longer requires use of the site as a landfill operation, no construction or excavation could be undertaken on that property without first obtaining written authorization by the Secretary of MDE.

The Commissioners met with Fire Marshal Jeff McMahon to discuss options to replace the 1982 Ford/Swab hazardous materials (Hazmat) response vehicle for the Special Hazards Response Team within the Fire Marshal's Office, which is aged and in need of repairs that would total \$31,000. Mr. McMahon stated that of the three potential replacement vehicles available, the 2015 Ford F-550 at a cost of \$131,600 would best serve the needs of the Special Hazards Response Team. In response to a question by Commissioner Mitrecic, Mr. McMahon stated it would cost approximately \$315,000 to purchase a new vehicle. In response to a question by Commissioner Bertino, Mr. McMahon advised that the 2015 Ford F-550 is a demo, with only minimal wear and tear. After some discussion and upon a motion by Commissioner Bertino, the Commissioners unanimously authorized Mr. McMahon to negotiate the best price possible for

the 2015 Ford F-550 Hazmat response vehicle, with a warranty, and return to the Commissioners for formal approval.

Pursuant to the recommendation of Development Review and Permitting Director Ed Tudor and upon a motion by Commissioner Church, the Commissioners unanimously adopted the Findings of Fact and Zoning Reclassification Resolution No. 16-01, regarding Rezoning Case No. 395, filed by Hugh Cropper, attorney, and Sun TRS Frontier, LLC, applicant, which was heard by the Commissioners on March 1, 2016 and which formally rezones approximately 36 acres of land shown on Tax Map 33 as part of Parcel 94, located to the east of MD Rt. 611 and north of MD Rt. 376 from C-2 General Commercial District to A-2 Agricultural District.

Pursuant to the recommendation of Mr. Tudor and upon a motion by Commissioner Purnell, the Commissioners unanimously adopted the Findings of Fact and Zoning Reclassification Resolution No. 16-01, regarding Rezoning Case No. 396, filed by Hugh Cropper, attorney, and the Estate of Mildred L. Parsons, Margaret P. Bunting, personal representative and applicant, which was heard by the Commissioners on March 1, 2016 and which formally rezones 11.5 acres of land shown on Tax Map 21 as Parcel 72, located on the easterly side of MD Rt. 589 to the north of Gum Point Road, from A-1 Agricultural District to C-2 General Commercial District.

The Commissioners met with Mr. Tudor to discuss the Town of Berlin's proposed draft Annexation Resolution. Mr. Tudor informed the Commissioners that by virtue of the above-referenced Annexation Resolution, the Town of Berlin is proposing to annex certain parcels owned by the town and identified on Tax Map 25 as Parcels 52, 57, and 410, which is commonly known as the old Tyson chicken plant. Mr. Tudor stated that the property proposed for annexation is zoned I-2 Heavy Industrial District under County zoning, and the town is proposing to rezone the property to R-1 Residential District zoning upon annexation, with plans to develop the property as a public park and related recreational and cultural facilities, which are substantially different uses than those currently permitted on the site. He explained that pursuant to the provisions of Article 23A of the Annotated Code of Maryland the annexed land cannot allow uses substantially different than those in the zoning category of the County for a period of five years after the annexation, unless the County consents to the proposed rezoning upon annexation. Upon questions from Commissioner Bertino, Mr. Tustin explained that the town will have substantial work to do on the property to clean it up in preparation for the proposed use, but there would be no cost to the County. Following some discussion and upon a motion by Commissioner Church, the Commissioners unanimously agreed to send a letter to the Town of Berlin concurring with the rezoning upon annexation of the subject property.

The Commissioners met with Mr. Higgins and Budget Officer Kathy Whited to review the Worcester County Departmental Operating Budget Requests for FY17. Mr. Higgins 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 are estimated to be \$187,404,247, which is an increase of \$4,954,138 or 2.7% more than the current year. He stated that the requested general fund operating expenditures total \$193,946,906, which leaves a

shortfall of \$6,542,659 that must be reconciled by either reductions in expenditures, additional revenues or a combination of the two.

Mr. Higgins advised that, based on the current tax rate of \$0.835 per \$100 of the real property assessment, Net Property Taxes are projected to increase by \$2,274,817, primarily as a result of increased assessments and Homeowner Tax Credits for the first time since 2008. Income Tax revenues are anticipated to increase by \$3,400,000 at the current tax rate of 1.75%, which became effective January 1, 2016, based on actual receipts for a full year and increased estimates. Other Local Taxes are expected to increase by \$287,500, which includes an increase of \$250,000 in Transfer Taxes and an increase in Room Taxes of \$97,500. Mr. Higgins advised that projected revenues increased from FY16 by \$4,954,138 or a 2.7% increase, while expenditure requests increased by \$11,496,797 or 6.3% increase. Mr. Higgins advised that major requested expenditure variances from FY16 to FY17 include the following: Sheriff's Office increase of \$914,202, due to additional personnel and equipment requests; Jail budget increase of \$353,272, due to additional personnel and increases in the inmate's medical contract costs; additional funds for the Fire Training Center of \$100,000 to cover the cost to purchase one replacement hazmat response vehicle; increased Roads Division funding of \$1 million for road paving; requests for grants to towns increased by more than \$1 million; taxes shared with towns increased by \$343,500; and salary, insurance and benefits package for County employees reflects an increase of \$2,860,279, which includes a salary increase of \$614,580 to provide a 2.5% step and longevity for those eligible, increased health insurance costs of \$658,188 based on an estimated increase of 10.5% for health benefits, Other Post Employment Benefits (OPEB) funding by \$1 million, and retirement contributions, which are anticipated to increase by \$339,184; Interfund Charges to assume the costs of recycling in the amount of \$684,720, and to assume the cost of the Solid Waste homeowner convenience centers (HOCCs) in the amount of \$504,505; and Board of Education (BOE) increases of \$3,228,127 to provide payroll increases of 2.3%, bus contractor increases, and increased starting teachers pay by 2.2% from \$42,433 to \$43,384.

The Board of Education (BOE) operating budget request is \$82,583,680, plus school construction debt of \$10,765,450 paid by the County on behalf of the BOE, which totals \$93,349,130 or 49.8% of the County's total estimated revenue.

Mr. Higgins informed the audience that the public hearing on the requested budget is scheduled for Tuesday, May 3, 2016, at 7:00 p.m. in the Snow Hill High School Auditorium, and the upcoming budget work sessions have been scheduled for March 22 and April 12, as well as May 10, May 18, and May 24, 2016 if needed. He advised that these work sessions are open to the public.

The Commissioners recessed until 11:00 a.m.

The Commissioners met in legislative session.

The Commissioners conducted a public hearing on Bill 16-1 (Zoning - Commercial Marine Yards in the CA Commercial Airport District), which was introduced by Commissioners Bertino, Church, Elder and Mitrecic on February 16, 2016. Mr. Tudor reviewed Bill 16-1, which would amend the Zoning and Subdivision Control Article to amend various sections of the CA Commercial Airport District regulations and Lot Requirements to permit commercial marine yards and associated uses in the CA District and to exempt structures in the CA District from

height limits, except those limits of the AP Airport Protection District. Specifically, it would amend Section ZS 1-303 to permit the proposed commercial marine yards, as well as adding provisions to Section ZS 1-305(n)(2) to exempt structures in the CA District from height restrictions. Mr. Tudor advised that the application received a favorable recommendation from the Planning Commission.

Commissioner Bunting opened the floor to receive public comment.

Attorney Mark Cropper stated that he represents a vendor that wants to build and outfit custom specialty boats in Worcester County, but that currently such operations are only permitted in the Industrial Zone and do not provide the deep water access needed for such a business. He stated that Bill 16-1 is needed to permit custom boat building businesses in the CA Commercial Airport District, where they would be on the water. He advised that such a business would be an economic boon to Worcester County, as the nearest boat repair businesses are located in New Jersey and North Carolina. He stated that the Ocean City Mayor and Council expressed their support of the proposal and their desire to allow such businesses on the Ocean City Airport property. He further explained that the property may be used as a landing to support future offshore wind facilities, which is also favored by the Town of Ocean City. In conclusion, he asked the Commissioners to adopt Bill 16-1 as presented.

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

Commissioner Mitrecic stated that the proposed use is a great fit with operations at the airport and he understood it would bring 25 skilled jobs to Worcester County initially and grow by another 75 jobs for a total of 100 skilled jobs once the business is fully operational. He further stated that, since this is simply enabling legislation, neighboring property owners would have a chance to comment on the specific project once plans are submitted.

Upon a motion by Commissioner Mitrecic, the Commissioners unanimously adopted Bill 16-1 (Zoning - Commercial Marine Yards in the CA Commercial Airport District) as presented.

The Commissioners conducted a public hearing on Emergency Bill 16-2 (Public Safety - Townhouse Fire Sprinkler Systems), which was introduced by Commissioners Bertino, Bunting, Church, Elder, Lockfaw, Mitrecic and Purnell on February 16, 2016. Fire Marshal Jeff McMahon reviewed the emergency bill, which would repeal and re-enact Section PS 1-410(e)(2) of the Public Safety Article to allow a group of three or more townhouse units to be equipped with automatic fire sprinkler systems compliant with a National Fire Protection Association (NFPA) 13D system (for one and two-family dwellings and manufactured homes), rather than an NFPA 13R system (for low-rise residential, multi-family occupancies), where such structures are provided with an automatic audible flow enunciator and an approved exterior fire department connection.

Commissioner Bunting opened the floor to receive public comment.

John Kotoski of Berlin, with the Maryland Builders Association, expressed strong support for the bill, noting that it would provide the same level of fire protection at a significant reduction in cost.

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

Upon a motion by Commissioner Mitrecic, the Commissioners unanimously adopted

Emergency Bill 16-2 (Public Safety - Townhouse Fire Sprinkler Systems), as presented. Commissioner Church thanked Mr. McMahon and Development Review and Permitting Director Ed Tudor for their prompt attention to this matter and for meeting with him to develop this legislation.

The Commissioners met with Environmental Programs Director Bob Mitchell to review a text amendment application submitted by Attorney Hugh Cropper, on behalf of Ayres Creek Family Farm, LLC, seeking to amend the Natural Resources Article to add an additional land use to be permitted within the Resource Conservation Area (RCA) of the Atlantic Coastal Bays Critical Area, Section NR 3-108(d)(9) to permit an office and/or establishment utilized by a nonprofit environmental conservation and land preservation organization within the RCA. Mr. Mitchell advised that the application was reviewed and modified slightly by staff at the Maryland Critical Area Commission (CAC) to meet the applicant's needs and still satisfy the intentions of the RCA. He stated that staff favorably recommends the text amendment.

Following some discussion, Commissioners Bertino, Bunting, Church, Elder, Lockfaw, Mitrecic and Purnell introduced the aforementioned legislation as Bill 16-3 and scheduled a public hearing on April 19, 2016 to receive comments on the bill.

Commissioner Bunting closed the legislative session.

The Commissioners conducted a public hearing on Rezoning Case No. 398, for an application submitted by Attorney Hugh Cropper, IV on behalf of Salt Grass Bali Hi, LLC, property owner, for an amendment to the Official Zoning Maps to rezone approximately 24.031 acres of land located on the south side of St. Martins Neck Road and west side of Salt Grass Point Road, in the Fifth Tax District of Worcester County, Maryland and identified on Tax Map 10 as part of Parcel 314 (Outparcel 1) from E-1 Estate District to A-2 Agricultural District. Staff members present at the hearing were Development Review and Permitting Director Ed Tudor and Deputy Director Phyllis Wimbrow. County Attorney Maureen Howarth informed the public of the procedures in this rezoning case. She then swore in those individuals who planned to give testimony during the hearing. Mr. Tudor reviewed the application. Ms. Wimbrow entered the Planning Commission's Findings of Fact into the record and stated that, according to the application for rezoning, the applicants' claim as the basis for their rezoning request was that there is a mistake in the existing zoning classification of the petitioned area and that there has been a substantial change in the character of the neighborhood since the last comprehensive rezoning adopted by the Commissioners on November 3, 2009. She stated that the petitioned area is defined as being bound on the north side by St. Martins Neck Road and extending along a creek in an easterly direction to the Assawoman Bay, on the east by the Assawoman Bay, on the south by St. Martins River but not including the Isle of Wight, and on the west by Harry Creek and is largely agrarian and rural in nature, including agricultural uses and scattered, low density residential uses, as well as the Bali Hi Campground across Salt Grass Point Road from the petitioned area. Ms. Wimbrow advised that the application received a favorable recommendation from the County Planning Commission, which had concluded that there is a mistake in the existing zoning of the petitioned area and found that the petitioned area is shown by the Comprehensive Plan as being within the Agricultural Land Use Category, as is most of the St.

Martins Neck Road corridor. Additionally, sensitive areas, poorly drained soils and a roadside location make residential development of the petitioned area difficult and inappropriate. Thus the petitioned area should not be zoned E-1. However, the Planning Commission concurred with the applicant's argument that of even more important is the fact that the E-1 Estate District does not function as intended because, while it is meant to beneficially lower density and thus crowding, it has now been shown to ineffectively and inefficiently consume large amounts of land; therefore, it actually results in undesirable sprawl, which is diametrically opposed to the smart growth called for in the Comprehensive Plan. She further stated that the Planning Commission agreed with Mr. Cropper's assertion that the existing E-1 Estate District on the petitioned area is a mistake.

Commissioner Bunting opened the floor to receive public comment.

Mr. Cropper, attorney for the applicant, concurred with staff's assessment and advised that the basis for the proposed change in zoning from A-1 to C-2 is that there has been a change in the character of the neighborhood since the 2009 Comprehensive Rezoning. He concurred with the Planning Commission's report and Findings of Fact and entered them into the record. He stated that the property is not suitable for any of the E-1 uses, but is suited for all of the A-2 uses. He further advised that the petition for rezoning does not include that portion of the petitioned area that lies within the Critical Area, the proposed boundary is intended to follow the Critical Area line, and if the proposed rezoning is granted the property owner will create a boundary line adjustment to remove the Critical Area portion of the subject property from the boundaries of Outparcel 1. He then identified the neighborhood, and he pointed out any area within a five to 10 minute drive of the petitioned area and all of the properties served by the Lighthouse Sound Wastewater Treatment Plant (WWTP) should be considered as being within the neighborhood. He asked the Commissioners to accept the Planning Commission's findings of fact with regard to the proposed rezoning.

In response to questions by Mr. Cropper, Land Planner and Landscape Architect Bob Hand stated that the definition of the neighborhood is appropriate and stated that there is a mistake in the existing zoning for the following reasons: the petitioned area is shown by the Comprehensive Plan as being within the Agricultural Land Use Category, as is most of the St. Martins Neck Road Corridor; sensitive areas, including a creek and wooded nontidal wetlands, are located on the westerly portion of the petitioned area and are not conducive to residential development; and the soils on the site are poorly drained and would most likely not pass seasonal testing for onsite septic disposal systems. He stated that while the petitioned area, which is located at the junction of St. Martins Neck Road and Salt Grass Point Road, is not suitable for the peaceful enjoyment of a residential subdivision, it could be utilized for purposes allowed by the A-2 Agricultural District, which with a special exception could include a campground. More importantly, he advised that the E-1 Estate District has not accomplished what it was intended to do, since the lower density actually consumes large swaths of land and results in sprawl, which is the antithesis of the smart growth that is called for in the Comprehensive Plan. He further noted that at one time a single-family residential subdivision of 12 homes on two-acre lots, designed in accordance with the E-1 Estate District regulations, had been planned for the property of which the petitioned area is an outparcel. However, when weighing the cost of development, including the installation of infrastructure, such as roads, stormwater management facilities, sewer and the like, against the projected value of the lots, it was determined that the costs were out of

proportion and the project was abandoned. He concluded that rezoning the property A-2 Agricultural District better fits within the character of the neighborhood; would result in less impervious surfaces than a subdivision and would have no County roads to maintain; have no adverse impact on the State's impaired waters list with total maximum daily load (TMDL) requirements; create a positive tax base; and cluster a campground next to an existing campground, which is smart growth..

Bruce Spangler of St. Martins Neck Road stated concern that rezoning the property A-2 would lower the value of surrounding properties and questioned whether the County would issue him a tax rebate if that were to occur. Chief Administrative Officer Harold Higgins advised that the Maryland State Department of Assessment and Taxation (SDAT) assesses property values in three-year cycles. However, if the Commissioners chose to rezone the petitioned property, and if Mr. Spangler felt that doing so had adversely affected the value of his property, he could contact the SDAT to appeal his existing assessment.

Bill Grimes, President of Bali Hi RV Park, stated that the Bali Hi RV Park has seen a steady decline in its property values since 2009, and if the proposed rezoning is permitted it will further affect property values and cause additional traffic, as individuals driving oversized campers may mistake the Bali Hi RV Park for the campground to be located on the opposite side of the road and get stuck on Bali Hi's private roads. He stated that a new campground would also create more traffic on St. Martins Neck Road where residents already have difficulty merging onto MD Rt. 90 into Ocean City during the summer. Therefore, he advised that the residents of the Bali Hi RV Park are opposed to the proposed rezoning.

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

Commissioner Bunting thanked those who spoke at the hearing. In response to a question by Commissioner Mitrecic, Commissioner Bunting stated that the sole purpose of the hearing is to determine if there is a mistake in the existing zoning, and he is of the opinion that the applicant has indeed proven beyond a reasonable doubt that there is a mistake in the existing zoning. He further stated that those who oppose any potential future uses proposed for the property will have an opportunity to voice their concerns before the Board of Zoning Appeals once plans for the site are presented.

Upon a motion by Commissioner Mitrecic, the Commissioners unanimously adopted the Planning Commission's Findings of Fact and approved the rezoning based on a mistake in the existing zoning of this property and agreed to rezone the property from E-1 to A-2.

In response to concerns raised by Commissioner Mitrecic, Mr. Tudor agreed to notify Mr. Spangler of any further applications to the Board of Zoning Appeals involving the subject property. Mr. Tudor further explained that the Code requires notification of adjoining properties and also posting a public notice on the property.

The Commissioners adjourned for lunch.

The Commissioners conducted a public hearing to receive public comment on both the proposed staff policy on utilization of new Mystic Harbour Sanitary Capacity in the Mystic Harbour/West Ocean City (WOC) Overlay District, and requests from Attorneys Hugh Cropper and Mark Cropper on behalf of their clients for establishment of a policy to permit the private

transfer of equivalent dwelling units (EDUs) of sanitary capacity in the Mystic Harbour Sanitary Service Area (SSA), similar to that which has been permitted in the WOC SSA since 1997. Environmental Programs Director Bob Mitchell and Public Works Deputy Director John Ross reviewed a PowerPoint presentation outlining the following: history, financial status, infrastructure, new connection to Pump Station No. 4, how the implementation plan will be accomplished, basic tenets and staff recommendations for the proposed utilization policy, and the requests from area attorneys on behalf of their clients for a policy allowing private transfer of sanitary capacity in Mystic Harbour, County experience with EDU transfers in WOC, and staff recommendation against the requested EDU transfer policy.

Mr. Mitchell stated that the Mystic Harbour Wastewater Treatment Plant (WWTP) had recently been upgraded and expanded at a cost of \$12.8 million, with grant funding which reduced the cost to \$8.1 million to be repaid by the current and future ratepayers within the Mystic Harbour sanitary service area. He pointed out that a significant portion of the debt repayment plan hinges on the sale of the additional 666 EDUs, with 331 EDUs expected to be sold to new customers in the Mystic/WOC overlay area. He stated that in addition to the current debt service, another \$3.2 million in additional improvements are required for land disposal – spray irrigation; and these combined costs are to be covered through the sale of EDUs at a cost of \$7,292 (equity contribution), plus an additional \$48 per quarter for debt service. He noted that the County's financing plan relies on the sale of roughly 30 EDUs each year to cover the debt service. Otherwise, rates will increase for existing customers. With regard to infrastructure, Mr. Ross advised that the overlay area presents an infrastructure challenge, since the County has two separate sewage collection systems: one for the WOC SSA, which is served by the Ocean City WWTP, and the second for the Mystic Harbour SSA, and staff has determined that WOC pump station No. 4 can be retrofitted to convey flow to either the OC or Mystic Harbour WWTP as necessary to accommodate the customers in each service area. He advised that the connection will be made between the WOC pump station No. 4 and Mystic pump station No. 7 for the transfer of flow. He advised that the Worcester County Sewer Committee strongly recommends implementing the proposed County policy for the sale, allocation and use of the additional sewage treatment capacity in the Mystic Harbour SSA as presented.

Mr. Mitchell went on to advise that the County received requests from two local attorneys on behalf of their clients to allow the transfer of privately owned water and sewer EDUs of public sewer and water capacity in the Mystic Harbour SSA, which include 40 EDUs of unconnected sewer and water capacity allocated to the Sea Oaks property, and a similar total of approximately 84 sewer and 78 water EDUs that have not been placed in service on the former Showell property. He stated that EDU transfers have been permitted in the WOC SSA since 1997, but this resulted in overinflated prices for EDUs, which created unnecessary barriers to infill development and redevelopment, thus thwarting County efforts to promote economic development in that area. He cautioned that if the County is unable to sell 30 EDUs each year in the Mystic Harbour SSA the financial system will not generate adequate funding to pay the debt service, and Mystic Harbour ratepayers will be required to cover the remaining debt through increased rates. Therefore, the Sewer Committee recommended that the request for adoption of an EDU transfer policy in the Mystic Harbour SSA be declined, noting that creating such a market for the private transfer of EDUs will directly compete with the County sale of EDUs that are critical to the Mystic Harbour financing plan.

Commissioner Bunting expressed concern regarding how the County would be able to make the annual debt service payment if the proposed transfer of EDUs out of the SSA results in the County's inability to sell the 30 EDUs per year needed to cover the annual debt service payment and asked what the impact would be if the EDUs were not sold. In response, Assistant Chief Administrative Officer Kelly Shannahan advised that the sale of 30 EDUs would generate \$218,760 of revenue each year. If no sales occurred that cost would be borne by the existing 1,052 ratepayers at an additional cost of \$208 per customer above their existing rate for each year that the County is unable to sell 30 EDUs. In response to a question by Commissioner Bunting, Mr. Ross stated that plans to begin a project to spray effluent on the Eagles Landing Golf Course is scheduled to begin at the close of the 2016 summer season.

Commissioner Bunting opened the floor to receive public comment.

Mark Cropper, attorney for Ann's Landing, LLC and Adam Showell (Showell Entities) requested to transfer 69 EDUs of water and sewer service from his client's property, located at the eastern terminus of Sunset Avenue previously known as Tax Map 27, Parcel 487 which has been re-subdivided; and Hugh Cropper, attorney for Kelly Farm Associates, requested to transfer 40 EDUs of water and sewer service from his client's 39.672-acre property, located on the west side of Maryland Route 611, with the sewer EDUs to be transferred to the property of GTF, LLC, identified on Worcester County Tax Map 27 as Parcel 144 and known as the Wheels of Yesteryear, located on the south side of U.S. Route 50 in West Ocean City, and the water EDUs to be transferred to the Food Lion Shopping Center on the west side of Stephen Decatur Highway and identified on Worcester County Tax Map 27 as Parcel 150, lands of Ocean City Market Place, LLC.

Attorney Mark Cropper stated that neither he nor Attorney Hugh Cropper are asking the Commissioners to adopt a blanket policy that would permit the general transfer of EDUs within the Mystic Harbour SSA, but rather they seek an exception solely for the benefit of the clients they are representing here today and whom they believe deserve special consideration due to extenuating costs and circumstances. He reviewed the history of his clients who purchased 100 EDUs of sewer capacity in 2002 at a cost of roughly \$1 million to construct a 165-room hotel, but that due to the downturn in the economy a few years later the facility was never constructed, and 69 of the EDUs have never been utilized. His client has also paid \$386,400 to retain the rights to use these EDUs over the past 14 years. He stated that recently his client was contacted by various property owners in the WOC SSA interested in purchasing a portion of his client's EDUs because there are simply too few EDUs remaining and available within the WOC SSA to meet the existing and future development demands in that area. He argued that not permitting the transfer would mean that a significant portion of EDU capacity in the Mystic Harbour SSA would forever remain unused. Therefore, he asked the Commissioners to reconsider the County policy prohibiting EDU transfers in the Mystic Harbour SSA and allow his clients to sell the water and sewer EDUs in the Mystic Harbour/WOC overlay area. He further noted that his client purchased the EDUs when the SSA was being served by the former Mystic Harbour Wastewater Treatment Plant (WWTP), so they should not be required to help fund the debt service for the new WWTP. He further stated that the proposed sale would in no way compete with or jeopardize the County's ability to sell EDUS within the Mystic Harbour SSA because his client's EDUs are not new EDUs that resulted from the construction of a new WWTP with additional capacity, nor will his clients be able to sell their EDUs at inflated rates because if they attempted

to do so the parties interested in acquiring them would simply acquire them from the County. Furthermore, he advised that once his client's EDUs have been exhausted the only option available for the purchase of EDUs would be through the County.

In response to a question by Commissioner Bertino, Mr. Ross stated that the argument that the EDUs were purchased when the former WWTP was in use but never used has no bearing as the basis for an argument on why those individuals should not be required to help shoulder the debt service for the new plant. First, the former WWTP, an aged and failing facility, was torn down and replaced by a new, state-of-the-art WWTP that is capable of accommodating additional capacity; therefore, flow from all customers in the Mystic Harbour SSA, regardless of when their EDUs were purchased, is being processed by the new WWTP, and thus the cost of debt service must be shouldered equally by all ratepayers in the SSA. Second, a quarterly fee is assessed for each EDU in the SSA regardless of whether that EDU is being utilized or reserved for future use.

Commissioner Bertino stated his concern that other ratepayers in the Mystic Harbour SSA could be negatively impacted if the Commissioners approve Mr. Cropper's clients' requests and the County is unable to sell a minimum of 30 EDUs per year to cover the budgeted portion of the annual debt service payment to be paid by new customers. He stated that the Commissioners are tasked with making a difficult decision, and regardless of the outcome there will be winners and losers. He stated that he would be more inclined to grant their requests if there was a way to do so without negatively impacting the other ratepayers in the SSA.

Mitch Parker, of Kelly Farm Associations, former owners of Frontier Town Campground, advised that the company that purchased the campground from him plans to purchase 165 EDUs of sewer service from the Mystic Harbour SSA, which would satisfy the minimum annual EDU sales needed by the County to help pay the debt service on the new plant for the next five years. Furthermore, he stated that Kelly Farm Associates just purchased the Food Lion Shopping Center in WOC, which is currently being served by a well, and he plans to transfer 40 EDUs of water from the Mystic Harbour SSA to serve that shopping center.

In response to a question by Commissioner Elder, Attorney Hugh Cropper stated that his client purchased 40 EDUs from the previous owner of the Mystic Harbour WWTP, Jack Burbage, to build the Sea Oaks subdivision, located off MD Rt. 611 in an environmentally sensitive, wooded area, but that developing that property does not constitute smart growth; whereas, transferring those EDUs to the existing commercial center in WOC does make good sense. Therefore, he requested that the Commissioners support his client's request to transfer the EDUs to properties in West Ocean City.

Richard Jendrek of the Water and Sewer Advisory Council for the Mystic Harbour SSA questioned what assurances the County has that the EDUs Mr. Parker referred to will be purchased and used in the near future. Mr. Parker stated that the purchase of the 165 EDUs by Frontier Town is imminent.

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

Commissioner Church stated that it would be condemnation without compensation not to allow the individuals here today to sell unused EDUs for which they have invested nearly \$4 million in fees from the time of their initial purchase. Commissioner Elder concurred.

Commissioner Mitrecic stated that he could support the transfer given that Frontier Town is buying 165 EDUs, which will satisfy the financial needs of the Mystic Harbour SSA for the

next five years.

In response to a question by Commissioner Bertino, Assistant Finance Officer Jennifer Swanton recommended that approval of the EDU transfers be made contingent upon the sale of the 165 EDUs to Frontier Town.

Following much discussion and upon a motion by Commissioner Church, the Commissioners voted 5-1-1, with Commissioner Bertino voting in opposition and Commissioner Bunting abstaining from the vote, to approve the requests to transfer 69 equivalent dwelling units (EDUs) of water and sewer service from the property of Ann's Landing, LLC and Adam Showell (Showell Entities), located at the eastern terminus of Sunset Avenue previously known as Tax Map 27, Parcel 487; and to transfer 40 equivalent dwelling units (EDUs) of water and sewer service from the 39.672 acre Kelly Farm Associates property, located on the west side of Maryland Route 611, with the understanding that the sewer EDUs will be transferred to the property of GTF, LLC, identified on Worcester County Tax Map 27 as Parcel 144 and known as the Wheels of Yesteryear, located on the south side of U.S. Route 50 in West Ocean City and the water EDUs will be transferred to the Food Lion Shopping Center located on the west side of Stephen Decatur Highway and identified on Worcester County Tax Map 27 as Parcel 150, lands of Ocean City Market Place, LLC.

Following further discussion and upon a motion by Commissioner Church, the Commissioners unanimously adopted the proposed staff policy for the sale, allocation and use of the additional sanitary capacity in the Mystic Harbour Sanitary Service Area (SSA) and specifically the Mystic Harbour/WOC Overlay District.

The Commissioners answered questions from the press, after which they adjourned to meet again in closed session.

Following a motion by Commissioner Church, seconded by Commissioner Purnell, the Commissioners unanimously voted to meet in closed session at 2:50 p.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: authorizing Chief Administrative Officer Harold Higgins to make staffing decisions in the Department of Liquor Control as necessary to implement the Exit Strategy; agreeing to foreclose on the former Pusey Country Store property in Snow Hill assumed in the last tax sale, and offering the property for sale; receiving legal advice from counsel; and performing administrative functions.

Following the closed session, the Commissioners adjourned to meet again on April 5, 2016.