

Minutes of the County Commissioners of Worcester County, Maryland

October 20, 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 Elder, 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 Weston Young, County Attorney Roscoe Leslie, Public Information Officer Kim Moses, Human Resources Director Stacey Norton, State's Attorney Kris Heiser, Sheriff Matt Crisafulli, Fire Marshal Jeff McMahon, Emergency Services Director Billy Birch, and Recreation, Parks, Tourism, and Economic Development Director Tom Perlozzo. Topics discussed and actions taken included hiring Cody Johnston as an Analyst/Technician within Information Technology and other personnel matters; receiving legal advice from counsel; and performing administrative functions, including reorganizing Economic Development and Tourism and reconfiguring parking assignments in the Franklin Street parking lot.

Following a motion by Commissioner Nordstrom, seconded by Commissioner Purnell, the Commissioners unanimously voted to adjourn their closed session at 9:33 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 Pastor Dale Brown of the Community Church at Ocean Pines and pledge of allegiance, announced the topics discussed during the morning closed session.

The Commissioners reviewed and approved the open and closed session minutes of their October 6, 2020 meeting as presented.

The Commissioners presented a proclamation recognizing October 19-23 as Economic Development Week to Greater Ocean City Chamber of Commerce Publications Manager Nancy Schwendeman, Worcester County Economic Development Director Lachelle Scarlato, Snow Hill Chamber of Commerce Board of Directors member Lee Chisholm, and Pocomoke Chamber of Commerce Executive Director Lisa Taylor. The Commissioners highlighted the County's partnerships with the area chambers of commerce, which enhance the economic growth of the region by providing leadership, inspiration, education, and development opportunities that

support and promote all segments of the business community.

Pursuant to the recommendation of Public Works Director John Tustin and upon a motion by Commissioner Elder, the Commissioners unanimously authorized Commission President Mitrecic to sign the Right of Way Easement, granting Choptank Electric Cooperative, Inc. a 10-foot wide easement around the electrical service line serving the new spray irrigation equipment at the Newark spray irrigation site.

The Commissioners met with Environmental Programs Director Bob Mitchell to review a request from Hugh Cropper, attorney for Salt Grass Point Farms, LLC for allocation of one equivalent dwelling unit (EDU) of sanitary sewer service from the Mystic Harbour Sanitary Service Area (SSA) to serve a proposed 900-square-foot office building, as part of a proposed 75,919-square-foot mini storage facility to be constructed on a 5.5-acre parcel located on the easterly side of Stephen Decatur Highway (MD Rt. 611) and more specifically identified on Tax Map 33 as Parcel 136. Mr. Mitchell advised that the property is currently zoned C-2 General Commercial District and is designated S-1 (sewer services within two years) in the County Water and Sewerage Plan, though this does not guarantee any service or obligate the provision of services in that time frame. He stated that currently this property has no water or sewer EDU allocations. Therefore, if the Commissioners approve the request for the sewer EDU allocation, the applicant will also be required to purchase water service from the Mystic Harbour water system.

Mr. Mitchell advised that 31 EDUs are available in Area 2 (south of the airport) as follows: Vacant or Multi-Lot properties (one EDU), Assateague Greens Golf Course (six EDUs), Church (five EDUs), and Single Family Dwellings (19 EDUs). In response to a question by Commissioner Mitrecic, Mr. Mitchell clarified that EDUs are not allocated for use with public storage units, so this sewer EDU would only be available to serve the office space, which is to be handicap accessible and available for use by customers.

Upon a motion by Commissioner Bertino, the Commissioners unanimously approved Option 1, allocating one EDU to the property from the Vacant or Multi-Lot category in Area 2.

The Commissioners met with Chief Administrative Officer Harold Higgins and Recreation, Parks, Tourism, and Economic Development Director Tom Perlozzo to discuss a written request from Recreation and Parks Director Kelly Rados for funding to purchase equipment for the concession stand at Showell Park. Mr. Higgins stated that it would cost approximately \$20,000 to fully equip the concession stand; however, capital expenditure requests were cut significantly for FY21. He stated that at a minimum the department can absorb costs of \$5,700; however, \$314,000 is available within the Other General Government budget as a contingency fund, and the department could request funds from this category to purchase the equipment or request this equipment in FY22. Mr. Perlozzo recommended purchasing only the equipment needed to pass inspection by the Health Department in FY21 and revisiting the request for the remainder of the equipment in FY22. These items include the grill, hand sink area, three-compartment sink, mop sink area and faucet, stainless steel table to support the grill, and ice machine for approximately \$5,700, which would be reimbursed at a rate of 90 percent through the Maryland Department of Natural Resources Program Open Space.

Upon a motion by Commissioner Purnell, the Commissioners unanimously approved the request as outlined by Mr. Perlozzo to use approximately \$5,700 to purchase the equipment needed to pass inspection.

Pursuant to the request of Information Technology Director Brian Jones and upon a motion by Commissioner Nordstrom, the Commissioners unanimously approved the request for proposals (RFP) for a private entity to partner with the County to address the lack of broadband infrastructure in the County by expanding high-speed broadband to unserved areas of the County. Mr. Jones advised that the State will soon be accepting applications for the Broadband Expansion Grant Program, and the County partner could apply for the grant funds on behalf of the County to bring broadband to the rural areas. He stated that there is no cost associated with the RFP.

In response to a question by Commissioner Bertino, Mr. Jones confirmed that the County would not be obligated to use any company. He advised that it would likely take 30 days to identify a suitable vendor and, hopefully, project construction would begin by spring 2021. He stated that the vendor would bear any infrastructure costs for the project.

Sheriff Matt Crisafulli met with the Commissioners to provide information requested at their October 6, 2020 meeting regarding the FY20 End of Year Transfer Request of \$81,123 for uniforms in the Sheriff's Office. Sheriff Crisafulli advised that the increase in this line item occurred because the vendor used by the department for dress uniforms went out of business. He stated that the original plan was to phase in the purchase of new dress uniforms over the next three years; however, due to the COVID-19 pandemic, his office identified a vendor selling washable dress uniforms and decided to purchase 460 sets now to limit staff's possible exposure to COVID-19 by eliminating the need for dry cleaning.

In response to questions by Commissioner Bertino, Colonel Doug Dods advised that staff has developed a plan to phase in the remainder of the needed dress uniforms over the next three years, which should reduce the amount of funding requested for this expenditure in future budgets.

Following some discussion and upon a motion by Commissioner Bertino, the Commissioners unanimously approved the requested FY20 Year End Budget Transfer of \$81,123 for uniforms as requested.

The Commissioners met with Development Review and Permitting Director Ed Tudor and Deputy Director Jennifer Keener to review a request from Marvin Steen, president of Steen Associates, Inc., owner of the property being developed as Triple Crown Estates Residential Planned Community (RPC), to reduce the density of this project by fifty percent, by proposing 30 single-family dwelling lots rather than sixty duplex units on thirty lots. Mr. Tudor advised that this change will not impact the proposed lot sizes, setbacks, road design, or other features shown on the plans to date. Furthermore, staff believes that because the Code contemplated an increase in density, not a decrease in density, this request does not constitute a substantial change and does not require a public hearing.

Upon a motion by Commissioner Bertino, the Commissioners unanimously approved the requested modification of the Triple Crown Estates RPC.

In follow up to their October 6, 2020 request for additional information from the second lowest bidder, Harold Scrimgeour, for Nuisance Abatement Order No. 20-1 for a property located at 2816 Snow Hill Road, Mr. Tudor stated that Mr. Scrimgeour provided the requested certificates of insurance and references. In response to a question by Commissioner Nordstrom, Mr. Tudor stated that he has had to remind Mr. Scrimgeour of bid requirements on past projects, but that he did receive good referrals regarding the quality of his work.

Upon a motion by Commissioner Nordstrom, the Commissioners voted 6-1, with Commissioner Bunting voting in opposition, to award the best bid for Nuisance Abatement Order No. 20-1 for a property located at 2816 Snow Hill Road to Scrimgeour's Farm ALL, LLC at a total cost of \$24,900.

The Commissioners recessed until 10:30 a.m.

The Commissioners met in legislative session.

The Commissioners met with Mr. Tudor to review a text amendment application submitted by Hugh Cropper, IV, on behalf of Kathleen Clark, which seeks to amend ZS 1-338 Accessory apartments by eliminating the requirement that either the main dwelling or the accessory apartment be owner occupied.

Following some discussion, Commissioners Church, Nordstrom, and Purnell introduced the aforementioned text amendment as Bill 20-8 (Zoning – Accessory apartments) and agreed to schedule a public hearing on the bill.

The Commissioners conducted a public hearing to receive comments on Bill 20-7 (Zoning – Casino Entertainment District), which was introduced on August 18, 2020 by Commissioners Bertino, Bunting, Church, Elder, Mitrecic, Nordstrom, and Purnell. Mr. Tudor reviewed the bill, which would add a Casino Entertainment District as an overlay district in the Zoning and Subdivision Control Article and establish such a use as a permitted use in the A-2 Agricultural District. He advised that the draft bill received a favorable recommendation from the Planning Commission.

Commissioner Bunting reviewed a list of general exceptions that would be allowed in the casino overlay district and asked if the change being requested today would affect the expiration of special exceptions after a certain period of time under the current Code. Mr. Tudor stated that staff does not believe that there is an expiration date for the existing uses permitted by special exception on the casino property. Other uses that are not currently in use on the property, such as churches, temples, mosques, contractor shops and boat storage yards, could be permitted in the C-2 district, A-2 district, A-2 district with the Ocean Downs, and the casino overlay district by special exception.

In response to a question by Commissioner Bertino, Mr. Tudor stated that the Board of Zoning Appeals (BZA) considers applications for special exceptions, subject to certain conditions. He noted that in 1997, Ocean Downs owners asked the BZA to grant a fairgrounds provision that included 21 special exception uses, many of which are in use on the property and there for are not subject to expiration while in use. Others, which have never been applied for cannot expire because they have never been approved. However, if they applied for and were granted special exceptions for the other activities, the uses would have to be implemented within one year and used consistently throughout the years or be subject to expiration.

Commissioner Mitrecic opened the floor to receive public comment.

Attorney Joe Moore reviewed the history of the racetrack and casino, noting that each year since 2012 the casino has requested a series of special exceptions permits, and none of those permits have expired because they have consistently utilized their right to those exceptions; however, they have agreed to aggregate those uses if the creation of the overlay district is approved. He advised that the casino, which is on land zoned A-2 Agricultural District, is an accessory use to the racetrack because it is a fairground; though, listing the casino as an accessory use is inappropriate because it has become the principal use on the site. He stated that the property owners chose to apply for the overlay district, which has 12 uses, three of which are already in use (casino, racetrack, and boarding stables), rather than apply to rezone this section of the property from A-2 to C-2 Commercial, like much of the surrounding area and which would allow 42 uses by either permitted uses or by special exceptions. He stated that the additional nine uses would be required to go through a two-step approval process from the Planning Commission, including traffic studies and architectural designs. He advised, however, that the purpose of discussions today is only to consider the text change, and any actions taken would not grant an approval for the additional uses. It simply gives the property owner the right to apply for those uses. He addressed concerns raised during the Commissioners' work shop on October 6, 2020 regarding hosting concerts on the property, noting that concerts are already permitted by special exception, and the casino has consistently asked for and received special exceptions to host these events. He stated that the primary issue with this bill for many here today is the provision allowing a hotel on the property. He stated that the casino and any person with a legal or financial interest in the casino are prohibited from locating a hotel on or within 10 miles of the site. However, this provision does not preclude a private owner from operating a hotel on or near the casino property. He committed both to hotel owners and the Commissioners that if the overlay zone is approved, the casino will request the overlay zone bill be amended to limit the number of privately owned and operated hotels to one hotel with 150 rooms. He stated that casino owners do not want to compete with Ocean City. Rather if the State law changes, they would like to attract an hotelier, perhaps someone already operating in Ocean City, to develop a hotel on the casino property to attract gamblers, which would result in an increase in casino revenues and the Local Impact Grant (LIG) funds paid to Worcester County, Ocean City, Ocean Pines, and Berlin.

In response to a question by Commissioner Mitrecic, Mr. Moore confirmed that, if the Commissioners approve the overlay district and if State law changes, they would like to place one hotel on the property. He stated that current law permits a hotel on the edge of the property in the C-2 zone or on property zoned C-2 across the street from the casino.

In response to a question by Commissioner Elder, Mr. Moore stated that the business plan to add a hotel would benefit the casino and the local jurisdictions, but it would not compete with Ocean City for visitors, as the hotel would be used to attract gamblers, not those who come to the area for the beach.

Ocean Downs General Manager Bobbi Sample presented a PowerPoint outlining the history of the casino as a responsible community partner that has helped to grow the shoulder season, provided 331 full-time and 34 part-time jobs pre COVID-19 and 255 full-time and 28 part-time jobs post COVID-19 to area residents, and LIG funds to area jurisdictions to fund capital projects, including road paving in Ocean Pines and Ocean City, the new Berlin Police Department building, and debt service for the Worcester Technical High School (WTHS), as

well as the purchase of new public safety vehicles and 911 radio upgrades. She stated that the purpose behind creating the overlay district, which County staff suggested in place of rezoning the property to C-2, is to clean-up the current legislation, so that the casino is not operating as a special exception but as a primary use. She stated that this bill does not grant casino officials carte blanche to institute additional uses included in the overlay district because they would still be required to seek approval for each use through planning and zoning. She pointed out that the Planning Commission unanimously supports Bill 20-7, which would allow additional amenities on the property that would result in the creation of new jobs and increased taxes. She confirmed that such an overlay district could not be permitted anywhere else in Worcester County because a second casino could not be added in the County without a referendum, and if and when such an application was presented casino owners would vehemently oppose the application. She then addressed traffic concerns, noting that casino representatives have committed to the OPA to commission a traffic study on the entirety of MD Rt. 589, even if not required to do so by the County when applying for special exception uses on casino property in the future. She stressed that the casino is part of the hospitality industry, so it is in their best interest to minimize traffic congestion, which could negatively impact the experience of casino customers. With regard to increased amenities, she confirmed that they would not endanger families or the casino's gaming license by adding family-activities that could attract minors to the casino. Instead, they plan to introduce additional services to attract new and returning customers who might otherwise bypass the Casino at Ocean Downs for Virginia gaming facilities if the state passes two referendum questions that would allow gaming and sports betting. She stated that Maryland law does not allow casinos to own hotels directly. However, they could lease or sell casino property to a private entity to develop a hotel, and casino officials would be permitted to offer complementary hotel rooms to casino guests. She concluded that gaming in Maryland is about partnerships between the casinos, the State, and local jurisdictions, and all of these entities benefit when the casinos thrive.

Hunt Taylor of McAllister Road opposed Bill 20-7, stating that approving this request would stop property owners on the westerly side of MD Rt. 589 adjacent to the casino from securing public sewer service to develop their properties for commercial use. He pointed out that Churchill Downs, owners of the Casino at Ocean Downs, vehemently opposed rezoning these properties by claiming that doing so would increase traffic; yet, this request does the same basic thing and allows casino owners to take advantage of a loophole in the law that prohibits them from having a hotel on the property.

Susan Jones, Executive Director of the Ocean City Hotel-Motel-Restaurant Association (HMRA), stated that Bill 20-7 as written is far too broad and asked the Commissioners not to move too swiftly on this request, but rather to consider its potential impacts, like a hotel with convention center space diverting business from the Roland E. Powell Convention Center, which is currently being expanded. She further asked that the bill be amended to limit any potential hotels on the property to one hotel with a maximum of 150 rooms. Mr. Moore confirmed that they would request the bill be amended to limit accommodations on or near the casino property to one hotel with 150 rooms.

Ocean Pines Association (OPA) President Larry Perrone the OPA originally had concerns about the impact of Bill 20-7 on Ocean Pines with regard to increased sewage to the Ocean Pines Wastewater Treatment Plant (WWTP) and increased traffic congestion on MD Rt. 589, but that Mr. Moore and Ms. Sample had met with and addressed each of these concerns.

Specifically, he confirmed that Ms. Sample had agreed to commission a traffic study of the entire MD Rt. 589 corridor regardless of whether required to do so by the Commissioners. He further noted that any expansion of the casino would result in increased Local Impact Grant (LIG) funds to the towns and the OPA, which could be used to augment decreased State funding for road projects. Therefore, the OPA unanimously supports Bill 20-7. In response to a question by Commissioner Bunting, Mr. Perrone stated that all seven OPA board members support the bill, and they have received no negative comments about the bill from Ocean Pines residents. Furthermore, he did not believe any future hotel with banquet facilities would negatively impact special events at the yacht club.

Commissioner Bertino thanked Mr. Perrone for attending the meeting and confirmed that he has also received a lot of positive comments and questions from Ocean Pines residents about Bill 20-7.

Hale Harrison of the Harrison Group strongly opposed the creation of the proposed overlay district, noting that many area hoteliers worked with the State originally to develop legislation that would not allow a hotel on or near casino property. He further stated that former casino owner Bill Rickman had assured area hotel owners that he did not want to be in the hotel business. He stated that the casino is not honoring its deal, and he asked the Commissioners not to take any action on Bill 20-7 at this time, but to instead take a wait and see approach to legislation that is expected to be introduced by the State.

Bill Rickman, former owner of the Casino at Ocean Downs, confirmed that when he owned the casino he did not want a hotel, but that the possibility of adding this use has been there since the beginning, as the law allows a third party to operate up to a 500-room hotel on property zoned C-2 in the vicinity of the casino property. Therefore, any decision made today would not impact that ability. He stated that casino operations are a partnership between casino operators, area businesses, and local government, and the proposal before them today is part of responsible growth. Therefore, he asked the Commissioners to support Bill 20-7.

Ocean City Mayor Rick Meehan opposed the overlay district. He confirmed that the casino has been a much better fit than many town officials and business owners originally imagined, and many of the hotels work with the casino to offer travel packages; however, the legislation crafted with their help was designed to ensure that no hotel could be developed on or near the casino property, yet Bill 20-7 would eliminate that restriction. He stated that town officials support the casino, but not the provision for a hotel. Therefore, he asked the Commissioners to abide by the original casino agreement.

Steve Mason of McAllister Road likened the overlay district to the creation of a special economic zone, which if passed would harm neighbors on the westerly side of MD Rt. 589 whose properties were recently rezoned for commercial use but were not granted access to public sewer service to develop their properties.

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

Commissioner Bertino stated that, while some have argued granting of an overlay district would give the casino an unfair advantage over other commercial operations, no business apart from the casino is saddled with a tax rate of 46% of gross receipts, and the local jurisdictions have benefitted tremendously from casino revenues over the last 10 years. He stated that the casino has been a really good neighbor since opening its doors, and casino officials have

adequately addressed his concerns about traffic on MD Rt. 589; therefore, he plans to support Bill 20-7.

Commissioner Purnell stated that she was not always in favor of gambling, as she has relatives who have been negatively impacted by casinos in Atlantic City that brought in their own staff instead of creating local jobs and attracted higher crime rates. However, she no longer feels that way, as the Casino at Ocean Downs has operated as a good neighbor by providing local jobs, supporting area nonprofits, and distributing LIG funds for use in capital projects, with no increase in crime. She stated that the casino has generated millions of dollars in LIG funds to the surrounding communities. These funds are being used to pay the WTHS debt service, to fund the Berlin Police Station, to pay for road paving projects, and to purchase public safety vehicles and equipment, so that the money did not have to come from the pockets of tax payers. Therefore, she appreciates the partnership of the casino and will be voting for Bill 20-7.

Commissioner Church stated that he met with Mr. Rickman prior to the passage of State legislation to allow the development of a casino in Worcester County, at which time he told him that he was dead set against gambling and would not support the legislation. However, to date he has not seen any negative aspects resulting from the operation of the Casino at Ocean Downs, which has turned out to be a good neighbor and taken extreme cautions for their gambling community. Therefore, he will be voting for Bill 20-7.

Commissioner Mitrecic also agreed that the casino has been a great neighbor and wants to keep it that way. He stated that the proposed overlay district flies in the face of all the restrictions that resort and government officials fought at the State level to put in place for casino operations. Furthermore, he has never seen traffic study findings that did not support the uses being proposed by those commissioning the studies. He expressed concern that the casino could eliminate racing entirely, and the areas between Worcester County and Virginia Beach are some of the most economically depressed areas he has ever seen. Therefore, he is in favor of upholding the current legislation.

Following much discussion and upon a motion by Commissioner Bertino, the Commissioners voted 5-2, with Commissioners Bunting and Mitrecic voting in opposition, to conceptually adopt the Planning Commission's Findings of Fact as their own and approved the creation of a Casino Entertainment District.

Commissioner Bertino stated that Governor Larry Hogan announced plans to reduce the State budget by 15% for FY22. Because it is unknown how those cuts will filter down to the counties, he made a motion for department heads to reduce their FY22 budget requests between 5-7 ½%. That motion failed 3-4, with Commissioners Bertino, Bunting, and Elder voting in favor of the motion and Commissioners Church, Mitrecic, Nordstrom, and Mitrecic voting in opposition.

The Commissioners answered questions from the press, after which they adjourned to meet again on November 4, 2020 at 12:29 p.m.