

Minutes of the County Commissioners of Worcester County, Maryland

July 19, 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 Lockfaw, seconded by Commissioner Bertino, the Commissioners unanimously voted to meet in closed session at 9:00 a.m. in the Commissioners' Conference Room to discuss public security and legal and personnel matters permitted under the provisions of Section 3-305(b)(1), (7) and (10) 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; Sheriff Reggie Mason and Colonel Doug Dods of the Sheriff's Office. Topics discussed and actions taken included: hiring Karen Parker and Vince Littleton as Transfer Station Attendants within the Solid Waste Division of Public Works; transferring Judith LoBianco at her request from Office Assistant IV within Public Works Administration to Office Assistant III within the Roads Division of Public Works; promoting Kimberly List from Accounting Clerk II within the Treasurer's Office to Immigration Detainee Records Specialist within the County Jail and agreeing to advertise to backfill the Accounting Clerk II position; promoting Kathy Worth and Quintin Dennis from Sergeant to Lieutenant, Naomi Campbell and Timothy Mulligan from Corporal to Sergeant, and Troy Murph from Correction Officer Cook to Kitchen Manager within the County Jail; transferring Christopher Vieira from Deputy Fire Marshal Inspector to Deputy Fire Marshal Investigator, lowering the Grade for Deputy Fire Marshal Inspector within the Fire Marshal's Office from (G17) to (G16) and agreeing to advertise to fill the vacant Inspector position created by the promotion of Mr. Vieira to Deputy Fire Marshal Investigator; acknowledging the hiring of five certified police officers, Jimmy Howard, Keith Layton, Julianne O'Toole, Matthew Weiss, and Gregory Wetzal, as full-time Deputies within the Sheriff's Office, and Julie Messick as Assistant Branch Manager at the Ocean Pines Branch Library; agreeing to advertise to fill the position of Office Assistant V within the Circuit Court; discussing public security; 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 open and closed session minutes of their

July 5, 2016 meeting as presented.

Pursuant to the request of Housing Program Administrator Jo Ellen Bynum and upon a motion by Commissioner Mitrecic, the Commissioners unanimously authorized Commission President Bunting to sign the Maryland Community Development Block Grant (CDBG) Program Amendment to Grant Agreement between the Maryland Department of Housing and Community Development (DHCD) and the County Commissioners of Worcester County to extend the deadline for expenditure of the County's current Housing Rehabilitation Program Grant from July 31, 2016 to March 31, 2017 for the rehabilitation of 18 owner-occupied homes. As of May 3, 2016, seven projects had been completed, five were under construction, and two were pending final work write-ups.

Pursuant to the request of Budget Accountant Kim Watts and upon a motion by Commissioner Mitrecic, the Commissioners unanimously approved bid specifications for soliciting West Ocean City commercial boat slip leases and agreed to increase the deposit for boat slips from \$25, which was applied to the first year's lease rent, to 10% of the total bid amount, which will be applied to the second year's lease rent. In response to a question by Commissioner Bertino, Ms. Watts advised that the \$25 deposit was instituted more than 20 years ago and is an insignificant sum. She stated that requiring the 10% deposit will help assure lease costs are paid during the second year when it can be more challenging to obtain payment from lease holders for the slips.

Pursuant to the request of Public Works Director John Tustin and upon a motion by Commissioner Lockfaw, the Commissioners unanimously awarded the low bid to Western Star Trucks of Delmarva, LLC of Mardela Springs, Maryland for the purchase of two 2017 Western Star Model 4700 SB dump trucks with 10-foot dump bodies and attachments and accessories as specified at a cost of \$120,724 per dump truck for a total delivered price of \$241,448 for use within the Roads Division of Public Works. Mr. Tustin explained that funding for this purchase was to be derived from projected FY16 surplus funds, as agreed by the Commissioners during FY17 budget deliberations.

Pursuant to the request of Mr. Tustin and upon a motion by Commissioner Bertino, the Commissioners unanimously agreed to waive the standard bid process and accepted the proposal from Hill's Electric Motors of Linkwood, Maryland to complete emergency repairs to the two rollers on the belt filter press at the Ocean Pines Wastewater Treatment Plant (WWTP) at a cost of \$26,197.54 for the first roller and \$13,641.64 for the second roller for a total repair cost of \$39,839.18. Mr. Tustin advised that the press and rollers are 21 years old, and it will need to be replaced in the next year or two at a cost of approximately \$200,000. He explained that the cost of new rollers was \$69,568.70, which he could not recommend, since the entire unit would be replaced soon, so repair was more prudent to keep the belt filter press operating until a new press is purchased. He advised that staff will provide the Commissioners with a formal recommendation to replace the filter press in FY18.

The Commissioners met with Mr. Tustin to discuss staff's recommendations in response

to public requests to install all-way stops at the intersections of Sunset Avenue and Golf Course Road, and Old Bridge and Golf Course Roads in West Ocean City to address traffic concerns. Mr. Tustin stated that the Manual on Uniform Traffic Control Devices (MUTCD) recommends that the decision to install multi-way stop control should be based on an engineering study. He stated that, generally, multi-way stop control is used where the volume of traffic on all approaches is approximately equal. He then outlined the MUTCD recommendations as follows: (1)(a), vehicle volume entering the intersection from both directions on the major street (Golf Course Road) average at least 300 vehicles per hour for any eight hours of an average day; and (1)(b), the vehicular, pedestrian, and bicycle volume entering the intersection from both approaches on the minor street (Sunset Avenue or Old Bridge Road) averages at least 200 units per hour for the same eight hours, with an average delay of at least 30 seconds per vehicle, and (2) the number of left turn conflicts are to be considered. Mr. Tustin advised that a 2005 vehicular count from the Maryland State Highway Administration (SHA) indicates that Old Bridge Road had sufficient volumes on Golf Course Road to meet criteria (1)(a), but the average number of vehicles on Old Bridge Road was less than 50 vehicles per hour, which is far below that recommended by the MUTCD in criteria (1)(b). Volumes on Sunset Avenue average 113 vehicles plus those on the east leg would meet the MUTCD criteria. Therefore, he recommended that all-way stops be approved at the intersection of Golf Course Road and Sunset Avenue, and traffic counters be installed on Old Bridge Road to obtain current vehicular volumes for its intersection with Golf Course Road. Upon a motion by Commissioner Church, the Commissioners unanimously approved staff's recommendation to install all-way stops at the intersection of Golf Course Road and Sunset Avenue immediately, and to install traffic counters on Old Bridge Road to obtain current vehicular volumes for that roadway. Commissioner Church thanked staff for providing this recommendation, noting that these two intersections are a top concern to many of his constituents and homeowners associations in that area.

Pursuant to the recommendation of Mr. Tustin and upon a motion by Commissioner Purnell, the Commissioners unanimously authorized Commission President Bunting to sign the Agreement between the County Commissioners of Worcester County and Dorchester Renewable Energy, LLC (DRE) of Annapolis, Maryland that grants DRE an exclusive option for a period of 18 months to investigate and pursue a venture to commercialize the landfill gas, the flare, the generator building, and the interconnection system at the County Landfill in Newark with an energy-related project. DRE originally approached the County in October 2015 to request a three-year exclusive contract, and at their December 1, 2015 meeting the Commissioners authorized County staff to negotiate a shorter contract.

The Commissioners reviewed and discussed various board appointments.

Upon a nomination by Commissioner Church, the Commissioners unanimously agreed to appoint Voncelia S. Brown to the Social Services Board for a three-year term expiring June 30, 2019, to replace Wes McCabe whose term expired.

Upon a nomination by Commissioner Church, the Commissioners unanimously agreed to appoint Mary E. "Liz" Mumford as an at-large member to the Commission for Women for the remainder of a three-year term expiring December 31, 2016, to replace Dawn Cordrey Hodge who resigned.

Upon a nomination by Commissioner Mitrecic, the Commissioners unanimously agreed to appoint Lauren Mathias Williams to the Commission for Women for the remainder of a three-year term expiring December 31, 2018, to replace Carol Rose who resigned.

Upon a nomination by Commissioner Lockfaw, the Commissioners unanimously agreed to appoint Larry Fykes to the Board of Zoning Appeals for the remainder of a three-year term expiring December 31, 2016, to replace Bobby Cowger who resigned.

Commissioner Church thanked Commissioner Mitrecic and members of the press for informing the public about the need for County residents to volunteer to serve on County boards and commissions. He stated that, as a result of recent articles published in area newspapers, he had been contacted by three residents with outstanding credentials and noted that he had been able to place two on County boards and commissions and will nominate the third when a future opening becomes available.

The Commissioners met with Health Officer Debbie Goeller to discuss Public Health Issues to prevent the spread of the Zika virus in the event of an outbreak. Upon a motion by Commissioner Purnell, the Commissioners unanimously adopted Resolution No. 16-19, declaring an emergency public nuisance exists if certain criteria is met and authorizing the Health Department to abate said nuisance to prevent the spread of the Zika virus. Ms. Goeller advised that Resolution No. 16-19 would allow her staff to respond quickly and appropriately to Zika-related situations, as outlined in the Zika Virus - Interim Maryland Aedes Surveillance and Control Plan. In response to a question by Commissioner Elder, Assistant Chief Administrative Officer Kelly Shannahan stated that in the event of a Zika outbreak, Resolution No. 16-19 would allow the waiving of a formal bid process to acquire the needed assistance to combat the spread of the disease more quickly; however, even in the event of an emergency the County would solicit competitive proposals from a number of sources to obtain the best pricing possible.

In response to a question by Commissioner Bertino, Ms. Goeller stated that Health officials could require property owners to drain or fill in water sources on their properties that contain stagnant water if their presence causes or threatens to cause the breeding of insects “which is or may be dangerous or prejudicial to public health,” as outlined in Resolution No. 16-19. However, she advised that her staff would work with any such individuals to develop other options, such as purchasing mosquito dunks or obtaining mosquito-eating fish for their ponds from the Maryland Department of Natural Resources (DNR) to remedy the situation rather than requiring any ponds to be filled in.

The Commissioners met with Ms. Goeller to discuss the Health Department’s response to Alley Cat Allies of Bethesda, Maryland regarding the impounding and later euthanizing of a feral cat from a colony in Ocean Village that had been in contact with a cat that tested positive for rabies. Ms. Goeller reviewed the background of the case, noting that a rabid cat from the colony at Ocean Village in West Ocean City bit and scratched a visitor, causing exposure to three individuals on June 11, 2016, which required them to undergo post-exposure rabies treatment to prevent the development of this fatal disease. She stated that, because the rabid cat was part of the colony maintained on the property and based upon eyewitness accounts, Health officials determined that all of the cats in that colony had been exposed to rabies. Thus, the remaining cats should be removed from the community and humanely euthanized to reduce the risk of additional

rabies exposure to the residents and visitors of Worcester County. She stated that Ocean Village's management company authorized Worcester County Animal Control (WCAC) to begin trapping the cats on June 16; however, unknown individuals interfered with trapping efforts, so no cats were caught until June 28 when the first feral cat was trapped and eventually humanely euthanized. She stated that, while the cat was in the custody of WCAC, Westside Animal Rescue of Nanticoke, Maryland attempted to claim the cat and provided a rabies vaccination certificate that was determined invalid because the description of the cat listed did not match the cat at WCAC, did not name where the cat resided, and had expired three months prior. Ms. Goeller stated that local feral cat advocates opposed the cat's euthanasia, in part because it was not tested for rabies afterward. Ms. Goeller advised that the cat was not tested because rabies can incubate in cats for up to six months following exposure, symptoms can develop at any time during that period, and animals will not test positive for rabies during an incubation period. Rather, an animal will only test positive for rabies after becoming symptomatic, when the virus has reached the brain. She stated that the cat in question was not symptomatic when euthanized and had no known contact with humans or pets; therefore, it was not tested for rabies. She stated that rabies poses a significant risk to public health because it is 100% fatal once symptoms develop, and the Worcester County Code requires animals exposed to rabies to be euthanized. Therefore, Health officials determined that the Ocean Village feral cat colony must be trapped and humanely euthanized. She pointed out that advocates want the County to adopt a Trap/Neuter/Return (TNR) program; however in 2010 the Commissioners assembled a Rabies Task Force that concluded a TNR program was not an acceptable alternative in Worcester County to curb the spread of rabies, as is evidenced by the rabid cat discovered in Ocean Village.

Commissioner Mitrecic stated that this is a situation that needed to be corrected and thanked staff for their handling of the situation; however, he admonished that the Commissioners should have been informed about the public outcry regarding the decision to remove and humanely euthanize the cats. He pointed out that he had no knowledge of the situation until July 16 when he received more than 600 angry emails about the issue. Commissioner Church concurred, noting that the incident occurred in his district, and he should have known, so he could respond to constituents' concerns.

In response to a question by Commissioner Bertino, Chief Animal Control Officer Susan Rantz advised that she had been contacted by four individuals who all claimed to own the impounded cat, which they later referred to as Oliver; however, Animal Control could not release the cat to any of them because ownership had not been established, the rabies certificate that had been provided to Animal Control was out of date, and it did not describe the cat in question. She stated that her department has been inundated with phone calls threatening her staff and their family members regarding the trapping and euthanizing of the feral cat. Furthermore, she advised that the Sheriff's Office is investigating the origin of these calls, as well as an incident in which Assistant Chief Animal Control Officer Glen Grandstaff had a clipboard thrown at his head by a man who became irate when he saw Mr. Grandstaff attempting to trap the remaining feral cats. Following much discussion, Commissioner Bunting thanked County staff for their handling of this sensitive situation to protect public health.

The Commissioners met in legislative session.

The Commissioners conducted a public hearing on Bill 16-4 (Zoning - Food Sales at

Wineries in the A-1 and A-2 Agricultural Districts), which was introduced by Commissioners Bertino, Bunting, Church, Elder, Lockfaw, Mitrecic and Purnell on June 21, 2016. Development Review and Permitting Director Ed Tudor reviewed the bill, which would amend the Zoning and Subdivision Control Article to allow the sale of hot and cold foods either on or off premises at an established winery. Mr. Tudor stated that County staff and the Planning Commission were concerned that the original text amendment application, submitted by Jack Lord, would not limit sales of food to on-premises consumption and to only those hours of operation when the wine tasting facility is open, which could potentially lead to a stand-alone carry-out facility, a use not appropriate in the A-1 District, rather than a bonafide accessory use to the wine tasting facility, which is a permitted agricultural use. Therefore, the Planning Commission had given an unfavorable recommendation to the original text amendment application, as specifically submitted by the applicant. However, the Planning Commission had granted a favorable recommendation to the text amendment application as revised by staff to include limitations to on-premises consumption only and to only those hours of operation of the wine tasting facility.

Commissioner Bunting opened the floor for public comment.

Mark Cropper, attorney for Jack Lord, owner of a winery known as Costa Ventosa, located on MD Rt. 610, southwest of U.S. Rt. 113 near Whaleyville in the A-1 Agricultural District, stated that his client fully supports the amended bill, noting that it was never his client's intent to create a full blown restaurant in the Agricultural zone.

There being no further public comment, the Commissioners closed the public hearing.

Upon a motion by Commissioner Elder, the Commissioners unanimously adopted Bill 16-4, as presented.

Commissioner Bunting closed the legislative session.

The Commissioners conducted a public hearing on Rezoning Case No. 403 for an application submitted by Attorney Mark S. Cropper, on behalf of Nichols-Neff Properties, LLC, for an amendment to the Official Zoning Maps to rezone approximately 95 acres of land formerly known as the Pine Shore Golf property and located on the northwesterly side of Beauchamp Road to the northeast of the junction with MD Rt. 589, and more specifically identified on Tax Map 15 as Parcels 127 (25.08 acres) and 259 (70 acres) in the Third Tax District of Worcester County, Maryland, from E-1 Estate District to R-1 Rural Residential 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 rezoning cases. 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 had been a mistake in both the existing zoning and a change in the character of the neighborhood wherein the petitioned area is located, noting that the zoning first established as A-1 Agricultural District in the mid 1960s was reclassified to E-1, with a portion of the property along Windmill Creek zoned RP Resource Protection District, in the 1992 comprehensive rezoning, and that reclassification was retained in the 2009 comprehensive rezoning. Ms. Wimbrow stated that the petitioned area is defined as being bound on the north by the St. Martins River, on the west by US Route 113, on the south by MD Rt. 589 and includes the Community Church of Ocean Pines,

the County Park, and various commercial properties, including those on Five L Drive, along MD Rt. 589 and in Pennington Commons, and on the east by the South Gate of Ocean Pines and following an extension of Manklin Creek Road to the Isle of Wight Bay. She stated that the Planning Commission did not concur with the applicant's definition of the neighborhood, finding that it should have extended further south along US Rte. 113 to include the Mariner property and others. However, the Planning Commission concluded that there has not been a change to the character of the neighborhood since the comprehensive rezoning of 2009 because it did not concur with Mr. Cropper's assertion that the changes to the character of the neighborhood cited in Rezoning Case Nos. 392 and 396 were applicable to this case. Thus, a definition of the neighborhood was not required. Ms. Wimbrow advised that the Planning Commission found that the existing Comprehensive Plan calls for the deletion of its Estate Land Use Category and the associated E-1 Estate District zoning classification, which was designed as a transition zone between urban/suburban development and the rural landscape, but has instead consumed excessive amounts of land per housing unit, taken working farms out of production, been overtaken by the requirements of the Atlantic Coastal Bays Critical Area Program, and failed to achieve truly clustered open space development, with large-lot zoning being incompatible with the Comprehensive Plan's approach to new growth and extensive large-lot development that leads to sprawl and its negative impacts; therefore, it actually results in undesirable sprawl, which is diametrically opposed to the smart growth called for in the Comprehensive Plan. The Planning Commission also found that, having been utilized as a single property developed with a golf course for many years, the two parcels should have been placed within the same land use category by the Comprehensive Plan. Therefore, the Planning Commission found that there is a mistake in the existing zoning of the petitioned area, and as a change in zoning would be more desirable in terms of the objectives of the Comprehensive Plan, they gave a favorable recommendation to Rezoning Case No. 403 to rezone the petitioned area from E-1 Estate District to R-1 Rural Residential District.

Commissioner Bunting opened the floor to receive public comment.

Mr. Cropper, attorney for the applicant, concurred with staff's assessment and advised that his original request for rezoning was based upon both a mistake in the existing zoning and 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, noting that from this point forward he would be arguing only that the request for rezoning is based on a mistake in the rezoning, as supported by the Planning Commission. Mr. Cropper then reiterated that the E-1 Zoning is inconsistent with the goals and objectives of the Comprehensive Plan.

Charles Nichols, representing Neff Properties, LLC and the Nichols family read from a letter dated May 3, 2016, which states that the family purchased the petitioned area in 2014 out of bank foreclosure to develop it in a reasonable and responsible manner that promotes and enhances the surrounding properties. Furthermore, the family had previously proposed the Mapleton Farms subdivision of 123 lots on adjacent properties to the west, but has since placed those properties in a conservation easement with the Maryland Environmental Trust. Mr. Nichols asked the Commissioners to look favorably upon the rezoning request.

In response to questions by Mr. Cropper, Chris McCabe, environmental consultant and owner of Coastal Compliance Solutions, LLC, reviewed a rendering of the Greater Ocean Pines

Sanitary Service Area (SSA). He identified the neighborhood and outlined the mix of residential and commercial uses therein, reviewed a rendering of the property that outlined its potential use as an 80-lot subdivision and noted that if rezoned the existing on-site septic system will be removed and the Total Maximum Daily Loads (TMDLs) reduced by the connection of any development on the site to the Greater Ocean Pines SSA.

In response to questions by Mr. Cropper, The Traffic Group Project Manager Betty Tustin reviewed the findings of a traffic impact analysis that was completed using March 2016 data collected at the intersection of MD Rt. 589 and Beauchamp Road and summer seasonal factors obtained from the Maryland State Highway Administration (SHA) to reflect summer conditions. She stated that if 54 lots were developed on the petitioned area the intersection would continue to operate at an acceptable level of service and there would be no need for highway improvements or changes to the existing intersection. In response to an additional question by Mr. Cropper, she stated that the traffic impact from an 80-lot subdivision on that same site would not be significantly greater, as it would only generate about 10 additional vehicle trips a day, with a Level of Service A.

Mr. Cropper entered into evidence letters from surrounding property owners and the Showell Volunteer Fire Company that support the applicant's petition to rezone the property from E-1 to R-1, and he asked the Commissioners to support the requested rezoning.

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

Upon a motion by Commissioner Church, 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 Estate District to R-1 Rural Residential District.

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

Following a motion by Commissioner Bertino, seconded by Commissioner Lockfaw, the Commissioners unanimously voted to meet in closed session at 11:56 a.m. in the Commissioners' Conference Room to discuss legal and personnel matters permitted under the provisions of Section 3-305(b) 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; and Maureen Howarth, County Attorney. Topics discussed and actions taken included performing administrative functions.

Following the closed session, the Commissioners adjourned to meet again on August 2, 2016.