

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

September 17, 2019

Diana Purnell, President  
Joseph M. Mitrecic, Vice President (absent)  
Anthony W. Bertino, Jr.  
Madison J. Bunting, Jr.  
James C. Church  
Theodore J. Elder  
Joshua C. Nordstrom

Following a motion by Commissioner Nordstrom, seconded by Commissioner Bunting, with Commissioner Mitrecic absent, the Commissioners unanimously voted to meet in closed session at 9:00 a.m. in the Commissioners' Conference Room to discuss legal and personnel matters permitted under the provisions of Section 3-305(b)(1), (7), and (14) 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 Kelly Shannahan, County Attorney Maureen Howarth, Public Information Officer Kim Moses, Human Resources Director Stacey Norton; and Commercial Real Estate Advisor John McCleelan. Topics discussed and actions taken included: hiring Lachelle Scarlato as Deputy Director of Economic Development, Allen Swiger as a Recreation Program Manager III for Recreation and Parks, and Sean Stacey as a Plant Operator Trainee for the Water and Wastewater Division; promoting Mosquito Control Foreman Trainee Steven Merchant due to his recent Pesticide Applicator's certification; discussing offers to purchase the former Liquor Control warehouse in Snow Hill; reviewing personnel changes within the County Jail and the Maintenance Division of Public Works; acknowledging the hiring of Brandiase Van Emmerrik from a State position within the Circuit Court to the County position of Judicial Assistant in Family Services within the Circuit Court; receiving legal advice from counsel; and performing administrative functions, including: an invitation to attend the United Way campaign kickoff.

Commissioner Mitrecic was absent from the meeting.

Following a motion by Commissioner Bunting, seconded by Commissioner Church, the Commissioners unanimously voted to adjourn their closed session at 9:25 a.m.

After the closed session, the Commissioners reconvened in open session. Commissioner Purnell called the meeting to order, and following a morning prayer by Arlene Page and pledge of allegiance, announced the topics discussed during the morning closed session.

The Commissioners reviewed and approved the September 3, 2019 open and closed session meeting minutes as presented.

Pursuant to the recommendation of Finance Officer Phil Thompson at the request of

David Lockwood, Jr., Chair of the Berlin Community Improvement Association (BCIA), and upon a motion by Commissioner Church, the Commissioners unanimously adopted Resolution No. 19-29, authorizing a 100% Tax Credit in the amount of \$3,500.84 for Real and Tangible Personal Property owned by the BCIA for such property which was exclusively for non-profit activities of that association for the July 1, 2019 tax year.

Pursuant to the request of Tourism Director Lisa Challenger and upon a motion by Commissioner Elder, the Commissioners unanimously authorized Commission President Purnell to sign a Maryland Department of Natural Resources (DNR) Technical Assistance Grant Application for technical assistance and funding of up to \$10,000 to develop a comprehensive water trail on the Pocomoke River. Ms. Challenger stated that Tourism is working with other County departments, with the towns, and with Somerset County to develop a trail that would start north of Snow Hill and run to the mouth of the Chesapeake Bay. She stated that Tourism will assist in printing waterproof water trail guides at a cost of roughly \$2,500 to be funded in a future budget, which will be free to the public and available at the Pocomoke River State Park, Pocomoke River Canoe Company, and other public buildings in the County.

Upon a motion by Commissioner Church, the Commissioners unanimously authorized a one-time grant of \$2,000 to help cover travel expenses associated with the Berlin Little League's participation in the Junior Little League World Championship in Taylor, Michigan in August 2019.

Pursuant to the recommendation of Assistant Chief Administrative Officer Kelly Shannahan and Recreation and Parks Director Tom Perlozzo and upon a motion by Commissioner Bunting, the Commissioners unanimously denied a request from the Maryland Department of the Environment (MDE) to install an air quality monitoring station for CAFO's (Concentrated Animal Feeding Operations) at Newtown Park in Pocomoke. Mr. Perlozzo stated that, while the County would like to be team players with the State, he was concerned that the installation of an air quality monitoring station at Newtown Park would detract from the appearance of the park and may hinder future operations and use of the park.

Pursuant to the request of Public Works Director John Tustin and upon a motion by Commissioner Bertino, the Commissioners unanimously approved bid specifications for the purchase of a hydraulic crawler excavator for the Solid Waste Division of Public Works, with funds available within the FY20 budget for this expense.

Pursuant to the recommendation of Mr. Tustin and upon a motion by Commissioner Bertino, the Commissioners unanimously awarded the bid for the provision of six 20-cubic-yard recycling containers for the Solid Waste Division of Public Works to Wastequip Manufacturing Company, LLC of Statesville, North Carolina at an individual unit cost of \$7,698.00 for a total cost of \$46,188. Mr. Tustin stated that the price exceeds budgeted funds of \$44,000 by \$2,188, but that County staff could identify funds within the FY20 budget to cover this overage.

Pursuant to the recommendation of Mr. Tustin and upon a motion by Commissioner Bertino, the Commissioners unanimously awarded the bid for one 2020 Ram Model 5500 service

truck with hydraulic crane/hoist for use within the Roads Division of Public Works to I.G. Burton and Company, Inc. of Milford, Delaware at a total cost of \$115,329.

Pursuant to the recommendation of Mr. Tustin and upon a motion by Commissioner Elder, the Commissioners unanimously awarded the best bid for two 2020/2021 Western Star Model 4700SB dump trucks for use within the Roads Division of Public Works to Western Star Trucks of Delmarva, LLC of Mardela Springs, Maryland at a cost of \$132,737 each for a total cost of \$265,274. Mr. Tustin explained that the low bid from Baylor, Inc. was for International Model HV507 trucks, which can only accommodate one passenger, and the transmission is 200 lb ft torque less than the required specifications and was, therefore, not recommended.

Pursuant to the recommendation of Mr. Tustin and upon a motion by Commissioner Bertino, the Commissioners unanimously agreed to piggyback on the State bid contract with Alpha Space Control of Chambersburg, Pennsylvania for roadway line striping for 302,154 feet of County roadways in the FY19 striping schedule at a cost of \$0.072 per foot for a total cost of \$21,755.08 and 350,528 feet of County roadways in the FY20 striping schedule at a cost of \$0.072 per foot for a total cost of \$25,238.02. Mr. Tustin stated that the State Highway Administration (SHA) has previously provided this service to the County at a cost of \$0.06 per foot, but their truck had been out of service, and they could not guarantee when or if they could provide striping services to the County. He further advised that funding is available within the FY19 and FY20 budgets for this purpose.

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 approved the proposal from Sherwood-Logan & Associates of Annapolis, Maryland for the provision of two replacement Flygt NP3127.060-SH Submersible Pumps to be installed by the County at Pump Station V in Ocean Pines at a total delivered cost of \$27,407.

Pursuant to the request of Mr. Tustin and upon a motion by Commissioner Church, the Commissioners unanimously agreed to waive the standard bid process and accept the proposal from Hartwell Engineering, Inc. of Stevensville, Maryland for supplying four electrical panels to be integrated into the supervisory control and data acquisition (SCADA) monitoring systems for continuous monitoring of the four pump stations in the West Ocean City (WOC) Sanitary Service Area (SSA) at a cost of \$32,700 per station for a total cost of \$130,800. Mr. Tustin stated that the County has developed a standard SCADA electrical panel supplied by Hartwell that has been used for several years in the Ocean Pines SSA as well as pump stations at Showell Elementary School, Riddle Farm SSA, and Frontier Town. Mr. Tustin stated that County staff will develop bid specifications to install the panels and make general improvements to these stations once the panels have been fabricated.

Pursuant to the request of Mr. Tustin and upon a motion by Commissioner Elder, the Commissioners unanimously approved Change Order No. 3 for the Mystic Harbour Wastewater Treatment Plant (WWTP) Effluent Disposal Project, which reflects a net reduction of \$32,032.99 in project costs due to actual quantities as constructed for a final contract amount of \$673,546.43. Mr. Tustin stated that the project is now complete. In response to a question by Commissioner

Church, Mr. Tustin stated that the savings will be credited back to the Mystic Harbour SSA.

Pursuant to the request of Mr. Tustin and upon a motion by Commissioner Bertino, the Commissioners unanimously approved the First Amendment to Antenna Mounting Space Lease Agreement between the County Commissioners (Lessor) and Cellco Partnership doing business as Verizon Wireless (Lessee) for mounting antennas to the Newark water tower structure to modify the method of attaching antennas to the tower support structure rather than the tank bowl to avoid damaging the tank. In response to a question by Commissioner Elder, Mr. Tustin stated that this work would not cause any disruption to water services in the Newark SSA.

The Commissioners met with Development Review and Permitting Director Ed Tudor to discuss the proposed annexation of Barrett Road to the Town of Berlin. On August 6, 2019, the Commissioners reviewed the proposed annexation of the I.G. Burton auto dealership, which is located on the northerly side of Maryland Rt. 346 and more specifically identified on Tax Map 25, Parcels 395 and 86, Lots 3-13, and expressed concern about how Barrett Road, which bisects the subject properties, would be handled, and agreed to concur with the proposed rezoning upon the annexation contingent upon the annexation and future maintenance of Barrett Road by the town. Mr. Tudor advised that County staff met with town officials on August 29, and though the town did not want to take ownership of a road that is essentially on private property and used by customers visiting that private business, I.G. Burton representatives agreed to take ownership of the portion of Barrett Road on their property and to create a turnaround at the terminus of the County road serving other properties as part of the annexation process. However, Mr. Tudor suggested that the County not quit claim Barrett Road to IG. Burton until the annexation agreement is approved, signed, and passes Berlin's 45-day referendum period.

In response to a question by Commissioner Elder, Mr. Tudor stated that the I.G. Burton property borders the easterly half of the loop, and he explained that the private properties that border the westerly side of the loop will continue to access their properties by the County road.

Upon a motion by Commissioner Bertino, the Commissioners unanimously approved the proposal by I.G. Burton and agreed to schedule a public hearing to amend the Inventory of County Roads to reflect this change after Berlin's 45-day referendum period closes.

Pursuant to the recommendation of Mr. Tudor and upon a motion by Commissioner Nordstrom, the Commissioners unanimously accepted the best bid from Beauchamp Construction in Pocomoke, Maryland for the demolition and disposal of the structures at 5492 and 5496 Stockton Road in Stockton, Maryland, as part of Nuisance Abatement Order 18-3, at a lump sum cost of \$31,890.00. Mr. Tudor explained that the low bid from Harry White House Movers of Pocomoke City, Maryland at a cost of \$26,500 did not include the name, license number and contact information for a Maryland Licensed Material Inspection Contractor as required.

In a related matter and in response to a question by Commissioner Bunting, Mr. Tudor advised that the owner of the property that is subject to a nuisance abatement in Bishopville will remove the deck and expand the other structure on the property.

Pursuant to the request of Public Works Director John Tustin and upon a motion by Commissioner Elder, the Commissioners unanimously agreed to schedule a public hearing to

receive public comment on a proposal to file a Community Development Block Grant (CDBG) application for supplemental funding of \$300,000 for the Newark spray irrigation project.

The Commissioners recessed until 10:30 a.m.

The Commissioners conducted a public hearing on Rezoning Case No. 418 for an application submitted by Attorney Hugh Cropper, IV on behalf of Moore Boat, LLC, property owner, which seeks to rezone approximately 9.4 acres of land located at the southerly terminus of North Piney Point Road, south of St. Martins Neck Road, and more specifically identified on Tax Map 10 as Parcels 4, 171, and 304, from E-1 Estate District to I-1 Light Industrial District. Staff members present at the hearing were Development Review and Permitting Director (DRP) Ed Tudor, DRP Deputy Director Phyllis Wimbrow, and DRP Zoning Administrator Jennifer Keener. County Attorney Maureen Howarth swore in those individuals who planned to give testimony during the hearing. Mr. Tudor reviewed the application, which received a favorable recommendation from the County Planning Commission. Ms. Wimbrow stated that according to the application for rezoning, the applicants' claim as the basis for their rezoning request was that there was a mistake in the existing zoning rather than a change in the character of the neighborhood. She then entered the Planning Commission's Findings of Fact into the record and stated that the property is located within an Existing Developed Areas land use category, is consistent with uses outlined in the Comprehensive Plan, and the Planning Commission found that there will be no negative impact to the transportation patterns arising from the proposed rezoning of the petitioned area and will not have any adverse environmental impacts, but would actually improve environmental conditions due to the installation of Critical Areas buffers, stormwater management systems, and a nitrogen removal wastewater system. Furthermore, the Planning Commission concluded that there was a mistake in the existing zoning of the petitioned area, as this is the site of a long-established boat repair and fabrication operation, and though the intensity of this operation has waned through the years, it has never ceased being utilized as such.

Commissioner Purnell opened the floor to receive public comment.

Mr. Cropper concurred with staff's findings and asked the Commissioners to accept these findings as his testimony as well. He reviewed the history of boat repair and fabrication operations on the property, noting that the State Critical Area Commission had approved a Growth Allocation for the property. He further stated that the I-1 zoning will provide important access to the water and associated economic benefits.

Environmental Consultant Chris McCabe testified that the Atlantic Coastal Bays Critical Area Commission designated a portion of the property as Limited Development Area (LDA), while the remainder of the property was designated as Resource Conservation Area (RCA), and he advised that the Critical Area Commission recently approved a growth allocation request and reclassification of the RCA portion to LDA based upon a mistake in mapping in that the entire site had long been used for the boat construction and repair business. He then outlined environmental enhancements to be made to the property.

Land Planner Bob Hand concurred that the E-1 zoning classification on the petitioned area is a mistake, as the petitioned area does not display the typical E-1 District uses, such as residential development, and that the long-established use of boat building and repair on the site are industrial uses that should have been given an industrial zoning classification. Therefore, he

agreed with the Planning Commission's findings.

Land Surveyor Frank Lynch, Jr. agreed that the E-1 zoning is a mistake, as developing residential units on two-acre lots represents sprawl, not smart growth. He advised that the rezoning of the property to I-1 would bring the existing uses back into compliance.

Todd LeKites of North Piney Point Road stated that he is not opposed to the rezoning, but requested assurance that the change would not result in the proliferation of tractor trailers on this road, which would endanger his grandchildren and impact the quality of life in this community.

Leighton Moore of Moore Boat, LLC confirmed that the boat fabrication business proposed for this property would generate no tractor-trailer traffic and in fact would not generate much additional traffic at all. He stated that he planned to use the facility primarily for storage.

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

Upon a motion by Commissioner Church, the Commissioners conceptually adopted the Planning Commission's Findings of Fact as their own and approved the rezoning from E-1 to I-1, based on a mistake in the existing zoning.

The Commissioners met in legislative session.

The Commissioners met with Mr. Tudor to consider proposed revisions to Bill 19-3 (Zoning - Boarding and Lodging Rentals) in follow-up to the August 20, 2019 request of the Commissioners following a public hearing on the matter to massage the language to address their concerns regarding the additional parking space required for rental properties, the limitation of two persons per bedroom rather than by size of the bedroom, and the restriction on the number of unrelated persons occupying a rental home for their consideration and the scheduling of an additional public hearing if the changes are significant. Mr. Tudor stated that, while these changes are rather simple, they did require a number of changes to the section numbers of the original bill along with changes to various sections of what will be the new zoning regulations. He then reviewed the proposed revisions as follows. First, the new ZS 1-351(b)(5) would require that one additional parking space be required beyond that currently required for a dwelling unit only for all short term rental structures for which a building permit application is received after the effective date of this bill. Second, staff revised several different parts of the bill, creating a definition of the term "bedroom," which created a new Section 1 of the bill and then renumbered all subsequent sections, and revised the new ZS 1-351(b)(3) A through C so that occupancy of a bedroom is based on the ratio of one occupant per 50 square feet of floor area unobstructed by other than furniture rather than simply two persons per bedroom as originally proposed. Third, to address the concerns over the number of unrelated persons occupying a short-term rental, staff revised the new ZS 1-351(b)(3)A to say that the definition of "family or housekeeping unit" shall not apply in determining the occupancy limitations of short term rentals holding a valid rental license, but rather the square footage limitations with regard to bedroom size and the total number of bedrooms would govern occupancy limitations. Mr. Tudor concluded that he did not consider these changes to be significant in nature. However, Chief Administrative Officer Harold Higgins recommended scheduling a public hearing to give the public an opportunity to comment on these changes.

Upon a motion by Commissioner Bertino, the Commissioners unanimously agreed to schedule a public hearing to receive public comment only on the proposed revisions to Bill 19-3 on October 15, 2019.

The Commissioners met with Mr. Tudor to review a proposed text amendment application submitted by Attorney Hugh Cropper, IV on behalf of Sally Connolly and Susan Naplachowski, property owners in the White Horse Park campground subdivision, seeking to add a new subsection ZS 1-318(d)(1)K after subsection 1-318(d)(1)J of the Zoning and Subdivision Control Article, which currently requires that units or sites in a campground subdivision shall be occupied only on a seasonal basis and shall not be occupied as a place of primary residence or domicile, and further stipulates that between September 30 of each year and April 1 of the succeeding year units or sites shall not be occupied for more than 30 consecutive days or an aggregate of 60 days. Mr. Tudor explained that Mr. Cropper's original application sought to renumber Subsection ZS 1-318(d)(1)K through (d)(1)Q and to add a new subsection (d)(1)K, which would allow the Board of Zoning Appeals to authorize, by special exception, year round occupancy of individual units or sites in a campground subdivision as a retirement residence where the youngest occupant is at least 55 years of age and provided such permitted units do not exceed twenty-five percent of the total. He stated that after many delays this proposed amendment was reviewed by the Planning Commission on May 2, 2019, at which time no action was taken, after which Mr. Cropper revised his application to replace previous language for a new Subsection (d)(1)K to affect White Horse Park residents only. Mr. Cropper's currently proposed language would allow property owners in White Horse Park who have resided there full time (continuously) since June 2018 to be permitted to continue their full time occupancy until the earlier to occur: (1) the property owners discontinue their full time residency; (2) the property owners pass away or (3) the unit is sold. Mr. Tudor explained that staff was opposed to the proposed text amendment and the Planning Commission gave the revised language a unanimous unfavorable recommendation on September 5, 2019. Mr. Tudor further advised that staff cannot stress strongly enough that they are in complete and total opposition to the language as proposed for a litany of reasons, all of which are spelled out in the staff memos to the Planning Commission and include but are not limited to the following: the terms full time and continuously are not defined in the amendment nor are they established definitions in ZS 1-103(b) of the Zoning Code; the term grandfathered is defined by the Zoning Code and only applies to plan approvals per ZS 1-126, thus occupancy is not a provision that can be grandfathered; year-round occupancy of units in White Horse Park was illegal all along and never constituted an approval of any sort, thus the current permanent occupancy of these units is unlawful and was unlawful at the time they were occupied on a permanent basis, and, therefore, cannot be considered a legally existing nonconformity; the three qualifying conditions are undefined and difficult to track, as is death of the property owners; not all year-round residents are necessarily property owners; any phase-out provision for the full-time residents should only be considered through a formal consent by the Commissioners and not as part of the Zoning Code, where it could set a dangerous precedent for other similar uses; approved equivalent dwelling unit (EDU) flows are based on the seasonal nature of the community, and year-round occupancy would necessitate acquisition of additional sanitary capacity by the White Horse Park community or the applicants; acquisition of approximately 54 additional EDUs from the Ocean Pines Sanitary Service Area (SSA) would have to be purchased at a cost of \$15,218 per EDU for a total cost of \$821,772, a cost that would be born solely by the property owners in the White Horse Park community; additional capacity is not available and would need to be reassigned from other properties in the planning area, as the Ocean Pines SSA does not have the sanitary

capacity to serve an application of this magnitude at this time; and additional meters would need to be installed in White Horse Park, along with a method for monitoring.

Commissioner Nordstrom introduced the text amendment as Bill 19-7 (Zoning - Campground Subdivisions). Immediately thereafter, Commissioner Bunting made a motion that passed 5-1, with Commissioner Nordstrom voting in opposition, to reject Bill 19-7.

Commissioner Bunting noted that, in accordance with State law, a bill may be rejected after its introduction without a hearing by a vote of at least two-thirds of the total membership of the County Commissioners. He stated that the County staff and Planning Commission are opposed to the text amendment as well as several owners of units in White Horse Park. As a result, he and a super-majority of the County Commissioners are not in favor of the proposed text amendment, so there is no need to consider the bill.

Commission President Purnell closed the legislative session.

Upon a motion by Commissioner Elder, the Commissioners unanimously agreed to send a letter to the Federal Communications Commission (FCC) expressing their strong support for the FCC's proposed establishment of the Rural Digital Opportunity Fund, which would direct critically-needed funding to rural communities to extend broadband to unserved areas.

The Commissioners answered questions from the press, after which they adjourned to meet again on October 1, 2019.