

**BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY MEETING MINUTES  
FOR TUESDAY, NOVEMBER 10, 2009**

Commissioner Jan Gardner, *President*, called to order a meeting of the Board of County Commissioners of Frederick County, Maryland, ("Board") for Tuesday, November 10, 2009, at 8:40 a.m. Present were Commissioners David Gray, *Vice President*; Kai Hagen, Charles Jenkins and John L. Thompson, Jr. Also present were Barry Stanton, Assistant County Manager and Mary Baker, Recording Secretary.

*(Official minutes of the Board of County Commissioners' meetings are kept on file in the County Manager's Office; the meetings are also video recorded. Approved minutes are available on the county's website. To receive a copy of meetings recorded on videotape or DVD, please contact the Board of County Commissioners at 301-600-1100 or visit the county's website at [www.FrederickCountyMD.gov](http://www.FrederickCountyMD.gov).)*

**NOTE: Copies of all staff reports are available in the OnBase system. If you need assistance with the OnBase system, please contact the recording secretary.**

**WORKSESSION**

**Veterans Day Proclamation**

Commissioner Jenkins presented the proclamation.

**CLOSED SESSION**

Commissioner Gray moved to proceed into closed session in accordance with Maryland Annotated Code State Government Article § 10-508(a)(7) To consult with counsel to obtain legal advice on a legal matter; and (8) To consult with staff, consultants, or other individuals about pending or potential litigation. Commissioner Hagen seconded the motion that passed 4-1 with Commissioner Thompson opposed.

Commissioner Thompson offered a substitute motion to acknowledge receipt of settlement through the public information act and to disclose in open session as a developer rights and responsibilities act item during administrative business. This motion failed due to lack of a second.

**OPEN SESSION**

**PLEDGE OF ALLEGIANCE**

The meeting began with the Pledge of Allegiance.

**COMMISSIONERS COMMENTS**

None.

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**WORKSESSION**

**Source Reduction Award Recognition**

Dawn Adams, Utilities and Solid Waste Management Division, presented the awards to the following:

- Green Country Inn and Diner
- The Common Market
- Frederick County Family Partnership (Citizens Services Division)
- Frederick County Finance Division

**America Recycles Day in Frederick County Proclamation**

Commissioner Gardner presented the proclamation.

**Appointments/Reappointments to Boards/Commissions/Committees - Joyce Grossnickle, Office of the County Manager**

**Business Development Advisory Council**

There was no public comment.

Commissioner Hagen moved to reappoint Dr. Carol Eaton, Dr. Joseph Garner and Mr. Michael Kidder to serve three-year terms to expire June 30, 2012 and appoint Mr. Shaun Butcher and Ms. Tanya Wagstaff to fill unexpired terms to expire June 30, 2012. Commissioner Gray seconded the motion that passed 5-0.

**PUBLIC HEARING**

**Request for Real Property Tax Credit by the Monocacy Valley Montessori Public Charter School (217 Dill Avenue) - Richard McCain, Office of the County Attorney**

Mr. McCain presented the request for tax credit.

Public comment was taken from:

- Kimberly Standing
- Leslie Mansfield
- Jack Lynch
- Juliana Lynch
- Eric Besch
- Yvette Rood
- Jim Sheehy

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- Leigh Fields
- Claire Mixon
- Kristen Spear

Commissioner Hagen moved to grant the property tax credit for FY 2010.

Commissioner Thompson called the motion out of order.

Commissioner Gardner overruled Commissioner Thompson.

Commissioner Gardner passed the gavel to Commissioner Gray.

Commissioner Gardner moved per Section 9-213E, to provide the property tax credit to 217 Dill Avenue for the time period in which the Monocacy Valley Montessori Public Charter School demonstrated exclusive use of the property as a charter school and for them to submit annual proof of exclusive use, excluding the interest due for FY 2010 for their 75% share including the building and parking lot. The Board, Board of Education and Monocacy Valley Montessori Public Charter School staff were to meet to find a long term solution to the tax issue. Commissioner Hagen seconded the motion that passed 3-2 with Commissioners Gray and Thompson opposed.

**ADMINISTRATIVE BUSINESS**

**Review of Options for Waste to Energy Facility Permitting – John Mathias, Office of the County Attorney**

Mr. Mathias presented the options for the waste to energy (WTE) facility. He noted under state law a WTE facility may not be installed unless it conforms to the county solid waste management plan. Before the Board could adopt an amendment, the Frederick County Planning Commission (FcPc) must certify the proposed amendment was consistent with the county's comprehensive plan. The proposed amendment was presented to the FcPc on October 14, 2009, and the FcPc declined to certify that the proposed amendment was consistent with the comprehensive plan.

The Board had requested the County Attorney's Office provide a list of possible options for them to consider in order to allow the WTE facility to move forward. The Board unanimously chose to pursue the following options:

- Request the FcPc to reconsider or rescind the decision made on October 14, 2009, prior to their next meeting on November 18, 2009, as the time period to file a judicial appeal would have expired;
- Appeal the FcPc decision in court, noting the appeal must be submitted by November 13, 2009;
- Determine whether the WTE was consistent with the solid waste management plan that currently exists; and

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- Seek an order from the Maryland Department of the Environment requiring the county to make the solid waste management plan amendments.

**WORKSESSION**

**Installment Purchase Program – Communication Tower Policy - Tim Blaser and Anne Bradley, Planning Division**

Commissioner Thompson recused himself from this item.

Mr. Blaser presented policy concerns regarding the installment purchase program (IPP) easements. He recommended a policy be developed to allow communications antennas on a case-by-case basis on existing structures located on IPP easements to allow the owners of the easements to benefit from earning additional income from the communications antenna so long as it did not interfere with the agricultural operations nor require the placement of a new structure or permitting a new freestanding cell tower.

(Commissioner Jenkins left the meeting.)

Public comment was taken from:

- Cathy Borten
- CeeCee Middlebrooks

(Commissioner Jenkins returned to the meeting.)

Commissioner Hagen moved to support staff's recommendations as presented including defining impacts and proving necessity. Commissioner Gardner seconded the motion that tied 2-2 with Commissioners Gray and Jenkins opposed and Commissioner Thompson absent.

(Commissioner Jenkins left the meeting.)

Commissioner Gray changed his vote and the motion then passed 3-0 with Commissioners Jenkins and Thompson absent.

**Installment Purchase Program - Inspection Policy - Tim Blaser and Anne Bradley, Planning Division**

(Commissioner Thompson entered the meeting.)

Mr. Blaser requested a policy be established for inspection of the installment purchase program (IPP) easements. He recommended an inspection be conducted every five years to ensure the terms of the deed of easement were being upheld and to allow for open communication between the landowners and the county.

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Commissioner Gray moved approval of staff's recommendations as presented. Commissioner Hagen seconded the motion that passed 4-0 with Commissioner Jenkins absent.

**COMMISSIONERS COMMENTS**

Commissioner Gardner noted she invited the newly elected City of Frederick Officials to the next county/municipalities meeting.

**PUBLIC COMMENTS**

- Karen Tome
- Caroline Eader

**QUESTIONS – PRESS**

None.

**ADJOURN**

The meeting adjourned at 1:45 p.m.

Mary E. Baker  
Recording Secretary

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**FORM OF STATEMENT FOR  
CLOSING THE MEETING OF TUESDAY, NOVEMBER 10, 2009**

**STATUTORY AUTHORITY TO CLOSE SESSION**

**State Government Article §10-508(a):**

- (7) To consult with counsel to obtain legal advice on a legal matter; and
- (8) To consult with staff, consultants, or other individuals about pending or potential litigation.

**Motion:**

Commissioner Gray moved to proceed into closed session in accordance with Maryland Annotated Code State Government Article § 10-508(a)(7) To consult with counsel to obtain legal advice on a legal matter; and (8) To consult with staff, consultants, or other individuals about pending or potential litigation. Commissioner Hagen seconded the motion that passed 4-1 with Commissioner Thompson opposed.

**Topic to be Discussed:**

To discuss the possibility of settling pending litigation involving the county.

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Mary E. Baker  
Recording Secretary

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**FORM OF STATEMENT FOR MINUTES OF NEXT OPEN MEETING  
ON TUESDAY, NOVEMBER 10, 2009,  
FOLLOWING THE CLOSED MEETING OF TUESDAY, NOVEMBER 10, 2009**

**STATUTORY AUTHORITY TO CLOSE SESSION**

**State Government Article §10-508(a):**

- (7) To consult with counsel to obtain legal advice on a legal matter; and
- (8) To consult with staff, consultants, or other individuals about pending or potential litigation.

**Motion:**

Commissioner Gray moved to proceed into closed session in accordance with Maryland Annotated Code State Government Article § 10-508(a)(7) To consult with counsel to obtain legal advice on a legal matter; and (8) To consult with staff, consultants, or other individuals about pending or potential litigation. Commissioner Hagen seconded the motion that passed 4-1 with Commissioner Thompson opposed.

**Others in Attendance:**

B. Stanton, J. Mathias, M. Chomel, K. Mitchell, A. Hudak, J. Kroll, M. Marschner, E. Soter, L. Steele, R. Santangelo , and M. Baker

**Topic to be Discussed:**

To discuss the possibility of settling pending litigation involving the county.

**Action Taken:**

The Board provided direction to staff.

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Mary E. Baker  
Recording Secretary