

BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY
MEETING MINUTES FOR TUESDAY, MARCH 23, 2010

Commissioner Jan Gardner, *President*, called to order a meeting of the Board of County Commissioners of Frederick County, Maryland, ("Board") for Tuesday, March 23, 2010, at 8:30 a.m. Present were Commissioners David Gray, *Vice President*, Kai Hagen, John L. Thompson, Jr. and Blaine Young. Also present were Ron Hart, County Manager and Patti Morrow, 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)

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.

PLEDGE OF ALLEGIANCE

The meeting began with the Pledge of Allegiance.

COMMISSIONER COMMENTS

Commissioner Young raised the issue of a possible conflict of interest with the Buckingham's Choice property as it pertained to the draft Countywide Comprehensive Plan.

WORKSESSION

Earth Hour Proclamation

The Board proclaimed Earth Hour in Frederick County.

PUBLIC HEARING

Water and Sewer Plan Amendment Requests – Fall 2009 Cycle – Tim Goodfellow, Planning Division

A public hearing was held, as duly advertised, to consider amendments to the Frederick County Water and Sewer Plan.

Commissioner Gardner swore in all those who were testifying.

Tim Goodfellow presented the fall 2009 amendment requests.

WS-09-07 - Staff/Christine Bradley and Michael Cooper: Request for the reclassification from S-5 Dev. to S-3 Dev. at 8929 Baltimore Road.

Recommendation: Planning staff and Utilities and Solid Waste Management Division (DUSWM) recommended approval of S-3 Dev. and the Frederick County Planning Commission (FcPc) found the request consistent with the New Market Region Plan. There was no public comment.

BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY
MEETING MINUTES FOR TUESDAY, MARCH 23, 2010

Decision: Commissioner Gray moved to approve WS-09-07 (Staff/Christine Bradley and Michael Cooper) to reclassify Tax Map 78, Parcel 235 from S-5 Dev. to S-3 Dev. based on a potential health hazard. Commissioner Hagen seconded the motion that passed 5-0.

WS-09-08 - Town of New Market: Request to reclassify Tax Map 801, Parcels 3735 (168 West Main Street) and 3809 (20 East Main Street) from W-5 Dev. to W-3 Dev. and a request to reclassify Tax Map 801, Parcels 3834 (17 East Main Street), 3761 (78 West Main Street) and 3859 (33 West Main Street) from W-3 Dev. to W-5 Dev.

Recommendation: Planning staff recommended approval of W-3 Dev. and the FcPc found the request consistent with the New Market Region Plan. DUSWM recommended approval to change to W-3 Dev. for Parcels 3735 and 3809 and no recommendation for Parcels 3834, 3761 and 3859 to change to W-5 Dev.

Rod Winebrenner, DUSWM, and Michael Chomel, Office of the County Attorney, commented on the request.

There was no public comment.

The Board requested a discussion take place with the Town of New Market officials to clarify the water amendment process.

Decision: Commissioner Hagen moved to approve WS-09-08 (Town of New Market) to reclassify Tax Map 801, Parcels 3735 and 3809 from W-5 Dev. to W-3 Dev., and to continue Parcels 3834, 3761 and 3859 following clarification from the Town of New Market regarding the reversal of the water amendments from W-3 Dev. to W-5 Dev. Commissioner Gray seconded the motion that passed 5-0.

WS-09-09 - Urbana Volunteer Fire Department: Request to reclassify Tax Map 96, Parcel 198 from W-5 Dev. to W-3 Dev.

Recommendation: Planning staff and DUSWM recommended approval of W-3 Dev. and the FcPc found the request consistent with the Urbana Region Plan.

There was no public comment.

Decision: Commissioner Gray moved to approve WS-09-09 (Urbana Volunteer Fire Department) to reclassify Tax Map 96, Parcel 198 from W-5 Dev. to W-3 Dev. Commissioner Young seconded the motion that passed 5-0.

WORKSESSION

BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY
MEETING MINUTES FOR TUESDAY, MARCH 23, 2010

2010 Big Sweep – Donnie Crum, Public Works Division and Eve Shafi, Volunteer Frederick

Mr. Crum and Ms. Shafi presented the request for county staff to team up with Volunteer Frederick for the 2010 Big Sweep to be held on Saturday, April 24, 2010.

Public comment was heard from Jeanette Cermak.

Commissioner Gray moved to approve the Frederick County Highway Operations and Utilities and Solid Waste Management Division staff participation in the 2010 Big Sweep.

Commissioner Young seconded the motion that passed 5-0.

Conservation Reserve Enhancement Program (CREP) Easements – Tim Blaser and Anne Bradley, Planning Division

Commissioner Thompson recused himself from the discussion due to a conflict of interest.

Mr. Blaser and Ms. Bradley presented the top five (5) applications approved by the Department of Natural Resources for CREP easement purchase.

There were no public comments.

Commissioner Gray moved to direct staff to negotiate with the top five (5) applicants with the understanding they would come back to the Board for final decision and the approval of a budget transfer. Commissioner Hagen seconded the motion that passed 4-0 with Commissioner Thompson recused.

Bus Shelter Deed of Easement and Maintenance Agreement – Nancy Norris, Transit Services Division

Ms. Norris presented a deed of easement and maintenance agreement for a bus shelter located at the corner of 14th Street and Motter Avenue.

Public comment was heard from:

- Brian Lyburn, Interfaith Housing Alliance

Commissioner Hagen moved to accept and execute the easement and maintenance agreement for the bus shelter located at the corner of 14th Street and Motter Avenue and directed staff to talk with the new property owners regarding the possible movement of the bus shelter farther south on the property. Commissioner Gray seconded the motion that passed 5-0.

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ADMINISTRATIVE BUSINESS

Request to Initiate Zoning Text Amendment to Permit by Right Co-Location of Communication Antennas on Existing Overhead Electric Transmission Towers – Larry Smith, Planning Division

Eric Soter and Mark Depo, Planning Division, presented the issue.

Commissioner Gray moved to direct staff to draft a zoning text amendment to permit co-location of communication towers with electric transmission towers and possibly other similar structures and bring back for consideration to take to public hearing. Commissioner Young seconded the motion that passed 4-1 with Commissioner Thompson opposed.

FY 2011-2016 Capital Improvements Program (CIP) and FY 2011 Capital Budget Regarding Public Hearing Input – Kelly Weaver, Finance Division

Ms. Weaver presented comments from the public hearing held on Tuesday, March 16, 2010 regarding the FY 2011-2016 CIP budget.

The possible scenarios of moving Lincoln Elementary School forward were discussed.

It was indicated the issue of private/public partnerships for building schools would be added to an upcoming joint BOCC/BOE agenda.

Commissioner Hagen suggested putting off the communication systems.

COMMISSIONERS COMMENTS

None.

PUBLIC COMMENTS (3 MINUTE PRESENTATION)

- Jeanette Cermak
- Mark Simanowith, Esquire, Saul Ewing, LLP, Representing AT&T

QUESTIONS – PRESS

None.

CLOSED SESSION

Commissioner Gray moved to go into closed session under the 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 5-0

Patricia A. Morrow
Recording Secretary

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**FORM OF STATEMENT FOR
CLOSING THE MEETING OF TUESDAY, MARCH 23, 2010**

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 Hagen moved to go into closed session in accordance with the 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 Gray seconded the motion that passed 5-0.

Topic To Be Discussed

To consult with legal counsel to obtain legal advice on an appeal of a Frederick County Circuit Court decision to the Court of Special Appeals of Maryland.

Patricia A. Morrow
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Motion:

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Topic To Be Discussed:

To consult with legal counsel to obtain legal advice on an appeal of a Board of Appeals decision to the Frederick County Circuit Court.

Patricia A. Morrow
Recording Secretary

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**FORM OF STATEMENT FOR MINUTES OF NEXT OPEN MEETING
ON THURSDAY, MARCH 25, 2010,
FOLLOWING THE CLOSED MEETING OF TUESDAY, MARCH 23, 2010**

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 go into closed session under the 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 5-0

Others in Attendance:

R. Hart, B. Stanton, J. Mathias, K. Mitchell, E. Soter, R. Santangelo and P. Morrow

Topic Discussed:

To consult with legal counsel to obtain legal advice on an appeal of a Frederick County Circuit Court decision to the Court of Special Appeals of Maryland.

Action Taken:

Staff was directed to move forward with the appeal to the Court of Special Appeals of Maryland while exploring a possible settlement.

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**FORM OF STATEMENT FOR MINUTES OF NEXT OPEN MEETING
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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 go into closed session under the 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 5-0

Others in Attendance:

R. Hart, B. Stanton, J. Mathias, W. Kearney, K. Mitchell, E. Soter, R. Santangelo and P. Morrow

Topic Discussed:

To consult with legal counsel to obtain legal advice on an appeal of a Board of Appeals decision to the Frederick County Circuit Court.

Action Taken:

The Board directed staff to file an appeal to the Frederick County Circuit Court.

Patricia A. Morrow
Recording Secretary