

Regular Meeting of County Commissioners
Tuesday October 24, 2023 (Legislative Day)

The regularly scheduled meeting of the County Commissioners was convened in hybrid format, virtually and in person, at 9:01 a.m. with the following persons in attendance:

Reuben B. Collins II, Esq., President, County Commissioner
Ralph Patterson, II, M.A., Vice President, County Commissioner
Gilbert O. Bowling, III, County Commissioner
Thomasina O. Coates, M.S., County Commissioner
Amanda M. Stewart, M.Ed., County Commissioner
Deborah Hall, Acting County Administrator
Wes Adams, County Attorney
Carol A. DeSoto, Clerk to the Commissioners

Call to Order/Pledge

Commissioner Collins called the meeting to order and began with the Pledge of Allegiance.

Roll Call

A roll call was taken. All Commissioners were present.

Commissioners' Comments

A motion was made by Commissioner Bowling, seconded by Commissioner Patterson and passed, with all Commissioners present, voting in favor to approve making today, October 24, 2023, a legislative day.

Approval of the Minutes of October 17 and 18, 2023

A motion was made by Commissioner Bowling, seconded by Commissioner Patterson and passed, with all Commissioners present, voting in favor to approve the minutes of October 17, 2023.

A motion was made by Commissioner Bowling, seconded by Commissioner Patterson and passed, with all Commissioners present, voting in favor to approve the minutes of October 18, 2023.

Note: Minutes of October 16, 2023 (Notice of Attendance) No Quorum/No Minutes Required

Announcement

Next Scheduled Session(s): October 31 and November 1, 2023.

Approval Items

Budget Amendments and Budget Transfers
There were none.

Change Order #62 Mattawoman Wastewater Treatment Plant- Inflow & Infiltration

(Ms. Alicia Afroilan, Engineering Supervisor, and Mr. Andrew Balchin, Chief of Infrastructure Management, Department of Planning and Growth Management)

A motion was made by Commissioner Bowling, seconded by Commissioner Patterson and passed, with all Commissioners present, voting in favor to approve Change Order #62 for three hundred and ninety-six thousand six hundred and twenty dollars and forty-six cents (\$396,620.46).

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Changes to Standard Operating Policy (SOP) Protocol for the Charles County Flag

(Ms. Julie Bryson, Assistant Chief of Staff, Office of the Commissioners; Ms. Terri Kahouk, Deputy Director, and Mr. John Earle, Chief of Building and Trades, Department of Public Works, Facilities)

A motion was made by Commissioner Bowling, seconded by Commissioner Patterson and passed, with all Commissioners present, voting in favor to approve the changes as presented to this SOP.

FY2024 Commissioners' Initiatives

(Ms. Julie Bryson, Assistant Chief of Staff, Office of the Commissioners)

A motion was made by Commissioner Bowling, seconded by Commissioner Patterson and passed, with all Commissioners present, voting in favor to approve the FY2024 Commissioners' Initiatives as presented.

Note: The FY2024 Commissioner's Initiatives: twenty-five thousand dollars (\$25,000.00) for the Drug Take Back Program; five thousand dollars (\$5,000.00) for the Protection Plus Program; and three thousand dollars (\$3,000.00) for the Veteran's Corner.

Briefing: Charles County Pension Plan (CCPP) Annual Investment and Actuarial Review

Ms. Alexis Blackwell, Director, and Ms. Megan Donnick, Deputy Director, Department of Human Resources; Mr. Jacob Dyer, Acting Director, Department of Fiscal and Administrative Services; Mr. Lazaro Guzman, Vice President, Full Services Investments, Mr. David Pappalardo, Vice President and Consulting Actuary, and Mr. Morris Jackson, Director of Relationship Management, Empower, provided an update on the Charles County Pension Plan performance as of June 30, 2023. They provided an asset allocation review; discussed the Macroeconomic Summary and Market Summary; reviewed the contribution summary, funded status, participant statistics, and actuarial funding methods/assumptions used. The County is well positioned for market volatility.

Briefing and Request for Approval: Sheriff's Office Retirement Plan (SORP) Annual Investment and Actuarial Review

Ms. Alexis Blackwell, Director, and Ms. Megan Donnick, Deputy Director, Department of Human Resources; Mr. Jacob Dyer, Acting Director, Department of Fiscal and Administrative Services; Mr. Alton Fryer, Director of Client Services, Ms. Ann Sturner, Senior Consulting Actuary; and Ms. Michelle Boyles, Consulting Actuary, Bolton USA, provided a review of the Sheriff's Office Retirement Plan (SORP) and requested changes to the investment policy and asset allocation policy.

A motion was made by Commissioner Bowling, seconded by Commissioner Patterson and passed, with all Commissioners present, voting in favor to approve amending the SORP's investment policy statement to allow for investment in private assets, including private real estate.

A motion was made by Commissioner Bowling, seconded by Commissioner Patterson and passed, with all Commissioners present, voting in favor to approve amending the asset allocation policy included in the investment policy statement to allocate five percent (5%) of the pension's assets in private real estate and reduce the allocation to large-cap growth and small-mid cap growth by two-point five percent (2.5%) each to fund the allocation to private real estate.

Briefing: Other Post Employment Benefits (OPEB) Annual Investment and Actuarial Review

Ms. Alexis Blackwell, Director, and Ms. Megan Donnick, Deputy Director, Department of Human Resources; Mr. Jacob Dyer, Acting Director, Department of Fiscal and Administrative Services; Mr. Alton Fryer, Director of Client Services, Ms. Ann Sturner, Senior Consulting Actuary; and Ms. Rebecca Trauger, Consulting Actuary, Bolton USA, provided a review of the Other Post Employment Benefit(OPEB) annual investment and actuarial review. They reviewed the value of the OPEB Trust, the policy’s benchmarks, funding and accounting valuation, County contributions, total outlays, participant statistics and methods/assumptions used in the review.

Discussion: Request to Waive Attorney/Client Privilege- Investigative Report Open Session

Commissioners; Ms. Alexis Blackwell, Director, Department of Human Resources; and Mr. Kevin Karpinski, Outside Counsel joined the Commissioners to discuss the request to waive attorney client privilege for a second investigative report completed earlier this year by Bernadette Sargeant, Esq., related to employee allegations of discrimination, bullying, and retaliation, by a current Commissioner. Mr. Karpinski provided the Board of Commissioners with guidance on considerations for releasing the final report to the public. Mr. Karpinski explained that the second report is owned by the Board of County Commissioners and could be made available with a majority vote of the Board.

Commissioner Bowling expressed the need to do better the second time around. Commissioner Stewart added that Judge Green indicated that this should have been done in open session with the first report and that the Commissioners owe it to the citizens. She also indicated that it could be self-shared by the Commissioner in the report.

Commissioner Patterson questioned whether Ms. Sargeant’s working files could also be released, to which Mr. Karpinski informed him that there is nothing to preclude the Board from asking for these files. He also indicated that in over thirty (30) years he was not aware of these files ever being turned over. Commissioner Patterson expressed the need for full disclosure and put sunshine on all aspects including the names of the employees, to own what was written. Commissioner Stewart indicated that this would incur additional costs for the County to pay to Ms. Sargeant and Mr. Karpinski.

Commissioner Collins read the following statement:

“ I am opposing the waiver of attorney/client privilege in this instance for two(2) fundamental reasons. Constitutionally, in our shared Republican form of governance not matter the circumstance, there is an inherent deference to the notion that whatever the allegation of wrongdoing is, there is a respect for a process that recognizes that you are innocent until proven guilty of wrongdoing. The Seventh Amendment to the United States Constitution preserves the right to a jury trial in any civil matter where the value in controversy shall exceed twenty dollars. As it relates to the incident’s involving the matters under the investigative process before us, allegations of work environment discrimination are covered under the Equal Employment Opportunity Commission (EEOC). Under this process even if an alleged wrongdoer is determined by the EEOC to have committed an act of discrimination, that same alleged wrongdoer is provided an opportunity to be heard by a jury of his or her peers.

Secondly as a lawyer that has practiced law in the State of New Jersey, the District of Columbia and Maryland since 1997, any waiver of attorney client confidentiality is viewed with the highest level of scrutiny. Rule one point six (1.6) of the Rules of Professional Conduct here in the State of Maryland fleshes out the importance of the role of an attorney in preserving confidentiality in any action where

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that person's representation is paramount. The Sargeant investigation stresses that role in page one (1), conversely in the minute from the June 9, 2020 meeting, the County Attorney stressed the 'importance that closed sessions need to stay in the confines of this meeting' citing in part the results of the infamous Sargeant report. We were implored to maintain confidentiality, not simply to limit exposure of the subject of the investigation, it was imposed to protect the identity of County employees referenced in the report. The Sargeant report is just that, a report. If litigation were to ensue alleging discrimination, the report would be viewed as evidence presented as part of the Plaintiff's case, nothing more nothing less.

Waiving the attorney/client privilege will establish a chilling precedent that suggests that our government is essentially a 'kangaroo court government' that does not adhere to the basic elements of our American Republican form of governance. I will not support that."

Commissioner Bowling stressed the need to be open otherwise looks like trying to hide something and the County has spent a lot of money for the judgement. It looks like the Board is rewarding a Commissioner. He hopes the Commissioner has the courage and boldness to address the issue.

Commissioner Stewart addressed Commissioner Collins' statement stressing that you cannot pick or choose and cannot turn off knowledge or responsibility. She mentioned that if an organization knowingly has information that discrimination occurred, they must take action to stop it. It is the elected official's responsibility to govern in an open session. It is a way elected officials can protect employees by operating in the open. She felt Commissioner Collins was just giving his opinion, but the Judge said that the first report should have been released in open.

A motion was made by Commissioner Bowling, seconded by Commissioner Stewart and failed with Commissioners Bowling and Stewart present, voting in favor to approve the release of the second Sargeant Report, to be read publicly in open session and waive attorney/client privilege related to this report with the accepted amendment from Commissioner Patterson to have Ms. Sargeant release her work files with the names of the employees only to Commissioners Patterson, Collins, Bowling and Stewart. Commissioners Collins and Coates were opposed; Commissioner Patterson abstained.

A roll call of the vote was taken: Commissioner Bowling-yes; Commissioner Coates-no; Commissioner Stewart-yes; Commissioner Patterson- abstained; Commissioner Collins-no. The motion failed two (2) to two (2) and one (1) abstaining.

Briefing: Update on the Southern Maryland National Heritage Area

Ms. Lucille Walker, Executive Director, Southern Maryland Heritage Area Consortium (SMHAC) provided an update on the Southern Maryland National Heritage Area, which became officially designated as a National Heritage Area by law on January 5, 2023 by an Act of Congress. The National Heritage Area includes Charles, Calvert, St. Mary's and Southern Prince George's Counties. Its launch was recognized by federal, state, and local leaders at a special event held on May 25, 2023. Ms. Walker highlighted the process for developing the management plan of the heritage area and public engagement efforts. She also reminded the Commissioners that Charles, Calvert, St. Mary's Counties still are comprised in the State of Maryland Heritage Area designation. She summarized the grant funding received to support the heritage designation, which totaled nine hundred thousand dollars (\$900,000) over the past four years for Charles County.

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Closed Session

At 11:45 a.m., motion was made by Commissioner Bowling, seconded by Commissioner Patterson and passed, with all Commissioners present, voting in favor to move into Close Session where all or a portion of this session may be closed pursuant to Section 3-305 (b)(1)(7) of the General Provisions Article of the Annotated Code of Maryland to review one (1) lease agreement and one (1) potential PILOT agreement; and discussion appointments to Commissioner appointed Boards and Commissions. The reason for moving into closed session is to keep legal advice, negotiations strategies, and personnel information confidential.

Summary Closed Session Items

At 12:04 p.m., the Commissioners went into closed session.

3-305(b)(7) Legal: Lease Renewal

Present: Commissioners Bowling, Coates, Stewart, Patterson, and Collins, Wes Adams, Deborah Hall, Carol DeSoto, Jenifer Ellin, Danielle Mitchell, and Michelle Lilly

Ms. Jenifer Ellin, Acting Deputy County Administrator, reviewed the potential lease renewal.

The Commissioners reached a consensus and took official action later this day under Additional Approval Items-Lease Approvals.

3-305(b)(7) Legal: Review of PILOT Agreement

Present: Commissioners Bowling, Coates, Stewart, Patterson, and Collins, Wes Adams, Deborah Hall, Carol DeSoto, Jenifer Ellin, and Zhypar Beishenalieva.

Ms. Zhypar Beishenalieva, Associate County Attorney, reviewed the potential PILOT agreement.

The Commissioners reached a consensus and took official action later this day under the Additional Approval Items-Wakefield PILOT Agreement.

3-305(b)(1) Personnel: Appointments to Boards and Commissions

Present: Commissioners Bowling, Coates, Stewart, and Patterson, Wes Adams, Deborah Hall, Carol DeSoto, Jenifer Ellin, and Christina Elkins.

The Commissioners reviewed the applicants interviewed for the Planning Commission and Police Accountability Board.

The Commissioners reached a consensus and took official action later this day under Additional Approval Items-Action on Boards, Commissions, and Committees.

At 12:14 p.m., a motion was made by Commissioner Stewart, seconded by Commissioner Patterson and passed, with all Commissioners present, voting in favor to end this close session.

The Commissioners returned to open session at 4:04 p.m.

Roll Call

A roll call was taken. All Commissioners were present.

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Additional Approval Item(s)

Actions on Boards, Commissions, and Committees

A motion was made by Commissioner Bowling, seconded by Commissioner Patterson and passed, with all Commissioners present, voting in favor to appoint Jeffrey Bossart and Semia Hackett as Citizen Members and Kevin Wedding as the Chair to the Planning Commission.

A motion was made by Commissioner Bowling, seconded by Commissioner Patterson and passed, with all Commissioners present, voting in favor to appoint Ivan Hill as the District Three (3) member to the Charles County Police Accountability Board.

Lease Approvals (Potomac Square and Cedarville)

(Ms. Jenifer Ellin, Acting Deputy County Administrator, Office of the County Administrator and Ms. Danielle Mitchell, Assistant Deputy County Attorney, Office of the County Attorney for Charles County)

A motion was made by Commissioner Stewart, seconded by Commissioner Bowling and passed, with all Commissioners present, voting in favor to approve the Potomac Square Lease.

A motion was made by Commissioner Coates, seconded by Commissioner Stewart and passed, with all Commissioners present, voting in favor to approve the Cedarville Lease.

Wakefield PILOT Agreement

(Forward Housing Staff; Mr. Jacob Dyer, Acting Director, Department of Fiscal and Administrative Services; Ms. Jenifer Ellin, Acting County Administrator, Office of the County Administrator; Ms. Zhypar Beishenalieva, Associate County Attorney, and Mr. Wes Adams, County Attorney, Office of the County Attorney for Charles County)

A motion was made by Commissioner Bowling, seconded by Commissioner Stewart and passed, with all Commissioners present, voting in favor to approve the Wakefield PILOT agreement.

Work Session: Bryans Road Sub Area Plan

Mr. Charles Rice, Acting Planning Director, and Ms. Amy Blessinger, Planner III, Ms. Cathy Thompson, Planning Supervisor, Department of Planning and Growth Management; Mr. Taylor Yewell, Redevelopment Manager, Department of Economic Development joined the Commissioners for a work session on the Bryans Road Sub Area Plan. Staff reviewed a presentation which provided an overview of the plan, community engagement, growth targets, public hearing, public comments, current and proposed land uses and densities, and recommendations, and next steps.

Commissioners Stewart and Bowling requested that a vote on this sub area plan wait until the Comprehensive Plan process begins to look holistically at all aspects. Public comments received indicate that residents are not in favor of this current plan and they should shelf it until the Comprehensive Plan process begins.

A motion was made by Commissioner Coates, seconded by Commissioner Patterson and passed, with Commissioners Coates, Patterson, and Collins present, voting in favor to approve the draft Bryans Road Sub Area Plan with staff recommended changes to the number range as presented.

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Commissioners Bowling and Stewart were opposed. A roll call of the vote was taken: Commissioner Bowling-no; Commissioner Coates-yes; Commissioner Stewart-no; Commissioner Patterson-yes; Commissioner Collins- yes. The motion passed three (3) to two (2).

Commissioner's New Business

There was no new business discussed.

Break 4:59 p.m. - 6:01 p.m.

Roll Call

A roll call was taken. All Commissioners were present.

Public Hearing: Spring 2023 Water and Sewer Category Cycle

The Commissioners held a hybrid, virtual/in-person, public hearing on the Spring 2023 Water and Sewer Category Cycle. Mr. Ben Yeckley, Planner III, Ms. Heather Kelley, Planning Supervisor, Ms. Melissa Hively, Planner I, Mr. Charles Rice, Planning Director, Department of Planning and Growth Management, reviewed the two applicant requests. Both Applicant 1 Category Amendment 2023-A1 and Applicant 2 Category Amendment 2023-A2 requested to change the water category from W-5 to W-3 and to change the sewer category from S-5 to S-3.

There were no public comments provided.

A motion was made by Commissioner Stewart, seconded by Commissioner Coates and passed, with all Commissioners present, voting in favor to close the public record.

A motion was made by Commissioner Stewart, seconded by Commissioner Coates and passed, with all Commissioners present, voting in favor to end this public hearing.

A motion was made by Commissioner Patterson, seconded by Commissioner Coates and passed, with all Commissioners present, voting in favor to approve the applications for amendments and to adopt Resolution 2023-16 to incorporate the amendments into the Charles County Comprehensive Water and Sewer Plan.

Public Hearing on Bill 2023-(09) Healthy Meals for Children

The Commissioners held a hybrid, virtual/in-person, public hearing on Bill 2023-09 Healthy Meals for Children. Ms. Danielle Mitchell, Associate County Attorney II, Office of the County Attorney for Charles County, reviewed the language of the Bill and the effective dates of twelve (12) months for beverages and eighteen (18) months for meals.

There were three (3) in person comments and one (1) virtual comment provided.

A motion was made by Commissioner Stewart, seconded by Commissioner Bowling and passed, with Commissioners Bowling, Stewart, and Patterson present, voting in favor to keep the public record open for thirty (30) days. Commissioners Coates and Collins were opposed. A roll call of the vote was taken:

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Commissioner Bowling-yes; Commissioner Coates-no; Commissioner Stewart-yes; Commissioner Patterson-yes; Commissioner Collins-no. The motion passed three (3) to two (2).

A motion was made by Commissioner Bowling, seconded by Commissioner Stewart and passed, with all Commissioners present, voting in favor to end this public hearing.

At 6:46 p.m., a motion was made by Commissioner Bowling, seconded by Commissioner Stewart and passed, with all Commissioners present, voting in favor to adjourn.

Carol A. DeSoto, Clerk to the Commissioners

Reuben B. Collins, II, Esq., President