

## **MEETING OF THE MONTGOMERY COUNTY BOARD OF ELECTIONS**

18753-210 North Frederick Avenue, Gaithersburg, Maryland

July 29, 2019

APPROVED

### **In Attendance:**

#### **Board Members:**

James F. Shalleck, President  
Nahid Khozeimeh, Vice President  
David A. Naimon, Secretary  
Diane Nash Dillon  
Elisse W. Barnes  
Jacqueline L. Phillips  
Alan Banov

#### **Board Attorney:**

Kevin Karpinski

#### **Staff:**

Margaret Jurgensen, Director  
Alysoun McLaughlin, Deputy Director  
Kera Bumbray, Management and Budget Specialist  
Lisa Merino, Office Services Coordinator  
Jessica Newby, Voter Services Manager  
Eric Olsen, Program Specialist  
Janet Ross, Information Technology Manager  
Gilberto Zelaya, Outreach Coordinator

#### **Guests:**

Nancy Farrar  
Dolly Kildee  
Barbara Sanders  
Tony Tomasello

Audio of the meeting may be found on YouTube at the link below:

<https://youtu.be/6u-otJzQHYU>

**Convene the Board meeting and Declare a Quorum Present [0:00:03]**

Mr. Shalleck called the Board meeting to order and declared a quorum present at 2:30 p.m.

**Approval of Minutes [0:00:25]**

**June 17, 2019, Board Meeting Minutes**

*Mr. Khozeimeh moved to accept the June 17, 2019, Board meeting minutes as discussed and amended. The motion was seconded by Ms. Phillips and passed unanimously.*

**Additions/Changes to the Agenda [0:03:21]**

There were no additions or changes to the Agenda.

**Public Comments [0:03:46]**

There were no public comments at this time. Tony Tomasello, City Manager of Gaithersburg, addressed the Board later in the meeting.

**Election Director Status Report [0:04:41]**

**Personnel [0:04:50]**

Ms. Jurgensen reported that Eric Olsen, Program Specialist in Operations, has submitted his resignation and has accepted a job as Deputy Director for the Board of Elections in Arlington County, Virginia.

Dr. Zelaya spoke at the International Association of Government Officials (IGO) regarding the Board of Elections' Future Vote Program in Montgomery County.

Ms. McLaughlin recently attended the National Association of Counties Annual Conference and is the vice-chair of the Elections Subcommittee. She also will be speaking at the Election Center, addressing Election Data Analytics, on August 19.

Ms. Jurgensen reported that waivers from the hiring freeze have been submitted [to the Office of Management and Budget (OMB)] to fill the Program Specialist position that will be vacant upon Mr. Olsen's resignation, and to begin the process of filling the 80 Election Aide I and Election Aide II temporary positions in preparation for the 2020 election cycle.

**Budget [0:06:21]**

Ms. McLaughlin provided a detailed spreadsheet on the fiscal year 2019 operating budget, noting that the Board is currently in a deficit of \$449,000, compared with a \$120,000 surplus the prior fiscal year. She noted that the fourth quarter State Board of Elections' invoice has been received and paid. She reminded the Board

members that a deficit had been projected, due to the timing of charges for the primary election that were budgeted in FY 18, as well as the costs of unexpected, unbudgeted recounts, and a 3-card ballot discussed in previous meetings. Ms. Phillips inquired how the deficit would be handled, and Ms. Jurgensen responded that OMB will notify the department whether a year end transfer or supplemental would be done.

Mr. Naimon requested a rough cost estimate of the recounts. Staff agreed to provide the information.

Ms. Bumbray provided a detailed spreadsheet on the fiscal year 2020 operating budget, noting that most of the expenditures this early in the fiscal year have been in personnel. She addressed the previous action item regarding moving funds from one fiscal year to another and an inquiry about whether an exemption could be granted. She noted that according to County Charter Section 3.11, Limitation on Expenditures, no expenditures of county funds shall be made or authorized in excess of county funds. Ms. Bumbray noted that an offer has been extended to OMB analyst Crystal Saltee to attend the Board meeting to answer potential questions.

### **Voter Registration [0:17:45]**

Ms. Newby had provided monthly voter registration statistics in advance, and updated statistics were provided at the meeting. Ms. Newby noted that staff had received the Electronic Registration Information Center (ERIC) list maintenance and will be working to process it. Staff received 22,000 records, 18,000 from the National Change of Address Service.

### **State Board of Elections [0:20:42]**

Ms. Jurgensen reported that the State Board of Elections (SBE) provided Montgomery County's 2018 comprehensive audit for the General Election, and the audit and its response were provided to the Board members in advance.

Ms. Jurgensen reported that the State Board of Elections changed the ballot marking device (BMD) policy in June to the following: During Early Voting, one BMD must be deployed, the local board has the discretion of sending four BMDs and the local board must ask for approval from the State Board to send five or more. On Election Day, one BMD must be deployed, the local board has the discretion of sending two BMDs, and the local board must ask approval to send three or more. The minimum number of voters that must use the BMD is five by 1:00 p.m. Changing the time will allow more time in the day to meet the requirement. The statement has been changed from check-in to the ballot issuance. In the last election all precincts but two complied with the requirement to send voters to the BMD's. SBE staff is to develop the statement and present it at the State Board's July meeting. Ms. Jurgensen added that staff will be working with SBE on new requirements. She added that the State Board will create an educational video on methods to vote, availability will be determined at a later date.

She noted that televisions would need to be available at each polling place to show the video.

### **Voting System [0:25:31]**

Regarding EVS 6100, Ms. Ross reported that the State is expecting certification on the new upgrade by October 31, and that if the State Board of Elections decides to proceed with the upgrade then from October to December, the State Board of Elections and Montgomery County's Board of Elections Informational Technology staff will be trained on the system. All systems will need to be upgraded, which include BMDs, DS200s, and DS850 scanners. The State will test a small number to begin with and if successful, will upgrade all equipment by February. This process will be very time consuming. Ms. Jurgensen added that the 2018 audit showed that the County's election result was exceptional in its accuracy—that its vote total was off by only one in the canvas.

Ms. Dillon inquired about the audit process. Ms. Ross responded that on Election Day, the Board randomly selects precincts to be audited after the election.

### **Ballots Stubs [0:31:14]**

Ms. Jurgensen reported that Ms. Newby has been working with the Maryland Association of Election Officials (MAEO) to eliminate the use of ballot stubs. MAEO has submitted a letter according to the regulatory process, and Ms. Jurgensen requested that the Board write a letter in support of MAEO to eliminate the ballot stubs. She added that the stubs have become antiquated, are not useful, create dust, and slow down the process at the ballot issuance table. Ms. Newby added that a survey was sent out to other Maryland counties, and a majority of them supported eliminating the stubs. It is being proposed that the vendor remove the stub, keep the ballots in packs of fifty with bank bands, wrapped in plastic wrap, and with an accounting sheet for each pack. The Board agreed that Mr. Karpinski should draft a letter to the SBE in support of eliminating the ballot stubs.

### **Public Comments Continued [0:46:00]**

Before Mr. Tomasello addressed the Board, Ms. Jurgensen provided an update on the Bohrer Park EV site. Ms. Jurgensen stated that staff and Mr. Karpinski met with Activity Center at Bohrer Park staff to test the electrical capacity in the gym to ensure appropriate power for the voting equipment. The Board members had requested that the staff inquire with the City of Gaithersburg about the use of the gym for the Primary and General elections. The City of Gaithersburg's counterproposal was the use of the activity room for the Primary and the gym in the General. Ms. Jurgensen stated that the City of Gaithersburg was generous in charging the same amount of money for the gym as for using the activity room (\$1,000).

Ms. Jurgensen countered by proposing the use of the gym for the last two days of early voting for the Primary during early voting.

Mr. Tomasello addressed the Board and indicated that the City of Gaithersburg was amenable to Ms. Jurgensen's request for the use of the gym for the last two days of early voting in the Primary. He indicated that the City of Gaithersburg found it to be a problem for the gym to be booked for the entire week as it is filled with programs, but that they are open to the use of the gym during the entire time of Early Voting for the General when there is more concern for line management. He also clarified that the Board would be using half the gym, not the full gym; Ms. Jurgensen stated that we did not need the full gym since half the gym was sufficient.

Mr. Naimon stated that the Board also experienced long lines on the first day of early voting and that he would prefer the gym be available then. Ms. Jurgensen stated that there had not been long wait times at Bohrer Park. Mr. Naimon disagreed and stated that lines had been interfering with one another in the polling place. Ms. Jurgensen noted that there will not be a three-page ballot this election.

Board members discussed the matter and it was agreed that Mr. Naimon and President Shalleck would attend the next city council public meeting to request the use of the gym for the entirety of the early voting period during the Primary election.

### **Action Items [1:05:07]**

Ms. Jurgensen updated the Board on the follow up items from the previous Board meeting.

- The Board Member orientation video has been posted to the website, along with the voter registration list maintenance presentation.
- Mr. Karpinski and Ms. Newby have drafted the letter to SBE regarding changing the language of the provisional ballot application instructions.
- Information on whether the transfer of funds can be made across fiscal years have been provided and follow up questions will be responded to in a future meeting by OMB personnel.
- Ms. McLaughlin has provided the exact status of the Ballot marking device certification.
- Mr. Olsen had been directed to work with the county to get the larger spaces where available for Early Voting; additional information will be provided in his presentation.
- Wait times will be discussed in the September Board meeting.
- Ms. Jurgensen stated that the public meeting on early voting site selection will be held in the July meeting.
- As for network connectivity, SBE has not provided the equipment to do the testing at the precincts' polling places, but it is said that the equipment will arrive in the next 10 days.

**Board Attorney Report [1:06:54]**

Mr. Karpinski reported that the decision for the *Judicial Watch Case* is still pending. In the interim he has sent an opinion from the United States Court of Appeals that addresses the same section of the Maryland Code, §3-506, regarding access to voter registration. This case is also still pending in District Court in front of Judge Hollander.

Mr. Karpinski has also sent an opinion on whether there had been a violation in Talbot County of the Open Meetings Act when communicating via text message and/or email, noting only discussions related to administrative functions can be sent electronically. However, policy discussions on matters such as Early Voting centers should not be discussed electronically.

Mr. Karpinski stated that Mr. Naimon, as Secretary of Board, volunteered to take the Open Meeting Compliance Act Training because the Board (under state law) could not meet in executive session unless one of the Board members is certified as completing the training course. Mr. Naimon stated that the training was worthwhile and it took a little longer than he had expected. Ms. Dillon requested that the link for the course be circulated again, which Mr. Karpinski agreed to send. Mr. Karpinski added that Mr. Banov distributed an email requesting to discuss Segal vs. the Maryland State Board of Elections. Mr. Karpinski explained that the question in that case was whether the signature requirement was constitutional and if Mr. Segal, having lost in the Primary, could appear on the General ballot on behalf of a different party. In the interim, the party was able to get enough signatures to be recognized as a political party in Maryland. Mr. Segal did not appear on the ballot. Mr. Karpinski indicated that the plaintiff failed to provide a status report to Judge Hazel, and the case has been dismissed. The Bread and Roses Party is now an official party.

**Old Business [1:15:45]****Early Voting Location Presentation [1:16:30]**

Ms. Jurgensen circulated a list of current Early Voting location reservations. Mr. Olsen gave a presentation on early voting locations and statistics (find the full presentation on the Board documents page: [2020 Early Voting Presentation](#)). Mr. Olsen noted that there were huge increases in the numbers of voters who voted in early voting – an increase of 223% overall from 2014 to 2018. Regarding the Potomac Rec Center, there has been discussion of prohibiting election campaigners from using the parking lot and to shuttle in election workers from another location nearby. Ms. Jurgensen said that she was trying to get better signage for the Sandy Spring Fire Station. In answer to a question by President Shalleck, Ms. Jurgensen said that the staff recommendation was to keep



all 11 existing EV sites except for Wheaton (substituting the new Wheaton Rec Center for St. Catherine's). Ms. Phillips suggested that the sample ballot clearly indicate the best times to vote. Mr. Naimon agreed. Voting on the Early Voting sites will be at the September Board meeting.

### **12<sup>th</sup> Early Voting Site [2:00:37]**

The Board discussed adding a potential 12<sup>th</sup> early voting site, as well as where the funding would come from for that site. Ms. Jurgensen stated that the cost of a new site would be \$117,000; that the Board is not authorized to initiate a 12<sup>th</sup> site until request has been provided and approval received from the County Executive and County Council to ensure there is funding. She noted that the cost is primarily borne by the county and the State will only pay for 50% of the scanners, BMDs and certain other expenses. She has already been informing County budget personnel that the Board would be discussing whether to add a 12<sup>th</sup> EV site. The Board members discussed early voting sites.

*Mr. Naimon moved to instruct Ms. Jurgensen to inquire of the County Executive and the County Council whether they would fund a 12<sup>th</sup> Early Voting site, if the Board were to vote to add a 12<sup>th</sup> site. The motion was seconded by Ms. Phillips. Mr. Shalleck, Mr. Naimon, and Ms. Barnes voted for the motion and Mrs. Khozeimeh and Ms. Dillon voted against the motion. The motion passed 3 to 2.*

### **Activity Center Bohrer Park [2:24:00]**

The cost of the gym would be the same as the cost of the activities center (\$1,000). An MOU will be necessary in any event after Gaithersburg makes its decision. Mr. Shalleck, Mr. Naimon and Ms. McLaughlin will attend the August 5<sup>th</sup> City of Gaithersburg meeting to request use of the gym for more days of Early Voting. Mr. Naimon will notify staff if a letter will need to be sent.

### **Early Voting Site Selection [2:28:27]**

The Board discussed how the public would be able to voice their comments and agreed that comments could be provided via email and that members of the public could request to speak at the September Board meeting during public comments. The next Board meeting will be on September 16, 2019.

*Ms. Phillips moved that the Board receive public comments regarding Early Voting sites for a two-week period before the September 16 meeting. The motion was seconded by Mr. Shalleck.*

*Mr. Naimon moved to amend the motion to have the Board hold a public meeting in Rockville on Saturday, September 14, to accept comments on this*

*subject in person. The motion was seconded by Mr. Banov. Mr. Naimon and Ms. Barnes voted for the motion. Mr. Shalleck, Mrs. Khozeimeh and Ms. Dillon voted against the motion. The amendment to the motion failed.*

*The vote on Ms. Phillips' motion: Mr. Shalleck, Ms. Khozeimeh, Mr. Naimon and Ms. Barnes voted for the motion; Ms. Dillon abstained. The motion passed 4 to 1.*

## **Follow Up on Same Day Voter Registration Networking [2:52:00]**

This item was addressed earlier in the meeting.

## **Follow Up on County Budgeting Policy [2:52:04]**

This item was addressed earlier in the meeting.

## **Follow Up on Minutes Committee [2:52:07]**

Ms. Phillips and Mr. Naimon stated that they have no final proposal to submit at this time. Mr. Naimon stated that a case can be made to make the Board of Elections' written minutes less detailed than they have been in the past. This item will be revisited at the September Board meeting.

## **New Business [2:54:56]**

### **Board Bylaws [2:54:57]**

The model bylaws sent by the State Board include a requirement either to prohibit contributions and attending of fundraisers or to allow them with public disclosure of contributions at Board meetings. Board members discussed the provision. Due to differences in opinion, Ms. Jurgensen stated that she will let the State Board of Elections know that the Board would like more time to deliberate on the bylaws.

### **Future Vote Program [3:11:10]**

Dr. Zelaya discussed the Board's outreach efforts and the Future Vote program. He stated that some outreach materials cannot be finalized because there may be potential changes to Early Voting sites. Future Vote has been certified by both the Montgomery County Public Schools and the Montgomery County Volunteer Center, and the program has hired over 45,000 students. Dr. Zelaya shared several accomplishments and positive outcomes from the Future Vote program.

Ms. Dillon expressed concerns that non-U.S. citizens are allowed to participate in the Future Vote Program as it is stated multiple times on the Board of Elections website for the Future Vote Program

### **Future Meetings [3:30:00]**

The next Board meeting will be held on September 16.



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### Action Items

The following action items developed from the meeting:

1. Pursuant to Mr. Naimon's request, the staff agreed to provide a rough estimate of the cost of the 2018 recounts **[10:15]**
2. Staff will invite Crystal Sallee to attend the October Board meeting to discuss supplemental authorizations **[17:30]**
3. Mr. Karpinski will draft a letter to the SBE in support of eliminating the ballot stubs. **[45:00]**
4. President Shalleck, Mr. Naimon, and Ms. McLaughlin will attend A Gaithersburg city council public meeting to request the use of the gym for the entirety of the early voting period during the Primary election. **[58:30]**
5. Ms. Jurgensen will write the County Executive and the County Council to inquire if they would provide \$117,000 in additional funding for a 12<sup>th</sup> Early Voting site if the Board were to vote to add one. **[2:07:00]**
6. In response to Ms. Dillon's request, Board staff will research the question of the genesis of the program and any involvement with outside organizations or County Departments which were involved in creating and/or running this program.

### Adjournment **[3:30:09]**

*With nothing further to discuss, Ms. Phillips moved to adjourn the meeting at 6:01 p.m. The motion was seconded by Ms. Dillon and passed unanimously.*

Respectfully Submitted,



Lisa Merino  
Offices Services Coordinator

APPROVED BY THE BOARD:



Jim Shalleck  
Board President

