



# TOWN COUNCIL

## Regular Session

October 10, 2006  
7:30 p.m.

At approximately 7:30 p.m. in Town Council Chambers, Mayor Dora Sullivan called to order the Regular Session of Town Council. In addition to Mayor Sullivan, present were John Burdiss, Mary Harris, Charles "Sambo" Brown, Gerald Elliott, Bruce Evans, and Chris Bannon. Also present were Town Manager Tim Krawczel, Town Attorney Mike Sterling, Town Planner Jason Pruitt, Town Treasurer Pat Buckley and Town Clerk Joy Pelletier. In addition there were several staff members and approximately twenty six members of the public in attendance.

Councilman Burdiss led the Invocation and Councilman Brown led the Pledge of Allegiance.

### Public Comments

#### *Ken Kuttler – 117 Strawberry Ave*

Mr. Kuttler stated that not only was he a resident of Town, but was also a member of Planning Commission. He mentioned the Town's image had suffered in the past from implications of corruption; therefore adopting a Code of Ethics would make a public statement that the Town leaders will act in a responsible manner. He urged the Council to adopt the Code.

#### *John Lowenthal - Land Mark Design Group*

Mr. Lowenthal indicated he was present to represent Tom Gallaher and "Portunity" property. He reported to be in favor of the Harbor Master Plan, but would like to be assured there would be sufficient flexibility to allow the developers to create plans that the market would support. He mentioned as an industrial site the plan reports a higher degree of natural resources than are really available; for instance the bottom of the Harbor is not conducive to proper drainage and the waterway is not as pristine as illustrated in the plan. He closed by stating the developer was looking forward to working with the Town on development of the area.

#### *Cela Burge - 117 Mason Ave*

Ms. Burge thanked the Council for considering the adoption of an ethics policy. She indicated the policy aligns with the reasoning of the Planning Commission and other Boards to be certified in their roles. She mentioned that the proposed policy was taken from James City County to be used as a model. She urged the Council to adopt the policy as a message that our leaders are following the lead of other progressive communities. She further stated this policy would provide parameters under which the Council would be operated. She strongly advised the Council to adopt the policy.

#### *June Rhinehart- 102 Randolph Ave*

Ms. Rhinehart spoke in agreement with the statements made earlier in favor of the Ethics Policy. She stated that holding office is an honor and that each public official should be expected to serve the public interest and not their own private agenda. She further stated the law sets minimum standards of behavior, and that just because something was legal did not mean it may be ethical; public perception means a great deal. She described the members of Council as stewards of the public's trust and expressed that if the Council was serious about operating the Town in the highest level possible, to please vote in favor of adopting the Ethics Policy.

*Clelia Sheppard - 109 Strawberry St*

Ms. Sheppard spoke on behalf of the owners of businesses on Strawberry St. She asked Council to consider developing into a Pedestrian Plaza the area of Strawberry St. between Randolph Ave and Mason Ave. She equated the idea to towns in Europe that have a plaza centralizing the business district. She asked the idea be included in the Comprehensive Plan as the first step towards development.

*Andrew Follmer – resident of Cape Charles*

“Dear members of the Cape Charles Town Council, First we would like to thank you for your service to the community that we have come to love as paradise. We appreciate your dedication to managing the affairs and growth of our Town to ensure the ongoing renewal does not damage the character and community that makes Cape Charles so extraordinarily special. It is precisely because of this critical mandate that we would also like to congratulate you for your consideration of your draft Code of Ethics and we strongly encourage you to adopt it. Our work with developing countries keeps us away from Cape Charles more than we like, but it is also driven home for us the lesson that growth without strong government virtually guarantees that the cancer of corruption in some form must metastasize in ways that make the fulfillment of your mandate impossible. Our little town is not immune to this any more than the countless communities that have fallen victim to this cancer as they attempted to chart their own paths to growth. We have confidence that you, the Town Council, have the capacity to successfully navigate the passages facing our Town in the coming years; therefore, we strongly urge you to adopt the Code of Ethics in recognition of the important roles that strong government must play in the execution of that duty.”

*Herbert Rhinehart – 102 Randolph Ave*

A statement was read into record as follows, “ To the Mayor and Town Council members, I Herbert M. Rhinehart strongly endorse the adoption of the Town of Cape Charles Town Council Code of Ethics which is before you tonight. Trust, integrity, and ethics should be the moral basis from which each person's actions and words come. Webster's dictionary defines ethics as a system of moral principles, the rules of conduct recognized in respect to a particular class of human actions or particular group. These are set forth to guide one's ethical behavior. As recent news items highlight, that is not always the case even within the halls of Congress. The adoption of this ethics policy by each of you on this Town's governing body will codify the standard of ethics under which each public servant within Cape Charles government will service the Town and the citizens thereof.

Several years ago, I pleaded in Public Hearing before Town Council that conflict of interest should cause some Town Council members to recuse (disqualifies the act because of interest or bias) themselves on discussing and voting on policies which directly affect them personally. To my knowledge those conflicts of interest were never recognized nor resulted in any recusals. This fact alone shows a need for a written code of ethics.

Unfortunately, conflict of interest is not always clear cut. In the proposed Code of Ethics, item three states ‘professional and personal conduct of members must be above reproach and avoid even the appearance of impropriety’. I know that some of you feel that this Code of Ethics is not needed. I wish that were the case. Past performance within the Town Council shows that the adoption of a written Code of Ethics is needed. There have been violations of ethics as spelled out in this document. Even the appearance of impropriety due to conflict of interest has the risk of eroding the public confidence and trust in both elected and appointed officials.

Integrity, ethics and truth are the hallmark by which the citizens of Cape Charles judge the actions of Town Officials. A vote for this code of ethics affirms that you agree with its moral principals. A vote against this code of ethics indicates you reject its moral principals. I strongly urge you to vote for this code of ethics. Respectfully, Herbert Rhinehart”.

**Motion made by Bruce Evans, seconded by John Burdiss and unanimously approved to modify the agenda by adding to New Business item AA. Fig Street Extension at Hump and item BB. Multiuse Path Crossing the Railroad Lines at the Float Dock.**

**Motion made by Bruce Evans, seconded by John Burdiss and unanimously approved to accept the minutes of September 12, September 13 and September 15, 2006 as presented.**

#### **Report Presentations**

*A. Treasurer’s Report - See attached*

**Motion made by Charles “Sambo” Brown, seconded by John Burdiss and unanimously approved to accept the Treasurer’s report as presented.**

*B. Public Works Director’s Report*  
Jennifer Parks. See attached.

*C. Planning Commission*  
Jason Pruitt - See attached.

#### **Old Business**

*A. Adoption of Harbor Master Plan*

Tim Krawczel gave a brief explanation of the work that went into creating the Harbor Area Conceptual Master Plan and Design Guidelines and followed up with options for implementation. He stated that following the Public Hearing held jointly by the Planning Commission and the Town Council, the Planning

Commission had met and had recommended to Town Council the adoption of the “Guidelines” as a part of the Comprehensive Plan.

**Motion made by Bruce Evans, seconded by Charles “Sambo” Brown and unanimously approved to adopt the Harbor Area Conceptual Master Plan and Design Guidelines as part of the updated Comprehensive Plan.**

*B. Adoption of Resolution for TEA-21 Funding*

Mayor Sullivan reported that VDOT had allocated \$89,000 in Federal TEA-21 funds for a multi-use path in Town. Phase 1 which included a Request for Proposals to solicit bids from engineering firms had been completed. This item was to ask Town Council to approve an application for Phase 2 of the project. Discussion followed discussing the path boundaries and the means of procuring the local matching funds. A resolution was presented to the Council outlining the need for the funds and how they would be used.

**Motion made by Councilman Bannon, seconded by Councilman Brown and unanimously approved to adopt the resolution as presented.**

*C. Designation of Swimming Area at Town Beach*

Town Manager Tim Krawczel reported on his discussion with the Department of Game and Inland Fisheries concerning a swimming area at the Town Beach. He stated that a public hearing had been held, so the next step was to propose regulations and complete the application process. Discussion followed concerning the area to select for swimming and the problem that may arise with monitoring and regulating the no boat zone. It was decided a committee be formed to develop the details and report back to Council.

**Motion made by Councilman Bannon, seconded by Councilman Evans and approved with one opposed to identify a no boat zone in accordance with Virginia Code Section 29.1-734.**

Further discussion focused on safety around kite boarders and windsurfers.

*D. Adoption of Ethics Policy for Town Council*

**John Burdiss made a motion which was seconded by Bruce Evans to approve the adoption of the Code of Ethics.** In the discussion that followed, it was mentioned the State Code of Virginia clearly identifies conflict of interest and many of the other concepts addressed in the proposed Ethics Policy; therefore although a Code of Ethics is a positive step, there is not a need to adopt a Code separate from the Code of Virginia. There was also an indication from some Council members that the proposed policy was not introduced for the interest of the public, but that there may be an underlying motive in producing the document. It was stated that in principle, a Code of Ethics is ideal; however, it may better serve all concerned if each item in the proposed document was discussed in a workshop.

**John Burdiss amended the motion to bring the document to a work session for further discussion and bring a proposal to the next Town Council meeting. The amended motion was seconded by Bruce Evans and approved. Roll call vote: Evans, yes; Bannon, yes;**

**Burdiss, yes; Harris, yes; Brown, no; Elliott, yes.**

**New Business**

*A. Route 184/13 Landscape Plan*

Tim Krawczel summarized the offer made by Dick Foster of BayMark Construction to landscape the entrance to Cape Charles on the condition the Town would assume responsibility of the maintenance. He further relayed to Council details of his research on the item which included VDOT approval of the project.

**Motion made by Bruce Evans, seconded by Mary Harris and unanimously approved to have the Public Works Director, Jennifer Parks initiate liaisons with VDOT, BayMark officials and the Council Government Committee to develop the landscape plan for the Route 12/184 intersection.**

*AA. Fig Street Extension*

Tim Krawczel summarized the latest discussions concerning the railroad overpass known as “the hump”. He opened discussion for the pros and cons of closing the “hump” to vehicular traffic replacing it with an at-grade crossing connecting Fig Street with Old Cape Charles Road. During the discussion it was mentioned the “hump” will always need to be available to emergency vehicles.

**Motion made by Bruce Evans, seconded by Chris Bannon and unanimously approved to endorse the Fig Street extension and initiate the necessary steps as directed by VDOT to have it explored. As the Town cannot afford the cost of the investigation, the Town should confirm in writing that Mr. Foster would pay for the study.**

*B. Round-about at Route 184 and Fig Street*

Mayor Sullivan explained that roundabouts were frequently used at high-traffic intersections where a signal light or stop sign would be inappropriate.

**Motion made by Chris Bannon, seconded by Charles “Sambo” Brown and unanimously approved to refer the issue of a roundabout to the Planning Commission for review and direct the Town Planer to initiate Liaison with VDOT officials.**

The discussion led to the current confusing and dangerous situation. Councilman Evans asked to have the motion amended by not sending the issue on to the Planning Commission. He asked that the investigation be turned over to Mr. Foster and VDOT. He stated the Town was unable to afford the cost of the project and Mr. Foster had offered to pay for the roundabout in conjunction with the Fig Street extension.

**Motion amended by Chris Bannon, seconded by Bruce Evans and unanimously approved to direct the Town Manager to contact VDOT to determine the appropriate steps for moving forward on the project and Dick Foster to confirm his role in the project.**

*BB. Multiuse Path at the Railroad Float Dock*

Tim Krawczel informed the Council of the meetings with VDOT sharing

their advice on how to proceed with the project. In order to use the grant funds, a lease of twenty to thirty years would have to be in place; therefore the current management of the Railroad has suggested the path be developed using local funds. VDOT suggested using the current grant funds in the designing of the multiuse path. Mr. Krawczel also reported on Phase II of the project – beginning the process of applying for funds for the construction of the project and repair work to the sidewalks that would tie into the multiuse path. Public Works Director Jennifer Parks reported on the Master Plan for the project.

C. *Mason Avenue Pump Station Landscape Plan*

Tim Krawczel opened the topic by referring to the adopted budget which included \$10,000 for the landscaping of the pump station. He mentioned both the consultants handling the Harbor Guidelines and the engineering consultants for the management of the wastewater plant were asked for any suggestions they may have. He reported the recommendation was to move the fence back a bit and replace it with vinyl coated fencing then to plant tree and bushes in front of fence. He then deferred to Public Works director Jennifer Parks who had also researched the topic. Ms. Parks suggested with the overall Master Plan and the area being next to the beach and harbor, a chain link fence with barbed wire would not make a desirable impression. She also mentioned going forward other areas may need fencing, so we may want to consider the type of aesthetically pleasing fence that could be carried throughout Town. Her research showed the more visually appealing fencing would take the entire budget amount. She suggested the fencing and landscaping be broken into a two phase project.

**Motion made by Charles “Sambo” Brown, seconded by Chris Bannon and unanimously approved to develop options for fencing and landscaping of the Mason Avenue lift station, submit the recommended plan to the Historic Review Board and Planning Commission and construct the approved fence and landscaped materials with costs being consistent with the adopted FY 2006/2007 budget.**

D. *Final Report of the Tree Committee*

Mayor Dora Sullivan reported on the process followed, including public hearings and newspaper articles, to produce the draft of the Cape Charles Master Tree Plan.

**Motion made by Mary Harris seconded by Charles “Sambo” Brown and unanimously approved to move the item forward to the Planning Commission.**

E. *Tenant Utility Deposits*

Tim Krawczel spoke to the Council concerning the difficulty of collection of overdue utility bills from some tenants. He mentioned as of July 1, 2006, changes to the Code of Virginia requires the Town to make a good faith effort in pursuing overdue amounts from the former tenant before billing the

landlord. He further commented a deposit on adoption of a policy requiring a deposit for utility service. The discussion that followed included: 1) limiting the deposit to \$118.60 for the Historic District and \$138.60 for new development; 2) and the landlord's responsibilities in collection of their own deposits to offset cases of delinquent bills; 3) charging a flat deposit to everyone or not at all; 4) the landlord being notified when bills go past due; 5) the landlord should be kept out of the loop all together; 6) State Code of Virginia makes the water bills a lien against the property

Mayor Sullivan suggested the Town Manager continue researching the item and bring it back to a workshop.

F. *Mayor's Discussion of Redistricting*

Mayor Sullivan opened for thought the idea of creating boroughs with the divisions being the Historic District, the Marina District and the Bay Creek District.

**Announcements**

Mayor Sullivan reported she, the Vice-Mayor and the Town Manager will be going to Mayor School at the end of the week so "November should be good meeting".

**Motion made by Charles "Sambo" Brown, seconded by Chris Bannon and unanimously approved to go into Closed Session in accordance with Section 2.2-3711-A of the Code of Virginia of 1950, as amended for the purpose of:**

**Paragraph 1: Discussion of prospective candidates for employment**

**Specifically: Attorney for Legal Services**

**AND**

**Paragraph 6 and 7: Discussion or consideration of the investment of public funds where competition or bargaining is involved, where, if made public initially, the financial interest of the Town would be adversely affected and Consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel.**

**Specifically: Water and Wastewater Expansion**

**Motion to return to Open Session made by Charles "Sambo" Brown, seconded by Chris Bannon and unanimously approved to return to Open Session.**

**Motion made by Charles "Sambo" Brown, seconded by Chris Bannon and unanimously approved certifying that to the best of each person's knowledge: (1) only public business matters lawfully exempted from open meeting requirements under chapter 2.2-3711-A of the Code of Virginia of 1950 as amended and (11) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the meeting of the Town Council. Roll Call Vote: Burdiss, yes; Harris, yes;**

**Brown, yes; Elliott, yes; Evans, yes; Bannon, yes.**

**Motion made by Charles “Sambo” Brown, seconded by Bruce Evans and unanimously approved to adjourn.**

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**Mayor**

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**Town Clerk**