



**TOWN COUNCIL**  
**Regular Meeting**  
**St. Charles Parish Hall**  
**September 10, 2009**  
**7:00 PM**

At approximately 7:00 p.m. Mayor Dora Sullivan called to order the Regular Meeting of the Town Council. In addition to Mayor Sullivan, present were Councilmen Bannon, Bennett, Elliott and Veber. Councilman Burdiss was out of town and not able to attend. Also in attendance were Town Manager Heather Arcos, Town Planner Tom Bonadeo, Town Consultant Bob Panek and Town Clerk Libby Hume. Several additional members of staff and 8 members of the public were also in attendance.

**PUBLIC COMMENTS:**

Rev. James E Davis, 533 Mason Avenue, addressed the Council regarding the numerous pet owners, both residents and visitors, who do not clean up after their pets. Rev. Davis complimented the individuals who arranged for the pet stations that were placed around the Town along the beach and in the park, but added that more are needed and asked that they be ordered to be placed within the Town. Rev. Davis went on to give examples of pet owners and their negligence and concluded by again requesting the placement of at least a dozen more pet stations throughout the Town along with scoops and leaflets advising pet owners to clean up after their pets and suggested that the police officers keep a supply of these leaflets with them to distribute as necessary.

Mr. and Mrs. Andy and Andrea Edmunds, 277 Tazewell Avenue and 9510 Osborne Turnpike in Richmond, submitted a letter asking that it be read at the meeting. (see attached)

Councilman John Burdiss was out of town but asked Town Clerk Libby Hume to read an excerpt from the September 7<sup>th</sup> issue of the *Town Crier* regarding Heather Arcos. (see attached)

**CONSENT AGENDA:**

Mayor Sullivan congratulated Heather Arcos for her promotion to Town Manager. Ms. Arcos thanked the Mayor and Town Council for the opportunity to serve as the Town Manager and stated that she looked forward to working with the Mayor, Council and the dedicated Town staff and added that the Town's great citizens help make Cape Charles the town that it is and that by working together it will ensure the Town's future growth.

Mayor Sullivan suggested moving New Business item 6C – Set a Public Hearing for Cape Charles Harbor "No Wake" Zone to the beginning of New Business. Councilman Bannon added that he would like to add under New Business, discussion of the entrance corridor into Cape Charles as item 6E.

**Motion made by Councilman Veber, seconded by Councilman Bannon and unanimously approved to approve the agenda as amended.**

The Town Council reviewed the minutes of the August 13, 2009 Executive Session, the August 13, 2009 Regular Meeting, the August 27, 2009 Joint Meeting with the Northampton County Board of Supervisors, the September 1, 2009 Executive Session and the September 3, 2009 Reconvened Executive Session.

Councilman Veber stated that since he was not in attendance at the August 13, 2009 Executive Session or Regular Meeting, he would abstain from the vote. Councilman Elliott added that he was not in attendance at several of the meetings so would also abstain from the vote.

**Motion made by Councilman Bennett, seconded by Councilman Bannon to approve the minutes for the August 13, 2009 Executive Session, August 13, 2009 Regular Meeting, August 27, 2009 Joint Meeting with the Northampton County Board of Supervisors, September 1, 2009 Executive Session and September 3, 2009 Reconvened Executive Session as presented. The motion was approved by a majority vote with Councilman Veber abstaining from the August 13<sup>th</sup> meetings and Councilman Elliott abstaining from the August 13<sup>th</sup>, August 27<sup>th</sup> and September 3<sup>rd</sup> meetings.**

#### **REPORT PRESENTATIONS:**

##### **A. *Town Manager's Report:***

Town Manager Heather Arcos reported the following: i) The Cape Charles Business Association (CCBA) submitted a letter requesting the \$3K which was earmarked in the FY2010 budget for the CCBA. The CCBA has accomplished a considerable amount since their inception earlier this year such as developing a website promoting the Town and its businesses, renting a billboard in the Eastville area, working to improve the face of the McCrory building on Mason Avenue, partnering with the *Cape Charles Happenings* to create the *Guide to the Town of Cape Charles*, creating a PowerPoint Presentation for the new Welcome Center at the Chesapeake Bay Bridge Tunnel, revising the Cape Charles brochure and having copies printed and distributed to the businesses in Town and the Welcome Center. The CCBA is also sponsoring the 2009 Cape Charles Fall Tomato Festival which will be held September 25 – 27, 2009; ii) Five bids were received for the Cape Charles Central Park Trail project and the lowest bid came within the estimated project cost. Once the bidder has been approved by the Virginia Department of Transportation (VDOT) the contract can be awarded by the Town Council; iii) She has been working with Mr. Tom Langley of Langley & McDonald, Harbor Master Smitty Dize and Town Planner Tom Bonadeo to finalize the bid documents for the Offshore Breakwater Project in order to be able to go out to bid by the end of September. The goal is for the Town Council to review the low bid selection and award the contract at the November meeting; iv) The Chief of Police position is being re-advertised to include a salary range and the preference that the candidate be certified in the State of Virginia. The new deadline for applications is September 22, 2009; v) On September 1<sup>st</sup>, Tom Bonadeo spoke to Mr. Bobby Isdell of VDOT regarding the status of the Fig Street Parking issue and Mr. Isdell has not heard back from the Traffic Department; and vi) On September 9<sup>th</sup>, she and Consultant Bob Panek attended Delegate Lynwood Lewis' Wastewater Summit and gave a brief presentation regarding the Cape Charles Wastewater Treatment Plant project. Representatives from several other towns on the Eastern Shore, some private entities, the Virginia Department of Health (VDH) and the Department of Environmental Quality (DEQ) were also in attendance.

##### **B. *Treasurer's Report:***

Treasurer JoAnna Leatherwood reported that the Treasurer's Report dated August 31, 2009 showed \$102,362 in the Bank of America checking account and \$1,164,602 in the Local Government Investment Pool ("LGIP") with a Total Cash on Hand of \$1,266,964.

JoAnna Leatherwood informed the Council of the following: i) She is awaiting an electronic version of the tax data from Northampton County which is needed before tax bills can be generated; and ii) She received notification that, due to budget cuts, the 599 Police Grant was being reduced to approximately \$1800.

**Hearing no objections, Mayor Sullivan stated that the Treasurer's Report was approved by unanimous consent.**

C. *Library Report:*

Librarian Ann Rutledge stated that the Library had been very busy this summer and reported the following: i) Jennifer Lewis had been a big help at the Library over the past several weeks; ii) During the month of August, there were activities for children at the Library every day except Mondays; iii) She has been working with the new Christian School regarding use of the Library; and iv) She received great feedback from visitors regarding the variety of books and programs available in such a small town library.

D. *Recreation Report:*

Recreational Coordinator Jennifer Lewis reported the following: i) A basketball tournament for ages 9-18 will start in October. The entry fee for this tournament is 3 canned goods which will be donated to the Cape Charles Food Pantry. Donation boxes for the Food Pantry will also be placed in the Town Hall; ii) The materials to repair the Skateboard Park have arrived but repairs cannot be complete until the weather clears up; iii) The Scrapbooking classes are being moved to Wednesdays to accommodate the new school; iv) She wants to put out a suggestion box for recreational ideas but needs a location; v) She is planning a Halloween party and parade and will be asking the public and businesses to donate candy; vi) She is collecting used wrapping paper and glass baby food jars to be used for various craft projects for the children; and vii) Volunteers are needed for the Kids Central at the Tomato Festival for the various activities.

E. *Public Works / Public Utilities Report:*

Public Works / Public Utilities Director Dave Fauber reported the following: i) The Public Works crew is performing general maintenance and repairs; ii) In January 2010, the Environmental Protection Agency (EPA) will be taking over the inspections for the laboratory from the DEQ. He and Patrick Christman have been working on the Wastewater Treatment Plant Laboratory Manual as required by the EPA; and iii) Stearns & Wheler have been working on the force main at Fig Street.

F. *Harbor Report:*

Harbormaster Smitty Dize reported the following: i) September has been a busy month so far. Several boaters came in just to attend the Harbor Party the first weekend of September; ii) The Tomato Ball will be held at the Harbor this year on September 26<sup>th</sup>; iii) He has been working with Langley & McDonald regarding the bid documentation for the Offshore Breakwater project; and iv) He has been working with the Department of Game and Inland Fisheries (DGIF) regarding the "No Wake Zone" issue.

G. *Planning Commission / Historic Review Board / Harbor Area Review Board Report:*

Town Planner Tom Bonadeo informed the Council that the Planning Commission will be discussing the Corridor Overlay District and the entrance into Town. The Commission held a Work Session and visited various undersized non-conforming lots around the Town and has been discussing modifications to the setback ordinance. The Commission has also been working on a Draft Wind Turbine Ordinance to add to the Town's Zoning Ordinance.

Tom Bonadeo stated that by request of the Planning Commission, the Historic District Review Board reviewed the Draft Wind Turbine Ordinance and unanimously agreed that wind turbines should not be allowed in the Historic District Overlay area and that the varying designs of micro turbines would not be appropriate in the Historic area. The Board also

reviewed the proposed modifications to the R-1 Setbacks for non-conforming lots, also by request of the Planning Commission, and unanimously agreed that these lots should continue to be built upon rather than being designated as unbuildable. The Board's feedback was reviewed by the Planning Commission at their September meeting.

Tom Bonadeo informed the Council that he held a training session for the new Harbor Area Review Board and Mr. Ralph Orzo was elected as Chairman. The Board met again on September 3<sup>rd</sup> to hear a presentation for the Cape Harbor development.

Tom Bonadeo went on to explain that he has been working with VDOT regarding the Fig Street parking issue and has been talking to Mr. Chris Isdell on a weekly basis. Unfortunately, VDOT has had some staff cuts so the engineer that we have to work with is in Suffolk. Councilman Bennett asked that the speed limit issue on Route 642 be re-addressed requesting the speed limit be reduced to 25 M.P.H.

**NEW BUSINESS:**

*C. Set a Public Hearing for Cape Charles Harbor "No Wake" Zone:*

Smitty Dize informed the Council that over the past several months, some vessels at the harbor have received damage due to wakes being carried by the west dock. Harbor staff installed "No Wake" signs on the fishing pier and Bayshore Concrete also placed a sign on their corner of the harbor. The placement of these signs created enforcement issues with the DGIF. After further investigation, it was determined that the Town would have to reapply to modify the No Wake Zone in the Harbor and pursuant to §29.1-744(a) of the Code of Virginia, a public hearing must be held as part of the application process. The Council agreed to schedule a public hearing on October 9, 2009 prior to their regular meeting.

*A. Planning Commission / Harbor Area Review Board Vacancies:*

Tom Bonadeo explained that Planning Commissioner Ken Kuttler, whose term expires October 31, 2010, has tendered his resignation from the Commission. Mr. Kuttler also served as one of the Planning Commission representatives to the Harbor Area Review Board. There is also another vacancy on the Harbor Area Review Board that needs to be filled. To date, no citizens have expressed an interest in serving on the Planning Commission. Tom Bonadeo requested approval to place advertisements in the Eastern Shore News and Eastern Shore Post for the vacancies on the Planning Commission and Harbor Area Review Board. This has also been placed on the Town's website and in the Gazette. Tom Bonadeo recommended that Commissioner Eileen Cobb be appointed to replace Ken Kuttler on the Harbor Area Review Board as one of the Planning Commission representatives. Councilman Veber also suggested placing a notice on the telephone pole by the Post Office.

**Motion made by Councilman Bannon, seconded by Councilman Elliott and unanimously approved to place advertisements in the newspapers for the vacancies on the Planning Commission and Harbor Area Review Board and to appoint Commissioner Eileen Cobb to the Harbor Area Review Board to replace Ken Kuttler.**

*B. Fee Schedule for Harbor Area Review Board Applications:*

Tom Bonadeo explained that the Harbor District Zone and the Historic Harbor Overlay District have established the requirement for a Harbor Development Certificate and the application for the certificate is to have a fee established by the Town Council. Tom Bonadeo reviewed the current application fees associated with Rezoning, Conditional Use Permits and Subdivisions and further explained that the expected Harbor Development Certificate process would take the same type of staff work as a Conditional Use Permit with an additional

requirement for larger projects and recommended an application fee of \$300 per application plus \$70 per acre.

**Hearing no objections, Mayor Sullivan stated that the Harbor Development Certificate application fee of \$300 per application plus \$70 per acre was approved by unanimous consent.**

D. *Fiscal Year 2008 Audit Management Letter:*

JoAnna Leatherwood informed the Council that each year at the completion of the annual audit, the auditing firm issues a management letter containing recommendations of items to be changed to closer adhere to audit standards and to create better internal controls. The management letter for Fiscal Year 2008 addressed the following issues: i) Identification of unpaid real estate taxes by year. JoAnna Leatherwood has addressed this issue with the Town's software vendor and is working with them to reconstruct and correct the dates to show the actual year; ii) No unpaid personal property taxes for the years prior to 2006 was transferred into the new software. JoAnna Leatherwood has been reviewing the records from the two prior software programs to identify the unpaid amounts and will then address the accountability issue; iii) The segregation of duties relating to cash receipts, specifically that one person processes the utility billing, payments received on the accounts and any adjustments that are made. Effective September 1, 2009, a new procedure has been implemented. Two employees are now involved with cash receipts recording and entry. In regards to account adjustments, the utility clerk will write up and input the adjustment for the Treasurer's review and final processing. The auditors will return in January 2010 to perform the audit for Fiscal Year 2009.

E. *Entrance Corridor into Cape Charles:*

Councilman Bannon expressed his concern regarding the entrance corridor into Town along Route 184. The State owns the highways and the County owns the land adjacent to the highways and neither entity is maintaining the area. Councilman Bannon stated that several years ago, Mr. Scott Walker took it upon himself and volunteered his time and trimmed the crape myrtles along this corridor and that he would like to see this corridor cleaned up.

**OLD BUSINESS:**

A. *Water and Sewer Availability Charge:*

Consultant Bob Panek informed the Council that there is no express authority for the assessment of an availability charge under the Code of Virginia. The Code does provide authorities for localities to i) collect fees and other charges for the construction and use of water and sewer systems; ii) charge water and sewer connection charges and other fees for real estate that has been connected; and iii) a charge to a subdivider or developer of land of the pro rata share of the cost of providing water, sewer and drainage facilities. The proposed availability charge is problematic since the properties are not connected to the system, do not use the system and have already been subdivided. Bob Panek described several alternatives as follows: i) New Kent County implemented a voluntary Availability Fee Agreement which locks the fee users will pay in exchange for payment up front which is similar to the connection fee installment payment plan previously considered by Council; and ii) Subsidize the debt service associated with underutilized capacity with general fund revenue which would be financed primarily through the real estate tax rate.

After some discussion, the Council agreed not to make a decision regarding this issue at this time, since there were two Councilmen who are not in attendance and the amount of the new debt service cannot be precisely calculated since it is dependent on the construction contract

bids, the availability of additional Federal stimulus money and the possibility of a no-interest loan through the Virginia Clean Water Revolving Loan Fund.

**B. *Wastewater Treatment Plant Construction Bids:***

Bob Panek informed the Council that eight (8) Wastewater Treatment Plant Construction bids were received and publicly opened on September 1, 2009. The bids ranged from \$14.7M to \$17.8M. The apparent low bidder is W.M. Schlosser. Based on this bid, the total project cost is now \$18.1M. Bob Panek explained that before the contract is awarded on September 24<sup>th</sup>, i) a complete review of the apparent low bid will be performed; ii) a Schedule of Values for the Virginia Water Quality Improvement Fund (WQIF) grant adjustment needs to be obtained; and iii) bidding documentation, including the American Recovery and Reinvestment Act of 2009 compliance needs to be provided to the Department of Environmental Quality for clearance.

**ANNOUNCEMENTS:**

- September 11, 2009, the Cape Charles Christian School Memorial Walk @ 11 AM at the Fire House
- September 24, 2009, Town Council Special Meeting @ 6 PM at the Town Hall re: WWTP Contract Award
- September 25-27, 2009, Tomato Festival
- October 8, 2009, Town Council Regular Meeting @ 7PM at the St. Charles Parish Hall
- October 12, 2009, Town Offices Closed in Observance of Columbus Day
- October 21, 2009, Casino Trip sponsored by the Friends of the Library.

**Hearing no objections, Mayor Sullivan adjourned the meeting by unanimous consent.**

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Mayor Sullivan

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Town Clerk