



TOWN COUNCIL
Regular Meeting
St. Charles Parish Hall
January 14, 2010
Immediately Following Public Hearing

At approximately 7:05 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, Burdiss, Elliott, Evans and Veber. Also in attendance were Town Manager Heather Arcos, Town Planner Tom Bonadeo and Town Clerk Libby Hume. The Department Heads were also in attendance along with six members of the public.

PUBLIC COMMENTS:

Mr. Melvin Dudley, 303 Madison Avenue, addressed the Council on various agenda items as follows: i) Approve the modifications to the setbacks in the R-1 Zone; ii) Approve the resolution regarding the development of a regional wastewater system plan; iii) Approve the three resolutions regarding long and short term capital project financing; iv) Authorize the Town Manager to execute the breakwater contract; v) Authorize the Town Manager to execute the boating infrastructure grant contract; vi) Schedule a public hearing for February 11, 2010 regarding the Cape Charles Harbor "No Wake Zone;" vii) Authorize the Mayor to sign the 2011 Virginia Port Authority grant request letter; viii) Schedule a public hearing for February 11, 2010 regarding a real estate tax ordinance; ix) Schedule a joint public hearing with the Planning Commission for February 2, 2010 regarding a conditional use permit (CUP) application for a bed & breakfast at 302 Fig Street, the conditional use permit process, and conditional use heights in the PD-STIP District; x) Authorize the Town Manager to sign the contract accepting the grant funds from the Tourism Commission Infrastructure Grant; and xi) Authorize the Mayor to sign the letter requesting funding from Northampton County.

There were no further comments from the public in attendance nor any written comments submitted prior to the meeting.

CONSENT AGENDA:

Mayor Sullivan stated that Chief of Police Charles Brown would present a brief report regarding incidents in Town requiring police attention over the last two years following the Town Manager's report.

Motion made by Councilman Bannon, seconded by Councilman Burdiss and unanimously approved to adopt the agenda as amended.

The Town Council reviewed the minutes of the December 10, 2009 Regular Meeting and the December 16, 2009 Executive Session.

Motion made by Councilman Burdiss, seconded by Councilman Bennett to approve the minutes for the December 10, 2009 Regular Meeting and the December 16, 2009 Executive Session as presented. The motion was approved by majority vote with Councilman Evans abstaining from the vote for the December 10, 2009 Regular Meeting since he was not in attendance at that meeting.

REPORT PRESENTATIONS:

A. Town Manager's Report:

Town Manager Heather Arcos reported the following: i) Excel Paving has started their work on the Central Park Trail. The playground, tennis courts and basketball courts will remain accessible during construction; ii) Public Works / Public Utilities Director Dave Fauber will be giving an update regarding the Town's meetings with FEMA representatives; and iii) A joint work session was held on

January 11th with the Cheriton Town Council regarding boundary adjustments. The meeting was productive and a sub-committee was formed to further discuss and investigate this issue. The sub-committee members from Cape Charles are Councilmen Burdiss and Veber and Town Planner Tom Bonadeo. The members from Cheriton are Vice Mayor Norma Spencer, Councilman Larry LeMond and Consultant Beverly Harper.

Heather Arcos asked Chief Charles Brown to update the Council and the citizens in attendance regarding the January 6th reported attempted child abduction. Chief Brown stated that a thorough investigation had been done and based on the investigation, it was determined that no criminal action occurred. The young girl reacted to the situation as she should have by reporting the incident to the authorities and we should all be thankful that there was no criminal intent. Chief Brown and Heather Arcos met with the faculty, parents and students of the Cape Charles Christian School and gave some insight on what to do in the future regarding a situation of this nature. Chief Brown added that he has added two new sections to the Cape Charles Police Department Manual regarding child abuse and sexual assault.

Chief Brown introduced James Pruitt as the new police officer for the Town adding that he would be a good asset to the Town's police force. Chief Brown presented a detailed report of the last two years' calls for service for the Cape Charles Police Department which showed a considerable reduction in crime and the types of crimes were mostly not of a serious nature. Chief Brown stated that the traffic around the school on Madison Avenue and Plum Street in the mornings and afternoons gets congested and that he has scheduled his officers to be there for approximately 30 minutes every morning and afternoon. An Identification Theft Seminar has been scheduled for January 28th at the Cape Charles Baptist Church beginning at 7:00 PM.

B. *Treasurer's Report:*

Treasurer JoAnna Leatherwood reported that the Treasurer's Report dated December 31, 2009 showed \$93,403 in the Bank of America checking account and \$2,873,521 in the Local Government Investment Pool ("LGIP") with a Total Cash on Hand of \$2,966,924.

Hearing no objections, the Treasurer's Report was approved as presented by unanimous consent.

C. *Library Report:*

Librarian Ann Rutledge reported that the traffic in the Library, especially the computer usage, had increased. Many citizens have been coming into the Library to work on resumes, file unemployment claims and look online for jobs. Councilman Veber stated that he would be willing to assist citizens with resumes, if needed. Ann Rutledge went on to state that they often get inquiries from groups wanting to hold meetings in the Library but unfortunately, there is no space to accommodate these requests. Another Family Poetry Slam has been scheduled for February 13th at the St. Charles Parish Hall. Councilman Bannon added that the Friends of the Library had planned another trip to the Harrington Slots for January 20th.

D. *Recreation Report:*

Community Events / Recreational Coordinator Jen Lewis reported that she and Heather Arcos have been meeting with the Northampton Chamber of Commerce and the Cape Charles Business Association regarding the Birding Festival. The Eastern Shore Chamber of Commerce is no longer interested in organizing this annual event and has requested other organizations to take over the responsibility for the event. The group wants to hire an executive director to plan this festival and is asking for monetary support of \$1K each from the towns and other organizations in the County. The scheduled dates for this year's festival are October 15 – 17, 2010. Councilman Evans stated that he attended this meeting and the group is planning various events in Cape Charles but would like to see this as a shore-wide festival. After much discussion, Mayor Sullivan asked for a poll of the Council and the Council was unanimous in their support of this event.

E. *Public Works / Public Utilities Report:*

Public Works / Public Utilities Director Dave Fauber reported the following: i) The valve for the water softener has been repaired; ii) Several meetings have been held with FEMA regarding damages to the boardwalk and pier caused by the nor'easters in November and December and possible mitigation repairs to the pier were discussed where the foundation would be reinforced to minimize future storm damage; iii) The Keck property site is a possible site for future wells. Bundick will drill a test site and Tom Bonadeo will be talking to Mr. David Long, the individual currently farming the property. Another land owner has expressed his willingness to allow the Town to install a well on his property at no cost. Other parcels of land were briefly discussed.

F. *Harbor Report:*

Harbormaster Smitty Dize informed the Council that this year's Blessing of the Fleet was going to be a two-day event and was scheduled for April 9-10th. Smitty Dize added that last year, three boats from Annapolis docked at the Cape Charles Harbor just to attend the Birding Festival. Councilman Bennett questioned the substantial reduction in net income from 2008. Smitty Dize explained that the difference was that the Harbor received \$74K less in Port Authority Grants in 2009.

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

Town Planner Tom Bonadeo reported that the Planning Commission reviewed the following at their January 5th meeting: i) a CUP application for a bed & breakfast at 302 Fig Street; ii) the CUP process and moving the additional permit completion process before the start of the one-year CUP duration; and iii) allowing building heights in the PD-STIP District to be over 40' but less than 55' with a CUP which is the same as the Harbor District. The Planning Commission recommends name changes for PD-STIP and STIP Districts since the Sustainable Technologies Industrial Park is defunct. This change would only affect the name not the underlying uses and requirements. Also, the Commission reviewed the current zoning of the Cape Charles Coastal Habitat Natural Area Preserve which is currently zoned as part of PD-STIP. This property is listed by the Virginia Department of Conservation and Recreation (DCR) as a natural area preserve and carries a wildlife easement in perpetuity. The Commission recommends rezoning this area as Open Space and the County and DCR both appear to be in favor of this change. The Commission is requesting a joint public hearing with the Council be scheduled for February 2nd regarding these issues. This is an agenda item later in this meeting. Tom Bonadeo went on to inform the Council that the Keck property deed has been recorded. Also, two names are being forwarded for seats on the Town's Commissions and Boards and interviews will be scheduled.

Tom Bonadeo stated that the Historic District Review Board and the Harbor Area Review Board did not meet in December.

OLD BUSINESS:

A. *Modifications to Setbacks in R-1 Zone:*

Tom Bonadeo reviewed the proposed modifications to §3.2 of the Cape Charles Zoning Ordinance regarding setbacks in the R-1 Zone to correct two conflicting sections of the ordinance. The first conflict relates to corner lots. Several years ago, the ordinance was changed from an 80' width requirement to a 40' width to continue the historic lot size. Unfortunately, the side yard setback for corner lots was not changed and remains at 30'. It would not be possible to have a 30' setback on a 40' wide lot. The Planning Commission recommends a change to a 5' side yard setback. The second conflict relates to non-conforming (smaller) lots that date back to the first 50 years of the Town and is the timeframe that the National Historic District designation is built upon. The current ordinance requires a 25' rear yard setback and homes on these non-conforming lots cannot meet this setback requirement. The Planning Commission recommends changing the setbacks for non-conforming lots to 5' for front yard, side yard and rear yards. These changes will allow these lots to remain as "buildable" which will maintain the character of the neighborhood and protect the Historic District integrity.

Motion made by Councilman Burdiss, seconded by Councilman Elliott and unanimously approved to approve the ordinance changes to § 3.2 of the Cape Charles Zoning Ordinance as presented.

B. *WWTP Facility Status:*

Consultant Bob Panek updated the Council on the status of the wastewater treatment plant construction and financing. The Town has reached a preliminary agreement with Bay Creek Resort and Club on the use of their pond system for reuse of the treated effluent for golf course irrigation. The Town was recently awarded another \$1.6M of American Recovery and Reinvestment Act (ARRA) funding bringing the balance to finance down to approximately \$4.9M. The Town may obtain additional ARRA funds after the Environmental Protection Agency (EPA) reallocates unobligated balances in February 2010. The State Water Control Board has approved the Town's application for a zero-interest loan to finance the balance.

Bob Panek distributed a fact sheet from the Virginia Department of Environmental Quality regarding water reclamation and reuse.

C. *Inflow & Infiltration Correction Project Update:*

Bob Panek updated the Council regarding the corrections of problems associated with fresh water inflow and infiltration into the wastewater system which will significantly decrease the potential for wastewater overflows and reduce operating costs of the new wastewater treatment plant. Stearns & Wheeler has been engaged in the design work to repair and upgrade the pump stations in the historic district, particularly Mason Avenue, and re-routing the Fig Street pump station force main directly to the wastewater treatment plant from its current discharge point at the Mason Avenue gravity line and these efforts are critical to minimizing the chances of overflows at the Mason Avenue pump station as the Town grows. The Town plans to spend approximately \$1.2M on this effort with about \$663K being funded by an EPA grant which was transferred from Northampton County to the Town. The balance will be included in the capital project financing plan

D. *Potential Regional Wastewater System:*

Bob Panek informed the Council that substantial progress has been made defining the proposed service area for the potential regional wastewater system. Ms. Katie Nunez, the County Administrator, has laid the groundwork with the Virginia Department of Housing and Community Development (DHCD) and USDA Rural Development (RD) for the grant and loan application process. Northampton County, the Town of Cheriton and the Town of Cape Charles need to adopt a resolution to apply for the planning grant through the DHCD. Cheriton adopted their resolution on January 11th and the County adopted their resolution on January 12th. There was some discussion regarding the service area and Bob Panek stated that Katie Nunez would be providing a map of their proposed service area sometime next week.

Mayor Sullivan moved for adoption of Resolution #20100114 – Regional Wastewater System Planning as noticed and forwent reading of the resolution. Resolution #20100114 was adopted by unanimous vote. Roll call vote: Bannon, yes; Bennett, yes; Burdiss, yes; Elliott, yes; Evans, yes; Veber, yes.

E. *Capital Project Financing – Short & Long Term:*

Jo Anna Leatherwood explained that the Town has been planning several capital projects to improve the public infrastructure as follows: i) a new wastewater treatment plant (WWTP); ii) a sewer force main realignment and pump station upgrade; iii) new water supply wells and connection to the water treatment plant; iv) a multi-use trail; v) an offshore breakwater at the harbor entrance; and vi) harbor improvements, including additional boat slips, a bathhouse and market spaces. Several grants are associated with most of these projects and most of the projects have been approved in this fiscal year's budget. It may be preferable to change this approach due to attractive financing sources currently available to finance the capital projects to spread the cost burden to both current and future beneficiaries over the life of the asset. In 2009, Council adopted Resolution #20090409 for the

financing of the WWTP through the VML/VACo Commonwealth Loan Program. At that time, the Town had planned to borrow \$9.9M due to the uncertain value of grants. The Town now plans to borrow a maximum of \$5M since grants have been obtained for much of the costs. The Town has been working with VML/VACo regarding the inclusion of other capital projects within the financing limit already approved. A new Council resolution and loan closing will be required. Additionally, VML/VACo has offered another alternative based on the availability of twenty-year bonds, subsidized by the ARRA, which would allow the Town to finance the portion of the capital budgets not funded by grants at interest rates of 3.25% to 4.5% and also provide interim financing for the portion funded by grants at an interest rate of approximately 2%. This would allow the Town to better manage cash flow. Jo Anna Leatherwood went on to explain the three resolutions requiring adoption at tonight's meeting.

Mayor Sullivan moved for adoption of Resolution #20100114A – Designating the Entire Geographic Area of the Town of Cape Charles, Virginia, as a Recovery Zone for Purposes of Recovery Zone Economic Development Bonds That May Be Issued From Time to Time pursuant to the Provisions of the American Recovery and Reinvestment Act of 2009, Resolution #20100114B – Authorizing the Issuance, Sale and Award of General Obligation Bonds in a Principal Amount Not to Exceed \$2,700,000 and Providing for the Form, Details and Payment Thereof, and Resolution #20100114C – Approving the Issuance and Sale of its Amended and Restated Public Improvement Note in a Maximum Principal Amount Not to Exceed \$10,000,000 and the Execution and Delivery of Certain Amended and Other Documents Prepared in Connection Therewith. Resolutions #20100114A, #20100114B and #20100114C were adopted by unanimous vote. Roll call vote: Bannon, yes; Bennett, yes; Burdiss, yes; Elliott, yes; Evans, yes; Veber, yes.

F. *Award of the Breakwater Contract:*

Smitty Dize stated that the low bidder for the Breakwater Project was Precon Marine and the Town has negotiated to reduce the cost of the project to \$792,500 as discussed at the December 10, 2009 Council meeting. \$47,427 will be paid directly to Bay Shore Concrete Products for the concrete shapes. The contract has been prepared and reviewed by legal counsel. \$145K is included in the current budget and the Town received a Virginia Port Authority (VPA) Grant of \$500K. The remaining balance will be funded by VML/VACo long term financing.

Motion made by Councilman Burdiss, seconded by Councilman Bennett and unanimously approved to authorize the Town Manager to execute the Breakwater Project contract with Precon Marine.

NEW BUSINESS:

A. *Boating Infrastructure Grant:*

Smitty Dize explained that the Town was awarded a grant for a maximum of \$343,977 which represents approximately 49% of the estimated cost of the transient portion of the Harbor improvements. These funds will be used for the construction and installation of 22 new transient boat slips with electrical and water service connections for each slip and a new bathhouse with showers and sanitary fixtures for use by transient boaters. Once the contract has been executed, the Town will receive a Notice to Proceed.

Motion made by Councilman Evans, seconded by Councilman Veber and unanimously approved to authorize the Town Manager to executive the Boating Infrastructure Grant contract as proposed.

B. *Cape Charles Harbor “No Wake Zone” – Schedule Public Hearing:*

Smitty Dize stated that on October 8, 2009, a public hearing was held to submit an application to the Department of Game and Inland Fisheries (DGIF) to change the “No Wake Zone” and the Town Ordinance, § 14-32. A letter was received from the DGIF recommending different locations for the “No Wake Zone” markers. A new public hearing needs to be scheduled for the updated revision of § 14-32 of the Town Code.

Motion made by Councilman Bannon, seconded by Councilman Evans, to schedule a public hearing for February 11, 2010 for the revision of § 14-32 “No Wake Zone” as proposed. The motion was approved by unanimous consent.

C. 2011 Virginia Port Authority Grant Request:

Smitty Dize explained that every year in January or February, staff meets with the VPA to informally request grant funds to be appropriated for the next fiscal year to continue to improve the Harbor as part of our Harbor redevelopment plan. The VPA requires a letter from the Mayor of the Town stating that if the VPA approves our grant request, the Town will have the money budgeted for Fiscal Year 2011.

Motion made by Councilman Bannon, seconded by Councilman Elliott, to authorize the Mayor to sign the attached letter to the Virginia Port Authority. The motion was approved by unanimous consent.

D. Real Estate Tax Ordinance:

Heather Arcos explained the real estate tax collection process. Currently, even if real estate taxes on a property are unpaid, permits are still issued allowing the property owner to possibly increase the value of the property. Unfortunately, the Town is unable to benefit from any assessment increase as the real estate taxes remain unpaid. The Code of Virginia allows a locality to pass an ordinance requiring payment of all delinquent real estate tax on a property prior to issuance of any permits, to include conditional use, variance, rezoning, building and erosion and sediment control permits. An ordinance of this nature would assist the Town in collecting delinquent taxes. A public hearing needs to be scheduled whenever a Town Code ordinance is modified.

Motion made by Councilman Bennett, seconded by Councilman Evans, to schedule a public hearing for the Town Code amendment. The motion was approved by unanimous consent.

E. Schedule Joint Public Hearing with Planning Commission – February 2, 2010:

As outlined during the Planning Commission report, Tom Bonadeo stated that the Planning Commission was requesting a joint public hearing be scheduled for February 2, 2010 to hear public comment regarding three issues: i) a CUP application for a bed & breakfast at 302 Fig Street; ii) the CUP process and moving the additional permit completion process before the start of the one-year CUP duration; and iii) allowing building heights in the PD-STIP District to be over 40’ but less than 55’ with a CUP, which is the same as what is permitted in the Harbor District, and name changes for PD-STIP and STIP Districts.

Motion made by Councilman Bennett, seconded by Councilman Burdiss, to schedule a joint public hearing with the Planning Commission for the three issues as presented. The motion was approved by unanimous consent.

F. Tourism Commission Infrastructure Grant:

Heather Arcos stated that on November 16, 2009, a grant application was submitted to the Eastern Shore Tourism Commission requesting \$9K for beach access improvements for dune crossings at Monroe, Madison and Jefferson Avenues, kayak access at the north end of the beach, and an ADA compliant access to the boardwalk at the south end near the fishing pier. On December 23, 2009, a letter was received from the Tourism Commission notifying us that the Town was awarded \$9K as requested and instituted a May 15, 2010 completion deadline contingent on weather conditions not impacting the project. The \$9K is for materials and there is no funding match required. The Town will provide the labor, mechanics, tools and equipment necessary to complete this project.

Motion made by Councilman Bennett, seconded by Councilman Burdiss, to authorize the Town Manager to sign the contract accepting the grant funds. The motion was approved by unanimous consent.

G. Northampton County Funding Request:

Heather Arcos informed the Council that the Town had received a letter from Northampton County informing us that all contribution requests for FY 2010/2011 must be submitted to the County in writing by January 29, 2010. In previous years, the Town has requested funding for the Cape Charles Memorial Library budget, the July 4th celebration and the Cape Charles Beach. For the last several years, the Town has received \$15,500 for the Library only. The Council reviewed the proposed letter requesting \$20K for the Library, \$5K for the July 4th Celebration and \$100K to help with the cost of sand replenishment at the beach and one revision was made.

Motion made by Councilman Veber, seconded by Councilman Burdiss, to authorize the Mayor to sign the funding request letter to Northampton County as revised. The Motion was approved by unanimous consent.

ANNOUNCEMENTS:

- January 16, 2010 Town Offices closed for Lee-Jackson Day
- January 18, 2010 Town Offices closed for Martin Luther King Jr. Day
- January 28, 2010 Town Council Work Session re: Budget Review
- February 2, 2010 Town Council & Planning Commission Joint Public Hearing
- February 11, 2010 Town Council Regular Meeting
- February 11, 2010 VML Legislation Day in Richmond

Hearing no objections, the Town Council Regular Meeting was adjourned by unanimous consent.

Mayor Sullivan

Town Clerk