



TOWN COUNCIL
Regular Meeting
St. Charles Parish Hall
June 10, 2010
Immediately Following the Public Hearing

At 7:04 p.m. Mayor Dora Sullivan stated that a quorum had been met and called to order the Regular Meeting of the Town Council. In addition to Mayor Sullivan, present were Councilmen Bannon, Bennett, Burdiss, Elliott and Evans. Councilman Veber was not in attendance. Also in attendance were Town Manager Heather Arcos, Consultant Bob Panek, Town Planner Tom Bonadeo, Town Treasurer JoAnna Leatherwood, Harbor Master Smitty Dize, Town Clerk Libby Hume, Councilman-elect Michael Sullivan and Councilwoman-elect Joan Natali. The Department Heads were also in attendance along with nine (9) members of the public.

INSTALLATION OF NEW COUNCIL MEMBERS / SWEARING OF OATH

Mayor Sullivan introduced Chief Deputy Clerk Victoria Morgan of the Northampton County Circuit Court who administered the oaths of office and installed Dora Sullivan as Mayor and L. G. "Chris" Bannon, Michael Sullivan and Joan Natali as members of the Cape Charles Town Council effective July 1, 2010.

Mayor Sullivan thanked Councilmen Burdiss and Elliott for their service to Cape Charles and presented them with hand-carved birds. Mayor Sullivan distributed copies of the Cape Charles Comprehensive Plan to the new and current members of the Council stating that it was a "road map" of Cape Charles and contained everything they needed to know about the Town.

PUBLIC COMMENTS:

Mr. Granville Hogg, P O Box 117, Cheriton, addressed the Council regarding the installation of electric service at a location on Bay Avenue to operate a seasonal mobile kitchen, hopefully by July 1, 2010. Mr. Hogg offered to pay for the installation, with the Town taking ownership, and pay the Town for monthly electricity usage. (See attached) Town Manager Heather Arcos informed Mr. Hogg that the Council was planning to review the issue of peddler's licenses, but that the issue would probably not be resolved prior to July 1. The Council asked whether the mobile unit would remain at the location throughout the season or if it would be removed nightly. Mr. Hogg responded that the unit would be removed nightly in order to remove the discharge on a daily basis. Mr. Hogg asked whether his proposal could be discussed at this evening's meeting. Councilman Burdiss suggested that the Council refer this issue to the Town Manager to work with the necessary department heads to make the decision. Heather Arcos informed Mr. Hogg that she would contact him the next day.

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 there were several items to be added to the agenda as follows: Under New Business, Change Order 3 regarding the Offshore Breakwater Project would become Item 8B, Harbor Redevelopment Phase 1 would be moved to Item 8C, Fiscal Year 2010/2011 Proposed Budget would be moved to Item 8D and two additional items will be added as new Item 8E – Virginia Retirement System Plan 2 Employee Resolution and new item 8F – Lease Agreement-Lots at Fig Street and Randolph Avenue.

Motion made by Councilman Evans, seconded by Councilman Elliott to approve the agenda as amended. The motion was approved by unanimous consent.

The Town Council reviewed the minutes of the May 13, 2010 Executive Session, the May 13, 2010 Regular Meeting, the May 18, 2010 Executive Session and June 3, 2010 Public Hearing.

Councilman Evans questioned the language from the May 13, 2010 Regular Meeting minutes regarding New Business Item C-Joint IDA Appointee Term Resolution stating that the Town should have appointed the representative to this committee and the County should have affirmed the Town's appointment. Councilman Burdiss stated that he was previously appointed to this committee as the representative from Cape Charles but his term was incorrect. This agenda item was to correct the term of the appointment only. After further discussion, it was noted that the minutes from the May 13th Regular Meeting did not need to be corrected.

Motion made by Councilman Bannon, seconded by Councilman Burdiss to approve the minutes for the May 13, 2010 Executive Session, the May 13, 2010 Regular Meeting and the May 18, 2010 Executive Session as presented. The motion was approved by unanimous consent.

REPORT PRESENTATIONS:

A. Town Manager's Report:

Town Manager Heather Arcos reported the following: i) The Cape Charles sign on the corner of Fig Street and Randolph Avenue has been touched up and looks great thanks to the Public Works Crew; ii) The Trail Project is making great progress and a mid-August completion date is anticipated. The Citizens of Central Park and the Town are making plans for a dedication event for Central Park possibly on September 5th. As the details are worked out, more information will be provided; iii) On May 25th, Heather Arcos, Mayor Sullivan and Harbor Master Smitty Dize attended a Virginia Port Authority Meeting where the Town received additional grant funding for the Harbor Improvements in the amount of \$447K. \$100K was included in the Fiscal Year 2010/2011 budget and the Town is very pleased in the additional amount; iv) Heather Arcos thanked Town Planner Tom Bonadeo and Public Works/Public Utilities Director Dave Fauber for their hard work and persistence in working with FEMA regarding the storm damage to the beach. The Town just received notification that it will be receiving \$30K, possibly \$40K, for sand replenishment at the beach; v) Heather Arcos is working on invitation for bids for the repairs to the pier and boardwalk and IT services for the Town.

B. Treasurer's Report:

Treasurer JoAnna Leatherwood reported that the Treasurer's Report dated May 31, 2010 showed \$169,489 in the Bank of America checking account and \$2,771,036 in the Local Government Investment Pool ("LGIP") with a Total Cash on Hand of \$2,940,525. The Treasurer's office is working on follow-up letters regarding delinquent real estate taxes and has been in contact with an attorney in regards to tax sales.

Motion made by Councilman Burdiss, seconded by Councilman Bennett, to approve the Treasurer's Report as presented. The motion was approved by unanimous consent.

C. Harbor Report:

Harbor Master Smitty Dize reported the following: i) There have been several issues regarding the Breakwater Project this week and more details will be provided regarding the issues later in the meeting; ii) Kent Pruitt's mother was hospitalized earlier this week and he had to go home to

take care of his ailing father and will be out until his mother has recovered; iii) Business at the Harbor is good.

D. *Recreation Report:*

Community Events / Recreational Coordinator Jen Lewis reported that St. Stephens Church has agreed to allow the Town to use their facility for Town events, such as Bingo. Jen Lewis thanked Joan Natali for her recommendation of this location.

E. *Library Report:*

Librarian Ann Rutledge reported the following: i) The Library's Summer programs start June 23rd; ii) The Library has been decorated for the summer; iii) Three new families have moved into Town for the summer and have gotten their Library cards; iv) Many familiar faces are coming back to the Library. Several customers come to Cherrystone each year and love coming to the Library; v) The Friends of the Library have been sending out mailings inviting people to join the "Friends" and asking for donations. A lot of people are stopping by the Library and dropping off their donations; and vi) A lot of new volunteers are helping out at the Library and their assistance is greatly appreciated. Heather Arcos stated that she received an email from Ms. Alice Morehouse, President of the Friends of the Library, informing her that over 800 surveys have been mailed and that the Friends are working on a statement for the Town Council regarding their ideas for the future of the Library. Councilman Bannon added that the Friends mailed over 1500 fund raising letters.

F. *Public Works / Public Utilities Report:*

Public Works / Public Utilities Director Dave Fauber reported the following: i) He is still working on obtaining the new doors for the Library; ii) Three companies are submitting bids for the new wells on the Keck property. The deadline for bids is Monday, June 14th and the Town is trying to get the drilling completed by the end of June; and iii) The sand replenishment work at the beach should be completed next week. Wagner Brothers began the installation of the snow fencing this week

G. *Code Enforcement / Central Park Trail Update*

Combination Inspector Jeb Brady reported the following regarding the Central Park Trail Project: i) The construction is moving along very smoothly; ii) The sidewalk around the park is approximately 95% completed; iii) The North and East Node brick pavers have been installed; iv) The handicapped ramp around the Gazebo has been finished; v) All the Memorial Trees have been relocated and all survived the move; vi) The fountain that is to be installed in the West Node has been ordered and is estimated to take 6-8 weeks to arrive; and vii) All the conduit has been installed for the light poles around the Nodes. There will be 34 total light poles but 17 are being installed at this time. The conduit will be in place when the Town is able to install the additional lights. Jeb Brady informed the Council that he has 27 open code enforcement cases with the majority of them being neglect of the property and he has been working with property owners to rectify the violations. One case in Bay Creek is bank-owned and an ad has been placed in the newspaper regarding the property and bids are being collected for demolition. A representative from the bank called this week and the Town hopes that they will come through regarding this property. Since 2004, 27 structures in Town have been demolished. The property owners paid for 25 of them. Ten other structures were saved when the owners complied with the Town's directives. Mayor Sullivan thanked Jeb Brady for doing a great job.

H. *Planning Report:*

Town Planner Tom Bonadeo reported the following: i) Two shallow wells will be drilled for Central Park. Bundick won the bid and the work will be paid by donations from the Citizens for Central Park; and ii) Tom Bonadeo referred to the 27 property demolitions that have done in the

Historic District over the past several years and added that this represented a 5% reduction in inventory for the Town. Once the percentage reaches 10%, the Town could be in jeopardy of losing its Historic District designation. Tom Bonadeo updated the Council on the status of several outstanding conditional use permits as follows: i) There is a new partner involved with the Harbor Development Group and their permits are almost in place. The group is currently working on a traffic study; and ii) Cape Harbor is working on their detailed plan which will be reviewed by the Harbor Area Review Board. Heather Arcos added that she received the final draft of the Harbor Area Architectural Guidelines. Tom Bonadeo stated that it will be provided to the Council soon for their review and final approval.

OLD BUSINESS:

A. *Wastewater Improvements Financing*

Consultant Bob Panek explained that the Town has been working with the Virginia Resources Authority (VRA), The Department of Environmental Quality (DEQ), Bond Counsel and the Town's legal counsel to arrange the closing on the zero interest loan. The Town has also been working with the DEQ for approval to include the following related project costs: i) the balance for the pump station modernization and force main realignment work after application of the \$663K EPA grant; and ii) the closure of the existing wastewater treatment plant (WWTP) site. The DEQ agreed regarding inclusion of the cost of the closure of the existing WWTP site but not for the inclusion of the Town's match for the work regarding the pump station and force main. Bob Panek went on to explain that Resolution 20100610 reflects the total project estimate of \$6.4M before receipt of the additional ARRA funds and was prepared by Bond Counsel and reviewed by the Town's legal counsel. The Town can close the loan for the full amount and draw only the amount needed (probably between \$5.0M and \$5.4M) up to that limit. Initial payments do not commence until project completion. A public hearing was held earlier this evening and no comments were heard.

Mayor Sullivan moved for adoption of Resolution #20100610 – A Resolution Authorizing the Issuance and Sale of a General Obligation and Revenue Bond in a Principal Amount not to Exceed \$6,400,000 and Providing For the Form, Details and Payment Thereof. Resolution #20100610 was adopted by unanimous vote. Roll call vote: Bannon, yes; Bennett, yes; Burdiss, yes; Elliott, yes; Evans, yes.

B. *June 28th Joint Public Hearing Information*

Bob Panek informed the Council that a joint public hearing and special meeting has been scheduled for June 28, 2010 with the Northampton County Board of Supervisors and the Town Councils of Cape Charles, Cheriton, Exmore and Nassawadox to consider the applications of the Towns to become members of the Eastern Shore of Virginia Public Service Authority (PSA) and to amend the Articles of Incorporation of the PSA to provide that the number of members of the PSA's Board of Directors be increased to ten (10) and comprised of one (1) member from each town and six (6) At-Large members appointed by the Northampton County Board of Supervisors. Copies of the documents relating to this meeting were included in this evening's agenda packet for review by Council.

C. *Cape Charles Trail Project Agreement Amendment*

Heather Arcos explained that in October 2008, the Town submitted an application for a Transportation Enhancement Program Grant in the amount of \$354K for the Cape Charles Trail Project. The Town was awarded the requested amount and the Amendment to the Project Development and Administration Agreement (Appendix A) showing the \$354K increase in grant funds for a total of \$1,109,300, has to be executed to accept the additional funds. The Town's 20% match of \$78K has been allocated in the FY 2010/2011 budget.

Motion made by Councilman Bannon, seconded by Councilman Elliott to authorize the Town Manager to execute the Amendment to Project Development and Administration Agreement (Appendix A). The motion was approved by unanimous consent.

D. Conditional Use Permit Process

Tom Bonadeo stated that, upon request by Council, the Planning Commission revised Section 4.3 of the Zoning Ordinance regarding the Conditional Use Permit process. A public hearing was held regarding the revised process but Council requested the modifications also be reviewed by legal counsel. Legal counsel has reviewed the process and recommended several text changes to strengthen the process as requested by Council. The Planning Commission reviewed the recommendations made by legal counsel and agreed that this new process would make the Conditional Use Permit process more functional.

Motion made by Councilman Evans, seconded by Councilman Bennett to approve the modification of Section 4.3 of the Zoning Ordinance as recommended by the Planning Commission. The motion was approved by unanimous consent.

NEW BUSINESS:

A. Variance Time Limitation

Tom Bonadeo explained that during a recent Board of Zoning Appeals hearing, it was discovered that the Zoning Ordinance may conflict with the State Code regarding a time limitation on variances and after legal review, a text change to the ordinance was recommended. Section 2.6.7 of the Zoning Ordinance states if a variance is not acted upon within one (1) year, the variance becomes null and void. The State Code does not specifically allow Towns to impose a time limit on variances but allows conditions to be added and in certain circumstances the condition of time could be added to the variance. Legal counsel surveyed attorneys from other municipalities and no other municipality sets a time limit on variances except as a condition under certain circumstances. The Council reviewed the text change recommended by legal counsel.

Motion made by Councilman Evans, seconded by Councilman Elliott to adopt the text change to Section 2.6.7 of the Zoning Ordinance as recommended by legal counsel. The motion was approved by unanimous consent.

B. Offshore Breakwater, Phases I & II Change Order #3

Smitty Dize explained that the currents have been stronger than expected causing the bedding stone to be washed out in several areas of the breakwater. The main concern is with the use of the concrete blocks which tilt with the current but the placement of additional armor stone is expected to alleviate this problem. Change Order #3 needs to be approved in the amount of \$81,073.35. Heather Arcos stated that the actual amount of the bid was the amount included in the budget but after the award of the bid, the Town was able to negotiate a lesser amount with Precon Marine so the Town does have room in the current financing to increase the project cost by the amount of this change order.

Motion made by Councilman Burdiss, seconded by Councilman Elliott and unanimously approved to authorize the Town Manager to executive the Change Order #3 as requested.

C. Harbor Redevelopment Phase 1

Heather Arcos explained that the Town was awarded \$343,977 from the Virginia Department of Health Boating Infrastructure Grant to construct 44 floating slips and two 750 SQFT shower/restroom facilities. An additional \$447K in grant funds was received from the Virginia Port Authority. The base bid package will include all slips, the two shower/restroom facilities and all water, sewer and electric utilities. This project is included in the FY2010/2011 budget.

Motion made by Councilman Burdiss, seconded by Councilman Bennett to authorize the Town Manager to advertise an Invitation for Bids for the Harbor Redevelopment Phase 1 once the bid package has been completed. The motion was approved by unanimous consent.

D. Fiscal Year 2010/2011 Proposed Budget

Heather Arcos stated that the Council held a public hearing on June 3, 2010 regarding the proposed Fiscal Year 2010/2011 Budget and no comments were heard. Heather Arcos went on to state that there were no tax rate changes. The base tier minimum utility rates will increase by a total of \$5.00. The water rate will increase from \$30.10 to \$31.60, the wastewater rate will increase from \$34.30 to \$37.05 and the trash collection fee per can will increase from \$13.25 to \$14.00. The trash collection fees were last increased in 2007. The utility increases are to cover current operating costs for water and wastewater and to accumulate debt service reserve that is required by the Virginia Resources Authority who is financing the balance of the wastewater treatment plant. The budget was prepared with no employee layoffs, but the employees will be contributing to the cost of their health care insurance. Councilman Burdiss expressed his disappointment regarding the fact that the Council held a public hearing on a \$21M budget and no citizens attended and tonight, only one (1) member of the public remained in attendance at this time.

Motion made by Councilman Burdiss, seconded by Councilman Bennett to adopt the proposed FY 2010/2011 budget as presented. The motion was approved by unanimous consent.

E. Virginia Retirement System Plan 2 Employee Resolution

JoAnna Leatherwood stated that the Town of Cape Charles had been a member of the Virginia Retirement System since January 1989. Effective July 1, 2005, the Town of Cape Charles, as part of the FY 2006 budget, decided to contribute the employees' share of the monthly retirement contribution as an added fringe benefit. In its 2010 session, the Virginia General Assembly passed legislation implemented new plan provisions for employees hired or rehired on or after July 1, 2010, called VRS Plan 2. The current active employees and retirees are in Plan 1. Since the Town's commitment to pay both the employee's and employer's share of the monthly contribution was passed when only Plan 1 was in place, a new resolution needs to be adopted by June 30, 2010 to make the same benefit available to any Plan 2 employees.

Mayor Sullivan moved for adoption of Resolution #20100610A – Authorization to Pick-Up the Employee's Contribution to VRS Under §414(h) of the Internal Revenue Code For Plan 2 Employees. Roll call vote: Bannon, yes; Bennett, yes; Burdiss, yes; Elliott, abstained; Evans, yes.

F. Lease Agreement – Lots at Fig Street & Randolph Avenue

Heather Arcos informed the Council that Bay Creek is the owner of lots 1464, 1465, 1466, 1468, 1470, 1471 and 1472 in Cape Charles and desires to lease the property to the Town. The Town's welcome sign is currently located on this property at the corner of Fig Street and Randolph Avenue. The initial term of the lease will begin June 10, 2010 and end December 31, 2010 and shall automatically renew for the term of December 31, 2010 to December 31, 2011 as long as neither party gives notice of its intent not to renew by October 1, 2010. In lieu of rental payments to Bay Creek, the Town will pay all Northampton County real estate taxes and forgive or pay any Cape Charles real estate taxes. Bay Creek agrees to offer this property for sale to the Town before offering the property for sale to any third party. Upon being offered the property

for sale, if the Town declines to purchase it, the term of the lease will expire on the date of closing on a sale to a third party. The Town will keep the property and the sign or signs in good repair and will be responsible for cutting the grass and otherwise maintaining the property. Councilman Burdiss suggested contacting the Commissioner of Revenue for Northampton County regarding a possible real estate tax exemption from the County for this property since the Town will be leasing it for its use and offered his assistance if needed.

Motion made by Councilman Burdiss, seconded by Councilman Elliott to authorize the Town Manager to execute the lease agreement with Bay Creek for the lease of lots 1464, 1465, 1466, 1468, 1470, 1471 and 1472. The motion was approved by unanimous consent.

ANNOUNCEMENTS:

- June 14, 2010 – Employee Recognition for Years of Service, 1PM
- June 15, 2010 – Virginia Stranding Team Release of Sea Turtles, 11AM
- June 17, 2010 – PSA Project Management Team Meeting, 7PM
- June 21, 2010 – Joint Meeting of Cheriton & Cape Charles Planning Commissions
- June 24, 2010 – Town Council Work Session – tentative
- June 28, 2010 – Joint Public Hearing – County Board of Supervisors and Town Councils of Cape Charles, Cheriton, Exmore, Nassawadox re: PSA Board – 7PM at the former Northampton Middle School Auditorium
- July 3, 2010 – Cape Charles Fire Company Annual Seafood Festival
- July 4, 2010 – July 4th Parade @ 2PM and Cape Charles Annual Fireworks after sunset
- July 5, 2010 – Town Offices Closed in observance of Independence Day
- July 8, 2010 – Town Council Regular Meeting, 7PM

Mayor Sullivan thanked Councilmen Burdiss and Elliott for their years of service on the Town Council adding that they will be missed.

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

Mayor Sullivan

Town Clerk

Comments from Mr. Granville Hogg

Dashboard Diner

In the long ago past there was a stand on the east side of Bay Avenue across from the pavilion that sold various food items. In the more recent past I have operated a mobile kitchen on the west side of Bay Avenue at the extension of Tazewell Avenue. Electric power for the mobile kitchen was provided by a generator. Having the food facility located at that site provided persons utilizing the beach with the opportunity to acquire a snack or drink.

There is a need for electric power for my operation. I am able to meet that need with my generator, however, the gasoline motor, within acceptable noise limits, is still loud and could be objectionable to the residents on the east side of Bay Avenue.

I am proposing the installation of an electric meter and 50 amp electric service to be installed on the existing utility pole located on the west side of Bay Avenue near the extension of Tazewell Avenue for the purpose of operating a mobile kitchen on a seasonal basis. The general hours of operation would be from approx. 10:00 AM until approx. 6:00 PM plus time to set-up and clean-up as I did in the past. In general, weekends from late April to mid June, continuously mid June to Labor Day, reduced scheduled until mid October.

The benefits associated with this proposal:

Its presence will encourage persons to come to the Cape Charles area as there are amenities that no other beach in the county offers.

Once persons are visiting in Cape Charles they are more likely to stay within the town area for a longer period of time to eat at restaurants and shop.

The use of electricity will reduce noise associated with the generator.

The operation is far enough away that persons desiring to enjoy the pavilion are not inconvenienced.

The unit is not so tall that it blocks the view of the residents on the east side of Bay Avenue.

I propose that I would make the necessary arrangements to have the electric meter and the associated connections constructed and I would pay for those improvements. Currently the Town has a similar arrangement at the harbor. Although I am glad to assume all financial responsibility for the electric service, it may be in the town's interest to assume ownership and permit me to pay the bill for electric use.

If the council will approve this concept, I am requesting Council to create an Ad Hoc committee of the Town Manager, Director of Public Utilities, and myself to bring this proposal to fruition. I will be the person implementing with the approval of Ms. Arcos and Mr. Fauber. Unless there are circumstances beyond my control, it is my intention to have this implemented by July 1, 2010.

If there are other unforeseen issues where occupancy for this season is not feasible, I will advise the Town Manager and will abandon the proposal.