



**TOWN COUNCIL  
Regular Meeting  
St. Charles Parish Hall  
October 17, 2013  
6:00 P.M.**

At 6:00 p.m. Mayor Dora Sullivan, having established a quorum, called to order the Regular Meeting of the Town Council. In addition to Mayor Sullivan, present were Councilmen Godwin, Sullivan and Wendell, and Councilwoman Natali. Vice Mayor Bannon and Councilman Bennett were not in attendance. Also in attendance were Town Manager Heather Arcos, Assistant Town Manager Bob Panek, Town Planner Rob Testerman, Treasurer Kim Coates, Town Clerk Libby Hume and Mr. Michael Sterling of Vandeventer Black, LLP, as well as the majority of the Department Heads and approximately 20 members of the public.

A moment of silence was observed followed by the recitation of the Pledge of Allegiance.

**RECOGNITION OF VISITORS / PRESENTATIONS**

*Tamsey Ellis, Candidate for the Northampton County School Board – District One*

Ms. Ellis addressed the Council and audience regarding her campaign for the District One representative on the Northampton County School Board and explained that she had the time, education, experience and passion to serve on the Board. Ms. Ellis distributed cards listing her qualifications and contact information.

*Paul Strong, Cape Charles Rotary Club*

Mr. Strong notified the Council that the Cape Charles Rotary Club had adopted Route 184 (Stone Road) under the VDOT Adopt-a-Highway Program. The first clean-up was done on October 13, 2013. 14 volunteers spent 1.5 hours picking up trash along Route 184 which filled up his pickup truck. Several high school teenagers helped as well as several non-Rotary members. Mr. Strong went on to state that the Cape Charles Rotary Club provided services to the Town of Cape Charles and the Eastern Shore and was one of the founders of the New Roots Youth Garden. Councilman Godwin and Town Manager Heather Arcos were members. Mr. Strong concluded by distributing an informational pamphlet on the Cape Charles Rotary Club and stated that if anyone was interested in joining the Rotary, they should contact a member.

**PUBLIC COMMENTS:**

*Deborah Bender, 300 Fulcher Street*

Please see attached.

*Veann Duvall, 110 Tazewell Avenue*

Please see attached.

Town Clerk Libby Hume read a letter from Wayne Creed representing Old School Cape Charles, LLC, 548 Monroe Avenue. Please see attached.

There were no additional public comments to be heard nor any additional written comments submitted prior to the meeting.

**CONSENT AGENDA – APPROVAL OF AGENDA FORMAT:**

Councilman Wendell stated that he still had an objection to the five minute limit under Mayor and Council comments since the decision was made outside of a Council meeting without a vote. Councilman Wendell added that he wanted a PSA report added to the agenda. The citizens were entitled to an update of the PSA activity over the last 60 days.

There was some discussion regarding Councilman Wendell's comments. Mayor Sullivan stated that it was brought up that the Council meetings were rambling on so the time limitation for Council comments was suggested and implemented to improve the flow and effectiveness of the meetings.

Heather Arcos stated that she would provide a brief update regarding the PSA during her report to Council.

**Motion made by Councilman Sullivan, seconded by Councilwoman Natali to approve the agenda format as presented. The motion was approved by majority vote with Councilman Wendell opposed.**

#### **CONSENT AGENDA – APPROVAL OF MINUTES:**

The Town Council reviewed the minutes of the September 19, 2013 Regular Meeting, the September 25, 2013 Work Session, and the October 3, 2013 Special Meeting.

Councilwoman Natali noted a couple of typographical errors in the September 25, 2013 Work Session minutes.

Councilman Wendell commented that the minutes from the September 19, 2013 Regular Meeting still did not reflect the moving of the railroad yard east of the hump adding that this plan was significant. Councilman Sullivan stated that the relocation of the railroad yard was not a plan but a conceptual idea from Mr. Eyre Baldwin. No official word had been received from Bay Coast Railroad. Councilwoman Natali suggested that it be stated as an unofficial plan since the person making the statement was not authorized to do so by the Railroad.

Councilman Wendell went on to comment on New Business, Item E – Long Term Financing, stating that his objections to the contract not being provided to Council for review prior to the vote on whether to move forward with Davenport & Company were not included in the minutes.

Councilman Wendell continued to comment regarding Councilman Bennett's statement at the September 19<sup>th</sup> meeting that Council could self-regulate themselves and put items on the agenda. Mayor Sullivan responded that if a Council member wanted to add something to the agenda during a meeting, he/she could make it a motion and if the motion was seconded, it would be brought to a vote.

**Motion made by Councilwoman Natali, seconded by Councilman Sullivan, to approve the minutes from the September 19, 2013 Regular Meeting and the September 25, 2013 Work Session as amended, and the October 3, 2013 Special Meeting as presented. The motion was approved by unanimous consent.**

#### **DEPARTMENT REPORTS:**

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

Treasurer Kim Coates reviewed the Treasurer's report dated September 30, 2013 which showed \$15 in the Bank of America account, \$267,452 in the Shore Bank account, \$68,486 in the Local Government Investment Pool (LGIP) account for the New Library and \$440,499 in the Local Government Investment & Restricted Funds with the Total Cash on Hand at \$776,452. Kim Coates noted that the Bank of America checking account was closed earlier in the week.

The total cash held in reserve was \$356,101. Kim Coates went on to review the Tax Collection Comparison for Fiscal Years (FY) 2013 and 2014, the revenues vs. expenditures and the capital improvement projects. Kim Coates informed Council that Northampton County was contracting out services for the IT portion of their real estate bills and the revised 2013 assessment books were dropped off on Friday, September 27<sup>th</sup>. The IT staff at Northampton County was working with the Town's database provider to upload the real estate and personal property tax files into our database. Once uploaded, the data would be verified for accuracy, necessary adjustments would be made and the bills should be mailed out by the end of October or mid-November at the latest with a December 5, 2013 due date.

Mayor Sullivan stated that she spoke with a family on Madison Avenue and let them know that disabled veterans did not have to pay taxes. They were unaware of this benefit and were very appreciative. Kim Coates responded that the tax relief application for the elderly and handicapped was available online and needed to be submitted each spring.

**Motion made by Councilman Godwin, seconded by Councilman Sullivan, to accept the Treasurer's Report as submitted. The motion was unanimously approved.**

*B. Planning Commission and Boards:*

Town Planner Rob Testerman stated that he had one addition to the monthly report included in the Council agenda packet and reported that the Historic District Review Board (HDRB) met on October 15 and approved two applications – an addition at 309 Mason Avenue and an alteration of 219 Jefferson Avenue.

Councilman Wendell asked about the Planning Commission's work on the Historic Town Entrance Overlay District. Rob Testerman stated that several years ago, the Commissioners were working with the County Planning Commission to protect the entrance corridor into the Town. Since the County was in the process of updating their Comprehensive Plan, the current Planning Commission was reviewing the draft from 2010 to provide the Town's input regarding commercial development along Route 13. The Commissioners discussed businesses which could be detrimental and complementary to the businesses in the Town.

There was much discussion regarding the draft Historic Town Entrance Overlay District and possible future commercial development on Route 13. It was explained that the Historic Town Entrance Overlay District was not a Cape Charles ordinance, but the County's and the Town could only provide input for consideration by the County Planning Commission and Board of Supervisors.

*C. Other Departmental Reports:*

*Town Manager:*

Town Manager Heather Arcos reported the following: i) Mr. Leon Parham was assisting the Town regarding the floor plan of the former library building and providing his recommendations to ensure that the integrity of the historic building was preserved. A plan would be presented to Council for approval. The design would also be presented to the Historic District Review Board for their review; ii) The Fiscal Year 2013 audit had been scheduled for January 13-14, 2014; iii) Davenport & Company issued a Request for Proposals on behalf of the Town of Cape Charles to solicit bids for financing options to reduce the Town's debt service on existing utility bonds as well as the potential for new financing for capital projects. Davenport & Company would present the results to Council for consideration in November; and iv) Heather Arcos, Kim Coates and Dave Fauber were working on the task list of items regarding the Public Service Authority (PSA) request. Currently under review was the Annexation Agreement language, inventory of the existing businesses in the area to determine a connection fee, establishment of an estimated cost for the future expansion of the wastewater plant, and

contact with other localities and public service authorities to discuss their experiences and development of their methodologies.

Councilman Wendell criticized the Town for not including Bob Panek in the group researching and evaluating information regarding the PSA since he was very knowledgeable about the PSA and the Town's wastewater system. Heather Arcos stated that Dave Fauber was the Director of Public Utilities and was very qualified to work on this project.

Heather Arcos continued her report as follows: v) The Cape Charles Fall Festival, sponsored by the Cape Charles Business Association (CCBA), and the Eastern Shore Birding Festival, sponsored by ESVA Festivals, had good turnouts despite the weather; and vi) Ms. Kelly Allison was the new Executive Director of the Eastern Shore of Virginia Tourism Commission and would be formally introduced to Council at the November meeting. The LOVE works, funded by the CCBA, was placed at the corner of Mason and Bay Avenues for a week.

Councilman Wendell asked about preliminary figures regarding the PSA. Heather Arcos responded that she did not have anything additional to report regarding the PSA at this time.

There were no further questions regarding any of the other monthly Departmental Reports.

## **OLD BUSINESS**

### **A. *Cape Charles Multi-Use Trail Project Update:***

Assistant Town Manager Bob Panek updated the Council regarding the Cape Charles Community Trail – Phase 2 as follows: i) Land Studio completed the test holes to locate 26 utility components along Peach Street and Washington Avenue and the information was being incorporated into the design documents; ii) Land Studio notified VDOT of the beach erosion at the northern terminus of the concrete boardwalk where Phase 2 would connect. An extension of the existing rock revetment over the storm drain outfall was being incorporated into the design documents; iii) The project cost estimate of \$1.4M would be updated when the design changes were completed. The amount was likely to increase due to the erosion issue; and iv) The current schedule anticipated 100% design/Bid documents in November, VDOT approval in January 2014, bidding in February, contract award in March, and beginning of construction in April.

Councilman Wendell asked the amount of the 20% Town match. Bob Panek responded that the Town's match would be \$280K on a \$1.4M project.

### **B. *NEA Our Town Project Update:***

Bob Panek updated the Council regarding the Our Town Project as follows: i) \$26,450 was allocated for the implementation of a tourism website and a marketing campaign. The website, [www.capecharlesbythebay.com](http://www.capecharlesbythebay.com), was operational and the print and social media marketing campaign was in place including advertisements in the next issues of the Virginia and Eastern Shore tourism guides. A plan was being developed to sustain the website and marketing campaign and to transition it from the Our Town Project to another organization. A recommendation would be provided to Council at a future work session; ii) A \$22K contract amendment was executed with Land Studio for the "Arts Walk" planning efforts. A steering committee of residents, business owners and the CCBA worked with the consultants to formulate proposals to link existing performance spaces and create additional spaces. The proposals were reviewed at an October 2 public meeting and included a way finding system with a signature arts piece and Town map at several locations, improvements on Strawberry Street and the south side of Mason Avenue including reuse of the former grocery store property, art displays around the trail in Central Park, and development of a beach front performance venue. The steering committee would prioritize the proposals and the recommendations would be presented to Council. If approved, the Cape Charles Master Trail Plan would be modified; and iii) Arts Enter reviewed the very successful Harbor for the Arts Festival and would likely

plan next summer's festival over a longer period with events concentrated around weekends. Just under half of the NEA grant funds were spent.

C. *Zoning Ordinance Section 3.9 – Harbor Density:*

Rob Testerman stated that the Harbor District Zoning Ordinance issue was tabled last month and no additional changes had been made to the proposed ordinance since the September meeting. At the September Council meeting, it was mentioned that proposed maximum Floor Area Ratios (FARs) for the Harbor District were possibly too low. Rob Testerman went on to state that for comparison, he looked at the existing commercial district on the north side of Mason Avenue and determined, as a whole, the district had a FAR of approximately 1.1, however, looking at individual buildings showed a wide range of FARs from 0.3 for Shore Treasures to 4.0 for the Wilson Building. Gull Hummock's building was 1.9 and Brown Dog's building was .8 or .9. Council had also discussed the possibility of extending the roads to give access to the Harbor without having to drive over the hump, but Rob Testerman stated that he did not think that language could be put into the ordinance requiring a developer to install a new road. This could possibly be negotiated as part of a conditional use permit. The proposed ordinance contained language keeping the viewsheds intact which could create a valuable pedestrian friendly area that would be better served to not have roads extending through it. Council could approve the proposed modifications as written, or approve the ordinance with changes that would make the ordinance less restrictive than what was advertised for the public hearing. Should Council wish to make the ordinance more restrictive, new public hearings would have to be held.

Councilman Wendell expressed his concern that if the FAR was made less restrictive, the Town would lose the leverage to negotiate under a conditional use permit for vehicular access to the Harbor. Last month, Councilman Bennett expressed his opinion that the FAR numbers were too restrictive. Councilman Wendell continued to state his concern that the south side of Mason Avenue would not reflect the development on the north side of Mason Avenue and added that more research was needed, especially with the relocation of the railroad to the east side. The Town was leaning so far for the developers that there was no leverage left for the citizens. Rob Testerman stated that the FAR numbers were intended to mirror the north side of Mason Avenue. Heather Arcos added that the Planning Commission had been working on this issue and researching information for several years.

There was some further discussion regarding FAR, the railroad and railway traffic. Councilman Wendell suggested adding language in the Zoning Ordinance requiring a developer to construct an access road for vehicular traffic from Mason Avenue to the Harbor. Councilman Sullivan stated that it would not be appropriate in the Zoning Ordinance and added that the railroad property was not public property. If the conceptual plan regarding the railroad would reach fruition, it would take several years and so far, nothing had been discussed with Bay Coast Railroad. Councilman Wendell suggested waiting on adopting the FAR language until a building permit was issued for property in the Harbor District. Rob Testerman stated that the ordinance needed to be in place prior to an application coming in.

**Motion made by Councilwoman Natali, seconded by Councilman Godwin, to approve the proposed modifications to Zoning Ordinance § 3.9 – Harbor District as presented with the exception of the Floor Area Ratio maximums which would be changed to set the maximum FAR of 1.5 by right for the Mainstreet Mixed Use area with a FAR of 2.0 by conditional use, and the maximum FAR of 1.75 by right for other areas in the Harbor District with a FAR of 2.0 by conditional use. Staff would work with the Planning Commission regarding identifying the FAR for the buildings on the north side of Mason Avenue to see if the numbers were compatible. If needed, the FAR numbers could be adjusted in the future. The motion was approved by majority vote with Councilman Wendell opposed.**

D. *Waste Collection Services Contract Award:*

Heather Arcos stated that the Request for Proposal for Waste Collection and Disposal Services closed on August 30, 2013 and one bid was received from Davis Disposal Co, Inc. Davis Disposal was the current service provider with a contract expiration of October 31, 2013. The proposal included the following terms: i) The residential account reflected an increase of 18¢ effective November 1, 2013. The monthly cost for pick up would be \$12.75 per account. The current fee charged to residents was \$12.57 effective July 1, 2013. The increase of \$1,584 in the Sanitation Fund would be covered by the positive fund balance and the cost would be evaluated during the budget process. The proposal also provided the cost for service for the next three years with the cost increasing to \$13.50 for the second and third year, and increasing to \$13.85 for the fourth year; ii) The food service accounts would continue to be billed per business according to container size and dumping frequency; iii) Curbside recycling would be \$5 per month per household or business with pick up every other week. The service would be based on the same number of residential accounts for waste collection so would be mandatory. Acceptable items would be paper and cardboard products, plastics marked with #1 or #2, and electronics with cords removed and no larger than 20 lbs. Glass would not be accepted. This option was not part of the staff recommendation at this time; and iv) The contract would be for one year with the option of three annual extensions. Mr. Mike Davis offered to work with the Town if a site could be located for a central recycling station.

Mayor Sullivan stated that another company provided recycling services for Accomack and Northampton Counties and suggested staff contact them regarding costs, etc.

Heather Arcos added that there was a continuing concern with commercial pickup in the 200 block of Mason Avenue. The issue was being reviewed and information would be provided to Council at the November meeting.

**Motion made by Councilman Godwin, seconded by Councilman Sullivan, to authorize the Town Manager to execute the contract with Davis Disposal Co., Inc. for waste collection and disposal services, not including curbside recycling. The motion was approved by unanimous vote.**

**NEW BUSINESS:**

A. *Notice of Appeal – Historic District Review Board:*

Heather Arcos stated that Old School Cape Charles (OSCC) filed a “Notice of Appeal of the Certificate of Appropriateness for School Project” to the Town Council on September 19, 2013. Per § 8.34 of the Cape Charles Zoning Ordinance, “An appeal from a decision of the property in question or by any party aggrieved by said decision, which shall be taken within thirty days after the decision appeals by filing with the Administrator a notice of appeal specifying the grounds thereof.” The Zoning Administrator and the Town Manager reviewed the notice of appeal and recommended rejection of the appeal based on the following facts: i) OSCC’s reasons for appeal were not grounds for an appeal. The approval of the five items reviewed by the Historic District Review Board (HDRB) fulfilled the requirements. The Department of Historic Resources approval process was not in the purview of the HDRB; ii) The appeal was procedurally deficient as its Notice of Appeal was directed to the Town Council rather than the Zoning Administrator as required in § 8.34 of the Zoning Ordinance; iii) OSCC was a Virginia Limited Liability Company, not a landowner; iv) OSCC did not own the former school property, nor any property in the Town. Virginia State Code § 15.2-2306 (A)(3) defined an “aggrieved party” and OSCC must own property within or in close proximity to the subject property, serving to establish a “direct, immediate, pecuniary and substantial interest in the decision;” and v) OSCC must demonstrate a “particularized harm to some person or property, right, legal or equitable, or imposition of a burden or obligation upon the petitioner different from that suffered by the public generally.” OSCC did not meet the requirements to challenge a decision by the HDRB since it did not own property in the Town, and did not have contractual rights or financial obligations with regards to the former school building. Therefore, OSCC failed to

attain the aggrieved party status. Unless Council decided to override the staff recommendation, the next step would be to respond to OSCC in writing explaining the rejection of the appeal.

Councilman Wendell stated that there were plenty of people aggrieved by the Council's decision based on the public comments from citizens expressing their concern and asking for their due process. Heather Arcos stated that during the review of the appeal, consideration was given to the definition of "aggrieved party" and the three lawsuits. The Ordinance was followed and it was determined that there were no grounds for an appeal.

There was much discussion regarding the parking lot, landscaping and the location of the front of the building. Councilman Wendell asked Rob Testerman if the front of the building faced the south and whether the developer could put a parking lot in the front of the building. Heather Arcos stated that the issue on the table was whether the Town Council agreed with the staff recommendation to reject the appeal or whether Council wanted to override the staff recommendation and hear the appeal. Councilman Wendell again asked Rob Testerman if the front of the building still faced south. Mayor Sullivan called Councilman Wendell out of order and added that if Councilman Wendell wanted to continue to debate the issue he could make a motion to table the issue or reject the staff recommendation if he so wanted.

**Motion made by Councilman Wendell to override the staff recommendation to reject the Notice of Appeal from Old School Cape Charles. The motion failed for lack of a second.**

Councilman Wendell asked Mayor Sullivan where the front of the building was. Councilwoman Natali recommended Mayor Sullivan not to answer the question and suggested Council move on to the next agenda item.

There was no further discussion regarding this agenda item.

**B. *Fuel Services Contract Extension/Provider Name Change:***

Heather Arcos stated that on November 8, 2010, the Town Council awarded the fuel services contract, effective December 1, 2010, to Bagwell Gas & Oil for all fuel services to the Town. The contract was for one year with the option to renew for three additional years. This would be the third and final extension under this contract. The current contract would expire at midnight on November 30, 2013 and staff would like to exercise the right to renew the contract at current fuel prices with no increase for another year. Heather Arcos went on to state that in August 2013, the Town received notification that Bagwell Gas & Oil had merged into Pep-Up, Inc., a full service petroleum distributor serving a territory from the Chesapeake Bay Bridge at Annapolis, MD to Kiptopeke, including all of Accomack and Northampton Counties. Pep-Up was operating out of the same offices as Bagwell Gas & Oil in Belle Haven and Onancock and had retained all the former employees.

**Motion made by Councilman Sullivan, seconded by Councilman Godwin, to authorize the Town Manager to execute a one-year contract extension with Pep-Up, Inc. to provide fuel services to the Town. The motion was approved by unanimous consent.**

**C. *Virginia Local Disability Program:***

Kim Coates informed Council that the 2012 Virginia General Assembly created the Virginia Local Disability Program (VLDP) through the Virginia Retirement System (VRS) for political subdivision and school division employees who would be covered under the VRS Hybrid Retirement Plan effective January 1, 2014. VLDP provided short and long term disability coverage to employees. Coverage for employees was automatic under VLDP unless a governing body elected to opt out by December 2, 2013 and provide a comparable employer-paid program. The election to remain or opt out of VLDP was irrevocable. VLDP currently had the highest rates of all available programs and offered the shortest rate guarantee period of only six months. Many localities were opting to participate in alternate programs through the Virginia Municipal League (VML) or other companies which offered options allowing localities the

flexibility of moving between plans in the future and all offered lower rates and longer rate guarantees than VLDP. The Town currently offered short-term disability to all full-time employees through another company but the VML Insurance Programs offered a significantly lower rate with added benefits. At this time, staff felt that the VML Insurance Program Option 1 was the best option for the Town. Kim Coates concluded by stating that a resolution had to be adopted to opt out of VLDP in order to move forward with enrolling in VML Insurance Programs Option 1.

**Motion made by Councilman Godwin, seconded by Councilwoman Natali, to adopt Resolution 20131017 – Irrevocable Election Not to Participate in Virginia Local Disability Program. Mayor Sullivan moved for adoption of Resolution 20131017 as noticed and forewent reading of the Resolution. The motion was approved by unanimous roll call vote. Roll call vote: Godwin, yes; Natali, yes; Sullivan, yes; Wendell, yes.**

D. *National Friends of Libraries Week Proclamation:*

Heather Arcos stated that October 20-26, 2013 was the eighth annual National Friends of Libraries Week. Staff recommended Council review and approve Proclamation 20131017 to recognize the Friends of the Cape Charles Memorial Library during National Friends of Libraries Week.

**Motion made by Councilman Godwin, seconded by Councilman Wendell, to appoint Rob Testerman as the Zoning Administrator. Mayor Sullivan moved to adopt Proclamation 20131017 as noticed and forewent reading of the Proclamation. The motion was approved by unanimous roll call vote. Roll call vote: Godwin, yes; Natali, yes; Sullivan, yes; Wendell, yes.**

E. *Fishing Pier – Permanent Repairs:*

Heather Arcos stated that in 2012, the old section of the pier was damaged during Hurricane Sandy and was closed to the public until the structure was repaired, inspected and deemed safe. On December 6, 2012, representatives from FEMA and the Virginia department of Emergency Management inspected the damage and declared that the pier would qualify for a Public Assistance Grant. The Town had originally requested that the pier be moved to another location but FEMA determined that the available funding would not replace or repair the damaged structure except in the same footprint as the original. FEMA allocated \$288,300 with a Town match of \$21,700 for a total estimated project of \$310K. The Town match was included in the FY 2013-2014 budget. The pier would be closed during construction and staff was hopeful to have the repairs completed in order for the pier to reopen by May 2014.

There was some discussion regarding the possibility of expanding a section of the pier to add seating and to hold events, etc. Heather Arcos stated that the Town would put the project out for bids and would ask for bid options such as a large platform area for events.

The possibility of a Design Build bidding process was also discussed. Heather Arcos stated that she was not sure whether a Design Build could be done for this project since the pier already existed, but would check into the possibility.

**Motion made by Councilman Godwin, seconded by Councilman Sullivan, to authorize the Town Manager to move the fishing pier project forward to design and put out to bid in order to have the pier reopened by spring 2014. The motion was approved by unanimous consent.**

F. *Virginia Local Government Insurance Association:*

Kim Coates stated that VML Insurance Programs had developed, through Lincoln Financial Group, a disability program as an alternative to the VLDP. In order to take advantage of the programs, the Town must join a joint powers association called the Virginia Local Government Insurance Association (VLGIA) by adoption of an ordinance.

**Motion made by Councilman Sullivan, seconded by Councilwoman Natali, to adopt Ordinance 20131017- Approving Joint Powers Association Agreement and the Virginia Local Government Insurance Association Joint Powers Agreement. The motion was approved by unanimous roll call vote. Roll call vote: Godwin, yes; Natali, yes; Sullivan, yes; Wendell, yes.**

#### **MAYOR AND COUNCIL COMMENTS**

Mayor Sullivan and Councilmen Godwin and Sullivan stated that they did not have any comments at this time.

Councilwoman Natali stated that she would be out of the country from November 6 through November 19.

Councilman Wendell commented on the following: i) He did not agree that Council went through the proper channels to enforce time limits for the Mayor and Council comment period; ii) The issue with the school arose when people wanted Council to slow down and consider their opinion regarding the school. Council sped up the process with a lame duck vote. He proceeded to read an excerpt from the Eastern Shore News from October 8<sup>th</sup> regarding the Mary Nottingham Smith Center. He went on to mention the Onancock Community Arts Center which was leased from the Town for 40 years and added that the lease was written by Ms. Cela Burge, former Cape Charles Town Manager, the same lease that Old School Cape Charles (OSCC) submitted to the Town for the former school building; iii) He was still waiting to review the Poquoson contract for financial advisory services; iv) He showed a rendering of the former school building and asked the Town Manager what was considered the front of the building and went on to state that the Historic District ordinance did not allow a parking lot in front of a building. He continued to state that the Town should be ashamed that it had spent more in legal fees than in repair costs for the former school building. The Town could not fix windows in the building but could pay to push the deal through for Echelon. The Council prevented OSCC from having their hearing. The Town chose a course to benefit a developer to take historic and recreational facilities from the citizens. The Sea Glass event was held in the Cape Charles Volunteer Fire Department when the former school building was the largest indoor space in the Town. It could have been used for the Crabby Blues Festival and other events. There was inclement weather last weekend for the Cape Charles Fall Festival. The festival could have been held in the school. At this point, Councilman Wendell was informed that his five minutes were exhausted.

#### **ANNOUNCEMENTS**

- October 25, 2013 – Movie in Central Park, 6:30 PM
- October 26, 2013 - Trunk or Treat, Pumpkin Carving & Haunted Harbor
- October 30, 2013 – Town Council touring the Chesapeake Bay Bridge Tunnel, 9:00 AM
- October 31, 2013 – Trick or Treating
- November 7, 2013 – Town Council Work Session, 6:00 PM, Town Hall
- November 11, 2013 – Town Offices closed in observance of Veterans’ Day & American Legion’s Veterans’ Memorial Service
- November 21, 2013 – Town Council Regular Meeting, 6:00 PM, St. Charles Parish Hall

**Motion made by Councilwoman Natali, seconded by Councilman Godwin, to adjourn the Town Council Regular Meeting. The motion was approved by majority vote with Councilman Wendell opposed.**

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Mayor Sullivan

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Town Clerk

Public Comments Provided in Writing  
October 17, 2013

*Deborah Bender, 300 Fulcher Street*

Old School Cape Charles filed a Notice of Appeal of the Historic District Review Board decision of August 20 to provide a Certificate of Appropriateness to allow Charon Ventures to begin work on the historic school in Central Park. The appeal was given to the clerk in a timely manner to be handled according to town code. Town staff has taken it upon themselves to make legal determinations about standing and who is an aggrieved party in this matter. That is not their job.

Town Code Section 8.15 says, "In all cases the decisions of the Zoning Administrator may be appealed to the Historic District Review Board, the decisions of the Historic District Review Board may be appealed to the Town Council, and the final decisions of the Town Council may be appealed to the Circuit Court of Northampton County."

Section 8.34 says about appeals, "An appeal from a decision of the Historic District Review Board may be taken to the Town Council by the owner of the property in question or by any party aggrieved by said decision ..."

Old School Cape Charles is aggrieved by the decision to grant a Certificate of Appropriateness for this property in what appears to be an effort by the developer and town staff to truncate the discussion of the Historic District Guidelines that advise the Historic District Review Board. That was obvious to those who attended the August 20 Board meeting where the vote was taken to approve the items requested by the developer and ignore other concerns raised by members of the Board.

Old School Cape Charles has two appeals actively under consideration by the Virginia Supreme Court. If we did not have an interest in this important town property, we would not have taken the matter to court.

We respectfully request that Town Council hear our appeal according to the requirements of town code.

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*Veann Duvall, 110 Tazewell Avenue*

Old School Cape Charles is an organization made up of residents of Cape Charles. In accordance with Town Code, we entered a Notice of Appeal of the Historic District Review Board decision of August 20 to provide a Certificate of Appropriateness to allow Charon Ventures to begin work on the historic school in Central Park. The appeal was given to the clerk in a timely manner to be handled appropriately.

Town staff is not authorized to make legal judgments about the nature of our standing in the eyes of the law.

We are residents and homeowners in Cape Charles. Some of us live very close to the old school building. Almost all of us live or own property in the Historic District. As individuals and as a group, we are aggrieved by the action of providing a Certificate of Appropriateness to Charon Ventures without taking into consideration the full requirements of the Historic District Guidelines.

We have asked for a hearing in order to put forth our arguments for why the Historic District Review Board erred in giving a Certificate of Appropriateness to the developer. Please over rule the decision of the Town staff so that we can have our hearing as provided for in Town Code.

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*Wayne Creed, Old School Cape Charles, LLC, 548 Monroe Avenue*

This letter is to request that Town Council reject the recommendation of its staff in regards to Old School Cape Charles' appeal of the Historic Review Board decision. It is apparent that the Town staff is falling back on legal precedents that do not exist attempting to act as a legal authority is outside their scope and purview; this should only take place in a court of law.

Certainly, regarding whether OSCC is required to be a landowner in order to appeal this decision is outside the scope and purview of this Council. The Town's own zoning code does not say that an aggrieved party must own the property in question. Town Code says, "An appeal from a decision of the Historic District Review Board may be taken to the Town Council by the owner of the property in question or by any party aggrieved by said decision, ..."

Old School Cape Charles is indeed an interested and aggrieved party having brought two appeals of a lower court decision regarding the property in question to the Virginia Supreme Court. OSCC also meets the legal definitions provided below:

*An individual [organization] who is entitled to commence a lawsuit against another because his or her legal rights have been violated.*

Looking to historical precedent in Cape Charles, the civic organization Old School Cape Charles has as much right to involve itself with the decisions about the old school as the Citizens for Central Park had the right to involve itself with determining the style of bathroom in the park.

That said, Old School Cape Charles requests that it be granted time to present its case to the Town Council for a decision about the validity of the Certificate of Appropriateness provided by the zoning administrator in the name of the Historic District Review Board.

There was even disagreement within the Historic District Review Board as to whether the five items requested by the developer should be approved while leaving issues regarding the Historic District Guidelines unconsidered and requested material not received from the developer. The numerous inconsistencies found with the awarding of the Certificate of Appropriateness, lends itself to a much more introspective analysis.

Old School Cape Charles has requested a hearing on its concerns about the approval of a Certificate of Appropriateness for this property. Now is not the time to bring all the merits of the appeal forward. That is the reason for the appeal process.

Old School Cape Charles looks forward to presenting a full explanation of its reasons for its appeal to you at a hearing before Town Council.

# Town of Cape Charles Proclamation 20131017

**Recognizing the Friends of the Cape Charles Memorial Library  
during National Friends of Libraries Week October 20-26, 2013**

**WHEREAS**, Friends of the Cape Charles Memorial Library raise money that enables our library to move from good to great -- providing the resources for additional programming, much needed equipment, support for children's summer reading, and special events throughout the year;

**WHEREAS**, the work of the Friends highlights on an on-going basis the fact that our library is the cornerstone of the community providing opportunities for all to engage in the joy of life-long learning and connect with the thoughts and ideas of others from ages past to the present;

**WHEREAS**, the Friends understand the critical importance of well funded libraries and advocate to ensure that our library gets the resources it needs to provide a wide variety of services to all ages including access to print and electronic materials, along with expert assistance in research, readers' advisory, and children's services;

**WHEREAS**, the Friends' gift of their time and commitment to the library sets an example for all in how volunteerism leads to positive civic engagement and the betterment of our community;

**NOW, THEREFORE, BE IT RESOLVED THAT** I, Dora Sullivan, Mayor of the Town of Cape Charles, proclaim October 20-26, 2013, as Friends of Libraries Week in Cape Charles, Virginia and urge everyone to join the Friends of the Cape Charles Memorial Library and thank them for all they do to make our library and community so much better.

In witness whereof, I have hereunto set  
my hand and caused the official seal of the  
Town of Cape Charles to be affixed this  
17<sup>th</sup> day of October, 2013.

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Mayor Dora Sullivan

ATTEST:

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Town Clerk



*Municipal Corp. of  
Cape Charles*

The undersigned Clerk of the Council of the Town of Cape Charles, Virginia (the “Town”), hereby certifies that:

1. A meeting of the Council of the Town (the “Council”) was duly called and held on October 17, 2013 (the “Meeting”).
2. Attached hereto is a true, correct and complete copy of Resolution 20131017 (the “Resolution”) of the Town entitled as recorded in full in the minutes of the Meeting, duly adopted by a majority of the members of the Council present and voting during the Meeting.
3. A summary of the members of the Council present or absent at the Meeting and the recorded vote with respect to the foregoing Resolution as set forth below:

<u>Member Name</u>	<u>Present</u>	<u>Absent</u>	<u>Voting</u>		
			<u>Yes</u>	<u>No</u>	<u>Abstaining</u>
Dora Sullivan, Mayor	X				
Chris Bannon		X			
Steve Bennett		X			
Tom Godwin	X		X		
Joan Natali	X		X		
Mike Sullivan	X		X		
Frank Wendell	X		X		

4. The Resolution has not been repealed, revoked, rescinded or amended and is in full force and effect on the date hereof.

Witness my signature and the seal of the Town of Cape Charles, Virginia this 18<sup>th</sup> day of October 2013.

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Clerk of the Council  
Town of Cape Charles, Virginia

(Seal)

**RESOLUTION 20131017**

**Irrevocable Election Not to Participate in Virginia Local Disability Program**

WHEREAS, by enacting Chapter 11.1 of Title 51.1 of the *Code of Virginia*, the Virginia General Assembly has established the Virginia Local Disability Program ("VLDP") for the payment of short-term and long-term disability benefits for certain participants in the hybrid retirement program described in Virginia Code § 51.1-169; and

WHEREAS, for purposes of VLDP administration, an employer with VLDP-eligible employees may make an irrevocable election on or before September 1, 2013 (or November 1, 2013 if employer requested an extension), requesting that its eligible employees not participate in VLDP as of the VLDP effective date of January 1, 2014, because it has or will establish, and continue to maintain, comparable employer-paid disability coverage for such employees that meets or exceeds the coverage set out in Chapter 11.1 of Title 51.1 of the *Code of Virginia*, with the exception of long term care coverage, by January 1, 2014; and

WHEREAS, it is the intent of the Town of Cape Charles, VRS member number 5-5379, to make this irrevocable election to request that its eligible employees not participate in VLDP;

NOW, THEREFORE, IT IS HEREBY RESOLVED that the Town of Cape Charles, irrevocably elects not to participate in VLDP because it has or will establish, and continue to maintain, comparable employer-paid disability coverage for such employees; and it is further

RESOLVED that, as an integral part of making this irrevocable election, the Town of Cape Charles certifies that it has or will establish, and continue to maintain, comparable employer-paid disability coverage for such employees.

Adopted in Cape Charles, Virginia this 17<sup>th</sup> day of October, 2013.

BY:

	Mayor
	Title
Authorized Signature	

ATTEST:

\_\_\_\_\_  
Town Clerk



*Municipal Corp. of  
Cape Charles*

The undersigned Clerk of the Council of the Town of Cape Charles, Virginia (the “Town”), hereby certifies that:

1. A meeting of the Council of the Town (the “Council”) was duly called and held on October 17, 2013 (the “Meeting”).
2. Attached hereto is a true, correct and complete copy of Ordinance 20131017 (the “Ordinance”) of the Town entitled as recorded in full in the minutes of the Meeting, duly adopted by a majority of the members of the Council present and voting during the Meeting.
3. A summary of the members of the Council present or absent at the Meeting and the recorded vote with respect to the foregoing Ordinance as set forth below:

<u>Member Name</u>	<u>Present</u>	<u>Absent</u>	<u>Voting</u>		
			<u>Yes</u>	<u>No</u>	<u>Abstaining</u>
Dora Sullivan, Mayor	X				
Chris Bannon		X			
Steve Bennett		X			
Tom Godwin	X		X		
Joan Natali	X		X		
Mike Sullivan	X		X		
Frank Wendell	X		X		

4. The Ordinance has not been repealed, revoked, rescinded or amended and is in full force and effect on the date hereof.

Witness my signature and the seal of the Town of Cape Charles, Virginia this 18<sup>th</sup> day of October 2013.

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Clerk of the Council  
Town of Cape Charles, Virginia

(Seal)

**Form of Ordinance 20131017**  
**Approving Joint Powers Association Agreement**

**WHEREAS**, Virginia political subdivisions are authorized by law to provide group life insurance, accident and health insurance and other employee benefits programs for their officers and employees; and

**WHEREAS**, Virginia Code §15.2-1300 provides that any power, privilege or authority exercised, or capable of being exercised by a political subdivision in the Commonwealth of Virginia may be exercised and enjoyed jointly with any other political subdivision of the Commonwealth having a similar power, except where express statutory procedure is otherwise provided for the joint enterprise; and

**WHEREAS**, said Code section authorizes two or more political subdivisions to enter into agreements with one another for such joint action and to appropriate funds and sell, lease, give or otherwise supply such property, personnel or services therefore as legally empowered to furnish; and

**WHEREAS**, the Virginia Public Procurement Act (the “Procurement Act”) exempts from its competitive sealed bidding and competitive negotiation requirements (the “Requirements”) the joint procurement by public bodies, utilizing competitive principles, of insurance purchased through member associations under the conditions set forth in the Procurement Act; and

**WHEREAS**, members of Virginia Local Government Insurance Association (the “Association”) are Virginia political subdivisions who have executed the Joint Powers Association Agreement, a copy of which is attached to and made part of this Resolution (the “Joint Powers Agreement”); and

**WHEREAS**, members of the Association may procure insurance through the Association; and

**WHEREAS**, insurance products purchased through the Association are more cost effective than those purchased through alternative means; and

**WHEREAS**, the procurement of insurance should be effectuated as provided in the Joint Powers Association Agreement, in accordance with applicable provisions of the Procurement Act, such as the utilization of competitive principles pursuant to an exemption from the Requirements; and

**WHEREAS**, it appearing to the Town Council of Town of Cape Charles that the procurement of insurance pursuant to the Joint Powers Agreement is otherwise in the best interests of Town of Cape Charles

**NOW, THEREFORE, BE IT HEREBY ORDAINED** that:

(1) Competitive sealed bidding and competitive negotiation for the procurement of insurance are not fiscally advantageous to the public because of the administrative and economic advantages of procuring such insurance through the Association.

(2) The procurement of insurance pursuant to the Joint Powers Agreement is hereby approved.

(3) The Joint Powers Agreement and the performance of the terms and conditions thereof on behalf of Town of Cape Charles are hereby authorized and approved.

(4) The Town Manager is hereby authorized and directed to execute and deliver the Joint Powers Agreement on behalf of Town of Cape Charles in substantially the form presented to this meeting.

(5) The payment obligations of Town of Cape Charles pursuant to the provisions hereof and the Joint Powers Agreement shall be subject to annual appropriation of requisite funds therefor by the Town Council.

(6) This Ordinance shall take effect immediately upon its adoption or passage.

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Adopted by the Town Council of Cape Charles on October 17, 2013

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk