



TOWN COUNCIL
Regular Meeting
St. Charles Parish Hall
February 10, 2011
Immediately Following the Public Hearing

At 6:03 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 Vice Mayor Bannon, Councilmen Bennett, Evans, Sullivan and Veber and Councilwoman Natali. Also in attendance were Town Manager Heather Arcos, Consultant Bob Panek, Town Planner Tom Bonadeo, Harbor Master Smitty Dize and Town Clerk Libby Hume. The Department Heads were also in attendance along with 12 members of the public.

Vice Mayor Bannon offered the invocation and led the Pledge of Allegiance.

PUBLIC COMMENTS:

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

CONSENT AGENDA:

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

The Town Council reviewed the minutes of the December 7, 2010 Joint Public Hearing with the Planning Commission, the January 13, 2011 Regular Meeting, the January 27, 2011 Executive Session, and the January 28, 2011 Town Council Retreat.

Councilman Bennett apologized for not being able to attend the January 13, 2011 Regular Meeting and added that he wanted to comment on the January Planning Report which stated that "the computers and tables purchased through the broadband grant had been set up in the Cape Charles Christian School and a plan would be developed regarding usage by the public." Councilman Bennett stated that he was in favor of the computers being available for the students at the Cape Charles Christian School but also wanted the public to be able to access these computers and would like to have a set date when the plan would be in place regarding usage of the computers by members of the public.

Motion made by Councilman Veber, seconded by Vice Mayor Bannon, to approve the minutes for the December 7, 2010 Joint Public Hearing, the January 13, 2011 Regular Meeting, the January 27, 2011 Executive Session, and the January 28, 2011 Town Council Retreat as presented. The motion was approved by majority vote with Councilman Evans abstaining since he was not in attendance at the December 7, 2010 Joint Public Hearing and the January 13, 2011 Regular Meeting.

REPORT PRESENTATIONS:

A. Town Manager's Report:

Town Manager Heather Arcos reported the following: i) On February 3rd, Heather Arcos, Harbor Master Smitty Dize, Police Chief Charles Brown, Code Official Jeb Brady and Town Clerk Libby Hume attended Legislative Day in Richmond to hear representatives from the Virginia Municipal League speak regarding legislation that would affect the municipalities in Virginia.

The group also met with Senator Ralph Northam. Earlier in the day, the group attended a meeting with representatives from the Virginia Port Authority and Delegate Lynwood Lewis to give an update on the Harbor Redevelopment Project and submit a request for additional grant funding to continue the work at the Harbor; ii) Earlier today, Heather Arcos and Tom Bonadeo attended the ribbon cutting ceremony for the Offshore Wind Technology Center in Chesapeake. Governor McDonnell gave a speech and Cape Charles was mentioned as a possible location; iii) A meeting would be set up with the Virginia Economic Development Partnership for a representative to give a presentation to Council regarding economic development; and iv) Heather Arcos was working on the Council Priorities discussed at the Retreat to prioritize the projects and would forward the information to Council upon completion.

B. *Treasurer's Report:*

The Treasurer's report dated January 31, 2011 showed \$206,400 in the Bank of America checking account and \$3,043.620 in the Local Government Investment Pool ("LGIP") with a Total Cash on Hand of \$3,250,020. Treasurer JoAnna Leatherwood added the following: i) delinquent real estate tax bills were mailed two weeks ago and have been very productive so far; ii) a report of the 10-20 highest unpaid tax bills would be presented to Council on a monthly basis with copies being forwarded to Mr. James W. Elliott, an attorney specializing in tax sales. Mr. Elliott also handled tax sales for both Accomack and Northampton Counties. Vice Mayor Bannon asked if the Town could initiate tax sales or whether it had to go through the County and also whether the Town could seize property vs. selling at a tax sale. JoAnna Leatherwood responded that she would check into these items and report her findings at a later date; and iii) the new accountant, Mr. Jerry Murphy, would be starting on March 15th.

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

C. *Recreation Report:*

Community Events/Recreational Coordinator Jen Lewis was not in attendance at the meeting.

D. *Library Report:*

Librarian Ann Rutledge reported that the Cape Charles Memorial Library now had a Facebook page and all events would be posted.

Councilman Veber stated that he was very impressed with the turnout for the recent showing of the *Clamdigger's Daughter* and added that it was a very good idea and a great fundraiser for the Library.

E. *Harbor Report:*

Harbor Master Smitty Dize passed around a notebook of photographs of the construction at the Harbor and reported the following: i) some of the floating slips arrived today and more are expected to arrive tomorrow; and ii) the Blessing of the Fleet was scheduled to begin April 8th and would start off the 2011 season. Blessing of the Fleet organization meetings were scheduled for February 23rd, March 16th and April 6th.

Councilman Veber asked Smitty Dize to provide information regarding the buy boats. Smitty Dize stated that he had spoken with the representative from the Chesapeake Bay Buy Boat Association and the boats would be arriving on August 4th and departing on August 8th. The boats would be open to the public and there would be a weekend of activities in Cape Charles. The buy boats were used heavily to dredge and transport oysters and crabs before trucks were used for transportation. Heather Arcos added that the Town was working on a schedule of events and a press release for this event.

F. *Public Works / Public Utilities Report:*

Public Works / Public Utilities Director Dave Fauber reported the following: i) The invitation for bids for grounds maintenance had been advertised. The park would be a separate item in the contract; ii) An invitation for bids for a new emergency generator for the Plum Street Pump Station would be advertised soon; and iii) the Public Utilities crew had been working on a portion of Pine Street to repair the high water at the pump station. The crew had to dig to find the problem.

Councilman Bennett asked about the location of the shell road on the Keck property. Dave Fauber responded that the road would run from Old Cape Charles Road to the corner of the property along the hedge to the wells.

G. *Code Enforcement:*

Code Enforcement Officer Jeb Brady stated that he had no additions to his written report.

Councilman Veber asked how the code enforcement process was going regarding houses in Town in disrepair. Jeb Brady responded that unfortunately, the property owners were not very responsive to his correspondence but he had met with Heather Arcos to develop a game plan. Currently there were six buildings that have been on his list for action for over four years. Due to the economy, it was difficult to get anyone to make costly repairs on a property, but the Town did not want to demolish a house, especially in the Historic District which could affect the Town's historic designation. Councilman Veber asked if the Town could do anything regarding the repairs, especially regarding safety. Jeb Brady stated that he could obtain quotes from contractors if that was what Council decided to do. The Town could also take legal action but the fees were high. Jeb Brady continued to state that he preferred to work with the property owners before taking legal action, if possible, but all costs incurred by the Town including the cost of certified mailings, could be placed as a lien against the property. Councilman Veber concluded by stating that he was concerned with the aesthetics of the Town especially with the number of tourists visiting the Town.

H. *Planning Report:*

Town Planner Tom Bonadeo reported that the Broadband Management Team was scheduled to meet on February 15th and planning for public access to the computers at the community center was on the agenda.

OLD BUSINESS:

A. *Zoning Ordinance Modification –Wind Energy Ordinance:*

Tom Bonadeo stated that Council, numerous citizens and potential businesses had expressed interest in alternative energy. The Governor of Virginia planned to promote Virginia as a center for Offshore Wind Power Development. The Planning Commission had worked on this ordinance for some time and the proposed document incorporated input from outside sources of expertise. A joint public hearing with Town Council and the Planning Commission was held on February 1, 2011 and no comments were heard. After the public hearing, the Planning Commission further reviewed the proposed ordinance and made two additional text changes which clarified the ordinance. The acronym "ANSI" was spelled out and the requirement of a Cape Charles building permit was added.

Councilman Bennett stated that he was glad that the installation of the wind turbine would be by conditional use and expressed his concerns regarding permitting wind turbines within the Town limits stating that he felt it would harm the Town. Councilman Bennett stated that he was in support of building wind turbines offshore, but not in Town. Councilman Bennett went on to state that he read that the Historic District Review Board voted against allowing micro systems in the Historic District and added that he did not see where this decision was reflected in the ordinance. Tom Bonadeo explained that any limitations in construction of wind turbines in the Historic District would be outlined in the Historic District Guidelines and reminded Council that

a conditional use permit was required and Council had the ability to put conditions on any proposed wind project.

There was much discussion regarding this issue and the ability to construct wind turbines in various areas of the Town. Councilman Evans asked whether the current zoning ordinance contained any language regarding wind turbines and what process would be followed if an application were submitted requesting to build a wind turbine. Tom Bonadeo stated that it would be considered a special use permit and went on to explain that it would be impossible to cover everything in the zoning ordinance. A special use permit covers everything that was not specifically listed in the zoning ordinance and in 2001 Council approved the construction of six wind turbines in Town. Unfortunately, the company was not able to raise the needed funds to begin construction.

Motion made by Vice Mayor Bannon, seconded by Councilman Veber, to adopt the proposed Wind Energy Ordinance as part of the Cape Charles Zoning Ordinance. The motion was approved by majority vote with Councilman Bennett opposed.

B. Conditional Rezoning Request – Portion of the Mack Building:

Tom Bonadeo stated that the Planning Commission received a complete application for rezoning a portion of the Mack Building located at the corner of Strawberry Street and Randolph Avenue from C-1 Commercial to CR Commercial Residential. The Planning Commission held a public hearing and recommended approval of the application with the express intent to use this zone as a bridge between commercial and residential areas.

This application for rezoning included the following proffers: i) creation of four parking spaces in the rear of the building for the potential tenants to keep cars from being parked on the street; ii) removal of the utility poles which currently block the alley access and installation of a 12' wide easement across the property connecting to the alley easement entering from Mason Avenue to restore the alley for emergency vehicle access at the least. The easement would encumber portions of two lots owned by the Mack building; iii) planting of a 12' evergreen landscape easement on 609 Randolph Avenue which was the vacant lot to the east of this property to block the view of the alley from Randolph Avenue; and iv) creation of a 12' rear yard area for the Randolph Avenue spaces to provide tenants space in the rear of the building to be used as a yard. The building front was on the sidewalk property lines and previous renters used the sidewalk as their front yard. The Planning Commission and the applicant agreed that all leases for the units in the building should, to the extent permitted by law, include requirements that no personal property be permitted in the front of the unit and no loitering was permitted on the public right of way. The Commission received two letters of support and one personal public comment which was answered during the Commissions' review.

Council held a public hearing earlier this evening and no comments were heard.

Councilwoman Natali asked that since this was a conditional rezoning application, what would happen to the proffers if the property was sold. Tom Bonadeo explained that the conditions would be recorded with the Circuit Court Clerk and would transfer with the property.

Councilman Veber stated that this was not the first time a project of this type had been done and added that this applicant had done a great job with Blue and felt that he would do a great job on this project. Councilman Veber added that he would like to add a date for the proffers to be completed.

Motion made by Councilman Veber, seconded by Councilman Bennett, to approve the Conditional Rezoning Application with proffers as discussed and for Heather Arcos to meet with the applicant, Patrick Hand, regarding the timeframe for completion of the proffers. The motion was unanimously approved.

C. *Mason Avenue Forcemains & Pump Station Upgrade Contract Award:*

Consultant Bob Panek stated bids were received for Phase 1 of the Mason Avenue Forcemains and Pump Station Upgrade project on January 27, 2011 with the lowest bid of \$1.285M from JCB Construction. GHD completed review of the contractor's qualifications and recommended award of the contract. GHD also submitted the required procurement documentation to the Department of Environmental Quality (DEQ) for clearance.

Heather Arcos asked Bob Panek to give Council some background on JCB Construction. Bob Panek explained that the company specialized in water/sewer pipeline work and had done work for the cities of Chesapeake, Portsmouth and Norfolk. They have a low overhead and did not initiate a lot of change orders and a history of completing their projects on schedule. Nothing but good reports has been received regarding JCB Construction.

Councilman Bennett asked regarding an estimated cost for Phase 2 and whether the Town had a time limitation to complete Phase 2. Bob Panek stated that the estimated cost was approximately \$500K which was increased due to flood plain issues. Bob Panek went on to state that the Town had shown good faith in moving forward with the work in Phase 1 which would improve performance of the pump station by at least 50%. The Environmental Protection Agency and the Department of Environmental Quality have approved this approach.

Motion made by Councilman Bennett, seconded by Councilwoman Natali, to authorize the Town Manager to execute the contract documents awarding the Mason Avenue Forcemain and Pump Station Upgrade Project to JCB Construction contingent upon DEQ clearance. The motion was approved by unanimous consent.

Mayor Sullivan asked Council to amend the agenda by moving New Business Item #7B – Cape Charles Volunteer Fire Company Presentation by President Nick Braatz up to this point in the meeting since several individuals from the fire company were in attendance, including a child, and she did not want them having to stay at the meeting any longer than necessary. Council agreed to this agenda amendment.

NEW BUSINESS:

B. *Cape Charles Volunteer Fire Company Presentation:*

President Nick Braatz introduced himself as the new president of the Cape Charles Volunteer Fire Company (CCVFC) and thanked Council for the opportunity to address them. Nick Braatz stated that the elections were held in December 2010 and went on to introduce the new Board of Directors as follows: Vice President – Doug Walker; Treasurer – Hollye Carpenter; Assistant Treasurer/Assistant Secretary – Jackie Barton; Secretary - Currently vacant; Chief – Steve Wilson; Deputy Chief – Charlie DeMarino; Assistant Chief – Matt Pruitt; Chief Engineer – Billy Powell; Captain Engineer – Doug Walker; Captain – Jeb Brady; and Lieutenant – Alex Kennedy. Nick Braatz reviewed the meeting schedule and informed Council of their upcoming events which included the Blessing of the Fleet, July 4th, the Poker Run and Tool Mania. There were also several committees: Texas Hold'em; 4th of July/Blessing of the Fleet; Poker Run and Membership Committee.

Chief Steve Wilson thanked the Mayor and Council for the opportunity to speak and informed Council that the Annual Seafood Fest was scheduled for July 2nd. Steve Wilson continued to state that the CCVFC responded to 140 calls in 2010 and assisted the Cape Charles, Nassawadox and Exmore Rescue Squads on 23 occasions. There were 26 firefighters on the roster, not including the 4 administrative personnel and 12 fund raising staff. 14 members have been certified by the State of Virginia and 4 students were currently enrolled in the Virginia Fire Training Academy. 200 hours of training was required for certification with an examination for each level completed. The firefighters usually attend training for 6-8 hours each week which was a lot to do since this was an all-volunteer force.

Councilman Bannon asked about the cost for certification. Steve Wilson responded that each fire company paid a yearly \$1K user fee to the Fire Training Center which was paid by Northampton County for all fire departments in the County. The fire departments have asked Accomack County to help fund a new burn building at an approximate cost of \$500K and the fire departments were trying to raise funds for this building.

Steve Wilson continued to inform Council of the cost savings for the Town by having a volunteer force vs. a paid force. In 2009, the cost savings totaled \$2,563,000 which breaks down to approximately \$900 per year. Steve Wilson went on to review funding received by the CCFVC as follows: i) The Town of Cape Charles contributes a portion of new permit fees; ii) The State of Virginia contributed \$8K annually; and iii) Northampton County contributed \$19K, which was down from \$21K in fiscal year 2010. The CCFVC paid \$23K annually for insurance and the cost to outfit one new firefighter with all new equipment was \$25K.

Councilman Veber thanked the CCFVC for being here in Town and stated that the firefighters were all very well respected and appreciated by the Town.

OLD BUSINESS:

D. *Revision of Town Code – Chapter 70 – Water, Sewers and Sewage Disposal:*

Bob Panek stated that the existing provisions of the Town Code pertaining to water and sewer needed to be revised primarily for the following reasons: i) to incorporate current sewer use standards required by the Environmental Protection Agency (EPA) and the DEQ; ii) to incorporate current requirements for water conservation and use restrictions during water shortage emergencies now required by the State Code and for renewal of the Town's Ground Water Withdrawal Permit; iii) to more clearly delineate the separate requirements pertaining to water and sewer, as they are governed by different federal and state laws and regulations; and iv) to update outmoded provisions of the existing code. The proposed revisions had been organized into three Chapters: 70 – Water Supply, 71 – Sewers and Sewer Use, and 72 – Water and Sewer Service Charges and Council held several work sessions to review the proposed ordinance and the resulting changes have been incorporated. A public hearing was held earlier this evening and no comments were heard. In order for the proposed changes to be approved, Ordinance #20110210 – Revising Water and Sewer Provisions of the Town Code needed to be adopted.

Councilman Veber asked whether it was fair to charge a monthly utility fee for a property when the house had been demolished. Bob Panek stated that the current ordinance required payment of the user fees. In the past, there was an unauthorized program in place where this charge was suspended, but it was never authorized by Council or by ordinance. If the Town did not charge this fee, other users would have to cover the cost with increased prices. Councilman Evans thought that it was a condition of the original bond that all users were required to pay the minimum fee and if the original bond was not paid in full, he did not see how the Town could get around this requirement. JoAnna Leatherwood confirmed that the original bond had not been paid off. Bob Panek mentioned that the Town could assess an availability fee, which was charged by other municipalities. This issue was discussed previously but, at that time, Council did not want to charge this fee. Councilman Veber added that he had a difficult time charging this fee and that a property was vacant for over 20 years, the monthly fees would total more than the connection charges. Bob Panek stated he would draft a proposal regarding the charging of availability fees vs. minimum monthly fees for review by Council but surmised that the new charge would not be much lower than the current minimum fee. Heather Arcos added that she recommended that Council adopt these ordinance revisions and re-evaluate this section during the upcoming budget meetings.

Mayor Sullivan moved for adoption of Ordinance #20110210 Revising Water and Sewer Provisions of the Town Code. Ordinance #20110210 was adopted by unanimous vote. Roll call vote: Bannon, yes; Bennett, yes; Evans, yes; Natali, yes; Sullivan, yes; Veber, yes.

Councilman Bennett complimented Bob Panek for doing such a great job on these ordinances.

NEW BUSINESS:

A. *Water and Sewer Connection Charges:*

Bob Panek stated that this issue was discussed at the Council Retreat where Council reviewed an estimate of \$16,850 for connection charges which reflected the following: i) the larger percentage of grant funding achieved; ii) a two-year delay of the previous growth projection; and iii) assumption of no payment under the Annexation Agreement. As requested by Council, he had prepared two additional estimates of connection charges taking into consideration payment of applicable costs under the Annexation Agreement. The first estimate which totaled \$12,350 assumed payment of 50% of applicable costs under the Annexation Agreement. The second estimated which totaled \$6,150 assumed payment of 100% of applicable costs under the Annexation Agreement.

There was much discussion and debate regarding the current connection charge and the three estimates. There was some concern regarding lowering the connection charge and refunding the difference to those that had paid the \$20K. Councilwoman Natali expressed her concern stating that she would not want to have to increase the connection charge again if the Town were to lower it too much. Bob Panek stated that the Code of Virginia stated that the fees must be "fair and reasonable" and with the additional money received in grants, etc., \$20K may not be considered "fair and reasonable." There was further discussion regarding the possibility that a lower connection charge could have a positive effect for builders coming to Cape Charles.

Motion made by Councilman Veber, seconded by Councilman Bennett, to schedule a Public Hearing on March 10, 2011, immediately preceding the Town Council Regular Meeting, to hear public comment regarding the reduction of the water and sewer connection charges to \$12,350 effective immediately upon approval next month and to refund the difference to those individuals/contractors who had paid the \$20K fee. The motion was approved by majority vote with Vice Mayor Bannon opposed.

C. *Harbor Rates:*

Smitty Dize stated that each year, staff reviewed all rates at the Harbor and recommendations were brought to Council. This year, staff felt that revisions were needed in the docking, storage and wharfage categories. Smitty Dize continued to review the recommended changes. Under Docking: i) a 25¢ per foot increase on the base rate for annual, seasonal and nightly in-season rentals; ii) the bulkhead rate would no longer be offered; iii) quarterly rates would be added; iv) off-season monthly and weekly rates would be added; v) hourly docking fees would be added; and vi) a reservation cancellation fee would be added for boaters that do not rebook with the same calendar year as well as the charge of one night's docking for boaters that do not cancel within 48 hours of scheduled arrival for non-holiday weekend and one week prior to scheduled arrival for holidays. Under Storage: i) increase in seasonal rate to match Cape Charles Marine; ii) boat davit increase to match the 60' slip rate; iii) reduction of the monthly rate to bring it more in line with Cape Charles Marine's fees; iv) offer a discount for trailer storage to boaters renting short term slips; v) add a rate for heavy equipment storage; and vi) nightly rate for storage of gravel, piles and pots over 10 days. Under Wharfage: i) add a rate for small trap piles; ii) add rates for clams and oysters; and iii) add rates for crab and conch pots.

Councilman Sullivan asked how these rates compared to other areas on the Eastern Shore. Smitty Dize stated that the majority of rates were still lower than the other Towns and marinas.

Councilman Bennett stated that some areas had slight increases and other areas had decreases and overall the rates were good.

Motion made by Councilman Bennett, seconded by Councilman Sullivan, to adopt the proposed rate changes for the Cape Charles Harbor as presented. The motion was approved by unanimous consent.

D. Harbor Rules and Regulations:

Smitty Dize stated that each year, the Town Manager and staff review the Harbor Rules and Regulations and recommendations were brought to Council. This year, three changes were being proposed to the Permits section of the Rules and Regulations. Smitty Dize reviewed the recommended changes as follows: i) in item #2, a one-year minimum lease requirement was added to renters of annual and seasonal slips; ii) item #3, language was added to state that sub-letting was not permitted. This language was inadvertently omitted from the previous rules which were updated in 2009; and iii) item #19 was added requiring completion of the Use of Facility Application – Harbor for rental of dock space or the gazebo for parties or events.

Motion made by Councilwoman Natali, seconded by Councilman Sullivan, to adopt the proposed revisions to the Town Harbor Rules and Regulations as presented. The motion was approved by unanimous consent.

OTHER ISSUES:

Councilman Veber informed Council that, as requested by Council at the Retreat, he had met with Messrs. Richard Foster and Oral Lambert of Bay Creek and other groups regarding economic development issues. Bay Creek was interested in working with the Town to promote Cape Charles. Mr. Lambert had asked that Council answer several questions, which were distributed by Councilman Veber, to help him prepare for discussions with Bay Creek's marketing and advertising people. Councilman Veber asked Council to send him their responses as soon as possible so he could forward the information to Mr. Lambert.

ANNOUNCEMENTS:

- February 15, 2011 – Town Council Executive Session, 6PM at the Town Hall
- February 21, 2011 – Town offices closed for President's Day
- February 24, 2011 – Town Council Work Session, 6PM at the Town Hall
- March 10, 2011 – Town Council Regular Meeting, 6PM at the St. Charles Parish Hall
- March 31, 2011 – Town Council Budget Work Session, 6PM at the Town Hall

Motion made by Vice Mayor Bannon, seconded by Councilman Veber, to adjourn the Town Council Regular Meeting. The motion was unanimously approved.

Mayor Sullivan

Town Clerk