



TOWN COUNCIL
Regular Meeting
Town Hall
November 12, 2009
7:00 p.m.

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

PUBLIC COMMENTS:

Mr. Melvin Dudley, 303 Madison Avenue, read a statement regarding accomplishing the impossible. (See attached)

Dr. Mark Clarke, 118 Fig Street, addressed the Council regarding the safety issues associated with not allowing property owners to park in front of their houses on Fig Street. Dr. Clarke concluded by asking the Council to vote to rescind the parking ban as discussed in a previous work session.

Ms. Judy Morgan, Landmark Holdings LLC, requested the Council to take the appropriate measures to fully activate the Conditional Use Permits for the Cape Harbor Project or extend it for one year. Ms. Morgan went on to review the timeframes for the various approvals made by the Council throughout their review process of the Conditional Use Permit Application as follows: i) On November 13, 2008, the use for a hotel and the use for multi-family residential over commercial were approved; ii) On December 11, 2008, the various heights were approved/ conditioned; and iii) On February 12, 2009, several specific conditions relating to a conference center for approximately 200 people and a maximum of 300 residential units were approved along with eleven out of twelve general conditions; and iv) On July 9, 2009, the final general condition regarding a performance bond was approved. Also on July 9, 2009, the Council adopted a resolution encompassing all previous approvals regarding the conditional uses for the Cape Harbor Project. Ms. Morgan added that the initial one-year timeframe for activating the Conditional Use Permit was about to expire but that Landmark Holdings was still awaiting approvals from the Harbor Area Review Board (HARB) and this process could take another year before a building permit could be issued. Ms. Morgan stated that in September, she met with the HARB for a combined pre-application and general application meeting and was currently working on the detailed application based on the recommendations from the HARB. Once the Harbor Development Certificate has been issued, there will be more intensive work regarding the site plan, etc. Ms. Morgan stated that Landmark had done everything possible within the available process to activate the use. Ms. Morgan went on to inform the Council of the new legislation enacted by Governor Tim Kaine which extends the timeframe for acting on a conditional use permit from one year to five years due to the current economic situation. Ms. Morgan concluded by stating that Landmark feels that now is the time for Council to ensure that these permits are not extinguished due to time limitations and either activate or extend the conditional use permit.

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

CONSENT AGENDA:

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

The Town Council reviewed the minutes of the October 8, 2009 Public Hearing, the October 8, 2009 Regular Meeting, the October 13, 2009 Executive Session, the October 22, 2009 Work Session and the November 2, 2009 Executive Session.

Motion made by Councilman Bennett, seconded by Councilman Burdiss to approve the minutes for the October 8, 2009 Public Hearing, the October 8, 2009 Regular Meeting, the October 13, 2009 Executive Session, the October 22, 2009 Work Session and the November 2, 2009 Executive Session as presented.

REPORT PRESENTATIONS:

A. Town Manager's Report:

Town Manager Heather Arcos reported the following: i) A pre-bid meeting was held on October 28th for the Breakwater Project and the bids were opened on November 10th. The lowest bid was \$999,260 for two breakwaters and the highest bid was over \$1.9M. The bids will be checked and plans are to award the contract in December; and ii) The groundbreaking ceremony for the new wastewater treatment plant was rescheduled for December 8th due to inclement weather. Ms. Arcos also informed the Council that due to the severe weather, she instructed the majority of the Department Heads to not attend tonight's meeting for safety reasons.

B. Treasurer's Report:

In Treasurer JoAnna Leatherwood's absence, Heather Arcos reported that the Treasurer's Report dated October 31, 2009 showed \$172,372 in the Bank of America checking account and \$1,167,466 in the Local Government Investment Pool ("LGIP") with a Total Cash on Hand of \$1,339,838. The real estate and personal property tax bills all went out as scheduled. Bills for taxes under \$1 were omitted.

C. Library Report:

Librarian Ann Rutledge was not in attendance at the meeting.

D. Recreation Report:

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

E. Public Works / Public Utilities Report:

Public Works / Public Utilities Director Dave Fauber was not in attendance at the meeting.

F. Harbor Report:

Harbormaster Smitty Dize informed the Council that due to the storm, the power to the lights in the harbor were cut off and will be turned back on once the storm and high water subsides.

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

Town Planner Tom Bonadeo explained Governor Kaine's legislation regarding the extension of time for conditional use permits to July 1, 2014 due to the economic situation. Tom Bonadeo stated that the Council approved the three conditional uses for Cape Harbor in November and December of 2008 and that the final resolution was adopted by Council in July 2009. Tom Bonadeo went on to inform the Council that this process, along with a copy of the letter from Landmark Holdings, is being reviewed by legal counsel and recommended to extend the conditional use permit as per the new ordinance.

OLD BUSINESS:

A. *Fig Street Parking:*

Tom Bonadeo stated that the Council held a work session on October 22nd to discuss the parking on Fig Street with the new Police Chief and the Virginia Department of Transportation (VDOT) requirements and the consensus was to return to allowing parking on both sides of the street. Tom Bonadeo explained the three options available to Council as i) maintain no parking on Fig Street; ii) Submit a resolution to VDOT along with a letter from the Chief to request the change back to allow parking on both sides of the street; or iii) Submit a resolution to VDOT along with a letter from the Chief to request a review of allowing parking on the east side of Fig Street only.

Motion made by Councilman Elliott, seconded by Councilman Burdiss to submit a resolution to VDOT to review the practicability of allowing parking on the east side of Fig Street only. The motion was approved by a majority vote with Councilman Bannon opposed.

NEW BUSINESS:

A. *Northampton County Infrastructure Grant Application:*

Heather Arcos stated that the Town was awarded a \$2K Tourism Infrastructure Grant last Spring for a webcam installation. Tom Bonadeo added that the Town asked for \$8K last year and received \$2K for the webcam project and that he is working with Bay Creek Communications to install the webcam at Aqua. Heather Arcos continued by stating that the new grant applications have been announced and staff is recommending the submission of several grant requests with the focus being improved access to the beach to include: i) ADA access to the boardwalk and fishing pier at the south end of the beach; ii) Dune crossings at three locations on the north end of the beach where there currently are none; and iii) Kayak access on the north end of the beach allowing access for boaters while not invading the bathing area. Tom Bonadeo added that the total request is for \$9K in materials and there is no funding match required.

Motion made by Councilman Burdiss, seconded by Councilman Veber and unanimously approved to submit the grant proposal as presented.

B. *Chief of Police Appointment:*

Heather Arcos stated that an Executive Session was held on October 13, 2009 and the Council recommended a promotion of Sergeant Charles Brown to the Chief of Police.

Motion made by Councilman Burdiss, seconded by Councilman Bannon, to officially appoint Charles Brown as the Chief of Police for Cape Charles. The motion was approved by a majority vote. Roll call vote: Bannon, yes; Bennett, no; Burdiss, yes; Elliott, yes; Veber, yes. Councilman Bennett explained that his opposition was to the process taken and had nothing to do with Chief Brown's qualifications and that he had every confidence that Chief Brown would do a great job.

C. *Cape Charles Police Department Policy & Procedure Manual:*

Heather Arcos explained that the Town hired Mr. Bill Ward, a retired Major with the Chesapeake Police Department, as a consultant to assist in the development of a policy and procedure manual for the Cape Charles Police Department. The manual had been reviewed by the Council in 2005 and had been approved by the Town's legal counsel, insurance representatives and all the State law enforcement agencies, but to date had not been officially adopted by the Town Council. Heather Arcos added that several sections of the manual had recently been updated to coincide with the Town's current Personnel Policies, Rules and Regulations regarding annual and sick leave accrual.

Councilman Bennett congratulated Chief Brown on making the adoption of the Cape Charles Police Policy and Procedure Manual his first priority.

Motion made by Councilman Bennett, seconded by Councilman Elliott and unanimously approved to adopt the Cape Charles Police Department Policy & Procedure Manual as presented.

D. Cape Charles Community Trail Contract Award:

Tom Bonadeo stated that the bids for the first phase of the trail in Central Park were publicly opened on August 19, 2009 and the apparent low bidder is Excel Paving Corporation, Inc. with a total project cost of \$792,124. Heather Arcos explained that the design has been modified omitting several items to save costs (i.e., paved parking lot at the school, node by the tennis court, fence by Park Row, plantings along the fence, park benches, and the decorative bricks along the concrete walkway around the park) which would allow the Town to add the infrastructure for much needed lighting around the park. There was some discussion regarding irrigation around the park. Bob Panek, Vice President – Citizens for Central Park, stated that the Park Board was willing to donate approximately \$15K to complete the existing irrigation system and another \$4K to install a shallow well.

Motion made by Councilman Bennett, seconded by Councilman Elliott and unanimously approved to authorize Town Manager Heather Arcos to execute the contract documents awarding the contract to Excel Paving Corporation.

E. South Port Suit:

Heather Arcos stated that a Compliant for Declaratory Judgment was filed against the Town by South Port Investors LLC which was served on October 30, 2009. An Executive Session was held on November 2, 2009 with legal counsel in attendance to review the case and Council disagrees with South Port's interpretation of the lease and maintains that the lease provides the right of the Town to build on Parcel 14. Legal Counsel is preparing a response to the suit.

Bob Panek informed the Council that there is an article on the Eastern Shore News website regarding the lawsuit filed by South Port. The article should appear in Saturday's edition of the Eastern Shore News.

F. Press Release – Eastern Shore News Ad:

Bob Panek reviewed the press release prepared by the Town in response to the advertisement entitled "\$70 vs. \$34" which appeared in the Eastern Shore News on October 28, 2009. Bob Panek stated that the press release had not been published as yet.

Councilman Veber mentioned that at the Joint Meeting held in Cheriton one of the Madonias, upon prompting by Secretary Bryant, had stated their interest in talking to Cape Charles regarding a regional wastewater system utilizing Cape Charles' plant and asked whether the Town had heard from the Madonias regarding this discussion. Heather Arcos stated that she had not heard anything and Bob Panek stated that after the Madonias found out that their intended use of the effluent was not permitted by law, they may have had to rethink the issue. Bob Panek also added that he had reconfirmed with representatives of Bayshore Concrete Products regarding their projected use of 60K GPD of treated effluent. The Town is working with the Department of Environmental Quality to obtain Federal stimulus funding to install the pipeline to Bayshore Concrete Products.

G. Wastewater Treatment Plant Principal Forgiveness Loan:

Bob Panek stated that the Town has been awarded a \$4.5M Virginia Clean Water Revolving Loan Fund (VCWRLF) principal forgiveness loan, which is equivalent to a grant, to partially fund the construction of the new wastewater treatment plant. The Funding Agreement with the Virginia Resources Authority (VRA) has been executed. The VRA required that the Town designate an authorized representative by resolution of the governing body to manage the loan execution process.

Vice Mayor Chris Bannon read Resolution 20091112 Authorizing the Town of Cape Charles Representative for the Virginia Clean Water Revolving Loan Fund Principal Forgiveness Loan.

Motion made by Councilman Burdiss, seconded by Councilman Bennett and unanimously approved to adopt the resolution appointing Bob Panek as the authorized representative to manage the loan execution process. Roll call vote: Bannon, yes; Bennett, yes; Burdiss, yes; Elliott, yes; Veber, yes.

H. Record Retention / Destruction:

The Town Clerk's office is continuing the process of organizing and archiving the vital records of the Town of Cape Charles as mandated by the *Virginia Public Records Act*. Real Estate and Personal Property Tax records must be retained for five years from the end of the tax year in which the tax is paid or until the audit. The governing body is then petitioned for authorization to destroy in compliance with Number 8 on the schedule. The Clerk's office petitioned for authorization to destroy Real Estate and Personal Property Tax records for taxing years 2001 and 2003.

Motion made by Councilman Bennett, seconded by Councilman Elliott and unanimously approved to authorize the Town Clerk to destroy the tax records for years 2001 and 2003 as designated under the *Virginia Public Records Act*.

ANNOUNCEMENTS:

- November 14, 2009 Meeting re: Rosenwald School at First Baptist Church, 505 Nectarine Street
- November 18, 2009 Town Council Special Meeting followed by Executive Session
- November 24, 2009 Town Council Work Session
- November 25, 2009 Town Offices closing at noon for Thanksgiving Holiday
- November 26 – 27, 2009 Town Offices closed for Thanksgiving Holiday
- November 30, 2009 Public Meeting re: VCWRLF Applicants in Richmond
- December 10, 2009 Town Council Regular Meeting

Motion made by Councilman Bennett, seconded by Councilman Elliott and unanimously approved to adjourn the Town Council Regular Meeting.

Vice Mayor Bannon

Town Clerk