



# TOWN COUNCIL Special Meeting & Executive Session

May 2, 2019  
Cape Charles Civic Center  
6:30 PM

1. Call to Order
  - A. Roll Call
  - B. Establish quorum
2. Public Comments on Agenda Items Only (3 minutes per speaker)
3. Order of Business
  - A. Legislative Update – Chris Ambrosio, Vandeventer Black, LLP
  - \*B. Historic District Review Board Member Appointments
  - \*C. Request for Tourism Zone Economic Stimulus Credits
  - D. Eastern Shore of Virginia Broadband Authority Update
  - E. Upcoming Work Session Topics (after finalization of FY 2020 Budget)
    - i. Animal Control
    - ii. Parking Regulations – Boat Trailer, RV, etc.
    - iii. Homestay Regulations
    - iv. Harbor Management Companies – Unsolicited Presentations
    - v. Town Support to Cape Charles Main Street, Inc.
    - vi. Develop Criteria/Application for Grants to Non-Profits (late summer/early fall)
    - vii. Issues Under Review by Planning Commission and/or Town Board(s)
      - a. Preservation Plan
      - b. Cottage Overlay District
      - c. Historic District Review Board Criteria and By-Laws
  - F. FY 2020 Proposed Budget – Review Changes from Prior Work Sessions if necessary
4. Motion to Recess to Closed Session

**Code of Virginia § 2.2-3711-A, Paragraph 1:** Discussion, consideration, or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of any public body.

**Specifically:** Town Manager Performance Evaluation
5. Motion to go into Open Session
6. Certification to the best of each member’s knowledge (i) only public business matters lawfully exempted from open meeting requirements under this chapter and (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the meeting by the public body. Roll call vote.
7. Adjournment

 <p><b>TOWN OF CAPE CHARLES</b></p>	<b>AGENDA TITLE:</b> Historic District Review Board Appointments		<b>AGENDA DATE:</b> May 2, 2019
	<b>SUBJECT/PROPOSAL/REQUEST:</b> Appoint members and alternates to Historic District Review Board		<b>ITEM NUMBER:</b> 3B
	<b>ATTACHMENTS:</b> None		<b>FOR COUNCIL:</b> Action (X) Information ( )
	<b>STAFF CONTACT (s):</b> Libby Hume, Town Clerk	<b>REVIEWED BY:</b> Larry DiRe, Town Manager	

**BACKGROUND:**

The Historic District Review Board (HDRB) reviews applications for certificates of appropriateness for exterior modifications to existing building, construction of new buildings and demolition of buildings in the Town's Historic District. The HDRB consists of five members – four citizen members each serving five-year terms, and one Planning Commission representative.

There are currently two vacancies on the HDRB.

In March 2019, Council opted to form an interview panel consisting of two Council members and one citizen member to be chosen by the two Council representatives. Councilmen Bannon and Grossman represented Council and chose Ms. Joan Natali as the citizen representative.

**DISCUSSION:**

Nine applicants were interviewed by the panel on April 3, 4, and 5. The interview panel recommended appointment of two candidates to fill the current vacancies and two alternates to fill future vacancies and serve on the HDRB if needed to make a quorum for any meeting. The new appointments would complete the existing terms of the vacant positions and would be eligible for re-appointment for a full five-year term.

The interview panel's recommendation is as follows:

- Kerry Shackelford – term expiring January 8, 2021
- Edward Eichman – term expiring January 8, 2020
- Edward Wells – first alternate
- Herbert Thom – second alternate

**RECOMMENDATION:**

Staff recommends Council appointment of Messrs. Kerry Shackelford and Edward Eichman to the Historic District Review Board and Messrs. Edward Wells and Herbert Thom as alternates to the Historic District Review Board as recommended by the interview panel.

 <b>TOWN OF CAPE CHARLES</b>	<b>AGENDA TITLE:</b> Request for Tourism Zone Economic Stimulus Credits		<b>AGENDA DATE:</b> May 2, 2019
	<b>SUBJECT/PROPOSAL/REQUEST:</b> Request for the Cape Charles Town Council to approve an application for terms of the tourism zone for the operation of a restaurant in the Harbor District.		<b>ITEM NUMBER:</b> 3C
	<b>ATTACHMENTS:</b> Tourism zone application dated April 24, 2019.		<b>FOR COUNCIL:</b> Action    ( x ) Information (   )
	<b>STAFF CONTACT (s):</b> Larry DiRe	<b>REVIEWED BY:</b>	

**BACKGROUND:**

Staff received an application for Tourism Zone Economic Stimulus Credits from South Port Investors, LLC on April 24, 2019. The application details request to support a restaurant located at 1011 Bayshore Road (also know as the “Harvey Building”). The beneficial provisions of the tourism zone for tourism-related businesses are found in the Town Code section cited below. The proposed use cited in the application is a tourism-related business as defined in Section 24-4 of the Town Code.

**ITEM SPECIFICS:**

The following Town Code section, adopted November 17, 2016 states the following:

*Sec. 24-6. – Economic Stimulus Credits and Enforcement.*

*(a) A qualified tourism business shall be eligible to receive the following economic stimulus credits:*

*(1) A credit equal to 25 percent of the new or increased capital improvement tax paid to the town with a verified capital investment of not less than \$2,000.00 to a maximum of \$1,000,000.00 capital investment.*

*(2) A credit equal to 50 percent of the amount of the net increase in real estate tax paid to the town.*

*(3) A credit equal to 50 percent of the amount of BPOL tax paid to the town.*

*(4) For a qualified tourism business that maintains at least 85 hours weekly of full time and part time staff employment, a credit of up to 50 percent of the facility and connection fees paid to the town.*

*(5) A credit of up to 50 percent of the building permit fees paid to the town for the approved project.*

*(b) The economic stimulus credits shall be awarded according to a flat credit structure for taxes described in subparts (a)(1) through (a)(3) above and a tiered structure for fees described in subparts (a)(4) and (a)(5). The amount of economic development stimulus credits awarded for fees shall be determined by the administrator based on a qualified tourism business's application alignment with [section 24-5\(1\)](#) through (4) and all or some of the following criteria: preserves or enhances retail sales tax base; fills a vacant storefront; eliminates blight; prevents demolition by neglect; and increases payroll by at least 44 hours of full time and part time staff employment per week.*

*The administrator shall make an award recommendation to the town council for final approval. Following the decision of the town council, the administrator will send a letter to the applicant business stating the following:*

*(1) Whether the business qualifies for economic stimulus credits.*

*(2) If the business qualifies, the potential amount of the credit(s) and the period(s) over which the credit(s) will be awarded.*

*(3) The required actions for the business to remain qualified to receive the credit(s).*

*(c) No taxes, fees, or other charges shall be deemed waived by this chapter. All such taxes, fees, and charges shall be paid by the qualified business in full as and when due. Economic stimulus credits described in subparts (a)(1) through (a)(3) above that are awarded to a qualified tourism business shall be paid annually, in arrears, for each year that the qualified business meets all eligibility criteria up to a maximum of five years. If a qualified business fails to meet all eligibility criteria in any given year, the economic stimulus credits for that year and all future years shall be forfeited. Economic stimulus credits described in subparts (a)(4) and (a)(5) above that are awarded to a qualified business shall be paid upon verification by the administrator of the completion of construction of the improvements to which the applicable facility and connection fees and/or building permit fees relate.*

*(d) As a condition to receiving an economic stimulus credit, a qualified business agrees to provide such information and allow such inspections as the town deems reasonably necessary to verify the eligibility criteria and to ensure the qualified business's ongoing compliance therewith.*

*(e) Notwithstanding anything to the contrary in this chapter:*

*(1) An otherwise qualified tourism business shall lose its eligibility for economic stimulus credits, and shall repay any previously awarded economic stimulus credits, upon any of the following:*

*a. A violation by such business or, to the extent related to the operation of the business, by any of its principals or officers, of any statute, regulation, or order of the United States or the Commonwealth of Virginia or any department or agency thereof; or*

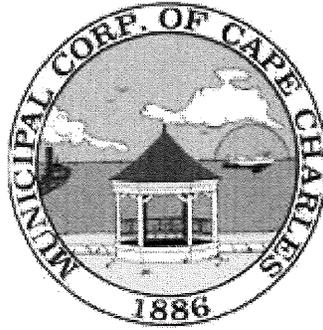
*b. A violation of any town ordinance that continues beyond the applicable cure period or, if none, a period of ten days.*

*(2) All economic stimulus credits are subject to the appropriation requirements of the Commonwealth of Virginia and the town.*

*(f) If a qualified tourism business leaves the town to conduct business in another location within three years after the expiration of all incentive periods, it will be required to repay the town the total amount of economic stimulus credits received.*

**RECOMMENDATION:**

Staff recommends approval of this application as submitted.



## Town of Cape Charles

### Application for Tourism Zone Economic Stimulus Credits

The Town Council adopted the Tourism Zone Ordinance at its regular monthly meeting on November 17, 2016. **The effective date of the ordinance is January 1, 2016.** The purpose of this Ordinance is to provide certain tax and fee credit incentives to qualified tourism businesses that develop, maintain, and expand operations and create full and part time jobs. The Tourism Zone Ordinance is Chapter 24 of the Town Code, adopted to encourage private sector investment and economic development in Cape Charles.

The Tourism Zone Ordinance does the following:

- establishes a Tourism Zone footprint as the entire Town of Cape Charles
- creates an administrative process to implement the Ordinance
- defines qualified tourism businesses and establishes eligibility criteria for participation
- makes no distinction between seasonal and all-year business operations
- defines economic stimulus credits available to qualified tourism businesses
- establishes the award process as a staff recommendation followed by Town Council approval.

Please note the economic stimulus credits provided for in the Tourism Zone Ordinance involve reimbursements to the qualified tourism business for taxes and fees already paid to the Town. No public funds reimbursement will be awarded unless a qualified tourism business has completed the review process and incentive credits have been approved by Town Council at a regular meeting.



TOWN OF CAPE CHARLES TOURISM ZONE BUSINESS APPLICATION

BUSINESS NAME South Port Investors LLC  
BUSINESS CONTACT NAME Eyre Baldwin  
BUSINESS PHYSICAL ADDRESS 16464 Courthouse Road Eastville, VA 23347  
MAILING ADDRESS PO Box 395 Eastville, VA 23347  
BUSINESS LICENSE NUMBER N/A EMAIL ADDRESS danbrown.va@gmail.com  
PHONE NUMBER 757.636.2885 FAX NUMBER \_\_\_\_\_

WHAT FISCAL YEAR (July 1-June 30<sup>th</sup>) ARE YOU REQUESTING INCENTIVES FOR? 2019

CHECK THE YEAR OF QUALIFICATION FOR THIS APPLICANT:

YR 1  YR 2  YR 3  YR 4  YR 5

BRIEF DESCRIPTION OF BUSINESS OR PROJECT, AND HOW IT RELATES TO TOURISM:

We have a full service restaurant project ready to serve the public at our 1011 Bayshore Road location. See attached narrative for details.

PLEASE ATTACH A BUSINESS PLAN OR NARRATIVE WHICH INCLUDES THE FOLLOWING:

- A general description of the business's history, including its formation, the products and/or services it has or will provide, and any other significant activities.
- A description of the operation and/or financial relationships with any parent or subsidiary, and describe any changes in ownership that may occur as a result of this project.
- A detailed description of the actions the business will take that will qualify it for the credit.
- Number of full and part time jobs to be created, and the time periods that these jobs will be available. List estimated hours per week of employment to be provided.

INDICATE WHICH TOURISM ZONE INCENTIVES ARE BEING REQUESTED:

REDUCTION OF SELECTED DEVELOPMENT REVIEW/PERMIT FEES OF UP TO 50%  
Site Plan Fees  Building or other Permit Fees  Other Fees   
Estimate of total building & other fees to be incurred by the project \$450,000-

REDUCTION OF WATER/SEWER FACILITY AND CONNECTION FEES OF UP TO 50%  
Estimate of total facility and connection fees to be incurred by the project \_\_\_\_\_

REDUCTION OF BUSINESS PROFESSIONAL AND OCCUPATIONAL LICENSE TAXES OF UP TO 50%

Gross Revenue Estimate for each of the 5-years of the program duration:

1 \$570,000 2 \$595,000 3 \$610,000 4 \$625,000 5 \$640,000-

REDUCTION OF BUSINESS PERSONAL PROPERTY TAXES OF UP TO 50%

Estimate of the increased assessed value of business personal property or machinery and tools.  
\$80,000-

REDUCTION OF REAL PROPERTY TAXES OF UP TO 50%

Estimate of the increased assessed value of real property \$450,000-

I do hereby certify that the applicant business is in compliance with all Town ordinances and has no outstanding debts to the Town or delinquent taxes to the Town or Northampton County. I also certify that I am fully authorized to sign the application on behalf of the business and that all statements on this application are true.

Signature \_\_\_\_\_

Name S. Eyre Baldwin Date 4/24/19

Must be signed by the owner if unincorporated, a duly authorized corporate officer, an LLC manager, or a general partner.

## **Town of Cape Charles Tourism Zone Business Application**

SouthPort Investors has leased the building known as Harvey to a successful pair of local restaurateurs. The building premises, located at 1011 Bayshore Road in Cape Charles, will be operated as a full service waterfront dining establishment. The restaurant will be open to the public and will serve lunch and dinner. A plan for breakfast and/or brunch is being considered as well. The restaurant will have a liquor license and will offer adult beverages. The establishment will seat sixty patrons at a time.

SouthPort believes Cape Charles will benefit from another dining experience option on Cape Charles Harbor. Patrons may arrive by boat, automobile, cart, bicycle, or on foot. The facility is located within walking distance of Mason Avenue. As the tourist market continues to grow, the need for eateries will also increase. This demand needs to be satiated in order to accommodate visitors and keep tourists returning to Town. The restaurant offers an indoor and outdoor waterfront dining experience at Cape Charles Yacht Center. This dining option is another demonstration of the momentum building on the south side of Cape Charles Harbor and will encourage visitors to venture out beyond the retail nucleus of Mason Avenue.

The restaurant will employ 10-12 people in different culinary and hospitality positions in year one. Half of the staff will be full time employees with the remainder categorized as seasonal or part-time. The restaurant will be open year-round.

 <p><b>TOWN OF CAPE CHARLES</b></p>	<b>AGENDA TITLE: Eastern Shore of Virginia Broadband Authority (ESVBA)</b>		<b>AGENDA DATE:</b> May 2, 2019
	<b>SUBJECT/PROPOSAL/REQUEST:</b> Response to inquiry about ESVBA requiring a “charter” to provide services within the Town of Cape Charles.		<b>ITEM NUMBER:</b> 2D
	<b>ATTACHMENTS:</b> Email correspondence with ESVBA executive director dated April 15 and 18, 2019.		<b>FOR COUNCIL:</b> Action ( ) Information ( x )
	<b>STAFF CONTACT (s):</b> Larry DiRe	<b>REVIEWED BY:</b>	

**BACKGROUND:**

Staff was informed by two Council members that a resident had a question about the Eastern Shore of Virginia Broadband Authority (henceforth ESVBA)’s possession of a “charter” to operate within the town boundary. ESVBA staff provided an [update of approximately twenty minutes at the February 21, 2019 regular monthly Town Council meeting](#). The presentation begins at approximately 30:40 and concludes at approximately 47:19 of the meeting video posted on the town website. At that meeting, the ESVBA staff provided a brief history of their work in Cape Charles, commencing approximately 2010 and including \$489,900 “community network construction” investment. ESVBA staff received little to no comments or questions from Town Council during this presentation. The questions Council posed at the time pertained to the anticipated service availability dates for extension of fiber into sections of the old town area. As was stated by ESVBA staff during the February 21, 2019 presentation, the “private neighborhoods” are not served by ESVBA since there are no easements or agreements with these neighborhoods. The “private neighborhoods” are served by an exclusive provider, and the degree to which competition or consumer choice is permitted in those “private neighborhoods” is not within the purview of the Town Council.

The ESVBA was created in 2008 by the Northampton and Accomack County Boards of Supervisors according to the [enabling legislation found in the Code of Virginia](#).

**ITEM SPECIFICS:**

The following Code of Virginia section expressly addresses the prohibition on public authorities providing cable television services:

***§ 56-484.7:1. Offering of communications services.***

*D. No county, city, town, electric commission or board, industrial development authority, or economic development authority providing such qualifying communications services shall acquire by eminent domain the facilities or other property of any communications service provider to offer cable, telephone, data transmission or other information or online programming services.*

Please see the attached email correspondence with the ESVBA executive director relative to the need for a local “charter.”

**RECOMMENDATION:**

No recommendation at this time.

## Larry DiRe

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**From:** Larry DiRe <larry.dire@capecharles.org>  
**Sent:** Thursday, April 18, 2019 2:01 PM  
**To:** 'mayor@capecharles.org'; 'vicemayor@capecharles.org'; 'councilmanbannon@capecharles.org'; 'councilmanbuchholz@capecharles.org'; 'Cela Burge'; 'councilmangrossman@capecharles.org'; 'Tammy Holloway'  
**Cc:** 'Zachary Ponds'  
**Subject:** FW: ESVBA services in Cape Charles

Please see the email below. If anyone has additional questions about ESVBA's operations please let me know. Thanks.

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**From:** Robert Bridgham <rbridgham@esvba.com>  
**Sent:** Thursday, April 18, 2019 1:24 PM  
**To:** Larry DiRe <larry.dire@capecharles.org>  
**Subject:** Re: ESVBA services in Cape Charles

Mr. DiRe:

I am happy to provide this information and any other information you may require. The ESVBA does not provide any cable services as it is prohibited by law for us to provide it. We also do not have a charter/franchise agreement with the town as we are not a cable operator. Please let us know if we can be of further assistance and we hope you have a good day.

Robert Bridgham  
Executive Director  
Eastern Shore of Virginia Broadband Authority  
(w) 757 414-0304  
(f) 757 656-7066  
[rbridgham@esvba.com](mailto:rbridgham@esvba.com)

This message contains confidential information and is intended only for the individual(s) named. All information contained in this message is considered proprietary and may be archived as part of our data retention policy at our sole discretion without any written consent of the parties involved.

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**From:** Larry DiRe <larry.dire@capecharles.org>  
**Date:** Monday, April 15, 2019 at 11:11 AM  
**To:** <rbridgham@esvba.com>  
**Subject:** ESVBA services in Cape Charles

Mr. Bridgham,

This email is a follow up to a voicemail I left you on Friday morning April 12 about ESVBA's service provision in the Town of Cape Charles. Specifically, a Council member has this question "I was asked if ES Broadband has a charter with the town for its cable/internet service as a provider." Could you provide additional information and advise on the best possible response? I informed Council I would provide a staff report by late April.

Regards,  
Lawrence DiRe, M.A. M.P.A  
Town Manager  
Town of Cape Charles  
2 Plum Street  
Cape Charles, VA 23310  
757-331-2979  
[townmanager@capecharles.org](mailto:townmanager@capecharles.org)

 <b>TOWN OF CAPE CHARLES</b>	<b>AGENDA TITLE:</b> Upcoming work session topics		<b>AGENDA DATE:</b> May 2, 2019
	<b>SUBJECT/PROPOSAL/REQUEST:</b> After FY2020 budget finalization, select and prioritize outstanding topics for future work sessions.		<b>ITEM NUMBER:</b> 3E
	<b>ATTACHMENTS:</b> None.		<b>FOR COUNCIL:</b> Action    ( x ) Information (   )
	<b>STAFF CONTACT (s):</b> Larry DiRe	<b>REVIEWED BY:</b>	

**BACKGROUND:**

Several topics remaining outstanding, and Council has expressed interest in moving them to a work session for more study and discussion.

**ITEM SPECIFICS:**

The following topics have been previously identified as requiring additional study and discussion before moving forward for Town Council action (in no particular order):

- (a) *Animal Control*
- (b) *Parking Regulations – boat trailers, recreational vehicles, etc. (staff encourages Council to include public safety agencies into this discussion at the outset to avoid repeating the mistakes of the failed rear-angle parking program).*
- (c) *Homestay Regulations – picking up from previous discussion and planning commission work.*
- (d) *Harbor Management Companies – unsolicited presentations.*
- (e) *Town Support to Cape Charles Main Street, Inc.*
- (f) *Develop Criteria\Application for Grants to Non-Profits.*
- (g) *Issues Under Review by Planning Commission and/or Town Boards – including on-going preservation plan update, cottage overlay district in the harbor area, Historic District Review Board Criteria and By-laws.*

**RECOMMENDATION:**

Following Town Council discussion provide direction to staff for requested information and scheduling.