



TOWN COUNCIL
Public Hearing, Special Meeting & Budget Work Session
Civic Center
March 14, 2019
6:30 p.m.

At approximately 6:30 p.m. Mayor William “Smitty” Dize, having established a quorum, called to order the Public Hearing, Special Meeting and Budget Work Session of the Town Council. In addition to Mayor Dize, present were Vice Mayor Bennett, Councilmen Bannon, Buchholz and Grossman, and Councilwomen Burge and Holloway. Also, in attendance were Town Manager Larry DiRe, Treasurer Deborah Pocock and Town Clerk Libby Hume. There were approximately 20 members of the public in attendance.

PUBLIC HEARING PUBLIC COMMENTS:

- A. Vacation of a public right-of-way on Tax Map #90-8-1A2
- B. The sale of a portion of one lot, located on Marina Road (Tax Map #83A3-A-10)

Richard Leal, 124 Saratoga Place

Mr. Leal addressed Council regarding the proposed sale of property on Marina Road and asked whether the town had a master plan for the harbor area, for the next five to ten years, or the former railroad property. He stated that it didn’t make sense to sell off property in the harbor piece by piece. People coming to town in mega yachts didn’t want to see little buildings where the railroad tracks were. They wanted a Hyatt Regency with four stories and great dining facilities. Ten years down the road, someone might come to town wanting to construct a hotel in the area but the town would be caught short if the land was sold. The Cape Charles Yacht Center had a new management company bringing mega yachts to town. Cape Charles was a magnificent spot and the first place where yachts came to for anchorage. Nobody else could offer this. Mr. Leal concluded by asking Council to please not throw away the harbor property like the school.

Phil Goetkin, 602 Jefferson Avenue

Mr. Goetkin stated that the town’s biggest asset was the waterfront – beach and harbor. He looked at the comprehensive plan, which was very good. The section for the harbor area conceptual master plan talked about the vision and ideas along with public amenities which included the waterfront, promenade, museum, etc. He was in favor of promoting amenities and maintain access to the waterfront for all citizens, not just yacht owners. The two items on the docket tonight both had impact to the waterfront. If going with the comprehensive plan, he was in favor. If not, he was opposed.

Wayne Creed, 548 Monroe Avenue

Mr. Creed spoke regarding both issues. He stated that he didn’t understand the issue regarding the vacation of the right-of-way. The right-of-way had been there since the 1990s. Why was it being vacated now, other than that Eyre Baldwin wanted it. Mr. Creed went on to state that the selling of the property in the harbor was tricky. The property was way underpriced even though it was only .4 acres. It was prime waterfront. Everyone loved The Shanty and the town needed to make sure they had a place to stay. The Town could extend their lease another 10-15 years. Citizens were worried about giving up control of the waterfront. Keep The Shanty here and make them successful, but the Town needed to maintain control of the waterfront.

Spencer Murray, Franktown, VA

Mr. Murray stated that he wore a lot of hats but was here this evening in his capacity on the Northampton County Board of Supervisors to speak regarding the vacation of the right-of-way. The parcel had already been conveyed to South Port Investors by the County. The County held a public hearing and received two bids on the property and accepted the higher bid. The Town had only one issue and that was to abandon the road. In December 2000, the Virginia Department of

Transportation (VDOT) put the road into its secondary system. The Town was holding its public hearing tonight and would vote on it on March 21. The County would also hold another public hearing and vote on April 9. It was not a complicated issue or process. Abandonment of the property would release VDOT from any obligation to maintain the road. Mr. Murray urged the Town Council and the County, as investors, to work on how to make Cape Charles an economic engine.

Bruce Evans, 645 Tazewell Avenue

Mr. Evans addressed Council regarding the sale of the property at the harbor. He agreed with previous speakers that the property was tremendously undervalued. No one wanted to lose The Shanty, who had a 40-year lease. Mr. Evans also agreed that it would be a shame to break up the waterfront property. It needed to be part of the total package at the harbor. If the Town was going to decide to sell the property, someone could buy it for a million dollars.

Jon Dempster, 22076 Verlinda Landing

Mr. Dempster addressed Council and the public stating that The Shanty was not interested in buying the property to flip it. They had 33 years left on the lease and were secure. The Town felt it was important to open a restaurant at the harbor as part of the master plan. The Shanty was fortunate to be there. They had invested \$750K in property on someone else's land. The Shanty has outgrown the current building and felt they could meet the growing demands of customers and Cape Charles by expanding the restaurant. Banks wanted equity when granting loans and he wanted to move forward with the additions. The Shanty brought in an enormous amount of revenue to the Town. More jobs would be created and the typical two-hour wait in the summer would be brought down to one-hour. The proposed addition had already received approval from the Harbor Area Review Board. He would feel more comfortable having the security of owning the land. He concluded by thanking Council for the time and opportunity to speak on the proposal

Eyre Baldwin, South Port Investors

Mr. Baldwin addressed Council regarding South Port Investors' acquisition of the road which was originally part of the Sustainable Technologies Industrial Park (STIP) that was purchased by South Port from the County. The road was removed from the sale by the previous county administrator. South Port had no intention of closing the road to the public. It served a purposed recently with the boat fire at the harbor. It enabled them to maneuver the travel lift to the site to remove the boat out of the water. South Port's initial plan was to purchase the STIP land, including the road, to allow the travel lift to move boats around the property. If VDOT or the County kept the road, South Port would need to apply for a permit each time a boat was moved over the road. If South Port owned the road, they could use a flagman to direct vehicular traffic when moving boats in the area. They spent \$1M on the waterfront at the Cape Charles Harbor and were about to extend the harbor trail all around the property back to the nature trail for public use. Mr. Baldwin asked people to look at the facts and the truth before creating any unnecessary drama.

Town Clerk Libby Hume read submitted comments into record. (Please see attached.)

There were no other comments.

Motion made by Vice Mayor Bennett, seconded by Councilwoman Holloway, to close the public hearing portion of the meeting. The motion was approved by unanimous vote.

The public hearing portion of the meeting was closed at 6:56 p.m.

SPECIAL MEETING

A. *Vacation of Public Right-of-Way on Tax Map #90-8-1A2*

Town Manager Larry DiRe stated that on January 9, 1996, the Town of Cape Charles held a public hearing to dedicate the property identified as parcel 90-8-1A2 as a public right-of-way as access to the STIP. On February 13, 1996, the Town Council approved the conveyance of the subject lot to the County of Northampton for the "sole purpose of a public right-of-way," and the lot had retained that use to this date. Certain procedural matters were required as a condition of vacating a public right-of-way, one of which was that the locality of the subject

property must hold a public hearing as required by the Code of Virginia. Following the public hearing, if approved by the Town Council, a letter of support would be sent to VDOT. Northampton County would also hold a public hearing and adopt a resolution to send to VDOT. Since the Town had a population of less than 3,500, all road issues had to go through the County.

Motion made by Councilman Grossman, seconded by Councilwoman Burge, to add the vacation of the public right-of-way to the March 21 regular meeting agenda as an action item. The motion was approved by unanimous vote.

Councilwoman Burge explained that Council had already deeded the property to the County a long time ago. The phrase “for public access” was included in the deed and it was that component that needed to be cleaned up. Abandonment jurisdiction of a roadway in VDOT’s secondary system was a simple procedural matter.

B. *Sale of Town-Owned Real Property (Portion of Tax Parcel #83A3-A-10)*

Larry DiRe stated that the Municipal Corporation of Cape Charles and the Hungry Crab, LLC entered into the lease for the approximately .40-acre site, not including the 12-foot public walkway, the area where the Waterman’s Memorial was located, nor the parking lot, on January 12, 2012. Since that date, the Hungry Crab, LLC built and opened a restaurant and bar, commonly known as The Shanty, on the subject property. Pursuant to section 5-Rent of the lease agreement, the required financial obligations of monthly rent of \$500 per month and a defined percentage of 1% of gross revenues monthly since January 1, 2015 through the lease termination date of December 31, 2021 had been met. As with all eating and drinking establishments in town, The Shanty paid business license and meals taxes. An unsolicited offer, including an appraisal by a professional appraiser, was received from the Hungry Crab, LLC to purchase the leased site for \$262K. Staff submitted that appraisal to W. R. McCain and Associates, Inc. for an independent review which concurred with the fair market value of \$262K. A second unsolicited offer of \$300K was received from Southern Shores, LLC on March 7, 2019. Pursuant to sections 15.2-1800 and 15.2-1813 of the Code of Virginia, a public hearing was required prior to the sale of town-owned property and was held earlier this evening. No portions of the town-owned parking lot or the Waterman’s Memorial site were included in the potential sale nor was the Town Council accepting any unsolicited offers to purchase any portion of the parking lot on parcel 10.

Mayor Dize asked Council to schedule an executive session, pursuant to Code of Virginia section 2.2-3711-A, paragraph 3, on March 21, 2019 beginning at 6:30 p.m. at the Town Hall immediately preceding the regular meeting to further discuss this issue. The item would be added as an action item to the regular meeting agenda.

Motion made by Councilman Grossman, seconded by Councilman Buchholz, to schedule an executive session prior to the regular meeting on March 21, 2019 and add the sale of town-owned real property to the regular meeting agenda as an action item. The motion was approved by unanimous vote.

Motion made by Councilwoman Holloway, seconded by Councilman Buchholz, to close the special meeting portion of the meeting. The motion was approved by unanimous vote.

The special meeting portion of the meeting was closed at 7:06 p.m.

BUDGET WORK SESSION:

Larry DiRe stated the following: i) He explained that the initial numbers presented on March 1 were place holders. Staff received the true numbers for health insurance and all departmental budgets had been updated to reflect the correct costs; ii) Some of the numbers regarding capital projects had changed; iii) Regarding salaries and personnel, the big picture had not changed since March 1; iv) A couple of community support items had been increased; v) The proposed Fiscal Year (FY) 2020 budget showed a balanced working budget without increasing taxes; vi) To meet the level of service obligations expected by the community, sufficient revenues were needed. Harbor rates were

increased effective April 1, 2019 through Town Council unanimous vote on December 20, 2018. Staff would be presenting modest increases in certain building, zoning and planning fees, including application fees at the April 11, 2019 regular meeting to become effective July 1, 2019 as part of the FY 2020 budget. These fee increases reflected an increase in number and complexity of the corresponding processes which required a time commitment of staff to ensure they were done effectively. Such fees were associated with a particular-beneficiary application who should bear the costs, and not be generally subsidized; vii) The proposed budget included a per month increase in the water/sewer/trash bills to cover pass-along trash hauler costs and water/sewer capital projects costs. Two options were presented for Council consideration at the proposed level of capital project development; viii) Significant capital expenditures included the purchase of a street sweeper (\$212K), extensive repairs and rebuilding of harbor docks and piers (not to exceed \$125K), lead abatement and installation of an elevator shaft and secondary stairway (not to exceed \$300K) at the library third floor as part of the town office conversion process. Upon closing of the sale of harbor lots 12 and 17, the Town would receive \$581K as a one-time revenue enhancement which would pay for the one-time capital expenditures of the harbor docks and library building improvements. A portion of the fourth breakwater cost to construct to a full 735 feet would be covered by revenue from sale of lots 12 and 17. The street sweeper would be paid by a one-time appropriation from the sanitation fund which was currently in excess of \$270K; ix) Lower cost capital projected included beach nourishment at Jefferson Avenue during spring of 2020 and the first year of a multi-year repair and rebuilding of the fishing pier. The costs of these projected were capped at \$30K this year with funds coming from transient occupancy tax (TOT) revenues; x) \$100K of TOT funds were designated as a contribution to the Cape Charles Main Street organization; xi) The Town share of in-shore breakwater (\$125K) and community trail phase III (\$96,133) capital projects were included in this budget. No expenditures were shown for community trail phase IV (Bay Avenue) in FY 2020; xii) This was an ambitious schedule of capital projects to undertake in one year. All the projects were listed as "near term" (begin within three years) in the 2016 Cape Charles Comprehensive Plan and/or connected to priorities identified by Council in this year's strategic planning sessions; xiii) Staff salary adjustments were based on a cost of living adjustment (COLA) of 2.5%. The Social Security increase for the year was 2.8% and the Consumer Price Index was 2.2% so he averaged the two. The COLA was augmented with a merit increase based on written evaluations and discussion with department heads. No employee received a COLA and merit increase beyond 3.6%, with the majority of employees receiving increased in the 3.0% to 3.2% range with an average of 2.96%. Several general fund and two utility fund long-term employees received one-time adjustments to bring them closer in line with each one's respective pay grade mid-point. The town clerk position was reclassified from grade 30 to grade 32, putting that position on level grade with the other charter officers of treasurer and police chief. Correspondingly, the position of public works/public utilities director was reclassified from grade 32 to grade 30, putting that position on level with other non-charter department heads. This budget showed the first library assistant position as full-time for the entire year allowing the library to do additional outreach to the community and potentially allow for additional operational service days; xiv) The treasurer's staff worked very hard and showed a great deal of creative thinking and problem solving to provide Council with several health insurance plan options to cover employees and dependents, while reducing net health care costs by \$12,838.68 over FY 2019. The Town realized additional savings by changing insurance carriers and not incurring the proposed 6.36% increase over the current year; xv) Support for community organizations enhancing quality of life was included in this budget. Direct payment contribution to the fire company remained constant as well as support levels in both direct payment and staff support for a variety of performing arts and public service organizations; and xvi) This budget proposed only one new full-time staff position for event staff/facility custodian to provide direct support to community organizations for public events and to serve as split-shift support for the public works department.

There was discussion as follows: i) Several Council members expressed their desire to review the revised sheets in the budget binders before continuing discussion; ii) Councilman Buchholz asked whether staff could ask VDOT to clean the streets more often vs. purchasing a street sweeper. Councilwoman Holloway stated that in the past residents weren't notified when VDOT would be sweeping the streets in order for them to move their vehicles adding that her property never got swept because there were always vehicles parked there. It was difficult to spend that much money

on a piece of equipment without a working plan in place; iii) There was a question regarding the reduction in expected revenue in the proposed budget. Treasurer Deborah Pocock and Larry DiRe explained that the reduction in revenue was due to not budgeting for phase IV of the community trail project. Also, revenue from meals tax and TOT were increased; iv) Councilwoman Holloway noted that bathrooms, which were a priority from the economic development committee to enhance the downtown area, weren't included and asked where that was in the plan. Larry DiRe responded that there were three options for accessible bathrooms downtown. The library had a public bathroom and if the library assistant was made full-time, there could be Sunday hours at the library. \$5K of TOT could be used to rent portable facilities from mid-June to mid-August. Patrick Hand had also offered to rent space in his second building for a public bathroom facility, which could be a better approach to portable units. Mayor Dize added that he had recently spoken to Mr. Hand who suggested a standalone bathroom facility in the walking area by the parking lot between Cape Charles Medical Center and his second building. The Town might have to get permission from the railroad for this option; v) Councilman Grossman commented on the \$300K included to refurbish the library building adding that he thought Council had talked in the past about another location for Town Hall. Council needed to put together a capital improvement plan; vi) Councilwoman Burge stated that she did not think of capital projects as part of the operational budget. The proposed budget included capital items embedded in the operational budgets and she had to try to pull the numbers out which was difficult to do. Larry DiRe responded that he had done budgets like that elsewhere, but Cape Charles' process was to capitalize everything \$5K or over which was why he included it in the operational budget; vii) Councilwoman Burge stated that Council discussed priorities in January and that expenditures more than last year be supported by level of service expectations. Historically, the Police Department had the biggest budget. The proposed budget showed a 4.6% increase but no level of service expectations was noted. She noted extra overtime being added in the Police Department and the additional person in the Parks & Recreation Department for events, etc., as well as the change in one of the library assistants from part-time to full-time. It would help her to review the revised numbers to determine what departments wanted vs. what Town Council wanted. Vice Mayor Bennett agreed that it needed to be determined what was a "need" vs. a "want" and justification was necessary for the "needs" and how to improve the level of service; viii) There was much discussion regarding the request for a street sweeper. Larry DiRe explained that the \$270K in the sanitation fund could pay for the sweeper so staff no longer had to use shovels to clean the streets; ix) Mayor Dize brought up curb-side recycling which had been requested by some residents in the past. A consensus of all residents was needed before the Town moved forward with curb-side recycling since the contractor charged an additional \$8 monthly fee for all residences. It was suggested that the Town could use the \$270K from the sanitation fund to subsidize recycling for the residents. It was noted that at some point, subsidizing the expense would catch up with the Town and there would have to be a large increase in the utility bill. There was additional discussion regarding having the Public Works crew pick up recyclables set on the curb by residents to take to the County convenience sites or transfer station; x) The annual purchase of a police car and the need for each officer to have their own car were discussed; xi) Councilwoman Burge asked if any thought was put into the possibility of having separate department heads for the public works and public utilities departments. Larry DiRe stated that currently, the two departments were too entwined with public works staff assisting with the meter reads, etc. It would be a long-range fix. Larry DiRe added that in order for the Town to develop, it might serve well for the town manager to be the strategic officer with two department heads serving dual roles as an office manager (preferably the town clerk) and operations manager (possibly the planner or other department head). This could evolve over time; xii) Several Council members requested to see the pay scale and where employees fell in their respective bands; xiii) There was some discussion regarding having the non-profit organizations appear before Council regarding their funding requests and their fundraising efforts. An application process and criteria needed to be developed to evaluate the non-profit requests. Mayor Dize suggested the possibility of requiring an 80/20 grant/match program. It was noted that not all non-profits were alike. The Cape Charles Volunteer Fire Company (CCVFC) performed a necessary service for the Town and the Town received a \$10K annual grant which was passed-through to the CCVFC. The Town typically contributed additional funding for their operations. The Citizens for Central Park raised money to improve the town-owned park. The Town applied annually for a matching grant through the Virginia Commission for the Arts and allocated up to \$5K to Arts Enter and the state

provided up to \$4,500, based on the Town's allocation; and xiv) There was much discussion regarding the CCVFC and other fire companies on the Eastern Shore and their fundraising efforts. There was strict statutory governance regarding fire departments and the volunteer fire company in Onley had been dissolved. Some localities supplemented the volunteer companies with paid staff such as fire medics.

Mayor Dize asked Council to review the information in the budget binders for further discussion at the April 4, 2019 work session. In the future, after finalization of the budget, Council would adhere to a schedule of two meetings per month – a work session or special meeting on the first Thursday and a regular meeting on the third Thursday.

Motion made by Councilman Buchholz, seconded by Councilman Bannon, to adjourn the Town Council Public Hearing, Special Meeting and Work Session. The motion was approved by unanimous vote.

The meeting adjourned at 8:33 p.m.

Mayor Dize

Town Clerk

**Comments submitted in writing
March 14, 2019 Public Hearing & Special Meeting**

J. D. Lewis, Southern Shore Holdings, LLC

Before you this evening is an unsolicited \$300,000 cash offer on behalf of Southern Shore Holdings, LLC. Nearly \$40,000 higher than the Hungry Crab offer without the lengthy financing contingency. To prevent a future sale that may not be in the taxpayer's best interest the town will be provided a first right of refusal. The lessor will be granted a second right of refusal.

Our offer will not impact the existing restaurant. We have every intention of honoring the legally binding 40-year lease already in place. Any investment by the lessor would be protected for the next 35+ years through a standard third-party commercial ground lease. If a properly structured ground lease could have a detrimental effect on the lessor's operations, such a scenario wouldn't be nearly as prevalent nationwide. As long as The Hungry Crab remains profitable and able to honor the existing lease, they will be welcomed to operate unobstructed per the current lease agreement. If the restaurant falls out of favor and moves on; the site will be repurposed to a new highest and best use. In such a volatile industry a new hot spot could emerge anytime in the next thirty years leading the current lessors to exit the business and liquidate the land.

This isn't a matter of supporting the Shanty. This is a matter of prioritizing fiduciary duty and fiscal responsibility over further subsidizing a private enterprise. Council should not show preference for one private entity over another. Both offers adequately protect the tenant's future interests. One offer is simply higher than the other. As a longtime town resident stated this week "If the town can afford to pass up a higher cash offer, why are we asked to pay nearly one hundred dollars monthly in water and sewer fees? Would a council member sell his or her own property at such a discount?"

Mr. McCain, the town's appraiser, notes that he did not visit the property. Instead he simply agreed with the valuation Mr. Dempster solicited on his own behalf. This is not the way to properly value such a unique taxpayer owned asset. Fair market value can only be determined by soliciting multiple offers. Fair market value is defined as "a price at which buyers and sellers with a reasonable knowledge of pertinent facts and not acting under any compulsion are willing to do business." This offer demonstrates that the fair market value for this parcel is higher than \$262,000. If the lessor is willing to exceed our \$300,000 offer; I propose council solicit sealed bids from both parties to be opened and read aloud at a future public hearing. Otherwise the higher offer should be accepted this evening.

Donna Kohler, 711 Tazewell Avenue

My name is Donna Onley Kohler and I reside at 711 Tazewell Avenue. I am writing in regards to a potential sale of land located at 33 Marina Road. I hope the Town and Council will not consider a bid to sell of part of our waterfront. This is one of our greatest assets, and as our town continues to develop, we do not want to lose one of the things that defines what makes Cape Charles a destination. I do not want to see a repeat of what happened a few years ago with the selling of Town resources to an unsolicited bid, and how that divided our Town.

Please do not think that negotiating a "first right of refusal to purchase back the land should it come up for sale in the future protect the Town. That land will increase in value as our waterfront continues to develop, and the Town may not be in a position to buy back the land.

The Shanty is a significant contributor to this community with meals tax, business license fees, and jobs creation. I don't know any details of the lease agreement, but at a minimum, a lease re-negotiation should be discussed before selling our waterfront.