



TOWN COUNCIL
Regular Meeting & Executive Session
Civic Center
May 16, 2019
6:30 PM

At approximately 6:30p.m. Mayor William “Smitty” Dize, having established a quorum, called to order the Regular Meeting & Executive 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, Police Chief Jim Pruitt and Town Clerk Libby Hume. There were 11 members of the public in attendance.

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

RECOGNITION OF VISITORS

- A. *Cape Charles Rosenwald School Restoration Initiative – Tevya Griffin*
Town Clerk Libby Hume stated that Ms. Griffin had informed her that she was unable to attend tonight’s meeting. The Rosenwald School presentation had been added to the June 20, 2019 meeting agenda.
- B. *National Safe Boating Week Proclamation*
Mayor Dize moved to adopt Proclamation 20190516 Proclaiming May 18-May 24, 2019 as National Safe Boating Week as noticed and forewent reading of the Proclamation.

Motion made by Councilman Buchholz, seconded by Councilman Bannon, to adopt Proclamation 20190516 Proclaiming May 18-May 24, 2019 as National Safe Boating Week. The motion was approved by unanimous vote. Roll call vote: Bannon, yes; Bennett, yes; Buchholz, yes; Burge, yes; Grossman, yes; Holloway, yes.

- C. *National Public Works Week Proclamation*
Mayor Dize moved to adopt Proclamation 20190516A Designating May 19-May 25, 2019 as National Public Works Week as noticed and forewent reading of the Proclamation.

Motion made by Vice Mayor Bennett, seconded by Councilwoman Holloway, to adopt Proclamation 20190516A Designating May 19-May 25, 2019 as National Public Works Week. The motion was approved by unanimous vote. Roll call vote: Bannon, yes; Bennett, yes; Buchholz, yes; Burge, yes; Grossman, yes; Holloway, yes.

PUBLIC COMMENTS:

Bishop James Davis, 533 Mason Avenue

Bishop Davis suggested that Council needed to designate space for the youth to skateboard and play basketball.

Brian Martin, 206 Jefferson Avenue

Mr. Martin addressed Council regarding an altercation that he had with Sandy Mayer on March 24th which escalated in warrants being filed against both parties. The case was heard earlier in the day by the General District Court of Northampton County. Mr. Martin was found guilty of a class 4 misdemeanor and Ms. Mayer was found guilty of a class 1 misdemeanor. (Please see attached.)

Terry Strub, 522B Washington Avenue

Ms. Strub addressed Council regarding several issues in Central Park and the children’s playground. (Please see attached.)

Michael Strub, 522B Washington Avenue

Mr. Strub thanked the residents of the town who were working to ensure the town’s responsiveness to the economic growth opportunities while maintaining its unique charm. (Please see attached.)

Diane D'Amico, 602 Jefferson Avenue

Ms. D'Amico addressed Council regarding the lawn mowing practices of many in the town who mow shooting the grass clippings into the street. It was unsightly, collected in the gutters and went into the storm sewers and into the bay. An easy fix would be for them to turn around and shoot the grass clipping onto their grass and there would be no more problems. She requested Council to include a letter in the water bills advising property owners that the town's ordinance would be enforced with penalties being assessed which should resolve the problem.

Libby Hume read comments submitted by Ms. Karen Jolly Davis into the record. (Please see attached.)

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

CONSENT AGENDA:

- A. Approval of Agenda Format
- B. Approval of Minutes:
 - i. April 4, 2019 Town Council Budget Work Session
 - ii. April 11, 2019 Town Council Public Hearing & Regular Meeting
 - iii. April 25, 2019 Town Council Budget Work Session & Executive Session
 - iv. May 2, 2019 Town Council Special Meeting & Executive Session
- C. Approval of March 31, 2019 Financial Report
- D. Monthly Department Reports
- E. Appointment of Planning Commission Representative to Historic District Review Board
- F. Appointment to Historic District Review Board

Motion made by Councilman Bannon, seconded by Councilman Grossman, to approve the Consent Agenda items as presented. The motion was approved by unanimous vote.

UNFINISHED BUSINESS:

- A. *VPA Grant Award Update:*

Larry DiRe read the staff report for this item into the record since it was not included in the initial agenda packet for review. (Please see attached.)
- B. *Zoning Ordinance Text Amendments – Historic District Review Board:*

Councilman Grossman stated that over the past four to five months, Council had been discussing the possibility of expanding the size of the Historic District Review Board (HDRB) and recommended moving this item forward so it could be referred to the Planning Commission incorporation into the zoning ordinance and the HDRB by-laws could be amended.

Motion made by Councilman Grossman, seconded by Vice Mayor Bennett, to approve the expansion of the Historic District Review Board to seven members with one member being a representative from the Town Council and requiring a minimum of four members being residents of the historic district. The motion was approved by unanimous vote.

It was noted that the Council representative's term on the HDRB would be concurrent with their term on Council.

NEW BUSINESS

- A. *Code 42-3 – Adoption of State Law:*

Larry DiRe stated that from time to time, the Code of Virginia was amended regarding safety tactics to protect those traveling the highways, streets and roads in the Commonwealth. Each year a new ordinance must be adopted accepting all amendments to the provisions and requirements set by the Code of Virginia in matters of regulation of motor vehicles and traffic in the Town of Cape Charles and any penalties for traffic violations. The ordinance would be effective July 1, 2019.

Motion made by Councilman Grossman, seconded by Vice Mayor Bennett, to adopt Ordinance 20190516 to Adopt Amendments to the Code of Virginia § 46.2 and Title 16.1, Chapter 11, Article 9 (§ 16.1-278 Et Seq.) and Title 18.2, Chapter 7, Article 2 (§ 18.2-266 Et Seq.), if any, for Incorporation into the Cape Charles Town Code Chapter 42-Motor Vehicles and Traffic. Mayor Dize moved for adoption of Ordinance 20190516 as noticed and forewent reading of the ordinance. The motion was approved by unanimous vote. Roll call vote: Bannon, yes; Bennett, yes; Buchholz, yes; Burge, yes; Grossman, yes; Holloway, yes.

B. June Town Council Regular Meeting Location:

Larry DiRe stated that the Civic Center was due for some interior repairs which were included in the FY 2019 budget. The interior work had been on hold until after the roof repairs were completed. The roof work was done last month. The town put out an advertisement for bids and one responsive submittal was received. The vendor could do the work during the week of June 17, which would impact the June 20 Town Council Regular Meeting. The Council meeting would be moved from the Civic Center to the Cape Charles Volunteer Fire Company. Pursuant to § 15.2-1416 of the Code of Virginia, the location of a regular meeting could be changed by the adoption of a resolution and posting of the resolution on the door of the regular meeting location and newspaper at least seven days prior to the meeting date.

Motion made by Councilman Bannon, seconded by Councilman Buchholz, to adopt Resolution 20190516 Changing the Location of the June 20, 2019 Cape Charles Town Council Regular Meeting. The motion was approved by unanimous vote. Roll call vote: Bannon, yes; Bennett, yes; Buchholz, yes; Burge, yes; Grossman, yes; Holloway, yes.

TOWN MANAGER COMMENTS

Larry DiRe commented as follows: i) He received the parking survey plat for Mason Avenue and forwarded an electronic version to the engineers for their review prior to preparation of the cost estimate which was another essential part for the application to VDOT which had to go to their regional office in Suffolk. He and Town Planner Zach Ponds also met briefly with VDOT's Resident Engineer Dale Pusey, who was in town yesterday. They reviewed the four-page survey plat which showed the parking pattern and signage. Mr. Pusey had a few questions which staff would describe in the narrative for the application. Most of Mr. Pusey's questions were regarding the roadway between Nectarine and Fig Streets and the grade of existing non-conforming curb cuts which didn't meet current VDOT standards. If the application was denied by VDOT, the surveyor was aware that the town would be pursuing parallel parking in the central business district. If that was the case, another survey plat would have to be drawn, and new cost estimates would have to be obtained; ii) The current year-to-date (YTD) budget detail report was generated by the treasurer this morning. He went on to review the revenue numbers. \$150K was budgeted and YTD collections were \$123,464 or 82%; \$145K was budgeted for transient occupancy tax and YTD collections were \$121,459 or 84%; \$500K was budgeted for meals tax and YTD collections were \$372,092 or 74%; and iii) Staff was keeping an eye on short term/vacation rental compliance such as business licenses, inspections, and adherence to occupancy limits. The building and finance departments were working together to check advertisements to ensure everyone had a safe experience when renting in Cape Charles.

MAYOR AND COUNCIL COMMENTS

Councilwoman Burge commented as follows: i) She was looking forward to the Rosenwald School presentation and hoped that Ms. Tevya Griffin would be able to attend in June to provide an update; ii) She agreed with Ms. D'Amico regarding grass cutting being a problem. The Town had an ordinance (§ 46-17) which stated a civic penalty of \$50 for the first offense and \$200 for subsequent offences. The Town needed to enforce the current ordinance; iii) She preferred that board appointments be handled as separate agenda items in the future so that Council could recognize the individuals who were willing to serve the Town in this capacity; and iv) She thought Mr. Martin's concern regarding dogs and cats was valid. Both convictions were for misdemeanors and the case was treated as cross warrants civilly. She suggested that Mayor Dize, Town Manager Larry DiRe and/or Chief Jim Pruitt meet with Sheriff Doughty to discuss the appropriate ordinances of the Town (§§ 50-191, 50-192, and 50-194) and County (§§ 95-04, 95-20, 95-23, and 95-29) to see if we could work cooperatively

to tackle this issue. We had ordinances dealing with dogs running loose and cats regarding shots and licenses which needed to be enforced. The Town identified the County's Animal Control office as the primary animal control office. We needed to stop talking about it and start enforcing it.

Councilman Grossman commented as follows: i) If someone observed an individual blowing grass into the streets, who should they contact to report the issue? How would it be enforced? Mayor Dize stated that the Code Official should be notified. Councilwoman Holloway asked how this information would be communicated to the residents. Councilwoman Burge stated that the Town had a good communications process in place with newsletters, social media, etc., and added that it could be lawn care contractors who were violating the ordinance; and ii) He thanked Ms. Terry Strub for all her work on the Historic District Review Board (HDRB) and welcomed Planning Commission representative Diane D'Amico and new member Edward Wells to the board. He thanked them for volunteering to serve on the board.

Councilman Bannon asked whether all the lawn maintenance contractors had business licenses and how the issue could be enforced. He suggested having the police officers asking the contractors whether they had licenses.

Vice Mayor Bennett commented as follows: i) He agreed with Councilwoman Burge's comments regarding cats and noted an error in the submitted letter that was read into the record, which stated that Ms. Sandy Mayer was a citizen of Cape Charles when she no longer lived in the town; and ii) He encouraged continuing with the inflow and infiltration efforts as this month's report showed a 25M gallon delta in water vs. wastewater.

Councilwoman Holloway commented as follows: i) Regarding communications on the grass issue, a notice could be placed in the Gazette, but people didn't read it. A notice needed to be included with the water bill and put on Facebook; ii) She agreed with Councilman Bannon regarding business licenses; iii) She hoped everyone had seen the new benches in Strawberry Street Plaza. Some of the benches would be moved to other locations. A group of volunteers helped put the benches together; iv) The lamp posts were supposed to arrive this week. The banners were ready to install. She would like to schedule a ceremony when the banners were hung, and the town needed to honor some of the citizens who took the pictures for the banners; v) She encouraged everyone to stop in and welcome the new businesses in Town; vi) She agreed with Ms. Strub's comments regarding the language in Central Park. It was so bad last weekend that she couldn't stay outside in her garden. She didn't know what to do about it. She encouraged everyone to report it. The Central Park Gazebo was also being terribly abused; vii) She would be giving a report from Cape Charles Main Street on the wayfinding signage. Although the signage did not need Council approval, she wanted Council to see the work that had been done. Larry DiRe, Zach Ponds and staff were wonderful in helping with the project; and viii) She asked if staff would look to see if there was any money available in this year's budget to open the bathrooms in the library to the public before July 1.

Councilman Buchholz commented regarding the repairs at the harbor adding that the monthly report seemed to be a mimic of last month's report. The harbor would be getting crowded very soon and the work needed to be completed. He added that he hoped money was included in next year's budget for contracting out some of the repairs. Larry DiRe stated that some work was still needed on the harbor master's building and would ask for specific updates to the projects.

Mayor Dize commented as follows: i) He agreed that the board appointments should be separate agenda items so everyone could be recognized; ii) He thanked Ms. Terry Strub for the time she served on the HDRB; iii) He thanked the police department for setting up the memorial display in Central Park and thanked the officers for all they did for the Town; iv) He thanked the Public Works crew for all they did. Some people he grew up with came into the Town and commented on how nice the Town looked; v) Regarding cats, dogs and other animals, the Town had ordinances on the books which needed to be enforced. All dogs and cats must be licensed and have current shots; vi) The Town Code stated that dogs must be under the owner's control. He wanted Council to discuss this issue and make it an actual leash law; vii) The Town needed to enforce grass cutting issues that were brought up tonight. A notice needed to be included in the utility bill; viii) If something is in the Town Code, it

needed to be enforced or removed; ix) Regarding business licenses for contractors, the Town needed to obtain stickers to distribute with the business licenses for the contractors to put on each of their vehicles. It would make it easier to identify the licensed contractors. If they didn't display a sticker on their vehicle, the job needed to be shut down; and x) He thanked Councilman Grossman for all his work on his presentation tonight.

Mayor Dize read the announcements.

Motion made by Vice Mayor Bannon, seconded by Councilman Buchholz, calling for a short recess before going into executive session. The motion was approved by unanimous vote.

The meeting recessed at 7:17 p.m. The members of the public and staff, with the exception of Larry DiRe, left the meeting.

At 7:37 p.m. Mayor Dize called the meeting back to order.

Motion made by Councilwoman Burge, seconded by Councilman Buchholz, and unanimously approved to go into Closed Session in accordance with Section 2.2-3711-A of the Code of Virginia of 1950, as amended for the purpose of:

Paragraph 3: Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body.

Specifically: i. Potential Purchase of Real Property
ii. Review Unsolicited Proposal to Purchase Town -Owned Real Property

Motion made by Councilman Buchholz, seconded by Vice Mayor Bennett, to return to open session. The motion was approved by unanimous vote.

Certification, to the best of each member's knowledge, that (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: Bannon, yes; Bennett, Buchholz, yes; Burge, yes; Grossman, yes; Holloway, yes.

Motion made by Councilman Buchholz, seconded by Councilman Bannon, to adjourn the Town Council Regular Meeting and Executive Session. The motion was approved by unanimous vote.

The meeting adjourned at 8:20 p.m.

Mayor Dize

Town Clerk

**Comments and information submitted in writing
May 16, 2019 Regular Meeting**

Brian Martin, 206 Jefferson Avenue

Mr. Larry DiRe and Cape Charles Town Council,

On March 24th, I had an altercation with a county resident by the name of Sandra Mayer while walking my dog on Strawberry Street in the town of Cape Charles. During this altercation Ms. Mayer struck my dog (Winston) with her foot. The following day I swore a warrant against Ms. Mayer for animal cruelty with the Northampton Magistrate. Shortly thereafter, Ms. Mayer filed a cross warrant for "dog at large."

Today, May 16th, I was found guilty of this Class 4 Misdemeanor by the General Districts Court of Northampton County, while Ms. Mayer was found guilty of the class 1 misdemeanor of animal cruelty. The Northampton judge stated that, while I and Winston have undergone extensive obedience training and we use an electronic training collar while on off-leash walks, that his was not enough to justify an exception to the "leash law" in town.

As the town ordinance (leash law) is written, (Sec 50-191) it shall be unlawful for the owner, custodian, or anyone who has control of an ANIMAL (later defined as "any mammal, bird or reptile") to permit the animal to run large at any time, the code goes on to state that running at large shall include roaming, running, or self hunting off the property of the owner outside of their immediate control. This ordinance is quoted for the record below.

As Ms. Mayer has testified in open court on May 16, 2019 that she provides these animals with medical care and food, as well as shelter in the form of cat houses located on the property of Mr. Pete Baumann at 239 Monroe Ave, it is reasonable to conclude that she has taken ownership, or, at the very least, custodianship of these animals and is therefore obligated to have them "under her immediate control," on her property, and licensed at all times pursuant to the "at large" ordinance with which I was convicted today.

Within the town ordinances of Cape Charles, duties of enforcing animal related laws is given to the county Animal Control officer (Sec 50-195, quoted below). Given these facts along with town and county codes, I would ask the town manager to charge Northampton County's Animal Control officers with enforcing this code equally across the board, starting with Ms. Mayer and Mr. Baumann. If the animal control officers are not willing to enforce the town code, I would ask that this duty be charged to the Cape Charles Police Department. To charge a town resident dog owner who is no more than 5 paces from his dog with "at large" while allowing a non-town resident to maintain a large population of feral cats within the town limits could certainly be seen as no less than discriminatory to dog owners and town residents.

William Brian Martin
206A Jefferson Ave
Cape Charles, VA 23310

Sec. 50-191. - Animals on beach and other public places.

(a) Animals prohibited during certain period.

(1) It shall be unlawful for any person owning, having control of any animal to permit such animal to be on the public sand beach, the boardwalk or the grassy area west of the boardwalk during the period from 9:00 a.m. through 9:00 p.m. between April 1 and Labor Day of each year, such period hereinafter referred to [as] the "season".

(2) It shall be unlawful for any person who owns or has control of any animal to permit such animal to run at large at any time. For purposes of this section, an animal shall be deemed to run at large while roaming, running, or self-hunting off the property of its owner or custodian and not under its owner's or custodian's immediate control.

(b) Defecation. (1) Any person who owns or has control of any animal shall not knowingly or willfully permit such animal to litter any public sand beaches or any other public areas within the Town at any time. In the event such animal shall defecate on the public sand beach or any other public properties, or private properties other than the animal owner's property, the person who owns or has control of such animal shall immediately remove all feces deposited thereon by such animal and dispose of same in a sanitary manner approved by the department of public health, such as encasing same in an airtight wrapper or container and

placing same in a garbage receptacle. Failure to so remove said feces in accordance with the provisions of this subsection shall constitute a class 4 misdemeanor. (2) Notwithstanding the above, it shall be unlawful for any person who owns or has control of any animal to permit such animal to be on public properties within the town, at any time, unless such person shall have in his possession a container of sufficient size and adequate design to remove and dispose of all feces deposited thereon by such animal in accordance with the provisions of subsection (b)(1). (3) With the exception of subsections (b)(1) and (2), the provisions of this section shall not be applicable to a guide dog, hearing dog or service dog trained to accompany a person with a disability while being accompanied by such person.

(4) For purposes of this section, the term "animal" shall be deemed to include but not be limited to any mammal, bird, or reptile.

(Ord. No. 091404, 9-14-04; Ord. No. 20151217 , 12-17-15)

Sec. 50-194. – Animal control.

Pursuant to § 3.2-6555 of the Code of Virginia, as amended, the County of Northampton has created the position of animal control officer. The Town of Cape Charles hereby appoints the county animal control officer(s) as its agent to enforce the provisions of the animal control ordinance within the corporate limits of the town. The duties of the animal control officer shall be those provided for in Code of Virginia, § 3.2-6555 et seq., and in the Codified Ordinances of Northampton County, Chapter 95, as amended, and such other duties as may be provided for herein. The town hereby adopts and incorporates, by reference, the applicable state statutes and the applicable county ordinances, as amended. Whenever a conflict arises between the provisions of this chapter and the state code and/or county animal control ordinance provisions, the state code and county ordinance provisions shall prevail.

(Ord. No. 20151217 , 12-17-15)

Terry Strub, 522B Washington Avenue

My name is Terry Strub, I live at 522B Washington Avenue. I would like to begin by commending the Citizens for Central Park and the town Public Works crew for the superb job they do in improving and maintaining the park. I have a concern about three problems which appear to emanate from the same cause, namely, the presence of youth in the children’s playground who are older than the age for which the playground equipment was designed. The problems are damage to the playground equipment, improper language, and litter. As a result, children are unable to use some of the equipment, children from the Christian school are not being allowed in the park in the presence of such language, and the litter could rapidly escalate. Hundreds of our citizens have contributed to the park and playground. I would request that anyone who observes this type of activity report same to a member of the Town staff. Thank you.

Michael Strub, 522B Washington Avenue

My name is Michael Strub, I live at 522B Washington Avenue. I wish to thank the many right smart paid and unpaid residents of our town who are working so hard, with gusto and grit, compromise and consensus, to ensure that our town is responsive to the economic growth opportunities while maintaining its unique charm. Keep up the good work. Thank you.

Karen Jolly Davis, 5 Randolph Avenue

To the town council:

For many years, Sandy Mayer has worked diligently to limit the town's feral cat population and prevent diseases that could spread among them. We have a small number of healthy feral cats, compared to places like Cheriton, where the cat population is exploding, and feline HIV is rampant.

Sandy traps the local cats and neuters them at her own expense. In the process, she becomes attached to them. Lately, some new residents have harassed Sandy for her completely harmless habit of feeding them.

If those Newbies have their way, the partially domesticated, neutered cats will be caught and killed. But the truly feral cats will not be caught, because no one will have the patient dedication that Sandy has to trap and neuter them. As a result, rather than eliminating feral cats, the population will grow exponentially.

I have lived in Cape Charles for 22 years, and never had any problems with feral cats. Many have lived in my garden, or under my shed, and the only thing they do is keep the mice out of my house. What will Cape Charles do to keep rodents from overtaking our town once the cats are gone? And how will the cat killers differentiate between feral cats and wandering pets?

But the truly hurtful thing is the way certain people have treated Sandy Mayer. This woman has served our community faithfully for many years, neutering the feral cats at her own expense and preventing them from breeding. Instead, she has been treated like some kind of criminal. The town's lack of compassion for this woman--and the attacks by new residents--are outrageous. I hope Cape Charles is not becoming a place where the lives of long-time citizens can be destroyed by Newbies who care more about their Precious Things than about our people.

Sandy is a kind and dedicated woman who does wonderful things for our community. Let her feed the cats.

Staff Report prepared by Capital Projects Manager Bob Panek

BACKGROUND:

The recent wave modeling study recommended building both off-shore breakwater #4 (north of the existing three) and an in-shore breakwater as the most cost effective solution to combatting long period waves from the north northwest (winter) and southwest (summer). These waves cause considerable damage to harbor infrastructure, particularly the floating docks, and create unsafe conditions for vessels and personnel.

Consequently, the Town requested that VPA approve:

1. Carry-over of \$100K of previously awarded ALP grant funding for the off-shore breakwater now under construction.
2. A new ALP grant in the amount of \$375K for a \$500K project to build an in-shore fixed breakwater to replace the ineffective floating wave attenuator at the floating docks.

DISCUSSION:

The VPA Board will vote on the resolution approving ALP grant authorizations at their May 21, 2019 meeting. VPA posted the agenda information on their website this morning. The recommended resolution would approve our \$100K carry-over request and provide \$251.4K of new grant funding for the in-shore breakwater.

The \$375K request for the in-shore breakwater was for the maximum authorization allowable for ALP; i.e., 75%. Council has included the \$125K match in the draft FY 2020 budget. The \$251.4K grant award would provide slightly more than 50% of the project estimate. There are two alternatives to construct the in-shore breakwater in a timely manner. First, Council could provide the remaining funding match, approximately another \$125K. Second, we could work with Langley & McDonald to structure the project plans and bid package to break out certain components of the work as bid alternates. This might allow accomplishment of the most important component of the project (fixed, sheet pile breakwater) first, followed by other components at a later date. For example, reinstallation of the existing floating wave attenuator on the north side might be accomplished by Town personnel or could await additional grant funding, such as the Boating Infrastructure Grant.

RECOMMENDATION:

Provided for information only.