



**TOWN COUNCIL
Special Meeting & Executive Session
Cape Charles Civic Center
March 3, 2022
6:30 PM**

At approximately 6:30 p.m. Mayor William "Smitty" Dize, having established a quorum, called to order the Special Meeting & Executive Session of the Cape Charles Town Council. In addition to Mayor Dize, in attendance were Vice Mayor Bennett, Councilmen Buchholz, Follmer and Grossman, and Councilwomen Holloway and O'Brien. Also, in attendance were Town Manager John Hozey, Project Manager Bob Panek, Police Chief Jim Pruitt, Assistant to the Town Manager Julie Pruitt, and Town Clerk Libby Hume. There were four members of the public physically in attendance, and 17 viewers on Facebook.

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

PUBLIC COMMENTS ON AGENDA ITEMS ONLY: (3 MINUTES PER SPEAKER)

Loraine Huchler, Cape Charles Property Owner

Ms. Huchler spoke about Item 4B – Consideration to Move to Negotiation Phase of Potential Utility Sale. (Please see attached.)

There were no other comments to be heard nor any comments received in writing prior to the meeting.

ORDER OF BUSINESS:

A. *Amendment to HBA Contract (Architectural Services):*

Town Manager John Hozey stated that the space needs assessment was almost complete. The Civic Center was not currently included in the study but should be added to the analysis to expand space allocation options. It was also prudent to get a professional condition report for long term maintenance planning regardless of its ongoing use. The cost to add the Civic Center to the analysis would be \$9,787, which was reasonable when compared to the \$23,065 for the condition assessments of the Municipal and Library buildings. This additional work would bring the contract value for Phase 1 to \$58,284 with sufficient funding budgeted for the project to accommodate this change.

Motion made by Councilman Grossman, seconded by Councilman Follmer, to amend the HBA contract in the amount of \$9,787 to include the Civic Center in the Phase 1 analysis of alternatives. The motion was approved by unanimous vote.

B. *Consideration to Move to Negotiation Phase of Potential Utility Sale:*

John Hozey stated that since receiving the first unsolicited proposal to sell the water and wastewater utilities more than 18 months ago, the Town had been engaged in a lengthy process to determine whether such a sale would be in the Town's best interest. With the assistance of a consultant specializing in this area, and much due diligence on the part of the Town, Virginia American Water (VAW) was selected as the utility company to move forward to the public phase of the evaluation. Two Town Hall meetings were held in February with VAW and our consultant to obtain public input. The next stage would be to negotiate details. If the Town Council wished to continue evaluating the potential sale, the next step in the process would be to authorize the town manager to begin detailed negotiations with VAW to draft an agreement. Not until formal negotiations were completed would the Town know the specifics necessary to determine whether an actual sale would be in the Town's best interest.

Motion made by Vice Mayor Bennett, seconded by Councilman Buchholz, to move to the next phase of the PPEA process and authorize the town manager to begin negotiations with Virginia American Water.

There was discussion as follows: i) Councilman Grossman asked about the cost associated with this next phase. John Hozey explained that the additional costs would be passed on to VAW as part of the Public-Private Education Facilities and Infrastructure Act (PPEA). The consultant were experts in utilities and appraisals and would assist with the legalities regarding the Annexation Agreement, and the crafting of a comprehensive agreement; ii) The timeframe for this next phase could not be determined since the Annexation Agreement involved a third party. Once an agreement had been negotiated with all parties, it would be provided for public review. A public hearing would be scheduled to obtain public input, then submission to the State Corporation Commission (SCC). Councilman Grossman added that he was researching the VAW agreement with the Town of Waverly on the SCC's website, but most of the information was confidential so not accessible at this time. The site did include a rate chart showing rates with the Town maintaining ownership compared to VAW's rates; iii) Councilman Follmer added that most of the questions received during the Town Hall meetings could only be answered upon completion of the next phase in the process. Moving to the next phase did not commit the Town to the sale but was the opportunity to obtain more information; iv) Vice Mayor Bennett reiterated that the next phase was to get more information and the Town would not be obligated to sell. At this time, no decision had been made regarding a sale of the utilities; v) Mayor Dize asked whether a Council representative needed to be named to work with the town manager on the negotiations. John Hozey stated that he was not opposed to the concept, but the Council representative would need to be responsive and available to meet on short notice. Council would be kept apprised of the negotiations; vi) John Hozey added that if Council should vote to move forward, an executive session was scheduled following this special meeting to obtain guidance regarding the negotiations.

Mayor Dize called for a vote. The motion was approved by unanimous vote.

TOWN MANAGER COMMENTS

John Hozey did not have any additional comments.

MAYOR AND COUNCIL COMMENTS

Mayor Dize stated that four years ago, he decided to run for Mayor. He had been part of this Town since 2005 when he started his job as the harbormaster. He had worked with a lot of good people over the years and he learned a lot. It had truly been a good ride, but he wanted to announce that he would not be seeking reelection in November. The six current Town Council members and some former Council members were among the smartest, most dedicated people to the Town. It would be crazy not to reelect those Council members running for reelection in November. The Town needed a Mayor who was forward-thinking and not stuck in the past. The Mayor needed to be part of the team, not working against it. He hoped the citizens of Cape Charles would think about this and elect a Mayor who would take the Town forward. He needed some time for himself but was not ruling out running again in four years.

Councilman Buchholz gave a shout-out to Preserve Communities for all they have done. They held two big fundraisers and raised \$65K for the Northampton Education Foundation, generating much needed funding for teachers and students. Over \$40K was raised for Habitat for Humanity. Preserve Communities was a great partner for the Town. The Town had been divided in the past, but were coming together as one big community.

Councilwoman Holloway commented as follows: i) Mayor Dize had done an amazing job and she knew how difficult it was for him to make this decision. He showed his leadership by letting people know tonight so the citizens could determine the best person to fill his shoes; ii) She attended her

first Northampton County Planning Commission meeting on Tuesday. Several people submitted their comments regarding the zoning change in certain areas to accommodate long-term rentals, which was prompted by a contracted sale of the Kiptopeke Inn. The contracted buyers proposed converting the Kiptopeke Inn into multi-family work force housing. Unfortunately, this agenda item was not presented well for a decision by the Planning Commission. The company buying the property gave a presentation and the county administrator spoke in favor of the zoning change. A work session was scheduled for March 15 and the item would be on the agenda for a vote in April. She hoped that the contract on the property would not be lost. At that meeting, only three of the submitted letters were read before the Planning Commission decided that it was too exhausting to listen to all of the comments. Her comments were one of the unread letters. She commended the Town Council for always taking the time to listen to all submitted comments.

Vice Mayor Bennett stated that he respected Mayor Dize's decision and his reasons for leaving office. He wished Mayor Dize the best and thanked him for all that he had done. Vice Mayor Bennett added that he had been on the Town Council for 13 years and Mayor Dize was one of the best Mayors during his tenure.

Councilwoman O'Brien expressed her pleasure in the beach closure next week for maintenance, adding that there were some channel posts coming up through the sand along the beach which posed a danger to beachgoers.

Councilman Grossman commented as follows: i) His thoughts were with Mayor Dize and his decision not to run for reelection; ii) The town manager's evaluation was coming up. He would send out the information for Council's completion within the next couple of days; iii) The Planning Commission had been working on language regarding accessory dwelling units (ADU) and that information would be presented to Council for input at a future meeting; iv) The Harbor Area Review Board met on March 2nd. Elections were held and Stuart Smith was elected as the chair and Diane D'Amico as vice-chair. He thanked Mr. Smith and Ms. D'Amico for stepping up in these positions. He also thanked Benjamin Lewis and Rob Harris for volunteering to serve on the board.

Councilman Follmer commented as follows: i) He received a lot of questions regarding ADUs and expressed his hope that the public would be engaged in the discussion. He thanked Mayor Dize for his long service to the Town. He was sorry to see him go but understood his reasons. He also thanked Mayor Dize for the timing of his announcement to allow the citizens ample time to consider their decision on the next mayor.

Mayor Dize read the announcements, adding that he hoped to see everyone out on March 5 for Cape Charles Day. He encouraged everyone to meet at the beach pavilion at 10:00 a.m. to join the clean-up of the Town. The clean-up would be followed by a picnic in Central Park where Councilman Buchholz would be grilling the hot dogs. Live music would begin at 12:30 p.m. Cape Charles's 136th birthday was on March 1st.

Motion made by Vice Mayor Bennett, seconded by Councilwoman O'Brien, 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 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: Negotiating strategy regarding the potential sale of the water and wastewater utility systems

Mayor Dize asked the members of the public in attendance to leave the room and advised them that they would be invited back into the room at the conclusion of the executive session.

The members of the public and staff in attendance, with the exception of John Hozey, Bob Panek and Libby Hume, left the room.

Council went into executive session at 6:59 p.m.

Libby Hume went outside to notify the members of the public of the end of the closed portion of the meeting. There were no members of the public waiting to return to the meeting.

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

The open portion of the meeting resumed at 7:40 p.m.

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: Bennett, yes; Buchholz, Follmer, yes; Grossman, yes; Holloway, yes; O'Brien, yes.

Motion made by Councilman Buchholz, seconded by Vice Mayor Bennett, to adjourn the Town Council Special Meeting and Executive Session. The motion was approved by unanimous vote.

The Regular Meeting and Executive Session adjourned at 7:41 p.m.

Mayor Dize

Town Clerk

March 3, 2022 Town Council Special Meeting Comments Provided in Writing

Loraine Huchler, Cape Charles Property Owner

Town of Cape Charles – Council Meeting – 3 March 2022
Statement from Loraine Huchler, P.E., CMC®, FIMC

Two weeks ago, we had the first opportunity to hear from the PPEA consultant and Virginia American Water (VAW). The council listened; the town manager had some answers that were not very helpful - like the details for the 10-year operating and capital cost projections if the Town keeps the plant. The answer was – they don't have that kind of specific data. Does the Town really want to rely on unvalidated cost projections for the base case to make a huge financial, town-quality-of-life, and political decision?

At the town hall meeting, the town manager urged patience; that it was still early in the process. But here we are, two weeks later, already entering into negotiations. Did the council investigate the impact of concerns raised by stakeholders? Or has the council already made up their minds that they will proceed with the sale?

Here's the elephant in the room: the annexation agreement that obligates Preserve Communities (formerly Bay Creek) to contribute funds to expand the plants as they build more houses and demand increases. This issue is real; the wastewater plant is already exceeding permitted volumes on some summer weekends. What is the planning commission's projection about that date – and, more importantly, the "drop dead" date – e. g. the time that the town would have to start planning the build out?

The language in the annexation agreement is clear: whoever owns the development must provide funds for the future build out. Will Preserve's liability transfer to the new owner, releasing them from the requirements in the annexation agreement? The town manager said that the funds in the escrow account for plant expansion would not be transferred to VAW. Is this true or is this a negotiable issue? Would VAW discount their offer based on the disposition of these escrowed funds? Does the town have a legal opinion regarding the town's liability with respect to the annexation agreement? How can the Town be confident that VAW won't sue the Town for their escrowed funds and/or for Preserve's liability when the time for the future expansion arrives?

Finally, I want to caution the council about treating the current rate projections as accurate. They're not accurate; they are a projection based on the PPEA consultant's estimates. VAW made no promises – except that rates would decrease after rate consolidation took effect. Rate consolidation spreads the operating and capital costs across all ratepayers. The biggest costs are for infrastructure. Compared to their other service areas, Cape Charles is a stranded utility with the smallest ratepayer base and service area and modern plants that require minimal capital improvements but it's wildly expensive to expand the service area. The other service areas are mostly high-density suburban or rural-suburban that have had rapid population growth and infrastructure expansion.

In the long term, rate consolidation will not keep the rates low in Cape Charles. A review of past rate increases make it likely that Cape Charles – with lower-than-average capital and infrastructure costs - will be subsidizing costs for other systems. A review of the commission that grants rate increases shows staggering increases every several years. Ready: 2008 – 9%; 2010 – 14%; 2011 – 6%; 2015 – 10%; 2018 – 3%; 2021 – 28% increase has been requested but not yet approved. Municipal officials from all of the districts have been protesting these increases – with little or no effect. When we talk about loss of control over rates – this is what it looks like.

Year	District	Rate Request	Rate Approved	Revenue Request	Revenue Approved	Revenue Reduction
2008	All	11.50%	8.80%	\$4,334,072	\$3,317,012	23%
2010	All	22.40%	14.12%	\$6,879,000	\$4,336,598	37%
2011	All	15.90%	6.35%	\$5,723,520	\$2,287,107	60%
2015	All	18.42%	10.14%	\$8,690,000	\$4,781,959	45%
2018	All	10.67%	3.24%	\$5,600,000	\$1,700,000	70%
2021	All	27.60%		\$14,300,000		