



TOWN COUNCIL
Public Hearings & Regular Meeting
October 17, 2024
Cape Charles Civic Center
6:00 PM

1. Call to Order
 - A. Roll Call
 - B. Establish quorum
2. Moment of Silence and Pledge of Allegiance
3. Public Hearing: (3 minutes per speaker)
 - A. [Zoning Map Amendment Application – 711 Tazewell Avenue](#)
 - B. [Real Property Transactions Required to Connect New Wells to the Water Treatment Plant Under the Post-closing and Franchise Agreements with Virginia American Water](#)
4. Close Public Hearing
5. Recognition of Visitors / Presentations / Recognitions
 - A. Recognition of Employee Significant Anniversary
6. Public Comments (3 minutes per speaker for topics not subject to this evening's public hearing)
7. *Consent Agenda
 - A. Approval of Agenda Format
 - B. [Approval of Minutes](#)
 - C. Approval of [July 31, 2024](#) & [August 31, 2024](#) Financial Reports
8. Unfinished Business:
 - A. None
9. New Business:
 - *A. [Zoning Map Amendment Application – 711 Tazewell Avenue](#)
 - *B. [FY 2025 Budget Amendment – Cape Charles Volunteer Fire Company Grant](#)
 - *C. [Real Property Transactions Required to Connect New Wells to the Water Plant](#)
 - *D. [Depository Accounts Bank Change](#)
 - *E. [Reappointment of Planning Commissioners](#)
 - *F. [Reappointment of Board of Zoning Appeals Member](#)
10. Town Manager Comments
11. Mayor & Council Comments (5 minutes per speaker)
12. Announcements
 - October 21, 2024 – Planning Commission & Town Council Joint Public Hearing
 - October 22, 2024 – Cape Charles Rotary Club Candidates Forum
 - October 23, 2024 – Town Council Work Session – Beachfront Master Plan
 - November 5, 2024 – Town offices closed for Election Day
 - November 7, 2024 – Town Council Special Meeting
 - November 9-10, 2024 – Dock Dogs
 - November 11, 2024 – Town offices closed for Veterans' Day
 - November 21, 2024 – Town Council Regular Meeting
13. Adjournment

TOWN OF CAPE CHARLES
Town Council– Public Hearing

The Cape Charles Town Council will hold a public hearing on October 17th, 2024, at 6:00 pm in the Cape Charles Civic Center, 500 Tazewell Avenue, to receive comment on the following application:

- A. A Zoning Map Amendment (ZMA) 2024-01 application from Donna and Gregory Kohler to conditionally rezone 711 Tazewell Avenue/302 Fig Street (aka the Fig Street Inn) (Tax Map #83A4-2-A & 83A4-2-J & 83A4-2-I) from Residential-I to Commercial Residential (CR) with proffers to limit the commercial activity of said proposed rezoning; said property has a current Conditional Use Permit for a Bed & Breakfast.

This application is available for public review on our website at www.capecharles.org, under Agendas & Minutes/Town Council. Please contact the Planning Department at 757- 331-2036, or by email at planner@capecharles.org if you have any questions or require additional information.

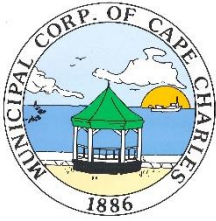
AD PLACED: Eastern Shore Post – Wednesday September 24, 2024
AD TO RUN: Friday September 27, 2024, and Friday October 4, 2024

Town of Cape Charles
Town Council Notice of Public Hearing

The Cape Charles Town Council will hold a public hearing on Thursday, October 17, 2024, at 6:00 PM, at the Civic Center located at 500 Tazewell Avenue, Cape Charles, Virginia, to receive public comments on real property transactions required to connect new wells to the water treatment plant under the post-closing and franchise agreements with Virginia American Water (VAW). Specifically: acceptance of easements from Canonie Atlantic Company and Virginia Port Authority and assignment of same to VAW, granting an easement to VAW, acceptance of fee simple conveyance from Bay Creek Development and conveyance of same to VAW. The Town Council will consider the necessary resolutions and ordinances at their meeting immediately following the Public Hearing. The documentation will be available for public review on our website at www.capecharles.org, under Agendas and Minutes/Town Council by October 11, 2024. You may also contact the Town Clerk, 757-331-3259, X10, or clerk@capecharles.org to obtain a copy of the documentation.

AD PLACED: Eastern Shore Post on Monday, September 30, 2024

AD TO RUN: Friday, October 4, 2024



DRAFT
TOWN COUNCIL
Regular Meeting
Cape Charles Civic Center
September 19, 2024
6:00 PM

At approximately 6:00 p.m. Mayor Adam Charney, having established a quorum, called to order the Regular Meeting of the Cape Charles Town Council. In addition to Mayor Charney, in attendance were Vice Mayor Bennett, Councilmen Buchholz, Butta and Grossman, and Councilwoman Holloway. There was one vacant position on the Council. Also, in attendance were Town Manager John Hozey, Project Manager Bob Panek, Treasurer Marion Sofield, Police Chief Jim Pruitt, Zoning Compliance Officer Jack Steinmayer and Town Clerk Libby Hume. There were 10 members of the public physically in attendance, and 8 viewers on Facebook.

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

RECOGNITION OF VISITORS / PRESENTATIONS/RECOGNITIONS:

A. *Recognition of Employee Significant Anniversary*

Mayor Charney congratulated Police Officer Thomas Potts for celebrating 10 years of service with the Town of Cape Charles on September 22, 2024. The certificate of appreciation was presented to Chief Jim Pruitt.

B. *Cape Charles Main Street Presentation*

Executive Director Karen Zamorski, President Bill Stramm and Board member Gerry Taylor provided a FY 2024 review of activities. (Please see attached.)

PUBLIC COMMENTS: (3 MINUTES PER SPEAKER)

Town Clerk Libby Hume read comments submitted by Ms. Julie Jones. (Please see attached.)

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

CONSENT AGENDA

A. Approval of Agenda Format

B. Approval of Minutes:

- i. June 4, 2024 Planning Commission & Town Council Joint Work Session
- ii. July 18, 2024 Town Council Regular Meeting
- iii. July 25, 2024 Town Council Work Session
- iv. August 6, 2024 Planning Commission & Town Council Joint Work Session
- v. August 8, 2024 Town Council Work Session
- vi. August 15, 2024 Town Council Work Session
- vii. August 15, 2024 Town Council Executive Session
- viii. August 21, 2024 Town Council Executive Session
- ix. August 22, 2024 Planning Commission & Town Council Joint Work Session

C. Approval of June 30, 2024 and July 31, 2024 Financial Reports

Motion made by Councilman Grossman, seconded by Councilman Butta, to pull out the July 31, 2024 Financial Report from the Consent Agenda for discussion. The motion was approved by unanimous vote.

Motion made by Councilman Buchholz, seconded by Councilman Butta, to approve the Consent Agenda as amended. The motion was approved by unanimous vote.

Councilman Grossman stated that four projects were missing under the capital projects in the July financials. He spoke to staff earlier this afternoon and they would be updating the Capital Improvement Project report.

John Hozey stated that in the past, under previous treasurers, we tended to recognize some of the budget revenue at the end of the year, which made it out of sync with the budget numbers. The technique was not wrong but made it difficult to track and match everything up. Staff would work to improve the reporting process.

Motion made by Councilman Grossman, seconded by Councilman Butta, to update the capital plan for the July financials. The motion was approved by unanimous vote.

UNFINISHED BUSINESS:

There was no unfinished business for review.

NEW BUSINESS:

A. *Reappointment of Building Code Board of Appeals Member:*

John Hozey stated that Bruce Brinkley was appointed to the Building Code Board of Appeals in November 2011 and had served continuously on that board. Mr. Brinkley's current term expired on September 10, 2024 and he had expressed his interest in continuing his service on the Board for another term.

Motion made by Vice Mayor Bennett, seconded by Councilman Buchholz, to reappoint Mr. Bruce Brinkley to the Building Code Board of Appeals for another five-year term. The motion was approved by unanimous vote.

B. *Recruitment Firm Contract Award:*

John Hozey stated that on July 8, 2024, the Town issues a Request for Proposals for Recruiting/marketing services, seeking a long-term relationship with a professional recruitment consultant to develop certain marketing materials and offer assistance whenever a vacancy occurred at a department head or higher position. The Town received four good proposals which were considered by the review committee. Two were selected for interview and negotiations. Baker Tilly Advisory Group, LP was selected as the best option due to their qualifications, past work, and familiarity with placements in Virginia. In addition to the broader contract, tonight's action would also include approval of the first engagement to help recruit a new town manager in anticipation of his retirement in May 2025. The cost of this first engagement would be \$26,950 and included an all-inclusive scope with certain guarantees detailed in the contract documents. For continuity, the goal was to have a new town manager on staff before he left. He hoped his replacement would be able to sit in on the budget meetings.

Motion made by Councilman Grossman, seconded by Councilwoman Holloway, to approve the long-term contract and first engagement with Baker Tilly Advisory Group. The motion was approved by unanimous vote.

C. *Cape Charles Volunteer Fire Company Matching Grant Discussion:*

John Hozey stated that on June 21, 2024 a notice was provided to the Cape Charles Volunteer Fire Company (CCVFC) notifying them that the Town was willing to participate in the purchase of a new fire engine to replace their existing 25-year-old apparatus. The Town's participation was contingent on several stipulations, the most significant one being that it be used to leverage additional funding in a dollar-for-dollar match up to \$250K. On September 6, 2024, the CCVFC contacted the Town asking for release from the matching requirement so they could immediately

move forward with the purchase a new truck. Since this request represented a significant departure from the original grant offer, it required Town Council discussion and guidance. Additionally, the grant pledge was originally expected to take several years to achieve so the funds for this grant were not appropriated with the FY 2024 budget. Should Council favor this new approach, an action item would need to be brought back to approve a budget amendment to appropriate the necessary funds.

CCVFC Treasurer Ryan Peake provided some background information regarding this issue. The CCVFC began the process of raising funds for a new truck and were looking at purchasing a truck within two to three years. The manufacturer contacted the CCVFC notifying them of the immediate availability of a new truck since the original purchase had fallen through. The cost of the truck was approximately \$850K, and costs continue to increase year after year. If they waited another two years, they would have to wait an additional two to three years before a truck became available. In 2027, new regulations would be effective for diesel engines and would add approximately \$300K to the cost. Their current truck was 25 years old and needed about \$20K in maintenance, including repairs to the antilock braking system. The CCVFC were in a position to move forward with this purchase, and they could have the new truck in about 60 days. The CCVFC had \$300K cash in reserves but he was uncomfortable writing a check for \$250K leaving only \$50K in reserve. His proposal was to use the \$250K grant from the Town, plus \$100K from the CCVFC reserve, and to finance the remainder of about \$500K for 15 years with a goal to repay the loan within 5 years. They were continuing their fund-raising efforts and looking at a number of grant opportunities. CCVFC was tasked with protecting the people of the Town and those who visited. In 2023, CCVFC responded to 190 calls the entire year. June 2024 was their busiest month with 40 calls. Bay Creek just released an additional 150 sites. The growth within the town had not stopped and the number of visitors grow each year with CCMS's marketing efforts. Purchase of this new truck was the best option to ensure the safety of the residents and visitors. Their current truck is 25 years old with maintenance issues.

Councilwoman Holloway stated that when Council initially had this discussion, she promised to meet with Mr. Peake to discuss grants. They had met several times and CCVFC's motivation is very strong. She saw their effort and was impressed and encouraged the Town's support.

Ryan Peake continued to state that he had met with Northampton County Administrator Charlie Kolakowski regarding funding from the county. The USDA Rural Development had a grant for fire apparatus, but he missed the FY 2025 deadline. The CCVFC was looking to restart their auxiliary again which they have not had since 2015. They were also working on their annual fundraising campaign which would be mailed out soon. This was one of two trucks that needed to be replaced and was the lesser expensive one. The other truck would cost approximately \$1.4M and CCVFC would focus on the Rural Development grant for that one.

There was a general consensus to move forward with the budget amendment to appropriate the \$250K funding for the CCVFC.

Mr. Peake thanked John Hozey and the Town Council adding that he looked forward to working with the Town.

TOWN MANAGER COMMENTS

John Hozey commented as follows:

- i) He stated that he provided Council a copy of the Library Report which showed impressive numbers, and he wanted to brag about our library team. Kudos to the library staff.
- ii) Council vacancy: The clerk contacted the Northampton County Clerk of Court who spoke to the judge regarding our plan to delay the appointment to fill the vacancy until after the election. The court was unwilling to engage with us in unofficial capacity and asked us to go through our

attorney. He spoke to the attorney and the issue was not as simple as he first thought. The Town had 45 days to make an appointment to fill the vacancy. If we did not so do, we would lose the ability to appoint. After 45 days, only the court could make the appointment. He did not think it would be a problem. The attorney already drafted a petition to appoint. Council would have to give approval for the attorney to submit the petition on our behalf. A special meeting was scheduled for November 7th, two days after the election, for Council to recommend appointment of the individual with the highest number of votes to complete the term. They would begin their regular term in January. Our other option would be to do nothing and wait until January, but the court could decide to fill the seat. His suggestion was to allow the original 45 days to expire, then on November 7th, make a motion to file a petition with the court to appoint the individual with the highest number of votes.

- iii) Recruitment efforts for the harbor: The first advertisement was published last week and several good applications were received. He was cautiously optimistic that we would be able to find individuals to fill these positions.
- iv) Several interviews were being scheduled for the assistant to the town manager position. That position was currently vacant so there would not be enough time to organize the Halloween Hootenanny, so this event was being canceled for this year. We would make every effort to bring it back next year.

Councilwoman Holloway asked that a notice be published about this since many people and businesses make plans around this event. Councilman Butta suggested working with CCMS to get the message out.

- v) He recently had a death in his family so would be driving to Philadelphia tonight after the meetings and would be out of the office tomorrow.

MAYOR AND COUNCIL COMMENTS

Councilman Grossman commented as follows:

- i) He asked whether comments were being received for the Beachfront Master Plan.

John Hozey responded that comments were being received and were being compiled by the consultant. There had been reports of people having difficulties with the Virtual Meeting Room (VMR) and comments, but comments could not be submitted unless the individual completed the questions regarding their name, address, standing within the town, etc. The VMR was designed to be viewed from a computer, not a mobile device. A public input session would be scheduled for the first week of October for the consultant to present the results and for Council to obtain feedback from the citizens.

- ii) Cape Charles Groundwater Permit: This was no longer the Town's concern, but he was very surprised to hear that the submittal from Virginia America Water (VAW) was not accepted. After the Keck Wells were connected, it would be monitored for two years and VAW would be allowed to apply for a modification.

There was some discussion about this item as follows: a) John Hozey stated that once the Keck wells were brought online everything should be fine. When the Virginia Dept. of Health (VDH) instituted daily limits, we started having problems, especially around July 4th; b) Bob Panek explained that VDH instituted the daily limits due to the capacity of the plant. When the Keck wells were brought online, the capacity increases and VDH will increase the daily withdraw levels.

Vice Mayor Bennett thanked John Hozey for providing the library statistics. In reviewing the weekly reports, it seemed that the library numbers had gone up, but this report proved it. It was great to see the increase in the number of users at the library.

Councilwoman Holloway commented as follows: i) She sent out the Economic Impact Study to everyone today. Eastern Shore as a total was very impressive and she thanked the efforts of the Eastern Shore of Virginia Tourism Commission; ii) She thanked the public works crew for their help with the potluck this year before the last concert of the season. There was a series of events with the wind blowing everything, and Ralph Bowen and his team came through and helped. There were 140 RSVPs and they ended up feeding around 250. They ran out of hot dogs and were down to the wire on burgers. It was a wonderful group and a great way to end the concert season.

Councilman Buchholz stated that there was a great turnout for the Cape Charles Historic District's Candidate Forum. The Cape Charles Rotary Club's Candidate Forum would be on October 22nd.

Mayor Charney read the announcements, adding that Dock Dogs would be back on November 9th and 10th.

Mayor Charney announced that the Dock Dogs event would be back on November 8 through 10 and was planned to be a bigger event than last year's with the addition of vendors and food trucks. Stay tuned for more information.

Motion made by Councilman Grossman, seconded by Vice Mayor Bennett, to adjourn the Town Council Regular Meeting. The motion was approved by unanimous vote.

The Regular Meeting adjourned at 7:17 p.m.

Mayor Charney

Town Clerk

**September 19, 2024 Town Council Regular Meeting
Comments and Information Provided in Writing**

Cape Charles Main Street Presentation



Meet the Team – Staff



Karen Zamorski
Executive
Director



Emily Martinez
Marketing
Administrator



Our Board of Directors



Bill Stramm
President



Patsy Harris
Vice President



John Hozey
Board Member
at Large



Jay Abella
Co-Chair
Economic Vitality



Ken Butta
Co-Chair
Economic Vitality



Lenore DeBellis
Co-Chair Design



David Gammino
Co-Chair Design



Tara Ashworth
Co-Chair
Promotions



Julie Crouse
Co-Chair
Promotions



Gerry Taylor
Co-Chair
Organization



Nancy Perry
Co-Chair
Organization

What Cape Charles Main Street has delivered In FY2024(July 1, 2023 to June 30,2024)

BUSINESS/TOWN Mkt. SUPPORT - \$101,641 GRANT SUPPORT: \$443,197*

- FY2024-25 Applied for and received grants totaling: **\$438,197* (+\$5K Arrivalist grant)**
- Architectural work for the new Welcome center: **\$32,334**
- Placeholder Software 1 year **\$2500**
- Launched **Giving Tuesday** campaign raising **\$7725** for new Beach Wheelchairs*
- Held Monthly Main Street Connect meetings for businesses **\$1360**
- Developed New Business Brochure **\$165**
- Held annual job fair **\$925**
- Continued to update and build on the CCVC website with CCMS Microsite and social media pages **\$4260**
- Distribution of 42,000 maps: **\$1380**
- Lightbox in Welcome Center at CBBT: **\$850**
- Buy Local Campaign on WESR Radio **\$350**
- Marketed Cape Charles through various print/Digital/Social campaigns **\$35,542**
- Love Sign Maintenance: **\$123**
- Cape Charles Gift Card Program***\$14,127**

* Details in attachment A, more info in presentation

BEAUTIFICATION/SPONSORED PROJECTS - \$129,880

- Beautification projects (benches, planters, beds flowers, picnic tables in the plaza, permanent tree lighting - **\$50,606**
- Train Project: Repair & Maintenance, window paintings **\$79,274**

EVENTS - \$53,057

Includes Marketing Costs Spent on Events

- Cape Charles Main Street Annual Meeting - Heart & Soul in a Bowl **\$1,401**
- LOVEFEST in the Park - **\$5,416**
- Festive Fridays - **\$22,041**
- Love Run - **\$24,199**

Grants Closed in FY2024 and Carryover to FY2025

Grants Closed out in FY2024 \$ 169,713.75

Grants Received in FY2024 that

Cross over into FY2025 (To Date) \$ 273,483.13

Total Grants Currently working \$ 443,196.88

Details on Key Grants in presentation under "What's Next"

Details on all grants in appendix

Key Grant Update



Train – Painting \$22,000 (Northampton County)



Strawberry St. Plaza- \$75,000 (DHCD Grant)

Gateway Beautification - \$16,250 (Northampton County)

Beach Bathroom - \$25,000 (Northampton County)

Marketing Cape Charles - \$20,000 (Virginia Tourism DMO Grant)



Entrance to Cape Charles & Beach Bathroom

1. CCMS to head up project for the beautification of the entrance to Cape Charles from Route 13 to Fig Street

- County, Canowie, Town met to discuss and understand what the goals/process should be for the project
 - CCMS applied for and received a Northampton County grant to complete Phase 1 of the project to complete site research and phased approach
2. CCMS is using a \$25,000 grant to fix up the current beach bathroom with new roof, paint, fixtures, tile and outdoor shower

Beach Wheel Chair Campaign



Giving Tuesday
Beach Wheelchair
Campaign

Raised \$7725 to
purchase 2 new
chairs and update
current chair

Thank You Volunteers!



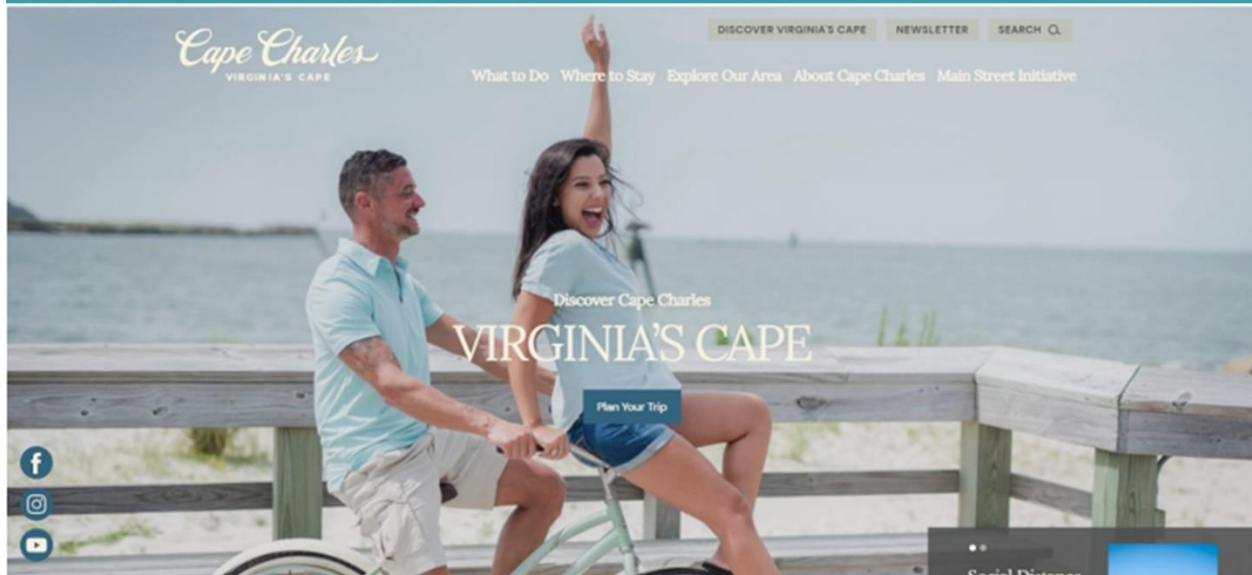
Our Volunteers ROCK!

Volunteer Hours FY24:
6,734 hrs. = \$190,955

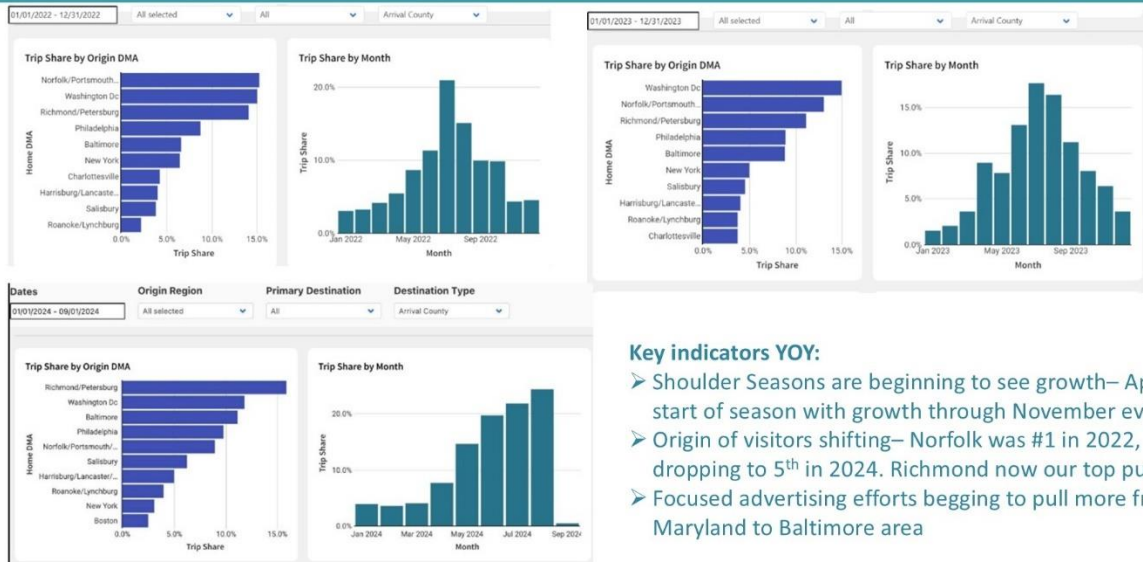
Total Volunteer Hours to Date for CCMS:
14,237 hrs. = \$403,761



Marketing Cape Charles



Marketing Cape Charles – Research



Key indicators YOY:

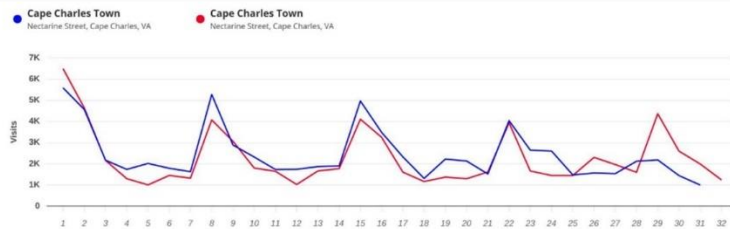
- Shoulder Seasons are beginning to see growth– April start of season with growth through November evident
- Origin of visitors shifting– Norfolk was #1 in 2022, dropping to 5th in 2024. Richmond now our top pull.
- Focused advertising efforts begging to pull more from Maryland to Baltimore area

Marketing Cape Charles - Research

PLACER FESTIVE FRIDAYS

Festive Fridays Overview

Visits Trend



Daily | Visits

Cape Charles Town - Nov 25th, 2022 - Dec 25th, 2022

Cape Charles Town - Nov 24th, 2023 - Dec 25th, 2023

We are taking the month that Festive Fridays starts (11/24/22 through 12/25/22)

We are taking the month that Festive Fridays starts (11/25/23 through 12/25/23)

Placer.ai

Example of How
CCMS Events help
Build Shoulder
Seasons

Marketing Cape Charles



Who is Cape Charles Main Street?

As a community, we are proud to be a part of the Cape Charles Main Street. It is a place where we can all come together and enjoy the beauty of our town. We are proud to be a part of the Cape Charles Main Street and we are proud to be a part of the Cape Charles Main Street.



Cape Charles, Virginia

Whether you're looking for a quiet retreat or a place to enjoy the outdoors, Cape Charles is the perfect place for you. We have a variety of homes and properties for sale, and we are proud to be a part of the Cape Charles Main Street.

Best Places to Live on the Coast 2024

Whether you're looking for a quiet retreat or a place to enjoy the outdoors, Cape Charles is the perfect place for you. We have a variety of homes and properties for sale, and we are proud to be a part of the Cape Charles Main Street.



Time To Getaway

Whether you're looking for a quiet retreat or a place to enjoy the outdoors, Cape Charles is the perfect place for you. We have a variety of homes and properties for sale, and we are proud to be a part of the Cape Charles Main Street.



7 Serene Towns In Chesapeake Bay For A Weekend Retreat

Using the weekend to relax and get right is just what most people love to do. One of the best ways to spend these few days is by heading to the Chesapeake Bay. Maryland is home to multiple serene towns in this region. See Eastern. The Talbot County Historical Center is the

Hunting for Holiday Magic This Season? Cape Charles Should Be at the Top of Your List!



Other words, this isn't a town to visit in the North Pole to find pure holiday magic. It's the town of Cape Charles. It's a town that is full of holiday magic and it's a town that is full of holiday magic. It's a town that is full of holiday magic and it's a town that is full of holiday magic.

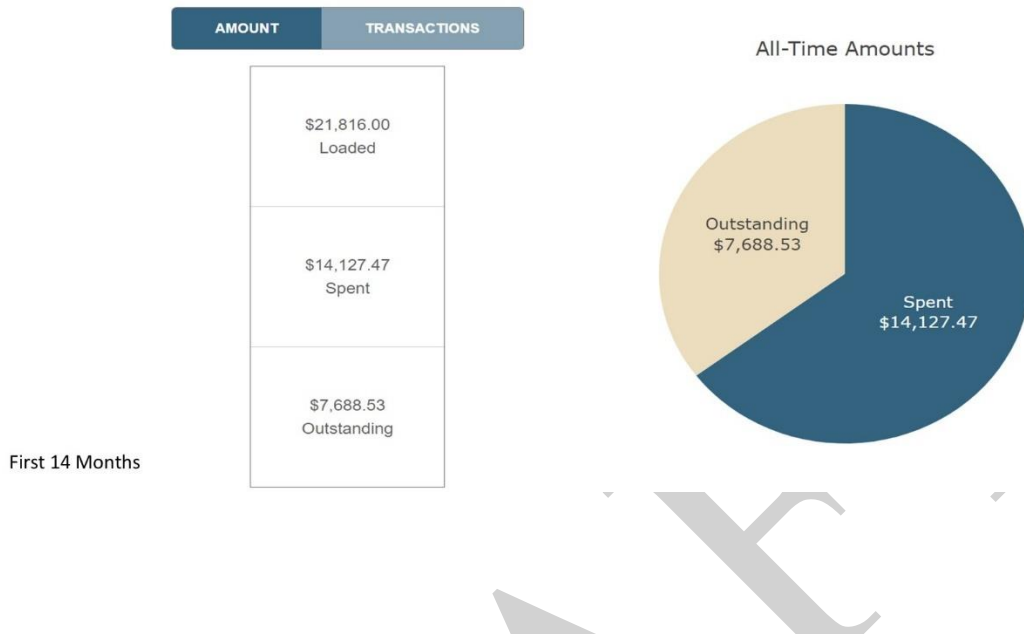


Cape Charles

Whether you're looking for a quiet retreat or a place to enjoy the outdoors, Cape Charles is the perfect place for you. We have a variety of homes and properties for sale, and we are proud to be a part of the Cape Charles Main Street.

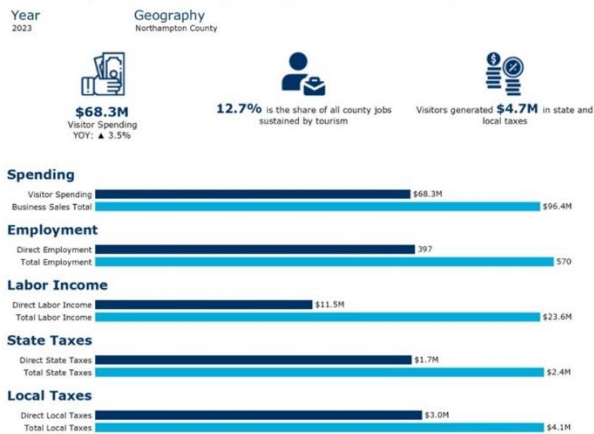
Cape Charles Gift Card Program

A Gift Card that works in 30 of our Businesses



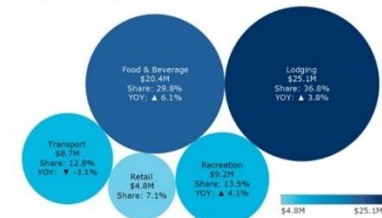
Northampton County Economic Impact

Northampton County - Spending and Economic Impact



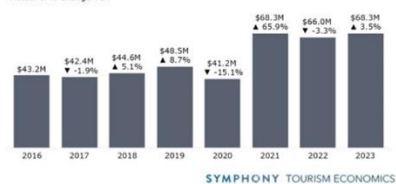
Visitor Spending by Category in 2023

Actual, share & % change YOY



Visitor Spending

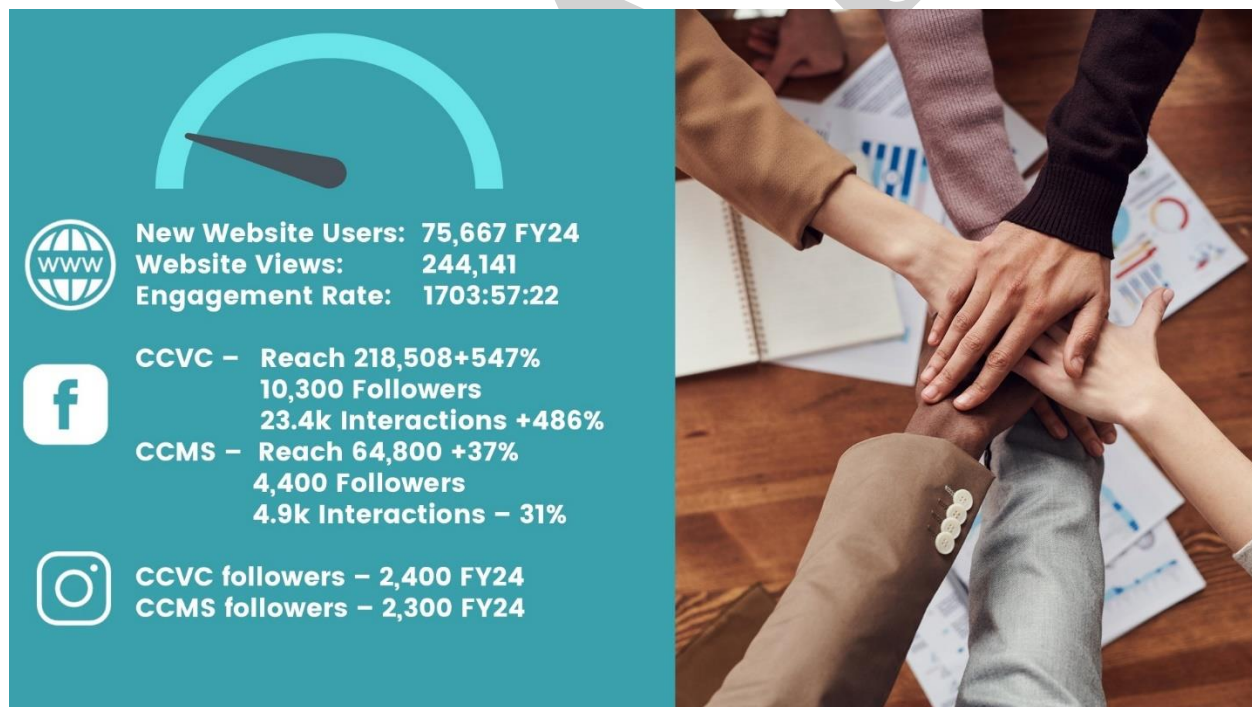
Actual & % change YOY



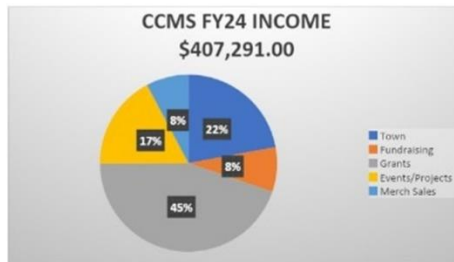
FY2021-FY2024

Meals & TOT Tax Comparison

	FY2021	FY2022	FY2023	FY2024
TOT	\$240,217	\$343,450	\$536,209	\$639,825
		+43%	1,456%	19%
Meals	\$514,720	\$650,619	\$755,764	\$792,839
		+26%	16%	5%



CCMS Financials FY24



- Town - \$90,000.00
- Fundraising - \$32,965.00
- Grants - \$182,249.00
- Events/Projects - \$70,383.00
- Merch Sales - \$31,694.00



- Payroll - \$98,305.00
- Events/Projects - \$237,507.00
- Marketing - \$42,302.00
- Admin - \$50,500.00
- Merchandise - \$29,525.00

**WHAT'S
NEXT?**

- Heart & Soul Soup Night 11/19/24
- Festive Fridays 2024 (Nov. 29, Dec. 6, 13, & 20th)
- Love the Locals February, 2025 TBD
- Love Run 5k/10k , April 26, 2025
- Opening Party for Strawberry Street Plaza
- New Visitor Center, Bathrooms, Offices TBD – Holding \$67,666 in grant funds

SUMMARY & ROI

BENEFITS DELIVERED	AMOUNT
Town of Cape Charles Investment	\$ 90,000.00
- Marketing Person	
- Website Management	
- Social Media Management for Fb & Instagram	
- Grant Writing & Management	
- Event Management	
- Fundraising	
- Design/Beautification Projects	
Amount Returned (Calculated on income minus Town investment only)*	\$ 317,291.00
Investment Gained	\$ 227,291.00
ROI on Investment in CCMS FY2024	252.55%
Plus Grants carrying over into FY25	\$ 273,483.13

*Does not include cost of salaries of additional personnel



Thank You All!

Julie Jones, property owner

From: Julie Jones

Sent: Thursday, September 19, 2024 2:04 PM

To: Libby Hume

Subject: please read during public comments tonight; have also attached, in case that might be easier to read....thanks, Libby!

Good evening council members, Mr. Mayor, and Town Manager Hozey,

My name is Julie Jones, and I live at 538 Monroe Avenue.

Last year, my husband, Sam, and I began volunteering with an after-school Good News Club at Kiptopeke Elementary School. Over the course of last year, we truly enjoyed meeting and working with the children in the club, and getting to know some of the Kiptopeke staff.

We are looking forward to resuming the Good News Club in October.

Recently, I heard some very troubling information, from someone associated with the school, that there are children who live in places without electricity.

I also heard that there are children who live in a trailer with 15 other people.

And one of the little girls in Good News club last year lived with her family at the Peacock Motel on Route 13. When you drive by the Peacock motel, there is a little blue plastic “kiddie pool” in front.

There are hundreds of houses in Cape Charles that are sitting dark and empty now, until the tourists come back in May. These houses all are running electricity to maintain air conditioning and heat, even though they are empty.

There is a little house in our block, which, 3 years ago, rented for \$400 per month, which is absolutely in the range for affordable workforce housing. Last fall, it sold for \$334,000. A lot of work was done on it, and it became a short-term rental last spring and summer. It is now on the market for just under \$700,000, for a house that is just over 1,000 square feet.

There is an 8-bedroom duplex also in our block, which sold for about \$450,000 three years ago. A lot of work was done on it, and it became a short-term rental. Now it is on the market for nearly \$1,400,000.

These are examples of gentrification on steroids, and there are many, many more examples of this in Town.

These homes were purchased at a price that could have had minimal work done, to improve and update, so that they could have been used as long-term rentals, as they were previously, but if someone is purchasing an old house here, with the intention of making it a short-term rental, then just making it livable is not enough to compete with other existing STRs.

So a lot of money is spent, and when the number of rentals doesn’t materialize, those houses go on the market at greatly inflated prices, and probably are no longer a house that a family might purchase to live in, or even rent out long term, at a reasonable rate for affordable housing.

Unless you have a personal connection to the Northampton County public schools, there is no way for you to know how dire the living conditions are for families with school age children. It was only recently that I became aware of this.

Until 2019, there were no short-term rentals in our block. Since then, about half of the homes have been converted from long-term rentals or single-family homes to short-term vacation rentals.

The Northampton County school bus used to come down our street, because there were kids who attended the public schools.

Now, the only children are those associated with the vacation rentals, and our neighbors’ grandchildren when they come to visit.

Our beautiful little town has a wonderful playground and park, and a beautiful beach. The children who lived at Sea Breeze used to play there, as well as the children and grandchildren of our neighbors.

In the summer, there are children everywhere, but from now until May, where are the children?

There are still homes in Cape Charles that have not yet been gentrified and which, with basic repairs, could become affordable housing, probably as long-term rentals. But in order for that to be an option, there would have to be a cap or limit on short-term rentals, (end of the 3-minute period)



DRAFT
TOWN COUNCIL
Executive Session
Cape Charles Civic Center
September 19, 2024
Immediately Following the Work Session

At 7:24 p.m. Mayor Adam Charney, having established a quorum, called to order the Executive Session of the Cape Charles Town Council. In addition to Mayor Charney, in attendance were Vice Mayor Bennett, Councilmen Buchholz, Butta and Grossman, and Councilwoman Holloway. There was one vacancy on the Council. Also, in attendance were Town Manager John Hozey, Project Manager Bob Panek and Treasurer Marion Sofield.

Motion made by Councilman Buchholz, seconded by Vice Mayor Bennett, and unanimously approved to go into Executive Session in accordance with Section 2.2-3711.A of the Code of Virginia 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: Discussion of Possible Sale and/or Purchase of Real Property and Receiving Town Council Guidance on Negotiating Terms

There were no members of the public in attendance.

Council went into executive session at 7:25 p.m.

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

The open portion of the meeting resumed at 8:04 p.m. There were no members of the public waiting to return to the meeting.

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, yes; Butta, yes; Grossman, yes; Holloway, yes.

Motion made by Councilman Butta, seconded by Councilman Grossman, to adjourn the Town Council Executive Session. The motion was approved by unanimous vote.

The Executive Session adjourned at 8:05 p.m.

Mayor Charney

Town Clerk

July 2024 Treasurer's Report

Page 1 – Cash Position

- A check run in the amount of \$304,700 was processed on July 31st. Prior to mailing the checks, funds were transferred to cover the amount paid, but due to the timing, our general operating account shows a “false” negative balance.
- The facility fee reserve cash balance as of 7-31-24 is \$3,819,313.
- A payment in the amount of \$11,882 was made to Vanasse Hangen Brustlin for consulting services regarding the beachfront master planning effort. Although the payment was recorded as a June expenditure because of our accounting method, it was actually made in July and affected July cash balances.

Page 2 – Revenues vs. Expenditures

- The town paid its first quarter general liability, property and workers' compensation insurance premium in the amount of \$30,325. This \$12,600 decrease from last year is due to the decreased risk and liability since the sale of the utilities (water and wastewater).
- The Public Works Department purchased three vehicles and additional equipment for a total cost of \$223,964, as budgeted.
- The final payment on one of our USDA loans was made in the amount of \$5,146. This loan originated from the 2019 purchase of a police vehicle. Two USDA loans for police vehicles remain.

MUNICIPAL CORPORATION OF CAPE CHARLES

TREASURER'S REPORT

July 31, 2024

REVENUE VS. EXPENDITURES

<u>FUND</u>	<u>CURRENT MONTH</u>	<u>CURRENT YEAR-TO-DATE</u>	<u>ANNUAL BUDGET</u>	<u>% REALIZED/ EXPENDED FY25</u>
GENERAL Fund				
REVENUE	\$256,486	\$5,291,738	\$6,029,809	87.76%
EXPENDITURES	\$296,647	\$4,501,247	\$6,029,809	74.65%
NET	(\$40,161)	\$790,491	\$0	
GENERAL Capital Fund				
REVENUE	\$6,616	\$492,187	\$2,222,536	22.15%
EXPENDITURES	\$7,254	\$922,833	\$2,222,536	41.52%
NET	(\$638)	(\$430,646)	\$0	
GENERAL Debt Service Fund				
REVENUE	\$19,234	\$846,905	\$255,223	331.83%
EXPENDITURES	\$19,234	\$1,188,507	\$255,223	465.67%
NET	\$0	(\$341,601)	\$0	
GENERAL Special Activities Fund				
REVENUE	\$0	\$71,970	\$296,350	24.29%
EXPENDITURES	\$60	\$105,369	\$296,350	35.56%
NET	(\$60)	(\$33,399)	\$0	

MUNICIPAL CORPORATION OF CAPE CHARLES

TREASURER'S REPORT

July 31, 2024

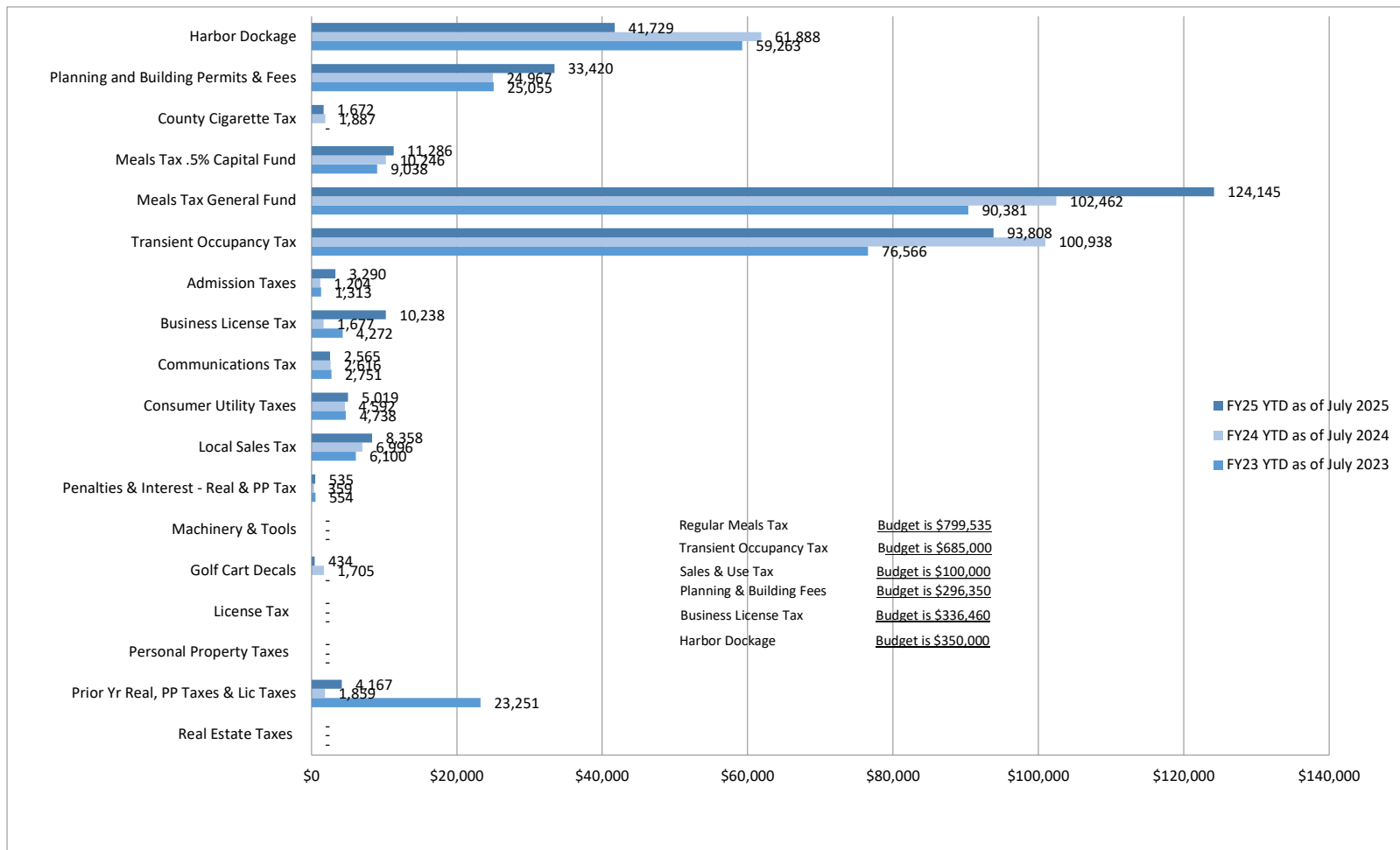
REVENUE VS. EXPENDITURES

<u>FUND</u>	<u>CURRENT MONTH</u>	<u>CURRENT YEAR-TO-DATE</u>	<u>ANNUAL BUDGET</u>	<u>% REALIZED/ EXPENDED FY25</u>
PUBLIC UTILITIES Fund				
REVENUE - Operating	\$187,041	\$1,853,584	\$2,098,108	88.35%
EXPENDITURES - Operating	\$32,285	\$666,479	\$1,986,317	33.55%
NET	\$154,756	\$1,187,106	\$111,791	
REVENUE - CAPITAL GRANTS, LOANS, FUND BALANCE	\$0	\$0	\$1,994,807	
REVENUE - FACILITY FEES	\$60,744	\$452,391	\$466,400	97.00%
EXPENDED - FACIL FEES, CAPITAL PROJECTS,DEBT SVC	\$70,037	\$1,311,155	\$2,572,998	50.96%
TOWN CONTRIB. & PENDING GRANTS	(\$9,293)	(\$858,764)	(\$111,791)	
HARBOR Fund				
REVENUE - Operating	\$6,892	\$560,655	\$864,018	64.89%
EXPENDITURES - Operating	\$23,573	\$528,585	\$865,870	61.05%
NET	(\$16,680)	\$32,070	(\$1,852)	
REVENUE - GRANTS & LOANS	\$97,680	\$208,637	\$228,687	91.23%
TRANSFERRED FM GEN FUND FOR DEBT SERVICE OR HARBOR FUND BALANCE	\$0	\$101,604	\$534,279	19.02%
EXPENDED - Capital Projects, Debt Svc	\$96,331	\$728,763	\$761,114	95.75%
TOWN CONTRIB. & PENDING GRANTS	\$1,349	(\$418,522)	\$1,852	
SANITATION Fund				
REVENUE	\$28,161	\$250,578	\$314,265	79.73%
EXPENDITURES	\$52,317	\$245,707	\$314,265	78.18%
NET	(\$24,155)	\$4,871	\$0	

MUNICIPAL CORPORATION OF CAPE CHARLES
TREASURER'S REPORT
July 31, 2024

REVENUE VS. EXPENDITURES

FUND	CURRENT MONTH	CURRENT YEAR-TO-DATE	ANNUAL BUDGET	% REALIZED/ EXPENDED FY25
GENERAL Fund				
REVENUE	\$430,387	\$430,387	\$5,124,101	8.40%
EXPENDITURES	\$644,648	\$644,648	\$5,124,101	12.58%
NET	(\$214,261)	(\$214,261)	\$0	
GENERAL Capital Fund				
REVENUE	\$11,286	\$11,286	\$10,790,806	0.10%
EXPENDITURES	\$0	\$0	\$10,790,806	0.00%
NET	\$11,286	\$11,286	\$0	
GENERAL Debt Service Fund				
REVENUE	\$0	\$0	\$25,121	0.00%
EXPENDITURES	\$5,146	\$5,146	\$25,121	20.48%
NET	(\$5,146)	(\$5,146)	\$0	
GENERAL Special Activities Fund				
REVENUE	\$435	\$435	\$25,500	1.71%
EXPENDITURES	\$1,590	\$1,590	\$25,500	6.24%
NET	(\$1,155)	(\$1,155)	\$0	
PUBLIC UTILITIES Fund				
REVENUE	\$19,215	\$19,215	\$9,576,514	0.20%
EXPENDITURES	\$3,561	\$3,561	\$9,576,514	0.04%
NET	\$15,654	\$15,654	\$0	
HARBOR Fund				
REVENUE	\$125,200	\$125,200	\$1,162,576	10.77%
EXPENDITURES	\$120,437	\$120,437	\$1,162,576	10.36%
NET	\$4,762	\$4,762	\$0	
SANITATION Fund				
REVENUE	\$28,741	\$28,741	\$345,884	8.31%
EXPENDITURES	\$27,400	\$27,400	\$345,884	7.92%
NET	\$1,341	\$1,341	\$0	



August 2024 Treasurer's Report

Page 1 – Cash Position

- The facility fee reserve cash balance as of 8-31-24 is \$3,836,861.09; interest closely tracks the Federal Reserve's funds rate.
- We have drawn down the remaining balance of our US Bank account by \$259,703. This money was reserved under a loan covenant, secured by our utility structure, which was sold. The cash was transferred to our Atlantic Union Operating Account during August.
- Future Treasurer's Reports will NOT include the following bank accounts, due to closure of these outdated, \$0.00 balance, accounts:
 - 1) US Bank - Reserved per VRA Interest Free Loan Requirements
 - 2) ComputerShare 2010 Debt Service pass through account #300
 - 3) ComputerShare 2010 Debt Service pass through account #308
 - 4) Atlantic Union Money Market # ARPA CRF #5847

Page 2 – Revenues vs. Expenditures

- Regarding our VA DOT Phase III Trail Grant, a \$90,732.52 payment was received and is reflected in the current month within this report, however it will ultimately be allocated to FY'24 due to our modified accrual accounting method.
- The public utilities fund shows monthly expenses of \$18,478. This total is comprised of several small expenses (i.e.: electric bills that are still being received by the Town). Most of these expenses will be reimbursed by VA American Water in subsequent months.

MUNICIPAL CORPORATION OF CAPE CHARLES
TREASURER'S REPORT
August 31, 2024

<u>Cash on Hand</u>	<u>7/31/2024</u>	<u>8/31/2024</u>	<u>Increase/ (Decrease)</u>
Atlantic Union Bank Checking Account	-\$107,885	\$332,221	\$440,107
Atlantic Union Bank Money Market Account	\$708,968	\$699,827	-\$9,141
LGIP Account 1 - 0565 - Unrestricted	\$115,280	\$115,808	\$529
LGIP Account 2 - 0195 - Unrestricted	\$336,296	\$337,977	\$1,681
Virginia Investment Pool Liquidity Unassigned - 5003	\$12,106,851	\$12,162,477	\$55,626
Virginia Investment Pool 1-3 Year Unassigned 0001	\$1,063,536	\$1,073,966	\$10,430
Total Cash On Hand	\$14,223,045	\$14,722,276	\$499,232

<u>Restricted and Reserved Cash Balances</u>	<u>7/31/2024</u>	<u>8/31/2024</u>	<u>Increase/ (Decrease)</u>
Atlantic Union Bank Checking Account - Police Funds	\$431	\$431	\$0
LGIP Account 2 - Restricted for USDA loan covenant	\$30,120	\$30,120	\$0
Atlantic Union Checking Account Library CD converted to cash	\$11,131	\$11,131	\$0
Atlantic Union Bank Checking Account - E-Summons Revenue Rsrvd	\$14,868	\$15,029	\$161
US Bank - Reserved per VRA Interest Free Loan Requirements	\$259,703	\$0	-\$259,703
ComputerShare 2010 Debt Service pass through account #300	\$0	\$0	\$0
ComputerShare 2010 Debt Service pass through account #308	\$0	\$0	\$0
Atlantic Union Money Market # ARPA CRF #5847	\$0	\$0	\$0
Virginia Investment Pool Liquidity Acct#1 Facility Fees Rsrvd (Utilities)	\$3,819,313	\$3,836,861	\$17,548
Total Cash Held in Reserve	\$4,135,566	\$3,893,572	-\$241,994
Total Cash - All Accounts	\$18,358,611	\$18,615,848	\$257,237

MUNICIPAL CORPORATION OF CAPE CHARLES
TREASURER'S REPORT
August 31, 2024

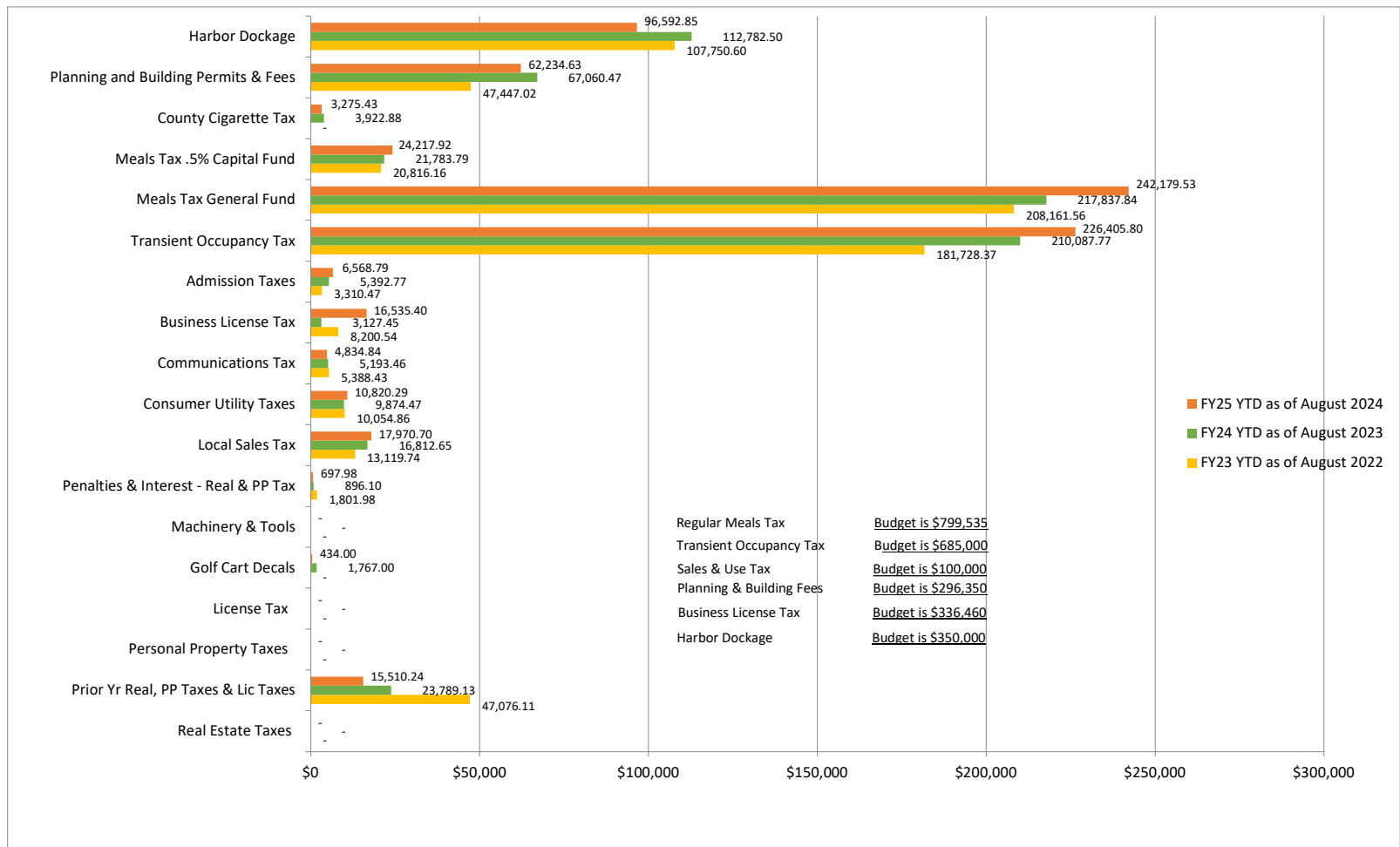
REVENUE VS. EXPENDITURES

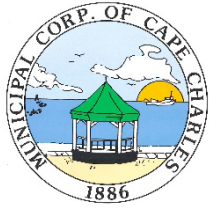
FUND	CURRENT MONTH	CURRENT YEAR-TO-DATE	ANNUAL BUDGET	% REALIZED/ EXPENDED FY25
GENERAL Fund				
REVENUE	\$473,346	\$903,732	\$5,124,101	17.64%
EXPENDITURES	\$341,830	\$986,478	\$5,124,101	19.25%
NET	\$131,516	(\$82,745)	\$0	
GENERAL Capital Fund				
REVENUE	\$103,665	\$114,950	\$10,790,806	1.07%
EXPENDITURES	\$2,895	\$2,895	\$10,790,806	0.03%
NET	\$100,770	\$112,055	\$0	
GENERAL Debt Service Fund				
REVENUE	\$0	\$0	\$25,121	0.00%
EXPENDITURES	\$0	\$5,146	\$25,121	20.48%
NET	\$0	(\$5,146)	\$0	
GENERAL Special Activities Fund				
REVENUE	\$0	\$435	\$25,500	1.71%
EXPENDITURES	\$60	\$1,650	\$25,500	6.47%
NET	(\$60)	(\$1,215)	\$0	
PUBLIC UTILITIES Fund				
REVENUE	\$18,412	\$37,627	\$9,576,514	0.39%
EXPENDITURES	\$18,478	\$22,039	\$9,576,514	0.23%
NET	(\$66)	\$15,588	\$0	
HARBOR Fund				
REVENUE	\$140,279	\$265,479	\$1,162,576	22.84%
EXPENDITURES	\$125,906	\$246,343	\$1,162,576	21.19%
NET	\$14,373	\$19,136	\$0	
SANITATION Fund				
REVENUE	\$29,044	\$57,784	\$345,884	16.71%
EXPENDITURES	\$26,667	\$54,067	\$345,884	15.63%
NET	\$2,377	\$3,717	\$0	

FY 25 Capital Improvement Project Tracking Report

As of:
8/31/2024

	<u>FY25 Status or Start Date</u>	<u>% of Current Year Budget</u>	<u>FY25 Budgeted</u>	<u>QTR 1 Expended</u>	<u>QTR 2 Expended</u>	<u>QTR 3 Expended</u>	<u>QTR 4 Expended</u>	<u>FY25 YTD Expended</u>	<u>(Over)/Under Budget</u>
General Capital Fund									
Multi-Use Trails, Phase 3 Construction	<u>Undetermined</u>		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	-
Municipal Space Replacement	<u>In Process</u>	0%	\$ 3,250,000	\$ -	\$ -	\$ -	\$ -	\$ -	3,250,000
Welcome Center Design & Construction	<u>In Process</u>	0%	\$ 750,000	\$ -	\$ -	\$ -	\$ -	\$ -	750,000
Library Upgrade & Condoization	<u>In Process</u>	1%	\$ 250,000	\$ 2,895	\$ -	\$ -	\$ -	2,895	\$ 247,105
Beachfront Revitalization	<u>Pending</u>	0%	\$ 45,000	\$ -	\$ -	\$ -	\$ -	\$ -	45,000
Beach Restroom/Bathhouse	<u>Pending</u>	0%	\$ 45,000	\$ -	\$ -	\$ -	\$ -	\$ -	45,000
Sidewalk Infill	<u>Pending</u>	0%	\$ 50,000	\$ -	\$ -	\$ -	\$ -	\$ -	50,000
Mason Ave. Electrical	<u>Pending</u>	0%	\$ 40,000	\$ -	\$ -	\$ -	\$ -	\$ -	40,000
Subtotal			\$ 4,430,000.00	\$ 2,895	\$ -	\$ -	\$ -	2,895	\$ 4,427,105
Harbor Fund									
Inner Harbor Bulkhead Rehab, Phase 3	<u>Pending</u>	0%	\$ 221,537	\$ -	\$ -	\$ -	\$ -	\$ -	221,537
Fixed Dock Rehab	<u>Pending</u>	6%	\$ 20,000	\$ 1,287	\$ -	\$ -	\$ -	1,287	\$ 18,713
Replace Boardwalk With Concrete	<u>Pending</u>	0%	\$ 43,000	\$ -	\$ -	\$ -	\$ -	\$ -	43,000
Subtotal			\$ 284,537	\$ 1,287	\$ -	\$ -	\$ -	1,287	\$ 283,250
TOTAL			\$ 4,714,537	\$ 4,182	\$ -	\$ -	\$ -	4,182	\$ 4,710,355





**TOWN OF
CAPE CHARLES**

AGENDA TITLE: Zoning Map Amendment Application – 711 Tazewell Avenue

AGENDA DATE
October 17, 2024

SUBJECT/PROPOSAL/REQUEST: ZMA 2024-01: 711 Tazewell Avenue/302 Fig Street (aka Fig Street Inn) – Conditionally Rezone from Residential -1 (R-1) to Commercial Residential (CR)

ITEM NUMBER:
3A & 9A

ATTACHMENTS: (1) TC 10-17-2024 Legal Ad for Public Hearing; (2) 711 Tazewell Avenue Application for ZMA with Proffers; (3) Site Plan; (4) Addendum ZMA 2024-01; (5) Staff Report from PC Public Hearing on 2024-08-06; (6) Staff Report from PC Meeting on 2024-09-03

FOR COUNCIL:
Action (X)
Information ()

STAFF CONTACT (s): Katie H. Nunez, Planning Director & Zoning Administrator

REVIEWED BY:
John Hozey, Town Manager

The Town Council is requested to hold a public hearing on Zoning Map Amendment (ZMA) 2024-01 application from Donna and Gregory Onley to conditionally rezone 711 Tazewell Avenue/302 Fig Street (aka the Fig Street Inn) (Tax Map #83A4-2-A & 83A4-2-J & 83A4-2-I) from Residential-1 to Commercial Residential (CR) with proffers to limit the commercial activity of said proposed rezoning; said property has a current Conditional Use Permit for a Bed & Breakfast.

A public hearing was held by the Planning Commission on August 6, 2024 on a conditional rezoning application submitted by Donna and Greg Kohler for their business identified as the Fig Street Inn at 711 Tazewell Avenue/302 Fig Street (Tax Map #83A4-2-A & 83A4-2-J & 83A4-2-I). Due to discussions and comments raised at the public hearing on the conditional rezoning with proffers, the applicants submitted a revised proffer statement and explanation document to the Planning Commission which was discussed at their September 3, 2024 meeting where the Planning Commission voted on their recommendation to Town Council on this application.



BACKGROUND:

On February 11, 2010, Town Council approved a Conditional Use Permit to operate a Bed & Breakfast to the Fig Street Inn at this address; said approval indicated it was for a total of 6 room (5 bedrooms in the main house and 1 bedroom in the accessory building).

The Cape Charles Zoning Ordinance Section 3.2 (Single Family Residential District R-1), Item # C (3) allows, through conditional use permit, the following:

3. Bed and breakfasts and tourist homes, provided the following requirements are met:
 - a. The owner and family must occupy the residence. The owner and his/her appointed agent are responsible for supervising guests.
 - b. The single-family dwelling appearance must be maintained.
 - c. Parking should be considered on a case-by-case basis as part of the conditional use application, ensuring adherence to Section 4.5.1 (Table of Parking Standards) using both on and off-street parking areas.
 - d. A sign no larger than four square feet shall be permitted.
 - e. The number of rooms shall be subject to recommendation by the Planning Commission and approved by the Town Council.

This was the requirement at the time when this property received their Conditional Use Permit.

CONDITONAL REZONING APPLICATION REQUEST

The applicant is seeking to rezone their three parcels from Residential-1 to Commercial Residential (CR) with the following original proffer condition: To eliminate the following five by-right uses allowed in the CR District – Athletic Club; Camera Shop; Newsstand; Tobacco Store; Video Store. The applicant is seeking to expand their business offerings on the property to enhance the visitor experience for their customers at the Bed & Breakfast. They would like to offer a bicycle rental business which would be available to their clientele as well as the general public; said bicycle rental business would not require a “storefront” but would operate through an online application for rental reservation and payment. While this type of business operation is not a by-right use in the CR district but requires a conditional use permit, the applicant is aware and prepared to seek said conditional use permit, which they understand is not guarantee for approval, but would not be possible if the zoning on their property remains R-1.

Following the 8/6/2024 public hearing, the Planning Commission discussed this at length with the Kohlers as well as from the public, no conclusive resolution between the board could be agreed upon to reach a majority recommendation of parcel “A” for the conditional rezoning application for Fig Street Inn at the time. Furthermore, more information was requested by members of the Planning Commission for clarification on why the applicants were looking to rezone parcels J and I from R-1 to CR, even though Fig Street Inn building itself occupies the singular parcel “A”.

Because of this it was recommended by the Planning/Zoning Administrator to table the vote for the conditional rezoning of the parcels for Fig Street Inn and have the applicants come in to the department and talk with the Planning/Zoning Administrator. This was agreed upon with unanimous approval.

At the September 3, 2024 Planning Commission meeting, the applicants amended their proffer statement (dated 8/16/2024) as follows:

ANALYSIS – Uses by Right and Conditional Use between the 2 Districts (ITEMS highlighted in PINK are ORIGINAL PROFFERS & GREEN are AMENDED PROFFERS to prohibit these by-right uses as well as Conditional Uses from this property). If an item is not highlighted in the right- hand column, then it would remain as an allowable use.

<u>RESIDENTIAL-1</u>	<u>COMMERCIAL RESIDENTIAL</u>
Permitted Uses by Right 1. Single-family dwellings. 2. Churches and places of worship 3. Parks and playgrounds. 4. Accessory buildings. 5. Schools and Municipal Community Center. 6. Group Homes per § 15.2-2291 of the Code of Virginia. 7. Home occupations in accordance with Section 4.0. 8. Dog pens. 9. Accessory Dwelling units by right in compliance with the requirements of Article 4.2(J)	Permitted Uses by Right 1. Accessory buildings 2. Antique shops 3. Art galleries 4. Athletic clubs 5. Beauty and barber shops 6. Bed and breakfasts 7. Camera shops 8. Candy stores 9. Clothing stores 10. Day spas 11. Dry goods stores 12. Florists 13. Gift shops 14. Leather goods 15. Newsstands 16. Offices 17. Real estate sales 18. Single-family dwellings 19. Tobacco stores 20. Video stores 21. Any other use which is compatible in nature with the foregoing uses and which the Zoning Administrator determines to be compatible with the intent of the district and is concurred with by the Planning Commission.
<u>CONDITIONAL USES</u> 1. Libraries, museums, and office and meeting spaces for civic organizations Town of Cape Charles 2. Public utilities and services provided that the exterior appearance of any building permitted in this district shall be in keeping with the character of the neighborhood in which it is located 3. Bed and breakfasts and tourist homes, provided the following requirements are met: a. The owner and family must occupy the residence. The owner and his/her appointed agent are responsible for supervising guests. b. The single-family dwelling appearance must be maintained. c. Parking should be considered on a case-by-case basis as part of the conditional use application, ensuring adherence to Section 4.5.1 (Table of Parking Standards) using both on and off-street parking areas. d. A sign no larger than four square feet shall be permitted.	<u>CONDITIONAL USES</u> 1. Bakeries 2. Bicycle shops 3. Cafes and coffee shops 4. Conference centers 5. Day care centers 6. Delicatessens 7. Ice cream parlors 8. Restaurant

e. The number of room accommodations shall be subject to recommendation by the Planning Commission and approved by the Town Council. 4. Neighborhood community center 5. Swimming pools, tennis courts, and basketball courts. 6. Adaptive Reuse of existing structure is a new use different than the intended use for which the structure was originally constructed. The Reuse is generally a permitted, accessory or conditional use with an adaptation such as density or size that is greater than the ordinance allows. The Reuse would require a conditional use permit (CUP). The following additional requirements must also be met: a. The use must be compatible with the permitted uses in the zone. b. The Reuse plan must meet the table of parking and landscaping standards (unlike reuse in the C-1 Zone where parking requirements are on a case by case basis). c. Replacement and new utility services shall be placed underground. d. The structure shall be a contributing structure to the Cape Charles National Historic District or at least 50 years old and the exterior of the structure must be restored in accordance with the Cape Charles Historic District Guidelines. 7. Residential dwelling units in square footage area below the minimum or above the maximum stated in Section 3.2.F.2	
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The applicants also proffered to use only natural materials such as sand, shell, stone, grass or other natural material compatible with residential dwellings in the historic district for improvement or development of any off-street parking area(s); will work with Jeff Klingel Landscape to improve the current off-street parking accessible from Tazewell Avenue and to make it clear where the five parking spaces are on the property (See sketch); electronic signage would not be utilized but would like to add a sign on the building on the side that faces Fig Street for the inn itself.

STAFF ANALYSIS (From Prior Staff Reports)

A. REVIEW WITH RESPECT TO COMPREHENSIVE PLAN

ECONOMY CHAPTER – OVERVIEW – pg. 50

Cape Charles is home to a lively economy built around accommodations, food service, health care, social services, education services, retail trade, public administration, manufacturing, fisheries/maritime activities, and transportation (2018 Cape Charles Market Study). The Cape Charles economy is evolving to support growth in other sectors, especially tourism and related sectors, as maritime businesses decline nationwide. Having navigated the worst of the COVID-19 pandemic, the Town continues to encourage the growth of existing businesses, as well as the creation of new businesses, in diverse markets. The Town is pursuing strategies to support businesses of different sizes and structures, ranging from small shops opened by residents to corporations.

Economy Objectives and Strategies – pg. 54

(3) Provide opportunities for households to strengthen their economic wellbeing.

Transportation Objectives and Strategies – pg. 68

(1) Reduce traffic congestion by reducing local vehicle miles traveled (VMT) by automobile. Coordinate with Land Use objectives and strategies.

(b) Prioritize increasing the number of people walking and bicycling in town.

FUTURE LAND USE MAP



The Future Land Use Map (FLUM) shows this area of Town to continue to be Historic District Residential; however, in the description of this designation (see below), there is an acknowledgement that some of the residential properties have been converted into a business use for lodging and indicates that this Plan intends for flexibility in use while maintaining the character of the area and quality of life for residents.



Historic District Residential: The Historic District Residential category covers the majority of the original street grid in Cape Charles. Any new development in this area is intended to reflect the historic character of the core residential area and compliment features of existing structures.

This plan recognizes that some historic homes have been converted into lodging and other uses. As such, the plan intends flexibility in use while maintaining the character of the area and quality of life for residents.

B. REVIEW WITH RESPECT TO ZONING ORDINANCE: ZONING DISTRICTS – INTENT

The Cape Charles Zoning Ordinance provides a statement of intent for the current zoning district of Residential-1 (R-1) as follows:

The intent of this basic zoning district is to provide quiet, medium density, single-family residential development plus provide open areas where similar residential development appears likely to occur. The regulations for this district are designed to stabilize and protect the essential characteristics of the district, to promote and encourage a suitable environment for family life where there are children, and to restrict all activities of a commercial nature as described in Section 3.6-A of this ordinance, known as Commercial District C-1, which states “These commercial activities are characterized by heavy traffic, noise, and congestion of people and passenger vehicles and by large office buildings and retail establishments,” and to promote a convenient, attractive, and harmonious community. This section is created in recognition of

the existence of developed areas where single-family and duplex dwelling currently exist on lots of 5,600 square feet and where the characteristics of the neighborhood include both permanent as well as seasonal residents.

The proposed rezoning district of Commercial Residential (CR) provides the following statement of intent as follows:

The purpose of this district is to recognize the unique juxtaposition of the existing residential structures within the central business district and the future needs of Cape Charles commercial districts. It is the intent of this zone to promote the continued residential character of these areas while allowing commercial uses to be introduced.

The specific intent of this district is (1) to encourage retention of the existing residential buildings and character of the area and (2) to encourage compatible uses for these buildings.

PLANNING COMMISSION DISCUSSION at their meeting on 9/3/2026

Councilman Grossman asked if this application was considered spot zoning. Ms. Nunez did not believe so as this application was consistent with the fact that there was already commercial zoning nearby, making it not completely out of character with this area of Fig and Tazewell.

Commissioner McDonald wanted to know that because there was a wellhead on Lot J if this would have any impact on potential rezoning. Ms. Nunez explained that the wellhead is not applicable to rezoning. Furthermore, Chairman Stramm, followed up by asking if the well was currently active. Ms. Nunez mentioned that it may be a shallow well, but the applicant would have to speak more on the well. Ms. Nunez indicated that this property is receiving municipal water and sewer service, pursuant to Town Code requirements.

After the Planning Commission was finished asking questions, they began to discuss the possible rezoning.

Finally, Councilman Grossman asked Ms. Nunez if the proffer statement was in the appropriate legal form that complied with the correct standards. Ms. Nunez mentioned that she will need to refine the proffer standards.

PLANNING COMMISSION RECOMMENDATION: Commissioner Smith motioned to recommend approval of ZMA2024-01 as presented with the amended proffers and was seconded by Commissioner Wright.. Discussion by Planning Commission on the motion was as follows:

Commissioner McDonald was willing to rezone just lot A but had concern for the precedent it would set if they rezoned all three lots and there was a change of ownership down the line that wanted to develop the other lots into business that were out of character with the area. Councilman Grossman did not want to rezone lot A as the Future Land Use Map (FLUM) does not reflect lots as Commercial Residential in this area of town and that the Historic District (HD) has to maintain its single-family residential look within the district. He was also worried that this could be the possible gateway into a transition that would be out of character with the area, and going from R-1 to CR was not compatible with the area as a whole. He does not believe the Comp Plan supports this rezoning application. He feels that the remaining by-right uses that could occur on the property could have a negative impact on this neighborhood, especially relative to the two lots that are not developed yet.

Commissioner Smith amended her motion to only recommend conditional rezoning for Lot A (Tax Map #83A4-2-A) which is the lot that houses the Fig Street Inn building with the proffers submitted and amended and was seconded by Commissioner McDonald. AYE: Stramm, Smith, Wright, Ashworth & McDonald. NAY: Grossman

VOTE ON THE AMENDED MOTION: AYE: Stramm, Smith, Wright, Ashworth, & McDonald. NAY: Grossman. MOTION PASSED to recommend a conditional rezoning of Lot A (Tax Map #83A4-2-A) from R-1 to CR with the proffers, original and amended, from the applicant.

STAFF INFORMATION:

2 items were raised by the Planning Commission during their deliberations:

1. Question about spot zoning:

Commissioner Grossman asked if this application would be considered spot zoning. I responded that I did not believe it would be considered as such. I have not consulted the Town's Legal Counsel on this point; however, I referred to Albemarle County's Land Use Handbook which is a source document utilized as the primary teaching tool in the Planning Commission Certified program offered by Virginia Commonwealth University (VD). There is a section in this document that is entitled "10-500: ZONING ACTIONS THAT MAY BE SUSCEPTIBLE TO CHALLENGE" and it reads in its entirety:

10-510 Spot zonings A spot zoning is the upzoning (allowing more intensive uses) of land to a classification that is different than that of the surrounding land. The common element found in a spot zoning is the rezoning of a parcel from an original zoning classification that was identical to parcels similar in size and use and situated in close proximity to the parcel rezoned. *Guest v. King George County Board of Supervisors*, 42 Va. Cir. 348 (1997). However, the fact that adjacent land is not similarly zoned does not necessarily make a rezoning a spot zoning. *Clark v. Town of Middleburg*, 26 Va. Cir. 472 (1990).

Illegal spot zoning occurs when the purpose of a zoning text or zoning map amendment is solely to serve the private interests of one or more landowners, rather than to further the locality's welfare as part of an overall zoning plan that may include a concurrent benefit to private interests. *Riverview Farm Associates v. Board of Supervisors of Charles City County*, 259 Va. 419, 528 S.E.2d 99 (2000); *Board of Supervisors v. Fralin & Waldron, Inc.*, 222 Va. 218, 278 S.E.2d 859 (1981); *Wilhelm v. Morgan*, 208 Va. 398, 157 S.E.2d 920 (1967); *Runion v. Board of Supervisors of Roanoke*, 65 Va. Cir. 41 (2004) (rezoning land from AR to R-1 was not illegal spot zoning because the rezoning was part of a continuing plan of development for the county, the community plan recognized that development in the area was inevitable, granting the rezoning with proffers allowed the county to better protect the interests of the county than merely allowing the property to develop under its AR classification, particularly in this case where the increase in density went from 38 to 44, and the rezoning was compatible with the surrounding area).

A spot zoning that is consistent with the comprehensive plan should be found to be lawful since, by being consistent with the plan, it is furthering the locality's welfare.

2. Proffer Statement- Template Form: Commissioner Grossman asked if the proffer statements were in a form compliant with the Town's requirements. I misspoke when I said that they were not in accordance with the Template form accepted by the Town. I have developed a form which is in draft form and which was utilized for a conditional rezoning application the prior year (Hotel Cape Charles) but it has not been formally accepted by the Town Council and Planning Commission at this time.

I have provided this draft template form to the applicant and requested that they complete said form with their full proffer statement and submit prior to the Town Council public hearing.

TOWN COUNCIL INFORMATION: Following their public hearing, the Town Council is able to do one of four actions following a review of the entire record on this application, including the ZMA Application which includes the original Proffer Statement and the amended Proffer Statement with explanation dated 8/17/2024:

- 1.) Vote to approve ZMA 2024-01 to conditionally rezone 711 Tazewell Avenue/302 Fig Street (aka the Fig Street Inn) (Tax Map #83A4-2-A & 83A4-2-J & 83A4-2-I – ALL 3 LOTS) from Residential-1 to Commercial Residential (CR) with proffers to limit the commercial activity of said proposed rezoning Said vote should incorporate Comprehensive Plan support.

- 2.) Vote to accept recommendation from Planning Commission to conditionally rezone from Residential-1 to Commercial Residential (CR) only Lot A (Tax Map #83A4-2-A), where the Fig Street Inn building sits and the proffers – original and amended offered by the applicant. Said vote should incorporate Comprehensive Plan support.
- 3.) Vote to deny ZMA 2024-01 at 711 Tazewell Avenue/302 Fig Street (aka the Fig Street Inn) (Tax Map #83A4-2-A & 83A4-2-J & 83A4-2-I – ALL 3 LOTS) from Residential-1 to Commercial Residential (CR) with proffers. Said vote should articulate all reasons for said denial.
- 4.) Vote to table ZMA 2024-01 to allow for additional information to be gathered (please state specifics of information sought) for Town Council consideration.

Staff is prepared to assist in the development of any motion proposed by Town Council to ensure that there is supportive reasoning offered, dependent upon which course of action Town Council proceeds with.

ATTACHMENTS

- 1) TC 10-17-2024 Legal Ad for Public Hearing**
- (2) 711 Tazewell Avenue Application for ZMA with Proffers**
- (3) Site Plan**
- (4) Addendum ZMA 2024-01**
- (5) Staff Report from PC Public Hearing on 2024-08-06**
- (6) Staff Report from PC Meeting on 2024-09-03**

TOWN OF CAPE CHARLES
Town Council– Public Hearing

The Cape Charles Town Council will hold a public hearing on October 17th, 2024, at 6:00 pm in the Cape Charles Civic Center, 500 Tazewell Avenue, to receive comment on the following application:

- A. A Zoning Map Amendment (ZMA) 2024-01 application from Donna and Gregory Kohler to conditionally rezone 711 Tazewell Avenue/302 Fig Street (aka the Fig Street Inn) (Tax Map #83A4-2-A & 83A4-2-J & 83A4-2-I) from Residential-I to Commercial Residential (CR) with proffers to limit the commercial activity of said proposed rezoning; said property has a current Conditional Use Permit for a Bed & Breakfast.

This application is available for public review on our website at www.capecharles.org, under Agendas & Minutes/Town Council. Please contact the Planning Department at 757- 331-2036, or by email at planner@capecharles.org if you have any questions or require additional information.

AD PLACED: Eastern Shore Post – Wednesday September 24, 2024
AD TO RUN: Friday September 27, 2024, and Friday October 4, 2024



Zoning Map Amendment Application

Planning & Zoning Department
 2 Plum Street; Cape Charles, VA 23310
 757-331-2036
planner@capecharles.org

Revised 08/2023	
Taxes	√pdmmw
Violations	NA
pdchk 411 Fee	\$1,000
Decision	

Budget Code: MISPL 100-3100-1070

PART 1. APPLICATION NOTES

1. A pre-application conference is mandatory prior to submission of an application for a zoning map amendment.
2. A zoning map amendment application should be consistent with the Comprehensive Plan and therefore, may also require a Comprehensive Plan amendment, which should be approved prior to the zoning amp amendment application.
3. The Town Council may not add conditions of approval to a zoning map amendment application.
4. If proffers are being offered, the proffer statements may not be less restrictive than the requested base zoning district standards.
5. If proffers are being offered, proffer statements may not be amended after the public notification of a public hearing to consider the application has been sent. The applicant may voluntarily offer proffered conditions as part of their application, which must be listed in a separate voluntary proffer statement using the template found on our website.
6. **Fees: Regular Rezoning – (a) Non-PUD = \$500 + \$50/acre****
(b) PUD = \$1,000 + \$50/acre (i) Amendment to Comp. Plan; Concept Approvals: \$550/app**
Conditional Rezoning = \$1000 + \$50/acre**
****plus, any actual cost for advertising & adjacent property owner notification mailings**

PART 2: PROPERTY INFORMATION

Property Address: 711 Tazewell Avenue	Tax Map #: 83A4-2-A
Project name: Rezone to CR	Current Zoning District: R-1
Does this application include proffers? ☐ No ☒ Yes, if so, attach separate form	Proposed Zoning District: CR

PART 3: PROPERTY OWNER INFORMATION

Applicant Name: Gregory S + Donna Olney Kohler	
Mailing Address: 711 Tazewell Avenue Cape Charles VA 23310	
Email address: donna@figstreetinn.com	Phone: 757.331.3133

If property is owned by an LLC, LP, or other form of corporation, list all landowners and their contact information.

n/a

Zoning Map Amendment Application (also referred to as a Rezoning or Conditional Rezoning) may be submitted by a Cape Charles property owner and may be advanced to public hearing, after this application is submitted to Town Council who authorizes said applications to public hearings, first to the Planning Commission in compliance with the Code of Virginia Section 15.2-2285 and 15.2-2204.

The applicant will be required to make a presentation to fully explain the request and demonstrate the need for said request and how the Comprehensive Plan supports and maintains compliance with the goals and objectives of the Comprehensive Plan

Additionally, the Planning Commission or Town Council may prepare and apply for a zoning map amendment with either the Town Manager or the Zoning Administrator or Planning Director representing the application on behalf of the Town.

PART 4: Written Description of Request – Answer all questions in this section. Attach additional sheets as needed.

- A) Describe the existing conditions on the property including existing land uses and buildings as well as the land uses and zoning districts on the abutting properties.

see attached.

- B) Describe how existing conditions have changed, thereby making the proposed amendment needed.

see attached.

- C) Describe how the proposed amendment furthers the objectives of the Comprehensive Plan.

see attached.

- D) Describe why the proposed rezoning is necessary.

see attached

- E) Describe the proposed use of the rezoned property including a site plan with the proposed types of site improvements and buildings.

see attached.

Applicant's signature: _____

Date: _____

Zoning Administrator's Signature: _____

Date: _____

PART 5: To Be Completed by P & Z Department Staff

Date Application Received in Office:	Application #: ZMA
Planning Commission	Town Council
Date referred:	Date received from Planning Commission:
Action deadline (100 days from receipt):	Action deadline (max. 365 days from referral to PC):
Public hearing date:	Public hearing date:
Decision:	Decision:

Proffers Offered:

As part of the Zoning Map Amendment Application, the following permitted by-right uses for CR district would not be considered in any plans for expansion, addition, or change of use:

- Athletic Club
- Camera Shop
- Newsstand
- Tobacco Store
- Video Store

A. Describe the existing conditions on the property including existing land uses and buildings as well as the land uses and zoning districts on the abutting properties.

The property located at 711 Tazewell Avenue/302 Fig Street is located in the R1 district and has a conditional use permit to operate as a 6 room bed and breakfast. It has been operated as Fig Street Inn, a 4-room bed and breakfast since May 2011. We have submitted an application to Planning & Zoning Department to improve an outbuilding for use as a 5th bed and breakfast transient unit. We should be on the June 18, 2024 for HRDB review.

Per Cape Charles requirements, we live on property in order to operate as a bed and breakfast. The business is open year-round and has hosted thousands of visitors in its 14 years of operation.

The property consists of a main structure (approx. 4,450 sq ft) with 6 bedrooms, 6 ½ bathrooms (between guest and owners' quarters). There is an outbuilding (approx. 237 sq ft) connected to the main building by a breezeway. This building is what we are working with Town to convert to a 5th bed and breakfast unit. This outbuilding is connected to an unfinished barn/shed by an 18 ft long enclosed area that backs up to the alleyway.

The property consists of 7 town lots with buildings located on 5 lots. The 6th and 7th lots (Lots I & J along Tazewell Avenue) are gardens.

The property is abutted by 4 single family dwellings, each in R1 district. Two of those homes are full-time residents, and two are second homes. One of the full-time residents is an area business owner and sometimes has work trucks in and out of their property.

B. Describe how existing conditions have changed, thereby making the proposed amendment needed.

Cape Charles has seen a significant amount of growth since we purchased the property in February 2010. We have also seen the needs of travelers change – they want to spend more time here and they want to have more things to do. Potential visitors can often find it difficult to find a place to stay. There are currently 35 transient lodging units among 4 properties in the historic district (36 if our HRDB application is approved). We know the demand is there and we would like to capture that opportunity.

We currently have a R1 designation and operate our bed and breakfast with a conditional use permit. Changing to CR (commercial residential) would allow us to operate by right, and would give the potential to develop Lots J&I with permissible uses.

Our property is located across the street (on Tazewell Avenue) which has both CR and R1. There are a total of 7 homes along Tazewell Avenue from Fulcher to Fig, with 6 of those being full-time residents, and the 7th being a second home. One home does have a vacation rental unit on property; and another is owned by a local business owner and often has a work truck parked along Tazewell.

It is not out of character for our block to be a mix of residential and commercial use. We have the former MeatLand property on the corner. There is boat trailer parking along with golf cart parking for Eastern Shore Custom Carts. We have 2 local business owners with commercial work vehicles coming in and out of the area – one on Tazewell, and one in an abutting property. We also had a medical building many years ago on the corner of Fulcher and Tazewell, which now has 3 newer homes.

We have been in operation for 14 years and our business is low impact on our block. We are not aware of any complaints regarding our business. We have never had the need for law enforcement with our guests. We provide off-street parking so street parking can be used by residents.

The Town has lost 3 beds and breakfasts since we opened, with each converted to a vacation rental. We want to preserve the use of this building, and the financial contribution it makes as a bed and breakfast with a CR designation. A bed and breakfast operation would be allowed by right, and not by conditional use permit.

Although Fig Street Inn is also a home, its purpose is business - a commercial entity contributing to the local economy. A CR designation is a more accurate description for the property.

C. Describe how the proposed amendment furthers the objectives of the Comprehensive Plan.

- *“Healthy balance between year-round residents, tourists, and second homeowners in Cape Charles.”*
This is the perfect description for our block of Tazewell between Fulcher and Fig. We have 6 full-time residents (with one also offering a vacation rental unit); 1 second homeowner; 1 business (Fig Street Inn) providing overnight accommodations for tourists. One half of Tazewell on the south side is CR and is used for boat and golf cart parking.
- *“Provide opportunities for households to strengthen their economic well-being.”*
A CR designation would allow for the expansion of business opportunities for ourselves, as well as for our family. We have the physical space on property to expand, build, develop a variety of businesses permissible by a CR designation that would allow us to grow our portfolio, and/or provide business opportunities for our children. Any additional business opportunity would have a financial impact on the local economy through collection and remittance of taxes.
- *“Promote and expand businesses in a business-friendly environment.”*
A CR designation provides more options on the types of businesses that could be operated from our property. We would like to expand the bed and breakfast and provide additional overnight transient accommodations. This would require an additional building and is not in our immediate plans.

Our immediate intent is to have a bicycle rental business. This amenity would be available to both guests and the public and would be done in such a way to have minimal impact on our street.

A longer term objective is to encourage our children to stay on the Eastern Shore, in Cape Charles, by providing opportunities for a small business on our property. Some of the permitted by-right uses match their interests and may be their career paths.

- *Bicycle Infrastructure*

The Comprehensive Plan recognizes that Cape Charles is a bicycle friendly town. It mainly discusses infrastructure improvements, many of which are in the works. A bicycle rental business, as we are proposing, supports the initiatives of bicycle use to promote healthy lifestyles and reduce vehicle traffic in the downtown areas.

D. Describe why the proposed rezoning is necessary.

The CR designation confirms the property's use as a bed and breakfast, and approves Fig Street Inn as a commercial entity in a residential area, without need for a conditional use permit. It recognizes the current mix of commercial and residential that already exists on our block, and has for much longer than we have owned the property.

With a CR designation, the immediate plan we have is to offer bicycle rentals that would be available to the public (not just our guests). This is not a "shop" and would not require an additional structure or building. This would be 2 bike racks located on our property – one within the off-street parking area, and the other around the corner from it along the fence line on Tazewell Avenue. Each rack can hold up to 5 bicycles. Bicycles are reserved on a mobile app with payment made to an outside company. After someone reserves, they receive a code on their phone to unlock a bicycle; they are provided a helmet; and after use, return the bicycle to lock back up at the rack(s). This is a self-serve operation with minimal impact, but offers an amenity that complements Cape Charles's character.

The outside company collects payment and remits payment to us after taking a commission. The outside company assumes liability and covers the insurance. Our responsibility is inventory and maintenance.

Bicycles would be maintained and repaired as needed on our existing property. We do not anticipate any need for an additional structure to support this business.

We expect that most users would walk to pick up bicycles or may have someone drive them to our location. We do not have the capacity to provide off-street parking for bicycle renters, but we do not anticipate a significant impact on street parking along Tazewell Avenue. Currently, on any given day, there are not many cars parked on Tazewell so street parking is usually readily available.

A “bicycle shop” is a conditional use permit use with CR designation. Although this would not be a shop, we understand we would need a conditional use permit for a bicycle rental business.

E. Describe the proposed use of the rezoned property including a site plan with the proposed types of site improvements and buildings.

There is no need for any buildings at this time.

The bicycle rental business would be one rack located at the end of our off-street parking area towards Tazewell Avenue. The second rack would be around the corner from the first rack, in front of the fence along Tazewell Avenue. Their placement makes them visible to the public from Tazewell without altering the block’s character.

THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT AND MAY NOT SHOW ANY/ALL EASEMENTS OR RESTRICTIONS THAT MAY AFFECT SAID PROPERTY AS SHOWN.

FLOOD ZONE INFORMATION SHOWN HEREON IS NOT GUARANTEED AND WAS APPROXIMATELY SCALED FROM F.E.M.A. FLOOD MAPS. SHORELINE SURVEYORS IS NOT A PARTY IN DETERMINING THE REQUIREMENTS FOR FLOOD INSURANCE ON THE PROPERTY SHOWN HEREON. FOR FURTHER INFORMATION AND TO CONFIRM THE FLOOD ZONE FOR THIS PROPERTY, CONTACT THE LOCAL COMMUNITY FLOOD OFFICIAL.

THIS PROPERTY APPEARS TO FALL IN:
FLOOD ZONE: X
COMMUNITY NO.: 510106
PANEL: 0285F DATED: MARCH 2, 2015

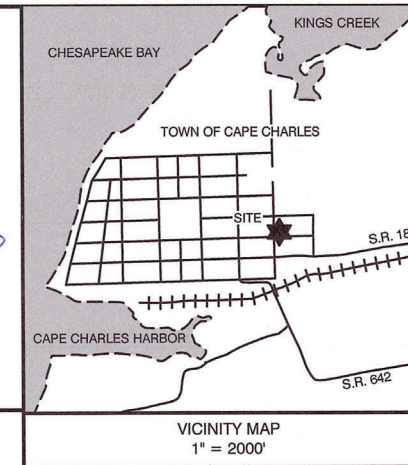
FLOOD ZONE DETERMINATION IS BASED ON THE FLOOD INSURANCE RATE MAPS AND DOES NOT IMPLY THAT THIS PROPERTY WILL OR WILL NOT BE FREE FROM FLOODING OR DAMAGE.

THE NORTH MERIDIAN OF THIS PLAT IS BASED ON THE VIRGINIA STATE PLANE COORDINATE SYSTEM, SOUTH ZONE, NAD83.

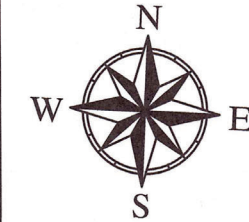
THIS PLAT IS BASED ON A CURRENT FIELD SURVEY HAVING A CLOSURE EXCEEDING 1:41,642.

BUILDING WALLS SHOWN HEREON REPRESENT THE FOUNDATION FOOTPRINT.

I, HEREBY CERTIFY THAT THIS BOUNDARY IS BASED ON A CURRENT FIELD SURVEY, AND TO THE BEST OF MY KNOWLEDGE AND BELIEF IS CORRECT AND COMPLIES WITH THE MINIMUM PROCEDURES AND STANDARDS ESTABLISHED BY THE VIRGINIA STATE BOARD OF ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND CERTIFIED LANDSCAPE ARCHITECTS.



MADE IN AMERICA



Shoreline Surveyors

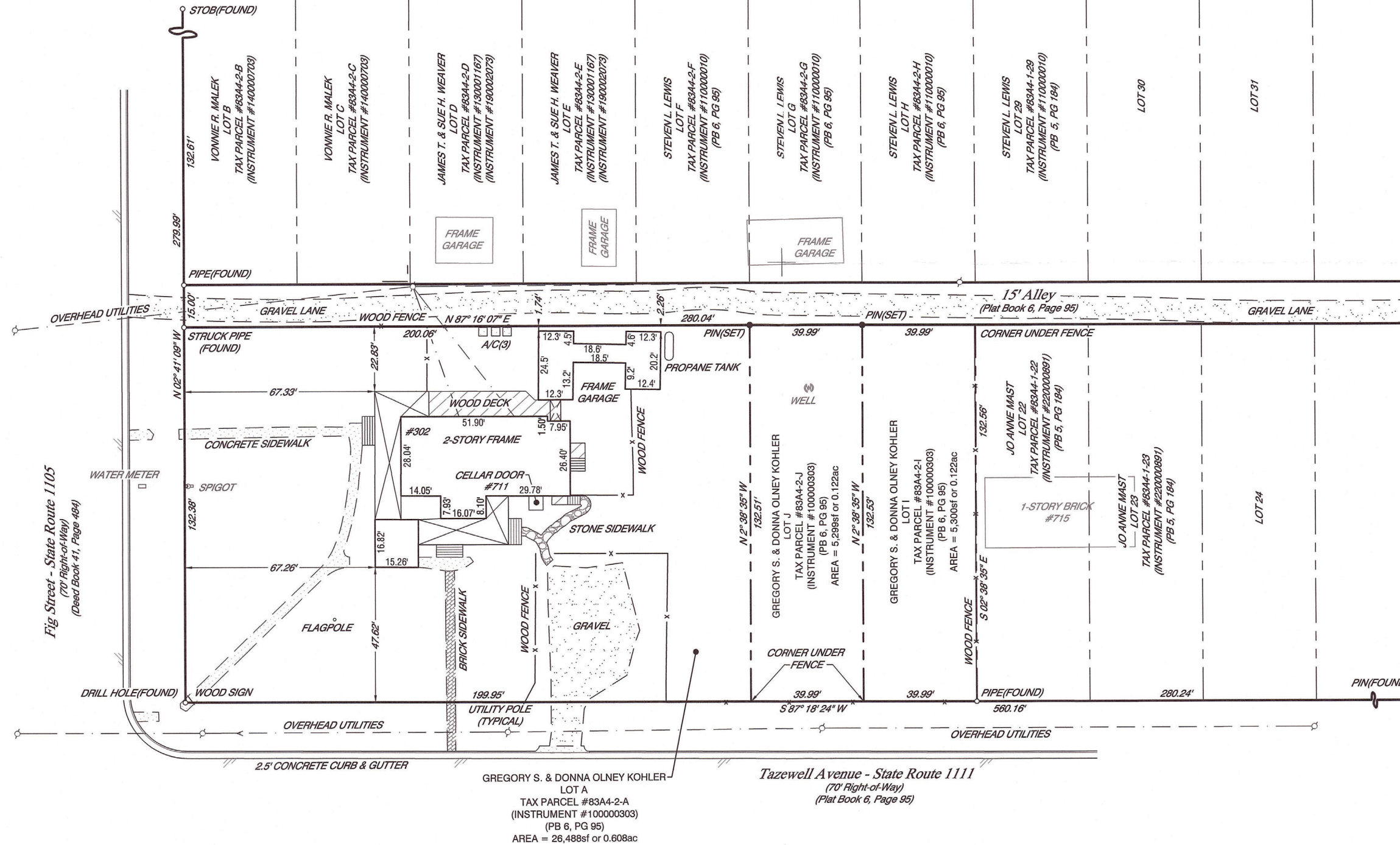
23314 Courthouse Avenue - P.O. Box 735
Accomac, Virginia 23301
PHONE (757) 789-3960 FAX (757) 789-3962

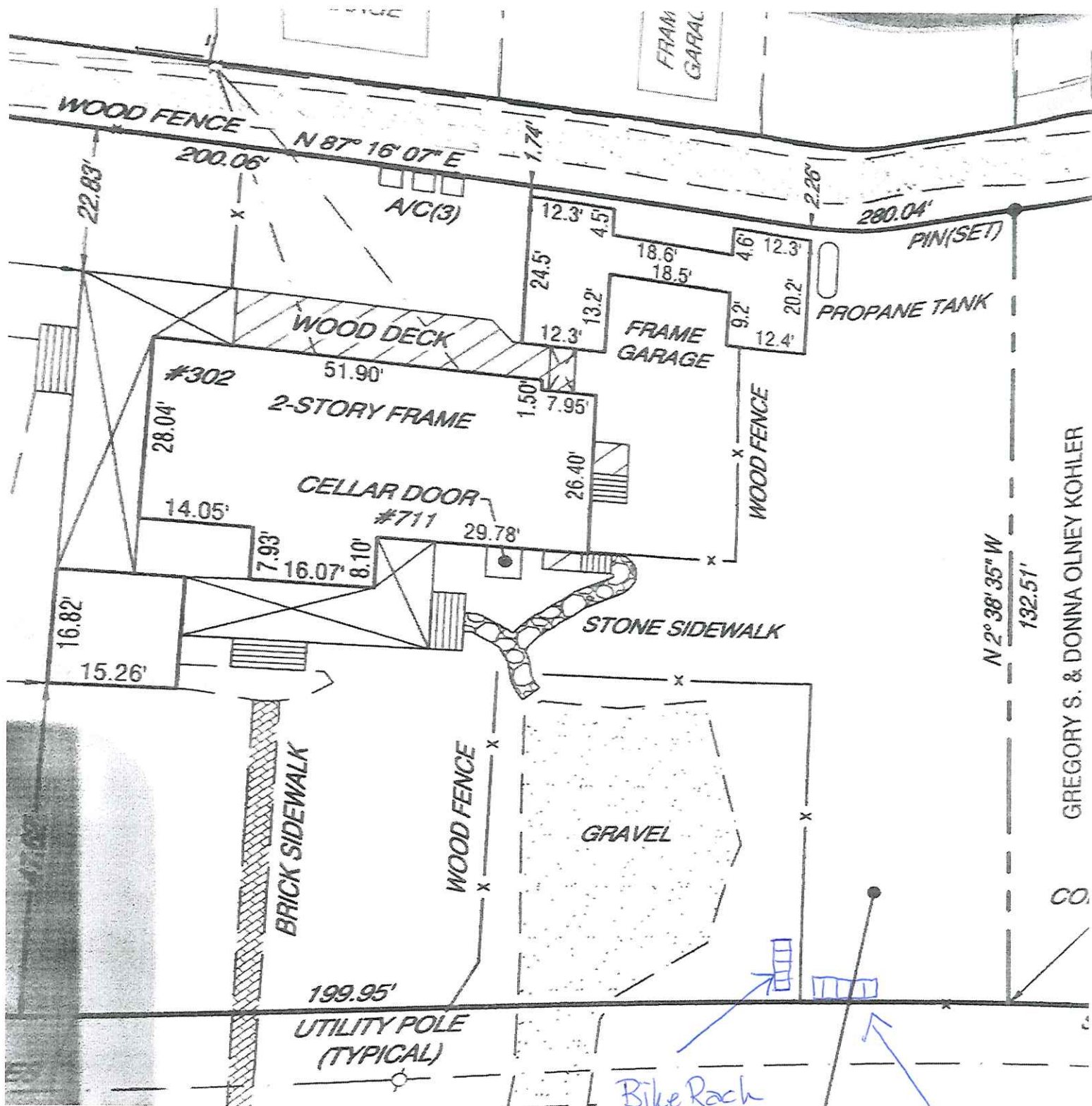
SCALE: 1" = 25'
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FIELD BOOK: 54, PAGES 39 & 40
JOB #24006
SHEET 1 OF 1

PHYSICAL SURVEY
OF
Lots 4, I & J
OF
"G. L. Webster Co., Inc."

(PLAT BOOK 6, PAGE 95)
TAX PARCELS #083A4-(02)-00-000A,
#083A4-(02)-00-0001 & #083A4-(02)-00-000J
TOWN OF CAPE CHARLES
NORTHAMPTON COUNTY, VIRGINIA

FOR
Donna Kohler
FEBRUARY 22, 2024



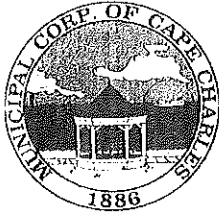


GREGORY S. & DONNA OLNEY KOHLER

CO.

Bike Rack
located in
parking lot
area

Bike rack
located at
fence
visible from
Tazewell



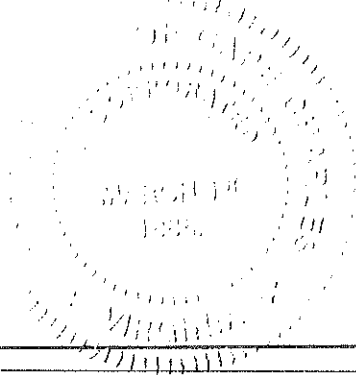
MUNICIPAL CORPORATION OF CAPE CHARLES

Date Issued: February 11, 2010

Issued to: Gregory S. & Donna O. Kohler For Property: 302 Fig Street
4650 Harris Hill Road Cape Charles, VA 23310
Williamsville, NY 14221

Conditional use permit shall be valid for only the specific use it covers in the specific location designated for a period of one year after the date of approval. If not acted upon within one year, the conditional use permit shall become null and void, unless construction is substantially underway during such one-year period or unless an extension of time not exceeding one year is approved by the Town Council for good cause shown before the expiration of such one-year period.

Project Description: Operation of a 6 bedroom Bed & Breakfast (5 bedrooms in main house, 1 bedroom in accessory building).



Libby Hume
Town Clerk

2/11/10
Date

VIDEOS IMAGES



Adult Urban Bike Adjustable Fit Sy Integrated Taillig Women

Color: Matte Blue

Size: Large(23.2"-24.0")

1x Available
Add to Cart
Apply to

Color: Matte Blue



Size:

Large(23.2"-24.0")

Size Chart

Brand

Color

Age Range Adult

(Description)

Size Large(23.2"-24.0"/59-61cm)

Special Feature Rear Light, Lightweight, Adjustable Strap

Add to List

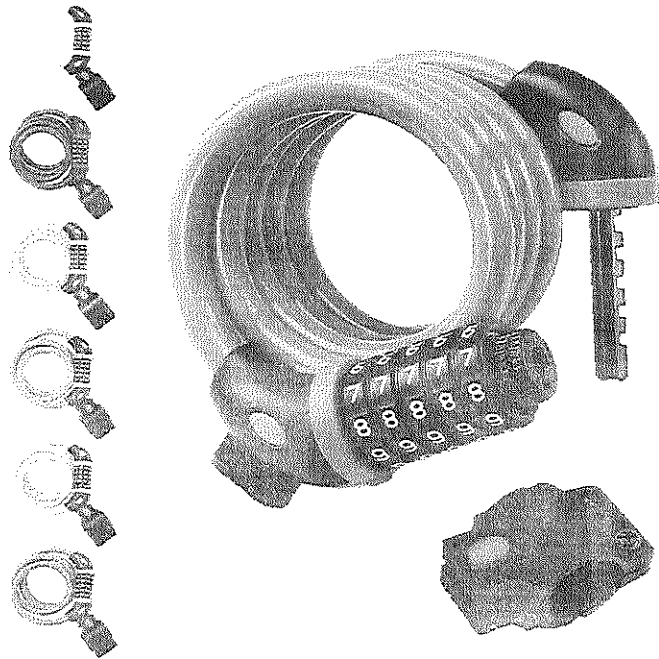
About this item

- **FASHION URBAN STYLE** - Built for urban riders and commuters. Fit for men and women.
- **DUAL CERTIFIED** - Meet US & EU safety standards.
- **LIGHTWEIGHT & BREATHABLE** - Built using integrated construction to reduce weight. Integrated polycarbonate shell with EPS liner enhancing durability. 5 large vents offer good air-flow.
- **SIZE ADJUSTMENT SYSTEM** - This bike helmet suitable for most adults head circumference. M size (21.7-22.8inch / 55-58cm) , L size (23.2-24.4inch / 59-61cm)
- **SAFETY REAR LIGHT** - Rechargeable USB rear light with 3 lighting options. Fully charged in 2 hours. Last for about 6-8 hours.

Report an issue with this product or seller

VIDEOS

IMAGES



NDakter Bike Locks Cable, High Digit Resettable (Coiling Bicycle Lock Duty Anti Theft C with...

Color: Blue



400+ bought in past

\$13.95

Prime Returns

on Business, you would have \$6 in the last year, to save 5% and save up to 5% today.

Buy Now

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Amazon.om
Amazon.qa
Amazon.kw
Amazon.bh
Amazon.ly
Amazon.jo
Amazon.il

Add a gift receipt for easy returns

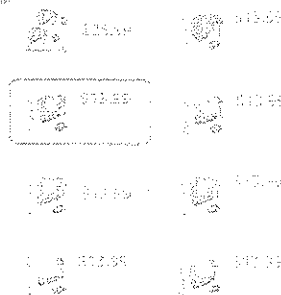
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Save up to 5% on this product with Business-only pricing.

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Brand NDakter
Special Anti Theft, Heavy Duty, Resettable
Feature
Lock Type Combination Lock
Item 6 x 6 x 1.6 inches dimensions
L x W x H
Material Vinyl, Steel, Polyvinyl Chloride

About this item

- **SECURE & RESETTABLE:** Smart 5-digit resettable combination chain lock, much safer than other 4 digit locks. Easy to set your own personalized number combination.

THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT AND MAY NOT SHOW ANY/ALL EASEMENTS OR RESTRICTIONS THAT MAY AFFECT SAID PROPERTY AS SHOWN.

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THIS PROPERTY APPEARS TO FALL IN:
FLOOD ZONE: X
COMMUNITY NO.: 510106
PANEL: 0285F DATED: MARCH 2, 2015

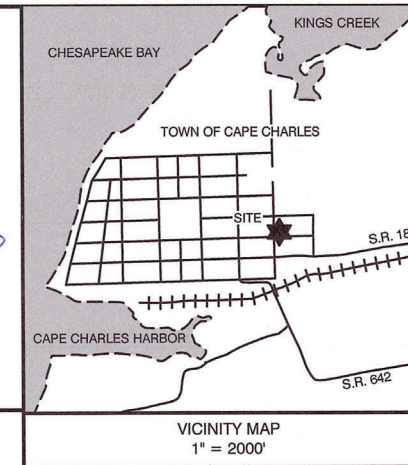
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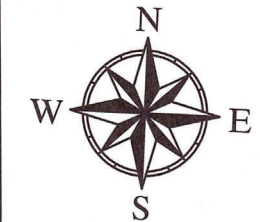
THIS PLAT IS BASED ON A CURRENT FIELD SURVEY HAVING A CLOSURE EXCEEDING 1:41,642.

BUILDING WALLS SHOWN HEREON REPRESENT THE FOUNDATION FOOTPRINT.

I, HEREBY CERTIFY THAT THIS BOUNDARY IS BASED ON A CURRENT FIELD SURVEY, AND TO THE BEST OF MY KNOWLEDGE AND BELIEF IS CORRECT AND COMPLIES WITH THE MINIMUM PROCEDURES AND STANDARDS ESTABLISHED BY THE VIRGINIA STATE BOARD OF ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND CERTIFIED LANDSCAPE ARCHITECTS.



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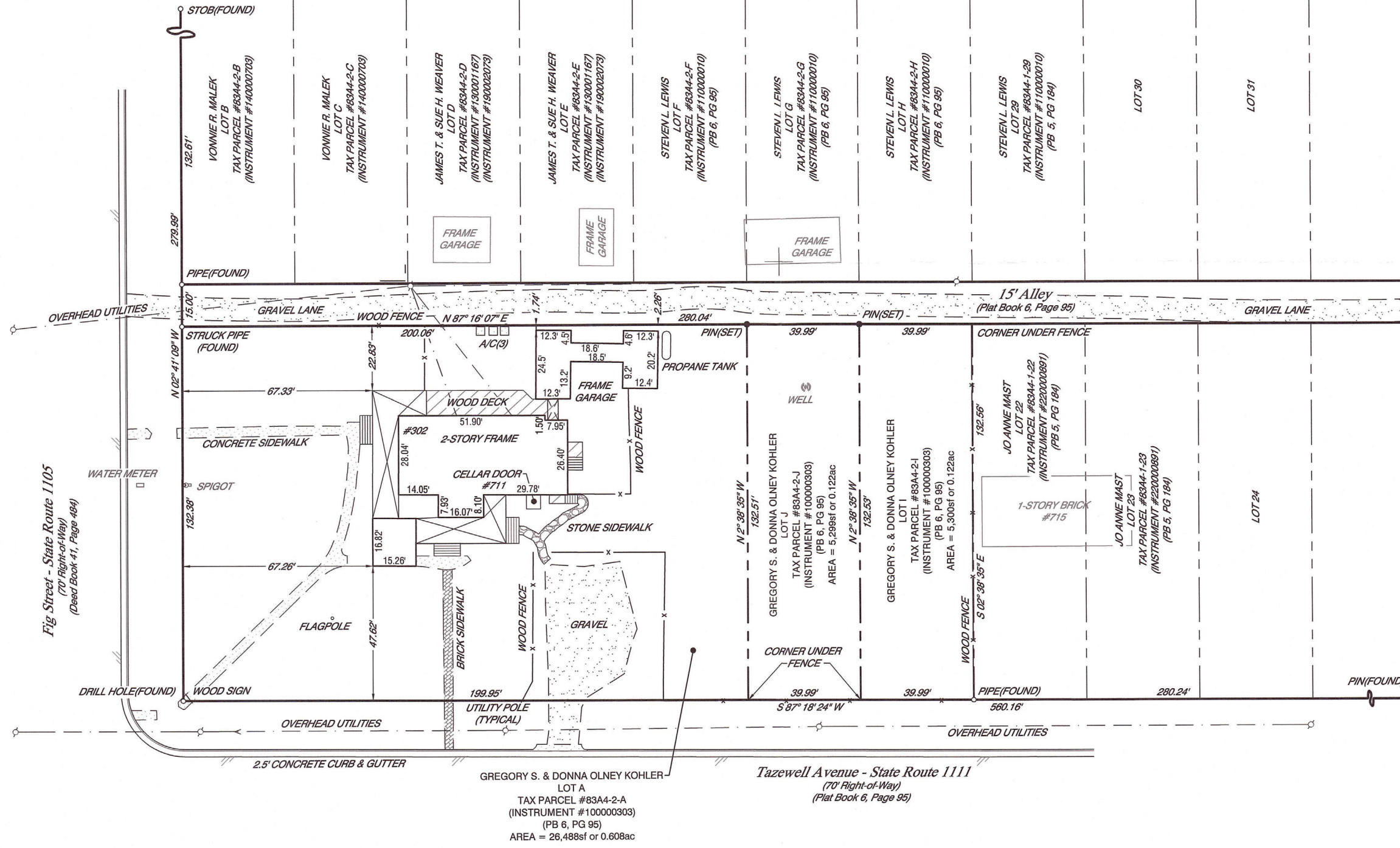
23314 Courthouse Avenue - P.O. Box 735
Accomac, Virginia 23301
PHONE (757) 789-3960 FAX (757) 789-3962

SCALE: 1" = 25'
DRAWN: MAS
FIELD BOOK: 54, PAGES 39 & 40
JOB #24006
SHEET 1 OF 1

PHYSICAL SURVEY
OF
Lots 4, I & J
OF
"G. L. Webster Co., Inc."

(PLAT BOOK 6, PAGE 95)
TAX PARCELS #083A4-(02)-00-000A,
#083A4-(02)-00-0001 & #083A4-(02)-00-000J
TOWN OF CAPE CHARLES
NORTHAMPTON COUNTY, VIRGINIA

FOR
Donna Kohler
FEBRUARY 22, 2024





Friday, August 16, 2024

Katie Nunez, Director of Planning
Town of Cape Charles
2 Plum Street
Cape Charles, VA 23310

Dear Katie,

Thank you for the opportunity to submit additional materials for proposed Zoning Map Amendment (ZMA) 2024-01. We would like to provide additional information, as well as address questions that came up during the August 6, 2024 Planning Commission Meeting:

Proffers:

The following proffers are offered:

1. The following by right uses will NOT be considered for development of Tax Map #83A4-2-A & 83A4-2-J & 83A4-2-I:
 - Antique shop
 - Art galleries
 - Athletic club
 - Camera shop
 - Candy store
 - Dry goods store
 - Leather goods
 - Newsstands
 - Tobacco Store
 - Video Store
2. Only natural materials such as sand, shell, stone, grass, or other natural material compatible with residential dwellings in the historic district, would be used for improvement or development of any off-street parking area(s). Blacktop and/or cement would not be used.

We have plans to work with Jeff Klingel Landscape later this year to improve the current off-street parking accessible from Tazewell Avenue. Spots will be clearly marked so guests know exactly where to park and we may continue to accommodate 5 cars in the off-street parking area. This should encourage guests to park in the lot vs. on Tazewell.

There is potential to add a 6th parking spot with removal of the large sycamore tree (shown on land survey attached). However, we prefer not to do that as the tree provides shade for the lot and adds to the residential look and feel of the business.

A sketch of the proposed off-street parking plan is attached.

3. The following conditional uses would NOT be applied for:

- Day care center
- Ice cream parlor
- Delicatessen
- Restaurant

Each of these uses has potential to bring increased vehicular traffic, foot traffic, and/or noise to Tazewell Avenue, and that is not our intent in requested a CR designation.

4. Electronic or neon signage would not be utilized. The only change we would like to make to Fig Street Inn signage is permission to add a sign on the Fig Street side of the building. This is not currently allowed under b&b signage regulations.

We know the Town is updating signage regulations and we are not familiar with what those may be. We agree to work with the Town for approval on any new signage and/or changes/updates so it is appropriate for a commercial entity within a residential community.

Parking:

Fig Street Inn has an off-street parking area accessible from Tazewell Avenue that can accommodate 5 vehicles. It is done in natural materials (sand, shell, dirt, grass). Please refer to Proffer 2 above about planned improvements to off-street parking.

We currently have 4 guest rooms and have approval to add a 5th unit in a pre-existing out building. This unit should be operational by year's end.

We provide one (1) off-street parking spot per guest room. Guests are told they can park in the lot or on the street, whichever they prefer. When guests have more than 1 vehicle – whether it is 2 people meeting here, or guests that rent a golf cart – they are directed to park one in the lot, and one on the street. When we are not at full occupancy, guests are told they may park more than 1 vehicle in the lot, if needed.

We do direct guests with over-width vehicles or trailers to park on Tazewell.

There is additional off-street parking accessible from the alleyway between Tazewell and Monroe. The area is not marked and is grassed. Guests are not directed to this area but it is available for ourselves and staff.

Concern was raised about parking on Tazewell. We can only speak to parking on the 700 block, and issues on other blocks of Tazewell are not from our business.

We have taken an inventory of street parking along Tazewell since the August 6th Planning Commission meeting (see attachment). We believe the data supports our previous statement that there is ample parking on our block of Tazewell. Residents that park on the west side claim a spot and rarely move their vehicles. These are residents who live along Fig Street or on the 600 block of Tazewell. Non-residents parking on Tazewell are typically from our business.

During the 10-day period in which we tracked parking, Fig Street Inn was at 85% occupancy (6 of those days were 100% occupancy). This means we had 3+ guest vehicles each day, and there were times many guests would choose to park on the street. Even with those vehicles on Tazewell, there was ample available parking. Should there still be concern with visitor parking along the 700 block of Tazewell, we believe some of this may be mitigated with the planned improvements to our off-street parking area and requesting that Fig Street Inn guests use the lot.

We recognize that parking is a concern throughout Cape Charles; however, our business should not be held to a higher standard than other businesses, and neither should we be held to higher residential standards. We understand the Town will be looking at longer term town-wide solutions, but until those are in place, the 700 block of Tazewell and our business should not be restricted for what may be a perceived issue vs. measurable issue.

Speeding Along Fig Street:

A concern was raised about vehicles speeding along Fig Street. We do not believe this is our guests. We are one block from the turn onto Fig from Randolph or from the STOP sign near New Roots Youth Garden. It is improbable, in our opinion, for a guest vehicle to increase to a high rate of speed when they are only driving one block and making a right turn onto Tazewell to access our business.

We are not aware of any guest receiving a speeding ticket within Town limits in our 14 years of operation. We are aware of guests receiving parking tickets downtown or speeding tickets along Route 13, so we expect a guest would have mentioned receiving a speeding ticket in Town.

Should our business expand to include additional offerings to the public, we do not see speeding along Fig Street being a result of commercial operations from our property because of our close proximity to Town's entrance.

Traffic:

We have updated our website to direct guests to use Fulcher Street rather than Fig Street when coming into Town (see attached). This will redirect traffic from Fig Street and the 4 corners on Randolph and Fig.

Commercial Development in a Residential Area:

The intent of the Commercial Residential (CR) designation (Town of Cape Charles Zoning Ordinance, Article III, Section 3.5) is exactly what we want to accomplish and preserve - "It is the intent of this zone to promote the continued residential character of these areas while allowing commercial uses to be introduced. The specific intent of this district is (1) to encourage retention of the existing residential buildings and character of the area and (2) to encourage compatible uses for these buildings."

The Town's Comprehensive Plan dated December 15, 2022 (pages 112, 113) recognizes the "existing land use" of 711 Tazewell Avenue/302 Fig Street as commercial, despite a R-1 designation. The property has operated as a commercial entity since Fig Street Inn opened May 2011. It is not a hobby and it is not supplemental or secondary income. Fig Street Inn is a full-time, year-round business, with 2 full-time employees (two owners) and 3 part-time seasonal employees. It is the oldest bed and breakfast in Cape Charles with 14 years in business, and is only one of two operating beds and breakfasts in town.

Since opening 14 years ago, the property has maintained its residential "character". Any changes to the building, and any potential new development are required to go through Town processes, permitting, commissions, boards, etc. for approval(s). We should not be denied for fear or concern of the "potential" of what could be developed. There are multiple steps any one (whether it is ourselves or a future owner) would need to go through, and multiple opportunities for the Town to impact and influence development, and ensure that residential character is maintained.

Commercial operations are not new to our end of Town. According to the August 9, 2024 Weekly Report, the Town Manager is in discussions "with the owner of the former Meatland property about possible future developments". We expect that would have sort of commercial use and would be accessible and visible from Tazewell Avenue. Storage and access to Eastern

Shore Custom Carts is available and visible across from our lots and along Tazewell Avenue. Those commercial entities are about ¼ of the 700 block of Tazewell.

One block south on Fig Street are Rayfield's Pharmacy, Chesapeake Properties and the Kellogg Building. Two blocks north on Fig Street is Wendell's Distributing, an industrial warehouse with parking lot for delivery trucks that operate in and out of town regularly.

The point of stating this is to acknowledge that our neighborhood already has a mix of commercial and residential, and specifically, it already exists on the 700 block of Tazewell Avenue. It would not be out of the neighborhood's character to have additional designated commercial entities on the 700 block of Tazewell.

Proposed Changes:

As stated in our initial application, we would like to add bicycle rentals to our business. The primary purpose is to offer as an amenity to guests, but we also want to make them available to the general public. This would be permissible with a conditional use permit with CR designation, and we understand that is a separate approval process. There would NOT be a "bicycle shop" or addition of any other structure for a bicycle rental business. Operation plans with location are detailed in our initial application.

Since our initial application, we have researched the addition of an EV charger to our off-street parking lot area. It will be for guest use but it does have the capability of being made available to the general public. We do not think making it available to the public is a good financial decision and could be disruptive to inn guests.

We have also researched and have a company we would like to engage with for solar power. As a commercial entity, with a commercial zoning designation, we would reduce our electric by approximately 75%. This will save us at least \$4,000 per year as well as be better for the environment. Savings with a residential designation are about 35%. There are many more incentives for commercial properties which is the reason for the difference in savings. However, these require zoning designation and not just land use. We have discussed Town licensing and permitting processes with the vendor so they (and we) are aware of what is needed to pursue. Having a commercial designation is the first step to implementing that project.

Reasoning for Designation Request:

Fig Street Inn is operated with a Conditional Use Permit (CUP) in R-1 designation. The CUP (copy attached) permits "operation of a 6 bedroom bed & breakfast (5 bedrooms in main house, 1 bedroom in accessory building)" and is "valid for only the specific use it covers".

The only way to expand bed and breakfast operations is to add a 5th guest bedroom to the main building which would require a significant renovation. We are not in a position to do that and do not have plans to pursue.

In order to grow the business outside of a bed & breakfast operation, to continue sustainability and viability, and to protect the home and lots from potential conversion into 7 single family homes, we are asking for a CR designation for all 3 parcels (7 lots total). We are not a contributing structure but the home was built for W.B. Wilson, owner of Wilson's department store (the Wilson Building on corner of Strawberry and Mason).

CR designation allows the pursuit of additional operations from our business location with minimal impact on our neighborhood.

- **Bicycle rental** is our immediate interest requiring a CUP. There could be signage attached to the fence for this, but we would work with the Town on what is permissible and suitable for the neighborhood.

- By right use for **gift shop** - We currently have a very small gift shop inside the inn available to guests, but we would like option to open to the public. Given the nature of our bed and breakfast operations, this would be on a limited basis with limited days and hours of operation and would more than likely be seasonal (holiday time). This would not require additional structures or signage.
- **Small business meetings, retreats** - We are not sure if this is a by-right under “offices” or requires a CUP under “conference center”. Either way, we would like to include this offering to generate income during our slower periods. This would not require additional structures and we would work with the Town should this require a CUP.
- **Elopements** - This is not listed as a by right or CUP under CR, but is not permitted with our current CUP. We would work with the Town to ensure we have permission to offer this. This would not require additional structures or signage, but we may want to add a decorative arch in the gardens. This offering would be in Lots J and/or I if outdoors, and Lot A, if indoors.

Separating Parcels:

There was discussion of limiting a CR designation to select parcels. The inn sits on Lot A which is made up of 5 parcels; and then there are 2 additional lots - Lot J to the west of A, and then Lot I which borders our neighbor. Lots J and I are boxwood gardens and we believe the two lots have been undeveloped since the home was built in 1899.

Having looked more closely at our land survey (see attached), you will see a well head towards the middle back on Lot J (towards the alleyway). This well serves Fig Street Inn. We ask that if parcels are to be separated with different zoning designations, that Lot J stay with Lot A and also receive a CR designation as the well is part of the business.

Future Development:

The following are not offered as proffers for permitted uses, as we would like to consider them in future development as business opportunities for us or family members:

- **Accessory building** – to provide long-term workforce housing or housing for aging family members. Although more lucrative, we are not interested in operating a vacation rental, but helping to address housing issues in our area.
- **Beauty and barber shop** – this is an area of interest for one of our children.
- **Bed and breakfast** – with addition of another structure to provide transient overnight accommodations. This is a limited offering in Cape Charles with only 35 available rooms among 4 businesses. We will add one to the inventory upon completion of our outside unit, and the Hotel Cape Charles will add additional units in the Betis Building, if approved. We know there is demand for this offering, and it makes sense to keep that type of business contained within our parcels.
- **Clothing store** – this is area of interest for both of our children
- **Day spas** – this is area of interest for one of our children.
- **Florist** – this is not something we are personally interested in but is not something our Town has. Should a structure be built for this, it would be a lease option for another business owner.
- **Gift Shop** – see above
- **Office** – see above
- **Single family dwelling** – for the same reasons we did not offer accessory building as a proffer.

Although permitted uses, ANY development is required to go through Town processes for approval. Concerns with parking could be addressed by requiring off-street parking.

The following CUP uses were not offered as proffers:

- **Bakeries** - this is area of interest for our family as a whole, but we do not see this as a need or fitting into our business plans, at this time.
- **Bicycle shop** – see above.
- **Café and coffee shop** - this is area of interest for our family as a whole, but we do not see this as a need or fitting into our business plans, at this time.
- **Conference center** – see above.

Not only would any development for the CUPs listed above need to go through Town processes for approval, they would also need to go through CUP approval processes.

There are many opportunities for the Town to have a say into how the land is developed.

Summary:

We know we want to expand our offerings and provide opportunities for our family to stay on the Shore. CR designation for all 3 parcels allows that with Town processes in place to protect the neighborhood character.

Again, thank you for the opportunity and we hope this addresses concerns of the Planning Commission. At least one of us will be attendance at the Tuesday, September 3 Planning Commission Meeting. The other is traveling back from dropping our oldest off at college and will do their best to return in time for the 6 pm meeting.

We thank you for working with us throughout this process.

With kindness,



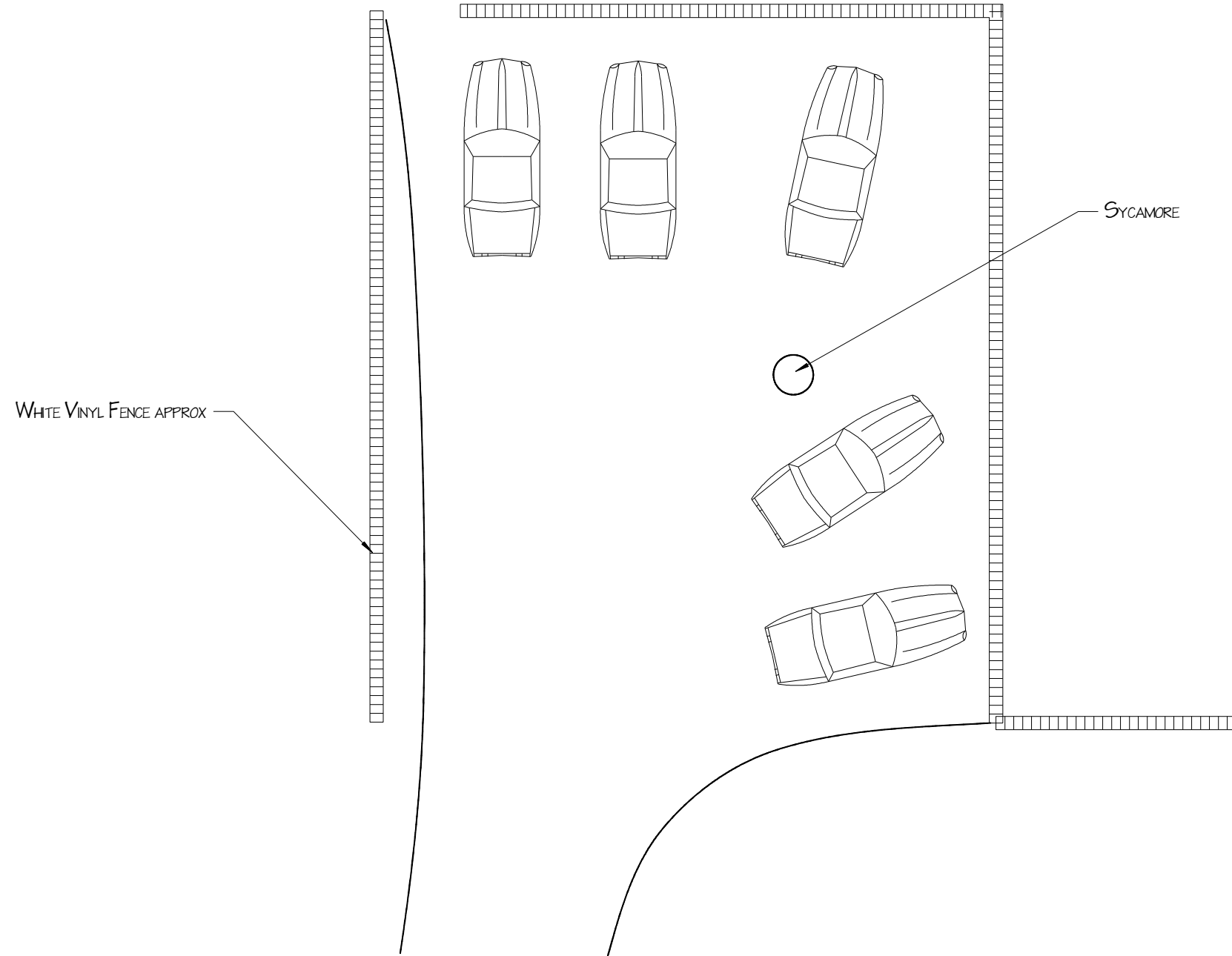
Donna Olney Kohler



Gregory S. Kohler

WHITE VINYL FENCE APPROX

SYCAMORE



TAZEWELL AVE



MUNICIPAL CORPORATION OF CAPE CHARLES

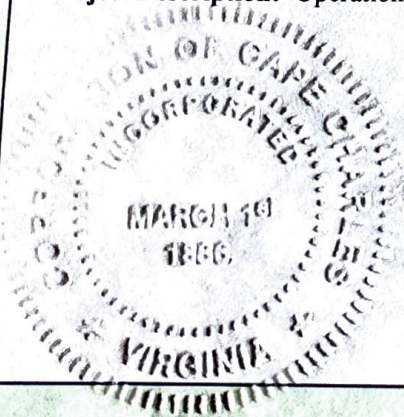
Date Issued: February 11, 2010

Issued to: Gregory S. & Donna O. Kohler
4650 Harris Hill Road
Williamsville, NY 14221

For Property: 302 Fig Street
Cape Charles, VA 23310

Conditional use permit shall be valid for only the specific use it covers in the specific location designated for a period of one year after the date of approval. If not acted upon within one year, the conditional use permit shall become null and void, unless construction is substantially underway during such one-year period or unless an extension of time not exceeding one year is approved by the Town Council for good cause shown before the expiration of such one-year period.

Project Description: Operation of a 6 bedroom Bed & Breakfast (5 bedrooms in main house, 1 bedroom in accessory building).



Libby Hume
Town Clerk

2/11/10
Date

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COMMUNITY NO.: 510106
PANEL: 0285F DATED: MARCH 2, 2015

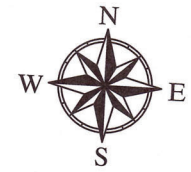
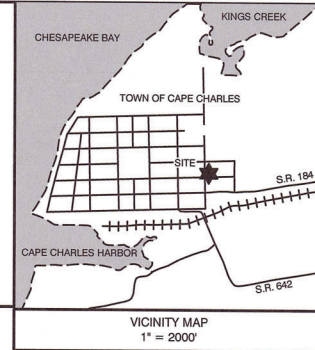
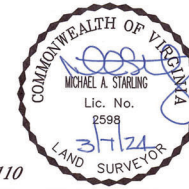
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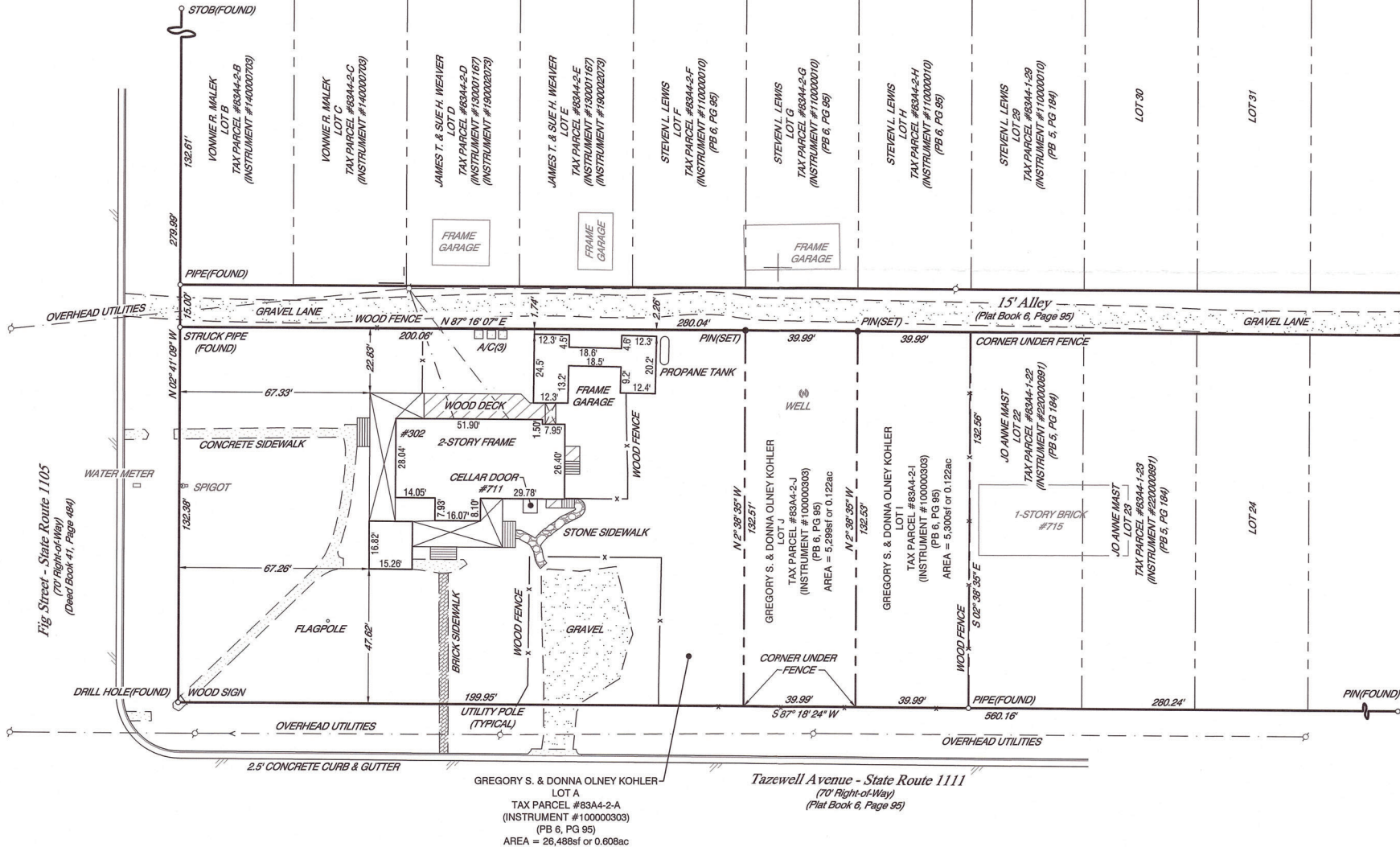
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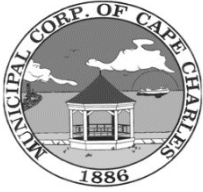
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SHEET 1 OF 1

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#083A4-1-002-00-0001 & #083A4-1-002-00-000J
TOWN OF CAPE CHARLES
NORTHAMPTON COUNTY, VIRGINIA
FOR
Donna Kohler
FEBRUARY 22, 2024





PLANNING COMMISSION PUBLIC HEARING STAFF REPORT

Meeting Date: August 6, 2024

Item #4A & 7A – ZMA-2024-01

Prepared by: Katie H. Nunez, Planning/Zoning Administrator

Date: July 17, 2024

APPLICANT: Donna & Gregory Kohler

SITE ADDRESS: 711 Tazewell Avenue/302 Fig Street (aka Fig Street Inn)

TAX MAP: 83A4-2-A & 83A4-2-J & 83A4-2-I

LOT SIZE: 36,404.18 sq. ft total or .84 acres

TYPE OF APPLICATION: Conditional Rezoning Map Amendment (ZMA) 2024-01

SPECIFIC REQUEST: Conditionally Rezone from R-1 to CR with proffers

ZONING ORDINANCE: CCZO Section 2.7.2 & 2.7.4 thru 2.7.9

CURRENT ZONING: Residential-1(R-1)

PROPOSED ZONING: Commercial Residential (CR)

DATE RECEIVED: June 6, 2024

DATE DEEMED COMPLETE: June 8, 2024

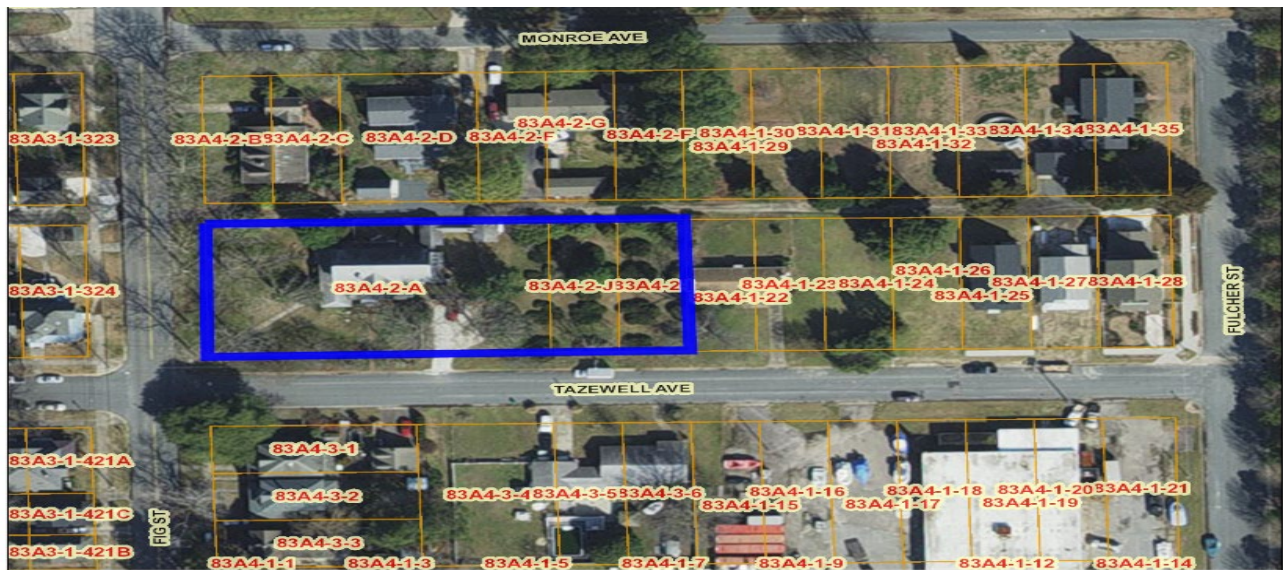
LEGAL DEADLINE: 100 days from 1st Receiving Application: November 14, 2024

Updated Staff Report – Updated Proffer Statement by Applicant:

AUGUST 6, 2024 STAFF REPORT

NARRATIVE OF PROPOSAL

An application for conditional rezoning (ZMA 2024-01) with proffers was submitted by Donna and Gregory Kohler to rezone their property & business identified as the Fig Street Inn at 711 Tazewell Avenue/302 Fig Street (Tax Map #83A4-2-A & 83A4-2-J & 83A4-2-I).



BACKGROUND

On February 11, 2010, Town Council approved a Conditional Use Permit to operate a Bed & Breakfast to the Fig Street Inn at this address; said approval indicated it was for a total of 6 room (5 bedrooms in the main house and 1 bedroom in the accessory building).

The Cape Charles Zoning Ordinance Section 3.2 (Single Family Residential District R-1), Item # C (3) allows, through conditional use permit, the following:

3. Bed and breakfasts and tourist homes, provided the following requirements are met:
 - a. The owner and family must occupy the residence. The owner and his/her appointed agent are responsible for supervising guests.
 - b. The single-family dwelling appearance must be maintained.
 - c. Parking should be considered on a case-by-case basis as part of the conditional use application, ensuring adherence to Section 4.5.1 (Table of Parking Standards) using both on and off-street parking areas.
 - d. A sign no larger than four square feet shall be permitted.
 - e. The number of rooms shall be subject to recommendation by the Planning Commission and approved by the Town Council.

This was the requirement at the time when this property received their Conditional Use Permit.

CONDITONAL REZONING REQUEST

The applicant is seeking to rezone their three parcels from Residential-1 to Commercial Residential (CR) with the following proffer condition: To eliminate the following five by-right uses allowed in the CR District – Athletic Club; Camera Shop; Newsstand; Tobacco Store; Video Store.

The applicant is seeking to expand their business offerings on the property to enhance the visitor experience for their customers at the Bed & Breakfast. They would like to offer a bicycle rental business which would be available to their clientele as well as the general public; said bicycle rental business would not require a “storefront” but would operate through an online application for rental

reservation and payment. While this type of business operation is not a by-right use in the CR district but requires a conditional use permit, the applicant is aware and prepared to seek said conditional use permit, which they understand is not a guarantee of approval, but would not be a possibility if the zoning on their property remains R-1.

Enclosed is the full application from the applicant; please note that this includes their response to the five mandatory questions contained in the application.

REVIEW WITH RESPECT TO COMPREHENSIVE PLAN

ECONOMY CHAPTER – OVERVIEW – pg. 50

Cape Charles is home to a lively economy **built around accommodations**, food service, health care, social services, education services, retail trade, public administration, manufacturing, fisheries/maritime activities, and transportation (2018 Cape Charles Market Study). **The Cape Charles economy is evolving to support growth in other sectors, especially tourism and related sectors**, as maritime businesses decline nationwide. Having navigated the worst of the COVID-19 pandemic, the **Town continues to encourage the growth of existing businesses, as well as the creation of new businesses, in diverse markets**. The Town is pursuing strategies to support businesses of different sizes and structures, ranging from small shops opened by residents to corporations.

Economy Objectives and Strategies – pg. 54

- (3) Provide opportunities for households to strengthen their economic wellbeing.

Transportation Objectives and Strategies – pg. 68

- (1) Reduce traffic congestion by reducing local vehicle miles traveled (VMT) by automobile. Coordinate with Land Use objectives and strategies.
- (b) Prioritize increasing the number of people walking and bicycling in town.

FUTURE LAND USE MAP



The Future Land Use Map (FLUM) shows this area of Town to continue to be Historic District Residential; however, in the description of this designation (see below), there is an acknowledgement that some of the residential properties have been converted into a business use for lodging and indicates that this Plan intends for flexibility in use while maintaining the character of the area and quality of life for residents.



Historic District Residential: The Historic District Residential category covers the majority of the original street grid in Cape Charles. Any new development in this area is intended to reflect the historic character of the core residential area and compliment features of existing structures.

This plan recognizes that some historic homes have been converted into lodging and other uses. As such, the plan intends flexibility in use while maintaining the character of the area and quality of life for residents.

REVIEW WITH RESPECT TO ZONING ORDINANCE: ZONING DISTRICTS – INTENT

The Cape Charles Zoning Ordinance provides a statement of intent for the current zoning district of Residential-1 (R-1) as follows:

The intent of this basic zoning district is to provide quiet, medium density, single-family residential development plus provide open areas where similar residential development appears likely to occur. The regulations for this district are designed to stabilize and protect the essential characteristics of the district, to promote and encourage a suitable environment for family life where there are children, and to restrict all activities of a commercial nature as described in Section 3.6-A of this ordinance, known as Commercial District C-1, which states “These commercial activities are characterized by heavy traffic, noise, and congestion of people and passenger vehicles and by large office buildings and retail establishments,” and to promote a convenient, attractive, and harmonious community. This section is created in recognition of the existence of developed areas where single-family and duplex dwelling currently exist on lots of 5,600 square feet and where the characteristics of the neighborhood include both permanent as well as seasonal residents.

The proposed rezoning district of Commercial Residential (CR) provides the following statement of intent as follows:

The purpose of this district is to recognize the unique juxtaposition of the existing residential structures within the central business district and the future needs of Cape Charles commercial districts. It is the intent of this zone to promote the continued residential character of these areas while allowing commercial uses to be introduced.

The specific intent of this district is (1) to encourage retention of the existing residential buildings and character of the area and (2) to encourage compatible uses for these buildings.

ANALYSIS – Uses by Right and Conditional Use between the 2 Districts (ITEMS highlighted in PINK are PROFFERS to prohibit these by-right uses from this property)

<u>RESIDENTIAL-1</u>	<u>COMMERCIAL RESIDENTIAL</u>
Permitted Uses by Right 1. Single-family dwellings. 2. Churches and places of worship 3. Parks and playgrounds. 4. Accessory buildings. 5. Schools and Municipal Community Center. 6. Group Homes per § 15.2-2291 of the Code of Virginia. 7. Home occupations in accordance with Section 4.0. 8. Dog pens. 9. Accessory Dwelling units by right in compliance with the requirements of Article 4.2(J)	Permitted Uses by Right 1. Accessory buildings 2. Antique shops 3. Art galleries 4. Athletic clubs 5. Beauty and barber shops 6. Bed and breakfasts 7. Camera shops 8. Candy stores 9. Clothing stores 10. Day spas 11. Dry goods stores 12. Florists 13. Gift shops 14. Leather goods 15. Newsstands 16. Offices 17. Real estate sales 18. Single-family dwellings 19. Tobacco stores 20. Video stores 21. Any other use which is compatible in nature with the foregoing uses and which the Zoning Administrator determines to be compatible with the intent of the district and is concurred with by the Planning Commission.
<u>CONDITIONAL USES</u> 1. Libraries, museums, and office and meeting spaces for civic organizations Town of Cape Charles 2. Public utilities and services provided that the exterior appearance of any building permitted in this district shall be in keeping with the character of the neighborhood in which it is located 3. Bed and breakfasts and tourist homes, provided the following requirements are met: a. The owner and family must occupy the residence. The owner and his/her appointed agent are responsible for supervising guests. b. The single-family dwelling appearance must be maintained.	<u>CONDITIONAL USES</u> 1. Bakeries 2. Bicycle shops 3. Cafes and coffee shops 4. Conference centers 5. Day care centers 6. Delicatessens 7. Ice cream parlors 8. Restaurant

c. Parking should be considered on a case-by-case basis as part of the conditional use application, ensuring adherence to Section 4.5.1 (Table of Parking Standards) using both on and off-street parking areas. d. A sign no larger than four square feet shall be permitted. e. The number of room accommodations shall be subject to recommendation by the Planning Commission and approved by the Town Council. 4. Neighborhood community center 5. Swimming pools, tennis courts, and basketball courts. 6. Adaptive Reuse of existing structure is a new use different than the intended use for which the structure was originally constructed. The Reuse is generally a permitted, accessory or conditional use with an adaptation such as density or size that is greater than the ordinance allows. The Reuse would require a conditional use permit (CUP). The following additional requirements must also be met: a. The use must be compatible with the permitted uses in the zone. b. The Reuse plan must meet the table of parking and landscaping standards (unlike reuse in the C-1 Zone where parking requirements are on a case by case basis). c. Replacement and new utility services shall be placed underground. d. The structure shall be a contributing structure to the Cape Charles National Historic District or at least 50 years old and the exterior of the structure must be restored in accordance with the Cape Charles Historic District Guidelines. 7. Residential dwelling units in square footage area below the minimum or above the maximum stated in Section 3.2.F.2	
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The Fig Street Inn is an established Bed & Breakfast in the Town; however, the Town has seen a conversion of these types of establishments over the last five years back into a residential use, with a strong leaning towards Short Term Rental capacity. In fact, there are only two remaining bed & breakfast establishments in Cape Charles along with two hotels. This application would allow this establishment to become a by-right use of its primary business at this property but to also offer, by-right, additional amenities not only to its guests but potentially to other customers in a low-impact manner; said amenities would supplement the viability of this business.

The Comprehensive Plan has acknowledged that the large historic homes have been converted into this type of lodging and the type of supplemental business being considered by the applicant is consistent with the intent of the Town to increase bicycling opportunities in the Town.

It is essential to review all of the by-right uses in the Commercial-Residential District that would be allowed at this location if the rezoning application is approved and determine if any of these uses were initiated at this property would they rise to the same level of use and activity occurring on the property currently or would they impact the neighborhood in a more intensive and possibly disruptive manner to a generally residential neighborhood. I do feel that the other by-right uses are equally on-par and would not be jarring to the neighborhood and would operate during daylight hours with nominal traffic impact and the property and its road frontage on Tazewell Avenue provide sufficient parking capacity to handle these uses, if activated.

STAFF RECOMMENDATION

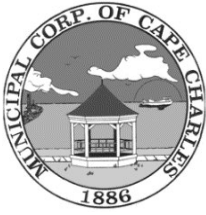
Staff is requesting the Planning Commission to convene and hold the public hearing and consider all comments received and determine if there are additional issues raised that were not considered by staff which may need to be considered. Staff is recommending favorable consideration of the conditional rezoning of Tax Map Parcels# 83A4-2-A & 83A4-2-J & 83A4-2-I from Residential-1 (R-1) to Commercial Residential (CR) with the proffers provided by the applicant.

POSSIBLE PLANNING COMMISSION MOTION

I would recommend the following motion for the Planning Commission's consideration: ***Motion to recommend the conditional rezoning of Tax Map Parcels # 83A4-2-A & 83A4-2-J & 83A4-2-I from Residential -1 to Commercial Residential with the proffers provided by the applicant.***

Attachments:

- Attachment 1 – ZMA Packet for 711 Tazewell Avenue Application for ZMA with Proffers
- Attachment 2 – Site Plan
- Attachment 3 – CUP for Fig Street Inn 2010-02-11 – 6 Bedroom B&B
- Attachment 4 – Town Council Minutes approving CUP 2010-02-10
- Attachment 5 – Cape Charles Zoning Ordinance Sections 2.7.2 & 2.7.4 thru 2.7.9



PLANNING COMMISSION PUBLIC HEARING STAFF REPORT

Meeting Date: September 3, 2024

Item #4A & 7A – ZMA-2024-01

Prepared by: Katie H. Nunez, Planning/Zoning Administrator &
Jack Steinmayer, Planning & Zoning Compliance Officer

Date: August 29, 2024

APPLICANT: Donna & Gregory Kohler

SITE ADDRESS: 711 Tazewell Avenue/302 Fig Street (aka Fig Street Inn)

TAX MAP: 83A4-2-A & 83A4-2-J & 83A4-2-I

LOT SIZE: 36,404.18 sq. ft total or .84 acres

TYPE OF APPLICATION: Conditional Rezoning Map Amendment (ZMA) 2024-01

SPECIFIC REQUEST: Conditionally Rezone from R-1 to CR with proffers

ZONING ORDINANCE: CCZO Section 2.7.2 & 2.7.4 thru 2.7.9

CURRENT ZONING: Residential-1(R-1)

PROPOSED ZONING: Commercial Residential (CR)

DATE RECEIVED: June 6, 2024

DATE DEEMED COMPLETE: June 8, 2024

LEGAL DEADLINE: 100 days from 1st Receiving Application: November 14, 2024

Updated Staff Report – Updated Proffer Statement by Applicant:

At the August 6, 2024, Public Hearing and Regular Meeting, the Planning Commission discussed a conditional rezoning application with proffers submitted by Donna and Gregory Kohler to allow for a rezoning of their property and business identified as the Fig Street Inn at 711 Tazewell Avenue/302 Fig Street (Tax Map #83A4-2-A & 83A4-2-J & 83A4-2-I).

As stated by the Kohler's in their original application the primary purpose for rezoning would be to allow for bicycle rentals as an accommodation for guests of the Fig Street Inn, however, they would also be available to members of the public. This would be permissible with a conditional use permit with a Commercial Residential designation.

After considerable conversation between members of the Planning Commission along with input from the members of the public, no conclusive resolution between the board could be agreed upon to reach a majority recommendation of parcel "A" for the conditional rezoning application for Fig Street Inn at the time. Furthermore, more information was requested by members of the Planning Commission for clarification on why the applicants were looking to rezone parcels J and I from R-1 to CR, even though Fig Street Inn building occupies the singular parcel "A".

Because of this it was recommended by the Planning/Zoning Administrator to table the vote for the conditional rezoning of the parcels for Fig Street Inn and have the applicants come in and talk to the Planning/Zoning Administrator. This was agreed upon with unanimous approval.

After meeting with the Planning/Zoning Administrator, the applicants have offered the following additional proffers for consideration: Antique Shops; Art Galleries; Candy Store, Dry Goods Store; and a Leather Goods Store. Also, the applicants have offered to eliminate the following as a conditional use and further restrict the following four uses: Day Care Centers; Delicatessens; Ice Cream Parlors; and Restaurants. (see updated chart on page 7 of this staff report)

It was also brought up by the Planning Commission and by members of the public that parking has been a problem on Tazewell Avenue and Fig Street, and rezoning these parcels to allow for additional business would exacerbate the problem. After meeting with the Planning/Zoning Administrator, the applicants have submitted a proffer to address the parking issues by using only natural materials for the development and maintenance of the current off-street parking on their property to retain the character of the neighborhood. Currently, the Kohler's have met with Jeff Klingel Landscape and at some point, this year will work to improve the current off-street parking which is accessible from Tazewell Avenue.

There is also potential to add an additional parking space to the lot, though, the space is currently occupied by a sycamore tree which would have to be removed, and this would not be the preferred decision as the tree provides shade and adds to the residential area.

Finally, the applicants have also mentioned how they would like to add a Fig Street Inn sign to the side of the building. As the town is currently working on updating the sign ordinance, the applicants have agreed to work with the town on any new signage and/or changes/updates so that it is appropriate for Fig Street Inn to have this proposed sign within a residential community.

Applicant has submitted a greater explanation within this amended proffer statement on why they are seeking for all three lots to be rezoned. The Planning Commission will need to determine if this explanation is sufficient to support rezoning of all three lots.

STAFF REVIEW OF COMP PLAN relative to the Updated Proffer Statement

While the Future Land Use Map (FLUM) shows these parcels with a land use designation of Historic District Residential, this land use designation specifically references that some of the historic homes have been converted into lodging and other uses and the intent is for the plan to have flexibility in use while maintaining the character of the area and the quality of life for the residents.

This business has been in operation for the past 14 years and is intending on being in operation for years to come but has indicated that some flexibility in its ability to conduct and offer complementary, but ancillary business services is essential to their continued operations.

The proffers from the applicant clearly demonstrate their intent to respect the neighborhood in which they are located but also give a nod to the current conditions at the edges of their neighborhood block

with Wendell’s Distributing Company located a block and a half to the north at the corner of Fig St & Madison Avenue and the former Meatland property, now home to Eastern Shore Custom Carts, located at the end of their street (Tazwell Avenue) on the south side.

Their proffers are limiting the more intensive uses that would impact a neighborhood with increased traffic, both vehicular and pedestrian, noise and visual impact. Staff are in support of this application with the original and amended proffers from the applicant.

Staff is prepared to assist the Planning Commission in developing a motion, as needed, regarding a recommendation to the Town Council on ZMA 2024-01 application to conditional rezone Tax Map Parcels # 83A4-2-A & 83A4-2-J & 83A4-2-I from Residential -1 to Commercial Residential with the original and amended proffers provided by the applicant.

AUGUST 6, 2024 STAFF REPORT
NARRATIVE OF PROPOSAL

An application for conditional rezoning (ZMA 2024-01) with proffers was submitted by Donna and Gregory Kohler to rezone their property & business identified as the Fig Street Inn at 711 Tazewell Avenue/302 Fig Street (Tax Map #83A4-2-A & 83A4-2-J & 83A4-2-I).



BACKGROUND

On February 11, 2010, Town Council approved a Conditional Use Permit to operate a Bed & Breakfast to the Fig Street Inn at this address; said approval indicated it was for a total of 6 room (5 bedrooms in the main house and 1 bedroom in the accessory building).

The Cape Charles Zoning Ordinance Section 3.2 (Single Family Residential District R-1), Item # C (3) allows, through conditional use permit, the following:

3. Bed and breakfasts and tourist homes, provided the following requirements are met:
 - a. The owner and family must occupy the residence. The owner and his/her appointed agent are responsible for supervising guests.
 - b. The single-family dwelling appearance must be maintained.
 - c. Parking should be considered on a case-by-case basis as part of the conditional use application, ensuring adherence to Section 4.5.1 (Table of Parking Standards) using both on and off-street parking areas.
 - d. A sign no larger than four square feet shall be permitted.
 - e. The number of rooms shall be subject to recommendation by the Planning Commission and approved by the Town Council.

This was the requirement at the time when this property received their Conditional Use Permit.

CONDITONAL REZONING REQUEST

The applicant is seeking to rezone their three parcels from Residential-1 to Commercial Residential (CR) with the following proffer condition: To eliminate the following five by-right uses allowed in the CR District – Athletic Club; Camera Shop; Newsstand; Tobacco Store; Video Store.

The applicant is seeking to expand their business offerings on the property to enhance the visitor experience for their customers at the Bed & Breakfast. They would like to offer a bicycle rental business which would be available to their clientele as well as the general public; said bicycle rental business would not require a “storefront” but would operate through an online application for rental reservation and payment. While this type of business operation is not a by-right use in the CR district but requires a conditional use permit, the applicant is aware and prepared to seek said conditional use permit, which they understand is not a guarantee of approval, but would not be a possibility if the zoning on their property remains R-1.

Enclosed is the full application from the applicant; please note that this includes their response to the five mandatory questions contained in the application.

REVIEW WITH RESPECT TO COMPREHENSIVE PLAN

ECONOMY CHAPTER – OVERVIEW – pg. 50

Cape Charles is home to a lively economy **built around accommodations**, food service, health care, social services, education services, retail trade, public administration, manufacturing, fisheries/maritime activities, and transportation (2018 Cape Charles Market Study). **The Cape Charles economy is evolving to support growth in other sectors, especially tourism and related sectors**, as maritime businesses decline nationwide. Having navigated the worst of the COVID-19 pandemic, the **Town continues to encourage the growth of existing businesses, as well as the creation of new businesses, in diverse markets**. The Town is pursuing strategies to support businesses of different sizes and structures, ranging from small shops opened by residents to corporations.

Economy Objectives and Strategies – pg. 54

- (3) Provide opportunities for households to strengthen their economic wellbeing.

Transportation Objectives and Strategies – pg. 68

- (1) Reduce traffic congestion by reducing local vehicle miles traveled (VMT) by automobile. Coordinate with Land Use objectives and strategies.
- (b) Prioritize increasing the number of people walking and bicycling in town.

FUTURE LAND USE MAP



The Future Land Use Map (FLUM) shows this area of Town to continue to be Historic District Residential; however, in the description of this designation (see below), there is an acknowledgement that some of the residential properties have been converted into a business use for lodging and indicates that this Plan intends for flexibility in use while maintaining the character of the area and quality of life for residents.



Historic District Residential: The Historic District Residential category covers the majority of the original street grid in Cape Charles. Any new development in this area is intended to reflect the historic character of the core residential area and compliment features of existing structures.

This plan recognizes that some historic homes have been converted into lodging and other uses. As such, the plan intends flexibility in use while maintaining the character of the area and quality of life for residents.

REVIEW WITH RESPECT TO ZONING ORDINANCE: ZONING DISTRICTS – INTENT

The Cape Charles Zoning Ordinance provides a statement of intent for the current zoning district of Residential-1 (R-1) as follows:

The intent of this basic zoning district is to provide quiet, medium density, single-family residential development plus provide open areas where similar residential development appears likely to occur. The regulations for this district are designed to stabilize and protect the essential characteristics of the district, to promote and encourage a suitable environment for family life where there are children, and to restrict all activities of a commercial nature as described in Section 3.6-A of this ordinance,

known as Commercial District C-1, which states “These commercial activities are characterized by heavy traffic, noise, and congestion of people and passenger vehicles and by large office buildings and retail establishments,” and to promote a convenient, attractive, and harmonious community. This section is created in recognition of the existence of developed areas where single-family and duplex dwelling currently exist on lots of 5,600 square feet and where the characteristics of the neighborhood include both permanent as well as seasonal residents.

The proposed rezoning district of Commercial Residential (CR) provides the following statement of intent as follows:

The purpose of this district is to recognize the unique juxtaposition of the existing residential structures within the central business district and the future needs of Cape Charles commercial districts. It is the intent of this zone to promote the continued residential character of these areas while allowing commercial uses to be introduced.

The specific intent of this district is (1) to encourage retention of the existing residential buildings and character of the area and (2) to encourage compatible uses for these buildings.

ANALYSIS – Uses by Right and Conditional Use between the 2 Districts (ITEMS highlighted in PINK are ORIGINAL PROFFERS & GREEN are AMENDED PROFFERS to prohibit these by-right uses as well as Conditional Uses from this property)

<u>RESIDENTIAL-1</u>	<u>COMMERCIAL RESIDENTIAL</u>
Permitted Uses by Right 1. Single-family dwellings. 2. Churches and places of worship 3. Parks and playgrounds. 4. Accessory buildings. 5. Schools and Municipal Community Center. 6. Group Homes per § 15.2-2291 of the Code of Virginia. 7. Home occupations in accordance with Section 4.0. 8. Dog pens. 9. Accessory Dwelling units by right in compliance with the requirements of Article 4.2(J)	Permitted Uses by Right 1. Accessory buildings 2. Antique shops 3. Art galleries 4. Athletic clubs 5. Beauty and barber shops 6. Bed and breakfasts 7. Camera shops 8. Candy stores 9. Clothing stores 10. Day spas 11. Dry goods stores 12. Florists 13. Gift shops 14. Leather goods 15. Newsstands 16. Offices 17. Real estate sales 18. Single-family dwellings 19. Tobacco stores 20. Video stores 21. Any other use which is compatible in nature with the foregoing uses and which the Zoning Administrator determines to be compatible with the intent of the district and is concurred with by the Planning Commission.
<u>CONDITIONAL USES</u>	<u>CONDITIONAL USES</u>
1. Libraries, museums, and office and meeting spaces for civic organizations Town of Cape Charles 2. Public utilities and services provided that the exterior appearance of any building permitted in this district shall be in keeping with the character of the neighborhood in which it is located 3. Bed and breakfasts and tourist homes, provided the following requirements are met: a. The owner and family must occupy the residence. The owner and his/her appointed agent are responsible for supervising guests. b. The single-family dwelling appearance must be maintained.	1. Bakeries 2. Bicycle shops 3. Cafes and coffee shops 4. Conference centers 5. Day care centers 6. Delicatessens 7. Ice cream parlors 8. Restaurant

c. Parking should be considered on a case-by-case basis as part of the conditional use application, ensuring adherence to Section 4.5.1 (Table of Parking Standards) using both on and off-street parking areas. d. A sign no larger than four square feet shall be permitted. e. The number of room accommodations shall be subject to recommendation by the Planning Commission and approved by the Town Council. 4. Neighborhood community center 5. Swimming pools, tennis courts, and basketball courts. 6. Adaptive Reuse of existing structure is a new use different than the intended use for which the structure was originally constructed. The Reuse is generally a permitted, accessory or conditional use with an adaptation such as density or size that is greater than the ordinance allows. The Reuse would require a conditional use permit (CUP). The following additional requirements must also be met: a. The use must be compatible with the permitted uses in the zone. b. The Reuse plan must meet the table of parking and landscaping standards (unlike reuse in the C-1 Zone where parking requirements are on a case by case basis). c. Replacement and new utility services shall be placed underground. d. The structure shall be a contributing structure to the Cape Charles National Historic District or at least 50 years old and the exterior of the structure must be restored in accordance with the Cape Charles Historic District Guidelines. 7. Residential dwelling units in square footage area below the minimum or above the maximum stated in Section 3.2.F.2	
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The Fig Street Inn is an established Bed & Breakfast in the Town; however, the Town has seen a conversion of these types of establishments over the last five years back into a residential use, with a strong leaning towards Short Term Rental capacity. In fact, there are only two remaining bed & breakfast establishments in Cape Charles along with two hotels. This application would allow this establishment to become a by-right use of its primary business at this property but to also offer, by-right, additional amenities not only to its guests but potentially to other customers in a low-impact manner; said amenities would supplement the viability of this business.

The Comprehensive Plan has acknowledged that the large historic homes have been converted into this type of lodging and the type of supplemental business being considered by the applicant is consistent with the intent of the Town to increase bicycling opportunities in the Town.

It is essential to review all of the by-right uses in the Commercial-Residential District that would be allowed at this location if the rezoning application is approved and determine if any of these uses were initiated at this property would they rise to the same level of use and activity occurring on the property currently or would they impact the neighborhood in a more intensive and possibly disruptive manner to a generally residential neighborhood. I do feel that the other by-right uses are equally on-par and would not be jarring to the neighborhood and would operate during daylight hours with nominal traffic impact and the property and its road frontage on Tazewell Avenue provide sufficient parking capacity to handle these uses, if activated.

STAFF RECOMMENDATION

Staff are requesting the Planning Commission to convene and hold the public hearing and consider all comments received and determine if there are additional issues raised that were not considered by staff which may need to be considered. Staff is recommending favorable consideration of the conditional rezoning of Tax Map Parcels# 83A4-2-A & 83A4-2-J & 83A4-2-I from Residential-1 (R-1) to Commercial Residential (CR) with the proffers provided by the applicant.

POSSIBLE PLANNING COMMISSION MOTION

I would recommend the following motion for the Planning Commission's consideration: ***Motion to recommend the conditional rezoning of Tax Map Parcels # 83A4-2-A & 83A4-2-J & 83A4-2-I from Residential -1 to Commercial Residential with the proffers provided by the applicant.***

Attachments:

- Attachment 1 – ZMA Packet for 711 Tazewell Avenue Application for ZMA with Proffers
- Attachment 2 – Site Plan
- Attachment 3 – CUP for Fig Street Inn 2010-02-11 – 6 Bedroom B&B
- Attachment 4 – Town Council Minutes approving CUP 2010-02-10
- Attachment 5 – Cape Charles Zoning Ordinance Sections 2.7.2 & 2.7.4 thru 2.7.9

ADDITIONAL ATTACHMENT

Amended Proffer Statement and Narrative dated August 16, 2024



**TOWN OF
CAPE CHARLES**

AGENDA TITLE: Budget Amendment – Cape Charles
Volunteer Fire Company Funding

AGENDA DATE
October 17, 2024

SUBJECT/PROPOSAL/REQUEST: A budget amendment in
the amount of \$250,000 to allow Cape Charles Vol. Fire Co. to
purchase a new engine

ITEM NUMBER:
9B

ATTACHMENTS: None

FOR COUNCIL:
Action (X)
Information ()

STAFF CONTACT (s):
Adrian Oei, Assistant Treasurer

REVIEWED BY: John Hozey, Town Manager

BACKGROUND:

As part of the Fiscal Year 2025 budget development process, town council committed to provide \$250,000 in matching funds to the Cape Charles Volunteer Fire Company to help them procure a new fire engine. Council did not appropriate this money in the FY 2025 budget, because it anticipated that it would take several years to procure a new engine. However, the Fire Company has an unexpected opportunity to procure an engine on short notice. At the September 19, 2024, regular meeting there was consensus among Town Council indicating a desire to move forward and provide the funds. To provide the required funding, an amendment to the Fiscal Year 2025 budget is necessary.

ITEM SPECIFICS:

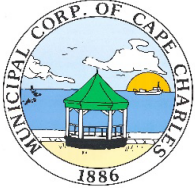
The proposed budget amendment (see below) will appropriate the required \$250,000 from General Fund undesignated fund balance and increase the town's Fiscal Year 2025 support of Cape Charles Vol. Fire Co. from \$50,000 to \$300,000. The additional \$250,000 will be used to purchase a new fire engine.

	Original Budget	Amended Budget	Change
<i>GF Revenue</i>			
100-3900-6000 Appropriation From Fund Balance	\$ -	\$ 250,000.00	\$ 250,000.00
<i>GF Expenses</i>			
100-4121-4025 Grant Exp - Town Support Fire Dept	\$ 50,000.00	\$ 300,000.00	\$ 250,000.00
<i>Revenue Less Expenses</i>			0

Note: This appropriation is below the threshold required for holding a public hearing.

RECOMMENDATION:

Staff recommends that Town Council approve the proposed budget amendment appropriating an additional \$250,000 for the Fire Company.

 TOWN OF CAPE CHARLES	AGENDA TITLE: KW 1&2 Pipelines		AGENDA DATE: October 17, 2024
	SUBJECT/PROPOSAL/REQUEST: Adopt a resolution and ordinances concerning real property transactions necessary to construct raw and treated water pipelines between the KW 1&2 wells site and the water treatment plant.		ITEM NUMBER: 9C
	ATTACHMENTS: 1. Route of pipelines. 2. Resolution for Canonie Atlantic Co. and Virginia Port Authority easements. 3. Ordinance for conveyance of Town easement. 4. Ordinance for parcel acceptance and conveyance.		FOR COUNCIL: Action (X) Information ()
	STAFF CONTACT (s): Bob Panek, Project Manager	REVIEWED BY: John Hozey, Town Manager	

BACKGROUND:

The Town contracted with GHD to prepare plans and specifications for a pipeline to connect two new wells, KW 1&2, to the water treatment plant to increase raw water volume from 416,000 gpd to 500,000 gpd. to meet growing demand. The plans also include a pipeline back to the wells site to convey treated water to the planned adjacent workforce housing development. The water and wastewater utilities were sold to Virginia American Water (VAW) before the pipelines could be bid for construction. While the plans and specifications were transferred to VAW for construction, the post-closing agreement specifies that the Town would complete the following real property transactions necessary to construct the pipelines:

1. Easement from Canonie Atlantic Co. on railroad property, to be assigned to VAW.
2. Easement from Virginia Port Authority (VPA) on dredge spoils site, to be assigned to VAW.
3. Easement to VAW on Town property adjacent to wells site.
4. Conveyance of a small parcel from Bay Creek Development to the Town and then conveyance of the same to VAW.

The route of the pipelines illustrating the above is at attachment 1.

DISCUSSION:

Staff has been working with all parties involved and our attorney to arrange the transactions and prepare the documents.

Acceptance of the two easements and assignment to VAW can be done by a Resolution. The Canonie easement has an annual cost \$5,000 which will be paid by VAW. The VPA easement has a one-time cost of \$2,355.70 which will be paid by the Town. Funds are included in the current fiscal year budget for this expense. The proposed Resolution is at attachment 2.

The grant of an easement on Town property to VAW must be done by an Ordinance. The proposed Ordinance is at attachment 3.

Acceptance of the fee simple parcel conveyance from Bay Creek Development and conveyance from the Town to VAW must be done by an Ordinance. The proposed Ordinance is at attachment 4.

A public hearing is required for the easement the Town is granting and for conveyance of the Bay Creek Development parcel. While no public hearing is required for acceptance of the two easements, they have been included in the hearing so that the public has a complete understanding of the transactions. The public hearing was held this evening.

No bidding is required for the Town's grant of an easement as it is within the scope of the approved franchise granted to VAW. No bidding is required for conveyance of the parcel as the Code of Virginia authorizes private sales of municipal property so long as a public hearing is held.

RECOMMENDATION:

Staff recommends that Council adopt the attached Resolution and Ordinances.

Legend

- Map Printed from Northampton
<https://parcelviewer.gcodeccisions.com/Northampton/>

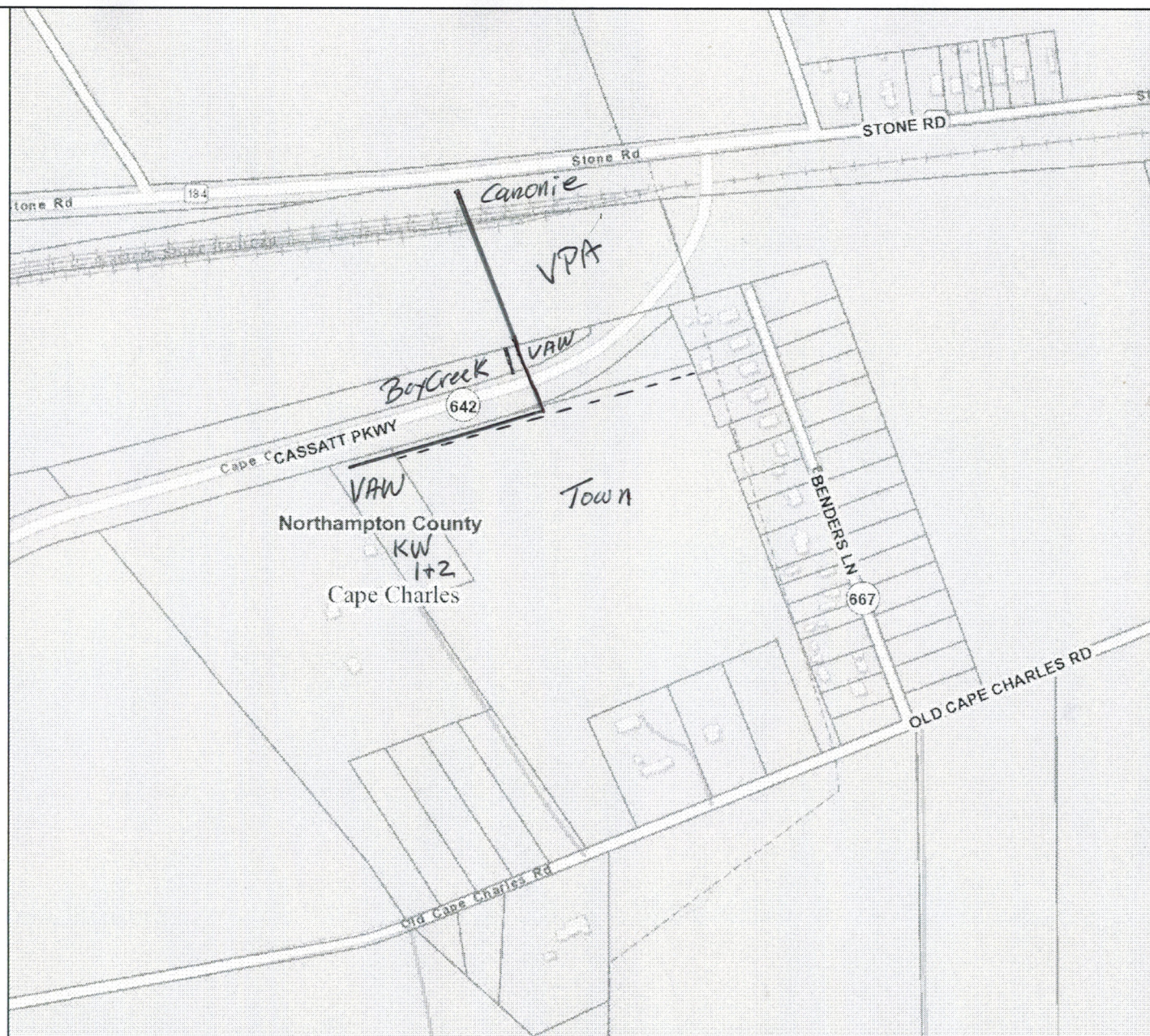
Feet


$$1:4,514 / 1"=376 \text{ Feet}$$

Title:

Date: 5/23/2024

DISCLAIMER: This drawing is neither a legally recorded map nor a survey and is not intended to be used as such. The information displayed is a compilation of records, information, and data obtained from various sources, and Northampton County is not responsible for its accuracy or how current it may be.



RESOLUTION 20241017A

APPROVING THE ACCEPTANCE AND ASSIGNMENT OF CERTAIN EASEMENTS RELATED TO THE SALE OF THE TOWN OF CAPE CHARLES WATERWORKS SYSTEM AND WASTEWATER SYSTEM TO VIRGINIA-AMERICAN WATER COMPANY

WHEREAS, on or about April 24, 2024, the Town of Cape Charles ("Town") sold its water treatment facility and distribution system and its wastewater treatment facility and collection system (collectively, the "System") to Virginia-America Water Company, a Virginia corporation (together with its successors and/or assigns, "VAWC").

WHEREAS, the sale was authorized by Resolution 20221110, Ordinance 20221110A, and Ordinance 20221110B, each adopted by the Town Council on November 10, 2022.

WHEREAS, in connection with the sale and as authorized by the foregoing Resolution and Ordinances, the Town and VAWC executed a Comprehensive Agreement, a Franchise Agreement, and a Post Closing Agreement, among other documents (the "Transaction Documents").

WHEREAS, in connection with operating the System, VAWC requires an easement across real property identified as tax parcel 90-A-9, which is owned by Canonie Atlantic Co. (the "Canonie Easement"), a draft of which is attached hereto as Exhibit A.

WHEREAS, in connection with operating the System, VAWC requires an easement across real property identified as tax parcel 90-A-6, which is owned by the Virginia Port Authority (the "VPA Easement"), a draft of which is attached hereto as Exhibit B. The Canonie Easement and the VPA Easement are collectively called the "Easements."

WHEREAS, it is in the best interest of the Town and is consistent with the Transaction Documents to accept the Easements and then assign the Easements to VAWC.

THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE TOWN OF CAPE CHARLES, VIRGINIA:

1. The Town is authorized to accept the Easements, each as may be further negotiated and revised consistent with the Transaction Documents and these Resolutions.
2. The assignment of the Easements from the Town to VAWC is authorized and approved.
3. The Town Manager is authorized to negotiate such changes and revisions to the Easements as he deems necessary or proper, so long as such changes and revisions are consistent with the Transaction Documents and are not materially adverse to the Town's interests. After the Town Manger determines that the Easements are in final form, the Town Manager is authorized

to execute and deliver the Easements, the instrument assigning the Easements from the Town to VAWC, and such other documents as may be necessary or proper in connection therewith.

4. The Town Manager is further authorized to take other actions as are necessary or proper to implement the foregoing Resolutions.

5. Michael L. Sterling, Esq. of the law firm Woods Rogers Vandeventer Black PLC, a qualified attorney-at-law, is selected to approve the form of the Easements and the assignment instrument, to the extent required by law.

Adopted by the Town Council of the Town of Cape Charles on October 17, 2024.

By: _____
Mayor of the Town of Cape Charles, Virginia

ATTEST:

Clerk of the Town of Cape Charles, Virginia

DRAFT 10/11/24

Exhibit A

Draft of Canonic Easement

[See attached.]

Document prepared by:

After recording, return to:

Kaufman & Canoles
Attn: Brandon S. Allred, Esq. (VSB No. 90516)
150 W. Main Street, Suite 2100
Norfolk, Virginia 23510

Attn: _____

GPIN No. 0090-((0A))-00-009

Current title insurance underwriter is unknown to preparer.

THIS DEED OF EASEMENT IS EXEMPT FROM RECORDATION TAXES PURSUANT TO SECTIONS 58.1-811(A)(3) AND 58.1-811(C)(5) OF THE CODE OF VIRGINIA OF 1950, AS AMENDED, BECAUSE THE GRANTEE IS A MUNICIPAL CORPORATION OF THE COMMONWEALTH OF VIRGINIA

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DEED OF EASEMENT

THIS DEED OF EASEMENT is made effective as of the _____ day of June, 2024, from **CANONIE ATLANTIC CO.**, a Virginia non-stock corporation (the “Grantor”) [index as a grantor], to **THE MUNICIPAL CORPORATION OF THE TOWN OF CAPE CHARLES**, a municipal corporation of the Commonwealth of Virginia (the “Grantee” and, together with the Grantor, each a “Party” and, collectively, the “Parties”) [index as grantee], which has a mailing address of 2 Plum Street, Cape Charles, Virginia 23310.

RECITALS

WHEREAS, Grantor is the owner of certain real property containing, or formerly containing, rail bed and supporting facilities, along with access thereto, located in the County of Northampton, Virginia, as more particularly described on Exhibit A attached hereto and incorporated herein by reference (the “Property”);

WHEREAS, the Property is currently subject to a Notice of Interim Trail Use (“NITU”) issued by the Surface Transportation Board (“STB”) in STB Docket No. **INSERT**;

WHEREAS, Grantor contemplates transferring or leasing all or a portion of the Property to a trail sponsor for interim trail use and rail banking pursuant to the requirements of the National Trails System Act, 16 USC §1247(d) (the “Trails Act”) and the NITU;

WHEREAS, pursuant to the Trails Act and the NITU, the Property must be maintained and remain available for reactivated rail use (the “Reactivated Rail Use”);

WHEREAS, Grantee desires to be granted a non-exclusive easement underneath a portion of the Property for the purpose of constructing, installing, servicing, maintaining, repairing and replacing certain underground equipment and facilities attendant to the provision of water service (the “Facilities”); and

WHEREAS, Grantee desires to grant, and Grantee desires to accept, a non-exclusive easement underneath a portion of the Property for the Facilities on the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the aforementioned recitals which are incorporated herein by this reference, the annual payments specified in Section 1(c) below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto agree as follows:

1. Grant of Easements.

- (a) Grantor does hereby grant and convey, with special warranty of title, unto Grantee a non-exclusive, perpetual easement to construct, install, service, maintain, repair, renew, operate, use, alter or change the Facilities (the “Permanent Water Utility Easement”) underneath that portion of the Property described as “10’ UTILITY EASEMENT HEREBY ESTABLISHED, AREA = 1,225sq or 0.028ac” (the “Permanent Water Utility Easement Area”), as shown on that certain plat entitled “EXHIBIT “A” SHOWING PROPOSED UTILITY EASEMENT OVER THE PROPERTY OF CANONIE ATLANTIC COMPANY, TAX PARCEL #0090-((0A))-00-009, TOWN OF CAPE CHARLES, NORTHAMPTON COUNTY, VIRGINIA, FOR TOWN OF CAPE CHARLES”, made by Shoreline Surveyors and dated as of February 25, 2024, a copy of which is attached hereto as Exhibit B and incorporated herein by reference (the “Plat”), along with the right of ingress and egress for such purposes, upon prompt notice to Grantor.
- (b) Grantor does hereby grant and convey, with special warranty of title, unto Grantee a non-exclusive, temporary easement to construct the Facilities (the “Temporary Construction Easement” and, together with the Permanent Water Utility Easement, each an “Easement” and, collectively, the “Easements”) within that portion of the Property described as “30’ TEMPORARY CONSTRUCTION EASEMENT HEREBY ESTABLISHED, AREA = 3,674sf or 0.084ac” (the “Temporary Construction Easement Area” and, together with the Permanent Water Utility Easement Area, each an “Easement Area” and, collectively, the “Easement Areas”), as shown on the Plat, along with the right of ingress and egress, upon prompt notice to Grantor, and temporary storage of materials, equipment and machinery for such purposes. The term of the Temporary Construction Easement will commence on the date

of this instrument, and it will automatically expire and terminate upon the earlier to occur of (i) three (3) years following the date hereof, or (ii) the completion of the Facilities. Upon request, Grantee will promptly execute and record a termination agreement, in recordable form, by which it will acknowledge the termination and relinquishment of the Temporary Construction Easement.

- (c) In consideration of the aforementioned Easements, Grantee hereby covenants and agrees to pay to Grantor a usage fee of Five Thousand and 00/100 Dollars (\$5,000.00), per annum (the “Usage Fee”), in immediately available funds, payable in advance on the date hereof, and thereafter, in advance on each annual anniversary of the date hereof, in accordance with such instructions as Grantor may deliver to Grantee hereunder from time to time. The Easements shall not commence, or be deemed to vest in Grantee, unless and until the initial Usage Fee is paid to Grantor. If any subsequent installment of the Usage Fee is not paid by no later than the then applicable anniversary hereof, Grantee shall pay to Grantor a late charge equal to 10.00 percent of the overdue amount in order to defray the expenses incident to handling such delinquent payment and, if such Usage Fee is not paid to Grantor within ten (10) days of the date when due, such delinquent Usage Fee shall bear interest at an annual rate equal to 10.00 percent, plus the then current rate of return for ten-year U.S. Treasury Bonds. If any installment of the Usage Fee, together with any late charge or interest accruing thereon, is not paid within sixty (60) days of written notice to Grantee, Grantor may, in addition to any other remedy available to Grantor at law or in equity, terminate the Easements and this instrument, and recover all costs incurred in connection with the same, including any costs of collection of such delinquent Usage Fee, late charges and interest, and reasonable attorney’s fees from Grantee.
2. Terms of Use. The aforesaid Easements are subject to all existing encumbrances, conditions, covenants and easements of record applicable to the Property, including without limitation prospective Trail Use and Reactivated Rail Use, and further subject to the following terms and conditions:
- (a) Grantor shall have the right to retain existing tracks and other improvements on the Property, including, without limitation, the Easement Areas, at their current location, or to reinstall such tracks and improvements on the Property, including, without limitation, the Easement Areas, even if removed, in the future. Nothing shall be done, now or in the future, by Grantee that will in any manner impair or restrict the usefulness or safety of the Easement Areas, or the Property, for the reactivation of rail service, or of such track, or other improvements as Grantor may construct in the future across or on the Property, including, without limitation, the Easement Areas. Grantee will be responsible for any damage, to include settling, erosion and impaired

drainage, caused to the roadbed, right of way and/or tracks, facilities or appurtenances on the Property, including, without limitation, the Easement Areas, arising from, or as a result of, the installation of the Facilities or its presence on the Property, including, without limitation, the Easement Areas, and Grantee, at its sole cost and expense, shall promptly repair any such damage. In addition, any damage caused to any component of the Facilities shall be the responsibility of Grantee.

- (b) Grantee covenants and agrees that no assessments, taxes, or charges of any kind shall be assessed or made against Grantor or the Property, including, without limitation, the Easement Areas, by reason of the construction or presence of the Facilities, and Grantee further covenants and agrees to promptly repay to Grantor, the full amount of any assessments, taxes or charges of any kind which may be levied, charged, assessed or imposed against Grantor or the Property, including, without limitation, the Easement Areas, by reason of the construction or presence of the Facilities.
- (c) All design, construction, maintenance and repairs of the Facilities shall be at the sole cost and expense of Grantee. Grantee shall design the Facilities in accordance with all federal and state requirements and in conformance with the American Railway Engineering and Maintenance-of-Way Association (“AREMA”) standards for the installation of underground pipelines in railroad rights-of-way. All design and construction plans shall be subject to review and reasonable approval of Grantor, at Grantor’s option. Grantee shall have access to the Easements Areas for all necessary surveys and field visits to properly design the Facilities. Grantee shall meet Grantor’s reasonable requirements for safety in connection with Grantee’s use of the Easements and activities within the Easement Areas, including, without limitation, the construction, installation, operation, maintenance, and repair of the Facilities and hereby releases and hold harmless Grantor from any liability whatsoever arising out of, or related to, Grantee’s use of the Easements and activities within the Easement Areas, including, without limitation, the construction, installation, operation, maintenance, and repair of the Facilities.
- (d) Grantee shall construct, maintain, relocate, repair, renew, alter, and/or remove the Facilities in a prudent, workmanlike manner, using quality materials and complying with all federal and state requirements and in conformance with AREMA standards for the installation of underground pipelines in railroad rights-of-way. Not later than thirty (30) days following completion of the Facilities, or any subsequent modification of such Facilities, Grantee shall furnish a complete set of plans and specifications for such Facilities to Grantor.

- (e) If the manner of constructing, replacing, repairing, maintaining, altering, relocating, removing and operating the Facilities shall at any time be in violation of any such applicable standard, law, rule, regulation or ordinance, then Grantee shall, at no cost or expense to Grantor, promptly, upon receipt of any notice from Grantor, or any governmental agency having jurisdiction over the Property, including, without limitation, the easement Areas, or the Facilities, make such changes or repairs as shall be necessary or required to comply with such standard, law, rule, regulation or ordinance. Failure or refusal of Grantee to make the required changes or repairs within the time prescribed shall terminate the Easements; provided, that it shall not terminate as long as Grantee in good faith and with diligence pursues appropriate legal or equitable remedies, enjoins, defends against, appeals from or pursues other lawful measures to avoid the enforcement of said laws, ordinances, rules or regulations.
- (f) All Grantee's work and the exercise of rights hereunder shall be undertaken at reasonable times and in a manner so as to eliminate or minimize any impact on or interference with Grantor's operations, Trail Use or Reactivated Rail Use, or the impact on or interference with other entities sharing a right to utilize the Property, including, without limitation, the Easement Areas.
- (g) Grantee's use, operation and maintenance of the Facilities shall not interfere with Grantor's use, Trail Use or Reactivated Rail Use of the Property, including, without limitation, the Easement Areas, including the right of Grantor to grant to third parties similar non-exclusive leases, licenses, or easements to the Property.
- (h) In the event Grantee (including Grantee's employees, agents, invitees, contractors, subcontractors, materialmen, laborers, tenants and licensees) causes any loss or damage with respect to the Property during construction, installation, servicing, maintenance, repair or replacement of the Facilities and appurtenances to the Facilities, Grantee shall promptly submit the proposed repairs to Grantor for approval, and shall promptly make such repairs, in accordance with standards referenced herein. Should Grantee fail to make the repairs within a reasonable period of time, Grantor reserves the right to contract to have the repairs made and will submit the reasonable direct expenses to Grantee for reimbursement to Grantor, which shall be reimbursed within fifteen (15) days of Grantor's delivery of an invoice therefore and, if unreimbursed thereafter, shall bear interest at an annual rate equal to 10.00 percent, plus the then current rate of return for ten-year U.S. Treasury Bonds. In this context, direct expenses incurred by Grantor shall include, without limitation, any reasonable cost paid or incurred by the Grantor, including the cost of personnel of the Grantor needed to ensure the proper design, location, repair, maintenance and construction of the Facilities and to ensure the safety

of trains, if applicable, and the use of the Property, including, without limitation, the Easement Areas.

- (i) With respect to the subsurface installation of the Facilities within the Permanent Water Utility Easement Area, Grantee, at its sole cost and expense, shall:
 - (i) support tracks, roadbed and the surface of the Property, including, without limitation, the Easement Areas, in a manner that is reasonable and appropriate for Grantor's use, Trail Use and Reactivated Rail Use of the Property, including, without limitation, the Easement Areas;
 - (ii) backfill with material and thoroughly tamp all trenches to prevent settling of the surface of the land and roadbed of Grantor in a manner that is reasonable and appropriate for Grantor's use, Trail Use and Reactivated Rail Use of the Property, including, without limitation, the Easement Areas; and
 - (iii) remove and dispose of any surplus earth or material in a reasonable and appropriate manner, and in compliance with all applicable laws and regulations.
- (j) After construction of the Facilities, Grantee or Grantee's contractor shall:
 - (i) restore the roadbed and other disturbed property of Grantor, to the original condition or to a condition reasonably satisfactory to Grantor; and
 - (ii) erect, maintain and periodically verify the accuracy of aboveground markers, indicating the location, depth and ownership of the underground Facilities or related appurtenances.
- (k) In the event future use by Grantor of the Property necessitates any change of location, height or depth of the Facilities, Grantee shall reasonably cooperate with Grantor to make the required changes to the Facilities in order to accommodate Grantor's operations, Trail Use or Reactivated Rail Use, at Grantor's expense. Such expenses for relocation of the Facilities shall be reasonable and customary to the industry.
- (l) If Grantee undertakes to relocate or materially change all or part of the Facilities or is required by any public agency or court order to do so, plans therefore shall be submitted to Grantor for approval before any such change is made, which approval shall not be unreasonably withheld provided that the additional facilities do not unreasonably burden the Property or interfere with

Grantor's operations, Trail Use or Reactivated Rail Use. After approval, the terms and conditions of this Agreement shall apply thereto. No material change shall be deemed to have been made if such change does not require additional Facilities and appurtenances, and/or underground support work.

- (m) Grantee shall ensure that the Facilities or other appurtenances installed pursuant to this instrument do not interfere with Grantor's operations, Trail Use or Reactivated Rail Use. Grantor shall ensure that Grantor's operations and Trail Use do not unreasonably interfere with the Facilities and appurtenances, use or access to the Easement Areas or the Facilities; however, the parties acknowledge that Reactivated Rail Use is a priority use of the Property, including, without limitation, the Easement Areas, and nothing herein can unreasonably interfere with the reactivation of rail use on the Property.
- (n) In the event any party fails or refuses to fully and completely perform any of its covenants or to remedy any breach within thirty (30) calendar days after receiving written notice from the other party in accordance with this instrument, prior to instituting any litigation arising out of or related to this instrument or any related agreements, the parties agree to submit the dispute or other matter to mediation. Any party desiring mediation shall begin the process by giving the other party or parties involved in the dispute a written request to mediate, which shall describe the issues involved and request the other party or parties to join in naming a mutually agreeable mediator and scheduling the mediation. The mediation shall be conducted in the County of Northampton, Virginia. The contents of all discussions during the mediation shall be confidential and non-discoverable in any subsequent arbitration or litigation. If the mediation results in a mutually acceptable resolution to the dispute, the agreed resolution shall be reduced to writing and signed by the parties. The costs of mediation shall be divided equally among the parties to the dispute. If the mediation does not result in a mutually acceptable resolution to the dispute, either party shall have the right to institute a suit for damages or other relief which shall be filed in the Circuit Court of the County of Northampton, Virginia. Each party shall be solely responsible for their own attorney's fees and costs regarding any dispute between the parties.
- (o) To the extent permitted by applicable law, Grantee hereby releases and agrees to indemnify and hold harmless Grantor and all of its shareholders, officers, employees, directors, agents, consultants, invitees, trail sponsors and their invitees, and its and their representatives (hereinafter collectively referred to as the "Grantor Indemnitees") of and from any and all claims, demands, liabilities, losses, costs, or expenses for any loss including but not limited to bodily injury (including death), personal injury, property damage, expenses, and attorneys' fees, caused by, growing out of, or otherwise happening in

connection with this instrument or the Grantee's use of the Easements and/or its activities on or within the Easement Areas or the Property (including, without limitation, the construction, repair, maintenance, use, operation, existence, or presence of the Facilities), irrespective of whether the same is due to any negligent or intentional act or omission on the part of Grantee, its agents, employees, or others working at the direction of Grantee, or on its behalf, or due to the application or violation of any pertinent federal, state, or local laws, or otherwise, except for the gross negligence or intentional misconduct of the Grantor Indemnitees. In case any action or proceeding is brought against any Grantor Indemnitee by reason of any claim mentioned in this Section 2(o), Grantee, upon notice from Grantor, shall, at Grantee's sole cost and expense, resist or defend such action or proceeding in Grantor's name, if necessary, by counsel for the insurance company, if such claim is covered by insurance, or otherwise by counsel approved by Grantor. Grantor agrees to give Grantee prompt notice of any such claim or proceeding. To the extent permitted by applicable law, this indemnification is binding on the successors and assigns of Grantee, and this indemnification shall survive the expiration or earlier termination of this instrument or the Easements. Notwithstanding the foregoing, Grantee retains all its rights under sovereign immunity, and the liability of the parties shall be limited only to the non-breaching party's actual and direct costs and shall specifically exclude any recovery for the value of such party's business as a going concern, present or future expectation of profits, loss of business or any other related damages of such non-breaching party, subject to such requirements of applicable state and federal laws and regulations.

3. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) if sent by a nationally recognized overnight courier (receipt requested), one (1) Business Day after deposit with such courier for delivery; (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient, whereby delivery is deemed to have occurred at the end of the Business Day on which electronic transmission is completed (but, in either case, only if a copy of such notice also is sent via overnight courier as provided in the preceding clause (b) within one (1) Business Day of such facsimile or e-mail) or (d) on the fifth (5th) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. For the purposes hereof, "Business Day" shall mean any day that is not a Saturday, Sunday, or a day observed as a holiday by either the government of the United States of America or the Commonwealth of Virginia. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 3):

Grantor: Canonie Atlantic Co.
Attn: Jim Outland, General Manager
Email: joutland@canonieatlantic.com
P.O. Box 312
Cape Charles, Virginia 23310

with a copy
(which shall not constitute
notice) to: Kaufman & Canoles
Attn: Brandon S. Allred, Esq.
Email: bsallred@kaufcan.com
150 W. Main Street, Suite 2100
Norfolk, Virginia 23510

Grantee: Municipal Corporation of Cape Charles
Attn: Town Manager
Email: john.hozey@capecharles.org
2 Plum Street
Cape Charles, Virginia 23310

with a copy
(which shall not constitute
notice) to: Woods Rogers Vandeventer Black PLC
Attn: Michael Sterling, Esq.
Email: Mike.Sterling@wrvbllaw.com
101 W. Main Street
500 World Trade Center
Norfolk, VA 23510

4. Assignments. This instrument shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns, or heirs, legal representatives, and assigns, as the case may be. In the event of sale or other conveyance by Grantor of any portion of its interest in the Property, under which the Facilities are installed, such conveyance shall be made subject to Grantee's rights and obligations under this instrument.

5. Title, Liens, Encumbrances.

(a) Grantor shall not in any circumstance be liable to Grantee for the failure of, or defect in, Grantor's title or in the estate of the Grantor in and to the Property over, under or along which the Easements lie.

(b) Nothing in this instrument shall be deemed to give, and Grantee hereby expressly waives, any claim of ownership in or rights to the Property, except for the Easements expressly granted to Grantee herein.

(c) In the event that any property of Grantor becomes subject to any liens or encumbrances as a result of Grantee's actions or omissions, Grantee agrees

promptly to pay, discharge or remove the same from such property upon Grantee's receipt of notice that such liens or encumbrances have been filed or docketed against the Property or any other property of Grantor; provided, however, Grantee reserves the right to challenge, at its sole expense, the validity and/or enforceability of any such liens or encumbrances, so long as Grantee (i) deposits such funds or bonds as are necessary to remove such liens or encumbrances with a court of competent jurisdiction and (ii) promptly institutes and diligently prosecutes such challenge. Should Grantee fail to satisfy of bond-off such a lien or encumbrance with ten (10) days' notice from Grantor, Grantor reserves the right to satisfy such lien or encumbrance at Grantee's sole cost and expense, and Grantee shall reimburse Grantor for any costs and expenses incurred in satisfying or otherwise resolving such lien or encumbrance, including, without limitation, reasonable attorney's fees, which reimbursement shall be made within fifteen (15) days of Grantor's delivery of an invoice therefore and, if unreimbursed thereafter, shall bear interest at an annual rate equal to 10.00 percent, plus the then current rate of return for ten-year U.S. Treasury Bonds.

6. General Provisions.

- (a) This instrument contains the entire understanding between the parties hereto. Modifications or amendments to this instrument must be in writing and executed by duly authorized representatives of each party.
- (b) Each of the parties hereto agrees to execute and deliver unto the other all such documents as may be necessary or appropriate for the effectuation of the provisions and intent of this instrument and the Easements granted hereunder.
- (c) Neither this instrument, any provision hereof, nor any agreement or provision included herein by reference, shall operate, or be construed as being for the benefit of any third person.
- (d) The form or any language of this instrument shall not be interpreted or construed in favor of or against either party hereto as the drafter thereof.
- (e) This instrument is executed under current interpretation of any and all applicable federal, state, county, municipal or other local statute, ordinance or law in the Commonwealth of Virginia. Each and every separate division (paragraph, clause, item, term, condition, covenant or agreement) hereof shall have independent and severable status from each other separate division for the determination of legality, so that if any separate division is determined to be void or otherwise unenforceable, such determination shall have no effect upon the validity or enforceability of each other separate division, or any other combination thereof.

- (f) Subject to Section 2(n) hereof, in the event of any litigation arising hereunder, venue for such claim shall be in the Circuit Court for Northampton County, Virginia.
- (g) The grant of the Easements contemplated herein shall be made subject to the rights of lienholders, bondholders or other entities holding obligations secured by Grantor's property, and the rights and obligations under the Trails Act and the NITU to maintain the Property, including, without limitation, the Easement Areas, for possible reactivation of rail service. Grantee's use of any such easements or the Facilities shall be subject to any necessary regulatory or governmental approvals of any local, state or federal agencies having regulatory supervision of Grantor's operations, Trail Use or Reactivated Rail Use on the Property, including, without limitation, the Easement Areas.
- (h) Prior to commencing any work in connection with the Easements or the Facilities, Grantee, and any design and/or construction party under contract with Grantee, will maintain and provide Grantor proof of insurance, including workman's compensation, general liability, pollution legal liability and protective liability in types and amounts satisfactory to Grantor, which shall include a policy of comprehensive general public liability insurance, including a contractual liability endorsement, and personal injury liability coverage, from an insurer reasonably acceptable to Grantor, in an amount of not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate, with coverage against claims for any injury, death, or damage to persons or property occurring on, in, or about the Easement Areas and Grantee's use thereof. Grantor and its agents, contractors, tenants, and any other third parties required by Grantor, shall be named as additional insureds on such insurance policies. Prior to making any entry onto the Property, Grantee shall furnish to Grantor (i) a certificate of insurance evidencing the foregoing coverages, and providing that such insurance policy may not be cancelled on less than thirty (30) days prior written notice to Grantor and (ii) proof of payment of the insurance premium.
- (i) Following construction of the Facilities, Grantee shall maintain and provide Grantor proof of insurance, including workman's compensation, general liability, pollution legal liability in types and amounts satisfactory to Grantor, to cover liability related to the occupancy of the Permanent Water Utility Easement Area by the Facilities as well as all other activities on the Property permitted under the Permanent Water Utility Easement, which shall include a policy of comprehensive general public liability insurance, including a contractual liability endorsement, and personal injury liability coverage, from an insurer reasonably acceptable to Grantor, in an amount of not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate, with coverage

against claims for any injury, death, or damage to persons or property occurring on, in, or about the Easement Areas and Grantee's use thereof. Grantor and its agents, contractors, tenants, and any other third parties required by Grantor, shall be named as additional insureds on such insurance policies. Prior to making any entry onto the Property, Grantee shall furnish to Grantor (i) a certificate of insurance evidencing the foregoing coverages, and providing that such insurance policy may not be cancelled on less than thirty (30) days prior written notice to Grantor and (ii) proof of payment of the insurance premium.

- (j) This instrument may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

7. Cessation of Operations; Abandonment.

- (a) In the event Grantee does not commence construction of the Facilities within eighteen (18) months of the date hereof, and the aforesaid time period has not been extended by mutual agreement of the parties, Grantor may consider the Easements abandoned, and proceed as provided in Section 7(b) below. Moreover, should Grantee or its successors or assigns, cease doing business without transferring its assets and operations to a successor or assign for a period of sixty (60) calendar days or in the event the Easements, or any one of them, provided for herein ceases to be used in connection with the Facilities for a period in excess of ninety (90) days, then the Grantor may consider the Easements to have been abandoned, and proceed as provided in Section 7(b) below.
- (b) In the event Grantor considers the Easements to have been abandoned, Grantor shall provide written notice to Grantee, or its assigns, advising of the reason Grantor considers the easements to be abandoned. Upon receipt of such notice, Grantee shall have thirty (30) days to resume such operations or provide evidence that the Easements, as applicable, have not been abandoned. In the event operations are not resumed or evidence is not provided as called for herein, Grantee will promptly execute and record a termination agreement, in recordable form, by which it will acknowledge the termination and relinquishment of the Easements, as applicable. Grantor shall also have the right to pursue any remedies it may have at law or equity.

[Execution Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date and year first above written.

GRANTOR:

CANONIE ATLANTIC CO.,
a Virginia stock corporation

By: _____ (SEAL)
Name: H. Spencer Murray
Title: President

COMMONWEALTH OF VIRGINIA

AT LARGE, to-wit:

The foregoing instrument was acknowledged before me in the City/County of _____, Virginia, this _____ day of _____, 2024, by H. Spencer Murray, in his capacity as the President of Canonie Atlantic Co., a Virginia stock corporation, on its behalf.

GIVEN under my hand this _____ day of _____, 2024.

Notary Public

My Commission Expires: _____

Notary Registration No.: _____

(SEAL)

GRANTEE:

MUNICIPAL CORPORATION OF CAPE CHARLES,
a municipal corporation of the Commonwealth of Virginia

By: _____ (SEAL)
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA

AT LARGE, to-wit:

The foregoing instrument was acknowledged before me in the City/County of _____, Virginia, this _____ day of _____, 2024, by _____, in his/her capacity as the _____ of the Municipal Corporation of Cape Charles, a municipal corporation of the Commonwealth of Virginia, on its behalf.

GIVEN under my hand this ____ day of _____, 2024.

Notary Public

My Commission Expires: _____

Notary Registration No.: _____

(SEAL)

Exhibit A

Property

Exhibit B

Plat

THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT AND MAY NOT SHOW ANY/ALL EASEMENTS OR RESTRICTIONS THAT MAY AFFECT SAID PROPERTY AS SHOWN.

FLOOD ZONE INFORMATION SHOWN HEREON IS NOT GUARANTEED AND WAS APPROXIMATELY SCALED FROM F.E.M.A. FLOOD MAPS. SHORELINE SURVEYORS IS NOT A PARTY IN DETERMINING THE REQUIREMENTS FOR FLOOD INSURANCE ON THE PROPERTY SHOWN HEREON. FOR FURTHER INFORMATION AND TO CONFIRM THE FLOOD ZONE FOR THIS PROPERTY, CONTACT THE LOCAL COMMUNITY FLOOD OFFICIAL.

THIS PROPERTY APPEARS TO FALL IN:

FLOOD ZONE: X

COMMUNITY NO.: 510106

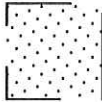
PANEL: 0315F DATED: MARCH 2, 2015

FLOOD ZONE DETERMINATION IS BASED ON THE FLOOD INSURANCE RATE MAPS AND DOES NOT IMPLY THAT THIS PROPERTY WILL OR WILL NOT BE FREE FROM FLOODING OR DAMAGE.

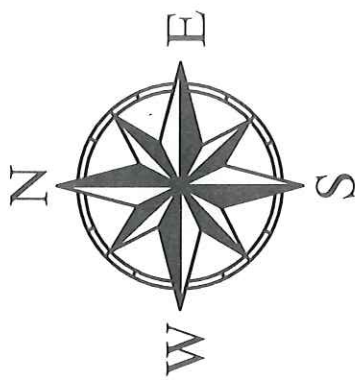
THE NORTH MERIDIAN OF THIS PLAT IS BASED ON THE VIRGINIA STATE PLANE COORDINATE SYSTEM, SOUTH ZONE, NAD83.



10' UTILITY EASEMENT HEREBY ESTABLISHED
AREA = 1,225sf or 0.028ac



30' TEMPORARY CONSTRUCTION
EASEMENT HEREBY ESTABLISHED
AREA = 3,674sf or 0.084ac



Stone Road - State Route 184
(80' Right-of-Way)

VDOT
MONUMENT
(FOUND)

N 81° 50' 15" E 3,838.14'
82.63'

CANONIE ATLANTIC COMPANY
TAX PARCEL #90-A-9
(DB 218, PG 432)
AREA = 34.846ac

VDOT
MONUMENT
(FOUND)

N 74° 53' 36" E
315.04'

PIN(FOUND)

L=94.05'
R=767.43'

PIN(FOUND)

N 81° 54' 53" E 935.17'

THE VIRGINIA PORT AUTHORITY

TAX PARCEL #90-A-6

(DB 227, PG 766)

(PB 14, PG 55)

Shoreline Surveyors

23314 Courthouse Avenue - P.O. Box 735

Accomac, Virginia 23301

PHONE (757) 789-3960 FAX (757) 789-3962

SCALE: 1" = 50'

DRAWN: MAS

JOB #13160

FEBRUARY 25, 2024

EXHIBIT "A"

SHOWING PROPOSED UTILITY EASEMENT
OVER THE PROPERTY OF

Canonie Atlantic Company

TAX PARCEL #00090-(0A))-00-009

TOWN OF CAPE CHARLES

NORTHAMPTON COUNTY, VIRGINIA

FOR

Town of Cape Charles

DRAFT 10/11/24

Exhibit B

Draft of VPA Easement

[See attached.]

THIS DEED OF EASEMENT IS EXEMPT FROM THE GRANTOR'S TAX PURSUANT TO § 58.1-811(C)(4) OF THE CODE OF VIRGINIA (1950), AS AMENDED.

Tax Parcel No. 90-A-6

Consideration: \$10.00

Actual Value: \$10.00

Prepared by: Office of the Attorney General

DEED OF EASEMENT

This DEED OF EASEMENT (this “**Deed of Easement**”) is made and entered into this ____ day of _____ 2024, by and between the VIRGINIA PORT AUTHORITY, a body corporate and political subdivision of the Commonwealth of Virginia (“**Grantor**”) and the TOWN OF CAPE CHARLES, VIRGINIA, a municipal corporation existing under the laws of the Commonwealth of Virginia (“**Grantee**”).

WITNESSETH

For the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in accordance with § 2.2-1151 of the Code of Virginia (1950), as amended (the “**Code of Virginia**”), Grantor hereby grants unto Grantee a perpetual, non-exclusive right and easement (the “**Utility Easement**”) and Grantor grants unto Grantee, its successors and assigns, the temporary, non-exclusive right, privilege, and easement to lay, erect, construct, install, use, operate, inspect, maintain, repair, replace, rebuild, remove, improve, and make such other changes, alterations, additions to or extensions of the Facilities (defined below) (the “**Temporary Construction Easement**”) (the Utility Easement and Temporary Construction Easement are collectively, the “**Easements**”), on the real property designated as (i) “10’ UTILITY EASEMENT HEREBY ESTABLISHED AREA = 2,909sf or 0.067ac” (the “**Utility Easement Area**”) and (ii) “30’ TEMPORARY CONSTRUCTION EASEMENT HEREBY ESTABLISHED AREA = 8,728sf or 0.200ac” (the “**Temporary Construction Easement Area**”) (the Utility Easement Area and Temporary Construction Easement Area are collectively, the “**Easement Areas**”), being under, upon, and across the lands of the Grantor situated in the County of Northampton, Virginia, shown and designated on the plat entitled “EXHIBIT “A” SHOWING PROPOSED UTILITY EASEMENT OVER THE PROPERTY OF THE VIRGINIA PORT AUTHORITY TAX PARCEL #00090-((0A))-00-006 TOWN OF CAPE CHARLES NORTHAMPTON COUNTY, VIRGINIA FOR TOWN OF CAPE CHARLES,” dated February 25, 2024, prepared by Shoreline Surveyors, and attached hereto as **Exhibit A** (the “**Plat**”). The Easement Areas are part of the same real estate acquired by Grantor by deed dated July 16, 1987, recorded in the Clerk’s Office of the Circuit Court of Northampton County, Virginia, in Deed Book 227, Page 766 (such real estate, together with all improvements now or hereafter located thereon and all appurtenances now or hereafter appertaining thereto, collectively referred to as “**Grantor’s Land**”).

The Easements are conveyed to Grantee subject to the following terms and conditions:

1. Use. The Easement Areas may be used to lay, erect, construct, install, use, operate, inspect, maintain, repair, replace, rebuild, remove, improve, and make such other changes, alterations, additions to or extensions of, water main lines and all equipment, accessories, and appurtenances necessary in connection therewith (the “**Facilities**”) for the purpose of conveying raw water from wells to the water treatment plant, and separately to convey treated potable water back to the well sites (the “**Use**”). The Facilities constructed or placed within the Easement Areas shall remain the property of Grantee, except as otherwise provided in this Deed of Easement.

2. Grantee Activities; Grantor Rules and Regulations. The Use of the Easement Areas shall be consistent with the purposes described in this Deed of Easement. All Facilities and activity occurring within the Easement Areas shall, and Grantee shall (i) comply with any and all federal, state, or local statutes, laws, ordinances, codes, rules, regulations, orders, or standards (whether voluntary or not); (ii) be subject to such reasonable rules and regulations as may be prescribed by Grantor to assure that the exercise of such rights will not interfere with Grantor’s activities upon Grantor’s Land; and (iii) adhere to all security rules and regulations of Grantor in the exercise of the rights granted by this Deed of Easement. Grantee further agrees to perform and to cause to be performed all such work and related activities in a timely and workmanlike manner.

3. Grantee’s Reasonable Access to Grantor’s Land; Restoration. Grantee shall have the right of access to and from the Easement Areas over Grantor’s Land as may be reasonably necessary to exercise Grantee’s rights granted by this Deed of Easement; provided, however, Grantee shall confine, to the greatest extent possible, access to the Easement Areas. Following Grantee’s access to Grantor’s Land and upon completion of any activity by or on behalf of Grantee upon the Easement Areas, Grantee shall restore Grantor’s Land and the Easement Areas as nearly to their original condition as practicable, including, but not limited to, backfilling of trenches, repaving, reseeding or resodding of lands, replacement of Grantor’s property, removal of trash and debris, and removal of any of Grantee’s equipment, accessories, or appurtenances not consistent with the construction, maintenance, or operation of the Facilities or the exercise of any right granted by this Deed of Easement. Grantee shall maintain the Facilities in good condition and repair at all times and in such a manner so as not to endanger or otherwise limit the enjoyment or use of Grantor’s Land and any other adjacent lands.

4. Grantee’s Right to Trim Trees. Grantee shall have the right to trim, cut, and remove trees, shrubbery, or other natural obstructions on, under, or over the Easement Areas which interfere with or threaten the efficient and safe operation, construction, or maintenance of the Facilities. All trees cut by Grantee shall remain the property of Grantor. All brush, branches, and other debris resulting from any cutting, trimming, or clearing of the Easement Areas shall be

removed from Grantor's Land and properly disposed of by Grantee, at its expense, within thirty (30) days of being cut, trimmed or cleared.

5. Grantor's Use of Easement Areas. Grantor may use or permit others to use the Easement Areas for any purpose not inconsistent with the rights granted in this Deed of Easement, provided such use (i) does not materially interfere with the safe and efficient construction, operation, or maintenance of the Facilities; and (ii) is not inconsistent with any laws, ordinances, codes, or regulations pertaining to the construction, operation, or maintenance of the Facilities and to which Grantor is subject.

6. Discontinuation of Use by Grantee. If after completing the construction and installation of the Facilities within the Utility Easement, Grantee at any time discontinues use of all or any portion of the Utility Easement for a period of one (1) year, all of Grantee's rights and interest in the Easement Areas or portion thereof shall immediately terminate and automatically revert to Grantor, its successors and assigns, and Grantee shall at its expense remove the Facilities and restore Grantor's Land and property as quickly and as nearly to its original condition as practicable and in a manner satisfactory to Grantor. In addition, promptly upon written request by Grantor, Grantee shall execute and deliver to Grantor appropriate recordable documentation pursuant to which Grantee quitclaims and releases the Easement Areas, or portion thereof, to Grantor. This Paragraph shall survive the expiration or termination of this Deed of Easement.

7. Rights Personal to Grantee. Notwithstanding any other provision of this Easement, Grantee may not (i) grant any sub-easement, sublease, license, or permit any third party, or (ii) allocate or utilize the Easement Areas or any part thereof for the installation of any equipment or property for purposes other than the Use. Neither the Easement nor Grantee's rights granted herein are delegable, transferrable, allocable, or assignable, and any delegation, transfer, allocation, or assignment of this Deed of Easement or any portion thereof or Grantee's rights granted herein without the prior written consent of Grantor, in its sole discretion, shall be null and void and of no effect; provided, however, Grantee's rights granted herein may be assigned and the Facilities transferred without Grantor's approval in accordance with the Final Order of the State Corporation Commission in Case No. PUR-2023-00016 filed on April 12, 2024 authorizing Virginia-American Water Company to acquire the water and wastewater system of the Grantee, or in accordance with an order of the State Corporation Commission to any municipal utility, utility cooperative, or other utility authorized to provide utility service within the Commonwealth of Virginia (the "**Commonwealth**").

8. Grantee Responsibility,

- a. Injury or Damage. Grantee shall exercise any rights granted by this Deed of Easement in such manner as shall not occasion injury or damage to property or persons (including death), animals, or wildlife or inconvenience to Grantor or any other occupants of Grantor's Land and as otherwise shall minimize any adverse impact or disturbance to Grantor's Land and property, including, but not limited

to, any conservation and natural heritage values thereof. Any activity or omission by Grantee that results in injury, damage, or adverse impact or disturbance, in Grantor's sole judgment, to Grantor's Land and property shall be remedied as directed by Grantor. Grantee shall upon written notice from Grantor ("**Grantor Election**") pay for or repair any injury, damage, or adverse impact or disturbance to any of Grantor's Land and property caused by Grantee ("**Grantee Damage**"). Grantee shall notify Grantor immediately of Grantee Damage and shall make said payment or repair within thirty (30) days after the Grantor Election; provided, however, that if Grantee Damage results in an emergency, on-going hazardous condition, or a material loss of use of Grantor's Land or property (such as, by way of illustration and not by limitation, a disruption of any utilities or loss of access to Grantor's Land or property) then Grantee shall immediately and diligently remedy the hazardous condition or material loss of use. If Grantee does not make such payment or repair within thirty (30) days (or as in the case of an emergency or on-going hazardous condition, immediately), Grantor may take such action as necessary to remedy Grantee Damage. All costs and expenses incurred by Grantor in exercising or enforcing its rights hereunder shall be paid or, at Grantor's election, reimbursed by Grantee within thirty (30) days after the date of Grantor's written demand for such costs and expenses. If such costs and expenses are not paid within such thirty (30) day period, all such costs and expenses shall immediately commence bearing interest at the rate of twelve percent (12%) per annum. This Paragraph shall survive the expiration or termination of this Deed of Easement.

- b. Indemnity. Grantee covenants and agrees to indemnify, defend, and hold Grantor and other occupants of Grantor's Land harmless from and against any and all claims, injuries, losses, damages, liabilities, judgments, fines, suits, actions, penalties, or costs and expenses (including, but not limited to, costs and expenses of attorneys, including, but not limited to, attorneys in the Office of the Attorney General of the Commonwealth, experts and consultants incurred in all tribunals, whether or not legal proceedings have been commenced by or against Grantor), to the full extent authorized by Virginia law, resulting from, or in any way arising out of, Grantee's exercise of any rights granted in this Deed of Easement or any other activity of Grantee on Grantor's Land, whether or not consistent with the rights granted under this Deed of Easement. In addition, Grantee shall reimburse Grantor for all costs and expenses incurred if Grantor voluntarily chooses to take any action in response to Grantee's failure to fulfill any of the obligations established in this Deed of Easement following written notice to Grantee and a reasonable period of time for Grantee to fulfill such obligations not to exceed sixty (60) days. This Paragraph shall survive the expiration or termination of this Deed of Easement.
- c. Insurance Required. No person or entity, including, but not limited to, any general contractor, subcontractor, or maintenance contractor, shall commence any

activity upon Grantor's Land unless and until such person or entity has obtained and delivered to Grantor evidence satisfactory to Grantor, in its sole but reasonable discretion, such insurance coverage as may be required from time to time by the Commonwealth, Department of General Services pursuant to guidelines adopted pursuant to Code of Virginia § 2.2-1151, as such section may be amended or its successor provisions.

9. Environmental.

a. Environmental Covenants. The defined terms in this Paragraph 9(a) not elsewhere defined in this Deed of Easement shall have the meanings set forth in Paragraph 9(b):

- i. Compliance. Grantee shall comply with all Applicable Environmental Laws that are or may become applicable to Grantee's activities, Grantor's Land, or the Easement Areas. Grantee shall not use, generate, manufacture, store, treat or Release any Toxic or Hazardous Materials on, under, about, or from Grantor's Land. Notwithstanding the foregoing, when Grantee is actively engaged in work on the Facilities pursuant to this Easement, Grantee may use and store fuel for Grantee's machinery and equipment, provided that Grantee complies with all Applicable Environmental Laws that are or may become applicable to the use of such fuels.
- ii. Grantee Solely Responsible for Releases. Grantee shall be solely responsible for the Release into the Easement Areas or Grantor's Land of any Toxic or Hazardous Materials as the result of any activity by or on behalf of Grantee under this Deed of Easement, and any preceding easements, licenses, or rights-of-way Grantor has granted to Grantee with respect to the Easement Areas. Any reporting or Remedial Action relating to such Release or threat of Release required by law or regulation shall also be the responsibility of Grantee.
- iii. Environmental Indemnification. Grantee shall indemnify and hold harmless Grantor from, and defend Grantor against, any and all claims, injuries, losses, damages, liabilities, judgments, fines, suits, actions, penalties, or costs and expenses (including, but not limited to, costs and expenses of attorneys, including, but not limited to, attorneys in the Office of the Attorney General of the Commonwealth, experts and consultants incurred in all tribunals and whether or not legal proceedings have been commenced by or against Grantor), to the full extent authorized by Virginia law, resulting from any use, generation, manufacture, storage, treatment, Release or threatened Release, or other acts or omissions by or on behalf of Grantee, which Grantor may directly or indirectly sustain or

suffer as a consequence thereof or resulting from a breach of this Paragraph 9. This Paragraph shall survive the expiration or termination of this Deed of Easement.

- iv. Notice to Grantor. If Grantee becomes aware that a Release of Toxic or Hazardous Materials has occurred due to acts or omissions of Grantee, whether or not such Release results in Contamination of the Easement Areas or Grantor's Land, Grantee will give verbal notice to Grantor within twenty four (24) hours of becoming aware of the Release, providing all relevant facts and circumstances. Upon request of Grantor, Grantee shall provide a more detailed written description of the facts and circumstances within a reasonable period of time, not to exceed sixty (60) days after receipt of the request.
- v. Prompt Action. Grantee, at its sole expense, will promptly take all action necessary to comply with Applicable Environmental Laws pertaining to a Release described above, including but not limited to: reporting the occurrence to appropriate federal, state, or local regulatory authorities, if so directed by Grantor; taking timely and effective steps to minimize the Release and its impact on human health and the environment; and taking Remedial Action. Grantee shall provide all information related to the Remedial Action requested by Grantor. Notwithstanding the foregoing, in response to the acts or omissions of Grantee, Grantor may, but will not be obligated to take any Remedial Action as it deems necessary or advisable to address any Contamination of Grantor's Land by or to ensure compliance with Applicable Environmental Laws. This Paragraph shall survive the expiration or termination of this Deed of Easement.
- vi. Unknown Toxic or Hazardous Materials. Grantee's obligations under this Paragraph 9 shall extend to any and all Toxic or Hazardous Materials whether or not such material or substance was defined, recognized, known, or suspected of being hazardous, toxic, dangerous, or wasteful at the time of any act or omission giving rise to Grantee's obligations.

b. Definitions.

- i. **"Applicable Environmental Laws"** means any and all federal, state, or local statutes, laws, ordinances, codes, rules, regulations, orders, or standards (whether voluntary or not) that govern the activities or operations upon Grantor's Land, or the persons carrying out those activities or operations, relating to the environment, natural resources, or human health and safety, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42

U.S.C. § 9601, et seq.), the Superfund Amendments and Reauthorization of 1986 (Pub. L. No. 99-499), the Hazardous Materials Transportation Act (49 U.S.C. § 5101, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901, et seq.), the Federal Water Pollution Control Act (33 U.S.C. § 1251, et seq.), the Clean Air Act (42 U.S.C. § 7401, et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601, et seq.), the Occupational Safety and Health Act (29 U.S.C. § 651, et seq.), and 10 U.S.C. § 2692, as such laws have been amended or supplemented now or in the future, and other applicable federal, state and local statutes, laws, ordinances, codes, rules, regulations, orders, or standards adopted pursuant thereto.

- ii. **"Contamination"** means a level of Toxic or Hazardous Materials in the air, soil, or water (surface water or groundwater), that exceeds levels allowed by Applicable Environmental Laws.
- iii. **"Release"** means any discharge, spill, emission, leaking, pumping, injection, excavation, deposit, disposal, leaching, or migration of Toxic or Hazardous Materials into the environment, accidental or otherwise, or introduction into the environment of Toxic or Hazardous Materials by any other means or method.
- iv. **"Remedial Action"** means investigating or monitoring of the environmental condition of the Easement Areas and any clean-up, containment, remediation, removal, response (including emergency response), and restoration of Grantor's Land, as per Applicable Environmental Laws, due to the presence or suspected presence of Contamination or a Release or suspected Release of Toxic or Hazardous Materials.
- v. **"Toxic or Hazardous Materials"** is used in its very broadest sense and includes, without limitation, (i) any toxic or hazardous material, substance, pollutant, contaminant, or waste defined as such in Applicable Environmental Laws; (ii) petroleum and petroleum-based products; (iii) asbestos in any quantity or form; (iv) polychlorinated biphenyls; and (v) urea formaldehyde.

10. Commonwealth as Sovereign. The parties hereto acknowledge and agree that notwithstanding anything contained in this Deed of Easement to the contrary, so long as the Commonwealth owns, or has any interest in, Grantor's Land, the following provisions shall control:

- a. With respect to tort liability for acts or occurrences with respect to this Deed of Easement, including product liability, the Commonwealth is either

constitutionally immune (or partially immune) from suit, judgment, or liability, insured, or covered by a financial plan of risk management that is in the nature of self-insurance, all as determined by applicable laws, government policies, and practices.

- b. No equitable, quasi-contractual, or injunctive remedies, other than those specifically authorized by law, may be used or are effective against the Commonwealth.
- c. No liens may be placed against, or shall attach to, any property owned by the Commonwealth.
- d. This Deed of Easement shall be governed by, and construed according to, the laws of the Commonwealth, and any legal action against the Commonwealth shall be instituted and maintained only in the state courts of the Commonwealth.
- e. No provision, covenant, or agreement contained in this Deed of Easement shall be deemed, in any manner, to be a waiver of the sovereign immunity of the Commonwealth, or any of its boards, agencies, or other political subdivisions, including Grantor, from tort or other liability.

11. Relocation at the Request of Grantor. If Grantor at any time deems it necessary or advisable to relocate for Grantor's convenience any of the Facilities, at the sole cost of Grantee, Grantee shall relocate such Facilities to a place acceptable to Grantor, provided Grantor, for no additional consideration, shall grant unto Grantee such replacement easement as may be necessary to effect such relocation, subject to the same rights, privileges, and conditions, as herein set forth. Upon relocation of any of the Facilities from any portion of the Easement Areas, the Easement for or over such portion of the Easement Areas shall automatically (i) terminate, and (ii) all rights, title, and interest therein shall revert to Grantor. Upon request of Grantor, Grantee shall execute an instrument requested by Grantor to evidence such reversion.

12. Acceptance. As evidenced by its execution of this Deed of Easement, the Grantee accepts the Easements as provided herein, subject to the terms, conditions, and limitations on this Deed of Easement.

13. Miscellaneous.

- a. Authority. Grantee represents and warrants that it is duly authorized with all requisite power and all governmental authorizations to enter into this Deed of Easement and that the person executing this Deed of Easement on behalf of Grantee is authorized to do so.
- b. Subject to Matters of Record. This Deed of Easement is subject to all existing easements, rights-of-way, covenants, agreements, encumbrances and restrictions

of record, and is further subject to all of the conditions in this Deed of Easement, which Grantee, by acceptance hereof, for and on behalf of itself and its successors, successors in interest and permitted assigns, hereby expressly agrees to and consents to be bound by this Paragraph 12(b).

- c. No Public Use. Nothing contained herein shall be construed as dedicating for public use any portion of Grantor's Land. No easements, except those expressly set forth herein, shall be implied by this Deed of Easement.
- d. Grantee. The term "Grantee" shall be deemed to include its officers, employees, agents, contractors, licensees, or the invitees of any of them.
- e. Perpetual in Nature; Successor and Assigns. Subject to the terms herein, this Deed of Easement shall be perpetual in nature, shall run with the land, and shall be binding upon the parties and their respective successors, successors in interest, and permitted assigns.

[Signature pages to follow]

WITNESS the following signatures and seals.

Grantor: VIRGINIA PORT AUTHORITY, a body corporate
and political subdivision of the Commonwealth of
Virginia

By: _____
Title: _____

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____, to-wit:

The foregoing Deed of Easement was acknowledged before me this ____ day of
_____ 2024, by _____, as _____ of
the Virginia Port Authority on behalf of the Authority.

My commission expires: _____

Notary registration no.: _____

Notary Public

OFFICE OF THE ATTORNEY GENERAL
Approved as to Form:

By: _____
Assistant Attorney General

RECOMMEND APPROVAL:
DEPARTMENT OF GENERAL SERVICES

By: _____
Acting Director

APPROVED BY THE GOVERNOR:

Pursuant to § 2.2-1151 of the Code of Virginia (1950), as amended, and by the authority vested in me to act for and on behalf of the Governor of Virginia under Executive Order 88 (01) dated December 21, 2001, I hereby approve this Deed of Easement and the execution of this instrument.

Secretary of Administration	Date
-----------------------------	------

Grantee: TOWN OF CAPE CHARLES, VIRGINIA, a
municipal corporation existing under the laws of the
Commonwealth of Virginia

By: _____
Title: _____

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____, to-wit:

The foregoing Deed of Easement was acknowledged before me this ____ day of
_____ 2024, by _____, as _____ of
the Town of Cape Charles, Virginia, on behalf of the Town.

My commission expires: _____

Notary registration no.: _____

Notary Public

The foregoing Deed of Easement is approved as to form by the undersigned, who is a qualified attorney-at-law selected by the Town of Cape Charles, Virginia, for such purpose.

**WOODS ROGERS VANDEVENTER
BLACK PLC**

Date: _____

By: _____ (SEAL)
Michael L. Sterling, Esq.
Principal

Commonwealth of Virginia,

City/County of _____, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2024, by Michael L. Sterling, Esq., who acknowledged himself to be the qualified attorney-at-law selected by the Town of Cape Charles, a municipal corporation of the Commonwealth of Virginia, for purposes of approving the foregoing Deed of Easement and that he, in such capacity, executed the foregoing instrument by his free act and the free act and deed and the free act and deed of said municipal corporation. This person is personally known to me.

Notary

My Commission expires:

EXHIBIT A

[Label plat Exhibit A and attach it in lieu of this page]

THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT AND MAY NOT SHOW ANY/ALL EASEMENTS OR RESTRICTIONS THAT MAY AFFECT SAID PROPERTY AS SHOWN.

FLOOD ZONE INFORMATION SHOWN HEREON IS NOT GUARANTEED AND WAS APPROXIMATELY SCALED FROM F.E.M.A. FLOOD MAPS. SHORELINE SURVEYORS IS NOT A PARTY IN DETERMINING THE REQUIREMENTS FOR FLOOD INSURANCE ON THE PROPERTY SHOWN HEREON. FOR FURTHER INFORMATION AND TO CONFIRM THE FLOOD ZONE FOR THIS PROPERTY, CONTACT THE LOCAL COMMUNITY FLOOD OFFICIAL.

THIS PROPERTY APPEARS TO FALL IN:

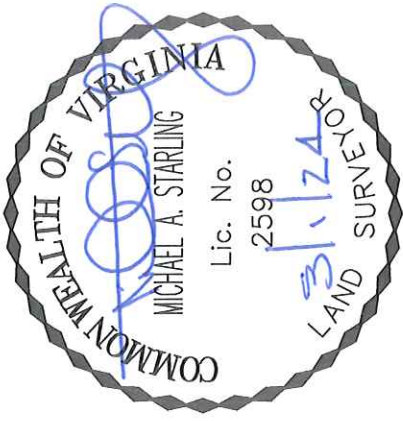
FLOOD ZONE: X

COMMUNITY NO.: 510106

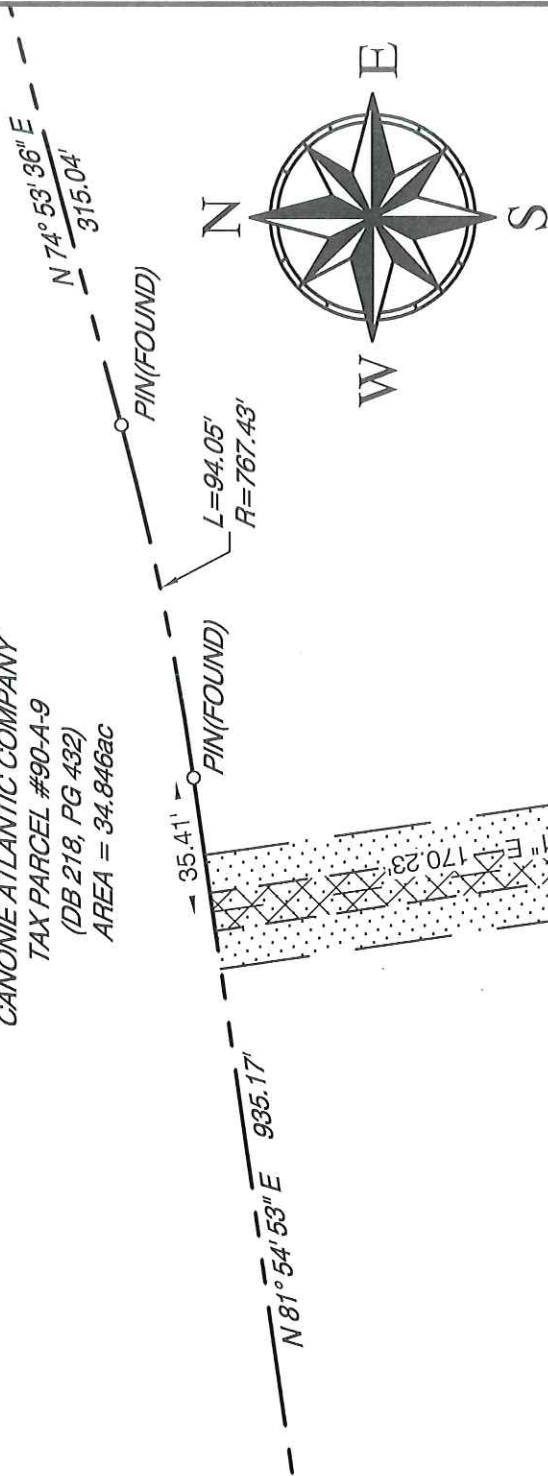
PANEL: 0315F DATED: MARCH 2, 2015

FLOOD ZONE DETERMINATION IS BASED ON THE FLOOD INSURANCE RATE MAPS AND DOES NOT IMPLY THAT THIS PROPERTY WILL OR WILL NOT BE FREE FROM FLOODING OR DAMAGE.

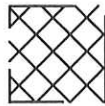
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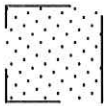
CANONIE ATLANTIC COMPANY
TAX PARCEL #90-A-9
(DB 218, PG 432)
AREA = 34.846ac



THE VIRGINIA PORT AUTHORITY
TAX PARCEL #90-A-6
(DB 227, PG 766)
(PB 14, PG 55)



10' UTILITY EASEMENT
HEREBY ESTABLISHED
AREA = 2,909sf or 0.067ac



30' TEMPORARY CONSTRUCTION
EASEMENT HEREBY ESTABLISHED
AREA = 8,728sf or 0.200ac

BAY CREEK DEVELOPMENT, LLC

LOT P-11
TAX PARCEL #90-30-P11
TAX PARCEL #90-000245)
TAX PARCEL #2100002168)
(INSTRUMENT #190002168)

Cassatt Parkway - State Route 642
(100' Right-of-Way)

Shoreline Surveyors

23314 Courthouse Avenue - P.O. Box 735

Accomac, Virginia 23301

PHONE (757) 789-3960 FAX (757) 789-3962

SCALE: 1" = 50'

DRAWN: MAS

JOB #13160

FEBRUARY 25, 2024

EXHIBIT "A"

SHOWING PROPOSED UTILITY EASEMENT
OVER THE PROPERTY OF

The Virginia Port Authority

TAX PARCEL #00090-((0A))-00-006

TOWN OF CAPE CHARLES

NORTHAMPTON COUNTY, VIRGINIA

FOR

Town of Cape Charles

EXHIBIT B

[Label Town Resolution Exhibit B and attach it in lieu of this page]

ORDINANCE 20241017A

GRANTING EASEMENT ON TAX PARCEL 90-19-B TO VIRGINIA-AMERICAN WATER COMPANY

WHEREAS, on or about April 24, 2024, the Town of Cape Charles (“Town”) sold its water treatment facility and distribution system and its wastewater treatment facility and collection system (collectively, the “System”) to Virginia-America Water Company, a Virginia corporation (together with its successors and/or assigns, “VAWC”).

WHEREAS, the sale was authorized by Resolution 20221110, Ordinance 20221110A, and Ordinance 20221110B, each adopted by the Town Council on November 10, 2022.

WHEREAS, in connection with the sale and as authorized by the foregoing Resolution and Ordinances, the Town and VAWC executed a Comprehensive Agreement, a Franchise Agreement, and a Post Closing Agreement, among other documents (the “Transaction Documents”).

WHEREAS, in connection with operating the System, VAWC requires an easement across real property owned by the Town and identified as tax parcel 90-19-B (the “90-19-B Easement”), a draft of which is attached hereto as Exhibit A.

WHEREAS, a public hearing was held on October 17, 2024.

WHEREAS, it is in the best interest of the Town and is consistent with the Transaction Documents to grant the 90-19-B Easement to VAWC.

THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF CAPE CHARLES, VIRGINIA:

1. The Town is authorized to grant the 90-19-B Easement to VAWC, as may be further negotiated and revised consistent with the Transaction Documents and this Ordinance.

2. The Town Manager is authorized to negotiate such changes and revisions to the 90-19-B Easement as he deems necessary or proper, so long as such changes and revisions are consistent with the Transaction Documents and are not materially adverse to the Town’s interests. After the Town Manager determines that the 90-19-B Easement is in final form, the Town Manager is authorized to execute and deliver the 90-19-B Easement and such other documents as may be necessary or proper in connection therewith.

3. The Town Manager is further authorized to take other actions as are necessary or proper to implement the foregoing Ordinance.

4. Michael L. Sterling, Esq. of the law firm Woods Rogers Vandeventer Black PLC, a qualified attorney-at-law, is selected to approve the form of the 90-19-B Easement, to the extent required by law.

Adopted by the Town Council of the Town of Cape Charles on October 17, 2024.

By: _____
Mayor of the Town of Cape Charles, Virginia

ATTEST:

Clerk of the Town of Cape Charles, Virginia

DRAFT 10/11/24

Exhibit A

Draft of 90-19-B Easement

[See Attached.]

<u>Prepared By:</u> Christopher Ambrosio, Esq. (VSB No. 41251) Woods Rogers Vandeventer Black PLC 101 West Main Street 500 World Trade Center Norfolk, VA 23510	<u>Return to:</u> _____ _____ _____
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Tax Map Number: 90-19-B

Current title insurance underwriter is unknown to the preparer.

DEED OF EASEMENT AGREEMENT

THIS DEED OF EASEMENT AGREEMENT ("Agreement") is made this ____ day of _____ 2024, by and between the **MUNICIPAL CORPORATION OF CAPE CHARLES**, a Virginia municipal corporation and political subdivision of the Commonwealth of Virginia, with an address of 2 Plum Street, Cape Charles, Virginia 23310 ("Grantor"), and **VIRGINIA-AMERICAN WATER COMPANY**, a Virginia corporation, with an office at 2223 Duke Street, Alexandria, VA 22314 (the "Grantee"). Grantor and Grantee are each a "Party" and are collectively the "Parties."

RECITALS:

WHEREAS, Grantor is the owner of certain real property County of Northampton, Virginia, known as Tax Parcel 90-19-B, as shown on the Plat described below (the "Property");

WHEREAS, on or about April 24, 2024, Grantor sold its water treatment facility and distribution system and its wastewater treatment facility and collection system (collectively, the "System") to Grantee;

WHEREAS, the sale was authorized by Resolution 20221110, Ordinance 20221110A, and Ordinance 20221110B, each adopted by the Town Council of Grantor on November 10, 2022;

WHEREAS, in connection with the sale and as authorized by the foregoing Resolution and Ordinances, the Grantor and Grantee executed a Comprehensive Agreement, a Franchise Agreement, and a Post Closing Agreement, among other documents (as may be amended from time to time, the "Transaction Documents");

WHEREAS, in connection with Grantee's operation of the System, Grantee desires to be granted a non-exclusive easement across and underneath a portion of the Property for the purpose of constructing, installing, servicing, maintaining, repairing and replacing certain underground equipment and facilities attendant to the provision of water service (the "Facilities"); and

WHEREAS, pursuant to the Transaction Documents, Grantor desires to grant, and Grantee desires to accept, a non-exclusive easement underneath a portion of the Property for the Facilities on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the aforementioned recitals which are incorporated herein by this reference and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto agree as follows:

1. Grant of Easements.

(a) Grantor does hereby grant and convey, with special warranty of title, unto Grantee a non-exclusive easement to construct, install, service, maintain, repair, renew, operate, use, alter or change the Facilities (the "Water Utility Easement") underneath that portion of the Property described as "10' UTILITY EASEMENT HEREBY ESTABLISHED, AREA = 8,356 sf or 0.192ac" (the "Water Utility Easement Area"), as shown on that certain plat entitled "EXHIBIT 'A' SHOWING PROPOSED UTILITY EASEMENTS, Tract B" etc., made by Shoreline Surveyors and dated June 13, 2024 and stamped June 15, 2024, a copy of which is attached hereto as Exhibit A and incorporated herein by reference (the "Plat"), along with the right of ingress and egress for such purposes, upon prompt notice to Grantor.

(b) Grantor does hereby grant and convey, with special warranty of title, unto Grantee a non-exclusive, temporary easement to construct the Facilities (the "Temporary Construction Easement" and, together with the Water Utility Easement, each an "Easement" and, collectively, the "Easements") within that portion of the Property described as "30' TEMPORARY CONSTRUCTION EASEMENT HEREBY ESTABLISHED, AREA = 16,642sf or 0.382ac" (the "Temporary Construction Easement Area" and, together with the Water Utility Easement Area, each an "Easement Area" and, collectively, the "Easement Areas"), as shown on the Plat, along with the right of ingress and egress, upon prompt notice to Grantor, and temporary storage of materials, equipment and machinery for such purposes. The term of the Temporary Construction Easement will commence on the date of this instrument, and it will automatically expire and terminate upon the earlier to occur of (i) three (3) years following the date hereof, or (ii) the completion of the Facilities. Upon request, Grantee will promptly execute and record a termination agreement, in recordable form, by which it will acknowledge the termination and relinquishment of the Temporary Construction Easement.

2. Terms of Use. The aforesaid Easements are subject to all existing encumbrances, conditions, covenants and easements of record applicable to the Property, and further subject to the following terms and conditions:

(a) Grantee covenants and agrees that no assessments, taxes, or charges of any kind shall be assessed or made against Grantor or the Property, including, without limitation, the Easement Areas, by reason of the construction or presence of the Facilities, and Grantee further covenants and agrees to promptly repay to Grantor, the full amount of any assessments, taxes or charges of any kind which may be levied, charged, assessed or imposed against Grantor or the Property, including, without limitation, the Easement Areas, by reason of the construction or presence of the Facilities.

(b) All design, construction, maintenance and repairs of the Facilities shall be at the sole cost and expense of Grantee. All design and construction plans shall be subject to review and reasonable approval of Grantor, at Grantor's option. Grantee shall have access to the Easements Areas for all necessary surveys and field visits to properly design the Facilities. Grantee shall meet Grantor's reasonable requirements for safety in connection with Grantee's use of the Easements and activities within the Easement Areas, including, without limitation, the construction, installation, operation, maintenance, and repair of the Facilities and hereby releases and hold harmless Grantor from any liability whatsoever arising out of, or related to, Grantee's use of the Easements and activities within the Easement Areas, including, without limitation, the construction, installation, operation, maintenance, and repair of the Facilities.

(c) Grantee shall construct, maintain, relocate, repair, renew, alter, and/or remove the Facilities in a prudent, workmanlike manner, using quality materials and complying with all federal and state requirements and in conformance with the Transaction Documents. Not later than thirty (30) days following completion of the Facilities, or any subsequent modification of such Facilities, Grantee shall furnish a complete set of plans and specifications for such Facilities to Grantor.

(d) If the manner of constructing, replacing, repairing, maintaining, altering, relocating, removing and operating the Facilities shall at any time be in violation of any such applicable standard, law, rule, regulation or ordinance, then Grantee shall, at no cost or expense to Grantor, promptly, upon receipt of any notice from Grantor, or any governmental agency having jurisdiction over the Property, including, without limitation, the easement Areas, or the Facilities, make such changes or repairs as shall be necessary or required to comply with such standard, law, rule, regulation or ordinance. Failure or refusal of Grantee to make the required changes or repairs within the time prescribed shall terminate the Easements; provided, that it shall not terminate as long as Grantee in good faith and with diligence pursues appropriate legal or equitable remedies, enjoins, defends against, appeals from or pursues other lawful measures to avoid the enforcement of said laws, ordinances, rules or regulations.

(e) All Grantee's work and the exercise of rights hereunder shall be undertaken at reasonable times and in a manner so as to eliminate or minimize any impact on or interference with Grantor's operations or the impact on or interference with other entities sharing a right to utilize the Property, including, without limitation, the Easement Areas.

(f) In the event Grantee (including Grantee's employees, agents, invitees, contractors, subcontractors, materialmen, laborers, tenants and licensees) causes any loss or damage with respect to the Property during construction, installation, servicing, maintenance, repair or replacement of the Facilities and appurtenances to the Facilities, Grantee shall promptly submit the proposed repairs to Grantor for approval, and shall promptly make such repairs, in accordance with standards referenced herein. Should Grantee fail to make the repairs within a reasonable period of time, Grantor reserves the right to contract to have the repairs made and will submit the reasonable direct expenses to Grantee for reimbursement to Grantor, which shall be reimbursed within fifteen (15) days of Grantor's delivery of an invoice therefore and, if unreimbursed thereafter, shall bear interest at an annual rate equal to 10.00 percent, plus the then current rate of return for ten-year U.S. Treasury Bonds. In this context, direct expenses incurred by Grantor shall include, without limitation, any reasonable cost paid or incurred by the Grantor, including the cost of personnel of the Grantor needed to ensure the proper design, location, repair, maintenance and construction of the Facilities and to ensure the safety of trains, if applicable, and the use of the Property, including, without limitation, the Easement Areas.

(g) With respect to the subsurface installation of the Facilities within the Permanent Water Utility Easement Area, Grantee, at its sole cost and expense, shall:

(i) backfill with material and thoroughly tamp all trenches to prevent settling of the surface of the land and roadbed of Grantor in a manner that is reasonable and appropriate for Grantor's use, including, without limitation, the Easement Areas; and

(ii) remove and dispose of any surplus earth or material in a reasonable and appropriate manner, and in compliance with all applicable laws and regulations.

(h) After construction of the Facilities, Grantee or Grantee's contractor shall:

(i) restore the disturbed property of Grantor to the original condition or to a condition reasonably satisfactory to Grantor; and

(ii) erect, maintain and periodically verify the accuracy of aboveground markers, indicating the location, depth and ownership of the underground Facilities or related appurtenances.

(i) In the event future use by Grantor of the Property necessitates any change of location, height or depth of the Facilities, Grantee shall reasonably cooperate with Grantor to make the required changes to the Facilities in order to accommodate Grantor's operations at Grantor's expense. Such expenses for relocation of the Facilities shall be reasonable and customary to the industry.

(j) If Grantee undertakes to relocate or materially change all or part of the Facilities or is required by any public agency or court order to do so, plans therefore shall be submitted to Grantor for approval before any such change is made, which approval shall not be

unreasonably withheld provided that the additional facilities do not unreasonably burden the Property or interfere with Grantor's operations. After approval, the terms and conditions of this Agreement shall apply thereto. No material change shall be deemed to have been made if such change does not require additional Facilities and appurtenances, and/or underground support work.

(k) In the event any party fails or refuses to fully and completely perform any of its covenants or to remedy any breach within thirty (30) calendar days after receiving written notice from the other party in accordance with this instrument, prior to instituting any litigation arising out of or related to this instrument or any related agreements, the parties agree to submit the dispute or other matter to mediation. Any party desiring mediation shall begin the process by giving the other party or parties involved in the dispute a written request to mediate, which shall describe the issues involved and request the other party or parties to join in naming a mutually agreeable mediator and scheduling the mediation. The mediation shall be conducted in the County of Northampton, Virginia. The contents of all discussions during the mediation shall be confidential and non-discoverable in any subsequent arbitration or litigation. If the mediation results in a mutually acceptable resolution to the dispute, the agreed resolution shall be reduced to writing and signed by the parties. The costs of mediation shall be divided equally among the parties to the dispute. If the mediation does not result in a mutually acceptable resolution to the dispute, either party shall have the right to institute a suit for damages or other relief which shall be filed in the Circuit Court of the County of Northampton, Virginia. Each party shall be solely responsible for their own attorney's fees and costs regarding any dispute between the parties.

(l) To the extent permitted by applicable law, Grantee hereby releases and agrees to indemnify and hold harmless Grantor and all of its elected officials, officers, employees, agents, consultants, and invitees (hereinafter collectively referred to as the "Grantor Indemnitees") of and from any and all claims, demands, liabilities, losses, costs, or expenses for any loss including but not limited to bodily injury (including death), personal injury, property damage, expenses, and attorneys' fees, caused by, growing out of, or otherwise happening in connection with this instrument or the Grantee's use of the Easements and/or its activities on or within the Easement Areas or the Property (including, without limitation, the construction, repair, maintenance, use, operation, existence, or presence of the Facilities), irrespective of whether the same is due to any negligent or intentional act or omission on the part of Grantee, its agents, employees, or others working at the direction of Grantee, or on its behalf, or due to the application or violation of any pertinent federal, state, or local laws, or otherwise, except for the gross negligence or intentional misconduct of the Grantor Indemnitees. In case any action or proceeding is brought against any Grantor Indemnatee by reason of any claim mentioned in this Section 2(l), Grantee, upon notice from Grantor, shall, at Grantee's sole cost and expense, resist or defend such action or proceeding in Grantor's name, if necessary, by counsel for the insurance company, if such claim is covered by insurance, or otherwise by counsel approved by Grantor. Grantor agrees to give Grantee prompt notice of any such claim or proceeding. To the extent permitted by applicable law, this indemnification is binding on the successors and assigns of Grantee, and this indemnification shall survive the expiration or earlier termination of this instrument or the Easements. Notwithstanding the foregoing, Grantee retains all its rights under

sovereign immunity, and the liability of the parties shall be limited only to the non-breaching party's actual and direct costs and shall specifically exclude any recovery for the value of such party's business as a going concern, present or future expectation of profits, loss of business or any other related damages of such non-breaching party, subject to such requirements of applicable state and federal laws and regulations.

3. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) if sent by a nationally recognized overnight courier (receipt requested), one (1) Business Day after deposit with such courier for delivery; (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient, whereby delivery is deemed to have occurred at the end of the Business Day on which electronic transmission is completed (but, in either case, only if a copy of such notice also is sent via overnight courier as provided in the preceding clause (b) within one (1) Business Day of such facsimile or e-mail) or (d) on the fifth (5th) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. For the purposes hereof, "Business Day" shall mean any day that is not a Saturday, Sunday, or a day observed as a holiday by either the government of the United States of America or the Commonwealth of Virginia. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 3):

Grantor:	Municipal Corporation of Cape Charles Attn: Town Manager Email: john.hozey@capecharles.org 2 Plum Street Cape Charles, Virginia 23310
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with a copy (which shall not constitute notice) to:	Woods Rogers Vandeventer Black PLC Attn: Michael Sterling, Esq. Email: Mike.Sterling@wrvblaw.com 101 W. Main Street 500 World Trade Center Norfolk, VA 23510
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Grantee:	Virginia-American Water Company
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with a copy
(which shall not constitute
notice) to:

4. Assignments; Running with the Land. This instrument shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns, or heirs, legal representatives, and assigns, as the case may be. In the event of sale or other conveyance by Grantor of any portion of its interest in the Property, under which the Facilities are installed, such conveyance shall be made subject to Grantee's rights and obligations under this instrument.

5. Title, Liens, and Encumbrances.

(a) Nothing in this instrument shall be deemed to give, and Grantee hereby expressly waives, any claim of ownership in or rights to the Property, except for the Easements expressly granted to Grantee herein.

(b) In the event that any property of Grantor becomes subject to any liens or encumbrances as a result of Grantee's actions or omissions, Grantee agrees promptly to pay, discharge or remove the same from such property upon Grantee's receipt of notice that such liens or encumbrances have been filed or docketed against the Property or any other property of Grantor; provided, however, Grantee reserves the right to challenge, at its sole expense, the validity and/or enforceability of any such liens or encumbrances, so long as Grantee (i) deposits such funds or bonds as are necessary to remove such liens or encumbrances with a court of competent jurisdiction and (ii) promptly institutes and diligently prosecutes such challenge. Should Grantee fail to satisfy of bond-off such a lien or encumbrance with ten (10) days' notice from Grantor, Grantor reserves the right to satisfy such lien or encumbrance at Grantee's sole cost and expense, and Grantee shall reimburse Grantor for any costs and expenses incurred in satisfying or otherwise resolving such lien or encumbrance, including, without limitation, reasonable attorney's fees, which reimbursement shall be made within fifteen (15) days of Grantor's delivery of an invoice therefore and, if unreimbursed thereafter, shall bear interest at an annual rate equal to 10.00 percent, plus the then current rate of return for ten-year U.S. Treasury Bonds.

6. No Third Party Beneficiaries; Rights not Public in Nature. Neither this instrument, any provision hereof, nor any agreement or provision included herein by reference, shall operate, or be construed as being for the benefit of any third person. The easements and rights created, reserved, granted and established herein do not, are not intended to, and shall not be construed to, create any easements, rights or privileges in and for the benefit of the general public, except to the extent the use of the System benefits the users thereof as set forth in the Transaction Documents.

7. General Provisions.

(a) This instrument contains the entire understanding between the parties hereto. Modifications or amendments to this instrument must be in writing and executed by duly authorized representatives of each party.

(b) Each of the parties hereto agrees to execute and deliver unto the other all such documents as may be necessary or appropriate for the effectuation of the provisions and intent of this instrument and the Easements granted hereunder.

(c) The doctrine of merger shall not be applicable to this Declaration or any of the easements, rights, privileges, responsibilities, obligations and covenants contained herein and there shall be no merger of estates or interest created herein as a result of any unity of title or interest thereto or therein.

(d) The form or any language of this instrument shall not be interpreted or construed in favor of or against either party hereto as the drafter thereof.

(e) This instrument is executed under current interpretation of any and all applicable federal, state, county, municipal or other local statute, ordinance or law in the Commonwealth of Virginia. Each and every separate division (paragraph, clause, item, term, condition, covenant or agreement) hereof shall have independent and severable status from each other separate division for the determination of legality, so that if any separate division is determined to be void or otherwise unenforceable, such determination shall have no effect upon the validity or enforceability of each other separate division, or any other combination thereof.

(f) Prior to commencing any work in connection with the Easements or the Facilities, Grantee, and any design and/or construction party under contract with Grantee, will maintain and provide Grantor proof of insurance, including workman's compensation, general liability, pollution legal liability and protective liability in types and amounts satisfactory to Grantor, which shall include a policy of comprehensive general public liability insurance, including a contractual liability endorsement, and personal injury liability coverage, from an insurer reasonably acceptable to Grantor, in an amount of not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate, with coverage against claims for any injury, death, or damage to persons or property occurring on, in, or about the Easement Areas and Grantee's use thereof. Grantor and its agents, contractors, tenants, and any other third parties required by Grantor, shall be named as additional insureds on such insurance policies. Prior to making any entry onto the Property, Grantee shall furnish to Grantor (i) a certificate of insurance evidencing the foregoing coverages, and providing that such insurance policy may not be cancelled on less than thirty (30) days prior written notice to Grantor and (ii) proof of payment of the insurance premium.

(g) This instrument may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument

8. Cessation of Operations; Abandonment; Expiration.

(a) Should Grantee or its successors or assigns cease doing business without transferring its assets and operations to a successor or assign for a period of sixty (60) calendar days or in the event the Easements, or any one of them, provided for herein ceases to be used in connection with the Facilities for a period in excess of ninety (90) days, then the Grantor may consider the Easements to have been abandoned, and proceed as provided in Section 8(b) below.

(b) In the event Grantor considers the Easements to have been abandoned, Grantor shall provide written notice to Grantee, or its assigns, advising of the reason Grantor considers the easements to be abandoned. Upon receipt of such notice, Grantee shall have thirty (30) days to resume such operations or provide evidence that the Easements, as applicable, have not been abandoned. In the event operations are not resumed or evidence is not provided as called for herein, Grantee will promptly execute and record a termination agreement, in recordable form, by which it will acknowledge the termination and relinquishment of the Easements, as applicable. Grantor shall also have the right to pursue any remedies it may have at law or equity.

(c) If not sooner terminated, the Easements and all rights of Grantee in this Deed of Easement shall automatically terminate upon the expiration or earlier termination of the franchise granted to Grantee under the Transaction Documents.

[Remainder of page intentionally left blank. Signature page follows.]

WITNESS the following signatures and seals as of the day and year first above written:

GRANTOR:

MUNICIPAL CORPORATION OF CAPE CHARLES,
a Virginia municipal corporation

By: _____
John Hozey, Town Manager

COMMONWEALTH OF VIRGINIA
COUNTY/CITY OF _____

The foregoing was acknowledged before me in the jurisdiction aforesaid this ____ day of _____, 2024, by John Hozey, Town Manager of the Municipal Corporation of Cape Charles. He is personally known to me or has produced his state issued driver's license as identification.

Notary Public

Notary Registration Number: _____

My Commission Expires: _____

[AFFIX SEAL]

GRANTEE:

VIRGINIA-AMERICAN WATER COMPANY
a Virginia corporation

By: _____

Name: _____

Title: _____

COMMONWEALTH OF VIRGINIA
COUNTY/CITY OF _____

The foregoing was acknowledged before me in the jurisdiction aforesaid this __ day of _____, 2024, by _____, who is _____ of Virginia-American Water Company. He or she is personally known to me or has produced his state issued driver's license as identification.

Notary Public

Notary Registration Number: _____

My Commission Expires: _____

[AFFIX SEAL]

DRAFT 10/11/24

[IF NECESSARY, INSERT APPROVAL OF FORM BY OUTSIDE TOWN ATTORNEY]

EXHIBIT “A”

[See attached plat depicting easement areas]

THE APPROVAL OF THIS PLAT BY THE TOWN IS NOT AN APPROVAL FOR IMPROVEMENTS. FURTHER DEVELOPMENT OF THESE LOTS AND/OR ROADS, INCLUDING ANY FILLING OR PHYSICAL ALTERATIONS OF THE LOTS AND/OR ROADS MAY REQUIRE ADDITIONAL PERMITS FROM THE TOWN OF CAPE CHARLES OR OTHER GOVERNMENTAL AGENCIES.

THE MERIDIAN SOURCE OF THIS PLAT IS BASED THE VIRGINIA STATE PLANE COORDINATE SYSTEM, SOUTH ZONE, NAD83.

THIS PROPERTY APPEARS TO FALL IN:
FLOOD ZONE: X
COMMUNITY NUMBER: 510106
PANEL: 0315F DATED: MARCH 2, 2015

FLOOD ZONE DETERMINATION IS BASED ON THE FLOOD INSURANCE RATE MAPS AND DOES NOT IMPLY THAT THIS PROPERTY WILL OR WILL NOT BE FREE FROM FLOODING OR DAMAGE.

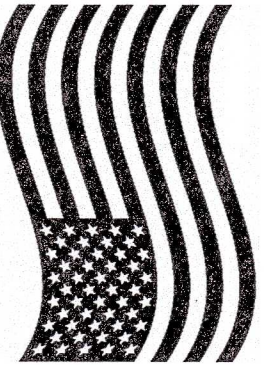
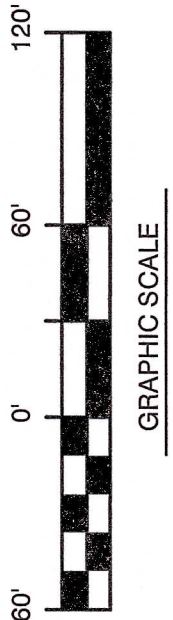
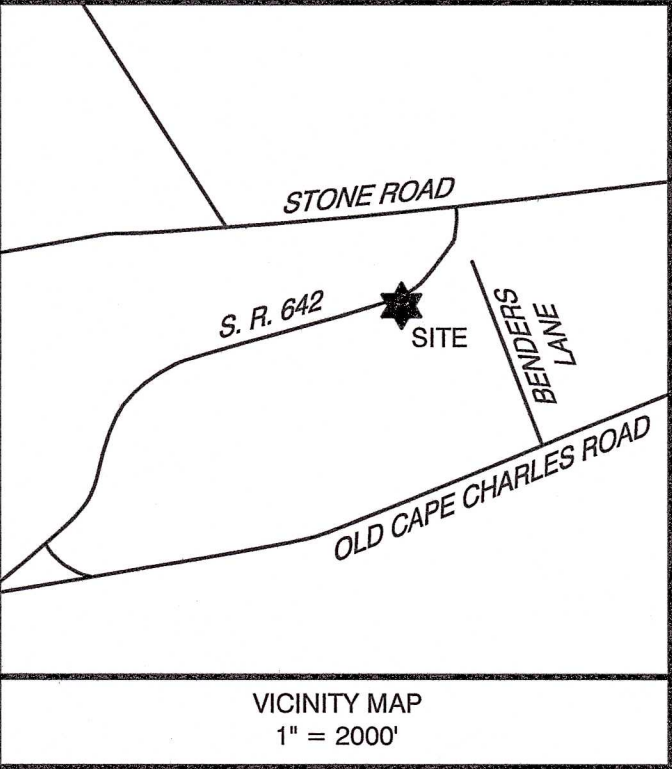
THIS PROPERTY IS ZONED 'RESIDENTIAL ESTATE (R-E)' AND THE SETBACKS ARE:
• FRONT - 60'
• SIDE - 25'
• REAR - 40'

THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT AND MAY NOT SHOW ANY/ALL EASEMENTS OR RESTRICTIONS THAT MAY AFFECT SAID PROPERTY AS SHOWN.

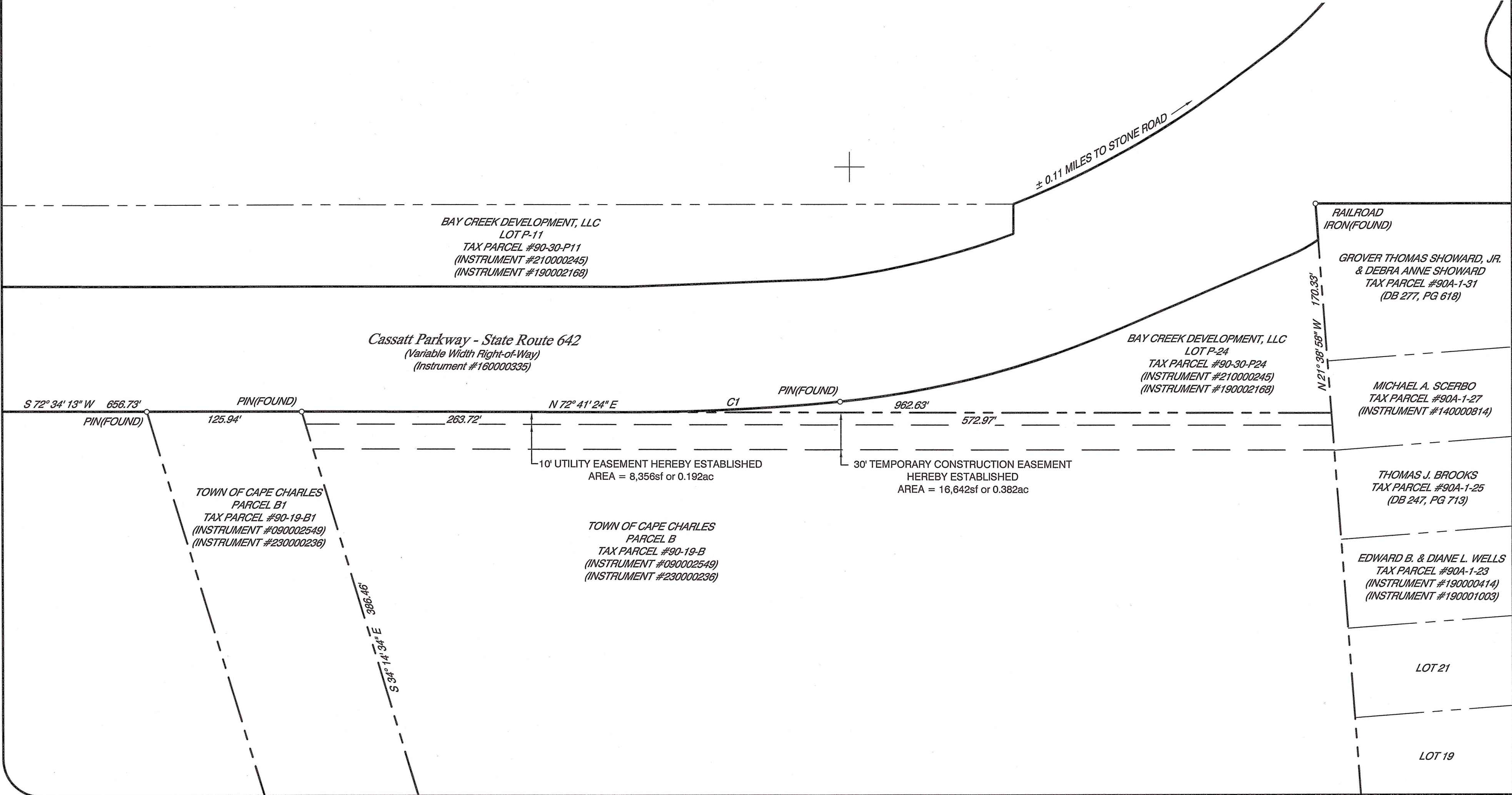
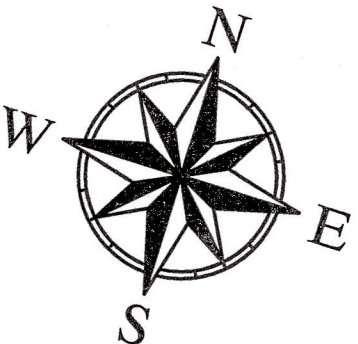
THIS PLAT IS BASED ON A CURRENT FIELD SURVEY.

THIS PLAT DOES NOT CONSTITUTE A BOUNDARY SURVEY. ONLY THOSE LINE MARKED WITH IRON PINS WERE SURVEYED.

CURVE TABLE						
CURVE #	ARC LENGTH	RADIUS	DELTA	BEARING	CHORD	TANGENT
C1	173.99'	1,727.85'	5° 46' 10"	N 69° 48' 19" E	173.91'	87.07'



MADE IN AMERICA



Shoreline Surveyors

23314 Courthouse Avenue - P.O. Box 735
Accomac, Virginia 23301
PHONE (757) 789-3960 FAX (757) 789-3962

SCALE: 1" = 60'
DRAWN: MAS
JOB #22082
SHEET 1 OF 1

EXHIBIT A SHOWING
PROPOSED UTILITY EASEMENTS
Tract B

(INSTRUMENT #190002168)
(INSTRUMENT #230000236)
TAX PARCEL #000890-((19))-00-000B
TOWN OF CAPE CHARLES
NORTHAMPTON COUNTY, VIRGINIA

FOR
Town of Cape Charles
JUNE 13, 2024

ORDINANCE 20241017B

ACCEPTING CONVEYANCE OF A PORTION OF TAX PARCEL 90-30-P11 FROM BAY CREEK DEVELOPMENT, LLC AND CONVEYING SUCH PROPERTY TO VIRGINIA-AMERICAN WATER COMPANY

WHEREAS, on or about April 24, 2024, the Town of Cape Charles (“Town”) sold its water treatment facility and distribution system and its wastewater treatment facility and collection system (collectively, the “System”) to Virginia-America Water Company, a Virginia corporation (together with its successors and/or assigns, “VAWC”).

WHEREAS, the sale was authorized by Resolution 20221110, Ordinance 20221110A, and Ordinance 20221110B, each adopted by the Town Council on November 10, 2022.

WHEREAS, in connection with the sale and as authorized by the foregoing Resolution and Ordinances, the Town and VAWC executed a Comprehensive Agreement, a Franchise Agreement, and a Post Closing Agreement, among other documents (the “Transaction Documents”).

WHEREAS, in connection with operating the System, VAWC requires a portion of real property owned by Bay Creek Development, LLC (“Bay Creek”) and identified as Lot W on the plat entitled “Subdivision Plat of P-11, Bay Creek South” etc., prepared by Shoreline Surveyors, dated March 30, 2024 and stamped April 2, 2024, and recorded in the Clerk’s Office of the Circuit Court of Northampton County as Instrument 240001060 (the “Bay Creek Parcel”), which property is a portion of Tax Parcel 90-30-P11.

WHEREAS, Bay Creek has agreed to convey the Bay Creek Parcel to the Town by Deed of Gift, a draft of which is attached hereto as Exhibit A (the “Bay Creek Deed”).

WHEREAS, a public hearing was held on October 17, 2024.

WHEREAS, it is in the best interest of the Town and is consistent with the Transaction Documents to convey the Bay Creek Parcel to VAWC by Deed of Gift, a draft of which is attached hereto as Exhibit B (the “VAWC Deed”)

THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF CAPE CHARLES, VIRGINIA:

1. The Town is authorized to accept the Bay Creek Parcel and the Bay Creek Deed, as such deed may be further negotiated and revised consistent with the Transaction Documents and this Ordinance.

2. The Town is authorized to convey the Bay Creek Parcel to VAWC and to execute and deliver the VAWC Deed, as such deed may be further negotiated and revised consistent with the Transaction Documents and this Ordinance.

3. The Town Manager and Mayor are each separately authorized to negotiate such changes and revisions to the Bay Creek Deed and the VAWC Deed as he deems necessary or proper, so long as such changes and revisions are consistent with the Transaction Documents and are not materially adverse to the Town's interests. After the Town Manager or Mayor determines that the Bay Creek Deed and the VAWC Deed are in final form, the Town Manager and Mayor are authorized to execute and deliver each Deed and such other documents as may be necessary or proper in connection therewith.

4. The Town Manager and Mayor are each further authorized to take other actions as are necessary or proper to implement the foregoing Ordinance.

5. Michael L. Sterling, Esq. of the law firm Woods Rogers Vandeventer Black PLC, a qualified attorney-at-law, is selected to approve the form of the Bay Creek Deed and the VAWC Deed, to the extent required by law.

Adopted by the Town Council of the Town of Cape Charles on October 17, 2024.

By: _____
Mayor of the Town of Cape Charles, Virginia

ATTEST:

Clerk of the Town of Cape Charles, Virginia

DRAFT 10/11/24

Exhibit A

Draft of Deed of Gift from Bay Creek to Town

[See attached.]

Prepared By and Return to:

Christopher Ambrosio, Esq. (VSB No. 41251)
Woods Rogers Vandeventer Black PLC
101 West Main Street
500 World Trade Center
Norfolk, VA 23510

Tax Map Number: Portion of 90-30-P11

Consideration: \$0.00
Assessed value: \$_____.00

Current title insurance underwriter is unknown to the preparer.

THIS DEED IS EXEMPT FROM RECORDATION TAXES PURSUANT TO VIRGINIA CODE SECTION 58.1-811(D).

DEED OF GIFT

THIS DEED OF GIFT is made effective the ____ day _____, 2024, by **BAY CREEK DEVELOPMENT, LLC**, a Virginia limited liability company ("**Grantor**"), and **the MUNICIPAL CORPORATION OF CAPE CHARLES**, a Virginia municipal corporation and political subdivision of the Commonwealth of Virginia, with an address of 2 Plum Street, Cape Charles, Virginia 23310 ("**Grantee**").

Grantor does hereby give, grant and convey with Special Warranty unto the Grantee the following described property (the "**Property**"):

SEE EXHIBIT A ATTACHED HERETO

TOGETHER WITH all the rights, easements, buildings, privileges and appurtenances thereunto belonging or in anywise appertaining.

SUBJECT TO valid recorded easements, covenants, reservations and restrictions in the chain of title to the property herein described, which have not expired or otherwise become ineffective.

Possession of the herein conveyed tract or parcel of land is to be given immediately upon the signing, sealing and delivery of this deed.

In compliance with the provisions of Virginia Code §§15.2-1800 and 15.2-1803, as amended, this Deed is in form approved by Michael L. Sterling, Esq., of the law firm Woods Rogers Vandeventer Black PLC, who is a qualified attorney-at-law selected by the Town Council of the Town of Cape Charles, Virginia, and is accepted by _____, _____for the Town of Cape Charles on behalf of the Town of Cape Charles, Virginia, having been authorized to perform said act on behalf of said Town by a resolution duly adopted by the Town Council at a meeting held on _____, 2024, which approval and acceptance is evidenced by their signatures hereto.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SEE FOLLOWING PAGES FOR SIGNATURES]

WITNESS, the following signature and seal:

GRANTOR:

BAY CREEK DEVELOPMENT, LLC
a Virginia limited liability company

By: _____

Name: _____

Title: _____

STATE/COMMONWEALTH OF _____

COUNTY/CITY OF _____

The foregoing was acknowledged before me in the jurisdiction aforesaid this __ day of _____, 2024, by _____, the _____ of Bay Creek Development, LLC. He or she is personally known to me or has produced his state issued driver's license as identification.

Notary Public

Notary Registration Number: _____

My Commission Expires: _____

[AFFIX SEAL]

The Town of Cape Charles accepts this Deed and the real estate hereby conveyed, effective as of the date written on the first page of this Deed. The undersigned certifies that he is authorized to act on behalf of the Town of Cape Charles for the purposes of accepting the Deed and the real estate hereby conveyed.

WITNESS the following signature and seal:

GRANTEE:

MUNICIPAL CORPORATION OF CAPE CHARLES,
a Virginia municipal corporation

By: _____

Name: _____

Title: _____

COMMONWEALTH OF VIRGINIA
COUNTY/CITY OF _____

The foregoing was acknowledged before me in the jurisdiction aforesaid this ____ day of _____, 2024, by _____, the _____ of the Municipal Corporation of Cape Charles. He is personally known to me or has produced his state issued driver's license as identification.

Notary Public

Notary Registration Number: _____

My Commission Expires: _____

[AFFIX SEAL]

The foregoing Deed is approved as to form by the undersigned, who is a qualified attorney-at-law selected by the Town Council of the Town of Cape Charles, Virginia, for such purpose.

**WOODS ROGERS VANDEVENTER
BLACK PLC**

Date: _____

By: _____ (SEAL)
Michael L. Sterling, Esq.
Principal

COMMONWEALTH OF VIRGINIA

COUNTY/CITY OF _____

The foregoing was acknowledged before me in the jurisdiction aforesaid this ____ day of _____, 2024, by Michael L. Sterling, Esq., who acknowledged himself to be the qualified attorney-at-law selected by the Town Council of the Town of Cape Charles, a municipal corporation of the Commonwealth of Virginia, for purposes of approving the foregoing Deed, and that he, in such capacity, executed the foregoing instrument. He is personally known to me or has produced his state issued driver's license as identification.

Notary Public

Notary Registration Number: _____

My Commission Expires: _____

[AFFIX SEAL]

Exhibit “A” to Deed
Real Property Description

All that certain tract or parcel of land located in the County of Northampton, Virginia and identified as Lot W on the plat entitled “Subdivision Plat of P-11, Bay Creek South” etc., prepared by Shoreline Surveyors, dated March 30, 2024 and stamped April 2, 2024, and recorded in the Clerk’s Office of the Circuit Court of Northampton County as Instrument 240001060.

It being a portion of the property conveyed to Bay Creek Development, LLC by deed dated _____ and recorded in the Clerk’s Office at _____.

DRAFT 10/11/24

Exhibit B

Draft of Deed of Gift from Town to VAWC

[See attached.]

Prepared By:

Return to:

Christopher Ambrosio, Esq. (VSB No. 41251)
Woods Rogers Vandeventer Black PLC
101 West Main Street
500 World Trade Center
Norfolk, VA 23510

Tax Map Number: Portion of 90-30-P11

Consideration: \$0.00

Assessed value: \$_____.00

Current title insurance underwriter is unknown to the preparer.

THIS DEED IS EXEMPT FROM RECORDATION TAXES PURSUANT TO VIRGINIA CODE SECTION 58.1-811(D).

DEED OF GIFT

THIS DEED OF GIFT is made effective the ____ day _____, 2024, by **the MUNICIPAL CORPORATION OF CAPE CHARLES**, a Virginia municipal corporation and political subdivision of the Commonwealth of Virginia, with an address of 2 Plum Street, Cape Charles, Virginia 23310 ("**Grantor**"), and **VIRGINIA-AMERICAN WATER COMPANY**, a Virginia corporation, with an office at 2223 Duke Street, Alexandria, VA 22314 ("**Grantee**").

Grantor does hereby give, grant and convey with Special Warranty unto the Grantee the following described property (the "**Property**"):

SEE EXHIBIT "A" ATTACHED HERETO

TOGETHER WITH all the rights, easements, buildings, privileges and appurtenances thereunto belonging or in anywise appertaining.

SUBJECT TO valid recorded easements, covenants, reservations and restrictions in the chain of title to the property herein described, which have not expired or otherwise become ineffective.

Possession of the herein conveyed tract or parcel of land is to be given immediately upon the signing, sealing and delivery of this deed.

In compliance with the provisions of Virginia Code §§15.2-1800 and 15.2-1803, as amended, this Deed is in form approved by Michael L. Sterling, Esq., of the law firm Woods Rogers Vandeventer Black PLC, who is a qualified attorney-at-law selected by the Town Council of the Town of Cape Charles, Virginia.

This conveyance was authorized by Ordinance 2024_____duly adopted by the Council of the Town of Cape Charles, Virginia, at a public hearing and meeting held on _____, 2024, a copy of which is attached hereto as **EXHIBIT “B.”**

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SEE FOLLOWING PAGES FOR SIGNATURES]

WITNESS, the following signature and seal:

GRANTOR:

MUNICIPAL CORPORATION OF CAPE CHARLES,
a Virginia municipal corporation

By: _____

Name: _____

Title: _____

COMMONWEALTH OF VIRGINIA
COUNTY/CITY OF _____

The foregoing was acknowledged before me in the jurisdiction aforesaid this __ day of _____, 2024, by _____, the _____ of the Municipal Corporation of Cape Charles. He is personally known to me or has produced his state issued driver's license as identification.

Notary Public

Notary Registration Number: _____

My Commission Expires: _____

[AFFIX SEAL]

The foregoing Deed is approved as to form by the undersigned, who is a qualified attorney-at-law selected by the Town Council of the Town of Cape Charles, Virginia, for such purpose.

**WOODS ROGERS VANDEVENTER
BLACK PLC**

Date: _____

By: _____ (SEAL)
Michael L. Sterling, Esq.
Principal

COMMONWEALTH OF VIRGINIA

COUNTY/CITY OF _____

The foregoing was acknowledged before me in the jurisdiction aforesaid this ___ day of _____, 2024, by Michael L. Sterling, Esq., who acknowledged himself to be the qualified attorney-at-law selected by the Town Council of the Town of Cape Charles, a municipal corporation of the Commonwealth of Virginia, for purposes of approving the foregoing Deed, and that he, in such capacity, executed the foregoing instrument. He is personally known to me or has produced his state issued driver's license as identification.

Notary Public

Notary Registration Number: _____

My Commission Expires: _____

[AFFIX SEAL]

Exhibit “A” to Deed
Real Property Description

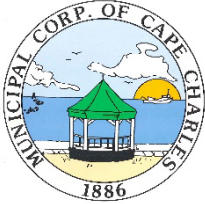
All that certain tract or parcel of land located in the County of Northampton, Virginia and identified as Lot W on the plat entitled “Subdivision Plat of P-11, Bay Creek South” etc., prepared by Shoreline Surveyors, dated March 30, 2024 and stamped April 2, 2024, and recorded in the Clerk’s Office of the Circuit Court of Northampton County as Instrument 240001060.

It being the same property conveyed to the Grantor herein by deed dated _____ and recorded in the Clerk’s Office at _____.

DRAFT 10/11/24

Exhibit “B” to Deed
Ordinance Authorizing Conveyance

[See attached.]

 TOWN OF CAPE CHARLES	AGENDA TITLE: Resolution 20241017B – Authorization to Change Depository Accounts to Taylor Bank		AGENDA DATE October 17, 2024
	SUBJECT/PROPOSAL/REQUEST: Approval of Resolution 20241017 – Authorization to Change Depository Accounts to Taylor Bank		ITEM NUMBER: 9D
	ATTACHMENTS: Resolution 20241017B; Taylor Bank Proposal		FOR COUNCIL: Action (X) Information ()
	STAFF CONTACT (s): John Hozey, Town Manager	REVIEWED BY: John Hozey, Town Manager	

BACKGROUND:

Following the closure of the Cape Charles branch of Bank of America in 2012, the Town moved its banking to Shore Bank. Over the intervening years this bank has changed names a number of times and is currently Atlantic Union, with its closest branch on Route 13, just south of Stone Road. There has not been a full-service bank located within the town's limits since the departure of Bank of America.

ITEM SPECIFICS:

Earlier this year, Taylor Bank announced that they were building a branch here within Cape Charles on the east end of Mason Ave. As a result, the Town reached out to them to see how their services compared to Atlantic Union. The Town Manager and Treasurer met with Taylor Bank representatives and received the attached briefing.

In addition to the convenience of a bank just two blocks away, and wanting to support local businesses, Taylor Bank offered significant financial advantages over our current bank. Our monthly fees could be cut by two-thirds, and more importantly, our funds on deposit could earn a greater interest income.

The attached resolution would authorize the move of the Town's banking to Taylor Bank and provide the documentation required to set up the accounts.

RECOMMENDATION:

Staff recommends approval of Resolution 20241017B – Authorizing Change of Depository Accounts to Taylor Bank

RESOLUTION 20241017B

**TO MOVE THE MUNICIPAL CORPORATION OF CAPE CHARLES'
DEPOSITORY ACCOUNTS TO TAYLOR BANK**

WHEREAS, following the closure of the Bank of America branch in Cape Charles in 2012, the Town of Cape Charles moved its depository accounts to Shore Bank, now doing business as Atlantic Union Bank, with its closest branch on Route 13 just south of Stone Road; and

WHEREAS, after Taylor Bank announced that they were building a branch within the Town, the Town Manager and Treasurer met with representatives from Taylor Bank and a proposal was received; and

WHEREAS, Taylor Bank offered significant financial advantages over our current bank – our monthly fees would be reduced and our funds on deposit would earn greater interest income; and

WHEREAS, municipalities are mandated to deposit public funds in qualified public depositories as defined in § 2.2-4401 of the Code of Virginia, and Taylor Bank fits the criteria; now

THEREFORE, BE IT RESOLVED by the Town Council of the Town of Cape Charles, Virginia, that the depository accounts for the Municipal Corporation of Cape Charles will be moved to Taylor Bank, with the transfer process to begin immediately; and

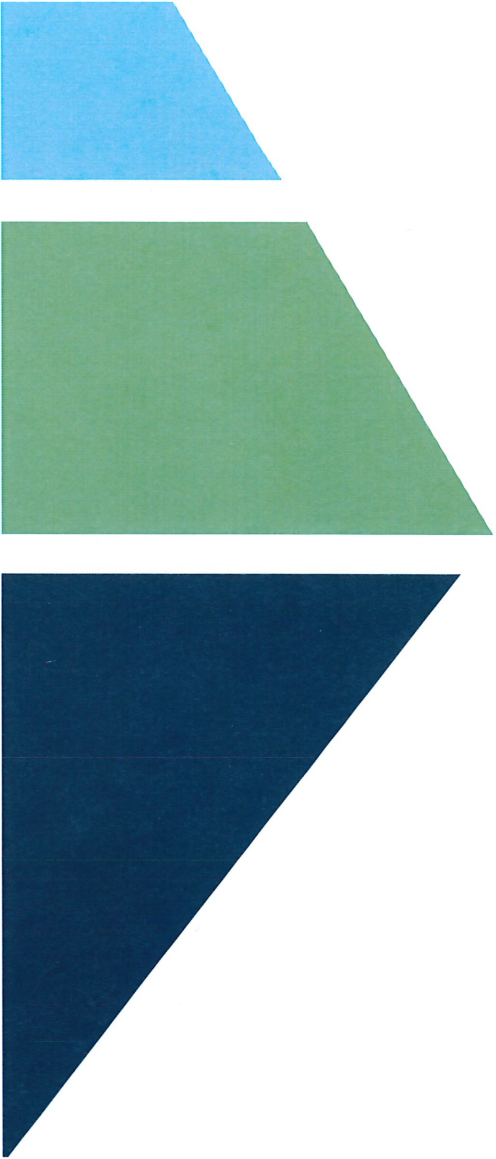
BE IT FURTHER RESOLVED by the Town Council of the Town of Cape Charles, Virginia, that the positions of Mayor, Town Manager, Treasurer, Assistant Treasurer and Town Clerk are authorized to sign banking documents.

Adopted by the Town Council of Cape Charles on October 17, 2024.

By: _____
Mayor

ATTEST:

Town Clerk



Town of Cape Charles

Account Comparison



Operating Account

Atlantic Union Analyzed Business Checking

•\$23.00 monthly
maintenance fee
\$0.125 deposit balance
assessment fee

0.20% interest

Taylor Bank Prime Business Checking

No monthly
maintenance or
deposit assessment
fees
(\$2,500 min bal. req.)

0.20% interest on
balance in account

Remaining balance in
account over \$100,000.00
can be swept into our ICS
program and earn 4.00%
(No charge for transfers)

Money Market

Atlantic Union

1.74%
annual percentage
yield

\$2,500 minimum
balance requirement
(\$12 fee if it falls below)

Taylor Bank

2.02%
annual
percentage yield

\$750 minimum
balance requirement
(\$8 fee if it falls below)

Taylor Bank- ICS Program

4.00%
annual
percentage yield

Balances over
\$100,000.00 will
automatically be swept
into the ICS program at
no cost to the customer.

Police Funds

Atlantic
Union

**Small business
checking-**

No minimum balance
requirements or
monthly service fees

Taylor
Bank

**Choice business
checking-**

No minimum balance
requirement and no
monthly service fee

Business Services Fees

Based on April 2024 Atlantic Union Account Analysis- \$6,100.00 will offset \$1.00 in fees for Analyzed Business Checking Account

<u>Service</u>	<u>Atlantic Union</u>	<u>Taylor Bank</u>
Deposit	\$0.80 per item	None
Not On-Us Item Deposited	\$0.16 per item	None
On-Us Item Deposited	\$0.16 per item	None
Checks Paid	\$0.21 per item	None
Chargeback Items	\$12.00 per item	\$10.00 per item

Business Services Fees

Based on April 2024 Account Analysis Atlantic Union- \$6,100.00 will offset \$1.00 in fees for Analyzed Business Checking Account

<u>Service</u>	<u>Atlantic Union</u>	<u>Taylor Bank</u>
Online Banking	\$25.00 per month	None
Positive Pay	\$50.00 per month \$0.03 Payee Positive Pay Issue Item \$0.04 Positive Pay Issue Item	\$40.00 per month
Remote Deposit Capture	\$50.00 per month	\$50.00 per month (Waived until Cape Charles Branch opens)
General ACH Services	\$25.00 per month \$0.25 ACH originated credits and debits \$0.20 ACH credits \$0.20 ACH debits	\$10.00 per month \$0.05 per transaction \$10.00 per batch
Wires	\$25.00 per month \$15.00 outgoing domestic \$50.00 outgoing international \$15.00 incoming wire	\$30.00 outgoing domestic (\$20.00 if enrolled in Cash Management) \$85.00 outgoing international \$10.00 incoming

Account Comparison

Atlantic Union

Service Description	Volume	Unit Price	Total Fee
General Account Services			
Analyzed Account Monthly Maint	1	\$23.0000	\$23.00
Deposit Balance Assessment	326	\$0.1250	\$40.75
Depository Services			
Deposit	53	\$0.8000	\$42.40
Remote Deposit Monthly Maint	1	\$50.0000	\$50.00
Non Atlantic Union Item Deposited	887	\$0.1600	\$141.92
On-Us Item Deposited	95	\$0.1600	\$15.20
Paper Disbursement Services			
Check Paid	96	\$0.2100	\$20.16
Chargeback	3	\$12.0000	\$36.00
Positive Pay Services			
Payee Positive Pay Issue Item	138	\$0.0300	\$4.14
Positive Pay Issue Item	138	\$0.0400	\$5.52
Positive Pay Account	1	\$50.0000	\$50.00
General ACH Services			
ACH Credit	53	\$0.2000	\$10.60
ACH Debit	40	\$0.2000	\$8.00
ACH Originated Debits And Credits	263	\$0.2500	\$65.75
ACH BeB Monthly Maint	1	\$25.0000	\$25.00
Wire And Other Funds Trnsf Services			
Wire BeB Outgoing Domestic	1	\$15.0000	\$15.00
Wire BeB Monthly Maint	1	\$25.0000	\$25.00
Information Services			
Business Ebanking BeB Monthly Maint	1	\$25.0000	\$25.00
Total Analyzed Fees			\$603.44
Total Fee Based Fees			\$0.00
Total Waived Fees			\$0.00
\$6,100.00 in Investable Balances Offset \$1.00 of Total Fees for all Analysis Based Services.			

Taylor Bank

Total Fee-

General Account Services

\$0.00

\$0.00

Depository Services

\$0.00

\$0.00 (\$50.00 Fee Waived Until Branch Opening)

\$0.00

\$0.00

Paper Disbursement Services

\$0.00

\$0.00

Positive Pay Services

\$0.00

\$0.00

\$40.00

General ACH Services Based on Volume

\$0.00

\$0.00

\$13.15 (263 items/ \$0.05 per item)

\$120.00 (Avg. 3 batches a week at \$10 per batch)

\$10.00 monthly maintenance fee

Wire Services Based on Volume

\$30.00 (\$20.00 if enrolled in Cash Management Service)

\$0.00

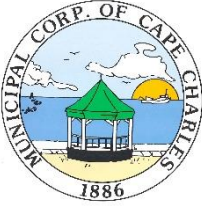
Online Banking

\$0.00

Total Analyzed Fees- \$213.15

Aside from the ACH and wires fees that are based on volume, the town would be paying roughly \$213.15 per month. This figure is roughly 1/3 of the fees being charged by Atlantic Union.



 TOWN OF CAPE CHARLES	AGENDA TITLE: Reappointment of Planning Commissioners		AGENDA DATE October 17, 2024
	SUBJECT/PROPOSAL/REQUEST: Approval of Planning Commissioner reappointments		ITEM NUMBER: 9E
	ATTACHMENTS: None		FOR COUNCIL: Action (X) Information ()
	STAFF CONTACT (s): Libby Hume, Town Clerk	REVIEWED BY: John Hozey, Town Manager	

BACKGROUND:

The Planning Commission serves as an advisory body to the Town Council for planning-related matters and consists of seven members – six citizen members each serving four-year terms and one member representing the Town Council.

ITEM SPECIFICS:

Bill Ashworth and Ian McDonald are current Planning Commission members whose terms will be expiring on October 31, 2024. Mr. Ashworth was appointed in December 2022, and Mr. McDonald was appointed in June 2024. Both were appointed to complete the unexpired terms of former Commissioners and have expressed their interest in continuing their service on the Commission.

RECOMMENDATION:

Staff recommends, if deemed appropriate, that Council reappoint Mr. Bill Ashworth and Mr. Ian McDonald to the Planning Commission for a full four-year term.

 TOWN OF CAPE CHARLES	AGENDA TITLE: Reappointment of Board of Zoning Appeals Member		AGENDA DATE: October 17, 2024
	SUBJECT/PROPOSAL/REQUEST: Reappointment of Member to the Board of Zoning Appeals		ITEM NUMBER: 9F
	ATTACHMENTS: None		FOR COUNCIL: Action (X) Information ()
	STAFF CONTACT (s): Libby Hume, Town Clerk	REVIEWED BY: John Hozey, Town Manager	

BACKGROUND:

The Board of Zoning Appeals (BZA) hears zoning appeals and reviews variance and special exception applications. All appointments are approved by the Circuit Court of Northampton County. The Board consists of five members each serving five-year terms.

DISCUSSION:

Laura Weigand was appointed in January 2022 to complete the unexpired term of a former member. Her term will be expiring on October 31, 2024. Ms. Weigand has expressed her interest in continuing her service on the BZA for another term.

RECOMMENDATION:

Staff recommends, if deemed appropriate, that Council reappoint Ms. Laura Weigand to the Board of Zoning Appeals for a full five-year term.