

TOWN COUNCIL
Public Hearing & Special Meeting
Cape Charles Civic Center
November 10, 2022
6:30 PM

At approximately 6:30 p.m. Mayor William “Smitty” Dize, having established a quorum, called to order the Public Hearing & Special Meeting of the Cape Charles Town Council. In addition to Mayor Dize, in attendance were Vice Mayor Bennett, Councilmen Buchholz, Follmer and Grossman, and Councilwomen Holloway and O’Brien. Also, in attendance were Town Manager John Hozey, Project Manager Bob Panek, Special Assistant to the Town Manager Julie Pruitt, Wastewater Plant Manager Patrick Christman, Public Works Foreman Ralph Bowen, Town Clerk Libby Hume, and four representatives from Virginia American Water. There were six members of the public physically in attendance, and 12 viewers on Facebook.

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

PUBLIC HEARING:

Mayor Dize announced that the purpose of this evening’s public hearing was to receive comments regarding the proposed sale of the public utilities – water and wastewater systems and granting of a franchise for the use of public places to acquire, maintain and operate the water and wastewater systems.

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

Motion made by Councilman Grossman, seconded by Councilman Buchholz, to close the public hearing. The motion was approved by unanimous vote.

The public hearing was closed at 6:33 p.m.

ORDER OF BUSINESS:

- A. *Opening of Bids for Proposed Franchise for Use of Public Places to Acquire, Maintain and Operate the Water and Wastewater Systems:*
Town Clerk Libby Hume stated that one bid was received. She opened the envelope and read the bid letter from Virginia American Water into the record. (Please see attached.)
- B. *Town Council Vote re: Comprehensive Asset Purchase Agreement:*
Town Manager John Hozey provided an overview of this item as follows: i) In May 2020 the Town received an unsolicited proposal from a private utility company to acquire and operate the Town’s water and wastewater utilities which started a lengthy process to develop procurement guidelines associated with the Public-Private Education Facilities and Infrastructure Act (PPEA), then provide appropriate public notice; ii) As a result of the public notice, the Town received a second proposal; iii) The Town then solicited for a consultant to assist in the evaluation of the two proposals and conduct due diligence; iv) Following the lengthy due diligence process, Council chose Virginia American Water’s proposal to move on to the next phase of the evaluation which included robust public consultation; v) After receiving input at multiple public meetings related to the Virginia American Water proposal, Council authorized the town manager to negotiate potential agreements to address the public comments and affected the transfer of the Town’s utilities. Draft agreements were developed and presented for public consideration at two Town Hall meetings in October where public comments and questions were addressed. There was no significant opposition to these agreements offered at the meetings; vi) The public notice for a public hearing was published and a public hearing was held earlier this evening with no public comments received.

John Hozey went on to state that this was a complex transaction. First, a resolution was needed to adopt the Comprehensive Asset Purchase Agreement that contained the terms and conditions of the sale. Since this action divested the Town of real property, adoption of an ordinance authorizing the sale of the property was also required. Both the resolution and ordinance required a supermajority vote of the Town Council for adoption. Following successful consideration of the resolution and ordinance, a franchise agreement also needed to be considered.

Motion made by Councilman Grossman, seconded by Councilman Buchholz, to adopt Resolution 20221110 Approving the Comprehensive Asset Purchase Agreement with Virginia American Water Company.

Mayor Dize read Resolution 20221110, then called for a vote.

The motion was approved by unanimous vote. Roll call vote: Bennett, yes; Buchholz, yes; Follmer, yes; Grossman, yes; Holloway, yes; O'Brien, yes.

C. Town Council Vote re: Sale of Water & Wastewater Systems:

John Hozey stated that, as explained earlier, this was the second step in the process to sell the water and wastewater systems to Virginia American Water. He added that the parcel was a very large lot and needed to be subdivided. Staff had been trying to secure a surveyor for the last nine months. When completed, all documentation would be presented to Council prior to execution.

Motion made by Councilman Grossman, seconded by Councilman Buchholz, to adopt Ordinance 20221110A Approving the Sale of the Town of Cape Charles Waterworks System and Wastewater System to Virginia American Water Company. The motion was approved by unanimous vote. Roll call vote: Bennett, yes; Buchholz, yes; Follmer, yes; Grossman, yes; Holloway, yes; O'Brien, yes.

D. Town Council Vote re: Granting of Franchise for the Use of Public Places to Acquire, Maintain and Operate the Water and Wastewater Systems:

John Hozey stated that it was a legal requirement that Virginia American Water be granted a franchise for exclusive rights to operate the systems. The Code of Virginia required advertisement and solicitation of bids. After public notice was conducted, one bid was received. It was opened and read into the record earlier this evening.

Motion made by Councilman Grossman, seconded by Councilwoman Holloway, to adopt Ordinance 20221110B An Ordinance Granting to Virginia American Water Company, Its Successor of Assigns the Exclusive Right, Insofar as and to the Full Extent That the Town Can Lawfully Grant Such Right, for the Term and Upon the Conditions Hereinstated, to Use the Streets, Alleys and Public Places of the Town of Cape Charles to Acquire, Maintain and Operate a Waterworks System and a Wastewater System in Said Town, to Lay, Remove, Repair, Replace and Maintain Water and Wastewater Pipes, Mains, Service Pipes, Hydrants, Fire Hydrants, Fixtures and Appurtenances in the Present and Future Streets, Alleys and Public Places of Said Town, to Supply Water and Wastewater Service for Domestic, Public, Manufacturing and Other Purposes Within the Town of Cape Charles and to Transport Through the Town to Other Municipalities and Unincorporated Areas Where Services May Now or Hereafter Be Furnished by Means of the Existing Distribution or Collections Systems and Mains or as the Same Be Hereafter Extended, Replaced, Relocated or Paralleled by Additional Mains from Time to Time. The motion was approved by unanimous vote. Roll call vote: Bennett, yes; Buchholz, yes; Follmer, yes; Grossman, yes; Holloway, yes; O'Brien, yes.

E. Approval of Transition Contract with Virginia American Water for Consultation of Wastewater Treatment Plant Maintenance and Operations:

John Hozey stated the Town would now be embarking in a lengthy process for State Corporation Commission (SCC) approval. It would take several months to put together the package to submit

to the SCC and another six or more months to obtain SCC approval. Until the sale was finalized, the Town was still responsible to operate and maintain the water and wastewater systems. Virginia American Water stepped in to assist us with some issues under an emergency procurement, which would be expiring soon. Council permission was being requested to continue the agreement with Virginia American Water until the sale was finalized. The original emergency procurement covered only the wastewater system, but the agreement being reviewed this evening would cover both the water and wastewater systems. John Hozey noted that he had failed to include the water system in the Exhibit A included in the agenda packet. The corrected Exhibit A was distributed to Council for review.

Motion made by Councilman Grossman, seconded by Councilwoman Holloway, to replace Exhibit A in the packet with the revised version. The motion was approved by unanimous vote.

Motion made by Councilman Grossman, seconded by Councilman Buchholz, to approve the Transition Consulting Agreement with Virginia American Water. The motion was approved by unanimous vote.

TOWN MANAGER COMMENTS

John Hozey commented as follows: i) He explained that there was an issue with Northampton County's tax database and the Town had just recently received the personal property tax information. Staff still needed to update each record in the database before it could be provided to our software vendor to import into our financial system. An exact date could not yet be determined for when the personal property tax bills could be printed and mailed. State law required a payment deadline of minimum of two weeks after the date of mailing. He asked for Council concurrence to extend the payment deadline to three weeks after the billing was mailed. There was some discussion regarding the payment deadline being closer to Christmas which could be a hardship for the residents, and income tax consequences if the deadline were pushed into 2023; ii) Since there were no items of business to bring forward for Council action for the November 17th Regular Meeting, he intended to cancel the meeting. The Comprehensive Plan was originally scheduled for action on November 17th, but it had been pushed back to December. There were no objections from Council.

MAYOR AND COUNCIL COMMENTS

Mayor Dize thanked all the candidates who ran for the Mayor and Council positions. Most people did not want to get involved. He appreciated everyone who ran and congratulated those who won for their service to the Town. He asked Council for their permission to include the newly elected individuals in all future correspondence and meetings, including executive sessions. Council was in agreement with including Mayor-elect Adam Charney and Councilman-elect Ken Butta in all future correspondence and meetings.

Vice Mayor Bennett stated that there were over 100K small wastewater systems in the United States and our water system was built before cybersecurity was an issue. Both of our plants were easily accessible which could be a threat to life. He recommended bringing Virginia American Water in to discuss cybersecurity. Cybersecurity protection was a necessity since anything with an Internet Protocol (IP) address could be accessed remotely and a potential threat. Public water and wastewater systems were considered the most vulnerable, especially in small localities.

Councilwoman O'Brien did not have any additional comments.

Councilwoman Holloway commented as follows: i) She stated that Festive Friday brochures had been distributed and went on to congratulate Cape Charles Main Street (CCMS) and Julie Pruitt for their hard work. She encouraged everyone to go down Mason Avenue to see the beautiful Christmas lights. CCMS had worked so hard to raise funding to decorate Mason Avenue. All of her weekends in December were sold out; ii) She thanked John Hozey for his perseverance and leadership, adding that

he guided everyone with incredible wisdom. A lot of great processes were adopted, and we were here tonight to celebrate the success.

Councilman Grossman commented as follows: i) He echoed Councilwoman Holloway's comments regarding John Hozey. The amount of effort he put into getting everything together and working with the consultants, etc. was very much appreciated; ii) He thanked Virginia American Water for their assistance with their consulting services in getting us through the issues in dealing with the various violations.

Councilman Buchholz expressed his agreement regarding Virginia American Water and their willingness to step in to provide their assistance in getting through the issues. He also thanked John Hozey and the Town staff who worked in the background. It was a tremendous amount of work and effort. It took a team to accomplish this. We had a good team and good leader.

Councilman Follmer expressed his agreement with all the previous comments. He thanked John Hozey for his wisdom in planning the process and rolling everything out to the public. He stated that he was uncomfortable with the idea when the process began. He did not envision the final vote as we had it earlier tonight, with buy-in from the majority of the community. It was not an easy feat. John Hozey led us through the process brilliantly. Virginia American Water stepped up and built a lot of confidence in the community. He also thanked the staff for their work. It was a very stressful process. He also thanked the water and wastewater teams and hoped that they were as excited about the next chapter as the Council was.

Mayor Dize thanked John Hozey for all he had done.

Motion made by Councilwoman Holloway, seconded by Councilman Buchholz, to adjourn the Town Council Public Hearing & Special Meeting. The motion was approved by unanimous vote.

The Public Hearing & Special Meeting adjourned at 7:01 p.m.

Mayor Dize

Town Clerk

**November 10, 2022 Town Council Public Hearing & Special Meeting
Comments and Information Provided in Writing**



BID LETTER

TO: THE HONORABLE COUNCIL OF THE
TOWN OF CAPE CHARLES, VIRGINIA

The undersigned, VIRGINIA-AMERICAN WATER COMPANY, respectfully submits this bid for the franchise rights proposed to be granted by the ordinance of the Council of the Town of Cape Charles, Virginia, entitled:

“AN ORDINANCE GRANTING TO VIRGINIA-AMERICAN WATER COMPANY, ITS SUCCESSOR OR ASSIGNS THE EXCLUSIVE RIGHT, INSOFAR AS AND TO THE FULL EXTENT THAT THE TOWN CAN LAWFULLY GRANT SUCH RIGHT, FOR THE TERM AND UPON THE CONDITIONS HEREINSTATED, TO USE THE STREETS, ALLEYS AND PUBLIC PLACES OF THE TOWN OF CAPE CHARLES, TO ACQUIRE, MAINTAIN AND OPERATE A WATERWORKS SYSTEM AND A WASTEWATER SYSTEM IN SAID TOWN, TO LAY, REMOVE, REPAIR, REPLACE AND MAINTAIN WATER AND WASTEWATER PIPES, MAINS, SERVICE PIPES, HYDRANTS, FIRE HYDRANTS, FIXTURES AND APPURTENANCES IN THE PRESENT AND FUTURE STREETS, ALLEYS AND PUBLIC PLACES OF SAID TOWN, TO SUPPLY WATER AND WASTEWATER SERVICE FOR DOMESTIC, PUBLIC, MANUFACTURING AND OTHER PURPOSES WITHIN THE TOWN OF CAPE CHARLES AND TO TRANSPORT THROUGH THE TOWN TO OTHER MUNICIPALITIES AND UNINCORPORATED AREAS WHERE SERVICES MAY NOW OR HEREAFTER BE FURNISHED BY MEANS OF THE EXISTING DISTRIBUTION OR COLLECTION SYSTEMS AND MAINS OR AS THE SAME BE HEREAFTER EXTENDED, REPLACED, RELOCATED, OR PARALLELED BY ADDITIONAL MAINS FROM TIME TO TIME.”

Virginia-American Water Company (the “Company”) proposes to operate under the franchise according to the terms of the franchise agreement, subject to acquiring the necessary facilities in accordance with the comprehensive asset purchase agreement. Further, any acceptance of this franchise agreement by the Company is contingent upon the Company obtaining all necessary regulatory approvals from the Virginia State Corporation Commission, in form and substance acceptable to the Company in the Company’s sole and absolute discretion, to acquire the necessary facilities and provide utility service in the Town of Cape Charles.

WE KEEP LIFE FLOWING®

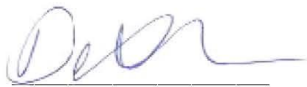
THE HONORABLE COUNCIL OF THE
TOWN OF CAPE CHARLES, VIRGINIA

IN WITNESS WHEREOF, Virginia-American Water Company has caused these presents to be signed by its Vice President thereunto duly authorized, and attested by its Corporate Secretary thereunto duly authorized, this 9th day of November 2022.

VIRGINIA-AMERICAN WATER COMPANY

By 
Vice President - Operations

ATTESTED:


Corporate Secretary