



TOWN COUNCIL
Public Hearings & Regular Meeting
Cape Charles Civic Center
July 20, 2023
6:30 PM

At approximately 6:30 p.m. Mayor Adam Charney, having established a quorum, called to order the Public Hearings & Regular Meeting of the Cape Charles Town Council. In addition to Mayor Charney, in attendance were Vice Mayor Bennett, Councilmen Buchholz, Butta, Follmer, and Grossman, and Councilwoman Holloway. Also, in attendance were Town Manager John Hozey, Assistant Treasurer Adrian Oei, Police Chief Jim Pruitt, Planner/Zoning Administrator Katie Nunez, Assistant to the Town Manager Julie Pruitt, and Town Clerk Libby Hume. There were 7 members of the public physically in attendance, and 11 viewers on Facebook.

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

PUBLIC HEARING COMMENTS: (3 MINUTES PER SPEAKER)

- A.i. A Zoning Map Amendment (ZMA) application from Nancy T. Rooney to rezone 107 Mason Avenue (Tax Map #83A3-2-1-74 & 83A3-2-1-75A) from Commercial-1 (C-1) Zoning District to Commercial Residential (CR) Zoning District for proposed use pursuant to Cape Charles Zoning Ordinance (CCZO) Section 3.5.

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

- A.ii. A Zoning Map Amendment (ZMA) application from RL & B Seaside Investments, LLC to rezone Tax Map Parcels #83A3-2-1-75B & 83A3-2-1-77 from Commercial-1 (C-1) Zoning District to Commercial Residential (CR) Zoning District for proposed use pursuant to Cape Charles Zoning Ordinance (CCZO) Section 3.5.

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

- B. Real Property Disposal – Monroe Avenue Parcel (Tax Map #83A3-1-418A)

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

Motion made by Councilman Buchholz, seconded by Councilwoman Holloway, to close the public hearings. The motion was approved by unanimous vote.

The public hearings were closed at 6:33 p.m.

RECOGNITION OF VISITORS / PRESENTATIONS/RECOGNITIONS:

- A. *Proclamation for U.S. Coast Guard Station Cape Charles Appreciation Day:*

Mayor Charney read Town of Cape Charles Proclamation 20230720 – Coast Guard Station Cape Charles Appreciation Day – August 3, 2023.

Motion made by Councilman Grossman, seconded by Councilman Buchholz, to adopt Proclamation 20230720 recognizing August 3, 2023 as Coast Guard Station Cape Charles Appreciation Day. The motion was approved by unanimous vote.

PUBLIC COMMENTS: (3 MINUTES PER SPEAKER)

L.D. Davis, Cape Charles resident

Ms. Davis addressed the Council regarding the Cape Charles Community Trail Phase 3. (Please see attached.)

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

CONSENT AGENDA

- A. Approval of Agenda Format
- B. Approval of Minutes:
 - i. June 12, 2023 Town Council Executive Session
 - ii. June 15, 2023 Town Council Regular Meeting
 - ii. June 15, 2023 Town Council Work Session
- C. Approval of May 31, 2023 Financial Report

Councilman Grossman asked that the May 31, 2023 financial report be pulled out of the Consent Agenda for discussion.

Motion made by Councilman Grossman, seconded by Councilman Buchholz, to approve the Agenda Format and minutes as presented. The motion was approved by unanimous vote.

Councilman Grossman stated that he had requested that the engineering and design costs for the new municipal center, library renovations and visitor center be separated by project, but the financial report showed the three projects grouped together. He asked that the amounts be broken out by project in future reports. Town Manager John Hozey stated that he would have the amounts separated in the future.

Motion made by Councilman Grossman, seconded by Vice Mayor Bennett, to approve the May 31, 2023 Financial Report as presented. The motion was approved by unanimous vote.

UNFINISHED BUSINESS:

There was no unfinished business for review.

NEW BUSINESS:

- A. *Zoning Map Amendments – from Commercial-1 (C-1) to Commercial-Residential (CR):*

- i. *107 Mason Avenue (Tax Map #83A3-2-1-74 & 83A3-2-1-75A)*
- ii. *Mason Avenue Parcels (Tax Map #83A3-2-1-75B & 83A3-2-1-77)*

Planner/Zoning Administrator Katie Nunez stated that after numerous conversations over the past five years, a joint zoning map amendment application was received from Nancy T. Rooney and RL & B Seaside Investments, LLC to rezone their properties on Mason Avenue (Tax Map #83A3-2-1-74, 83A3-2-1-75A, 83A3-2-1-75B & 83A3-2-1-77) from Commercial-1 (C-1) to Commercial-Residential (CR).

During the Comprehensive Plan update in 2022, these four lots were discussed regarding the possibility of rezoning them to CR. Two of the lots (#83A3-2-1-74, 83A3-2-1-75A) were under common ownership by Nancy T. Rooney with one lot being vacant and the other lot with a 3,300 square foot, one-story building. The other two lots (83A3-2-1-75B & 83A3-2-1-77) were under common ownership by RL & B Seaside Investments, LLC and were vacant. During discussion related to the Future Land Use Map it was indicated that the Mason Avenue blocks closer to the beachfront might be moved to a mixed zoning designation of Commercial-Residential, especially this half block from Harbor Avenue heading east along Mason Avenue, thus serving as a transition zone between the residential lots closer to the beach and the full commercial that started in the building next to Ms. Rooney's building. The Planning Commission held their public hearing on July 11, 2023, and no comments were heard. After

the public hearing, the Commission reviewed the application and unanimously recommended Council approval to rezone these parcels from C-1 to CR. The Town Council public hearing was held earlier this evening, with no comments heard.

Councilman Follmer stated the following: i) He thought that at one time, a proposal was discussed to have an apartment in the back portion of the building at 107 Mason Avenue and commercial in the front. Katie Nunez confirmed that this was still the intent for this building; ii) Some time ago, another commercial space was being used for residential. Would this action tonight set a precedent to make it easier for other commercial properties to be used for residential? Katie Nunez stated that rezoning was the appropriate and legal way to do this, but there had been other examples over the last five to seven years where the Town addressed similar issues and granted approval without going through the proper zoning changes. Some were done under ADA, but no deed restrictions were put in place to accompany that action. Others were done through conditional use permits, but the Town did not have any procedures in place to allow first floor residential in a commercial district. Rezoning was the legal way to do this and there would be no question about what was being done. This was not an easy process and it had taken more than five years to get to this point.

Councilman Butta stated the following: i) In reading through the documentation, it seemed that, in approving this zoning amendment, we would be doing the opposite of the purpose of the CR district, which was to promote the continued residential character of these areas while allowing commercial uses to be introduced. These parcels were already zoned for commercial use, and we were now adding residential use; ii) For the last five to seven years, the owners knew that it was not legal to live in the property, but they did so, and the Town allowed it. He expressed his concerns about making this change for someone who had violated the ordinance, and added that for these two reasons, he was opposed to this request.

Motion made by Councilman Grossman, seconded by Vice Mayor Bennett, to adopt Ordinance 20230720A Amending Cape Charles Zoning for Tax Map Parcels #83A3-2-1-74, 83A3-2-1-75A, 83A3-2-1-75B and 83A3-2-1-77 for Commercial-1 to Commercial-Residential which was supported by the Comprehensive Plan and Future Land Use Map. Mayor Charney moved for adoption of Ordinance 20230720A as noticed and forewent reading of the Ordinance. The motion was approved by majority vote. Roll call vote: Bennett, yes; Buchholz, yes; Butta, no; Follmer, yes; Grossman, yes; Holloway, yes.

B. *Real Property Disposal – Monroe Avenue Parcel (Tax Map #83A3-1-418A):*

John Hozey stated that the Town owned two contiguous lots zoned Residential-1 near the intersection of Monroe Avenue and Pine Street. The lot directly on the corner (#83A3-1-419) contained the Pine Street Pump Station which was part of the wastewater collection system. The lot to the east (83A3-1-418) was vacant. In preparation of the sale of the water and wastewater systems to Virginia American Water, the corner lot was subdivided so that only the area occupied by the pump station would convey with the utility sale. The vacant portion of that lot was combined with the contiguous lot to create a parcel (#83A3-1-418A) about one and a half times the size of a standard lot in the historic district. The subdivision plat was recorded in the land records of Northampton County. As there was no current or future need for this residential lot, it was advertised for competitive sale with a minimum bid of \$250K to generate both sales revenue and ongoing real property tax revenue. Two bids were received with the winning bid of \$300,010. Staff felt that this was a reasonable price for the larger than normal lot. If approved, the FY 2024 budget would be amended mid-year for the actual sale price. The Code of Virginia § 15.2-1800 allowed a locality to dispose of real property by either public or private sale and adoption of an ordinance after a public hearing was held. The public hearing was held earlier this evening, with no comments received.

Motion made by Councilman Grossman, seconded by Councilman Buchholz, to adopt Ordinance 20230720B – Sale of Monroe Avenue Parcel. Mayor Charney moved for adoption of Ordinance 20230720B as noticed and forewent reading of the Ordinance. The motion was approved by unanimous vote. Roll call vote: Bennett, yes; Buchholz, yes; Butta, yes; Follmer, yes; Grossman, yes; Holloway, yes.

C. Tourism Zone Credit Payment:

John Hozey stated that a tourism zone application was received from Cape Charles Mini Golf which met the qualification requirements of the program. The credit currently due to Cape Charles Mini Golf amounts to \$4,061.80 for facility & connections fees and building permits. Additionally, Cape Charles Mini Golf would be due annual payments of approximately \$747 over the next five-year period based on revenue projections and estimated value of improvements provided by the business owner in the application.

Motion made by Vice Mayor Bennett, seconded by Councilman Follmer, to approve the tourism zone payment for facility & connection fees and building permits to Cape Charles Mini Golf in the amount of \$4,061.80. The motion was approved by unanimous vote.

D. Memorandum of Agreement with Cape Charles Main Street:

John Hozey stated that the Town and Cape Charles Main Street (CCMS) entered into an initial Memorandum of Agreement (MOA) on July 1, 2018, which established the roles and responsibilities of each organization as the Town strived to become a Virginia Main Street Community. The initial MOA was for five years, which expired on June 30, 2023. Over the past five years, Cape Charles had gone from being a Virginia Main Street Affiliate to a Virginia Advancing Main Street Community, and the Town had experienced strong economic growth within the business community, due in no small measure to the nurturing efforts of CCMS. CCMS had also taken on many successful events/programs which grew in popularity each year. The Town contributed financially to CCMS since inception. Although the support had decreased slightly over the years, it was unlikely that it would ever be discontinued. Economic development was a common and vital municipal function, that were it not for CCMS, the Town would have to fund internally at levels much higher than our current participation in CCMS. The renewal MOA was substantially similar to the original but updated to the current situation.

Councilman Grossman stated that CCMS gave a great annual report, but he would also like to receive copies of the quarterly reports. John Hozey stated that Councilman Grossman would be provided copies of the quarterly reports as they were received.

Motion made by Vice Mayor Bennett, seconded by Councilman Butta, to approve the new Memorandum of Agreement with Cape Charles Main Street. The motion was approved by unanimous vote.

E. Adoption of New Cape Charles Town Code:

John Hozey stated that over the years, the Town Code became obsolete as the State Code changed and local practices evolved. It was prudent to update the entire Town Code periodically to ensure it remained relevant. The latest update began in 2021 when Municode was contracted to conduct a comprehensive review to include incorporating changes made by the General Assembly through 2021. The year 2021 saw two additional General Assembly special sessions, so Municode's contract was amended to include those special sessions. The analysis received was also reviewed by the Town's attorney and staff, and additional revisions were proposed reflecting changes in local practice and/or procedures since the Code was last updated. Considerable time was spent working with the attorney to update the town's noise ordinance, using the adopted Virginia Beach ordinance as a model. Going forward, a legal review was planned every four to five years. All Town Code changes adopted by Council through August 2022 were included in the new Code. No other changes had been made until this evening's decision related to the Tourism Zone.

The new Town Code, both clean and blacklined versions, were provided to Council two weeks ago for review, as well as being posted on the website. The memoranda from the CivicPlus attorney describing the legal review changes, as well as a color-coded document describing the changes from staff and our attorney were included in the agenda packet.

There was discussion as follows: i) The proposed noise ordinance addressed sounds heard within permanent dwellings, hotel or other type of residence, regardless of where the sounds were coming from. It would be reviewed again, and potentially revised, during discussion regarding short-term rental regulations; ii) Councilman Butta noted the change to the Building Code Board of Appeals term from one year to five years and asked if the town had other boards with five-year terms. Town Clerk Libby Hume responded that the Historic District Review Board and some other boards currently had five-year terms; iii) Councilman Grossman asked whether any changes were made related to public alleys as a result of the recent Board of Zoning Appeals case. John Hozey responded that no substantive changes had been made, but this issue would be reviewed separately; iv) Councilman Butta noted that Article 2, Section 2-4 showed that the assistant town manager would take over the town manager's duties in the absence of the town manager, but we did not have an assistant town manager, and he asked whether language needed to be added regarding the mayor performing the duties. It was explained that this language stated that "if" the Town had an assistant town manager, the assistant town manager would perform the duties of that office. The Town Charter addressed the mayor's performance of the duties.

Motion made by Councilman Grossman, seconded by Vice Mayor Bennett, to adopt Ordinance 20230720C – An Ordinance Adopting and Enacting a New Code for the Town of Cape Charles, Virginia; Providing for the Repeal of Certain Ordinances not Included Therein; Providing a Penalty for the Violation Thereof; Providing for the Manner of Amending Such Code; and Providing When Such Code and This Ordinance Shall Become Effective. Mayor Charney moved for adoption of Ordinance 20230720C as noticed and forewent reading of the Ordinance. The motion was approved by unanimous vote. Roll call vote: Bennett, yes; Buchholz, yes; Butta, yes; Follmer, yes; Grossman, yes; Holloway, yes.

F. *Cape Charles Community Trail Phase 3:*

John Hozey stated that the Community Trail Phase 3 construction was previously bid in 2019 but no contract was awarded due to the estimated costs of the bids received. The project was redesigned to reduce costs, and after a lengthy period of review by VDOT, was readvertised in May 2023. Only one bid was received on June 16th from Conrad Brothers of Virginia, Inc. The bid of \$945,630, including the two bid alternates, substantially exceeded the engineer's estimate of \$653,494. It also greatly exceeded Conrad Brothers' bid from 2019 but was typical of the post-pandemic construction environment. John Hozey explained that when this year's capital budget was prepared, knowing the uncertainty of cost estimates, a reasonable estimate was included in the budget, but additional unappropriated funding was available in the Capital Project Fund. The breakdown of the bid was reviewed. John Hozey went on to state that the bid alternate for the lighting seemed excessive. The base bid included the conduit, wiring and concrete foundations for the lighting, but it was recommended that staff procure and install the lighting, as done in other areas of the town. With recent changes in the area surrounding the south entrance to Central Park, staff recommended not moving forward with the other bid alternate which covered improvements to this area. Staff's recommendation was to work with the Citizens for Central Park and surrounding residents regarding future needs and plans for this area. John Hozey added that staff's recommendation was to award the base bid to Conrad Brothers. Although the bid was over budget, it was still worth doing due to the amount of grant funding.

There was discussion as follows: i) If the light poles and fixtures were installed by staff, it could be done in phases and the number reduced as suggested by Ms. Davis earlier this evening; ii)

Councilwoman Holloway expressed her agreement with Ms. Davis related to the number of plantings included in the plan as overkill and asked that the number of plantings be reduced. John Hozey responded that it would be difficult to change the design with VDOT having to approve all changes, but the Town could possibly handle this issue as a change order. He would talk to Bob Panek to try to address this item once the contract was awarded; iii) It was difficult to predict the exact schedule, but construction would not begin until after Labor Day; iv) Councilwoman Holloway stressed the need for ongoing communication, either through Cape Charles Main Street or directly with the businesses in the area, regarding the timeline and impact to the commercial area of south Peach Street.

Motion made by Vice Mayor Bennett, seconded by Councilman Buchholz, to authorize the town manager to award the base bid construction contract to Conrad Brothers of Virginia, Inc., in the amount of \$759,567.19, and any future contract change orders within the 5% contingency reserve. The motion was approved by unanimous vote.

G. Town Tourism Zone Recension:

John Hozey stated that in 2016, the Town Council adopted Ordinance 20161117 establishing the entire area of the town as a Tourism Zone for the purpose of attracting new tourism-related business and investment to town. The ordinance provided tax credits over a five-year period, in the form of tax and permit rebates, to certain tourism-related businesses that made new investments in town. Since inception of the program, due to administrative burdens, there had been a historical backlog of credits owed to businesses under the ordinance. With the exception of payments made earlier this summer, payments were last issued in 2018. While the initial intent of the program was well meaning, staff questioned its relevancy today. The potential repeal of the program was discussed at the June 15, 2023 Town Council meeting and staff was directed to bring back an ordinance for consideration to repeal the ordinance establishing the program. Any businesses currently in the program, including Cape Charles Mini Golf that was approved earlier this evening, would be grandfathered until the expiration of their five-year period.

Motion made by Vice Mayor Bennett, seconded by Councilman Buchholz, to adopt Ordinance 20230720D – Repealing Ordinance 20161117 Tourism Zone Ordinance (Article XII, Section 18-414 Through 18-420 of Cape Charles Town Code Adopted July 20, 2023) repealing the tourism zone program. Mayor Charney moved for adoption of Ordinance 20230720D as noticed and forewent reading of the Ordinance. The motion was approved by unanimous vote. Roll call vote: Bennett, yes; Buchholz, yes; Butta, yes; Follmer, yes; Grossman, yes; Holloway, yes.

TOWN MANAGER COMMENTS

John Hozey commented as follows:

- i) As reported in his weekly report, the application to the State Corporation Commission (SCC) was accepted and the discovery process had begun. The process was taking more time than he had thought. Most of the first set of discovery questions had been answered and a second set of questions was received today. The discovery questions were to provide additional details to the SCC, but nothing that would cause withdrawal of the application.
- ii) He was working with Canonie regarding the lease of the land for the visitors' center and restrooms. It was a complicated process. A draft lease was received from Canonie and forwarded to our attorney. There were some concerns, especially since Canonie did not have clear title to the property and whether they could lease the property without having a clear title. The Town was getting ready to make significant improvements/investments on the property and could potentially build the major public facility then get evicted. It was up to the attorneys to make us aware of the risks and up to the Town to make the decisions.

- iii) Bids were received for the Harbor project, and they all came in about 24% to 28% over budget. Again, the Town had sufficient funds in the unappropriated fund balance. When Bob Panek returned, they would meet to review the options and their recommendations would be presented to the Council at the August meeting.
- iv) There were some staffing changes to report: Harper Matthews moved from the public works department to the police department. This move created a full-time position in the public works department and Markeen Hines was moved from part-time seasonal to full-time. Maureen Tamares-Meditz, who was the part-time library assistant, was also hired as the part-time planning department administrative assistant.
- v) The Town was just notified that a group of residents hired an attorney to file an appeal on the recent Board of Zoning Appeals decision related to a public alley behind their properties. Some residents wanted the decision to go one way and others were opposed, so he was not surprised on the filing of the appeal. He asked that if anyone got served to please contact him or Katie Nunez immediately.
- vi) The Shriner's Parade was confirmed for August 5th – the same weekend as the Crab Slam. It would be another busy weekend.

MAYOR AND COUNCIL COMMENTS

Mayor Charney thanked the town manager, and everyone involved in the July 4th planning for the best 4th of July since he had been in Town. He had received so many great comments about the setup, breakdown, and clean up. It was unbelievable. John Hozey stated that he would pass along the comments to the Public Works crew, Julie Pruitt, the Police Department, and Jeb Brady.

Vice Mayor Bennett stated that the sign on Route 13 advertised a free fishing pier and free public beach, and he did not think it was needed anymore. With the Town's current tourism load, he did not think the beach and pier needed to be advertised anymore and asked that the signs be changed to anything else or even left blank. John Hozey responded that he was meeting with CCMS next week regarding the signs. Councilwoman Holloway added that the two signs could be removed immediately, but it would be a slower process to determine what the replacements should be.

Councilwoman Holloway went on to thank Councilman Buchholz and Steve Smith of CC Ryder for putting out signage advising golf carts that they could not go beyond the trestle by the brewery. There had been many sightings of golf carts at Food Lion and the ABC store. Signs were also needed on the old railroad path since that was the way many golf carts were going. We had a new set of people in Town each week. She had also seen property being advertised in Kings Creek Landing and Tower Hill as being a "short golf cart ride to downtown Cape Charles." She did not know what the Town's responsibility was regarding these advertisements, but we needed to make an effort to communicate these issues.

Councilman Buchholz added that signs were also posted on the golf cart path by Bay Creek, and that the golf cart rental company in Virginia Beach was telling their renters that they could drive golf carts anywhere with a 35 MPH speed limit which was not the case. He had spoken with Northampton County Supervisor and member of the Canolie Board John Coker about this issue and Canolie was willing to help. His signs were temporary and more permanent ones needed to be installed.

Councilman Follmer commented as follows: i) As an interim measure, he supported painting over the two signs at Route 13 as brought up by Vice Mayor Bennett; ii) He had received very positive feedback this summer about the trash cans being emptied regularly and the cleanliness of the Town, especially early morning following July 4th. Twice in recent weeks, members of the Public Works staff had stopped and offered assistance to him when he was moving items around. These actions contributed to the kind of community we wanted to encourage; iii) He asked about the status of installing additional signage for the municipal parking lot along Mason Avenue. There was a problem with

vehicles going in both directions and trying to pass, and he had been hearing a lot of complaints. John Hozey responded that nothing had been done yet, but he would take this comment as a prod to move forward to get this completed.

Councilman Butta stated his appreciation for the work done on the Town Code but asked that the Zoning Ordinance update be reviewed piecemeal during work sessions. The ability to discuss items in work session would make it easier to resolve issues and provide the public an opportunity to follow the process. It might be beneficial to allow questions for the public as well. Katie Nunez responded that it was the plan to hold multiple work sessions to review the proposed updates to the Zoning Ordinance.

Councilman Grossman had no further comments.

Mayor Charney read the announcements. John Hozey noted that the August 3, 2023 meeting was added tentatively in case a work session was needed for the Town Code. Since the Council adopted the new Town Code this evening, the meeting was not needed.

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

The Regular Meeting adjourned at 7:50 p.m.

Mayor Charney

Town Clerk

**July 20, 2023 Town Council Public Hearings & Regular Meeting
Comments and Information Provided in Writing**

L.D. Davis, Cape Charles resident

Thank you, Mayor and Town Council, for this opportunity to be heard.

In August of 2017, April of 2018 and again in August of 2020, I have come before you with concerns about the Community Trail Phase 3 project and I am here again.

Today I walked the 300 block of Mason Avenue and found 4 light fixtures on the entire block. Yet the final design work that is to be sent to VDOT for approval of the Phase 3 project contains 10 light fixtures between the north side of Mason Avenue and the south side of Randolph Avenue. Let me remind you that Peach Street is shorter in length than the 300 block of Mason and is a mixture of commercial and residential properties. This is lighting overkill and an unnecessary expense. Public safety comes first but common sense must prevail.

Also, as I reviewed the proposed design, I was surprised to find that the landscaping for Phase 3 is to include:

12 Crepe Myrtles
28 Yaupon Hollies
874 Liriope plugs
18 Stella de Oro Daylilies

Once again, overkill. Who will maintain these plantings, or will they suffer the same fate, disease and death, as those on the Community Trail Phase 3 North Peach project? While Public Works does the best job they possibly can, they are understaffed for the time, energy & maintenance this overplanted landscaping design requires.

Einstein's definition of insanity is doing the same thing over and over again and expecting a different result.

Let us begin this project by making sane, smart and dollar wise decisions.

Thank you for your time & commitment to Cape Charles
