

(ONE COUNCILMAN'S)

TOWN CRIER

This is the first issue of what will be a periodic communication to the citizens of Cape Charles.

John Burdiss is solely responsible for the content of the

TOWN CRIER

Topics addressed in this issue (May 9, 2007) are:

- 1. Kicking out the Cape Charles Volunteer Fire Company?**
- 2. Notable agenda items at the May 8, 2007 meeting of Town Council.**
- 3. Let the court decide? Sometimes the "majority" does not rule!**
- 4. Constituents are invited to meet and discuss whatever topics interest them.**

Kicking out the fire department? That's a bit of a stretch.

Some important facts that you need to know about the government of the Town of Cape Charles (Town) & the Cape Charles Volunteer Fire Company (Fire Company).

1. Town & Fire Company are totally independent of each other - we do not commingle our funds and we are run as totally independent bodies
2. Fire Company relies on volunteers – who do wonderful and thankless work and upon donations (or fund raisers - primarily) to operate
3. Town relies on your tax dollars & user fees to fund your government operations
4. Town has never been a substantial source of donations for Fire Company
5. Prior Town Council “volunteered” Town funds (a donation) to buy the “new” ladder truck for Fire Company
6. Current Town Council agreed to honor that “promise” by giving Fire Company a \$145,000 donation – no strings attached – to buy the ladder truck
7. Town has never made a donation even remotely close to \$145,000 to any organization – in fact, the \$145,000 is believed to be more that 30 times the amount ever “donated” to any independent organization before
8. **Prior Town Council, while pledging to “buy” the ladder truck – made no provisions in the 2006 – 2007 budget to provide the Town funds to do so**
9. **Current Town Council funded the promised \$145,000 donation by making the following “cuts” to the budget that it inherited from the prior Town Council:**
 - a. Cape Charles High School renovation – eliminated \$70,000 in budget
 - b. New park, open space and ball fields – eliminated \$57,000 in budget
 - c. Skateboard park – eliminated \$7,000 in budget
 - d. Volleyball, softball & soccer apparatus – eliminated \$10,000 in budget
10. As with your household budget, the Town can only spend a dollar one time. The trade offs council must make (like the ones above) are part of what you elect council members to do
11. Town needs and has needed additional storage space for equipment that has been purchased for use by the Town
12. Current Town Council has been studying the best possible places (for the long term) – on Town owned property – to locate a building to store Town equipment
13. Estimated costs of building needed for this storage range upward of \$100,000
14. Town owns the Municipal Building, including the space immediately under the Town offices and the Council room
15. Fire Company uses that space owned by the Town for essentially for 3 things:
 - a. Storage for an antique fire engine
 - b. Garage space for an old “chiefs” car
 - c. Communications room & turnout gear
16. Town cannot legally lease property for more than 40 years – that is and has been a state law; Fire Company did pay \$1/year in a single check in 1996 (\$78) covering the period (per the memo on the check) 1928 – 2006; again, Town could not actually agree to such a lease, no matter what the check stated or what the Fire Company understood
17. Fire Company has been told repeatedly that the Town will work with Fire Company to partition the garage space “leased” from the Town so the Fire Company will not be required to move its communications room
18. Arguably, the antique engine can be stored in the main building owned by the Fire Company
19. Fire Company has offered absolutely no compromise to its position and has “threatened” to move out of Cape Charles

20. The Town's use of the garage space in the Town's own building may be for a limited period of time until Town builds – if needed – its own equipment storage space; meaning the change in use may not be permanent

I implore the Fire Company to put some balance in this situation. \$145,000 is by no means a small gift, and then there is the effectively “free” use of Town's property for a number of years. The Town's resources are finite; the Fire Company should try to accommodate the Town with a reasonable response to the Town's need for space in return for the Town's enormous support of the Fire Company.

Notable agenda items at the May 8, 2007 meeting of Town Council

6. **Old Business**

- *A. Regional Water Supply Plan – allows Town to join various Eastern Shore entities in an ongoing study of how to best obtain potable water & treat waste water. Burdiss Yes.

7. **New Business**

- *B. Nuisance Ordinance Amendment – allows for fines/penalties to encourage recalcitrant property owners to comply with existing ordinances. Burdiss Yes.

G. Draft Budget – This is the **“key”** document that outlines how the Town expects to collect revenues and make expenditures in the fiscal period from July 1, 2007 – June 30, 2008. Please get familiar with this document and ask questions – knowledge is good! Vote to schedule public hearing on May 29, 2007. – Burdiss Yes.

- *H. Revised Utilities Rates & *I. Revised Water & Wastewater Connection Charges & *J. Revised Meals Tax & *K. Short-Term Rental Tax:

These all relate to part of the necessary means to balance the budget and/or provide for long term funding of capital needs.

Burdiss Yes on all changes effective June 1, 2007, or Yes to set, if needed, a public hearing before adopting changes.

Notes:

1. Utility rates have not been increased since 2003; during that time our costs have climbed by 37%.
2. Utility rates have been increased on the higher volume users in particular (over 5,000 gallons/month) in part to encourage water conservation. A key factor driving the Town's need to build a new water plant and more water storage is the increasing water usage.
3. Special provisions were made to allow low income users to apply for a \$6.00/month reduction in their water bills. The \$6.00 is the equivalent of the increase in the monthly

charges to the lower volume users, particularly in the historic district where in the past those users paid less than users in the newly developed portions of town. That differential has been eliminated.

4. Connection fees have been studied exhaustively and the rates are necessary to fund the spending needed for water and sewer plant upgrades and/or expansion. Commercial users were provided approximately an 80% reduction in the connection fees initially proposed when informational meetings were held earlier this year.
5. Meals tax increase from 4 – 5% and the establishment of a 1% short term rental tax (golf carts, scooters, kayaks, etc.) are also important building blocks in acquiring the funds needed to balance the budget, with those funds dedicated to tourism, promotion and/or recreation.

Finally, we are very pleased to report that in the proposed budget, your real estate taxes, personal property taxes, boat taxes and other taxes remain at the same rate as last year!

Let the court decide?
Sometimes the “majority” does not rule!

Background facts:

1. Our Town Charter requires that 4 members of council be present to have a quorum for meetings. The Mayor does not count for this purpose, nor may the Mayor vote on any issue, except to break a tie.
2. When a vacancy exists (Mary Harris’ seat, for example) according to the Town Charter, the majority of council shall (in legal parlance this is a mandate, not an option) select the person to fill that seat.¹
 - a. A “majority” vote is needed from the remaining council members (5 of 6 slots are filled) to elect the replacement; a simple vote of 3 to 2 is sufficient. The majority rules.
 - b. There is not any legal requirement nor has there been any tradition or any standard in the past as to what person was elected to fill a vacancy; the only legal requirement is that the person elected must be a qualified voter in Cape Charles; that’s it.
3. Each member of council swears an oath² and has a fiduciary duty to the Town to act in the best interests of the Town.³ This would arguably include attending meetings of

¹ **Section 3.2. Vacancies on Council.** Vacancies on the council shall be filled for the unexpired portion of the term by a majority vote of the members of the council; persons so elected to fill vacancies must be qualified voters of the town.

² ... “I will **faithfully and impartially discharge all the duties incumbent upon me** as a Member of the Town Council of Cape Charles”... (**emphasis added**)

³ **TOWN OF CAPE CHARLES - TOWN COUNCIL CODE OF ETHICS - Preamble** - The citizens and businesses of Town of Cape Charles, Virginia, are entitled to have fair, ethical, and accountable local government, which has earned the

- council⁴ unless the member is physically unable to do so; for example – health issues and/or in travel status away from Cape Charles.
4. Last week (May 3, 2007) an Emergency Session of Town Council was called to elect a replacement for Mary Harris; Mary apparently tendered her resignation on April 28, 2007 as she & Steve are moving to Florida.
 5. Prior to the meeting being held, 4 of the 5 members of council appeared amenable to **a** selecting a qualified candidate; that candidate also had the Mayor's support.
 - a. Without notice, 2 of the 5 members of council failed to show up for the Emergency Session of Town Council, thus preventing a quorum and the planned election of Mary's replacement.
 - b. One of the two members who failed to attend the Emergency Session reneged upon his pledge to support that election.
 6. Rumors were circulating that the two members who failed to attend that Emergency Session would continue to make themselves absent from all Council meetings until 45 days have passed since the effective date of Mary Harris' resignation, and to let the Circuit Judge for Northampton County select the replacement for unexpired term of Mary Harris.
 - a. **Va. Code § 24.2-228**, "When a vacancy occurs in a local governing body ... the remaining members of the body ... within forty-five days of the office becoming vacant ***shall*** appoint a qualified voter" ... "***If a majority of the remaining members cannot agree, or do not act***" the judge of the circuit court shall make the appointment. (***emphasis added***)
 - b. **The *majority of your Town Council cannot act because of the absence of the other 2 members can prevent a quorum, thus preventing the "council" as a whole from acting.***⁵
 - c. This same tactic was used by these same two members in July 2006 at which time Mary Harris was ultimately chosen to fill Dora Sullivan's unexpired term on Council when Dora became Mayor on July 1, 2006.

So what happened last night? ***We had a quorum and Council could have acted on filling the vacancy, but Council did not do so.*** How did this happen? Why did this happen?

public's full confidence for integrity. The effective functioning of democratic government requires that public officials, both elected and appointed, comply with both the letter and spirit of the laws and policies affecting the operations of government; that public officials be independent, impartial and fair in their judgment and actions; that public office be used for the public good, not for personal gain; and that public deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility. To this end, the Town of Cape Charles Town Council has adopted this Code of Ethics for members of the Town Council and of the Town's boards, commissions, and committees, to assure public confidence in the integrity of local government and its effective and fair operation.

1. Act in the Public Interest - Recognizing that stewardship of the public interest must be their primary concern, members will work for the common good of the people of Town of Cape Charles and not for any private or personal interest, and they will assure fair and equitable treatment of all persons, claims, and transactions coming before the Town of Cape Charles Town Council, boards, commissions, and committees.

2. Comply with the Law - Members shall comply with the laws of the nation, the Commonwealth of Virginia, and the Town of Cape Charles in the performance of their public duties. These laws include, but are not limited to: the United States and Virginia constitutions; the Charter of the Town of Cape Charles; laws pertaining to conflicts of interest, election campaigns, financial disclosures, employer responsibilities, and open processes of government; and Town ordinances and policies.

⁴ **Handbook for Virginia Mayors & Council Members**, Virginia Municipal League, July 2004, 5th Edition Revised. Chapter 3, Roles of Council, pages 29 – 30: "The council is the legislative and policy-making body in municipal government. General law states that "all powers granted to localities shall be vested in their respective governing bodies" (Virginia Code, §15.2-1406). Council members do not have formal or legal powers as individuals, but only as members of the council as a whole. **The council is responsible for: ... Filling vacancies on council. (emphasis added)**

⁵ *Ibid.*

Without any consultation with the "majority" of council members, the Mayor had unilaterally decided before the meeting last night that the vote to replace Mary Harris would not be addressed at that May 8, 2007 regular meeting of council.

It was apparent that we were going to have a quorum. However before the meeting was officially convened the Mayor unequivocally stated that she would not amend the agenda to add a new business item allowing for the vote needed to replace Mary Harris.

Now we are at an impasse. A "majority" cannot act unless one of the other two members attends a council meeting.⁶

I challenge those failed to attend and who threaten to continue to do so to articulate for the benefit of the citizens of Cape Charles how their actions serve the best interests of the Town.

I challenge the Mayor to articulate how failing to act when an opportunity existed last night to fill the existing vacancy served the best interests of the Town and how the Mayor expects the impasse to be resolved.

Citizens of Cape Charles - please get involved. Speak to the Mayor, speak to all members of Council and express your displeasure with this intolerable situation!

You are invited!

Please join me at my office - 117 Mason Ave., Suite E (next to Kelly's Pub) from 5:15 - 6:15 PM on Tuesday, May 15th for what I plan to make a regular event. You can come, voice opinions, ask questions and learn more about what your Town government and your Council are doing to honor our duty to you by always striving to serve the best interests of the Town with each action we take.

Your responses and/or inquiries to anything in the

TOWN CRIER

are welcome at johnburdiss@baycrk.net

⁶ See Town Charter, **Section 3.2. Vacancies on Council.**