

TOWN CRIER

This is the 16th issue of a periodic communication to the citizens of Cape Charles.

John Burdiss is solely responsible for the content & any opinions in the *Town Crier*.

In this issue (October 10, 2008) are items from the 10/09/08 agenda

Cape Harbor: Where are we now?

Some members of Council think that we need a consultant. Mayor Sullivan broke a 2 to 2 tie – Bannon & Veber in favor, Bennett and Burdiss against to consider hiring a consultant; Evans had recused himself and Elliott was absent from this Council meeting.

While I agree that there does not appear to be unanimity among members about what the broad scope of the project should be, there does seem to be some consensus that the project as requested is just too big, too massive, simply too much. Although I am not absolutely sure and I don't presume to speak for him, it appears to me that Councilman Bennett may be more disposed to approval at a level that approaches or equals the request, as was recommended by the Planning Commission. Councilman Veber and I are on the other end, leaning toward a substantial paring of the size; as is Mayor Sullivan in the event she is called upon to vote to break any tie. Councilman Bannon and perhaps Councilmen Elliott and Evans (if he confirms that he can vote) appear somewhere in between.

Bennett and I agree that a consultant is unnecessary and we both asked those in favor to articulate what they want and expect a consultant to do. My questions include:

- What exactly do we expect a consultant to do for us?
- What "type" of consultant should be considered?
- Who will determine the scope of work?
- Who will pay for the consultant – the Town?
- How much is a reasonable amount for the Town to pay and why?
- Are we expecting a consultant to resolve our differences in what we each see as the appropriate "scope" and size of the project? If so, how?

I think we as members of Council are simply expected to use good judgment, express our bases for what we think the "answer" should be and work toward some compromise as we must often do. The consensus is that mixed use and the hotel are "okay", so we are only dealing with height which affects size, mass and scale. It is very important to remember that not one hotel room and not one condo can be built in this district (or on this site) by right; hence the application for the conditional use permits. We are not bound to accept the request without adjustment if we as a Council determine that the size just does not fit with the neighborhood, which is in the immediately adjacent historic district and with the Town overall.

We are the legislative body for the Town and objectively discussing what each one of us thinks about such issues is what we are elected to do. That we don't all agree is a good thing. We need to voice our differences in a civil manner, try to reach consensus, and vote based upon our best judgment in each case of what is in the best interests of the Town. As I said last month: "I look forward to further objective, fact based analysis and discussions related to this matter as we move toward addressing what appears to be a consensus that "some" project is desirable, but perhaps not this one for which these 3 conditional use requests was made."

An example of this is that despite our agreement on the consultant issue, Bennett and I disagree on the point of whether density can be addressed. I believe it can and must be considered. Nonetheless I do agree with Bennett that this project – because of this unique district – could well be much more “dense” than those properties that are truly more comparable – such as other properties in Town that are in the adjacent historic district.

For example: 115 Mason, 117 Mason and 245 Mason are perhaps as comparable as any existing structures to those in the proposed project (just look at the renderings presented by the applicant and note the mimicry); Hubbards’ Building and the Bank of America also have significant “mass”, but they have no existing or immediately planned residential components. The ratio square feet of residential to commercial in the actual buildings with the active “mixed use” ranges from 2:1 to 3:1 vs. the 10:1 requested. Comparisons with everything from Sea Breeze and Gallagher’s project to Bay Creek condos at the golf course may give some sense of scale and density, but I agree with Bennett, the Harbor District is not exactly like any of those.

Since I am not in favor of approval of the project as requested or as recommended by the Planning Commission, I suppose I should be pleased that that prospect of approval has been at best delayed. However, I remain of the opinion that Council could and should approve the uses of: hotel and the mixed use, but limiting the height and setting limits on the overall density at a level that “fits” with the Town. This might mean as many as 200 or 250 condo units, plus a hotel, but I see those as the upper limits. Further, the number of units should be established in manner that effectively downsizes the overall project. That is to say, we wouldn’t want 250 units that in overall mass, gross size and space that would equal the requested 425 units.

Here are some levels of approval with which I can agree:

1. Use – hotel? Yes.
 - a. Maximum rooms – 120.
 - b. Maximum height 55’ of space that can be occupied as rooms or used in hotel operations
2. Use – mixed use – commercial and residential? Yes.
 - a. The lesser of:
 - i. Maximum # of units 225
 - ii. Maximum SF of residential space – 225,000
 - iii. Maximum ratio of residential to commercial space – 5:1
 - b. Maximum height – 45’
 - i. Average height – 35’
 - ii. Therefore the amount of space at 45’ must be offset with equal amounts of 25’ heights

Other conditions that I think should attach to any approval:

1. All “public” infrastructures – streets, utilities, boardwalk, sidewalks, bulkhead, etc. must be fully bonded to assure their completion, no matter whether the full project is ever built out or not. Further, these elements must be completed and in place in not more than 3 years from the date the project receives its “certificate of appropriateness” from the newly established Harbor Historic District Review Board.
2. Underground garages, if any, or above ground garages must be built in 3 equal phases – a slight change from condition # 1 from planning.
3. The remaining conditions 2. – 12. should be as recommended by the Planning Commission; with the exception of the non-public portions of the project - # 7. for which Council apparently may not legally compel the development to be bonded. However, to

assuage the concerns of citizens who see many unfinished houses in town and projects elsewhere, the developer should provide reasonable assurances from independent sources that the project – before each phase is begun (ground broken, structures being erected) – is fully financed and capable of being bonded.

4. Finally, there must be articulation of building heights that provides a result that is comparable to (doesn't mean mirror image or direct match) but truly comparable to and compatible with the articulation of building heights currently in existence on Mason Ave.

Follow-up on the topic of economic impact and financial wherewithal:

1) As I said in last month's issue of the Crier: "Citizens are rightly concerned that this developer or a future developer may not or for financial reasons cannot carry off the proposed multi-million dollar project requested – see the recent news stories about the problems in Norfolk – Granby Towers. Unfortunately, despite well-intentioned suggestions, since this is private property, in many ways our hands are tied."

2) Our charge in these conditional use applications is not economically driven, therefore when advocates point to the possible economic benefits, I would respond:

- a) We have not seen any economic impact study, which by the way is not the standard nor is it required for conditional use applications.
- b) Even if we were to accept that the project as requested will be a boost to downtown economic activity (I don't subscribe to that theory as it has been tendered), we have absolutely no assurance that this developer or any subsequent developer can successfully finish the project – that was true weeks and months ago, and surely with today's economic climate it is even more true.

3) So, we should not count our proverbial economic chickens too soon, rather we should focus on "if" built, at any future date, by this developer or any other, will the Town's best interest be served overall.

OTHER ISSUES ON THE AGENDA OR IN STAFF REPORTS – 10/09/08:

1) **The economic crisis and its affect on the Town.** Belt tightening is being done; no layoffs projected, but some vacant positions may not be filled. Our "funds" invested through the state-wide investment pool, apparently are safe and have not lost significant value. However, to date we have not established any credit lines – assuming that we actually can find a lender – to fund cash flow shortfalls that may occur if tax collections lag, or funds from grants that must be paid and then refunded, all of which could strain our cash position to require such stop gap plans.

2) **Community Trail and Broadband** initiatives are moving forward.

3) Planning and efforts continue on a **Regional Water and Waste Water System**, which may change the Town's plans; however, our plans are moving forward as if there will be no such regional system.

4) **Keck property** set for public hearing at next Council meeting regarding a possible re-zoning.

The Constituent's meeting will be held on
Thursday, October 16th at 5:15 – 6:15 PM.

The meetings are held at my office, at 117 Mason Ave., Suite E (next to Kelly's Pub). It is your opportunity to 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. **Please come; we will all benefit.** Responses and/or inquiries to anything in the Town Crier or about "Town" business are welcome: johnburdiss@baycrk.net