

TOWN CRIER

This is the 17th 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 (November 15, 2008) are items from the 11/13/08 agenda

I apologize for the quantity of information in this issue, but as you read you will understand that there are many very important issues facing the Town.

Regional Water and Wastewater System

Council unanimously approved my request to change the Agenda such that item 6.A. be split into two parts (see attached a copy of the original Agenda & the staff briefing on 6.A. as originally presented); - therefore 6.A.(1) was: "Terminate current planning efforts for a regional wastewater system under the MOU." and - 6.A.(2) was: "Downsize the capacity of the new Cape Charles WWTP to 250kGPD.", thus enabling me to participate in Agenda item 6.A.(2).

As to Agenda item 6.A.(1) - [Regional Water and Wastewater System] - When this item was addressed, I stated on the record that I would remain in the room, but that I would not participate in the discussion or vote on that matter. The Conflict of Interest Act ("COIA") names the Commonwealth Attorney as the person from whom an opinion about COIA can be sought, and I had asked the Commonwealth Attorney for his opinion.

Accordingly, my recusal on this item was in response to the Commonwealth Attorney's opinion that I have conflict because my wife works for a law firm (she is not an owner/partner) that represents Webster Investors, LLC ("Webster"); however her firm has not represented Webster in the area of water and wastewater before Town Council. I have made the Commonwealth Attorney aware that I believe his position is incorrect and that it may have far reaching and unintended implications for any person serving in a public office whose spouse is a professional person - e.g. - attorney, accountant, engineer, realtor, etc. Nonetheless, although cordially invited by the Commonwealth Attorney to appeal his opinion to the Attorney General (as outlined in COIA), I have decided to abide by his finding (see also Keck matter - agenda item 6.E.) if and until a different opinion is obtained.

An important tenet of COIA is to make the public aware of the personal interests of public officials such that public officials could not benefit from transactions before the public body without the public's knowledge. Ironically, as the Commonwealth Attorney has stated, if my son, daughter, brother or sister was a professional - and he or she did not live in my home or rely upon me for support of

\$10,000 or more, that relative could actively represent a client *before* the Town Council and I would not be required to recuse myself under COIA. Further, while there are specific provision in COIA for a public official to disclose his interest in the transaction and then state that he is able to objectively vote on the matter, the Commonwealth Attorney does not believe that under his interpretation and opinion that I am entitled to make that disclosure and statement in order to participate. I do not agree that the tenuous connection the Commonwealth Attorney has made between me and Webster and the resulting disqualification is in keeping with this evidence of legislative intent.

After considering a presentation by Bob Panek, our consultant on water and wastewater, discussion ensued and a vote was called for, with the decision being 3 to 2 to terminate the MOU (Memorandum of Understanding). The MOU was a tri-party, non-binding agreement between the Town of Cape Charles, Webster and the Town of Cheriton. The MOU's purpose was to explore the prospects and possible benefits of a regional water and wastewater system. Evans and Bennett voted "no", Bannon and Veber voted "yes" (to terminate) and Mayor Sullivan broke the tie by also voting "yes" thus ending the Town's participation and terminating the agreement.

Note: Councilman Elliott also remained in the room; however he did not participate in the discussion nor in the vote since a regional system anticipates the possible privatization of all water and wastewater operations and thus jobs at the Town, including the position held by Councilman Elliott, could be eliminated.

NEWS FLASH: "SPECIAL GAZETTE" (from the Town Manager)
3:30 PM, Friday - 11/14/2008

"Mayor Dora Sullivan has scheduled a Town Council Work Session for Tuesday, November 18, 2008 at the Town Hall regarding the Regional Waste Water Plan. This meeting will start at 5:00 PM and was requested by Webster Investors LLC.

On Thursday, November 13, 2008 at the Regular Scheduled Town Council Meeting; the Town Council voted to terminate the current planning efforts for a regional wastewater system under the Memorandum of Agreement [sic - Understanding - MOU, not MOA]. "

As to Agenda item 6.A.(2) - [Capacity/size of new wastewater plant for Cape Charles] After considering a presentation by Bob Panek and engaging in discussion, the matter was tabled by unanimous vote pending the receipt of additional cost and/or engineering information, likely not available until the January 2009 meeting.

As I understand if we do vote to "Downsize the capacity of the new Cape Charles WWTP to 250k GPD.", there are several factors that must be considered, some directly related to the plant's capacity and some are more general attributes related to the assumptions imbedded in all of our projections and a variety of "unknowns" that

can have huge impacts. Here are some points to consider as I currently understand them:

- The possible cost of the wastewater treatment plant would drop to about \$18MM vs. \$30MM for the 500k plant;
- The Town would lose – perhaps permanently – its 500k Gallon Per Day (“GPD”) DEQ permit, impacting the ability to serve future growth;
- The 250k plant would not serve any capacity needs that might occur if a regional system were deemed to be feasible and it was put into place;
- The 250k plant could be expanded, however the loss of the 500k GPD permit would require that all effluent in excess of the 250k GPD (reduced permit) must be reused and not discharged into the Bay;
- The current design for the new wastewater plant is for a 40 – 50 life, however a “package” plant – with a 20 year life may be available at much less cost;
- The plant now in use by the Town – a 250k plant – was also a package plant and it is effectively worn out, though not fully paid for;
- As of January 1, 2011, we must have a new plant in operation that meets new environmental standards of discharge, or we lose prospect of increasing the capacity to 500k; however, I understand that no financial penalties, such as fines, begin to accrue on that date if we are not up and running with the new plant;
- The projected growth in new connections to the wastewater system relies upon a revived real estate market in the future and building patterns that are at a pace that substantially exceeds the average in the recent past, including the boom period;
- The connection fees (now at \$10,000, which may rise to \$15,000) that are projected from this anticipated building growth are a very significant part of the recovery of capital costs to build the plant;
- If the growth does not meet projected patterns, e.g. – if only 50% is achieved, there would have to be significant rate increases to the users to pay not just the operating costs, but the high level of debt not covered by grants or other sources – such as Bay Creek under the annexation agreement where applicable;
- In fact, we expect that staff will recommend a 20% increase (about \$5.00/month) in the wastewater charge at our December 2008 meeting as the current rate (around \$25.00/month) is not adequate to cover existing operating costs, funded depreciation and payments on existing debt for the old plant and/or collection system – in excess of \$1.3 million was still owed by the Town as of 06/30/2007 – this was a 30 year loan taken out in 1992 and the original amount was about \$1.6 million;
- While we believe that significant grant funds are available, we may be competing with a regional system, among other entities in the State and beyond, for a what may be – given the wide-spread public budget problems – a diminishing pool of funds for grants and/or loans for all uses;

- Bay Creek, the successor to Brown & Root under the Annexation Agreement, contends that the Town's interpretation of the timing and the amounts it must pay are erroneous; hence the funds "budgeted" in 2008/2009 to be received from Bay Creek (another part of key assumptions in our modeling in the short term and longer term) may be much longer in coming. If this occurs it will add further to the short and intermediate term for the debt load of the Town and hence cause an increase in the monthly bills for all users who must pay for the new plant.

Suffice it to say, this wastewater situation is dynamic and very complicated, and the implications of how these issues are resolved will have a long lasting impact. Stay tuned.

If not a MOU, can I interest you in a MOA?

After the 3 to 2 vote described above to terminate the MOU (Agenda item 6A.(1)), at Agenda item 6.B. Council was briefed on the proposed MOA (Memorandum of Agreement) between Cheriton and Cape Charles. Among the steps to be undertaken in this "partnership" (if Cheriton agrees) under the MOA will be to: "Accept and evaluate a proposal from the private partner [shown as in the briefing as Webster, but the opportunity to make a proposal is open to any private entity] and negotiate a comprehensive partnership agreement if the proposal is economically advantageous [to the Towns of Cape Charles and Cheriton]." Sounds a lot like the MOU, doesn't it?

The resolution prepared to affirm Cape Charles' approval of the MOA - which by roll call vote was unanimously agreed to - contained a reference to the just dissolved 3-party MOU which had to be stricken from the final resolution before the vote was taken.

The net result it seems of ending the MOU and approving the MOA is that we - now just Cheriton (if their Council agrees) and Cape Charles will no longer work cooperatively with Webster in planning (the MOU); however under the new MOA, the two Towns will consider any proposals from Webster or any other interested party.

Incidentally, Webster had never made an actual proposal to Cape Charles/Cheriton, however the vote on the MOU (to end it) means that we (Cape Charles, Cheriton and Webster) aren't working together any longer under the non-binding MOU that had been approved just a few months ago.

Confused? Stay tuned.

Accessory dwelling units - nyet!

Agenda item 6.C. - By a 5 to 0 vote (I abstained as I had not attended the work session held just before the regular council meeting) the Planning Commission's recommendation was voted down by Council and accessory units will not be permitted. It is my understanding the Planning Commission had viewed changing the zoning to

allow accessory dwelling units as a small part in the affordable housing puzzle and to acknowledge (and thus approve) existing units that are in violation of the zoning ordinance. Council's concerns seemed substantially based upon enforcement issues, a circumstance that already exists.

Cape Harbor: One bite at a time.

Regarding Agenda item 6.D., Tom Bonadeo, the Town's Planner, led the Council to parse out 2 of the 3 requested conditional uses - hotel (maximum of 120 units) and mixed use - (residential and commercial - but no number of units approved), leaving the 3rd conditional use which is the height for a later meeting or meetings. The votes on both conditional uses were unanimous, which as previously outlined in the *Town Crier* confirmed that Council does favor development and agrees with these two uses requested. However, the battle over mass or size and/or number of units, which can clearly be correlated to the height, remains to be resolved.

The next workshop will be held - likely the first week of December, since our previously designated 4th Thursday for such workshops, etc. is Thanksgiving. At that time we will consider the height and the 12 conditions already recommended by the Planning Commission, along with likely more Council imposed conditions, if approval is to be granted.

Keck property - Old Cape Charles Road - conditional rezoning approved.

Agenda item 6.E. As mentioned above, in keeping with the Commonwealth Attorney's opinion, since my wife's firm has also represented the Kecks, I remained in the room; however I did not participate in the discussion nor in the vote. Under a conditional re-zoning regime, the Kecks were able to make proffers to the Town to induce the Town to grant their request. The Planning Commission had unanimously recommended Council's approval; my wife, who chairs the Planning Commission had been purposefully absent from all matters concerning the Keck property. The highlights of the approval, which was 5 to 0, are as follows:

1. Town receives a deed to about 18 acres;
2. Kecks get R-3 zoning on 16 acres - maximum 100 units per acre;
3. Buffers are required to provide visual screens to neighbors;
4. Town can use the 18 acres for a variety of "public" purposes - park, soccer fields, additional water wells, etc.;
5. After 15 years, Town can sell or exchange the 18 acres without limitation as to its use or zoning.

Water, water everywhere - more regional planning?

Agenda item 7.A. was unanimously approved. According to the staff presentation, "Virginia's General Assembly has mandated the development of local and regional water supply plans. For localities under 15,000 in population the deadline is

November 2, 2010 if the Town goes alone or November 2, 2011 if we join a regional system. A-N PDC (Accomack-Northampton Planning District) will manage the aggregation of information from the Towns in Northampton County - Cape Charles, Cheriton, Eastville, Exmore and Nassawadox - with an ultimate plan to manage the regional water [this does not apply to wastewater] system, if one is developed.

One more MOA - for the road, that is for the park.

Agenda item 7.B. Since 2007, Council has desired to formalize the Town's relationship with entities that work with the Town in a variety of areas. The Citizens for Central Park, LLC ("CCP") has been a very active participant and a very significant contributor in funds and volunteer efforts to the re-development of Central Park (which the Town owns), including such things as the new Gazebo/bandstand. CCP is the first organization to sign a MOA (Memorandum of Agreement) with the Town, the intent of which is to better document and formalize how these types of entities (in this case CCP) will work cooperatively with the Town.

OTHER ISSUES ON THE AGENDA OR IN STAFF REPORTS - 11/13/08:

- 1) While there have been some discussions with a local bank, to date the Town still has not taken any of the formal steps required to establish any credit lines; e.g. - among other things a public hearing is required before the Town can agree to this proposed new indebtedness. A credit line could be used to fund cash flow shortfalls in operations that may occur if tax collections lag, or to provide funds for the start up phases of multi-million dollar projects like the wastewater plant and the harbor project for which long term loans or grants have also not been formalized.
- 2) Approvals for the new floating docks (at the area of the former gravel dock) and the offshore breakwater are moving along, with the breakwater as the only one lagging. Approval is expected on all areas soon and development on the breakwater (first) and some of the docks (including the in-shore breakwater) could begin in the Spring of 2009.
- 3) Fall Council Retreat - all day Wednesday, 11/19/2008 at Town Hall - (see attached agenda for topics).

The Constituent's meeting will be held on
Thursday, November 20th 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